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THE ICC ETHICS POLICIES ON TRIAL: THE RESOLUTION?

By Richard Schulte

Code change proposal F144-09/10 was the result of close to three years of work by the Code Technology Committee (CTC) Roof Vent Study Group. This proposal would eliminate the requirements to provide smoke/heat vents in one-story industrial and storage building protected by a sprinkler system and require a manually-activated mechanical smoke removal system instead. Obviously, the adoption of this proposal would have had a significant impact on the market for smoke/heat vents, however, the proposal was “disapproved” by the ICC membership in the code development hearings held last week in Dallas.

Perhaps, one of the most interesting things about code change proposal F144-09/10 is that it generated an ethics complaint based upon testimony by William Koffel of Koffel Associates at the code development hearings held in Baltimore in late October 2009. The following is a transcript of Koffel’s testimony:

“ . . . Secondly, they talk about a recommendation of the NFPA 204 committee. I sit on the NFPA smoke management committee responsible for 204. I’m not representing that committee here. I sit on NFPA 13 discharge criteria committee which is responsible for Chapter 12. I’m not representing that committee. **But I think this committee needs to know that NFPA 13 now allows vents and draft curtains in buildings protected throughout with a sprinkler system.** In fact, they’ve even gone so far to allow it in a building with ESFR sprinklers, smoke vents that is, if the vents have a certain criteria. That’s in Chapter 12 of the 2010 edition of NFPA 13. **So the 13 committee recognizes that this is a viable technology in sprinklered buildings.** 204 has a proposal, or a comment, that is being balloted now that has a new chapter for designing smoke vents in buildings protected with a sprinkler system, so the technology is being addressed by the appropriate NFPA committees.”

“ . . .But I think this committee needs to know that NFPA 13 now allows vents and draft curtains in buildings protected throughout with a sprinkler system. . .So the 13 committee recognizes that this is a viable technology in sprinklered buildings. . .”

In my opinion, there is little doubt that Koffel's statement that "*the 13 committee recognizes that this is a viable technology in sprinklered buildings*" is a misleading statement. In fact, not only is this statement misleading, it's my opinion that the statement is downright false. The basis for this opinion is the substantiation statement made for the new provisions which address the installation of smoke/heat vents in NFPA 13. The following is part of the record for this proposal to amend NFPA 13:

"13-325 Log #CP43 AUT-SSD **Final Action: Accept**
(12.1.1)

Submitter: *Technical Committee on Sprinkler System Discharge Criteria,*

Recommendation: *Revise Section 12.1.1 as follows:*

12.1.1 Roof Vents and Draft Curtains.

12.1.1.1 *Manually operated roof vents or automatic roof vents with operating elements that have a higher temperature classification than the automatic sprinklers shall be permitted.*

Substantiation: *The intent of the standard is that roof vents and draft curtains should not be used in conjunction with storage protection. Previous language was unenforceable.*

"The intent of the standard is that roof vents and draft curtains should not be used in conjunction with storage protection."

Committee Meeting Action: Accept

Number Eligible to Vote: 28

Ballot Results: *Affirmative: 22 Negative: 3*

Ballot Not Returned: *3 Blumenthal, M., Madrzykowski, D., Smith, P.*

Explanation of Negative:

MULTER, T.: *The following original proposal on ROP documents dated 10/20/2007 should be accepted as proposed but with a change to the annex statement.*

12.1.1 *Roof Vents and Draft Curtains. Roof vents and draft curtains shall not be used in conjunction with the sprinkler protection criteria for storage in this standard.*

A.12.1.1 *The design parameters in NFPA 13 were developed based upon the absence of roof vents or draft curtains. (See Annex C.6) Fire tests for sprinklers specifically listed for storage applications are tested without vents or draft curtains. References to control mode sprinklers in other building standards pertain*

“ . . . the use of smoke vents and draft curtains can be detrimental to all sprinklers that are specifically tested for storage applications.”

to standard spray sprinklers that were not specifically tested by the laboratories for storage applications. With the advent of K-11.2 and larger sprinklers for storage applications and now Specific Application Control Mode sprinklers (being revised to CMSA), we need to realize that ESFRs are not the only storage sprinklers and that the use of smoke vents and draft curtains can be detrimental to all sprinklers that are specifically tested for storage applications. FM Global’s recommended storage protection designs are based upon vents not being provided and that the use of automatic vents may increase the sprinkler water demand.”

After reviewing the record on the new provision addressing the use of roof vents in buildings protected by a sprinkler system, one could hardly say that these comments are intended to be an endorsement of the use of smoke/heat vents in sprinklered buildings. Does the NFPA 13 committee really consider roof vents to be “a viable technology in sprinklered buildings”? Doesn’t sound like it to me.

“The design parameters in NFPA 13 were developed based upon the absence of roof vents or draft curtains.”

Basically, what the new NFPA 13 provision says is that the use of roof vents in sprinklered buildings is permissible only when the vents are designed not to automatically operate in the event that the sprinkler system successfully controls the fire. In other words, the installation of roof vents is acceptable provided that the vent system is only provided as a back-up in the event of sprinkler system failure or to be used for post-fire control ventilation of the building.

What is interesting to note concerning the above is that William Koffel is not only a member of the NFPA 13 committee, but is also a member of the AUT-SSD subcommittee which reviewed this proposal and then voted to accept the proposal. Given this fact, and the fact that the substantiation statement for the proposal is so clearly written, it would be difficult for Koffel to state that he was unaware of the intent of this new provision in NFPA 13.

Given the above, an ethics complaint against William Koffel was filed on January 20, 2010 for the violation of the International Code Council's ethics policies, CP-37. The following are excerpts from the ICC ethics policies:

"This policy is intended to guide the conduct of all members, member representatives, and participants in the activities of the ICC and is further intended to foster an environment that promotes ethical conduct and transparency in all matters related to the organization."

"This policy . . . is further intended to foster an environment that promotes ethical conduct and transparency in all matters related to the organization. . ."

2.0. Integrity. A commitment to integrity *in all circumstances* benefits each individual as well as the ICC. ICC Members, member representatives, and participants in the activities of the ICC should:

2.1. *Respect the truth and avoid misrepresentation.*

2.2. *Pursue fairness and objectivity in all activities.*

3.0. Professional Excellence. ICC promotes professional excellence and encourages *open and honest communication* among all members. ICC Members, member representatives, and participants in the activities of the ICC should:

"A commitment to integrity in all circumstances benefits each individual as well as the ICC. "

"Respect the truth and avoid misrepresentation."

3.1. *Set an example for high standards of professionalism.*

3.2. *Disclose any proprietary interests."*

Given the evidence above, did William Koffel comply with the ICC ethics policies in his testimony on code change proposal F144-09/10? It is certainly my opinion that Koffel misrepresented the provisions addressing roof vents included in the 2010 edition of NFPA 13 and that he is and was aware of the intent of the provisions, however, the ICC Executive Board disagreed. Rather than respond to the complaint in a letter, the ICC Board chose to respond with a Staff Comment on code change proposal F144. This Staff Comment was issued as an addendum to the Public Comments published for the Final Action Hearings.

The Staff Comment reads as follows:

“Staff Analysis: *In his reason statement, the proponent [Richard Schulte, Schulte & Associates] has noted that an ethics complaint (relating to Council Policy #37) has been filed with ICC concerning testimony offered on code change F144-09/10 at the Baltimore Code Development Hearings. The Executive Committee (EC) of the ICC Board has met and reviewed the complaint. **The EC concluded that it is not the intent of CP #37 to govern the conduct of the hearings relating***

to the veracity or intent of technical statements made at the hearings. The EC’s view is that the hearings themselves – which by their very nature afford the opportunity for a wide variety of assertions and opinions to be made and rebutted in an open forum – are the proper venue for resolution of substantive and technical issues relating to code content. **As such, the EC has concluded that CP #37 does not apply.** The resolution of those concerns needs to occur at the hearing itself. The open forum provided at the Final Action Hearings is the appropriate forum for debating the issues surrounding the basis for IFC’s committee action in Baltimore, as well as for consideration of any new information contained in the public comments submitted in response to the committee’s action.”

“The EC concluded that it is not the intent of CP #37 to govern the conduct of the hearings relating to the veracity or intent of technical statements made at the hearings. . . . As such, the EC has concluded that CP #37 does not apply.”

So much for the ethics policies applying “*in all matters relating to the organization*” and so much for “*respect the truth and avoid misrepresentation*”. Certainly, testimony at a code development hearing is one of the “*matters relating to the organization*” and, at least in my opinion, William Koffel most certainly did not “*respect the truth*” and was purposely involved in “*misrepresentation*” of the intent of NFPA 13.

All of the facts have been laid out before you-no need to let the ICC Executive Board make the decision on whether or not Koffel violated the ICC Ethics Code. Everyone can make up their own mind as to whether or not the Executive Board called this one right.

I'd like to see one of the members of the ICC Executive Board explain why Koffel's misrepresentation of the NFPA 13 provisions pertaining to roof vents was in error in 60 seconds or less without researching the subject prior to speaking. Silly Executive Board, it simply can't be done in 60 seconds.

"In a time of universal deceit, telling the truth is a revolutionary act." George Orwell

There is a reason that the issue of roof vents in sprinklered buildings is being considered by the Code Technology Committee-it's too complex of an issue to be handled in the regular code development format.

With this ruling, I'd say the ICC Executive Committee just "broke" the code development process and maybe the entire ICC. The NFPA codes and standards process is looking better and better. Having 30 or 60 days to respond to misrepresentations is a whole lot more time to get it right than 60 seconds and there is no better example of this than the action on code change proposal F144-09/10. This code change ended up being "disapproved" because of misrepresentations at Baltimore. It's difficult to get a two-thirds majority to overthrow a code changes committee's recommendation, hence, the misrepresentation sent code change proposal F144 "down to the bottom of the sea just like the Titanic". How many more billions of dollars are we going to waste on a product, smoke/heat vents, that don't "work" in sprinklered buildings? Mandating the installation of smoke/heat vents in sprinklered buildings in this day and age is embarrassing.

Ruling that lying in oral testimony at a code development hearing is not covered by the ethics code is simply nonsense and, I'd bet that more than a 2/3's majority of the ICC membership would agree with me. If the Executive Board's ruling is allowed to stand, the ICC might as well send their ethics policies to the bottom of the sea too.

To quote George Orwell: "In a time of universal deceit, telling the truth is a revolutionary act." What's wrong with insisting that professionals involved in the code development process tell the truth?

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