

NATIONAL FIRE PROTECTION ASSOCIATION
STANDARDS COUNCIL HEARING

AGENDA ITEM 11-3-15
TENTATIVE INTERIM AMENDMENT 1020

APPELLANT: Sam Francis
American Wood Council

Day/Date: Monday, February 28, 2011

Place: Caribe Hilton Hotel
Los Rosales Street
Boardroom 8-9
San Juan, Puerto Rico

Time: 12:57 p.m. to 1:36 p.m.

Reporter: Marty E. McArver, RDR, CA-CSR, GA-CCR, CLR

REALwriters of Puerto Rico, Inc.
www.realwriterspr.com

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

APPEARANCES

JIM PAULEY, CHAIRMAN
Square D. Company/Schneider Electric

Amy Beasley Cronin, NFPA Secretary

Linda J. Fuller, NFPA Recording Secretary

Maureen Brodoff, Esq., NFPA Legal Counsel

STANDARDS COUNCIL MEMBERS

Kerry M. Bell, Underwriters Laboratories, Inc.
Shane M. Clary, Bay Alarm Company
David P. Demers, Demers Associates, Inc.
Ronald R. Farr, Michigan Bureau of Fire Services
J.C. Harrington, FM Global
Roland J. Huggins, American Fire Sprinkler Assoc.
Joseph M. Jardin, New York City Fire Department
Fred M. Leber, Leber/Rubes Incorporated
Danny L. McDaniel, Colonial Williamsburg Foundation
James A. Milke, University of Maryland
Richard P. Owen, Underwriters Laboratories Trustee
Michael D. Snyder, Dow Corning Corporation

ALSO PRESENT AS OBSERVER
Andy Wandell, NFPA Staff

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 SAN JUAN, PUERTO RICO; MONDAY, FEBRUARY 28, 2011

2 P R O C E E D I N G S

3 MR. PAULEY: I'll call this meeting
4 of the Standards Council to order.

5 We are currently going to take on
6 a hearing. It is Agenda Item 11-3-15.

7 In a moment I'm going to ask the
8 members of the Standards Council and
9 staff -- I'll go around and ask them
10 to introduce themselves for the record.

11 Then I'll ask everyone else in
12 the room to introduce themselves for
13 the record.

14 Then I'll go over, very quickly,
15 how we're going to do the hearing today.

16 My name is Jim Pauley. I'm
17 Chairman of the Council.

18 MS. BRODOFF: Maureen Brodoff.
19 I'm on NFPA staff and legal counsel
20 to the Standards Council.

21 MR. MILKE: Jim Milke, member of
22 council.

23 MR. HARRINGTON: J.C. Harrington,
24 member of council.

25 MR. HUGGINS: Roland Huggins,

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 member of council.

2 MR. CLARY: Shane M. Clary, council
3 member.

4 MR. OWEN: Richard Owen, member of
5 council.

6 MR. McDANIEL: Danny McDaniel,
7 member of council.

8 MR. FARR: Ronald Farr, member of
9 council.

10 MR. DEMERS: David Demers, member
11 of council.

12 MR. JARDIN: Joe Jardin, member of
13 council.

14 MR. LEBER: Fred Leber, member of
15 council.

16 MR. SNYDER: Michael Synder, member
17 of council.

18 MR. BELL: Kerry Bell, member of
19 council.

20 MS. FULLER: Linda Fuller, NFPA
21 staff.

22 MS. CRONIN: Amy Cronin, NFPA staff
23 and secretary to the NFPA Standards
24 Council.

25 MR. PAULEY: Sam, do you just want

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 to introduce yourself for the record?

2 MR. FRANCIS: Sure.

3 Sam Francis, American Wood Council.

4 MR. PAULEY: And, Andy, if

5 you'll --

6 MR. WANDELL: Andy Wandell, NFPA

7 staff.

8 MR. PAULEY: Thank you.

9 A couple of things about the
10 hearing, as we get started. One, as
11 you all figured out, the stenographer
12 is recording this session. So I'll
13 remind everyone to please preface your
14 remarks with your name so that we can
15 ensure that we get the record accurately
16 attributed to the correct individual.

17 Also, the way I'm going to do the
18 hearing today is, Sam, I'm going to give
19 you about ten minutes to basically lay
20 out for the council your views on this
21 TIA.

22 We do have all of the written
23 material that's been in front of us,
24 and the council members have had that
25 material. So I would encourage you

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 not to go back over exactly the written
2 material, but if you'd kind of use that
3 ten minutes to sort of sum up where
4 you see this needing to go from your
5 perspective.

6 I'll then open it up to questions
7 from the members of the Standards
8 Council.

9 When we close those, I'll give
10 you about five minutes to wrap up, and
11 that's how we'll conclude the hearing
12 today.

13 So I'm going to turn it over to
14 you now.

15 MR. FRANCIS: Thank you.

16 Ladies and gentlemen, I'm Sam
17 Francis, American Wood Council.

18 Some of you know me as American
19 Forest & Paper Association. We're
20 now two entities, separate but the
21 same -- or the same but separate.
22 I forget.

23 I'm the appellant, I believe.

24 My memory -- I'm old as the hills
25 now, and you'll have to forgive these

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 brief lapses of memory.

2 I'm the appellant in this TIA 1020
3 issue. And, frankly, I came down here
4 because it seems to me the council has
5 to answer for itself three questions,
6 really.

7 And that is has the process, has
8 the procedure been followed? Has due
9 process been given to all parties?
10 But, mostly, the rules and regulations
11 you-all developed, have they been
12 followed?

13 Secondly, there's a TIA here, a
14 Tentative Interim Amendment. Is it of
15 an emergency nature that needs to move
16 forward separately from other processes?

17 And, thirdly, are there substantive
18 issues within this TIA that were
19 properly addressed in the processing
20 of the TIA, or did that get left behind
21 somehow?

22 Well, specifically with respect to
23 the process, I just want to reiterate
24 the definition of consensus, right
25 out of the regulations, and that's

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 "substantial agreement" -- this is an
2 excerpt -- "substantial agreement means
3 much more than a simple majority, but
4 not necessarily unanimity. Consensus
5 requires that all views and objections
6 be considered and a concerted effort
7 be made toward their resolution."

8 At the June Technical Session, I,
9 among others, submitted NITMAMs. And
10 the association voted to return 654
11 to the committee.

12 The committee rejected that.

13 I appealed that to you-all.

14 And the Standards Council supported
15 that, sent it back. And, among other
16 things, that decision said that it would
17 be returned in conformance to 4.4.7.3
18 of the regs that says you're going back,
19 not opening it for new proposals but,
20 rather, to deal with the existing ROP.

21 And, further, in that section,
22 by the way, it requires then that the
23 committee take that ROP, issue a new
24 call for comments, which would then
25 supercede all previously filed public

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 and TC comments, and then do a new ROC.

2 Instead, the committee developed a
3 TIA based on previous comments, which is
4 at least, in my mind, a violation of the
5 spirit of the Standards Council decision
6 in August of last year, if not the exact
7 letter of that decision, saying go back
8 to the ROP, call for comments, and so
9 forth.

10 And coupling that to the definition
11 of consensus -- a concerted effort be
12 made toward a resolution -- I submit
13 to you, that's no effort to resolution.
14 That's a bypassing of the rules in an
15 attempt to put forward those committee
16 proposals and subsequent committee
17 comments that were developed, which
18 is not what this committee asked.

19 And alls we were asking for is an
20 opportunity to go back to committee and
21 have our comments in the ROC given due
22 consideration.

23 In an e-mail to committee members,
24 the chair observed that some people --
25 myself -- represented an industry, the

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 American Wood Council, that was not
2 subject to 654.

3 That's kind of true. Our members
4 in the American Wood Council are
5 interested in wood and wood products.
6 And 664, of which I am a member, would
7 apply.

8 But our members also have
9 interests -- they do business that's
10 regulated by 654. So our member
11 companies have an interest in this.

12 Furthermore, in the rules it says
13 anyone may make a comment. So I would
14 like to think that I fall within the
15 category of anyone. And, therefore, our
16 comment should be given the same weight
17 and consideration as anyone else's.

18 Okay. So much for process.

19 Emergency. What of the emergency?
20 There are six factors you have to
21 consider. Is there an error or omission
22 overlooked during the regular process?

23 This is our third appeal to the
24 Standards Council. I don't think we've
25 overlooked much, nor has the committee.

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 This is pretty well thrashed out.

2 There's no conflict within the
3 document. In fact, I would submit to
4 you, if you look at the proposed TIA,
5 it will create an internal conflict
6 in 654. I believe that you all have
7 received an e-mail from --

8 Oh, who the hell sent that in...
9 I've been copied on so much, I've lost
10 track.

11 -- a law firm. And I think that
12 they've correctly pointed out that in
13 6.1.3 there are two conditions, an (a)
14 and a (b) -- 1(a), 1(b), 2(a), 2(b) and,
15 frankly --

16 This is the one that talks about
17 1/32 of an inch versus a 1/64 over
18 5 percent of the area.

19 And, frankly, you can never get
20 to the 1(a) condition or the 1(b)
21 condition except in one specific
22 instance where the unlikely case of
23 the volumetric measurement exactly
24 equaling the area measurement. It's
25 a rare, never-to-occur case. You

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 never get to (a). That's a
2 misrepresentation of those
3 conditions as an option.

4 Item C under emergency, does the
5 TIA address a previously unknown hazard.

6 I don't think so. In their
7 discussion in the ROP, the committee
8 never mentioned any substantiation.

9 But in response to our comments
10 in the ROC, a specific research project,
11 1983, was referenced.

12 So this is -- And, in fact, one
13 of the committee members has written a
14 paper regarding that, in 1992. This
15 isn't news.

16 Is there evidence to support the
17 conclusion that the proposed TIA would
18 lessen a recognized hazard?

19 Well, I'll come back to that in
20 a moment. The short answer is no.

21 And does the TIA advance the art
22 or -- Our position is it's merely a
23 change in the subjective perception
24 of risk and mitigation of that risk
25 or acceptable risk. There's simply

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 nothing of an emergency nature.

2 Further to that point, I submitted
3 to you-all the transcript of the hearing
4 in Las Vegas for the Technical Session.
5 And on Page 64 of that transcript, a
6 testifier testified that --

7 This was John Cholin, by the way,
8 a member of 654.

9 John said: "We have time to do
10 this right. There's no need to rush.
11 So while there's... merit in the
12 proposal --"

13 And at that point, the moderator,
14 Mr. Clary said, "One minute."

15 John's train of thought, anyway,
16 there's no need to rush. And a TIA is
17 a rush. This is the fast-track because
18 we don't have time to wait for the ROC,
19 and we're on the short cycle anyway.
20 So do we need to rush? No.

21 And, by the way, committee chair
22 was there and was offered the chance
23 to comment, and did not refute that --
24 and I quote -- "We have time to do this
25 right."

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 So from an emergency point of
2 view, I submit to you-all, no emergency
3 exists. These items should be
4 considered in the ROC process.

5 And that's all we came asking for
6 the first time, the second time. And
7 that's all I'm asking you-all for this
8 time. We'd like for our point of view
9 to be given full consideration and we'd
10 like to have reasonable chance to work
11 it out with the committee.

12 Technically, is there anything
13 wrong with the TIA? Well, yeah, but I
14 don't want to spend -- You got document
15 after document submitted to you. I'll
16 just focus on one thing. The TIA
17 took what was in 6.1.3, I believe,
18 a dimension of 1/32 of an inch.

19 And, by the way, this is one of
20 the things that the membership focused
21 on. Who, among NFPA members, are
22 enforcers, fire marshals, for example?
23 If we did what the ROC asked us to do,
24 it would take weeks to determine if a
25 facility was in compliance, because

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 we would no longer be able to go out,
2 measure to see if the dust layer
3 exceeded a 32nd of an inch.

4 Now we had to do -- not optionally;
5 we had to do bulk density -- measure a
6 weighted average of dust distribution.
7 And to do the determination of density,
8 we had to take that back to the
9 laboratory. And, by the committee's
10 testimony, that's going to take weeks
11 to determine.

12 So the 1/32 of an inch was the
13 focus. The TIA drops that to a 1/64 of
14 an inch. No reason for dropping it to
15 that level. Moreover, that number has
16 never appeared in any of the literature
17 that they've cited in their comments.

18 But in terms of substantiation,
19 back to the hearing testimony,
20 Mr. Cholin also said that in the thirty
21 years I've been dealing with combustible
22 dust, investigating accidents, I've
23 never performed an investigation where
24 the deflagration occurred in a facility
25 that complied with the current edition

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 of 654. In every incident we've
2 investigated, it could have been
3 prevented by merely complying with
4 the current document, which was, at
5 that time, the 2006 edition of 654.

6 Moreover, former OSHA Chief
7 Edwin Foulke said, in his press
8 conference after the Imperial Sugar
9 incident, which led to much of the
10 current furor about dust, quote, "The
11 investigation concluded that this
12 catastrophic incident could have been
13 prevented if Imperial Sugar had complied
14 with existing OSHA safety and health
15 standards."

16 "OSHA" -- This is not part of the
17 quote, but part of the New York Times
18 article quoting him. "OSHA also cited
19 two General Duty Clause violations,"
20 violations of acceptable national
21 consensus standards, which includes 654.

22 MR. PAULEY: Sam, if you could,
23 begin to start to wrap up a little bit.

24 MR. FRANCIS: So if you look at
25 Mr. Cholin's ballot statement, he

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 offered a table that shows you locations
2 that have had incidents, and the dust
3 layers -- just look at it -- between
4 a foot, 12 inches. And the smallest
5 was at the Shoe Tree Plant, which was
6 2 inches of dust. And so on that basis
7 we're going to drop it from 1/32 to
8 1/64 inch, and create other problems
9 within the document? I think not.

10 The only data ever submitted to
11 substantiate or to refute the necessity
12 of these changes has been offered by
13 Mr. Cholin, which says that if we
14 only had compliance with the existing
15 standard, these incidents would not
16 have occurred. That is substantiated
17 by the testimony of the chief of OSHA.

18 So I think this TIA fails, first,
19 procedurally, because we didn't go back
20 to the ROC. I haven't had a chance to
21 substantially work out differences with
22 the committee. It failed procedurally.

23 Second, it fails to rise to an
24 emergency nature.

25 And, third, it's not even

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 technically sound within itself, and
2 will create a conflict within the
3 document.

4 Thank you very much.

5 MR. PAULEY: Thank you.

6 I'm now going to open it up to
7 questions from the members of the
8 Standards Council.

9 MR. HUGGINS: Roland Huggins,
10 council member.

11 Sam, it was identified in the
12 paperwork that was submitted, to some
13 degree; but, very briefly, what would
14 be the ramification or the impact on
15 industry if this went through?

16 MR. FRANCIS: Well, if you accept
17 that OSHA implements this via the
18 General Duty Clause, there's a huge
19 cost impact. Literally --

20 Remember, folks who have submitted
21 comments to you include the feed and
22 grain association. And they represent
23 food processors as well as animal food
24 processors.

25 The American Forest & Paper

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 Association, 75 percent of the paper
2 industry. American Wood Council.

3 American Chemistry Council, I
4 have no idea how large of the industrial
5 segment they represent.

6 But you've got comments from a
7 lot of people. And I would submit to
8 you that because OSHA applies these
9 standards retroactively, and you have
10 every facility in America, from a
11 mom-and-pop sawmill up to DuPont's
12 big plants --

13 I know that Georgia-Pacific says
14 it's going to cost them \$80 million to
15 retrofit without the TIA. So it's a
16 staggering amount of money to comply,
17 because it will be applied
18 retroactively.

19 But that's a whole other question.
20 I'd love to spend a little time on the
21 retroactivity from OSHA.

22 But the answer is it's a big
23 impact and a very expensive one, for
24 no improvement in risk mitigation that
25 I can tell. The data doesn't support

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 it.

2 MR. PAULEY: Mr. Bell?

3 MR. BELL: Kerry Bell, member
4 of council.

5 The submitter's substantiation
6 in the second paragraph suggests that
7 the existing text in the body of 654
8 doesn't provide sufficient guidance for
9 determining a dust deflagration hazard.

10 In your opinion do you think the
11 existing standard provides sufficient
12 guidance, and it's providing for
13 consistent interpretation out in
14 the field?

15 MR. FRANCIS: Yes. The short
16 answer is yes. And that's because it
17 is not -- Yes, it's not specific and
18 very narrowly focused. And that's what
19 we would call engineering judgment.

20 In answering your question, you
21 have a letter from John Cholin. And
22 John said, "Hey, I voted for this. Then
23 I changed my vote because I tried to
24 apply it to one of my clients, and I
25 couldn't do it."

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 And I talked to John before coming
2 here to see what-all had transpired
3 with him. And among the other things
4 he told me, he said that he and John
5 Valiulis wrote Appendix D initially
6 for 664, of which I am a member. And
7 it was intended to be an example of
8 how to apply it so that engineers
9 could exercise engineering judgment
10 in mitigating risk.

11 MR. PAULEY: Mr. Harrington?

12 MR. HARRINGTON: J.C. Harrington.

13 Sam, I think you mentioned that
14 your industry is involved more closely
15 in 664 than 654. But do you also have
16 industry reps that sit on 654 that
17 participated in this subject during
18 ROP/ROC or --

19 MR. FRANCIS: Yeah, I'm employed by
20 American Wood Council. And specifically
21 the American Wood Council's focus is
22 more onto building codes and standards,
23 makers of wood and wood products.

24 But those companies like
25 Georgia-Pacific, Boise Cascade, and

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 Weyerhaeuser, among the several hundred
2 member companies, also have facilities
3 involved in paper and so on. And, yeah,
4 one of our members sits on 654. Brice
5 Chastain represents Georgia-Pacific on
6 654.

7 MR. HARRINGTON: And he
8 participated in these subject
9 discussions as part of the PASS
10 cycle process, ROP/ROC? He was
11 at the meetings --

12 MR. FRANCIS: At the meetings?

13 MR. HARRINGTON: He participated
14 in the discussions? He was present
15 there?

16 MR. FRANCIS: To the best of my
17 knowledge, some of them.

18 MR. HARRINGTON: Okay.

19 MR. FRANCIS: I know that his
20 schedule didn't permit him to attend
21 one meeting in the ROC phase, which was
22 hastily called. I think he had only a
23 week's notice. But, yeah, he attended
24 most.

25 MR. HARRINGTON: Okay.

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 MR. PAULEY: Mr. Clary.

2 MR. CLARY: Yes. Thank you.

3 Shane M. Clary, council member.

4 Mr. Francis, in looking at the
5 ballot results for this TIA, the first
6 ballot, one person, individual, voted
7 against. That was Mr. Chastain, who
8 obviously represents --

9 MR. FRANCIS: Yes.

10 MR. CLARY: I take it, is he a
11 directed vote of your association?

12 MR. FRANCIS: Is he a directed
13 vote?

14 MR. CLARY: Right.

15 MR. FRANCIS: No.

16 MR. CLARY: Okay.

17 MR. FRANCIS: He represents
18 himself -- Georgia-Pacific, as a
19 company.

20 MR. CLARY: Who happens to be,
21 then, a member of --

22 MR. FRANCIS: Right.

23 MR. CLARY: Okay.

24 MR. FRANCIS: Coincidentally a
25 member of ours.

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 MR. CLARY: Okay. Then it
2 looks like, on the re-ballot, of
3 course Mr. Cholin switched his vote.

4 And then Mr. Febo, do you happen
5 to know who he represents?

6 MR. FRANCIS: Febo?

7 MR. CLARY: Right.

8 MR. FRANCIS: I think he works
9 for FM.

10 MR. HARRINGTON: Yeah, he works
11 for FM Global.

12 Just clarifying his question.

13 MR. CLARY: And I thank
14 Mr. Harrington for the clarification.

15 I guess my point is, of the members
16 that were eligible to vote, 29, one did
17 not return. So 25 on the committee
18 voted to accept this TIA, and only 3
19 disagreed.

20 So I guess -- And I don't wish
21 to put words in your mouth. But
22 obviously in the consensus-based
23 process -- and, you know, we have a
24 balanced committee -- they all agreed
25 that the TIA was valid.

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 So what are they seeing that
2 basically these organizations that have
3 sent in -- or what are they not seeing
4 that these organizations that have sent
5 in the written testimony are not seeing?

6 MR. FRANCIS: I think you just
7 asked me what am I not seeing?

8 MR. CLARY: No, no, no.
9 What is the committee not seeing --

10 MR. FRANCIS: Oh.

11 MR. CLARY: -- that these various
12 trade associations that are having --

13 I mean, obviously they're saying
14 that there's an emergency nature to make
15 this change --

16 MR. FRANCIS: Yes.

17 MR. CLARY: -- from the 1/32 of
18 an inch to the 1/64 of an inch. In a
19 consensus-based committee, 25 members
20 agreed with the TIA. And, yet, all
21 these various trade organizations are
22 saying, wait a second, time out, whoa.

23 MR. FRANCIS: And in the documents
24 I submitted to this council is a copy of
25 an e-mail from another member who failed

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 to get his change of vote on time, so...

2 MR. CLARY: Correct.

3 MR. FRANCIS: I'm tempted to just
4 say to you I respectfully decline to
5 answer, simply because I didn't want to
6 get into this aspect of the development.

7 MR. CLARY: Okay.

8 MR. FRANCIS: We've only come here
9 asking for a chance to participate fully
10 and be heard, as was directed in your
11 August decision. And the committee did
12 something else.

13 What are they missing? I don't
14 know.

15 MR. CLARY: Okay.

16 MR. FRANCIS: If I knew, I would
17 have written it down in my comment to
18 them.

19 MR. CLARY: Okay. Fair enough.

20 MR. FRANCIS: We believe it's
21 not an emergency and it isn't even
22 substantiated by the research report
23 1983, that they submitted.

24 And if I may elaborate on just
25 that one point, the National Grain

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 and Feed Association ponied up a
2 million-and-a-half dollars to have
3 FM do that research to try to come
4 up with some solutions to these kinds
5 of problems. They wanted to know,
6 what can we do in our grain elevators
7 to prevent dust explosion hazards.

8 Well, what the research found was
9 embraced in old editions of the code,
10 so --

11 I'm sorry. Anyway, it's not
12 that -- This is being cast as industry
13 versus the world. And, frankly, we're
14 interested in mitigating these hazards,
15 because OSHA is now coming around and
16 fining violators substantial amounts
17 of money.

18 Before OSHA came around in 1983,
19 we ponied up millions of dollars.
20 That's substantial. But now you're
21 talking about billions to incorporate
22 the requirements of a TIA, because
23 every operation in America involved in
24 creating dust is in instant violation,
25 instantly.

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 MR. CLARY: So OSHA would now be
2 enforcing the TIA?

3 MR. FRANCIS: Yeah. They
4 already -- Well, they're already, under
5 the General Duty Clause, enforcing NFPA
6 documents, including 654. And they've
7 indicated that, yeah, they'll have that
8 one at your door next week.

9 MR. CLARY: Okay. Thank you.

10 MR. PAULEY: Mr. Jardin.

11 MR. JARDIN: Joe Jardin, member
12 of council.

13 Mr. Francis, in your testimony
14 you stated that as a follow-up to that
15 council decision following the return to
16 committee decision, that the technical
17 committee took the action of attempting
18 to issue this TIA in lieu of some other
19 direction. You know, that's what it
20 sounded like.

21 MR. FRANCIS: Yes.

22 MR. JARDIN: Can you explain to us
23 what, to your knowledge, the committee
24 is doing as a follow-up to that return
25 to the committee action in regards to

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 this topic?

2 MR. FRANCIS: Well, frankly, this
3 is the second TIA that's come out in
4 response to this.

5 I was looking for a report on
6 proposal, and I haven't seen it, so
7 that we can begin to develop comments
8 to work with those members of 654 to
9 do what the definition of consensus
10 says, which is achieve some reasonable
11 consensus on the question. And I
12 haven't seen any of those things.

13 This is the second TIA attempting
14 to implement what was in their comments
15 and the committee proposals, which is
16 what the association rejected in the
17 first place.

18 I don't know what they're doing.
19 I'm not a member of that committee.
20 This is what I've seen.

21 MR. PAULEY: Mr. Demers.

22 MR. DEMERS: David Demers, council
23 member.

24 What's the take on this issue by
25 the pharmaceutical industry? I haven't

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 seen anything coming from them, and
2 it's certainly -- Dust is certainly
3 a big issue with the pharmaceutical
4 production.

5 MR. FRANCIS: I don't know. I
6 only -- I only know about Grain and
7 Feed and Chemistry and so forth because
8 they submitted comments and I read their
9 material, and I have contacted some of
10 those individuals.

11 I don't -- I don't know what their
12 position is. And I believe that, like
13 the American Wood Council and AF&PA, I
14 think the pharmaceutical industry has a
15 similar relationship with the American
16 Chemistry Council. I think there's
17 crossover there as well. I don't know
18 what they're thinking.

19 MR. DEMERS: Thank you.

20 MR. PAULEY: Additional questions?

21 Jim Pauley, chair to council.

22 Just a question from -- just so I
23 have a general understanding, although
24 the wording may be different, I'm
25 presuming that the topic, the subject,

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 of the TIA was also in or debated during
2 the 654 cycle that ultimately just
3 passed and ended up being returned.

4 So with respect to the point that
5 you're raising about how do I measure
6 this or what is the level or is there
7 a hazard --

8 MR. FRANCIS: Yeah.

9 MR. PAULEY: -- was there debate
10 that went on during the last cycle over
11 this same topic?

12 I mean, obviously the committee
13 arrived at a position on that that got
14 returned. But I'm trying to understand
15 how much is repeating that same issue,
16 what's new, and did the debate occur.

17 MR. FRANCIS: There was debate over
18 that. This was, in fact, part of --

19 The sections that are questioned
20 were subject of NITMAMs. And it was
21 covered in the Annual Technical Session
22 discussion.

23 The difference here is that we're
24 now -- Well, it changes its application,
25 brings forward information from what

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 was guidance in Appendix D, to make it
2 mandatory.

3 But the discussion of those items
4 had occurred. And the response is now
5 to lower it. In my mind, at the annual
6 session, the idea that I couldn't just
7 go measure the thickness of a layer of
8 dust but, rather, I had to collect the
9 dust, I had to measure its density, its
10 moisture content -- and, in fact, in
11 the original proposal, I had to know
12 the size of the fibers. And I couldn't
13 do that. So a fire marshal coming out
14 is ill equipped to do that.

15 What we've done now is essentially
16 negate the provision that was debated on
17 the floor about separation by distance
18 and how much dust could occur in that
19 separation; and we're now applying a
20 new dimension, 1/64 of an inch rather
21 than 1/32, to the condition. So the
22 numbers are changing.

23 But, yeah, these subjects were
24 part of the discussion at the ROC and,
25 again, at the Annual Tech Session.

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 MR. PAULEY: Thank you.

2 MS. BRODOFF: This is Maureen
3 Brodoff.

4 The way I understand this TIA
5 is that it's a clarification of the
6 provisions on the dust layer depth
7 criteria in 654.

8 Is it your position that the dust
9 layer depth criteria in 654 currently
10 is clear?

11 MR. FRANCIS: Yes.

12 And Appendix D was not intended --
13 It's a boundary condition.

14 The authors tell me their intent
15 was only to offer an example of how to
16 apply good engineering to the conditions
17 that were in Chapter 6 and 7 of the text
18 of 2006. John Cholin and...

19 Good old what's his name. I said
20 it before, just --

21 MR. LEBER: John Valiulis.

22 MR. FRANCIS: Dr. Valiulis, yeah,
23 who had the coolest job in America,
24 and left. He got to blow things up
25 for FM all the time. I thought that

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 was just the coolest job there was.

2 MR. PAULEY: Ms. Cronin.

3 MS. CRONIN: Amy Cronin, Standards
4 Council's secretary.

5 As a follow-up to Maureen Brodoff's
6 question, the 1/32 of an inch criteria
7 that exists now in the document, do you
8 believe that properly characterizes the
9 hazard regardless of the dust type when
10 compared to the bulk density method?

11 MR. FRANCIS: Well, firstly,
12 the bulk density can be applied. I
13 don't think that the current Chapter 6
14 prohibits it. That's part of an
15 engineer's duty, to apply that. And I
16 think John Cholin's letter to you-all
17 goes to that point.

18 And, secondly, we don't disagree
19 that there's merit in the proposal.

20 Back to the ROP -- The disagreement
21 between industry and the committee has
22 never been that these notions have no
23 merit whatever, but, rather, the manner
24 in which they are implemented into the
25 text.

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 And our comments were completely
2 disregarded. And what's been happening
3 is we're getting farther apart instead
4 of closer together.

5 I think that 1/32 -- Look at
6 the TIA. Now it's no longer in a
7 distribution. So if you had collected
8 the dust in the room and put it into
9 a container to make it safe, if it's
10 2.6 cubic feet in a thousand feet of
11 building -- 2.67 cubic feet will fit
12 in a 60-gallon trash can -- you're in
13 violation. Because the way that TIA
14 is written, it can be in a single pile
15 or enclosed in a container.

16 So the TIA has created internal
17 conflict and made it nearly impossible
18 to comply.

19 And, in answer to your question,
20 1/32 existed, and you could apply bulk
21 density. That's what good engineering
22 judgment is about.

23 The appendix from which that was
24 taken was intended, written by Cholin
25 and Dr. Valiulis, to clarify how you

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 could do that.

2 MR. PAULEY: Jim Pauley, chair of
3 the council.

4 I guess, just dovetailing a little
5 bit on that point, the issue that you're
6 raising about conflicts that it creates
7 within 654, were these raised during
8 the discussion, debate, and balloting
9 of the TIA? I mean, are these also the
10 subjects of the public comment, of --

11 MR. FRANCIS: I believe that we
12 raised this question during the comment
13 on the TIA. But, frankly, I don't
14 remember. I believe so.

15 MR. PAULEY: Other questions?

16 Okay. I'll close off the questions
17 at this point.

18 And, Sam, if you've got any wrap-up
19 at all -- I mean, we've kind of had a
20 back-and-forth dialogue, but if you have
21 any wrap-up or final comments that you
22 want to make or --

23 MR. FRANCIS: No, sir.

24 I don't believe that it rises to
25 the nature of an emergency, creates

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

1 conflict, and doesn't meet the process
2 requirements that you-all laid down
3 last August. That's my wrap-up.

4 MR. PAULEY: Great. Thank you.

5 With that, I'm going to bring the
6 hearing to a close.

7 I want to remind everyone involved
8 that the ultimate decision of the
9 Standards Council will be issued in
10 writing from Ms. Cronin, the secretary
11 of the council.

12 No member of the council or member
13 of NFPA staff is permitted to convey
14 the results of that discussion or the
15 hearing. That written decision will
16 be the only way that the ultimate
17 decision of the council will be
18 conveyed.

19 With that, I will bring this
20 hearing to a close.

21 We are off the record.

22 (Whereupon, at 1:36 p.m. the
23 proceedings are concluded.)

24

25

NFPA Standards Council Hearing * TIA 1020 * 2/28/11

REPORTER'S CERTIFICATE

I, MARTY E. McARVER, Registered Diplomate Reporter with the National Court Reporters Association, California Certified Shorthand Reporter No. 2769, Georgia Certified Court Reporter No. 2563, Florida Professional Reporter, and Certified LiveNote Reporter, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

MARTY E. McARVER