

**State of Oregon**

**BOARD OF BOILER RULES**

**Regular Meeting Minutes  
December 7, 1999**

**MEMBERS PRESENT:** Roger Vignery, Chairman  
John Endicott  
Stephen Frantz  
Michael Gibson  
Dale McLouth  
Steve Nelson  
John Pyle  
Nelson White - Arrived at 9:40 a.m.  
Russell Williams

**MEMBERS ABSENT:** John Copenhagen - Excused  
Casey Scott - Excused

**STAFF PRESENT:** Joe Brewer, Administrator  
Curt Lundine, Chief Boiler Inspector and Board Secretary  
Dana Roberts, Manager, Regulatory and Statewide Services  
Charles Kliewer, Assistant Manager, Statewide Services  
Clay Rhodes, Boiler Inspector  
Andrea Simmons, Policy Analyst  
Brad Morris, Chief Compliance Officer  
Roseanne Nelson, Compliance Officer  
Marilyn Benton, Boards Coordinator/Recorder

**GUESTS PRESENT:** Thomas Perritt, Operating Engineers, Local 701, Ret.  
James Buss, J & A Mechanical, Inc.  
Roy AnDone, McDowell Welding  
Tom Lindberg (Past Board Chair), Operating Engineers Local 701  
Randy Elledge, Quality Mechanical  
Ed Pitzrick, Chubb Group of Insurance Companies  
Daryl Hoffman, FM Global  
Mike Jurkiewicz, Local 290 Training Center

## **I BOARD BUSINESS**

### **I.A Call to Order**

Chairman Vignery called the Oregon Board of Boiler Rules to order at 9:30 a.m. The meeting was held at the Building Codes Division, 1535 Edgewater NW, Salem, Oregon.

### **I.B Roll Call**

John Copenhagen and Casey Scott were absent (both excused).

Chairman Vignery welcomed Thomas Perritt who will replace Casey Scott on this board effective January 1, 2000.

*Nelson White arrived at 9:40 a.m. and was present for the balance of the meeting.*

### **I.C Approval of Agenda and Order of Business**

The following changes were made to the agenda:

1. Under Section III, add Item III.AA - "Report on Code - Curt Lundine, Chief Boiler Inspector."
2. Amend Section VII - New Business:  
VII.A - "Board approve administrative rule amendments for public hearing."  
  
VII.B - "Appoint board nominees for Senate Bill 803 Task Force."

**MOTION** by Stephen Frantz to approve agenda as amended.

**MOTION CARRIED UNANIMOUSLY.**

### **I.D Approval of the September 7, 1999, Minutes**

Chairman Vignery **RULED** the minutes approved as submitted.

### **I.E Date of the Next Regularly Scheduled Meeting**

March 7, 2000

## II PUBLIC COMMENT

Dana Roberts, Manager of Regulatory and Statewide Service Sections, reported on efforts to revamp the division's compliance program.

Mr. Roberts said that Director Mike Greenfield, Deputy Director Debbie Lincoln, Division Administrator Brewer and Deputy Division Administrator Joan Fraser toured the state to hear from industry, interested parties and building officials about how they perceive the division is operating and what it can do to provide better service. One of the major themes was the need to improve the compliance process, particularly regarding consistency.

Chief Compliance Officer Brad Morris and Compliance Officer Roseanne Nelson have developed a proposal that has been further developed by staff. Mr. Roberts posed five objectives:

1. Establish a compliance process that is uniform, consistent and fair.
2. Establish a compliance process with applicable codes, rules and statutes that allow the division to take action in a timely manner.
3. Protect the health and safety of the public while dealing with compliance issues.
4. Make compliance the best option for a contractor or business to continue working in Oregon. At present, fees and penalties are so low that some contractors believe they are the cost of doing business.
5. Restore confidence that the compliance program, including the boiler program, is working.

Mr. Morris and Ms. Nelson proposed that boiler inspectors in the field act as agents on behalf of this board. Their authority would be similar to the authority of plumbing and electrical inspectors, who can investigate a situation, determine that a compliance problem has occurred, and serve notice of the potential penalty. No further investigation by the division would be necessary, and the division would proceed appropriately.

Further proposed is authority for the compliance officers, chief boiler inspector and section manager to take action to dispose of "process" cases; *e.g.*, notice served and evidence later indicates no violation occurred. The case would be dismissed and the dismissal would be reported to the board. This action would hasten the compliance process.

The use of "consent orders" to achieve compliance was suggested for the reason that the cost of complying would be the cheaper alternative for violators. A first-time

violator would agree through a "consent order" not to further violate. The penalty for the second-time violator would be significant. This board, the Electrical and Elevator Board, and the Plumbing Board have authority to impose penalties up to \$5,000 per violation. A matrix would be prepared for the board and staff to use in helping non-compliant parties understand their alternatives, which may involve a "consent order," a plan to educate their employees, and other measures.

A sliding penalty scale would focus on repeat offenders to make the cost significant enough to make them want to comply. In the matrix, a fourth- or fifth-time offender must come before board, and the board would decide whether or not the offender could continue working in Oregon.

The draft proposal will be referred to the Attorney General and then submitted to the board.

Michael Gibson feels the major problem is that the public has never heard of this board or its program. Mr. Roberts remarked that the 700 inspectors throughout the state acting as agents of the board would require an education program. He added that a compliance newsletter to all contractors and interested parties is being considered. Boiler and elevator requirements are on the division's jurisdictional oversight program agenda in advising and helping local building departments.

Mr. Roberts explained that a "cease and desist order" is used by the division to stop someone from continuing a practice on any present or future job site. A "stop work order" is site-specific.

### III REPORTS

#### Compliance Cases - Roseanne Nelson

##### Reconsideration

##### A. **Clarence E. Shock, Jr. - Assessment of \$500 civil penalty by the board September 7, 1999, for installing a boiler without being certified in Boring.**

Division recommends dismissal of Default Order dated September 7, 1999, and approval of the Consent Order.

**MOTION** by Michael Gibson to adopt division recommendation to dismiss the default order.

**MOTION CARRIED UNANIMOUSLY.**

**MOTION** by Russell Williams to approve Consent Order.

**MOTION CARRIED UNANIMOUSLY.**

**Unanimous Consent Calendar**  
**Consent Orders**

Division recommends adoption of recommendations in the balance of the compliance calendar.

**MOTION** by Michael Gibson to approve division recommendation.  
**MOTION CARRIED UNANIMOUSLY.**

- B. J & A Mechanical Incorporated - Assessment of \$6,000 civil penalties for installing boilers and pressure vessels without a business license or permits in Portland (11 violations), to be stayed for three years and dismissed if there are no further violations by Respondent during the three-year period.**
- C. Newport Plumbing, Inc. - Assessment of \$1,000 civil penalties for installing a boiler without a business license or permit in Newport, to be stayed for three years and dismissed if there are no further violations by Respondent during the three-year period.**
- D. John Nielsen - Assessment of \$500 civil penalty for installing a boiler without certification in Ontario, to be stayed for three years and dismissed if there are no further violations by Respondent during the three-year period.**
- E. Quality Mechanical, Inc. - Assessment of \$5,000 civil penalties for installing boilers without a business license or permits in Portland, to be stayed for three years and dismissed if there are no further violations by Respondent during the three-year period.**
- F. Randy D. Elledge - Assessment of \$1,500 civil penalties for installing pressure vessels without certification and for installing boilers that did not meet minimum safety standards in Portland, to be stayed for three years and dismissed if there are no further violations by Respondent during the three-year period.**
- G. SFB, Inc. - Assessment of \$500 civil penalty for installing a boiler without a permit in Portland, to be stayed for three years and dismissed if there are no further violations by Respondent during the three-year period.**
- H. Slayden Construction, Inc. - Assessment of \$3,000 civil penalties for employing an individual who was not certified to install pressure vessels and for no permit in Lincoln City, \$1,500 to be stayed for three years and dismissed if there are no further violations by Respondent during the three-year period.**

- I. Greg Wiley - Assessment of \$500 civil penalty for installing pressure vessels without certification in Lincoln City, to be stayed for three years and dismissed if no further violations by Respondent during the three-year period.**
- J. J & J Heating & Air Conditioning, Inc. - Assessment of \$1,000 civil penalties for installing a boiler without a business license or permit in Roseburg, to be stayed for three years and dismissed if there are no further violations by Respondent during the three-year period.**
- K. Steve Wess - Assessment of \$500 civil penalty for installing a boiler without certification in Roseburg, to be stayed for three years and dismissed if there are no further violations by Respondent during the three-year period.**

**Default Orders**

- L. Chemical Specialties, Inc. - Assessment of \$1,000 civil penalties for altering a pressure vessel without a business license or permit in North Bend.**
- M. Grinnell Corporation dba Grinnell Fire Protection Systems Company - Assessment of \$1,000 civil penalties for installing a pressure vessel without a business license or permit in Molalla.**
- N. Jones Boiler & Mechanical, Inc. - Assessment of \$500 civil penalty for repairing a boiler without a permit in Vale.**

**III.AA Report on Code - Curt Lundine, Chief Boiler Inspector**

Mr. Lundine distributed copies of Chapter 10 - Boilers, Water Heaters and Pressure Vessels - 1998 International Mechanical Code, adopted by Oregon (Exhibit "A"). He remarked that the boiler law in place takes precedence over the mechanical code on all boiler issues.

**IV COMMUNICATIONS - None.**

**V APPEALS - None.**

**VI UNFINISHED BUSINESS - None.**

**VII NEW BUSINESS**  
**VII.A Board Approve Administrative Rule Amendments for Public Hearing.**

Because there have been several rule changes in the last two years, division staff would like to publish a 2000 Edition of the Boiler Law. The committee intends to have rules ready for board approval at the March 7, 2000 regular meeting.

The Boiler Rules Advisory Committee recommends approval of the proposed rule changes for public hearing (*refer to Draft 1 dated November 9, 1999, in the December 7, 1999, board packet*).

Among items discussed:

**918-225-0240 Definitions**

"(16) 'Pressure Piping' means ~~boiler external piping and non-boiler external piping defined in ORS 480.515(8)~~ **piping systems and components under the scope of ASME B31.1, B31.5 and B31.9.**"

Because the board is considering enforcement of regulations for refrigeration piping, B31.3 (chemical and petroleum process piping) is not mentioned under this definition. Inspector Lundine noted that every electronics plant in the state has miles of chemical process piping.

Further, B31.5 refers to refrigeration piping standards. The board must decide where it wants to go with enforcement of piping codes. If it starts by enforcing standards on refrigeration piping, then it should look at more dangerous piping systems, such as chemical piping plants. If the board determines not to enforce refrigeration piping regulations, then all reference to B31.5 must be removed. Mr. Lundine emphasized that this is a very pivotal point. Considerations include licensing and testing of tradesmen, licensing of companies, and a need for additional inspectors.

**Daryl Hoffman, FM Global**, is concerned about refrigeration piping and adding industrial boiler field training requirements. He remarked that industry should be encouraged to follow the standards. However, there is little justification for additional inspection costs. The division would be far ahead if it spent more time on education and less time extending rules and adding more confusion.

Inspector Lundine advised that installations of pressure vessels relating to refrigeration systems are currently inspected by either a state inspector or a special insurance company inspector. Basically, the level of inspection is registration of the pressure vessel because the division does not regulate the fabrication and installation of refrigeration piping systems. He explained that the division wants personnel at the site before a boiler is fired and that an intensive inspection is made the first time the

boiler is operated. The division does not need to be present when a refrigeration pressure vessel is installed, though it must be registered with a permit to operate.

Mr. Lundine distributed copies of Chapter 11 - Refrigeration - 1998 International Mechanical Code (Exhibit "B"), which contains no reference to performance standards. The only reference to material is the type of piping that may be used. It does not give ASTM standards or anything approaching the depth of requirements in ASME code. It does not require compliance with ASME B31.5. The level of inspection is not mentioned. There are no requirements for piping supports, hangers, expansion or anchoring.

Chairman Vignery stressed the board's main concern is public safety, which is one of the reasons it regulates steam. Mr. Lundine is concerned about refrigerant because it will not support life in an enclosed space. Chairman Vignery remarked that companies using refrigerants must post a code advising the fire department of the degree of possible danger.

**Tom Lindberg, Past Board Chairman, and Operating Engineers Local 701**, said that the kind of refrigerants used is changing from the type that would not support life to the type of refrigerant that kills people by a series of poisons. The most dangerous are in the home. He lobbied for B31.3 and B31.5. The lobbying effort was based on safety. For instance, there is extreme danger in chip plants in both volatility and toxicity. He suggested that a steering committee prepare a formal proposal for the board.

John Pyle said his industry opposes the proposed rules and questioned whether some issues are within the scope of the board and inspectors in the field. He said that several years of training are involved, even now as the division experiences problems in making people aware of law that has existed for a number of years. Further, broadening the scope of boiler rules is an uphill battle. He also recommended a special task force and suggested the plausibility of expanding responsibility to the IMC, rather than placing responsibility upon this board.

Michael Gibson cautioned that the entire industry should be contacted before finalizing these rules.

Chairman Vignery observed that the legislature has given the board authority to regulate AMSE codes, indicating that the legislature has mandated this board as the proper venue. The Boiler Rules Advisory Committee will meet January 19, 2000. Interested parties, including the refrigeration and insurance industries, are on the mailing list for that meeting. Chairman Vignery suggested deferring action on this section until after that meeting.

**MOTION** by Dale McLouth to table consideration of all appropriate administrative rules concerning ANSI B31.5, including OAR 918-225-0240(16), OAR 918-225-0430 and OAR 918-225-0730, until the next regular meeting.

**MOTION CARRIED UNANIMOUSLY.**

**Darrel Hoffman** said that entities with industrial-size boilers over 12.5 million btu/hr. should particularly be involved regarding OAR 918-225-0430(7) concerning controls and safety devices. Inspector Lundine said he was advised at the last ASME code committee meeting that the NFPA 85 series will be incorporated in one document in January 2000. However, NFPA later told Mr. Lundine that it would not occur until 2002. Reference to NFPA was removed. This issue will be included in the next three-year rule review.

**MOTION** by Michael Gibson to approve all proposed rule changes included in the November 9, 1999, draft for public hearing, excluding OAR 918-225-0240(16), OAR 918-225-0430 and OAR 918-225-0730.

**MOTION CARRIED UNANIMOUSLY.**

*(This portion of the discussion was heard out of order during announcements.):*  
John Endicott asked about the status of ASME B31.5. Inspector Lundine said that at a previous board meeting he was directed to look at writing rules for refrigeration piping. No one at that time mentioned chemical and petroleum process piping. He agrees that these systems are equally hazardous to the public. It is boiler program policy to protect the public from any hazardous pressure equipment over which it has authority. Mr. Lundine explained that rules and staffing are required. The budget is not a boiler program problem. The difficulty is in obtaining authority to hire personnel. If there are rules in place requiring a specific job, he has hiring authority.

Charles Kliever, Assistant Manager, Statewide Services Section, referring to authority for hiring, said one of the critical elements is a clear definition of the scope of what the board intends to do. When the scope is defined, the division can determine what the impact will be and report back to the board. He agrees that there are several issues to be resolved and defined.

*(Also, see Agenda Item VIII - Announcements)*

## **VII.B Board Appoint Nominees for Senate Bill (SB) 803 Task Force.**

This bill created the "Electrical and Mechanical Board Consolidation Task Force" to study the feasibility of combining the Board of Boiler Rules, Plumbing Board, and Electrical and Elevator Board. The study will also look at the transfer of the roles and responsibilities relating to the regulation of mechanical, electrical and plumbing

contractors from the Building Codes Structures Board to a consolidated "Electrical and Mechanical Board."

The task force will consist of 17 members appointed by the Governor. Four members each shall be appointed from among persons currently serving on the Board of Boiler Rules, State Plumbing Board, Electrical and Elevator Board, and Building Codes Structures Board. One member shall be appointed from a list of persons designated by the Director of the Department of Consumer and Business Services (DCBS).

Administrator Brewer explained that SB 803 was originally submitted by the construction industry as an attempt to position our board process to move into the next millennium. When one of the interest groups decided not to support the proposal, it became apparent that a task group study of the proposal was in order. After passage in the Senate, the bill was changed in the House to a 1999/2000 interim study of the boards. This bill would call for a larger board, similar to the structures board in the State of Washington, and use task forces for particular subject areas. For instance, boiler issues might be addressed in committee, with its recommendations made to the board. Copies of the July 6, 1999, memo from Director Mike Greenfield to Governor Kitzhaber regarding Enrolled SB 803 were distributed (Exhibit "C").

**Tom Lindberg** said there would be some question about rulemaking authority. On the other hand, he sees the task force as an opportunity to move building codes into the new century.

Mr. Gibson asked about financial savings. Mr. Brewer explained that the potential for savings is in staffing. The Building Codes Division staffs the Building Codes Structures Board, Electrical and Elevator Board, Board of Boiler Rules, and the Plumbing Board. Each board has a separate Board Secretary. Additionally, the Boards Coordinator/Recorder supports all of the division boards. The cost savings is one of the ancillary benefits. Consistency in policy making would be the significant benefit. The larger board would have the power to establish as many subcommittees as needed to obtain advice required to make appropriate decisions on technical issues.

The four representatives of this board will sit with representatives of the other boards to create the report to the legislature about what, if anything, should be done with the board structure. One of the issues to be discussed by the task force is the correct rulemaking model to follow. Mr. Brewer does not see any of the current administrative rules being eliminated through this process. They would remain in place. The authority would transition to the "super board."

**Mr. Lindberg** said there are many aspects of the building and construction industry not regulated by the Building Codes Division; *e.g.*, crane operators who may or may

not follow national standards, who come from other states without standards, and so forth. The issue is safety.

Mr. Pyle said he did not see how a "super board" would result in more awareness of the problems the industry encounters. Chairman Vignery was concerned about continuation of broad industry representation

The following board members volunteered as nominees to the task force:

Rodger Vignery  
Dale McLouth  
Michael Gibson  
John Endicott

## VIII ANNOUNCEMENTS

The next Department of Administrative Services (DAS) half-day orientation for new board and commission members is scheduled for March 14, 2000, in Portland. Board members who have not previously attended are encouraged to contact the Boards Coordinator (503) 378-6787) for registration information. Another session will be held in September at the State Fairgrounds in Salem.

Chairman Vignery said he would prefer that ASME B31.5 be handled separately and that the January 19 task force meeting remain focused on B31.5. At that time, a meeting concerning ASME B31.3 could be scheduled. Chairman Vignery asked that the Department's view of B31.5 and an estimate of the impact of adding both ASME specifications, including budget and enforcement problems, be given to the task force at its January 19 meeting.

## IX ADJOURNMENT

Chairman Vignery adjourned the meeting at 10:50 a.m.

Respectfully submitted,

Marilyn Benton  
Boards Coordinator/Recorder

### *Exhibits:*

- A. Chapter 10 - Boilers/Water Heaters/Pressure Vessels -1998 IMC (Agenda III.AA)
- B. Chapter 11 - Refrigeration - 1998 IMC (Agenda VII.A)
- C. July 6, 1999, memo from Greenfield to Kitzhaber re SB 803 (Agenda VII.B)