

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

In the Matter of:

Attorney General
File No. 2008-3009855-A

**Inergy Propane, LLC d/b/a
Blue Flame Gas, Gaylord Gas,
Lagasco Propane, McBride Oil &
Propane, Northwest Propane,
Northwest Energy, Petoskey Propane
and Progas Propane,**

Respondent.

**NOTICE OF INTENDED ACTION
AND OPPORTUNITY TO CEASE AND DESIST**

TO: Inergy Propane, LLC
c/o CSC-Lawyers Incorporating Service (Registered Agent)
601 Abbott Rd., East Lansing, MI 48823

Michael A. Cox, Attorney General of the State of Michigan, notifies Inergy Propane, LLC d/b/a Blue Flame Gas, Gaylord Gas, Lagasco Propane, McBride Oil & Propane, Northwest Propane, Northwest Energy, Petoskey Propane and Progas Propane, (“Respondent”), of his intent to file a lawsuit in circuit court alleging violations of the Michigan Consumer Protection Act (MPCA), 445.901 *et seq*, if the issues summarized in this Notice are not immediately resolved.

Pursuant to the MCPA, Respondent is notified that it may confer with the Attorney General or his representative regarding the allegations summarized below and must immediately address these issues to avoid a lawsuit in which the Attorney General will seek an injunction compelling Respondent to comply with the law, seeking disgorgement of profits, civil penalties, and other relief.

I. FACTUAL ALLEGATIONS

1.1 Respondent is engaged in trade or commerce in the State of Michigan by the solicitation and sale of propane gas to Michigan consumers for their personal family or household use. Respondent engages in such business at various locations throughout Michigan and under numerous assumed names.

1.2 Respondent leased propane tanks and entered into agreements with Michigan consumers to provide propane gas at a price not to exceed the market price for propane gas within Respondent's service area.

1.3 From about December 2007 Respondent charged Michigan consumers a price of at least \$3.00 per gallon to as much as \$4.49 per gallon for propane gas.

1.4 Respondent represented that its prices were consistent with the retail prices of others in the market and reflected the increased price of propane gas in the wholesale market.

1.5 The prices charged by Respondent are grossly in excess of the prices charged for propane gas by other propane retailers.

1.6 Respondent's prices are at least \$1 to \$2 more per gallon than the prices charged by other propane retailers within their service area.

1.7 According to the Michigan Public Service Commission, from December 3, 2007 to February 19, 2007, the average residential per gallon price for propane in Michigan ranged from \$2.33 to \$2.45.

1.8 Respondent failed to notify its customers prior to delivery that their prices are grossly in excess of the market price for propane.

1.9 When customers complained about the grossly excessive prices, Respondent refused to remove the propane unless the customers paid removal fees that were not agreed to by the customers or previously disclosed to the customers.

1.10 Some of Respondent's customers are unable reasonably to protect their interests because they are unaware of their rights to change companies or refuse deliveries or return propane gas as a result of Respondent's actions.

1.11 Respondent is charging customers that use State subsidies to pay for their propane gas excessively high prices.

1.12 Many of Respondent's customers are unable to afford the propane gas they need at Respondent's excessively high prices because they are on fixed incomes and/or use limited subsidies to pay for propane gas.

II. VIOLATIONS OF MICHIGAN LAW

2.1 The conduct described above violates Section 3 (1) of the Michigan Consumer Protection Act, MCL 445.903 (1), which defines unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce as follows:

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

...

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

...

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or

persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

...

- (x) Taking advantage of the consumer's inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability.

...

- (z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

...

- (bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.
- (cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

III. ATTORNEY GENERAL'S AUTHORITY

3.1 The Attorney General proceeds under section 5 of the Michigan Consumer Protection Act, which provides in part:

- (1) When the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful pursuant to section 3, and upon notice given in accordance with this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of section 3 the court may assess the defendant a civil penalty of not more than \$25,000.00.
- (2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section the attorney general shall notify

the person of his intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the attorney general in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to his usual place of business or, if the person does not have a usual place of business, to his last known address, or, with respect to a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

IV. RESPONDENT'S OPPORTUNITY TO COMPLY WITH MICHIGAN LAW

4.1 Respondent has the opportunity to immediately cease violations of the MCPA and to orally inform the Attorney General of its decision, confirming such decision in writing.

4.2 Respondent has the opportunity to confer with the Attorney General or his representative. If Respondent decides to comply with Michigan law, the Attorney General will consider that decision in determining whether to take further action.

4.3 The Attorney General may accept a formal assurance, in accordance with section (6) of the MCPA that Respondent will stop violating the act. The assurance may provide for payment of the costs of investigation, restitution to aggrieved persons, and other relief.

V. CONSEQUENCES OF RESPONDENT' VIOLATIONS

5.1 Respondent has the opportunity to immediately cease and desist the alleged unlawful methods, acts or practices prior to commencement of an action. If Respondent elects to cease and desist, that fact will be taken into consideration by this office in determining whether to file a lawsuit against Respondent.

5.2 If no assurance of discontinuance is accepted, then the Attorney General will be authorized to file a lawsuit against Respondent in circuit court.

5.3 A lawsuit under the MCPA may result in an injunction and the imposition of civil penalties of up to \$25,000 as provided in section 5 of the MCPA.

5.4 If you decide to exercise your opportunity to confer with the Attorney General or his representative, you must contact the undersigned Assistant Attorneys General immediately to avoid the filing of a lawsuit.

Mike Cox
Attorney General

/S/ Elizabeth Lippitt
Jason R. Evans (P61567)
Elizabeth Lippitt (P70373)
Assistant Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
Phone: (517) 335-0855; Fax: 335-1935

Date: March 3, 2008