

No. 2025-P-1192

COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

MAJIDA ORTIZ and URSZULA MASNY-LATOS, on behalf of
themselves and all persons similarly situated,

Plaintiffs-Appellants,

v.

EVERSOURCE ENERGY,

Defendant-Appellee.

On appeal from a judgment of the
Superior Court for Suffolk Business Litigation Session
Civil Case No. 20-01455-BLS-1 (Krupp, J.)

**BRIEF OF *AMICI CURIAE* PHYSICIAN AND PUBLIC HEALTH
PROFESSIONALS AND GROUPS IN SUPPORT OF
PLAINTIFFS-APPELLANTS AND SEEKING REVERSAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 17(c)(1) of the Massachusetts Rules of Appellate Procedure, Greater Boston Physicians for Social Responsibility and Climate Code Blue state that they have no parent corporations, that no publicly held corporations hold any portion of either organization, and that neither organization is a subsidiary or an affiliate of any publicly owned corporation.

PREPARATION OF AMICUS BRIEF

Pursuant to Rule 17(c)(5) of the Massachusetts Rules of Appellate Procedure, *amici* have no direct financial interest in the parties to or the outcome of this case. No party or counsel for a party authored this brief in whole or in part. No person or entity, other than *amici* or their counsel, made a monetary contribution to the preparation or submission of this brief. Neither *amici* nor their counsel have represented one of the parties to the present appeal in another proceeding involving similar issues or served as a party or party representative in a proceeding or legal transaction at issue in the present appeal.

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Other Authorities

Anchal Garg et al., <i>Exposure and health risks of benzene from combustion by gas stoves: A modelling approach in U.S. homes</i> , 492 J. of Hazardous Materials (2025)	15
Andee Krasner et al., <i>Cooking With Gas, Household Air Pollution, and Asthma: Little Recognized Risk for Children</i> , 83(8) J. of Env't Health (2021)	26
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<i>How Methane Threatens Health on its Journey to Your Home</i> , Am. Lung Ass’n (Dec. 13, 2024)	18
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<i>Improving Indoor Air Quality</i> , EPA (Aug. 3, 2026)	16
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Lukoye Atwoli et al., <i>Call for Emergency Action to Limit Global Temperature Increases, Restore Biodiversity, and Protect Health</i> , 385 N. Eng. J. Med. (2021)	19
<i>Majority of US Adults Believe Climate Change Is Most Important Issue Today</i> , Am. Psychological Ass’n (Feb. 6, 2020)	28
Molly L. Kile et al., <i>A cross-sectional study of the association between ventilation of gas stoves and chronic respiratory illness in U.S. children enrolled in NHANESIII</i> , Env’t Health (2014).....	20
Nasim A. Mullen et al., <i>Results of the California Healthy Homes Indoor Air Quality Study of 2011-2013: impact of natural gas appliances on air pollutant concentrations</i> ,	

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Nat'l Consumer Law Ctr., <i>Consumer Protection in the States</i> (2018).....	5
Nathan G. Phillips et al., <i>Indoor methane consistently above outdoor levels in homes with natural gas service</i> , 21(8) PLoS One (2026).....	10
Philip J. Landrigan, M.D. et al., <i>Perspective: The False Promise of Natural Gas</i> , 382 New England J. of Med. (2019)	17
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<i>WHO guidelines for indoor air quality: selected pollutants</i> , World Health Org. Regional Office for Europe (2010)	13
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INTERESTS OF *AMICI CURIAE*

Amici curiae are physician-led and public health professional-led groups, their members, and individual practitioners with a common professional interest in ensuring proper knowledge regarding scientifically supported findings of health and environmental injury in courts across the United States.

A full list of *amici curiae* (“*amici*”) can be found in the annexed Appendix.

SUMMARY OF ARGUMENT

When analyzing claims under Chapter 93A, the Supreme Judicial Court has “held that unfair or deceptive conduct is best discerned from the circumstances of each case.” *UBS Fin. Servs., Inc. v. Aliberti*, 483 Mass. 396, 412 (2019) (citations and quotation marks omitted). *Amici*—physicians and public health professionals—write to shed light on the underlying facts and circumstances of the present case.

Studies have repeatedly shown that gas appliances, such as stoves, generate pollutants that increase the risk of illness and premature death and contribute to emissions that cause or exacerbate climate change. Massachusetts law recognizes both human health and climate advertising deception as actionable.

This brief aims to highlight that obfuscation of these harms is misleading to consumers, that real injury is present, and that it would be reasonable for a consumer to alter their behavior when properly informed. *Amici* emphasize that the allegations of deception should be permitted to proceed past a motion to dismiss and become the subject of expert discovery, as they necessitate an analysis of literature that is not suited to early judicial dismissal.

Amici further express concern that utilities, given the unique breadth of their services, have a far-reaching ability to mislead the public about the health and climate implications of gas services. Massachusetts has not followed the minority of states that exempt utilities from consumer protection liability, yet the Superior Court's ruling would amount to such an exemption—granting immunity for misleading marketing by a utility, where consumers were misled into overpurchasing the utility's product, and where they suffered both economic and noneconomic harms.

That is not what Chapter 93A contemplates, and setting that precedent would make it far more difficult to hold utilities accountable for unfair and deceptive behavior. This would prevent millions of

Massachusetts consumers from making informed decisions about their own health and from utilizing a law meant to protect them.

Instead, this Court should recognize that misleading consumers into overusing products that cause serious health exposures and environmental harm constitutes “injury,” regardless of whether the price of those products is regulated.

ARGUMENT

I. Eversource engaged in unfair and deceptive conduct by making actionable misstatements that were false, misleading, and inconsistent with scientific studies

Statements and representations that “natural” gas (herein, “fossil gas”) is clean, healthy, or safe are misleading to Massachusetts consumers. These statements are not supported by the medical literature, which shows that the use of gas appliances is associated with an increased presence of toxic and carcinogenic substances and greenhouse gas emissions.

A. Massachusetts law permits residents to challenge misleading environmental statements and does not exempt utilities

The fundamental purpose of consumer protection law is to promote honest business behavior and protect consumers from

misleading business practices. In Massachusetts, “General Laws c. 93A ‘is a statute of broad impact’ that prohibits ‘unfair methods of competition’ and ‘unfair or deceptive acts or practices in the conduct of any trade or commerce.’” *Exxon Mobil Corp. v. Attorney General*, 479 Mass. 312, 315 (2018) (citations omitted).

A “flexible set of guidelines” helps courts analyze “what should be considered lawful or unlawful under c. 93A,” which “suggest[] that the Legislature intended the terms ‘unfair and deceptive’ to grow and change with the times.” *Id.* at 316 (citation and quotation marks omitted). Accordingly, Massachusetts courts allow cases to proceed over misleading environmental issues of “the times” such as climate change. *See generally id.* (denying company’s request to set aside investigative demand regarding misleading representations of fossil fuel products and their climate impacts).

Outside of Massachusetts, consumer protection laws are regularly used to challenge misleading environmental marketing claims and omissions. *See, e.g., Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654, 664–65 (D.C. 2024) (finding plaintiff had plausibly alleged consumer protection claims where Coca-Cola’s “sustainability” marketing “omits

the alleged fact that Coca-Cola’s mass-scale production of single-use plastics make it one of the single greatest blights on our environment”).

Although a minority of states exempt utilities from consumer protection liability, Massachusetts does not. *See, e.g., Nat’l Consumer Law Ctr., Consumer Protection in the States* 23 (2018). Exempting utilities is problematic because “consumers depend on utility service for survival and are therefore extremely vulnerable to unfair and deceptive practices.” *Id.* at 17.

Where states do exempt utilities, they do it by statute, and where courts have expanded exemptions beyond the statutory text in other jurisdictions, those decisions are being overturned (or are poised to be). Indeed, the D.C. Attorney General forcefully argued in an *amicus* brief earlier this year that regulated utilities should not be immunized for misleading statements, because allowing private consumer protection suits against utilities “comports with the [statute]’s expansive, remedial purpose.” *Client Earth et al. v. Washington Gas Light Co., Amicus Br. of* D.C. at 8, No. 23-CV-0826 (D.C. Feb. 26, 2026).¹ A panel of D.C.’s

¹ *Available at* <https://efile.dcappeals.gov/document/view.do?documentID=407492&csIID=67953>.

highest court initially upheld dismissal in that case of similar gas-deception claims due to prior precedent, but a concurring opinion encouraged *en banc* rehearing so that the court could overturn its constraining case law. *Client Earth v. Washington Gas Light Co.*, 343 A.3d 21, 33 (D.C. 2025). The full court then accepted a petition to review the case *en banc*, see No. 23-CV-0826, 2025 D.C. App. LEXIS 425 (Dec. 19, 2025), and appears poised to reverse the problematic precedent, see also *Attorney General v. Eli Lilly & Co.*, No. 165961, 2026 WL 2212544, at *14 (Mich. July 31, 2026) (overturning Michigan Supreme Court precedents as wrongly decided because they “turned a narrow exception” “into broad immunity” for regulated activities, in contradiction of the state consumer protection statute’s text and purpose).

Facing a similarly broad and protective consumer statute, this Court should not create an exemption that the Legislature did not intend by effectively insulating utilities for false and misleading statements.

B. Plaintiffs have detailed Eversource’s deceptive statements that its product is clean, safe, environmentally friendly, and good for families

As alleged by plaintiffs, Eversource makes misstatements and omits material information to suggest that fossil gas is clean, safe, and environmentally- and family-friendly. For example:

- **Implying gas stoves are safe for children.** This includes images featuring children near gas stoves. *See, e.g.*, RAI_016 ¶15; RAI_023 ¶31; RAI_018–19 ¶18 (video narration featuring a family with children: “[n]atural gas is clean, safe and good for . . . your family”); RAI_024 ¶32; *see also* RAI_017 ¶17 (testimonial video: “[s]afety is very important. We have a child here.”).
- **Stating fossil gas is “safe” and “clean.”** *See, e.g.*, RAI_018–19 ¶18 (video narration: “[n]atural gas is . . . safe”); RAI_026; RAI_017 ¶17 (quoting testimonial: “It’s safe. Cleaner”); RAI_025 ¶34 (featuring image of Eversource employee at stove “he claims is burning ‘clean’”).
- **Suggesting overhead ventilation is unnecessary; omitting its importance.** *See, e.g.*, RAI_024 ¶ 32; RAI_025 ¶ 34.

- **Claiming environmental benefits.** *See, e.g.*, RAI_018–19 ¶18 (video narration: “[n]atural gas is . . . good for the environment”); RAI_024 ¶32 (webpage: “[c]ooking with natural gas is three times more efficient than cooking with electricity”); RAI_033–34 ¶55.

One need not look far to find other publicly available statements. For example, a children’s coloring book by Eversource states that “[n]atural gas burns easy and clean, unlike other fuels like coal or wood.”² Without injunctive relief, there is no guarantee that similar statements will not appear in marketing and consumer-facing materials.

**C. These representations are deceptive
because fossil gas is associated with harm to
human health and the environment**

Eversource’s statements and representations that fossil gas is “clean,” “safe” or “good for the environment” and implications that its products are safe for children are not supported by the scientific and medical literature. *Amici* express concern that these types of

² *See* Exhibit A; *see also* Glenn Branch, *Natural-gas-promoting booklets raise eyebrows in Massachusetts school*, Nat’l Ctr. for Sci. Education (May 21, 2021), <https://ncse.ngo/natural-gas-promoting-booklets-raise-eyebrows-massachusetts-schools>.

representations are in line with reports of longstanding deceptive behavior by the gas industry that have resulted in suppressed information about health harms.³ As elucidated below, studies show associations between fossil gas usage in homes and the presence of pollutants such as nitrogen dioxide, carbon monoxide, benzene, formaldehyde, and methane.

Those pollutants cause direct harm. One study estimated that over 10 percent of pediatric asthma cases are tied to gas stove usage. *See infra; contra* Def.-Appellee Br. 14 (arguing that the statements complained of “are objectively true, not deceiving”).

1. Human health harms

Gas appliances in homes release harmful air pollutants through combustion and the leaking of non-combusted gas. Gas combustion from cooking, for example, produces harmful indoor emissions that often exceed outdoor air quality standards, including, among other things,

³ *See, e.g.,* Jeff Brady, *How gas utilities used tobacco tactics to avoid gas stove regulations*, NPR (Oct. 17, 2023), <https://www.npr.org/2023/10/17/1183551603/gas-stove-utility-tobacco>; *The Fraud of “Clean” Natural Gas*, Ctr. for Climate Integrity (2026) (“By disrupting the emerging scientific consensus over the health impacts of gas stove emissions, the gas industry was able to stymie calls for the regulation of indoor air pollutants and protect the carefully-crafted ‘clean gas’ image . . .”).

methane, nitrogen dioxide (NO₂), carbon monoxide (CO), fine particulate matter (PM_{2.5}), ultrafine particulate matter, and carcinogens such as benzene and formaldehyde.⁴ The result can be a range of serious health threats, including asthma, cardiovascular disease, and cancer.

Amici highlight a non-exhaustive list of certain pollutants and concerns below.

Nitrogen dioxide. Indoor NO₂ is “generated primarily from the combustion of natural gas or propane in stoves and other gas

⁴ See generally, e.g., Barae Jomaa et al., *Gas Stove Pollutants: Consequences on Indoor Air Quality and Health*, 2(1) J. Netherlands Soc’y of Toxicology 1 (2025), https://www.scienceopen.com/document_file/5c1da62d-c9cd-4d70-9e5f-a27dfa47feef/ScienceOpen/jnst20240004.pdf; Yannai S. Kashtan et al., *Integrating indoor and outdoor nitrogen dioxide exposures in US homes nationally by ZIP code*, 4(12) PNAS Nexus (2025), <https://academic.oup.com/pnasnexus/article/4/12/pgaf341/8361964?login=false>; Yannai S. Kashtan et al., *Gas and Propane Combustion from Stoves Emits Benzene and Increases Indoor Air Pollution*, 57(26) Env’t Sci. & Tech. 9653 (2023), <https://pubs.acs.org/esthag/article/57/26/9653/316350/Gas-and-Propane-Combustion-from-Stoves-Emits>; Nathan G. Phillips et al., *Indoor methane consistently above outdoor levels in homes with natural gas service*, 21(8) PLoS One (2026), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0348496>.

appliances.”⁵ Longer exposures to high concentrations of NO₂ have been linked “to the development of asthma.”⁶ Even as of a decade ago, EPA had found a likely causal relationship between long-term NO₂ exposure and respiratory effects, in particular based on evidence for asthma development.⁷ NO₂ has further been linked to “incidences of lung cancer, preterm birth, and diabetes mellitus.”⁸ Even low levels of exposure are associated with increased risk of mortality.⁹

⁵ Kashtan et al., *Integrating indoor and outdoor nitrogen dioxide exposures in US homes nationally by ZIP code*, *supra* (citations omitted).

⁶ *Basic Information about NO₂*, EPA (June 24, 2026), <https://www.epa.gov/no2-pollution/basic-information-about-no2>.

⁷ *Integrated Science Assessment for Oxides of Nitrogen – Health Criteria 1-32*, EPA (2016).

⁸ Kashtan et al., *Integrating indoor and outdoor nitrogen dioxide exposures in US homes nationally by ZIP code*, *supra* (citations omitted); see also Eric D. Lebel et al., *Methane and NO_x Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, 56(4) Env’t Sci. & Tech. 2529 (2022), <https://pubs.acs.org/esthag/article/56/4/2529/382806/Methane-and-NOx-Emissions-from-Natural-Gas-Stoves> (citation omitted)).

⁹ Bert Brunekreef et al., *Mortality and Morbidity Effects of Long-Term Exposure to Low-Level PM_{2.5}, BC, NO₂, and O₃: An Analysis of European Cohorts in the ELAPSE Project*, 208 Rsch. Rep. (Health Effects Inst.) (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9476567/>.

Carbon monoxide. EPA considers CO “toxic,” and lists gas appliances like stoves as CO sources.¹⁰ According to the American Lung Association, CO displaces oxygen in red blood cells thereby blocking oxygen to the body; breathing lower levels of CO can cause dizziness, nausea, and confusion, while higher levels can cause vomiting, anxiety or depression, impaired vision, loss of consciousness, and death.¹¹ Average levels of CO are higher in homes with gas stoves.¹²

Benzene. Benzene is a volatile organic compound which EPA labels a “‘known’ human carcinogen.”¹³ It “is a product of incomplete combustion”¹⁴ and is present in leaked fossil gas.¹⁵ The Centers for

¹⁰ *Carbon Monoxide’s Impact on Indoor Air Quality*, EPA (July 15, 2026), <https://www.epa.gov/indoor-air-quality-iaq/carbon-monoxides-impact-indoor-air-quality>.

¹¹ *Carbon Monoxide*, Am. Lung Ass’n (Nov. 2, 2023), <https://www.lung.org/clean-air/indoor-air/indoor-air-pollutants/carbon-monoxide#>.

¹² *Carbon Monoxide’s Impact on Indoor Air Quality*, EPA, *supra*.

¹³ *Benzene*, EPA, https://iris.epa.gov/ChemicalLanding/&substance_nmbr%3D276 (last visited Aug. 29, 2026).

¹⁴ Kashtan et al., *Gas and Propane Combustion from Stoves Emits Benzene and Increases Indoor Air Pollution*, *supra*.

¹⁵ Eric D. Lebel et al., *Composition, Emissions, and Air Quality Impacts of Hazardous Air Pollutants in Unburned Natural Gas from Residential Stoves in California*, 56(22) Env’t Sci. & Tech. 15828 (2022), <https://pubs.acs.org/esthag/article/56/22/15828/381969/Composition-Emissions-and-Air-Quality-Impacts-of>.

Disease Control and Prevention (CDC) lists numerous potential long-term health effects of exposure to benzene, including a decrease in blood cells, irregular menstrual periods, effects to the immune system, and cancer (including leukemia).¹⁶ According to the World Health Organization, “no safe level of [benzene] exposure can be recommended.”¹⁷ Studies have found that gas stoves contribute significantly to indoor benzene concentrations,¹⁸ including while they are turned off.¹⁹

The dangers from gas appliance use are more than theoretical. One study found that in homes with poor ventilation, and especially with small kitchens, NO₂ levels could exceed national outdoor air

¹⁶ *Benzene*, CDC (June 11, 2026), <https://www.cdc.gov/chemical-emergencies/chemical-fact-sheets/benzene.html>.

¹⁷ *WHO guidelines for indoor air quality: selected pollutants*, World Health Org. Regional Office for Europe xvii (2010), <https://iris.who.int/server/api/core/bitstreams/202feb0d-06e8-418d-8e38-8927ec2d166b/content>.

¹⁸ See, e.g., Kashtan et al., *Gas and Propane Combustion from Stoves Emits Benzene and Increases Indoor Air Pollution*, *supra* (“in 9 of the 33 cases (29%), a single gas burner on high or an oven set to 350 °F raised kitchen benzene concentrations above the upper range of indoor benzene concentrations attributable to secondhand tobacco smoke”).

¹⁹ Lebel et al., *Composition, Emissions, and Air Quality Impacts of Hazardous Air Pollutants in Unburned Natural Gas from Residential Stoves in California*, *supra*.

quality standards within a matter of minutes of stove use.²⁰ Annual mortality attributed to NO₂ due to gas stoves in the European Union and United Kingdom combined is estimated to be higher than that for exposure to second-hand smoke and for car accidents.²¹ When gas stoves are removed from homes, hospital admissions have been shown to decline.²²

Children are particularly vulnerable. A meta-analysis of dozens of studies found that children in homes with gas cooking have a 42 percent increased risk of current asthma, and that the related indoor NO₂ exposure increases risk of wheeze.²³ One population-level analysis estimated that 12.7 percent of U.S. childhood asthma cases are

²⁰ Lebel et al., *Methane and NO_x Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, *supra*.

²¹ Jomaa et al., *Gas Stove Pollutants: Consequences on Indoor Air Quality and Health*, *supra* at 1 (citations omitted).

²² See, e.g., Carlos F. Gould et al., *Climate and health benefits of a transition from gas to electric cooking*, 120(34) PNAS (2023), <https://www.pnas.org/doi/abs/10.1073/pnas.2301061120>.

²³ Weiwei Lin et al., *Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children*, 42(6) Int'l J. of Epidemiology 1724, 1728, 1731 (2013), https://research-portal.uu.nl/ws/files/260904356/ije_42_6_1724.pdf.

attributed to gas stove usage.²⁴ And another study showed that gas stove emissions are linked to “significantly elevated cancer risks” in insufficiently-ventilated locations, with the risk being 1.85 times greater for children than adults.²⁵

Though industry and utilities push back against this reality, it is an attempt at creating a controversy where there is none among the medical community. Leading medical associations and environmental agencies openly highlight the risks. The American Medical Association committed to informing members “that use of a gas stove increases household air pollution and the risk of childhood asthma” and to “advocat[ing] for innovative programs . . . to encourage the transition from gas stoves to electric stoves.”²⁶ The Massachusetts Medical Society

²⁴ Taylor Gruenwald et al., *Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States*, 20(1) Int’l J. of Env’t Rsch. and Public Health (2023), <https://www.mdpi.com/1660-4601/20/1/75>.

²⁵ Anchal Garg et al., *Exposure and health risks of benzene from combustion by gas stoves: A modelling approach in U.S. homes*, 492 J. of Hazardous Materials (2025), <https://www.sciencedirect.com/science/article/pii/S0304389425009021?via%3Dihub>.

²⁶ *Informing Physicians, Health Care Providers, and the Public that Cooking with a Gas Stove Increases Household Air pollution and the Risk of Childhood Asthma D-135.964*, Am. Med. Ass’n (2022),

(continued...)

“recognizes the association between the use of gas stoves, indoor nitrogen dioxide levels, and asthma.”²⁷ And EPA advises individuals to “[v]ent all combustion appliances to the outside” because they “can produce dangerous pollutants.”²⁸

2. Climate harms

In addition to health harms, using fossil gas increases greenhouse gas emissions. According to EPA:

Combustion of natural gas . . . for heating and cooking emits carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O). Emissions from natural gas consumption represent 78% of the direct fossil fuel CO₂ emissions from the residential and commercial sector in 2022.²⁹

<https://policysearch.ama-assn.org/policyfinder/detail/gas%20stove?uri=%2FAMADoc%2Fdirective.s.xml-D-135.964.xml>.

²⁷ *Testimony Regarding Warning Labels on Gas Stoves*, Mass. Med. Soc. (Apr. 29, 2025), <https://www.massmed.org/Advocacy/State-Advocacy/State-Testimony/Testimony-Regarding-Warning-Labels-on-Gas-Stoves/>.

²⁸ *Improving Indoor Air Quality*, EPA (Aug. 3, 2026), <https://www.epa.gov/indoor-air-quality-iaq/improving-your-indoor-environment#:~:text=Vent%20all%20combustion%20appliances%20to%20the%20outside.%20Combustion%20appliances%20like%20heaters%2C%20stoves%2C%20and%20dryers%20can%20produce%20dangerous%20pollutants%20in%20your%20indoor%20air.%C2%A0>.

²⁹ *Commercial and Residential Emissions*, EPA (Mar. 10, 2026), <https://www.epa.gov/ghgemissions/commercial-and-residential-sector-emissions>.

Fossil gas is primarily composed of methane,³⁰ a powerful greenhouse gas that is only surpassed by CO2 in its contribution to climate change during industrial times.³¹ It is 86 times more powerful than CO2 on a 20-year timescale.³²

Methane leakage is tied specifically to gas stoves “through post-meter leaks and incomplete combustion.”³³ Researchers estimate that annual methane emissions from gas stoves in the United States have the same climate impact as 500,000 cars’ worth of annual CO2 emissions.³⁴ It is further documented that pollutant releases occur from extraction and through the pipeline process, before even reaching a home.³⁵

³⁰ Deborah Gordon & Shannon Hughes, *Reality Check: Natural Gas’s True Climate Risk*, Rocky Mountain Inst. (July 13, 2023), <https://rmi.org/resources/reality-check-natural-gas-true-climate-risk/>.

³¹ See, e.g., *Importance of Methane*, EPA (Feb. 10, 2026), <https://www.epa.gov/gmi/importance-methane>.

³² Lebel et al., *Methane and NOx Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, *supra* (citation omitted).

³³ *Id.*

³⁴ *Id.* (citation omitted).

³⁵ See, e.g., Philip J. Landrigan, M.D. et al., *Perspective: The False Promise of Natural Gas*, 382 New England J. of Med. (2019), <https://www.nejm.org/doi/full/10.1056/NEJMp1913663> (describing health and climate risks that result from the earlier stages of hydraulic
(continued...)

Climate harms are inextricably linked with human health harms. Experts refer to climate change as the biggest health threat of our time.³⁶ The nation's Fifth National Climate Assessment states that "[c]limate change has profound negative effects on human health[,]” listing threats from extreme events such as wildfire and heat, and noting that health risks include heat-related morbidity, increases in infectious disease and poor air quality, “higher rates of pulmonary, neurological, and cardiovascular diseases; and worsening mental health.”³⁷ In 2021, the New England Journal of Medicine and over 200 other health journals published a joint emergency call to action, stating, “[t]he science is unequivocal: a global increase of 1.5° C above the pre-

fracturing, the large network of gas transmission lines and related storage, compressor stages, and end-stage combustion); *How Methane Threatens Health on its Journey to Your Home*, Am. Lung Ass’n (Dec. 13, 2024), <https://www.lung.org/blog/how-natural-gas-threatens-health>.

³⁶ Anthony Costello et al., *Managing the Health Effects of Climate Change*, 373 *Lancet* 1693, 1693 (2009) (“Climate change is the biggest global health threat of the 21st century.”); *see also, e.g., The Health Argument for Climate Action 2*, World Health Org. (2021), <https://cdn.who.int/media/docs/defaultsource/climate-change/cop26-special-report.pdf> (“Climate change is the single biggest health threat facing humanity.”).

³⁷ Dr. Mary H. Hayden et al., *Ch. 15: Human Health, Fifth National Climate Assessment* (2023), <https://nca5.climate.us/chapter/15> (citations omitted).

industrial average and the continued loss of biodiversity risk catastrophic harm to health.”³⁸

3. These harms underscore why Eversource’s statements are deceptive

The Supreme Judicial Court has previously expressed concern about both types of harm—health and climate—in consumer protection actions.

First, regarding health harms, the court has upheld deceptive marketing claims where a company’s marketing allegedly did not account for real-world usage. In *Aspinall v. Philip Morris Cos.*, 442 Mass. 381 (2004), “light” cigarettes marketed as “lowered tar and nicotine” were tested at lower levels of tar and nicotine, but the company allegedly knew the test results were misleading because they did not reflect how smokers would actually use the product. *See id.* at 385–88. The company allegedly concealed the cigarettes’ impacts if ventilation holes were covered, and did not alert consumers about how

³⁸ Lukoye Atwoli et al., *Call for Emergency Action to Limit Global Temperature Increases, Restore Biodiversity, and Protect Health*, 385 N. Eng. J. Med. (2021), <https://www.nejm.org/doi/full/10.1056/NEJMe2113200> (citations omitted).

to hold the cigarettes to obtain the claimed lowered levels. *See generally id.*

Those fact are parallel to the allegations here, where Eversource has allegedly failed to inform customers of how to obtain a safer home through proper ventilation, even advertising stoves in its images without ventilation. *See, e.g.,* RAI_024 ¶32, RAI_025 ¶34. Ventilation or exhaust fans, although still limited, have been shown to vitally reduce pollution in homes and lower the risk of respiratory illnesses.³⁹

Worse than the situation in *Aspinall* are representations that are not simply misleading, but outright false, such as referring to fossil gas as “healthy” and “safe,” and implying it is “safe” and “good” for children and families.

³⁹ *See, e.g.,* Nasim A. Mullen et al., *Results of the California Healthy Homes Indoor Air Quality Study of 2011-2013: impact of natural gas appliances on air pollutant concentrations*, 26(2) *Indoor Air* (2016), <https://onlinelibrary.wiley.com/doi/10.1111/ina.12190>; Molly L. Kile et al., *A cross-sectional study of the association between ventilation of gas stoves and chronic respiratory illness in U.S. children enrolled in NHANESIII*, 13(71) *Env’t Health* (2014), <https://pmc.ncbi.nlm.nih.gov/articles/PMC4175218/> (finding adjusted odds of pediatric asthma, wheeze, and bronchitis lower for children whose parents reported using ventilation as compared to those that did not).

As evidenced above, fossil gas is not “healthy,” because it contains and emits pollutants; numerous studies show associations between gas appliances and serious health concerns such as respiratory illnesses and hospital admissions. Fossil gas is also not “safe,” as gas stoves are associated with the presence of pollutants such as nitrogen dioxide, benzene, and formaldehyde, for which there are no identified safe levels of exposure. And fossil gas is not “good” for families because, as numerous studies have shown, children are at an increased risk of health consequences from exposure to pollutant emissions.

Second, regarding climate harms, in an ongoing consumer protection proceeding brought by the Massachusetts Attorney General, the Supreme Judicial Court identified “climate change caused by manmade greenhouse gas emissions” as “a distinctly modern threat that grows more serious with time,” whose effects “are already being felt in Massachusetts.” *Exxon Mobil Corp.*, 479 Mass. at 316 (citation omitted).

The allegations in that case are strikingly similar to those here. Exxon allegedly made misrepresentations and omissions that “obscur[ed] the extreme effect of climate change caused by the

production and normal use of . . . fossil fuel products” and “deceptive “green” images that portray [the company] as a good environmental steward[.]” *Commonwealth v. Exxon Mobil Corp.*, Nos. 146628, 1984CV03333-BLS1, 2021 Mass. Super. LEXIS 371, at *34 (June 22, 2021) (citations omitted). The allegations include describing fossil gas products as “cleaner.” *Id.* at *17.

As in *Exxon Mobil*, Eversource’s claim that fossil gas—primarily composed of methane, a potent greenhouse gas—is “good for the environment” is misleading.

D. Courts are skeptical of carbon neutral and other emissions claims

In addition to the product-related statements noted above, the plaintiffs further allege that Eversource makes deceptive statements and omissions regarding emissions-reduction goals, including around “carbon neutrality.” *See, e.g.*, Pl.-Appellants Br. 23–24. This includes its claimed commitment that its “operations will be carbon neutral by 2030,” RAI_036 ¶¶61–62; claims to be “operating in a socially and environmentally responsible manner,” helping Eversource “shoulder our responsibility to protect our planet,” RAI_038–39; and a claim included

in monthly bills that “since 2018 we’ve reduced our greenhouse gas emissions by 25%,” RAI_044 ¶78.

Eversource’s claim that its “operations [would] be carbon neutral by 2030” is especially misleading if, as plaintiffs allege, this statement only refers to Eversource’s scope 1 and 2 emissions and omits scope 3 emissions. *See, e.g.*, Pl.-Appellants Br. 23–24. Scope 1 and 2 refer to direct emissions from Eversource’s own infrastructure and fleet, and indirect emissions from electricity Eversource purchases.⁴⁰ But as Eversource appears to acknowledge, these sources are dwarfed by its scope 3 emissions, which include emissions from burning the gas it supplies, among other sources.⁴¹ Eversource’s own estimate is that scope 3 accounted for a staggering 98 percent of its total emissions in 2025.⁴²

Cases regarding claims of “carbon neutrality” have made it past a motion to dismiss. *See, e.g., Berrin v. Delta Air Lines, Inc.*, No. 2:23-CV-

⁴⁰ *See Sustainability Report* 66, Eversource (2025), <https://www.eversource.com/docs/default-source/community/eversource-2025-sustainability-report.pdf>; *see also* Jeremy Gregory & Aaron Krol, *Scope 1, 2 and 3 Emissions*, MIT Climate Portal (Mar. 20, 2024), <https://climate.mit.edu/explainers/scope-1-2-and-3-emissions>.

⁴¹ *Sustainability Report*, Eversource, *supra*, at 47, 66.

⁴² *Id.* at 66.

04150, 2024 LX 234153, at *22 (C.D. Cal. Mar. 28, 2024). Several trends have emerged. In general, courts appear skeptical when portions of potential emissions are excluded from a defendant’s calculation. *See, e.g., Env’t Working Grp. v. Tyson Foods, Inc.*, 2025 LX 80961, at *12 (D.C. Super. 2025) (permitting consumer protection claims over “net-zero” representations to proceed where plaintiff alleged “that Tyson’s emissions calculations are purposefully inaccurate and exclude metrics from land use change, a major source of its emissions”).

Even in cases that did not make it past a motion to dismiss for inapposite reasons, even corporate defendants accepted that “carbon neutrality” claims should include scope 3 emissions. In *Dib v. Apple*, for example, all parties presumed that scope 3 emissions were included:

The term “carbon neutral” is generally understood to mean that the production *and use* of a product do not release a net-positive amount of CO₂ into the atmosphere. *Id.*; Opp’n, ECF No. 44 at 17 n.2 (“Plaintiffs allege that they and consumers reasonably understood the phrase ‘carbon neutral’ to mean that the subject activities result in ‘net-zero’ carbon emissions—a definition that Apple never challenges.”).

No. 25-CV-02043, 2026 LX 24233, at *3–4 (N.D. Cal. Feb. 20, 2026) (emphasis added).

Amici believe it is misleading for a gas utility to suggest it is achieving carbon neutrality without clearly specifying whether that excludes the emissions from burning its gas, given the health and environmental harms detailed above. Even if Eversource argues that using the term “operations” sufficiently limits its statement to scope 1 and 2, *amici* believe that reasonable consumers could interpret the statement to be far broader. At the very least, discovery is warranted regarding how reasonable consumers might view the statement.

II. These types of health and environmental statements are material to reasonable consumers

“In determining whether an act or practice is deceptive, ‘regard must be had, not to fine spun distinctions and arguments that may be made in excuse, but to the effect which [the act or practice] might reasonably be expected to have upon the general public.’” *Leardi v. Brown*, 394 Mass. 151, 156 (1985) (citation omitted); *see also Aspinall*, 442 Mass. at 396 (“advertisement is deceptive when it has the capacity to mislead [reasonable] consumers . . . to act differently from the way they otherwise would have acted”).

In light of the strong association between gas use and health and environmental harms, *amici* submit that Eversource’s statements

would mislead reasonable consumers. Indeed, individuals from *amici* have advocated for directly “[i]nform[ing] consumers that gas stoves are associated with childhood asthma.”⁴³ The Massachusetts Medical Society supports warning consumers.⁴⁴ *Amici* further note that whether reasonable consumers could be misled often requires expert analysis rather than judicial assumptions, and therefore “[w]hether statements made by [Eversource] would have misled a reasonable consumer or how [Eversource’s] statements would be understood by a reasonable consumer are questions ill-suited for resolution on a motion to dismiss.” *Commonwealth*, 2021 Mass. Super. LEXIS 371, at *30.

But if the Court wishes to address this issue at this early stage, a survey of the literature underscores the degree to which consumers make purchasing decisions based on perceived environmental costs and benefits, as well as safety and harm to human health.

One survey from Boston Consulting Group found that “[t]hree-quarters of consumers cited health and well-being as the number one

⁴³ Andee Krasner et al., *Cooking With Gas, Household Air Pollution, and Asthma: Little Recognized Risk for Children*, 83(8) J. of Env’t Health 14 (2021), <https://www.jstor.org/stable/27072194>.

⁴⁴ *Testimony Regarding Warning Labels on Gas Stoves*, Mass. Med. Soc., *supra*.

marker of a prosperous life, ahead of career and financial wealth.”⁴⁵ Safety⁴⁶ is vital as well. Clean and eco labels are cited as being motivating to consumers, who are willing to pay price premiums for such products.⁴⁷ A consumer survey conducted by PricewaterhouseCoopers International Limited found that 85 percent of respondents were “experiencing first-hand the disruptive effects of climate change” and that “[c]onsumers are willing to spend an average of 9.7% more on sustainably produced or sourced goods,” despite “cost-

⁴⁵ Aparna Bharadwaj et al., *Global Consumers Have Moved On. Has Your Growth Strategy Caught Up?*, Boston Consulting Group (Aug. 26, 2026), <https://www.bcg.com/publications/2026/five-consumer-shifts-reshaping-growth>.

⁴⁶ See, e.g., Kar Ho Lim & Elina T. Page, *Consumers’ Interpretation of Food Labels with Production Claims Can Influence Purchases*, Econ. Rsch. Serv., U.S. Dep’t of Agric. (Mar. 7, 2022), <https://www.ers.usda.gov/amber-waves/2022/march/consumers-interpretation-of-food-labels-with-production-claims-can-influence-purchases> (finding that “[o]n average, those who agreed or strongly agreed that grass-fed was safer were willing to pay around \$2 more per pound”).

⁴⁷ See, e.g., Kar Ho Lim & Elina T. Page, *Consumers’ Interpretation of Food Labels with Production Claims Can Influence Purchases*, *supra* (citing a study that found consumers willing to pay more for eco-labeled canned tuna); *Less mystery, more meaning: Clean labels win consumer preference*, Ingredion (Sept. 8, 2025), <https://www.ingredion.com/na/en-us/be-whats-next/consumer-preference-clean-labels-healthier-choices>.

of-living and inflationary concerns.”⁴⁸ Studies also show that consumers adjust their behavior in response to health warning labels.⁴⁹

This tracks to the utility space. In an American Psychological Association survey, over half of U.S. adults stated that “climate change is the most important issue facing society today,” and limiting energy usage in homes and using renewable energy were two of the most common behavior changes individuals were willing to make.⁵⁰ Another

⁴⁸ *Consumers willing to pay 9.7% sustainability premium, even as cost-of-living and inflationary concerns weigh: PwC 2024 Voice of the Consumer Survey*, PwC (May 15, 2025), <https://www.pwc.com/gx/en/news-room/press-releases/2024/pwc-2024-voice-of-consumer-survey.html>.

⁴⁹ See, e.g., Anna H. Grummon & Marissa G. Hall, *Sugary drink warnings: A meta-analysis of experimental studies*, 17(5) PLoS Med. (2020), <https://journals.plos.org/plosmedicine/article/file?id=10.1371/journal.pmed.1003120&type=printable>; Lindsey Smith Taillie, *Impact of taxes and warning labels on red meat purchases among US consumers: A randomized control trial*, 21(2) PLoS Med. (2023), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1004284>.

⁵⁰ *Majority of US Adults Believe Climate Change Is Most Important Issue Today*, Am. Psychological Ass’n (Feb. 6, 2020), <https://www.apa.org/news/press/releases/2020/02/climate-change>.

survey found that Americans were less likely to prefer gas stoves over alternatives after learning of the harmful effects.⁵¹

Other jurisdictions have found the term “clean” problematic when used in fossil fuel company marketing. United Kingdom regulators banned a series of Shell advertisements mentioning “cleaner” energy and the fact that some households used renewable electricity from Shell, because, among other things, “the cumulative effect . . . was to give the [wrong] impression that low-carbon energy products comprised a significant proportion of the energy products Shell invested in and sold in the UK . . . or were likely to do so in the near future.”⁵²

Massachusetts courts have likewise acknowledged that these concerns motivate consumer behavior. In *Commonwealth v. Exxon Mobil*, the Superior Court rejected Exxon’s argument “that no reasonable consumer would be misled by Exxon’s advertisements

⁵¹ Sabrina Jacobs, *After Learning About Their Toxic Emissions, Americans Support Regulating Gas Stoves*, Date for Progress (2023), <https://www.dataforprogress.org/blog/2023/1/31/after-learning-about-their-toxic-emissions-americans-support-regulating-gas-stoves>.

⁵² *ASA Ruling on Shell UK Ltd t/a Shell*, U.K. Advertising Standards Authority (June 7, 2023), <https://www.asa.org.uk/rulings/shell-uk-ltd-g22-1170842-shell-uk-ltd.html>.

because . . . a reasonable consumer would be aware of the connection between fossil fuels and climate change,” reasoning that it simply could not “conclude at this stage that no reasonable consumer would be misled by Exxon’s” marketing. Nos. 146628, 1984CV03333-BLS1, 2021 Mass. Super. LEXIS 371, at *30–31.

Amici believe that if given full knowledge, it would be highly reasonable for a consumer to alter their purchasing patterns. This could include purchasing less gas or switching to renewable energy, using non-gas appliances such microwaves or electric kettles, switching to electric heat pumps or electric stoves, or installing proper ventilation.

III. Marketing fossil gas while misleading consumers about its health and climate harms causes them injury

As health professionals, *amici* are alarmed by the Superior Court’s apparent conclusion that consumers are not “injured” by deceptive health and environmental claims, because the price of fossil gas was not “artificially inflated as a result of” this deception. RAIII_216. Such a rule would grant free rein to companies who misleadingly induce consumers into buying products that are dangerous for their families

and the environment, as long as the consumers got a certain price, or where the price might be regulated.

The plaintiffs have sufficiently briefed the issue of economic injury. *Amici* write to additionally emphasize—especially in light of the outlined harms—that exposure to toxic products by itself is widely recognized as a cognizable injury; the same is true for purchasing a product which causes injury to the environment that the consumer did not intend. If, absent the deception, a consumer would have purchased less of a product—or not purchased the product at all—that constitutes injury.

A. Exposure to toxic chemicals is a cognizable injury

Because indoor combustion leads to consumers being exposed to toxic chemicals, misleading consumers about these risks—and thereby inducing them to consume more gas, or to burn gas without taking exposure precautions—constitutes an “injury.”

Under Chapter 93A, “a plaintiff need not demonstrate an ascertainable loss of money or property, or suffer actual personal injury”; instead, “it is enough that a consumer has been wronged in a discernible way.” *Hershenow v. Enter. Rent-A-Car Co. of Bos.*, 445 Mass.

790, 808 (2006). There should be no question that being exposed to toxic chemicals, and suffering anxiety over the possible health consequences of that exposure, is an “injury” under Chapter 93A, separate from any actual health condition that may develop.

This is so regardless of whether a plaintiff might separately maintain a tort action for such exposure, absent showing “physical harm.” *Payton v. Abbott Labs.*, 386 Mass. 540, 574 (1982).⁵³ While Massachusetts has not yet joined other states to recognize such a tort claim, *cf. Goodmaster v. Houser*, 625 A.2d 1366, 1371 (Conn. 1993); *Potter v. Firestone Tire & Rubber Co.*, 863 P.2d 795, 818 (Cal. 1993); *Arabie v. CITGO Petroleum Corp.*, 89 So. 3d 307, 322 (La. 2012), that is not the standard for injury under Chapter 93A.

Here, the plaintiffs allege that Eversource misled them about the dangers of its products. They could have lessened their exposure by using less gas, switching to non-gas appliances, or ensuring proper ventilation, but Eversource’s alleged deception led them and their

⁵³ The *Payton* court concluded that claims of negligent infliction of emotional distress required physical injury, but it made clear that where (as here) the defendant’s conduct is *intentional*, no such requirement attaches. *See* 386 Mass. at 554–55.

families to unwittingly be exposed to these pollutants. Regardless of whether they could recover in tort for such exposure, this surely qualifies as “injury” under Chapter 93A.

B. Deceptively inducing consumers to contribute to environmental harm also amounts to injury

The plaintiffs also allege that they were misled into unwittingly contributing to climate harm. This, too, is an injury.

Courts have recognized that consumers have legitimate concerns about the impacts of products beyond the quality or “worth” of those products. The D.C. Court of Appeals, for example, recently recognized that “a considerable chunk of the District’s population cares about the environmental impact of the products that it purchases,” and thus that consumers may be misled by marketing statements about “environmental sustainability.” *Earth Island Inst.*, 321 A.3d at 662–63. When the deceptive conduct addresses not the inherent qualities of the product itself, but its broader impacts, consumers’ injury cannot be evaluated solely based on whether they paid a particular price. Being misled into buying a product with objectionable *impacts* is injurious to any consumer who cares about those impacts.

To be clear, this is not a “per se” theory of injury; the deceptive act itself is not the injury. The injury is the consumer’s unintended contribution to a problem that they wished to avoid exacerbating.

C. Consumers who purchase a product they would not otherwise have purchased, or purchase more of it than they would have, suffer distinct injury

With respect to both of these kinds of injury—consumers misled into exposing their families to more toxic chemicals than they intended and misled into contributing more to global warming than they intended—“overpayment” for the product is not the essential issue.

Eversource wrongly suggests misleading consumers into overpurchasing products is analytically identical to misleading them into overpaying for those products. But some consumers may not have purchased the product *at all*. For example, a consumer misled into thinking that tainted salad greens were pathogen-free, or an observant Jewish consumer misled into believing a product was Kosher. In other cases, the consumer may have chosen to purchase less—such as if, for example, a seller fraudulently understates the amount of caffeine in a product, marketing it as safe to consume in large quantities. These consumers did not “overpay” according to a price premium theory.

With respect to the injuries at issue here, it is overly simplistic to suggest that representative reasonable consumers are simply concerned about how much they are paying to be exposed to toxic pollutants or contribute to climate change. Especially where health and moral injuries are concerned, viewing consumer injury solely through the lens of whether the consumer overpaid for the product is an unwarranted narrowing of Chapter 93A’s “broad impact.” *Exxon Mobil*, 479 Mass. at 315. Instead, a consumer who would have purchased less of a product—or not purchased it at all—due to its effects and impacts, has suffered injury.

In addition to other reasons why the “filed-rate doctrine” does not apply to this case, it does not matter whether Eversource’s rates were regulated because plaintiffs allege injury regardless of price. Citing *Haverhill Gas Co. v. Findlen*, 357 Mass. 417, 424 (1970), the Superior Court here ruled that because Eversource’s gas rates “are not entirely within its control . . . Plaintiffs cannot show that they paid a premium for the Eversource product due to Eversource’s alleged false

representations.” RAIII_214–15.⁵⁴ But *Haverhill* is inapposite, for several reasons. It was not a statutory consumer protection case, but a breach of contract case where the gas customer had mistakenly been under-billed for gas actually used. The customer did not allege that it was misled about the impacts of the product—nor did it even allege that it would have used less gas if it had been appropriately billed. The question was not whether the customer had been injured by the gas company’s error, but whether they could avoid paying for the gas actually used at the rate fixed by regulation.

Eversource’s heavy reliance on federal decisions, such as *Shaulis v. Nordstrom, Inc.*, 865 F.3d 1 (1st Cir. 2017), is misplaced for several reasons. In *Shaulis*, the allegation was not that the consumer had been misled as to health risks or environmental impact, but just that they had been led to believe they were getting a better deal than they actually were. *Shaulis* distinguished its facts from a case where consumers “had purchased and smoked cigarettes that did not deliver

⁵⁴ Simply because a price is not “entirely within” the defendant’s control is not a defense to consumer fraud. In *Aspinall*, 442 Mass. 381, for example, the defendant tobacco company surely did not directly control the retail prices of its cigarette products sold by third-party retailers.

the advertised health benefits.” *Id.* at 10 (quoting *Bellermann v. Fitchburg Gas & Elec. Light Co.*, 475 Mass. 67, 75 (2016)). *Shaulis* is thus fundamentally distinct from a case like this one, where health risks *are* at issue. Regardless, this holding of *Shaulis* has never been endorsed by the Massachusetts courts.

IV. The Court need not assess remedy at this stage

Amici recognize that various measures of damages have been debated by the parties, but this Court does not need to weigh in on appropriate remedies at this stage. As long as the plaintiffs have shown *injury*—and they have—the case should proceed. Anything else would be premature. Moreover, neither of the consumer protection statutes at issue requires that the injury be quantifiable or awardable in the form of specific damages or restitution.

A. Under Chapter 93A, injury alone is sufficient to proceed

Whether a consumer has suffered injury is not the same as whether they “will be able to prove actual damages.” *Aspinall*, 442 Mass. at 402. Chapter 93A allows “recovery when an unfair or deceptive act caused a personal injury loss such as emotional distress, even if the consumer lost no ‘money’ or ‘property.’” *Hershenow*, 445 Mass. at 798.

Caselaw and plaintiffs’ submissions suggest a variety of ways of quantifying damages. This could include, for example, the cost of retrofitting gas stoves to ensure adequate ventilation that Eversource misled consumers into believing was not necessary; refunding the purchase costs of gas stoves that consumers would not have bought had they not been misled; the cost of purchasing carbon offsets that Eversource promised; or a “price premium” calculation. But in each instance, these are simply potential measures of damages for the underlying alleged injury: an economic one, or that consumers unwittingly exposed their families to toxic pollutants and contributed to climate pollution at levels that they would not have absent Eversource’s deception. If a company falsely claims that it is “carbon-neutral,” for example, the consumer is injured by buying products that they might not have bought *at all* absent this misinformation: “enforcement under these circumstances would entail that, should [the company] want to make a claim that it is carbon-neutral, it must actually be carbon-neutral. That damages may ultimately be calculated in the form of a price premium does not change that the thrust of the claim itself is not an allegation of a price premium.” *Berrin*, 2024 LX 234153, at *13–15.

But even if none of these methods for calculating damages works here, statutory damages are still available. Recognizing that some injuries may not be amenable to quantification, the Legislature allowed for presumed statutory damages of \$25 per “deceptive act or practice,” G.L. c. 93A, § 9(3), plus reasonable attorneys’ fees, *id.* § 9(4).

Ample caselaw demonstrates that such statutory damages are available both where actual damages are minimal, and where they are simply unquantifiable. Any injury—even if it does not constitute “a readily quantifiable loss of money or property or measurable emotional distress”—entitles a consumer “to the minimum statutory damage award.” *Tyler v. Michaels Stores, Inc.*, 464 Mass. 492, 504 n.20 (2013).

Thus, *even if* the Superior Court were correct that the plaintiffs here cannot rely on a “price premium” method (or any other method) for calculating actual damages, plaintiffs have *still* alleged injuries subject to statutory damages under 93A. The question of *remedy* for these injuries is unnecessary to decide at the pleading stage.⁵⁵

⁵⁵ The Superior Court’s reliance on *Haverhill*, as noted above, is particularly inapt with respect to section 9. *Haverhill* was decided in 1970, while section 9 was adopted on August 13, 1969—well after the pleadings and lower court decisions in *Haverhill* had been decided. The
(continued...)

**B. Under Chapter 266, section 91, any
“aggrieved party” may obtain relief**

Similarly, section 91 plainly allows *some* injunctive relief when a consumer has been aggrieved by deceptive marketing.

Section 91 “confers standing upon any party aggrieved by any person who falsely advertises merchandise for sale to seek an injunction against said person.” *Chenlen v. Philips Elecs. N. Am.*, 20 Mass. L. Rep. 652, at *15 (Middlesex County Mar. 1, 2006). The precise content of that injunction should not be at issue at the pleading stage, because the statute is unambiguous: *anyone* who violates section 91’s prohibitions “may be enjoined” in a suit by “any aggrieved party.”

While the scope of any potential injunction is not at issue at this stage, the health-related impacts identified here suggest some possibilities. For example, Eversource could be enjoined from making claims about the safety of fossil gas—or to require disclosures of the potential health risks. Because section 91 is about ending injurious practices, not recovering money, it does not matter whether the

Supreme Judicial Court was not considering the current law when deciding that case.

plaintiffs here suffered a quantifiable loss or can rely on a “price premium” theory in order for the case to proceed.

CONCLUSION

Given the health and environmental risks associated with Eversource’s products, *amici* urge the Court against dismissing at this early stage and respectfully encourage reversal.

Dated: September 17, 2026

/s/ Wesley Kelman

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APPENDIX

A full list of *amici curiae* is as follows.

Organizational *amici curiae*:

Greater Boston Physicians for Social Responsibility

(GBPSR). Greater Boston Physicians for Social Responsibility is a non-profit organization of health professionals and community members dedicated to combating climate change and working to reduce health threats from environmental exposures. Members have expertise in public health, epidemiology, infectious diseases, and health effects from climate change.

GBPSR was the founding chapter of the national group, Physicians for Social Responsibility (PSR). PSR's international federation, the International Physicians for the Prevention of Nuclear War, was awarded the 1985 Nobel Peace Prize. GBPSR played an active role in the international campaign to abolish nuclear weapons; this campaign was recognized with a Nobel prize in 2017.

Climate Code Blue. Climate Code Blue is a community of physicians and allied health professionals dedicated to raising public awareness of the health harms of anthropogenic climate

change and the health benefits of green infrastructure. They use their knowledge and privilege to amplify the voices of their vulnerable neighbors in their struggle for health justice.

Individual *amici curiae*:*

Thomas Kalinoski, MD

Andee Krasner, MPH

Greater Boston Physicians for Social Responsibility

Philip J. Landrigan, MD, MSc, FAAP

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Director, Global Observatory on Planetary Health

Schiller Institute for Integrated Science and Society

Boston College

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Susan Racine, MD

Co-chair of Greater Boston Physicians for Social Responsibility

Jim Recht, MD

Lecturer on Psychiatry

Harvard Medical School

Caren Solomon, MD, MPH

Associate Professor of Medicine

Harvard Medical School

*University affiliations are solely for identification purposes.

CERTIFICATE OF COMPLIANCE

1. This document complies with the applicable font, word count, and disclosure requirements pursuant to Rules 16, 17, 20, and 21 of the Massachusetts Rules of Appellate Procedure.
2. This document was prepared in Microsoft Word 365 using the proportionally spaced typeface Century Schoolbook in 14-point font.
3. This document contains 7438 non-excluded words.

/s/ Wesley Kelman
Wesley Kelman

CERTIFICATE OF SERVICE

I certify that on this 17th day of September 2026, the foregoing Brief of *Amici Curiae* Physician and Public Health Professionals and Groups in Support of Plaintiffs-Appellants and Seeking Reversal of the District Court was served via electronic mail on the following parties:

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/s/ Wesley Kelman

Wesley Kelman

Exhibit A

STOP LOOK & learn™

Ages 3+

Electric & Utility Safety

Educational Coloring and Activity Book



EVERSOURCE

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STOP LOOK & learn™

Electric & Utility Safety

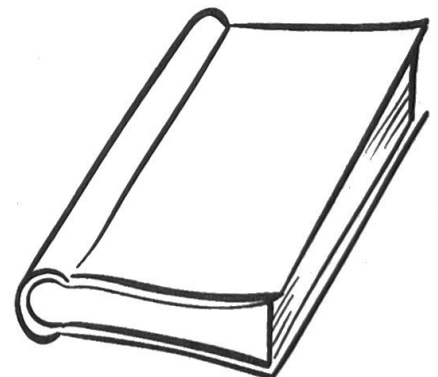
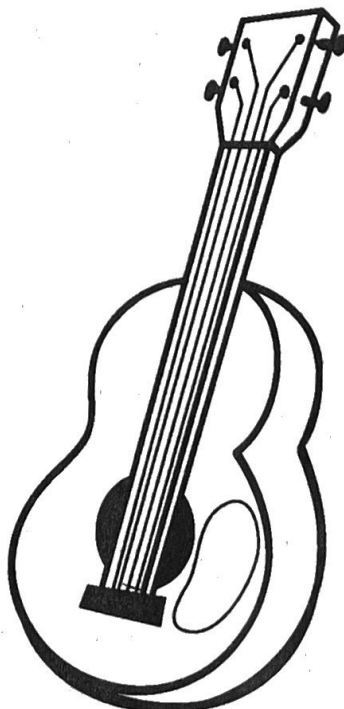
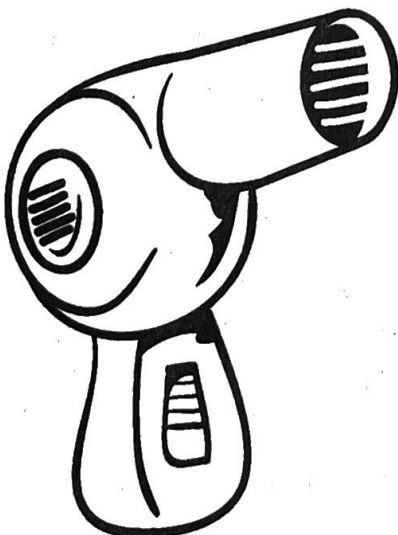
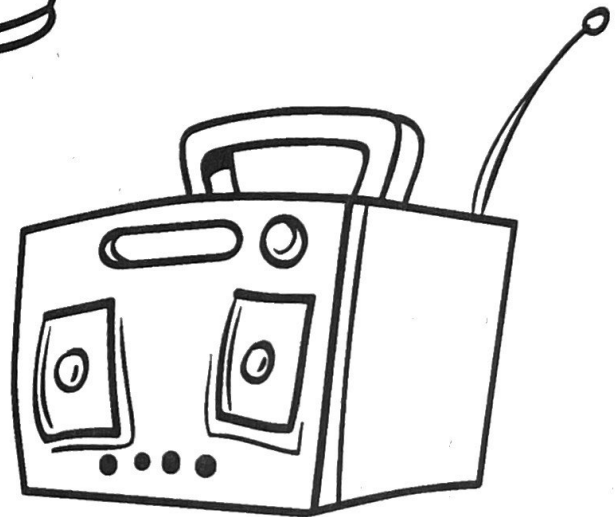
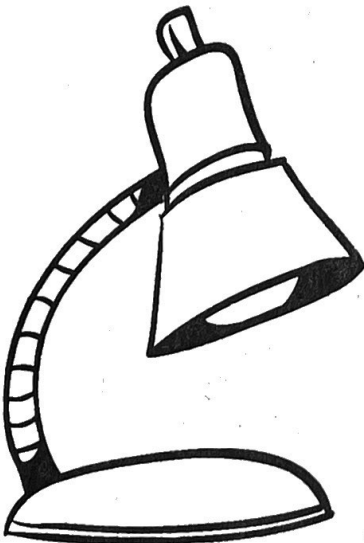
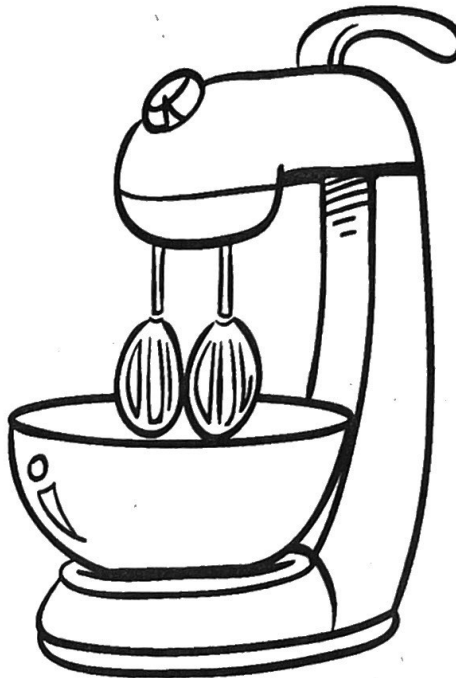
Educational Coloring and Activity Book

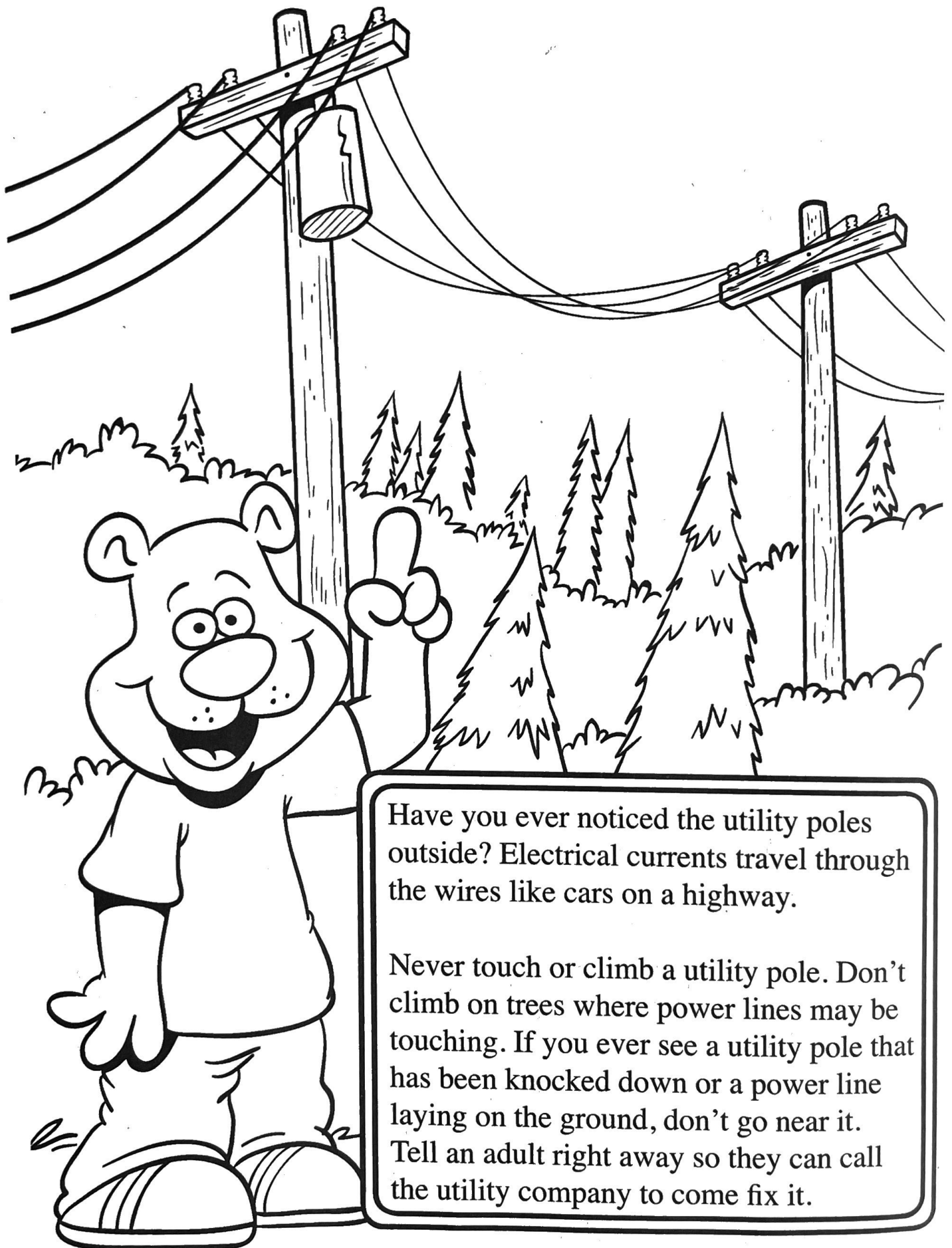




Power lines deliver electricity to your home. Lights, televisions, DVD players and even video games need electricity to work.

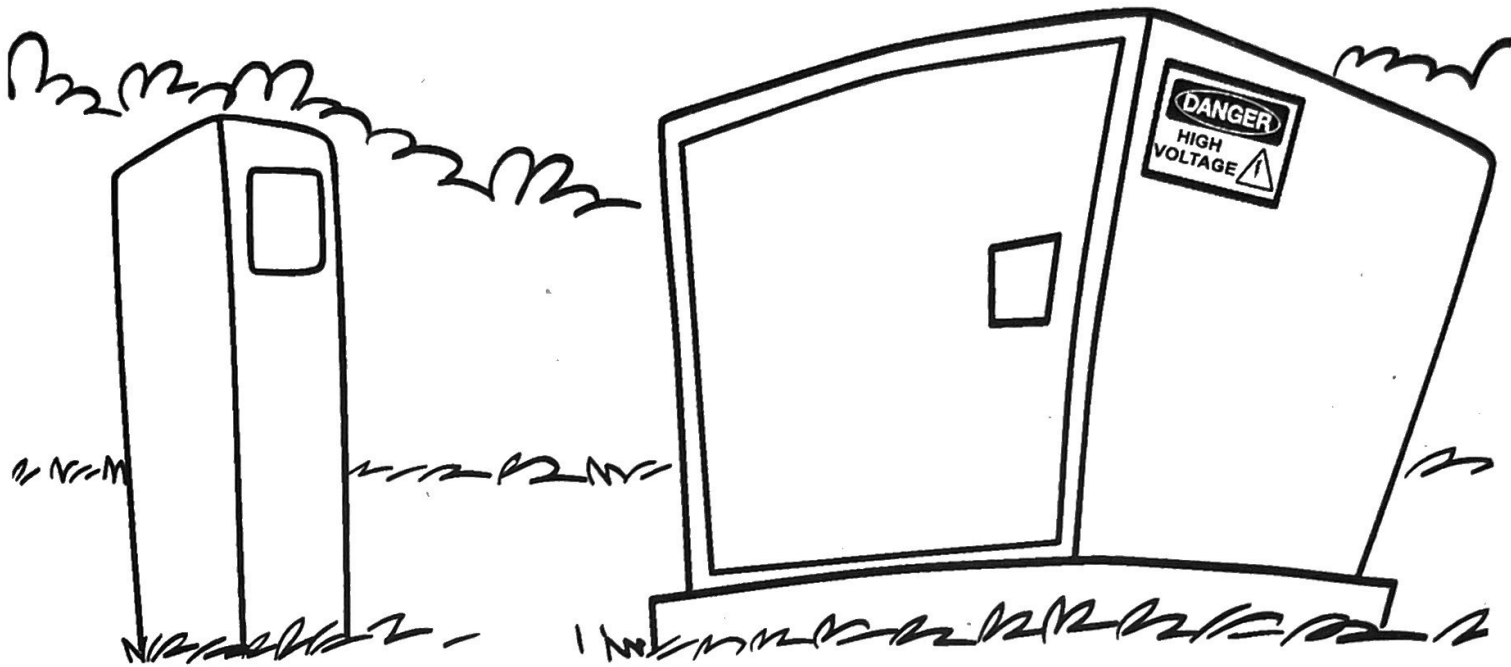
Can you circle all the items that need electricity to work?





Have you ever noticed the utility poles outside? Electrical currents travel through the wires like cars on a highway.

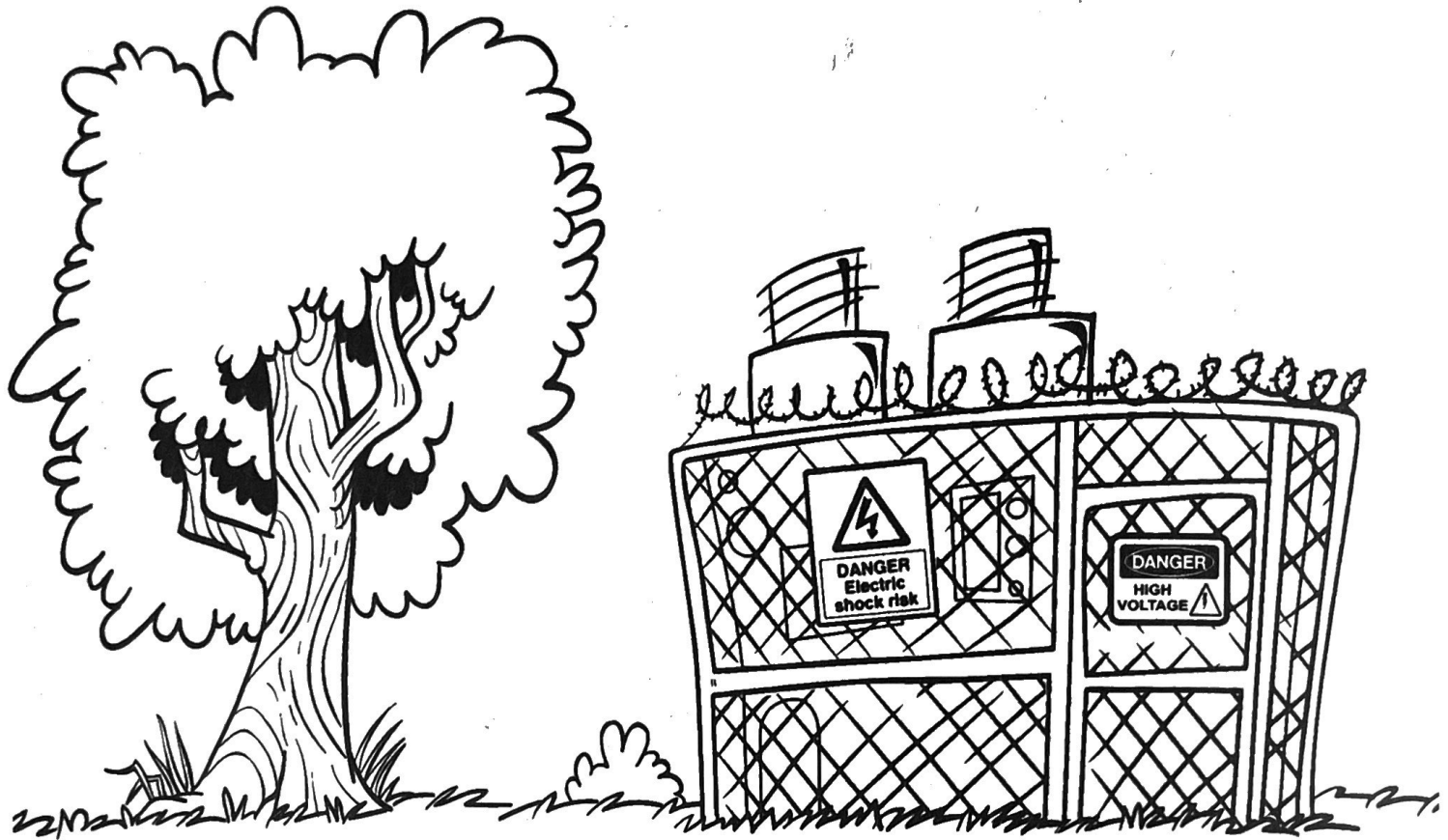
Never touch or climb a utility pole. Don't climb on trees where power lines may be touching. If you ever see a utility pole that has been knocked down or a power line laying on the ground, don't go near it. Tell an adult right away so they can call the utility company to come fix it.



Your neighborhood might have power lines that are buried underground. If you have a big green box in your yard or neighborhood, stay away from it. Do not climb or play on it.

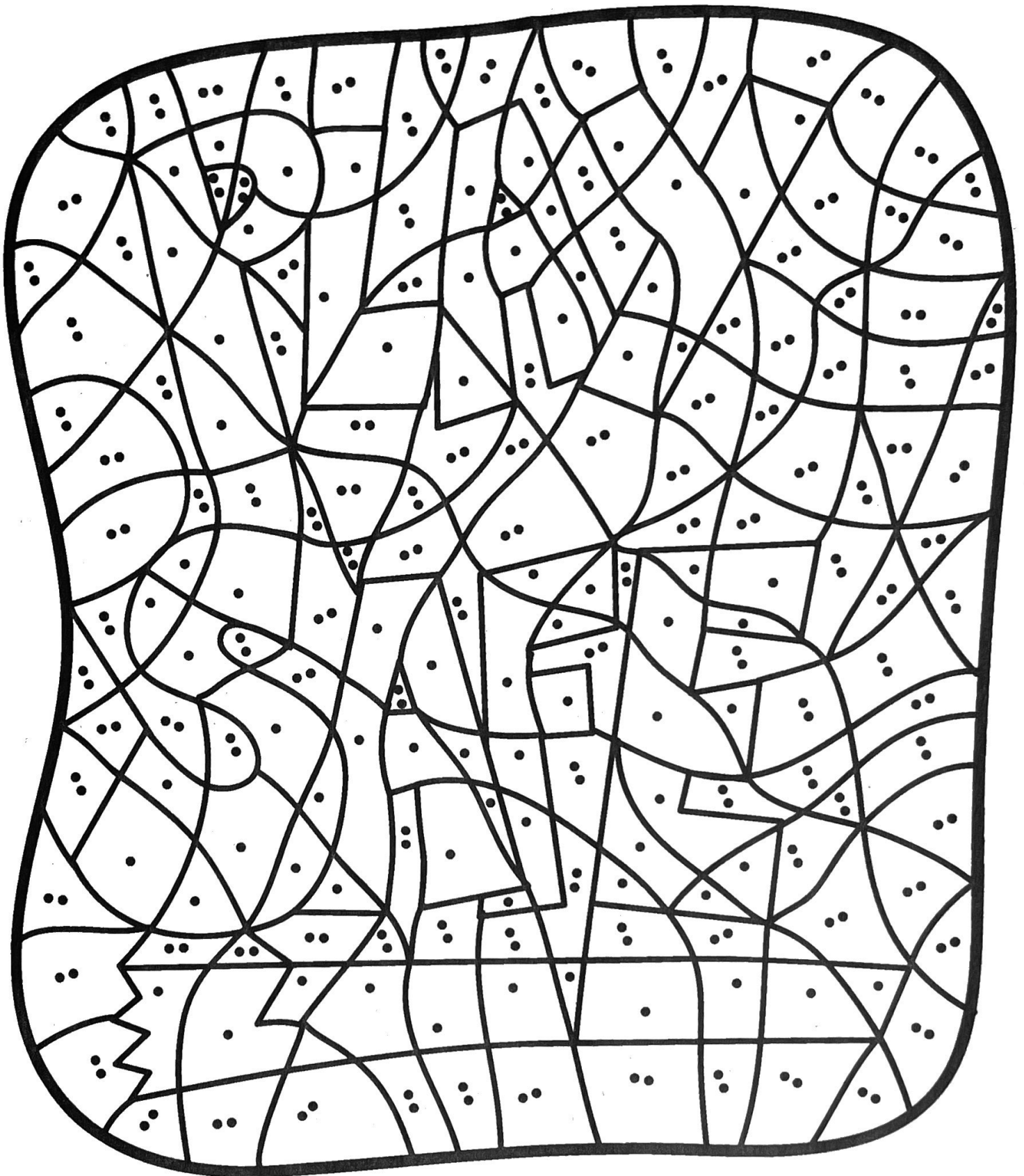
Never dig near buried power lines. Call your local utilities company before digging so they can show you where it is safe to dig.





Never play near a power station. They are very dangerous and have signs posted to warn you.

Make sure to always pay attention to the warning signs. They are there to protect you from hurting yourself.

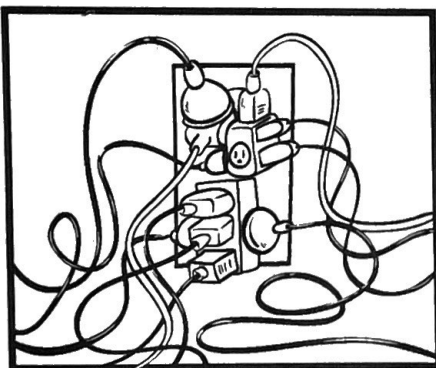


Color all the shapes with one dot red.
Color all the shapes with two dots blue.

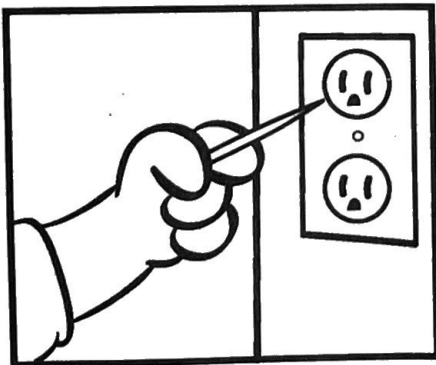
**BE SAFE! DON'T MESS
WITH ELECTRICAL OUTLETS.
ONLY ADULTS SHOULD PLUG
ELECTRICAL CORDS INTO
OUTLETS.**

**LEARN ABOUT
OUTLET SAFETY.**

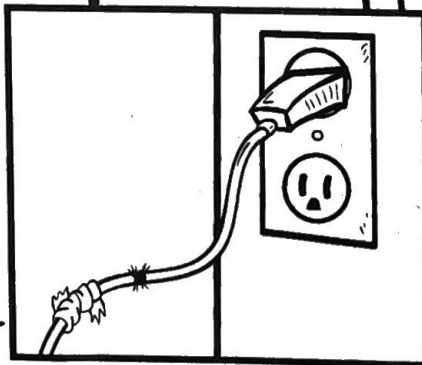
Unsafe uses of an
electrical outlet.



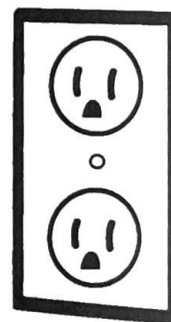
Never overload an outlet
with too many plugs.



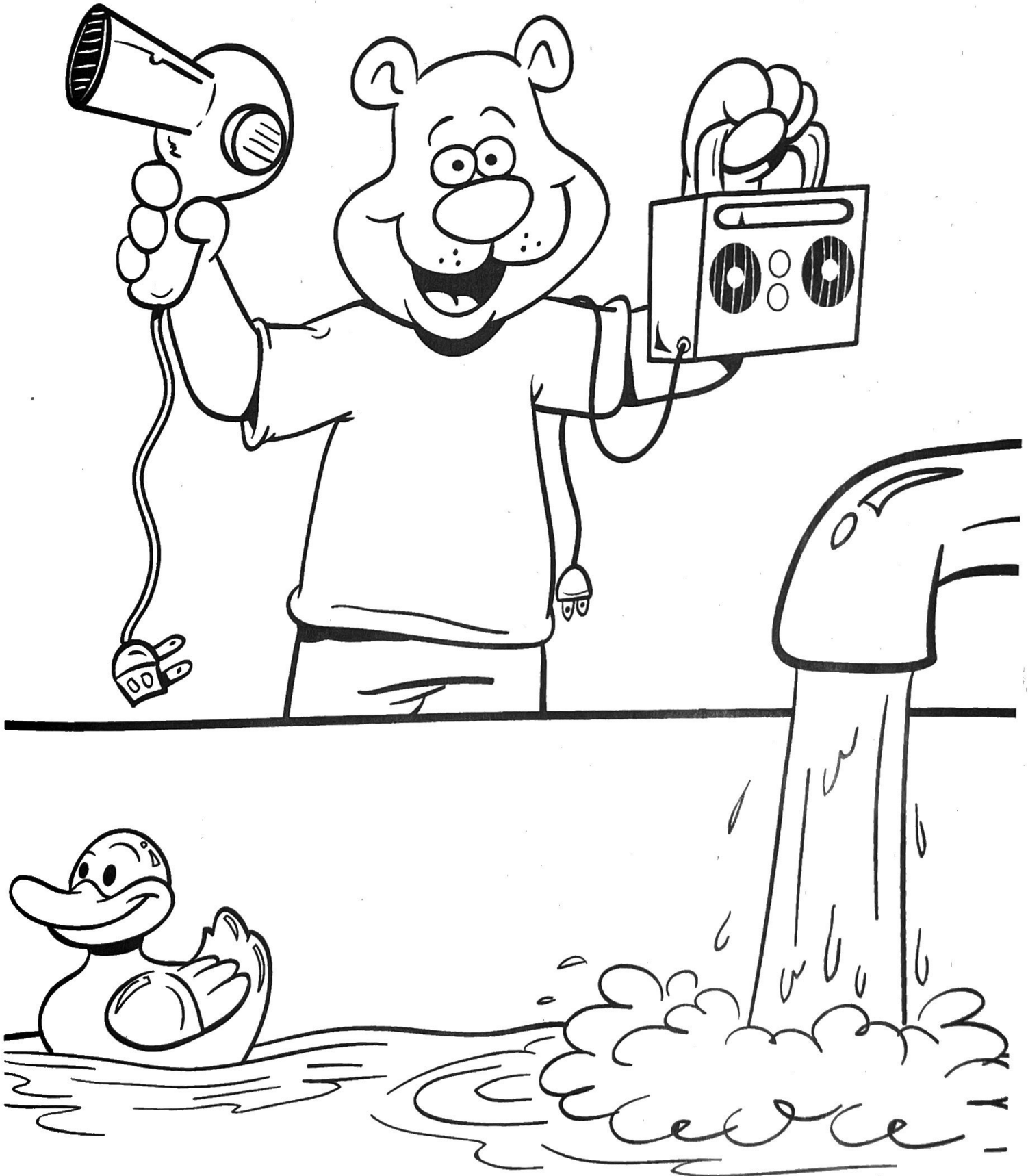
Never stick anything
other than a plug
into an outlet.



Never use a cord
that is damaged.



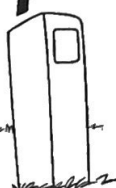
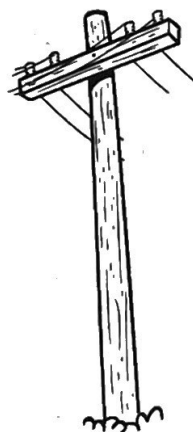
Never use or place anything that uses electricity near water, like a shower, sink or bathtub. If you see water near an electric appliance tell an adult right away. Do not touch an electric appliance that is wet!





Find your way through the maze.
Make sure to avoid all the electrical equipment.

start



finish



Follow the kite strings to find out which kite leads to the ball of string.



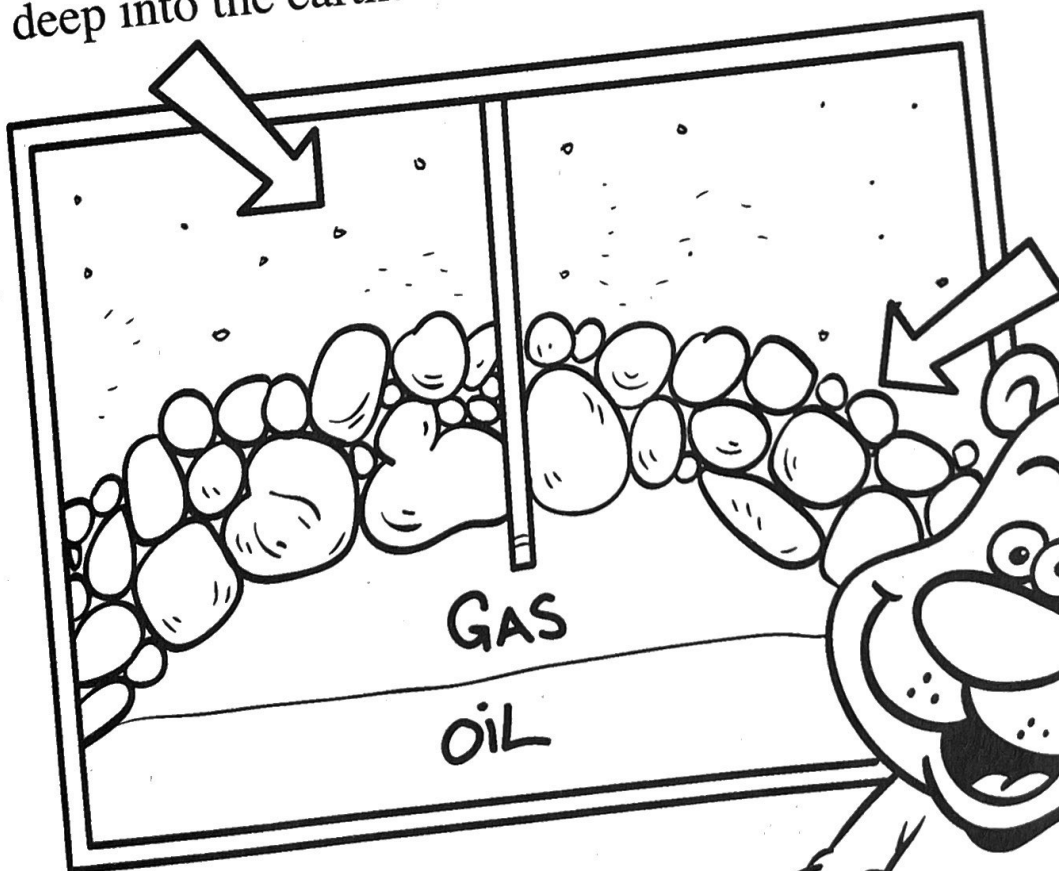
Natural gas is used for heating your home, warming water for bathing and getting the oven nice and hot for baking.



Natural gas is not the same as gasoline that a car uses. While gasoline is a liquid, natural gas is a vapor. Natural gas burns easy and clean, unlike other fuels like coal or wood.



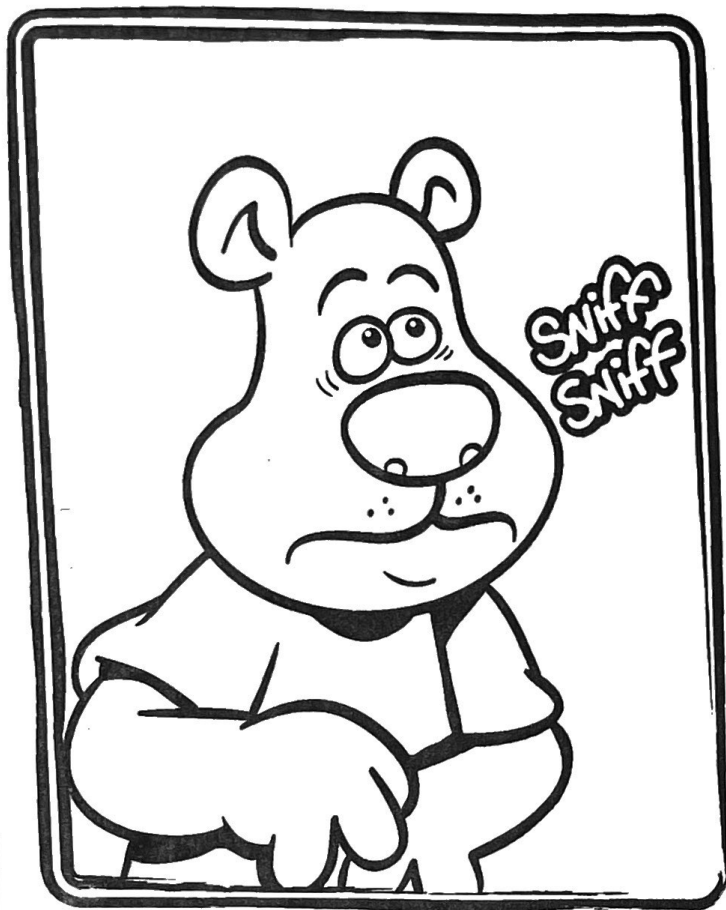
The only way to get natural gas is by drilling very, very deep into the earth.



After drilling through thick layers of hard rock there is a pocket of natural gas.



This gas was created by decaying plants and animals that lived millions of years ago.

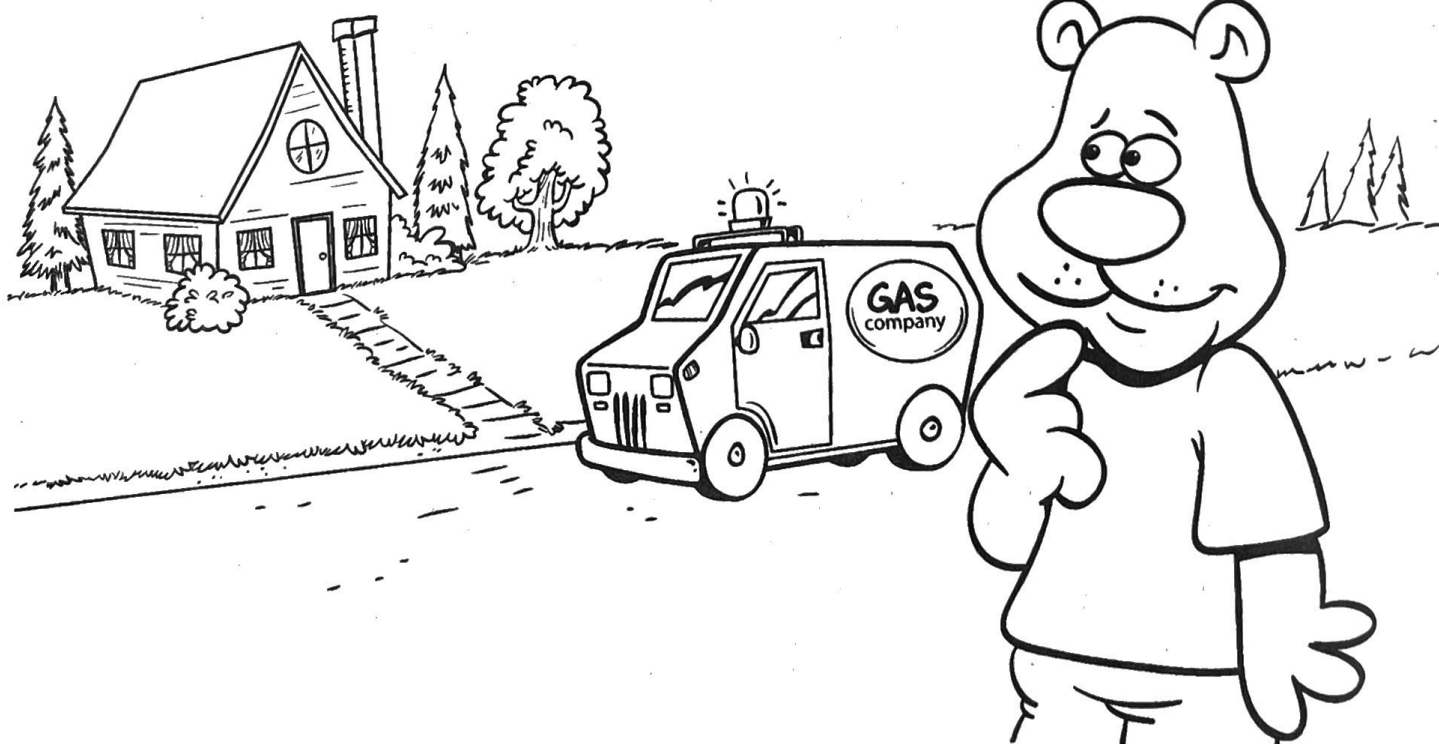


You can't see natural gas, but it does have a smell like rotten eggs. If you think you smell a gas leak, get yourself and everyone else out of your house immediately.



Call 9-1-1 after you get to a safe place.

Don't turn on any lights or try to use your phone. The tiniest spark could cause an explosion. Get far away from your house and call for help.





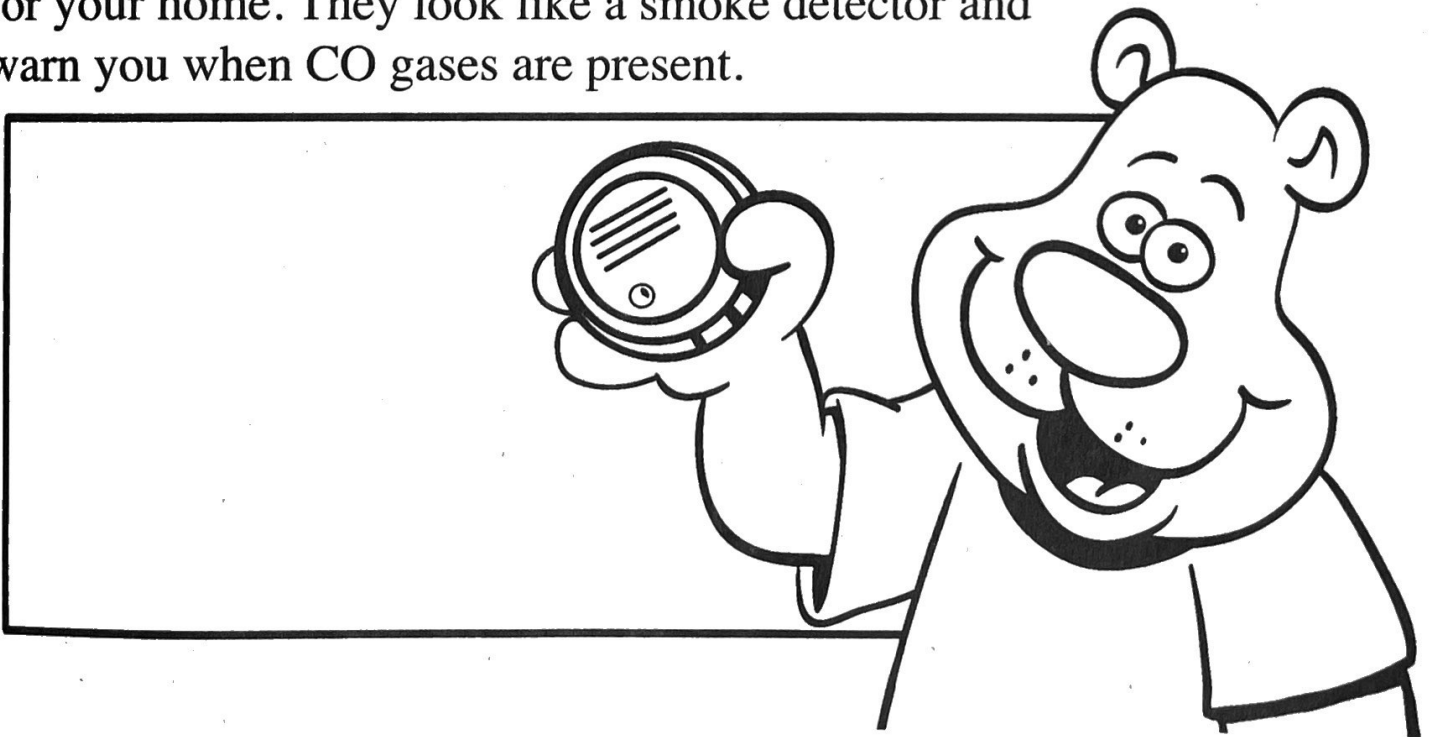
CO Poisoning

Carbon monoxide poisoning, or CO, is caused by the burning of fuels (like gas, propane, or oil) in a house or small enclosed area.

CO poisoning can cause headaches, vomiting and drowsiness. If exposed long enough to CO you can die.

If you feel any of these symptoms get outside and take a deep breath of fresh air. After you are outside call 911 or a local emergency number right away.

Your family can purchase a carbon monoxide detector for your home. They look like a smoke detector and warn you when CO gases are present.



Whether you're relaxing indoors or playing outside,
always respect the electric and gas utilities that
power your home and neighborhood.

Remember "Safety First!"



STOP LOOK & learn™

Electric & Utility Safety

Educational Coloring and Activity Book



LETTER TO THE PARENT/GUARDIAN

The Stop, Look and Learn™ line of coloring and activity books was created to educate and entertain children. We encourage you to participate with your child in discussing each topic. Our goal is to create an activity book that will be a positive influence on a child's early development.

