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FOLLOW-UP REPORT



A Review of the Liquefied Petroleum Gas Board

INTRODUCTION

This is a follow-up review of the audit, A Review of the Liquefied Petroleum Gas Board, released by the Legislative Audit Council in November 2005. This review was conducted to determine the extent to which recommendations presented in the 2005 report have been implemented. A copy of the original report can be obtained through the contact information on the back of this report.

Our November 2005 audit found that liquefied petroleum (LP) gas should be regulated because it is a hazardous substance that is highly flammable. However, the statutory requirements for LP gas dealers to maintain minimum storage capacities could limit competition and impede commerce. Also, we found evidence that board members had shown anticompetitive behavior in the course of their duties. Further, the LP Gas Board had exceeded its statutory authority beginning in 2003 when it created a new licensing category, the modified dealer category. There is nothing in the board's statute which grants authority to the board to create new license categories. Also, tests for licensees of the LP Gas Board did not meet professional testing standards.

During our follow-up review, we found that the General Assembly has not implemented our recommendations to delete the requirement for minimum storage capacities and to eliminate the LP Gas Board and make the state fire marshal's office responsible for regulating LP gas. The board has implemented one of our two recommendations for improved performance.

BACKGROUND

Members of the General Assembly requested that the Legislative Audit Council review the Liquefied Petroleum Gas Board to determine whether the current system of regulation for liquid petroleum gas serves the public interest without limiting competition or impeding commerce.

LP gas is a flammable material that provides energy for many purposes, including cooking, heating, and drying. The LP Gas Board was created to promulgate and enforce rules and regulations to develop minimum standards relating to LP gas. The board is composed of seven members who are appointed by the Governor. The Department of Labor, Licensing and Regulation (LLR) provides administrative support to the board through the state fire marshal's office. The board administers the licensing requirements for the LP gas industry. A person must have a license to engage in the storage, handling, or transportation of LP gas as well as to install, service, or repair LP gas systems or containers.

RECOMMENDATIONS & CURRENT STATUS

- 1. The General Assembly should amend S.C. Code §40-82-240 to delete subsection (A)(1), which requires dealers to have LP gas storage capacity of 30,000 water gallons.*
- 2. The General Assembly should amend S.C. Code §40-82-10 to eliminate the Liquefied Petroleum Gas Board and require the state fire marshal's office to regulate liquid petroleum gas.*

In our 2005 audit, we found that requirements for LP gas dealers to maintain minimum storage capacities were unnecessary and could limit competition and impede commerce.

A 2003 Attorney General's opinion found that storage requirements would in all probability be declared unconstitutional by a court. Also, we found no evidence that the absence of the storage requirements would result in significant harm to consumers. Evidence in the board's statements and discussion indicated that they desired to inappropriately limit competition through the board's regulatory authority. Most other states we contacted did not have a board to regulate LP gas; instead, an agency was responsible for LP gas regulation. The S.C. state fire marshal's office regulates other hazardous materials and should administer LP gas regulations.

In our follow-up, we found that the General Assembly has not implemented these recommendations. Legislation that would have implemented our recommendations to delete storage requirements and eliminate the board was introduced in March 2006, but this legislation was not enacted. We obtained a copy of proposed legislation recommended by the LP Gas Board and the Department of Labor, Licensing and Regulation (LLR). The proposed legislation, which had not been introduced as of January 2008, if adopted, would not implement either of our recommendations for statutory change.

3. The Liquefied Petroleum Gas Board should cease granting licenses for which it has no authority.

Our 2005 audit found that the board had created a category of license, "modified dealer," which was not authorized by statute. LP gas licensing categories are established in statute, and there is nothing in the current statute which grants authority to the board to create new license categories.

The board has implemented this recommendation. Prior to our audit, the board had issued 17 modified dealer licenses for which it had no authority. We reviewed the licenses issued by the board from 2006 through November 2007 and found that the board has not issued any new licenses which are not authorized by statute.

4. The Liquefied Petroleum Gas Board should use the National Propane Gas Association to certify licensees.

Our 2005 audit found that the tests for licensees of the LP Gas Board did not meet professional testing standards. We recommended that the board use a training program created by the National Propane Gas Association (NPGA) to determine whether applicants for licensure are qualified.

The board has not implemented this recommendation. According to an LLR official, it is inappropriate for the state to require membership in a private organization as a prerequisite for entering a regulated occupation in South Carolina. However, membership in the NPGA is not required to complete the certified employee training program (CETP) that the NPGA developed. The education and testing program is now administered by the Propane Education and Research Council (PERC), an organization chartered by the federal government and funded by an assessment on each gallon of odorized propane gas. The tests are developed using professional testing practices. According to PERC, the CETP is the basis for state licensure programs in states such as Maine, Maryland, Michigan, Missouri, New Jersey, Pennsylvania, and Vermont.

This follow-up was limited to the issues in the 2005 audit for which we made recommendations. We received information from the Department of Labor, Licensing and Regulation regarding the implementation of the recommendations in the audit. We reviewed this and other information, and verified evidence supporting the agency information as appropriate.

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