

From: Carl Malamud <carl@media.org>
Subject: Fwd: 2009 NSPC
Date: December 13, 2012 12:36:20 PM PST
To: Chris Butler <butler@archive.org>
▶ 1 Attachment, 157 KB

Dear Chris –

Thanks for forwarding this communication from Mr. White to my attention. Public.Resource.Org is responsible for uploading this document to the Internet Archive.

The National Standard Plumbing Code (2009) has been incorporated into and is legally mandated by the State of New Jersey in the New Jersey Administrative Code, 5–23–3.15. You can find more information at the page maintained by the New Jersey Department of Community Affairs:

<http://www.state.nj.us/dca/divisions/codes/codreg/>

As this document has been incorporated into the New Jersey Plumbing Code and is the law of the state, long-standing precedent of the United States Supreme Court holds that copyright claims cannot prevent citizens from reading, knowing, and speaking the law. See *Wheaton v. Peters*, 33 U.S. 591 (1834); *Banks v. Manchester*, 128 U.S. 244 (1888).

While the standards drafted by the National Assoc. of Plumbing–Heating–Cooling Contractors were entitled to copyright protection when issued, once incorporated into state or federal law these standards became the law, and thus have entered the public domain. Chief Judge Edith H. Jones of the 5th Circuit expressed this principle clearly in her opinion in *Veck v. Southern Building Code Congress*, which concerned a model building code incorporated in the law of two Texas towns:

"The issue in this en banc case is the extent to which a private organization may assert copyright protection for its model codes, after the models have been adopted by a legislative body and become 'the law.' Specifically, may a code-writing organization prevent a website operator from posting the text of a model code where the code is identified simply as the building code of a city that enacted the model code as law? Our short answer is that as law, the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives. As model codes, however, the organization's works retain their protected status." 293 F.3d 791 (5th Cir. 2002) (en banc).

As you can see by looking at each of the documents we've posted in the Public Safety Codes Collection, a cover sheet has been prepended to each clearly spelling out the section of the law--in this case the New Jersey Administrative Code--that created the incorporation by reference into the law. Incorporation into the New Jersey Administrative Code is not a casual affair and requires that the regulator follow a carefully prescribed procedure and that the incorporation be approved. In this case, the government carefully followed that procedure. See N.J.A.C. 1:30–2.2.

Please note also that all of these documents are also currently available on <https://law.resource.org/> from which they were uploaded to the Codes collection on the Internet Archive. That collection includes a large number of other public safety codes incorporated into the Code of Federal Regulations and into state and local laws. Public.Resource.Org has not been required to remove any documents from any of the other standard development organizations in response to the noncommercial efforts of our nonprofit organization to make the law available for citizens to read. As such, we hope the National Assoc. of Plumbing–Heating–Cooling Contractors will reconsider their request.

Needless to say, maintaining these standards on the Internet Archive web site is a decision you'll have to make. I'm not a lawyer, so you may wish to consult your legal counsel, but I do hope that for the purpose of informing the public about critical public safety standards on a noncommercial basis, you leave these documents online. Public safety is of critical interest and importance to first responders and and government officials, as well as the larger public .

If the National Assoc. of Plumbing-Heating-Cooling Contractors wishes to contact us on these issues, we'd be more than happy to discuss the matter.

Best regards,

Carl Malamud
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, CA 95472

Begin forwarded message:

From: Chris Butler <butler@archive.org>
Date: December 13, 2012 9:38:43 AM PST
To: Carl Malamud <carl@media.org>
Subject: Fwd: Fwd: 2009 NSPC

Hi Carl,

Please see take down notice for standards doc. If there is a response you would like us to relay, we'd be glad to do so.

-Chris

----- Original Message -----

Subject:2009 NSPC
Date:Wed, 12 Dec 2012 14:00:21 +0000
From:Charles R. White <White@naphcc.org>
To:'info@archive.org' <info@archive.org>

Internet Archive Copyright Agent:

Please find attached a Cease & Desist notice regarding the posting of the 2009 National Standard Plumbing Code.

Thank you,

Charles R. White
Vice President Technical & Code Services
Plumbing-Heating-Cooling Contractors—National Association
2425 S. Twyckenham Dr.
South Bend, IN 46614
Direct: 574-286-7866



National Standard Plumbing Code Committee



December 11, 2012

Internet Archive Copyright Agent

Internet Archive
300 Funston Ave.
San Francisco, CA 94118

Phone: 415-561-6767
Email: info@archive.org

Please be advised that we have found our 2009 NSPC (National Standard Plumbing Code) posted to your website at the following link: http://archive.org/stream/gov.law.phcc.nspc.2009/phcc.nspc.2009_djvu.txt

The 2009 NSPC is a copyright protected document and may not be printed or distributed in any manner without the express written permission of PHCC—National Association. It is our belief that your organization has not been granted such permission and is in direct violation of this protection.

We request that you immediately cease and desist from the posting, duplication, and/or non-permitted distribution of the 2009 NSPC and any other form of the NSPC documents.

As the Secretariat to the National Standard Plumbing Code and Vice President of Technical and Code Services for PHCC—National Association, I attest under the penalties of perjury that I represent the owner of this copyright protected document and that the above statements are true to the best of my knowledge.

Respectfully submitted,

Charles R. White
NSPC Secretariat
PHCC—National Association
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white@naphcc.org