

BEFORE THE NORTH CAROLINA BUILDING CODE COUNCIL
RALEIGH, NORTH CAROLINA

IN THE MATTER OF AN APPEAL BY)
ZF LEMWORDER CORPORATION)
REGARDING THE NORTH CAROLINA)
ELECTRICAL CODE)

)

ORDER AND
FINAL AGENCY DECISION

This case came on for full hearing pursuant to N.C. Gen. Stat. §§ 143-141 and 153A-374 before the North Carolina Building Code Council (hereinafter "Council") on September 11 and 12, 2006, in Asheville, North Carolina, and on September 29 and December 11, 2006, in Raleigh, North Carolina. ZF Lemforder Corporation (hereinafter "ZF Lemforder") appeared and was represented by Ernest C. Pearson, Esq.; the Catawba County Building Services Division appeared through its Chief Building Inspector Armin Wallner; and James E. Long, Commissioner of Insurance of the State of North Carolina appeared and was represented by Daniel S. Johnson, Esq. 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 hereby enters the following:

FINDINGS OF FACT

1. This matter came on for hearing before the Council on ZF Lemforder's appeal as follows:

A. In a written decision dated August 26, 2005, the Catawba County Building Services Division (sometimes referred to in the record as "Catawba County Inspection Department") denied a request by ZF Lemforder to place particular machinery into operation in

its Newton, North Carolina facility without approval. The particular machinery that is the subject of ZF Lemforder's request and of this appeal is described in Enclosure 1 of Attachment 1 to the written stipulations that the parties entered into on September 11, 2006, at the hearing. See ZF Lemforder Exhibit 10.

B. In a letter dated September 14, 2005, ZF Lemforder requested the Office of the State Fire Marshall Division of the North Carolina Department of Insurance (hereinafter "NCDOI") to issue a formal interpretation reversing the August 26, 2005, decision by the Catawba County Building Services Division; ZF Lemforder additionally requested the Catawba County Building Services Division to issue a Temporary Certificate of Compliance pending the outcome of the requested formal interpretation and appeal process.

C. In a letter dated September 22, 2005, the Catawba County Building Services Division conditionally granted ZF Lemforder's request for a Temporary Certificate of Compliance.

D. On March 16, 2006; NCDOI entered an Order affirming the August 26, 2005, decision by the Catawba County Building Services Division.

E. It is ZF Lemforder's appeal of NCDOI's March 16, 2006, Order that came before the Council and that is the subject matter of the Order herein. Hereinafter, the NCDOI March 16, 2006, Order will be referred to as "NCDOI Order."

2. Paragraph three of page one of the NCDOI Order contains the following finding of fact: "From personal observation the undersigned finds as a fact that the *equipment* is operated by electricity, is connected to the supply of electricity and is installed inside the building." (Emphasis added.)

3. Paragraph three of page one of the NCDOI Order contains the following finding of fact: "From personal observation the undersigned finds as a fact that the *equipment* utilizes electrical energy for electronic, and/or electromechanical, and/or chemical, and/or heating, and/or lighting or similar purposes." (Emphasis added.)

4. Paragraph six of page one of the NCDOI Order contains the following conclusion: "It can be seen that electrical equipment in buildings connected to the electrical supply, such as the electrical *equipment* involved in this appeal, is governed by and is subject to the requirements [of] the NC Electrical Code." (Emphasis added.)

5. Paragraph four of page two of the NCDOI Order contains the following conclusion: "Section 90.4 of the NC Electrical Code makes it clear that the Agency Having Jurisdiction (Catawba County Inspection Department in this case) has the responsibility for approving the *equipment*. 'Approved' means acceptable to the Authority Having Jurisdiction." (Emphasis added.)

6. The NCDOI Order imposed the following decision: "IT IS THEREFORE ORDERED that the electrical *equipment* involved in this appeal is *equipment* as defined by the NC Electrical Code. IT IS FURTHER ORDERED that the electrical *equipment* involved in this appeal must be approved by the Catawba County Inspection Department." (Emphasis added.)

7. The use of the term "equipment" in the NDCOI Order to describe the particular machinery at issue in this case is erroneous.

8. At the hearing, the parties did not dispute that the applicable definition of equipment under Article 100 of the North Carolina Electrical Code is: "Equipment. A general term including material, fittings, devices, appliances, luminaries (fixtures), apparatus, and the like used as a part of, or in connection with, an electrical installation."

9. Article 100 of the North Carolina Electrical Code contains the following definition of utilization equipment: "equipment that utilizes electric energy for electronic, electromechanical, chemical, heating, lighting, or similar purposes."

10. Article 670, Section 670.2 of the North Carolina Electrical Code contains the following definition of industrial machinery: "Industrial Machinery (Machine). A power-driven machine (or group of machines working together in a coordinated manner), not portable by hand while working, that is used to process material by cutting; forming; pressure; electrical; thermal, or optical techniques; lamination; or a combination of these processes. It can include associated equipment used to transfer material or tooling, including fixtures, to assemble/disassemble, to inspect or test, or to package. [The associated electrical equipment, including the logical controller(s) and associated software or logic together with the machine actuators and sensors, are considered as part of the industrial machine.]" (Text in brackets contained in original.)

11. The Council finds that the particular machinery at issue in this case is industrial machinery, not equipment, utilization equipment, or electrical equipment.

12. The Council finds that the particular machinery at issue in this case is industrial machinery, not conductors that connect to the supply of electricity.

13. The Council finds that the particular machinery at issue in this case was not used as a part of, or in connection with, an electrical installation.

Based on the foregoing Findings of Fact, the Council makes the following:

CONCLUSIONS OF LAW

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. The scope of the Code is set forth in Section 90.2 of the North Carolina Electrical Code. Section 90.2(A)(I) provides that the North Carolina Electrical Code covers the installation of equipment for public and private premises. Section 90.2(A)(3) provides that the North Carolina Electrical Code covers the installation of conductors and equipment that connect to the supply of electricity.

3. The applicable definition of equipment under Article 100 of the North Carolina Electrical Code is: "Equipment. A general term including material, fittings, devices, appliances, luminaries (fixtures), apparatus, and the like used as a part of, or in connection with, an electrical installation. "

4. Utilization equipment under Article 100 of the code is "equipment that utilizes electric energy for electronic, electromechanical, chemical, heating, lighting, or similar purposes."

5. Section 110.2 of The North Carolina Electrical Code provides: "110.2 Approval. The conductors and equipment required or permitted by this Code shall be acceptable only if approved."

6. Approved is defined under Article 100 of the North Carolina Electrical Code as "Acceptable to the authority having jurisdiction."

7. Under Article 670, Section 670.2 of the North Carolina Electrical Code, the definition of industrial machinery is: "Industrial Machinery (Machine). A power-driven machine (or group of machines working together in a coordinated manner), not portable by hand while working, that is used to process material by cutting; forming; pressure; electrical; thermal, or optical techniques; lamination; or a combination of these processes. It can include associated equipment used to transfer material or tooling, including fixtures, to assemble/disassemble, to inspect or test, or to package. [The associated electrical equipment, including the logical controller(s) and

associated software or logic together with the machine actuators and sensors, are considered as part of the industrial machine.]" (Text in brackets contained in original.)

8. Under Article 670 of the North Carolina Electrical Code, industrial machinery is not required to be approved by the Authority Having Jurisdiction. Industrial machinery is instead required to bear a nameplate setting forth the electrical specifications of the industrial machinery.

9. The particular machinery at issue in this case is industrial machinery within the scope of Article 670 of the North Carolina Electrical Code.

10. The particular industrial machinery in this case does not fall within the scope of equipment under Article 100 of the North Carolina Electrical Code, or any other provision of the North Carolina Electrical Code that requires equipment to be approved.

11. The particular industrial machinery in this case does not fall within the scope of utilization equipment under Article 100 of the North Carolina Electrical Code, or any other provision of the North Carolina Electrical Code that requires utilization equipment to be approved.

12. The particular industrial machinery in this case does not fall within the scope of electrical equipment under Article 100 of the North Carolina Electrical Code, or any other provision of the North Carolina Electrical Code that requires electrical equipment to be approved.

13. The particular industrial machinery in this case does not fall within the scope of conductors under Article 100 of the North Carolina Electrical Code, or any other provision of the North Carolina Electrical Code that requires conductors to be approved.

14. The particular industrial machinery at issue in this case is instead subject to the provisions under Article 670 of the North Carolina Electrical Code that require industrial

machinery to bear a nameplate setting forth the electrical specifications of the industrial machinery.

15. The conclusion that the particular machinery at issue in this case is industrial machinery that falls under the scope of Article 670 and outside the scope of Article 100 of the North Carolina Electrical Code constitutes a sufficient basis alone for the Council to rule that the particular machinery at issue in this case is not required to be approved.

16. The Council concludes that the particular machinery at issue in this case additionally falls outside the scope of Article 100 of the North Carolina Electrical Code because it was not used as a part of, or in connection with, an electrical installation as described in Article 100 of the North Carolina Electrical Code. This conclusion constitutes a sufficient basis alone for the Council to rule that the particular machinery at issue in this case is not required to be approved.

Based on the foregoing Findings of Fact and Conclusions of Law, the Council enters the following:

ORDER

The determinations of the Catawba County Building Services Division and the North Carolina Department of Insurance that the machinery described in paragraph 1 of the Findings of Fact herein must be approved by the authority having jurisdiction are REVERSED.

SO ORDERED, this the ___ day of February 2007.

Dan Tingen, Chairman
North Carolina Building Code Council

CERTIFICATE OF SERVICE

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

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This __ day of February 2007.

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