

Proposals to Enhance Propane Safety and Minimize Burden on Business

Ministry of Consumer Services
February 4, 2014

Introduction

This paper seeks input on four proposals to refine the regulation of propane transfer facilities in Ontario. The proposals are intended to enhance propane safety and minimize burden on business.

In September 2013, the Ministry of Consumer Services (ministry) and the Technical Standards and Safety Authority (TSSA) established a roundtable of industry, fire services and consumer representatives. Roundtable members' input and expertise helped the ministry and TSSA develop these proposals for broad consultation.

The ministry welcomes your comments and feedback on the proposals.

To submit comments directly through the Regulatory Registry website, please visit: www.ontariocanada.com/registry

Submissions may also be sent by email with "Propane Consultation" in the subject line, to: propanepolicy@ontario.ca

or by regular mail to:

Propane Consultation
Public Safety Branch
Ministry of Consumer Services
777 Bay St, 5th Floor
Toronto, ON M7A 2J3

Comments are due by March 21, 2014.

Summary of the proposals

The first two proposals seek to enhance the safety of propane transfer facilities:

- ***Moving from Annual Inspections to Risk-Based Inspections***

This proposal would remove the requirement for annual inspections of propane transfer facilities to enable TSSA to fully implement its risk-based inspection scheduling model. A risk-based approach leads to a better use of regulatory resources by targeting inspections at facilities that present the greatest risk, thereby enhancing safety.

- ***Setting Minimum Insurance Requirements as a Condition of Licensing***

This proposal would require a minimum level of commercial general liability insurance as a condition of licensing for propane transfer facilities. For small facilities (Level 1), the proposed minimum insurance amount is \$2 million per occurrence. For large facilities (Level 2), the proposed minimum insurance amount is \$10 million per occurrence. This proposal enhances safety by giving both the insurer and the insured an incentive to work together to minimize safety risks.

Please refer to the Appendix for the definitions of Level 1 and Level 2 facilities, and per occurrence limits.

The remaining two proposals seek to minimize burden on business by enabling greater administrative efficiency and simplifying requirements:

- ***Aligning the Decision Making Authority for Risk and Safety Management Plan Guidelines***

This proposal would place the authority for the Level 1 Risk and Safety Management Plan (RSMP) guideline with the Director of Fuels under the Technical Standards and Safety Act (the Director), aligning it with that of the Level 2 guideline. This would enable the Director to update the Level 1 guideline to incorporate enhancements or remove elements which are no longer needed. This authority is consistent with the Director's safety oversight expertise and responsibilities.

Please refer to the Appendix for the definition of an RSMP.

- ***Simplifying the Record of Training Requirement***

This proposal would remove administrative burden by simplifying the current regulatory requirement for an officer, director, partner, or the sole proprietor of a business to hold a record of training. The proposal would enable a business to

designate, on a form approved by the Director of Fuels, the appropriate senior management person responsible for oversight of their propane operation.

Details of the Proposals

1. Moving from Annual Inspections to Risk-Based Inspections

Propane transfer facilities are currently required to be inspected annually. The Propane Safety Review Panel (the panel) recommended that TSSA should inspect facilities annually until it had gathered the required data, and developed and applied a risk-based approach to enforcement. Since then, TSSA has gathered sufficient data and built a rigorous statistical model for risk-based inspection scheduling. Please refer to the Appendix for background on the panel and a link to the panel's report.

This proposal would remove the requirement for annual inspection of propane transfer facilities, leaving the determination of inspection frequency to the Director of Fuels. The Director would use TSSA's risk-based inspection scheduling model to determine the appropriate length of inspection intervals.

A risk-based approach leads to a better use of regulatory resources, thereby increasing safety. Facilities with higher risk ratings would be inspected more frequently with a focus on continuous compliance improvement. Facilities with a strong record of safety and risk management would be moved to longer inspection intervals, rewarding their safety performance by reducing their costs related to inspections.

TSSA's risk-based inspection scheduling model offers facility owners transparency and predictability by providing evidential basis for inspection frequency decisions. The model consists of two steps:

1. Determining a facility's risk score, which is a combination of its location residual risk and operational risk; and,
2. Determining the window of time within which a facility should be inspected to keep its risk within acceptable limits, based on a facility's risk score and the overall occurrence rate in the propane sector.

Please refer to the Appendix for the definitions of the above terms.

TSSA has been using risk-based inspection scheduling for elevating devices in Ontario since 2010, and has been awarded a patent for its model in both Canada and the United States.

2. Setting Minimum Insurance Requirements as a Condition of Licensing

Insurance as a condition of licensing is a valuable element of a safety framework because it gives both the insurer and the insured an incentive to work together to minimize safety risks, creating an additional layer of risk management. It also creates a

financial incentive for safety because a poor safety record would be reflected in higher premiums and potential loss of coverage.

The Technical Standards and Safety Act allows the Minister to make regulations that would require any person subject to the Act or its regulations to obtain and maintain a specific amount of liability insurance.

Under this proposal, a minimum amount of commercial general liability insurance for propane transfer facilities would be required through regulation. The insurance requirement would be a condition of licensing. As part of the application for license or renewal, a licensee would have to provide as proof a certificate of insurance issued by a licensed insurer. In case of a change to insurance coverage, the insurer would be responsible to notify the Director of Fuels within 30 days of the changes being made.

The proposed minimum insurance amounts are \$2 million per occurrence for Level 1 facilities, and \$10 million per occurrence for Level 2 facilities. The minimum amount would apply to the business that is named on the license. The business is considered to include all elements of the propane operation. For example, if a business is applying for a license to operate a Level 1 propane transfer facility, then that business must demonstrate that it is covered by a commercial general liability insurance policy with at least \$2 million per occurrence.

The Propane Safety Review Panel recommended a minimum insurance requirement as a condition of licensing, noting that having any degree of insurance creates an additional layer of oversight on business. The proposed \$2 million minimum for Level 1 facilities is based on the minimum amount required in Nova Scotia, while the \$10 million minimum for Level 2 facilities is based on consultations with stakeholders.

3. Aligning the Decision Making Authority for Risk and Safety Management Plan Guidelines

The regulation refers to a specific document as the guideline for the contents of a Level 1 RSMP. This means that any update to the guideline requires the government to change the regulation. For Level 2 RSMPs, the guideline is under the approval authority of the Director of Fuels, which means that the Director can approve updates to the guideline without changes to the regulation. This authority is consistent with the Director's safety oversight expertise and responsibilities.

This proposal would align the approval authority for the Level 1 guideline with that of the Level 2 guideline, placing the approval authority with the Director of Fuels. This would enable the Director to update the Level 1 guideline to incorporate enhancements or remove elements which are no longer needed. Any changes to the Level 1 guideline would follow the same process as changes to the Level 2 guideline, which include consulting with TSSA's advisory councils and risk reduction groups.

4. Simplifying the Record of Training Requirement

The regulation currently requires that upon application for or renewal of a license for a propane transfer facility, the applicant ensure that at least one officer, director, partner, or the sole proprietor hold a certificate or record of training, unless none of those positions exist (for example, in a municipal organization) or if none of those individuals are present in Ontario. This requirement was intended to implement a recommendation of the Propane Safety Review Panel for senior management of a business to understand the safety requirements of their propane operation.

Licensees have advised the ministry that complying with the record of training requirement is an unnecessary administrative burden because the regulation is too prescriptive. In some cases, this has resulted in unintended consequences that do not meet the panel's intended safety outcome. For example, if a corporation's sole Ontario-based officer is the head of marketing, that person must obtain a record of training even where they are not responsible for or have any relation to the business's propane operation. Licensees have expressed to the ministry that more flexibility is needed to enable them to designate an appropriate senior management person responsible for oversight of propane operations at their businesses.

It is proposed that the regulation be amended to enable a business to designate, on a form approved by the Director of Fuels, the appropriate senior management person responsible for oversight of their propane operation. The form would require that the licensee affirm that the designated person is a senior management person responsible for oversight of the propane operation to which the license applies. In addition, the licensee would acknowledge that:

- propane must be handled in accordance with the Technical Standards and Safety Act and its regulations;
- all staff that handle propane must have at all times the training specified in the regulations; and,
- a propane-related incident has the potential to cause catastrophic harm to people and property.

This proposal would meet the panel's intent for senior management of a business to understand the safety requirements of their propane operation, while allowing businesses to designate the appropriate senior management person within their unique organizational structures.

Next steps

The Ministry of Consumer Services welcomes feedback and encourages anyone interested to provide comments on any of the above proposals, which are also posted on the government's Regulatory Registry website.

Comments are due by March 21, 2014.

To submit comments directly through the Regulatory Registry website, please visit:
www.ontariocanada.com/registry

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The Ministry of Consumer Services will review and analyze the feedback received during this consultation period before presenting proposed regulatory options for government decision-making.

Appendix: Background and Definitions

- A **Level 1 facility** has a propane fixed storage capacity of 5,000 U.S. water gallons (USWG) or less, or up to 500 USWG of portable storage if the facility has a fixed storage capacity of exactly 5,000 USWG.
- A **Level 2 facility** has a capacity greater than that of a Level 1 facility.
- A **per occurrence** limit on an insurance policy refers to the total amount that the policy will pay for a single occurrence. This differs from an aggregate limit, which refers to the total amount that the policy will pay during the policy period or term.
- A **risk and safety management plan (RSMP)** is a plan that sets out the safe operation of a propane transfer facility. Requirements for an RSMP vary depending on whether it is for a small Level 1 facility or a large Level 2 facility.
- In 2008, the government appointed Dr. Michael Birk and Ms. Susana Katz to the **Propane Safety Review Panel** as independent experts to review and make recommendations to enhance propane safety in Ontario. The panel's report was submitted to the government on November 7, 2008, and can be accessed at this link: http://www.sse.gov.on.ca/mcs/Documents/Propane_Safety_Report.pdf
- **Operational risk** is the estimated risk of a facility based on TSSA's data related to a facility's compliance and incident history. TSSA determines operational risk by assigning a numerical value, called a risk score, to all types of non-compliance.
- A facility's **estimated location risk** takes into account the amount of propane stored at a facility and the type of public receptors within a facility's hazard distance.
- **Location residual risk** is calculated as the difference between the facility's estimated location risk and the acceptable level of risk, based on risk acceptance criteria guidelines developed by the Major Industrial Accidents Council of Canada.

Privacy Statement

Please note that unless agreed otherwise by the Ministry of Consumer Services, all responses received from organizations in response to this consultation will be considered to be public information and may be used and disclosed by the ministry to assist the ministry in evaluating and revising the proposal. This may involve disclosing any response received to other interested parties.

An individual who provides a response and who indicates an affiliation with an organization will be considered to have submitted the response on behalf of that organization.

Responses received from individuals who do not indicate an affiliation with an organization will not be considered to be public information. Responses from individuals may be used and disclosed by the ministry to assist in evaluating and revising the proposal. Any personal information such as an individual's name and contact details will not be disclosed by the ministry without the individual's consent unless required by law.

If you have any questions about the collection of this information, please contact propanepolicy@ontario.ca