



VIA EMAIL ONLY

February 23, 2023

Jeffrey Jones on behalf of
EVAPCO, Inc., SPX Corporation, and
Baltimore Aircoil Company, Inc.
150 W. Jefferson, Ste. 2100
Detroit, MI 48226-4438

Re: IAPMO Board of Directors Petition
Standards Council Decision Dated October 10, 2022
UPC Items #305 (PCs 1 - 4) and #307 (PCs 1 – 2)
UMC Items #321 (PC1) #323 (PCs 1 – 3, 5 – 7, 9 – 11), #324 (PCs 1 – 2), #325 – #330 (PC1)

Standards Council Decision Dated December 14, 2022
UMC Item #321 (PC1), #323(PC10), #324 (PC2), #325 - #329 (PC1), #330 (PCs 1 – 2)
UPC Items #305 (PC2), #307 (PC2)

Dear Mr. Jones,

I am transmitting to you herewith the following decision of the IAPMO Board of Directors.

A duly appointed Board Subcommittee of the IAPMO Board of Directors consisting of Kevin Tindall (Chair), David Gans (Vice Chair), Allen Becker, Rick Garcia, Barry Ramsey, and Jeremy Stettler held a hearing pursuant to the *Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council*, to consider the petition filed by Jones Day on behalf of EVAPCO, Inc., SPX Corporation, and Baltimore Aircoil Company, Inc. concerning the IAPMO Standards Council decisions referenced above. The IAPMO Board accepted the recommendation of the Board Subcommittee in its entirety. Henceforth the announcement and rationale provided by the Subcommittee have been adopted by the Board and are presented by the Subcommittee on behalf and with the authority of the full IAPMO Board of Directors.

Under IAPMO rules, the Standards Council has been delegated the responsibility for the administration of the codes and standards development process, including adjudication of appeals and the issuance of the *Uniform Mechanical Code* and *Uniform Plumbing Code* (see the *IAPMO Regulations* §§ 1-7, 2-2). On a petition, the Board of Directors must give due deference to the judgment of the IAPMO Standards Council, and will not intervene unless the Petitioner demonstrates the existence of extraordinary circumstances requiring intervention to protect the integrity of the codes and standards development process (see the *IAPMO Regulations Governing Petitions* § 3; see also the *IAPMO Regulations* § 1-7).

Petitions to the Board of Directors are not intended to be a full appeal beyond that already afforded by the Standards Council, but rather an opportunity for the Board of Directors to intervene in the event the Board determines there to be extraordinary circumstances.

History

On October 25, 2022, the petitioner filed a Notice of Intent to petition the IAPMO Board of Directors regarding the Standards Council decision dated October 10, 2022. The decision pertained to *Uniform Plumbing Code* Items #305 and #307, and the *Uniform Mechanical Code* Items #321 and #323 - #330. The Petitioner's Notice of Intent requested an extension of the petition due date until 10 days after the Standards Council decision regarding the November 16 appeals. Said extension was granted.

Petitioner participated in the Standards Council hearings held in November 2022 regarding the items noted immediately above and in the subject line of this decision and was provided a copy of the Standards Council decision dated December 14, 2022. On December 28, 2022, the petitioner filed a Notice of Intent to petition the IAPMO Board of Directors regarding the Council's December 14 decision, related to *Uniform Plumbing Code* Items #305 and #307, and the *Uniform Mechanical Code* Items #321 and #323 - #330.

Petitioner requested and was granted a hearing to address both the October and December Standards Council decisions immediately referenced above.

Procedural Concerns

The petitioner expressed concern with the Legionella Task Group. The Task Group was formed to provide recommendations to the Technical Committee for consideration in the development of the 2024 *UMC*. However, Petitioner claims the Task Group "was motivated by anticompetitive factors or other interests having little or nothing to do with...science." In reviewing the makeup of the Task Group and how it was formed, the Board finds nothing in the record which reflects a violation of procedure, as codified in IAPMO's *Regulations*, nor any anticompetitive influence. While Petitioner may disagree with certain stances of those who served on the Task Group, including its Chair, it is clear to the Board that appropriate notices were widely distributed throughout the industry inviting all interested parties to participate. The Task Group report and code change proposals were submitted through IAPMO's code development process, in accordance with the *Regulations*.

Petitioner further claims, "the dominance of self-interested parties and the lack of representation on the Task Group or technical committees of the cooling tower industry and building owners and operators are particularly problematic." The Board heard an extensive discussion on this argument during the hearing but does not agree. The *ANSI Essential Requirements* at 1.2 states:

1.2 Lack of dominance

The standards development process shall not be dominated by any single interest category, individual or organization. Dominance means a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation to the exclusion of fair and equitable consideration of other viewpoints.

The Board does not see evidence that the process was dominated by any single person, interest, or organization, nor do they see evidence that anyone was excluded. Petitioner believes that dominance was present as a result of certain task group members' business interests, claiming dominance "precluded 'fair and equitable consideration of other viewpoints.'" Petitioner feels the TC simply rubber-stamped the Task Group's recommendations. The Board disagrees and points to the Council decision where it addressed allegations of conflict, stating that "the process is structured so that each

participant, regardless of their perspective, may participate, and so that final decisions on code content are made by a balanced consensus body.” The recommendations of the Task Group were provided to the Technical Committee for discussion and consideration.

When IAPMO issued a call for participants to join the Task Group in 2019, the call went through various industry media and was posted in IAPMO’s membership magazine, within digital newsletters, and on IAPMO’s website. The call specifically sought “technical experts to participate in a task group relating to Legionella for mechanical systems.” It is not clear why Petitioner’s clients did not apply to serve on the Task Group. They do represent an interest that has much to contribute towards the development of the code. However, in reviewing the formation of the Task Group, the members who served including the Chair, and how the Technical Committee handled all resulting proposals and comments resulting from the Legionella Task Group’s work, the Board finds no *Regulations* violation.

Petitioner alleges “a clear distortion of the code development process exists” as a result of the Technical Committee disagreeing with the membership recommendations from the Charlotte 2022 meeting on the items referenced above. A reference is made to an article written by Julius Ballanco wherein he stated “[t]he typical Technical Committee vote is to agree with the will of the membership.” While this may indeed be “typical” insofar as the Technical Committee always duly considers the recommendation of the membership, the Board is aware of multiple occurrences in recent code cycles when the membership and Technical Committee vote were not in agreement. Such a disagreement is anticipated in the process, addressed in the *Regulations*, and was appropriately applied here. The Board finds no procedural violation.

In Petitioner’s previous letters to IAPMO, incorporated within the January 2023 written petition, claims of procedural violations were raised with respect to:

- ANSI Essential Requirements 1.1 Openness
- ANSI Essential Requirements 1.2 Lack of Dominance
- ANSI Essential Requirements 1.3 Balance
- ANSI Essential Requirements 1.4 Coordination and Harmonization
- ANSI Essential Requirements 1.5 Notification of Standards Development
- ANSI Essential Requirements 1.6 Consideration of Views and Objections
- Regulations Governing Committee Projects 3-3.7.1.2¹
- Regulations Governing Committee Projects 3-3.3.3
- Regulations Governing Committee Projects 4-4.6.2.2, 4-4.6.2.3
- Regulations Governing Committee Projects 4-4.9.2

With regard to the *ANSI Essential Requirements*, the Board does not see evidence to support these claims. The process was open to all parties directly and materially interested in the activity. As noted

¹ The Board notes that Petitioner twice references this section. This section of the *Regulations* governs other mandatory standards “referenced in IAPMO Codes and Standards,” that is, codes and standards existing outside of the code being developed. The Board notes that this section of the *Regulations*, while facially not applicable to the matter at issue, refers to development processes that “include a means for obtaining divergent views, if any” and “a means of achieving consensus for the resolution of divergent views and objections.” Assuming Petitioner’s intent is to point to those requirements, the Board notes that they are encompassed in the references to ANSI Essential Requirements, and that the discussion of the Essential Requirements herein applies thereto.

above, no dominance by any person or organization was present in the development of the code. The appropriate balance existed on the Technical Committee. Efforts were made to harmonize the *UMC* with other American National Standards. Appropriate notifications were timely and adequately made throughout the three-year process and, finally, prompt consideration was given to the written views and objections of all participants.

Further, the Board sees no violation of *Regulations* 3-3.3.3, or 4-4.9.2. These sections address handling of participation at a Technical Committee meeting, and handling of substantive comments. The record shows no wrongdoing on the part of the Technical Committee with regard to an application of these *Regulations*.

With regard to Petitioner's allegations of a lack of harmonization with *ASHRAE 188*, the Board notes the harmonization efforts made between IAPMO and ASHRAE as addressed in the Council's December 14, 2022 decision. Further, Petitioner claims the Council was incorrect in pointing out that an ASHRAE representative serves on the Mechanical Technical Committee. Petitioner claims "based on Petitioner's inquiries, that is not correct. The so-called 'representative' is simply a contractor who is also an ASHRAE member." The Board understands that IAPMO staff has on file the application from this particular ASHRAE representative and confirmation from ASHRAE that the individual is, in fact, the ASHRAE representative on the Mechanical Technical Committee. While Petitioner may not agree with ASHRAE's selection, the Board finds no concern here.

Items to be Placed on Hold

With regard to Petitioner's claim that the Technical Committee should have chosen to place certain Items on hold, the Board agrees. Petitioner provides numerous examples through his testimony and the testimony of Dr. Hung Cheung that raise concern for the Board. Specifically, Item 323 of the *UMC* addressed a proposed new Appendix H in the *Uniform Mechanical Code* titled *Impact of Water Temperature on the Potential for Legionella Growth*.

While the record provides a history of data shared with the Technical Committee to substantiate the appendix, the Board feels the testimony provided by Dr. Cheung relating to cooling towers, medical concerns, and the overall complexity of the issue should be further discussed among the Technical Committee.

Similarly, Items 324 – 329 of the *UMC* addressed a proposed new *Appendix F Operation, Closure, and Restarting of Cooling Towers*.² Petitioner claims the Technical Committee was misguided in adopting this new appendix. While the Board disagrees with this claim, the data presented by Dr. Cheung as they relate to cooling towers raised a concern for the Board that the proposed new Appendix F in the *Uniform Mechanical Code* may require additional review, discussion, and debate.

Section 4-4.6.2.3 of the *Regulations* reads as follows:

4-4.6.2.3 Basis for Hold. *In determining whether to hold a Comment pursuant to 4-4.6.2.2, the TC may consider any relevant factors including, but not limited to, the extent to which the*

² Appendix F was previously proposed as Appendix J, and was renamed from "The Safe Operation, Closure and Restarting of Cooling Towers."

*Comment proposes a change that is new and/or substantial, **the complexity of the issues raised, and whether sufficient debate** and public review has taken place. [emphasis added]*

The Report on Comments includes comments that introduce only certain data shared with the Board during Petitioner's hearing, which leads the Board to believe that this issue and the resulting proposed code language requires further review and discussion by the Technical Committee. The evidence shared by a public health expert introduced medical information that the Board believes may not have been known and may be more complex requiring further discussion among the Technical Committee. This presents an extraordinary circumstance requiring further consideration in the next code development cycle, in accordance with the *Regulations*.

Decision

The Board grants, in part, and denies, in part, said petition as follows:

- **Grant the petition for UMC Item 323.** The Board approved a hold on this item resulting in the 2024 UMC not including *Appendix H Impact of Water Temperature on the Potential for Legionella Growth*. This item will be submitted as a proposal in the 2027 code development cycle in accordance with the *Regulations*.
- **Grant the petition for UMC Items 324 – 329.** The Board approved a hold on this item resulting in the 2024 UMC not including *Appendix F Operation, Closure, and Restarting of Cooling Towers*. These items will be submitted as proposals in the 2027 code development cycle in accordance with the *Regulations*.
- **Deny the petition for UPC Item 305.** The 2024 UPC will include amendments to *Appendix N Impact of Water Temperature on the Potential for Scalding and Legionella Growth* as noted in the Council decision dated December 14, 2022.
- **Deny the petition for UMC Item 330.** The 2024 UMC will include *Appendix J Professional Qualifications* as noted in the Council decision dated December 14, 2022.
- **Deny the petition for UPC Item 307.** The 2024 UPC will include *Appendix P Professional Qualifications* as noted in the Council decision dated December 14, 2022.

Board members Steve Panelli and Jason Shank recused themselves from discussion and voting on this petition.

Sincerely,



Kevin Tindall
Chair

Cc: IAPMO Code Dept.
Members, Mechanical Technical Committee
IAPMO Standards Council
IAPMO Board of Directors
Dr. Hung Cheung