

Original: 2461

①

RECEIVED
2005 FEB -8 AM 9:10
INDEPENDENT LABORATORY
REVIEW COMMISSION

Glenn Rowe II
624 Wile Circle
Fayetteville, Pa 17222

This letter is to hopefully bring reconsideration to the amendments that the Environmental Quality Board considered FINAL rulemaking to 25 Pa.Code Chapter 211. Anything in blue will be taken from that final rulemaking.

The magazine security requirements are minimal and only address design requirements for magazine construction, doors and locks on the doors. There are no effective perimeter security requirements and magazines are too readily accessible to those who want to steal explosives.

< This is taken from the orange book on type 1 magazine construction that I'm sure you are aware of.

§ 55.207 Construction of type 1 magazines.

A type 1 magazine is a permanent structure: a building, an igloo or "Army-type structure", a tunnel, or a dugout. It is to be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated.

(a) Buildings. All building type magazines are to be constructed of masonry, wood, metal, or a combination of these materials, and have no openings except for entrances and ventilation. The ground around building magazines must slope away for drainage or other adequate drainage provided.

(1) Masonry wall construction. Masonry wall construction is to consist of brick, concrete, tile, cement block, or cinder block and be not less than 6 inches in thickness. Hollow masonry units used in construction must have all hollow spaces filled with well-tamped, coarse, dry sand or weak concrete (at least a mixture of one part cement and eight parts of sand with enough water to dampen the mixture while tamping in place). Interior walls are to be constructed of, or covered with, a nonsparking material.

(2) Fabricated metal wall construction. Metal wall construction is to consist of sectional sheets of steel or aluminum not less than number 14-gauge, securely fastened to a metal framework. Metal wall construction is either lined inside with brick, solid cement blocks, hardwood not less than four inches thick, or will have at least a six inch sand fill between interior and exterior walls. Interior walls are to be constructed of, or covered with, a nonsparking material.

(3) Wood frame wall construction. The exterior of outer wood walls is to be covered with iron or aluminum not less than number 26-gauge. An inner wall of, or covered with nonsparking material will be constructed so as to provide a space of not less than six inches between the outer and inner walls. The space is to be filled with coarse, dry sand or weak concrete.

(4) Floors. Floors are to be constructed of, or covered with, a nonsparking material and shall be strong enough to bear the weight of the maximum quantity to be stored. Use of pallets covered with a nonsparking material is considered equivalent to a floor constructed of or covered with a nonsparking material.

(5) Foundations. Foundations are to be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the buildings is to be enclosed with metal.

(6) Roof. Except for buildings with fabricated metal roofs, the outer roof is to be covered with no less than number 26-gauge iron or aluminum, fastened to at least 7/8 inch sheathing.

(7) Bullet-resistant ceilings or roofs. Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosives within, the magazine is to be protected by one of the following methods:

(i) A sand tray lined with a layer of building paper, plastic, or other nonporous material, and filled with not less than four inches of coarse, dry sand, and located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation.

(ii) A fabricated metal roof constructed of 3/16-inch plate steel lined with four inches of hardwood. (For each additional 1/16 inch of plate steel, the hardwood lining may be decreased one inch.)

(8) Doors. All doors are to be constructed of not less than 1/4 inch plate steel and lined with at least two inches of hardwood. Hinges and hasps are to be attached to the doors by welding, riveting or bolting (nuts on inside of door). They are to be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.

(9) Locks. Each door is to be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must have at least five tumblers and a casehardened shackle of at least 3/8 inch diameter. Padlocks must be protected with not less than 1/4 inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(10) Ventilation. Ventilation is to be provided to prevent dampness and heating of stored explosive materials. Ventilation openings must be screened to prevent the entrance of sparks. Ventilation openings in side walls and foundations must be offset or shielded for bullet-resistant purposes. Magazines having foundation and roof ventilators with the air circulating between the side walls and the floors and between the side walls and the ceiling must have a wooden lattice lining or equivalent to prevent the packages of explosive materials from being stacked against the side walls and blocking the air circulation.

(11) Exposed metal. No sparking material is to be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and side walls, which might be exposed to contact with explosive materials, must be blind nailed, countersunk, or covered with a nonsparking lattice work or other nonsparking material.

(b) Igloos, "Army-type structures", tunnels, and dugouts. Igloo, "Army-type structure", tunnel, and Dugout magazines are to be constructed of reinforced concrete, masonry, metal, or a combination of these materials. They must have an earth mound covering of not less than 24 inches on

the top, sides and rear unless the magazine meets the requirements of paragraph (a)(7) of this section. Interior walls and floors must be constructed of, or covered with, a nonsparking material. Magazines of this type are also to be constructed in conformity with the requirements of paragraph (a)(4) and paragraphs (a)(8) through (11) of this section.

Now C-mon, how can you say there is minimal security? Why not make the offenders of stealing explosives more intense than to punish the average citizen? If a person really wants to steal explosives do you really think those fences are going to stop them? It might take them a couple more hours to gather some more tools to do the job. There still going in unless they know there getting 30 years instead of 5 years behind bars.

I have a license to build fireworks. I do this as a hobby and belong to two fireworks clubs. Building fireworks is a dying ancient art that needs protected, not abolished. These amendments will do just that. I bought a 20 foot sea container in Oct. of 2004 to turn into a type 4 magazine. A week later I found out about all these rules coming and haven't done anything with the container since. The question always comes up, why a 20 foot sea container for a hobby. I only paid \$800 for it. You couldn't build a 6'x6' shed for that. I have a big fireworks display around Independence Day here on my fathers farm land that a bunch of my fellow pyrotechnicians help with and needed a place to store the fireworks as it gets bigger a better every year. There is no way I can comply to these rules coming to the fireworks community. This hobby costs me a lot of money just to see the smiles on neighbor's faces. It's hard to believe, something we celebrate our freedom with is about to take a huge hit possibly even across the US. Oregon for instance has only one company that does fireworks because of rulemaking that wasn't given enough thought. Now how many communities do you think has fireworks on Independence Day there? How much do you think it would cost if you wanted one? If these rules go forth they'll possibly migrate to neighboring states. Very, very few small fireworks display companies will be able to make it with this ruling.

As a result of inadequate (**C_MON please**) security requirements, explosives have been stolen from magazines in Pennsylvania. From March 2003 to December 2003, the last period for which data from ATF is available, Pennsylvania led the nation with 9 explosives thefts. In these 9 thefts 1,859 pounds of explosives and 375 detonators, necessary to detonate the explosives were stolen. Not all of this material has been recovered.

You say not all this material has been recovered. I understand that some of this was miscounts and misplaced and some recovered. **SO what is still on the books as missing?** With that in mind are we now with all other states? Another question is how much explosives are used in other states compared to Pa. If we use 8% more explosives in Pa than others and our thefts were 2% higher, we did pretty well.

These thefts of explosives pose a significant risk to the public's safety and the threat of future thefts may present an even greater risk to the public safety.

I agree that **HIGH EXPLOSIVES** pose a threat to the public and possibly more security is needed. Fireworks are **NOT** high explosives in no way shape or form. The Denmark fireworks disaster was around **2,000 TONS**. One firefighter lost his life at the time of the blast in that disaster.

Please do some research on fireworks before this ruling is made. A fireworks shell is made up of a specific amount of Black powder (low explosive) to get it into the air. A time fuse (just burns) till it gets to a specific height, lighting a small amount black powder (low explosive) that ignites and sends the stars (just burning color compositions) through the air.

Now salutes are more explosive. I could see maybe having to mix salutes with color so someone couldn't just steal a case of salutes.

Small magazine sites, where a few hundred pounds of explosives or less are stored, may cost less than \$10,000 to secure. Larger sites may cost \$150,000 or more to secure. The savings to the regulated community would be in the form of prevention of possible lawsuits stemming from explosives stolen from an inadequately secured site, resulting in harm to people or property. The cost to insure secured facilities may be less than the costs to insure unsecured facilities. The licensees' loss due to stolen explosives should also be reduced.

Every time I read this it makes my blood boil. Like I got \$10,000 laying around!!!! I had to take out a loan to buy my lawnmower!!!!!!!!!!!!

CC: William Adolph (Pa.house EREC, committee chairman)
John R. McGinley (chairman of IRRC)
Joseph Pizarchik (DEP)
Terry Punt (State Senator)

Original: 2461

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From: Scott Kerr [mailto:skerr@talleyds.com]
Sent: Wednesday, January 26, 2005 4:50 PM
To: Lking@state.pa.us
Cc: Lon Santis
Subject: PA Security Proposals

Dear Mr King;

Being a potential stakeholder in the explosives industry in the Commonwealth of Pennsylvania, Talley Defense Systems, Inc. is concerned about the proposed PADEP regulations.

Talley is an explosives manufacturer located in Mesa Az. Our operations currently include a small facility (non-explosives) in PA. The proposed regulations could play a detrimental role in future expansion decisions within the Commonwealth which might involve explosives.

As an IME member company, Talley has followed the rules development closely. We as well as every member company are always open to change that will improve Safety and Security, but must consider the full consequences of such change against several tests. Those being, 1) Experience, 2) Industry Standards, and 3) Cost/Benefit trade off.

These rules, as written, are of great concern to us and most of the current stakeholders. I urge you to consider allowing modifications to these rules through a joint effort between industry and regulators.

Thank you for your consideration.

Sincerely,

Scott Kerr
Director, Safety, Security & Environmental Quality
Talley Defense Systems
Mesa Arizona

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Original: 2461

Gelnett, Wanda B.

From: IRRC
Sent: Thursday, February 03, 2005 12:41 PM
To: Sandusky, Richard M.; Gelnett, Wanda B.
Subject: FW: PA Security Proposals

Please handle, Wanda. Thanks.

-----Original Message-----

From: Lon Santis [mailto:ldsantis@ime.org]
Sent: Thursday, February 03, 2005 11:39 AM
To: IRRC
Subject: FW: PA Security Proposals

Fyi, see comments on the PADEP explosives security proposal below.

Lon Santis

From: Scott Kerr [mailto:skerr@talleyds.com]
Sent: Thursday, February 03, 2005 11:36 AM
To: Lon Santis
Subject: RE: PA Security Proposals

No Problem

Scott

>>> "Lon Santis" <ldsantis@ime.org> 2/3/2005 8:04:52 AM >>>

Scott:

Can I forward your comment to the IRRC? They are reviewing the reasonableness of the PADEP proposals.

Ion

2/3/2005

8

Original: 2461

IRRC

From: Jewett, John H.
Sent: Thursday, March 03, 2005 9:04 AM
To: IRRC
Cc: Support; Wyatte, Mary S.; Sandusky, Richard M.; Smith, James M.
Subject: #2461

Please file the attachments as "Final comments" in #2461.

Thanks

-----Original Message-----

From: hank@abckeystone.org
Sent: Wednesday, March 02, 2005 4:27 PM
To: Jewett, John H. [mailto:jjewett@IRRC.STATE.PA.US]
Subject: Final EQB Regulation #7-394 (#2461), Storage, Handling and Use of Explosives

RECEIVED
2005 MAR -3 AM 9:09
NEW YORK COMMISSION

Original: 2461



PENNSYLVANIA
Associated Builders and Contractors, Inc.

Rapho Business Park, 135 Shellyland Road
 Manheim, PA 17545
 (717) 653-8804 Fax: (717) 653-6431

8

RECEIVED
 2005 MAR -3 AM 9:09
 THE REVIEW COMMISSION

Date: January 11, 2005
 To: Members of the EQB Board
 From: Hank Butler; Government Affairs ABC PA
 Subject: Concerns for the Proposed Administrative Changes to Storage, Handling, Use of Explosives

The Pennsylvania Chapters of the Associated Builders & Contractors, Inc. (ABC PA) have concerns regarding the proposed changes to the storage, handling, and use of explosives currently attempting to be implemented as a "Homeland Security" effort, and believes that more time and resources are needed develop a comprehensive and thorough assessment of this situation from all parties?

Recently, the Rendell Administration's Department of Environmental Protection (DEP) announced their proposal to administratively change the state's requirements in the storage, handling and use of explosives. These results were a cooperative effort from the Department of Environmental Protection, the Pennsylvania State Police and the Pennsylvania Department of Homeland Security. These groups are informing all interested parties that these changes are needed as a homeland security measure. In a recent report, Pennsylvania led the nation in explosive thefts at nine (9) in a recent year span.

After reviewing the proposed regulations, ABC PA wishes to submit the following comments:

- The proposed changes to the regulations were attempted to be passed during December of 2004 without any input from the business community. Though there was a delay, for a month, and input from the business community (the individuals directly affected by the changes) the timing and lack of input is very concerning. ABC PA is recommending delaying these implementations until a task-force of explosive experts can work with DEP, Pennsylvania Homeland Security, and the State Police to develop a reasonable agreement, understanding, and new proposals.
- ABC PA questions the need for these changes. Pennsylvania has already adopted the Federal ATF's recommended changes. These changes in the regulations would make Pennsylvania the most restrictive state in the explosives industry. Instead of reacting to the recent theft data (in which some were inventory miscalculations) with more regulations, the state agencies should investigate these thefts and improve the current regulations based on actual findings.
- The proposed changes being recommended will create a significant hardship on the explosive industry. In some situations, businesses are expecting to spend over \$500,000 with no support from the government forcing this change. If regulations are to be implemented above the federal recommended changes proposed by ATF, then DEP or another state agency should financially subsidize these mandated changes.
- The changes are so extensive and unfunded, that ABC PA has already heard from several explosive experts who are considering either consolidating their explosives storage units or storing them in Maryland, Ohio, or other bordering states and transporting the explosive materials a greater distance. This will lead to transportation thefts, carjacking, etc. -- a potentially more vulnerable environment than before the regulations were proposed.

ABC PA believes that these proposals should be re-evaluated, the reasoning for these changes need more research, and explosive experts from the business community should be called in to help re-examine this situation. Implementing the proposed regulations could open Pennsylvania to a greater risk than previous years.

Has enough discussion and time been given to develop a comprehensive and thorough assessment of this situation from all parties?
The answer is no.



Original: 2461

Associated Builders and Contractors, Inc.

Rapho Business Park, 135 Shellyland Road
Manhelm, PA 17545

PH: 717.653.8106 FX: 717.653.6431

www.abckeystone.org

Keystone Chapter

Date: January 7, 2005
To: ABC Keystone Chapter Membership
From: Hank Butler; Government Affairs ABC PA
Subject: **Pennsylvania Proposal: Administrative Changes to Storage, Handling, Use of Explosives**

RECEIVED
2005 MAR -3 AM 9:00
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REVIEW COMMISSION

Recently, the Rendell Administration's Department of Environmental Protection (DEP) announced their proposal to administratively change the state's requirements in the storage, handling and use of explosives. These results were a cooperative effort from the Department of Environmental Protection, the Pennsylvania State Police and the Pennsylvania Department of Homeland Security. These groups are informing all interested parties that these changes are needed as a homeland security measure. In a recent report, Pennsylvania led the nation in explosive thefts at nine (9) in 2003. As ABC was researching these changes, we were informed that there was an attempt to implement these changes without the input from the business community who will have to adhere to these new regulations.

- Detonators located in indoor magazines (explosive storage containers) must be stored in a separate secured room
- All magazines must be inspected every 24 hours and follow reporting specified procedures with the Pennsylvania Department of Homeland Security and the Pennsylvania State Police.
- One access point only for each magazine.
- Outer perimeter of the magazine must comply with the following:
 - 7' earthen barrier, boulder, or manmade impassable barrier.
- Inner perimeter of the magazine must comply with the following:
 - 1' buried fencing; 8' in height; anchored posts 10' or less on center; top rail of 1.6" outside diameter; razor wire on the tops and at ground level.
- Inner perimeter gating requirements:
 - 9 gauge chain; anchoring posts 6.62" outside diameter; razor wire on top; 2 locks with specifications
- Outer perimeter gating requirements:
 - Constructed to prevent defeat of gate by wheeled vehicle.
- Weight limitations on portable magazines (empty).
- Regulated signage and maintenance regulation.
- Additional security measures for magazine sites with over 30,000lbs. of explosives.
- Magazine construction requirements:
 - Federally compliant; trucks being used as a magazine must have axels removed; systems of pumps and/or tanks used for storing to mixing bulk blasting equipment must have locks with specifications.
- Vehicles transporting bulk blasting agents left unattended must have 2 disabling mechanisms approved by DEP.
- Vehicles used to transport bulk blasting agents that are used as temporary magazines must be kept within the outside perimeter and follow federal guidelines.

These are extensive changes that overhaul the entire explosives industry. ABC members directly affected by this are mainly excavators and general contractors. ABC PA is researching this issue to see how other states are handling their regulations or adapting to homeland security concerns with the storage and handling of explosives. These regulations are above and beyond the federal guidelines and seem to be a reaction to being ranked as the highest state in explosive theft in the nation. One ABC member firm stated that these regulations cost \$40,000 for their changes at one of their magazines (they have 9 magazines throughout their operating region) – this does not include the labor cost for compliance checks and transport costs directed in this proposal.

ABC needs to alert our members and encourage them to weigh in with the administration in an attempt to make these regulations more adaptable and workable to our industry and the business community.

EMBARGOED MATERIAL

Original: 2461
IRRC

From: Jewett, John H.
Sent: Thursday, May 12, 2005 8:28 AM
To: IRRC
Cc: Sandusky, Richard M.; Smith, James M.; Wyatte, Mary S.; Support
Subject: FW: PA Code 25, Chapter 211, Storage, Handling and Use of Explosives

Please file this email and its attached letter under "Final comments" for #2461. Thanks

-----Original Message-----

From: Dave Harrison [mailto:daveharrison25@hotmail.com]
Sent: Wednesday, May 11, 2005 11:32 PM
To: Jewett, John H.
Subject: PA Code 25, Chapter 211, Storage, Handling and Use of Explosives

Dear John:

Please review the attached letter addressing our concerns for today's scheduled meeting.

Thanks,
Dave Harrison

RECEIVED
2005 MAY 12 AM 8:31
IRRC

EMBARGOED MATERIAL

Original: 2461
May 12, 2005

RECEIVED

2005 MAY 12 AM 8:31

INDEPENDENT REGULATORY REVIEW COMMISSION

Independent Regulatory Review Committee

Re: **PA Code 25, Chapter 211, Storage, Handling and Use of Explosives**
New Proposed blasting Regulations

Dear IRRC Member:

As president of the Mid-Atlantic Chapter of the International Society of Explosive Engineers (ISEE), I am writing in regard to the new proposed blasting regulations concerning the storage of explosives in the state of Pennsylvania. These regulation changes are under **PA Code 25, Chapter 211, Storage, Handling and Use of Explosives** and were approved by the Pennsylvania Environmental Quality Board on April 19, 2005.

If we compare the latest version of these regulations, you will find that although the PA DEP has made some changes, the changes fall short of meeting the criteria set forth in your disapproval order, especially when it comes to how these regulations apply to commercially used explosives versus fireworks. The bolded areas below are referenced to your disapproval order:

For example, the **Adverse effects on prices of goods and services and competition (71P.S. § 745.5b (b) (1) (ii))**. These regulations do not compare to any other State in the Country and will leave the commercial explosive industry in PA at a significant disadvantage compared with adjoining states. This is perhaps the area in which the explosives industry will be hurt the most. Just as was commented on by someone for the fireworks industry at the March 10, 2005 IRRC meeting, businesses will be lost to out of state blasting contractors, not held to the same costly regulations.

In regard to **Protection of the public health, safety and welfare (71P.S. § 745.5b(b)(2))**; without sufficient changes to these regulations, the cost of storing explosives will become unaffordable, transportation of explosives will increase, businesses will close or move out of state and the cost of mining and construction projects will increase significantly. There will be more explosives on the road, traveling further and further compromising public safety.

The next area is the **Desirability and feasibility of setting lesser standards of compliance for small business (71P.S. § 745.5b(b)(1)(v))**. Although the board did lower the standards for fireworks, fireworks are still explosives. These changes are unfair to commercial explosives. Reportedly the latest terrorist attack in New York City at the British Consulate used gunpowder.

Page 2
IRRC Member

The next major area where the Board falls short is in the area of **Reasonableness of requirements, implementation procedures and timetables for compliance (71P.S. § 745.5b (b) (3) (IV))**. This is one of the areas where the gap is the widest. The recent changes do not take into account the overall reasonableness of these requirements. These regulations would still not have prevented many of the thefts from occurring and we will have spent a great deal of time and money without the benefits. Two perimeters are still required by these regulations; no other State or ATF has any similar requirements.

It is my opinion that the only real significant change which meets your IRRC order with respect to commercial explosives is reducing the inner fence perimeter from 25 feet to 6 feet. This will reduce the overall cost if the proposed fencing method is selected, without a loss of perceived security. The key word is perception - in most cases, these regulations will still not prevent the types of thefts that have occurred in the past.

The ISEE shares a common goal for better security for explosives in PA and we have submitted regulation changes to the PA DEP. These suggested changes exceed the current state and federal regulations; however, they chose not to use them.

These regulations, as presented to you, can not be passed into law in their present form. They do not meet the criteria set forth in your disapproval order. I urge your committee to disapprove these regulations.

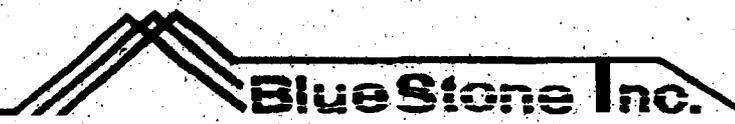
I look forward to discussing this matter further. Please do not hesitate to contact me at my office 1-800-765-4033.

Sincerely yours,

David Harrison
President Mid-Atlantic Chapter of ISEE
Pennsylvania Resident

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Original: 2461



170 Cherry Blossom Drive
Churchville, PA 18966-1091

(215) 364-1415
FAX (215) 364-1725

May 11, 2005

EMBARGOED MATERIAL

IRRC
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Revised PA regulations governing storage of explosives Ch. 211

Gentlemen:

I am writing to inform you of the impact of the proposed revised regulations on BlueStone, Inc.'s business. We are a drilling and blasting contractor in business for almost thirteen years, and have lost our lease to store explosives. Our landlord is intimidated by the apparent risks and alarm raised by DEP and PA Homeland Security. The soon-to-be new security requirements and resulting insurance liability concerns to the property owner have effectively resulted in our cessation of blasting operations. The option of daily explosive deliveries and pickups from manufactures and distributors escalate costs beyond our ability to recover added cost from our customers. Our explosives in storage were destroyed in a quarry shot May 6, 2005. This was our deadline to vacate the magazines and we could not otherwise consume the several thousand dollars worth of explosive we had in storage. Our supplier refused return of the explosives based on complexity of record keeping for ATF and chain of possession issues.

Our company has three licensed blasters with an aggregate of 55 years blasting expertise. We handled difficult and technically challenging sewer line, basement, and bulk drilling and blasting projects. Our blasters have shot rock at nuclear plants, urban environments, etc. We have considered out-of-state sites for a new storage location. The cost problem is then one of transporting explosives for hours to get to our market areas in PA and then return at the end of the day to the out-of-state storage site. On-the-job explosives loading would be limited to a few hours, even though labor cost and transportation cost would exceed eight hours per day. Again we would be non-competitive in our market area.

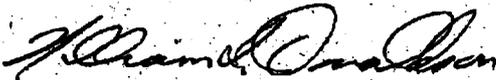
RECEIVED
2005 MAY 11 AM 10:14
NEW JERSEY COMMISSION

Skilled use of explosives is an asset to our economy. Escalating the level and complexity of security to a point where a terrorist cannot obtain commercial explosives will result in a significant loss of skills and size of our industry. In Pennsylvania, the Chapter 211 revisions might force a determined thief to steal explosives in New Jersey, Maryland, West Virginia or other near-by location where there is still a viable explosives market.

I am more than dismayed that the DEP has apparently turned a deaf ear to the industry leaders, ISEE and IME, and the previously issued opinion and comments of the IRRC regarding the high explosives industry.

Sincerely,

BLUESTONE, INC.



William I. Donaldson
President

WID/ad

cc: Dale Ramsey, President ISEE



170 Cherry Blossom Drive
Churchville, PA 18968-1091

(215) 364-1415
FAX (215) 364-1725

TELECOPIER TRANSMISSION COVER SHEET

DATE: 5.11.05

FROM: Bill Donaldson

SUBJECT: Rev. Ch. 211 Impact on Blue Stone, Inc

NO. OF PAGES: 3

NOTE: If any problems occur during transmission, please telephone (215) 364-1415.

PLEASE DELIVER TO:

NAME: IRRC

FIRM: _____

ADDRESS: _____

FAX NO.: 717-783-2664

PHONE NO.: _____

COMMENTS: _____

This facsimile contains privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this facsimile is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via the U.S. Postal Service. Thank You.

Original: 2461

D. C. GUELICH EXPLOSIVE CO.

(814) 765-1888
FAX # (814) 765-2962

High Explosives - Ammonium Nitrate Fertilizer

1442 18 Hollow Road CLEARFIELD, PA 16830

Handwritten initials "DK" in a circle.

2005 MAY -3 AM 11:02
RECEIVED
REGULATORY COMMISSION

May 3, 2005

Mr. John R. McGinley, Jr. Esq.
Chairman
Independent Regulatory Review Commission
Fax #: 717-783-2664

Reference: Regulation Number: #7-394(#2461)

This letter is in reference to the extreme regulation change in regards to explosive materials storage that is proposed by the Department of Environmental Protection (DEP), the Pennsylvania State Police (PSP) and by the Office of Homeland Security (OHS).

I would like to ask for your indulgence and request that you see that each member of the Independent Regulatory Review Commission (IRCC) receives a copy of this letter.

While our industry and a number of associations, to which several of us within the explosives industry are members or associate members, have tried to reason, several times, with the aforementioned regulating and law enforcement bodies, our efforts have been almost fruitless, because of what appears to be a strong belief by them that this regulation will pass with little, if any, change. The needed changes that I am referring to are the changes that were put forth by the IRRC in your disapproval order dated March 10, 2005.

As you know, the proposed regulations that were disapproved at that time had previously been approved by the Environmental Quality Board (EQB) on January 18, 2005, and as you know, that board is chaired by Ms. Kathleen A. McGinty.

Your Commission was very specific as to its disapproval of the proposed regulation. The commission gave six (6) points to clarify its disapproval. I have not enclosed a copy of that disapproval order. I have not enclosed a copy of the original proposed regulation changes nor have I included a copy of the newly proposed/changed regulation. Some of these materials you should already have in your possession and the newly proposed/changed regulation should have been made available to you by EQB. However, I have taken the liberty to enclose copies of pages 1 and 10 of the EQB ORDER. Please note the date that the ORDER was to be sent to ALL concerned, on (upper left hand corner of page 1 of the ORDER) April 5, 2005. However, admittedly by

Rick Lamkie of DEP, Bureau of Explosives, the paperwork did not get sent on April 5, 2005 due to some "technical difficulties". I personally did not receive my e-mail until April 7, 2005 at 9:35 a.m.

I question that if it didn't get sent on April 5, 2005 does it meet the requirement of being published 14 days in advance of the EQB meeting, which was held on April 19, 2005. A copy of Mr. Lamkie's explanation about the technical difficulties is also included.

If you would also please note, the ORDER is dated April 5, 2005, but states that it WAS APPROVED April 19, 2005.

The changed regulation WAS THEN APPROVED by EQB on April 19, 2005.

To my knowledge there are currently at least 24 active explosives storage sites in the state that are owned and operated by "explosives distributors", a number of us having numerous sites. Plus there are coal producers, road construction contractors, stone producers and utility contractors that have their own storage sites. According to information that I received from DEP via phone, on April 27, 2005, there are approximately 350 approved explosives storage sites in the state. ALL of these sites have been approved by DEP and are licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives, now under the direction of the United States Department of Justice. The ATFE regulations have been the accepted "benchmark" for explosives storage for many years and the Pennsylvania Department of Environmental Protection accepted those regulations, only a few years ago, as the requirement for explosive storage within the state. I don't know for sure, but I seriously doubt that DEP has visited everyone of those 350 sites to determine the economic impact that their proposed regulation will have on the various industries involved and, of course, eventually on ALL of the residents of Pennsylvania due to increased cost of coal production for electricity, road construction, aggregate and concrete production, utility advancement and even down to some items purchased over the counter, such as toothpaste and soap.

Those of us who have been involved in the meetings with the regulatory and enforcement agencies have been lead to believe that the pressing of these "emergency regulations" is coming directly from the Governor's office. While that might be, I seriously doubt that you, the Independent Regulatory Review Commission, nor the members of the Pennsylvania House of Representatives, nor the members of the Pennsylvania Senate, nor the Governor, want to place any industry within this economically struggling State, at a cost to operate disadvantage.

In closing, having been personally involved in the discussions with DEP, PSP, and OHS, I can factually state that they were asked more than once if there was any funding available to help the explosives industry pay for the very expensive requirements of the proposed regulation. They answered in the negative each time they were asked. However, I must point out that while watching the TV program, 60 Minutes, on the evening of Sunday, April 10, 2005, I observed that it was made very clear that there is

federal money available to help with such things. It was also made very clear that some of the money was already spent on some frivolous things, such as leather jackets for, I believe, some policemen in Tennessee, and tuition for some emergency responders to attend a Dale Carnegie course, so as to make them more capable to verbally respond to individuals in the event of an emergency.

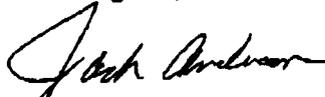
The program further stated that at least one locale has received a large amount of money and has not yet figured out how to spend all of it.

I am pleading for your help.

PLEASE DISAPPROVE the regulation AS IT IS CURRENTLY WRITTEN. I believe that I can honestly speak for the explosives industry at large and most certainly for this company, that employs 69 people in this state, and lastly for myself, that we all know/accept the fact that reasonable regulation change concerning explosive security is justifiable and that we will very willingly comply with change that will actually make our sites more secure not just make them cost more to develop and operate.

Thank you for your time.

Best Regards,



**Jack Anderson
General Manager**

Enclosures

4/5/05 Copy includes Blue Highlights to indicate changes addressing IRRC's Order

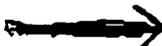
**NOTICE OF FINAL RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
25 Pa. Code Chapter 211
Handling, Use and Storage of Explosives**

Order

The Environmental Quality Board (EQB or Board) hereby amends Chapter 211 pertaining to the storage of explosives as set forth in Annex A.

These amendments establish standards to ensure that explosive magazines are secure from unauthorized intrusion and theft.

Notice of proposed rulemaking is omitted under section 204 (2) and (3) of the act of July 31, 1968, P.L. 769, No. 240, (45 P.S. §1204 (2) and (3)). Subsection (2) provides that an agency may omit the notice of proposed rulemaking if all persons subject to the regulation are named therein and are either served with the proposed regulation or have actual notice of the proposed regulation. There are approximately 350 persons that will be directly affected by these regulations. They include licensees of outdoor magazines and those persons who currently store in Pennsylvania explosives in the form of fireworks, blasting agents, high explosives, and detonators. All these persons were sent a copy of this Final Order and Annex A at least two weeks prior to the EQB's January 18, 2005 and April 19, 2005 meetings. Subsection (3) provides that an agency may omit the notice of proposed rulemaking if the agency finds for good cause that notice of proposed rulemaking is impracticable, unnecessary or contrary to the public interest. In this case using the Notice of Proposed Rulemaking procedure is contrary to the public's interest. As more fully explained in the background section, the existing magazine standards are inadequate to prevent the theft of explosives. These amendments will provide additional significant deterrence to thefts of explosives from magazines and subsequent accidental or deliberate injury to persons and damage to property.

 These amendments were adopted by order of the EQB at its meeting of January 18, 2005. At the April 19, 2005 Board meeting, the EQB approved amendments to the Final Order addressing the Independent Regulatory Commission's (IRRC) March 10, 2005 disapproval of the EQB January 18, 2005 rulemaking. The IRRC disapproval Order was received March 16, 2005.

A. Effective Date

These amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons and Information

For further information contact Joseph G. Pizarchik, Director, Bureau of Mining and Reclamation, Rachel Carson State Office Building, 5th floor, 400 Market Street, P.O. Box 8461

*EQB Order 1
Page*

4/5/05 Copy includes Blue Highlights to indicate changes addressing IRRC's Order

CDL (45 P.S. §§1201 and 1202) is, in this instance, contrary to the public interest.

(3) The use of the notice of proposed rulemaking procedures is, in this instance, impracticable, unnecessary and contrary to the public interest in light of the current threat to the public safety from explosive magazines in Pennsylvania that have inadequate security measures. ~~There have been numerous thefts of explosives in recent years in Pennsylvania from explosive magazines. These regulations are needed immediately to impose additional security requirements that are designed to prevent future thefts of explosives from licensed magazines in Pennsylvania.~~ As demonstrated by recent thefts, the existing regulations leave explosives magazines vulnerable to theft.

(4) All persons directly affected by this Final Order were sent a copy of the proposed amendments at least two weeks prior to the adoption of the proposed amendments.

(5) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble and in the public interest.

K. Order of the Board

The Environmental Quality Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, 25 Pa. Code Chapter 211 are amended as set forth in Annex A.

(b) The Chairperson shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

(c) The Chairperson shall submit this Order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

Kathleen A. McGinty
Chairperson
Environmental Quality Board

*EQB Order 10
Page*

Jack

From: "Lamkie, Richard" <rlamkie@state.pa.us>
To: <jack@iqnetsys.net>
Sent: Thursday, April 07, 2005 9:23 AM
Subject: Posting on EQB Website

Jack,

Here is a copy of what was last sent out. The web posting was delayed, due to technical difficulties, it's OK now.

Thanks,

Rick

Ladies and Gentlemen,

The technical difficulties that delayed the posting of the rulemaking package have been resolved. Please share this information with members of your organizations or any other members of your industries.

<http://www.dep.state.pa.us/dep/subject/eqb/eqb2005.htm>

Thanks,

Rick

RECEIVED
2005 MAY -3 AM 11:02
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REGULATORY COMMISSION

*Mr Lamkie's
Technical difficulties
explanation. 4/7/2005*

D. C. GUELICH EXPLOSIVE COMPANY

FACSIMILE TRANSMITTAL SHEET

TO:	Mr. John R. McGinley, Jr. Esq. Chairman	FROM:	Jack Anderson
COMPANY:	Independent Regulatory Review Commission	DATE:	5/3/2005
FAX NUMBER:	717-783-2664	TOTAL NO. OF PAGES INCLUDING COVER:	7
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	
RE:	#7-394(#2461)	YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

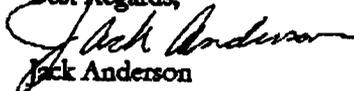
NOTES/COMMENTS:

Dear Mr. McGinley:

Following please find my comments in regards to the Final EQB Regulation #7-394(#2461), Storage, Handling and Use of Explosives.

Thank you for your time spent in reading my comments and for your consideration of them.

Best Regards,



Jack Anderson

General Manager

D.C. Guelich Explosive Company

RECEIVED
GENERAL MANAGER
MAY -3 11:02
2005

Original: 2461

IRRC

From: Lon Santis [ldsantis@ime.org]
Sent: Wednesday, March 30, 2005 2:36 PM
To: IRRC
Subject: PADEP Conference call

I wanted to report on a conference call convened by PADEP today at 1:00 on the explosives regulatory proposals. The number of participants was limited to six individuals because PADEP could not support more than six outside lines on a conference call. The participants were invited as late as Monday and were led to believe that decisions on changes to the rulemaking would be presented. Several of the participants, including myself, rearranged their schedules and missed other appointments to accommodate this call.

Surprisingly, at the onset of the call, we were told by Mr. Pizarchik that they had made no decisions on whether or not to make changes. When pressed, Mr. Pizarchik would only say that there were two possibilities. The first possibility was that there would be no changes made and the regulation would be resubmitted to IRRC. The second possibility was that changes addressing only the issues raised in the IRRC's order would be made and the regulation would be submitted to the EQB and then to the IRRC. He would not divulge any inclination of which choice might be made, only that we would know by April 5 what choice was made.

I understand that a similar call took place with the fireworks industry this morning.

Keeping you informed,
Lon Santis
IME

3/31/2005

Original: 2461

IRRC

From: D.L. Ramsey [dlramsey@alltel.net]
Sent: Wednesday, March 30, 2005 10:58 PM
To: Dale L. Ramsey; Arlene Chafe; Jeff Dean
Cc: IRRC
Subject: PA DEP Conference Call Report

Hi Jeff,

As you know PA DEP scheduled a conference call for today. When I responded to their request on Friday March 25th.

I requested that you be included in the call list since you are our Executive Director and General Council, but once again DEP

chose to address a select group of association representatives.

The call as I understood was to follow-up on potential revisions to the proposed regulations addressing issues listed

in the IRRC Disapproval Order rather than having another meeting in Harrisburg given the short time available.

I was advised on Tuesday by Rick Lamkie that due to the 6 person call limit of their phone system, there would be 3

conference calls being made. The first was to the Pyrotechnics Industry in the morning then there were to be 2 conference

calls made in the afternoon to the Commercial Explosives Industry.

Conference Call Recap

Our call began at 1:04pm on March 30th. with a roll call by Mr. Pizarchik. Association members included were: Dale Ramsey of ISEE,

Judd Wagner of Eastern Chapter - ISEE, Lon Santis of IME, Joe Lanyon of PUCA and David Harrison of Mid-Atlantic Chapter of ISEE.

PA DEP representatives were: Joe Pizarchik, Rick Lamkie, Mike Steiner and Mark Rhoda.

Mr. Pizarchik then began by saying there is nothing to report due to their lack of direction at this point. He recapped there are 2 possible

scenarios, Option #1 would be have proposed changes responding to the IRRC Disapproval Order delivered to EQB members by next

Tuesday March 5th. to meet the deadline for placing it on their April 19th. agenda. Option #2 would be resubmit the regulations as drafted

to IRRC once again for their May 12th meeting.

The prepared statement by DEP was completed at 1:07pm. There was questions by association representatives and the call officially ended at 1:24pm.

Ramsey Comments:

It is my opinion that DEP does lacks direction, we as industry representatives met with them last week and proposed meaningful change that

addressed many of the issues listed in the IRRC Disapproval Order such as mitigating cost without compromise to security and addressed

our cost/ benefit concerns. I know they are on an accelerated time schedule to meet the milestone dates for EQB and IRRC meetings but

spending the better part of today conducting 3 conference calls which effectively were 3 minutes long saying there is nothing to report was

in my opinion not a productive use of their valuable limited time available. I personally rescheduled 3 appointment to participate in the call and hoped

they would finally realize industry is not against improved security measures but I am not so sure they are sincere in their willingness to make

3/31/2005

meaningful change.

Dale Ramsey
President
International Society of Explosives Engineers



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
March 17, 2005

Secretary

717-787-2814

The Honorable Craig A. Dally
Pennsylvania House of Representatives
House Post Office Box 202020
Harrisburg, PA 17120-2020

The Honorable Douglas G. Reichley
Pennsylvania House of Representatives
House Post Office Box 202020
Harrisburg, PA 17120-2020

Dear Representatives Dally and Reichley:

Thank you for your recent letter regarding the Storage, Handling and Use of Explosives Final Rulemaking that was adopted at the January 18, 2005, Environmental Quality Board (EQB) meeting. I appreciate your recognition that this regulation must be reasonable and logically related to law enforcement concerns. I could not agree more. This regulation was initiated at the urging of the Pennsylvania State Police and Pennsylvania Office of Homeland Security following identification of a public safety vulnerability because of inadequate security at explosive storage magazines.

You are correct that input has been solicited and received from the regulated industry. Because the design, placement and content of each magazine is unique to each site, we agree that exceptions and alternate methods should be considered. For that reason, the regulations have been crafted to be flexible and allow for alternative measures that are specifically designed to take advantage of, or compensate for the characteristics of each magazine site. Electronic monitoring alarms that elicit a response and have redundancies in place in case of power loss or tampering (qualities that are currently found in most commercial security systems) are an acceptable substitute for fencing as inner perimeter security. The regulation includes fencing with concertina razor wire as only one example of acceptable inner perimeter security. The regulation can be described as a performance based standard and allows flexibility in how the magazine licensee provides the inner and outer perimeter security.

Thank you for the fair-mindedness complement. Our efforts to be supportive of Pennsylvania industry and mindful of public safety can be found throughout the regulation. For example, commentators from the fireworks industry requested an exemption from the daily inspection requirement when their magazines are empty. The regulations were revised to include such an exemption.

RECEIVED
2005 MAR 22 PM 2:17
REVIEW COMMISSION



The Honorable Craig A. Dally and Douglas G. Reichley

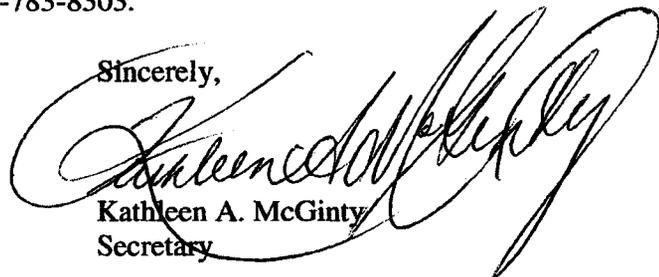
March 17, 2005

We are confident these regulations will address the identified vulnerability and, based on conversations with licensees and because the licensees each received a copy of the regulation when it was sent to EQB on January 4, 2005, we believe the timeframes for compliance can be met. As a safety net, the regulations allow implementation time extensions for those licensees who have legitimate reasons why they need additional time to put the security measures in place. DEP currently has the staff available to respond in a timely manner to review all plan submissions and requests. Except for the actual submission of the plan itself, we have had several large facilities indicate to DEP that they believe they already meet most of the requirements of the new regulations.

In addition, DEP and the Pennsylvania State Police have formed a committee with representatives from the explosives and fireworks industries to help guide the implementation of the standards in these regulations, including the submittal of plans, and to communicate the agreed upon acceptable implementation methods to the regulated community. As you are aware, this rulemaking was disapproved at the March 10, 2005, Independent Regulatory Review Commission meeting. Representatives of the fireworks industry and three Commissioners had questions regarding the applicability of these requirements to fireworks. As a result, the Department has invited representatives of the fireworks industry to an additional meeting this week. We look forward to that dialogue and are open to suggestions that would allow these businesses to flourish while their explosives are secured and the public is protected.

Thank you your interest in this important debate. If you have any additional questions or concerns, please contact Joseph T. Leighton, Director of Legislative Affairs, or by e-mail at jleighton@state.pa.us or by telephone at 717-783-8303.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read 'Kathleen A. McGinty'. The signature is written over the typed name and title.

Kathleen A. McGinty
Secretary

cc: John McGinley, Jr., Chairman
Independent Regulatory Review Commission

(21)

Original: 2461



600 N. Twelfth Street • Lemoyne, Pennsylvania 17043
717-730-4380 • 800-692-7339 • 717-730-4396 (Fax) • Internet—www.pahomes.org

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Roger B. Zimmer
HBA of Metro Harrisburg

Vice President
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Lawrence County BA

Independent Regulatory Review Commission
Mr. John McGinley, Jr., Chairman
333 Market Street, 14th Floor
Harrisburg, PA 17101

March 14, 2005

Mr. McGinley:

The Pennsylvania Builders Association (PBA) would like to offer their comments regarding the proposed PA Department of Environmental Protection's explosives regulations [#7-394 (#2461)] that are to be considered by IRRC at your March 9, 2005 meeting.

The PBA has several members who represent the explosives industry and these members have expressed concerns regarding the DEP explosives regulations.

PBA members are primarily concerned about the regulation writing process. The Industry's participation in developing these regulations has been minimal. The explosives industry's representatives are concerned about the economic impact on small explosives' provider companies.

Providers of explosives are very concerned about the "menu" of regulatory options currently proposed. This menu approach will likely lead to various interpretations that will in effect be additional regulations. The explosives industry believes that the subjectivity and interpretive nature of the currently proposed regulations will subject the industry to multiple interpretations by the regulatory agency.

Our members have indicated that more effective regulations could have been developed if regulators and the regulated community had met on a regular basis. The PBA is not commenting on the technical merits of the regulations.

RECEIVED
2005 MAR 17 AM 9:25
REGULATORY COMMISSION



Building Today For A Better Tomorrow



The PBA is respectfully requesting that the IRRC not approve the proposed DEP explosives' regulations at this time and direct pertinent agencies and individuals to meet to resolve differences and to develop a set of workable regulations for future consideration by the IRRC.

Sincerely,



Keith Ashley, Assistant Director Governmental Affairs
Pennsylvania Builders Association
600 North Twelfth Street
Lemoyne, PA 17043

Cc: Senator David Brightbill
Senator Mary Jo White
Senator Ralph Musto
Representative William Adolph
Representative Camille "Bud" George

20

Original: 2461

IRRC

From: D.L. Ramsey [dlramsey@alltel.net]
Sent: Wednesday, March 16, 2005 9:54 PM
To: Dale L. Ramsey; Arlene Chafe; Lon Santis; Jeff Dean
Cc: IRRC
Subject: ISEE Mid-Atlantic Chapter Meeting Report

Hi everyone;
The Mid-Atlantic Chapter of ISEE held it's quarterly meeting Thursday March 10, 2005 at the Holiday Inn in Monroeville, PA. Despite the last minute cancellation of our scheduled speakers Vince Babish and Rick Lamkie just hours before the meeting, nearly 60 members were in attendance. We were expecting over 100 attendees from all over the commonwealth for this most important meeting that was for many industry members their first opportunity to hear first hand from the PA Department of Domestic Security and PA DEP the proposed changes to chapter 211 that will have major effects on their businesses and employees. We scrambled to call as many members as possible while in route from our program committee meeting at Penn State preparing for our 12th biennial Drilling & Blasting Conference this November about the last minute program cancellation. I understand that the decision of the IRRC to disapprove the proposed changes would affect their prepared program but I firmly believe they once again missed an important opportunity to engage industry stakeholders in the process. Chapter president David Harrison and myself tried our best to salvage the meeting by taking the opportunity to bring all of our industry colleagues up to date on the rulemaking process or lack thereof to date. There were many questions and comments exchanged during the meeting which adjourned around 9:20pm.

Dale L. Ramsey
President
International Society of Explosives Engineers

Original: 2461

EMBARGOED MATERIAL

(16)

IRRC

From: Lon Santis [ldsantis@ime.org]
Sent: Wednesday, March 09, 2005 8:25 AM
To: rlamkie@state.pa.us
Cc: D.L. Ramsey; Jeff Dean; IRRC; jpizarchik@state.pa.us
Subject: RE: DEP/PSP Explosives Industry Alternative Magazine Security Methods Committee Meeting

Dear Mr. Lampkie:

I am sure you are very busy gearing up for implementation of the new explosives security regulations your agency hopes to implement this month. But an answer to my inquiry, or even acknowledgement that you have received it, would be appreciated. Industry is also doing its best to prepare for the new rules and needs clear guidance from your department. Thank you.

Lon Santis
Manager of Technical Services, IME

-----Original Message-----

From: Lon Santis
Sent: Friday, February 11, 2005 9:15 AM
To: 'rlamkie@state.pa.us'
Cc: 'D.L. Ramsey'; Jeff Dean; 'IRRC'
Subject: RE: DEP/PSP Explosives Industry Alternative Magazine Security Methods Committee Meeting

Dear Mr. Lampkie:

Please excuse me if I have misunderstood the information below, but the IME has not been directly involved in any of the activity of the Explosives Industry Alternative Magazine Security Methods Committee.

What is PADEP's justification for requiring that magazine alarms be on the outside of the magazine? It seems to me that an alarm may operate more reliably protected from the elements and be more tamper resistant on the inside.

Likewise, under what circumstances is a licensee allowed to reduce the distance from the magazine to the inner perimeter from 25 feet to 6 feet? Please provide specific examples of situations where PADEP would approve distances as short as 6 feet.

Thank you.

Lon Santis,
Manager of Technical Services
Institute of Makers of Explosives

-----Original Message-----

From: D.L. Ramsey [mailto:dramsey@alltel.net]
Sent: Thursday, February 10, 2005 10:05 PM
To: Jeff Dean; Lon Santis
Subject: Fw: DEP/PSP Explosives Industry Alternative Magazine Security Methods Committee Meeting

----- Original Message -----

From: "D.L. Ramsey" <dramsey@alltel.net>
To: "Dale L. Ramsey" <dramsey@alltel.net>
Sent: Thursday, February 10, 2005 10:03 PM

Subject: Fw: DEP/PSP Explosives Industry Alternative Magazine Security
Methods Committee Meeting

>
> ----- Original Message -----
> From: "D.L. Ramsey" <dlramsey@alltel.net>
> To: "Lamkie, Richard" <rlamkie@state.pa.us>
> Sent: Thursday, February 10, 2005 9:56 PM
> Subject: Re: DEP/PSP Explosives Industry Alternative Magazine Security

> Methods Committee Meeting

>
>
>> Hi Rick;
>>
>> I have a comment relative to item 1 dealing with placement of alarms.
I
>> would ask if your response was a result of
>> consulting with ATF or others? I can envision a day when magazine
>> manufacturers build a plug & play type magazine
>> equipped to be wired into an alarm system with sensors already built
into
>> the doors. I would caution not to set a policy
>> that could prohibit such development that would make them more tamper

>> resistant being on the inside.
>> I had consulted with ATF when looking into systems and as I
understand it
>> one must only comply with electrical code
>> as detailed in CFR 27 (Orange Book)

>>
>> Dale
>>
>>

>> ----- Original Message -----
>> From: "Lamkie, Richard" <rlamkie@state.pa.us>
>> To: <dlramsey@alltel.net>
>> Sent: Tuesday, February 08, 2005 1:34 PM
>> Subject: FW: DEP/PSP Explosives Industry Alternative Magazine
Security
>> Methods Committee Meeting

>>
>>
>>
>>
>>
>>
>>> -----Original Message-----
>>> From: Lamkie, Richard
>>> Sent: Tuesday, February 08, 2005 1:33 PM
>>> To: 'jimshuster9@hotmail.com'; 'svitale@pyrotechnico.com';
>>> 'dramsey@alltel.net'; 'denny.kisthart@austinpowder.com';
>>> 'paletter@paonline.com'; 'daveharrison25@hotmail.com';
>>> 'scartwright@csonline.net'
>>> Cc: Babich, Vincent A; Steiner, Michael R; Pizarchik, Joseph
>>> Subject: DEP/PSP Explosives Industry Alternative Magazine Security
>>> Methods Committee Meeting
>>>
>>>
>>> Gentlemen,
>>>
>>> Thanks for attending our first committee meeting. I appreciate your

>>> participation in the explosives storage security measure regulation
>>> implementation process.
>>> Your participation will ensure that the implementation goes more

>>> smoothly and that stored explosives are secured in an effective and
>>> consistent manner and that the approved security measures will be
>>> reasonable to put in place.
>>>
>>> Two items were discussed that I said I would get back to you on.
>>>
>>> 1. Do magazines need to be alarmed on the inside, outside or both.
>>>
>>> It will be acceptable to alarm magazines on the outside only, door
>>> alarms.
>>>
>>> 2. Must inner perimeter security fencing always be 25' from the
>>> magazine.
>>>
>>> The regulations allow for the Department to consider lesser
distances.
>>> In many cases distances as short as six feet may be approved.
However,
>>> that would depend on how the magazine is sited and the kind of
fencing
>>> employed.
>>>
>>>
>>> Among the handouts was a draft of an application form. If you have
any
>>> comments on the application form please mark up the form and fax it
to
>>> me @ 717-783-5675.
>>>
>>> Thanks again,
>>>
>>> Rick
>>
>

Original: 2461

EMBARGOED MATERIAL

17

IRRC

From: Jewett, John H.
Sent: Wednesday, March 09, 2005 10:10 AM
To: IRRC
Cc: Sandusky, Richard M.; Wyatte, Mary S.; Smith, James M.; Support
Subject: FW: IRRC meeting



DearIRRCmember3
905-final-1.doc...

I believe this email and its attachment should be filed as an "embargoed" comment under "final comments" for #2461.

Thanks

-----Original Message-----

From: Dave Harrison [mailto:daveharrison25@hotmail.com]
Sent: Wednesday, March 09, 2005 9:48 AM
To: Jewett, John H.; ldsantis@ime.org
Subject: IRRC meeting

Dear Mr. Jewett:

My name is David Harrison and I am planning on attending the March 10, 2005 meeting of the IRRC. I am the current President of the Mid-Atlantic Chapter of the International Society of Explosives Engineers (ISEE), a long-time resident of the State of Pennsylvania, and the current Co-Chairman of the ISEE Public Education and Relations Committee. I have been involved in the explosives industry for more than 20 years. A Mining Engineer from the University of Pittsburgh, I have been involved in multiple areas of the explosives and explosives related industry since graduation. I would appreciate the opportunity to speak and discuss and/or answer questions concerning the Regulations in question with your Committee.

Thank you for your time and attention to this matter.

Yours Sincerely,
David Harrison, Mid-Atlantic ISEE President
4092 Gibsonia Road
Gibsonia, PA 15044
724 449-2221 (Office)
412 848-6690 (Cell)

Please confirm you received this email.

Original: 2461

EMBARGOED MATERIAL

March 9, 2005

Independent Regulatory Review Committee

Re: **PA Code 25, Chapter 211, Storage, Handling and Use of Explosives**
New Proposed blasting Regulations

Dear IRRC Member:

I am writing in regard to the new proposed blasting regulations concerning the storage of explosives in the state of Pennsylvania. These regulation changes are under **PA Code 25, Chapter 211, Storage, Handling and Use of Explosives** and were approved by the Pennsylvania Environmental Quality Board on January 18, 2005. The regulation changes were portrayed as an emergency measure which allowed the Agency to bypass the normal rulemaking process.

Changes to Pennsylvania Blasting Regulations were announced without notice to licensees. The passage of these regulations in their current form will greatly affect the economy and well-being of this state. As written, it will cost jobs - both union and non-union. It will affect our total infrastructure. The explosives industry in Pennsylvania is an essential part of our economy. Without the practical and economically viable use of explosives, we will not have the cost competitive materials to build and improve our highways. Hence, a significant portion of building materials will have to be imported from outside the Commonwealth of Pennsylvania. The cost of powering our homes and businesses will rise significantly. Many smaller explosives companies, critical to our economy, will be crippled by these regulations and may have to close. This will add to the rolls of unemployment.

I have been involved in the explosive industry for more than 20 years. I am a Mining Engineer from the University of Pittsburgh and have been involved in multiple areas of the explosives and explosives related industry since graduation. I am the current President of the Mid-Atlantic Chapter of the International Society of Explosives Engineers (ISEE), a resident of the State of Pennsylvania, and the current Co-Chairman of the ISEE Public Education and Relations Committee.

The International Society of Explosives Engineers (ISEE) and the Mid-Atlantic Chapter of the ISEE have always held explosives safety as one of their number one priorities. This safety concern also entails security. The explosives industry is not against necessary and practical improvements to security in these difficult and changing times. We would, however, like to balance *practical* with *necessary* changes.

Page 2
IRRC Member

It is naïve to think that we can fully protect ourselves from terrorists, either foreign or domestic, by taking such drastic measures.

The ISEE has a zero tolerance for explosives theft and the explosives industry in general is very open to improving security. We would like time to address these issues and evaluate what can be done practically, with as little harm to our economic well-being as possible, while protecting the citizens of Pennsylvania.

The Mid-Atlantic Chapter of the ISEE would like you to emphasize that we will cooperate and work with DEP and the Department of Domestic Security to put into play the final rules – as we are already doing by serving on alternative methods committees.

Together, we will be able to work toward the same common goal; a continuing zero tolerance policy when it comes to explosives theft in Pennsylvania, while promoting the safe and economical usage by licensed professionals. These regulations, as presented to you, can not be passed into law in their present form.

I look forward to discussing this matter further. Please do not hesitate to contact me at my office 1-800-765-4033.

Sincerely yours,

David Harrison
President Mid-Atlantic Chapter of ISEE
Pennsylvania Resident

15

Original: 2461
IRRC

From: Jewett, John H.
Sent: Tuesday, March 08, 2005 10:25 AM
To: IRRC
Cc: Wyatte, Mary S.; Sandusky, Richard M.; Smith, James M.; Support
Subject: FW: 25 pa code 211

Please file under "final comments" for #2461. Thanks.

-----Original Message-----

From: Clayton J Staub [<mailto:daspyro@comcast.net>] <[mailto:\[mailto:daspyro@comcast.net\]](mailto:[mailto:daspyro@comcast.net])>
Sent: Tuesday, March 08, 2005 10:22 AM
To: Jewett, John H.
Subject: 25 pa code 211

John

I was informed this week that the Federal Office of Homeland security was getting ready to announce that they will be removing the placards from all train cars and tractor trailers carrying hazardous materials because it makes them a prime target of terrorists.

This makes section 211.115 subsection 9 part iii a real problem. For the recorded I have attended a few courses on the subject.

Incident response to terrorist bombings prepared for the department of justice by New Mexico Institute of mining and technology, energetic materials research and testing center.

Emergency response to terrorism, Law enforcement response to weapons of mass destruction incidents prepared for the department of justice by Louisiana state university Academy of counter-terrorist education.

Both members of the national domestic preparedness consortium. So I know what I am talking about and I think the changes to 25. 211 are a bunch of bad, feel good we done something laws that will come back to adversely affect public safety.

Clayton J Staub

RECEIVED
2005 MAR -8 AM 10:26
NEW MEXICO STATE UNIVERSITY
ENERGETIC MATERIALS RESEARCH AND TESTING CENTER

14

Original: 2461

IRRC

From: Jewett, John H.
Sent: Tuesday, March 08, 2005 10:11 AM
To: IRRC
Cc: Support; Wyatte, Mary S.; Sandusky, Richard M.; Smith, James M.
Subject: FW: March 10 IRRC Meeting

Please file under "final comments" for #2461.

Thanks

-----Original Message-----

From: Kuser, Rich [mailto:rich.kuser@eds.com]
Sent: Tuesday, March 08, 2005 10:02 AM
To: Jewett, John H.
Cc: jkemps@ptd.net
Subject: March 10 IRRC Meeting

Mr. Jewett,

I plan to attend the IRRC meeting as long as my schedule holds up. My name is Rich Kuser and I am an independent free-lance pyrotechnician DBA Kuser Fireworks Productions. I work for several well respected fireworks display companies as a subcontract pyrotechnician to do their displays in addition to doing my own stuff. The storage issue has affected me personally by prohibiting me from doing further business in PA with regards to doing my own shows and displays and has totally crippled my ability to obtain a renewal of my Federal ATF license.

I may be reached at 717-856-2793. I am associated by friendship with several members of the PGI. I am further associated by a newly formed acquaintance with John Kempes of Celebration Fireworks (which came about thru these regulations). I plan to add my voice to theirs in opposition to the regulations and request an exemption for the fireworks industry due to the unreasonable burden these regulations impose on small businesses such as mine, effectively putting me out of business.

I appreciate the IRRC hearing our input on this issue.

Thank You,
Rich Kuser
EDS, Information Analyst
HIFIES SC - Healthcare, Insurance, and Financial Industries & Enterprise
Support Solution Centre
225 Grandview Ave
Camp Hill PA 17011
(717) 975-4281

RECEIVED
2005 MAR -8 AM 10:19
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

Original: 2461

IRRC

From: Jeffrey Shively [shivelyj@msn.com]
Sent: Monday, March 07, 2005 4:06 PM
To: IRRC
Subject: Regulation # 7-394 (#2461)

Mr. John R. McGinley JR. Chairman

Mr. McGinley as the owner of a small fireworks company I am very concerned about the upcoming rule changes. I do a couple fireworks displays a year and just recently started an import business. I have ask my ATF agents many times about placards and other warning signs around my magazine. Their reply was to not do it for it will draw attention to what is stored. I have written all the fire departments around me to notify them of the hazard. The proposed rule changes to storage requirements would put a large financial burden on me and would most likely force me out of business. Fireworks and high explosives are not the same and should be looked at separately. The new requirements will in themselves draw attention to what is being stored there. They are now talking about changing things on the railroads placards on rail cars because they tell what is in the cars making it easy for some one to get any hazardous item they want. I would really like the chance to build up my business. Please consider not letting these new regulations go into effect the way they are written. A fence a wall an alarm system a locked door they only keep an honest person out.

Thank you very much.
Jeffrey B, Shively
Shively Fireworks

7

Original: 2461

IRRC

From: Jewett, John H.
Sent: Wednesday, March 02, 2005 5:02 PM
To: IRRC
Cc: Support; Sandusky, Richard M.; Wyatte, Mary S.; Smith, James M.
Subject: #2461

Please file the attached comments as "final comments" for #2461.

Thanks

-----Original Message-----

From: Jim Sells [mailto:jim@pacaweb.org]
Sent: Wednesday, March 02, 2005 4:17 PM
To: Jewett, John H.
Subject: Final EQB Regulation #7-394 (#2461), Storage, Handling and Use of Explosives

John:
Attached are PACA's comments regarding the explosives regulations before IRRC on March 9, 2005.
Thank you for the opportunity to comment.
Jim

James D. Sells
President
PACA - 3509 N. Front St.
Harrisburg, PA 17110
www.pacaweb.org
717.234.2603 - Off
717.234.2603 - Fax
717.571.6091 - Cell

Independent Regulatory Review Commission
Mr. John McGinley, Jr., Chairman
333 Market St., 14th Floor
Harrisburg, PA 17101

March 2, 2005

Mr. McGinley:

The Pennsylvania Aggregates and Concrete Association [PACA] would like to offer their comments regarding the proposed PA Department of Environmental Protection's explosives regulations [#7-394 (#2461)] that are to be considered by IRRC at your March 9, 2005 meeting.

PACA has 13 members who represent the explosives industry and several of them have expressed serious reservations regarding the DEP explosives regulations.

An overriding theme from all of the PACA members is the process by which the regulations were written. Industry's involvement in developing these regulations has been minimal at best. The explosives' industry representatives are concerned about the equity and fairness of the proposed regulations and in particular the economic impact on small privately held explosives provider companies.

Additionally, they [explosives providers] are concerned with the "menu" of regulatory options as currently proposed. Their concerns center around, "What would prevent the regulatory agency [DEP] from adding additional requirements or interpretations after the permit applicant has submitted their proposal for security and containment of the explosives storage magazine"? The explosives industry feels that the subjectivity and interpretive nature of the currently proposed regulations leaves them vulnerable to unclear parameters and direction by the regulatory agency.

The industry members have indicated that better regulations could have been crafted if the regulators and regulated community had met on a scheduled basis and resolved these regulatory differences. PACA is not commenting as to the technical merits of the regulations. We are deferring to the explosive's associations and individual companies to argue those points.

PACA is requesting that IRRC not approve the proposed DEP explosives regulations at this time and direct those impacted agencies and individuals to reconvene for the purpose of resolving the current differences and to craft a set of agreed upon regulations for future consideration by IRRC.

Your positive consideration of these comments is most appreciated.

Sincerely,

James D. Sells,
President
PACA
3509 North Front St.
Harrisburg, PA 17110

cc: Senator David Brightbill
Senator Mary Jo White
Senator Ralph Musto
Representative William Adolph
Representative Bud George

Message

Page 1 of 1

Original: 2461
IRRC

9

From: Hank Butler [hank@abckeystone.org]
Sent: Wednesday, March 02, 2005 4:43 PM
To: IRRC
Subject: positions on #7-394

Per your meeting on Thursday, attached, please see ABC PA's position on EQB regulation #7-394

Thank you

Hank Butler
Government Affairs
ABC Pennsylvania

3/4/2005

Original; 2461



PENNSYLVANIA

Associated Builders and Contractors, Inc.

**Rapho Business Park, 135 Shellyland Road
Manheim, PA 17545
(717) 653-9804 Fax: (717) 653-4431**

Date: January 11, 2005
To: Members of the EQB Board
From: Hank Butler; Government Affairs ABC PA
Subject: **Concerns for the Proposed Administrative Changes to Storage, Handling, Use of Explosives**

In as much as the Pennsylvania Chapters of the Associated Builders & Contractors, Inc. (ABC PA) is fully supportive of Homeland Security, we believe that these new proposed changes to the storage, handling, and use of explosives are being promulgated without industry input, with no regard to the hardship it may cause, and may cause more harm than good. ABC PA believes that these proposals should be re-evaluated, the reasoning for these changes need more research, and explosive experts from the business community should be called in to help re-examine this situation prior to any consideration to changes of the current rules.

Recently, the Rendell Administration's Department of Environmental Protection (DEP) announced their proposal to administratively change the state's requirements in the storage, handling and use of explosives. These results were a cooperative effort from the Department of Environmental Protection, the Pennsylvania State Police and the Pennsylvania Department of Homeland Security. These groups are informing all interested parties that these changes are needed as a homeland security measure. In a recent report, Pennsylvania led the nation in explosive thefts at nine (9) in a recent year span.

After reviewing the proposed regulations, ABC PA wishes to submit the following comments:

- The proposed changes to the regulations were attempted to be passed during December of 2004 without any input from the business community. Though there was a delay, for a month, and input from the business community (the individuals directly affected by the changes) the timing and lack of input is very concerning. ABC PA is recommending delaying these implementations until a task-force of explosive experts can work with DEP, Pennsylvania Homeland Security, and the State Police to develop a reasonable agreement, understanding, and new proposals. Bringing business experts to the table, the real day-to-day, explosive handlers will help to effectively address the Homeland Security issue.
- ABC PA questions the need for these changes. Pennsylvania has already adopted the Federal ATF's recommended changes. These changes in the regulations would make Pennsylvania the most restrictive state in the explosives industry. Instead of reacting to the recent theft data (in which some were inventory miscalculations) with more regulations, the state agencies should investigate these thefts and improve the current regulations based on actual findings.
- The proposed changes being recommended will create a significant hardship on the explosive industry. In some situations, businesses are expecting to spend over \$500,000 with no support from the government forcing this change. These costs will most likely trickle down to the consumers and ultimately the taxpayers. If regulations are to be implemented above the federal recommended changes proposed by ATF, then DEP or another state agency should be compensated for these mandated changes.
- The changes are so extensive and unfunded, that ABC PA has already heard from several explosive experts who are considering either consolidating their explosives storage units or storing them in Maryland, Ohio, or other bordering states and transporting the explosive materials a greater distance. This will lead to transportation thefts, carjacking, etc. -- a potentially more vulnerable environment than before the regulations were proposed.

ABC PA believes that these proposals should be re-evaluated, the reasoning for these changes need more research, and explosive experts from the business community should be called in to help re-examine this situation. Implementing the proposed regulations could open Pennsylvania to a greater risk than previous years.

Has enough discussion and time been given to develop a comprehensive and thorough assessment of this situation from all parties?

The answer is no.

Original: 2461

22

JRC

2 March 2005

Independent Regulatory Review Commission
The Commonwealth of Pennsylvania
333 Market Street, 14th Floor
Harrisburg, PA 17101

Attention: Chairman, Vice Chairman, and Commissioners

SUBJECT: Proposed Amendment to 25 Pa. Code Chapter 211

RECEIVED
2005 MAR 18 AM 10:15
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Gentlemen:

We members of the Halliburton Energy Services and Jet Research Center staff involved in global explosives operations, security and safety wish to document our opinions concerning the recently drafted amendments to the Commonwealth of Pennsylvania 25 Code, Chapter 211 related to the handling, storage and use of explosives in Pennsylvania. The amendments substantially increase the requirements for outer perimeter security supposedly to inhibit wheeled vehicle entry into explosive storage sites, inner perimeter security supposedly to inhibit potential intruders, increased magazine inspections, and other measures designed to preclude explosives theft and shorten the reporting time to state law enforcement authorities. Halliburton and its unincorporated operating division, Jet Research Center, have several serious concerns with this planned course of action by the Department of Environmental Protection of the Commonwealth of Pennsylvania. Our objections to the enactment of this amendment are summarized below.

First, under the Executive Summary of the Final Rulemaking, the statement is made that there were nine thefts of explosive materials in Pennsylvania from March 2003 to December 2003 without offering the details of those nine incidents. From considerable experience in the explosives business, explosive "losses" are occasionally accounting errors in magazine inventory records and, in point of fact, no explosives were actually stolen. The Executive Summary does not mention that most of the nine incidents reported were actually inventory accounting errors.

Second, under Section F. of the Notice of Final Rulemaking, entitled Benefits and Costs, the figures of \$10,000 cost per small explosives site and over \$150,000 for a large site were estimates of the costs of the implementation of these measures. It is our belief that the costs of implementing these measures were grossly underestimated and will place an undo burden on the explosives industry.

Third, under Section E. of the Notice of Final Rulemaking, entitled Summary of Final Rulemaking, some facilities within the boundaries of Pennsylvania are exempt from

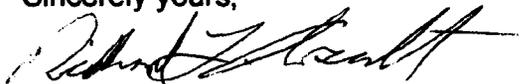
implementation of the security measures including underground storage facilities. Furthermore, explosive sites under the ownership or jurisdiction of the Federal Government such as Department of Defense military bases, supply depots and ammunition storage sites would not be subject to the requirements of the Pennsylvania Code 25. The fact that so many sites would remain outside the requirements of the Pennsylvania Code raises serious questions as to how effective the amendments are to improving public safety.

Fourth, no data or evidence was presented in the Executive Summary describing whether the stolen explosives were actually used in criminal activity within the Commonwealth of Pennsylvania or transported across state lines for use in such criminal activity in other states or sold as contraband. It must be recognized that it is not necessary to steal commercial explosives to build a bomb for criminal activity. Sufficient materials are available to build such devices without the theft of commercial explosives if the criminal were so motivated and possessed a high school level chemistry background.

Fifth, the greatest concern of Halliburton and its affiliated and subsidiary companies is the desire on the part of the cognizant regulatory body in Pennsylvania to attempt to influence federal regulations. OSHA, ATF, USDOT and other regulatory agencies have not seen fit to implement such drastic measures on a Federal level. If this measure should be implemented by other states or implemented on a national level, the costs to the explosives industry would be very high indeed. We at Halliburton estimate that domestic implementation costs could easily exceed 2.25 million dollars for just the inner security barrier alone. This cost might be justified if a real improvement in overall public safety were the result, but the benefits to the safety of the general public from this measure are, in our opinion, questionable.

We at Halliburton propose that the Institute of Makers of Explosives and its member companies assist the Environmental Quality Board of the Pennsylvania Department of Environmental Protection, in constructing an alternative proposal to the amendments to the Pa. Code 25, that improves security at explosive sites without unnecessary and burdensome costs to the industry.

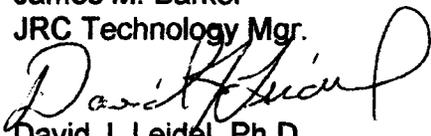
Sincerely yours,



Richard Arsenault,
Halliburton Global Radiation and Explosive Safety Mgr.



James M. Barker
JRC Technology Mgr.



David J. Leidel, Ph.D.
JRC Senior Scientific Advisor - Physics

Original: 2461
RYAN ENGINEERING

P.O. Box 406 • New Alexandria, PA 15670 • (412) 668-2804

724

RECEIVED

2005 FEB 22 AM 9:16

Mr. John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission.

RE: Feb 16, 2005

Dear Mr. McGinley,

I would like you and the other members of the Commission to consider my following comments and to enter them into the record concerning regulation # 7-394 (#2461). This regulation would alter the storage magazine requirements for both high explosives and display fireworks.

I am strongly opposed to including display fireworks in this regulation. What has happened to common sense? Is "Homeland Security" a buzz-word that allows stupid regulations to become law? The Independent Regulatory Review Commission is the last hurdle this ill written set of regulations needs to pass before becoming enacted. I urge you to send it back to the DEP to eliminate display fireworks from the new regulations. Otherwise, thousands of jobs will be lost in Pennsylvania and the security of our homeland will be not one bit be improved.

I have been setting off a fireworks display at my place (a large place) for our Township on the 4th of July, for the last 40 years. I open the place up for everyone to park and to watch the display. All of the cost of doing so has been covered by me, as a patriotic act for my country. All Federal, State, and Local laws have been complied with over the years, including a PA. Licensed magazine for storing the fireworks prior to the 4th. The proposed regulations would be impossible to comply with, and our Township display would stop. What makes this to hard to cope with, is that including fireworks in the new regulations makes no sense whatever, as fireworks never have been used, and never will be a useful instrument against homeland security. Even my DEP explosives inspector told me how ridiculous it was, and that he had testified it in hearings. Why is hysteria replacing logic in our country?

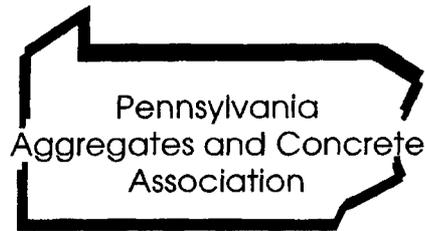
I was an explosives and pyrotechnics consultant for Westinghouse Electric for many years, and can tell you that fireworks pose no threat to homeland security. The introduction to the rules contains many factual errors and demonstrates that those pushing this legislation simply do not understand the difference between display fireworks and high explosives. The Independent Regulatory Review Commission must send this piece of regulations back to the DEP for modifications concerning fireworks. Common sense must prevail.

Fred Ryan, 724-668-2804, fredmerkr@aol.com
PO Box 406 New Alexandria, PA. 15670

Fred Ryan

5

Original: 2461



EMBARGOED MATERIAL

Independent Regulatory Review Commission
Mr. John McGinley, Jr., Chairman
333 Market St., 14th Floor
Harrisburg, PA 17101

March 2, 2005

Mr. McGinley:

The Pennsylvania Aggregates and Concrete Association [PACA] would like to offer their comments regarding the proposed PA Department of Environmental Protection's explosives regulations [#7-394 (#2461)] that are to be considered by IRRC at your March 9, 2005 meeting.

PACA has 13 members who represent the explosives industry and several of them have expressed serious reservations regarding the DEP explosives regulations.

An overriding theme from all of the PACA members is the process by which the regulations were written. Industry's involvement in developing these regulations has been minimal at best. The explosives' industry representatives are concerned about the equity and fairness of the proposed regulations and in particular the economic impact on small privately held explosives provider companies.

Additionally, they [explosives providers] are concerned with the "menu" of regulatory options as currently proposed. Their concerns center around, "What would prevent the regulatory agency [DEP] from adding additional requirements or interpretations after the permit applicant has submitted their proposal for security and containment of the explosives storage magazine"? The explosives industry feels that the subjectivity and interpretive nature of the currently proposed regulations leaves them vulnerable to unclear parameters and direction by the regulatory agency.

The industry members have indicated that better regulations could have been crafted if the regulators and regulated community had met on a scheduled basis and resolved these regulatory differences. PACA is not commenting as to the technical merits of the regulations. We are deferring to the explosive's associations and individual companies to argue those points.

Pennsylvania Aggregates and Concrete Association

3509 N. Front St., Harrisburg, PA 17110-1438 Phone: 717.234.2603 Fax: 717.234.7030 www.pacaweb.org

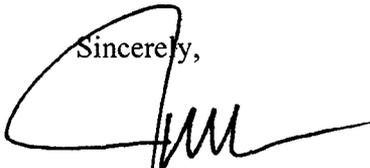
RECEIVED
2005 MAR 10 AM 10:26
INDEPENDENT REGULATORY
REVIEW COMMISSION

Page 2

PACA is requesting that IRRC not approve the proposed DEP explosives regulations at this time and direct those impacted agencies and individuals to reconvene for the purpose of resolving the current differences and to craft a set of agreed upon regulations for future consideration by IRRC.

Your positive consideration of these comments is most appreciated.

Sincerely,

A handwritten signature in black ink, appearing to be 'JDS', written over the word 'Sincerely,'.

James D. Sells,
President
PACA
3509 North Front St.
Harrisburg, PA 17110

cc: Senator David Brightbill
Senator Mary Jo White
Senator Ralph Musto
Representative William Adolph
Representative Bud George

Original: 2461

Jeffrey B. Shively
Shively Fireworks
1311 Hooker Road
Karns City, PA 16041

February 8, 2005

Senator Mary Jo White
Senate Box 203021
168 Capitol Building
Harrisburg, PA 17102

Dear Senator White:

The Environmental Quality Board recently considered a final rulemaking regarding storage of explosives. It is my understanding that this ruling came about because of thefts of explosives (3 actual thefts) for the year 2004 and that these were explosives that were used in mining or construction.

This ruling combines explosives used for mining, construction and other similar activities with those used in pyrotechnic displays. I am not aware of the current regulations used in the mining or construction but I do know that the fireworks industry is well regulated by the Department of Alcohol, Tobacco and Firearms.

My concern is that the Dept of Environmental Protection is rushing to implement unnecessary and undue regulations that impact small pyrotechnic businesses. This will impose a tremendous burden disproportionate to the security risks. My business, as well as many other businesses will not be able to absorb such costly measures that are being proposed.

I am asking that you give considerations to the impact of the regulations and make a case for fireworks exemptions.

Thank you.

Sincerely,

Jeffrey B. Shively

RECEIVED
2005 FEB -8 PM 5:07
REVIEW COMMISSION

Original: 2461

IRRC

4

From: Lon Santis [ldsantis@ime.org]
Sent: Friday, February 11, 2005 9:15 AM
To: rlamkie@state.pa.us
Cc: D.L. Ramsey; Jeff Dean; IRRC
Subject: RE: DEP/PSP Explosives Industry Alternative Magazine Security Methods Committee Meeting

Dear Mr. Lampkie:

Please excuse me if I have misunderstood the information below, but the IME has not been directly involved in any of the activity of the Explosives Industry Alternative Magazine Security Methods Committee.

What is PADEP's justification for requiring that magazine alarms be on the outside of the magazine? It seems to me that an alarm may operate more reliably protected from the elements and be more tamper resistant on the inside.

Likewise, under what circumstances is a licensee allowed to reduce the distance from the magazine to the inner perimeter from 25 feet to 6 feet? Please provide specific examples of situations where PADEP would approve distances as short as 6 feet.

Thank you.

Lon Santis,
Manager of Technical Services
Institute of Makers of Explosives

-----Original Message-----

From: D.L. Ramsey [mailto:dlramsey@alltel.net]
Sent: Thursday, February 10, 2005 10:05 PM
To: Jeff Dean; Lon Santis
Subject: Fw: DEP/PSP Explosives Industry Alternative Magazine Security Methods Committee Meeting

----- Original Message -----

From: "D.L. Ramsey" <dlramsey@alltel.net>
To: "Dale L. Ramsey" <dlramsey@alltel.net>
Sent: Thursday, February 10, 2005 10:03 PM
Subject: Fw: DEP/PSP Explosives Industry Alternative Magazine Security Methods Committee Meeting

>

> ----- Original Message -----

> From: "D.L. Ramsey" <dlramsey@alltel.net>
> To: "Lamkie, Richard" <rlamkie@state.pa.us>
> Sent: Thursday, February 10, 2005 9:56 PM
> Subject: Re: DEP/PSP Explosives Industry Alternative Magazine Security

> Methods Committee Meeting

>

>

>> Hi Rick;

>>

>> I have a comment relative to item 1 dealing with placement of alarms.

I

>> would ask if your response was a result of

>> consulting with ATF or others? I can envision a day when magazine

>> manufacturers build a plug & play type magazine
>> equipped to be wired into an alarm system with sensors already built
into
>> the doors. I would caution not to set a policy
>> that could prohibit such development that would make them more tamper

>> resistant being on the inside.
>> I had consulted with ATF when looking into systems and as I
understand it
>> one must only comply with electrical code
>> as detailed in CFR 27 (Orange Book)

>>
>> Dale

>> ----- Original Message -----

>> From: "Lamkie, Richard" <rlamkie@state.pa.us>
>> To: <dlramsey@alltel.net>
>> Sent: Tuesday, February 08, 2005 1:34 PM
>> Subject: FW: DEP/PSP Explosives Industry Alternative Magazine
Security
>> Methods Committee Meeting

>>
>>
>>
>>
>>
>>

>>> -----Original Message-----

>>> From: Lamkie, Richard
>>> Sent: Tuesday, February 08, 2005 1:33 PM
>>> To: 'jimshuster9@hotmail.com'; 'svitale@pyrotechnico.com';
>>> 'dramsey@alltel.net'; 'denny.kisthart@austinpowder.com';
>>> 'paletter@paonline.com'; 'daveharrison25@hotmail.com';
>>> 'scartwright@csonline.net'
>>> Cc: Babich, Vincent A; Steiner, Michael R; Pizarchik, Joseph
>>> Subject: DEP/PSP Explosives Industry Alternative Magazine Security
>>> Methods Committee Meeting

>>>
>>>
>>> Gentlemen,

>>> Thanks for attending our first committee meeting. I appreciate your

>>> participation in the explosives storage security measure regulation
>>> implementation process.
>>> Your participation will ensure that the implementation goes more
>>> smoothly and that stored explosives are secured in an effective and
>>> consistent manner and that the approved security measures will be
>>> reasonable to put in place.

>>> Two items were discussed that I said I would get back to you on.

>>> 1. Do magazines need to be alarmed on the inside, outside or both.

>>> It will be acceptable to alarm magazines on the outside only, door
>>> alarms.

>>> 2. Must inner perimeter security fencing always be 25' from the
>>> magazine.

>>> The regulations allow for the Department to consider lesser
distances.

>>> In many cases distances as short as six feet may be approved.
However,

>>> that would depend on how the magazine is sited and the kind of
fencing

>>> employed.
>>>
>>>
>>> Among the handouts was a draft of an application form. If you have
any
>>> comments on the application form please mark up the form and fax it
to
>>> me @ 717-783-5675.
>>>
>>> Thanks again,
>>>
>>> Rick
>>
>