

**BEFORE THE NORTH CAROLINA BUILDING CODE COUNCIL
RALEIGH, NORTH CAROLINA**

Docket No. 2014-03

IN THE MATTER OF AN APPEAL BY)	
VIM PRODUCTS, INC. REGARDING)	
THE NORTH CAROLINA PLUMBING)	ORDER AND FINAL AGENCY
CODE AND A LEVEL ENTRY)	DECISION
SHOWER SYSTEM)	
_____)	

THIS MATTER came on for full hearing pursuant to N.C. Gen. Stat. § 143-141 and Chapter 150B, Article 3A before the North Carolina Building Code Council (hereinafter "Council") on February 10, 2015, in Raleigh, North Carolina. VIM Products, Inc. (hereinafter "VIM Products") appeared and was represented by O. Craig Tierney, Jr., Esquire, and the North Carolina Department of Insurance, Office of State Fire Marshal (hereinafter "the Department") appeared and was represented by Robert D. Croom of the North Carolina Department of Justice.

After careful consideration and based on the testimony presented, the exhibits introduced and the record as a whole, the Council makes the following:

FINDINGS OF FACT

1. VIM Products, Inc. manufactures and sells a level entry shower system. The VIM

Products level entry shower system consists of:

Shower Kit consisting of a pre-sloped (1/4"/ft slope to drain) pan, ABS drain assembly, and liquid waterproofing membrane with sheet applied fabric. The waterproofing components included in our shower kit have been tested and certified that they meet or exceeds the requirements of ANSI A118.10 (Load bearing, bonded, waterproof membranes for thin-set ceramic tile and dimensional stone). The drain assembly component included in our shower kit has been

tested and certified that it meets or exceeds the requirements of ASME A112.18/CSA B125.2-2011 (Plumbing Waste Fittings).

2. On April 15, 2014, VIM Products made a formal request of Barry Gupton, the Chief Code Consultant of the North Carolina Department of Insurance, Office of State Fire Marshal, for a formal interpretation under N.C.A.C. § 203.2.1.2.
3. VIM Products requested a formal interpretation that its level entry shower system complied with § 417, showers; § 417.5.2.5, sheet applied, load bearing, bonded waterproof membranes; and § 424.1.2, waste fittings under the 2012 North Carolina Plumbing Code (2009 IPC with 2012 North Carolina Amendments).
4. On May 20, 2014, the Chief Code Consultant issued a formal interpretation that the VIM Products level entry shower system did not meet the prescriptive code, but would otherwise qualify under Section 105 of the 2012 North Carolina Plumbing Code (2009 IPC with 2012 North Carolina Amendments), alternate material, design, or method (AMM).
5. After meeting with VIM Products and having an opportunity to examine an example of the drain assembly used in the VIM level entry shower system, the Chief Code Consultant determined that the drain assembly did meet the prescriptive requirements of § 424.1.2 of the 2012 North Carolina Plumbing Code (2009 IPC with 2012 North Carolina Amendments).
6. On September 4, 2014, the Chief Code Consultant issued a revised formal interpretation that again concluded the waterproof membrane used in the level entry shower system did not meet the prescriptive requirements of § 417.5.2.5 but was acceptable as an AMM.

7. On September 15, 2014, VIM Products filed its appeal to the Council seeking a ruling that the VIM Products level entry shower system does meet the prescriptive requirements of § 417.5.2.5.
8. The Council finds that the VIM Products level entry shower system uses a liquid membrane which is applied to a sheet applied fabric underlayment as part of the installation process.
9. The Council finds that when the liquid membrane is applied to the sheet fabric underlayment according to the manufacturer's instructions, it is a sheet-applied membrane.
10. The current PMG-1094 Listing for the VIM Products level entry shower system is attached to the Order as Exhibit "1."

CONCLUSIONS OF LAW

Upon hearing the testimony, receipt and review of the evidence, and hearing arguments of both parties at the hearing on February 10, 2015, the Council makes the following conclusions:

1. This matter is properly before the Council, and the Council has jurisdiction over the parties and the subject matter pursuant to Article 9 of Chapter 143 of the North Carolina General Statutes.
2. Section 417.5.2.5 of the 2012 North Carolina Plumbing Code (2009 IPC with 2012 North Carolina Amendments) states: "Sheet-applied, load-bearing, bonded, waterproof membranes shall meet requirements of ANSI A118.10 and shall be applied in accordance with the manufacturer's installation instructions."

3. There is no definition of “sheet-applied” in the 2012 North Carolina Plumbing Code (2009 IPC with 2012 North Carolina Amendments).
4. Section 201.4 of the North Carolina Plumbing Code (2009 IPC with 2012 North Carolina Amendments) states: “Where terms are not defined through the methods authorized by this section, such terms shall have ordinary accepted meanings such as the context implies.”
5. The Council concludes that the VIM Products level entry shower system’s use of a liquid membrane applied to a sheet fabric underlayment meets the ordinary accepted meaning of “sheet-applied” when installed according to the manufacturer’s instructions.
6. The Council concludes that VIM’s level entry shower system meets the prescriptive requirements of the North Carolina Building Code under § 417.5.2.5 when installed according to manufacturer’s instructions.
7. The Council concludes that the VIM Products level entry shower system fully complies with the prescriptive North Carolina Plumbing Code under this Section, and is therefore not subject to review and approval by the Authority Having Jurisdiction as an AMM.
8. As stated in VIM products PMG 1094 Listing, “Each tilable shower kit must be installed in accordance with the manufacturer’s published instructions, and the applicable codes.”
9. The Council concludes that the Department’s May 20, 2014 (Revised September 4, 2014) formal interpretation was in error and should be reversed.

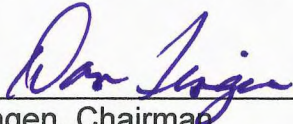
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Department's May 20, 2014 (Revised September 4, 2014) formal interpretation is REVERSED and the VIM Products level entry shower system shall be accepted as meeting the prescriptive requirements of the North Carolina Building Code under § 417.5.2.5 when installed according to manufacturer's instructions.

IT IS SO ORDERED.

This 11th day of March, 2015

North Carolina Building Code Council

By: 
Dan Tingen, Chairman
North Carolina Building Code Council

Appeal Rights: This Order, which is considered a Final Agency Decision, may be appealed to Superior Court within 30 days of receipt of this Order, as set out in Chapter 150B of the North Carolina General Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing ORDER AND FINAL AGENCY DECISION upon counsel for the parties via certified mail, return receipt requested, first class postage prepaid, addressed as follows:

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Robert Croom
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USPS Tracking No. 7014 2120 0002 1431 2622

This 12th day of March, 2015.

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