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August 24, 2009

Via 1st Class Mail and Email (jacdavenport@state.pa.us)

Jack Davenport
PA Department of Labor & Industry
Bureau of Occupational and Industrial Safety
651 Boas Street, 16th Floor
Harrisburg, PA 17120

INDEPENDENT REGULATORY
GENERAL COMMISSION

2009 AUG 27 PM 4:35

RECEIVED

Re: Comments Regarding Propane and Liquefied Petroleum Gas Regulations

Dear Mr. Davenport:

Enclosed please find a copy of comments offered by the Pennsylvania Propane Gas Association with regard to the Propane Regulations published in the July 25, 2009 *Pennsylvania Bulletin*.

Should you have any questions, please feel free to contact me to discuss.

Sincerely,



Kathy Speaker MacNett

KSM/elf
Enclosure

cc: Kelly K. Smith, Esq. (via email w/encl. — kellysmith@state.pa.us)
James M. Smith, Regulatory Analyst (via email w/encl. — jsmith@irrc.state.pa.us)
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Comments on Proposed Regulations Published on July 25, 2009

August 24, 2009

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Counsel, Pennsylvania Propane Gas Association

These comments are offered by the Pennsylvania Propane Gas Association ("PAPGA") with regard to the Propane Regulations published in the July 25, 2009 *Pennsylvania Bulletin*.

I. INTRODUCTION

These are the implementing regulations to Act 61 (2002), 35 P.S. Sections 1329.1 to 1329.19 inclusive, the rewrite of the Propane and Liquefied Petroleum Gas Act, ("Act" or "Act 61"). That Act was strongly supported by the PAPGA. That Act provided that until the new regulations were adopted, the old regulations plus the 1992 version of NFPA 54 and 58 would govern the propane industry. 35 P.S. §1329.16(b).

The law also provided that the regulations could not adopt any version of NFPA 54 and 58, which had not been in effect for at least two years. 35 P.S. §1329.16(c). The rationale was to provide a time frame for the industry to review any new versions of the NFPA regulations so that it could reject certain portions if they were viewed as inappropriate for use in Pennsylvania. In fact, NFPA would allow for rooftop installations, but language was added to the law prohibiting such in Pennsylvania because of safety concerns. 35 P.S. §1329.14.

The Department of Labor and Industry ("L&I") shared draft regulations with PAPGA at a variety of times throughout their development prior to publication of the Proposed Regulations. As a result, PAPGA was able to secure some appropriate revisions prior to the July publication of the Proposed Regulations in the *Pennsylvania Bulletin*. PAPGA would like to publically thank L&I for its cooperation in this regard. These earlier draft revisions include, but are not limited to, the adoption of NFPA interpretations or tentative interim amendments as standards.

Various other drafts of the regulations were also reviewed by the Propane Advisory Committee created by Act 61. A number of the changes suggested by that Committee have already been included in the resulting Proposed Regulations.

As a result of that cooperation, PAPGA has only limited comments to offer to the Proposed Regulations, which fall into three categories: Substantive, Practical and Technical.

II. SUBSTANTIVE CONCERNS

A. *Correct the Oversight on Municipal Preemption- Section 13.54(a)*

There is a discrepancy between the language in the Summary indicating that municipalities are preempted in accordance with the language of Act 61, and the actual language of the proposed regulation on the same topic. It looks like a "NOT" or "NO" was simply overlooked. We have already informally requested confirmation of correction from L&I. Section 13.54 (a) is missing a "NOT" after the word "may" or a "NO" before "municipality."

The language *should read*:

§ 13.54. *[Liquid Discharge] Municipal preemption.*

The Department has the sole right and ability to regulate all matters related to the operation of the LPG industry under section 15 of the act (35 P. S. § 1329.15).

- (a) A municipality or other political subdivision may **NOT** adopt or enforce an ordinance or regulation which differs from or conflicts in whole or in part with the act or this chapter regarding permits, licensing standards, fees, construction, installation, maintenance, operation, inspection, location or placement of LPG containers or LPG facilities or other matters related to this industry within this Commonwealth. (Emphasis added.)

OR

- (b) **NO** municipality or other political subdivision may adopt or enforce an ordinance or regulation which differs from or conflicts in whole or in part with the act or this chapter regarding permits, licensing standards, fees, construction, installation, maintenance, operation, inspection, location or placement of LPG containers or LPG facilities or other matters related to this industry within this Commonwealth. (Emphasis added.)

The Department reports that this was apparently a transcription error from the time the language left the Department until it appeared in the *Pennsylvania Bulletin*. We understand that a revision is anticipated to correct this problem prior to final adoption of the regulations.

B. *Cylinder Exchange Cabinets- Section 13.24(2)*

PAPGA does not believe that it is appropriate to include the "sidewalks, concrete aprons and parking lots at retail establishments" as "busy thoroughfares or sidewalks." The difference between parking lots and public streets is specifically recognized in the Editor's Comment to Section 8.4.1.2 of NFPA 58 (2008 ed.) contained in the NFPA LP-Gas Code Handbook, where Mr. Lemoff states: "[Section 8.4.1.2(3)] was revised in the 2008 edition when the committee became aware that [the term 'busy thoroughfares or sidewalks'] was being used to unnecessarily restrict the location of exchange cylinder cabinets at retail locations. The former

text required separation from busy thoroughfares or sidewalks, and was written when such storage might be on the sidewalk in front of a hardware store, with automobile traffic a few feet away at normal street speeds. *With the introduction of much larger retail stores (big box stores) in malls, the threat from traffic is significantly reduced as vehicles travel much more slowly in parking lots than on streets, and the requirement was revised to reflect this change by adding the words 'on other than private property.'* (Emphasis added.) PAPGA suggests that L&I should not change this portion of the 2008 edition of NFPA 58, but should recognize the clear distinction between the nature and flow of traffic on public roads and streets from that which occurs in parking lots.

C. Better Define the type of Cylinder Exchange Cabinet by Application or Limit to Retail Locations -Section 13.1

This definition of "cylinder exchange cabinets" is not clear in that it does not indicate whether it is limited to such exchange cabinets as are used at retail locations to facilitate the exchange of barbecue or grill cylinders, or whether it is to be read more broadly to include cylinder exchange cages that may be used at commercial/industrial locations to store motor fuel or other cylinders for the use of a single customer. Clarification in the definition to limit the application to *retail* cylinder exchange cabinets regardless of the size of cylinder would be helpful.

D. Grandfather Existing Containers- Section 13.20.

In previous discussions with L&I, PAPGA recommended that existing containers be grandfathered. See: §13.20 (b) (5) and 13.20 (g). The intent of this provision would be to avoid the requirement for U1-A reports for older tanks because such reports would not be available for those tanks.

III. PRACTICAL COMMENTS

A. Repeat the statutory language regarding limitation on filling tanks- No existing section; requires addition of a new section.

PAPGA urges L&I to repeat the statutory language contained in Act 61 regarding the inability of any company to fill a tank owned by some other person or company without appropriate permission. See: 35 P.S. §1329.3. The suggested language follows:

~~13.X~~ "Filling, Transferring or Delivering LPG into LPG Containers. No person shall: fill, transfer or deliver LPG into any LPG container or permit any person to fill, transfer or deliver LPG into any LPG container, or use an LPG container unless that person is authorized to do so by the owner of the LPG container and the Department or is authorized to do so by an emergency response agency.

If an emergency response agency acting through a duly authorized representative authorizes a person to transfer LPG from or to disconnect

any LPG container, the duly authorized representative or his designee must contact the owner of the LPG container within five days after such action is taken.

Any person who disconnects an LPG container must secure the LPG container in a safe fashion using propane industry custom and practice."

PAPGA views this as key language in Act 61 and is concerned that failure to include it in the regulations will mean that it is overlooked by individuals, who read only the regulations without referring to Act 61.

- B. Assure funding of the propane function from propane fees- No existing section; requires either addition of a new section or active monitoring by the Department.*

Act 61 states that the total fees from propane distributors shall equal as closely as possible the expenditures necessary for the enforcement of Act 61.

The financial estimates accompanying the Proposed Regulations 35 P.S. §1329.5(b) indicate almost a doubling of the costs of the Bureau of Occupational and Industrial Safety, into which propane enforcement falls. (Page 5, Section 3, Cost and Impact...) That Bureau enforces nine (9) separate programs. Only one of those is propane.

PAPGA sees no reason why the cost of propane enforcement would increase significantly in the foreseeable future. PAPGA asks that L&I remember that the propane industry is funding the cost of enforcement of Act 61 and remain aware of propane enforcement costs, without sacrificing safety concerns, so that propane may remain a competitively priced fuel in Pennsylvania.

- C. Allow for on-line registration- Section 13.5*

PAPGA suggests that L&I consider the use of on-line registration to save time and resources. This should reduce the backlog at L&I and expedite registrations.

- D. Combine language to make it clear that a distributor may expand its own facility or the facility utilized by an industrial user – Section 1320 (c)*

For practical purposes, a distributor may be acting as the agent of an industrial user to expand an industrial user's facility because the distributor may own the tanks used by the industrial user. As currently written, the proposed regulation makes it clear that a distributor could expand a bulk plant owned by the distributor, and an industrial user could expand its own location. It is not as clear that a distributor could expand or install as the agent for the industrial user. As a practical matter, it should not matter because the distributor is capable of safely handling the expansion at either location, and the gallonage is the same. Hence we recommend, as a matter of practicality, that L&I avoid a potential equal protection problem and replace the existing language with the following:

(c) A Department-provided notice of intent to install form may be submitted instead of the plans required under subsection (b)(3) for the following:

(1) A distributor installing or expanding an existing bulk plant of less than 9,000 gallons, or

(2) A distributor or an industrial user installing or expanding any location with a total storage capacity of less than 9,000 gallons.

IV. TECHNICAL COMMENTS

A. Conform the language from "vessels" to "container"- Passim.

The language used in the bulk of the regulations refers to containers. This is a defined term which includes cylinders, tanks, portable tanks, and cargo tanks used for propane storage. Cylinder is further defined as complying with DOT requirements. Tank is also further defined to meet ASME requirements.

At several locations, however, the word "vessels" is used. (e.g. Section 13.20 (g)). The word "vessels" is not defined in the proposed regulations and is not used in NPFA 58. PAPGA suggests a universal change in the regulations using container or, if more appropriate, cylinders for purposes of conformity and clarity.

B. Change the references to "facility" to "LPG facility"-Passim.

The defined term in the regulations is "LPG facility." Accordingly all references to "facility" should be change to "LPG facility," for the sake of consistency. (E.g. Section 13.52).

C. Reference to the Official Citation to Act 61- Section 13.1.

The Act should be referenced formally within the Regulations as the Act of June 19, 2002, P.L. 421, No. 61 to avoid any confusion should it be amended.

D. Correct NGPA to NPGA- Section 13.1

The abbreviation for NPGA is transposed. The abbreviation for National Propane Gas Association should be NPGA, NOT NGPA.

V. CONCLUSION

Overall, PAPGA is pleased with the Proposed Regulations. The above comments are offered in the spirit of improving an already good product. Please contact me should you need additional information or clarification.

cc: Kelly Smith, Esq.
Independent Regulatory Review Commission
James Smith and Michael Stephens, IRRC staff
Shelby Metzger