

ENDORSED  
FILED  
San Francisco County Superior Court

JAN 21 1997

ALAN CARLSON, Clerk  
GAIL HEERLESS  
Deputy Clerk

CALIFORNIA SUPERIOR COURT  
CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT NUMBER EIGHT

RICHARD CUFFE; GREG BAKER; RON MORGAN; SAM GILL; CALIFORNIA PIPE TRADES COUNCIL; CALIFORNIA FIREFIGHTERS ASSOCIATION; PLANNING AND CONSERVATION LEAGUE; SIERRA CLUB; CALIFORNIA LEGISLATIVE CONFERENCE OF THE PLUMBING HEATING AND PIPING INDUSTRY; and MECHANICAL CONTRACTORS ASSOCIATION OF NORTHERN CALIFORNIA,

Petitioners,

vs.

CALIFORNIA BUILDING STANDARDS COMMISSION and CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT,

Respondents.

NO. 977657

ORDER GRANTING WRIT OF MANDATE

This matter came before the court on October 10, 1996. The Honorable William Cahill, presiding, orders this matter submitted. After further consideration of all papers and arguments, the court orders as follows:

1 IT IS HEREBY ORDERED THAT petitioners' request for a Writ of Mandate is  
2 GRANTED for the following reasons:

3 Every year Respondents, California Building Standards Commission and the California  
4 Department of Housing and Community Development enact the California Plumbing Code  
5 ("CPC"). This process begins with review of the then existing national Uniform Plumbing Code  
6 ("UPC"). Respondents then decide to either adopt the UPC in its entirety as this state's CPC or  
7 adopt a modified form of the UPC for California.

8 Beginning in the early 1980s, Respondents chose to adopt a modified UPC by amending it  
9 in regards to CPVC pipe. Consistently during that time, the UPC specifically approved CPVC  
10 pipe for use in transporting potable water for residential housing units and every year respondents  
11 specifically deleted those sections for California. For 14 years respondents chose to prohibit  
12 CPVC pipe use in this state.

13 This changed in 1995, when Governor Pete Wilson issued a directive to respondents  
14 ordering the approval of CPVC pipe. Respondents immediately changed their policy and  
15 removed their restrictions on the pipe by adopting emergency regulations changing its policy. In  
16 March 1996, at its regular meeting, respondents simply chose not to delete the portion of the  
17 UPC which approved CPVC pipe for residential use. These acts permitted California builders of  
18 residential plumbing, for the first time in 14 years, to choose to use CPVC pipe for their projects.

19 This court finds that respondents' change of position in this area requires CEQA review  
20 before it goes into effect. Respondents argue that their actions in 1995 and 1996 were merely  
21 "ministerial" in that they merely adopted the UPC without change. This argument ignores the fact  
22 that the board was in fact exercising its discretion to change not only a 14-year old statewide  
23 construction policy, but also the substantive plumbing code. Making such a choice, by definition,  
24 is a discretionary act, and since CEQA applies to "discretionary projects proposed to be carried  
25 out or approved by public agencies . . ." (Pub.Res.Code Sec. 21080(a)), the respondents' actions  
26 in regards to CPVC pipe requires CEQA review under California law.

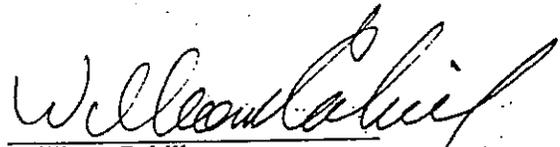
27 An exemption to CEQA occurs only "where it can be seen with certainty that there is no  
28 possibility that the activity in question may have a significant effect on the environment."

1 (Guidelines sec. 15061(b)(3)). The record presented to this court on CPVC's effect on the  
2 environment does not permit this court to find that there is no possibility that CPVC pipe would  
3 not affect the environment significantly. There is a dispute between the parties regarding the  
4 extent of the possibility of chemical leaching and solvents polluting drinking water carried in the  
5 pipe. In addition there is a dispute regarding potential chemical exposure to workers installing the  
6 pipe. Apparently there is some validity to petitioners' position because for 14 years respondents  
7 agreed with them.

8 Whether or not there should be a ban in California on CPVC pipe for residential use is not  
9 something which this or any court should be involved with. The decisions in this area are solely  
10 for the legislature and the executive branch, but these branches of government have passed and  
11 enacted into law the California Environmental Quality Act, and it is the duty of this court to insure  
12 that CEQA is complied with when required by law. This is one of those instances.

13 As such, the Respondent agencies were required to initiate the CEQA process, beginning  
14 with an initial study, and ending with either the production of a final Environmental Impact  
15 Report, or a Negative Declaration. Neither was produced in this case, rendering the process in  
16 violation of CEQA. Thus, petitioners' writ of mandate is GRANTED.

17  
18  
19 DATED: 1/21/97

  
William Cahill  
San Francisco Superior Court

CALIFORNIA SUPERIOR COURT  
CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT NUMBER EIGHT

RICHARD CUFFE; GREG BAKER; RON )  
MORGAN; SAM GILL; CALIFORNIA PIPE )  
TRADES COUNCIL; CALIFORNIA )  
FIREFIGHTERS ASSOCIATION; PLANNING )  
AND CONSERVATION LEAGUE; SIERRA , )

Petitioners, )

vs. )

CALIFORNIA BUILDING STANDARDS )  
COMMISSION and CALIFORNIA )  
DEPARTMENT OF HOUSING AND )  
COMMUNITY DEVELOPMENT,, )

Respondents. )

NO. 977657

CERTIFICATE OF SERVICE BY  
MAIL (CCP 1013a(4))

I, Gail Peckless, a deputy clerk of the Superior Court for the City and County of San Francisco, certify that:

1) I am not a party to this action;

2) On January 21, 1997, I served the attached:

ORDER GRANTING WRIT OF MANDATE

by placing a copy in a sealed envelope, addressed as follows:

ANN BROADWELL  
DANIEL CARDOZO  
ADAMS & BROADWELL  
651 Gateway Blvd, Suite 900  
South San Francisco, CA 94080

M. ANNE JENNINGS  
Deputy Attorney General  
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KEITH HOWARD  
TONY HAWTHORNE  
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MICHAEL J. VAN ZANDT  
MCQUAID, METZLER, McCORMICK  
& VAN ZANDT  
One Maritime Plaza  
Golden Gateway Center, 23rd Floor  
San Francisco, CA 94111

and,

3) I then placed the sealed envelope in the outgoing mail at 633 Folsom Street, San Francisco, CA, 94107 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following the standard court practices.

January 21, 1997

Gail Peckless  
Deputy Clerk