



Dawn Michele Bellis
Secretary, Standards Council

22 August 2016

To: Interested Parties

Subject:

Standards Council Decision (Final):	D#16-1
Standards Council Agenda Item:	SC#16-4-14-d
Date of Decision:	6 April 2016
<i>TIA No. 1209 on NFPA 780, Standard for the Installation of Lightning Protection Systems, proposed 2017 Edition</i>	

Dear Interested Parties:

At its meeting of April 5-6, 2016, the Standards Council considered an appeal on the above referenced matter. On April 15, 2016 NFPA published the Council's decision on the appeal in the form of a "Short" decision which briefly stated the outcome of the appeal and which indicated that a full Final decision on the appeal would be issued in due course and sent to all interested parties as soon as it became available.

The Council's Final decision is now available and is attached herewith.

Sincerely,

A handwritten signature in black ink that reads "Dawn Michele Bellis".

Dawn Michele Bellis
Secretary, NFPA Standards Council

- c: D. Berry, S. Everett, L. Fuller, R. Roux
Members, TC on Lightning Protection (LIG-AAA)
Members, NFPA Standards Council (AAD-AAA)
Individuals Providing Appeal Commentary



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SUMMARY OF ACTION (for convenience only; not part of official decision): *The Standards Council voted to deny the appeal to overturn the Technical Committee ballot results on both technical merit and emergency nature for Tentative Interim Amendment No. 1209 on the proposed 2017 Edition of NFPA 780, Standard for the Installation of Lightning Protection Systems.*

DECISION:

At its meeting of April 5-6, 2016, the Standards Council considered an appeal from OMNI LPS (“OMNI”), Heary Brothers Lightning Protection, and Lightning Master Corporation (OMNI, Heary Brothers Lightning Protection, and Lightning Master Corporation collectively referred to herein as “Appellants”) regarding the issuance of proposed Tentative Interim Amendment No. 1209 (“TIA”) on the proposed 2017 Edition of NFPA 780, *Standard for the Installation of Lightning Protection Systems*. The appeal was supported by the National Lightning Protection Corporation.

Specifically, the appeal requested that the Council reverse the Technical Committee’s failure to achieve the necessary support for recommendation to issue the proposed TIA in accordance with Section 5.6 of the *Regulations Governing the Development of NFPA Standards (“Regs”)*.

The TIA proposed to amend Section 1 of NFPA 780 by adding new Section 1.8 and associated Annex material as follows:

1.8 Equivalence. Nothing in this standard is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety over those prescribed by this standard.

1.8.1 Technical Documentation. Technical documentation shall be submitted to the authority having jurisdiction to demonstrate equivalency, including without limitation equivalency based on the history of performance in the field.

1.8.2 Approval. The system, method, or device shall be approved for the intended purpose by the authority having jurisdiction, including without limitation the NFPA, Underwriters Laboratories, Inc. and/or ANSI.

1.8.3* Equivalent Compliance. The alternative system, method, or device approved as equivalent by the authority having jurisdiction shall be recognized as being in compliance with this standard.

A.1.8.3 Equivalent Compliance Not a Waiver of Standard Requirement. An equivalent method of protection provides an equal or greater level of safety to the satisfaction of the authority having jurisdiction with the understanding that equivalency includes, without limitation, equivalency based on the history of performance in the field. An approved equivalent method of protection by the authority having jurisdiction is not a waiver or deletion of a standard requirement but instead provides an alternative while the original standard may still be used as an available option. Other standards-making organizations and/or authorities having jurisdiction shall not withhold approval as equivalent when the system, method, or device is supported by a manufacturer's track record as to performance in the field.

TIA No. 1209 was balloted by the Technical Committee on Lightning Protection in accordance with the *Regs* to determine whether the necessary three-fourths majority support on both technical merit and emergency nature was achieved to recommend the TIA for issuance. The ballot overwhelmingly failed the Technical Committee on both technical merit and emergency nature.

When a TIA fails to achieve the recommendation of the responsible Technical Committee on technical merit and emergency nature, the resulting recommendation of the Technical Committee through the standards development process is to not issue the TIA. This appeal requests the Council overturn the action recommended through the standards development process and issue TIA No. 1209. The Council has reviewed the entire record concerning this matter and has considered all the arguments put forth in this appeal.

The Council has voted to deny the appeal and to not issue TIA No. 1209. Although the Standards Council has the authority to act against the recommendation of the standards development process, on appeal, the Council generally defers to the responsible Technical Committee on technical issues and the determination of emergency nature unless extraordinary and compelling circumstances support overturning such determinations. Here, the Standards Council finds no extraordinary and compelling reasons to overturn the results of the Technical Committee ballot and thereby upholds the results of the standards development process.

The effect of this action is that TIA No. 1209 on NFPA 780 will not be issued on the proposed 2017 Edition.

DISCUSSION:

Korean Corporation, OMNI LPS, manufactures and sells a bipolar air terminal lightning protection system. OMNI initially approached NFPA with a request to present its lightning protection system technology to the Standards Council and raise concerns about the company's difficulty in getting approval of its lightning protection system on a construction project in Austin, Texas. At that time, the Standards Council took the unusual step of inviting OMNI to make an informational presentation at its next-scheduled meeting in August 2015. The presentation focused primarily on OMNI's bipolar air terminal lightning protection system, although OMNI also expressed concerns that Authorities Having Jurisdiction ("AHJs") and others were reluctant or unwilling to approve the OMNI lightning protection system citing NFPA 780 as the basis for such denial.

In previous conversations and at the time of the OMNI presentation, NFPA staff engaged OMNI representatives in discussions regarding how OMNI could participate in the NFPA standards development process of NFPA 780. Conversations also included information explaining the scope of authority of AHJs, the federal government and private entities to specify or approve lightning protection installations and products. As a result of these discussions and following the presentation at the August Standards Council meeting, OMNI expressed an interest in proposing a TIA to expressly incorporate an equivalency provision in the 2017 edition of NFPA 780.

To assist OMNI towards this goal, NFPA staff provided OMNI representatives with sample equivalency provisions from existing NFPA standards such as the following:

Nothing in this standard is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety over those prescribed by this standard.

OMNI then filed TIA No. 1209 proposing new Section 1.8 and associated Annex material. The Technical Committee's ballot results overwhelmingly recommended against issuance of the TIA. The appeal asserts that the rejection of the TIA was procedurally defective because the negative votes were based upon varying (and sometimes competing) rationales. Appellants further assert that the variety of reasons for rejecting the TIA must, therefore, be based on improper competitive interests rather than on NFPA's procedures and regulations.

The comments of Technical Committee members voting negatively on the TIA were broad-ranging: suggesting a number of issues and concerns with the language proposed in the TIA. Some Technical Committee members commented that the TIA was an attempt to circumvent the recently-concluded revision cycle of NFPA 780; some members identified the lack of technical documentation supporting the proposed language; and some members stated they were confused by the suggested language of the TIA. (The Appellants appear to concede some ambiguity in the proposed TIA language in that they included proposed revisions to the TIA within the appeal.)

However, in addition to the negative comments of the Technical Committee members, there were twenty-eight comments received from the public on TIA No. 1209ⁱ. Twenty-seven opposed the proposed text of the TIA. These public comments also cited a variety of reasons to withhold support of the TIA, many of which mirrored the objections raised by Technical Committee members.

Rather than finding an improper reason for the variety of responses to TIA No. 1209, the Council notes that the language of the TIA went well beyond equivalency provisions currently included in some NFPA standards. Specifically, the provisions instructing the AHJ on how equivalency would be determined and the inaccurate implication that NFPA, UL and ANSI are AHJs were departures from accepted language used to address equivalency. The Council believes that the unusual nature of the proposed language (in part), not improper competitive interests, was the basis for the varied Technical Committee member comments. (The Council also notes there were a significant number of public

ⁱ An additional twelve comments were received in opposition to the appeal.

comments opposing the TIA's proposed text, as well as a substantial amount of material submitted to justify opposition to the proposed TIA.)

Separate from the specific language of this TIA and as background to the appeal, the NFPA has a long history with non-Franklin Rod lightning protection systems. For more than two decades, NFPA actively engaged with representatives of alternative lightning protection systems through multiple public hearings, Standards Council appeals, Board petitions, litigation and other court proceedings. (See, for example, Standards Council Decisions include Decision Nos. 88-39, 90-29, 93-100, 94-11, 95-25, 95-26, 98-40, 00-13, 00-22, 00-30, 01-24, 01-26, 05-11, and 07-18; Petitions to the Board of Directors in May 1994, December 1995, October 2000, May 2002 and January 2008; *Heary Bros. Lightning Protection Co., Inc., et al., v. Lightning Protection Institute, et al.*, No. CV 96-2796-PHX-ROS (D. Ariz. 2003); *Heary Bros. Lightning Protection Co., Inc., et al., v. Lightning Protection Institute, et al.*, Case 2:96-cv-02796-ROS (9th Cir. 2008).)

Based on that history, at this point in time, NFPA has chosen to write standards specific to traditional Franklin Rod lightning protection systems. These standards are developed by volunteer Technical Committee members including advocates for, and manufacturers of, alternative lightning protection systems.

Although NFPA 780 does not address the bipolar air terminal lightning protection system manufactured by OMNI, the standard also does not prohibit such a system. Perhaps more importantly, there are other international standards that cover OMNI's bipolar air terminal lightning protection system, such as IEC 62305, which OMNI testified and acknowledges that the IEC standard addresses its technology and is used in many locations where OMNI has installations.

OMNI's complaint as evidenced in the appeal is as much about *how* NFPA 780 is interpreted as *what* it contains. NFPA does not control which standards are selected for use and how compliance is enforced any jurisdiction, by any AHJ, or by any private entity. An AHJ or other entity seeking to enforce requirements for lightning protection systems could choose to use and enforce the requirements of NFPA 780, or it could choose to use and enforce IEC 62305 or UL96A. That the insurer for OMNI's client's proposed facility in Texas has chosen to use and enforce the provisions of NFPA 780 and not approve OMNI's Lightning Protection System is not a situation that NFPA can address through its standards development or appeals process.

In conclusion, the Council found no basis in the record to support a decision to overturn the recommendation of the standards development process. For these reasons, the Standards Council has voted to deny the appeal and to not issue TIA No. 1209.

Standards Council Chairman Kerry Bell and Standards Council Member Dick Owen recused themselves from the discussion and decision on this matter.