

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

California Energy Commission

DOCKETED

15-MISC-01

TN # 74293

JAN 15 2015

In the Matter of:)

Nonresidential Building)
Standards (Cal. Admin. Code,)
Title 24, §§ 2-5301 through)
2-5364))

Docket No. 88-NRBS-2

ORDER ADOPTING BUILDING
STANDARDS AMENDMENTS AND
FINDINGS OF EMERGENCY

On November 18, 1987, the California Energy Commission ("Commission") adopted an order instituting rulemaking to consider a variety of proposed amendments to the nonresidential building standards. The purpose of these amendments, adopted in part pursuant to an October 18, 1987, rulemaking petition from Patrick L. Splitt, was to address specific problems with "second generation" office and retail standards with the purpose of making them clearer, easier to use, and more enforceable.

Although Mr. Splitt's petition requested an emergency rulemaking, the Commission elected (consistent with his request) to follow the normal notice and hearing provisions of the California Code of Regulations (formerly the "Administrative Procedure Act", or "APA") so that the proposed standards could be shaped by public comment prior to their adoption. However, having completed that public adoption process, the Commission has recently been convinced by public comment that the near-term implementation of the proposed amendments is in fact necessary to prevent significant dislocation in the building industry and among those local agencies charged with enforcing the standards.

The need for early implementation of the proposed changes by emergency rulemaking was cogently expressed in Mr. Splitt's rulemaking petition:

"The scope of these hearings should be limited to those changes to the Non-Residential building standards which [interested] groups believe must be implemented (through this Emergency Rulemaking) before January of 1989. Many groups such as the implementation subcommittee of the PAG, Cal SMACNA, CBIA, and CABEC agreed to a six month delay [in the repeal of "first generation" retail standards pursuant to 88-NRBS-1] only on the condition that significant corrections to the non-residential standards would be implemented by the CEC during the delay. The only way some of these changes can be legally made in this time frame is through an emergency rulemaking proceeding"

With the cooperation and approval of the State Building Standards Commission ("SBSC"), the Commission has arranged for its amendments to Title 24 to take effect July 1, 1988. Moreover, the "first-generation" standards for retail and wholesale stores are scheduled to be repealed on that date. After July 1, all new retail buildings must comply with the new retail standards. This means that builders and building officials are looking at potentially confusing, disruptive, and expensive changes in the requirements for new buildings starting July 1. The proposed amendments are fashioned to mitigate these harmful consequences, and should therefore take effect on the same July 1 date.

Building officials have told the Commission Staff that, should the standards not be adopted on an emergency basis and become effective July 1, they will nevertheless enforce the proposed amendments as if they had the force of law. These extreme statements are apparently based on the feeling among some officials that the proposed amendments are essential to intelligent and workable enforcement of the standards. The Commission is alarmed at the potential for confusion should the

proposed amendments be "stockpiled" for up to a year while some builders and building officials behave as if they are already effective. This would undermine fair, consistent, equitable, and understandable standards enforcement, and inevitably lead to greater expense for the building community and enforcement agencies.

Based on the above, the Commission hereby adopts the proposed amendments set forth in the "15-Day Language", with those changes memorialized on the March 30 errata sheet. The Commission further finds that the proposed amendments must be adopted on an emergency basis because such action is necessary for the immediate preservation of the public peace, health and safety or general welfare, and we ask the SBSC to concur in this finding when approving the proposed amendments.

Dated: _____

CHARLES R. IMBRECHT
Chairman

BARBARA CROWLEY
Vice Chair

RICHARD A. BILAS
Commissioner

ROBERT MUSSETTER
Commissioner

WARREN D. NOTEWARE
Commissioner