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Red-Tagging a Furnace: Who Is Responsible?

by John R. Hall

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Many consumers live with dangerous furnaces and attachments — cracked heat exchangers, blocked flue vents, patchwork duct systems, etc. As a result, people are killed or injured every year from dangerously high levels of carbon monoxide gas leaking from furnaces and attachments that should have been repaired or replaced.



Many people are also saved by alert actions taken by HVACR contractors whose well-trained technicians have diagnosed dangerous conditions and taken corrective action, either by repair or replacement or by shutting down the equipment. Shutting down a furnace is often called “red-tagging” — which is characterized by the installation of a red tag on the equipment, stating that it has been shut down and is dangerous to operate unless repaired or replaced. The tag can be signed by the technician and the homeowner or building occupant/owner.

Perhaps the most important thing to understand is the definition of the phrase red tag. A red tag could simply be the color of a tag attached to a defective appliance or it could be representative of the actual shutdown process in which a utility company is called into a building and turns off the energy source and disables the equipment. It could be splitting hairs to say that red tag has different meanings with one of them being a red “flag.”

Questions are: Is this enough action to prevent the building owner from turning the furnace back on and possibly injuring or killing a building occupant? Or what other steps are necessary such as contacting the local utility company to shut off the energy source? And should an HVACR contractor follow the entire process to ensure the safety of the building occupants?

Aaron York of Aaron York's Quality A/C, Indianapolis, said, “To my understanding, we

cannot red tag anything. That is something that only the utility can do. We can turn it off with the information of why on our invoice with the customer signing their acknowledgment of it."

Gabe Wade of Triple Service One Hour Heating and Air Conditioning, Mendota, Ill., noted that in Illinois, HVACR contractors can't disable the furnace.

He said, "We used to do it. What we do now is we really don't red tag the furnace; we have a three-sheet carbonless form. We get one sheet, the homeowner gets one, and the third sheet is a thicker cardboard with two strips of adhesive on the back. The headline at the top reads "Release of Liability." We go on to write what we legally did, which in this state is to turn the gas off and turn the electric off."

TRANSLATING THE MECHANICAL CODE

According to the 2006 International Mechanical Code (IMC), an unsafe mechanical system is one that "is unsafe, constitutes a fire or health hazard, or is otherwise dangerous to human life, as regulated by this code, is hereby declared as an unsafe mechanical system. Use of a mechanical system regulated by this code constituting a hazard to health, safety or welfare by reason of inadequate maintenance, dilapidation, fire hazard, disaster, damage or abandonment is hereby declared an unsafe use. Such unsafe equipment and appliances are hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal."

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The code goes on to state, "Whenever the code official determines that any mechanical system, or portion thereof, regulated by this code has become hazardous to life, health, property, or has become unsanitary, the code official shall order in writing that such system either be removed or restored to a safe condition."

There is an exception to this procedure, "In cases of immediate danger to life or property, such disconnection shall be made immediately without such notice."

Does this mean that an HVACR contractor can make the disconnection? Not according to one mechanical inspector.

"There is no language in the code that requires or allows a mechanical contractor to red-tag a furnace," said Mark Riley, inspector supervisor for the Troy, Mich., Building Department.

But there is a gray area in the code, which may give contractors the authority to red-tag a furnace — when energy sources are not provided by a public utility. This is the 2006 IMC verbiage: "Where energy sources are provided by a public utility, the code official shall immediately notify the serving utility in writing of the issuance of such order to disconnect."

Sonny Knobloch of Help! Air Conditioning & Heating, New Orleans, said his techs don't actually red tag or condemn a furnace, whether the code is clear or not. "We have a procedure and guidelines for turning off a defective furnace but we don't actually red tag anymore," he said.

AN OBLIGATION OR DUTY

Service techs often find equipment so dangerous that they feel it is their duty and obligation to red-tag the furnace and shut it down, especially if it poses an immediate danger to life or property.



And if a customer balks at having his or her equipment disabled? "It's not even a discussion item," said Russ Donnici of Mechanical Air Service Inc., San Jose, Calif. "The furnace is disabled and the gas line is capped off. They cannot even sign a waiver since there may be a carbon monoxide incident, and we would be looked at as responsible because the client would not have had the specialized knowledge and training to make an informed consent."

York said customers have no choice. "They cannot refuse it," he said. "We are required by law to comply. We do not disconnect the furnace. It is turned off at the electrical disconnect, the SSU switch, so noted on the service ticket, and signed by the consumer."

Some contractors, like Kevin Walsh of Schaafsma Heating & Cooling, Grand Rapids, Mich., have written procedures for dealing with dangerous equipment. "We shut the gas and electric off," he said. "We show the homeowner what we did and they sign off on a

form we have outlining the risks of CO and our guarantee. We keep a signed tag acknowledging receipt of this form also.

"We offer a free second opinion and our guarantee is if we replace the furnace and the heat exchanger is not bad, then the furnace is free. Our techs have been through classes on heat exchanger diagnosis and National Comfort Institute classes on combustion and CO."

Scott Getzschman of Getzschman Heating LLC, Fremont, Neb., has a very formal procedure titled the "Heat Exchanger Breach Policy Form."

"If the technician finds a breach, our policy calls for a second opinion from another Getzschman tech or manager," Getzschman said. "Once the breach is verified and it has been shown to the home- owner, we document the breach on our Heat Exchanger Breach Policy Form. In Fremont, we call the local utility and they red tag the furnace. Anywhere else, we red tag it and disable the system. To disable the system, we usually cap the gas line and disconnect the ignition board totally.

"We then complete the paper work and have the customer sign the breach policy form. During this process, we explain the dangers of CO poisoning and what could happen if the furnace was left in service. We also give them a copy of our peace of mind guarantee, which states if they bring in a third party to contest the findings and we cannot confirm the leak to them, we will install a new furnace free or pay a company of their choice to install the furnace free."

To back up any work performed, whether it is repair or a red tag, the most important part of the procedure is written verification and acknowledgment by the customer. It is even a good idea to take photographs of the equipment and the red tag (or whatever color the tag is). That way, the customer cannot come back at a later time, possibly after they have reconnected the furnace themselves, and blame an injury or death on the HVACR contractor.

Once the red-tag procedure is followed, it is the building owner's responsibility to contact the utility company to shut off the energy source, if they choose to do so. York said, "The responsibility of notification is placed in the hands of the consumer. This is done in accordance with what local attorneys have advised us is necessary to comply with protocol and law."

Arthur Pickett of Royal Air Systems, North Reading, Mass., whose technicians have all been through heat exchanger training, said his techs take the opportunity to sell a

customer new equipment before leaving the home with the furnace disabled. "My techs carry price books and when they condemn a unit they offer a new unit right on the spot," he said. "They shut the gas or oil off and also the electric if the customer says they are getting other prices. In that case, we follow up within a couple of days to confirm they have done something."

Sidebar: Attorney Opinion

The NEWS contacted the law office of Cole, Schotz, Meisel, Forman & Leonard, P.A., Hackensack, N.J., to get an opinion on red-tagging a furnace. Attorney Damon T. Kamvosoulis gave this statement.

"As a general matter, disconnecting the electrical connection to a problem/hazardous unit and red-tagging same, while also obtaining the property owner's signature and acknowledgement that both a dangerous condition exists and that the unit is unsafe to operate until the issues with the unit are properly corrected, will place the HVAC contractor in the best position under the law to avoid liability. These precautions, will, however, not completely absolve a contractor of liability, as negligence may always be alleged where the quality of the work performed by the contractor and/or the explanation given concerning the condition of the unit can be placed in issue.

"In all instances, the contractor should follow all state and local laws and ordinances regarding red-tagging procedures (which may include notifying the local utility company about the problem/hazardous condition). Of critical import, is for the contractor to obtain and retain the executed acknowledgement of the property owner whereby the customer acknowledges the red tagging of the equipment, the existence of a dangerous/hazardous condition and that the equipment cannot be utilized unless and until it has been properly repaired and inspected. As a final and additional precaution, it would also be wise to include a written warning on the acknowledgement and red tag in both English and Spanish to ensure that the property owner understands the seriousness of the condition of the unit and the prohibitions associated with the red-tagging of the unit.

"In the end, while it is almost impossible for a contractor to completely absolve itself from any liability, following the state and local laws regarding red-tagging, maintaining a copy of the property owner's acknowledgement of the presence of a hazardous condition in the customer's record file, and properly explaining the prohibitions and associated dangers to the property owner, will place the contractor in the best position to limit any exposure to a claim should one arise."