



PROPANE EXCHANGE

November 2009 * West Virginia Propane Gas Assn.

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March 22, 2010	Spring Membership Mtg. Marriott Hotel Charleston, WV
April 10-12, 2010	NPGA Southeastern Conv Atlanta, GA



Propane Marketers Can Help Defeat Climate Change Legislation

In an effort to defeat Climate Change Legislation, the National Propane Gas Association has put together a bill stuffer which propane marketers can send to their customers. This is all part of a grass roots campaign undertaken last month by NPGA (and reported in the October issue of *Propane Exchange*).

According to Phi Squair, NPGA's Senior Vice President, Public & Government Affairs, "Regarding messaging, the bill stuffers are being provided as a means through which propane consumers can participate in the climate change debate. To the extent that they agree that congressional initiatives to address climate change will increase their fuel bills, they will be able to join for free the Partnership for America's Energy Security and have a variety of tools available to help them weigh in. All the tools they need to do this are available on the site, including toll-free numbers for Congress. Letters are pre-populated with information to go to the correct Senators from that individual."

The cost to obtain these pamphlets is \$20 per 1000 ordered. WVPGA members may order through the Association office by emailing their request to wvpga@aol.com. Be sure to give the quantity requested and to what address the bill stuffers should be sent. Members will be invoiced for their orders so no pre-payment is necessary.

News Flash:

Propane furnaces produce 9 percent fewer greenhouse gas emissions than electric heat pumps and 64 percent fewer greenhouse gas emissions than electric baseboard heaters.

Propane desiccant dehumidifiers produce 66 percent fewer greenhouse gas emissions than similar electric dehumidifiers.

Propane storage tank water heaters produce 52 percent fewer greenhouse gas emissions than similar electric heaters and 17 percent fewer greenhouse gas emissions than similar heaters fueled by fuel oil.

Source: *Propane Reduces Greenhouse Gas Emissions: A Comparative Analysis 2009*, prepared by Energetics Inc. (Columbia, Md.)



Comparative Heating Analysis Fact Sheets

Three new fact sheets from the Propane Education & Research Council (PERC) summarize some of the key findings from ***Comparative Analysis of Residential Heating Systems***, a 2009 study sponsored by PERC.

The study by Newport Partners LLC evaluated 14 heating systems in 16 locations across the United States in both new and existing homes. The results: propane-fueled systems performed strongly in several areas, including simple return on investment, lower carbon dioxide emissions, and effectiveness as a backup to other systems.

Each fact sheet features an executive summary of the research findings for a specific region: the Northeast, the Southeast, and the Midwest. Download the fact sheets from the online Propane Marketing and Resource Catalog (www.propanemarc.com; registration and log-in required).

For details about the comparative heating analysis, the fact sheets, and the training program for construction professionals, get in touch with Tracy Burleson, the director of PERC's residential and commercial programs, at tracy.burleson@propanecouncil.org or 202-452-8975.



DOT to Rewrite Hours of Service Rules?



The long-standing legal dispute with safety advocates over drivers' hours-of-service (HOS) rules may be coming to an end (sort of) with NPGA learning that the DOT's Federal Motor Carrier Safety Administration (FMCSA) has agreed to rewrite the HOS rules from scratch.

Under the terms of the agreement, which is a settlement between the government and the safety advocacy groups, FMCSA has until July 2010 to forward a Notice of Proposed Rulemaking (NPRM) to the Office of Management and Budget (OMB) and 21 months to publish a Final Rule. The current HOS rules will remain in place while the rulemaking is pending.

The current regulations were initially adopted in 2003. A series of lawsuits have resulted in the current daily driving time limit of 11-hours, a 14 consecutive hour on-duty requirement, and a 34-hour restart provision. The 11-hour daily driving limit and the 34-hour restart provisions have been the subject of litigation by safety groups claiming the provisions undermine driver health and safety. In July 2007, the U.S. Circuit Court of Appeals for D.C. remanded the rule to the FMCSA to remedy procedural deficiencies. In late 2008, FMCSA eventually issued a Final Rule retaining both provisions.

The government's action in reaching this settlement with the safety groups now means this subject could drag on for years or longer. NPGA will keep you updated when the next round of HOS proposals are published.

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Customer Owned Tanks: Marketers Need to Protect Their Business

“Customers may lack the knowledge and experience to recognize potential problems with a tank that a marketer could identify. Due to these risks, our firm recommends that marketers utilize a specialized contract drafted specifically for COT customers.”

Customer owned tanks (“COTs”) are becoming increasingly popular with propane customers. The COT attraction is understandable. It allows the customer to shop around for the best propane rates without being locked into a tank lease agreement or tied to a specific marketer. While on its face it may be an attractive option for the customer, there are many safety concerns that must be considered by marketers. These safety concerns also raise a number of issues that marketers should address when servicing a customer with a COT.

In a typical tank lease agreement, the marketer is responsible for the propane tank’s upkeep and maintenance. This is because the marketer actually retains ownership of the tank. A COT, however, is owned by the customer. Therefore, the customer is responsible for tank maintenance in a COT situation. This arrangement should concern certain marketers.

With a COT, the marketer typically will not know the tank’s history, condition and past maintenance performed. This is especially true since some COTs are refurbished older tanks purchased on the cheap. In addition, since COT customers often switch marketers, a subsequent marketer may not be familiar or know of any prior concerns another marketer may have had with the tank.

Further, if the COT is an underground tank it raises a number of other concerns unique to underground tank applications. Underground tanks require cathodic protection to prevent corrosion. An underground COT’s cathodic protection history may not be available to the marketer. Therefore, a marketer may not know whether the tank is properly protected unless it tests the cathodic protection levels. This could create extra costs and expenses for the marketer or customer. Additionally, since the tank is underground, it cannot be easily inspected.

Marketers must weigh all these factors when deciding whether to deliver to an underground COT.

If a marketer decides to deliver to a COT, it should make every effort to protect their business. COTs do create an additional risk because control over the tank is held by the customer as opposed to the marketer. Customers may lack the knowledge and experience to recognize potential problems with a tank that a marketer could identify. Due to these risks, our firm recommends that marketers utilize a specialized contract drafted specifically for COT customers.

This contract should clearly identify the obligations of each party. It should state which party will be responsible for tank maintenance and, if applicable, who will monitor and maintain the cathodic protection. The contract should also contain an indemnification/hold harmless clause to protect the marketer should the tank, or other customer owned equipment, fail which the customer had agreed to maintain. Further, the contract should identify the payment terms and whether it involves a keep fill arrangement, pay as you go, pre-pay, cash on delivery, or other type of payment option.

Also, if it is not a keep fill arrangement, then the contract should address what occurs in an out of gas situation. Since an out of gas situation requires that the marketer complete a system leak test, the cost of that test should be the customer's obligation. Finally, if a marketer is not satisfied with the condition of the COT, or the condition deteriorates due to improper maintenance, then the marketer should be permitted to cancel the agreement. The procedure to cancel the agreement should be spelled out in the contractual language.

The above does not address each contractual clause that should be included in a COT delivery contract, but it does highlight some of the major components. Other issues to consider may include what tests a marketer should conduct when first delivering to a COT, what occurs if the odorant is compromised due to tank corrosion, what happens to the gas in the tank when the customer breaches the agreement, and is there a minimum threshold of propane that the customer must purchase from the marketer. Additionally, there are a number of other issues that a marketer may want to address in the

Contact Us

wvpga@aol.com

www.wvpropanegas.com

703.530.9772

COT delivery contract. Ultimately, marketers should retain an attorney that is familiar with the propane industry, its codes and regulations, and the marketer's business operations to draft an appropriate COT delivery contract.

*This article is written by **EUGENE M. LaFLAMME**, a Senior Associate at McCoy & Hofbauer S.C. His practice focuses in the areas of civil litigation, fire & explosion litigation, commercial litigation, product liability, and insurance defense. He is a member of the Propane Gas Defense Association. [e-mail: elaflamme@mh-law.us] Phone: (262) 522-70000*



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LP494 - 1-26,950gal Chicago Bridge & Iron, 210psi @ 650, Jones Chappell, AL

LP560 - 30,000gal Chicago Bridge & Iron, 200psi, 1951, Rose Hill, NC

LP562 - 30,000gal Cherokee Steel, 250psi, Rose Hill, NC

LP489 - 14,000gal National Butane Co ASME storage, 250psi, 1970, Amory, MS

LP563 - 6,563gal Trinity Industries Skid tank, 250psi, 1971, Virginia

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