



STATE OF NORTH CAROLINA

INVESTIGATIVE REPORT

**NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

STANDARDS DIVISION

LIQUEFIED PETROLEUM GAS SECTION

RALEIGH, NORTH CAROLINA

DECEMBER 2011

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA

STATE AUDITOR

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AUDITOR'S TRANSMITTAL

The Honorable Beverly Perdue, Governor
Mr. Steve Troxler, Commissioner, North Carolina Department of Agriculture and Consumer Services
Members of the North Carolina General Assembly

Ladies and Gentlemen:

Pursuant to North Carolina General Statute §147-64.6(c)(16), we have completed an investigation of allegations concerning the enforcement of liquefied petroleum gas regulations under the administration of the North Carolina Department of Agriculture and Consumer Services. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General, and other appropriate officials in accordance with G.S. §147-64.6 (c) (12).

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA
State Auditor

December 29, 2011

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INTRODUCTION

The Office of the State Auditor received a complaint through the *State Auditor's Hotline* alleging that the North Carolina Department of Agriculture and Consumer Services, Standards Division failed to impose and collect monetary penalties from facilities that violated liquefied petroleum (LP) gas regulations.

To conduct our investigation of this complaint, we performed the following procedures:

- Review of applicable North Carolina General Statutes, North Carolina Administrative Code, and North Carolina Department of Agriculture and Consumer Services policies and procedures
- Examination of relevant documents and records, including inspection reports, of the North Carolina Department of Agriculture and Consumer Services
- Interviews with North Carolina Department of Agriculture and Consumer Services employees and management as well as North Carolina Propane Gas Association personnel

This report presents the results of our investigation. The investigation was conducted pursuant to North Carolina General Statute § 147-64.6 (c) (16).

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ORGANIZATION OVERVIEW

The North Carolina Department of Agriculture and Consumer Services (Department) was created in 1877. Its mission is to provide services that promote and improve agriculture and agribusiness, protect consumers and businesses, and preserve farmland and natural resources.

The Standards Division within the Department is responsible for inspecting liquefied petroleum (LP) gas and anhydrous ammonia installations for compliance with safety codes; testing all commercial weighing and measuring devices for accuracy; checking packages or containers with a stated weight listing (such as a box of sugar, bag of ice, or bag of potting soil) for compliance with their net contents statement; testing motor fuels for compliance with quality specifications; and providing precision mass, volume, temperature, and length calibrations. To accomplish its mission, the Standards Division is organized into four sections: LP-Gas, Measurement, Motor Fuels, and Standards Laboratory.

The LP-Gas Section is responsible for inspecting LP-gas bulk storage facilities¹ for compliance with laws and regulations; LP-gas delivery trucks for transfer accuracy and safety compliance; LP-gas dispensing sites, including LP-gas tank scales, for safety and meter accuracy; and installed residential and commercial LP-gas containers for compliance with safety requirements.

The LP-Gas Section is comprised of one supervisor (LP-Gas Engineer), located in the Raleigh office, and eight regional field inspectors. Five inspectors conduct site inspections which include bulk storage facilities, dispensing sites, homes, and commercial locations. The remaining three inspectors perform delivery truck inspections. Each field inspector is assigned specific counties to perform their designated inspections. To accomplish their tasks, each inspector is provided a State vehicle for their travel. These positions are funded by a one-quarter cent per gallon inspection tax collected by the North Carolina Department of Transportation and remitted to the North Carolina Department of Agriculture and Consumer Services.

Inspections are completed and violations are noted on an inspection report. The original inspection reports are mailed weekly to the Standards Division office and separated into four groups. Inspection report information is keyed into a database and the reports are filed in the Standards Division office.

For facilities with repeat violations, inspectors often attach notes or separate sheets asking the LP-Gas Engineer to review the reports. The LP-Gas Engineer reviews the inspection reports and makes the decision to issue a warning letter, a penalty assessment, or take no action against the facility. If action is taken, the LP-Gas Engineer prepares a warning letter or penalty assessment letter. The Standards Division Director reviews and signs the warning

¹ *National Fire Protection Association 58: Liquefied Petroleum Gas Code* defines a bulk storage facility (bulk plant) as "A facility, the primary purpose of which is the distribution of LP-Gas, that receives LP-Gas by cargo tank vehicle, railroad tank car, or piping, distributing this gas by portable container (package) delivery, by cargo tank vehicle, or through gas piping. These plants are generally utilized for domestic, commercial, agricultural, institutional, and industrial applications, or for the storage of liquid propane waiting delivery to the end user."

ORGANIZATION OVERVIEW (CONCLUDED)

letter or penalty assessment letter. When a facility receives a penalty assessment, it may pay the full amount, initiate informal settlement negotiations (per General Statute §150B-22), or file a contested case with the Office of Administrative Hearings. The Department's complete description of the inspection process (including penalty assessment) is included in Appendix A.

FINDINGS AND RECOMMENDATIONS

THE DEPARTMENT IMPOSED AND COLLECTED ONLY MINIMAL FINES DESPITE IDENTIFYING NUMEROUS VIOLATIONS OF THE LIQUEFIED PETROLEUM (LP) GAS REGULATIONS.

Summary of Violations

For the period October 1, 2009 through September 30, 2010, our review of all inspection reports showed that inspectors identified 7,466 violations of liquefied petroleum (LP) gas regulations (See Table 1) against 1,189 facilities² that resulted in only \$7,100³ in fines against two facilities. Moreover, those two facilities were cited because the LP-Gas Engineer selected them as part of a database pilot project under development to track violations. If the maximum fines had been imposed for the 7,466 violations in accordance with North Carolina General Statute §119-59(c), the potential monetary assessment would have been \$2,543,000.⁴ Of the 7,466 violations, 736 violations (9.86%) were noted by the Department of Agriculture and Consumer Services (Department) inspectors as repeat violations, some repeated as many as seven times.

Table 1
Violations by Inspection Type
October 1, 2009 – September 30, 2010

Violation Occurrence	Bulk Plants		Trucks ⁵		Dispensing Sites		Domestic Tanks		Totals	
	Number of Violations	Potential Penalty Amount								
1 st	2,860	\$858,000	187	\$56,100	2,428	\$728,400	1,255	\$376,500	6,730	\$2,019,000
2 nd	196	98,000	3	1,500	206	103,000	19	9,500	424	212,000
3 rd	158	158,000			43	43,000	7	7,000	208	208,000
4 th	75	75,000			1	1,000			76	76,000
5 th	15	15,000			9	9,000			24	24,000
6 th	1	1,000							1	1,000
7 th	3	3,000							3	3,000
Totals	3,308	\$1,208,000	190	\$57,600	2,687	\$884,400	1,281	\$393,000	7,466	\$2,543,000

Source: North Carolina Department of Agriculture and Consumer Services LP-Gas Inspection Records⁶

Violations were of various types, magnitude, and significance and included the following:

- Bulk plants not locked when unattended
- Leaks around tanks and in the piping

² LP-Gas facilities include LP-Gas bulk storage plants, farms, schools, businesses, industrial plants, correctional institutions, and campgrounds.

³ Two facilities were assessed fines totaling \$7,100. However, the Department only collected \$4,000 because it negotiated a smaller amount with one facility. Facility 1 was assessed \$6,200 for uncorrected violations but only paid \$3,100 because it negotiated a settlement with the Department. Facility 2 was assessed and paid \$900 for violations categorized as instant penalties (assessed on the first occurrence) at three sites.

⁴ The amounts are based on the highest penalty for each violation as stated in North Carolina General Statute §119-59 (c).

⁵ The total number of truck violations represents only those violations for which the Department has the authority to assess penalties.

⁶ The Office of the State Auditor compiled this matrix from the Department's manual files.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

- Tanks and piping not protected from vehicular traffic
- Evidence of smoking in LP-gas delivery trucks or within 25 feet of a LP-gas tank
- Operational violations such as a lack of operational procedures and non-current or non-existent maintenance procedures
- Properly-rated fire extinguishers not located on-site or not operational
- “No smoking” signs not installed on fences around bulk plant
- Documentation deficiencies such as improper registration of dispensing sites or bulk plants operating without a current dealer license

According to the Department’s inspectors, certain violations present threats to public health and safety or could cause significant property loss. For example, inspectors cited dangers such as improper or non-operating emergency shutoff valves⁷, failure to use wheel stops for LP-gas delivery trucks during the gas transfer process, and dispensing site personnel that were deficient in training requirements for safe fueling.

Our review of inspection reports revealed that LP-gas bulk storage facilities were cited for 751 violations in which the facilities lacked either operational procedures, maintenance procedures or a fire safety analysis, or these items were incomplete or out-of-date. Also, there were 178 violations cited in which the remote device for the emergency shutoff valve was not operational. If those sites experienced an emergency, the emergency shutoff valves would not have prevented liquid propane or gas vapor from escaping from the tank or piping. Additionally, inspectors reported 161 violations regarding the piping on the LP-gas delivery trucks. These violations included leaks that required repair or piping that required painting to prevent corrosion. Of these 1,090 violations⁸, the Department assessed and collected fines for only 31 violations against just two facilities.

Our investigation identified several LP-gas companies with numerous violations, some of which were repeated violations. For example, one company had 352 violations (123 bulk plant violations, 50 LP-gas delivery truck violations, 14 dispensing site violations, and 165 domestic tank violations⁹). Our analysis of these 352 violations revealed that 36 were repeat violations in which the same violation was cited a second (27), third (seven), fourth (one), or fifth (one) time by the inspectors over multiple inspections. Another company was cited for 223 violations (85 bulk plant violations, 24 LP-gas delivery truck violations, 12 dispensing site violations, and 102 domestic tank violations). Of these 223 violations, we discovered 12 violations that were cited a second time and one violation that was reported a third time. The Department did not assess or collect fines for these violations.

⁷ Emergency shutoff valves are designed to stop the flow of LP-gas in the event of a hose rupture or piping break at the transfer area.

⁸ The 1,090 violations were comprised of 751 bulk storage violations, 178 emergency shutoff violations, and 161 delivery truck violations.

⁹ “Domestic tanks” are those located at a private residence or business.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

In addition to the truck violations summarized in Table 1, an additional 688 truck violations were noted during our investigation. Department management said that they did not have the authority to assess penalties for these violations. According to Department management, these violations fall under the authority of the Department of Crime Control and Public Safety's Motor Carrier Enforcement Administration Section. However, the Department did not communicate with the Motor Carrier Enforcement Administration Section concerning these violations.

LP-Gas Regulations

North Carolina General Statutes §119-54 through §119-62 (Article 5, Liquefied Petroleum Gases) (See Appendix B) address oversight of the LP-gas industry. Specifically, General Statute §119-59 details the sanctions for violations. In the assessment of penalties, the law treats all violations the same; that is, a first violation for improper lighting could be assessed the same penalty as a first violation for an improper emergency shutoff valve.

In 2009, the North Carolina General Assembly revised General Statute §119-59 (c), which governs civil penalties.¹⁰ The revision increased the maximum civil penalty amounts for violations from \$100 to \$300 for the first violation, \$300 to \$500 for the second violation, and \$500 to \$1,000 for the third or subsequent violation. The revised law also eliminated the provision for the 45-day grace period for a facility to correct or cease an alleged violation. According to Standards Division management, the revisions strengthened the law to "put some teeth" in the program. However, assessments for violations remained at the discretion of the Agriculture Commissioner. The law states that "*The Commissioner may assess a civil penalty against any person who violates a provision of this Article or a rule adopted under it. The penalty may not exceed three hundred dollars (\$300.00) for the first violation, five hundred dollars (\$500.00) for a second violation, and one thousand dollars (\$1,000) for a third or subsequent violation.*"

Department's Explanation

The Standards Division Director (Director) said the primary reason that the Department did not assess penalties was to prevent inconsistent treatment of violators because their current database was incapable of tracking violations. The Director said the Department began the development of a new database in October 2009 to better manage inspections and violations data. He said the new database will track violations and automatically generate written warning or penalty assessment letters. However, the Director did not know when the new database will be operational. He said that, during the initial implementation, the new database will maintain and track only bulk plant inspections and violations while other inspection types will be added in phases.

As noted above, the only two facilities that received penalty assessments during the period we selected to review resulted from a pilot project. The LP-Gas Engineer selected a sample of facilities cited for violations and assessed penalties against two of those facilities in an effort to test the system during its development stage. If this database

¹⁰ According to Department management, North Carolina General Statute §119-59 (c) was revised based on the Department's recommendation.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

project had not been undertaken, the Department may not have imposed any fines during the selected 12-month period. Department management indicated that one of the two facilities would have been penalized irrespective of the pilot project.

In addition, the Director offered another reason that penalties were not assessed. He indicated that, in addition to being regulators, the Department is also a service organization. According to the Director, the Department is there to help educate those it inspects and explain the requirements and possible solutions to their problems. Further, the Director indicated that the Department is more concerned with getting companies in compliance than with punitive assessments.

Other Consequences

Repeated violations affect many aspects of the LP-gas industry. A representative from the North Carolina Propane Gas Association said that the majority of the LP-gas companies want fines assessed to ensure all companies, not just a few, are spending the resources to comply with regulations. Standards Division management said that some companies “are not as diligent” as other companies to correct violations. Standards Division management also said that some companies “fix the violation only when it costs the companies not to fix the violation.” In addition, Standards Division inspectors said that low morale was prevalent because management did not assess penalties for repeat violations.

Potential Benefit to North Carolina Public Schools

In addition to the regulatory intent of ensuring public health and safety and preventing property loss, imposing and collecting monetary penalties could provide additional revenue to North Carolina public schools. North Carolina General Statute §115C-457 states that at least 80% of all civil penalties, fines, and forfeitures collected shall be deposited into the State Public School Fund for allotment by the State Board of Education, on behalf of the counties, to local school administrative units on a per pupil basis. Based on the potential penalty amount of \$2,543,000 during our review period (October 1, 2009 through September 30, 2010), \$2,034,400 could have been remitted to the local school systems if the maximum civil penalties had been collected for all violations in accordance with General Statute §119-59 (c).

Public Health and Safety

As noted above, the 7,466 violations represent potential threats to public health and safety. Despite these threats to public health and safety, very few penalties have been assessed for regulatory violations and the amounts assessed have been minimal. Based on the volume of repeat violations at LP-gas facilities, the Department’s expectation of voluntary compliance with respect to repairs or corrective action has been ineffective. Thus, the threat to public health and safety continues and directly conflicts with the Department’s mission to “protect consumers.”

FINDINGS AND RECOMMENDATIONS (CONCLUDED)

RECOMMENDATIONS

To minimize threats to public health and safety and prevent property loss, management should impose monetary penalties against facilities that violate LP-gas regulations. Management should pursue a legislative change to the General Statutes to strengthen its ability to consistently impose monetary penalties for violations of LP-gas regulations. Specifically, North Carolina General Statute § 119-59(c) should reference a Department policy, such as the Division's Civil Penalty Assignment Schedule, that includes monetary penalties for certain violations.

Management should also develop an implementation schedule for its violations database. This schedule should include milestone dates for each phase or segment of the violations database project. An assessment of these implementation milestones should be incorporated into management's monthly agenda to ensure continued progress toward completion.

Management should also initiate formal discussions with the Department of Crime Control and Public Safety's Motor Carrier Enforcement Administration Section concerning the truck violations cited in this report. These discussions should include specific protocols to address motor carrier safety violations that LP-gas inspectors identify during on-site inspections.

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APPENDIX A

North Carolina Department of Agriculture and Consumer Services
LP-Gas Inspection Program
Inspection Process Including Penalty Assessment¹¹

1. At the beginning of the year, inspectors receive a listing of locations to be inspected
 - a. Truck inspectors receive a list of dispensing sites and companies that have delivery trucks
 - b. Site inspectors receive a listing of bulk plants and dispensing sites
2. Inspections are scheduled with the goal of completing them by the end of the year. Inspections occur roughly on an annual basis and are often unannounced.
 - a. Inspectors may contact companies to set up appointments for inspections, typically when trucks are involved or at locations that require the inspector be accompanied by site personnel
3. Inspections are completed and violations are noted on the applicable inspection report (bulk plant, truck, dispensing site, domestic tank)
 - a. Additional sheets detailing the violations and corrective action required may be completed by the inspector and attached to the inspection report
 - b. Inspectors include a date by which repairs are to be completed
 - i. Typically 15 days for significant leaks
 - ii. 30 days for other repairs
 - c. Violations and repairs will be followed up on by inspectors during their re-inspection visit, usually the next year
 - d. For truck inspections, if meter reading is not correct, the inspector changes the gears or settings to adjust the meter
 - e. A copy of inspection report is either left with company or mailed to them
4. Inspectors mail the original inspection reports to the Standards Division office at least weekly
5. Inspection reports are received in the Standards Division Office and separated into 4 separate groups (bulk plant, truck, dispensing site, domestic tank)
6. Inspection report information is keyed into the applicable database (this consists of site information, the date of inspection and pass/fail; no individual violations can be entered. On domestic tanks, only failed inspections are entered)
 - a. Inspection reports are then filed in the Standards Division Office
7. An inspection report is cleared only when all the violations are corrected
 - a. When repairs/corrections are made by the company, their copy of inspection report is signed and dated indicating repairs have been completed
 - b. Copy of inspection report is sent to the Standards Division and matched to original inspection report
 - c. The repair date is entered into the applicable database
 - d. An inspector may revisit locations to confirm that corrections have been made as indicated by the company copy of the inspection report

¹¹ Source: Department of Agriculture and Consumer Services, Standards Division management

APPENDIX A

- e. A company may ask for an extension of time, with justification, in order to complete repairs
 - i. Extensions are approved or denied by the LP-Gas Engineer
 - ii. LP-Gas Engineer may consult with inspectors before granting extensions
8. For companies with repeat violations, the inspectors may attach notes or separate sheets asking the LP-Gas Engineer to review the reports
 - a. Inspectors may also call the LP-Gas Engineer to discuss the violations
9. The LP-Gas Engineer reviews the inspection report and makes the decision to issue a warning letter, a penalty assessment letter, or take no action against the company
10. If action is taken, the LP-Gas Engineer prepares a warning letter or penalty assessment letter
11. The Standards Division Director reviews and signs the warning letter or penalty assessment letter
12. If penalties are assessed against a company, they may pay the entire amount or they may file a contested case hearing with the Office of Administrative Hearings (OAH) appealing the assessment. Per G.S. 150B-22, informal settlement negotiations may be initiated at any time by contacting the Standards Division Director to negotiate a settlement of the assessment

APPENDIX B

Article 5.

Liquefied Petroleum Gases.

§ 119-54. Purpose; definitions; scope of Article.

(a) It is the purpose of this Article to provide for the adoption and promulgation of a code of safety, and such rules and regulations setting forth minimum general standards of safety for the design, construction, location, installation, and operation of the equipment used in handling, storing, measuring, transporting, distributing, and utilizing liquefied petroleum gases and to provide for the administration and enforcement of the code and such rules and regulations thereby adopted. Words used in this Article shall be defined as follows:

- (1) "Board" means the North Carolina Board of Agriculture.
- (2) "Commissioner" means the Commissioner of Agriculture or his designated agent.
- (3) "Dealer" means any person, firm, or corporation who is engaged in or desires to engage in:
 - a. The business of selling or otherwise dealing in liquefied petroleum gases which require handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or
 - b. The business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment, or appliances which use liquefied gas. A person who engages in any of the aforementioned activities only in connection with his or his employer's use of liquefied petroleum gas and not as a business shall not be deemed to be a "dealer" for the purposes of this Article.
- (4) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butanes or isobutane), butylenes.

(b) This Article does not apply to the design, construction, location, installation, or operation of equipment or facilities covered by the Building Code pursuant to Article 9 of Chapter 143 of the General Statutes. (1955, c. 487; 1959, c. 796, s. 1; 1961, c. 1072; 1981, c. 486, s. 1; 1989, c. 25, s. 1.)

§ 119-55. Power of Board of Agriculture to set minimum standards; regulation by political subdivisions.

The Board shall have the power and authority to set minimum standards and promulgate rules and regulations for the design, construction, location, installation, and operation of equipment and facilities used in handling, storing, measuring, transporting, distributing, and utilizing liquefied petroleum gas.

Any municipality or political subdivision may adopt and enforce a safety code dealing with the handling of liquefied petroleum gas which conforms with the regulations adopted by the Board, and the inspection service rendered by such municipality or political subdivision shall conform to the requirements of the inspection service rendered by the Board in the enforcement of this Article. (1955, c. 487; 1959, c. 796, s. 2; 1961, c. 1072; 1963, c. 671; 1967, c. 1231; 1969, c. 1133; 1975, c. 610, s. 1; 1977, c. 410; 1981, c. 486, s. 1.)

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§ 119-56. Registration of dealers; liability insurance or substitute required.

A person shall not hold himself out or commence operation as a dealer without first having registered as provided in this section. A dealer shall register with the Commissioner on a form to be furnished by the Commissioner. Such form shall give the name and address of the dealer, the place or places of and type or types of business of such dealer, and such other pertinent information as the Commissioner may deem necessary. Verification of the insurance coverage required by this section or of proof of alternative means of financial responsibility permitted by this section shall be submitted to the Commissioner as a condition of the issuance of any registration or renewal of such registration.

There shall be two classes of dealers:

- (1) A Class A dealer is one who engages in the transportation of liquefied petroleum gas.
- (2) A Class B dealer is one who does not engage in the transportation of liquefied petroleum gas.

A Class A dealer shall obtain and maintain general liability insurance, including product liability, of one million dollars (\$1,000,000) and motor vehicle liability insurance of one million dollars (\$1,000,000) combined single limit. A Class B dealer shall obtain and maintain general liability insurance, including product liability, of one hundred thousand dollars (\$100,000). Verification of said insurance coverage shall be made in a manner satisfactory to the Commissioner. The Commissioner may from time to time request in writing that a dealer provide within 10 days of such request verification of said insurance coverage or proof of alternative means of financial responsibility. In lieu of insurance, the dealer may file and maintain a bond, certificate of deposit or irrevocable letter of credit in a form satisfactory to the Commissioner which provides protection for the public in the same amounts and to the same extent as said insurance.

The provisions of this section shall not apply to a dealer who retails liquefied petroleum gas in containers of less than 50 pounds water capacity and which retailing does not involve the filling or transportation of such containers. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1; 1987, c. 453; 2009-386, s. 1.)

§ 119-57. Administration of Article; rules and regulations given force and effect of law.

It shall be the duty of the Commissioner to administer all the provisions of this Article and all the rules and regulations made and promulgated under this Article; to conduct inspections of liquefied petroleum gas containers and installations; to investigate for violations of this Article and the rules and regulations adopted pursuant to the provisions thereof, and to prosecute violations of this Article or of such rules and regulations adopted pursuant to the provisions thereof. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1; 2009-386, s. 2.)

§ 119-58. Unlawful acts.

- (a) It shall be an unlawful act for any person to:
 - (1) Sell any liquefied petroleum gas burning appliance designed or built for domestic use that has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the Building Code Council.

APPENDIX B

- (2) Repealed by Session Laws 1999-344, s. 1, effective July 22, 1999, and applicable to liquefied petroleum gas burning appliances installed on and after that date.
- (3) Repealed by Session Laws 1999-344, s. 1, effective July 22, 1999, and applicable to liquefied petroleum gas burning appliances installed on and after that date.
- (4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, the tank or container may be filled by weight if the tank or container is weighed before and after filling.
- (5) Disconnect an appliance from a gas supply line without capping or plugging the line before leaving the premises.
- (6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas outlets.
- (7) Violate any provisions of this Article or any rules adopted pursuant to this Article.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, label, or other marking that includes the name of the person supplying liquefied petroleum gas to the system, and it shall be unlawful for any person, other than the supplier or the owner of the system, to disconnect, interrupt or fill the system with liquefied petroleum gas without the consent of the supplier. If another registered supplier is requested by the consumer to connect service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave the equipment in a condition consistent with this Article and the rules adopted pursuant to this Article. (1955, c. 487; 1959, c. 796, s. 3; 1961, c. 1072; 1981, c. 486, s. 1; 1987, c. 282, s. 17; 1999-344, s. 1.)

§ 119-59. Sanctions for violations.

(a) Criminal. – A dealer who violates a provision of this Article or a rule adopted under it is guilty of a Class 1 misdemeanor.

(b) Injunction. – The Commissioner or an agent of the Commissioner may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this Article or a rule adopted under it.

(c) Civil Penalty. – The Commissioner may assess a civil penalty against any person who violates a provision of this Article or a rule adopted under it. The penalty may not exceed three hundred dollars (\$300.00) for the first violation, five hundred dollars (\$500.00) for a second violation, and one thousand dollars (\$1,000) for a third or subsequent violation. In determining the amount of a penalty, the Commissioner shall consider the degree and extent of harm or potential harm that has resulted or could have resulted from the violation. The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Registration. – The Commissioner may deny, suspend, or revoke the registration of a dealer who violates a provision of this Article or a rule adopted under it. (1955, c. 487; 1961,

APPENDIX B

c. 1072; 1981, c. 486, s. 1; 1993, c. 356, s. 2; c. 539, s. 911; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 25; 2009-386, s. 3.)

§ 119-60. Liquefied petroleum gas accidents; liability limitations.

Any person who provides assistance upon request of any police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission or storage of liquefied petroleum gas, when the reasonably apparent circumstances require prompt decisions and actions, shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance unless such acts or omissions amount to willful or wanton negligence or intentional wrongdoing. Nothing in this section shall be deemed or construed to relieve any person from liability for civil damages (a) where the accident or emergency referred to above involved his own facilities or equipment or (b) resulting from any act of commission or omission on his part in the course of providing care or assistance in the normal and ordinary course of conducting his own business or profession, nor shall this section be construed to relieve from liability for civil damages any other tortfeasor not referred to herein. When the assistance takes the form of rendering first aid or emergency health care treatment, questions of liability shall be governed by G.S. 90-21.14. (1981, c. 660.)

§ 119-61. Replacement data plates for liquefied petroleum gas tanks.

A liquefied petroleum gas tank of 120 gallons or more that is subject to the American Society of Mechanical Engineers (ASME) Code must have a data plate indicating that it was built in accordance with that Code. The Commissioner may issue a data plate to replace a rusting or partially detached data plate on a liquefied petroleum gas tank. The Commissioner shall charge a person to whom a replacement data plate is issued a fee of twenty dollars (\$20.00) for the plate. Fees collected under this section shall be credited to the Department of Agriculture and Consumer Services and applied to the cost of issuing replacement data plates. (1993, c. 356, s. 1; 1997-261, s. 109; 2009-386, s. 4.)

§ 119-62. Liquefied petroleum gas dealers and their employees, agents, subcontractors; liability limitations.

(a) A dealer shall not be liable for any civil damages resulting from any act or failure to act if the alleged injury, damage, or loss claimed in the action was caused by any one or more of the following:

- (1) The installation, alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, and the installation, alteration, modification, or repair was done without the knowledge and consent of the dealer.
- (2) The use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner or for a purpose other than that for which the equipment or appliance was intended, and the use of the equipment or appliance in a manner or for a purpose other than that for which the equipment or appliance was intended took place without the knowledge and consent of the dealer.

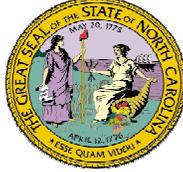
APPENDIX B

- (3) The installation of liquefied petroleum gas equipment or a liquefied petroleum gas appliance by a person, other than the dealer, in a manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article, and the installation of the equipment or appliance in a manner not in accordance with the instructions of the manufacturer of the equipment or appliance or in a manner not in accordance with rules adopted under this Article took place without the knowledge and consent of the dealer.
 - (b) Nothing in this section alters a dealer's duty to exercise reasonable care.
 - (c) As used in this section, "dealer" means dealer as defined in G.S. 119-54 and any employee, agent, and subcontractor of the dealer. (2007-302, s.1.)

§ 119-63. Reserved for future codification purposes.

§ 119-64. Reserved for future codification purposes.

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STEVE TROXLER
COMMISSIONER

State of North Carolina
Department of Agriculture and Consumer Services
Raleigh

December 21, 2011

The Honorable Beth A. Wood, State Auditor
Office of the State Auditor
2 South Salisbury Street
20601 Mail Service Center
Raleigh, NC 27699-0601

Dear Ms. Wood:

This letter is in response to your investigative report involving the Liquefied Petroleum Gas Section in the Standards Division which resulted from an allegation presented to the department in October 2010. We are pleased to provide additional information and background for inclusion in the report.

In early 2009, the North Carolina Department of Agriculture and Consumer Services proposed to the General Assembly several changes to the LP-Gas laws, including updating required insurance amounts, creating two classes of LP-Gas licenses, and increasing the maximum assessment for civil penalties. The department proposed the changes because the program managers saw a trend away from voluntary compliance and the need to step up enforcement. The new laws became effective October 1, 2009.

Prior to the 2009 changes, the law was constructed in a way that severely limited the department's ability to issue civil penalties. Along with the changes, the department also recognized the need to put in place a penalty matrix so the regulated community would be dealt with in a consistent manner. The programming to create a database for the category of bulk plant inspections was started in October 2009. The intent was to model the LP-Gas penalty matrix along the lines of the one used by the Standards Division's Measurement Section for price scanning violations. The programming to create the database and the corresponding penalty matrix proved to be more difficult and time-consuming than anticipated, but the development was well under way when the Office of State Auditor first contacted the department about the allegation. The database and penalty matrix are now in place for bulk plant inspections and are being used to automatically issue civil penalty notices. In fact, since the database was made operational on September 1, 2011, seven civil penalties have been issued. We anticipate the pace to accelerate as follow-up inspections are performed. Other categories of inspection databases will be developed going forward based on management's assessment of which categories are most critical.

With respect to the report's statement that imposition of the maximum penalty on all violations during the review period would have generated considerable additional revenue for the public schools, it must be noted that current law requires "the Commissioner to consider the degree and extent of harm or potential harm that has resulted or could have resulted from the violation." The wording of the statute would seem to preclude the imposition of the maximum penalty for all violations.

Regarding the three recommendations made in the report, we offer the following responses:

1. We will discuss with the leadership of the General Assembly the recommendation that the statute reference a department penalty policy, such as the division's civil penalty matrix, that includes monetary penalties for certain violations.
2. Division management has already developed a prioritization schedule for its violations database. Milestone dates will be established and monitored for the next phases of the project.
3. Division management will formalize a process for passing along truck violations to the Motor Carrier Enforcement Administration in the Department of Public Safety (formerly the Department of Crime Control and Public Safety). The Standards Division is very familiar with the Motor Carrier Enforcement unit, having worked with the unit on projects involving highway weight enforcement and the use of dyed diesel fuel.

Thank you for the opportunity to provide additional information and background. Please let me know if you have any questions.

Sincerely,



Steven W. Troxler
Commissioner

ORDERING INFORMATION

Copies of this report may be obtained by contacting the:

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