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Eastern Pennsylvania Chapter
International Society of Explosives Engineers

www.easternpaisee.com

March 28, 2016

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 Chapters 210 and 211 [Saturday, February 27, 2016]

Dear Mr. Callaghan:

The Eastern PA Chapter International Society of Explosives Engineers (“EPCISEE”) appreciates the opportunity to provide comments regarding the Handling and Use of Explosives published in the Pennsylvania Bulletin on February 27, 2016, 46 Pa.B. 996.

We commend the board’s intention to update Pennsylvania’s regulations as they relate to consistency and relevancy to Federal regulations (ATF, OSHA, MSHA, DOT), the safety and security of explosives, and reflect current industry practices. In general EPCISEE supports what is presented in the proposed rule making. EPCISEE does, however, have the following comments and request for clarifications.

210.15. License application; 210.17. Issuance and renewal of licenses; & 210.20. Fees:

While EPCISEE understands the need to increase fees to cover administrative and testing cost a 300-500% increase seems excessive. We would recommend an increase of new applications to \$100 and renewal applications to \$75. The annual administration fee of \$10 for reviewing ATF requirements should be built into the license application cost; therefore, we recommend striking 210.20.

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211.101. Definitions:

Blast area—The area around the blast site that **[should] must** be cleared **and secured** to prevent the **potential for** injury to persons and damage to property.

EPCISEE suggest that the addition of “must” and “secured” is adequate to meet the board’s intentions. “The potential for” will always exist in the handling and use of explosives and we are not in control of unforeseen possibilities.

211.103. Enforcement:

Subsection (d) allows a permit or license block for failure to comply with State and Federal explosive requirements. EPCISEE request for clarification as to the time frame of the block, is it applied to any violation or violation within the last 6 months, a year?

211.115. Standards for classifying and storing explosives and constructing, maintaining and siting magazines.

Requirements set by ATF, OSHA, MSHA, DOT and Homeland Security are already in place and proven to be effective. The requirement of subsection (j) for a 4-hour time limit may not always be feasible. EPCISEE recommends that this section be removed or be written to show consistency with other federal regulations.

211.124. Blasting activity permits.

We ask for clarification on how to account for multiple shots on a blasting activity permit as they apply to subsections (10) and (17).

211.126. Fees:

(c) The Department will assess a fee for inspecting and monitoring an explosive storage magazine. This annual administration fee will be assessed annually and will be collected as part of the explosive storage license application renewal process. The annual administration fee for each explosives storage magazine is \$85.

For clarification, the annual administration fee and the inspecting/monitoring fee are inclusive in the \$85 cost, or are they separate fees? If they are separate fees will the inspecting/monitoring fee change yearly?

211.141. General requirements:

(13) Only load explosives into **on-road** vehicles that have passed the State safety inspection or certification.

EPCISEE recommends this be revised to **(passed a state or FMSCA/DOT)**. Not every state has a state inspection requirement and vehicles maybe licensed in state other than Pennsylvania.

211.151. Prevention of damage or injury:

(b) **Blasting shall be conducted in a manner that does not cause a nuisance.**

EPCISEE asks for clarification and a clear definition of a “nuisance”. By definition alone “nuisance” can be causing trouble, annoyance or inconvenience. Simply notifying someone that blasting will be taking place nearby, could be scene as annoying or an inconvenience and may subject us to additional civil liabilities.

211.154. Preparing the blast:

EPCISEE request a clearer definition of who will be responsible for blasting under a Blasting Activity Permit and a Blasting Module 16.

Subsection (d) **“at-the-hole communication”** we ask for clarification and a clear definition of at-the-hole-communication. There is also no verification process provided.

211.155. Preblast measures:

(7) Post signs at access points to a blast site which clearly warn of explosives use. If there are no specific access points, a minimum of four signs shall be posted on all sides of the blast site at a distance of 100 feet from the blast site.

We ask that this section be amended to require a sign must be posted on a minimum of four sides of the blast site. We also ask for clarification on the 100 feet distance requirement. This proposed distance may not always be safe or plausible to comply with.

Subsection J. Civil Penalties:

We request clarification on how these civil penalties will affect our members rights during possible criminal charges that maybe brought due to injuries or property damage associated with violations of the proposed rulemaking.

211.204. System for assessment of penalties:

(b)(1)(vii) The interference with a person's right to the comfortable enjoyment of life or property.

EPCISEE believes this cannot be able to be measured consistently, equitably or without personal bias and request that it be removed from the proposed rulemaking.

(4) Cost to the Commonwealth. A penalty may be assessed based on the costs expended by the Commonwealth as a result of the violation. The costs may include:

We ask for clarification as to how this section will be assessed. As written there is no limitations on costs or how they will be determined.

(e) If a penalty calculated under the criteria in this section would yield a penalty in excess of the regulatory maximum for a violation, the maximum penalty will be imposed for that violation. Separate violations occurring on the same day may each be assessed a penalty of up to the regulatory maximum. When violations may be attributed to two or more persons, a penalty of up to the regulatory maximum may be assessed against each person.

EPCISEE asks for clarification on **"attributed to"**. Will this be applied to the blaster-in-charge, permittees, blasting crew, etc.?

The EPCISEE requests this proposed rulemaking document be withdrawn or at least suspended, and the Environmental Quality Board, DEP, The Eastern PA Chapter ISEE work together for a more effective solution to the proposed rulemaking. The Eastern PA Chapter ISEE stands committed to this effort.

Sincerely,



Scott E. Mueller
President, Eastern PA Chapter ISEE