

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1417

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1417

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 8012

Committee Clerk Signature

Ellen Letang

Chairman Keiser: Opened the hearing on HB 1417 relating to the liability of persons working with liquefied petroleum gas, provide for application & declare an emergency.

Frank Wald~Representative Wald from District 37, Dickinson. Introduces bill 1417 would limit the liability of LPG marketers, transporters, handlers & sellers of propane gas.

Mike Rud~Executive Director of the North Dakota Propane Gas Association. See testimony attachment 1.

Chairman Keiser: Do you have the copy of the states?

Rud: Yes I do. Passes out testimony attachment 2.

Representative Nottestad: I have seen the damage that gas can do. A friend's house was lifted about three inches and back down again. It's a very serious thing. As we look at a bill like this, my first concern is, will this get someone off the hook or is it for protection?

Rud: Both will be taken to court.

Representative Gruchalla: I noticed that the language used liquefied petroleum gas, however, you refer it to as propane. Does this cover every gas made out petroleum?

Rud: Liquefied petroleum gas is propane.

Representative Gruchalla: Question is there are other products that are made out of petroleum that are liquefied into a gas, like butane, is this going to cover the whole realm of products or stick to propane.

Rud: There will be other people who will testify to add amendments to include methane & natural gas.

Representative Boe: I was paying a penny a gallon more for insurance so that when he delivered, no matter what, he was covered. What the cost of that today?

Rud: Whatever he's charging, I can't address that.

Chairman Keiser: That is something we should check into and we have someone from the insurance area here.

Representative Amerman: There are vehicles that have converted the diesel to propane, if something happens, who's responsible.

Rud: This bill would only deal with the residential or commercial site.

Chairman Keiser: Are you sure

Rud: This bill was specifically designed for residential and commercial sites.

Representative Boe: My grain dryer, I have a regulator goes bad, I have one in a box out in the shop, take old one off, install the new on, I can't do that anymore?

Rud: It would be best to if you were to contact a certified propane technician.

Troy Steele~Propane Service Technician for Missouri Valley Petroleum in Mandan. See testimony attachment 3.

Representative Thorpe: When you do these installations, do you have a blue print to shows you have to do?

Steele: What we are looking at trying to do is get software to able to do a blue print.

Representative Boe: As far as plumber installations, are they as good as a certified propane technician?

Steele: I would say no.

Lee Fitterer~Fitterer Oil & Gas, North Dakota Propane Gas Association. Goes over attachment 4 showing a training schedule.

Representative Amerman: What kind of parameters will this bill protect? One thing doesn't fill the whole situation.

Fitterer: I understand that. If the handler is not trained, he is liable. That's why you go through the proper channels to distribute propane.

Representative Ruby: If I ran out of propane and hooked up my gas grill tank so I can have hot water, is that a big no, no?

Fitterer: That's a big no, no. That supply has been compromised and you have to do a pressure test.

Representative Boe: You talk about pressure test, do I have to retest with a new dealer?

Fitterer: Yes and that company may waive that to get your business.

Chairman Keiser: We are trying to establish fair and legal liability standards. It is fair when someone modifies their own system inappropriately and there is damage, that you are held accountable for that. Representative Boe made some sense, he's a farmer, he has something that goes out, he is not certified but he can properly install it. We can get some push back from the farming community. How are we going to let the consumer know that they now transferring the responsibility? This could protect the consumer and the distributor, ultimately but it only protects the consumer somehow we inform them.

Fitterer: In my company, we give them a propane safety customer packet. We cover those issues. I don't know what else we can do.

Chairman Keiser: You can see the dilemma, it's swings the pendulum all the way over. Now we will have an uninformed public.

Fitterer: When you pull into the yard, you don't know what's going on in that house.

Representative Nottestad: I have an issue with the last statement of the negligence. For the most part, rural North Dakota, it's done by a non certified person and done properly and right. We need to be careful when we say it's being done by a non certified person being done with negligence because it's not.

Fitterer: You are correct.

Representative Boe: What about Indian reservations? Our supplier's main customer base is reservations, you are going to have to carry insurance anyway.

Fitterer: Correct. I'm not saying that we don't have to carry insurance, we will still carry insurance. As far as reservations, I can't answer that.

Chairman Keiser: They still have to carry insurance but this will give them the defense in the court and if they can document a change by the owner, that good evidence.

Representative Thorpe: In a legal action, courts are going to find who's responsible or not.

Fitterer: Current law, we are labile always to the courts.

Chairman Keiser: If you can show that Lee is responsible for 1% but the other party is 99% responsible have no money, Lee gets to pay. That's the problem.

Representative Ruby: You partially answered it. Your responsibility is to each of the appliances, so other than a pressure check; you're not going in and inspecting all the lines to make sure they have not been altered on a frequent base. You are really taking a lot of risk for almost uncontrolled aspect of the whole thing. What would be some of the things that you think you liability to be for? I'm trying to grasp gross negligent or just not following codes.

Fitterer: It difficult to do regular frequent safety checks.

Representative Ruby: You are responsible for a gray area which is difficult to do.

Fitterer: That's our problem

Representative Clark: Are you required to go out and do a test to see that it's up to date?

Fitterer: Each company is different, depending on the situation.

Christopher Friez~Crowley Fleck Law Firm representing the Grain Growers Association. See testimony attachment 5.

Evan Mandigo~State Executive of the North Dakota Independent Agents Association. See testimony attachment 6.

Representative Nottestad: In electrical work there are ways to get it certified, in properly redoing propane system, how do they get certified to show that it's properly done.

Mandigo: You are asking a question beyond my level of knowledge. I personally would call my propane supplier any time I wanted to fix the propane system.

Chairman Keiser: The language in the bill says that you can do repairs but you now have to inform the dealer that you have done them.

Mandigo: If the dealers have knowledge, I don't think they want off the hook from the insurance standpoint.

Representative Amerman: Are insurance premiums for a propane dealer more astronomical.

Mandigo: I know that insurance for propane dealers are astronomical for the intensity of propane explosions and fires for serious damage.

Bob Graveline~Utility Shareholders of North Dakota. See amendment attachment 7. Goes over the amendments.

Representative Amerman: Can you give me a better understanding on methane gas.

Graveline: Methane gas is pure gas that is process and primarily a natural gas, however, in the natural gas business they sell it by the (inaudible).

Kent Olson~North Dakota Professional Insurance Agents Association. I want to lend a little information as far as the availability of insurance. Our concern is not the certification or alteration processes but the insurance availability and cost. We support the bill. LP gas is considered a hazardous type of insurance. It's called risk insurance. There are only two basic companies who will write LP gas dealers. LP gas insurance companies in the United State has 22 companies who will write this type of thing up, which eight of them say we will only write on a combination basis.

Chairman Keiser: Is LP gas a surplus line?

Olson: Yes.

Representative Boe: Do you have a minimum requirement of liability coverage for LP gas deliveries?

Olson: There is no legislative requirement, no limit, no amount, there is for automobile but not for farm or home owners.

Steve Becker~Executive Director of North Dakota Professional Insurance Association.

Insurance want 10% or less of the gross sales or we are not even going to look at it because of the uncertainty. As far as rates, a dollar for every gallon of gas, LPG will be four or five times for fuel oils sales. It's more expensive because of the uncertainty; there is a lot less exposure of fueling oil or gas.

Anyone here in opposition to HB 1417?

Al Austad~Executive Director of the North Dakota Trial Lawyers Association, Inc. Our object to the bill is based on that there are legal remedies today. Introduces Jeff Weikum.

Jeff Weikum~Attorney from Bismarck. See testimony attachment 8.

Representative Boe: Say is a certified propane dealer fill a tank to 98%, top off valve malfunctions and we have a problem. They are not liable now because I didn't notify them?

Weikum: With the new bill now they are immune.

Representative Ruby: One of the problems is when you are going through the process of trying to find the percentage of fault, if they had no fault, they could spent a lot of money proving that.

Weikum: Absolutely, that is the way the system is set up right not and what they are able to do then, they are able to recover those costs. Additionally, there will be cross claims.

Representative Clark: You are opposed to this bill, how does this bill affect the North Dakota Association for Justice?

Weikum: We are taxed with the responsibility to make sure the citizens of North Dakota have equal access to the courts. This bill is not equal for all, it's put liquid petroleum on a different playing field and that's not equitable.

Jim Chyle~Owner of Heartland Gas Company of Park River, North Dakota. See testimony attachment 9, also attachments of safety brochures given to customers. In conclusion (very emotional), we are a better company because were sued.

Representative Thorpe: The bill has an emergency clause on it, why the emergency. The other question is, is there a certain circumstance to bring this bill in?

Wald: No specific case. Your first question about the emergency clause, there is urgency from propane dealers. The second reason, we want more insurance into the market to make it more stabilized.

Chairman Keiser: Closes the hearing on HB 1417.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1417

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8640

Committee Clerk Signature

Ellen LiTang

Chairman Keiser: Opened the committee work session on HB 1417.

Representative Boe: I have a problem with this bill. Explains a example in which happens on his farm. The trial lawyer stated said, don't worry about it, it's all covered. If they come in and prove that it is what I did to cause the problem, there is no liability back to the dealer. We are better off letting the reports take care of it.

Representative Gruchalla: Did we accept the amendment with the methane and gas. Fargo pipes it's methane from the landfill over to Cargill and I bet there wasn't a certified propane tech that certified all of that. There are a lot of other things here that I would include.

Vice Chairman Kasper: Moves a Do Not Pass as Amended.

Representative Nottestad: Seconded.

Chairman Keiser: Further discussion.

Voting rolling was taken on HB 1417 for a Do Not Pass as Amended with 7 yea's, 6 nay's, 0 absent and Representative Thorpe is the carrier.

February 4, 2009

VR
2/5/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1417

Page 1, line 2, after "gas" insert ", methane, or natural gas"

Page 1, line 7, after "gas" insert ", methane, or natural gas"

Page 1, line 9, after "gas" insert ", methane, or natural gas"

Page 1, line 11, after "gas" insert ", methane, or natural gas"

Page 1, line 12, after "gas" insert ", methane, or natural gas"

Page 1, line 13, after "gas" insert ", methane, or natural gas"

Page 1, line 14, after "transporter" insert "or was completed by a person who was not qualified to repair the equipment or appliance" and remove the second "or"

Page 1, line 19, after "transporter" insert "; or

3. The use of the methane or natural gas equipment or appliance in a manner or for a purpose other than that for which the equipment or appliance was intended

Renumber accordingly

Date: Feb 4 - 2009
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1417

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☒ As Amended

Motion Made By Kasper Seconded By Nottestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark		✓	Representative Gruchalla	✓	
Representative N Johnson		✓	Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby		✓			
Representative Sukut		✓			
Representative Vigesaa		✓			

Total (Yes) 7 No 6

Absent 0

Floor Assignment Thorpe

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1417: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1417 was
placed on the Sixth order on the calendar.

Page 1, line 2, after "gas" insert ", methane, or natural gas"

Page 1, line 7, after "gas" insert ", methane, or natural gas"

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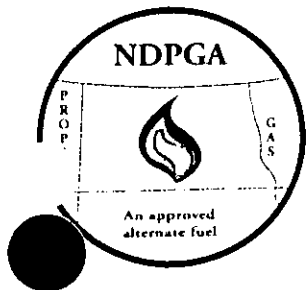
Page 1, line 19, after "transporter" insert "; or

3. The use of the methane or natural gas equipment or appliance in a
manner or for a purpose other than that for which the equipment or
appliance was intended

Renumber accordingly

2009 TESTIMONY

HB 1417



North Dakota Propane Gas Association

1025 North 3rd Street • PO Box 1956
Bismarck, ND 58502 • www.ndpropane.org
701-223-3370 FAX 701-223-5004

Testimony HB 1417

January 28, 2009 – House Industry, Business and Labor Committee

Chairman Keiser and members of the House Industry, Business and Labor Committee:

For the record, my name is Mike Rud. I'm the Executive Director of the North Dakota Propane Gas Association. I'm here seeking a **"DO PASS" on HB 1417.**

NDPGA has about 200 propane marketers and associate members in our state and employ approximately 1,000 people. North Dakota propane dealers sell over 100 million gallons of propane annually. They also provide quality installation and maintenance services from trained professionals. In winters like the one we are experiencing now, quality propane service is essential and vital to many residents in North Dakota and the Upper Midwest.

Propane is a versatile, environmentally friendly fuel. It is used safely by residential, industrial/commercial and agricultural customers throughout North Dakota. Although safe, it can become hazardous if handled improperly. In fact, a large percentage of the claims and lawsuits filed against propane retailers involve incidents clearly caused by changes to a propane system or appliance made by "do-it-yourselfers." Typically they are customers of a propane company who are unqualified to work on the

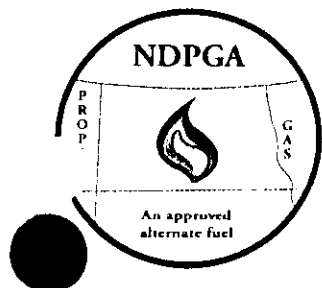
propane system. The result can be catastrophic, not only to the residents, but also to the propane retailer who may face the costs of ensuing litigation.

H.B. 1417 is a bill designed to create fair and reasonable legal liability standards for propane companies and their employees in North Dakota. To date, 17 other states have passed similar, if not more stringent limited liability laws. This bill offers simple and clear legal reform designed specifically to help the propane industry survive by avoiding frivolous lawsuits in North Dakota. Specifically, the legislation would protect propane businesses and their employees from lawsuits where injury, loss, or property damage occurred because propane gas equipment or appliances were modified, repaired or used in an inappropriate fashion without their knowledge or consent.

Just as importantly, HB 1417 can serve as a consumer protection bill. Passage of this bill would help protect the propane customers – the very people who rely on propane to heat their homes and help operate their businesses – not only from price hikes that propane companies may be forced to pass along in order to keep up with ever-increasing liability insurance rates, but more importantly from endangering themselves and others by sending the message the average citizen should think twice about their own propane home improvement project.

In closing, when a propane marketer is responsible for an incident, it should be held responsible for its negligence. However, the vast majority of incidents involving propane result from actions, inactions, mistakes or misuse by consumers.

A “**DO PASS**” on this bill will help enact common sense legal liability reform for the North Dakota propane industry. Thank you for your time and consideration.



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Testimony HB 1417

January 28, 2009 – House Industry, Business and Labor Committee

States with Limited Liability Legislation

As of April 2008

- Alabama
- Arizona
- Arkansas
- Colorado
- Georgia
- Iowa
- Kansas
- Kentucky
- Louisiana
- Missouri
- Nebraska
- New Jersey
- North Carolina
- South Dakota
- Tennessee
- Texas
- Utah

Testimony HB 1417

January 28, 2009 – House Industry, Business and Labor Committee

Below are a just a few examples of unfair litigation that propane companies are seeking to eliminate. We are confident this Committee will find each of these accounts outrageous and/or tragic, as well as solid evidence for the reforms called for in **H.B. 1417**.

Midwest

In 1999, six people died in a propane-related house fire in the Midwest. The lawsuit filed on behalf of the deceased against the propane retailer alleged that the fire started because an unqualified relative installed a propane heater in the garage by tapping into the existing propane system running to the house. The propane retailer had nothing to do with the installation of the heater and did not know it had been installed, which the plaintiff admitted.

However, because the state where this incident occurred does not have a commonsense propane liability protection law, the propane retailer had to defend claims that they should have better inspected the propane system, found the problem heater (despite having not installed it) and provided better up-front customer safety information. Fortunately, the propane retailer eventually won his case, though, not after going through the uncertainty and expense of a legal challenge.

South

Another recent example comes from a southern state where a long-time customer of a propane marketer decided to have her nephew crawl under her house to do some undetermined repairs. While under the house, the nephew discovered what he believed to be a propane leak coming from what was thought to be the propane-powered water heater. As a consequence, he set about “fixing” the problem. Unfortunately, while performing the “repairs,” the nephew left open the gas fittings to the cook stove in the kitchen and the room filled up with gas. The resulting explosion and fire killed the woman who owned the house and injured the nephew.

No question, sadness and tragedy surround this incident, indeed any accidental loss of life. However, legal liability should be placed where it is deserved. In this case, the propane company was sued for nearly 6 million dollars and accused of gross negligence in open court. In the end, the court ordered the propane company to pay the property owner’s funeral costs, the nephew’s medical expenses and to replace a car that burned in the fire. While the small propane company managed to avoid the millions in punitive damages, it still ended up paying over \$300,000 dollars for an incident they had no responsibility for.

Northeast

A northeastern state propane company recently sent two service technicians to one of their residential heating customers on a “no heat” call. When the technicians arrived and began to work, they discovered a bad control device replaced it. However, while switching out the controls, one of the technicians discovered that one of the propane heating system pipes had rotted out. He informed the customer of the problem and told him that he was going back to the shop for materials to either repair or replace

the pipe. The customer responded that he was a maintenance supervisor for an apartment complex and that, rather than pay the expense of having them repair or replace the pipe, he would change the pipe himself since he does this work for a living. After discussing the situation, the technicians agreed to let the homeowner do the work himself. They left the propane system off when they left the jobsite.

At 2:00 am the next day, the same customer called 911 to report that he and his family were all sick. They were rushed to the hospital but all released within 90 minutes with no long-term effects. Subsequently, the fire department found where he disassembled the pipe to the propane system and had apparently turned the heating system back on.

The same two technicians returned in the morning after the customer called again. When they arrived, the customer apologized and admitted that he had not finished the job and should have let them do it the prior day. The technicians then fixed the pipe and everything was fine when they left.

A month later, the propane company received a subpoena for a \$1 million lawsuit claiming that the customer and his wife were now in terrible physical shape because of exposure to propane fumes. The propane company is now embroiled in a legal battle with an uncertain conclusion in spite of the fact that the customer: (1) stopped the technicians from doing their job; (2) said he would do the work, didn't complete the repair and then acknowledged that he messed up; and (3) spent a mere 90 minutes in the hospital emergency room with no lingering injuries.

Clearly, homeowners and others not qualified to make changes to a propane system or appliance should hire a qualified person or company. The average homeowner or tenant is generally not aware of the extensive propane code requirements which are in place to ensure the safety of the propane system or appliance. Unfortunately, as in the previous examples, these people are also painfully unaware of the danger they are placing themselves and their loved ones in by working around propane without proper training, tools or experience.

Conclusions

When a propane marketer is responsible for a propane-related incident, it should be held legally responsible. We would never argue otherwise. However, we believe that propane marketers are becoming an easy target for plaintiffs' attorneys whenever there is an incident, regardless of evidence of fault. Our industry does not expect blanket exemption from legal liability; we are simply looking for an equal footing with plaintiffs when propane-related incidents result in property damage, personal injury or death.

Testimony HB 1417

January 28, 2009 – House Industry, Business and Labor Committee

Chairman Keiser and members of the House Industry, Business and Labor Committee:

For the record, my name is Troy Steele. I am a propane service technician for Missouri Valley Petroleum in Mandan. I'm here seeking a **"DO PASS" on HB 1417**. The testimony I will share recounts incidents I have encountered while filling propane tanks or responding to propane service calls.

Example 1:

When I got to the Mandigo residence, the deck had already been removed. The gas line from the tank to the second stage regulator, which was installed on the side of the house, was installed correctly. The gas line from the outlet of the second stage regulator goes as follows:

Copper tubing was just run alongside the foundation on top of the ground and followed under the deck to the vicinity of an abandoned window. The gas lines by code are supposed to be buried at the depth of 18 inches. There were numerous leaks. Some copper flares were done improperly. Some of them simply had just not been tightened properly. There was a gas hot water heater that appeared to have been added to replace an electric one. The gas supply line was run with copper through an abandoned window and a T had been installed. One side of the T ran along the wall to a furnace and the other was run to the water heater which was straight down from the old window opening. We replaced the copper with iron pipe and the proper ball valves and drip legs were installed according to code. The customer also wanted to have us connect a gas service line for his outdoor gas grill. When I was finished everything was done properly and most importantly the customer and his family could enjoy their deck and pool area safely.

At the conclusion of this project the homeowner stated to me that this work was done prior to him owning the property. This is a great example of the homeowner trying to save money and with an end result of having things done improperly and worst of all unsafely.



Example 2:

I received a phone call from a customer. He stated he had built a small shop on his farm and was looking to heat it with a propane forced air furnace. He was looking for prices to purchase and install a heater. When I told him what he would need and how much it was going to cost, he told me he could buy one for less at a retail store. I did not hear from him for about a week. A week later he called me and wanted to see if I could come out and take a look at his heater. I got to the farm and found it as follows:

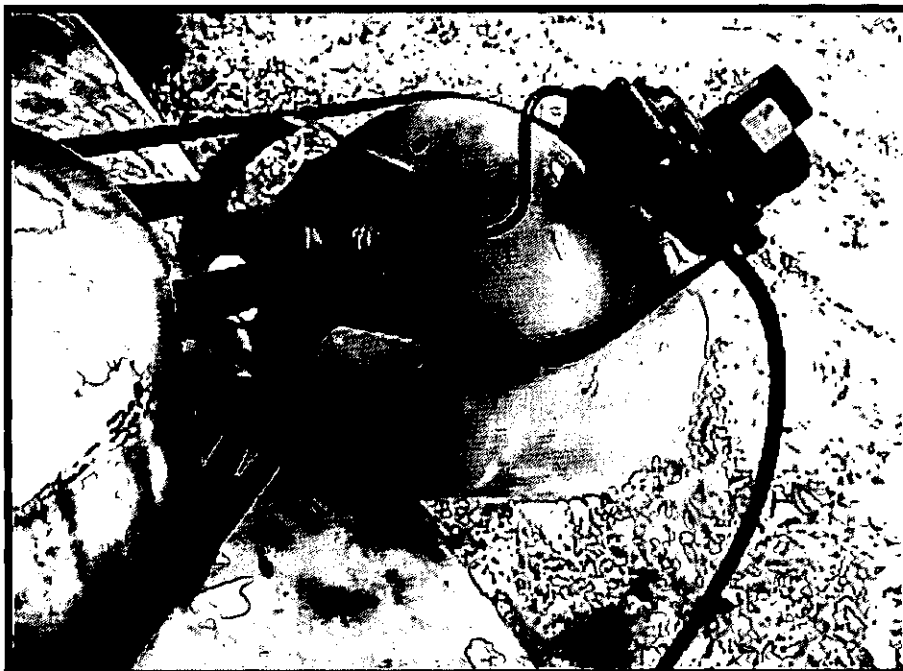
He had it hooked up to a propane tank already on the farm. He had the proper regulators and supply line. What he did not do was make sure it was suited to burn propane. He had purchased everything he needed but did not know he needed to have orphices and a gas valve spring replaced with ones that were set up for propane. His heater was designed and set up from the factory to burn natural gas. He sooted up his building and luckily no one was hurt. I converted this heater to propane and everything is now working safely.

Example 3:

I received a call from a customer. He explained to me he needed a forced air gas furnace installed. I got there installed and test fired the furnace. Everything was done and it was safe. Approximately six months later, I received a call that he was having problems with this heater. I went out and discovered he had since put in a steam boiler. This steam boiler was rigged to say the least. He explained he went to an auction sale and bought this boiler and installed it himself. Also, he wanted to bring the building up to temperature quickly because he didn't always heat this building. He explained that he had purchased a torpedo construction heater to run right away when he arrived in the mornings. He had put a T into the gas line on the high pressure side of the regulator and had a high pressure gas line run into the building and hooked it to the construction heater. I advised him we would not deliver gas to him any longer as long as things were this way. He agreed and we are now working on getting these things corrected.

Fortunately none of these incidents resulted in catastrophic damages or injuries. A "do pass" on HB 1417 will help protect safety first companies like ours from consumer negligence when it comes to propane service and maintenance. Thank you for your time. I would be happy to answer any questions.







NORTH DAKOTA PROPANE GAS ASSOCIATION


PROPANE
 EXCEPTIONAL ENERGY

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Training Schedule

Registration sheets will be mailed approximately 5 weeks in advance of class date. No phone in registration will be accepted. If you have questions, please contact Mary at 701-223-3370 or email Mary.

Government form of Identification (drivers license) is required to be verified by instructor before student can take Certified Employee Training Test.

Class Descriptions

Employee Propane Training Schedule 2009

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Fargo 2009 Expressway Suites, 4303 17th Ave S - Fargo, ND 1-877-239-4303

February 23 & 24	Basic Principles & Practices Book 1	8:00 am - 5:00 pm
February 24	DOT Hazardous Materials	6:00 - 10:00 pm
February 25-26-27	Preparing & Installing Vapor Distribution Systems Book 4.2	8:00 am - 5:00 pm
February 26	Basic & Delivery Refresher Training	6:00 - 10:00 pm

Mandan 2009 Seven Seas, 2611 Old Red Trail - Mandan, ND 1-800-597-7327

May 15	DOT Hazardous Material	8:30 am - Noon
May 15	Propane Cylinder Filling	1:00 - 4:30 pm

Minot 2009 Holiday Inn, 2200 Burdick Expressway East - Minot, ND 1-800-468-9968

June 10	<i>Tentative</i> - Propane Fire School Training	10:00 am - 5:00 pm
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Minot 2009 Holiday Inn, 2200 Burdick Expressway East - Minot, ND 1-800-468-9968

July 13 & 14	Operating a Bobtail to Deliver Propane Book 2.1 & 2.2	8:00 am - 5:00 pm
July 14	DOT Hazardous Materials	6:00 - 10:00 pm
July 15	Operating a Truck / Trailer to deliver / relocate ASME Tanks	8:00 am - 5:00 pm
July 16	Operating a Truck / Trailer to deliver / relocate ASME Tanks	8:00 am - noon

Relocate ASME Tanks

July 16	Propane Cylinder Filling	1:00 - 5:00 pm
July 17	Office Personnel	8:00 am - 5:00 pm

**Bismarck 2009 Doublewood Inn, 1400 E Interchange Ave, Bismarck, ND
1-800-554-7077**

September 28 & 29	Basic Principles & Practices Book 1	8:00 am - 5:00 pm
September 29	Basic & Delivery Refresher	6:00 - 10:00 pm
September 30	Gas System & Appliance Check	8:00 am - 10:00 pm
October 1 & 2	Plant Operations Book 3.1, 3.2, 3.3, 3.4	8:00 am - 5:00 pm

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TESTIMONY ON HB 1417
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
JANUARY 28, 2009

Presented by Christopher Friez, on behalf of the
North Dakota Grain Dealers Association

Good morning Mr. Chairman and members of the Committee. My name is Christopher Friez from the Crowley Fleck law firm and I'm here on behalf of the North Dakota Grain Dealers Association.

The North Dakota Grain Dealers association is in support of HB 1417.

The Grain Dealers feel that it is common sense that an innocent supplier of a legal product should not be held liable for the negligent acts of another after the product is sold.

We are told there is a minimum of a \$5,000 extra premium for insurance of a business handles propane. For this reason, some elevators simply do not engage in the propane business because of the additional insurance costs and liabilities.

The North Dakota Grain Dealers Association stands in support of HB 1417 and urges a Do Pass.

Thank you.

TESTIMONY

House Bill 1417-Independent Insurance Agents of ND

House IBL Committee

Representative Keiser, Chairman

Chairman Keiser and members of the House Industry Business & Labor committee, my name is Evan Mandigo. I am the State Executive of the North Dakota Independent Agents Association and a licensed insurance agent in North Dakota. I am here to testify in favor of HB 1417.

Coverage for LPG businesses is difficult to place for our members in part because of the inevitable involvement of dealers in any event involving an LPG explosion or fire. They are spectacular in nature and sadly often involve injury to members of the general public. Too often the LPG dealer is identified as a handy target of subsequent civil litigation when they have done nothing wrong. Their insurance carrier is obligated to provide a defense even if it is only to prove they did everything right. Such almost automatic inclusion in events translates to higher expense dollars for the insurance carriers and higher premiums or restricted coverage availability for the dealers. Those costs will be passed on to LPG customers in higher fuel costs.

Immunity from civil liability as provided by HB 1417 will go a long ways to clarify what should be obvious. A business should not incur civil liability for alteration, modification, or repair to their installed equipment done without their knowledge or use of the equipment without dealer participation. HB 1417 does not immunize poor work done by a dealer, only work done without their knowledge which leads to an accident.

Others can speak to horror stories of user modifications to LPG installations done without their knowledge and the oft times horrific consequences in terms of damage to lives and property. This bill, if enacted, will make it

crystal clear that if a system is modified or used for purposes not intended without the knowledge of the dealer, they will not be forced into expensive civil litigation and the risk of an adverse legal decision if an accident happens. That is only fair. It is our opinion such immunity will make the market for insurance provided to dealers more predictable and less volatile and therefore less expensive. It is my experience after nearly 40 years in the insurance and risk management profession that insurance carriers hate uncertainty and compensate for it with more premium or restricted access. HB 1417 removes much of that uncertainty.

I have a personal experience to relate that illustrates the potential. I live on the outskirts of Bismarck and heat with propane. This past summer, we decided to re-build the deck in our backyard. The propane line feeding our heating system had to be re-routed to accommodate the project, so I called my propane dealer. The installation did not look right to me. When the representative arrived, his face turned white. They knew nothing about the jury rigged undersized line draped under the deck. It also had a crimp that restricted its flow. He wanted to take a picture of it for safety training to illustrate just about everything possible that could be done wrong by a homeowner installation. The previous owner had modified it without their knowledge and we enjoyed 10 years of blissful ignorance. Had there been an explosion, they would have known nothing about it. I had them fix the line properly which was an unexpected expense, but it was done right.

Chairman Keiser and members of the committee, I urge you provide a do pass recommendation for HB 1417 and I would be happy to respond to any questions you may have.

Proposed amendments for HB-1417

On line 7 after the word “gas”, insert a comma followed by the words, “methane or natural gas”.

On line 9, following the word “gas” insert a comma, followed by the words, “methane or natural gas”.

On line 14, following the word “or” add the words “was completed by a person who was not qualified to repair a methane or natural gas appliance, or”

On line 19, change the period to a comma and add the word “or”. Then begin a new line with “3. The use of the methane or natural gas equipment or appliance in a manner or for a purpose other than that for which the equipment or appliance was intended.”

And renumber the lines accordingly.

8

Testimony in Opposition to House Bill No. 1417

Respectfully Submitted by:

Jeffrey S. Weikum
Pagel Weikum, PLLP
1715 Burnt Boat Drive
Madison Suite
Bismarck, ND 58503
701-250-1369

Mr. Chairman and members of the Committee:

Thank you for allowing me to speak with you this morning. I am an attorney from Bismarck and I have been practicing in North Dakota for fourteen (14) years. I am also licensed to practice in Minnesota, South Dakota and Montana. I am President of the North Dakota Association for Justice.

I am here in opposition to House Bill No. 1417

North Dakota law both statutory and through the use of jury instructions already addresses the issues that House Bill No. 1417 attempts to address.

Attached for your convenience are a sample of a few of the North Dakota Pattern Jury Instructions dealing with the these issues:

- 1) Fault
- 2) Proximate Cause
- 3) Comparative Fault
- 4) Assumption of Risk

The statutes and the jury instructions provide an appropriate framework within which the Courts can determine responsibility in all cases, including matter involving liquefied petroleum gas.

I would ask that you vote "no" on House Bill No. 1417.

Thank you again for your time.

If you have any questions, please feel free to contact me

Definition of "Fault"**2000- Tort Liability****C - 2.80**

The term "fault" as used in these instructions means [strict liability for product defect] [breach of warranty] [negligence] [assumption of risk] [misuse of a product for which the Defendant otherwise would be liable] [dram shop liability] [failure to exercise reasonable care to avoid an injury or to mitigate damages].

NDCC 32-03.2-01, NDCC 32-03.2-03 (7/8/87 - 4/30/93)

Proximate Cause

2008- Tort Liability

C - 2.15

A proximate cause is a cause which, in natural and continuous sequence, produces the injury, and without which, the injury would not have occurred. It is a cause which had a substantial part in bringing about the injury either immediately or through events which follow one another.

[There may be more than one proximate cause of the injury. The fault of two or more persons may contribute to cause the injury, and in such case, each person's fault is regarded as a proximate cause.]

Beilke by Beilke v. Coryell, 524 NW2d 607 (ND 1994)

Andrews v. O'Hearn, 387 NW2d 716 (ND 1986)

Knorr v. K-Mart Corp., 300 NW2d 47 (ND 1980)

Froemke v. Otter Tail Power Co., 276 NW 146 (ND 1937)

Comparative Fault
2002- Tort Liability

C - 2.82

You will return a special verdict in which you will make special findings of fact determining:

- 1) who was at fault, if anyone;
- 2) whether such fault was a proximate cause of damages;
- 3) the respective percentages of fault allocated to the Defendant[s], the Plaintiff, or anyone else who contributed to proximately cause any damages;
- 4) the amount of Plaintiff's [or Defendant's'] damages without reduction for fault.

[Any damages awarded will be reduced by any percentage of fault allocated to the Plaintiff. However, if you allocate 50% or more of fault to the Plaintiff, the Plaintiff will not recover any damages.]

The court will reduce the damages by any percentage of fault allocated to the Plaintiff. You are not to reduce any damage amounts.

This instruction is not meant to suggest that you should find anyone at fault. It is to explain the relationship between the allocation of fault and damages.

NDCC 32-03.2-02

Sollin v. Wangler, 2001 ND 104, 627 N.W.2d 159

Assumption of Risk

2002- Tort Liability

C - 2.75

A person assumes the risk of [injury] [loss] if the person 1) has actual knowledge of a risk of [injury] [loss], 2) has freedom of choice to avoid the risk, 3) voluntarily encounters the risk, and 4) [injury] [loss] is proximately caused by the encounter. If you find that a person has assumed the risk of [injury] [loss] you may consider that as evidence of fault.

NDCC 32-03.2-02

Rodenberg v. Fargo-Moorhead Young Men's Christian Ass'n, 2001 ND 139, 632 NW2d 407

Spieker v. Westgo, Inc., 479 NW2d 837 (ND 1992)

Olson v. Chesterton, 256 NW2d 530 (ND 1977)

***Heartland* Gas Company**
13209 Highway 17
Park River, ND 58270-9603
Phone 701-284-7480 Fax 701-284-7492
Email: heartlandgas@polarcomm.com

Jim Chyle, Owner of Heartland Gas Company, Park River, North Dakota
In business for 22 years

With this legislation the propane company is not responsible for anything inside the home.

So who is responsible? The furnace man, the plumber for installing the water heater, the department store for selling the gas range and gas clothes dryer?

No, these people all deal in the individual parts of the gas system.

Who is the expert for the complete gas system? It should be the gas supplier.

The gas supplier is trained to not only deliver propane but also trained to:

- Inspect the gas system in the home (make sure the system is safe and efficient)
 - Perform a GAS check (the industry standard evaluation)
 - Instruct and educate the homeowner on the safety of the gas system in their home
 - Continually have a relationship with the customer via safety brochures, decals, newsletters, gas bills, websites, etc. All of these forms of safety media all contain information on the importance of having a trained professional for all service and modifications to the gas system.
- and

- Most importantly, the propane supplier has the ability to interrupt the gas supply when the system is not in compliance with current gas codes and safety standards

Propane can be a dangerous product, but if the suppliers take responsibility for their work and make sure the system is safe there is no reason for this piece of legislation. We will never eliminate all lawsuits, nor should we. We can hope that Attorneys, Insurance Companies, Judges and Juries are all made up of reasonable people; if a propane company is liable they should be sued.

This bill protects approximately 100 propane companies in the State of North Dakota.

Who is protecting the 640,000 residents?

LIGHTING PILOT LIGHTS

IF A PILOT LIGHT REPEATEDLY GOES OUT or is very difficult to light, there may be a safety problem. **DO NOT** try to fix the problem yourself. It is strongly recommended that only a **QUALIFIED SERVICE TECHNICIAN** light any pilot light that has gone out.

YOU ARE TAKING THE RISK of starting a fire or an explosion if you light a pilot light yourself. Carefully follow all of the manufacturer's instructions and warnings concerning the appliance before attempting to light the pilot.

APPLIANCE MAINTENANCE

LEAVE IT TO THE EXPERTS. Only a qualified service technician has the training to install, inspect, service, maintain, and repair your appliances. Have your appliances and propane system inspected just before the start of each heating season.

HELP YOUR APPLIANCES "BREATHE."

Check the vents of your appliances to be sure that flue gases can flow easily to the outdoors; clear away any insect or bird nests or other debris. Also, clear the area around your appliances so plenty of air can reach the burner for proper combustion.

DO NOT TRY TO MODIFY OR REPAIR

valves, regulators, connectors, controls, or other appliance and cylinder/tank parts. Doing so creates the risk of a gas leak that can result in property damage, serious injury, or death.

HAVE OLDER APPLIANCE CONNECTORS

INSPECTED. Certain older appliance connectors may crack or break, causing a gas leak. If you have an appliance that is more than 20 years old, have a qualified service technician inspect the connector. Do not do this yourself, as movement of the appliance might damage the connector and cause a leak.



FLAMMABLE VAPORS ARE A SAFETY HAZARD. The pilot light on your propane appliance can ignite vapors from gasoline, paint thinners, and other flammable liquids. Be sure to store and use flammable liquids outdoors or in an area of the building containing no propane appliances.



DON'T RISK IT! If you cannot operate any part of your propane system, or if you think an appliance or other device is not working right, call your propane retailer or a qualified service technician for assistance.



RUNNING OUT OF GAS

DON'T RUN OUT OF GAS. SERIOUS SAFETY HAZARDS, INCLUDING FIRE OR EXPLOSION, CAN RESULT.

- If an appliance valve or a gas line is left open, a leak could occur when the system is recharged with propane.
- If your propane tank runs out of gas, any pilot lights on your appliances will go out. This can be extremely dangerous.
- **A LEAK CHECK IS REQUIRED.** In many states, a propane retailer or a qualified service technician must perform a leak check of your propane system before turning on the gas.

IMPORTANT CONTACTS

POLICE:

FIRE DEPARTMENT

HearlandGas Company

13209 Highway 17

Park River, ND 58270


701-284-7480

For more information, please visit:
www.usepropane.com



IMPORTANT PROPANE SAFETY INFORMATION

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Important Propane Safety Information

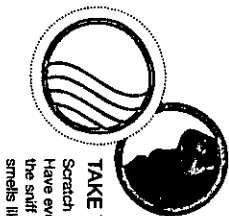
for you and your family

Please read and follow the safety rules in this brochure. Share this information with your family to help keep everyone safe and to reduce the risk of serious and potentially fatal injury, fire, or explosion.

PROPANE
EXCEPTIONAL ENERGY

IF YOU SMELL GAS

- 1. NO FLAMES OR SPARKS!** Immediately put out all smoking materials and other open flames. Do not operate lights, appliances, telephones, or cell phones. Flames or sparks from these sources can trigger an explosion or a fire.
- 2. LEAVE THE AREA IMMEDIATELY!** Get everyone out of the building or area where you suspect gas is leaking.
- 3. SHUT OFF THE GAS.** Turn off the main gas supply valve on your propane tank if it is safe to do so. To close the valve, turn it to the right (clockwise).
- 4. REPORT THE LEAK.** From a neighbor's home or other nearby building away from the gas leak, call your propane retailer right away. If you can't reach your propane retailer, call 911 or your local fire department.
- 5. DO NOT RETURN TO THE BUILDING OR AREA** until your propane retailer determines that it is safe to do so.
- 6. GET YOUR SYSTEM CHECKED.** Before you attempt to use any of your propane appliances, your propane retailer or a qualified service technician must check your entire system to ensure that it is leak-free.



TAKE THE SNIFF TEST
Scratch and sniff the blue oil.
Have everyone in your family take the sniff test to learn what propane smells like.

CAN YOU SMELL IT?

Propane smells like rotten eggs, a skunk's spray, or a dead animal. Some people may have difficulty smelling propane due to their age (older people may have a less sensitive sense of smell), a medical condition, or the effects of medication, alcohol, tobacco, or drugs. Consider purchasing a propane gas detector as an additional measure of security.

ODOR FADE is an unintended reduction in the concentration of the odor of propane, making it more difficult to smell. Although rare, several situations can cause odor fade:

- The presence of air, water, or rust in a propane tank or cylinder
- The passage of leaking propane through the soil

Since there is a possibility of odor fade or problems with your sense of smell, you should respond immediately to even a faint odor of gas.

PROpane GAS DETECTORS

Propane gas detectors sound an alarm if they sense propane in the air. They can provide an additional measure of security in homes with little-used areas or with occupants who have difficulty smelling propane.



GUIDELINES regarding propane gas detectors:

- Buy only units that are listed by Underwriters Laboratories (UL).
- Follow the manufacturer's instructions regarding installation and maintenance.
- Never ignore the smell of propane, even if no detector is sounding an alarm.

CARBON MONOXIDE AND YOUR SAFETY

WHAT IS CARBON MONOXIDE (CO)?
You can't taste or smell CO, but it is a very dangerous gas, produced when any fuel burns. High levels of CO can come from appliances that are not operating correctly, or from a venting system or chimney that becomes blocked.

CO CAN BE DEADLY! High levels of CO can make you dizzy or sick (see below). In extreme cases, CO can cause brain damage or death.

Symptoms of CO poisoning include:

- Headache
- Dizziness
- Fatigue
- Shortness of breath
- Nausea

IF YOU SUSPECT CO IS PRESENT, ACT IMMEDIATELY!

1. If you or a family member shows physical symptoms of CO poisoning, get everyone out of the building and call 911 or your local fire department.
2. If it is safe to do so, open windows to allow entry of fresh air, and turn off any appliances you suspect may be releasing CO.
3. If no one has symptoms, but you suspect that CO is present, call your propane retailer or a qualified service technician to check CO levels and your propane equipment.

TO HELP REDUCE THE RISK OF CO POISONING:

- Have a qualified service technician check your propane appliances and related venting systems annually, preferably before the heating season begins.
- Install UL-listed CO detectors on every level of your home.
- Never use a gas oven or range-top burners to provide space heating.
- Never use portable heaters indoors unless they are designed and approved for indoor use.
- Never use a barbecue grill (propane or charcoal) indoors for cooking or heating.
- Regularly check your appliance exhaust vents for blockage.

SIGNS OF IMPROPER APPLIANCE OPERATION THAT CAN GENERATE HIGH CO LEVELS:

- Sooting, especially on appliances and vents
- Unfamiliar or burning odor
- Increased moisture inside of windows

WHAT IS PROPANE?

Propane (also called LPG—liquefied petroleum gas—or LP gas) is a liquid fuel stored under pressure. In most systems, propane is vaporized to a gas before it leaves the tank. Propane is flammable when mixed with air (oxygen) and can be ignited by many sources, including open flames, smoking materials, electrical sparks, and static electricity. Severe "freezing burn" or frostbite can result if propane liquid comes in contact with your skin.



carbon monoxide safety information



Carbon Monoxide

Anticipate Danger

- > colorless
- > odorless
- > tasteless
- > toxic

Poisoning Symptoms

- > headache
- > dizziness
- > fatigue
- > shortness of breath
- > nausea

If you suspect carbon monoxide is present,
ACT IMMEDIATELY!



If you or a family member shows physical symptoms of carbon monoxide poisoning, get everyone out of the building and CALL 911 OR YOUR LOCAL FIRE DEPARTMENT.

If it is safe to do so, open windows to allow entry of fresh air and turn off any appliances you suspect may be releasing the carbon monoxide.

If no one has physical symptoms of carbon monoxide poisoning, but you suspect that carbon monoxide is present, call your propane retailer or a qualified service technician to check carbon monoxide levels and your propane equipment.

IMPORTANT CONTACTS

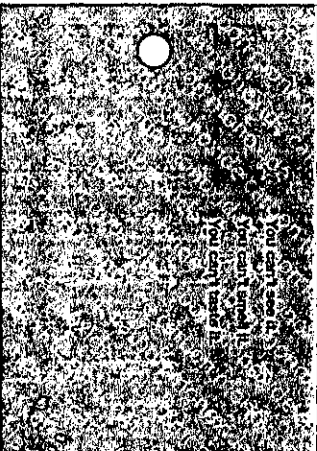
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Spend a few moments
for your family's safety.





carbon monoxide safety information

Carbon Monoxide Can Be Deadly!

Every year, hundreds of Americans die from unintentional carbon monoxide poisoning and thousands seek medical attention. Some of these fatalities are caused by improper operation of appliances.

Everyone in your family is at risk if dangerous levels of carbon monoxide are present in your home. Unborn babies, infants, those with medical conditions, and the elderly are the most susceptible to its effects. Carbon monoxide can strike quickly... people who are sleeping can die from carbon monoxide poisoning before ever experiencing symptoms.

Please take a few minutes to read this brochure to learn about the dangers of carbon monoxide and simple precautions you can take to reduce the risk of accidental poisoning. Share this information with your family members to help ensure that everyone stays safe.

Carbon Monoxide Facts



WHAT IS CARBON MONOXIDE?

Carbon monoxide is a colorless, odorless, tasteless, and toxic gas. Smoking a cigarette, running an internal combustion engine, and burning candles, fuel oil, wood, kerosene, natural gas, and propane may produce carbon monoxide. High levels of carbon monoxide can be produced when fuels are burned incompletely.

WHERE DO HIGH LEVELS OF CARBON MONOXIDE COME FROM?

High levels of carbon monoxide can be generated by internal combustion engines or by appliances that are defective or improperly installed or maintained. Carbon monoxide can also enter a home if an appliance venting system or chimney becomes blocked (for example, by a bird's nest).



CARBON MONOXIDE CAN BE DEADLY!

High levels of carbon monoxide can make you dizzy, give you headaches, or cause flu-like symptoms (see "Poisoning Symptoms" on reverse side). In extreme cases, high levels of or extended exposure to carbon monoxide can result in brain damage or death. Young children, the elderly, people with heart disease, and those under the influence of alcohol, drugs, or medication are particularly susceptible to carbon monoxide poisoning.

Reduce the Risk of Carbon Monoxide Poisoning



The best way to reduce the risk of carbon monoxide poisoning is to have a qualified service technician check your appliances and venting systems annually, preferably before the heating season begins. Other important measures include:



- Keep chimneys, flues, and vents free of debris such as leaves and animal nests.
- Keep chimneys, flues, and vents free of snow and ice.
- Consider installing a UL-listed carbon monoxide detector on every level of your home.
- Never use a gas oven or range-top burners to provide space heating.
- Never use portable heaters indoors, unless they are designed and approved for indoor use.
- Never use a barbecue grill (propane or charcoal) indoors for cooking or heating.
- Regularly check your appliance exhaust vents for blockage.
- Always open the chimney flue damper when you use your fireplace.
- Always follow the manufacturer's instructions for placement and use of vent-free appliances, including fireplaces and logs.
- Never run an internal combustion engine such as your car, lawn mower, generator, or snow blower in enclosed areas such as your garage.



Carbon Monoxide Detectors Can Prove Safety

Carbon monoxide detectors are designed to sound an alarm when they sense excessive levels of carbon monoxide in the air. For an extra measure of safety, we recommend that you consider installing a UL-listed carbon monoxide detector on each level of your home. Be sure to follow the manufacturer's instructions regarding installation, location, and maintenance.

Some Signs of Improper Appliance Operation That Can Generate High Carbon Monoxide Levels:

- Sooting, especially on appliances, vents, and warm air registers
- Unfamiliar or burning odor
- Increased moisture inside of windows

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PREVIOUS SALE NO.	CODE	GALLON READING - START	TOTALS
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YOUR SALE NO.	GALLON READING - FINISH
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CITY

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BEGINNING %	ENDING %	ODORIZATION REQUIRED BY	SALES TAX
TANK NO.			TOTAL

THIS IS YOUR INVOICE

RECEIVED
ABOVE GALLONS

CUSTOMER SIGNATURE

RECEIVED
PAYMENT \$ ☐ CASH ☐ CHECK DRIVER

LIQUEFIED PETROLEUM GAS

2.1/FLAMMABLE GAS/UN 1075 (PROPANE NON-CORROSIVE)

SEE REVERSE SIDE FOR PROPANE SAFETY INFORMATION