

**Plumbing Board
Minutes
January 20, 2009 – Minnesota Room
Department of Labor and Industry (DLI)
443 Lafayette Road No., Saint Paul, MN 55155-4344
DLI.CCLDBOARDS@State.MN.US**

Members Present:

Karl Abrahamson
Rebecca L. Ames
Steve Christenson
Kenneth Kammerer
James Kittelson
Lawrence G. Justin
Allen J. Lamm
Michael McGowan
Rick Palmateer
John A. Parizek
Jim Peterson (DLI Commissioner's designee)
Paul Sullwold
Ronald Thompson (MDH Commissioner's designee)

Members Absent:

Jim Gander

Staff Present:

Cathy Tran
Wendy Legge
Annette Trnka
Jim Lungstrom

Visitors:

Matt Marciniak
Gary Thaden
Brian Soderholm
Doug Hall
Daniel Rookaird
Luther Westman
Carl Crimmins
Bob Wolf

I. Call To Order

The meeting was called to order by Parizek at 9:37 a.m.

- A. Announcements – Parizek reviewed the parking availability.
- B. Introductions – Introductions were made.

II. Approval of Agenda

Chair Parizek asked if there were any additions or objections to the Agenda. Hearing none, the Chair declared the Agenda approved.

III. Approval of Previous Meeting Minutes

- A. October 21, 2008 Minutes – There were several corrections to the Minutes, the first on page 6 of 9, under paragraph ii, where it states “Gander stated in Rochester” and should be “Gander stated that Rochester...” Legge had a question on page 8(B) the third paragraph, second sentence. It was decided it should state “...on water conditioning licensing.” Lamm stated on page 9,

the last sentence before announcements should be changed from “expert” to “representative.”

- i. Abrahamson made a motion, seconded by Kittelson, to accept the previous Minutes. The vote was unanimous and the motion passed.

IV. Regular Business

- A. Approval of Expense Reports
 - i. Chair declared the expense reports and Per Diems in order and declared them approved.

V. Committee Reports

- A. Executive Committee – met to discuss the items on the Board Agenda. There are several items that will be discussed at today’s meeting. In addition, one referral of an RFA was referred to the Product and Code Review Committee.
- B. Product and Code Review Committee – Justin discussed the meeting of the Committee held on October 29, 2008. One of the items discussed was water treatment equipment. It was decided that a sub-committee could be formed to review the issues and give recommendations back to the Board. Justin asked McGowan if he wanted to add anything further on that discussion. McGowan stated he doesn’t have anything to add to what was already discussed, however he would be interested in being part of the sub-committee.

Justin discussed PB0035 and the outstanding request items from the meeting that were included in a letter dated 12/19/08 to Bob Lechner of Saniflo. To date a response has not been received, however, they are on the Agenda for the next PCRC meeting being held January 28th.

Justin then discussed PB0031 and the outstanding items requested of Toto, USA. A representative of Toto, USA, Doug Hall, is present today. A copy of the letter sent on December 1, 2008 to Mr. Chris Paulsen of Toto, USA, was given to Mr. Hall and Mr. Hall has stated that the outstanding items will be provided at next week’s meeting. Toto, USA has also been added to the PCRC Agenda.

Vista Clear Dental Units were discussed (PB0012). There were a number of items requested from Mr. Jim Chandler that have not been provided yet to the Committee. Mr. Peterson will do a follow up with Mr. Chandler and Vista Clear will also be on the Agenda for the next meeting.

- C. Code Interpretation Committee – Has not met.
- D. Licensing and Registration Committee – Has not met, however, the issue of water conditioning is outstanding.

- E. Green Committee – Has not met since August, 2008. RFA file number PB0034, Falcon Waterless, was sent a letter requesting information regarding the waterless urinals. That information is still outstanding. A Green Committee meeting will be scheduled in February and Parizek will poll the Green Committee members as to what their schedule is and a date for the meeting will be decided during break.

Parizek stated that one thing discussed during the Executive Committee meeting was that DLI staff and Committee members need adequate time to review materials before upcoming meetings. If information/documentation have been requested from a Requester, that information/documentation should be turned in at least one week in advance of the meeting.

Justin made a motion, seconded by Peterson, that when information has been requested from RFA Presenters, that the information must be received by DOLI at least seven business days before the meeting when the item will be discussed in order to give DLI staff and committee members the opportunity to review the submitted information. The vote was unanimous and the motion passed.

Lamm made a motion, seconded by Sullwold, to close out all outstanding RFAs prior to the formation of the Plumbing Board on July 1, 2007, and require that all open RFAs be submitted or re-submitted using the current RFA form available on the Board's web site. The vote was unanimous and the motion passed.

VI. Special Business

- A. Minnesota Plumbing Code – Rulemaking
 - i. Requests for Hearing – Legge stated that the Dual Notice had been published in the *State Register* on December 15, 2008. The deadline to request a hearing in writing is January 21, 2009. So far, the Board had received 22 requests for hearing letters. Gary Thaden then handed Legge four more letters requesting a hearing. Parizek asked Gary Thaden if no other requests were received would Mr. Thaden want to meet with the Board prior to the cancellation of the hearing. Mr. Thaden stated that he would like to meet with a Board representative and the Department's attorney to discuss issues. Legge stated the Board has not voted to appoint a representative to speak or negotiate on behalf of the Board on rulemaking. If there were to be any changes on the proposed rules, it would have to come back to the Board for approval of those changes. If the rule requesters are requesting that a change be made in the rules before hearing requests are withdrawn, there would have to be a special Board meeting to consider that. Alternatively, the Board could give authority to someone, for instance the Board Chair, to negotiate limited rule changes within a particular

range; such as the issues presented in the letters. Parizek asked if the Board were to call a special board meeting, would it have to be before the hearing date on February 3rd. Legge answered that the deadline to cancel a hearing is three days before the hearing, which would be Thursday, January 29th. Legge also stated that the Chair has the prerogative of cancelling the meeting if there should be no need for the meeting. Parizek asked the Board members what their schedules are for January 28, prior to the Product and Code Review Committee meeting. Parizek stated that he will call a special meeting for January 28, 2009, at 9:00 a.m. in the Washington Room.

The meeting took a break at 10:12 and resumed at 10:20.

Gary Thaden and Carl Crimmins addressed the Board. Mr. Thaden stated that the requests for hearing were, in part, defensive in case someone else came in. There is one specific issue regarding the fittings; that they remain accessible, in case there's an issue with them, that they not be insulated and that they be a set distance, such as three inches, from any structure so that as copper piping expands and contracts, it won't affect the fitting.

Justin asked when Mr. Thaden states the location be three inches away from a structural issue; does he mean an anchor or inside of a stud wall? Mr. Crimmins answered that they were thinking more along the lines of passing through a floor, wall or ceiling, so that it's not tight to the wall so that as the copper expands, it would put undue pressure on the fitting. Legge asked if there was specific rule language that Mr. Thaden and Mr. Crimmins is suggesting. Mr. Thaden stated he doesn't have proposed language today, but he would be able to get it to the Board. Parizek asked if this issue involves both removable and non-removable fittings and was told yes.

Abrahamson stated he would like to see language proposed regarding hangers because if there's a riser clamp or some sort of split ring next to it, that's pretty solid, so some sort of spacing for hangers of that type may want to be considered.

Kammerer asked if there was documentation that these fittings have failed to illustrate the concerns they have. Mr. Crimmins answered that no, there was no documentation, however being in the business for 39 years, he could state that anytime you have any type of fitting next to a structure you always try to leave an oversized hole so the pipe can move freely or it has to be kept away from the wall, ceiling or floor. The other issue is that this fitting tends to leak. That's why they don't want it insulated because if water starts dripping in an insulated pipe it can move numerous feet before it starts dripping and it could be

leaking quite a while before it's even noticed. Kammerer asked if it's known that this fitting have a tendency to leak or is the concern if it leaks. Crimmins answered that the concern is that if it should leak, you'd want to be able to find it. Kammerer asked if that wouldn't be true of any fitting. Mr. Thaden answered that part of their concern is that it is a new style of fitting. As there isn't much experience with them, there is concern that more should be learned about the fitting.

Legge stated that if the Board wants to consider this issue further at the special meeting, she would request that proposed language from Mr. Thaden and Mr. Crimmins be submitted for distribution to the Board in advance of that special meeting, if possible, so there is something specific for the Board to consider.

Tran asked if they could give clarification on the insulation factor. She stated that she's concerned from a mechanical code standpoint if there would be a conflict if there were insulation required, potentially with temper or recirculation water lines. Mr. Crimmins stated that the insulation should stop an inch from the fitting and then the insulation would start an inch on the other side of the fitting, as there is a special method of terminating the insulation so that the fitting would be in the open. Justin stated that it would be similar to a union or a flange. Mr. Crimmins stated that this is a new fitting and after demonstrated use perhaps the rules could be changed in the future.

Sullwold asked if the Board authorizes further changes, what happens with the rule process. Legge stated that if the Board makes changes in the rule, in order to continue through the rulemaking process, the Judge would have to find that they are not substantial changes. If it is a minor change that's consistent with comments and is within the scope of what was noticed for the proposed rule, normally the Judge will find that it's not a substantial change. The Board can certainly authorize further changes that could then be submitted to the Office of Administrative Hearings and presented to the Administrative Law Judge either at the hearing, if the hearing is held, or in writing asking the Judge to find that the changes are not substantial changes.

If the Board wants to consider making further changes to the rules, the Board should have specific rule language that the Board would approve or disapprove in terms of going forward. Legge stated she didn't know enough about the technicalities to determine whether this would be a substantial change to the proposed rules.

Parizek asked if the proposed language could be provided by the end of business this Friday, January 23rd, to give the Board members the

opportunity to review by the special meeting date of January 28, 2009. Mr. Thaden stated that whatever the Board wants is what they'll do.

Sullwold stated that some of the fittings have a little device on it that a clip is hooked on that holds it in and it forces the pipe to stay in place and one of major concerns is that if it is put close to a structure and the pipe grows, it would release itself and then the "O" ring is the only thing holding things from letting go.

Kammerer asked if these fittings have been used in other states. Crimmins stated the manufacturers have stated they have been used in other states, and they would request some data on performance on those fittings.

Lamm stated he would like to see some of the fittings and Peterson responded that the Board had been shown the 1016 fittings and the IAPMO Standards. Peterson went on to state that DLI doesn't have any samples because DLI doesn't approve products so they're not kept. McGowan stated that in small drinking water systems in the water conditioning business, those fittings have been used for years. However, the connections are out in the open and not behind enclosed walls. McGowan went on to state that he feels it's a good idea to have the fittings be placed in open areas. Some manufacturers have made clips that could be used for fittings used behind enclosed walls in order to ensure the fittings aren't compressed and can't release.

Ron Thompson asked Jim Peterson if Peterson felt these changes would be enforceable. Peterson stated they would be enforceable as any other material standards would be enforceable. Parizek stated that he agrees with Sullwold and McGowan that there are a variety of these types of fittings out there and some are permanent and others are removable if that ring is compressed they will pop off and there may be some concerns with that. Justin recommends that the presenters of the push fit fittings are informed of the special meeting to allow them to be a part of the discussion on January 28, 2009 at 9:00 a.m. Justin stated he also feels it's advantageous to have the fittings accessible and that he considers these fittings the same as a union, and those are accessible.

ii. Other – There were no other special business items discussed.

B. Department Updates/Comments –

i. Commissioner – Assistant Commissioner Tom Joachim addressed the Board. Mr. Joachim stated that in the last Legislative Session, a bill established the State Building Code as a state-wide standard and now everything built in Minnesota should be compliant with the State

Building Code. However, the Department of Labor and Industry found an area of that bill which says the plumbing code doesn't apply to single family homes that has a septic system and a private well. The Department of Labor and Industry's clean-up bill would take out that language, having the plumbing code apply state-wide.

The Department of Labor and Industry also found an error in the laws regarding bond requirements. The law has a section requiring a restricted journeyman plumber to have a bond, which is unnecessary as a restricted journeyman plumber can't perform the services. Correcting this error is included in the clean up bill.

The law also kept the authority with the Department of Labor and Industry over water conditioning; not placing water conditioning under the authority of the Board. Therefore, the clean up bill will include transferring the responsibility for licensure of water conditioning to the Board.

In this clean-up bill, the Department also addresses the state-wide licensure of the restricted and master plumbers by deleting the language of "less than 5,000" while the "less than 5,000" still applies to the water conditioning installers and licensees, which is similar to the master plumber and the restricted master journeyman, etc.

The specific language of the proposed bill was then discussed.

Legge stated that she is representing the Department of Labor and Industry on this legislation and discussed the clean up bill's possible amendments to the language of 326B.43, Subd. 1, which is the language that would apply to the single family home with septic system and wells. Subdivision 5 is extraneous language that can be repealed because the licensing law was changed to include the exception for pipelayers who have completed pipelaying training as prescribed by the Commissioner of Labor and Industry.

326B.435 is to clarify that the plumbing code includes the standards that apply to both plumbing and water conditioning. There was confusion before because since the water conditioning wasn't transferred to the Board, and it wasn't clear if that meant that the plumbing code doesn't include water conditioning. This bill also would transfer to the Board authority for rules regarding licensing of water conditioning contractors and installers.

The bond provision under 326B.475 needs revising as a regular journeyman plumber is not required to meet those bond requirements,

yet the existing language states that a restricted journeyman plumber is required to.

Language in 326B.52 changes the rulemaking authority from the Commissioner to the Plumbing Board and make that same clarification about water conditioning that was made about plumbing – namely that it’s going to apply to residences with their own private septic and well system. 326B.52 also states that the Commissioner retains the authority over permits, bonds, approval of plans, and inspections.

326B.58 changes authority over rules for fees from the Commissioner to the Plumbing Board.

326B.59 deletes the language of “populations of 5,000 or more.”

The “RULE CHANGE” language is being proposed because the rule limits the applicability of the Plumbing Code so that it doesn’t apply to private residences with their own well and septic. The changes will be made under the “good cause exemption” which is an expedited rulemaking process to change that one rule so it’s consistent with statute.

Kittelton asked about restricted master and journeyman being able to do water conditioning work in towns with a population under 5,000. Legge answered that there’s a separate statute on restricted plumbers and this does not change the statute on restricted plumbers. Thompson asked for clarification regarding 326B.58, that master and journeyman plumbers do not have to have a separate water conditioning license, but what about the restricted master and journeyman plumbers. Legge answered that the Department could look at that language and asked what the Board’s position would be; should restricted master and journeyman be able to do water conditioning work in areas with less than 5,000 in population. McGowan stated that he feels that there is a separate section in the code for water conditioning and he feels that everyone should have to take the test and become licensed. Kittelson stated that he agrees that they should have to take the test and be licensed. Legge stated that right now the language doesn’t exclude restricted journeyman and restricted masters from the water conditioning license requirement. Gary Thaden stated that as one of the proposers of the removal of the language of towns under 5,000 population exemption; he feels that letting the restricted plumbers and journeyman do the whole plumbing system except they couldn’t do this one part of water conditioning seems nonsensical.

Sullwold asked about the language on page one regarding allowing the commissioner to waive certain plan reviews or allow work to progress

on projects still getting their inspections. He stated that it would make sense to allow small commercial projects to move forward without a full plan review, for example a single sink in a break room in a commercial tenant build-out. Legge stated that part is not new language; it's existing language already in statute and the Department's proposed changes don't affect that. Tran stated that the Department is using some discretion now regarding small projects and on the web there's some information on small projects or A.D.A. upgrade that the Department allows if the local building official is acceptable to that.

Abrahamson asked if a licensed master and journeyman plumber can currently install water conditioning systems without a license. Legge stated yes. Abrahamson asked if it's stated anywhere where water conditioning work stops and where plumbing work starts. Peterson stated that is in existing statute. Legge stated that it is in definitions of water conditioning in statute, but that's not being proposed for change. Parizek asked if there were time constraints on this proposed bill language and was told by Legge that yes, the Department is looking for indication from the Board as soon as possible on whether the Board is supportive of the proposed language in the clean-up bill. Legge asked if the Board would like to recommend to the Commissioner whether a restricted plumber should be added to the language of 326B.50 as able to do water conditioning work in towns with a population of less than 5,000.

McGowan made the motion, seconded by Justin, that the Board supports the language of the Department's clean up bill and also that under 326B.59 that restricted masters and restricted journeyman be allowed to install water conditioning systems where their licenses apply.

Sullwold asked if there is a reason that the Board doesn't have authority over continuing education as right now there is no requirement for continuing education, and feels there should be a requirement in place. It was stated that the only Board to have authority over continuing education is the Board of Electricity. Legge stated that the options for the Board would be to approach the legislature on changing the authority over continuing education to the Board; or the Board could approach the Commissioner regarding adopting rules over continuing education. Parizek asked Tom Joachim if the Commissioner would be receptive to discussion regarding continuing education. Mr. Joachim stated yes, however, he wasn't sure how it would be received by the industry and stated that the author the Department had discussed the bill with stated that if the bill was non-controversial, they would carry it. However, if there are

items that are sensitive, the Department of Labor and Industry may not find an author for the bill. The special meeting notice will include the clean up bill of the Department of Labor and Industry.

The Board then voted on the motion made by McGowan. The vote was unanimous and the motion passed.

- ii. Legislature S.F. # 74 – Parizek stated that this bill on recycled and reclaimed water doesn't affect the Plumbing Board directly, however, he foresees that if this bill moves forward, the Plumbing Board will get requests regarding grey water systems for the proposed uses that pertain to plumbing, which includes flushing toilets, urinals, priming drain traps, industrial process water, structural fire fighting, decorative fountains, and commercial laundries. Parizek stated he intends to place this with the Green Committee.

Ron Thompson stated that the authors of the bill are Senator Jungbauer and Senator Frederickson. Thompson said he feels discussion with Senator Jungbauer would be in order, because as far as he knows, Senator Jungbauer has not contacted PCA, Labor and Industry or the Health Department before authoring this bill. Thompson stated that clearly some parts of this bill are addressed to the wrong Agency. For example, the bill refers to the Minnesota Department of Health (MDH) dealing with the wording on piping, which the MDH doesn't have authority over. Thompson stated that it is specific to domestic waste so it would not include the rainwater systems the Board has talked about in the Green Committee. The MDH just got this bill last week and is in the process of reviewing it, as is the Pollution Control Agency (PCA).

Parizek stated that according to the legislative website, the bill has been referred to the Department of Natural Resources (DNR). Thompson stated he believes it's a DNR Committee. Legge stated that Chapter 103G is a DNR chapter in that the word "commissioner" is defined as the commissioner of the Department of Natural Resources, however, she doesn't see anything in Chapter 103G, reviewing quickly, that gives the commissioner of the Department of Natural Resources the authority to do rules for all areas in that chapter, so it's unclear to her who would do the rules and who would do enforcement. Thompson stated it isn't clear as the DNR has stated that most of the bill is not for the DNR. Parizek stated that he feels that the MDH is going to be concerned with the quality of water going back into a residence. Thompson stated that the MDH's reading of the bill is not for potable use and it appears to follow the California standards to a large extent.

Brian Soderholm addressed the Board. He states that he feels this bill warrants the Board getting involved. Domestic waste is not defined in this bill and he feels that the proposed use includes “black water” and not just grey water. Parizek stated that this will be on the next Green Committee Agenda for discussion.

VII. Complaints

- A. Advertising – the Board received several dozen complaints regarding licensed plumber’s license numbers not being listed in advertisements appearing in newspaper, yellow pages and various internet ads. The task of reviewing these complaints has been assigned to Charlie Durenberger on behalf of the Commissioner of the Department of Labor and Industry. Legge stated that there is language that is proposed regarding unlicensed or false advertising for plumbing contractors. Peterson stated that the Department of Labor and Industry will typically send a letter stating that plumbing cannot be performed without a license, and in those cases where it is proven that plumbing work has been performed without a license, enforcement action is taken by the Department.

Parizek stated that the three items added to the agenda of the special meeting will be language proposed and supplied by Gary Thaden on proposed rule changes; continuing education; and review of the Department clean-up bill. Legge stated that perhaps one agenda item be listed as “any other legislative issues.”

VIII. Open Forum

Gary Thaden addressed the Board that he has heard that WCCO may be doing a follow up to their story on waterless urinals and recommends the Green Committee move expeditiously on this issue. Thompson stated that there have been previous discussions with the Board and with one of the Committees about well contractors and plumbing work. The Well Contractor’s Association has met with the MDH and DLI and they are having some discussions with the plumbing industry in which they discuss proposing legislation which would allow contractors to do water lines and yard hydrants, which is the work they’ve typically been doing in the past under the well license, which now is covered under the Plumbing Code. Thompson stated the Association has some draft language, however, he’s not aware of the status of it or if they’ve approached an author, but it may be coming up during this legislative session. It would essentially not allow them to do indoor plumbing, it would be a water line up to a building and the waters or yard hydrants that are connected to those water lines.

IX. Board Discussion

Kammerer stated that inspectors should be aware that the Building Code is requiring a radon mitigation system in all new homes. He states it will be a three or four inch pipe

that goes from below the basement floor out through the roof. Inspectors should be aware of this so that no one puts a sewer line into that pipe, or there could be major problems. The Code is requiring it to be marked, stating radon mitigation system, but Kammerer feels it should be something kept in mind for all those who inspect new homes that it may not be a sewer pipe. Kammerer stated that he believes this will become effective in June, 2009.

X. Announcements

- A. Next Regularly Scheduled Meetings:
- i. Hearing – Tuesday, February 3, 2009, 9:30 a.m. – Minnesota Room, DLI – if required
 - ii. Tuesday, April 21, 2009, 9:30 a.m. – Minnesota Room, DLI
 - iii. Tuesday, July 21, 2009, 9:30 a.m. – Minnesota Room, DLI

XI. Adjournment

Abrahamson made a motion, seconded by McGowan, to adjourn the meeting. The vote was unanimous, and the motion passed. The meeting adjourned at 11:29 a.m.

Respectfully Submitted,

Lawrence Justin

Lawrence Justin