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Pennsylvania Aggregates and Concrete Association

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March 28, 2016

VIA email and eComment

Mr. Thomas Callaghan, PG
Director, Bureau of Mining Programs
PA Department of Environmental Protection
RCSOB, 5th Floor
400 Market Street
Harrisburg, PA 17105-8464

RE: Handling and Use of Explosives
25 PA Code Chs. 210 and 211
[46 Pa.B. 996]
[Saturday, February 27, 2016]

Dear Tom:

The Pennsylvania Aggregates and Concrete Association (PACA) respectfully submits the following comments on proposed amendments to 25 PA Code Chapters 210 and 211 (relating to blasters' licenses; and storage, handling and use of explosives) per the February 27, 2016 PA *Bulletin*. We thank you for this opportunity to provide input to the Department of Environmental Protection (DEP) and the Environmental Quality Board (EQB).

PACA represents the broad interests of over 200 member aggregates (stone, sand and gravel), concrete and cement companies, and companies supporting these industries (equipment manufacturers, dealers, consultants and service providers) in the Commonwealth of Pennsylvania. PACA's members account for more than 80 percent of the total aggregates production in Pennsylvania. In 2015, Pennsylvania ranked second in national crushed stone production and third in national overall construction aggregates, according to USGS data. PACA member companies' operations utilize blasters and blasters' service and, therefore, have an interest in this proposed regulation.

In general, PACA supports these amendments, particularly as they apply to safety and security, and recognizes the need for fees that support a reasonable, representative cost to deliver a service. We do, however, have the following comments and requests for clarification.

Definitions

While we appreciate the efforts to amend definitions to cross reference with other agencies, i.e., ATF and MSHA, we still find differences, even in simple terms such as "blast area" and "blast site." This leads, at the very least, to an inability to standardize training materials. Because of the words "the potential for" in the definition of "blast area", the definition is more stringent than the federal regulations and implies that either the blaster or the permittee has control of "potential". We request this definition delete the words "the potential for", as we cannot control actions that have not occurred.



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We are requesting examples be given as part of the definition for “nuisance.” We believe this is a vague interpretation and will lead to inconsistent application in the field when the attention should be paid to more significant safety and health hazards.

Furthermore, there are terms used interchangeably for which we request clarification. Is the term “blaster” and “blaster-in-charge” identical? If not, please clarify the difference. (See § 211.121 and § 211.124.)

Section 211.103 Enforcement

Subsection (d) established the permit and license block for State and Federal explosives requirements violations. Please clarify the time frame associated with this block.

Section 211.124 Blasting Activity Permits

Items (a)(10) and (a)(17). Please clarify how the permittee is to account for multiple shots.

Section 211.126 Fees

It is our understanding that the following fees apply to these proposed regulations. Is this an accurate understanding?

- Blasters license fee of \$150 with an annual administrative fee of \$10.
- Blasting activity permit fees ranging from \$12 to \$210.
- Explosive storage license fees ranging from \$50 to \$225, with an annual administrative fee of \$85 for each storage magazine. The inspection and monitoring fee is part of the overall explosive storage license fees and is not a separate fee.

While we agree that it is reasonable for DEP to collect fees for reviewing, administering and enforcing the blasting program, as supported by regulation, and in a manner consistent, efficient and equitable, we request clarification as to the actual cost of the blasting program and a listing of DEP personnel assigned to the program with their associated yearly hours. We also suggest that a more efficient, long-term solution to the fees is the use of the Consumer Price Index (CPI) average for All-Urban Consumers for the most recent calendar year, adjusted annually by the percentage, either upward or downward by which the CPI for the most recent calendar year exceeds the CPI for the previous calendar year. This is the CPI currently utilized by DEP Air Quality’s Title V program.

Furthermore, in support of DEP’s transparency policy and to provide a baseline of the Blasting Program operations, we request a yearly report on blasting be a part of an overall Mining Program financial statement report to be completed no later than December 31 of the most recent fiscal year.

Finally, this fee should be able to be paid via credit card, if applicant chooses to do so.



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Section 211.141 General Requirements

Please address/clarify the situation of an “on-road” vehicle from another state but operating in PA. For example, a truck licensed in Ohio but operating in PA would not have completed the State safety inspection.

Section 211.151 (b) Nuisance

Please provide examples of what constitutes a “nuisance” so that DEP, the blaster, and the permittee have a clear understanding of the boundaries of “nuisance.” This term can be highly subjective.

Section 211.152 Control of Noxious Gases

Please clarify the difference between noxious gases and toxic gases, if any.

Section 211.154 (d)

Please provide a definition of “at-the-hole communication.”

Subchapter J. Civil Penalties

Section (b)(1)(vii) The interference with a person’s right to the comfortable enjoyment of life or property. This criterion is completely subjective and should be removed. It cannot be measured consistently or equitably, and will reflect personal bias.

Another example of potential bias is the criteria for “seriousness.” While the criteria are identified, many more questions arise from that term that will lead to a judgment call on the part of DEP personnel. Clarifying exactly what is expected from the company is a better solution and should be incorporated into this document.

Section (b)(4) Cost to the Commonwealth. Please provide specifics/criteria regarding how this portion of the penalty is to be assessed. As written, almost anything could be included.

Conclusion

PACA appreciates the opportunity to comment and looks forward to responses and changes from the Department. Should you have any questions, don’t hesitate to contact me.

Sincerely,

Josie Gaskey
Dir., Environmental, Health & Safety

cc: Peter Vlahos - President, PACA
Rick Lamkie - DEP