



LETTER L-62-13

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VIA EMAIL

charcourt@waterstonelaw.com

October 24, 2013

Mr. Clint S. Harcourt
Waterstone Law Group LLP
Suite 304
20338 - 65th Street
Langley, BC V2Y 2X3

Dear Mr. Harcourt:

Re: Hemlock Utility Services Ltd.
2012 Annual Report – Extension Request and
Ongoing Compliance Matters

The British Columbia Utilities Commission writes in response to an October 11, 2013 request from Mr. Clint Harcourt on behalf of Hemlock Utility Services Ltd. requesting an extension to file its annual report for the year ending April 30, 2013 (2012 Annual Report) by November 15, 2013. The Commission writes to grant Hemlock's request and remind Hemlock of its obligations as a public utility in British Columbia.

Hemlock provides the services of a public utility as defined by section 1 of the *Utilities Commission Act* (Act). As such, Hemlock must comply with the provisions of the Act and Commission orders.

All public utilities are required to file annual reports with the Commission in accordance with sections 23, 24, 43 and 49 of the Act. Commission letters L-36-94 and L-14-95 specify the requirements for public utility annual reports to the Commission. Specifically, L-36-94 states that annual reports are to be filed within 4 months of a public utility's fiscal year-end. Hemlock's fiscal year-end is April 30.

Hemlock's 2012 Annual Report was anticipated on August 31, 2013. On October 3, 2013, the Performance Monitoring, Conduct and Compliance Group sent a letter requesting Hemlock to file its annual report within 5 business days or by October 10, 2013. However, the report was not filed. Commission staff followed up by phone and Hemlock subsequently filed a request for an extension to file the 2012 Annual Report by November 15, 2013.

After receiving an extension request past the filing date for Hemlock's 2011 Annual Report and on the date of filing required by Order G-184-12, the Commission issued Order G-25-13 directing Hemlock to make extension requests in advance of filing dates. In the future, and in accordance with Order G-25-13, Hemlock should make requests for extensions in writing to the Commission Secretary no later than 14 days in advance of the filing date.

Failing to file an annual report is a contravention of Sections 43 and 49 of the *Act*. The Commission reminds Hemlock that Part 8.1 of the *Act* authorizes the Commission to impose administrative penalties against persons who contravene the *Act* or the regulations, or an order, standard or rule of the Commission. The *Administrative Penalties Regulation* provides for penalties against corporations and their directors, officers or agents who contravene the provisions of the *Act*. Different penalties apply where different sections of the *Act* are contravened. Part 8.1 of the *Act* and OIC 731 are attached for Hemlock's review.

Hemlock must file its 2012 Annual Report by November 15, 2013.

Should Hemlock have any questions regarding the annual reporting requirements the Commission encourages Hemlock to establish a meeting with Commission staff to review and provide clarification of the requirements.

Yours truly,

Erica Hamilton

AG/cms
Enclosures

cc: Dianne LeChasseur
dlechasseur@hemlockvalleyresort.com

Part 8.1 — Administrative Penalties

Contraventions

109.1 (1) After giving a person an opportunity to be heard, the commission, for the purposes of section 109.2, may find that the person has contravened a provision of

(a) this Act or the regulations, or

(b) an order, standard or rule of the commission or a reliability standard adopted by the commission.

(2) If a corporation contravenes a provision referred to in subsection (1), a director, officer or agent of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.

(3) Without limiting section 112, if an employee, contractor or agent of a corporation contravenes a provision referred to in subsection (1) of this section in the course of carrying out the employment, contract or agency, the corporation also contravenes the provision.

(4) The commission may not find that a person has contravened a provision referred to in subsection (1) if the person demonstrates to the satisfaction of the commission that

(a) the person exercised due diligence to prevent the contravention, or

(b) the person's actions or omissions relevant to the provision were the result of an officially induced error.

(5) Nothing in subsection (4) prevents the commission from doing anything else that the commission is authorized to do under this Act with respect to an act or omission by the person.

(6) If a person referred to in subsection (2) or (3) has not contravened a provision referred to in subsection (1) as a result of demonstrating to the satisfaction of the commission anything referred to in subsection (4), the commission may find, subject to subsection (4), that any of the other persons referred to in subsection (2) or (3) have contravened the provision.

(7) A person does not contravene a provision referred to in subsection (1) by doing or omitting to do something if that act or omission is reasonably necessary to conform to the requirements of the *Workers Compensation Act* or any regulations under that Act.

Administrative penalties

- 109.2** (1) If the commission finds that a person has contravened a provision referred to in section 109.1 (1), the commission may impose an administrative penalty on the person in an amount that does not exceed the prescribed limit.
- (2) If a contravention of a prescribed provision occurs over more than one day or continues for more than one day, separate administrative penalties, each not exceeding the prescribed limit for the purposes of subsection (1), may be imposed for each day the contravention continues.
- (3) Before the commission imposes an administrative penalty on a person, the commission, in addition to considering anything else the commission considers relevant, must consider the following:
- (a) previous contraventions by, administrative penalties imposed on and orders issued to the following:
 - (i) the person;
 - (ii) if the person is an individual, a corporation for which the individual is or was a director, officer or agent;
 - (iii) if the person is a corporation, an individual who is or was a director, officer or agent of the corporation;
 - (b) the gravity and magnitude of the contravention;
 - (c) the extent of the harm to others resulting from the contravention;
 - (d) whether the contravention was repeated or continuous;
 - (e) whether the contravention was deliberate;
 - (f) any economic benefit derived by the person from the contravention;
 - (g) the person's efforts to prevent and correct the contravention;
 - (h) the cost of compliance with the provision contravened;
 - (i) whether the person self-reported the contravention;
 - (j) the degree and quality of cooperation during the commission's investigation;
 - (k) any undue hardship that might arise from the amount of the penalty;
 - (l) any other matters prescribed by the Lieutenant Governor in Council.

(4) If a person is charged with an offence under this Act, an administrative penalty may not be imposed on the person in respect of the same circumstances that gave rise to the charge.

Notice of contravention or penalty

109.3 (1) If the commission finds under section 109.1 that a person has contravened a provision referred to in that section or imposes under section 109.2 an administrative penalty on a person, the commission must give to the person a notice of the decision, and the notice must include reasons for the decision and specify the following:

- (a) the contravention;
- (b) the amount of the penalty, if any;
- (c) the date by which the penalty, if any, must be paid;
- (d) the person's right, with respect to the decision, to apply for a reconsideration under section 99 or to appeal it under section 101;
- (e) an address to which a request for a reconsideration under section 99 may be sent.

(2) If the commission imposes an administrative penalty on a person, the commission may make public the reasons for and the amount of the penalty.

Due date of penalty

109.4 A person on whom an administrative penalty is imposed under section 109.2 must pay the penalty

- (a) within 30 days after the date on which the notice referred to in section 109.3 (1) is given to the person, or
- (b) by a later date ordered by the commission.

Recovery of penalty from ratepayers prohibited

109.5 In setting rates for a public utility, the commission must not allow the public utility to recover from persons who receive or may receive service from the public utility the costs of paying an administrative penalty imposed under this Part.

Enforcement of administrative penalty

109.6 (1) An administrative penalty constitutes a debt payable to the government by the person on whom the penalty is imposed.

(2) If a person fails to pay an administrative penalty as required under section 109.4, the government may file with the Supreme Court or Provincial Court a certified copy of the notice imposing the penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice, as if the notice were a judgment of that court.

Revenue from administrative penalties

109.7 The commission must pay into the consolidated revenue fund all amounts derived from administrative penalties.

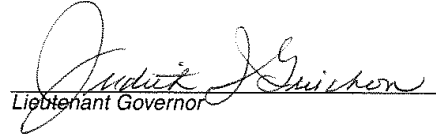
Limitation period

109.8 (1) The time limit for giving a notice under section 109.3 imposing an administrative penalty is 2 years after the date on which the act or omission alleged to constitute the contravention first came to the attention of the chair of the commission.

(2) A certificate purporting to have been issued by the chair of the commission and certifying the date referred to in subsection (1) is proof of that date.

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **731**, Approved and Ordered **NOV - 8 2012**


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that sections 36, 37, 40 (b) and (c), 43, 44 and 46 of the *Energy and Mines Statutes Amendment Act, 2012*, S.B.C. 2012, c. 27, are brought into force and the attached Administrative Penalties Regulation is made.

DEPOSITED

November 9, 2012

B.C. REG. **316/2012**



Minister of Energy, Mines and Natural Gas
and Minister Responsible for Housing and
Deputy Premier



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Energy and Mines Statutes Amendment Act, 2012*, S.B.C. 2012, c. 27, s. 48;
Utilities Commission Act, R.S.B.C. 1996, c. 473, ss. 109.2 and 125

Other: _____

September 20, 2012

R/333/2012/27

SCHEDULE

ADMINISTRATIVE PENALTIES REGULATION

Definition

- 1 In this regulation, “Act” means the *Utilities Commission Act*.

Application

- 2 This regulation does not apply to a water utility, as defined in section 1 of the *Water Utility Act*, unless the water utility is also a public utility under the Act, disregarding section 4 (a) of the *Water Utility Act*.

Penalties

- 3
- (1) A person who contravenes section 42, 43, 44 or 73 of the Act is liable to an administrative penalty not exceeding
 - (a) \$500 000, if the person is a corporation, and
 - (b) \$100 000, if the person is a director, officer or agent of a corporation that contravenes the section.
 - (2) A person who contravenes an order under section 47 of the Act is liable to an administrative penalty not exceeding
 - (a) \$200 000, if the person is a corporation, and
 - (b) \$100 000, if the person is a director, officer or agent of a corporation that contravenes the section.
 - (3) A person who contravenes section 71 or 71.1 of the Act is liable to an administrative penalty not exceeding \$100 000.
 - (4) A person who contravenes a reliability standard adopted by the commission is liable to an administrative penalty not exceeding
 - (a) \$1 000 000, if the person is a corporation, and
 - (b) \$100 000, if the person is a director, officer or agent of a corporation that contravenes the reliability standard.
 - (5) A person who contravenes any section of the Act other than those referred to in subsections (1) to (4) of this section is liable to an administrative penalty not exceeding \$25 000.
 - (6) Section 47 of the Act and all reliability standards adopted by the commission are prescribed for the purposes of section 109.2 (2) of the Act.