



November 21, 2017

Julius A. Ballanco, P.E.
JB Engineering and Code Consulting, P.C.
1661 Cardinal Dr.
Munster, IN 46321

Re: IAPMO Standards Council Decision Docket #04-18
Date of Decision: November 21, 2017*
Uniform Mechanical Code – Sections 1104.6, 1104.6.1, 1104.6.1.1,
1104.6.1.2, Table 1104.1
Item # 144

Dear Mr. Ballanco:

I am transmitting to you herewith the following decision of the IAPMO Standards Council.

At 1:00 p.m. at their meeting on November 15, 2017, the IAPMO Standards Council considered your appeal requesting publication of the 2018 *Uniform Mechanical Code* and the above-referenced code sections as amended by Public Comments 1, 2, and 3 to Item #144. This decision provided herein reflects the complete deliberation of the Council with respect to these Items.

Summary of Technical Committee Actions

For a summary of actions taken with respect to each of the Items at issue please refer to Exhibit A attached hereto.

Analysis of Appeal

Appellant requested the IAPMO Standards Council override the results recommended by the development process and issue the 2018 edition of the *Uniform Mechanical Code* incorporating the Public Comments submitted for Item #144. Appellant has raised issues to the Standards Council concerning the technical merit and procedural development of the Technical Committee action on the Public Comments.

On an appeal, the Standards Council accords great respect and deference to the IAPMO codes and standards development process. In conducting its review, the Council will overturn the result recommended through that process only where a clear and substantial basis for doing so is demonstrated. The Council has reviewed the entire record concerning this appeal and has considered all of the arguments raised by it.

I. Analysis of Appellant’s Technical Merit-Based Arguments

Appellant contends that if Appellant’s relief is not granted section 1104.6 of the 2018 edition of the *Uniform Mechanical Code* will permit the use of ammonia in residential air conditioning systems. Upon deliberation, the Council is satisfied that Appellant’s concern and the “unintended consequence” is alleviated via Section 1102.1 of the *Uniform Mechanical Code* which prohibits the use of ammonia in residential air conditioning systems.¹

From a technical standpoint, Appellant urges the Council to treat all comments submitted by the A2L Task Group [incorporating six different Items (#140-142, #144, #146-147)] as one block, to be accepted or rejected on “all or nothing” terms. The Council appreciates the testimony of Appellant that all the recommendations of the A2L Task Group were intended to work in concert.² The Council appreciates that the acceptance of some Public Comments (and their subsequent effect on the 2018 *UMC*) with the rejection of others may not fully embrace the expression of the A2L Task Group. However, the Council is mindful that this scenario was known to the Technical Committee. The Council is satisfied that the TC was then aware of the potential inconsistency that the Appellant raises now to the Council.

There is nothing in the record that compels the Council to upset the approach of the consensus body in handling these Items. There is no precedent for an “all or nothing” approach, and nothing in the Regulations Governing Committee Projects to recommend such an approach.³

Upon review of the full record, the Council notes many valid technical arguments supporting Public Comments 1, 2 and 3 to Item #144. The A2L Task Group worked diligently to present a set of proposals to the Mechanical Technical Committee; some were accepted, and others not. In the view of the Council, the evidence in the record does not provide any clear and substantial basis on which to overturn the results recommended by the IAPMO codes and standards development process.

II. Analysis of Appellant’s Procedural Arguments

Appellant contends that the Mechanical Technical Committee Statement accompanying the rejections of the Public Comments was not germane. The Council disagrees even as the Council acknowledges, as noted by Appellant, none of the Public Comments incorporate the draft version of Addendum D to *ASHRAE 15-2013* by reference. The Council acknowledges and accepts Appellant’s commentary: “ASHRAE Standard 15, Addendum D, is not referenced anywhere in the code text of the three public comments to Item 144.” Yet, the disposition of Addendum D – in un-finalized form – is prominently referenced in the Problem Statement accompanying each of the Public Comments for Item #144. The draft-or-finalized status of Addendum D informs the Committee’s degree of reliance on the Commenters’ Problem Statement, which naturally informs the Technical Committee’s ultimate disposition of these Public Comments. Within this context, the Mechanical Technical Committee’s statement is germane.⁴

¹ “Exception: Ammonia refrigeration systems shall comply with IAR 2, IAR 3, and IAR 5.”

² The Council acknowledges that Appellant was the Chairman of the Group.

³ The Regulations at Section 4-4.6 require the Technical Committee to act on all Comments individually.

⁴ The Council shall not address the specious allegation offered in oral testimony that the consensus body “is giving away their authority to change the code to another entity”.

Appellant further argues that the Mechanical Technical Committee Statements accompanying the rejection of Public Comments 1 - 3 violated the Regulations Governing Committee Projects by failing to provide technical justification. Appellant asserts a procedural violation occurred when the Technical Committee did not accept Public Comment #3 to Item #144 because “there has been no technical justification submitted to support the allowance of B2L refrigerants in high probability systems.” The Council does not agree that the omission of B2L refrigerants from Section 1104.6 via the rejection of Public Comment #3 is equivalent to a code change making B2L refrigerants allowable as a matter of right in high probability systems. The Council does not agree with Appellant’s assertion that the scenario created a procedural requirement for technical substantiation.

In parallel, Appellant argues that the TC’s basis for rejection of Comment #1, incorporating the rejection of Comment #3, likewise amounted to a procedural violation because it failed to provide a technical justification.

Appellant, in his written brief, correctly identified Section 4-4.6.3 as the pertinent Regulation, and Appellant read that section into the record in his oral testimony. The applicable language from Section 4-4.6.3 is as follows: “The TC action on comments ‘accepted as amended,’ ‘rejected,’ or ‘held’ shall include a statement, preferably technical in nature, on the reason for the TC action.” The Council notes that this language does not create a requirement that all TC statements provide technical justifications: rather it states that such statements are “**preferably** technical.” The Council finds no procedural violation.

Finally, Appellant alleges:

*The Mechanical Technical Committee did not state whether these safety requirements are inadequate, or perhaps overly burdensome. The Mechanical Technical Committee makes no mention of the safety requirements at all in their Committee Statement. **As such, the Mechanical Technical Committee did not follow the Regulations Governing Committee Projects.***

(emphasis added). The Council disagrees with this conclusion.⁵

Final Decision

In consideration of the aforesaid, the Standards Council denies Appellant’s request for relief with regard to the actions taken by the Mechanical Technical Committee on Item #144. The Council does not overturn the result recommended by the consensus process. The effect of this decision is that the Committee’s final actions with respect to the aforementioned Items will be included within the 2018 edition of the *Uniform Mechanical Code* as more specifically set forth in Exhibit B.

⁵ The Council also disagrees with the following assertions of Appellant: “If a statement is used to reject one public comment, and the same statement could be used for another public comment that is approved rather than rejected, the *Committee Statement* is not valid;” and “The Standards Council is responsible for correlating the code.”

Sincerely,



Gabriella Davis
Secretary, Standards Council

cc: Monte Bogatz, Executive VP, General Counsel
Heather Koffman, VP, Associate General Counsel
Hugo Aguilar, VP, Codes and Standards
Enrique Gonzalez, Staff Liaison
Mechanical Technical Committee
Standards Council
David Calabrese, Daikin U.S.
Dave Mann
Mike Afonso, UA Local 342

***NOTE:** Participants in IAPMO's codes and standards making process are advised that limited review of this decision may be sought from the IAPMO Board of Directors. For the rules describing the available review and the method for petitioning the IAPMO Board of Directors for review, please consult Section 1-7 of the *IAPMO Regulations Governing Committee Projects* and the *IAPMO Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council*. **Notice of the intent to file such a petition must be submitted to the Petitions Clerk of the Board of Directors within 15 calendar days of the Date of Decision noted in the subject line of this letter.** As the *Uniform Mechanical Code* is designated as an American National Standard (ANS), any persons who have directly and materially affected interests by this decision have the right to appeal to ANSI in accordance with ANSI procedures.

Exhibit A

Summary of Technical Committee Actions

Appeal Docket #04-18; Item #144

UMC 1104.6, 1104.6.1, 1104.6.1.1, 1104.6.1.2, and Table 1104.1

The 2016 Report on Proposals (ROP) published the results of the first committee ballot on Item #144, a code change proposal to amend section 1104.6 “Applications for Human Comfort and for Nonindustrial Occupancies” by adding “B2L” among the other listed refrigerants.

At the meeting, a majority of the committee members were in support of rejecting this proposal as submitted. Upon written ballot of the Mechanical Technical Committee, they affirmed their desire to reject the code change proposal.

At their second meeting, the committee reviewed three comments seeking to modify the proposal. A majority of the committee was in support of rejecting all three public comments. Upon written ballot of the Mechanical Technical Committee, they affirmed their decision to reject all three public comments.

The 2017 Report on Comments (ROC) published the results of the second and final committee ballot on the comments to Item #144.

At the Association Technical Meeting Convention, a motion was made to accept Public Comment 3. The motion failed.

There was no further action taken on this item, thus the process recommendation is the committee’s final action as published in the ROC, making no change to section 1104.6.

Exhibit B

Result for #04-18

The 2018 UMC at section 1104.6 will be consistent with the previous edition and will read as follows:

1104.6 Applications for Human Comfort and for Nonindustrial Occupancies. In nonindustrial occupancies, Group A2, A3, B1, B2, and B3 refrigerants shall not be used in high-probability systems for human comfort.

Further, there is no change to Table 1104.1 "Permissible Refrigeration Systems."

IAPMO Regulations Governing Committee Projects
Section 1-7

1-7 Petitions to the Board of Directors.

1-7.1 General. The Standards Council has been delegated the responsibility for the administration of the codes and standards development process and the issuance of Documents. However, where extraordinary circumstances requiring the intervention of the Board of Directors exist, the Board of Directors may take any action necessary to fulfill its obligations to preserve the integrity of the standards development process. Anyone seeking such intervention of the Board of Directors may petition the Board of Directors concerning Standards Council action on any matters. Such petitions shall be filed and processed in accordance with the Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council.

1-7.2 Notice of Intent to File the Petition. Anyone wishing to petition the Board of Directors concerning an Standards Council action related to the issuance of a document, shall file a Notice of Intent to File a Petition within 15 days following the Standards Council action. A Standards Council action related to the issuance of a document includes any action of the Council that issues or returns a Document or that affects the text of a Document. Petitions concerning other Standards Council actions shall be filed within a reasonable period of time.

1-7.3 Effect of Filing. The filing of a Petition will not serve to stay the effective date of a Document or a Tentative Interim Amendment unless the Chief Executive Officer of the Association or the Board of Directors acts, pursuant to 4-7.2 or 5-6, to delay the effective date. Any Petition pending at the time a Document or Tentative Interim Amendment becomes effective will be treated as a Petition to withdraw the Document or Tentative Interim Amendment.

1-8 Use of Visual Aids and Demonstrations Before the Standards Council or Board of Directors. The policy for the use of visual aids and physical demonstrations to the Standards Council and Board of Directors shall be the same as that required for TCCs, TCs, and Task Groups, in accordance with 3-3.3.3(e) and 3-3.3.3(f).

**IAPMO Regulations Governing Petitions to the Board of Directors
from Decisions of the Standards Council**

ADOPTED BY THE IAPMO BOARD OF DIRECTORS SEPTEMBER 4, 2000. Amended in January 2007.

Section 1 Scope of and Authority for these Regulations.

(a) These regulations have been issued by the Board of Directors pursuant to its authority under Article 5, 6 and 8 of the IAPMO Bylaws.

(b) These regulations set forth the procedures to be used for the filing and processing of all petitions to the Board of Directors filed pursuant to 1-7 of the Regulations Governing Committee Projects.

(c) The Board of Directors can amend these regulations from time to time and waive or supplement, in whole or in part, at any time or times at its discretion.

(d) For the purposes of these regulations, the Standards Council Secretary, or such other person as the Chair of the Board of Directors may appoint, shall act as a petitions clerk.

Section 2 Subcommittees of the Board of Directors. Unless the Board of Directors otherwise orders, the authority to consider and make recommendations on the disposition of a petition by the Board of Directors shall be delegated to a subcommittee of the Board of Directors, which shall be appointed, in accordance with 2.1 of these regulations. Subcommittees shall be appointed by the Chair of the Board of Directors.

2-1 Composition of Subcommittees. Subcommittees shall consist of three or more members of the Board of Directors. The criteria for selection and appointment of subcommittee members shall be as follows:

(a) A subcommittee member shall be a person who can decide the petition on the merits in an impartial manner.

(b) A subcommittee member shall not have any conflict of interest. (A conflict of interest is defined as any situation in which a decision on a petition could substantially and materially affect the member's financial or business interest.)

(c) Each subcommittee member shall, to the extent practicable, represent diverse interests within the association.

In making a decision of whether or not to serve on a subcommittee, the member may consult with the IAPMO general counsel.

Section 3 The Scope of Review. The petitioner shall generally confine the argument in the petition to matters that were presented below and shall not raise any new matters that could have but were not presented within the standards development process. A petition to the Board of Directors shall not be regarded as simply another opportunity to reargue a position that was rejected by the Standards Council. In considering a petition, the subcommittee shall give due deference to the judgment of the Standards Council and shall not intervene unless it can be demonstrated that extraordinary circumstances exist requiring the Board of Director's intervention to protect the integrity of the standards development process.

Section 4 The Record. In its consideration of the petition, the subcommittee shall have before it the entire record that was before the Standards Council, as well as all proceedings and decisions of the Standards Council on the issue. In addition, the subcommittee may consult any other records of the association that it deems pertinent to the issue, and the subcommittee may seek technical assistance from staff, the technical committee, or any other source or persons that it deems appropriate.

Section 5 Notice of Intent to File the Petition. Anyone wishing to petition the Board of Directors concerning a Standards Council action related to the issuance of a document, shall file a Notice of Intent to File a Petition within 15 days following the Standards Council action. A Standards Council action related to the issuance of a document includes any action of the Council that issues or returns a document or that affects the text of a document. Petitions concerning other Standards Council actions shall be filed within a reasonable period of time.

Section 6 Filing and Contents of the Petition.

(a) Within 15 days following the receipt of the notice of intent to file, or within such other time as the petitions clerk may allow, the petitioner shall file the petition together with 20 copies. The petition shall be no more than 10 pages in length and shall contain, in separately denominated sections, the following:

- (1) Name, affiliation, and address of the petitioner;
- (2) Statement identifying the particular Standards Council action to which the petition relates;
- (3) Argument setting forth the grounds for the petition and, in particular, addressing why there exist extraordinary circumstances requiring the intervention of the Board of Directors (see the preceding Section 3 and 1-7 of the Regulations Governing Committee Projects); and
- (4) Statement of the precise relief requested.

(b) Any part of the record related to the standards development process that is referenced or discussed in the petition should be clearly cited in the petition using available markings such as the title, author, date, and page of the record. Since the full record will be available to the subcommittee during its review, attachments and appendices shall not accompany the petition, unless express permission has been obtained from the petitions clerk.

Section 7 Consideration of the Petition.

7-1 Initial Review. The petitions clerk may, at his or her discretion, arrange for initial review of the petition by meeting, correspondence, or telephone conference. If upon such initial review of the petition and any relevant portions of the record, the subcommittee determines that the petition has no merit, it may dismiss the petition.

7-2 Full Review. If initial review is not conducted, or, if upon such review, the subcommittee determines that further review is warranted, it shall afford the opportunity for responses to be filed by interested parties. Responses, together with 20 copies, shall be filed within 15 days or within such other time as the petitions clerk may allow.

(a) Responses shall be no more than 10 pages in length and shall contain, in separately denominated sections, the following:

- (1) Name, affiliation, and address of the respondent;
- (2) Statement identifying the petition to which the response relates and stating whether the respondent supports or opposes the petition; and
- (3) Argument setting forth the grounds for opposing or supporting the petition and, in particular, addressing why there does or does not exist extraordinary circumstances requiring the intervention of the Board of Directors (see the preceding Section 3 and 1-7 of the Regulations Governing Committee Projects).

(b) Any part of the record related to the standards development process that is referenced or discussed in a response should be clearly cited in the response using available markings such as the title, author, date, and page of the record. Since the full record will be available to the subcommittee during its review, attachments and appendices shall not accompany the response, unless express permission has been obtained from the petitions clerk.

(c) So as to avoid unnecessary repetition and duplication of effort, parties are encouraged to file joint responses where possible and appropriate.

(d) Unless a hearing has been requested and granted by the subcommittee (see Section 8), the subcommittee shall, either by meeting or telephone conference, review and

render a decision on the petition based on the written submissions of the parties and the record before it.

Section 8 Requests for Hearings. If the petitioner requests a hearing on the petition and that hearing is granted, the petitioner shall be assessed a filing fee of \$2,500 to be posted following the granting of the request. This fee may be reduced or waived by the Chief Executive Officer upon application of the petitioner if good cause for reducing or waiving the fee is presented. If a hearing is granted, the Procedures for Hearings shall be followed.

Section 9 Waiver of Regulations. Any of the deadlines or requirements set forth in these regulations may be waived by the subcommittee upon application of the petitioner or any other party for good cause shown, or in the discretion of the subcommittee.

Section 10 Subcommittee Report to the Board of Directors. The subcommittee shall file with the Board of Directors a written report concerning each petition that it has determined.