
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2656 Session of
1988

INTRODUCED BY GEORGE, BROUJOS, WOZNIAK, YANDRISEVITS, BOWLEY AND
FREEMAN, AUGUST 9, 1988

REFERRED TO COMMITTEE ON CONSERVATION, AUGUST 9, 1988

AN ACT

1 Banning the sale and use of certain leaded materials in plumbing
2 systems; requiring water suppliers to provide public
3 notification relating to lead contamination in drinking water
4 and imposing powers and duties on the Department of
5 Environmental Resources in relation thereto; and providing
6 penalties.

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8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Plumbing
12 System Lead Ban and Notification Act.

13 Section 2. Declaration of purpose.

14 The purposes of this act are to:

15 (1) Protect public health and safety by prohibiting the
16 sale of certain leaded materials commonly used in plumbing
17 systems and prohibiting their use in plumbing system
18 construction, modification and repair.

19 (2) Provide for public notice of the potential for lead
20 contamination of drinking water consumed by users of public
21 water systems.

22 Section 3. Definitions.

23 The following words and phrases when used in this act shall
24 have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "Community water system." A community water system as
27 defined in the Safe Drinking Water Act.

28 "Department." The Department of Environmental Resources of
29 the Commonwealth.

30 "Environmental Hearing Board." The board established

1 pursuant to section 1921-A of the act of April 9, 1929 (P.L.177,
2 No.175), known as The Administrative Code of 1929, for the
3 purposes set forth in that section.

4 "Environmental Quality Board." The board established
5 pursuant to section 1920-A of the act of April 9, 1929 (P.L.177,
6 No.175), known as The Administrative Code of 1929, for the
7 purposes set forth in that section.

8 "Lead free." When used with respect to solders and flux,
9 refers to solders and flux containing not more than 0.2% lead
10 and, when used with respect to pipes and pipe fittings, refers
11 to pipes and pipe fittings containing not more than 8% lead.

12 "Local agency." A governmental unit other than a unit of the
13 Commonwealth or the Federal Government. The term includes, but
14 is not limited to, a county, city, borough, town, township or
15 municipal authority.

16 "Nontransient noncommunity water system." A nontransient
17 noncommunity water system as defined in regulations promulgated
18 by the Environmental Protection Agency at 40 CFR § 141.2.

19 "Person." Any individual, partnership, association, company,
20 corporation, municipality, municipal authority or political
21 subdivision, or any agency of the Federal or State government.
22 The term includes the officers, employees and agents of any
23 partnership, association, company, corporation, municipality,
24 municipal authority or political subdivision, or of any agency
25 of the Federal or State government.

26 "Plumbing system." All piping, fixtures and appurtenances
27 used to transport water to, within and from a building,
28 including all residential and nonresidential facilities and
29 source, transmission, treatment and distribution facilities of
30 public water systems.

1 "Public water system." A public water system as defined in
2 the Safe Drinking Water Act.

3 "Safe Drinking Water Act." The act of May 1, 1984 (P.L.206,
4 No.43), known as the Pennsylvania Safe Drinking Water Act.

5 "State agency." Any Commonwealth department, board,
6 commission or agency other than the Department of Environmental
7 Resources.

8 "Water supplier." Any person who owns or operates a public
9 water system.

10 Section 4. Prohibition of sale of plumbing materials that are
11 not lead free.

12 No person shall sell, exchange or offer for sale within this
13 Commonwealth any pipe, pipe fitting, solder or flux commonly
14 used in plumbing systems that is not lead free. Solders that are
15 not lead free and that are commonly used in plumbing systems
16 include, but are not limited to, solid core or acid core
17 solders, such as 50-50 tin-lead solder and 85-15 tin-lead
18 solder.

19 Section 5. Prohibition of use of plumbing materials that are
20 not lead free.

21 No person shall use or authorize another to use any pipe,
22 pipe fitting, solder or flux that is not lead free in the
23 construction, modification or repair of any plumbing system.

24 This section shall not apply to plumbing systems in existence on
25 the effective date of this act but shall apply to modifications
26 and repairs of such systems after the effective date of this
27 act.

28 Section 6. Application of act.

29 This act shall not apply to the following:

30 (1) Bulk lead, as normally used for the repair of cast

1 iron pipe joints.

2 (2) Bar solder, as normally used in the construction and
3 repair of sheet metal duct work.

4 (3) All solders not used in the plumbing industry which
5 have automotive, electronic, industrial or other applications
6 and which have specifications distinct from solders commonly
7 used in plumbing systems.

8 Section 7. Powers and duties of Environmental Quality Board.

9 The Environmental Quality Board shall have the power and its
10 duty shall be to adopt such rules and regulations of the
11 department as it deems necessary for the implementation of this
12 act.

13 Section 8. Powers and duties of department.

14 The department shall have the power and its duty shall be to:

15 (1) Administer and enforce this act and any rules and
16 regulations adopted hereunder.

17 (2) Issue such orders and initiate such proceedings as
18 may be necessary for the enforcement of this act and any
19 rules and regulations adopted pursuant to this act. Those
20 actions shall include, but are not limited to, the initiation
21 of criminal prosecutions, including the issuance of summary
22 citations by agents of the department.

23 (3) Enter into agreements, at its discretion, with any
24 State agency or local agency for the purpose of delegating
25 any of its authority under this act. Any State agency or
26 local agency acting pursuant to a delegation agreement shall
27 have the same powers and duties otherwise vested in the
28 department to implement this act, to the extent delegated by
29 the agreement.

30 Section 9. Public notification.

1 (a) General rule.--The water supplier of each community
2 water system and each nontransient noncommunity water system
3 shall issue notice to persons served by the system who may be
4 affected by lead contamination of their drinking water in
5 conformance with this act and regulations adopted hereunder,
6 except as provided in subsection (b).

7 (b) Lead-free systems.--Notice under subsection (a) is not
8 required if the water supplier demonstrates to the department
9 that the public water system, including the residential and
10 nonresidential facilities connected to the system, is lead free.

11 (c) Compliance.--A water supplier who issues public
12 notification in compliance with the public notice requirements
13 established by the Environmental Protection Agency under 40 CFR
14 § 141.34 shall be deemed to be in compliance with this section
15 and need not provide additional notification under subsection
16 (a) before June 19, 1991, should such additional notification be
17 required by the department.

18 (d) Content of notice.--The content of the notice required
19 by this section shall include, but not be limited to, the
20 following:

21 (1) The potential sources of lead in the drinking water.

22 (2) Potential adverse health effects.

23 (3) Reasonably available methods of mitigating known or
24 potential lead content in drinking water.

25 (4) Any steps the public water system is taking to
26 mitigate lead content in drinking water.

27 (5) The necessity for seeking alternative water
28 supplies, if any.

29 (e) Rules and regulations.--The Environmental Quality Board
30 may adopt regulations establishing public notification

1 requirements under this section, including, but not limited to,
2 specific applicability criteria and frequency, manner and
3 content of notice.

4 (f) Departmental requirements as to notice.--The department
5 may require standardized notices under this section and may
6 require that notices under this section contain specific health
7 effects information.

8 (g) Notice by department.--In the event that a water
9 supplier fails to give notice to the public as required by this
10 section, the department, in its discretion, may perform this
11 notification on behalf of the water supplier and may assess
12 costs of notification on the responsible water supplier.

13 (h) Notice to be provided.--The water supplier shall provide
14 notice under this section despite the absence of a violation of
15 any drinking water standard as defined and established in the
16 Safe Drinking Water Act and its accompanying regulations in 25
17 Pa. Code Ch. 109 (relating to safe drinking water).

18 Section 10. Certification to public water system of lead-free
19 plumbing materials.

20 (a) When required.--A water supplier shall require, as a
21 condition of allowing a connection to the supplier's system,
22 that the person requesting or applying for the connection
23 certify that the materials used in the construction of the
24 plumbing system to be connected are lead free.

25 (b) Refusal of connection.--A water supplier shall refuse
26 connection to any person who is in violation of section 5 or who
27 fails to provide the certification required under this section.
28 Section 11. Inspections and searches.

29 (a) Authority of department.--The department is authorized
30 to make inspections and conduct tests or samplings, including

1 the sampling of plumbing products and materials and the
2 examination and copying of books, papers, records and data
3 pertinent to any matter under investigation in order to
4 determine compliance with this act. For these purposes, the duly
5 authorized agents and employees of the department are authorized
6 at all reasonable times to enter and examine any property,
7 facility, operation or activity.

8 (b) Access.--The owner, operator or other person in charge
9 of the property, facility, operation or activity under
10 subsection (a), upon presentation of proper identification and
11 purpose for inspection by the agents or employees of the
12 department, shall give these agents and employees free and
13 unrestricted entry and access. Upon refusal to grant entry or
14 access, the agent or employee may apply for a search warrant
15 authorizing entry and inspection to any Commonwealth official
16 authorized to issue a search warrant. The warrant shall be
17 issued upon a showing of probable cause. It shall be sufficient
18 probable cause to issue a search warrant authorizing the entry
19 and inspection if there is probable cause to believe that the
20 object of the investigation is subject to regulation under this
21 act and that access, examination or inspection is necessary to
22 enforce the provisions of this act.

23 (c) Time of inspection.--Public water systems and places
24 where plumbing supplies are sold are subject to inspection by
25 the department and its employees and agents once per year for
26 purposes of ascertaining compliance with this act. Residential
27 or nonresidential facilities subject to the requirements of this
28 act are subject to inspection by the department and its
29 employees and agents once during the construction, modification
30 or repair of such facilities.

(d) Additional inspections, etc.--The department and its employees and agents may conduct additional inspections, including:

- (1) follow-up inspections;
- (2) inspections to observe any practice or condition related to public health or safety; and
- (3) inspections to determine compliance with this act, the other statutes administered by the department, the department's regulations or any requirement of an order issued by the department.

(e) Threats to health, safety, etc.--The department and its employees and agents may also conduct inspections whenever any person presents information to the department giving the department reason to believe that a condition exists which may pose a threat to public health, safety or welfare or to the environment, or that there exists a violation of this act, of regulations adopted under this act, of orders issued pursuant to this act, or of any other statute or regulation administered by the department.

(f) Construction of section.--Nothing in this section shall be construed or understood to place any duty or obligation upon the department to conduct a minimum number of inspections per year, or to conduct a minimum number of inspections during a certain period, or to inspect for particular reasons.

Section 12. Public nuisances.

Any violation of any provision of this act, any rule or regulation of the department or any order of the department shall constitute a public nuisance. Any person who commits such a violation shall be liable for the costs of the abatement of the public nuisance caused by the violation. The Environmental

1 Hearing Board and any court of competent jurisdiction are hereby
2 given jurisdiction over actions to recover the costs of such
3 abatement. Any activity or condition which is declared by this
4 act to be a nuisance or which is otherwise in violation of this
5 act shall be abatable in the manner provided by law or equity
6 for the abatement of public nuisances.

7 Section 13. Penalties and remedies.

8 (a) Duty to comply with orders of department.--It shall be
9 the duty of any person to proceed diligently to comply with any
10 order issued by the department under this act. If such person
11 fails to proceed diligently or fails to comply with the order
12 within such time, if any, as may be specified, the person shall
13 be guilty of contempt and shall be punished by the court in an
14 appropriate manner; and for this purpose, application may be
15 made by the department to the Commonwealth Court, which court is
16 hereby granted jurisdiction.

17 (b) Equitable relief.--The department may proceed in equity
18 in the Commonwealth Court or in a court of common pleas having
19 jurisdiction to restrain or prevent violations of this act or to
20 compel compliance with this act or any rule, regulation or order
21 issued pursuant to this act.

22 (c) Summary offense.--A person who violates any provision of
23 this act, any rule or regulation of the department or any order
24 of the department, or who resists or interferes with an officer,
25 agent or employee of the department in the performance of his
26 duties, commits a summary offense and shall, upon conviction in
27 the county in which the offense was committed, be sentenced to
28 pay a fine of not less than \$100 nor more than \$1,000, and
29 costs, for each separate offense, or, in default of payment
30 thereof, shall be sentenced to imprisonment for a period of not

1 more than 30 days.

2 (d) Misdemeanor of the third degree.--Any person who
3 willfully or negligently violates any provision of this act, any
4 rule or regulation of the department or any order of the
5 department commits a misdemeanor of the third degree and shall,
6 upon conviction, be sentenced to pay a fine of not less than
7 \$1,250 nor more than \$12,500 for each separate offense or to
8 imprisonment for not more than one year, or both.

9 (e) Misdemeanor of the second degree.--Any person who, after
10 a conviction of a misdemeanor for any violation within two years
11 as provided in subsection (d), willfully or negligently violates
12 any provision of this act, any rule or regulation of the
13 department or any order of the department commits a misdemeanor
14 of the second degree and shall, upon conviction, be sentenced to
15 pay a fine of not less than \$1,250 nor more than \$25,000 for
16 each offense or to imprisonment for not more than two years, or
17 both.

18 (f) Civil penalties.--In addition to proceeding under any
19 other remedy available at law or in equity for a violation of
20 any provision of this act, any rule or regulation of the
21 department or any order of the department, the department may
22 assess a civil penalty upon a person for such violation. Such a
23 penalty may be assessed whether or not the violation was willful
24 or negligent. When the department assesses a civil penalty, it
25 shall inform the person of the amount of the penalty. The person
26 charged with the penalty shall then have 30 days to pay the
27 penalty in full, or, if the person wishes to contest either the
28 amount of the penalty or the fact of the violation, the person
29 shall within the 30-day period file an appeal of the action with
30 the Environmental Hearing Board. Failure to appeal within 30

1 days shall result in a waiver of all legal rights to contest the
2 violation or the amount of the penalty. The maximum civil
3 penalty which may be assessed pursuant to this section is \$1,000
4 per day for each violation. Each violation for each separate day
5 and each violation of any provision of this act, any rule or
6 regulation under this act or any order of the department shall
7 constitute a separate and distinct offense under this section.

8 (g) Civil action to compel compliance.--Any person having an
9 interest which is or may be adversely affected may commence a
10 civil action on his own behalf to compel compliance with this
11 act or any rule, regulation or order issued pursuant to this act
12 against any person alleged to be in violation of any provision
13 of this act or any rule, regulation or order issued pursuant to
14 this act. Any other provision of law to the contrary
15 notwithstanding, the courts of common pleas shall have
16 jurisdiction of such actions, and venue in such actions shall be
17 as set forth in the Rules of Civil Procedure concerning actions
18 in assumpsit.

19 (h) Additional remedies.--The penalties and remedies
20 prescribed by this act shall be deemed concurrent, and the
21 existence or exercise of any remedy shall not prevent the
22 department from exercising any other remedy hereunder, at law or
23 in equity.

24 (i) Violation defined.--For purposes of determining what
25 constitutes a violation under sections 4 and 5, a violation is
26 defined as follows:

27 (1) Under section 4, a violation means each separate
28 transaction.

29 (2) Under section 5, a violation means:

30 (i) use of materials that are not lead free in the

1 plumbing system of each service connection to a public
2 water system; or

3 (ii) use of materials that are not lead free in each
4 private individual water system.

5 (j) Separate offenses.--Violations on separate days shall
6 constitute separate offenses for purposes of this act.

7 Section 14. Local plumbing codes.

8 This act and the regulations adopted hereunder shall
9 supersede plumbing codes of local agencies to the extent that
10 those codes are less stringent than or otherwise inconsistent
11 with this act and the regulations adopted hereunder.

12 Section 15. Safe Drinking Water Account.

13 All fines and penalties collected under the penalty
14 provisions of this act shall be paid into the Safe Drinking
15 Water Account, as established by section 14 of the Safe Drinking
16 Water Act. Such funds are hereby appropriated to and shall be
17 administered by the department for such purposes as are
18 authorized in this act and in the Safe Drinking Water Act.

19 Section 16. Effective date.

20 This act shall take effect as follows:

21 (1) Sections 1, 2, 3 and 7 of this act shall take effect
22 immediately.

23 (2) The remainder of this act shall take effect in 18
24 months.