

**PRODUCT APPROVAL PROGRAM OVERSIGHT COMMITTEE
TELECONFERENCE MEETING FROM TALLAHASSEE
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July 23, 2020

10:00 A.M.

Minutes

**PRODUCT APPROVAL PROGRAM OVERSIGHT COMMITTEE
PRESENT:**

Jeffrey Stone, Chairman
Nan Dean
David Compton

Robert Hamberger
Brian Swope

**PRODUCT APPROVAL PROGRAM OVERSIGHT COMMITTEE
NOT PRESENT:**

David Gilson

STAFF PRESENT:

Mo Madani
Thomas Campbell
Jim Hammers

Justin Vogel
Chris Howell
Zubeyde Binici

MEETING FACILITATION:

The meeting was facilitated by Jeff Blair from Facilitated Solutions, LLC. Consultation, Process Design & Facilitation. Information at: facilitatedsolutions.org

Welcome:

Time: 10:00 a.m.

Mr. Blair welcomed everyone to the teleconference meeting of the Product Approval Program Oversight Committee.

Roll Call:

Mr. Blair performed roll call for the Product Approval Program Oversight Committee. A quorum was determined with 5 members present at the time of roll call.

Agenda Approval:

Chairman Stone asked for a motion to approve the agenda for today if there were no changes.

Commissioner Compton entered a motion to approve the agenda as posted for today's meeting. Commissioner Hamberger seconded the motion. The motion passed unanimously with a vote of 5 to 0.

Approval of Minutes and Facilitation Report from May 21, 2020 meetings:

Chairman Stone asked for a motion to approve the facilitator's report and meeting minutes from the May 21, 2020 meeting, if there were no changes.

Commissioner Compton entered a motion to approve the minutes and facilitator's report as posted from the May 21, 2020 meeting. Commissioner Hamberger seconded the motion. The motion passed unanimously with a vote of 5 to 0.

Product Approval and Entities Statistics Report:

Ms. Binici provided the statistical report for products and entities.

Report on conditional approvals from the June 3, 2020 meeting:

Chairman Stone advised there were no conditional approvals to report for this meeting.

Complaint against the International Association of Plumbing and Mechanical Officials (IAPMO) and Fi Foil Company, Inc. by Dermot Ennis of International Insulation Products.

Mr. Blair advised that the Commission's Legal Counsel Justin Vogel will present the complaint.

Complaint against the International Association of Plumbing and Mechanical Officials (IAPMO) and Fi Foil Company, Inc. by Dermot Ennis of International Insulation Products. (cont.)

Mr. Vogel advised that the Commission received a complaint against a manufacturer of installation product and a product evaluation entity. He stated he would address each complaint. Mr. Vogel stated with respect to the product manufacturer complaint the rule provides for action against a specific product rather than the manufacturers. He further stated that this product does not have a product approval number and Rule 61G20-3.001 (2) states “This rule applies to approval of products and systems, which comprise the building envelope and structural frame, for compliance with the structural requirements of the Florida Building Code.” Mr. Vogel stated the threshold question for the POC is whether or not this product is subject to this Rule. He stated with respect to the evaluation entity the POC will be tasked to examine the allegations, the evidence submitted, and to determine whether it appears that the Rules pertaining to the product approval program have been violated. Mr. Vogel advised the relevant sections of the Rule were posted to the agenda. Mr. Vogel then presented the list of possible violation as follows:

61G20-3.013

(2) Revocation or suspension of evaluation entity, certification agency, testing laboratory, validation entity, quality assurance agencies or accreditation body approval.

(a) The Commission shall revoke or suspend the approval of any evaluation entity, certification agency, testing laboratory, quality assurance agency, or validation entity other than those specifically identified in Section 553.842(9)(a), F.S., for one or more of the following reasons:

1. Failure to maintain accreditation by a Commission approved accreditation body.
2. Suspension or revocation of accreditation by a Commission approved accreditation body for failure to meet Commission accreditation standards or equivalent pursuant to Rules 61G20-3.008 and 61G20-3.015, F.A.C.
3. Determination by the Commission that any requirement set forward in this document has been violated.
4. Determination that the criteria for independence from any manufacturer set forth in Rule 61G20-3.009, F.A.C., has been violated.
5. Determination that the entity is not independent pursuant to Rule 61G20-3.009, F.A.C., of any competing manufacturer of the manufacturer to whom the entity provided services on which Florida jurisdictions’ product approval is based.
6. An entity has misrepresented its accreditations or other material information on its application for approval.
7. Failure to conduct investigations of products authorized by Rule 61G20-3.014, F.A.C.

Complaint against the International Association of Plumbing and Mechanical Officials (IAPMO) and Fi Foil Company, Inc. by Dermot Ennis of International Insulation Products. (cont.)

Mr. Vogel stated that in order to initiate an investigation against the product evaluation entity there would need to be substantial material evidence showing non-compliance with a specific rule or statutory provision of the product approval program. He further said to note that our rules may only cover a subset of requirements that the evaluation entity's accrediting body may have, but the Commission is restricted considering the requirements which are present in rule or statute.

Mr. Blair suggested that the POC have two separate discussions, first covering the complaint against Fi Foil Company and deciding if this is out-side of the Commission's authority. He then stated they would address the complaint against IAPMO.

Fi Foil Company:

The Committee addressed the complaint against Fi Foil Company first and Mr. Ennis was present on the call and provided detail on his complaint and answered questions from the Committee members. He stated he agreed with the Committee that the product in question was outside the scope of the Rule.

Public Comment: None

Commissioner Compton entered a motion stating that the product was outside the scope of the Rule and Commission's authority, and the POC would recommend that the Commission dismiss the complaint against Fi Foil Company, Inc. on the basis that the product is outside the scope of the Product Approval Rule and the Commission's authority. Commissioner Hamberger seconded the motion. The motion passed unanimously with a vote of 5 to 0.

IAPMO:

Mr. Blair asked for clarification from Mr. Vogel should the POC find just cause for an investigation, would the first step be to request that the accrediting body do the investigating.

Mr. Vogel stated yes if there appears to be a violation, they would initiate an investigation and it would be done by the accrediting body.

Mr. Blair advised the Committee of the process for hearing the complaint and response from the opposing party.

IAPMO (cont.):

Complaint against the International Association of Plumbing and Mechanical Officials (IAPMO) and Fi Foil Company, Inc. by Dermot Ennis of International Insulation Products. (cont.)

The Committee addressed the second complaint against International Association of Plumbing and Mechanical Officials (IAPMO) and Mr. Ennis was present on the call and provided detail on his complaint and answered questions from the Committee members.

Barry Johnson and Brian Gerber representing IAPMO provided a full response to the complaint.

Mr. Vogel reviewed the provisions of Rule 61G20-3.014 used for initiating investigations against entities. He stated the investigations of entities should be by their accrediting body.

Mr. Madani stated IAPMO is an approved evaluation entity and its accrediting body is ANSI.

Mr. Vogel also noted that IAPMO had cancelled the evaluation report (ER-291) in July of 2020, Fi Foil Company's product evaluation report for the product in question.

Mr. Vogel provided the provisions in Rule 61G20-3.013 (2)(a) individually for initiating investigations against entities.

The POC reviewed each of the seven Rule provisions and determined after discussion that there was not substantial material evidence that any of the provisions had been violated. There were several Commissioners expressing that there were valid concerns in the complaint, but the Commission is limited in the scope they can use to determine a violation of the rule.

Commissioner Compton specifically asked Mr. Johnson and Mr. Gerber to clarify IAPMO's pulling of the product.

Mr. Gerber provided a detailed response on the activity and the reasoning for pulling the product.

Commissioner Dean expressed concerns that there were issues and that this testing should have been done earlier.

Commissioner Hamberger asked IAPMO why in the timeline it appears that the ER 291 was renewed and reissued in May 2018, but today it does not seem to meet the criteria.

Mr. Gerber stated the older and newer standards were similar and they did not believe the testing should be different. He stated they realized that the Federal Regulation do require the new standard and so they pulled the product. Mr. Gerber stated the reports follow the National Code and the products could be used across the US.

IAPMO (cont.):

Complaint against the International Association of Plumbing and Mechanical Officials (IAPMO) and Fi Foil Company, Inc. by Dermot Ennis of International Insulation Products. (cont.)

Commissioner Compton asked IAPMO whether they would have ever completed additional testing had a complaint not been filed.

Mr. Gerber said the additional testing would not have been completed if not for the complaint. He stated there was an inquiry and the original investigation was started in advance of this particular complaint. Mr. Gerber stated this issue began with an inquiry from the Attorney General's office based on a complaint filed.

Public Comment: None

Commissioner Compton entered a motion to recommend that the Commission dismiss the complaint and not initiate an investigation regarding the complaint submitted against the International Association of Plumbing and Mechanical Officials (IAPMO) by Dermot Ennis of International Insulation Products on the basis that there is not substantial material evidence of a violation of the applicable provisions of the Product Approval Program by IAPMO. Commissioner Hamberger seconded the motion. The motion passed unanimously with a vote of 5 to 0.

Review of Product Approval & Entity Applications:

Chairman Stone advised there were 9 entities on the consent agenda for approval and asked for a motion to approve if there were no entities to be pulled.

Commissioner Compton entered a motion to approve the consent agenda of 9 entities. Commissioner Hamberger seconded the motion. The motion passed unanimously with a vote of 5 to 0.

Product Approval Applications without Comments consent agenda:

Chairman Stone advised there were 127 products on the consent agenda and asked for a motion to approve if there were no products to be pulled.

Commissioner Compton entered a motion to approve the 127 products on the consent agenda. Commissioner Hamberger seconded the motion. The motion passed unanimously with a vote of 5 to 0.

Product Approval Application with Comments:

32364 – Commissioner Compton entered a motion for conditional approval of 32364. Commissioner Dean seconded the motion. The motion passed with a vote of 5 to 0.

32407 - Commissioner Compton entered a motion for conditional approval of 32407. Commissioner Dean seconded the motion. The motion passed with a vote of 5 to 0.

DBPR Applications:

Mr. Madani advised that there were 92 products on the DBPR roster. He stated there is no action needed from the Product Approval Committee.

Public Comments: None

POC Member Comments: Commissioner Dean requested Mr. Vogel or staff to obtain copies of the case that is filed with the Attorney General's Office for review by the Commission regarding IAPMO. She stated she would like to know if they have an ongoing case at this time.

Final Roll Call:

Mr. Blair performed a final roll call and 5 members were remaining on the line.

Adjournment: Chairman Stone thanked everyone for their participation and adjourned the meeting at 11:25 a.m.