

**STATE OF CALIFORNIA  
BUILDING STANDARDS COMMISSION  
MEETING MINUTES**

**January 22, 2009**

**1. CALL TO ORDER**

Chair Marin called the meeting to order at approximately 10:00 a.m. at the Department of Consumer Affairs, 1625 North Market Blvd., First Floor Hearing Room, Sacramento, California.

**ROLL CALL**

*Commissioners Present:*

Rosario Marin, Chairperson  
Isam Hasenin, Vice Chairperson (arrival delayed)  
James Barthman  
Craig Daley  
Christina Jamison  
Stephen Jensen  
Michael Paravagna  
Steve Winkel  
Richard Sawhill  
Susan Dowty

*Commissioners Absent:*

Tony Hoffman

*Also Present:*

David Walls, Executive Director  
Tom Morrison, Deputy Director  
Teresa Boron-Irwin, Legal Counsel  
Michael Nearman, Architectural Associate  
Stephanie Davis, Executive Assistant

**2. APPROVAL OF THE MINUTES OF THE OCTOBER 2008 MEETING**

Chair Marin requested a motion to approve the Minutes of the October 27, 2008 meeting. Moved by Commissioner Winkel and seconded by Commissioner Barthman that the Minutes be adopted. **Motion Carried.**

**3. ITEMS FOR CONSENT**

**a) Strategic Plan**

Moved for approval by Commissioner Sawhill, seconded by Commissioner Jamison. **Motion carried.**

**4. UPDATE ON CBSC CODE ADVISORY COMMITTEES**

**CALIFORNIA BUILDING STANDARDS COMMISSION  
JANUARY 22, 2009 MEETING MINUTES**

Mr. Walls and Commissioner Barthman presented this item. The Code Change Committee will be recommending members of each of the six committees to be voted on by the full Commission at the March meeting.

**5. 2007 ANNUAL CODE ADOPTION CYCLE PROPOSALS**

- A) The possible action for the following California Plumbing Code adoptions and approvals includes the consideration and certification of the Final Environmental Impact Report, "Adoption of Statewide Regulations Allowing the Use of PEX Tubing," (State Clearinghouse No. 2007102143) and the adoption of findings.

Mr. Walls provided a background on the progression of the proposed code adoption allowing for the use of PEX tubing.

**Public Comments**

Sydney Coatsworth, EDAW, explained how the EIR was prepared using studies by the State, other research performed, and input from experts.

Tom Enslow expressed disapproval of this item on behalf of the Coalition for Safe Building Materials, Members of the Coalition for the Consumer Federation of California, Planning Conservation League, Center for Environmental Health, Sierra Club of California, California Professional Firefighters, and Communities for a Better Environment, and provided a handout summarizing concerns with the approval of the use of PEX and deficiencies in the EIR in regard to the issue of damage to PEX caused by exposure to sunlight.

Scott Wetch, California State Pipe Trades Council, expressed disapproval of this item and stated that the EIR is insufficient in regard to the issues of permeation and leaching. Mr. Wetch also distributed a letter from W.L. Hickey and Sons that stated the use of PEX would be problematic for the plumbing industry.

Bill Thomas, Plumbers Union, Local 467, expressed disapproval of this item by stating that he has first-hand experience of the lack of durability of PEX tubing.

Mark Burri, San Miguel County Plumbers Union, expressed disapproval of this item by stating that union members have very little confidence in the durability and dependability of PEX.

David Rodriguez, Plumbers and Steam Fitters, expressed disapproval of this item by stating that the EIR is insufficient and that it is problematic that PEX cannot be recycled.

Bill Guthrie, Plumbers Local Union 393 in San Jose, expressed disapproval of this item by stating that union members believe that there are liability issues relating to the premature failures of PEX piping and there are no existing standards relating to sunlight exposure.

**CALIFORNIA BUILDING STANDARDS COMMISSION  
JANUARY 22, 2009 MEETING MINUTES**

Bob Adler, Inspector City of San Jose, expressed disapproval of this item by stating that PEX products have a proven track record of being failing.

Nathan Vasquez, Local 393, expressed disapproval of this item by stating that PEX does leach making it insufficient for safety reasons.

Carl Cimino, Pipe Trades Training Center, expressed disapproval of this item by stating that PEX is unable to deliver clean and safe water to consumers.

Bill Whitney, Northern California NCA, expressed disapproval of this item by stating that the EIR fails to evaluate reports of PEX failures and to outline standards of exposure to sunlight. He also stated his concerns of leaching and possible liability risks to installers.

Steve Silber, plumbing local union, expressed disapproval of this item by stating the risks of leaching and contamination.

Wayd LaPearl, Local 393, expressed disapproval of this item by stating that the EIR is deficient by not discussing PEX failures.

Mario Orlando, NIBCO, producer of copper fittings and PEX materials, expressed support of this item by stating that failures are few and industry has responded quickly by providing adequate repairs to prevent future failures. He stated that leaching is a non-issue in that there are no chemicals used in cross-linking. Mr. Orlando also stated that industry has provided a method for PEX scrap to be recycled into a material used for roads.

Bill Schwartz, Osborne Company, PEX manufacturer representative, expressed support of this item by stating that PEX is in the public interest and the EIR was complete and thorough. He stated that PEX is recyclable as an alternative building material and that PEX will not leak if sleeved, thereby omitting the possibility of leaching.

Bob Raymer, CBIA, on behalf of 13 entities in support of this item; California Business Properties Association, Building Owners and Managers Association of California, the California Apartment Association, American Institute of Architects California Council, California Building Officials, National Association of Industrial Office Properties, California Chamber of Commerce, California Manufacturers and Technology Association, American Chemistry Council, International Council of Shopping Centers, Western Electrical Contractors Association, and Habitat for Humanity. He stated that industry has had a positive experience with this product so far and that it is a viable low-cost alternative to copper.

Jim Casey, Osborn Company, expressed approval of this item by stating that the EIR addressed everything that has been brought up and that the comments opposing this item should have been brought up during the public comment period.

**CALIFORNIA BUILDING STANDARDS COMMISSION  
JANUARY 22, 2009 MEETING MINUTES**

Richard Church, Plastic Pipe and Fitting Association, expressed support of this item by stating that the preparation of the EIR was a rigorous process that was well-carried out and covered all relevant factors. He stated that PEX is recyclable whereas copper is not a renewable resource.

Chair Marin confirmed with Sydney Coatsworth that every comment made was addressed in the EIR. Chair Marin was concerned about the comment that children will become ill and have medical concerns due to the use of PEX. Ms. Coatsworth indicated that she is not aware of any documented case concerning this and that this issue was address in the EIR.

Commissioner Hasenin inquired as to whether any litigation was addressed in the EIR. Ms. Coatsworth responded that the issue was addressed and the conclusion was that it was not due to the product as a whole, but rather a specific lot.

Chair Marin stated that a letter was received from Ed Calcany, from Jay Spark, PhD, and a letter from Christopher Boyher. [This segment was difficult to hear.]

**(1) The Final Environmental Impact Report has been completed in compliance with CEQA**

Commissioner Hasenin stated that the Final EIR has addressed all potentially adverse effects of the project and findings have been prepared that include mitigation measures to assure that the potential adverse effects have been reduced to an insignificant level and so moved that the Building Standards Commission would certify that the EIR has been completed in compliance with CEQA. Seconded by Commissioner Barthman.

Commissioner Winkel motioned to insert Mitigation Measure 4.4-1 in the draft EIR into the Final EIR regarding leaching. Ms. Goodsworth indicated that the MTBE issue is not significant enough to require mitigation. This would reinstate a mitigation measure that requires testing to ensure compliance with California standards at the outset.

Seconded by Commissioner Barthman. **(4/6 - Motion Denied)**

Original motion and second on the floor. **(9/1 - Motion Carried)**

**(2) The Final Environmental Impact Report reflects the California Building Standards Commission's independent judgment and analysis.**

Commissioner Hasenin moved that the Building Standards Commission certify that the Final EIR reflects the Commission's independent judgment and analysis. Seconded by Commissioner Barthman.

**Motion Carried.**

**CALIFORNIA BUILDING STANDARDS COMMISSION  
JANUARY 22, 2009 MEETING MINUTES**

- (3) The California Building Standards Commission has reviewed and considered the information within the Final Environmental Impact Report prior to approving the project.**

Commissioner Hasenin moved that the Commission certify that the Commission has reviewed and considered the information in the EIR.

Seconded by Commissioner Winkel.

**Motion Carried.**

- (4) Changes or alterations have been required in, or incorporated into the project that mitigate or avoid the potentially significant impact as identified in the Final Environmental Impact Report.**

Commissioner Hasenin moved that the Commission adopt and incorporate the Statement of Findings for this project including the mitigation measures and mitigation monitoring program.

Seconded by Commissioner Barthman.

**Motion Carried (9/1).**

- B) The Building Standards Commission (BSC 01/07):** Proposed adoption of amendments to the 2007 edition of the California Plumbing Code (California Code of Regulations, Title 24, Part 5). The proposed action repeals amendments contained in Section 604.11 and Table 6-4, which prescribe CBSC's non-adoption of model plumbing code provisions regulating the use of PEX water supply piping. Additional amendments to Table 6-4 reflect findings in the Environmental Impact Report upon which CBSC relied in its rulemaking.
- C) The Division of the State Architect (DSA-SS 02/07):** Proposed adoption of amendments to the 2007 edition of the California Plumbing Code (California Code of Regulations, Title 24, Part 5). The proposed action repeals amendments contained in Section 604.11 and Table 6-4, which prescribe DSA's non-adoption of model plumbing code provisions regulating the use of PEX water supply piping. Additional amendments to Table 6-4 reflect findings in the Environmental Impact Report upon which DSA relied in its rulemaking.
- D) The Department of Housing and Community Development (HCD 01/07):** Proposed adoption of amendments to the 2007 edition of the California Plumbing Code (California Code of Regulations, Title 24, Part 5). HCD proposes necessary amendments to the 2007 CPC to incorporate state and federal laws and regulations, provide clarity to the user, and update materials used within a plumbing system based on current nationally recognized standards, engineering principles, and available energy efficient fixtures for the programs within HCD's authority.
- E) The Office of Statewide Health Planning and Development (OSHPD 06/07):** Proposed adoption of amendments to the 2007 edition of the California Plumbing Code (California Code of Regulations, Title 24, Part 5). This code contains requirements for plumbing fittings and fixtures and various piping materials, including PEX, which may be used for the distribution of potable water, for various

**CALIFORNIA BUILDING STANDARDS COMMISSION  
JANUARY 22, 2009 MEETING MINUTES**

rooms or areas in hospitals, skilled nursing facilities, licensed clinics, and correctional treatment centers. The proposed regulations will allow non-aerating laminar flow devices on handwashing fixtures and will remove the prohibition of PEX tubing. Editorial and minor technical amendments are also being proposed.

Commissioner Barthman stated that the Commission adopted and approved the amendments proposed by the Building Standards Commission, the Division of State Architect, the Department of Housing and Community Development and the Office of Statewide Health Planning and Development to the 2001 Edition of the California Plumbing Code and California Code of Regulations, Title 24.

Commissioner Hasenin motioned that the Commission direct the Executive Director to file a Notice of Determination on behalf of the California Building Standards Commission to memorialize its decision to adopt and approve this project in compliance with the provisions of CEQA.

Seconded by Commissioner Winkel.

**Motion Carried.**

**F) The Department of Public Health (CDPH 01/07):** Proposed approval of amendments to the 2007 edition of the California Plumbing Code (California Code of Regulations, Title 24, Part 5). The proposed action would repeal language contained in Sections 604.1 and 604.11, which prescribe CDPH's non-adoption of model plumbing code provisions regulating the use of PEX water supply piping. CDPH proposes to amend CPC Table 6-4 and Sections 604.1, 604.11, 604.11.1, and 604.11.2 regarding the use of PEX in potable water supply systems.

**G) The Department of Food and Agriculture (AGR 01/07):** Proposed approval of amendments to the 2007 edition of the California Plumbing Code (California Code of Regulations, Title 24, Part 5). The proposed action would repeal language contained in Sections 604.1 and 604.11, which prescribe AGR's non-adoption of model plumbing code provisions regulating the use of PEX water supply piping. AGR proposes to amend CPC Table 6-4 and Sections 604.1, 604.11, 604.11.1, and 604.11.2 regarding the use of PEX in potable water supply systems.

Commissioner Barthman moved that the Building Standards Commission approve the amendments proposed by the Department of Public Health and the Department of Food and Agriculture for the 2007 edition of the California Plumbing Code, California Code of Regulations.

Seconded by Commissioner Winkel.

**Motion Carried.**

**6. EMERGENCY CODE CHANGE PROPOSAL:**

**a) Division of the State Architect (DSA EF 01/09)** emergency regulations to Part 1 Section 4-330 regarding extension of approval for projects for which state funds have

**CALIFORNIA BUILDING STANDARDS COMMISSION  
JANUARY 22, 2009 MEETING MINUTES**

been suspended due to the Department of Finance Budget Letter No. 08-33 (interim loans for general obligation and lease revenue bond projects).

Aaron Noble presented this item stating that this proposal would affect projects that were approved three to four years and would only remain in effect through this year. Commissioner Jensen moved for approval of the finding of emergency, seconded by Commissioner Winkel.

**Motion Carried.**

Commissioner Winkel moved for approval of the code change as submitted, seconded by Commissioner Paravagna.

**Motion Carried.**

**7. UPDATE ON THE REVIEW OF THE INTERNATIONAL RESIDENTIAL CODE BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

Doug Hensel presented this item, stating that the adoption of the IRC was considered during this Plumbing Code Cycle. HCD received stakeholder input and staff performed analysis to determine that there was a need to adopt the IRC, without the plumbing, mechanical and electrical provisions. A proposal to adopt the building portions of the IRC will be forthcoming.

Jay Peters, ICC, stated that his staff has been participating in this process from the beginning and does not agree that the plumbing, mechanical, and electrical provisions should be omitted at this time, although they will still support HCD throughout the process.

Martin Cooper, City of Foster City, expressed concern over the cost of new materials that would be required as part of the code enforcement and prefers that the provisions of the residential code be incorporated into the current parts of Title 24 as a single document.

Steve Kiefer, CALBO, expressed his support of HCD, although would prefer that all provisions be included.

Mona Casey, United Parents to Restrict Open Access to Refrigerant Corporation, expressed support of the adoption of the IRC with the mechanical provision intact.

Harvey Weiss, Synergy-National Inhalant Prevention Coalition, expressed his support of adopting the code, indicating his request to adopt the IRC with the plumbing and mechanical code included.

Dana Prethro, stated her request to adopt the IRC with the mechanical provisions intact.

Mr. Hensel stated that HCD will consider these issues moving forward and will come back to the Commission with recommendations.

Dwight Perkins, IAPMO, will work with HCD on the mechanical code.

Bob Raymer, CBIA, expressed his support of moving forward in a timely fashion.

**CALIFORNIA BUILDING STANDARDS COMMISSION  
JANUARY 22, 2009 MEETING MINUTES**

**8. COMMISSIONER COMMITTEE ASSIGNMENTS**

Appeals Committee: Commissioners Barthman, Sawhill, Hasenin, Jamison, and Parvagna.

Code Change Committee: Commissioners Barthman, Hasenin, Jamison, Winkel, and Hoffman.

Green Building Committee: Commissioners Barthman, Jamison, Winkel, Jensen, and Dowty.

Policy and Management Committee: Commissioners Sawhill, Jamison, Daley, and Hoffman.

Publication, Communication and Training Committee: Commissioners Dowty, Daley, Parvagna, and Sawhill.

Seismic Committee: Commissioners Jensen, Hasenin, Dowty, and Winkel.

**9. UPDATE ON GREEN BUILDING STANDARDS**

Commissioner Barthman reported that the last roundtable meeting was productive and included at least 30 stakeholders. Focus group meetings are planned to determine what some of the technical requirements will be. A draft is expected by June and will be to the advisory committees in August and will be back to the Commission in September or October. It is hopeful to have the document available in January 2010 with a publication date of July 1, 2010 and a mandatory enforcement date of January 1, 2011.

**10. FUTURE AGENDA ITEMS**

None at this time.

**12. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA**

Steve Kiefer, CALBO, commended the Commission on its leadership in green building and continued work in ensuring that California is the leader in the development of green building.

**13. ADJOURN**

Chair Marin adjourned the meeting at approximately 1:40 p.m.

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