

December 18, 2008



Ms. Gabriella Davis
Sr. Director of Worldwide Operations
5001 East Philadelphia Street
Ontario, CA 91761

RE: Petition to the IAPMO Board of Directors,
Standards Council Docket #1165-09; Item #187, reference to ASME A112.20.2 ANSI
Qualification for Installers of Firestop Systems and Devices for Piping Systems

Dear Ms. Davis,

The Firestop Contractors International Association (FCIA), and a consensus of the construction industry, presented to the IAPMO Standards Council regarding Item #187 and the IAPMO Uniform Plumbing Code in November.

As an organization, FCIA has great respect for IAPMO, and thank the group for the ability to keep communications open, even as we have divergent views.

The purpose of this letter is to submit a formal Petition to the IAPMO Board of Directors from a decision of the Standards Council, Decision Docket #1165-09, dated Nov. 21, 2008, addressed to the Firestop Contractors International Association, and request a hearing as allowed by the Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council.

We look forward to further conversations with IAPMO about the issues stated in our Petition.

Yours very truly,

Bill McHugh, FCIA Executive Director
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708-202-1108 Office ~ 708-449-0837 FAX

CC: FCIA Board, FCIA Code Committee, Benito Robles, Jon Preciado, Thomas Rodriguez, Michael Logue, Washington Association of Building Officials, other Interested Parties, ANSI Board of Directors, ASME Board of Directors

FCIA Petition to the IAPMO Board of Directors – December 18, 2008

Standards Council Docket #1165-09; Item #187, reference to ASME A112.20.2 ANSI Qualification for Installers of Firestop Systems and Devices for Piping Systems

- 1. FCIA Statement - FCIA is addressing the Standards Council Docket referenced above.**
- 2. FCIA's Argument to the Standards Council Decision dated November 21, 2008, is incorporated in the text below.** FCIA believes that the Anticompetitive result of the code proposals Item #187, Item #27 and approval and the consensus used to create it creates extraordinary circumstances and a need for a petition for intervention by the IAPMO Board of Directors.
- 3. FCIA believes that the Standards Council Item referenced above brings a standard requirement to the IAPMO Code that is Anticompetitive, causing harm to the integrity of the association.**
 - a. The ASME A 112.20.2 Standard was developed with the resources of the United Association of Plumbers and Pipefitters (UA) at ASME, with Sid Cavanaugh, who was an employee of the UA during the initiation and development of the standard, chair of the development task group. It has been and is currently referenced in the Uniform Plumbing Code, and is manifestly anticompetitive.

The effect of the standard is to limit the workforce used for firestopping of plumbing penetrations to journeymen plumbers and thereby the work to those firms signatory to the UA, the international plumbing union. Many others are fully qualified to do this work – indeed, there are trained workers from other union and non union organizations, as well as certified firestop contractors with their own labor forces who currently are installing these systems. The ASME A 112.20.2 Standard will restrict competition and increase costs.

Moreover, the manner in which the proposed standard was ratified was dubious. It is improper to have the private parties who will financially benefit from a standard collectively agree to limit competition, as occurred in this case. The standards and code development process does not provide a free pass to act in this manner.

The approval of Item # 27 connecting Chapter 15, Firestop Protection, and Table 14-1, Reference Standards, clearly shows the UA's intent to control commerce through their labor network throughout the country.

4. Integrity of the Standards Development Process - Consensus – The Scope of the Consensus for the ASME A 112.20.2 Standard and IAPMO Adoption of the standard were not correct.

- a. Making ASME A 112.20.2 a requirement in the code through the connection in Chapter 3 extends the plumbing consensus to the fire resistance rated assembly, without representation from the fire resistance rated assembly industry.
- b. From the ANSI Website for your convenience, the essential requirements for due process in standards development and consensus, with FCIA's conclusions in bold and italics are listed below:

1.2 Lack of dominance The standards development process shall not be dominated by any single interest category, individual or organization. Dominance means a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation to the exclusion of fair and equitable consideration of other viewpoints.

The Firestopping industry was overruled by the plumbing industry at ASME A112 Main Committee, on a fire assembly issue involving several construction industry trades. T

1.3 Balance - The standards development process should have a balance of interests. Participants from diverse interest categories shall be sought with the objective of achieving balance.

The ASME Main Committee had a majority of plumbing industry participants, and did not represent the construction industry involved with fire resistance rated assemblies. Those involved in firestopping fire rated walls and floors include the fire resistance rated wall and floor assembly organizations, the insulation industries, firestopping industries, not the penetrating item industry. Firestopping is not about the penetrating item, it's about the assembly and fire rating. At IAPMO, the same imbalance existed as was at ASME, where plumbing industry representatives and plumbing inspectors voted for consensus without full assembly of construction industry representation present.

Annex A: Definitions

Consensus: Consensus means substantial agreement has been reached by directly and materially affected interests. This signifies the concurrence of more than a simple majority, but not necessarily unanimity. Consensus requires that all views and objections be considered, and that an effort be made toward their resolution.

The Consensus for the ASME A 112.20.2 was not a true consensus of directly and materially affected interests. There was a majority, but not a majority of those affected by the requirement of ASME A112.20.2 including the firestopping and fire resistance rated wall and floor assembly industries, and more, that agreed with the ASME

plumbing dominated committee who added a requirement for ‘a person with 4 years documented piping experience, with testing by ISO 17024 third party certified organizations’, a strategy referenced on UA Websites. Most important, the voting membership at IAPMO hearings consisted of plumbing industry representatives, without the firestopping or fire resistance rating industries for consensus.

Consensus body: The group that approves the content of a standard and whose vote demonstrates evidence of consensus.

The consensus body for ASME A 112.20.2 and IAPMO’s Uniform Plumbing Code consisted of the Plumbing Union Representatives, many from Local 393, Plumbing Inspectors, some who also were UA Members, plumbing suppliers who supply these members with materials, and consultants to the plumbing industry. The firestopping industry and other fire resistance rated industries were outvoted hands down.

- 5. FCIA believes that Item #27 plus Item #187 connect the requirement that all firestopping be applied around piping by journeyman plumbers, due to a connection between Table 14.1 and Chapter 15 in Chapter 3, section 313.7. This affects the health of the association by reaching consensus way beyond the scope of the plumbing code, extending into building and fire safety issues.**
- 6. FCIA Specific Relief Requested - There are extraordinary circumstances that exist in this case regarding the consensus body and perceived anticompetitive language, created by Item #187 and Item #27 adoption into the Uniform Plumbing Code.**
 - a. FCIA respectfully requests one of two options to resolve the issue we are petitioning to the IAPMO Board of Directors.**
 - i. IAPMO can grant FCIA’s request in Item #187 to remove ASME A 112.20.2 as a reference in Table 14-1.**
 - ii. Alternatively, IAPMO can strike the new language that was approved in Item #27 that creates the requirement for ASME A 112.20.2 in Chapter 3. We have had discussions with IAPMO Staff about this issue. It is Lynne Simnick’s opinion that Item #27 does not create a code requirement, because ‘ASME A 112.20.2 is not in the body of the code. It is meaningless’. If the Chapter 3 language is meaningless, we request it be removed from the Uniform Plumbing Code now. This would remove the perception that ASME A 112.20.2 is mandatory. We believe that if this language remains, it will be used by the UA’s network of plumbing union locals to harass contractors into using journeyman plumbers for firestop work, causing an anticompetitive labor situation on construction projects. This will eliminate the perception that the IAPMO Uniform Plumbing Code is being used for jurisdictional purposes by one trade over several others.**

Request respectfully submitted,

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