

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1237 Session of 2001

INTRODUCED BY ARGALL, BARD, CAPPELLI, CLYMER, DAILEY, DeWEESE, FRANKEL, HENNESSEY, HERMAN, KELLER, LAUGHLIN, R. MILLER, RUBLEY, SEMMEL, E. Z. TAYLOR, J. TAYLOR, THOMAS AND WATSON, MARCH 29, 2001

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 20, 2001

AN ACT

1 Providing for the transferring of liquefied petroleum gas, for
2 registration, for fees, for inspection, for records, for
3 training, for permits and for appeal; establishing the
4 Liquefied Petroleum Gas Advisory Board; providing for
5 insurance, for prohibitions and for penalties; and making
6 repeals.

TABLE OF CONTENTS

- 7
- 8 Section 1. Short title.
- 9 Section 2. Definitions.
- 10 Section 3. Transfer of LPG.
- 11 Section 4. Registration.
- 12 Section 5. Fees.
- 13 Section 6. Records.
- 14 Section 7. Operator training.
- 15 Section 8. Inspections.
- 16 Section 9. Siting.
- 17 Section 10. Application process.
- 18 Section 11. Appeal.

1 Section 12. Advisory board.
2 Section 13. Insurance.
3 Section 14. Prohibitions.
4 Section 15. Preemption of municipal regulations.
5 Section 16. Regulations.
6 Section 17. Enforcement and penalties.
7 Section 18. Administration.
8 Section 19. Other acts.
9 Section 20. Repeals.
10 Section 21. Effective date.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Short title.

14 This act shall be known and may be cited as the Propane and
15 Liquefied Petroleum Gas Act.

16 Section 2. Definitions.

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

20 "Advisory board." The Liquefied Petroleum Gas Advisory
21 Board.

22 "Authorized attendant." An employee of a manufacturer,
23 distributor, or user of LPG who has been trained, in a manner
24 approved by the Department of Labor and Industry, in the proper
25 performance of duties, and who has been officially recognized by
26 the facility operator to perform those duties.

27 "Bulk plant." An LPG storage facility, the primary purpose
28 of which is the distribution of LPG which has:

29 (1) a bulk storage capacity of more than 2,000 gallons;
30 and

1 (2) container-filling or tank-loading facilities on the
2 premises.

3 The term includes a consumer of LPG that uses storage tanks to
4 refill the consumer's own containers if the consumer's storage
5 facility has a bulk storage capacity of less than 2,000 gallons,
6 and the storage tanks are not owned by a distributor.

7 "Department." The Department of Labor and Industry of the
8 Commonwealth.

9 "Distributor." A person authorized by the Department of
10 Labor and Industry to sell or transfer LPG.

11 "Gallons." The term shall be measured in terms of water
12 capacity.

13 "Industrial user." Any person who is the consumer of LPG and
14 who maintains a total storage capacity at a site of more than
15 2,000 gallons and whose storage tanks are not otherwise
16 registered under a distributor.

17 "Industry standard." Those standards developed by the
18 National Fire Protection Association for the storage and
19 handling of liquefied petroleum gases.

20 "Liquefied petroleum gas" or "LPG." Any material in liquid
21 form that is composed predominately of any of the following
22 hydrocarbons or mixtures thereof:

23 (1) Propane.

24 (2) Propylene.

25 (3) Normal butane or isobutane.

26 (4) Butylenes.

27 "LPG facility." Distributors, bulk plants and industrial
28 users.

29 "Person." Any individual, firm, partnership, unincorporated
30 association, corporation, political subdivision or authority,

1 including the Commonwealth.

2 "Secretary." The Secretary of Labor and Industry of the
3 Commonwealth.

4 "Transfer." To cause LPG to pass from any pipeline, tank,
5 container, tank truck, receptacle or storage location to a
6 similar or different type of pipeline, tank, container, tank
7 truck, receptacle or storage location.

8 Section 3. Transfer of LPG.

9 (a) Authorization required.--No person shall transfer, sell,
10 fill, deliver or permit to be delivered any LPG or use a LPG
11 container or receptacle unless authorized to do so by the owner
12 of the LPG container and authorized by the department to do so,
13 or authorized to do so by emergency response agencies.

14 (b) Notification.--Whenever any person acting in behalf of
15 an authorized emergency response agency transfers LPG or
16 disconnects any LPG container, such person shall notify the
17 container owner within five days after such action.

18 (c) Container to be secured.--Any person disconnecting such
19 container shall secure the LPG container in a safe fashion.

20 Section 4. Registration.

21 (a) General rule.--The following shall register with and
22 obtain a permit from the department:

23 (1) Distributors.

24 (2) Bulk plants.

25 (3) Industrial users.

26 ~~(4) Owners of containers of 470 pounds water capacity or <—~~
27 ~~larger who are not otherwise registered.~~

28 (b) Submission of plans.--

29 (1) Prior to beginning construction or modification of
30 an LPG facility, the following requirements shall be met:

1 (i) Except as set forth in subparagraph (ii), the
2 owner of an LPG facility shall submit to the department
3 for its approval plans for the construction or
4 modification of the facility. The owner shall provide
5 additional technical information if it is requested by
6 the department for purposes of plan approval.

7 (ii) A distributor installing or expanding a bulk
8 plant or an industrial user with total storage capacity
9 of less than 9,000 gallons shall submit to the
10 department, in a manner specified by the department,
11 notice of intent to install.

12 (2) Before any LPG facility is put into use, any owner,
13 who is not a distributor, shall apply for and receive a
14 permit from the department.

15 Section 5. Fees.

16 (a) Establishment.--The department, in consultation with the
17 advisory board, shall establish fees by regulation for the
18 approval of new and expansion of existing LPG facilities,
19 permits and certification of training programs. ~~LPG facilities~~ ←
20 ~~shall not be required to pay additional fees as owners of~~
21 ~~individual containers of 470 pounds water capacity or larger.~~

22 (b) Use of fees.--The total fees collected by the department
23 annually shall equal as closely as possible the expenditures
24 necessary for the enforcement of this act. All fees received
25 pursuant to this act shall be paid into the State Treasury
26 through the Department of Revenue.

27 (c) Effective date.--This section shall not take effect
28 until the next annual billing by the department following the
29 effective date of this act and adoption of appropriate
30 regulations.

1 (d) Interim.--Until this section takes effect, fees shall be
2 assessed under ~~section 3.2 of the act of December 27, 1951~~ <—
3 ~~(P.L.1793, No.475)~~, referred to as the ~~Liquefied Petroleum Gas~~
4 ~~Act~~. SECTION 613-A OF THE ACT OF APRIL 9, 1929 (P.L.177, <—
5 NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929.

6 Section 6. Records.

7 Adequate records shall be maintained by each LPG facility
8 owner as to the installation addresses of all customers served.
9 The records shall be made available to the department upon
10 request at a location specified by the LPG facility owner during
11 normal business hours. Records may be maintained in any
12 accessible form, including paper or computer disk.

13 Section 7. Operator training.

14 (a) Required training.--No individual shall transfer LPG
15 unless the individual is an authorized attendant. Each LPG
16 facility operator shall develop and submit to the department a
17 program of training which is in accordance with standards
18 approved by the department. The department shall consult with
19 the Advisory Board and the Pennsylvania Propane Gas Association
20 in the development of an approved training program.

21 (b) Records.--The LPG facility operator shall maintain
22 training records and make those records available to the
23 department in accordance with this act.

24 Section 8. Inspections.

25 (a) LPG facilities.--The department shall establish a
26 schedule for inspection of LPG facilities. An LPG facility shall
27 not be inspected more than once every two years.

28 ~~(b) Individual owners. The department shall inspect~~ <—
29 ~~individually owned containers with water capacity of at least~~
30 ~~470 pounds not more than once every two years on a schedule~~

1 ~~established by the department.~~

2 ~~(e)~~ (B) General inspection authority.--The department may, ←
3 when it has just cause to believe there is a threat to public
4 safety at a particular installation, inspect any LPG facility or
5 privately owned container, with water storage capacity of at
6 least 470 pounds.

7 Section 9. Siting.

8 The department shall have the authority to develop criteria
9 applicable to the siting of all new LPG facilities in excess of
10 400,000 gallons and the expansion of all existing LPG facilities
11 if the expansion would exceed 400,000 gallons total capacity.

12 Those criteria shall include, but not be limited to:

13 (1) Storage quantities.

14 (2) Proximity to populated areas and public ways.

15 (3) The impact of any rejection from the department upon
16 the LPG facility's ability to service current and anticipated
17 consumer needs and upon the LPG facility's business
18 investment.

19 (4) Risk to and from existing adjacent facilities.

20 (5) Topography of the site.

21 (6) Access for emergency vehicle response.

22 (7) Utilities, both public and private.

23 (8) Requirements for receipt or shipment of products.

24 (9) Compliance with local ~~code~~ and LAND USE ordinances ←
25 as provided in section 15.

26 (10) The safety plan proposed by the LPG facility, such
27 as emergency systems, spill containment, fire protection,
28 fencing and lighting.

29 Section 10. Application process.

30 (a) Application required.--Any person that plans to operate

1 a new LPG facility in excess of 400,000 gallons or expand an
2 existing LPG facility to exceed 400,000 gallons shall submit an
3 application to the department. Upon submission of the
4 application to the department, the applicant shall notify the
5 municipality where the facility is located that the applicant
6 has filed an application with the department. Notification shall
7 ~~be in a manner provided by the department.~~ BE MADE VIA CERTIFIED <—
8 MAIL.

9 (b) Publication.--Within ten business days of receipt of the
10 application, the department shall arrange for publication of a
11 notice of application in the Pennsylvania Bulletin. THE NOTICE <—
12 SHALL INCLUDE THE DUE DATE FOR PROTESTS OR COMMENTS.

13 ~~(c) Protest. Any party that wishes to protest the approval~~ <—
14 (C) PROTEST OR COMMENTS.-- <—

15 (1) THE MUNICIPALITY OR COUNTY IN WHICH THE LPG FACILITY
16 WOULD BE LOCATED IS A PARTY FOR PURPOSES OF PROTEST OR
17 COMMENTS ON AN APPLICATION FOR SITING.

18 (2) ANY PARTY THAT WISHES TO PROTEST THE APPROVAL of an
19 application must file a notice of protest with the department
20 within ~~30~~ 45 days after the date of the publication of the <—
21 notice of application. ~~The municipality in which the LPG~~ <—
22 ~~facility would be located is a party for purposes of this~~
23 ~~section. Any party, including a municipality, who does not~~
24 ~~file~~ ANY PARTY THAT DOES NOT FILE a protest on a timely basis <—
25 shall be barred from any participation in the application or
26 appeal process, EXCEPT AS PROVIDED IN PARAGRAPH (3). <—

27 ~~(d) Written comments. The applicant and any party who has~~ <—
28 ~~filed a notice of protest shall submit written comments to the~~
29 ~~department supporting their respective positions within 45 days~~
30 ~~of the publication of the notice of application in the~~

2 (3) IN LIEU OF A PROTEST, A MUNICIPALITY OR COUNTY MAY ←
3 SUBMIT WRITTEN COMMENTS ON THE APPLICATION WITHIN 45 DAYS
4 FOLLOWING THE NOTICE DESCRIBED IN SUBSECTION (B). IF THE
5 MUNICIPALITY FAILS TO FILE A PROTEST OR COMMENTS ON A TIMELY
6 BASIS, THE MUNICIPALITY OR COUNTY SHALL BE DEEMED TO HAVE
7 WAIVED ITS STATUS AS A PARTY IN ANY SUBSEQUENT ADMINISTRATIVE
8 PROCEEDING OR APPEAL.

9 ~~(e)~~ (D) Review.--The department shall review the written ←
10 submissions and may inspect the site. The department shall issue
11 a written determination approving or disapproving the
12 application within 90 days of the publication of the notice of
13 application, and a copy of the notice shall be sent to all
14 interested parties by certified mail. This time may be extended
15 only upon receipt of a written approval of the extension from
16 the applicant.

17 Section 11. Appeal.

18 (a) Determination.--The department shall issue its initial
19 determination. A party may appeal the initial determination to
20 the department. An appeal must be filed within 30 days.

21 (b) Hearing.--If an appeal is filed under subsection (a), a
22 formal hearing shall then be conducted in accordance with the
23 provisions of 2 Pa.C.S. (relating to administrative law and
24 procedure) by a hearing examiner appointed by the secretary. The
25 department may, at its discretion, secure an independent
26 scientific consultant with knowledge of LPG facilities who shall
27 prepare and issue a report, which shall be made part of the
28 record before the hearing examiner. The cost of the services of
29 this expert shall be equally divided between the department and
30 the parties. Parties may also secure expert testimony if they

1 desire. The order of the hearing examiner shall be appealable to
2 the Industrial Board within 15 days of its receipt by a party.

3 (c) Decision.--The Industrial Board shall issue its decision
4 within 60 days of the department's receipt of the appeal from
5 the hearing examiner's decision.

6 (d) Appeal of decision.--Any party may appeal a decision of
7 the Industrial Board to the Commonwealth Court within 30 days of
8 the date of issuance of the decision.

9 Section 12. Advisory board.

10 (a) Establishment.--There is hereby established a Liquefied
11 Petroleum Gas Advisory Board within the department. The members
12 of the board shall be appointed by the secretary and shall
13 advise the Industrial Board in matters under this act.

14 (b) Members.--The board shall consist of seven members as
15 follows:

16 (1) One representative of the department who shall serve
17 as chairperson.

18 (2) Five representatives from the Liquefied Petroleum
19 Gas Industry. To the extent possible, the representatives
20 must represent various segments of the industry and have
21 knowledge of LPG facilities of different sizes and types of
22 storage.

23 (3) One consumer representative.

24 (c) Conduct of business.--The board shall conduct business
25 in accordance with the 65 Pa.C.S. Ch. 7 (relating to open
26 meetings).

27 (d) Terms.--The members of the board shall be appointed to
28 terms of three years. Terms following the initial appointment
29 shall be staggered so that three members initially serve a
30 three-year appointment, two members serve a two-year appointment

1 and two members serve a one-year appointment.

2 (e) Duties.--The board shall:

3 (1) Review and comment on all fee schedules prior to
4 promulgation and adoption by the department.

5 (2) Review and comment on all regulations prior to
6 release of such regulations to the Office of Attorney General
7 under section 204(b) of the act of October 15, 1980 (P.L.950,
8 No.164), known as the Commonwealth Attorneys Act.

9 (3) Review and comment on all amendments to industry
10 standards.

11 (4) Consider enforcement problems within the industry.

12 (5) Recommend appropriate training programs for
13 functions performed by various types and classifications of
14 industry employees. Such training programs may include video,
15 computer-based printed material and attendance at industry-
16 sponsored programs, seminars and demonstrations.

17 (6) Recommend scientific experts with knowledge of LPG
18 facilities for use in the appeals process.

19 (7) Consider other issues specified by the secretary.

20 (8) ADVISE THE INDUSTRIAL BOARD ON VARIANCES IN LPG ←
21 MATTERS CONSISTENT WITH SECTION 2214 OF THE ACT OF APRIL 9,
22 1929 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF
23 1929.

24 (f) Compensation.--Members of the board shall serve without
25 compensation but shall be reimbursed for actual and reasonable
26 expenses related to the performance of their official duties.
27 Reimbursement shall be allocated from funds available under this
28 act.

29 Section 13. Insurance.

30 An LPG facility shall secure and maintain policies of

1 liability insurance in the following amounts:

2 (1) An LPG facility with a storage capacity of not more
3 than 9,000 gallons shall maintain minimum liability coverage
4 of \$250,000.

5 (2) An LPG facility with a storage capacity in excess of
6 9,000 gallons shall maintain minimum liability coverage of
7 \$1,000,000 per incident and \$2,000,000 in the aggregate.

8 Section 14. Prohibitions.

9 No person shall install, service, fill or for any other
10 purpose place a tank of LPG on top of any roof of a dwelling or
11 structure within this Commonwealth unless the tank was installed
12 prior to January 1, 1980.

13 Section 15. Preemption of municipal regulations.

14 (a) Rights reserved by Commonwealth.--The Commonwealth
15 specifically reserves the sole right and ability to regulate any
16 and all matters related to the operation of the Liquefied
17 Petroleum Gas Industry in accordance with this act.

18 (b) Regulations not to conflict.--

19 ~~(1) Except for cities of the first and second class, and~~ <—
20 ~~as provided in paragraph (2), no municipality or any other~~

21 (1) NO MUNICIPALITY OR ANY OTHER political subdivision <—
22 shall adopt or enforce any ordinance or regulation which
23 differs from or conflicts in whole or in part with the
24 provisions of this act or with the regulations promulgated
25 under this act with regard to permits, licensing standards,
26 fees, construction, installation, maintenance, ~~operation,~~ <—
27 ~~inspection or location of LPG tanks or plants or~~ OPERATION, <—
28 INSPECTION, LOCATION OR PLACEMENT OF LPG CONTAINERS OR LPG
29 FACILITIES OR any other matters related to this industry
30 within this Commonwealth. ~~Notwithstanding any provisions of~~ <—

1 ~~NFPA 58 to the contrary, a municipality retains the right to~~
2 ~~establish, for LPG tanks, side and rear yard setbacks of ten~~
3 ~~feet from a property line in residential districts.~~ PROVIDED ←
4 FURTHER, THAT A MUNICIPALITY MAY NOT PROHIBIT PLACEMENT OF
5 ANY LPG CONTAINER IN ANY EXISTING YARD SETBACK AREA, EXCEPT
6 TO ESTABLISH AN ABSOLUTE SETBACK OF 10 FEET FROM A
7 RESIDENTIAL PROPERTY LINE.

8 (2) A municipality shall retain the right pursuant to
9 local zoning ordinances to require any LPG facility to locate
10 within approved residential, industrial, commercial or other
11 zones and to require an LPG facility to obtain zoning
12 permits, pay zoning fees and undergo inspections related to
13 the zoning of the LPG facility. Any building at an LPG
14 facility shall comply with the municipal standards applied to
15 primary structures.

16 (3) ~~A~~ EXCEPT AS PROVIDED IN THIS SUBSECTION, A ←
17 municipality may not prohibit or otherwise regulate the use
18 or storage of LPG including the location or replacement of
19 storage tanks for LPG.

20 (c) Definitions.--As used in this section, "differs" or
21 "conflicts" shall include, but not be limited to, regulation of
22 any area not addressed in this statute.

23 Section 16. Regulations.

24 (a) Regulatory authority.--The department shall promulgate
25 and enforce regulations to implement this act. These regulations
26 may include setting forth minimum general standards covering the
27 design, installation and construction of containers and
28 pertinent equipment for the storage and handling of liquefied
29 petroleum gases, specifying the odorization of the gases and
30 establishing guidelines for the processes and technologies that

1 are not covered by industry standards. The regulations shall be
2 such as are reasonably necessary for the protection of the
3 health, welfare and safety of the public and persons using such
4 materials and utilize the National Fire Protection Association
5 industry standards.

6 (b) Interim regulations.--The department shall use the
7 current Pennsylvania LPG regulations and the 1992 edition of
8 National Fire Protection Association 54 and 58, including all
9 cross references for purposes of this act, until new regulations
10 are promulgated and published as final rule in the Pennsylvania
11 Bulletin and the effective date of the new regulations has
12 arrived, unless otherwise specified in this act.

13 (c) Revision of regulations.--The department may revise the
14 regulations as necessary to implement this act at any time. Each
15 regulation based on a revised edition of an industry standard
16 shall take effect no earlier than two years following the
17 effective date of the industry standard.

18 Section 17. Enforcement and penalties.

19 (a) Enforcement.--

20 (1) The department shall enforce this act and the
21 regulations promulgated under this act.

22 (2) The department may initiate criminal prosecutions
23 under this section.

24 (b) Penalties.--

25 (1) Except as provided in paragraph (2), a person that
26 violates this act or a regulation promulgated under this act
27 commits a summary offense and shall upon conviction, be
28 sentenced to pay a fine of not more than \$500 or to
29 imprisonment for not more than ten days.

30 (2) A person that, after being sentenced under paragraph

1 (1), violates this act or a regulation promulgated under this
2 act commits a summary offense and shall upon conviction, be
3 sentenced to pay a fine of not more than \$1,000 or to
4 imprisonment for not more than 30 days.

5 (c) Collection of fines.--All fines collected under this act
6 shall be forwarded to the Department of Revenue, which shall
7 transmit the funds to the State Treasury.

8 Section 18. Administration.

9 (a) Other statutes.--The following acts or parts of acts
10 shall be administered jointly with this act:

11 Act of April 9, 1929 (P.L.177, No.175), known as The
12 Administrative Code of 1929.

13 Act of June 18, 1998 (P.L.655, NO.85), known as the Boiler
14 and Unfired Pressure Vessel Law.

15 (b) Restriction.--Nothing in this act shall be construed as
16 giving the department the authority to regulate persons that
17 both sell LPG and the container in which the LPG is contained if
18 the container is not more than 2.5 pounds water capacity.

19 Section 19. Other acts.

20 Any LPG facility or distributor covered by this act shall not
21 be subject to the act of December 10, 1974 (P.L.852, No.287),
22 referred to as the Underground Utility Line Protection Law., ~~the~~ ←
23 ~~act of December 7, 1990 (P.L.639, No.165), known as the~~
24 ~~Hazardous Material Emergency Planning and Response Act, or the~~
25 ~~act of November 10, 1999 (P.L.491, No.45), known as the~~
26 ~~Pennsylvania Construction Code Act, or any other act, which does~~
27 ~~not expressly regulate propane and/or liquefied petroleum gas.~~

28 ANY REFERENCE IN STATUTE OR REGULATION TO THE ACT OF DECEMBER ←
29 27, 1951 (P.L.1793, NO.475), REFERRED TO AS THE LIQUEFIED
30 PETROLEUM GAS ACT, SHALL BE DEEMED A REFERENCE TO THIS ACT.

1 Section 20. Repeals.

2 (a) Absolute.--The act of December 27, 1951 (P.L.1793,
3 No.475), referred to as the Liquefied Petroleum Gas Act, is
4 repealed.

5 (b) General.--All other acts and parts of acts are repealed
6 insofar as they are inconsistent with this act.

7 Section 21. Effective date.

8 This act shall take effect in 60 days.