

Occupational Health and Safety Council

Appeal of Order

KMC Mining Corporation

Appellant

and

Alberta (OHS)

Respondent

Order

File Number: 1503

Issued by: Andrew Smith (Panel Chair), Sean Evans and Evan Edbom

Date: May 29, 2015

 Jobs, Skills, Training
and Labour
Occupational Health and Safety Council

Disposition

KMC Mining Corporation (KMC) appeals a Stop Work Order issued by Alberta OHS (OHS) on January 22, 2015. After reading submissions and arguments of KMC Mining Corporation we uphold the order issued by Alberta Occupational Health and Safety. What follows are our written reasons for dismissing this appeal.

Facts and Analysis

In making of our findings of fact, we referred to the OHS officer's notes, summary photographs, Client Contact Reports, employee statements, KMC investigation, and the written submissions of counsel for each of the appellant and respondent.

On January 22, 2014 an incident occurred at Suncor Base 85 – Millennium Mine – Mine Oil STKPL – OPP B. The incident occurred when a KMC fuel truck caught on fire shortly after completing refueling operations. Suncor firefighting units were engaged and completely extinguished the burning fuel truck within 3 hours. There were no injuries as a result of this incident.

The detailed chronology of events as they occurred is summarized in the two Contact Reports submitted as evidence.

Contact Report File Reference OHS-083542-BEBA6-01A

This Contact Report references specific detail and timelines for the incident. The incident is logged as reported to OHS via the Occupational Health and Safety contact centre by the Suncor Energy Safety Specialist at approximately 6:18 PM and an OHS officer assigned at 6:19 PM. Details provided by Suncor at the time of the report include:

- KMC Mining Inc. (KMC) is sub-contracted by Suncor Energy Inc. – ETAL – (Suncor) to complete work related to oil sands production at the location noted above;
- The incident is restricted to KMC equipment;
- Incident involved a fueling truck and grader, the task of fueling having been recently completed by a KMC employee;
- Fueling truck was under the care and control of KMC employee;
- Fire was restricted to the fuel truck, no injuries; and
- Suncor does not have available at the time of reporting a copy of KMC's Safe Work Processes or hazard assessment in relation to the task and activities of fueling.

The Contact Report identifies a call placed by the KMC Safety Advisor to OHS at 6:30 PM which confirmed the information provided by the call from Suncor at 6:18 PM.

The Contact Report also states:

Additional information was later provided by KMC Safety Advisor, Holli O'Neil, as follows:

- Hazards assessment (JSA) completed on the day in question was destroyed in the fire;
- Fire has been extinguished;
- KMC investigation is ongoing and at this time unable to confirm whether or not the location of fueling had been assessed by the worker in relation to fire and explosions hazards, existing or potential, of the area;
- Information provided does not detail whether or not KMC is in possession of sufficient information in relation to Suncor's or other entities equipment or materials stored at or near the incident location (i.e. other fuel sources); and
- Maintenance record detail recent work completed on the incident fuel truck.

The Contact Report indicates that at 6:43 PM the Occupational Health and Safety Officer issued a Stop Work Order pertaining to:

all work conducted by KMC in relation to KMC refueling of KMC equipment. KMC was informed the scope of this order was restricted to fueling activities and tasks being performed by KMC under agreements currently in place with Suncor; Suncor property only.

Lifting of the Stop Work Order issued by the OHS Officer is cited in the Contact Report as being contingent upon compliance with the Occupational Health and Safety Code, section 9, *viz*:

Before this stop work order can be lifted KMC Mining Inc. must ensure full compliance with Occupational Health and Safety Code section 9 including, but not limited to, identification of all existing and potential hazards for workers who are tasked with the fueling of equipment using KMC fueling trucks. The assessment must detail all engineered and administrative measures and personal protective equipment required to ensure workers complete work safely when performing tasks and/or activities related to the transfer of fuel. Documentation detailing compliance and proof of worker review is required.

Contact Report File Reference: OHS-083542-BEBA6-CCR-01B

Compliance was achieved by KMC on January 23, 2015:

Occupational Health and Safety (OHS) acknowledges receipt on January 23, 2015 of information and records provided by KMC as follows:

1. Job Safety Analysis – Grader – Servicing Original
2. Job Safety Analysis – Servicing Equipment Extraction Area
3. Job Safety Analysis – Servicing Graders
4. Sign Off – Proof of Worker Review of New Processes – January 23, 2015
5. Safe Operating Procedures Fuel and Lube Safety
6. Safe Operating Procedures Fuel and Lube Safety (2)
7. Map of GPS Coordinates

A review of information and records received was completed by the Occupational Health and Safety Officer on January 23, 2015, after which KMC was provided oral direction from OHS confirming full compliance with all requirements of this order.

Jurisdiction and Applicable Law

Section 10 of the Alberta Occupational Health and Safety Act Section was applied by the OHS Officer in this case. It reads:

- 10(1) When an officer is of the opinion that a danger to the health or safety of a worker exists in respect of that worker's employment the officer may at any time enter into or on any work site and do any or all of the following:*
- (a) order the work or any part of it that is taking place to be stopped forthwith;*
 - (b) order any worker or other person present to leave the work site forthwith;*
 - (c) in writing order the prime contractor, the contractor or the employer to take measures specified by the officer that the officer considers necessary for the purpose of removing the source of danger or to protect any person from the danger.*

16(1) A person

(a) to whom an order is issued under section 9, 10, 11, 12, 14, 25 or 33 . . .

may appeal the order . . . to the Council.

(3) After considering the matter being appealed, the Council may by order

(a) in the case of an appeal from an order referred to in subsection (1)(a), confirm, revoke or vary the order . . .

Positions and Arguments of the Parties

The Appellant's position is that the Stop Work Order should be revoked. It concedes that OHS Officers should be given a broad scope around which to issue an order of this nature in the public interest. However, the Appellant submits if there have been assumptions made underlying the Stop Work Order, it should be revoked. In this case, the Appellant argues that adequate hazard assessments were completed prior to the incident occurring.

The Appellant says the issuance of this Order will bring negative reputational and business impact upon the company. The panel acknowledges the adverse impact that such orders may have on companies in bidding processes and in competition for safety awards. However, that is outside the scope of Alberta Occupational Health and Safety legislation and was not applied as a consideration in this appeal.

The Respondent submits that the Stop Work Order is justified and should be confirmed. At the time of the incident the OHS officer had information that the fuel truck was fully engulfed in fire and it had not yet been extinguished. Information provided to the officer suggested some content in the existing hazard assessment documentation was lacking. The Respondent OHS "submits that, on the balance of probabilities, the OHS Officer held a reasonable opinion that there was a danger to the health and safety of workers on the work site."

Analysis

At the time of the incident, and post incident, the OHS Officer was not on the worksite. The issuance of the stop work order and formation of the requisite opinion by the officer to issue said Order was based on the information received verbally from the Suncor Safety Specialist and KMC Safety Advisors. To have the Stop Work Order removed, KMC was directed to complete hazard assessment activities under section 9 of the Alberta Occupational Health and Safety Code. KMC did complete an investigation. Connie Arndt, Director of Health Safety and Training, identified the cause of the incident as likely a space heater in the truck storage compartment. There is no date indicating when this

investigation was completed; however it is logical that it was at a time proximate to the other activities ongoing in response to the incident.

The panel considered the events at the time the Stop Work Order was issued. There was an ongoing fire of an unknown cause with the fuel truck. An uncontrolled fire involving a fuel truck presents a significant occupational safety risk and is sufficient justification to issue a Stop Work Order with instruction to assess potential of recurrence with other fueling operations that KMC had ongoing at the time. This becomes particularly important should the cause of the incident be something systemic and a risk that it could repeat elsewhere on other KMC fueling operations.

KMC had completed Job Safety Analyses and Operating Procedures in advance of the incident. Hazard assessment is a dynamic and not a static process that develops, at least in part, through experience. What was once reasonable and foreseeable may change, thus requiring a revision or expansion of the hazard assessment. The Appellant cited the case of *R. v. Kidco Construction Ltd*, 2009 ABPC 195 (CanLII) [<http://canlii.ca/t/24dtk>] for the proposition that hazard assessments do not take one specific form. We agree KMC had multiple-dimensional processes for hazard assessment established at the time of this incident.

The OHS Officer issued a Stop Work Order to compel KMC to review their Hazard Assessments and communicate those assessments to affected parties. KMC submitted these to OHS and changed the following Safety Management System Elements:

- KMC Mining, Safety Management System, 2.4.2 Fuel and Lube Truck Safety, Revision Date: January 23, 2015 (this superseded the October 30, 2014 edition)
- KMC Mining, Safety Management System 2.4.2 Fuel and Lube Truck Safety, revised date October 30, 2014.

The change made to these documents stated, "... housekeeping, inclusion of using fire suppression for firefighting, heavy equipment safety approach and ensuring the ground prior to servicing."

The Appellant also provided copies of the Job Safety Analysis for Service Grader, Service Equipment both dated January 23, 2015. There was a version #2 of the Service Grader Job Safety Analysis dated January 23, 2015 which was updated by Holli O'Neil (KMC) to include: "... ensuring the equipment is grounded, updated information for emergency preparedness, updated PPE requirements, and the general information for working outside, illumination in the work area and general housekeeping. The communication of all updated material is contained in a document entitled *Daily Pass* which communicated to KMC employees that documents had been updated and require review. Upon review of the appellant's documents and subsequent revisions, the OHS Officer lifted the stop work order, January 23, 2015.

We agree with the Appellant that hazard assessments were established by KMC in a variety of formats (i.e. Job Safety Analysis and Safe Work Procedures) prior to the incident occurring. Though there were changes made to the hazard assessment materials developed by KMC it is not clear whether they were changes that were preventative in nature to this specific incident or were established with a broader consideration of health and safety risks not related to this specific incident. The focus of the changes was to consider risks originating from surrounding structures and containers which were not considered in the original KMC material.

It is also important to recognize that the OHS Officer must act in the interest of the public based on the information that is present at the time of the incident (in this case provided through Suncor and KMC Safety Resources by way of verbal reports). Based on the nature of the information that the officer had available at the time, which was that a fuel truck was engulfed in fire with a cause unknown, it was prudent to stop operations until the fire was brought under control, the cause identified and steps taken to prevent a recurrence. Essentially the officer needed to establish, in his opinion, that there was danger to initiate the Stop Work Order.

Section 10 (1) authorizes an officer to order work to stop “[w]hen an officer is of the opinion that a danger to the health or safety of a worker exists in respect of that worker’s employment.” In light of the officer’s understanding of an ongoing fire involving a fuel truck with unknown causation and the fact that KMC had other fueling operations underway, the response by the officer to issue this Stop Work Order was reasonable. The officer’s opinion formed in this circumstance was justified and appropriate, given the danger that existed at that time.

Section 10 identifies in (1) (c) that the officer can, by order identify measures to be taken that are considered necessary, “for the purpose of removing the source of danger or to protect any person from the danger.” The measures to be taken are again based on the officer’s opinion which, in this incident were identified as hazard assessment activities to be completed by KMC. Although hazard assessment processes had been completed by KMC in a number of formats prior to the incident occurring, the officer’s opinion of the danger was formed using the reports and information available at the time the incident was reported. The Stop Work Order required KMC to review existing hazard assessment documents, consider the engineered, administrative and personal protective controls against identified risk, and provide evidence that this had been reviewed with workers. This is a reasonable regulatory response based on the nature of this incident.

Decision

We dismiss this appeal by KMC Mining Corporation and confirm the Stop Work Order issued by the Respondent OHS.