



**WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO**

2007 Wisconsin Act 203 [2007 Senate Bill 273]	Liquefied Petroleum Gas and Propane Regulation; One-Call System (“Diggers Hotline”)
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Prior law directed the Department of Commerce to regulate the design, construction, location, installation, operation, repair, and maintenance of equipment for the storage, handling, use, and transportation by tank truck or tank trailer of liquefied petroleum gases (LPG) for fuel purposes.

2007 Wisconsin Act 203 expands these regulations and amends the law governing the one-call system, also known as “Diggers Hotline.” In both prior law and under Act 203, LPG includes propane, either by itself or in a mixture with other specified hydrocarbons.

LPG and Propane Regulations

LPG Retail Supplier License

The Act establishes that no “retail supplier” may distribute LPG without holding a license issued by the Department of Commerce. A “retail supplier” is a person engaged in the business of filling containers that have a water capacity of at least four pounds with LPG that is intended to be used directly from the containers as fuel for another person’s use.

The department must issue a retail supplier license upon obtaining proof of financial responsibility, described below, and receiving a license fee set by the department based on the cost of providing this service. However, for a retail supplier who only fills “Department of Transportation (DOT) cylinders¹,” the Act specifies that the annual license fee shall be \$20.

The department must set the terms of these licenses, not to exceed two years, and publish an annual list of all retail suppliers holding valid licenses.

¹ These cylinders hold LPG and meet federal DOT specifications. An example of these cylinders is a 20-pound propane tank used to provide fuel to a barbeque grill.

This memo provides a brief description of the Act. For more detailed information,
consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

LPG Retail Supplier Financial Responsibility

The Act requires each retail supplier, in general, to maintain proof of financial responsibility in the amount of \$1 million dollars per occurrence with an annual aggregate of \$2 million dollars for compensating third parties for bodily injury and property damages for incidents associated with the release of LPG. These limits are reduced to \$500,000 per occurrence with an annual aggregate of \$1 million dollars for a retail supplier who only fills DOT cylinders or who only fills containers for engine and recreational vehicle fueling systems.

A retail supplier may obtain a specified surety bond, irrevocable letter of credit, or commercial general liability insurance as a means of proving the required financial responsibility. A retail supplier who fails to maintain this proof of financial responsibility may not distribute LPG at retail until such proof is obtained. Furthermore, any retail supplier that cancels or fails to renew its proof of financial responsibility must notify the department at least 60 days before canceling or failing to renew the bond, letter, or insurance. Upon receipt of the notice, the department must revoke the retail supplier's license.

A third party that issues a bond, letter, or insurance to a retail supplier for proof of financial responsibility must provide written notice to the retail supplier and the department at least 60 days before canceling, revoking, suspending, or failing to renew the bond, letter, or insurance.

Notice of Interruptions in the Operation of a Propane Gas System

The Act requires any person who owns, leases, or uses a propane gas system and who is a customer of a retail supplier who provides propane gas for the system to notify the retail supplier of any interruption in the operation of the system due to the replacement, modification, repair, or servicing of the system by any person other than the retail supplier. A "propane gas system" is an assembly consisting of one or more containers that has a total water capacity of at least 100 gallons and a means of conveying propane gas from the containers to a point of connection with devices used to consume the propane gas. These systems include all piping and other components associated with the assembly that are used to control the quantity, flow, pressure, and physical state of the propane gas.²

The customer must provide this notice at least seven days in advance of the interruption in the operation of the system, unless the interruption is due to an emergency repair or servicing, in which case the notice must be as soon as possible and no later than 24 hours after the completion of the repair or servicing.

The retail supplier, or the person servicing the system, must perform a check for leaks or other defects in the system before placing the system back into operation in the manner required in the Department of Commerce rules.

In addition, each retail supplier filling a container that is part of a propane gas system must provide written notice to each of its customers who owns, leases, or uses a propane gas system of the customer's duty to notify the retail supplier of any interruption in the operation of the system, as described above. The retail supplier must provide this notice before its first delivery of propane gas to that customer and must provide subsequent notices on an annual basis. These notices must include the following information:

² An example of a "propane gas system" is the cylinders and associated pipes, meters, and other components used to supply propane to a rural residence.

- The name, address, and telephone number of the retail supplier.
- The purpose of giving the notification to the retail supplier.
- A description of the type of propane gas system that is subject to the notification requirement.
- A description of the types of activities that constitute a replacement, modification, repair, or servicing of a propane gas system.
- A copy of the statutes specifying the customer's duty to provide this notification.

Evacuation of LPG Containers

The Act clarifies prior law in establishing that, in general, no person other than the owner of a LPG container or person authorized by the owner may evacuate the container. The Act creates an exception to this prohibition that authorizes a retail supplier to evacuate a LPG container not under its ownership in order to transfer the remaining LPG that is in that container into a container that is under its ownership.

Department of Commerce Rules

The Act directs the Department of Commerce to submit its proposed rules on LPG and propane regulations to the Legislative Council Rules Clearinghouse by October 1, 2008. The Act also creates an exception to a provision in the state's administrative procedures law by specifying that the Secretary of Administration may not require the department to prepare an economic impact report for these rules.

Penalties

The Act creates the following penalties:

- For the violation of requirements regarding the handling and use of LPG containers under prior law and evacuation of these containers under the Act, and LPG equipment in the Department of Commerce's rules, notice of interruptions in the operation of a propane gas system:
 - If the violation is intentional, a fine of \$25 to \$2,000 or imprisonment for 30 days to six months (but not both).
 - If the violation is unintentional, a forfeiture of \$10 to \$1,000.
- For violations of requirements regarding retail supplier licensing or demonstration of financial responsibility:
 - If the violation is intentional, a fine of \$500 to \$1,000 for the first offense and \$2,000 to \$5,000 for subsequent offenses or imprisonment for 30 days to six months (but not both).
 - If the violation is intentional and by a person who fills only DOT cylinders or containers for engines and recreational vehicles; a fine of \$200 to \$400 for the

first offense and \$200 to \$2,000 for subsequent offenses or imprisonment for 30 days to six months (but not both).

- If the violation is unintentional, a forfeiture of \$500 to \$1,000 for the first offense and \$2,000 to \$5,000 for subsequent offenses.
- If the violation is unintentional and by a person who fills only DOT cylinders or containers for engines and recreational vehicles, a forfeiture of \$200 to \$400 for the first offense and \$800 to \$2,000 for subsequent offenses.

With regard to all of the foregoing penalties, each day of violation is a separate offense.

In addition, if a retail supplier is found in violation of the licensing or proof of financial responsibility requirements described above, the court must require that the retail supplier cease distributing LPG at retail until the retail supplier is issued by the Department of Commerce the license required under the Act.

Civil Liability

The Act establishes that any retail supplier licensed under the provisions described above who suffers damages caused by the filling of a container that is not a DOT cylinder by another retail supplier who is not so licensed may bring an action against the unlicensed retail supplier to do any of the following:

- Enjoin the unlicensed retail supplier from distributing LPG gas at retail until the retail supplier receives the required license.
- Receive monetary damages equal to three times the amount of any monetary loss sustained or \$2,000 whichever is greater, multiplied by each day that the unlicensed supplier is not licensed.

A retail supplier who prevails in such an action shall be awarded reasonable attorney fees. An action under these provisions must be commenced within 180 days after the cause of action accrues or is otherwise barred.

One-Call System (Diggers Hotline)

One-Call System Membership

Prior law directed transmission facilities owners to establish or designate a nonprofit organization as the operator of a one-call system in which a single operational center receives excavation notice and transmits notice information to affected member transmission facilities owners. Under prior law, a “transmission facility” excluded a fuel storage tank and a fuel storage pipeline, if the pipeline does not cross a public right-of-way and if the tank and pipeline are located on properties owned or leased by the user of the tank and pipeline.

The Act removes this exception from the definition of transmission facilities in the one-call system statute and authorizes, but does not require, owners of private transmission facilities to become members of the one-call system. The Act defines a “private transmission facility” to mean a transmission facility that is owned by a person, other than a governmental unit, is located on private property owned or leased by that person, and does not cross a public right-of-way.

Information Provided to Excavators and Customers of Retail Suppliers

The Act directs the operator of the one-call system to ensure that a person providing notice on intended excavation activities is informed that private transmission facilities are not subject to the one-call system and that the person providing notice is referred to other entities to be contacted by the person for determining the location of private transmission facilities. The system must provide this information through information distributed to the public by phone, Internet, or printed materials. In providing this information, the operator must specifically use the term “propane” in describing the type of private transmission facilities that are not subject to the one-call system. In addition, the Act authorizes the Department of Commerce to promulgate a rule that requires retail suppliers of propane to inform their customers each year of the obligation of owners of transmission facilities under the one-call system statute.

Excavation Clearance

Under prior law, an excavator must maintain a clearance of 18 inches between the excavating equipment and marked, unexposed, underground transmission facilities. The Act provides an exception to this requirement “as is necessary at the beginning of the excavation process to penetrate and remove the surface layer” of asphalt or concrete pavement.

Private Transmission Facilities Owners Exemptions

The Act specifies that transmission facilities owner requirements in the one-call system statute, in general, do not apply to owners of private transmission facilities. These exemptions include the requirement applicable to other persons owning transmission facilities to mark the location of transmission facilities upon receipt of an excavation notice at the area described in the notice. An owner of a private transmission facility is subject to the requirement to inspect the facility for damage within six hours after receipt of a notice of possible damage, if there is a risk of personal injury or loss of life, or within 24 hours after receipt a notice if there is not a risk of injury or loss of life, and to repair any damage found as soon as practicable. Furthermore, unless the owner of a private transmission facility is notified or has knowledge of damage to the facility by an excavator, the owner is not responsible for or required to make an inspection of its transmission facility, nor is the owner, in the absence of notification or knowledge, responsible for supervising in any manner the excavation.

Effective Date: Act 203 takes effect on April 16, 2008, except as follows:

- The provisions relating to notification of interruptions in the operation of a propane gas system take effect on October 1, 2008.
- The provisions relating to the one-call system take effect on May 1, 2009.
- The provisions relating to retail supplier licensing and proof of financial responsibility requirements and related penalties take effect on August 1, 2009.

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