



February 26, 2020

Nathan D. Berry
Skarlatos and Zorich LLC
320 Market Street, Suite 600W
Harrisburg, PA 17101

Re: IAPMO Standards Council Decision Docket #02-21
Uniform Plumbing Code – Item(s): #125 (Public Comment(s): 1,2)

IAPMO Standards Council Decision TIA UPC-002-18
2018 Uniform Plumbing Code -- Section 715.3

Dear Mr. Berry:

I am transmitting to you herewith the following decision of the IAPMO Board of Directors.¹

A duly appointed Board Subcommittee of the IAPMO Board of Directors consisting of myself as Chairman, Allen Becker, Steven Panelli, Jeremy Stettler and Kevin Tindall held a hearing pursuant to the *Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council*, to consider the Petitions of NASSCO concerning the IAPMO Standards Council decisions referenced above.² The IAPMO Board accepted the recommendation of the Board Subcommittee in its entirety. Henceforth the announcement and rationale provided by the Committee has been adopted by the Board and is presented by the Subcommittee on behalf and with authority of the full IAPMO Board of Directors.

Under IAPMO rules, the Standards Council has been delegated the responsibility for the administration of the codes and standards development process, including adjudication of appeals and the issuance of the *Uniform Plumbing Code* (see the IAPMO Regulations §§ 1-7, 2-2). On a petition, the Board of Directors must give due deference to the judgment of the IAPMO Standards Council, and will not intervene unless the Petitioner demonstrates the existence of extraordinary circumstances requiring intervention to protect the integrity of the codes and standards development process (see the *IAPMO Regulations Governing Petitions* § 3; see also the IAPMO Regulations § 1-7).

Petitions to the Board of Directors are not intended to be a full appeal beyond that already afforded by the Standards Council but are rather an opportunity for the Board of Directors to intervene in the event the Board determines there to be extraordinary circumstances.

I. Petition to Revise Section 715.3, 2021 Edition of the *Uniform Plumbing Code*

As discussed herein below, in the opinion of the Board an extraordinary circumstance is presented here: the existence of a *complete* ban of a method of repair (cured-in-place pipe rehabilitation) as applied to a specific material (cast iron soil pipe) in the absence of any

¹ IAPMO President David Straub was unable to travel to Florida to serve as the Chairman of the Board Subcommittee.

² The undersigned recused from voting on the Board Subcommittee recommendation yet did participate in the discussion prior to the vote. At the meeting of the full Board of Directors to discuss the Subcommittee's recommendation the undersigned recused from the vote and did not participate in the discussion prior to the vote.

identified concerns for public health and safety and in the absence of evidence of any issues occurring in the field materially affecting any party to merit the draconian step of issuing a complete ban. This circumstance is anathema for a model plumbing code, an American National Standard, that serves as the industry leader. A complete ban of a process such as cured-in-place rehabilitation as applied, without qualification, to a given product is appropriate only if warranted. An outright ban - even when merited - arguably presents an extraordinary circumstance. The issuance of a ban in the absence of an overwhelming argument in its favor is an extraordinary circumstance requiring remedy.

The Board has determined the Petitioner, merely through recitation of the development process for Section 715.3 in the 2021 code development cycle, demonstrated an extraordinary circumstance, though not one arrived at through a procedural violation of the IAPMO *Regulations Governing Committee Projects*. Regarding procedures, the Board found Petitioner's petition and hearing testimony devoid of any new facts or arguments offered to dispute the finding by the Standards Council of no procedural error. Petitioner asserted violations of the IAPMO *Guide for the Conduct of Participants in the IAPMO Codes and Standards Development Process* and styled these, to Petitioner's detriment, as allegations of violations of IAPMO's ANSI-accredited standards development procedures.³ The Board defers to the good judgment of the IAPMO Standards Council in the Council's findings on procedural issues in this case.

Even absent a procedural error the Board will be compelled to act pursuant to the *Regulations* if extraordinary circumstances exist to compel such action. Grave health or safety concerns could constitute extraordinary circumstances. So, too, could utilization of the code development process in a way that is procedurally correct but distorted, nonetheless. Turning to the Petition, the Board is mindful that Authorities Having Jurisdiction (AHJs) have the duty and the right to determine for themselves whether a particular product or procedure is acceptable to it.⁴ If a plumbing code of installation and practice is going to prohibit a particular practice, product or device - thereby supplanting the role of the AHJ in determining acceptance - there should be overwhelming evidence of a public health or safety concern to support such prohibition. In this case, there is not overwhelming evidence. There is not ample evidence nor some evidence. There is no evidence of any public health or safety concern to balance on *that* side of the scale against the heavy weight of an outright prohibition on *this* side of the scale. This imbalance is a distortion of the code development process and requires remedy.

The Technical Committee had the opportunity to provide its rationale to support the ban.⁵ One oft-repeated rationale to support the ban was the concern that cured-in-place pipe rehabilitation violates the product standard for the manufacture of cast iron pipe. The Board finds this concern misplaced, even dubious, given that the standard concerns the cast-iron soil pipe during the course of manufacturing, yet the rehabilitation process is applied to pipe already installed in the field. The Board finds no evidence in the record that the product standards for cast-iron soil pipe address repair or rehabilitation once the pipe is installed. There is no evidence in the record of any concern that cured-in-place pipe repair - where permitted by the *Uniform Plumbing Code* for pipe of material other than cast iron - violates those respective product standards. There is no evidence in the record that violating the manufacturers standards is in and of itself a problem in the context of in-the-field rehabilitation and there is no evidence that cast-iron merits treatment distinct from pipes of other material.

³ The Board Subcommittee finds these allegations to be threadbare and conclusory and as such were disregarded by the Board.

⁴ The Board Subcommittee heard testimony on how this plays out, in practice, in the example of Oceanside, CA.

⁵ See Sections 4-3.5.1, 4-3.5.2 4-4.6.3, 4-4.6.4 of the IAPMO *Regulations Governing Committee Projects*.

During the development of the 2021 UPC, the *Uniform Plumbing Code* Technical Committee has stated one reason for this ban: the implementation of CIPP violates cast iron pipe dimensional standards. As alike the manufacturing standards, there is no evidence that violating the dimensional standards is in and of itself a problem in the context of in-place rehabilitation, given that this process is not actually creating cast-iron soil pipe. No reason was provided to address why should this process and the resulting pipe made of resin be required to meet the dimensional standards for cast-iron soil pipe. The Board finds the TC's arguments on this point unconvincing.

The *Uniform Plumbing Code* Technical Committee has also stated that the prohibition on cured-in-place pipe rehabilitation for cast iron soil pipe is justified because "...the language is necessary for the enforcement of the code..."⁶ Upon scrutiny, the Board finds that this is not suitable justification for instating a complete ban. "Necessary for enforcement of the code" is somewhat of a circular argument in the first place; when weighed against the extreme measure of a ban it fails in its purpose completely.

The Board anticipates that if, in the future, a prohibition as broad as this ban is proposed for inclusion into an IAPMO consensus code, the Proposal will be accompanied by an abundance of evidence of a public health or safety concern or problems in the field.

The Board hereby grants the Petition, in part, rendering Section 715.3 of the *2021 Uniform Plumbing Code* as set forth in the Appendix (attached).⁷

II. Petition to Reconsider TIA to Section 715.3, 2018 Edition of the *Uniform Plumbing Code*

The second NASSCO Petition to the Board is a related petition as it addresses substantially the same subject matter.⁸ As stated herein above, an outright ban presents an "extraordinary circumstance." Upon the presence of such exigent circumstances the Board will carry out its responsibility pursuant to the *Regulations* and review the proposed Tentative Interim Amendment (TIA).

In this context, the Board will assume the role of the IAPMO Standards Council in determining whether the proposed TIA should be issued.⁹ This endeavor requires an examination of the technical merit of an amendment and, next, whether an emergency nature exists to issue the amendment outside the normal standard development process.

The Board observes that the Technical Committee determined the TIA lacks technical merit.¹⁰ The Board acknowledges the difficulty of assessing the technical merit of an amendment that deletes existing code text. In this case the Board is presented with the deletion of a prohibition. So, the assessment of the technical merit of the amendment is essentially an assessment of the technical merit of the product, process or device affected by the prohibition. The board finds

⁶ See 2019 *UPC Report on Comments*, p. 180

⁷ The full relief requested can be found within the Petition, published online at <https://www.iapmo.org/hidden/2021-petition-filed-and-council-appeals-decisions/>.

⁸ With the consent of the Petitioner the two petitions were heard concurrently by the Board Subcommittee in one hearing.

⁹ See Sections 5, 6 of the IAPMO *Regulations Governing Committee Projects*.

¹⁰ A review of the TC comments reflects a consensus that there was *insufficient* merit as opposed to a total lack of technical merit.

ample evidence within the complete record favoring the technical merit of the cured-in-place rehabilitation of cast iron pipe. The Board finds nothing within the record to evince that this process as applied to this product is not technically sound. Moreover, the Board notes that the amendment returns Section 715.3 to that version that exists in the *Uniform Plumbing Code*, 2015 Edition. Accordingly, the Board determines that the TIA possesses technical merit.

Given that the TIA possesses technical merit, if the TIA involves an issue of emergency nature then the TIA should be processed. This TIA exhibits the emergency nature set forth in the *Regulations*, Section 5-2(f), addressing “an adverse impact on a product or method.” Section 5-2(f) of the *IAPMO Regulations Governing Committee Projects* reads, in its entirety: “The proposed TIA intends to correct a circumstance in which the revised document has resulted in **an adverse impact on a product or method that** was inadvertently overlooked in the total revision process, or **was without adequate technical (safety) justification for the action**” (emphasis added).

1. Indisputably an outright prohibition is an adverse impact.¹¹
2. As set forth in detail herein above, the Board determines there was a want of justification to support an outright ban.

Accordingly, the TIA shall be issued. As a result, Section 715.3 of the *2018 Uniform Plumbing Code* shall read as set forth in the Appendix (attached).

Sincerely,



David Gans
Chairman

Cc: IAPMO Code Dept.
Members, Mechanical Technical Committee
Members, Standards Council
IAPMO Board of Directors
Connie Wilson
Kaleel Rahaim
Tom Bowman

¹¹ The record is sparse as to whether the adverse impact (ban) and its consequences were considered by the TC or whether its effects were overlooked; the answer is irrelevant in the presence of inadequate technical justification.

Appendix

2018 UPC

715.3 Existing Sewers. Replacement of existing building sewer and building storm sewers using trenchless methodology and materials shall be installed in accordance with ASTM F1216.

2021 UPC

715.3 Existing Sewers. Replacement of existing building sewer and building storm sewers using trenchless methodology and materials shall be installed in accordance with ASTM F1216, ASTM F2561, ASTM F2599, or ASTM F3240.