

Loss Control in Court: Two Examples

UTILITY PUBLIC SAFETY ALLIANCE
MAY 9, 2019

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Example 1

WARNINGS – THE CALL CENTER
("I SMELL GAS")

Overview

- DECEMBER 2000 RESIDENTIAL EXPLOSION

 - Husband – severe injuries, ultimately dies

 - Wife 60%+ tbsa burn injury - \$1 million medical

- CAUSE – NATURAL GAS LEAK

 - Normac riser pullout next to foundation

 - Gas migrates into basement

 - Improper installation of riser

 - Other issues

December 16, 2000

- ▶ 9:07 p.m. – husband calls gas company
 - ▶ Reports gas odor
 - ▶ Strong outside, “faint” in basement
 - ▶ Service tech dispatched
 - ▶ Husband not told to evacuate house
 - ▶ No warning to “Stay out of basement”
- ▶ 9:15 p.m. – explosion
- ▶ 9:23 p.m. – fire department arrives
- ▶ 9:40 p.m. – service tech arrives

Home Post-Explosion



The Loss

- ▶ Husband and wife severely burned
- ▶ Husband died the next day
- ▶ Wife – 60%+ second/third degree burns
 - ▶ 3 months in burn unit
 - ▶ Over \$1 million past medical expense
 - ▶ Over \$5 million projected future medical/treatment expense
- ▶ Husband – beloved in community
- ▶ Incident right before Christmas
- ▶ Oldest daughter's wedding – between Christmas and New Year's

Cause and Origin

- ▶ Explosion originated in the basement
- ▶ Source of gas – service line riser
 - ▶ Mechanical failure – separation
 - ▶ Improper installation
- ▶ Frozen ground – gas migrates into basement
- ▶ Ignition source unknown

Call Center Report

PRELIMINARY REPORT
of
Asphyxiations, Explosions, Fires, Major Outages, etc. as outlined in the Emergency Manual

DATE OF OCCURRENCE 12/16/00	TIME OF OCCURRENCE 2:07 AM	NOTIFIED BY (CUSTOMER, FIRE DEPT., POLICE DEPT.; INCLUDE NAME OF INDIVIDUAL REPORTING) Customer
REPORTED TO (INCLUDE NAME AND TITLE) [Redacted]	DATE 12/16/00	TIME 2:07 AM
REPORTED BY (FIELD SUPERVISOR) [Redacted]	REPORTED TO (GENERAL OFFICE) [Redacted]	DATE 12/16/00
DATE [Redacted]	TIME [Redacted]	A.M. P.M.

LOCATION OF OCCURRENCE
1469 Wilbur Rd., [Redacted] (520080959)

LOCATION OF CONTACT SITE (SERVICE CENTER, OFFICE, ETC.)
Logistics Center, [Redacted]

PHONE NUMBER
1-900-3 [Redacted]

SUBJECT (EXPLANATION OF WHAT HAPPENED)
Customer called saying he had odor in basement and strong odor around meter. He said the line going to meter was ours. I explained meter was ours lines were his. He wanted me to tell him how to make safe and he would call back. I told him once reported to us we had to respond and make safe. He still wanted us to wait. I told him we had to respond. I called [Redacted] at 2:14.

USE (IF DIG-IN WAS LINE PROPERLY LOCATED)

HAS BEEN DONE AND ESTIMATED TIME FOR RESTORING SERVICE

TENT OF DAMAGE (PROPERTY)

TENT OF INJURY (PERSONAL)


PLAINTIFF'S EXHIBIT 26


IS DOT REPORTABLE?	IS THIS STATE COMMISSION REPORTABLE?	IF REPORTABLE, SHOULD DRUG/ALCOHOL TESTING BE PERFORMED?
YES NO	YES NO COURTNEY ONLY	YES NO


- ▶ "...odor in basement and strong odor around meter"
- ▶ "...wanted me to tell him how to make safe..."
- ▶ "I told him once he reported to us we had to respond and make safe..."

Brochure Mailed to Customers

If you smell gas...

 **Leave the building immediately.** Don't light matches, touch electrical switches or use your phone.

 **Call [redacted] from a nearby phone.** Check the phone book for our special emergency number. Then wait for a [redacted] representative to arrive.

 **Natural gas** is one of the most dependable and cost-efficient forms of energy you can use. It's also one of the safest. Together, we can keep it that way.

Please turn to the other side and scratch the blue flame

- ▶ If you smell gas ... Leave the building immediately."

Another Company Brochure



Leave



Don't



Call

If You Smell Gas . . .

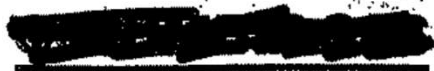
Leave your home immediately and call your [redacted] office using the phone number on your gas bill or a special emergency number in your phone book.

Don't light matches, touch electrical switches or use your phone.

Call from a neighbor's phone or pay telephone and then remain near your home until [redacted] personnel arrive.

Natural gas is one of the warmest, most convenient and reliable forms of energy you can use. It's also one of the safest. Together, we can keep it that way.

Please turn to other side and scratch the blue flame.



C-2284

Call Center Procedure

GAS ODOR ORDER-PROCEDURE

- **EXCEPTION TO RULE: ORDER DOES NOT HAVE TO BE ON ACCOUNT!**
- DIGA-VERIFY ADDRESS
- FUNCTION 11
- ACCESS DTPR
 - VERIFY NAME
 - VERIFY PHONE NUMBER
- **MUST ENTER INFORMATION INTO ORDER INSTRUCTIONS**
 - PHONE NUMBER
 - DESCRIPTION OF THE EMERGENCY
 - HOW LONG SMELLED
 - ACCESS ARRANGEMENTS
 - CALLER'S NAME (IF OTHER THAN RESIDENT BE SURE GET NAME AND NUMBER AND WHERE THEY CALLED FROM)
 - LOG IN INSTRUCTIONS THE LOGISTIC CENTER-PLACE **DISPATCHER'S NAME W/TIME OF CALL.**
- ENTER ORDER

STRONG ODOR OF GAS- PROCEDURE

- **EXCEPTION TO RULE: ORDER DOES NOT HAVE TO BE ON ACCOUNT!**
- **FOLLOW ODOR OF GAS WITH THESE ADDITIONAL PROCEDURE**
 - ASK CUSTOMER WHERE HIS CURRENT LOCATION IS
 - REQUEST THAT THE CUSTOMER VACATE PREMISE AS A **SAFETY PRECAUTION**
 - ADVISE TO GO TO NEIGHBOR HOUSE
 - ADVISE THE CUSTOMER TO LAY THE PHONE DOWN DO NOT HANG UP THE PHONE (**FYI PHONE'S CAN CAUSE A SPARK**)
- **MUST ENTER INFORMATION INTO ORDER INSTRUCTIONS**
 - PHONE NUMBER
 - DESCRIPTION OF THE EMERGENCY
 - HOW LONG SMELLED
 - ACCESS ARRANGEMENTS (NOTATE WHERE THE CUSTOMER IS WAITING)
 - CALLER'S NAME (IF OTHER THAN RESIDENT BE SURE GET NAME AND NUMBER AND WHERE THEY CALLED FROM)
 - LOG IN INSTRUCTIONS THE LOGISTIC CENTER-PLACE **DISPATCHER'S NAME W/TIME OF CALL.**
 - **ADVISED THE CUSTOMER TO AVOID SMOKING, LIGHT A MATCH, SWITCH LIGHTS ON/OFF, RAISING OR LOWERING WINDOWS**

▶ IF "STRONG ODOR OF GAS ..."

▶ "Request that the customer vacate the premises as a SAFETY PRECAUTION."

▶ If there is gas odor but it is not strong...

▶ No instructions to the customer at all

Another Call Center Procedure

PRIORITY ORDER

ORDER INSTRUCTIONS MUST INCLUDE:

- Where the customer is smelling gas
- If the order is CO related-list the symptoms and how long the customer has had them
- Access arrangements to the property-Explain that we will respond within 60 minutes, if access is not available, service will be turned off
- Name of person requesting the order and a phone number where they can be reached
- Time order was taken & your USERID/C, S, etc.
- If an odor was reported with dead grass/vegetation, the area of the odor, dead grass and how long the grass has been dead

AFTER ENTERING ORDER - CONFIRM THAT PR PRINTED TO MDT VIA DIPL

IF NEEDED, ADVISE CUSTOMER TO WAIT OUTSIDE OR AT A NEIGHBOR'S

The following PR's will be called to Logistics:

- ⇒ PR did not print to MDT
- ⇒ Blowing line
- ⇒ PR without a valid address
- ⇒ Explosion/Working fire

For PR Without a valid address (DTPR) access the PR "Order Take Control" screen, type in the "actual" location number and hit "enter". Complete order. Call order to Logistics and indicate the time and the LC you spoke to.

PLAINTIFF'S EXHIBIT
31

▶ Regardless of strength of odor...

▶ "IF NEEDED, ADVISE CUSTOMER TO WAIT OUTSIDE OR AT A NEIGHBOR'S"

Yet Another Call Center Procedure

Order Instructions	<ul style="list-style-type: none">• Where the customer is smelling gas.• If the order is CO related, list the symptoms and how long the customer has had them.• Access arrangements to the property. Explain that we will respond within 60 minutes. If access is not available, service will be turned off.• Name of person requesting the order and a phone number where they can be reached.• Time order was taken and your USERID/C, S, etc.• If an odor was reported with dead grass/vegetation, the area of the odor, dead grass and how long the grass has been dead.
Confirm Order Printed	Access Pending Order Inquiry screen (DIPL); next to 'PRINT TERM' in the lower right side, you will see "MDT".
Call Logistics Coordinator	ONLY when the following situations exist: <ol style="list-style-type: none">1. PR <i>did not</i> print to MDT;2. Blowing line;3. PR <u>without a valid address</u>;4. Explosion/working fire, or5. Customer reports <u>high pressure</u>.

Note: If needed, advise customer to wait outside or at neighbor's.

RETURN TO TOP

PLAINTIFF'S EXHIBIT 30

▶ Again....

▶ “Note: If needed, advise customer to wait outside or at neighbor's”

Result

- ▶ Substantial 7 figure settlement – amount confidential
- ▶ Fortunately, other defendants paid substantial amounts as well

Take-Aways

- ▶ BE CONSISTENT – consumer warnings must match call center warnings
- ▶ DON'T make the strong odor vs. weak odor distinction
- ▶ DON'T try to diagnose the problem over the phone
- ▶ DON'T try to do the customer a favor, at the expense of safety

Example 2

WARNINGS – THE SAFETY BROCHURE
("I NEVER SMELLED GAS")

Overview

- ▶ Residential propane flash fire – Twining, Michigan
- ▶ Corrosion leak from copper line to gas dryer
 - ▶ Water line leak onto copper pipe
- ▶ Mary Kovacs injured – 30% second degree burn injury
- ▶ Mary was standing in front of dryer
- ▶ Pushed start button and gas ignited



831-6889
DEPO
EX



PENGAD 800-631-6989
SMP
DEPOSITION
EXHIBIT
19
P. KOVALS
1-13-10





800-631-6689
5/11/11
DEPOSIT
EXHIBIT
8

Gas Odor

- ▶ Mary Kovacs denies smelling gas before incident
- ▶ Gas is well odorized
 - ▶ Post incident gas samples
- ▶ First responders smell strong gas odor in basement
- ▶ Why didn't Mary Kovacs smell gas?
 - ▶ Lying?
 - ▶ Odor fade?
 - ▶ Short term leak – nose not in gas

Claims Against Gas Supplier

- ▶ Failure to red tag copper line
 - ▶ Multiple service interruptions
 - ▶ Should this have been found by gas supplier
 - ▶ Not a code violation
- ▶ Failure to warn
 - ▶ Odor fade and availability of gas detectors as backup
 - ▶ Plaintiffs: gas detector would have alerted Mary to danger

Safety Brochure Distributed

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 properly, 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:

PROPANE RETAILER:

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



DEPOSITION
EXHIBIT
11
M. KOVACS

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.

Este folleto contiene información importante acerca de la seguridad relacionada con el gas propano: Pida su versión en español a su vendedor de gas propano.

IMPORTANT PROPANE SAFETY INFORMATION

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PROPANE

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).



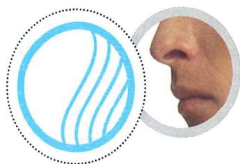
4. REPORT THE LEAK. From a neighbor's home or other nearby building away from the gas leak, call your propane retailer right away. If you can't reach your propane retailer, call 911 or your local fire department.



5. DO NOT RETURN TO THE BUILDING OR AREA until your propane retailer, emergency responder, or qualified service technician 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 circle. The odor is similar to propane odor. Have everyone in your family take the sniff test. Always take action if you smell any kind of foul odor.



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.

ODOR LOSS. On rare occasions, propane can lose its odor. Several things can cause this including:

- 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 loss or problems with your sense of smell, you should respond immediately to even a faint odor of gas.

Propane gas detectors

Under some circumstances, you may not smell a propane leak. Propane gas detectors sound an alarm if they sense propane in the air. They can provide an additional measure of security. You should consider the purchase of one or more detectors for your home.



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
- Shortness of breath
- Dizziness
- Nausea
- Fatigue

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 freeze burn or frostbite can result if propane liquid comes in contact with your skin.



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- Follow the manufacturer's instructions regarding installation and maintenance.
- Never ignore the smell of propane, even if no detector is sounding an alarm.

Warning Brochure At Trial

- ▶ Plaintiff
 - ▶ I didn't get it
 - ▶ It is too weak – should have said detectors are absolutely necessary for safety
 - ▶ “You should consider...”
- ▶ Defense
 - ▶ Plaintiff got it
 - ▶ Annual mailing – dedicated to safety
 - ▶ Mailing records and lists
 - ▶ Customer choice is proper
 - ▶ If absolutely necessary for safety, detectors should be required
 - ▶ They are not required by any state or federal agency

Result – defense verdict

- ▶ Jury was intrigued by gas detectors
- ▶ Jury agreed that detectors are a matter of customer choice
- ▶ Jury loved the brochure

Take-Aways

- ▶ Good safety warnings help the defense, PROVIDED:
 - ▶ They are visually appealing and up to date
 - ▶ It can be **proven** that they were delivered
 - ▶ They are not diluted by other material

QUESTIONS