JONES DAY

150 WEST JEFFERSON • SUITE 2100 • DETROIT, MICHIGAN 48226.4438

TELEPHONE: +1.313.733.3939 • JONESDAY.COM

DIRECT NUMBER: (313) 230-7950

JJJONES@JONESDAY.COM

January 12, 2023

Via Email and UPS Overnight

Ms. Gabriella Davis
Petitions Clerk
IAPMO Board of Directors
IAPMO Group
4755 E. Philadelphia Street
Ontario, CA 91761

Re: Petition to the IAPMO Board of Directors

Dear Ms. Davis,

Section One: Petitioner Information

EVAPCO, Inc., SPX Corporation, and Baltimore Aircoil Company, Inc., represented by Jones Day.

EVAPCO, Inc.
5151 Allendale Lane
Taneytown, MD 21787

SPX Cooling Technologies
7401 West 129th St.
Overland Park, KS 66213

Baltimore Aircoil Company, Inc.
7600 Dorsey Run Road
Jessup, MD 20794

Jones Day (Attn: Jeff Jones)
150 West Jefferson
Suite 2100
Detroit, Michigan 48226-4438

Section Two: Standards Council Action at Issue

Docket Nos. Appeals 2024 UMC and Appeals 2024 UPC – *Date of Decision: October 10, 2022*
2024 Uniform Plumbing Code
Items #305 (Public Comments ("PCs") #1–#4), #307 (PCs #1–#2)
2024 Uniform Mechanical Code
Items #321 (PC #1), #323 (PCs #1–#3, #5–#7, #9–#11), #324 (PCs #1–#2), #325–#330 (PC #1)

Docket Nos. 01-24A through 04-24F – *Date of Decision: December 14, 2022*
2024 Uniform Mechanical Code – Appendix F2; Appendix H; Appendix J, Table 1801.23
Items #321 (PC #1), #323 (PC #10), #324 (PC #2), #325–#329 (PC #1), #330 (PCs #1–#2)
2024 Uniform Plumbing Code – Appendix N; Appendix P; Table 1701.2
Items #305 (PC #2), #307 (PC #2)

Section Three: Grounds for Petition

I. The Board Urgently Needs to Review This Matter

Petitioners request that the IAPMO Board of Directors ("Board") review the issues presented by Petitioners in their May 23, 2022 appeal, including the testimony provided at the September 22, 2022 hearing ("Sept. Hearing") ("First Appeal"), and the issues presented in Docket Nos. 01-24A through 04-24F, including Petitioners' objections at the November 16, 2022, hearings ("Nov. Hearings"), (collectively, "Appeals") and take action to preserve the integrity of IAPMO's code development process and postpone adoption of the exclusionary, misguided, and counterproductive items at issue for further evaluation and study pursuant to IAPMO's rules.

The items slated for inclusion in the 2024 UPC and UMC at issue in this petition ("Items") single out cooling tower products and technologies by imposing upon them disparate, unjustifiable, and enormously costly requirements without adequate justification, regulatory expertise, or scientific study. Many of the Items were proposed or advocated by *competitors* of cooling towers seeking to burden cooling towers or drive them out of business *to benefit other products and technologies in the marketplace*. Under federal law, provisions like these cannot be used to pick winners and losers in the marketplace. The Items will irreparably harm building owners and operators, taxpayers, cooling tower manufacturers, and their suppliers and distributors—imposing enormous costs on them and the public at large with no demonstrable benefits. The lack of any credible justification for the Items, the clear bias in their development, and their antitrust implications constitute extraordinary circumstances requiring Board intervention.

In addition, the code development process utilized to develop the Items also constitutes an extraordinary circumstance necessitating Board action. The Standards Council erroneously determined that the process complied with ANSI Essential Requirements and IAPMO's Regulations Governing Committee Projects ("Regulations"), but, based on the record, that determination is clearly erroneous. And the Standards Council failed to address multiple procedural violations—which permeated the entire process—that Petitioners raised in the Appeals. Even if the Board disagrees that the process was flawed, it is clear that the process was nonetheless distorted—by clear bias—in a manner that requires the Board's intervention.

II. The Proposed Regulations Are Wrong on the Science, Lack Justification, Were Not Properly Studied, and Would Impose Millions, If Not Billions, of Dollars in Unwarranted Costs.

Based on the extensive scientific literature and testimony presented to the Standards Council in the Appeals, the Items' single-minded focus on cooling towers is entirely misguided and unsupported. The evidence shows that the vast majority of Legionnaires' disease cases are not associated with any outbreaks, let alone any cooling tower outbreaks. Approximately 96 percent of Legionnaires' disease cases are "sporadic." (August 25, 2022, Letter to IAPMO ("August Letter" at Tab 2, slide 6; Tab 3, p. 2; Tab 6, slide 2.) For the four percent of cases associated with outbreaks, potable water—not cooling towers—is the most common causative source. (*Id.* at Tab

2, slide 6.) And, notably, the water in cooling towers comes from the potable water supply. Thus, according to some estimates, less than one percent of Legionnaires' disease cases studied have been attributed to cooling towers (*see id.* at Tab 2, slides 6, 10, 14), and even that small percentage has been shown to be misattributed due to antiquated testing technologies that do not identify the actual causative source of the disease. More accurate testing developed at a subatomic level has refuted many of those attributions.

Unfortunately, the IAPMO Legionella Task Group ("Task Group") formed to explore these issues was motivated by anticompetitive factors or other interests having little or nothing to do with the science. By singling out cooling towers as a primary or even significant cause of Legionnaires' disease, the Task Group fundamentally misdiagnosed the problem, and the Items will in fact only worsen the problem by failing to address the core causative source of the disease—the incoming water supply.

In fact, New York City adopted onerous regulations for cooling towers in 2016, imposing water sampling and recurring inspection requirements. (*Id.* at Tab 3, p. 2.) Yet, after it did so, the number of Legionnaires' disease cases more than *doubled* within two years. (*Id.* at Tab 3, p. 2; Tab 8.) And the cost of complying with the regulations mushroomed. Some estimates calculate the cost of compliance at $40,000 per building owner or about $1.8 billion over five years in New York City alone. (*Id.* at Tab 8.) Similarly, the specific testing levels included in UMC Item #323 are not supported by scientific data or evidence sufficient to establish their efficacy, let alone justify the costs that they would impose on building owners, operators, and tenants. (In fact, California Governor Gavin Newsom recently vetoed Senate Bill 1144, which would have required a *Legionella* management program for building over ten stories high with cooling tower systems, finding the program would have imposed "hundreds of millions of dollars" in costs. https://www.gov.ca.gov/wp-content/uploads/2022/09/SB-1144VETO.pdf? emrc=7781d7).

Analyzing these issues in the right way takes time and requires assembling a broad constituency of independent scientists, regulatory bodies, and other stakeholders to develop meaningful recommendations. For instance, ANSI/ASHRAE Standard 188-2018, the preeminent building standard, was in development for more than 10 years with an expert committee that included representatives from the CDC and the EPA and many other chemists, engineers, water treatment professionals, manufacturers, and other experts. (*Id.* at Tab 4.) These experts considered and elected not to include many of the types of onerous requirements proposed in the Items. Additionally, Standard 188 (and ASHRAE Guideline 12) already contains recommendations regarding incoming water risks and building water management systems, including cooling towers. That guidance is sufficient. The Items here will only create confusion in the marketplace and public heath communities by modifying this guidance. Even ASHRAE, through the Manager of Codes Emily Toto (*see, e.g.*, UMC Item #323, PC #10; UMC Item #324, PC #2) and Executive Vice President Jeff Littleton have cautioned that adding to or using only parts of Standard 188 can undermine the standard's effectiveness. Those now advocating requirements different from or inconsistent with Standard 188 are driven by self-interests that should not form the basis of codes developed by a standard-setting organization.

In rejecting the Petitioner's appeal, the Council summarily stated that "the evidence in the record supports the decision of the Technical Committee" (Dec. 14, 2022, Standards Council Decision, p. 7), without identifying any scientific, regulatory, or empirical evidence supporting the decision and without identifying any cost-benefit analysis that was undertaken to assess the impact of the proposed regulations. In fact, no such analysis was done.

III. The Scientific, Regulatory, and Cost Evidence Submitted All Contradict the Proposed Regulations.

As discussed below, the Task Group created to explore these issues and help generate the Items was dominated by competitors to cooling towers and others with financial interests who would benefit from imposing high costs and regulatory burdens on cooling towers. There is no evidence that the Task Group performed any scientific-based risk assessments or cost-benefit analyses of the actual regulatory burdens that the Items would impose compared with their likely benefit. Yet, the technical committees largely accepted the code proposals "as is" with no additional scientific analysis, testimony, or evidence to support them.

If the UPC or UMC imposes expensive regulatory burdens on a technology under the guise of public health or safety, there should be strong scientific evidence from objective and independent sources to support the requirements. In this case, there is strong medical and scientific evidence *to the contrary*. In fact, the requirements that the Items would impose on cooling towers threaten to *harm* public health and safety by diverting attention and resources away from evidence-based Legionnaires' disease prevention strategies.

Notably, the record here contains *no supporting evidence or testimony from public health experts knowledgeable on the issues*. No one from the CDC or EPA sat on the Task Group or technical committees. The Task Group and committees did not seek input from scientists from the EPA, the Center for Disease Control, the World Health Organization, or other health organizations that have studied Legionnaires' disease. Similarly, the record here contains *no supporting evidence or testimony from state regulatory authorities with expertise on the issues*. No current or former state medical directors—who have regulatory authority for public health and safety—participated in the Task Group or the committees.

To the contrary, two former health regulators testified on appeal *against* the Items. Gerald Smith, a former public health engineer for the Minnesota Department of Health with no connection to Petitioners, submitted an independent letter in support of Petitioners' First Appeal (August 22, 2022, Letter to IAPMO by G. Smith ("Aug. Smith Letter")) and his own appeal (Sept. 30, 2022, Appeal by G. Smith and P. Root ("Sept. Smith Appeal")). Mr. Smith also testified against the Items (Sept. Hearing Tr. at 30–33, 34–35; Nov. Hearings Tr. *passim*). Based on Mr. Smith's participation in the code development, he testified that there was "bias" at the outset of the "conversation." (Aug. Smith Letter; Sept. Smith Appeal.) He noted, "[t]here was no substantive effort made by the Technical Committees to hear, address and resolve all the public commenters [*sic*] objections and rationale for their objections." (Aug. Smith Letter.) He cautioned that "what is being proposed in the appendices of the 2024 UPC and UMC is not harmonizing with those existing guidelines and

guidance's [*sic*], but has the real potential of creating confusion to the users." (*Id.*) He urged IAPMO to "identify building water system stakeholders, subject matter experts, and other stakeholders in preparing for possible re-submission" in another code cycle. (*Id.*)

In addition, Dr. Hung Cheung, former medical director for the State of Maryland, testified that much of the previous research into sources of Legionnaires' disease cases used scientifically unreliable testing methods and that the Items are not scientifically sound, overlook the primary cause of Legionnaires' disease, and are harmful. (Sept. Hearing Tr. at 21–28; *see also* August Letter at Tab 3.) He, too, advocated that IAPMO focus on upstream causes of Legionnaires' disease—in other words, source water. (Sept. Hearing Tr. at 21–28; August Letter at Tab 2.)

Further, there is *no supporting evidence or testimony analyzing or addressing the impact on the stakeholders that will bear the burden and expense of the proposed code provisions, and these stakeholders were not heard as part of the process*. No building owners, operators, or tenants—the stakeholders who will have to pay for the onerous requirements that the Items propose—participated in the Task Group or the technical committees. This is a critical omission, since any objective analysis of the Items requires an assessment of the Items' associated costs and benefits. *Nor were any manufacturers, customers, or suppliers represented on the Task Group or the technical committees*. This is in spite of the fact that these manufacturers have decades of expertise on the relevant issues, are themselves heavily involved in efforts to prevent Legionnaires' disease, and will be directly affected by the Items.

In addressing the objections made to the Items, the Mechanical Technical Committee, provided cursory rejections of proposed changes, often stating "the deletion would undue [*sic*] the work of the task group" (*see, e.g.,* Committee Statement ("CS") on UMC Item #321, PC #1; CS on UMC Item #323, #10; CS on UMC Item #328, PC #1) or that the Items simply "provide useful guidance" (*see, e.g.,* CS on UMC Item #323, PCs #2–#3). These threadbare justifications are circular and insufficient to reject evidence-based objections to the Items. And, importantly, they only go to show how much the Committee is relying on the work of the Task Group.

Finally, *IAPMO's own membership rejected many of the technical committees' actions at issue* at IAPMO's annual association conference. The membership voted to accept Public Comment #2 to UMC Items #324 and #330 and UPC Item #307 and Public Comment #1 to UMC Items #325–#329. Those votes reflect other considerations beyond the anticompetitive voices that animated the generation of the proposals at the outset. Yet, the membership's votes were summarily set aside by the committees. Even a member of the Task Group itself, Julius Ballanco, noted how unusual this is: "The typical Technical Committee vote is to agree with the will of the membership." (Julius Ballanco, Outvoted at IAPMO, Nov, 1, 2022, https://www.pmengineer.com/articles/96158-julius-ballanco-outvoted-at-iapmo.) Here, they did not do so. For these reasons, a clear distortion of the code development process exists such that Board intervention is appropriate.

IV. The Proposed Regulations Were the Result of a Clear And Obvious Bias That Sought to Burden Cooling Towers and Help Competitors in an Unlawful Manner.

The proposed regulations are the byproducts of misstatements, misleading claims, or negative characterizations regarding the cooling tower industry that were designed to impugn the industry and promote alternative products that *compete* with cooling towers in an unlawful and anticompetitive effort to use a standard-setting organization to burden or, in effect, prohibit competitors. Many of the provisions at issue (UMC Items #324–#329) were submitted by Jay Egg, who is a geothermal consultant and certified geothermal designer. Mr. Egg, for instance, submitted proposed UMC Appendix J (relabeled as F), "Operation, Closure, and Restarting of Cooling Towers" (UMC Item #324), which is clearly a one-sided and heavily biased regulation designed to impose costly regulatory requirements on cooling towers.

As stated in the Appeals, Mr. Egg markets geothermal technologies that *compete* with cooling towers, so he stands to benefit financially from burdening cooling towers with costly regulations, as do other members of the Task Group. Mr. Egg's business, Egg Geothermal, reportedly "show[s] the public how they can save money and the environment using Geothermal Heating and Cooling." Mr. Egg has written extensively about the cooling tower industry and made numerous inaccurate or misleading statements about it. On May 4, 2020, Mr. Egg wrote an article titled, "Cooling Towers and Legionella Primer; Where Are We Headed?" in which he states, "*One of the best ways to eliminate the possibility of Legionella exposure from cooling towers is to eliminate the cooling tower. Geothermal exchange systems solve this concern while at the same time providing the ability to eliminate combustion heating.*" (May 2, 2022 Letter, p. 2).

Incredibly, according to Mechanical Technical Committee member David Mann, *Mr. Egg actually chaired the Legionella Task Group, which developed the proposed regulations.* (Nov. Hearings Tr. at 107:2.) Notably, Mr. Egg's wife also participated in the Items' development and authored many comments that the committees accepted (e.g., UPC Item #305, PC #1; UMC Item #323, PC #1). That the attributed author of many of the Items—and the Chair of the Task Group that created them—is so publicly opposed to cooling towers is disturbing and highly problematic.

Even the Items themselves reflect Mr. Egg's biased views. Appendix J and its purported "substantiations" contain inflammatory, inaccurate, or misleading representations regarding the cooling tower industry that seek to disparage it:

> UMC Item #324 Substantiation states: "Legionnaires' disease linked to aerosolization of contaminated water vapor from cooling towers has increased in recent decades, and these standards are presented to provide reasonable control measures established for Legionella levels." UMC Item 325, J 301.1 Legionella likewise states: "Water based mechanical system are generally closed and pressurized and have no potential to affect the health of occupants, except at the cooling tower. Cooling towers can carry Legionella on aerosolized water droplets and infect occupants in and outside of the building."

As described above, Mr. Egg, the author of these statements, has a clear economic interest in promoting alternative technologies that *compete* with cooling towers and is not a disinterested party in the development, interpretation, and application of the UMC. Even more troubling, Mr. Egg is the chair of the Task Group and a member of the Mechanical Technical Committee, where he advocated for the Items and voted to approve the appendices that he primarily authored.

In spite of this obvious anticompetitive bias, the technical committees adopted the recommendations of the Task Group, summarily overruling compelling objections from representatives across the industry and IAPMO's own membership. Simply stated, the Task Group did the leg work for and prepared the Items. The technical committees then largely adopted the Items "as is." When a technical committee is not an expert in the subject matter at issue—here, *Legionella* and Legionnaires' disease—and relies almost entirely on the purported "expertise" of others, it is absolutely essential that those doing the actual drafting be fair, balanced, and not subject to bias or dominated by interest groups seeking to burden competitors in the industry. Here, the complete opposite occurred. Notably, in its decision rejecting the appeal, the Standards Council repeatedly touted the efforts of the Task Group—the very Task Group that was animated by clear bias—as support for the proposed regulations. (Dec. 14, 2022, Standards Council Decision, p. 6 ("Considering the extensive work by the Task Group . . .").)

As a result of this clear bias, Petitioners believe the adoption of the Items will unlawfully restrict competition in violation of the Lanham Act, state statutes protecting against unfair and deceptive business practices, and/or state and federal antitrust laws. The U.S. Supreme Court has made clear that "a standard-setting organization . . . can be rife with opportunities for anticompetitive activity." *Am. Soc. Of Mech. Eng'rs, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 571 (1982). And self-interested parties may face antitrust liability when a standards-setting process is "biased by members with economic interests in stifling product competition." *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 501 (1988). An antitrust violation may also be found "where rule making is used to facilitate collusion or the exclusion of rivals whose competitiveness or innovation threatens the relevant decision makers." *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412 (4th Cir. 2015) (citation omitted), *as amended on reh'g in part* (Oct. 29, 2015). In light of this, 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.

V. The Proposed Regulations Resulted from Multiple Fundamental Procedural Violations That Are Inconsistent with IAPMO's Requirements and ANSI's Standards.

Petitioners' January 10, 2022 Letter to IAPMO, May 2, 2022 Letter to IAPMO, and the Appeals outline in detail the procedural violations that occurred in the Items' development. Petitioners incorporate these arguments here. The Standards Council incorrectly decided the issues. Petitioners believe IAPMO's conduct has violated the following ANSI and IAPMO policies, procedures, and requirements: (1) Openness (ANSI Essential Requirement 1.1), (2) Lack of Dominance (ANSI Essential Requirement 1.2), (3) Balance of Representation (ANSI Essential

Requirement 1.3), (4) Conflict Between/Among Existing American National Standards (ANSI Essential Requirement 1.4), (5) Notifications of Standards Activities (ANSI Essential Requirement 1.5), (6) Consensus (Regulations #3-3.7.1.2), (7) Consideration of Views and Objections (ANSI Essential Requirement 1.6; Regulations #3-3.3.3), and (8) Hold (Regulations #4-4.6.2.2, #4-4.6.2.3) and Substantive Comment (Regulations #4-4.9.2). In addition, Petitioners highlight six errors made by the Standards Council in its appeals decisions.

First, Petitioners believe the Standards Council was mistaken in finding that the technical committees need not "hold" the Items pursuant to Regulation #4-4.6.2.2, which states that a technical committee shall hold a comment that "[w]ould propose something that could not be properly handled within the time frame for processing the report," and Regulation #4-4.6.2.3, which provides that, when deciding whether to hold a comment, the committee may consider "the extent to which the Comment proposes a change that is . . . substantial, the complexity of the issues raised, and whether sufficient public debate or review has taken place." Given the complex nature of Legionnaires' disease and the proposals and comments at issue, the technical committees should have agreed to hold the Items. The intense, still-continuing debate surrounding the Items, the membership's rejection of the technical committees' actions, and the technical committees' overriding of the membership clearly indicate that sufficient public debate and review has *not* taken place. In the Council's decision rejecting the appeal, the Council summarily stated that it is "clear" that "appropriate research was done," "meetings were held" and "expertise was solicited" (Dec. 14, 2022, Standards Council Decision, p. 6), without identifying any such "expertise." There is no record of the Task Group or anyone else soliciting independent "expertise" on the complex scientific and regulatory issues presented here or the costs of the proposed regulations, let alone a record that any such "expertise" supports the proposed regulations.

Second, and similarly, the Standards Council failed to make any finding regarding Petitioners' argument that the technical committees should have withdrawn the Items for further consideration and later presentation pursuant to Regulation #4-4.9.2, which permits such action when a comment has "merit," "must be considered in this revision," and "would require research and discussion by the TC that cannot be handled within the time frame established for processing the Report."

Third, the Standards Council erred in finding that the Items do not violate ANSI Essential Requirement 1.4, requiring coordination and harmonization among American National Standards. The Items are not coordinated or harmonized with ANSI/ASHRAE Standard 188-2018 (and ASHRAE Guideline 12). Standard 188 establishes Legionellosis risk management requirements for building water systems, and these requirements differ from those in the Items. ANSI requires "substantial, thorough and comprehensive [good-faith] efforts to harmonize [the Items] and [Standard 188]." (ANSI Essential Requirement Benchmark 2.4.) The Council clearly erred in finding that this requirement was met. To support its conclusion, the Council stated that Standard 188 committee members were invited to participate in the Items' development, that proponents of some of the Items said "[the Items] [are] not intended to supersede ASHRAE 188 and Guideline 12," and that some of the Items refer to Standard 188. (Oct. 10, 2022, Standards Council Decision,

p. 2; Dec. 14, 2022, Standards Council Decision, pp. 6–7.) None of those findings address the problem.

Simply offering individuals the opportunity to participate does not preclude procedural violations—the committees have an obligation to seek to harmonize the proposals in a substantive manner. Here, they did not do so. As set forth above, ASHRAE personnel lodged multiple objections to the Items and "the ASHRAE Standing Project Committee (SSPC) 188 voted 22-0-1 to reject the inclusion of [UMC Items] #324–#329 into the UMC as originally proposed." ASHRAE also "invite[d] the Technical Committee to engage in a collaborative revision of the proposed code language," but that was not done. (UMC Item #324, PC #2.) And, contrary to the process used here, a multidisciplinary cross-section of expert stakeholders developed Standard 188 and, in many cases, rejected elements of the Items proposed here. In its decision rejecting the appeal, the Standards Council stated that "an ASHRAE representative serves on the Mechanical Technical Committee" (Dec. 14, 2022, Standards Council Decision, p. 6), but, based on Petitioners' inquiries, that is not correct. The so-called "representative" is simply a contractor who is also an ASHRAE member. ASHRAE itself and representatives from ASHRAE have testified *against or objected to* the Items. Appendix H does reference Standard 188, but the manner in which it does so only highlights the central problem here. Proposed UMC Item #323, Appendix H, H.203, as amended by Public Comment #1, requires certain other water-using devices only to comply with Standard 188, but cooling towers are singled out and subjected to many onerous additional requirements. This disparate treatment of cooling towers only further supports the Petitioners' arguments.

Fourth, the Standards Council neglected to make any finding regarding Petitioners' Lack of Dominance argument regarding the Task Group. Nor is there any credible argument in response. Given Mr. Egg's extensive involvement in submitting the majority of the Items, his chairing of the Task Group, the obvious financial interests in regulating the cooling tower industry, and the absence of other parties, the Task Group was fundamentally flawed from the outset. Additionally, the majority of Task Group members stand to financially benefit from the Items. Such dominance precluded "fair and equitable consideration of other viewpoints," particularly coupled with the technical committees' rubber-stamping of the items submitted by the Task Group and their unreasoned and cursory dismissals of any objections. Some have argued that the Task Group need not be "fair" or "balanced" but that has no application here where the Committees and the Council rely so heavily on the Task Group and its supposed "work" as the basis for their decisions.

Fifth, the Standards Council failed to address a concerning allegation in its determination that Consideration of Views was equally afforded to all. As explained in the First Appeal, p. 6, when one of Petitioners' representatives came to the podium to discuss UMC Item #323, Public Comment #7, a technical committee member (who, as a geothermal installer, has clear and obvious interests opposed to the cooling tower industry) made a blanket motion to reject the rest of the representative's comments (including Comments #7 and #9–#11), which Petitioners understand passed. This is a violation of ANSI Essential Requirement 1.6 and/or Regulation #3-3.3.3, which requires that "[w]hen a guest addresses the committee, equal opportunity shall be afforded those with opposing views." Additionally, at the technical committee meetings, no meaningful time was

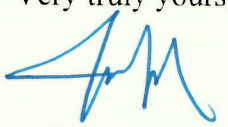
afforded to debate the issues and the committees summarily voted against Petitioners' proposals with no considered reasoning. The Standard Council repeatedly states that others were given the "opportunity" to participate in the process but such participation is meaningless if the objections and the basis for them are ignored.

And, finally, sixth, the Standards Council neglected to make any finding regarding Consensus (Regulation #3-3.7.1.2). Consensus requires "substantial agreement . . . by materially affected interest categories" and that "a concerted effort be made toward the[] resolution" of all views and objections." The cooling tower industry is undoubtedly a materially affected interest category in regard to the Items, it is not in substantial agreement with them, and there has not been a concerted effort to resolve its concerns. In fact, the technical committees have failed to engage in good faith or in any depth with Petitioners' objections.

Section Four: Relief Requested And Hearing Requested.

Petitioners request that the Board take action to preserve the integrity of the code development process by postponing adoption of the Items until the next cycle of code development in order to permit sufficient research, debate, and public review of the complex and substantial issues raised. This will also allow IAPMO another opportunity to include all relevant stakeholders and take steps to mitigate conflicts of interest in the process, as is required by ANSI. Alternatively, Petitioners request that the Board adopt Petitioners' written objections to the Items as listed in their submitted public comments/proposals and prohibit IAPMO from adopting UMC Appendices H and Appendix J (relabeled as F). A hearing is also hereby requested for this petition. A check for the $2,500 hearing fee is enclosed. Potential speakers at the hearing include Jeff Jones and Dr. Hung Cheung.

Very truly yours,



Jeffrey J. Jones