

February 6, 2014

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Texas Real Estate Commission
Via email

Dear Commissioners,

Please initiate Emergency Rule Procedure to provide clarity of Rule and notice to the public regarding the ongoing debate concerning corrugated stainless steel tubing gas pipe (CSST) and reinforce, through a special decree, that home inspectors do not inspect or compare homes to code, prescriptive standards or manufacturer installation instructions.

CSST

I defer the technical explanation of this problem to the review of the emergency rule process. I am confident TREC staff is apprised and can explain the current mayhem. The summary is:

- Parties claim CSST is dangerous and should be banned.
- The Lubbock Texas Fire Marshal has issued a new construction moratorium regarding CSST.
- Parties believe CSST caused the death of a person in Lubbock. That law suit is still in progress.
- CSST has been determined defective by a jury.
- The CSST industry defends their product as safe, although the methods of installing it have had changes since 2000. CSST is approved by code.
- A home owners insurance company is subrogating an inspector for a claim. Lawyers are encouraging subrogation.
- A CSST manufacturer is blaming home inspectors for not inspecting CSST to the latest code and is advising the insurance company to subrogate home inspectors.
- Inspectors are not required or qualified to inspect CSST to new codes.

To remedy the potential for miscommunication, TREC should adopt specific advisory language which an inspector can use when CSST is discovered. This has been done in Oklahoma with an emergency rule. Following is wording that may be a starting point for discussion.

"A gas supply line material called corrugated stainless steel tubing (CSST) was observed in the building. CSST, and the increased risk of lightning related fire, is a matter of national discussion. TREC cannot approve or disapprove CSST. A licensed electrician should determine if the (CSST) is properly installed, including bonding and grounding, per the latest manufacturer's installation instructions and codes. Additionally, the buyer is advised to assure the entire home meet the requirements of their home owner insurance provider and mortgage company as the home inspection is not to be relied upon to satisfy their requirements."

This advises the public about CSST without TREC or the home inspector condemning or endorsing CSST. Inspectors are in a position to inform consumers of the controversy and then defer final judgment to licensed electricians, the CSST industry, Fire Marshals, code organizations, lawyers, expert engineers and insurance companies. TREC and home inspectors are not qualified to make those decisions.

Do not misunderstand possible comment from an inspector committee member indicating that inspection of bonding and grounding has been required for a long time. It is not accurate. If that were true, inspectors would be required to write up hundreds of code based discoveries that TREC has deemed beyond the scope of home inspection legislative intent.

Clarity of Rule

I ask the Commissioners to clarify the Standards Rule and stop incorrect interpretation by third parties. Points to consider:

- The Standards require the inspector to inspect the bonding and grounding in a home. This does not mean compare the home to code changes or newer methods. If such were the case all homes built before 1960 would need to be rewired and every home since then likely not meet the most modern code.
- On several occasions TREC has stated the inspector is not required to inspect or compare a home to code. This was reinforced in the Standards explanation package published by the Commission on May 6, 2013. It stated.

*Three commenters made suggested changes to insert specific technical requirements to the new rules regarding smoke detector devices, water heaters, dryer exhaust systems, and electrical systems (specifically referring to the National Electric Code standards). The Commission respectfully declines to make these changes. All of these technical change comments were reviewed by the Texas Real Estate Inspector Committee and they determined that these comments were trying to impose a building, electrical or plumbing code or manufacturer's installment requirements into the Standards. Under Texas Occupations Code, §1102.001(9), a real estate inspection is defined as an "opinion as to the condition of the improvements to real property, including structural items, electrical items, mechanical systems, plumbing systems, or equipment." Additionally, a real estate inspector is not required by Chapter 1102 to be code certified for any system. **These provisions are evidence that the legislature did not intend for the real estate inspection for home buyers and sellers to be code based and therefore the Commission declines to make revisions based on those comments.***

The Standards Detail Sections can supersede the Standards General Scope Limitations with specific instruction however none is provided regarding CSST. An example of specific instruction would be the GFCI section, the prior arc fault section and the stair section.

Evidence supporting the Commission's interpretation of intent is the recent removal of the requirement to report the lack of arc fault devices from the Standards. Arc fault devices are recent code driven requirements and they were removed from the TREC Standards as a reporting requirement.

In my opinion: A CSST and home owners insurance company have abused the intent of the Standards by improperly interpreting a requirement to verify CSST is installed to a standard later than the date of installation. This is excessive and improper interpretation of the Standards. Even the Lubbock Texas Fire Marshal who issued a moratorium on CSST does not appear to require a home with CSST to be updated when a change of occupancy occurs. Pre-existing homes are considered "grandfathered". It is incorrect to hold a home inspector to a higher standard than a Fire Marshal.

A solution to the confusing question regarding code and manufacturer installation instructions (implied or specified) is to create a prescriptive optional code based inspection standard the inspector can offer to the public and insurance companies. The cornerstone would be a performance based inspection and an optional specific code based comparison product. It's easy to organize and I am glad to show everyone how to do it.

I thank TREC and all Texas inspectors for their diligent hard work in protecting the public. The recent acts of a CSST manufacturer and insurance company are shameful exploitations of Texas. The Governor should deal with them firmly. Home inspectors are discussing stern options. I foresee most inspectors will be unwilling to approve any product produced by the CSST manufacturer or insurance company. The manufacturer and insurer have cast a blight on their own industries.

Home inspectors must have the fullest support from their regulatory agency, Texas and other commerce to do their jobs, unimpeded and unrestricted by political considerations, and without fear of reprisals or negative repercussions.¹

Please enact Emergency Rule to 1) provide a consistent response when CSST is discovered 2) clarify inspectors do not compare the home to prescriptive standards or manufacturer specifications. I am available to discuss this if desired. Thank you.

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CC Texas Association of Real Estate Inspectors, Texas Professional Real Estate Inspectors Association, American Society of Home Inspectors, International National Association of Certified Home Inspectors

¹ Borrowed and amended from the Fire Marshals Association newsletter.