

BEFORE THE ARKANSAS DEPARTMENT OF LABOR
BOILER INSPECTION DIVISION

IN RE: MID-SOUTH STEAM BOILER &
ENGINEERING COMPANY, INC.,
NATIONAL BOARD NUMBERS 294 & 295

VARIANCE ORDER

This matter comes before the Boiler Advisory Board of the State of Arkansas and the Boiler Inspection Division of the Arkansas Department of Labor on Tuesday, June 7, 2005. Mid-South Steam Boiler & Engineering Company, Inc. (hereinafter, Mid-South) requests a variance on two vessels on behalf of its client, Pepper Source. Present on behalf of Mid-South was Tom Gill. Present on behalf of Pepper Source was Steve Campbell. Board members present were Larry Wolf, Bill McCoy, Steve Case, Richard Mille' and James L. Salkeld, Director of the Department of Labor and ex-officio chairman. Department of Labor staff present was Gary Myrick, Chief Boiler Inspector; Denise Oxley, Chief Legal Counsel; Ron Baker, Code Enforcement Administrator; Floyd Donaldson, Boiler Inspector; and Maxine Wagley, Office Manager. Board member Richard Mille' recused himself from consideration of this matter.

FINDINGS OF FACT:

1. Mid-South requested a variance on behalf of Pepper Source for two cooling kettles manufactured by Mid-South in 2001. Specifically, Mid-South requested a re-rating of the maximum allowable working pressure of the two vessels from 20 psig to 50 psig.
2. The two vessels were ASME Code constructed and have National Board numbers 294 and 295. Mid-South's serial numbers are 9737 and 9738.
3. The two vessels are identical and made of stainless steel construction.

4. The Board members and the Chief Boiler Inspector reviewed the manufacturers' data reports, drawings and calculations based on the original code of construction, as well as some new calculations requested by the Chief Boiler Inspector. Additionally, Mid-South proposes to hydro test the two vessels at 75 psi, such test to be witnessed by Inspector Floyd Donaldson.

5. The variance is requested in order to increase production capacity at Pepper Source's manufacturing operation in Rogers, Arkansas.

CONCLUSIONS OF LAW

1. Ark. Code Ann. § 20-23-301(a)(2) provides that: "All boilers installed or in operation in this state shall conform to those regulations and standards that shall from time to time be adopted by the Boiler Inspection Division with the approval of the director. "

2. The regulations of the Boiler Inspection Division, at 31 provide:

To the extent permitted by statute where the application of a rule would cause expense materially out of proportion to the increase of safety obtained thereby, or would be unreasonable under the facts of the particular case, and safety can be obtained in other ways, the Chief Boiler Inspector may, upon adequate showing by the person affected, grant an exemption or variance of the rule complained of, under such requirements as will secure a reasonable condition of safety provided such exemption or variance be not in conflict with the Ark. Code Ann. §§ 20-23-101 *et seq.*

3. The regulations of the Boiler Inspection Division at 37 provide:

"State Special" shall mean a boiler or fired/unfired pressure vessel of any type or size, which carries neither the ASME symbol nor National Board stamping, which may be acceptable for use provided the manufacturer, installer, or owner can present sufficient evidence to the Chief Boiler Inspector that the vessel is built to standards which are at least equivalent to the applicable ASME Code.

4. The Chief Boiler Inspector, with the advice and approval of the Boiler Advisory Board, determines that the variance in the present case should be granted subject to the following conditions:

a. The vessels are successfully hydro tested at 75 psi with such test witnessed by a commissioned inspector;

b. The ASME stamp is removed and a new data plate is issued reflected the new MAWP of 50 psi; and

c. The vessel will be assigned a state number as an "Arkansas Special".

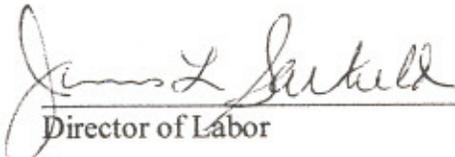
IT IS SO ORDERED.



Chief Boiler Inspector

6/20/05

Date



Director of Labor

6-20-05

Date