
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

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, APRIL 29, 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~~ DETERMINATION shall be
27 ~~sent to all interested parties by certified mail.~~ BY CERTIFIED
28 MAIL TO THE APPLICANT AND TO ALL PARTIES WHO FILED A NOTICE OF
29 PROTEST OR SUBMITTED WRITTEN COMMENTS PURSUANT TO SUBSECTION
30 (C). This time may be extended only upon receipt of a written

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1 approval of the extension from the applicant.

2 Section 11. Appeal.

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

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

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

23 (d) Appeal of decision.--Any party may appeal a decision of
24 the Industrial Board ~~to the Commonwealth Court within 30 days of~~ <—
25 ~~the date of issuance of the decision.~~ IN ACCORDANCE WITH THE <—
26 PROVISIONS OF 2 PA.C.S. CH. 7 SUBCH. A (RELATING TO JUDICIAL
27 REVIEW OF COMMONWEALTH AGENCY ACTION).

28 Section 12. Advisory board.

29 (a) Establishment.--There is hereby established a Liquefied
30 Petroleum Gas Advisory Board within the department. The members

1 of the board shall be appointed by the secretary and shall
2 advise the Industrial Board in matters under this act.

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

5 (1) One representative of the department who shall serve
6 as chairperson.

7 (2) Five representatives from the Liquefied Petroleum
8 Gas Industry. To the extent possible, the representatives
9 must represent various segments of the industry and have
10 knowledge of LPG facilities of different sizes and types of
11 storage.

12 (3) One consumer representative.

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

16 (d) Terms.--The members of the board shall be appointed to
17 terms of three years. Terms following the initial appointment
18 shall be staggered so that three members initially serve a
19 three-year appointment, two members serve a two-year appointment
20 and two members serve a one-year appointment.

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

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

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

28 (3) Review and comment on all amendments to industry
29 standards.

30 (4) Consider enforcement problems within the industry.

1 (5) Recommend appropriate training programs for
2 functions performed by various types and classifications of
3 industry employees. Such training programs may include video,
4 computer-based printed material and attendance at industry-
5 sponsored programs, seminars and demonstrations.

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

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

9 (8) Advise the Industrial Board on variances in LPG
10 matters consistent with section 2214 of the act of April 9,
11 1929 (P.L.177, No.175), known as The Administrative Code of
12 1929.

13 (f) Compensation.--Members of the board shall serve without
14 compensation but shall be reimbursed for actual and reasonable
15 expenses related to the performance of their official duties.
16 Reimbursement shall be allocated from funds available under this
17 act.

18 Section 13. Insurance.

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

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

24 (2) An LPG facility with a storage capacity in excess of
25 9,000 gallons shall maintain minimum liability coverage of
26 \$1,000,000 per incident and \$2,000,000 in the aggregate.

27 Section 14. Prohibitions.

28 No person shall install, service, fill or for any other
29 purpose place a tank of LPG on top of any roof of a dwelling or
30 structure within this Commonwealth unless the tank was installed

1 prior to January 1, 1980.

2 Section 15. Preemption of municipal regulations.

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

7 (b) Regulations not to conflict.--

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

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

28 (3) Except as provided in this subsection, a
29 municipality may not prohibit or otherwise regulate the use
30 or storage of LPG including the location or replacement of

1 storage tanks for LPG.

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

5 Section 16. Regulations.

6 (a) Regulatory authority.--The department shall promulgate
7 and enforce regulations to implement this act. These regulations
8 may include setting forth minimum general standards covering the
9 design, installation and construction of containers and
10 pertinent equipment for the storage and handling of liquefied
11 petroleum gases, specifying the odorization of the gases and
12 establishing guidelines for the processes and technologies that
13 are not covered by industry standards. The regulations shall be
14 such as are reasonably necessary for the protection of the
15 health, welfare and safety of the public and persons using such
16 materials and utilize the National Fire Protection Association
17 industry standards.

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

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

30 Section 17. Enforcement and penalties.

1 (a) Enforcement.--

2 (1) The department shall enforce this act and the
3 regulations promulgated under this act.

4 (2) The department may initiate criminal prosecutions
5 under this section.

6 (b) Penalties.--

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

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

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

20 Section 18. Administration.

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

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

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

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

1 Section 19. Other acts.

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

5 Any reference in statute or regulation to the act of December
6 27, 1951 (P.L.1793, No.475), referred to as the Liquefied
7 Petroleum Gas Act, shall be deemed a reference to this act.

8 Section 20. Repeals.

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

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

14 Section 21. Effective date.

15 This act shall take effect in 60 days.