

No. 2002-61

AN ACT

HB 1237

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

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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 Propane and Liquefied Petroleum Gas Act.

Section 2. 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:

“Advisory board.” The Liquefied Petroleum Gas Advisory Board.

“Authorized attendant.” An employee of a manufacturer, distributor or user of LPG who has been trained, in a manner approved by the Department

of Labor and Industry, in the proper performance of duties and who has been officially recognized by the facility operator to perform those duties.

“Bulk plant.” An LPG storage facility, the primary purpose of which is the distribution of LPG which has:

- (1) a bulk storage capacity of more than 2,000 gallons; and
- (2) container-filling or tank-loading facilities on the premises.

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

“Department.” The Department of Labor and Industry of the Commonwealth.

“Distributor.” A person authorized by the Department of Labor and Industry to sell or transfer LPG.

“Gallons.” The term shall be measured in terms of water capacity.

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

“Industry standard.” Those standards developed by the National Fire Protection Association for the storage and handling of liquefied petroleum gases.

“Liquefied petroleum gas” or “LPG.” Any material in liquid form that is composed predominately of any of the following hydrocarbons or mixtures thereof:

- (1) Propane.
- (2) Propylene.
- (3) Normal butane or isobutane.
- (4) Butylenes.

“LPG facility.” Distributors, bulk plants and industrial users.

“Person.” Any individual, firm, partnership, unincorporated association, corporation, political subdivision or authority, including the Commonwealth.

“Secretary.” The Secretary of Labor and Industry of the Commonwealth.

“Transfer.” To cause LPG to pass from any pipeline, tank, container, tank truck, receptacle or storage location to a similar or different type of pipeline, tank, container, tank truck, receptacle or storage location.

Section 3. Transfer of LPG.

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

(b) Notification.—Whenever any person acting in behalf of an authorized emergency response agency transfers LPG or disconnects any

LPG container, such person shall notify the container owner within five days after such action.

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

Section 4. Registration.

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

- (1) Distributors.
- (2) Bulk plants.
- (3) Industrial users.

(b) Submission of plans.—

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

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

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

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

Section 5. Fees.

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

(b) Amount of total fees.—The total fees collected by the department annually shall equal as closely as possible the expenditures necessary for the enforcement of this act. The department, when establishing fees pursuant to this section, shall utilize a multiyear cost averaging approach. All fees received pursuant to this act shall be paid into the State Treasury through the Department of Revenue.

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

(d) Interim.—Until this section takes effect, fees shall be assessed under section 613-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 6. Records.

Adequate records shall be maintained by each LPG facility owner as to the installation addresses of all customers served. The records shall be made available to the department upon request at a location specified by the LPG

facility owner during normal business hours. Records may be maintained in any accessible form, including paper or computer disk.

Section 7. Operator training.

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

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

Section 8. Inspections.

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

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

Section 9. Siting.

The department shall have the authority to develop criteria applicable to the siting of all new LPG facilities in excess of 400,000 gallons and the expansion of all existing LPG facilities if the expansion would exceed 400,000 gallons total capacity. Those criteria shall include, but not be limited to:

- (1) Storage quantities.
- (2) Proximity to populated areas and public ways.
- (3) The impact of any rejection from the department upon the LPG facility's ability to service current and anticipated consumer needs and upon the LPG facility's business investment.
- (4) Risk to and from existing adjacent facilities.
- (5) Topography of the site.
- (6) Access for emergency vehicle response.
- (7) Utilities, both public and private.
- (8) Requirements for receipt or shipment of products.
- (9) Compliance with local land use ordinances as provided in section 15.
- (10) The safety plan proposed by the LPG facility, such as emergency systems, spill containment, fire protection, fencing and lighting.

Section 10. Application process.

(a) **Application required.**—Any person that plans to operate a new LPG facility in excess of 400,000 gallons or expand an existing LPG facility to exceed 400,000 gallons shall submit an application to the department. Upon submission of the application to the department, the applicant shall notify

the municipality where the facility is located that the applicant has filed an application with the department. Notification shall be made via certified mail.

(b) **Publication.**—Within ten business days of receipt of the application, the department shall arrange for publication of a notice of application in the Pennsylvania Bulletin. The notice shall include the due date for protests or comments.

(c) **Protest or comments.**—

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

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

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

(d) **Review.**—The department shall review the written submissions and may inspect the site. The department shall issue a written determination approving or disapproving the application within 90 days of the publication of the notice of application, and a copy of the determination shall be sent by certified mail to the applicant and to all parties who filed a notice of protest or submitted written comments pursuant to subsection (c). This time may be extended only upon receipt of a written approval of the extension from the applicant.

Section 11. Appeal.

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

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

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

(d) Appeal of decision.—Any party may appeal a decision of the Industrial Board in accordance with the provisions of 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).
Section 12. Advisory board.

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

(b) Members.—The board shall consist of seven members as follows:

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

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

(3) One consumer representative.

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

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

(e) Duties.—The board shall:

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

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

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

(4) Consider enforcement problems within the industry.

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

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

(7) Consider other issues specified by the secretary.

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

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

Section 13. Insurance.

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

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

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

Section 14. Prohibitions.

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

Section 15. Preemption of municipal regulations.

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

(b) Regulations not to conflict.—

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

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

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

(c) Definitions.—As used in this section, “differs” or “conflicts” shall include, but not be limited to, regulation of any area not addressed in this statute.

Section 16. Regulations.

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

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

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

Section 17. Enforcement and penalties.

(a) Enforcement.—

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

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

(b) Penalties.—

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

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

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

Section 18. Administration.

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

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

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

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

Section 19. Other acts.

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

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

Section 20. Repeals.

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

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

Section 21. Effective date.

This act shall take effect in 60 days.

APPROVED—The 19th day of June, A.D. 2002.

MARK S. SCHWEIKER