

ASPELA TIMES

The News of the Los Angeles Chapter of The American Society of Plumbing Engineers

www.aspela.com

November 2023

Volume 23 Issue XI

PRESIDENT'S REPORT Thura Zin CPD, GPD President



October speaker:
Eric Hough
Chief Commercial Officer
Epic Cleantec

Dear Members,

Congratulations on receiving the "2022-2023 Chapter Award of Merit" at the 2023 Technical Symposium in Seattle! (see page 7) It's wonderful to hear about your chapter's achievement, and it's clear that your hardworking officers and members, especially VP Tech Vahan, treasurer Edgar, and past president Bill, played a crucial role in earning this recognition.

It's also great to see that you're already looking ahead and identifying areas for improvement, such as membership retention. Maintaining existing members is essential for the long-term success of any organization. It's an excellent goal to work on for the upcoming term.

Keep up the fantastic work, and I wish your chapter continued success in all your endeavors! If you have any questions or need advice on membership retention strategies or anything else related to your chapter, feel free to ask.

It's wonderful to hear that you had an insightful presentation from Eric Hough of Sale Leadership, Epic Cleantech, at your September meeting. Learning from experts in the field can be a valuable experience, and it's great that your chapter is able to provide such opportunities to its members.

please continue reading on page 21

November Meeting

Date: **November 8, 2023**

Time: Check-in will start at 5:30pm. Presentation to begin at 7:00 pm.

Place: **Courtyard Marriott**
2100 Empire Avenue
Burbank CA 91504

Program: Pump Basics

Speaker: Mr. Michael Madsen
Lead Sales Engineer
GRUNDFOS CBS Inc.

Future events include:

- **Holiday Party!** 1-27-24
- **Fishing Trip!** TBD

See inside for Details...



inside...

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AMERICAN SOCIETY OF PLUMBING ENGINEERS LOS ANGELES CHAPTER

**November 8, 2023, Meeting
“Pump Basics”**

**By Mr. Michael Madsen
Lead Sales Engineer
GRUNDFOS CBS Inc**

WHAT YOU WILL LEARN:

If you are brand new to pumps and need a Pumps 101 overview, or you have been at it a long time and just want a refresher then this Pumps 101 overview is for you. Presentation will cover:

- the basics of pump operation,
- pump and system terminology
- reading of pump curves
- developing system curves
- pump affinity laws
- basic design considerations for Hot Water Recirculation and Domestic Booster systems
- and some of the new technologies available in the market.

MEETING LOCATION:

In Person:

*COURTYARD BY MARRIOTT BURBANK
2100 W EMPIRE AVE, BURBANK, CALIFORNIA 91504*

MEETING SCHEDULE:

5:30 pm – Check in

6:30 pm – 7:30 pm – Presentation

COST: Pay at door only

Meeting Fee:

RSVP - \$55 and Retired BOD: \$30

Without RSVP - \$60

RSVP Online:

[RSVP](#)

By: November 6, 2023

THE SPEAKER:



Mike is a licensed Mechanical Engineer in the State of California and has his LEED AP credential. Mike is based in Long Beach, California, and has 38 years' experience in the pump industry in both sales and engineering roles. Mike holds a BMSE from the University of Michigan, as well as, an MBA from California State University, Long Beach. His Territory includes the states of California, Nevada, and Hawaii for all of the Grundfos Commercial products.

If you have additional questions or needed information on his presentation, you can reach him at: michael.madsen@grundfos.com

For more information, visit our website @www.aspela.com.

STATE-FUNDED CADD/BIM TRAINING (3) SCHEDULE (ACH&T)

Online Live Instructor Interactive

CLASS	DAYS	START	END
Revit Architecture	M W (5:30 to 9:30 pm.)	9/13/23	12/11/23
MEETING DATES: *September-13, 18, 20, 25, 27 *October-2, 4, 9, 11, 16, 18, 23, 25, 30 *November-1, 6, 8, 13, 15, 20, 27, 29 *December-4, 6, 11			
Revit MEP	M W (5:30 to 9:30 pm.)	9/13/23	12/11/23
MEETING DATES: *September-13, 18, 20, 25, 27 *October-2, 4, 9, 11, 16, 18, 23, 25, 30 *November-1, 6, 8, 13, 15, 20, 27, 29 *December-4, 6, 11			
Revit Structure	T TH (5:30 to 9:30 pm.)	9/14/23	12/14/23
MEETING DATES: *September-14, 19, 21, 26, 28 *October-3, 5, 10, 12, 17, 19, 24, 26 *November-2, 7, 9, 14, 16, 21, 28, 30 *December-5, 7, 12, 14			
Civil 3D	T TH (5:30 to 9:30 pm.)	9/14/23	12/21/23
MEETING DATES: *September-14, 19, 21, 26, 28 *October-3, 5, 10, 12, 17, 19, 24, 26 *November-2, 7, 9, 21, 28, 30 *December-5, 7, 12, 14, 19, 21			
Revit Arch. Friday (5:30 to 8:30 pm.) Saturday (8 am. to 1 pm.)		9/15/23	12/15/23
MEETING DATES: *September-15, 16, 22, 23, 29, 30 *October-6, 7, 13, 14, 20, 21, 27, 28 *November-3, 4, 10, 11, 17, 18 *December-1, 2, 8, 9, 15 (5:30 to 9:30 pm.)			
AutoCAD Friday (5:30 to 8:30 pm.) Saturday (8 am. to 1 pm.)		9/15/23	12/15/23
MEETING DATES: *September-15, 16, 22, 23, 29, 30 *October-6, 7, 13, 14, 20, 21, 27, 28 *November-3, 4, 10, 11, 17, 18 *December-1, 2, 8, 9, 15 (5:30 to 9:30 pm.)			

For Enrollment, please contact BARRY barry@ach.edu OR barry@westech.edu OR call 949-393-8866, www.ach.edu click on State-Funded Training Program.

Leak Detection & Water Submetering Solutions



LEED Platinum-Certified Apartment Building Uses Submetering to Dramatically Reduce Water Consumption

PROJECT BACKGROUND

A 32-story, new construction, 500-unit apartment building known as 360 State Street in New Haven, Connecticut, wanted to install an innovative submetering system to track the residents' water & hot-water heating data while providing tenants with an easy-to-use web portal to access and manage their utility data.



H2O Degree delivered a submetering system consisting of a 1,000 dual point-of-entry water meters (hot & cold) and 591 thermostats. The battery-powered wireless water meters communicate with the thermostats. The thermostats act as transceivers, a unique feature of H2O Degree's wireless network, which results in substantial savings compared to using traditional wireless repeater networks. When considering the minimal wiring it took to set up the radios and ZigBee mesh network the system uses, the system was the most cost effective option for the building.



PLUMBING CONFIGURATION

The dual point-of-entry submetering at 360 State Street means that the plumbing is configured so that one riser branches into the apartment for cold water. A second



riser delivers domestic hot water created centrally by recovering heat from a CHP system. Water enters the apartment in the utility closet and there are two water meters in each apartment, one for cold and one for hot water.

WATER & ENERGY CONSERVATION SAVINGS

Typical 1-2 bedroom apartments at 360 State Street average 45 to 55 gallons of water use per day. This is almost half the national average of 70-90 gallons per day. This savings is the result of billing tenants for water and proactive water leak detection. Another energy-savings benefit came from billing tenants for electricity and providing thermostat controls resulting in heating & cooling costs being 10 to 20% below apartments without submetering.



Read the full case study on 360 State Street by visiting H2O Degree's website at www.h2odegree.com/aspela.php



To request information on H2O Degree leak protection and submetering solutions contact our local representative Keyline Sales at (562) 904-3910.

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TECHNICAL REPORT

Vahan Margaryan CPD, GPD
V.P. Technical

October was very busy month for ASPE LA:

1. We had a well-attended meeting on October 4th with Mr. Eric Hough discussing “Next Generation Water Conservation Technologies” which triggered many questions from participants.
2. Then, on October 8th, we had our first post-covid ASPE LA annual picnic at Elysian Park in Old Lodge Picnic Area. While we expected a much better turn out, not many ASPE friends and family members were there. Partakers and their kids had some fun playing giant connect four, ladder toss, cornhole, volleyball, egg toss, and a no-hand watermelon eating contest. Volleyball game Arup Plumbing VS world ended up in a draw, while egg toss winning team were Mackenzie Hill (Arup) and Edgar Ochoa(SCEG). Beautiful southern California weather, great food and huge selection of drink made that event unforgettable.

3. On October 21st women of ASPE and ASPE Young professionals will be hosting Clay Shooting event in LAClays Shooting Park in South El Monte. This event was greatly advertised previously during our monthly meetings as well as in our newsletters. Hopping to see many familiar faces at the event.

The International Association of Plumbing and Mechanical Officials (IAPMO®) and the Medical Gas Resiliency Task Group are seeking the public’s initial input for development of the Manual of Recommended Practice for Medical Gas Resiliency. IAPMO initiated the Medical Gas Resiliency Task Group to create a manual to provide code enhanced and adoptable language for medical gas piping systems and include innovative approaches toward resiliency. While developed as a guidance document, it is written in mandatory language so building and health departments can easily adopt and codify the requirements. Additionally, this stand-alone document includes excerpts from IAPMO’s Uniform Plumbing Code (UPC®). The task group consisted of industry experts from across the nation The IAPMO

continued on page 14

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TEST REPORT

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<http://www.iapmort.org>

Report Number: 2536-18001-002 Project No.: 29225
Report Issued: February 26, 2018.
Client: Aqua-Rex
3301 Spring Mountain Road Ste 18
Las Vegas, NV 89102 Contact: Jonny Secombe
Source of Samples: The samples were shipped to IAPMO R&T Lab from Aqua-Rex, and received in good condition on October 11, 2017.
Date of Testing: October 25, 2017 through December 15, 2017.
Sample Description: Scale Prevention Device; model: Aqua-Rex WK1-E.
Scope of Testing: The purpose of the testing is to determine the efficacy of the Scale Prevention Device per section 5 of IAPMO IGC 335-2018, entitled "Rapid Scaling Test for Scale Prevention Devices".

CONCLUSION: **When tested per Section 5 of IAPMO IGC 335-2018, Aqua-Rex WK1-E reduced scaling by 83% when applied to Las Vegas water heated to 180°F.**

Tested by,

Reviewed by,

Hanks Ninh
Hanks Ninh, Project Engineer

Sean Vuu
Sean Vuu, P.E., Manager, Specialty Projects

LEGISLATIVE REPORT • Kook Dean, C.I.P.E., CPD (past president) • V.P. Legislative

Update on the Los Angeles City All Electric Building Regulations:

The City of Los Angeles Ordinance No. 187714 was approved that all newly constructed buildings be fitted with all electrical infrastructure. The all electric buildings contain no combustion equipment such as fuel or gas piping that provide energy for appliances and/or equipment and such structures are expected to rely solely on electricity.

For details, [view Ordinance No. 187714 pdf](#)
(url: https://clkrep.lacity.org/onlinedocs/2022/22-0151_ord_187714_1-23-23.pdf)

This is my personal opinion on the current state of the Los Angeles City Ordinance (No. 187714) requirement for new construction all electric building(s). Based on the Ninth Circuit Court Opinion of CRA v. City of Berkeley (OPINION) Case Number 21-16278: The Los Angeles City Ordinance 187714 is not enforceable. My current plan is to publish the OPINION in the November 2023 ASPELA Newsletter. In November; I will submit a copy of the OPINION to the Los Angeles City Attorney's Office and request if the Ordinance 187714 is enforceable or not. I have the City of Los Angeles document with the identification of the City Council who voted in support of the original Ordinance 187714. A copy of the OPINION will be submitted to each City Council with the request on the status of this Ordinance.

Listed below is a copy from CRA V. CITY OF BERKELEY, No. 21-16278 (9th Cir. 2023)

Website:

<https://www.natlawreview.com/article/ninth-circuit-cans-berkeley-gas-ban-under-federal-law>

Ninth Circuit cans Berkeley Gas Ban under Federal Law

Friday, April 21, 2023

On 17 April 2023, in *California Restaurant Association v. City of Berkeley*,¹ No. 21-16278 (9th Cir. 2023) the Ninth Circuit struck down a local ordinance banning natural gas piping in newly constructed buildings, **concluding that federal law preempts the ordinance**. This decision may have significant implications for similar state and local regulations, especially those in California and Washington. Building owners and operators, utilities, and other stakeholders impacted by natural gas “bans” or electrification mandates should consider whether their state or local regulation is affected.

CALIFORNIA RESTAURANT ASSOCIATION V. CITY OF BERKELEY

In July 2019, the City of Berkeley, California (Berkeley or the City) adopted Ordinance No. 7,672-N.S., titled “Prohibition of Natural Gas Infrastructure in New Buildings” (Ordinance). The Ordinance amends the Berkeley Municipal Code to prohibit natural gas infrastructure in new buildings.² Natural gas infrastructure is defined as “fuel gas

continued on page 13



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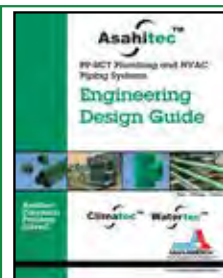


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SCIENCE

The Cooling World

There are ominous signs that the earth's weather patterns have begun to change dramatically and that these changes may portend a drastic decline in food production—with serious political implications for just about every nation on earth. The drop in food output could begin quite soon, perhaps only ten years from now. The regions destined to feel its impact are the great wheat-producing lands of Canada and the U.S.S.R. in the north, along with a number of marginally self-sufficient tropical areas—parts of India, Pakistan, Bangladesh, Indochina and Indonesia—where the growing season is dependent upon the rains brought by the monsoon.

The evidence in support of these predictions has now begun to accumulate so massively that meteorologists are hard-

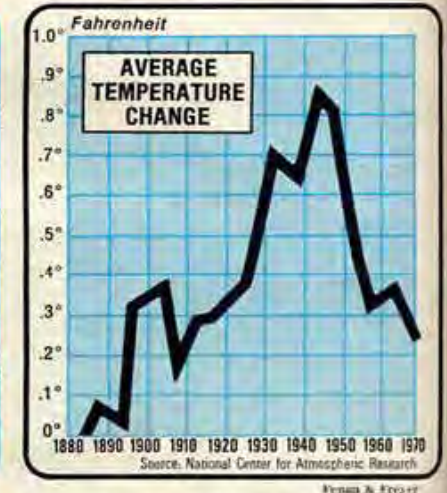
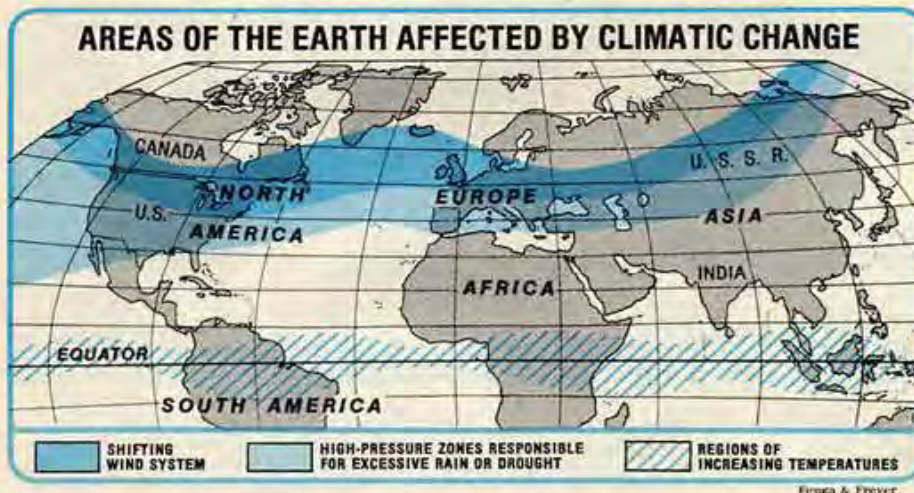
reduce agricultural productivity for the rest of the century. If the climatic change is as profound as some of the pessimists fear, the resulting famines could be catastrophic. "A major climatic change would force economic and social adjustments on a worldwide scale," warns a recent report by the National Academy of Sciences, "because the global patterns of food production and population that have evolved are implicitly dependent on the climate of the present century."

A survey completed last year by Dr. Murray Mitchell of the National Oceanic and Atmospheric Administration reveals a drop of half a degree in average ground temperatures in the Northern Hemisphere between 1945 and 1968. According to George Kukla of Columbia University, satellite photos indicated a sudden, large increase in Northern Hemisphere snow cover in the winter of 1971-72. And

ic change is at least as fragmentary as our data," concedes the National Academy of Sciences report. "Not only are the basic scientific questions largely unanswered, but in many cases we do not yet know enough to pose the key questions."

Extremes: Meteorologists think that they can forecast the short-term results of the return to the norm of the last century. They begin by noting the slight drop in over-all temperature that produces large numbers of pressure centers in the upper atmosphere. These break up the smooth flow of westerly winds over temperate areas. The stagnant air produced in this way causes an increase in extremes of local weather such as droughts, floods, extended dry spells, long freezes, delayed monsoons and even local temperature increases—all of which have a direct impact on food supplies.

"The world's food-producing system," warns Dr. James D. McQuigg of NOAA's Center for Climatic and Environmental Assessment, "is much more sensitive to



pressed to keep up with it. In England, farmers have seen their growing season decline by about two weeks since 1950, with a resultant over-all loss in grain production estimated at up to 100,000 tons annually. During the same time, the average temperature around the equator has risen by a fraction of a degree—a fraction that in some areas can mean drought and desolation. Last April, in the most devastating outbreak of tornadoes ever recorded, 148 twisters killed more than 300 people and caused half a billion dollars' worth of damage in thirteen U.S. states.

Trend: To scientists, these seemingly disparate incidents represent the advance signs of fundamental changes in the world's weather. The central fact is that after three quarters of a century of extraordinarily mild conditions, the earth's climate seems to be cooling down. Meteorologists disagree about the cause and extent of the cooling trend, as well as over its specific impact on local weather conditions. But they are almost unanimous in the view that the trend will

a study released last month by two NOAA scientists notes that the amount of sunshine reaching the ground in the continental U.S. diminished by 1.3 per cent between 1964 and 1972.

To the layman, the relatively small changes in temperature and sunshine can be highly misleading. Reid Bryson of the University of Wisconsin points out that the earth's average temperature during the great Ice Ages was only about 7 degrees lower than during its warmest eras—and that the present decline has taken the planet about a sixth of the way toward the Ice Age average. Others regard the cooling as a reversion to the "little ice age" conditions that brought bitter winters to much of Europe and northern America between 1600 and 1900—years when the Thames used to freeze so solidly that Londoners roasted oxen on the ice and when iceboats sailed the Hudson River almost as far south as New York City.

Just what causes the onset of major and minor ice ages remains a mystery. "Our knowledge of the mechanisms of climat-


the weather variable than it was even five years ago." Furthermore, the growth of world population and creation of new national boundaries make it impossible for starving peoples to migrate from their devastated fields, as they did during past famines.

Climatologists are pessimistic that political leaders will take any positive action to compensate for the climatic change, or even to allay its effects. They concede that some of the more spectacular solutions proposed, such as melting the arctic ice cap by covering it with black soot or diverting arctic rivers, might create problems far greater than those they solve. But the scientists see few signs that government leaders anywhere are even prepared to take the simple measures of stockpiling food or of introducing the variables of climatic uncertainty into economic projections of future food supplies. The longer the planners delay, the more difficult will they find it to cope with climatic change once the results become grim reality.

—PETER GWYNNE with bureau reports


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continued from page 6

pipng, other than service pipe, in or in connection with a building, structure, or within the property lines of premises, extending from the point of delivery at the gas meter.”³ By prohibiting natural gas piping in newly constructed buildings, Berkeley sought to “eliminate obsolete natural gas infrastructure and associated greenhouse gas emissions in new buildings where all-electric infrastructure can be most practicably integrated, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.”⁴

In November 2019, the California Restaurant Association (CRA) sued Berkeley in the U.S. District Court for the Northern District of California, arguing among other things that the federal Energy Policy and Conservation Act (EPCA)⁵ preempted the Ordinance. EPCA is a federal statute that regulates the energy efficiency of several consumer products, including water heaters; furnaces; stoves; and heating, ventilation, and air conditioning systems (together, covered products). EPCA does not cover piping, however. EPCA preempts state and local regulations concerning the energy efficiency, energy use, or water use of any covered product that has a federal energy conservation standard.⁶

The district court originally dismissed the CRA’s challenge, concluding that EPCA must be “interpreted in a limited manner.” According to the district court, broad federal preemption under EPCA would cause federal law to “sweep into areas that are historically the province of state and local regulation,” including “local natural gas infrastructure.”⁷ Thus, EPCA could supersede only those state and local regulations that focus on a covered product, and directly require a particular energy use for that product.

The Ninth Circuit reversed the district court, holding that EPCA expressly preempts state and local regulations concerning the energy use of many natural gas appliances, including those used in household and restaurant kitchens.⁸ The Ninth Circuit held that EPCA’s preemption clause supersedes state and local regulations that “relate” to the quantity of energy directly consumed by certain appliances at the place where those products are used.⁹ A preemption clause that covers regulations on “energy use” “fairly encompasses an ordinance that effectively eliminates the ‘use’ of an energy source.”¹⁰ Critically, the panel reasoned that EPCA’s purpose was to ensure that states and localities “could not prevent consumers from using covered products in their homes, kitchens, and businesses.”¹¹ EPCA’s preemption clause therefore extends to regulations that both (i) directly address the covered products and (ii) affect the on-site infrastructure related to the use of those products.¹² The Ninth Circuit concluded that EPCA preempted Berkeley’s ban because it prohibited the onsite installation of natural gas infrastructure necessary to support covered natural gas appliances.¹³

IMPLICATIONS OF THE NINTH CIRCUIT’S DECISION

Berkeley may still appeal the Ninth Circuit’s decision to the U.S. Supreme Court. As it stands now, the opinion’s immediate effect is that it strikes down Berkeley’s Ordinance. It may also spell the end for similar regulations banning natural gas in states and municipalities in the Ninth Circuit.¹⁴ The decision may also have other wide-ranging effects.

Emphasis on the use of covered products

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ADMINISTRATIVE SECRETARY

Jeff Atlas

Administrative Secretary... and your newsletter editor

Please read the VP Legislative report carefully. There are a lot of restrictions, harsh regulations, limits and bans on our way of life coming at rapid fire here in California with next to no opposition.

Will the various jurisdictions, such as Los Angeles, simply plow ahead ignoring court rulings? I guess that will depend on at just what point the inhabitants of this state begin to realize what's happening around them.

Will we be "allowed" to grill burgers at the next ASPE picnic?

Please read the VP Legislative report carefully.

Attendance is way up at the meetings. Please continue to participate. Things don't have to be the way they are.



VP Tech: continued from page 5

manual may be downloaded at: iapmo.org/media/31862/medical-gas-resiliency-manual-public-comment.pdf.

The International Association of Plumbing and Mechanical Officials (IAPMO®) is seeking volunteers to participate on the new Technical Committee for Hot Water Recirculation System Design, Installation, Commissioning, and Operations. The goal of this standard will be to develop prescriptive and performance requirements for domestic hot water recirculation systems to minimize energy and water usage while improving safety. The deadline to apply is December 31. Anyone interested in serving on the new committee may complete the application online at forms.iapmo.org/iapmo/committee/app_innovation_taskgroup.aspx.





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MEMBERSHIP REPORT

Robert Galaviz CPD
V.P.Membership

In this month's newsletter, I'm excited to introduce two new members to the ASPE LA family: Amir Habibi and Shaun Dunn. I look forward to your active involvement in the organization!

Speaking of our community, we want to remind our current members about the importance of renewing your memberships. Your ongoing support is what keeps us going and growing.

Let's also not forget our mission to bring in fresh faces – we're all about embracing and empowering younger members. They bring new energy and ideas that keep us on our toes and moving forward. Together, we're building something fantastic here at ASPE LA, and we're grateful for each one of you who's part of it.

If you happen to know of someone that would benefit from joining our organization, please have them fill out the following form, or reach out to me directly. I'd be happy to assist them. <https://www.aspe.org/membership-global-community/join/>



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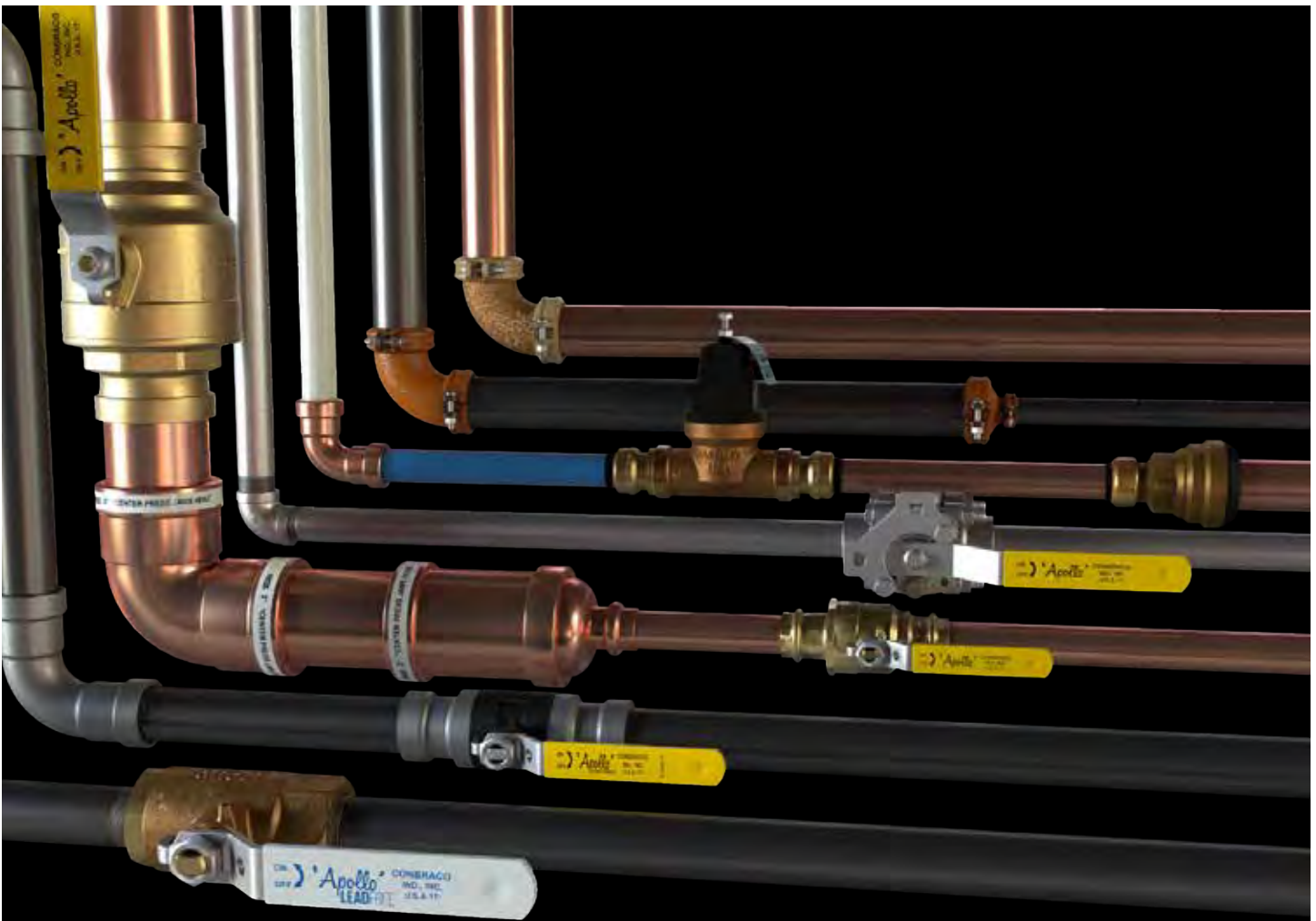


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PRESIDENT: continued from page 1

The upcoming November meeting sounds exciting as well. Having Mr. Michael Madsen, lead Sales Engineer from Grundfos CBS Inc., present on "Plumbing Basics" is sure to be informative and beneficial for your members. Learning about essential plumbing and pump concepts can be valuable for those in your industry. I hope your chapter continues to have successful and engaging meetings, and I'm sure your members are looking forward to the upcoming event with Mr. Madsen. If you have any more updates or announcements, feel free to share them.

Thank you for sharing the exciting news about the 2024 ASPE Convention and Expo in Columbus, Ohio, scheduled for October 18 through 23. It's a great opportunity for members to enrich their knowledge and network with industry professionals.

The process for selecting chapter delegates for the convention sounds fair and transparent. It's good to see that your chapter is prioritizing active involvement and participation in local meetings as an eligibility criterion. Having your Chapter President, VP Technical, and VP Legislative serve as the first three delegates is a sensible approach. I'm sure your members are looking forward to the event, and the selection of chapter delegates

will help ensure your chapter's representation is well-rounded and can make the most of the convention's opportunities. If you have any more updates or information to share about the convention or any other chapter activities, please feel free to let me know.

I want to remind everyone that registration is mandatory via our LA Chapter website, as before. This helps us ensure accurate headcounts for the venue. Please note that we are not currently accepting online payments.

I'm delighted to share details about our chapter's annual family picnic, set for October 8th at the Elysian Park's Old Lodge Picnic Area near Dodger's Stadium. I'm sure everyone who attends will still appreciate the effort put into organizing the picnic, and it will be a memorable day for many. If you have any plans or updates regarding next year's picnic or any other chapter activities, please feel free to share.

Another exciting event on the horizon is the "Sporting Clay Event – Joint WOA and AYP event for ASPE – LA Chapter and ASPE OC" on October 15th, 2023. I look forward to hearing more about the details and updates on this event in our next month's report.

Lastly, we are aiming for an annual dinner on January 27, 2024, so please save that date. We are still looking for a venue. Additionally, if any manufacturer is interested in sponsoring a fishing trip, please reach out and let us know.

As always, your input is valuable to us. If you have any topics or ideas for our technical programs, don't hesitate to contact us or any board member. Keep an eye on your email for the next meeting invite, and I eagerly anticipate seeing all of you at our upcoming events.




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First, the Ninth Circuit's focus on "use" puts in question state and local regulations prohibiting or affecting—even indirectly—the "use" of natural gas in homes and buildings. Since 2019, over 70 state and local jurisdictions around the country have passed provisions requiring or incentivizing all-electric or zero-emissions new buildings and new construction in existing buildings, including many in California and Washington state.¹⁵

EPCA preemption of local building codes

Second, the Ninth Circuit observed that EPCA can also preempt local building codes. Building codes may survive preemption, however, under two circumstances. First, EPCA would not preempt any state or local regulation enacted or prescribed before 8 January 1987. Second, a state or local building code can survive EPCA preemption if the following seven requirements are met:¹⁶

1. The code allows a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet that objective;
2. The code does not specifically require any Covered Products to exceed federal standards for energy efficiency (unless granted a waiver from the secretary of energy);
3. The code offers options for compliance on a "one-for-one equivalent energy use or equivalent cost basis";
4. The code bases any baseline building design used by the code on a building with covered products that do not exceed federal standards (unless granted a waiver from the secretary of energy);
5. The code offers at least one optional combination of energy consumption-related items that does not exceed federal standards for any covered product (assuming the code offers such combinations);
6. The code frames any energy target as total energy consumption for the entire building; and
7. The code uses test procedures specified in EPCA to determine the energy consumption of covered products.¹⁷

According to the Ninth Circuit, Berkeley's natural gas ban was in a building code that failed to meet these requirements. The CRA Decision indicates that courts will look to the outcome of a state or local regulation and see if it affects the "use" of a product covered by EPCA. If so, under the Ninth Circuit's decision, EPCA preemption is likely triggered, and the state or local regulation is likely preempted, unless one of EPCA's exceptions applies. EPCA preemption could conceivably also cover a plethora of other state and local regulations related to testing and labeling requirements,¹⁸ energy use,¹⁹ energy efficiency standards,²⁰ and water use.²¹

WHERE GAS BANS GO FROM HERE

The Ninth Circuit may have struck down Berkeley's natural gas ban, but other state and local bans and electricity mandates could still stand if they are within a building code that meets EPCA's preemption exceptions. Other federal courts may also be ruling on

continued on page 26

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similar cases in the future, which would affect state and local regulations in states outside of the Ninth Circuit and could create a conflict among the circuits.

Stakeholders now face uncertainty regarding assumptions and projections made with now potentially defunct gas bans in mind. For instance, building owners and operators may have invested in electric appliances or infrastructure to comply with a local prohibition or mandate. Gas and electric utilities serving local jurisdictions subject to a natural gas ban may have designed integrated resource plans or other long-term energy plans with certain assumptions on the rise of electric service and the decline of gas. Local jurisdictions that have experienced difficulty implementing electricity infrastructure may use the CRA Decision to justify continued reliance on natural gas. Moreover, providers of renewable natural gas and hydrogen may market their fuel as a legally compliant, low-carbon alternative to investing in all-electric infrastructure.

Furthermore, the CRA Decision may ease concerns by gas utilities faced with potential “stranded assets”—investments in infrastructure that have remaining useful life but have been retired early as a result of underutilization—due to state and local policies that are intended to reduce or wind-down consumption of natural gas. Such assets often give rise to thorny policy questions as to whether the utility or ratepayers should be responsible for these sunk costs, particularly when the investments were prudent when made. The Ninth Circuit’s confirmation that EPCA requires in many cases continued access to natural gas infrastructure by new customers supports continued prudent investment by utilities to meet this additional demand—and, accordingly, bolsters the case for cost recovery for these investments in utility rates.

FOOTNOTES

¹ *Cal. Rest. Ass’n v. City of Berkeley*, No. 21-16278, 2023 WL 2962921 (Apr. 17, 2023) (*CRA Decision*).

² Ordinance § 12.80.040(A).

³ *Id.* § 12.80.040(E).

⁴ *Id.* § 12.80.010(H).

⁵ 42 U.S.C. § 6201 *et seq.*

⁶ 42 U.S.C. § 6297(c). This particular provision contains several exceptions, but the Ninth Circuit determined that none of the exceptions were applicable to this case. *CRA Decision*, 2023 WL 2962921 at *4.

⁷ *Cal. Rest. Ass’n v. City of Berkeley*, 547 F. Supp. 3d 878, 891 (N.D. Cal. 2021).

⁸ *CRA Decision*, 2023 WL 2962921 at *2.

⁹ *Id.* at *4.

¹⁰ *Id.* at *5.



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