

Date: February 6, 2018
File No. SSAB 18-2017

Index as: BCSSAB 18 (1) 2017

IN THE MATTER OF THE *SAFETY STANDARDS ACT*
SBC 2003, CHAPTER, 39

AND IN THE MATTER OF an appeal to the
British Columbia Safety Standards Appeal Board

BETWEEN: A Plumbing and Heating Ltd. APPELLANT

AND: Technical Safety BC RESPONDENT

Chair of Safety Standards Appeal Board: Emily C. Drown
On Behalf of the Appellant: Appellant
Counsel for Technical Safety BC: Kimberley Fenwick

REASONS FOR DECISION

Introduction

[1] This appeal concerns a monetary penalty issued on September 28, 2017 (the “Monetary Penalty”) by Provincial Safety Manger of Technical Safety BC (the “Respondent”) against A Plumbing and Heating Ltd. (the “Appellant”). Monetary Penalty No. MP-2017-0026 was issued against the Appellant in the amount of \$7000.00 for the Appellant’s failure to comply with Compliance Order No. CO-2017-0044 (the “Compliance Order”) and in particular the requirement to conduct a review of all regulated boiler and pressure vessel work conducted during the period between March 6, 2015 and March 6, 2017 and to identify any work where a

permit was not obtained and to obtain such permit(s), if any, retroactively within thirty days of receipt of the Compliance Order.

[2] The issue that must be determined is whether the Monetary Penalty ought to be upheld, dismissed or varied.

Background

[3] The facts leading to this appeal began on February 15, 2017 when a routine gas installation inspection (the "Inspection") occurred at a property in Vancouver, British Columbia (the "Property") concerning regulated work performed by the Appellant at the Property. During the Inspection the Safety Officer found that although the requisite gas installation permit had been obtained for regulated work at the Property that no boiler installation permit had been obtained for the Property. As a result of the Appellant's failure to obtain a boiler installation permit as required by the applicable safety legislation, the Safety Officer issued the Compliance Order on March 6, 2017. The Compliance Order required the Appellant to review its records and identify all regulated boiler and pressure vessel work performed since March 6, 2015 and to obtain permits retroactively for any work where a permit had not previously been obtained. The Compliance Order also required the Appellant to provide a list of the identified work to the Respondent within 30 days of receipt of the Compliance Order.

[4] Upon receipt of the Compliance Order the Appellant notified the Senior Safety Officer that the Appellant would be unable to comply with the review and reporting terms of the Compliance Order within the 30 day deadline due to staffing issues and workload and the large scope of the job to review and report as required by the Compliance Order. After some back and forth on the matter, a 30 day extension was granted to the Appellant requiring compliance with the Compliance Order by June 24, 2017.

[5] The Appellant did not comply with the requirements of the Compliance Order by June 24, 2017 and, as stated above, the Respondent ultimately issued the Monetary Penalty on September 28, 2017. At that time the Appellant had not complied with the reporting requirements set out in the Compliance Order. The Appellant did ultimately provide a list of all worksites where regulated boiler work was performed during the required reporting period; however, this was not provided to the Respondent until the commencement of this Appeal, over four months after the extended deadline for compliance and almost a month after the Monetary

Penalty was issued. While the Appellant did provide the required list of worksites to the Respondent, by the time written submissions were made by the parties in this appeal the Appellant had still failed to fully obtain permits for all of the worksites listed as required by the Compliance Order.

The Monetary Penalty

[6] The Appellant submits that the Monetary Penalty ought to be cancelled. In support of this submission, the Appellant states that it did not have sufficient resources to comply with the Compliance Order in the timeframe provided in the Compliance Order and ought to have been provided with more time to comply before being penalized for non-compliance. The Respondent submits that the failure to allocate resources to important matters like statutory compliance is not an excuse for failure to comply and that as the Appellant was required by statute to obtain the necessary permits prior to commencing regulated work that it ought to have ceased to take on new work until the existing work projects were able to be brought into compliance.

[7] The Appellant states that its failure to comply with the Compliance Order was not deliberate and that it simply needed more time to do so and did advise the Respondent of this. The Appellant states that it fully intended to comply with the Compliance Order, but it was unable to do so in the timeframe demanded by the Respondent. In support of this assertion, the Appellant points to the fact that it obtained gas installation permits for all of the jobs in question and was not performing work without any of the necessary permits. The Respondent states while gas permits have now been pulled for all jobs in question that, at the date the Monetary Penalty was issued, permits remained outstanding for 13 jobs identified by the Appellant. In particular, the Respondent notes that as set out in the Affidavit of a Senior Safety Officer with the Respondent, that five sites were identified to the Appellant as needing permits on February 17, 2017 and that four of those sites still did not have permits over seven months later when the Monetary Penalty was issued. In this regard, the Respondent submits that the Appellant chose to prioritize other work over complying with the requirements of the Compliance Order and that this was a deliberate choice.

[8] The Appellant states that the amount of the Monetary Penalty is excessive given that it expressed a willingness to comply with the terms of the Compliance Order. The Respondent states that the amount of the Monetary Penalty is appropriate as the Appellant has not denied

that it failed to comply with the Compliance Order and states that the amount of the Monetary Penalty was achieved through an application of the criteria set out in the *Monetary Penalties Regulation*.

[9] Finally, the Appellant states that it is a reputable company in good standing. The Respondent states that the Appellant provided no evidence of being a reputable company, but did concede that there had been no previous enforcement actions for similar contraventions. The Respondent submits that the Safety Manager properly acknowledged this when calculating the appropriate penalty to be levied using the Respondent's monetary penalty calculator.

Analysis

[10] A review of the Appeal Record and evidence filed in this appeal indicates that the compliance enforcement process found several instances of non-compliance where permits had not been properly obtained as required by the *Safety Standards Act*, S.B.C. 2004, c. 39 (the "Act") and *Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation*, B.C.. 104/2004 (the "Boiler Regulation").

[11] Until the filing of this Appeal, the Appellant still had not completed the internal review and reporting required by the Compliance Order. This was over seven months after the issuance of the Compliance Order. Accordingly, there is no question that the Appellant had not completed its internal review and reporting as required by the Compliance Order when the Monetary Penalty was issued. Further, there is no question that the Appellant had not obtained all the required boiler installation permits as required by the Compliance Order when the Monetary Penalty was issued.

[12] The Act permits Safety Officers to issue compliance orders when there are instances of non-compliance with the Act or Boiler Regulation. Further, the Act stipulates that compliance orders may require the type of review and reporting seen in the Compliance Order at issue in this Appeal.

[13] The Act and *Monetary Penalties Regulation* permits a Provincial Safety Manager to issue a Monetary Penalty if a Compliance Order has not been complied with. When the Monetary Penalty was issued the Appellant had had over six months in which to comply with the requirements of the Compliance Order. I also note that by the time this Appeal came before

the Board that a further month had passed and the Appellant still had not fully complied. The Monetary Penalty issued in this matter is \$7000.00. Given that the Act gives the Provincial Safety Manager discretion to issue penalties up to \$100,000.00, the Provincial Safety Manager was well within his discretion to issue this penalty.

Conclusion

[14] For the reasons set out above, this Appeal is dismissed.

A handwritten signature in black ink, appearing to read 'Emily C. Drown', written in a cursive style. The signature is positioned above a thin horizontal line.

Emily C. Drown
Chair, Safety Standards Appeal Board