Board of Boiler Rules Meeting Minutes  
November 13, 2012  
Department of Labor & Industries, Tacoma, WA

Board Members:  
Robert Olson, Chair  
Terry Chapin  
Leslie Grimm  
Larry Trenda  
Tony Oda, Secretary

Other Attendees:  
Mike Carlson, State of Washington  
Alicia Curry, State of Washington  
Chuck Bowers, Tesoro  
Larry Leet, City of Seattle  
Russell Bartlett, Travelers  
Pam Reuland (teleconference)*

* Attended Study Session only  
** Attended Board Meeting only

The Board of Boiler Rules Study Session was held at 9:00 a.m. on November 13, 2012.

The Board of Boiler Rules meeting was called to order by the Chair on November 13, 2012, at 10:00 a.m. Introductions were made by the board members and guests attending the meeting.

Agenda Item 1.  
The meeting agenda was reviewed and approved.

Agenda Item 2.  
The minutes from the September 11 & 12, 2012, meeting were reviewed and approved with a typo correction made.

Agenda Item 3.  
Extension of Internal Inspection Frequency Request – Boise Paper.  
Steve Meredith, Boise Paper Wallula mentioned to the board at the September meeting that they want to submit a second extension of internal inspection frequency request for the Kipper & Sons hog fuel boiler No. 1227 (NB 47 / State No. 24701-80W) for a longer extension period of 24 months. The boiler was approved for an 18 month extension period at the September meeting. Boise Paper was unable to collect all the required shutdown NDE and inspection reports for submission by the November meeting deadline, but Steve Meredith informed the department that they are in the process of putting the package together and will try to submit for the February meeting. This item will be included on the February meeting agenda.

Agenda Item 4.  
WAC 296-104-018 Administration – Revision to include guidelines for appeals.  
The board discussed the on-going revision to WAC 296-104-018 with Pam Reuland, ATG, who was present by teleconference at the study session. The intent of the revision is to clarify the appeals process for any person(s) who disputes the interpretation and/or application of the rule(s) by the Chief Inspector and Board of Boiler Rules and wants to appeal to Superior Court. The proposed language outlines the necessary steps in the process. The board finalized the language with a few minor changes, and voted in approval of WAC 296-104-018 as written.
WAC 296-104-018 Administration – How are rules interpreted and revised? Interpretation of Rules – Appeal Rights – Hearings

Stakeholder requests for clarifications and interpretations of these rules shall be made to the chief inspector in writing upon the form furnished by the chief inspector located on the boiler program web site. Interpretations will be brought to the board in the same manner if the inquirer is aggrieved by the interpretation of the chief inspector (RCW 70.79.360). For board consideration the form must be submitted to the department of labor and industries forty-five days prior to the board of boiler rules meeting date. Forms may also be requested by contacting the department.

(1) Any person desiring clarification or interpretation and/or application of the rules in this chapter shall submit a request in writing to the chief inspector upon the “chief inspector clarification and interpretation request form”. The chief inspector shall issue a written decision responding to such a request.

(2) Any person who disputes the interpretation and/or application of the rule(s) by the chief inspector may ask the board of boiler rules (board) for its interpretation. Such requests must:
   (a) Be submitted in writing to the board upon the “board of boiler rules interpretation and revision request form”;
   (b) Be received by the secretary to the board (the chief inspector) within thirty (30) days after the date on which the chief inspector’s written decision was served on the person making the request; and
   (c) Be received by the secretary at least forty-five days before the board meeting date for inclusion at the next regularly scheduled board meeting. Otherwise, the request will be heard and considered at the following board meeting.

At the meeting, the board will affirm, modify or revoke the Department’s interpretation and a written order reflecting the board’s decision will be issued by the chair.

(3) A party may seek judicial review of a final order of the board within thirty days after service of the order, in accordance with RCW 34.05.542.

(4) Any person, firm, partnership, corporation, or other entity wishing to appeal a penalty issued under chapter 70.79 RCW or this chapter must file a written notice of appeal with the chief boiler inspector within twenty days after the date on which the notice of the penalty was served on the assessed party. In the hearing off the appeal, the department has the burden of proof by a preponderance of the evidence. At the hearing, the board will decide the appropriateness of the penalty and may either affirm, modify or overturn the assessment. The parties shall prepare and submit an order reflecting the board’s decision to the chair of the board.
(5) Except as provided in chapter 70.79 RCW and this chapter, all proceedings before the board and the courts will be conducted according to chapter 34.05 RCW (the Administrative Procedure Act) and chapter 10-08 WAC (model rules of procedure).

Agenda Item 5.
WAC 296-104-100 Inspection – Discussion on allowing Chief Inspector to grant temporary (one time) extensions for power boiler internal inspections
This agenda item was brought forth by Tim Barker with the intent of allowing the Chief Inspector to grant temporary one-time extensions (up to 6 months) for power boiler internal inspections, excluding black liquor recovery boilers. The applicants would be limited to a one-time temporary request every 5 years. At the September meeting, Pam Reuland, ATG agreed to research the boiler laws to verify if the board has the authority to allow the Chief Inspector to grant the extensions.

The board discussed the item with Pam Reuland by teleconference at the study session. Pam’s research of the laws concluded that the board does not have the authority to grant approval by the Chief Inspector, since that was not the intent of the legislature in RCW 70.79.240 (1). The board agreed not to request a formal written ruling from the ATG’s office and to close the item without action.

Agenda Item 6.
Department Notes:
Rules after the Moratorium
The moratorium on rulemaking is scheduled to expire by January 1, 2013. Assuming the moratorium will not be extended the board would like to proceed with rulemaking next year and if possible, hold a public hearing in May 2013. The department will work with the Legislative and Rules Manager to complete a rulemaking timeline.

Boiler Board Meeting Schedule for 2013
The meeting schedule for 2013 was not included in the agenda. The department will email the schedule to the board for review and the Chair’s approval.

Adoption of NBIC, Part I
The department discussed adopting the NBIC, Part I for installation. Over the years, the department has found numerous violations during installations, some considered serious, but did not have the jurisdictional authority to apply corrective action for these types of conditions. This requires the department to write a referral to the appropriate building official for any violations found during installation and then rely on the official to make sure the correction action is taken. Currently, the NBIC standards adopted are Part 2 and 3, which apply to in-service and repairs and alterations. The department would like the board to consider adopting the NBIC, Part I to allow the department jurisdictional authority to write violations for installations directly and have the corrections made in a timely manner. This would also allow for a complete inspection and increase public safety. There are some conflicts in the NBIC, Part
I, but jurisdictional statutes and rules will take precedence. The department will submit a formal request for the board’s consideration at the next meeting.

Meeting adjourned at 10:25 a.m.