

No. 1989-33

## AN ACT

SB 283

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

## TABLE OF CONTENTS

- Section 1. Short title.
- Section 2. Declaration of purpose.
- Section 3. Definitions.
- Section 4. Prohibition of sale of plumbing materials that are not lead free.
- Section 5. Prohibition of use of plumbing materials that are not lead free.
- Section 6. Application of act.
- Section 7. Powers and duties of Environmental Quality Board.
- Section 8. Powers and duties of department.
- Section 9. Public notification.
- Section 10. Certification to public water system of lead-free plumbing materials.
- Section 11. Inspections and searches.
- Section 12. Public nuisances.
- Section 13. Penalties and remedies.
- Section 14. Local plumbing codes.
- Section 15. Safe Drinking Water Account.
- Section 16. Construction.
- Section 17. Severability.
- Section 18. Effective date.

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

Section 1. Short title.

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

Section 2. Declaration of purpose.

The purposes of this act are to:

- (1) Protect public health and safety by prohibiting the sale of certain leaded materials commonly used in plumbing systems and prohibiting their use in plumbing system construction, modification and repair.
- (2) Provide for public notice of the potential for lead contamination of drinking water consumed by users of public water systems.

### Section 3. Definitions.

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

“Community water system.” A community water system as defined in the Safe Drinking Water Act.

“Department.” The Department of Environmental Resources of the Commonwealth.

“Environmental Hearing Board.” The board established pursuant to section 1921-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, for the purposes set forth in that section.

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

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

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

“Nontransient noncommunity water system.” A nontransient noncommunity water system as defined in regulations promulgated by the Environmental Protection Agency at 40 CFR 141.2.

“Person.” Any individual, partnership, association, company, corporation, municipality, municipal authority or political subdivision, or any agency of the Federal or State government. The term includes the officers, employees and agents of any partnership, association, company, corporation, municipality, municipal authority or political subdivision, or of any agency of the Federal or State government.

“Plumbing system.” All piping, fixtures and appurtenances used to transport water to, within and from a building, including all residential and nonresidential facilities and source, transmission, treatment and distribution facilities of public water systems.

“Public water system.” A public water system as defined in the Safe Drinking Water Act.

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

“State agency.” Any Commonwealth department, board, commission or agency other than the Department of Environmental Resources.

“Water supplier.” Any person who owns or operates a public water system.

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

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

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

No person shall use or authorize another to use any pipe, pipe fitting, solder or flux that is not lead free in the construction, modification or repair of any plumbing system. This section shall not apply to plumbing systems in existence on the effective date of this act but shall apply to modifications and repairs of such systems after the effective date of this act.

**Section 6. Application of act.**

This act shall not apply to the following:

- (1) Bulk lead, as normally used for the repair of cast iron pipe joints.
- (2) Bar solder, as normally used in the construction and repair of sheet metal duct work.
- (3) All solders not used in the plumbing industry which have automotive, electronic, industrial or other applications and which have specifications distinct from solders commonly used in plumbing systems.

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

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

**Section 8. Powers and duties of department.**

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

- (1) Administer and enforce this act and any rules and regulations adopted hereunder.
- (2) Issue such orders and initiate such proceedings as may be necessary for the enforcement of this act and any rules and regulations adopted pursuant to this act. Those actions shall include, but are not limited to, the initiation of criminal prosecutions, including the issuance of summary citations by agents of the department.
- (3) Enter into agreements, at its discretion, with any State agency or local agency for the purpose of delegating any of its authority under this act. Any State agency or local agency acting pursuant to a delegation agreement shall have the same powers and duties otherwise vested in the department to implement this act, to the extent delegated by the agreement.

**Section 9. Public notification.**

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

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

(c) Compliance.—A water supplier who issues public notification in compliance with the public notice requirements established by the Environmental Protection Agency under 40 CFR 141.34 shall be deemed to be in compliance with this section and need not provide additional notification

under subsection (a) before June 19, 1991, should such additional notification be required by the department.

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

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

(2) Potential adverse health effects.

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

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

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

(e) Rules and regulations.—The Environmental Quality Board may adopt regulations establishing public notification requirements under this section, including, but not limited to, specific applicability criteria and frequency, manner and content of notice.

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

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

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

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

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

(b) Refusal of connection.—A water supplier shall refuse connection to any person who is in violation of section 5 or who fails to provide the certification required under this section.

(c) Exemption from certification.—A person requesting or applying for the connection shall be exempted from the requirements of subsection (a) if the municipality within which the connection is to be made has adopted the Building Officials and Code Administrators (BOCA) National Plumbing Code of 1987, or another plumbing or building code which sets forth lead-free requirements which are consistent with the provisions of this act. The water supplier shall determine which municipalities within its service areas have adopted ordinances which set forth lead-free requirements consistent with the provisions of this act. For municipalities which have not adopted such ordinance, the water suppliers shall require certification in accordance with the provisions of this section. For municipalities which have adopted such ordinance, no certification shall be required.

**Section 11. Inspections and searches.**

(a) Authority of department.—The department is authorized to make inspections and conduct tests or samplings, including the sampling of plumbing products and materials and the examination and copying of books, papers, records and data pertinent to any matter under investigation in order to determine compliance with this act. For these purposes, the duly authorized agents and employees of the department are authorized at all reasonable times to enter and examine any property, facility, operation or activity.

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

(c) Time of inspection.—Public water systems and places where plumbing supplies are sold are subject to inspection by the department and its employees and agents once per year for purposes of ascertaining compliance with this act. Residential or nonresidential facilities subject to the requirements of this act are subject to inspection by the department and its employees and agents once during the construction, modification 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 Hearing Board and any court of competent jurisdiction are hereby given jurisdiction over actions to recover the costs of such abatement. Any activity or condition which is declared by this act to be a nuisance or which is otherwise in violation of this act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

**Section 13. Penalties and remedies.**

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

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

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

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

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

(f) **Civil penalties.**—In addition to proceeding under any other remedy available at law or in equity for a violation of any provision of this act, any rule or regulation of the department or any order of the department, the

department may assess a civil penalty upon a person for such violation. Such a penalty may be assessed whether or not the violation was willful or negligent. When the department assesses a civil penalty, it shall inform the person of the amount of the penalty. The person charged with the penalty shall then have 30 days to pay the penalty in full, or, if the person wishes to contest either the amount of the penalty or the fact of the violation, the person shall, within the 30-day period, file an appeal of the action with the Environmental Hearing Board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. The maximum civil penalty which may be assessed pursuant to this section is \$1,000 per day for each violation. Each violation for each separate day and each violation of any provision of this act, any rule or regulation under this act or any order of the department shall constitute a separate and distinct offense under this section.

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

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

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

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

(2) Under section 5, a violation means:

(i) use of materials that are not lead free in the plumbing system of each service connection to a public water system; or

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

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

#### Section 14. Local plumbing codes.

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

#### Section 15. Safe Drinking Water Account.

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

**Section 16. Construction.**

The terms and provisions of this act are to be liberally construed, so as to fully protect the public health, welfare and safety and to achieve and effectuate the goals and purposes hereof.

**Section 17. Severability.**

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

**Section 18. Effective date.**

This act shall take effect as follows:

- (1) Sections 1, 2, 3, 7 and 8 of this act shall take effect immediately.
- (2) The remainder of this act shall take effect in 18 months.

**APPROVED—**The 6th day of July, A. D. 1989.

**ROBERT P. CASEY**