

1980

c 185 Gasoline Handling Act

Ontario

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CHAPTER 185

Gasoline Handling Act

1. In this Act and in the regulations,

Interpre-
tation

- (a) "associated product" means any product of petroleum other than gasoline, wax and asphalt;
- (b) "bulk plant" means one or more storage tanks, including the appurtenances thereof, where gasoline or an associated product is received by pipe line, tank vessel, tank car or tank vehicle and is stored in bulk for subsequent transmission by pipe line or transportation or distribution by tank vessel, tank car or tank vehicle;
- (c) "consumer outlet" means any premises at which gasoline or an associated product of the operator of the outlet is put into the fuel tanks of motor vehicles used by the operator of the outlet or into portable containers used by the operator of the outlet;
- (d) "Director" means the Director of the Energy Branch;
- (e) "equipment" means equipment used or to be used in the handling of gasoline or an associated product;
- (f) "flash point" means the lowest temperature, determined by using a Tagliabue closed-cup tester, at which the vapour of a product of petroleum forms a flammable mixture in air;
- (g) "gasoline" means a product of petroleum that has a flash point below 100°F. and that is designed for use in an internal combustion engine;
- (h) "handling" means the storing, transmitting, transporting or distributing of gasoline or an associated product, and includes putting gasoline or an associated product into the fuel tank of a motor vehicle, motor boat or other water craft or into a container;
- (i) "inspector" means an inspector authorized to enforce this Act;

- (j) "marina" means any premises at which gasoline or an associated product is sold and is put into the fuel tanks of motor boats and other water craft or into portable containers;
- (k) "Minister" means the Minister of Consumer and Commercial Relations;
- (l) "portable container" means a container that has a capacity of ten gallons or less, that is designed, manufactured and used or to be used for the storage or conveyance of gasoline or an associated product;
- (m) "regulation" means a regulation made under the authority of this Act;
- (n) "service station" means any premises at which gasoline or an associated product is sold and is put into the fuel tanks of motor vehicles or into portable containers;
- (o) "transport" means to convey in or on a vehicle gasoline or an associated product, exclusive of the fuel carried for use in the vehicle, and "transporting" and "transportation" have corresponding meanings. R.S.O. 1970, c. 189, s. 1; 1972, c. 1, s. 41 (1); 1973, c. 115, s. 1 (1, 2).

Gasoline
handling
equipment
must be
approved

2. No person shall,

- (a) offer for sale or sell;
- (b) install; or
- (c) use in a service station, consumer outlet, marina or bulk plant,

any equipment that is not approved by the Director pursuant to the regulations. R.S.O. 1970, c. 189, s. 2; 1973, c. 115, s. 2.

Containers
must be
approved

3. In a service station, consumer outlet, marina or bulk plant, no person shall put gasoline or an associated product having a flash point below 100°F. into any container of a type that is not approved by the Director pursuant to the regulations. R.S.O. 1970, c. 189, s. 3; 1973, c. 115, s. 3.

Approval of
specifica-
tions for
equipment

4. The Director may establish or approve specifications or test reports for equipment and designate organizations to

test equipment in accordance with such requirements. R.S.O. 1970, c. 189, s. 4; 1973, c. 115, s. 4.

5. All equipment shall be installed, tested, operated or used in accordance with the regulations. R.S.O. 1970, c. 189, s. 5. Equipment must comply with regulations

6.—(1) No person shall,

(a) operate a service station;

(b) operate a marina;

(c) operate a bulk plant; or

(d) transport gasoline or an associated product,

Licence to operate service station, etc.

unless licensed to do so by the Director.

(2) No person shall install, repair, service or remove equipment at a bulk plant, consumer outlet, marina or service station unless he is, Installation, repair, etc., of equipment

(a) engaged in the business of installing, repairing, servicing or removing such equipment; and

(b) registered as a contractor by the Director for that purpose,

or he is an employee of such person.

(3) Subject to section 7, any person who makes application for a licence in accordance with this Act and the regulations for any of the purposes enumerated in subsection (1) or makes application for registration as a contractor in accordance with this Act and the regulations and pays the prescribed fee is entitled to be issued such licence or registered as a contractor by the Director. Entitlement to licence or registration

(4) Subject to section 8, a licensee or registrant who makes application for a renewal of his licence or registration in accordance with this Act and the regulations and pays the prescribed fee is entitled to a renewal of his licence or registration by the Director. 1973, c. 115, s. 5 (1). Entitlement to renewal of licence or registration

7. Subject to section 9, the Director may refuse to issue a licence to an applicant or to register an applicant who has otherwise complied with the requirements of section 6 if in his opinion the past conduct of the applicant or where the applicant is a corporation, of its officers, directors or servants, affords reasonable grounds for belief that the operations to be carried on pursuant to the licence or registration will not be carried on in accordance with law and in a safe manner. 1973, c. 115, s. 6, *part*. Refusal to issue licence or to register

Suspension,
etc., of
licence or
registration

8. Subject to section 9, the Director may refuse to renew or may suspend or revoke a licence or registration if in his opinion the licensee or registrant or where the licensee or registrant is a corporation, any officer, director or servant thereof, has contravened or has knowingly permitted any person under his control or direction or associated with him in the carrying on of operations pursuant to the licence or registration to contravene any provision of this Act or of the regulations or of any other Act or regulation applying to the carrying on of such operations, and such contravention occurred through lack of competence or with intent to evade the requirements of such provision. 1973, c. 115, s. 6, *part.*

Notice of
proposal to
refuse or
revoke

9.—(1) Where the Director proposes to refuse to issue or renew a licence or registration or proposes to suspend or revoke a licence or registration, he shall serve notice of his proposal, together with written reasons therefor, on the applicant, licensee or registrant informing him that he has a right to a hearing by a judge of the county or district court of the county or district in which he intended to carry on or carried on his operations under the licence or registration if he applies therefor within fifteen days after service of the notice by the Director, and the applicant, licensee or registrant may within such time apply to the judge for a hearing.

Powers of
Director
where no
hearing

(2) Where an applicant, licensee or registrant does not apply for a hearing in accordance with subsection (1), the Director may carry out the proposal stated in his notice under subsection (1).

Powers of
judge where
hearing

(3) Where an applicant, licensee or registrant applies to a judge for a hearing in accordance with subsection (1), the judge shall appoint a time for and hold the hearing and, on the application of the Director at the hearing, may by order direct the Director to carry out his proposal or refrain from carrying out his proposal and take such action as the judge considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the judge may substitute his opinion for that of the Director.

Service of
notice

(4) The Director may serve notice under subsection (1) personally or by registered mail addressed to the applicant, licensee or registrant at his address last known to the Director and, where notice is served by registered mail, the notice shall be deemed to have been served on the third day after the day of mailing unless the person to whom notice is being given establishes to the judge to whom he applies for a hearing that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the notice until a later date.

(5) A judge to whom application is made by an applicant, licensee or registrant for a hearing under subsection (1) may extend the time for making the application either before or after expiration of the time fixed therein, where he is satisfied that there are *prima facie* grounds for granting relief to the applicant, licensee or registrant pursuant to a hearing and that there are reasonable grounds for applying for the extension and may give such directions as he considers proper consequent upon the extension. Extension of time for hearing

(6) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence or registration, a licensee or registrant has applied for renewal of his licence or registration and paid the prescribed fee, his licence or registration shall be deemed to continue, Continuation of licences or registrations pending renewal

(a) until the renewal is granted; or

(b) where he is served with notice that the Director proposes to refuse to grant the renewal, until the time for applying to a judge for a hearing expires and, where a hearing is applied for, until the judge has made his order. 1973, c. 115, s. 6, *part*.

10.—(1) The Director, the applicant, licensee or registrant who has applied for the hearing and such other persons as the judge may specify are parties to the proceedings before a judge under section 9. Parties

(2) Notice of a hearing under section 9 shall afford to the applicant, licensee or registrant a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence or registration. Notice of hearing

(3) An applicant, licensee or registrant who is a party to proceedings under section 9 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1973, c. 115, s. 7. Examination of documentary evidence

(4) The oral evidence taken before the judge at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the county court. Recording of evidence

(5) The findings of fact of a judge pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*. 1971, c. 50, s. 43 (2), *part*. Findings of fact R.S.O. 1980, c. 484

Appeal from
order of
judge

11.—(1) Any party to proceedings before a judge may appeal from the decision or order of the judge to the Divisional Court in accordance with the rules of court.

Record to be
filed in court

(2) Where notice of an appeal is served under this section, the judge shall forthwith file in the Supreme Court the record of the proceedings before him in which the decision or order was made, which, together with the transcript of the evidence before the judge if it is not part of the record of the judge, shall constitute the record in the appeal.

Minister
entitled to
be heard

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. 1971, c. 50, s. 43 (2), *part*.

Decision

(4) The Divisional Court may, on the appeal, exercise all the powers of the judge appealed from and for such purpose the court may substitute its opinion for that of the Director or of the judge or the court may refer the matter back to the judge for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1971, c. 50, s. 43 (2), *part*; 1973, c. 115, s. 8.

Provisional
order of
Director

12. Notwithstanding section 9, the Director, by notice to a licensee or registrant and without a hearing, may provisionally refuse renewal of or suspend the licence or registration where the carrying on of the operations under the licence or registration is, in the Director's opinion, an immediate threat to public safety or the safety of any person and the Director so states in the notice giving his reasons therefor, and thereafter sections 9, 10 and 11 apply as if the notice given under this section were a notice of a proposal to revoke the licence or registration served under subsection 9 (1). 1973, c. 115, s. 9.

Employers
must take
reasonable
precautions

13. Every person who employs another person in the handling of gasoline or an associated product or in the installing of equipment shall take every precaution that is reasonable in the circumstances to ensure that his employees comply with this Act and the regulations. R.S.O. 1970, c. 189, s. 7.

Inspectors
R.S.O. 1980,
c. 139

14.—(1) Every inspector appointed for the purposes of the *Energy Act* is authorized to enforce this Act.

(2) Every inspector may, for the purposes of this Act and the regulations,

(a) enter any premises where he has reason to believe there has been, are or may be hazardous conditions relative to gasoline or an associated product;

- (b) make such inspections, tests and inquiries as are necessary to ascertain whether this Act and the regulations are being complied with;
- (c) take samples of any liquid that he has reason to believe is or may contain gasoline or an associated product; and
- (d) require the production of any licence or other document prescribed by a regulation, and examine and copy it.

(3) An inspector may give instructions orally or in writing ^{Instructions} to any person with respect to any matter in order to bring about compliance with this Act and the regulations and may require that his instructions be carried out within such time as he specifies.

(4) Where a person to whom an inspector gives oral ^{Idem} instructions requests the inspector to put his instructions in writing, he shall do so. R.S.O. 1970, c. 189, s. 8 (1-4).

(5) Any person who considers himself aggrieved by any ^{Appeal from Instructions of inspector} instructions given by an inspector under this section may forthwith appeal to the Director, but the bringing of such appeal does not affect the operation of the instructions appealed from until disposition of the appeal. 1971, c. 50, s. 43 (3), *part*; 1973, c. 115, s. 10 (1).

(6) An appeal under subsection (5) may be made in ^{How made} writing or orally or by telephone, but the Director may require the grounds for appeal to be specified in writing before the hearing. 1971, c. 50, s. 43 (3), *part*; 1973, c. 115, s. 10 (2).

(7) The appellant, the inspector from whom the appeal is ^{Parties} taken and such other persons as the Director may specify are parties to an appeal under this section. 1971, c. 50, s. 43 (3), *part*; 1973, c. 115, s. 10 (3).

(8) On an appeal under this section, the Director shall ^{Powers of Director on appeal} hear and dispose of it as promptly as is practicable and may substitute his findings or opinions for those of the inspector who gave the instructions appealed from and may affirm or reverse such instructions or give new instructions in substitution therefor and for such purpose has all the powers of the inspector and the instructions of the Director shall stand in the place of and have like effect under this Act and the regulations as the instructions of the inspector. 1971, c. 50, s. 43 (3), *part*; 1973, c. 115, s. 10 (4).

**Duty to
assist
inspector**

(9) The occupant of any premises and his servants, agents and employees shall give reasonable assistance to an inspector in the exercise of his powers under this Act.

**No personal
liability**

(10) No inspector is personally liable for anything done by him in the exercise of his powers under this Act. R.S.O. 1970, c. 189, s. 8 (5, 6).

**Crown not
relieved of
liability
R.S.O. 1980,
c. 393**

(11) Subsection (10) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by an inspector and to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (10) had not been enacted. 1971, c. 50, s. 43 (3), *part*.

Regulations

15.—(1) The Lieutenant Governor in Council may make regulations,

- (a) appointing such persons or classes of persons as may be necessary to assist in the enforcement of this Act and the regulations;
- (b) exempting any person or class of persons from this Act or the regulations or any of the provisions thereof;
- (c) exempting any equipment or any class of equipment from this Act or the regulations or any of the provisions thereof;
- (d) respecting the term, issue, renewal and posting of licences and registrations and prescribing the fees therefor;
- (e) designating organizations to test equipment to specifications established or approved by the Director and, where the equipment conforms to the specifications, to place their label thereon;
- (f) prescribing procedures for installing, testing, operating and using equipment;
- (g) respecting the approval by the Director of equipment or any type thereof;
- (h) prescribing grades of gasoline and associated products, and providing for the identification thereof;
- (i) prescribing forms and providing for their use;

- (j) requiring the reporting of accidents, spills and leaks involving gasoline or associated products;
- (k) providing for and requiring the keeping of records and plans and the making of affidavits, returns, statements or reports on the handling of gasoline and associated products;
- (l) requiring and providing for the approval of design and construction standards and drawings for equipment and installations. R.S.O. 1970, c. 189, s. 9; 1971, c. 50, s. 43 (4); 1973, c. 115, s. 11 (1-4).

(2) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or specifications and may require compliance with any code or specifications that is so adopted. 1973, c. 115, s. 11 (5). Adoption of codes by reference

16. This Act and the regulations prevail over any municipal by-law. R.S.O. 1970, c. 189, s. 10. Act prevails over by-laws

17. Every person who,

- (a) contravenes or fails to comply with any provision of this Act or the regulations;
- (b) knowingly makes a false statement in any document prescribed by the regulations; or
- (c) fails to carry out the instructions of an inspector,

Offences
and
penalties

is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1970, c. 189, s. 11.

18. On a day to be named by proclamation of the Lieutenant Governor,

Amendments
to cl. 1 (g)
and s. 3

- (a) clause 1 (g) is amended by striking out "100°F." in the second line and inserting in lieu thereof "40°C."; and
- (b) section 3 is amended by striking out "100°F." in the third line and inserting in lieu thereof "40°C.". 1978, c. 87, s. 13.

