



June 4, 2001

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor
Harristown #2
333 Market Street
Harrisburg, PA 17101

RECEIVED
2001 JUN - 8 AM 9:06
INDEPENDENT REGULATORY REVIEW COMMISSION

Subject: Comments on Proposed Amendments to Chapter 211 – Storage, Handling and Use of Explosives [30 Pa.B. 2768].

Dear Senator White:

I am writing this letter to express my opposition to the above proposed revision of Chapter 211 as it is presently written. The Executive Summary of the EQB Final Rulemaking document points out that these regulations have not been significantly revised since they were adopted more than 25 years ago. While I agree that a rewrite of this document is long overdue, the present rewrite does not adequately address the realities of modern commercial rock blasting.

The technology of commercial blasting, and our knowledge of the effects of blasting vibrations on structures, have advanced dramatically in recent years. Both the DEP and the explosives-using industry are vitally interested in controlling the potential for vibration damage to the many different types of man-made structures encountered by the professional blaster. However, it is my opinion that the proposed rewrite of Chapter 211 lacks both the required flexibility and the technical sophistication to support this interest.

One specific example of weakness in this document is Figure 1 in §211.151(c). This figure is a *modified* form of the Appendix B blasting level criteria recommended in 1980 by the former US Bureau of Mines. It is commonly known as the Appendix B, or 'Z' curve. Its purpose is to limit the intensity of ground vibration so that no type of damage to residential structures can occur.

In its original and intended form, the USBM 'Z' curve is generally regarded as the most scientifically valid criterion for preventing any type of damage to wood frame residential-type structures. Code-built residential structures are the type of building most easily damaged by blasting vibrations, and the 'Z' curve effectively prevents cosmetic damage to their weakest components - hairline cracks in their gypsum interior walls and ceilings.

Mr. Robert E. Nyce
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The problem with Figure 1 in the proposed regulations is that it has been modified (simplified) to the point where it is no longer practical. It no longer represents the intent of the USBM to provide damage protection to both new and older homes. The original 'Z' curve originally included a very restrictive .5 ips limit designed to protect the plaster-on-wood lath interiors of older homes, as well as a .75 ips limit to protect modern homes against damage to their drywall and other gypsum lath-based interior surfaces. ***The DEP's Figure 1 includes only the .5 ips limit, and completely ignores the .75 ips limit recommended for the protection of modern homes.***

To my knowledge, homes with plaster-on-wood-lath interiors have not been built for over 50 years. This method of interior wall finishing has been long obsolete, and was probably abandoned in part because of its intrinsic weakness and tendency for the plaster to crack and separate from the wood lath. As a result of this problem, the interior walls of many older homes have already fallen apart beyond repair, and have been replaced using modern and stronger materials.

Because of this, I submit that the present Chapter 211 rewrite is already obsolete as a reasonable control for blasting vibrations at most mining and construction sites. Furthermore, the proportion of such sites will become even greater with time as buildings and their component materials evolve.

The fact that the revised 'Z' curve is overly strict for most blasting sites is only part of the problem - the proposed regulations also lack the required incentives and technical guidance which might allow DEP inspectors to apply more reasonable limits in the majority of cases where their revised 'Z' curve does not apply. In essence, the regulations simply state that the Department may raise or lower the vibration limit as it deems appropriate - they provide absolutely no guidance for blasters or inspectors to plan for or establish reasonable limits at any given site.

Another related weakness in the Chapter 211 rewrite is that the 'Z' curve is technically applicable ***only*** to wood frame residential-type structures. However, there are many cases where the structures to be protected are not homes. They are engineered buildings, bridges, towers, pipelines and other structures, all of which have substantially higher vibration damage resistance than homes. Again, these regulations do not provide sufficient guidance or incentives for DEP inspectors to apply reasonable vibration limits to such structures.

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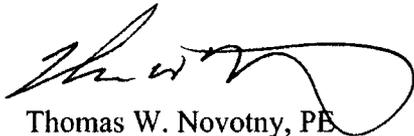
Historically, the lack of fundamental guidance for DEP inspectors to establish appropriate limits for non-residential structures has led them to adopt a 'one size fits all' mentality. This has resulted in literally hundreds of cases where blasters have been forced to adhere to costly blasting restrictions that should never have been applied to non-residential structures. The new rewrite does nothing to correct that problem.

Commercial blasting is a sophisticated activity practiced by trained and licensed professionals. It is only proper that the regulatory environment in which they work should be equally sophisticated and knowledgeable. Inappropriate and inflexible regulations, as now exist in portions of the Chapter 211 rewrite, will stifle the productivity of the commercial blasting industry, as well as the economic well-being of the Commonwealth.

Thank you for your time and consideration of my request.

Respectfully submitted,

VIBRA-TECH ENGINEERS, INC.

A handwritten signature in black ink, appearing to read 'Thomas W. Novotny', with a large, stylized flourish at the end.

Thomas W. Novotny, PE
Vice President

D. C. GUELICH EXPLOSIVE CO. Phone 814-765-1558
R. D. # 3 BOX 125 A Fax 814-765-2962
CLEARFIELD PA. 16830

May 31, 2001

To: Independent Regulatory Review Commission.

From: Breck Neepser, Safety Director.

RE: Comments.
EQB Regulation #7-349 (#2120)
Licensing of Blasters and Storage, Handling and use of Explosives.

RECEIVED
INDEPENDENT REGULATORY REVIEW COMMISSION
MAY 31 AM 11:50
D. C. GUELICH

210.17. Issuance and renewal of licenses.

(a). A blaster's License is issued for a specific classification of blasting activities. The classification will be determined by the department and may include general blasting (which includes all classifications EXCEPT DEMOLITION and underground noncoal mining), trenching and construction, seismic and pole line work, well perforation, surface mining, underground noncoal mining, industrial, limited and DEMOLITION.

Demolition activity. The act of demolishing a structure with explosives.

**The responses I have received to the question of why there is a need for a separate demolition license when a general license covers this activity are:
There needs to be more training on the use and application of specialized explosives.**

The questions I have in regards to this training, which I do not feel, have been adequately addressed in the responses from the ENVIRONMENTAL QUALITY BOARDS EXECUTIVE SUMMARY dated April 17, 2001 are:

- (1) Would the department of environmental protection change their blasters training and testing program to cover demolition blasting?**
- (2) Would this training be separate from all other testing and training?**
- (3) If so how many times a year would this take place?**
- (4) Who in the department of environmental protection would be qualified to teach this "specialized application"?**

**D. C. GUELICH EXPLOSIVE CO.
Comments, EQB Regulation # 7-349 (#2120)**

- (5) **Would the test be designed in house at the department of environmental protection or would the test be designed by a out side contractor? If so would it not be possible that this could be designed by the outside contractor to monopolize on this type of expertise?**
- (6) **The training requirements for a blaster license are one year's experience in the handling and use of explosives prior to taking a blaster test. No matter which blaster license tests the applicant is taking, The departments' training and testing does not constitute technical application for any blasting specialty.**
- (7) **Many blasters with a general license have already done demolition blasting and does the department of environmental protection want to take this ability away with out due process?**
- (8) **The department of environmental protection possesses neither the duty nor the responsibility and it is virtually impossible to teach the many technical applications of explosives.**
- (9) **The technical applications of explosives needs to be learned through experience and working with experienced blasters. Not through the department of environmental protection.**
- (10) **The blasting activity permit is the department of environmental protections only opportunity to control or deny a particular blaster or blasting company the ability to do the blast.**
- (11) **The prime responsibility of the department of environmental protection is to give a general knowledge of the regulations and rules to govern the use of explosives in Pennsylvania.**
- (12) **Demolition has always been covered under a general license and still should be.**

211.151. Prevention of damage.

(c). Blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 or meets the maximum allowable peak particle velocity as indicated by figure 1. However, Blasting activities authorized prior to (effective adoption date) may continue as authorized unless the authorization is modified, suspended or revoked by the department.

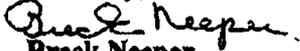
D. C. GUELICH EXPLOSIVE CO.
Comments, EQB REGULATION # 7-349 (#2120)

Comment.

The Scaled Distance of 50 was set for construction and industrial minerals and at 60 for coal. The recommended Z curve was .75 inches per second. When these Scaled Distances and Z curve levels where established by OSM and The Bureau of mines these numbers were set at levels known to prevent damage. With the new level of 90 or greater and the use of the Z curve standard of .5 inches per second increases the Scaled distance standard by 150% and the Z curve standard by 33%. This new standard will be very costly to industry with VERY little if ANY benefit to the public. To our company alone just the cost of new seismographs will be between \$20,000 and \$27,000.

The stated benefit to the department was that a Scaled Distance of 90 or greater would reduce the number of complaints to the department. The public will always complain if they PERCEIVE a thrcat to there property whether the scaled distance is 90 or not. The Scaled distance should be left as is.

Sincerely,


Breck Neeper.

Safety Director.

DECLASSIFIED

2001 MAY 31 AM 11:50

REVIEW COMMISSION

Date: 5-31-01

D. C. GUELICH EXPLOSIVE COMPANY
R. D. #3 Box 125A
Clearfield, PA 16830



Telephone: 814-765-1558
Fax: 814-765-2962

TO: Robert E. Nyce

FROM: Breck Neepser

OF PAGES (incl. cover sheet) 4

COMMENTS: EPB Regulation #7-349 (#2120)

Multiple horizontal lines for additional comments or notes.

Original: 2120



359 Northgate Drive, Suite 100, Warrendale, PA 15086

724-933-7620 FAX 724-933-7630

June 4, 2001

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor
Harristown #2
333 Market Street
Harrisburg, PA 17101

Subject: Comments on Proposed Amendments to Chapter 211 - Storage, Handling and Use of Explosives [30 Pa.B. 2768].

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REVIEW COMMISSION

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Page 2

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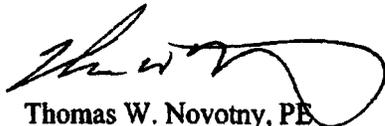
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Thank you for your time and consideration of my request.

Respectfully submitted,

VIBRA-TECH ENGINEERS, INC.



Thomas W. Novotny, PE
Vice President

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2001 JUN -4 PM 4: 24



REVIEW COMMISSION 359 Northgate Drive, Suite 100, Warrendale, PA 15086

724-933-7620 FAX 724-933-7630

FAX TRANSMITTAL COVER SHEET

Date: 6/4/01 Number of Pages (including cover): 4

To: ROBERT E. NYCE, EXEC. DIR.

Company: INDEPENDENT REGULATORY REVIEW Comm.

Fax Number: 717-783-2664

Project/Reference: PROPOSED AMENDMENTS TO CH 211 STORAGE, HANDLING AND USE OF EXPLOSIVES

From: TOM NOVOTNY [30 Pm. B. 2768]



MESSAGE: _____

ORIGINAL P WILL WILL NOT FOLLOW BY MAIL

The information contained in this facsimile message is intended only for the use of the individual or entity to which it is addressed and may contain privileged and confidential information. If the reader is not the recipient or delivering agent, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone for subsequent instructions.

Original: 2120

Michael F. Salley, P.E.
106 Center Street
Forty Fort, PA 18704-5018

Phone: (570) 287-3212

RECEIVED
2001 MAY 29 AM 9:57

INDEPENDENT REGULATORY
REVIEW COMMISSION



May 24, 2001

Independent Regulatory Review Commission (IRRC)
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: **Regulation Number 7-349**
Licensing of Blasters and Storage, Handling and Use of Explosives
(A rewrite of Chapters 210 and 211 of PA Code Title 25, Environmental Resources)

Dear Sir or Madam:

I am a Registered Professional Engineer in the Commonwealth of Pennsylvania. I have recently reviewed an Austin Powder Company Explosives Storage Site located in Wilkes-Barre Township / Laurel Run Borough, Luzerne County. Before you and other Commonwealth Officials is the above-captioned Regulation, to be approved or returned.

I had participated in the public comment period for this Regulation by submitting a letter dated July 29, 2000 and an Addendum to this letter dated August 9, 2000. However, my August 9, 2000 Addendum letter, which included the suggested modification provided below, was not considered because it was submitted after the comment period which apparently closed about August 3, 2000.

Suggested Action for this Regulation:

It is suggested that this Regulation be returned for modification. Essentially, the suggested modification is that the separation distance between the magazines and nearest building or public traffic route should be measured by a Professional Land Surveyor. The suggested modification and supportive justifications are provided below.

Suggested Modification to Regulation:

The Section in question is § 211.113. **Application contents, Subsection (b), Number (4)**, with suggested modification shown (strike-through for deletion, and underlined for addition):

A scale map, or plan or a sketch of the site location showing the nearest buildings, nearest railways, nearest highways, and existing barricades, if any, and proposed barricades. The shortest distance from any magazine to the nearest building, or public traffic routes (railway, road, street or highway) shall be measured by a Registered Professional Land Surveyor, and shown on this scale plan. The scale plan shall be signed and sealed by this Surveyor, in accordance with the registration laws of the Commonwealth of Pennsylvania. This signed and sealed scale plan shall be submitted with the application.

Regulation Number 7-349

Licensing of Blasters and Storage, Handling and Use of Explosives

(A rewrite of Chapters 210 and 211 of PA Code Title 25, Environmental Resources)

May 24, 2001

Page 2

Justifications for Suggested Modification:

As provided above, it is suggested that the Regulation be modified so that a Registered Professional Surveyor shall perform any measurements of the separation distance from the magazines to the nearest building or public traffic route. This procedure is necessary for the following reasons:

- The Applicant, such as a Powder Company, has a vested interest in the separation distance between the magazine and nearest building because this separation distance determines the amount of high explosives that may be stored, based on the distance tables. For any magazine, the larger the amount of explosives that is permitted to be stored, the more economical that magazine can be. Accordingly, the measurement of this separation distance should *not* be performed by the Applicant.
- The Commonwealth, in the personage of Department of Environmental Protection (DEP) Blasting Inspectors, apparently have long-term relationships with representatives from Powder Companies. Accordingly, to preclude any appearance of impropriety, the measurement of this separation distance should *not* be performed by the DEP.
- As indicated in Act 367, *The Engineer, Land Surveyor and Geologist Registration Law*, these Registered Professionals are obligated to "...safeguard life, health or property and to promote the general welfare..." under penalty of Law. The separation distance between the magazine and nearest building is a critical distance from the standpoint of safety. The separation distance determines the degree to which that building, and its inhabitants, will be exposed to the explosives hazards, one of which is blast overpressure. Accordingly, the separation distance should be measured by a Registered Professional, that is, a Professional Land Surveyor, whose occupation it is to provide measurements, and whose obligation it is to safeguard the life, health and property of the residents of the Commonwealth.

A Recent Review of an Explosives Storage Site:

As provided in the introduction, I recently reviewed an explosives storage site. The following summary of some of the elements of this review are germane to the necessity that a Surveyor provide the separation distances:

In June of 2000, Austin Powder Company of Northampton, PA established an explosives storage site in Wilkes-Barre Township / Laurel Run Borough, Luzerne County. The residents of Wilkes-Barre Township were concerned because the explosives storage site was located adjacent to their homes, these homes located in a congested residential area of Wilkes-Barre Township. My initial review of the site indicated that the separation distance between the magazines and nearest home was about 800 feet. However, the Applicant, Austin Powder Company, had provided a separation distance of 1056 feet to the DEP, to which the DEP had permitted 25,000 pounds of high explosives.

Regulation Number 7-349
Licensing of Blasters and Storage, Handling and Use of Explosives
(A rewrite of Chapters 210 and 211 of PA Code Title 25, Environmental Resources)
May 24, 2001
Page 3

I informed DEP that the 1056-foot separation distance was not correct. Upon my complaint, a DEP Blasting Inspector purportedly performed a measurement of the separation distance, this measurement being 947 feet, purportedly performed with a laser range finder. Based on the 947-foot distance as measured by the DEP Blasting Inspector, the explosives storage site license SL- 4665 was modified by DEP to permit 16,000 pounds of high explosives.

I informed, again, the DEP that this 947-foot distance was not correct. The DEP did not respond to me. In support of my assertion that the separation distance was about 800 feet, I measured the site with surveying equipment and provided to the DEP, and others, a scale drawing showing this separation distance, bearing my Professional Engineer's seal and my signature. Again, the DEP did not respond to my sealed engineering drawing.

Concurrently with my review, Inspectors from the ATF (United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms) had been performing their own review of this site, for their own reasons. At some point in their review, the ATF had compelled the Austin Powder Company to retain a Surveyor to measure the separation distance between the magazines and the nearest home. This Surveyor made a measurement of about 800 feet, which was my assertion from the outset. Accordingly, based on a separation distance of about 800 feet, the ATF restricted the site to 8000 pounds of high explosives. This action by the ATF superceded the DEP explosives storage site license SL-4665 that still specifies to this day that 16,000 pounds of high explosives are permitted at the site.

On March 28, 2001, the Court of Common Pleas of Luzerne County decided for a Wilkes-Barre Township Resident, who Appealed the Special Exception Permit issued by the Wilkes-Barre Township Zoning Hearing Board to Austin Powder Company. The Court determined that the site was located partially in Laurel Run Borough. Accordingly, Wilkes-Barre Township had no jurisdiction. The Court revoked the Zoning Permit, and Austin Powder Company withdrew from the site, and the area.

Note that it is a rare and significant circumstance when a Federal Agency supercedes the authority of a State Agency. The Commonwealth should make particular note of this fact. Note also that the account above provides direct evidence and support for the aforementioned Justifications. It would be in the best interests of the Commonwealth, and its residents as well, for the Regulation to specify that a Surveyor shall provide any separation distances between magazines, and buildings or public traffic routes.

The Proposed Regulation is *Less Protective* than the Current Regulation:

The current Regulation, Chapter 211, specifies that the Applicant shall submit a scale plan. As provided in the current Chapter 211, Section §211.40 "These plans shall be drawn with a scale of 100 or 200 feet to the inch."

The proposed Regulation does *not* specify a scale map or plan. This contradicts typical Permit Application procedure. The interests of the residents of the Commonwealth, or the Commonwealth, cannot be well served by allowing plans, maps or

Regulation Number 7-349

Licensing of Blasters and Storage, Handling and Use of Explosives

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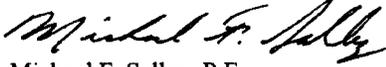
May 24, 2001

Page 4

sketches to be submitted that are not to scale, which of course, cannot accurately represent or depict the conditions, such as separation distances, surrounding the explosives site.

If you have any questions, please call me at (570) 287-3212.

Sincerely,



Michael F. Salley, P.E.

This letter has been addressed and sent to the following seven (7) parties:

Senator Mary Jo White
Chairperson (Senate) - Environmental Resources & Energy Committee
Senate P.O. Box 203021
Harrisburg, PA 17120
(717) 787-9684

Senator Mary Jo White
Attn: Mr. Patrick Henderson - Environmental Resources & Energy Committee
Senate P.O. Box 203021
Harrisburg, PA 17120
(717) 787-9684

Senator Ralph Musto
Environmental Resources & Energy Committee
Senate P.O. Box 203014
Main Capitol
Harrisburg, PA 17120
(717) 787-7105

Representative Arthur Hershey
Chairman (House) - Environmental Resources & Energy Committee
House P.O. Box 202020
Harrisburg, PA 17120-2020
(717) 783-6435

Mr. Fred Taylor
Executive Director - Environmental Resources & Energy Committee
House P.O. Box 202217
Harrisburg, PA 17120-2217
(717) 783-6435

Representative Camille (Bud) George
Environmental Resources & Energy Committee
Attn: Mr. Thomas Kuhn
House P.O. Box 202020
Harrisburg, PA 17120-2020
(717) 787-7316

Independent Regulatory Review Commission (IRRC)
333 Market Street, 14th Floor
Harrisburg, PA 17101

Original: 2120

Pennsylvania
Aggregates and Concrete
Association

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2001 MAY 29 AM 8:57

May 25, 2001

3509 North Front Street • Harrisburg, PA 17110-1438

INDEPENDENT REGULATORY
REVIEW COMMISSION

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101



Dear Mr. Nyce:

RE: Regulation File #7-349 (#2120)

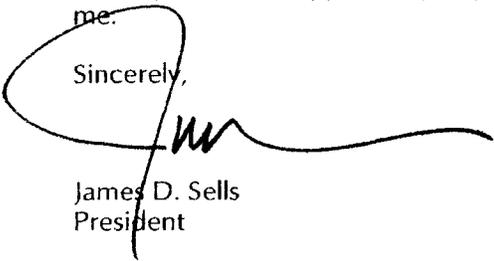
The Pennsylvania Aggregates and Concrete Association's (PACA) Blasting Committee has extensively reviewed the Chapter 210 and 211 final rulemaking as approved by the Environmental Quality Board on April 17, 2001. PACA has been working closely with the Department of Environmental Protection over the past few years to develop a regulation that reflects currently accepted advancements in the industry, and we are pleased with the cooperative efforts.

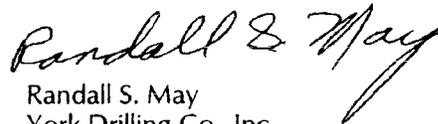
On behalf of the membership of PACA, we would like to offer the following input regarding the regulation.

- ◆ 211.121 (c) PACA requests that the words "authorizing blasting activity" be eliminated. A mining permit already authorizes blasting by the nature of the permit.
- ◆ 211.151 (c) DEP has stated at several meetings and in written comments (Page 7 of comment/response document - last item on page) that "monitoring is to be conducted at the nearest building, unless another structure is designated by the Department". Therefore, we would recommend that the phrase as currently written "or other structure designated by the Department" be in parentheses **OR** changing the wording to say "**at the closest building, unless another structure is designated by the Department**".
- ◆ 211.182 (c) PACA would highly recommend revising this section to state: "When blasting within 200 feet (60.96 meters) of a utility **line not owned or leased by the permittee or their customer**, blast holes may not exceed 3 inches (7.62 x 10² meters) in diameter, **unless approved by the utility and the Department**." Revising the definition of "utility line" to not include lines which are used in the operation of crushers, pumps, etc. could also modify this section. If changes are not made to this section, a blaster could be in violation if blasting close to utility lines owned by the permittee.

Thank you for this opportunity to provide our input, and if you have any questions or comments, please contact me.

Sincerely,


James D. Sells
President


Randall S. May
York Drilling Co., Inc.
Blasting Committee Chairman

cc: Senator Mary Jo White, Chair, Senate Environmental Resources and Energy Committee
Representative Arthur Hershey, Chair, House Environmental Resources and Energy Committee
Environmental Quality Board
PACA's Blasting Committee and PACA's Board of Directors

McGuireWoods LLP
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Original: 2120

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PENNSYLVANIA STATUTORY
REVIEW COMMISSION

wboswell@mcguirewoods.com
Direct Fax: 412.667.6050

May 22, 2001

IRRC
Attn: John H. Jewett
333 Market Street, 14th Floor
Harrisburg, PA 17101

EQB Regulation #7-349 (#2120)
Licensing of Blasters, etc.

Dear Commission Members:

Attached to this letter is a copy of my communication on behalf of the Pennsylvania One Call System, Inc. (POCS) to the EQB on April 6, 2001.

My letter to the EQB expressed concern that the EQB's final regulations did not make a clear reference to the Commonwealth's underground damage prevention statute, 73 P.S. Sec. 176, et seq., when describing the duties of blasters. Subsequently, EQB personnel advised me that their training materials would make reference to the statute, which POCS thinks is a step in the right direction.

That said, POCS also wishes to ask once again that the EQB's final regulation itself refer to the statute, as a means of putting all persons on notice that they must call before engaging in the types of activities (blasting, in this case) that the regulation seeks to control. While POCS is satisfied that training materials will be of use, we remain concerned that persons who do not seek or participate in such training may not be aware of their obligations to call before blasting. A clear reference in the regulations would go a long way toward eliminating this problem.

To repeat what I said to the EQB in my earlier letter, POCS does not seek to add another layer of regulation, merely to use the vehicle of the proposed regulations as another means of informing persons of their statutory duties to thus further enhance public safety.

Very truly yours,



Legal Advisor
POCS

cc: Wm G. Kiger

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April 6, 2001

Evan T. Shuster, P.E.
Chief, Division of Permits
Bureau of Mining and Reclamation
PA DEP
P.O. Box 8461
Harrisburg, PA 17105-8461

Re: Licensing of Blasters and Storage, Handling and Use of Explosives

Dear Mr. Shuster:

I have your letter of April 3rd concerning the above matter. I note that the Board considered the comment of the Pennsylvania One Call System (POCS) but chose not to include any reference to the Act in the final regulations. The stated reason was that blasting is subordinate to excavation and the blaster is not the primary contractor or designer.

Please understand that POCS is not attempting to suggest that the Department add another layer of regulation. Rather we are attempting to disseminate as broadly as possible the Commonwealth's statutory requirement that persons call before they excavate. In this case, while the general contractor normally will be the person to make the call, the statute defines a contractor as **"any person who or which performs excavation or demolition work for himself or for another person."** Furthermore, excavation work, as defined by the statute, includes blasting.

I mention this because a blaster is clearly obliged to fulfill the obligations imposed by the Act, and cannot point the finger at his general contractor if those obligations are not met. POCS wishes to avoid any blaster, or the Department, laboring under the mistaken impression that the failure to act by a third party excuses from liability the person actually engaging in excavation, which, in this case, means blasting. The statute does not include the term "primary contractor."

POCS requests that you forward this communication to the EQB as a response, supplement or clarification to our earlier-stated position, as the case may be. Thank you for your assistance.

Sincerely,

Cc: Wm G. Kiger

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