



November 25, 2019

Sheila Joy, Executive Director  
NASSCO, Inc.  
2470 Longstone Lane, Suite M  
Marriottsville, MD 21104

Re: IAPMO Standards Council Decision Docket #02-21  
**Date of Decision: November 25, 2019\***  
2021 Uniform Plumbing Code – Section 715.3  
Item # 125

Dear Ms. Joy:

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

At 11:20 a.m. at their meeting on November 14, 2019, the IAPMO Standards Council considered your appeal requesting publication of the *2021 Uniform Plumbing Code* and the above-referenced code section as amended by Public Comment 2 to Item #125. This decision provided herein reflects the complete deliberation of the Council with respect to this Item.

### **Summary of Technical Committee Actions**

For a summary of actions taken with respect to Item #125 please refer to Exhibit A attached hereto.

### **Analysis of Appeal**

Appellant has raised issues to the Standards Council concerning the technical merit and procedural development of the Plumbing Technical Committee action on the initial Proposal and subsequent Public Comments submitted for Item #125. Accordingly, Appellant's relief requested of the IAPMO Standards Council is to override the results recommended by the development process and to issue the 2021 edition of the *Uniform Plumbing Code* incorporating the Public Comment to the above referenced Sections. Specifically, Appellant requests the acceptance of Public Comment 2.

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 the arguments raised by it.

### **I. Analysis of Appellant's Procedural Arguments**

Appellant's request of the Standards Council is for the Council to reverse an outcome that is, in Appellant's stated opinion, unjust. Appellant has made clear to the Council that the text at the core of the Appeal – first added to Section 715.3 in the 2018 edition of the *Uniform Plumbing Code* – is problematic. Appellant has made clear that it considers it a grave error that, in the development

of the *2021 Uniform Plumbing Code*, the Plumbing Technical Committee twice failed to correct this error and so, too, did the Association Assembly twice fail. Appellant has stated to this Council “the TC has failed to follow IAPMO’s Regulations,” and Appellant’s sole claim under this heading is that the Plumbing Technical Committee violated the IAPMO Regulations Governing Committee Projects in issuing a procedurally deficient Committee Statement accompanying the Committee’s rejection of the Proposal, rejection of Public Comment 1 and rejection of Public Comment 2.<sup>1</sup>

The Council takes notice of the Committee Statement provided by the Technical Committee accompanying the rejection of the Proposal. This statement exactly also accompanied the Technical Committee’s rejection of each of the Public Comments.<sup>2</sup> It is not surprising that the Committee Statement is the same in all three cases, since the Proposal and both Public Comments sought a practically equal result.<sup>3</sup> As stated to the Council by the Appellant at the hearing, “unfortunately, the public comments and member’s comments were rejected with the Technical Committee duplicating their original statement to justify their vote without revealing where this prohibition could be found.” The Appellant stated the development process on this Item included “erroneous substantiation” and “vague statements in support of its substantiation.” The Committee Statement is brief, and there is little doubt in the collective opinion of the Standards Council that, had the Technical Committee offered even a little more information, the Appellant may not feel as unsatisfied and frustrated by the development process.<sup>4</sup> The Regulations do not require such justification nor the need for the Technical Committee to prove any fact or statement. Ultimately, in the opinion of the Council, the concise statement fully complies with the applicable Regulations and the Council accordingly finds no procedural violation here.<sup>5</sup>

In the view of the Council, the evidence in the record does not provide any clear and substantial procedural basis on which to overturn the results recommended by the IAPMO codes and standards development process.

## **II. Analysis of Appellant’s Substantive Arguments**

Appellant contends that Section 715.3 of the 2018 and 2021 edition of the *Uniform Plumbing Code* contains internal inconsistencies and illogic. Appellant contends that unless or until the text at issue is excised, Section 715.3 in the 2018, 2021 and presumably any future editions of the *Uniform Plumbing Code*, is fatally flawed. The Council does not agree that the section is flawed, or even inconsistent. On a review of the full record, and a plain reading of 715.3, the Council determines that this section contains a requirement followed by a clarifying limitation. The first sentence does not specify any material, so it covers all material. The second sentence tackles a subset of ‘all material:’ cast-iron pipe. This treatment is not inconsistent with other sections on different topics in this installation code of practice.

The Plumbing Code would likely benefit from the addition of one word – “Notwithstanding” – at the start of the second sentence of Section 715.3. That addition would more clearly signal to the reader

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<sup>1</sup> The Standards Council is not adjudicating any procedural arguments addressing the development of the 2018 Edition of the *Uniform Mechanical Code*. To the largest extent possible, the Council treats any such allegations as substantive arguments for the merits of Appellant’s requested relief.

<sup>2</sup> The Committee Statement reads, in full: “The proposed deletion is being rejected as the language is needed for the enforcement of the code. Furthermore, such technology does not comply with current standards for cast-iron.”

<sup>3</sup> The Proposal and Public Comment 1 sought exactly the same result: deletion of one sentence. Public Comment 2 went further in also deleting the last sentence of Section 715.3.

<sup>4</sup> The Standards Council observes that the Appellant finds IAPMO’s process wanting, and that even when followed, “the manner in which the standards development process was transacted creates an appearance of impropriety and may cause ANSI and third parties to question the validity of all standards promulgated by IAPMO.”

<sup>5</sup> Regulation 4-3.5.1 states the requirements for a Committee Statement rejecting a Proposal; Regulation 4-4.6.3 for a Comment. The requirements are practically the same.

and user that, having set an installation requirement in the first sentence, the second sentence now proceeds to draw the fence in tighter. The Council finds that the absence of the helpful “notwithstanding” only renders the text inartful. The text is not illogical, nor is it inconsistent. Again, *rule followed by exception* is a common treatment; an *exception* is not an inconsistency.

The Appellant testified as follows:

*“Is the product an approved product or not? If you read this particular section, maybe you, too, seem to be confused about that particular section and whether or not it allows cured-in-place pipe, because it allows ASTM F1216 to be used. But then it says you can’t use cured-in-place pipe.”*

The Council notes that the Uniform Plumbing Code is a code of practice. The Code text does not “approve” or “disapprove” of any product. Understanding this fact may render Section 715.3 less inscrutable.

Substantively, Appellant alleges that the underlying rationale for the Technical Committee action on this Item throughout the development process was dubious. Appellant alleges a “fallacious rationale” was relied on by the consensus body as far back as the development of the 2018 edition of the code and continuing through the entire 2021 development cycle.

The full record reveals there was lengthy debate on this item throughout the 2021 development process. At the two most recent meetings of the 2021 cycle, this Item was deliberated extensively.<sup>6</sup> The consensus body heard extensive testimony at its Technical Committee meeting from cast-iron pipe manufacturers who shared their concerns with cured in place piping as a method for repairing or replacing cast iron pipe. Similar testimony was provided during the Council hearing. It is clear upon review of the record that the consensus body adopted, at the start, the technical position that cured in place piping does not comply with product standards that govern cast-iron pipe. Appellant strenuously argues this to be a “fallacious” statement or position, and advanced arguments along these lines throughout the 2021 cycle, and the 2018 cycle before it. Appellant testified to the Council that Appellant repeatedly presented testimony during the development process identifying the Technical Committee’s position as “misleading and factually untrue” – to no avail. There is no evidence at all, within the complete record, to show that the consensus body’s technical opinion was anything other than genuine and not affected by malice, fraud or deceit. Ultimately, the Standards Council will not referee and insert its technical judgment for the technical judgment of the Technical Committee. The Council elects not to pick winners and losers in a technical debate. There are no substantive grounds on which the Council will overturn the result recommended by the consensus process.

### **Final Decision**

In consideration of the aforesaid, the Standards Council denies Appellant’s request for relief regarding the actions taken by the Plumbing Technical Committee on Item #125. The effect of this decision is that the Committee’s final actions with respect to Item #125 will be included within the 2021 edition of the *Uniform Plumbing Code* as more specifically set forth in Exhibit B.

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<sup>6</sup> The most recent meeting was the final Association Technical Meeting, in Reno, NV in September 2019. The meeting prior to that was the open Technical Committee Meeting in Denver, CO in May 2019.

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  
Plumbing Technical Committee  
Standards Council  
Kaleel Rahaim, NASSCO  
Joanne Carroll, Subtegitic Group  
Connie Wilson, NASSCO  
Tom Bowman, NuFlow  
Mike Jennings, RotoCo, Inc.  
Bill LeVan, CISPI  
Dave Parney, CISPI  
Brian Conner, Charlotte Pipe & Foundry  
Dave Mann, Self

**\*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 Plumbing 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 02-21; Item #125** *2021 Uniform Plumbing Code, Section 715.3*

The 2018 Report on Proposals (ROP) published the results of the first committee ballot on Item #125, a code change proposal requesting to amend Section 715.3 “Existing Sewers” by deleting the second sentence of the section.

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

At their second Technical Committee meeting in Denver, CO, a majority of the committee members were in support of rejecting Public Comment 1, which sought to accept the original proposal as submitted. Upon written ballot of the Plumbing Technical Committee, they affirmed their decision to reject Public Comment 1.

The 2019 UPC Report on Comments (ROC) published the results of the second and final committee ballot on Public Comment 1, with a vote of 18 Affirmative; 3 Negative.

At the Association Technical Meeting Convention in Reno, NV, a motion was made to approve Item #125, Public Comment 1 as submitted. 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, which will not delete the second sentence of Section 715.3 “Existing Sewers.”

**Exhibit B**  
**Result for #02-21**

A separate Item #126, Public Comment 1 was accepted as amended by the Technical Committee to include three newly added ASTM standards to the end of the first sentence of Section 715.3 "Existing Sewers" as well as to Table 1701.1.

Thus, the 2021 Uniform Plumbing Code at Section 715.3 will be amended from the previous edition, and will read as follows:

**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. Cast-iron soil pipes and fittings shall not be repaired or replaced by using this method aboveground or belowground. Replacement using cured-in-place pipe liners shall not be used on collapsed piping or when the existing piping is compromised.

**IAPMO Regulations Governing Committee Projects**  
**Section 1-7**

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**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).

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

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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.