



STATE OF WASHINGTON

STATE BUILDING CODE COUNCIL

Department of General Administration

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MINUTES CARBON MONOXIDE ALARM TAG FEBRUARY 15, 2011

Date: February 15, 2011
Location: GA Building/Conference Room 207

TAG members present (*phoned-in):

- Dave Kokot, Chair;
- Gary Allsop; Nancy Bernard; Cal Clausen; Jackie Clower*; Neil Hampson, M.D.*; Julie Johnson; Tracey Locke; Barbara Moilien; Mark Murray; Mark Ossewarde*; Julie Peterson; Joe Puckett; Rodney Schauf (voting members).
- Ann Fitzsimmons; Michael Otto*; Lindell Weaver, M.D.*; Katie Wheeler* (non-voting members)

Also present:

- Lance Talley; Steve Simpson; Carly Golden (sub for Megan Schrader)

Absent:

- Heidi Scarpelli; Jim Williams; Anne Donegan (alternate); Allen Spaulding (alternate)

Staff present:

- Peggy Bryden; Joanne McCaughan; Tim Nogler

TAG Chair Dave Kokot welcomed the group. The agenda was approved as written.

Dave asked for a show of hands to determine if anyone had prior experience serving on a TAG, and not many had (four). He pointed out that a lack of experience may be an advantage, and that it is very good to have new people involved. He noted that the CO alarm issue had been discussed at the Fire Code TAG in 2009; that group looked to the model code language to address the issues, made some changes, and sent it forward to public hearing. It was then reviewed by the Council for a final determination, and additional changes were made. It has been challenging for everyone, given the concerns from various stakeholders that were heard in 2010, after the rules were adopted.

Introductions were made around the table and included those participating by phone. A discussion ensued on the background of the rulemaking process for this issue. Review of the original wording on the legislation was given. Dave shared that local jurisdictions may modify the code, but could only increase the regulations, not make them any less restrictive than the model code adopted by the State of Washington. The original CO law was challenged and was reviewed in November, 2010 by the SBCC Council. It was determined by the Council that the CO alarm issue should be taken back to the TAG level and reviewed again. After the TAG comes to a consensus of what the CO Alarm ruling should be there needs to be an economic analysis done by the Economic Analysis Committee. This Economic Analysis Committee meets in April so that means that this group will only have between two or three meetings to accomplish this task. Right now the Emergency Rule, which continues to be the original wording, is in effect for 120 days and will stay in effect until the new rule is determined. Dave indicated there was a great deal of public testimony on this issue which was available on the website. He recommended the TAG members

review this testimony. He also noted that there had been three proposals submitted to address the issues, and noted those were in the packets and would be discussed later in the meeting. Joanne McCaughan noted that there are now emergency rules in effect, and they modified the permanent rules. These temporary rules are in effect for 120 days from the filing date, and must be re-filed to remain effective until a new permanent rule is implemented.

Neil Hampson, M.D., and Lindell Weaver, M.D. have done extensive research on the epidemiology of CO poisoning, and wanted to ensure that the group was aware of risks, even when there is no fuel source. Barbara Moilien is the parent of CO poisoning victim, and noted it is an emotional issue, and wonders why it is taking so long to get these rules written when the Governor signed the bill in 2009; she fears the rules have been watered down due to concerns that are economically driven. She is also concerned that people often tend to blame victims, even when they have done nothing wrong.

REVIEW RULEMAKING BACKGROUND FOR CO ALARMS

Original Legislation

Julie Johnson noted that the rulemaking process was confusing because the Council adopted different, more stringent, rules than what had been brought to public hearing; this was unanticipated. Dave Kokot explained that economics is not the only factor, and that the Fire Code TAG had expected something else when they discussed it. Tim Nogler explained that the scope had been broadened, and at that point it was important that others 'weigh-in.' Julie asked for clarification on what the original TAG looked at.

Dave explained that the TAG was meeting in 2009 before the ICC codes were published, so they did not have the final language, but the legislation had passed. The TAG was in favor of moving it forward; the changes from the Council came later that fall, after the TAG process was completed. It sat through the next legislative session with no changes or additional legislation passing, and became a permanent rule. The challenges came later, and in November 2010 the Council decided another look was needed at the TAG level to address the potential impacts.

Dave shared that local jurisdictions may modify the code, but could only increase the regulations, not make them any less restrictive than the model code adopted by the State of Washington. He added that there were several questions that come up for local officials regarding the CO alarm rules. For example, what does enforcement look like at the local level? Are the rules an 'unfunded mandate'? Most importantly, will we see the reduction in CO deaths that we all want to see?

After the TAG reaches consensus on a proposal, an analysis will be done by the new Economic Impact, Enforcement, Correlation and Construction Committee (EECC), before it is sent to the Council. The EECC will meet in April, thus the TAG will meet only two or three times. The emergency rule currently in effect will be continued until a new rule is adopted and implemented. Lin Weaver indicated he has a study to share with the TAG; he will send it to staff for posting on the website and distribution to the group.

There was some discussion about the March 1 proposal deadline; this is the annual deadline for rulemaking submissions to the SBCC. Since several proposals have already been submitted it is possible to work from those to make modifications. Dave noted the deadline is short, and that the TAG needs to finish the work. Lance Talley reminded the group that the role of the TAG is to study the issues and make recommendations, while the role of the Council is to decide what goes forward. Nancy Bernard asked for clarification on what actually goes forward to public hearing, and Tim noted it is the TAG's recommendation.

The group began a brief discussion around current proposal submissions. Joe Puckett asked for clarification on where proposal 11-003 had been initiated as there was no form attached. Dave noted that he had put it together in a hurry late last year when discussions were underway for the emergency rule; he did not submit it on a form. Joe also wanted clarification around requirements for existing buildings in Chapter 46 and wondered why it was not put into Chapter 9 instead. Dave noted that there was an effort to consolidate language related to existing buildings into one

part of the code, and that work is on-going. Tim noted that additional work could be done to create consistency between the Fire Code and the Residential Code regarding Group R occupancies. Definitions of Group R-1, R-2 and R-3 were reviewed by the TAG. Staff will send out additional clarification prior to the next meeting.

Katie Wheeler, the epidemiologist from New York City, described the reason for fuel exemption in NYC; indicated there were a relatively small percentage of homes that were single family; most are older multi-family units; a proportion of which use only steam/electric and are exempted from the requirements in NYC. Mike Otto of Washington State University said that most of the dorms were also steam heated, and he felt that these would not need CO alarms because there would be no source to create carbon monoxide. He noted it is hard to justify the expense when there have been no incidences. Dr. Hampson believes that students might be more likely to bring in fuel sources, and Dr. Hampson also observed that even though this group might not have fuel fired appliances or attached garages, they still needed CO alarms as the building systems could pass the carbon monoxide between units if a fuel-source was brought in or introduced from outside the building. He also noted there has been an incidence of consequence where a professor died and several students became ill. Rodney Schauf noted that the Westin Hotel in Seattle is also steam heated, and that barbeques are not allowed in the building. Mark Murray of the University of Washington noted that there are administrative controls on student behavior in terms of what behavior is allowed in on-campus student housing. Rodney noted this is also true for hotels.

Joe Puckett wanted to know if the TAG can recommend additional data gathering on the incidences of CO poisoning in Washington State? Dr. Hampson noted that data is already available; he worked on a study with several others after the 2006 Seattle windstorms that took eight lives and saw hundreds of hospital visits due to CO poisoning. Nancy Bernard noted there is no requirement for reporting on CO poisoning; it is possible that DOH could add it as a 'reportable condition', but it would require them to enter rulemaking and it may not be possible due to the Governor's moratorium under Executive Order 10-06.

Dave noted that we are mandated to review the codes, it is within the scope of our mission; DOH and others realize what a challenge it is to get funding for new initiatives. How can we do enforcement when there is no time or funding due to personnel and budget cuts? He noted that whatever rule we create must be enforceable. Nancy asked about how smoke detector rules are enforced. Dave noted in new construction it happens during the inspection, but in existing residences it is a challenge. Julie Johnson noted that in rental housing there is language in the lease that the tenant must maintain the device; the landlord must ensure it is operational when the tenant moves in.

Joe wondered if the data he is interested in could be collected by DOH, and Nancy will check internally; Joanne will check with Jim Williams, director of the Washington Poison Control Center, who is also a TAG member but was unable to make the meeting. Annie Fitzsimmons noted that a public information campaign is needed and wondered if the CO alarm manufacturers might be interested in assisting with such an effort. Lance indicated some clarification is needed on how to do the testing for state licensed facilities; the fire marshals do that testing. Katie Wheeler noted there is a CO surveillance workgroup she has been involved with; they have evaluated several data bases on hospitalization; one of the challenges is that there is very little data on what the source of poisoning is. Jackie Clower noted it is all dependent on which data are being analyzed (hospital data are very comprehensive but contain little information about the cause of CO poisoning; the hyperbaric treatment data are reported voluntarily but contain much information about the cause of CO poisoning) and she suggested the group should review information from Weaver and Hampson.

Julie Peterson asked for clarification on the term 'source' and what the definition of 'home' is in the codes; the facilities she works with are in a different regulatory environment. Dave noted we will need to use the data to help decide what the regulations should be by occupancy. Mark Murray wanted to point out that there is some data from the Consumer Product Safety Commission in 2003 and wondered if it has been updated; staff will check and get the information out to the group.

Dave also noted that the states data from the National Conference of State Legislatures (NCSL) may be updated and staff should check to be sure we have the most accurate data. He notes that there is always an effort to try to get model codes to be consistent, but it is necessary to take differences around the country into consideration. While the TAG needs to be able to reach consensus if possible, there is not a limit to participation in the process. It is important to recognize the realities of life and consider real experience; he noted it will be critical to do the public education so when this is implemented people are ready for it. He noted most people don't believe or understand that there is something in their home that could kill them so easily; the home is generally where people feel the safest.

Tracey Locke wanted to know how the alarms are installed in terms of location in the home, and noted that combo alarms are preferred. Dr. Hampson informed the group that there is a new study coming out to show they can be put anywhere, and Locke noted that cost is also an issue when there are many units involved and referred to the economic impact information in Proposal 11-001. Dave wondered if industry is ready, whether there are going to be enough alarms available for the demand, will the combo alarms be reliable and sensitive, i.e., has the technology improved? Tracey noted the hard-wired units should have replaceable components. Dave noted the potential for continued loss of life between now and the implementation date. Rodney Schauf noted that technology needs to catch up, the manufacturers aren't ready.

Julie noted it is the responsibility of people to purchase these for their homes, and questioned where government should regulate or not; there is a personal responsibility for safety. Dr. Hampson noted that if a home is more than 10 years old, then the choice should be to get a combo unit. Tim commented that there is a provision to exempt single owner-occupied homes before a date certain. Joe wondered if there could be some phase-in time for implementation. Dr. Hampson indicated that in the Seattle 2006 windstorm incidences they were all caused by either bringing in charcoal or other fuel-sources, or by generators being used improperly; thus none of these people would have been saved with the exclusion of fuel-burning appliances. Katie noted reporting the cause is often difficult after the fact. Nancy added that there is great difficulty in understanding why there are so many poisonings; often we blame it on the demographics, i.e., victims are often poor, immigrant populations. We have a long way to go in terms of public education, though there have been many effective training materials developed in many languages. The challenge is getting the information out to the population.

Mark wondered if there are any efforts underway to have CPSC add labels; Dr. Hampson noted that the labels were changed in the late 90s for information to be printed on charcoal bags, and it did result in fewer deaths. There is a possibility of bringing in other items, could be covered as well, e.g., camping stoves. There is a question of whether the smoke detectors are activated when charcoal is used indoors, but apparently they are not.

Barb Moilien noted that there is a lot of discussion about the actions of victims, however she reminded the group that the property owner is responsible to maintain a safe residence. In the case of her daughter's death, the landlord had hired an unlicensed contractor; there are some responsibilities there, they are due to the actions of the property owner. Dr. Hampson added that in many cases more than one person is poisoned in the same incident, they are not all responsible for that. A question was brought up about whether or not the CO alarms would be effective if placed in the equipment room with the fuel-fired appliance. Steve Simpson noted that as the appliances today are designed to save gas and energy, when the electric goes off the gas continues to flow. A very small amount could trigger the alarm; the answer is more public education. Dave added that there may be some grants available to fund education efforts, but Dr. Hampson noted he has done more than 50 papers on the subject and it is not possible to just educate everyone. Nancy noted that 2006 was a huge wake up call for people in public health education and outreach. There is a lot of information that has been developed since then, it is an on-going challenge. Dave reminded the group that it is beyond the scope of the TAG to address all these issues, but agrees that the information needs to be developed and provided at the regional level.

Nancy noted that there had been a recent case where a CO alarm was given to some new homeowners as a closing gift from their realtor; soon after they moved into the house they had an incident with their fireplace and the alarm saved them. Annie Fitzsimmons appreciated that being shared as she represents the Washington Realtors, and they do encourage this type of gift. Staff will post a video clip of the news broadcast reporting on this recent event. Julie Johnson noted that landlords provide a handout to new tenants at the time of the lease signing; it includes information on mold and smoke alarms, as required under the Landlord Tenant Act (RCW 59.18).

Barbara Moilien explained that she had brought a visual aid to illustrate how people become poisoned inadvertently. She had five jars, four of which had different liquids in them, they all look the same; the fifth jar was empty. Each of the substances in the four jars smelled and tasted differently. Though they all appeared the same, they were different and some were dangerous. The point is that although something may appear to be benign, it is not necessarily so. It was noted that as a society we came to terms with smoke alarms, now it is our burden to recognize the learning curve and enforce legislation that does that for CO alarms. Lance Talley noted that the idea is to prevent the incidents, anything we can put in place to avoid the incident is money well-spent; if there is a death then we have failed. Dave noted that in our culture we allow these things to happen, while in certain other cultures it would be considered a crime. Right now we are tolerating the CO issue and we should not be.

Joe wants to confirm that F-133-09/10 is the model code from ICC; Tim confirmed it. Tracey Locke asked what the next steps are to get the rules written. Dave replied that he believes the group should be able to reach consensus on a proposal. He suggested we should look at the proposals submitted thus far. The group could select one and modify it. He asked that the group do a homework assignment:

- Review the three proposals
- Determine the pros/cons for each one
- Come back with a goal to work toward consensus

Mark asked that there be an attempt to define terms, e.g., 'dwelling unit.' Dave agreed and noted that clarification of terms is critical. Julie Peterson noted that there are definitions in other sections of law that may have an impact on our understanding of the code language. Dave noted that for enforcement purposes terms need to be as clear as possible and that there is a common understanding.

Julie Peterson presented her proposal 11-002. Her emphasis is on ensuring the proper approach with licensed boarding homes and assisted living arrangements. They are licensed by DSHS and regulated by DOH construction review services. There are statutory requirements related to the health and well-being of the residents, with very specific emergency response tactics. They are not in a 'landlord-tenant' relationship, they deal mostly with older residents whose situation is such that they need assistance with daily living. Cooking appliances are not allowed, nor are heaters, nor other such personal appliances. The staff is constantly interacting with the residents, but it is not the same as a nursing home. There is very little likelihood of any CO poisoning risk in these settings.

Tracey Locke noted there are different sources that could be present; she asked if the code was not going to cover office building settings. Tim explained this was only to be a residential issue. Julie Peterson noted it is not really pertinent what the building looks like, it is who occupies the space. Tracey asked about situations where there are multiple occupants in different units, and Julie Johnson explained that a fuel-source would need to be present, if there is not then the unit is considered safe for the occupants. That is the responsibility of the landlord. The responsibility of the tenant is their own behavior and what they bring into the space. Education is part of the answer, landlords could provide some information as they do for smoke alarms and mold; however, tenants can also go out and purchase a CO alarm themselves, they are available in any store. Dr. Hampson replied that we cannot assume the same landlord for all units, different properties adjacent to each other may be owned by different people. In addition, neighbors may be irresponsible and bring in dangerous items to their own residence, but the effects may be felt throughout a larger area. Such actions can lead to poisoning of people who did nothing to cause it.

Rodney Schauf noted that the ICC language in the proposal 11-001 covers the situation, by denoting a floor separation. Mark added that it is a good proposal, and that administrative controls should be in place to ensure portable fuel-burning devices are not brought into the units. . Katie Wheeler noted there are many incidents where the fuel source was in the basement and those poisoned lived in apartments numerous floors above; she was concerned about potential language exempting units more than 1 floor above a fuel source; Tim noted we will get some information out to the TAG regarding the discussions around the issue that occurred at the ICC hearings. Dr. Hampson asked what if the person is not home on the first floor, where the alarm is present, when the incident occurs. Julie Peterson noted there should be an exemption unless there is a fuel burning appliance within the dwelling unit itself; she added there are the two kinds of facilities that she is referring to: boarding homes and assisted living, both considered R-2 occupancies. Tim noted there are also adult family homes, these are considered R-3. Dave added that an R-3 is not an IRC building; R-3 buildings are single family, duplex, or townhouse structures that exceed three floors and are subject to the IBC. Julie Peterson suggested the R-2 licensed boarding homes should be exempted from the CO alarm rules. Nancy asked for clarification on the various residential categories of occupancy. Staff will send this information out in the interim.

Julie Johnson noted that the goal for landlords is to provide safe housing; all of her residences have the CO alarms in place already. Dave added that when the emergency rules were filed it was meant to allow the users to get ready to follow the code enforcement community, to react to the new rules. He noted that the R-1 classifications for hotels/motels, many of these do not contain fuel-burning appliances. They were looking at the model code rather than the finished product. Tracey asked about enforcement, and he replied that the local officials are required to enforce, but there are several counties that don't even have an acting fire marshal. Annie noted that some property owners are fearful of being sued if there is an incident. Dave indicated that the fire marshals would need to get together, but they won't be able to enforce all of it as they do with smoke detectors; there they had grants that covered some of the costs for installation, etc.

Dave thanked the group for their attention and hard work today, and noted that this conversation among the TAG members is exactly the discussion that needs to happen with all the stakeholders at the table. We may wind up with a combination of all three proposals, or some other iteration; not everyone will get everything they want, but we will do our best to come to consensus and get a proposal we can all get behind. Joanne noted that it is apparent that the group has already reached consensus on the goal of prevention of future CO deaths and poisoning incidents. Plans were discussed for additional meetings as follows:

- March 1 in Renton; time and specific location to be established.
- March 15 and March 22; time and specific location to be established.
- Staff will provide documents related to R occupancies, ICC monograph on the approved model code.
- Presentations on various topics: elements of CO poisoning; data review; CO Alarm basics.

