

Minnesota Plumbing Board

AMENDED ORDER ADOPTING RULES

Adoption of New Expedited Permanent Rules Regulating Backflow Prevention Rebuilder and Tester Certifications, Minnesota Rules, Chapter 4716; Revisor's ID Number AR4082

WHEREAS:

1. The 2011 Legislature authorized the Minnesota Plumbing Board (the "Board") to adopt expedited rules under Minnesota Statutes § 14.389 that are related to the certification of backflow prevention rebuilders and backflow prevention testers. See, First Special Session 2011, Chapter 4, Article 3, Section 15.

2. The Board has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law. The Board authorized proposing the rules at its meeting on April 17, 2012, and a quorum was present.

3. The Notice of Intent to Adopt New Expedited Rules Without a Public Hearing, dated August 31, 2012, is attached hereto and incorporated by reference.

4. The Board received six written comments on the rules.

5. The proposed expedited rules were modified in response to the comments that were received. The rules, as proposed, provide exceptions for individuals that possess current backflow prevention rebuilder or backflow prevention tester certifications issued by the Department of Labor and Industry prior to January 1, 2012. The modification replaces the date "January 1, 2012" with "January 1, 2013" for both certifications.

This modification does not result in a rule that is substantially different from the rule as proposed because it is within the scope of the matter announced in the notice of intent to adopt, which specifically stated that the rulemaking was about establishing certification requirements for backflow prevention rebuilders and backflow prevention testers. Further, the notice, as mailed, emailed, posted on the Internet, and published in the State Register, included the proposed rule.

The modification is also in character with the issues raised in the notice because the notice specified that the proposed rule would capture the topic of certification requirements for backflow prevention rebuilders and testers. The Board also announced that the rule was proposed pursuant to the statutory authority of Minn. Stat. § 326B.437, which specifically regulates these rebuilders and testers. The difference between the rules as published and the rules as adopted are a logical outgrowth of the contents of the notice and the comments submitted in response to the notice for the same reasons.

Fair warning that the outcome of the rulemaking proceeding could be the rules in question was provided by the scope of the notice of intent to adopt expedited rules. The Board discussed the rule during board meetings and invited contribution and comment from the public during the rule

development process. Additionally, individuals who will be affected by the rule should have known that this rulemaking proceeding could affect their interests because of the Board's compliance with the rulemaking provisions of the Administrative Procedures Act, and its efforts to inform interested parties and affected individuals throughout the rule development process. Lastly, the notice of intent specifically stated that the proposed expedited rules apply to persons performing or offering to perform the installation, maintenance, repair, replacements, testing, or rebuilding of reduced pressure zone backflow prevention assemblies.

6. The Board received zero requests for notice of submission to the Office of Administrative Hearings.

7. The Board adopts the recommended changes specified in footnote 1 of Administrative Law Judge Barbara L. Neilson's Order on Review of Rules Under Minn. Stat. § 4.389 and Minn. R. 1400.2410, dated January 30, 2013, which is attached hereto and incorporated by reference.

8. The rules are needed and reasonable.

9. The Board authorized the adoption of the above captioned rules at its meeting on January 15, 2013, a quorum was present, and the undersigned was authorized to sign this Order. See, Certificate of the Plumbing Board; Resolution Authorizing the Adoption of Rules, dated January 15, 2012.

ORDER

IT IS ORDERED that the January 15, 2013 Order Adopting Rules, New Expedited Permanent Rules Regulating Backflow Prevention Rebuilder and Tester Certifications, Minnesota Rules, Chapter 4716; Revisor's ID Number AR4082, is rescinded and replaced with this Order to the make the suggested changes specified in paragraph seven above.

IT IS FURTHER ORDERED that the above-named rules, in the form certified by the Office of the Revisor, file number RD4082, dated 08/16/12, published in the State Register on September 10, 2012, with the modifications as indicated in the Revisor's draft, file number AR4082, dated 02/01/13, are adopted pursuant to the authority vested in the Plumbing Board by Minnesota Statutes §§ 14.389, 326B.435, subd. 2(a)(5), and 326B.437.



February 8, 2013

John Parizek, Chair
Minnesota Plumbing Board