

Plumbing Board Special Meeting
Minutes
January 28, 2009
Isanti 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
Jim Gander
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)

Staff Present:

Cathy Tran
Wendy Legge
Annette Trnka
Jim Lungstrom
John Schultz

Members Absent:

None

Visitors:

Dana Buccicone
Bill Chapin
Mark Meyer
Mike Sides
Carl Crimmins
Luther Westman
Russ Bahensky
Brian Soderholm
Doug Hall
Dave Duren
Gary Thaden
Don Knipe
Mike Lipke

I. Call To Order

The meeting was called to order by Parizek at 9:09 a.m.

- A. Announcements – Chair gave parking information.
- B. Introductions – Introductions were made.

II. Approval of Agenda

The Chair asked if there were changes or objections to the Agenda. Hearing none, the Chair declared the Agenda approved.

III. Approval of Previous Meeting Minutes

- A. January 20, 2009 Minutes
 - i. Cathy Tran stated that on page 7, paragraph 1, septic tank should be changed to septic system and add the word “private” before “well.” Justin made a motion, seconded by Abrahamson, to accept the previous Minutes as amended. The vote was unanimous and the motion passed.

IV. Regular Business

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

V. Special Business

- A. Rule Changes
 - i. Requests For Hearing, Push Fit Fittings – Gary Thaden addressed the Board. He stated that since the push-fit fittings are a fairly new product in this area, there are three issues that they wanted to address. He went on to state that in no way were the changes meant to ban or diminish the product. The first issue is to make them accessible so that if there is a problem, people won’t have to tear out a wall. Two is to not have the fittings insulated on the joint itself out of concern that if there should be a problem the fitting could be looked at right away. In addition, if there is a leak, the water could travel down the insulation and it will be difficult to know where the problem originates from. The third issue is they want control for the expansion and contraction of the piping and feels the fitting needs to be secured to the structure so as not to come apart. Carl Crimmins pointed out that the insulation work is not usually done by the same person who installs the product.

Tran stated that what she understood from the 1-20-09 Board meeting was that the fitting should be at least three to four inches from the structure floor or ceiling. The proposed language presented by Mr. Thaden now only states the fitting should be secured to the structure. Thaden answered that he was sorry for the misunderstanding. They feel the issue is that as the temperature changes and the pipes expand and contract that the joints not separate.

Kammerer asked if there was any documentation found on the failure rate of the fittings and was told that there was no documentation found online. Dana Buccicone spoke as a manufacturer of the push-fit fittings (both removable and non-removable) and stated that in regard to failure rates, they have manufactured five million pieces in the last three years and have had one failure, which was an installation issue

where an installer nipped the O ring. He went on to state that these fittings are very durable and are permanent fittings with the same guarantee as a soldered fitting. There is no restriction regarding insulation and the fittings are not prone to leakage as long as they are installed in compliance with manufacturer's instructions. He states that these fittings have been used all over the world since the late 1980s. The fittings are to be placed behind the wall and they are to be insulated and they are permanent.

Bill Chapin with Cash Acme stated that their company has produced over thirty million fittings since September, 2004. He states that there's no information online regarding failure of these fittings, because the fittings don't fail. He spoke about the water hammer tests, pull-out tests and other testing and research that have been done on the fittings and how they meet the ASSE 1061 standards. He stated that a test was done with temperature changes of 100 degrees in two minute intervals and the most the fitting expanded or contracted was 1/10 of an inch per copper tube. Mr. Chapin stated that the proposed code by Minnesota is the strictest in the country out of all 50 states.

Gary Thaden left at 9:27 as the Worker's Compensation Advisory Committee was starting at 9:30, which Mr. Thaden had previously agreed to attend.

Cathy Tran then passed out proposed Department alternative language which included 4715.0805, Subpart 6 and 4715.0850.

Jim Gander left to attend the WCAC meeting at 9:30 a.m.

Russ Bahensky addressed the Board. He stated that his company had also come out with a permanent push copper joint in 2004. He stated that Minnesota is one of the last states to approve this fitting. His company has done extensive testing on the product with good results and feels that the most important factor for these fittings is proper installation. He states that owners who do in-house work feel that this fitting is a huge time-saver and has cost savings.

Chuck Olson of DLI addressed the Board and related being out at an inspection last week where the contractor brought up push-on fittings. The contractor stated that he had been out at a private residence where the home owner had originally done the install underneath a cabinet. The contractor pulled up on the pipes and said they were loose and the push-on fitting released, requiring the contractor to shut off the water. Mr. Olson stated he feels the concern with the fittings not being secured is valid. The contractor Mr. Olson spoke with didn't know which brand of fitting it was. Thompson asked Mr. Olson if he knew

who had done the work and was told that the homeowner had done the install and the homeowner has his own well and septic system.

Parizek asked Carl Crimmins if there's more concern regarding one fitting over another – removable compared to the non-removable. Mr. Crimmins answered that due to the number of manufacturers, sometimes it's hard to differentiate between the two types so they included the concern for both. He added that if the fitting was treated like a union, which also isn't covered, and was not insulated and was easily accessible it would allow for repair. Justin asked Peterson about enforcement within six inches of the joint. If there were to be noticeable joints within a wall cabinet, for example, with multiple fittings, would Peterson be looking for it to be secured within six inches of the joint. Peterson answered that he would look at it as a water heater installation.

Gary Thaden returned at 9:34 a.m. Justin stated that, as Wendy Legge has asked many times in the past, where did that number come from (the 3 or six inches from the wall) – what is that number based on. Mr. Thaden answered it was based on discussions with plumbers. Justin stated that from an enforcement standpoint the language would need to detail why it is needed and reasonable.

McGowan stated that when the issue of restraint first came up, he thought that the concern was anchors and securing, not that they needed more or less securing than other piping systems. It was that the fitting not be placed next to an anchor so if the pipe moved, it wouldn't press the release mechanism. Crimmins answered that he felt they were picking a number that was workable, and thought if the pipe were supported within six inches the fitting couldn't go up against the wall. He feels that as long as there is some requirement for a distance that the Board agrees on, that will be acceptable. Legge asked if the language that Cathy Tran proposed would be acceptable to Mr. Thaden and Mr. Crimmins. Mr. Thaden stated yes, however, he would like the sentence to end at the word "structure" and cut out the rest of the sentence of "to prevent separation of the joint due to expansion and contraction of the piping."

Kammerer stated he is neither for nor against this fitting and had done some research on his own. He found IAPMO's and the Uniform Plumbing Code's testing and they specifically state that an access panel isn't needed for these fittings. He also went on to IPC's website, which provides an evaluation service for all building products and there is one on push fittings. There isn't anything on that evaluation that states these fittings have any kind of a failure rate or that they shouldn't be treated like any other fitting. He added that the testing those fittings are put through are impressive. Kammerer also stated he

feels that the language is too restrictive and doesn't feel the code needs to be more restrictive.

Justin stated he agrees with Kammerer and pointed out that if a rule is made, it's in there for at least three years, and care should be taken not to put unnecessary restrictions in the code without technical documentation of the need for those restrictions.

Luther Westman identified himself as a retired plumbing contractor and stated that he has seen these fittings used in the field and the most important factor is to make sure that they are installed properly, that they will work and feels they are a good fitting. Mr. Thaden left again at 9:40 a.m.

Parizek asked if there was anything in the installation of products, especially of the non-removable, that addresses that the fitting should be a certain amount of distance away from a structure or where it's being placed. Mr. Chapin stated that with their removable ones, the instructions state "do not place within one inch of another fitting" just for the reason that the fitting can't be disassembled without that space. He added that he's never been told of one disengaging accidentally, that they're difficult to do when trying to disengage them.

Doug Hall asked if this language would not allow PEX or CPVC tubing/piping. Parizek answered that was correct; the language wouldn't allow PEX or CPVC installation. Mr. Hall stated that there has been permanent push-on fittings used on CPVC and PEX for years. Justin answered that the Board and the Product and Code Review Committee had both discussed the use of PEX and CPVC and had decided that for now the language will only include copper. Mr. Chapin stated that most of the push fittings designed to use with PEX are designed to meet the Standard ASTM F877.

Kammerer asked the manufacturers if they put on any kind of training for installation. A member of the audience answered that they train and certify installers.

Kammerer made a motion, seconded by Justin, to leave the Board's proposed language unchanged. Further discussion followed.

Abrahamson referred to Chuck Olson's story of that fitting releasing, and stated he's been inspecting for the last eight months for the Water Department and has seen a lot of installations which they have not allowed and they had to be taken out. He added that those fittings are going tight against studs, etc., and if the pipes expand one inch, it could be releasing that mechanism. Abrahamson stated he wanted to go on record that some of these installations, which were done by

professionals, do scare him. Some of the fittings are removable and someone untrained may not know the difference.

Lamm asked if the contractor that had spoken to Chuck Olson had stated how far the contractor had pulled on those pipes and was it possible the contractor inadvertently released the push fitting. Mr. Olson stated that he didn't ask, however, Mr. Olson's assumption was that when the contractor pulled on the pipes it hit something that caused the fitting to release. Lamm stated that if it didn't leak before the contractor pulled on it, his assumption would be that the contractor hit the release mechanism. Mr. Olson stated the contractor did state that the fitting was concealed and because it was loose, he pulled on it to see if it was hooked up to anything and it released. A member of the audience said that if it was installed by the homeowner, perhaps it was installed incorrectly to begin with.

Justin stated that he feels we all have concern on installation issues, that's one reason they have the metal plates when there's electrical or anything copper running through the studs, they have to protect it so no one puts a screw through it. He added that he's hesitant to put language into the code where there's no backing for that language to be added. Whatever number assigned, 3 inches, 6 inches, 12 inches, 3 feet – no one knows what the reasoning is behind it for that specific number to be chosen. Once it's in code, then it's enforceable and there should be a reason why it's in the code, other than there could possibly be some installation issues.

McGowan stated that the issue of the failure brought up by Chuck Olson wasn't a good example, as the Board doesn't know how the fitting was installed, or what fitting was used. The fittings meet the ASTM Standards and that's how we base our standards for the rest of the fittings and feels the Board can't go ahead with restrictive language without fact. Chuck Olson asked if the language would preclude a homeowner from getting training. He added that he's sure that these fittings will end up at all the do-it-yourself stores. It was stated that the fittings already are in stores.

A member of the audience spoke on the tests the fittings are put through before being manufactured. He stated that the fittings are permanent and are technically sound high quality fittings. He stated that the installation is very simple and quick to install.

Parizek stated that the concerns he has heard only affect removable fittings and not the non-removable push-fit fittings. He went on to state that the purpose of this meeting was not to rewrite the language, but to see if a hearing could be avoided.

Parizek then called for the vote on the motion made by Kammerer, to leave the Board's proposed language unchanged. The vote was Peterson, Ames, Kittelson, McGowan, Kammerer, Palmateer, and Justin voted Aye. Parizek, Abrahamson, Lamm, Sullwold and Christenson voted Nay. The majority ruled and the motion passed seven to five. Gander did not vote.

Carl Crimmins stated that he appreciated the good discussion and felt that in view of the result, they would withdraw their letters of request for a hearing. Legge stated that they needed the request to withdraw in writing and it had to be received today in order to cancel the hearing within the required time frame. Mr. Crimmins wrote a letter stating he is withdrawing the requests for hearing and gave it to Wendy Legge.

- a. 4715.0420, Subpart 3, 3R
 - b. 4715.0805, Subpart 2
 - c. 4715.0850, Subpart 6
- ii. Parizek asked if there were any other requested rule changes relating to Requests For Hearing or written comments received in response to Dual Notice – none were noted thus there was no further discussion.

B. Legislative Issues

- i. Update on Department Clean-Up Bill – Legge spoke about the Department's proposed language for legislation. She stated that the Department had taken the Board's concerns into account and had added proposed language regarding false advertising. Thompson asked the status of the bill going forward. Joachim answered that Representative Mahoney has agreed to author the bill if the bill is non-controversial, so the language regarding unlicensed activity and Continuing Education (discussed below in Bii) was being left out in order to keep the bill non-controversial.
- ii. Continuing Education – Tom Joachim, Department of Labor and Industry's Assistant Commissioner, addressed the Board regarding a draft of the Department of Labor and Industry's language that would give authority over rules that regulate continuing education to the Board. The language needs to be non-controversial in order that the bill can move forward with an author.

McGowan asked if the contractor is an individual or a corporation. Legge responded that it could be either one. Kevin Wilkins answered that the reference to the plumbing contractor language needs to be struck, as under the current law the master plumber is the contractor. There is no specific contractor language in the electrical code. Water Conditioning Contractor is an individual license.

A gentleman who identified himself as representing the MN PHCC stated that Mr. Joachim had requested him to get information regarding other states' continuing education requirements. He had also sent a letter out to all their members in the state of Minnesota, which are a combination of union and non-union shops, asking them what they thought of continuing education. He received approximately 25-30 responses and out of those received back, only two responses were against continuing education. He stated the requested information and responses were being presented to Mr. Joachim now.

Don Knipe asked about who would be authorized to provide the continuing education and also asked how the continuing education would be applied to those who carry multiple licenses. Kevin Wilkins answered that the current program for the Department of Labor and Industry manages continuing education for the electrical area and the residential building contractor area. Even though they are distinctly separate programs, they do have some common approaches; one of which is using providers outside the Agency and is sponsored by colleges, individuals, and private sector businesses. All the providers are approved in advance by the Department.

Legge stated that this language would allow the Board to adopt rules to determine who could provide the continuing education. Joachim stated that the same process for rulemaking would apply and would direct the Department on what continuing education providers are allowed. Kammerer stated that he would like to see this legislation go through and asked if the Board decided to move forward with this language, would the Board have to find a sponsor and was told yes. Joachim stated that the Department wanted to draft some language regarding continuing education so the Board would understand what the language would mean and the Board could then decide how they wanted to handle the issue.

Sullwold thanked Wendy Legge, Tom Joachim and their staff for their hard work and for drafting the language and guiding the Board in the direction of how to change legislation. Justin stated that a motion could be made in order to state that the Board would approve the language drafted by the Department then PHCC may feel better about going forward with it if they felt they had the support of the Board.

Parizek stated that one thing he doesn't see included in the language is the back flow testers and their continuing education. That may need to be addressed in the future. Sullwold asked if continuing education became the responsibility of the Board, could back flow testers be addressed in rule. Legge answered that the language is for licensed individuals and back flow testers are not licensed and they would not

fall under the language. McGowan stated that this issue is cloudy because testers don't have to be a plumbing licensed individual, they only need certification.

Thompson stated the continuing education language would also not include apprentices, inspectors or pipelayers. Parizek stated that this is just a proposed language draft and if someone does author it and move it forward, the language could change. Legge stated that the proposed language as presented by the Department does not change the Commissioner's authority with respect to educational requirements for plumbing inspectors, so if the Board were to propose to change that, the Commissioner may or may not oppose that change.

Justin made a motion, seconded by Sullwold, to approve the language moving forward by industry. Peterson made a friendly amendment to revise the motion language to "endorse the language moving forward by industry." Justin amended his motion to read "motion to remove plumbing contractors from the submitted language from item six and to endorse the language to be moved forward by industry" seconded by Sullwold. The vote was unanimous and the motion passed. The proposed language is as below:

Amend 326B.435, subdivision 2, Amend section (5) add new section (6) and renumber (6) through (11);

(5) ~~except for rules regulating continuing education,~~ adopt rules that regulate the licensure or registration of plumbing contractors, journeymen, apprentices, master plumbers, restricted master plumbers, and restricted journeymen and other persons engaged in the design, installation, and alteration of plumbing systems, except for those individuals licensed under section 326.02, subdivisions 2 and 3. The board shall adopt these rules pursuant to chapter 14 and as provided in subdivision 6, paragraphs (e) and (f);

(6) adopt rules that regulate continuing education for individuals licensed as master plumbers, journeyman plumbers, restricted master plumbers, restricted journeyman plumbers, water conditioning contractors and water conditioning installers. The board shall adopt these rules pursuant to chapter 14 and as provided in subdivision 6, paragraphs (e) and (f);

~~(6)~~ (7) advise the commissioner regarding educational requirements for plumbing inspectors;

~~(7)~~ (8) refer complaints or other communications to the commissioner, whether oral or written, as provided in subdivision 8, that allege or imply a violation of a statute, rule, or order that the commissioner has the authority to enforce pertaining to code compliance, licensure, or an offering to perform or performance of unlicensed plumbing services;

(8 9) approve per diem and expenses deemed necessary for its members as provided in subdivision 3;

(9 10) approve license reciprocity agreements;

(10 11) select from its members individuals to serve on any other state advisory council, board, or committee; and

(11 12) recommend the fees for licenses and certifications.

iii. Any other legislative issues – there were no further issues.

C. Formation of Water Conditioning Committee

- i. Members assigned to the sub-committee – Parizek stated that the Board is going to appoint an ad-hoc committee for water conditioning and will appoint Abrahamson as Committee Chair. McGowan, Sullwold, Peterson, Parizek and Lamm will be additional members. Thompson would like to be copied on all information.
- ii. Outline of duties/objectives – Parizek stated he would encourage any member of the water conditioning industry to be present at the meetings for their input. Parizek stated that any Committee recommendation for changes be made to the Board.

VI. Open Forum

There were no requests for open forum.

VII. Board Discussion

Abrahamson stated an issue had come up regarding the back flow tester list. When licensed plumbers pass away and their license is not renewed, they are moved to a list of “testers only.” Abrahamson feels that there should be an expiration date or renewal date for testers by the Department of Labor and Industry. Peterson stated that when Abrahamson notified him of this issue, he checked the list for his father, who was licensed up through the 1980s and passed away last August, and had his name removed. He stated that currently the only way someone is removed from the list is when the Department of Labor and Industry is notified that someone has passed away. He stated that if the Board chose to change the rule on RPZ testing to put an expiration date or a continuing education or recertification requirement that would weed out those who are deceased from automatically renewing. Parizek asked if this issue would fall under the Construction Codes and Licensing section of the Department of Labor and Industry. Peterson stated that the Department keeps track of the certifications, however DLI isn’t the Agency that does the certification and once you get the certification it’s good forever.

McGowan asked how it came to pass that someone who is non-licensed as a plumber is allowed to do the testing or get the certification. Peterson stated that initially it was determined that since all that’s being done is attaching a gauge to test products on a

device, it was considered that the testing was non plumbing work, however, re-building and installing is considered a licensed activity. McGowan asked if there was other type of plumbing work was allowed without being a licensed plumber. Peterson answered that utility contractors that are pipelaying from the street to the building are not required to be licensed. McGowan asked if it would be difficult to change the rule for that and require that pipelaying can only be done by a licensed plumber. Peterson stated that would require a statutory change. Legge stated that the only way to change it by rule is in the definition of plumbing, which wouldn't allow for grandfathering anyone in.

VIII. Announcements

A. Next Regularly Scheduled Meetings:

- i. Tuesday, April 21, 9:30 a.m. – Minnesota Room, DLI
- ii. Tuesday, July 21, 9:30 a.m. – Minnesota Room, DLI

XI. Adjournment

Abrahamson made a motion, seconded by Kittelson, to adjourn the meeting. The vote was unanimous, and the motion passed. The meeting adjourned at 10:40 a.m.

Respectfully Submitted,

Lawrence Justin

Lawrence Justin