June 16, 2011

Jane Gilchrist

1101 Mail Service Center

Raleigh, NC 27699-1101

Re: 13 NCAC 13 .0211

Dear Ms. Gilchrist:

At its June 16, 2011 meeting the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to this rule based on ambiguity. In (b) it is unclear when an external inspection must be done.

As the rule was written before the proposed amendment an internal inspection was to be performed at the time of installation and then every year afterwards. In the period between three and nine months after the internal inspection the inspector was to perform an external inspection as well. Now it is not clear at the least whether the external inspection is a one-time inspection at the time of installation or whether it is to be done every year as well. The language of the rule seems to require only one external inspection, which can be performed at any time, of the boiler.

In that same paragraph the inspector is given the authority to suspend or revoke the certificate of operation if the inspector determines (during the external inspection while the high pressure boiler is operating) that “an unsafe condition exists that is likely to result in serious personal injury or property damage.” Counsel would hope that if such a situation existed – “unsafe condition exists … likely to result in serious … injury or … damage” – that there would not be much discretion involved and that the inspector would be required to suspend or revoke the certificate. If there is discretion, then it is unclear what standards the inspector is to use to determine whether to take action.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission’s action, please let me know.

Sincerely,

 Joseph J. DeLuca, Jr.

 Commission Counsel

JJD:jbe