
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1237 Session of
2001

INTRODUCED BY ARGALL, BARD, CAPPELLI, CLYMER, DAILEY, DeWEESE,
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MARCH 29, 2001

SENATOR THOMPSON, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, APRIL 15, 2002

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.

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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 (b) Submission of plans.--

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

29 (i) Except as set forth in subparagraph (ii), the
30 owner of an LPG facility shall submit to the department

1 for its approval plans for the construction or
2 modification of the facility. The owner shall provide
3 additional technical information if it is requested by
4 the department for purposes of plan approval.

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

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

13 Section 5. Fees.

14 (a) Establishment.--The department, in consultation with the
15 advisory board, shall establish fees by regulation for the
16 approval of new and expansion of existing LPG facilities,
17 permits and certification of training programs.

18 (b) ~~Use of~~ AMOUNT OF TOTAL fees.--The total fees collected <—
19 by the department annually shall equal as closely as possible
20 the expenditures necessary for the enforcement of this act. THE <—
21 DEPARTMENT, WHEN ESTABLISHING FEES PURSUANT TO THIS SECTION,
22 SHALL UTILIZE A MULTIYEAR COST AVERAGING APPROACH. All fees
23 received pursuant to this act shall be paid into the State
24 Treasury through the Department of Revenue.

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

29 (d) Interim.--Until this section takes effect, fees shall be
30 assessed under section 613-A of the act of April 9, 1929

1 (P.L.177, No.175), known as The Administrative Code of 1929.

2 Section 6. Records.

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

9 Section 7. Operator training.

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

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

20 Section 8. Inspections.

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

24 (b) General inspection authority.--The department may, when
25 it has just cause to believe there is a threat to public safety
26 at a particular installation, inspect any LPG facility or
27 privately owned container, with water storage capacity of at
28 least 470 pounds.

29 Section 9. Siting.

30 The department shall have the authority to develop criteria

1 applicable to the siting of all new LPG facilities in excess of
2 400,000 gallons and the expansion of all existing LPG facilities
3 if the expansion would exceed 400,000 gallons total capacity.

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

5 (1) Storage quantities.

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

7 (3) The impact of any rejection from the department upon
8 the LPG facility's ability to service current and anticipated
9 consumer needs and upon the LPG facility's business
10 investment.

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

12 (5) Topography of the site.

13 (6) Access for emergency vehicle response.

14 (7) Utilities, both public and private.

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

16 (9) Compliance with local land use ordinances as
17 provided in section 15.

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

21 Section 10. Application process.

22 (a) Application required.--Any person that plans to operate
23 a new LPG facility in excess of 400,000 gallons or expand an
24 existing LPG facility to exceed 400,000 gallons shall submit an
25 application to the department. Upon submission of the
26 application to the department, the applicant shall notify the
27 municipality where the facility is located that the applicant
28 has filed an application with the department. Notification shall
29 be made via certified mail.

30 (b) Publication.--Within ten business days of receipt of the

1 application, the department shall arrange for publication of a
2 notice of application in the Pennsylvania Bulletin. The notice
3 shall include the due date for protests or comments.

4 (c) Protest or comments.--

5 (1) The municipality or county in which the LPG facility
6 would be located is a party for purposes of protest or
7 comments on an application for siting.

8 (2) Any party that wishes to protest the approval of an
9 application must file a notice of protest with the department
10 within 45 days after the date of the publication of the
11 notice of application. Any party that does not file a protest
12 on a timely basis shall be barred from any participation in
13 the application or appeal process, except as provided in
14 paragraph (3).

15 (3) In lieu of a protest, a municipality or county may
16 submit written comments on the application within 45 days
17 following the notice described in subsection (b). If the
18 municipality fails to file a protest or comments on a timely
19 basis, the municipality or county shall be deemed to have
20 waived its status as a party in any subsequent administrative
21 proceeding or appeal.

22 (d) Review.--The department shall review the written
23 submissions and may inspect the site. The department shall issue
24 a written determination approving or disapproving the
25 application within 90 days of the publication of the notice of
26 application, and a copy of the notice shall be sent to all
27 interested parties by certified mail. This time may be extended
28 only upon receipt of a written approval of the extension from
29 the applicant.

30 Section 11. Appeal.

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

4 (b) Hearing.--If an appeal is filed under subsection (a), a
5 formal hearing shall then be conducted in accordance with the
6 provisions of 2 Pa.C.S. (relating to administrative law and
7 procedure) by a hearing examiner appointed by the secretary. The
8 department may, at its discretion, secure an independent
9 scientific consultant with knowledge of LPG facilities who shall
10 prepare and issue a report, which shall be made part of the
11 record before the hearing examiner. The cost of the services of
12 this expert shall be equally divided between the department and
13 the parties. Parties may also secure expert testimony if they
14 desire. The order of the hearing examiner shall be appealable to
15 the Industrial Board within 15 days of its receipt by a party.

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

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

22 Section 12. Advisory board.

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

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

29 (1) One representative of the department who shall serve
30 as chairperson.

1 (2) Five representatives from the Liquefied Petroleum
2 Gas Industry. To the extent possible, the representatives
3 must represent various segments of the industry and have
4 knowledge of LPG facilities of different sizes and types of
5 storage.

6 (3) One consumer representative.

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

10 (d) Terms.--The members of the board shall be appointed to
11 terms of three years. Terms following the initial appointment
12 shall be staggered so that three members initially serve a
13 three-year appointment, two members serve a two-year appointment
14 and two members serve a one-year appointment.

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

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

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

22 (3) Review and comment on all amendments to industry
23 standards.

24 (4) Consider enforcement problems within the industry.

25 (5) Recommend appropriate training programs for
26 functions performed by various types and classifications of
27 industry employees. Such training programs may include video,
28 computer-based printed material and attendance at industry-
29 sponsored programs, seminars and demonstrations.

30 (6) Recommend scientific experts with knowledge of LPG

1 facilities for use in the appeals process.

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

3 (8) Advise the Industrial Board on variances in LPG
4 matters consistent with section 2214 of the act of April 9,
5 1929 (P.L.177, No.175), known as The Administrative Code of
6 1929.

7 (f) Compensation.--Members of the board shall serve without
8 compensation but shall be reimbursed for actual and reasonable
9 expenses related to the performance of their official duties.
10 Reimbursement shall be allocated from funds available under this
11 act.

12 Section 13. Insurance.

13 An LPG facility shall secure and maintain policies of
14 liability insurance in the following amounts:

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

18 (2) An LPG facility with a storage capacity in excess of
19 9,000 gallons shall maintain minimum liability coverage of
20 \$1,000,000 per incident and \$2,000,000 in the aggregate.

21 Section 14. Prohibitions.

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

26 Section 15. Preemption of municipal regulations.

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

1 (b) Regulations not to conflict.--

2 (1) No municipality or any other political subdivision
3 shall adopt or enforce any ordinance or regulation which
4 differs from or conflicts in whole or in part with the
5 provisions of this act or with the regulations promulgated
6 under this act with regard to permits, licensing standards,
7 fees, construction, installation, maintenance, operation,
8 inspection, location or placement of LPG containers or LPG
9 facilities or any other matters related to this industry
10 within this Commonwealth. Provided further, that a
11 municipality may not prohibit placement of any LPG container
12 in any existing yard setback area, except to establish an
13 absolute setback of 10 feet from a residential property line.

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

22 (3) Except as provided in this subsection, a
23 municipality may not prohibit or otherwise regulate the use
24 or storage of LPG including the location or replacement of
25 storage tanks for LPG.

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

29 Section 16. Regulations.

30 (a) Regulatory authority.--The department shall promulgate

1 and enforce regulations to implement this act. These regulations
2 may include setting forth minimum general standards covering the
3 design, installation and construction of containers and
4 pertinent equipment for the storage and handling of liquefied
5 petroleum gases, specifying the odorization of the gases and
6 establishing guidelines for the processes and technologies that
7 are not covered by industry standards. The regulations shall be
8 such as are reasonably necessary for the protection of the
9 health, welfare and safety of the public and persons using such
10 materials and utilize the National Fire Protection Association
11 industry standards.

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

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

24 Section 17. Enforcement and penalties.

25 (a) Enforcement.--

26 (1) The department shall enforce this act and the
27 regulations promulgated under this act.

28 (2) The department may initiate criminal prosecutions
29 under this section.

30 (b) Penalties.--

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

6 (2) A person that, after being sentenced under paragraph
7 (1), violates this act or a regulation promulgated under this
8 act commits a summary offense and shall upon conviction, be
9 sentenced to pay a fine of not more than \$1,000 or to
10 imprisonment for not more than 30 days.

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

14 Section 18. Administration.

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

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

19 Act of June 18, 1998 (P.L.655, No.85), known as the Boiler
20 and Unfired Pressure Vessel Law.

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

25 Section 19. Other acts.

26 Any LPG facility or distributor covered by this act shall not
27 be subject to the act of December 10, 1974 (P.L.852, No.287),
28 referred to as the Underground Utility Line Protection Law.

29 Any reference in statute or regulation to the act of December
30 27, 1951 (P.L.1793, No.475), referred to as the Liquefied

1 Petroleum Gas Act, shall be deemed a reference to this act.

2 Section 20. Repeals.

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

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

8 Section 21. Effective date.

9 This act shall take effect in 60 days.