

**Date Issued: December 7, 2018
Appeal No. SSAB 13-2018**

Indexed as: BCSSAB 13 (1) 2018

**IN THE MATTER OF THE *SAFETY STANDARDS ACT*,
S.B.C. 2003, Chapter 39**

**AND IN THE MATTER OF an appeal to the
BRITISH COLUMBIA SAFETY STANDARD APPEAL BOARD**

BETWEEN:

A Gas Contractor

APPELLANT

AND:

Technical Safety BC

RESPONDENT

REASONS FOR DECISION

Safety Standards Appeal Board:

Jeffrey Hand

Representing the Appellant:

The Appellant

Technical Safety BC:

Kimberley Fenwick

INTRODUCTION

[1] This is an appeal from a review dated June 7, 2018 conducted by the Safety Manager of a Certificate of Inspection dated May 10, 2018. This inspection required certain non-compliances with a boiler installation to be corrected. The Appellant says the installation is safe and ought to be accepted by the Safety Manager. The Respondent says that modifications to the draft hood on the boiler contravene the applicable Regulations and cannot be approved.

FACTS

[2] The Appellant is a gas contractor carrying on business in the Peace River Region of British Columbia. On September 5, 2017 the Appellant obtained a gas installation permit to install a boiler in a residential property located in Mackenzie, British Columbia (the "Mackenzie Property").

[3] Owing to physical constraints in the space where the boiler was to be installed, principally due to other duct work and piping located in the space immediately above the boiler, the Appellant says he was required to reduce the height of the draft hood above the boiler by approximately two inches. The boiler is supplied with a draft hood supplied by the manufacturer and bearing the following label:

This draft hood must be installed without alteration. Required clearance between bottom of skirt and top of jacket to be minimum 10.5 inches.

[4] As installed, the draft hood height was 8 3/16 inches.

[5] An inspection of the boiler installation was performed by a Safety Officer on May 10, 2018 and the installation was found to be non-compliant as a result of this alteration of the draft hood.

[6] The Appellant sought a review of this decision on May 16, 2018. On June 7, 2018 the Safety Manager made a determination that the installation was non-compliant and must be corrected.

[7] The Appellant filed an appeal with the Board from this decision on June 25, 2018. The Appellant installed the same boiler in a residence located at another property in Mackenzie, British Columbia, in or about September, 2015 (the "Centennial Property"). The Appellant says he made a similar modification to the draft hood at the Centennial Property. He says that the Safety Officer responsible for the area was aware that this modification and no objection was made by the Respondent.

ANALYSIS

[8] The Appellant does not deny that an alteration was made to the draft hood resulting in a dimension less than that specified by the manufacturer however, he says that the Safety Manager has the discretion to approve this alteration and that he should do so because:

- (a) The installation is safe as evidenced by the fact that the boiler has operated without incident through one winter heating season; and
- (b) The similar modification undertaken at the Centennial Property has been allowed to remain in service since 2015, again without incident.

[9] The Respondent says that the alteration performed on the draft hood contravenes CSA standards and that the approval testing authority has not confirmed that this modification is indeed safe. The Respondent further says that the Safety Manager is not in a position to perform the necessary testing to determine whether the modification is safe notwithstanding that it has performed satisfactorily to date. Lastly, the Respondent says that the installation at the Centennial Property has not been approved because it was never subject to physical inspection.

[10] The Canadian Standards Association has established CSA B149.1-15 as an Installation Code for gas burning appliances and equipment ("Installation Code"). This code has been adopted and is applicable in British Columbia under Section 30 of the Gas Safety Regulation, BC Reg. 103-2004.

Section 8.23.3 of the Installation Code provides:

- 8.23.3 the draft hood either supplied with or forming part of an appliance shall be installed without alteration.

[11] Based on the foregoing provision the installation at the Mackenzie Property contravenes this section of the Installation Code because the draft hood has been modified by reducing its length by 2 inches.

[12] The following provisions under the *Safety Standards Act* are also applicable to this appeal:

- 63 A person must not do any of the following:

- (a) ...alter a regulated product contrary to this *Act* and the Regulations
- 32(1) A Safety Officer may, if requested by any person, issue in writing a variance to the person varying the application of a provision of the Regulations with respect to a regulated product or regulated work.
- 68(1) A person must not alter a regulated product if the alteration would or is likely to:
- (a) result in the product ceasing to meet the requirements of the Regulations, or
 - (b) result in the product ceasing to meet the standards
 - (i) require to be met by the certification agency, or any successor of that agency, that authorized the use of a certification mark for the regulated product, or
 - (ii) apply to that regulated product by a Provincial Safety Manager in issuing an approval under Section 10

[13] Considering the foregoing provisions of the *Act* and Regulations, the thrust of the Appellant's argument is that while the installation at the Mackenzie Property does not strictly conform to the Regulations the Appellant says the Safety Manager should accept that alteration.

[14] There is no evidence before me that the Appellant has sought a variance of the Regulations in relation to the Mackenzie Property, although the submissions of the Respondent suggest that a variance request may have been submitted after this appeal was filed.

[15] The Respondent submits that a variance is unlikely to be granted. The boiler in question would have had a certification mark applied by a certification agency signifying that the product was safe if installed in accordance with the equipment supplied by the manufacturer, including, in this instance the draft hood without modification.

[16] The Respondent says that the certification of regulated products is a detailed process that involves reviewing significantly more information than a Safety Officer is

capable of assessing during the physical inspection of an already installed product. The Respondent relies on the certification mark as part of its assessment to assess the safety of regulated products and regulated work.

[17] They say that in the absence of written confirmation that the alteration would not void the certification of the product the Safety Manager is not in a position to approve the installation as safe notwithstanding that it has apparently performed without incident since its installation.

[18] The Board is mindful that if the Safety Manager's decision is upheld this will result in additional cost and inconvenience to either the homeowner or the Appellant, or both in order to bring the boiler into compliance. No evidence was placed before the Board explaining what might have to change at the Mackenzie Property in order to have a boiler installation that complies with the Regulations. While the operation of the boiler without incident is some reason to believe the modification may not have created an unsafe condition, the Board notes that the Safety Manager still has safety concerns. Considering all of the foregoing the Board considers the Safety Manager's decision to be reasonable and we are not inclined to vary or reverse it.

[19] In terms of the installation at the Centennial Property if, as the Respondent suggests, that installation too may be non-compliant, this does not provide sufficient grounds on which to conclude that the Mackenzie Property should be approved. While it is somewhat troubling that there appears to be some inconsistency in how these installations are treated by Field Safety Officers the Board does not consider that a determinative factor in the outcome of this appeal.

CONCLUSION

[20] The Safety Manager's decision is upheld and the appeal is dismissed.

Signed;

A handwritten signature in black ink, appearing to read 'J. Hand', written in a cursive style.

Jeffrey Hand, Chair