Dear Interested Parties:

At its meeting of July 29 – July 31, 2013, the Standards Council considered an appeal on the above referenced matter. On August 1, 2013, NFPA issued 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,

Christian Dubay, P.E.
Secretary, NFPA Standards Council

c:  D. Berry, M. Brodoff, L. Fuller, M. Earley, W. Burke, A. Fraser, R. Solomon
Members, NEC Code-Making Panel 3 (NEC-P03)
Members, NEC Correlating Committee (NEC-AAC)
Members, TC on Air Conditioning (AIC-AAA)
Members, NFPA Standards Council (AAD-AAA)
Individuals Providing Appeal Commentary
SUMMARY OF ACTION (for convenience only; not part of official decision): The Standards Council voted to deny the appeal to Accept Comment 3-21.

DECISION:
At its meeting of July 29 – July 31, 2013, the Standards Council considered an appeal from Marcelo Hirschler of GBH International. The appeal requests that the 2014 edition of NFPA 70®, National Electrical Code® (NEC) be issued with acceptance of Comment 3-21. Specifically, the appeal seeks to add a new Exception in Section 300.22(B) that reads as follows:

*Exception: Wiring that is specifically listed for use within an air-handling space (plenum) shall be permitted to be installed in air ducts, but only if the wiring is directly associated with the air distribution system and the total length of such wiring does not exceed 1.2 m (4 ft).*

As background, Code-Making Panel 3 (CMP-3) rejected Proposal 3-82 and Comment 3-21, both of which sought to add the new Exception to Section 300.22(B). Subsequently, Certified Amending Motion (CAM), 70-5 which sought to Accept Comment 3-21 was made at the 2013 Association Technical Meeting. The motion was defeated, therefore, the Panel’s decision to reject Comment 3-21 stands as the final result of the standards development process.

The appeal requests that the Council overturn the result arrived at by the standards development process and, instead, accept Comment 3-21. It is argued that such action is necessary in order to provide consistency and uphold the appropriate jurisdictional division between NFPA 70 and NFPA 90A, Standard for Installation of Air-Conditioning and Ventilating Systems. On appeal, the Council accords great respect and deference to the NFPA standards development process. In conducting its review, the Council will overturn the results of that process only where a clear and substantial basis for doing so is demonstrated. In the view of the Council, this appeal does not present a clear and substantial basis on which to overturn the results yielded by the NFPA standards development process. Accordingly, the Council has voted to deny the appeal.

The assignment of jurisdictional scopes among committees is the direct responsibility of the Council. See, generally, Regulations Governing the Development of NFPA Standards at Section 3.1. The Council, however, is reluctant, even with jurisdictional scope issues, to reject the result arrived at during the revision process. In this case, the Council sees no reason to intervene through the appeals process. The issues concerning the jurisdiction over wiring within air-handling spaces are addressed in previous Standards Council decisions, and include, but are not limited to, Standards Council Decision Number
D#05-24 (Standards Council Agenda Item #05-7-4, July 2005) and Standards Council Agenda Item #03-10-25, October 2003. The NEC Correlating Committee has diligently worked to implement those decisions, and the Council believes that the further refining of responsibilities between the NEC and NFPA 90A can generally take place, going forward, through the regular standards development process.

Towards that end, it has been suggested that an inter-committee task group should be formed to promote correlation and consistency across NFPA 90A and the NEC. The Council agrees. Accordingly, the Council requests the Chair of the NEC Correlating Committee appoint a task group chair from his committee’s membership. The task group chair should appoint members of the task group from the Technical Committee on Air Conditioning, CMP-3 and any other relevant Code-Making Panel(s). This task group is charged with determining if there are any correlation issues regarding wiring within air-handling spaces in the NEC and NFPA 90A and, if so, recommending ways to address them (including, the development of Public Inputs or, if appropriate, Tentative Interim Amendments.) The Council believes that, with the assistance of this task group, issues such as those asserted in this appeal can be effectively reviewed and considered through the regular standards development process.