

Notebook...

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"Orphaned" Water Heaters Prompt Lawsuit

Charging a risk to homeowner property and health, Michigan attorney E. Powell Miller has launched a class-action lawsuit against the Michigan Consolidated Gas Company (MichCon) on behalf of 45,000 Michigan homeowners who participated in a utility-sponsored furnace-replacement program. According to Miller, thousands of chimneys may have been damaged by "orphaned" water heaters: heaters left alone on flues that had previously been shared by furnaces.

Homeowners who replaced inefficient gas furnaces with high-efficiency sidewall-vented models received low-interest financing and a \$300 rebate from the gas utility. Miller charges that MichCon encouraged homeowners to make the change without warning



Michigan attorney E. Powell Miller says homeowners should have been warned of possible damage like this from orphaned water heaters.

them about the risks posed by orphaned water heaters. Where water heaters were left connected to a flue that had been sized to serve both the furnace and the water heater, says Miller, exhaust has been condensing in chimneys, forming an acidic solution that subjects the masonry to chemical attack and freeze-thaw damage. Ice and deteriorating masonry can block the flue, the attorney contends, creating a carbon monoxide hazard. Now, Miller wants MichCon to inform all 45,000 rebate recipients of the potential for problems, and to pay for relining of chimneys.

A recognized problem. The scenario Miller describes appears to be a familiar one, and *JLC* inquiries on the Internet drew numerous responses. Home inspectors and chimney technicians told us that the problem occurs not only with orphaned water heaters but also when low-efficiency furnaces are replaced by more efficient units. Provisions of the *National Fuel Gas Code, NFPA 54 and NFPA 211*, call for chimneys to be inspected, cleaned, and repaired, and sizing reevaluated, whenever venting arrangements change.

Determining whether a particular appliance change requires resizing is a case-by-case process, explains Jim Brewer, of Magic Sweep Corporation in Norfolk, Va.: "There are many factors that need to be known in order to perform a sizing calculation of the overall system to determine if the venting system is suitable for continued use." They include

- Btu input of the water heater
- Flue collar size of the water heater
- Size, type, and configuration of the connector pipe between the water heater and the chimney
- Location of chimney (interior or exterior)
- Internal size of the chimney
- Height of the chimney

Installation of a flue liner is the best method to correct an oversized venting system, said Brewer.

Case in point. Grand Rapids, Mich., home inspector Mike Holcomb told *JLC* of encountering chimney damage that was directly traceable to a stranded water heater: "Two years ago we inspected a home that had a high-efficiency furnace vented through the sidewall rim joist. The water heater was still vented in the old

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"Orphaned" Water Heaters
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masonry chimney that was sized for the old furnace and the water heater. Two months ago, our client called to say her chimney needed to be rebuilt. On reinspection I determined that the chimney deteriorated as a result of condensing flue gases from the water heater. Once the liners spalled to the point that the mortar joints failed, the softer brick followed suit. The estimate to repair the chimney is \$7,000."

Who's to blame? Experts we heard from generally reserved judgment on fault in the Michigan cases, noting that codes and practices are in a state of change. Grand Rapids codes, for instance, do not require resizing or relining in a furnace changeout, according to Mike Holcomb, although he always recommends it.

But the Michigan lawsuit raises the legal question of who is responsible for the unintended consequences of energy-efficiency improvements made in response to utility incentives. In this case, attorney Miller contends the gas company has taken on a duty: "Where a gas company has a reason to believe that there is a problem, it should inspect and warn — particularly under circumstances where it encouraged, promoted, and financed the change in appliances that gave rise to the problem." And Miller insists that the gas company knew of the potential for chimney damage from its own inspection reports.

MichCon, however, does not accept any responsi-

bility for damage resulting from furnace changeouts in the program, according to a company spokesperson. "We were just the bank for this program," said MichCon's Mary Sileski. "We didn't do any of the work." Currently, MichCon is fighting the lawsuit's class-action status, arguing that individual homeowners should take their complaints to individual heating contractors on a case-by-case basis, not sue the gas utility as a group. 

Sources of Information

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