

FLORIDA BUILDING COMMISSION

PRODUCT APPROVAL POC

APRIL 3, 2014 TELECONFERENCE MEETING SUMMARY REPORT

THURSDAY, APRIL 3, 2014

MEETING SUMMARY AND OVERVIEW

At the Thursday, April 3, 2014 teleconference meeting the POC considered regular procedural issues including product approval and entities statistics report; a status report on conditional approvals (all were resolved); review and approval of product and entity applications; and a review of DBPR approved product approval applications. Specific actions include developing recommendations on declaratory statements DS 2014-013 and DS 2014-024.

Background and Supporting Documents

Relevant background and supporting documents are linked to each agenda item. The Agenda URL for the *April 3, 2014* meeting is as follows:

http://www.floridabuilding.org/fbc/commission/FBC_0414/Product_Approval/Product_Approval_Agenda.htm

AGENDA ITEM OUTCOMES

A.1. OPENING AND MEETING ATTENDANCE

The meeting was opened at 10:00 AM once a quorum was established, and the following POC members participated (4 of 6* members):

Jeff Stone (Chair), Jay Carlson, David Compton, and Brian Swope.

Members Not Participating:

Nan Dean and Tim Tolbert.

**Note:* Commissioner Herminio Gonzales rolled-off the Commission, and as a result of the requirement that POC members must be Commissioners, he is no longer serving as a POC member.

A.2. DBPR STAFF PRESENT

Robert Benbow, Joe Bigelow, Paul Drake (legal intern), Jim Hammers, April Hammonds, Ila Jones, Mo Madani, Marlita Peters, and Jim Richmond.

Meeting Facilitation and Reporting

Product Approval POC meetings are facilitated and meeting reports drafted by Jeff Blair from the FCRC Consensus center at Florida State University. Information at: <http://consensus.fsu.edu/>



CONSENSUS CENTER

A.3. AGENDA REVIEW

The POC voted unanimously, 4 - 0 in favor, to approve the agenda for the April 3, 2014 meeting as posted. Following are the key agenda items approved for consideration:

- To Consider/Discuss Product Approval Program Issues
- To Consider/Decide on Petitions for Declaratory Statements
- To Consider/Decide on Approval of Products and Product Approval Entities

The complete Agenda is included as “*Attachment 1*”.
(See *Attachment 1—Agenda*)

A.4. STATEMENT OF TELECONFERENCE PARTICIPATION PROCESS

Jeff Blair reviewed the teleconference participation process with participants reminding them that it is important to keep their phones on mute to minimize background noise, not to put their phones on hold, and to wait until invited to speak to avoid confusion and chaos. Jeff emphasized that all participants will have ample time to speak on all agenda items. Participants were reminded to state their names each time they speak.

B. REVIEW AND APPROVAL OF THE FEBRUARY 6, 2014 MINUTES

MOTION—The POC voted unanimously, 4 - 0 in favor, to approve the February 6, 2014 meeting minutes as presented/posted.

Amendments:

There were no amendments offered.

C. 1. PRODUCT APPROVAL AND ENTITIES STATISTICS REPORT

Robert Benbow reviewed the product and entities statistics reports with participants and answered members’ questions. The report is linked to the Product Approval POC’s agenda.

C.2. REPORT ON CONDITIONAL APPROVALS FROM FEBRUARY 2014 MEETING

Commissioner Stone noted there all of the conditions were met for the conditional approvals reported at the February 2014 meeting.

C.3. CONSIDERATION OF DS 2014-023 BY GLENN T. WILLIAMS, ESQ., B.C.S. OF WILLIAMS LAW FIRM

Glenn T. Williams, Esq., B.C.S. submitted a petition for a declaratory statement for review by the Product Approval POC. All of the relevant documentation is linked to the April 3, 2014 Product Approval POC agenda found on-line. There was no one representing the petitioner during the teleconference meeting, so staff reviewed the petition and provided staff’s analysis. Following questions and answers and an opportunity for public comment, the POC took the following action:

POC Actions:

MOTION—The POC voted unanimously, 4 - 0 in favor, to recommend the Commission approve the POC’s recommendation on the Petition (to approve staff’s recommendations as revised to incorporate legal staff’s comments).

Overview:

The Petitioner requested clarification regarding whether his client's product, Storm Stoppers, falls within the scope of the Florida Building Code, Existing and Rule 61G20-3.

Overview of Discussion During the POC Meeting:

The Petitioner was not present during the meeting so staff reviewed the Petition and answered members' questions. The POC discussed the issue following public comments and agreed with staff's recommendations. April Hammonds requested that additional language be added to staff's responses to clarify that there were no specific facts and circumstances provided by the Petitioner rendering an answer impossible. In addition, legal requested that additional language be added to H. and I. of staff's recommended responses to indicate that one can't comment on the conduct of another in a declaratory statement petition.

Staff Analysis:

Staff Analysis: Based on the above facts and circumstances, staff provides the following answers to proponent's questions:

Interpretation No.1

A. Does the Storm Stoppers product as described fall within the scope of the Florida Building Code, Existing Building?

Answer: Answer is not possible. No specific project/level of work was provided, and there are no specific facts and circumstances provided.

B. If the answer is yes, then what are the specific Code provisions from the 2010 Florida Building Code, Existing Building, that apply?

Answer: See answer to question A.

Interpretation No.2

A. What are the specific statutes, Code provisions and laws that give the Florida Building Commission jurisdiction or legal authority to regulate or approve any product for use on an Existing Building AFTER the building has been constructed and received a certificate of occupancy, when such product is not used or incorporated into the permanent structure, nor attached with permanent anchors that penetrate into the structure of the building's frame?

Answer: Answer is not possible. Question is too general.

B. Are wood structural panels (i.e. plywood) as-described in the Florida Building Code, Residential, exempt from having to comply with Florida Statutes Section 553.842(5)?

Answer: Answer is not possible. This question does not apply to the Petitioner's product.

C. If, in the opinion of the Florida Building Commission, wood structural panels (i.e, plywood) are exempt from Florida Statutes Section 553.842 (5), then would Storm Stoppers be entitled to receive the same exempt treatment as wood structural panels assuming the Storm Stopper product is equal to if not better than wood structural panels, for the temporary or emergency protection of window or doors from wind and rain?

Answer: Answer is not possible. This question does not apply to the Petitioner's product; and there are no specific facts and circumstances provided.

D. What is the Florida product approval number for wood structural panels (i.e. plywood) showing that product was approved by the Florida Building Commission?

Answer: Answer is not possible. This question does not apply to the Petitioner's product.

E. Since the Storm Stoppers product is equal to if not better than wood structural panels Identified in Section 1609.1.2 of the Florida Building Code, Residential, is Storm Stoppers entitled to receive the same treatment as wood structural panels and not apply for a product approval number?

Answer: Answer is not possible. This question does not apply to the Petitioner's product.

F. Is Keddo Enterprises and Florida Building Commission recognized groups like the IHPA, FLASH, FEMA and the IBHS permitted to advertise or market wood structural panels (i.e. plywood) for "*Wind-borne Debris Protection*," as a "*Shutter*" and for "*Hurricane Protection*" in Florida (even though plywood does not have a Florida product approval number)?

Answer: Answer is not possible. This question does not apply to the Petitioner's product.

G. Is the Florida Building Commission violating Section 553.842(5) in their promotion of Table 1609.1.2 in the Florida Building Code, Residential, by advertising wood structural panels (i.e. plywood) as "*Wind-Borne Debris Protection*" (at a time when plywood does not have a Florida product approval number and has not been shown to pass the ASTM Large Missile Impact Test and the Cyclic Pressure Differential Tests)?

Answer: Answer is not possible. This question does not apply to the Petitioner's product.

H. Can Keddo Enterprises, Including home improvement stores, advertise, sell, offer, market or distribute plywood for wind-borne debris protection or hurricane protection, since plywood is actually sold by home improvement stores throughout Florida for that purpose both long before and during an approaching, hurricane?

Answer: Answer is not possible. This question does not apply to the Petitioner's product, and it is not allowed to comment on the conduct of another in a declaratory statement petition.

I. Additionally, major home improvement stores advertise or sell plywood in Florida as a Shutter, hurricane protection or as protection from wind-borne debris both long before and as a hurricane is approaching. For example, the home improvement chain Lowe's has a YouTube video showing how to board up windows with plywood (which consumers can purchase from Lowe's). See video here:

<http://www.youtube.com/watch?v=0jCUrYY3IEk&feature=share&list=PLA3F904701785FEB8>

Can Keddo Enterprises create a similar video advertising or marketing plywood as a "shutter," "hurricane protection" or as "protection from wind-borne debris", without violating Florida Statutes Section 553.842(5)?

Answer: Answer is not possible. This question does not apply to the Petitioner's product, and it is not allowed to comment on the conduct of another in a declaratory statement petition.

Interpretation 3:

Does the Storm Stoppers product fall outside the scope of Rule 61G20-3.001, State Product Approval Program?

Answer: The answer is "Yes". The product in question is a proposed alternative to the Wood Structural Panels (prescriptive specification method for protection of opening) as specified in Section R 301.2.1.2, Exception, of the Florida Building Code "FBC", Residential. As per Section 104.11 of the Florida Building Code, Building, an alternative method of construction to that prescribed in the FBC is subject to review and approval by the local building official, when such alternative is substantiated to be equivalent of that prescribed in the FBC in quality, strength, effectiveness, durability and safety. Therefore, the Florida Building Commission has no authority to approve said alternate as part of the State Product Approval Program.

C.4. CONSIDERATION OF DS 2014-024 BY WARREN W. SCHAEFER, P.E. OF W.W. SCHAEFER ENGINEERING AND CONSULTING, P.A.

Warren Schaeffer, P.E. submitted a petition for a declaratory statement for review by the Product Approval POC. All of the relevant documentation is linked to the April 3, 2014 Product Approval POC agenda found on-line.

The Petitioner reviewed the petition with the POC, and following questions and answers, an opportunity for public comment, staff analysis and recommendations, and discussion by the POC, the POC took the following action:

POC Actions:

MOTION—The POC voted unanimously, 4 - 0 in favor, to recommend the Commission approve the POC's recommendation on the Petition (to approve staff's recommendations as revised to incorporate legal staff's comments).

Overview:

The Petitioner requested a Declaratory Statement on Rule 61G20-3.009 *Criteria for Certification of Independence*, seeking clarification on two (2) situations specific to him.

Overview of Discussion During the POC Meeting:

The Petitioner provided the POC with an overview of the issue and noted he felt it was an unfair trade restriction to not allow an engineer who evaluates a product, and has no financial interest in the product or the various relevant entities, to validate the product. The POC discussed the issue and agreed that although the Rule appeared clear on the issue they would like to discuss whether this is a reasonable requirement at the next POC meeting. The POC requested an agenda item be added to the June 2014 POC meeting as follows: Staff presentation on current requirements and rationale, and POC discussion regarding the provisions in Rule 61G20-3.009 (4) requiring that a validator cannot validate their own evaluation.

Staff Analysis:

Staff Analysis: Based on the above facts and circumstances, staff provides the following answers to proponent's questions:

Question #1:

To the question #1: *Situation 1:* I am the engineer that prepared, signed and sealed the window drawings NO. 1518, 1519 & 1520 that exist as part of Dade County NOA's 13-0829.18, .19 & .17 & Florida approvals FL10015, 10022 & 10026 respectively. The manufacturer of these products is in process of applying for 1A state approvals using the referenced NOA's, listing Dade as the QA & certification entity. The manufacturer desires to list me as the validator. I have no financial interest in any of the parties involved (manufacturer, Dade, test lab), I will not be listed on the applications as any entity in the application, and I am listed with the state as a validator. Can I validate these approvals?

Answer: No, as per Rule 61G20-3.009 (4), the work in question is considered to be an evaluation as defined in Rule 61G20-3.002 and therefore a validator/Engineer cannot validate his/her own evaluation. This is because, in this case, the Petitioner would receive financial compensation by performing the said validation.

Question #2:

To the question #2: *Situation 2:* I am the engineer that has prepared, signed and sealed installation instructions for products being issued to the State of Florida for product approval under method 1A (Entity certification) & Florida approval FL16258. WDMA will be the certification and QA entity for these products. In the product listing, the manufacturer will be uploading my certified installation instructions. The manufacturer desires that I be the validator. I have no financial interest in any of the parties involved (manufacturer, WDMA, test lab), I will not be listed on the applications as an entity in the application, and I am listed with the state as a validator. Can I validate the approvals?

Answer: No, as per Rule 61G20-3.009 (4), the work in question is considered to be an evaluation as

defined in Rule 61G20-3.002 and therefore a validator/Engineer cannot validate his/her own evaluation. This is because, in this case, the Petitioner would receive financial compensation by performing the said validation.

D.1. PRODUCT AND ENTITY APPLICATIONS CONSENT AGENDA

Commissioner Stone presented the consent agenda for approval of products by asking if any participants' wished to have any applications pulled from the consent agenda for individual consideration. There were no product applications pulled for individual consideration. Commissioner Stone presented the consent agenda for entities by asking if any participants' wished to have any entity applications pulled from the consent agenda for individual consideration. There were no entity applications pulled for individual consideration.

POC Actions:

MOTION—The POC voted unanimously, 4 - 0 in favor, to recommend the Commission approve the consent agenda of products recommended for approval as posted.

MOTION—The POC voted unanimously, 4 - 0 in favor, to recommend the Commission approve the consent agenda of product approval entities recommended for approval as posted.

D.2. PRODUCT APPROVAL APPLICATIONS WITH DISCUSSION OR COMMENTS

Jeff Blair presented the products with discussion and public comment. Following are the POC's recommendations on the 22 product approval applications with public comment(s):

- The POC recommends the Commission conditional approve product #4613 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission conditional approve product # 4622 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission conditional approve product # 7841 based on the condition that the product application indicate specifically how the product was tested for water infiltration;
- The POC recommends the Commission conditional approve product # 8804 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission conditional approve product # 12546 based on the condition that the limitations of use indicate that the product can't be used as an opening protective device;
- The POC recommends the Commission conditional approve product # 15905 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission approve product # 16382;
- The POC recommends the Commission approve product # 16406;
- The POC recommends the Commission conditional approve product # 16751 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission approve product # 16779;
- The POC recommends the Commission approve product # 16807;
- The POC recommends the Commission approve product # 16849;
- The POC recommends the Commission conditional approve product # 16881 based on the condition that the limitations of use indicate that the product can't be used as an opening protective device;

- The POC recommends the Commission conditional approve product # 16883 based on the condition listed in DBPR staff's recommendation, and the additional condition that both dimensions of the roll slats are tested;
- The POC recommends the Commission approve product # 16888;
- The POC recommends the Commission approve product # 16891;
- The POC recommends the Commission conditional approve product # 16896 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission conditional approve product # 16897 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission conditional approve product # 16899 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission conditional approve product # 16900 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission conditional approve product # 16901 based on the conditions listed in DBPR staff's recommendation;
- The POC recommends the Commission approve product # 16687;
- The POC recommends the Commission approve product # 16806.

The complete report of POC recommendations on product and entity applications is available linked to the Commission's April 17, 2014 agenda.

D.3. DBPR APPLICATIONS

Staff noted that the recommendations for the DBPR applications are linked to the April 3, 2014 Product Approval POC agenda found on-line. Members of the public were provided an opportunity to comment on the applications. Participants were reminded that the POC could decide based on public comment that there is a technically significant issue that should be considered, and make a recommendation that the Commission pull the product approval from the consent agenda for individual consideration based on the POC's recommendation. April Hammonds noted that the threshold for pulling a product off of the DBPR approved list is through a showing of good cause, which is a high threshold to achieve.

Following an opportunity for public comments and responses by DBPR staff, the POC was offered an opportunity to determine whether any of the products recommended for approval should be sent to the Commission for consideration. There was no action taken by the POC to refer any products to the Commission for consideration.

Although, the POC voted to recommend the Commission ratify the DBPR approvals, there is no need for a full Commission review of any specific products pursuant to Rule 61G20.3007 (3) requiring the POC to ratify DBPR product approvals unless they vote to refer a specific product approval for a full Commission review through a showing of good cause. The POC agreed that no products should be conveyed to the Commission for review, therefore no Commission action is needed.

E.1. PUBLIC COMMENT

Commissioner Stone invited members of the public to address the Commission on any issues under the Commission's purview.

- Ted Berman: noted that several products on the BCSI are not shown as approved, and are shown as set to reapply.
- Mo Madani: responded that staff will review the applications, but he believes the applicants requested this action.
- Warren Schaefer: made comments pertaining to DBPR approvals and when he would be allowed to comment.
- April Hammonds: explained that the time to have made comments was during the POC's review of the DBPR applications report and not during general public comment.
- Ted Berman: commented on product approval applications.
- April Hammonds: explained that the time to have made comments was during the POC's review of the product approval applications report and not during general public comment.
- Turner: asked when the BCIS will be open for 2014 submittals.
- Mo Madani: responded that it is in process.

E.2. POC MEMBER COMMENT

Commissioner Stone invited POC members to offer any general comments to the POC.

There were no POC member comments offered.

POC RECOMMENDATIONS FOR COMMISSION ACTION

The POC recommends the following actions to the Florida Building Commission:

- 1.) The POC recommends the Commission take action on product and entity applications as recommended by the POC and reflected in DBPR staffs' product and entity approval report.
- 2.) The POC recommends the Commission take action pursuant to the POC's recommendations regarding declaratory statements DS 2014-013 and DS 2014-024.

FUTURE AGENDA ITEMS

- Commissioner Stone requested an agenda item be added to review the Product Approval Rule provisions regarding product approval issues pertaining to the use of portable rollform machines. It was agreed this issue would be deferred to provide time for the issue to be added to the next DBPR rules plan scheduled for fiscal year 2014-2015.
- Commissioner Stone requested an agenda item be added to the June 2014 POC meeting as follows: Staff presentation on current requirements and rationale and POC discussion regarding the provisions in Rule 61G20-3.009 (4) requiring that a validator cannot validate their own evaluation.

NEXT STEPS

The POC will meet June 5, 2014 to provide recommendations to the Commission on Product Approval System relevant issues for the June 20, 2014 Commission meeting.

F. ADJOURN

Commissioner Stone, POC Chair, thanked POC members, staff and the public for their attendance and participation, and adjourned the meeting, after a 4 – 0 vote in favor, at 12:10 PM on Thursday, April 3, 2014.

ATTACHMENT I
MEETING AGENDA

FLORIDA BUILDING COMMISSION
PRODUCT APPROVAL/MANUFACTURED BUILDINGS (POC)

THURSDAY, APRIL 3, 2014
10:00 AM

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
1940 NORTH MONROE ST. —TALLAHASSEE, FLORIDA 32399

AUDIO: DIAL-IN NUMBER 1-888-670-3525 CONFERENCE CODE: 606 232 6940

MEETING OBJECTIVES

- To Consider/Discuss Product Approval Program Issues
- To Consider/Discuss Declaratory Statement
- To Consider/Decide on Approval of Products and Product Approval Entities

PRODUCT APPROVAL POC MEMBERS

Jeffrey Stone (Chair), E.J. Carlson, David Compton, Nanette Dean, Herminio Gonzalez, Brian Swope, and Tim Tolbert,

MEETING AGENDA— THURSDAY, FEBRUARY 6, 2014

All Agenda Times—including Adjournment—are Approximate and Subject to Change

<i>10:00AM</i>	A)	Call to Order 1. Roll call of POC Members 2. Identification of Staff/Attendees 3. Review and Approval of Agenda 4. Statement on Teleconference Participation Process
	B)	Review & Approve Agenda & February 2014 Minutes
	C)	Product Approval Program Issues: 1. Product Approval & Entities Statistics Report 2. Report on conditional approvals from the February 2014 meeting(All Conditional Approval Requirements were met and completed from the February Report) 3. To consider, discuss, and provide recommendation for consideration by the Commission regarding DS 2014-023 By Glenn T. Williams, Esq., B.C.S. of

		Williams Law Firm. (Staff Analysis) 4. To consider, discuss, and provide recommendation for consideration by the Commission regarding DS 2014-024 By Warren W. Schaefer, P.E. of W.W. Schaefer Engineering and Consulting, P.a. Staff Analysis
	D)	Department of Business and Professional Regulation Reports: 1. Review of Entity Applications 2. Review of Product Approval Applications and Product Approval Applications with Comments 3. DBPR Applications
	E)	Public/POC/Staff Comments
	E)	Adjourn

STAFF CONTACTS: Robert Benbow, Robert.benbow@myfloridalicense.com , (850) 717-1837;
Mo Madani, Manager

Teleconference Process/Etiquette:

[URL:http://www.floridabuilding.org/fbc/meetings/1_meetings.htm](http://www.floridabuilding.org/fbc/meetings/1_meetings.htm)

Note: This document is available to any person requiring materials in alternate format upon request. Contact the Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2100 or call 850-487-1824