

# Natural Gas Appliances, Energy Policy, and Federalism: Who Is in Charge?

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To address climate change and other concerns related to emission of greenhouse gases, multiple jurisdictions in the United States have enacted new laws banning the construction and use of new products or infrastructure that burn natural gas. The most prominent of these are [Local Law 154](#), adopted by the New York City Council in 2021, and a statewide effort in California to limit use of appliances and machinery that consume natural gas, including a number of [local measures prohibiting](#) new natural gas infrastructure. (In 2022, the California Air Resources Board also [proposed a rule](#) that would impose statewide restrictions on natural gas consumption and infrastructure; that rule has not been finalized as of the date of this Sidebar.) These efforts were met with some measure of resistance, often from the federal government, with mixed results. For example, a [natural gas ban](#) adopted by the City of Berkeley, CA, was [invalidated](#) by the U.S. Court of Appeals for the Ninth Circuit in 2023. By contrast, in 2025 federal district courts [rejected](#) similar challenges to New York’s Local Law 154 and a similar law enacted by New York State, and the U.S. Court of Appeals for the Second Circuit [affirmed](#) those decisions in June 2026, acknowledging a split with the Ninth Circuit on the interpretation of federal preemption.

These laws and the ensuing litigation have raised questions about whether the federal Energy Policy and Conservation Act (EPCA) bars states and local governments from restricting the use of fossil-fuel-powered appliances in new buildings. In January 2026, the U.S. Department of Justice (DOJ) initiated litigation asserting that states and localities had overstepped their jurisdictional boundaries and were preempted by federal law and policy. Multiple California localities responded to the threat of litigation by [walking back](#) their natural gas infrastructure bans, while litigation on the matter continues. This Legal Sidebar analyzes these ongoing matters and the broader question of federal preemption of state and local regulation of natural gas infrastructure and consumption.

## Background: Federal Appliance and Equipment Standards Program and the Supremacy Clause

The federal Appliance and Equipment Standards Program, a national program setting minimum efficiency standards for a variety of consumer and industrial products, was first authorized as a voluntary program in 1975 by [EPCA](#). Congress authorized and directed binding standards imposing limits on product electricity consumption and water use in [subsequent amendments](#) to that legislation. EPCA grants the

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U.S. Department of Energy (DOE) [broad authority](#) to administer the program for “[covered products](#)” for which efficiency standards are set in statute, to adopt and amend new efficiency standards for other listed covered products through the administrative process, and to adopt new standards to cover certain consumer products not explicitly named in EPCA. DOE is also [authorized](#) to amend the standards, although EPCA prohibits the agency from adopting amendments that would reduce efficiency. EPCA also [grants](#) DOE authority to enforce these standards through civil penalties. Another [CRS Legal Sidebar](#) contains more details on this program.

Under the [Supremacy Clause](#) of the U.S. Constitution, if federal law conflicts with state or local law, federal law prevails and preempts the state or local law. Federal law may expressly or impliedly preempt state or local law. EPCA contains an express preemption provision. Relevant to the state and local natural gas regulations, EPCA’s preemption provision [expressly preempts](#) certain state laws and regulations related to energy conservation and efficiency. State or local standards “concerning the energy efficiency, energy use, or water use” of covered products are preempted by 42 U.S.C. § 6297(b) and (c). Subsections (b) and (c) [except](#) some state and local laws from EPCA’s preemptive effect; however, none of those exceptions would apply to state or local restrictions on natural gas hookups. Also of potential relevance to the state and local natural gas regulations, subsection (f) of EPCA’s preemption provision offers a [seven-part test](#) that state and local building codes must satisfy in order to avoid preemption by EPCA. This was not, however, a significant factor in the litigation.

## California Local Initiatives and *California Restaurant Association v. City of Berkeley*

A number of municipalities in California have enacted measures to limit use of appliances and machinery that consume natural gas within their jurisdictions, including a number of [local measures prohibiting](#) natural gas hookups and other accommodations in new construction. In 2019, the City of Berkeley, CA, adopted [Ordinance 7,672-N.S.](#) (Ordinance). The Ordinance prohibited construction of “natural gas infrastructure” in newly constructed buildings in the city. “Natural gas infrastructure” was defined to include piping but not the appliances to which such piping would connect. The California Restaurant Association (Association) sued to challenge the Ordinance, [claiming](#) that the Ordinance was preempted by EPCA and the federal Appliance and Equipment Standards Program. A federal district court [dismissed](#) the Association’s claim, holding that EPCA’s energy efficiency provisions should be “interpreted in a limited matter” to protect traditional state and local roles and that the Ordinance was not preempted by the Program because it does not “facially regulate or mandate any particular type of product or appliance.” The Association appealed to the Ninth Circuit, which reversed the lower court in *California Restaurant Association v. City of Berkeley* and [held](#) that the Ordinance was preempted by EPCA.

The Ninth Circuit [held](#) that “EPCA preempts regulations that relate to ‘the quantity of [natural gas] directly consumed by’ certain consumer appliances at the place where those products were used.” The court took a more holistic approach to EPCA and the energy efficiency standards program, [concluding](#) based on EPCA’s plain text and structure that the statute “is concerned with the end-user’s ability to use installed covered products at their intended final destinations.” The court thus [concluded](#) that “by its plain language, EPCA preempts Berkeley’s regulation here because it prohibits the installation of necessary natural gas infrastructure on premises where covered natural gas appliances are used.”

The Ninth Circuit rejected Berkeley’s argument that the Ordinance was not an efficiency requirement, [characterizing](#) the prohibition on natural gas infrastructures as effectively a cap on energy consumption set to zero. The court also [rejected](#) the lower court’s conclusion that EPCA energy efficiency requirements were intended to be limited to “regulations that ‘directly regulate either the energy use or energy efficiency of covered appliances,’” [concluding instead](#) that “by enacting EPCA, Congress ensured that States and localities could not prevent consumers from using covered products in their homes, kitchens

and businesses” and that therefore EPCA’s preemption “extends to regulations that address the products themselves *and* the onsite infrastructure for their *use* of natural gas.” The court also [pointed to](#) the language in EPCA’s preemption provision that covers regulations that “concern” such products.

The Ninth Circuit further [noted](#) that EPCA’s preemption section extends to building codes, but the court did not consider whether the Ordinance qualified for one of the preemption exemptions for state and local building codes listed at [42 U.S.C. § 6297\(f\)](#). Instead, the court [decided](#) that the existence of this subsection “demonstrates that EPCA’s preemptive scope extends beyond direct or facial regulations of consumer products” [and](#) that it “shows the extensive scope of the preemption clause.” The court therefore [reversed](#) the lower court’s decision and remanded with directions to reinstate the plaintiff’s claims. In January 2024, the circuit court narrowly [rejected](#) a request for rehearing en banc, with eight judges dissenting from the denial of rehearing en banc.

As noted above, at least two other California cities [subsequently amended](#) natural gas restrictions to avoid running afoul of the Ninth Circuit’s decision in *California Restaurant Association*. Not every jurisdiction and court followed suit.

## **New York City Local Law 154 and *Association of Contracting Plumbers v. New York***

In December 2021, the New York City Council adopted [Local Law 154](#), amending the city’s administrative code [to](#) “generally prohibit[] the use of fossil fuels such as natural gas and heating fuel in newly constructed residential buildings in New York City.” The [law](#) prohibits “combustion of any substance that emits 25 kilograms or more of carbon dioxide per million British thermal units of energy” unless the emitting device “contains no connection to a building’s gas supply line or fuel oil piping system, is used on an intermittent basis, and is not used to supply a building with heat or hot water.”

A group of contracting industry associations and a union brought a legal challenge to Local Law 154, [asserting](#) that it was preempted by the federal efficiency program established by EPCA. The plaintiffs [cited](#) the preemption standard for covered products in EPCA, [arguing](#) that the provision’s prohibition on state regulations “concerning the energy efficiency, energy use, or water use of such covered product,” and specifically the use of the word “concerning,” implied that the preemption goes beyond the explicit product standards, just as the Ninth Circuit had held in *California Restaurant Association v. Berkeley*. However, in *Association of Contracting Plumbers of the City of New York v. New York*, the U.S. District Court for the Southern District of New York [rejected](#) the Ninth Circuit’s interpretation of EPCA’s appliance standard preemption language.

Separately, New York State also enacted a [law](#) directing the State Fire Prevention and Building Code Council to adopt regulations prohibiting the installation of appliances that burn fossil fuels in certain new buildings. A group of companies, trade associations, and unions challenged the state law in the U.S. District Court for the Northern District of New York, which [held](#) that EPCA did not preempt the state law, [citing](#) the decision and the reasoning of their colleagues in the Southern District.

The plaintiffs in both cases appealed, and the U.S. Court of Appeals for the Second Circuit [affirmed](#) the district courts’ decisions, holding that EPCA does not preempt Local Law 154 or the New York State law. The Second Circuit focused on the phrase “energy use” as it is used in [42 U.S.C. § 6297\(c\)](#) and [found](#) that the phrase represents “a standardized, fixed measure assigned to a product before it reaches consumers” and that “once an appliance has been sold, nothing a consumer does with the appliance changes that appliance’s ‘energy use.’” As a result, the court [concluded](#) that “a regulation that effectively bars the use of a covered appliance by certain consumers . . . has little to do with that appliance’s ‘energy use,’” and therefore is not implicated by EPCA’s preemption provision. The court also [emphasized](#) the broader context of EPCA and argued that the language in [42 U.S.C. § 6297\(g\)](#) (clarifying that energy use

standards do not constitute an express or implied warranty) would make no sense if the phrase did not refer to fixed standards. The court also [reasoned](#) that EPCA's other references to a fixed value for "energy use," including references to manufacturer compliance requirements, would not make sense if the phrase covered consumer usage patterns in addition to standardized efficiency determinations. The court further concluded that EPCA's use of the word "concerning" did not broaden the scope of the statute's preemption provision to cover the challenged state and local laws, holding based on analysis of [EPCA's objectives](#) and the two laws' [effects](#) that they were not impermissibly connected to "energy use."

The Second Circuit explicitly [acknowledged](#) its split with the Ninth Circuit's decision in *California Restaurant Association*, finding fault with that court's interpretation of EPCA's preemption language. However, the Second Circuit [concluded](#) that "the reasons for divergence [were] too compelling" to avoid a circuit split. Specifically, the Second Circuit disagreed with the Ninth Circuit's reliance on the phrase "point of use" in the statutory definition of "energy use" to conclude that "EPCA is concerned with the end-user's ability to use installed covered products at their intended final destinations," finding instead that "point of use" was a technical term that related to EPCA's scope for regulating an appliance's consumption of energy.

## More Natural Gas Infrastructure Prohibitions and Litigation

In the wake of the Ninth Circuit's decision in *California Restaurant Association v. Berkeley* in 2023, a number of California cities [reportedly suspended](#) enforcement of local natural gas restrictions. Nevertheless, in January 2026 DOJ filed a [complaint](#) in a district court in the Ninth Circuit seeking to enjoin the cities of Morgan Hill and Petaluma, CA, from enforcing their natural gas prohibitions, [citing](#) EPCA and the Supremacy Clause. In response, the cities [adopted ordinances](#) amending or withdrawing their previous ordinances and acknowledging federal supremacy in the area. Following these actions, plaintiffs [dismissed](#) their complaint in March 2026.

The split among federal courts regarding the scope of the preemption language in EPCA allows for similar natural gas infrastructure restrictions in other jurisdictions, at least for the time being. For example, Section 84 of Massachusetts's 2022 renewable energy legislation [directs](#) the state's Department of Energy Resources to create a pilot program allowing up to 10 Massachusetts municipalities to require new building construction or major renovation projects to be fossil-fuel-free. Montgomery County, MD, adopted [similar legislation](#), effective at the end of 2026, that [prohibits](#) equipment that "uses fuel gas or fuel oil" in new construction and major renovations. The U.S. District Court for the District of Maryland recently [rejected](#) a legal challenge to the Montgomery County ordinance, siding with the reasoning used by U.S. District Court for the Southern District of New York and the Second Circuit in [concluding](#) that the County ordinance "does not regulate 'energy use' at the 'point of use' as specifically defined in the EPCA."

Even within the Ninth Circuit, EPCA preemption does not necessarily preclude any regulation of appliances that use natural gas. In a recently published [decision](#) in *Rinnai America Corp. v. South Coast Air Quality Management District*, the Ninth Circuit held that EPCA preemption as articulated in *California Restaurant Association* does not extend to a measure adopted by a California regional air quality management agency that required zero emissions of certain pollutants from stationary sources of emissions, including appliances, to comply with a Clean Air Act requirement intended to reduce air pollution. The court [highlighted](#) the distinction between regulations such as Berkeley's Ordinance, which regulated the energy use of and the natural gas infrastructure that supplies gas *into* appliances, and emissions and air pollution regulations that regulate the *output* of appliances, noting that EPCA does not include any mention of emissions standards. The court [reiterated](#) the previous panel's description of its ruling on EPCA preemption as "very narrow" and concluded by contrast that the Clear Air Act's requirement that states take "all reasonably available control measures" to reduce emissions was not preempted by EPCA's preemption of state appliance efficiency programs. The court [concluded](#) that EPCA

did not impliedly repeal the regulatory authority granted to states and local governments by the Clean Air Act. Accordingly, states and localities may still be able to regulate some aspects of the emissions or use of appliances consistent with both *California Restaurant Association* and *Rinnai*, depending on the specific regulation and its underlying authority.

If Congress wishes, it may clarify the scope and limitations of federal preemption of state and local energy efficiency measures in the relevant [section](#) of EPCA. Further litigation may also help clarify the scope of the federal preemption in this area, with plaintiff trade groups having appealed the Maryland District Court's [conclusion](#) that the Montgomery County ordinance was not preempted by EPCA to the Fourth Circuit.

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