COMBUSTIBLE AND FLAMMABLE LIQUIDS ACT

ACT NO. 1998-15

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF OCCUPATIONAL AND INDUSTRIAL SAFETY

COMBUSTIBLE AND FLAMMABLE LIQUIDS ACT

ACT NO. 1998-15

AN ACT Providing for the regulation of combustible and flammable liquids; allocating functions of the Department of Labor and Industry and the Pennsylvania State Police; imposing penalties; and making repeals.

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 Combustible and Flammable Liquids 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:

"Board." The Industrial Board of the Commonwealth.

"Combustible liquid." A liquid having a closed cup flash point at or above 100 degrees F (37.8 degrees C).

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

"Flammable liquid." A liquid having a closed cup flash point below 100 degrees F (37.8 degrees C) and having a vapor pressure not exceeding 40 pounds per square inch, absolute (2068 millimeters hg) at 100 degrees F (37.8 degrees C).

"Person." Any individual, corporation or partnership.

"Retail service station." A place of business engaging in the sale at retail in this Commonwealth of gasoline, diesel fuel or kerosene.

"Storage tank." A vessel which:

(1) has a liquid capacity in excess of 30 gallons (113.5 liters);
(2) is intended for fixed installation; and

(3) is not used for processing which shall be deemed to include, but not be limited to, use of tanks to separate crude oil and water prior to and at the point of crude oil custody transfer.

Section 3. Transfer of functions

The powers and duties of the Pennsylvania State Police relating to combustible liquids or flammable liquids under the act of April 27, 1927 (P.L.450, No.291), referred to as the State Fire Marshal Law, are transferred to the department.

Section 3.1. Notification by manufacturers of gasoline additive information.

No person that distributes gasoline or that owns or operates a retail service station may make a representation respecting the antiknock characteristics of the gasoline unless the representation discloses the minimum Antiknock Index Requirements of the fuel as adopted by the National Conference of Weights and Measures and published in Handbook 130, and supplements thereto, or in any publication revising or superseding Handbook 130. The department shall have the authority to issue a stop-sale notice to a person that distributes gasoline or that owns or operates a retail service station if the person is in violation of this section.

(3.1 added October 18, 2000, P.L.574, No.74)

Section 4. Regulations

(a) Authority.

(1) The department may promulgate regulations governing the possession, use, storage and sale of combustible liquids or flammable liquids. Regulations under this paragraph must be based upon generally accepted national or international standards, except that regulations providing for emergency controls, including switches, shall be based upon subsection (c).

(2) To provide standards for the storage and dispensing of compressed natural gas as a vehicular fuel in fleet and public dispensing operations, the department shall promulgate regulations which adopt the National Fire Protection Association Standard for Compressed Natural Gas Vehicular Fuel systems (NFPA 52), excluding provisions on engine fuel systems.

(b) Existing regulations. Until modified or deleted by the department, 37 Pa. Code Chs. 11 (relating to preliminary provisions) and 13 (relating to storage and use) shall be deemed regulations of the department under this section.

(c) Emergency controls. The department shall require emergency controls, including a main power shut-off switch or switches, at self-service gasoline stations. Emergency controls shall be independent of the approved special dispensing devices and control equipment. Emergency controls and switches shall be installed at an accessible location not more than 15 feet from the principal control location of the attendant and not more than 125 feet from the farthest self-service dispensing device. Use of the emergency controls, including the main power shut-off switch or switches, to control the dispensing devices in other than an emergency shall be prohibited.

(4 amended October 18, 2000, P.L.574, No.74)

Section 5. Permits

(a) Requirements.

(1) A person may not install, replace or relocate a tank, pump or drawing-off device in connection with the possession, use, storage or sale of combustible liquids or flammable liquids in an aggregate capacity in excess of 30 gallons unless the person has a permit from the department.

(2) A person may not install, replace or relocate a container, pressure vessel or piece of compression equipment for the storage and dispensing of compressed natural gas as a vehicular fuel in fleet and public dispensing operations unless the person has a permit from the department.

(b) Procedure.

(1) To receive or renew a permit under this section, an applicant must submit an application in a form prescribed by the department.

(2) The department shall make a decision on permit issuance based upon the applicant's ability to safely handle combustible liquids or flammable liquids in accordance with regulations under section 4.

(3) An applicant may appeal a denial of permit issuance under paragraph (2) to the board. The board's affirmance of a denial constitutes a final order. This paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 6. Fees

The department shall collect a fee of $75 for a permit issued under section 5.

Section 7. Retail service stations

(a) Kerosene. At a retail service station, the intake or receiving pipe opening for a kerosene storage tank shall be smaller than the nozzle on the hose used to deliver gasoline or diesel fuel into the storage tank.

(b) Self-service. An attended self-service gasoline station may use a hold-open gasoline-dispensing nozzle if all of the following are met:

(1) The nozzle meets safety standards adopted by regulation of the department.

(2) A sign is posted indicating that any person, other than the attendant, who uses a hold-open gasoline-dispensing nozzle shall remain at the refueling point during the refueling operation.

(c) Portable container specifications.--In addition to established container construction requirements under 37 Pa. Code § 11.7 (relating to container construction), portable containers used for the storage and handling of flammable and combustible liquids shall be color-coded to properly identify the contents of the container as follows:

(1) Blue shall represent kerosene.

(2) Red shall represent gasoline.

(3) Yellow shall represent diesel.

No other color may be used for portable containers as provided for in this section which are used for the storage and handling of flammable and combustible liquids. At least 75% of the surface area of the container shall be of the required color.

(d) Attended self-service station operator facilities. It is the responsibility of the operator of the attended self-service station to familiarize attendant employees with the location and operation of the station's emergency fuel shut-off switch.

(7 amended Nov. 23, 2004, P.L.937, No.134)

Section 8. Investigation

(a) Regulated persons. An agent or employee of the department may enter, during normal business hours, the premises of any applicant or permittee to do any of the following:

(1) Make determinations under section 5(b)(2).

(2) Ascertain violations of this act and regulations promulgated under this act.

(3) Inspect tanks, pumps, drawing-off devices, containers, pressure vessels or compression equipment to assure compliance with this act and regulations promulgated under this act.

(b) General. The department is authorized to investigate violations of this act and regulations under this act. This includes seeking search warrants.

Section 9. Orders

(a) Authority. An agent or employee of the department may, upon discovering a violation of this act or a regulation under this act, issue an order to place a tank, pump or drawing-off device out of service. An order under this section must comply with all of the following:

(1) Be in writing.

(2) State the corrective action necessary.

(b) Appeal.

(1) A person may appeal to the board the issuance of an order under subsection (a). The appeal shall not operate as a supersedeas.

(2) This subsection is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 10. Prohibitions

A person may not do any of the following:

(1) Hinder, delay or interfere with the department's enforcement of this act or regulations promulgated under this act.

(2) Fail to place out of service, in accordance with an order of the department, a tank, pump or drawing-off device for the possession, use, storage or sale of combustible liquids or flammable liquids.

(3) Cause or permit a delivery or acceptance of fuel into a kerosene storage tank in violation of section 7(a). Each delivery or acceptance constitutes a separate offense.

(4) Fail to remain at a location no more than ten feet from the nozzle being utilized and within plain sight of the nozzle during the use of hold-open gasoline-dispensing or hold-open diesel fuel-dispensing nozzles if the sign required under section 7(b)(2) is posted. Responsibility for compliance with this paragraph shall reside exclusively with the person utilizing a hold-open device.

(10 amended Nov. 23, 2004, P.L.937, No.134)

Section 11. Penalties

(a) Initial offense. Except as provided for in subsection (c), a person that violates this act or a regulation under this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine of $500.

(b) Subsequent offenses. A person that, after being sentenced under subsection (a), violates this act or a regulation under this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine of $1,000.

(c) Improper container. A person who violates section 7(c) relating to portable container specifications commits a summary offense and, upon conviction thereof, shall be sentenced to pay a fine of not more than $100. The responsibility for compliance with section 7(c) shall reside exclusively with persons who use portable containers to store or handle flammable combustible liquids. The filling of such containers in connection with the sale or distribution of gasoline or kerosene shall not constitute an act of storage or handling for purposes of this section, and no seller shall incur any civil liability for failure to properly identify the contents of such containers.

(d) Restitution. If the sign required under section 7(b)(2) is posted, a person that violates section 10(4) shall be liable for payment of all environmental cleanup costs associated with a fuel spill resulting from the person's violation of section 10(4).

(11 amended Nov. 23, 2004, P.L.937, No.134)

Section 12. Applicability

This act shall not apply to the possession, use or storage by a farm of any motor fuel for noncommercial purposes or any substance to facilitate the production of crops, livestock and livestock products. This act shall not apply to any tank in which such motor fuel or substance is stored by a farm.

Section 13. Repeals

Sections 1(b) and (c) and 4.1 of the act of April 27, 1927 (P.L.450, No.291), referred to as the State Fire Marshal Law, are repealed.

Section 14. Effective date

This act shall take effect in 60 days.