

Board of High Pressure Piping Systems Meeting Minutes

Thursday, April 14, 2016 – 10:00 a.m.

Minnesota Room – Department of Labor and Industry

443 Lafayette Road North, St. Paul, MN 55155

Members Present

Bob Bastianelli (Secretary)
Marit Brock
Dave Carlson
Tim Daugherty
Mark Geisenhoff
Todd Green
Mark Kincs
Vicki Sandberg
Chris Savage
Russ Scherber (Vice Chair)
Mark Slagle
Larry Stevens Jr. (Chair)

Members Absent

Jim Andrie

DLI Staff & Visitors

Jessica Looman (Deputy Commissioner – DLI)
Jeff Lebowski (DLI)
Lori Herzog (DLI)
Lyndy Lutz (DLI)
Roger Thein (St. Paul Pipefitters JATC)
Gary Thaden (MMCA)
Sophie Thaden (MMCA)
Jake Denison (Evapco – via teleconference)
Don Hamilton (Evapco – via teleconference)
Mike Koutnik (ESRI)
Adam Hanson (ABC)

I. Call to Order

The meeting was called to order at 10:03 a.m. by Chair Stevens. Housekeeping announcements were made and a quorum was met.

II. Approval of Meeting Agenda

A motion was made by Bastianelli, seconded by Slagle, to approve the agenda as presented. The vote was unanimous; the motion carried.

III. Approval of Previous Meeting Minutes

A motion was made by Scherber, seconded by Daugherty, to approve the January 14, 2016, meeting minutes as presented. The vote was unanimous; the motion carried.

IV. Regular Business

A. HPPS rules

Deputy Commissioner Jessica Looman provided an update on the legislative session and the three bills sponsored by the Department – the Housekeeping bill, Workers' Compensation Advisory Council bill, and the AWARE bill.

B. Licensing and permitting

Nothing to report

C. Continuing Education

Nothing to report

V. Special Business

Nothing to report.

VI. Complaints

Nothing brought forth.

VII. Open Forum

Nothing brought forth.

VIII. Board Discussion

A. Jeff Lebowski introduced himself as an attorney for the Construction Codes and Licensing Division and said he would be acting as the attorney for the HPPS Board while Bill Bierman is on leave. He then asked for a roll call in order to establish a quorum.

B. Request for Variance – Evapco, Inc.

Jake Denison and Don Hamilton attended via teleconference.

- Hamilton introduced himself as the Product Development Manager of a new product line being introduced in the U.S. and briefly explained Evapco's Request for Variance.
- Todd Green referred to **Attachment A** and said part #171 is a component part of a compressor and not a high pressure piping system; therefore, the Board should not inspect or address the Request for Variance.
- Lebowski said that if the Board agreed with Green then someone would need to make a motion and vote.

A motion was made by Savage, seconded by Carlson, to accept Todd Green's recommendation to not consider the Request for Variance because the material is a manufactured piece and falls outside of the Board's jurisdiction. The vote was unanimous; the motion carried

- Lebowski said a variance is a serious issue and a rule has the force and effect of law. It is no different than a statute; therefore, when someone is granted a variance they must follow procedures as required by the legislature and he referred to MN Statutes 14.055 and 14.056 noting the seven requirements that must be included in a petition (**Attachment B**). Once a variance is requested the Board has 60 days to rule and if the Board fails to do so then the variance would be automatically granted. Evapco's Request for Variance only met one of the seven requirements; therefore, legal counsel would have authorized the Board to reject the Request for Variance as incomplete.

IX. Announcements

A. Next regularly scheduled 2016 meetings – 10:00 a.m. Thursdays – Minnesota Room, DLI

- July 14, 2016
- October 13, 2016

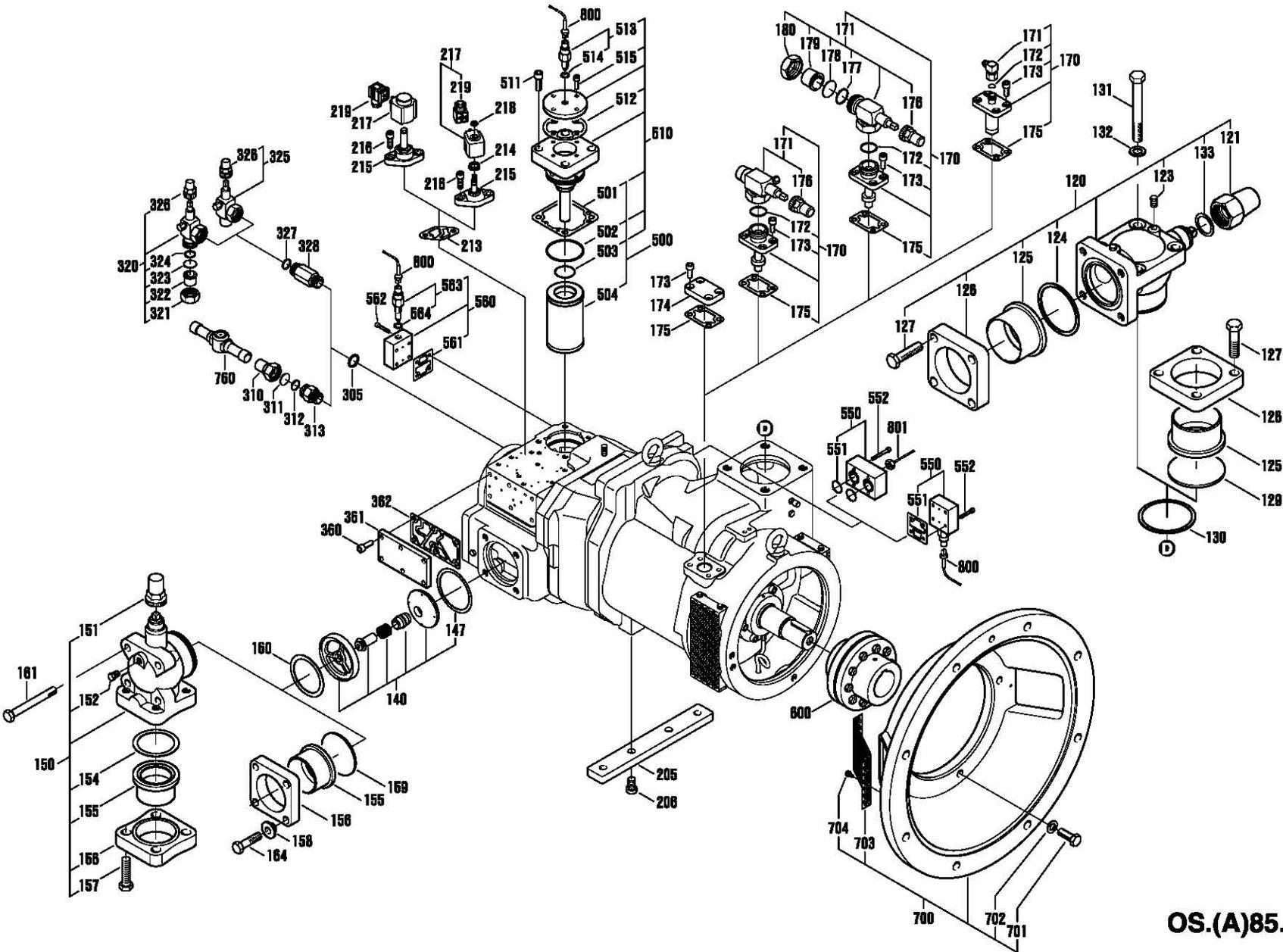
X. Adjournment

A motion made by Bastianelli, seconded by Sandberg, to adjourn the meeting at 10:35 a.m. The vote was unanimous; the motion carried.

Respectfully Submitted,

Robert Bastianelli

Robert Bastianelli
Secretary



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14.055 RULE VARIANCES; STANDARDS.

Subdivision 1. **Authority.** A person or entity may petition an agency for a variance from a rule adopted by the agency, as it applies to the circumstances of the petitioner.

Subd. 2. **General terms.** The following general terms apply to variances granted pursuant to this section:

(1) the agency may attach any conditions to the granting of a variance that the agency determines are needed to protect public health, safety, or the environment;

(2) a variance has prospective effect only;

(3) conditions attached to the granting of a variance are an enforceable part of the rule to which the variance applies; and

(4) the agency may not grant a variance from a statute or court order.

Subd. 3. **Mandatory variances.** An agency shall grant a variance from a rule as applied to the particular circumstances of the petitioner, if the agency finds that the application of the rule, as applied to the circumstances of that petitioner, would not serve any of the purposes of the rule.

Subd. 4. **Discretionary variances.** An agency may grant a variance if the agency finds that:

(1) application of the rule to the petitioner would result in hardship or injustice;

(2) variance from the rule would be consistent with the public interest; and

(3) variance from the rule would not prejudice the substantial legal or economic rights of any person or entity.

Subd. 5. **Rules.** An agency may adopt rules under section 14.389 establishing general standards for granting mandatory or discretionary variances from its rules. Section 14.389, subdivision 5, applies to these rules. An agency also may grant variances based on standards specified in other law.

Subd. 6. **When not applicable.** This section and section 14.056 do not apply if another state or federal law or rule authorizes or requires the granting of variances by an agency or in certain circumstances.

History: 2001 c 179 s 2

14.056 RULE VARIANCES; PROCEDURES.

Subdivision 1. **Contents of variance petition.** A petition for a variance under section 14.055 must include the following information:

- (1) the name and address of the person or entity for whom a variance is being requested;
- (2) a description of and, if known, a citation to the specific rule for which a variance is requested;
- (3) the variance requested, including the scope and duration of the variance;
- (4) the reasons that the petitioner believes justify a variance, including a signed statement attesting to the accuracy of the facts asserted in the petition;
- (5) a history of the agency's action relative to the petitioner, as relates to the variance request;
- (6) information regarding the agency's treatment of similar cases, if known; and
- (7) the name, address, and telephone number of any person the petitioner knows would be adversely affected by the grant of the petition.

Subd. 2. **Fees.** (a) An agency may charge a petitioner a variance fee. The fee is:

- (1) \$10, which must be submitted with the petition, and is not refundable; or
- (2) the estimated cost for the agency to process the variance petition, if the agency estimates that the cost will be more than \$20.

(b) If an agency intends to charge costs to the petitioner under paragraph (a), clause (2):

- (1) the agency and the petitioner must agree on the costs and the timing and manner of payment;
- (2) for purposes of the 60-day limit in subdivision 5, the petition is not complete until there is agreement with the petitioner on the costs and timing and manner of payment; and
- (3) if the payment made by the petitioner exceeds the agency's actual costs, the agency must refund the overpayment to the petitioner. The payment is not otherwise refundable.

(c) Proceeds from fees charged under this subdivision are appropriated to the commissioner of management and budget. The commissioner of management and budget may transfer amounts to the fund and agency that supports the program that is the subject of the variance petition when the agency makes a request for the fee proceeds and the commissioner of management and budget determines the agency needs the fee proceeds to implement this section. Annually, the commissioner of management and budget must transfer proceeds from fees that are not transferred to agencies to the general fund.

Subd. 3. **Notice.** In addition to any notice required by other law, an agency shall make reasonable efforts to ensure that persons or entities who may be affected by the variance have timely notice of the request for a variance. The agency may require the petitioner to serve notice on any other person or entity in the manner specified by the agency.

Subd. 4. **Additional information.** Before granting or denying a variance petition, an agency may request additional information from the petitioner.

Subd. 5. **Order; timing.** An agency must issue a written order granting or denying a variance and specifying the scope and period of any variance granted. The order must contain an agency statement of the

relevant facts and the reasons for the agency's action. The agency shall grant or deny a variance petition as soon as practicable, and within 60 days of receipt of the completed petition, unless the petitioner agrees to a later date. Failure of the agency to act on a petition within 60 days constitutes approval of the petition.

Subd. 6. **Order; delivery.** Within five days of issuing a variance order, the agency shall send the order to the petitioner and to any other person entitled to notice under other law.

Subd. 7. **Record.** An agency shall maintain a record of all orders granting and denying variances under section 14.055. The records must be indexed by rule and be available for public inspection to the extent provided in chapter 13.

History: 2001 c 179 s 3; 2009 c 101 art 2 s 109