

CHAPTER 127
FORMERLY
SENATE BILL NO. 103

AN ACT TO AMEND TITLES 7 AND 29 OF THE DELAWARE CODE RELATING TO PROGRAMS OF THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8003(2)(h), Title 29 of the Delaware Code by striking said paragraph in its entirety.

Section 2. Amend §8014, Title 29 of the Delaware Code by striking the phrase “Division of Waste Management” whenever it appears in the title and body of said section and substituting in lieu thereof the phrase “Division of Waste and Hazardous Substances”.

Section 3. Amend §8014(5), Title 29 of the Delaware Code by striking the sentence “The Division of Air Quality and the Division of Waste Management shall have primary authority under this section for matters concerning solid and hazardous waste and air resources of the State.” as it appears in that subsection and substituting in lieu thereof the following: “The Division of Air Quality and the Division of Waste and Hazardous Substances shall have primary authority under this section for matters concerning solid and hazardous waste, underground and aboveground storage tanks, boiler safety, hazardous materials emergency response, accident release prevention, emergency planning and community right to know, hazardous substance site investigation and restoration, and air resources of the State.”

Section 4. Amend §8018(6), Title 29 of the Delaware Code by striking the phrase “Director of Waste Management” as it appears in said paragraph and substituting in lieu thereof the phrase “Director of Waste and Hazardous Substances”.

Section 5. Amend §8018(8), Title 29 of the Delaware Code by striking the phrase “Director of Boiler Safety” as it appears in said paragraph.

Section 6. Amend §8028 and §8029, Title 29 of the Delaware Code by striking said sections in their entirety.

Section 7. Amend Title 7 of the Delaware Code by adding a new Chapter 74B to read as follows:

“§ 7401B. Establishment and Purpose of the Boiler Safety Program.

(a) The Boiler Safety Program is established and shall have the powers, duties and functions set forth in this Chapter. The Program shall be responsible for the administrative, ministerial, budgetary, clerical and investigative functions as provided by law.

(b) The primary objective of the Boiler Safety Program is to protect the general public, especially those persons who are owners or users of objects certified by the Program, from unsafe construction, operation, maintenance and repair of boilers, pressure vessels and nuclear installations. The secondary objectives of the Program are to maintain minimum standards of inspector competency and to maintain certain standards in the delivery of services to the public. In meeting these objectives, the Program shall develop standards assuring professional competence, shall monitor complaints brought against inspectors, and shall develop rules and regulations.

(c) The mandates of this Chapter shall not apply to the following:

- (1) Any boiler or pressure vessel which is subject to federal inspection and control;
- (2) Any pressure vessel used for the transport or storage of compressed gasses and liquids under the control or regulation of the United States Department of Transportation;
- (3) Any air tank on any vehicle used for carrying passengers or freight and operated under the authority of any other state agency;
- (4) Any air tank installed on the right-of-way of railroads;
- (5) Any unfired pressure vessel not exceeding:
 - a. Five cubic feet in volume and 250 psig design pressure;

b. Three 3 cubic in volume and 350 psig design pressure,
c. One and one-half cubic feet in volume and 600 psig design pressure;
d. Vessels having an inside diameter, width, height, or cross section diagonal not exceeding 6 inch with no limitation on length of vessel or pressure.

(6) Any unfired pressure vessel having an internal and/or external operating pressure not exceeding 15 psig;

(7) Any unfired pressure vessel containing water at ambient temperature with a nominal water containing capacity of 120 gallons or less, including those with air or gas cushion, the compression of which serves only as a cushion;

(8) Any water filter or softener containing water at ambient temperature when the pressure does not exceed 300 psig;

(9) Any pressure vessel under the control of the State Fire Marshal;

(10) High pressure breathing air cylinders used by emergency response organizations are exempt from inspection and certification provided they are installed, serviced, and maintained in accordance with the manufacturer's recommendations and the National Fire Prevention Association Standards, and the owner or user of this equipment shall be responsible for maintaining, testing, and servicing this equipment and shall keep all records associated with these activities as required by National Fire Protection Association Standards. The failure of any person to so install, service, test and maintain these air cylinders and to keep such records shall constitute a violation of this Chapter.

(11) Any water heater, directly fired with oil, gas or electricity, which shall be equipped with American Society of Mechanical Engineers (ASME) stamped safety relief valves and which cannot exceed any of the following limitations:

- a. Heat input of 200,000 Btu/hr. or 58,600 watts;
- b. Water temperature of 210 degrees Fahrenheit; or
- c. Nominal water capacity of 120 gallons.

(12) Any coil type hot water boiler without any steam space where water flashes into steam released through a manually operated nozzle unless 1 of the following limitations is exceeded:

- a. A 3/4-inch diameter tubing or pipe size, with no drum or headers attached;
- b. Nominal water containing capacity does not exceed 6 gallons;
- c. Water temperature does not exceed 350 degrees Fahrenheit; or
- d. Steam is not generated within the coil; and

(13) Any other exemptions promulgated in regulations supporting this Chapter.

§ 7402B. Definitions.

(a) 'Boiler' shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term 'boiler' shall include fired units for heating or vaporizing liquids other than water, where these units are separate from processing systems, and are complete within themselves.

(1) 'Power boiler' shall mean a vessel in which steam or other vapor is generated at a pressure of more than fifteen (15) PSIG.

(2) 'High temperature water boiler' shall mean a water boiler operating at a pressure exceeding 160 psi and/or temperatures in excess of 250 degrees F.

(3) 'Thermal Fluid Heater' shall mean a boiler used to heat an organic fluid for heating and or processing that does not vaporize in the process. Object is considered a boiler in the State of Delaware and is required to be built to Section I of the ASME Construction Codes and registered with the National Board. Overpressure protection will be in accordance with ASME Section I Part PVG.

(4) 'Heating boiler' shall mean a steam boiler operating at pressures not exceeding fifteen 15 psi, or a hot water boiler operating at pressures not exceeding 160 psi and/or temperatures not exceeding 250 degrees F, which is supplied to an external heating system.

(5) 'Hot Water Supply Boiler' shall mean a vessel used to heat water for purposes other than space heating, where the water is used external to itself, at pressures not exceeding 160 psi, and/or temperatures not exceeding 250 degrees F. at or near the boiler outlet. ASME Stamping would be ASME Section IV, H.

(6) 'Pool Heater' shall mean an appliance designed for heating non-potable water stored at atmospheric pressure such as water in swimming pools, spas, hot tubs, and similar applications.

(7) 'Water Heater' shall mean a closed vessel in which water is heated by gas, oil, electric, or some other fuel supply, and the water is used externally to itself for potable water supply, or used for potable water and space heating, operating at pressures not exceeding 160 psi and water temperatures not in excess of 210 degrees F. ASME Stamping would be ASME Section IV, HLW.

(8) 'Jacketed Cooking Kettle' shall mean a gas or electrically fired jacketed cooking kettle built and stamped ASME Section VIII, Division 1. ASME stamping would be U.

(b) 'Council' shall mean the Governor's Council on Boiler Safety.

(c) 'Department' shall mean the Department of Natural Resources and Environmental Control .

(d) 'National Board' shall mean 'The National Board of Boiler and Pressure Vessel Inspectors'.

(e) 'NBIC' shall mean the National Board Inspection Code. The manual for boiler and pressure vessel inspectors, published by the National Board of Boiler and Pressure Vessel Inspectors. The NBIC is recognized for Repairs and Alterations, and Antique (Historical) boilers only (Part 3 only).

(f) 'Place of public assembly' shall mean any establishment, building, location or any portion thereof within this State intended and used for occupation by persons while employed therein for compensation of any kind, any commercial structure and/or location to which the public has access.

(g) 'PSI' or 'psi' shall mean pounds per square inch.

(h) 'PSIG' or 'psig' shall mean pounds per square inch gauge.

(i) 'Pressure Vessel' shall mean containers for the containment of pressure, either internal or external. The pressure may be obtained from an external source or by the application of heat from a direct or indirect source, or any combination thereof.

(j) 'Secretary' shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(k) 'Shop Review' shall mean a general survey and examination of a boiler or pressure vessel manufacturing or repair firm's facilities, methods and records. The examination is performed by a designee of the ASME, and/or the National Board.

§ 7403B. Program Duties and Responsibilities.

(a) Notwithstanding the provisions of subsection 7401B(c) of this Chapter, the Secretary or the Secretary's designee shall have immediate access to the premises for investigation purposes in the event of an accident related to the construction, operation, maintenance or repair of a boiler, pressure vessel or nuclear installation.

(b) Notwithstanding any provision of this Chapter to the contrary, any heating and hot water supply boiler located in an apartment complex or residence of 6 or less living units, or any heating or hot water supply boiler located in and used to heat a single unit, where the heat input does not exceed 100,000 Btu/hr., shall be exempt from field inspection only.

(c) The Boiler Safety Program shall have the authority to specify minimum standards for the fabrication, construction, installation, operation, inspection and repair of all boilers, pressure vessels and nuclear installations in this State.

(d) The Boiler Safety Program, with the approval of the General Assembly, shall establish appropriate fees for all activities and services provided by the Program, including, but not limited to, commissions, inspections and examinations.

(e) The Boiler Safety Program shall act as the ASME and National Board designees when performing ASME shop reviews and the National Board of Boiler and Pressure Vessel Inspectors (NBBPVI) shop reviews of those manufacturers and repair companies of boilers and pressure vessels in this State.

(f) The Boiler Safety Program shall have the authority to require that all boilers and pressure vessels in this State be inspected by persons commissioned as boiler and pressure vessel inspectors in this State, and to issue a Certificate of Inspection for all boilers and pressure vessels that meet state installation guidelines, except those exempt under § 7401B(c) and by regulation. The Program shall be responsible for inspecting uninsured boilers and pressure vessels as well as boilers and pressure vessels that the insurer has failed to inspect. The Secretary or the Secretary's designee shall have immediate access to the site of all installations for inspection purposes and in the event of an accident. Inspection requirements shall be contained in rules and regulations.

(1) All owners, users and/or contractors, who are responsible for the installation of boilers or pressure vessels in this State, shall obtain a Certificate of Inspection from the Boiler Safety Program prior to the operation of the boiler or pressure vessel. Notwithstanding this provision, any newly installed boiler or pressure vessel may be operated for testing necessary for issuance of a Certificate of Inspection.

(2) Failure to obtain the required Certificate of Inspection shall subject the owner, user and/or contractor to a civil penalty of not less than \$1,000 for the first offense and \$2,000 for a second or subsequent offense. The Justice of the Peace Courts shall have jurisdiction over all violations of this subsection.

(g) The Secretary or the Secretary's designee shall have the authority to issue a commission to an applicant as an inspector of boiler and pressure vessels who meets the following criteria:

(1) Shall file a notarized application with the Secretary or the Secretary's designee and pay the fee established by the Program;

(2) Shall obtain a passing score on the validated examination for inspector;

(3) Shall possess a valid, current commission issued by the NBBPVI; and

(4) Shall not have been the recipient of any administrative penalties regarding the applicant's inspection practices in any other jurisdiction where the applicant has held, or currently holds, a commission.

The applicant shall be responsible for providing proof of a valid commission in all state jurisdictions where the applicant holds or has held a commission as boiler inspector.

(h) All inspections of repairs and alterations shall be performed by a Delaware-commissioned inspector following the provisions of the NBIC and the Delaware rules and regulations.

(i) The Secretary shall promulgate and enforce rules and regulations, which shall be binding on all persons commissioned by the Program, including manufacturers and users of boilers and pressure vessels. The rules and regulations shall conform, insofar as possible, to the ASME Boiler and Pressure Vessel Code and the NBBPVI's Inspection Code. The rules and regulations shall further the purposes and objectives of this Chapter and particularly as stated in § 7401B(b).

(j) The Secretary or the Secretary's designee shall have the authority to grant a variance, on a case by case basis, to those rules and regulations that pertain to the installation of new boilers to replace existing boilers.

(k) The Secretary or the Secretary's designee shall designate, contract, approve and arrange for the administration of all examinations. The Secretary or the Secretary's designee shall have the following powers, duties and functions relating to the administration of Delaware examinations:

(1) Deposit all fees received for testing to be used to cover the costs of all expenses directly related to the administration of examinations;

(2) Review, approve and execute all contracts for examination services;

(3) Review and approve the content and validity of any examination; and

(4) Supervise the administration and proctoring of all tests.

(l) The Secretary or the Secretary's designee shall:

(1) Have the power of a constable pursuant to § 2902 (d) of Title 10, for the sole purpose of executing and serving the administrative inspection warrants, subpoenas and summons issued under the authority of this State and pursuant to the performance of their duties; and

(2) Have the power to shut down unsafe boilers or pressure vessels pursuant to this Chapter.

(m) The Secretary or the Secretary's designee shall have the power to suspend or revoke a State commission for a finding of improper conduct. Where an application has been refused or rejected for a commission as inspector in this State or where a commission has been suspended for improper conduct by the Secretary's designee, the applicant may appeal to the Secretary of the Department of Natural Resources and Environmental Control.

(n) The Secretary or the Secretary's designee shall establish a process for handling citizen complaints regarding the unsafe operation of boilers and pressure vessels in this State, which process shall be promulgated in rules and regulations.

(o) All commissions issued previously by the Division of Boiler Safety shall remain valid as if they had been issued by the Program, and the Program shall have all powers and jurisdiction over such commissions the same as if the commissions had been issued by the Program in the first instance.

§ 7404B. Council on Boiler Safety.

(a) There is established the Council on Boiler Safety.

(b) The Council on Boiler Safety shall serve in an advisory capacity to the Secretary or the Secretary's designee and shall consider matters relating to the sale, operation, construction and use of boilers in this State and such other matters as may be referred to it by the Governor, or the Secretary of the Department. The Council may study, research, plan and advise the Secretary, the Secretary's designee, the Boiler Safety Program, and the Governor on matters it deems appropriate to enable the Program to function in the best possible manner.

(c) The Council on Boiler Safety shall be composed of 5 members who shall be appointed for terms of 3 years by the Governor. The Council shall be composed of 5 members; and, preferably 1 shall be a representative of a company licensed to insure boilers and pressure vessels in Delaware, another, a manufacturer who shall have been actively engaged in the manufacture of boilers, another, a user of boilers, another, a mechanical engineer and the fifth, a licensed stationary engineer.

(d) No more than 3 of the newly appointed members shall be affiliated with the same political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a member of the Council.

(e) Members of the Council shall serve without compensation except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(f) A Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for re-election.

(g) Any appointment, pursuant to this section, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term."

Section 8. Amend §7404A(a)(7), Title 7 of the Delaware Code by striking the phrase "Aboveground storage tanks regulated pursuant to § 8028 of Title 29" as it appears in said paragraph and substituting in lieu thereof the phrase "Aboveground storage tanks regulated pursuant to Chapter 74B of Title 7 of the Delaware Code."

Section 9. Amend §7413A(b), Title 7 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof a new subsection (b) to read as follows: "The aboveground storage tank registration fee established in subsection (a) of this section must be used by the Department solely for the purpose of administering Chapters 74, 74A, and 74B of Title 7 of the Delaware Code as well as the regulations of the Department promulgated under said chapters."

Section 10. Amend § 8226(a), Title 29 of the Delaware Code by striking the phrase "Division of Waste Management" as it appears in said subsection and substituting in lieu thereof the phrase "Division of Waste and Hazardous Substances."

Section 11. Amend § 6302(a)(5), Title 7 of the Delaware Code by striking the phrase “Division of Waste Management” as it appears in said subsection and substituting in lieu thereof the phrase “Division of Waste and Hazardous Substances.”

Section 12. Amend § 6319(d), Title 7 of the Delaware Code by striking the phrase “Division of Waste Management” as it appears in said subsection and substituting in lieu thereof the phrase “Division of Waste and Hazardous Substances.”

Section 13. Amend § 8003(1), Title 29 of the Delaware Code by striking the phrase “Division of Waste Management” as it appears in said subsection and substituting in lieu thereof the phrase “Division of Waste and Hazardous Substances.”

Section 14. Amend § 8003(2)g., Title 29 of the Delaware Code by striking the phrase “Division of Waste Management” as it appears in said subsection and substituting in lieu thereof the phrase “Division of Waste and Hazardous Substances” and by striking the phrase “Director of Waste Management” as it appears in said subsection and substituting in lieu thereof the phrase “Director of Waste and Hazardous Substances.”

Approved July 13, 2011