MAURER & SCOTT

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Environmental Quality Board
P.O. Box 8477
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RE: Comments to Proposed Rulemaking, Environmental Quality Board, [25 PA CODE CHS. 210 & 211], Handling and Use of Explosives

On behalf of Maurer & Scott I am submitting comments on the proposed rule changes to PA Title 25. Chapter 210. Blasters' Licenses, Chapter 211. Storage, Handling and Use of Explosives.

Interest of Maurer & Scott

Being well-established as a safe and compliant blasting independent contractor for many of the permitees in Northeastern PA any changes in our state regulations will impact Maurer & Scott.

Our 40 plus PA licensed blasters, their crews and the customers they serve represent a big percentage of who will be affected by the new regulations.

We appreciate the opportunity to comment during this proposed rulemaking and share in the responsibility to help make regulations that are both current and relevant to how explosives are stored, handled and used by our industry today.

Comments:

The Environmental Quality Board has used this rulemaking to make amendments to the regulations we support.

- The revisions to the regulations that address blasting activities for seismic exploration; especially with respect to the specialized security issues.
- The updates that reflect current practices, eliminate antiquated requirements and for the most part the updates to address consistency between the requirements for construction blasting and blasting for mining operations.
- The inclusion of the ATF verification to the blaster licensing process.
- With some clarification of the new fee structures we can understand the need to increase the fees across the board.
- In general we support most of what is presented in this proposed rulemaking.

Although we support the above mentioned amendments a number of remaining concerns follow.

211.101. Definitions:

In the *Blast area* definition adding ***"the potential for"*** implies that we are in control of all possibilities of injury and damages. We feel this "potential" will always exist. We believe the purpose of the change is met by just adding ***"must"*** and ***"secured"***.

In our opinion the ***"Nuisance"*** definition may need clearly communicated examples. As written it is open to vague interpretation which could lead to inconsistent application towards real safety and health hazards vs minor complaint issues.

211.103. Enforcement:

(d) The department will not issue a permit or license to any person who has either:

For ***(1) and (2)*** are these restrictions "once and done" or will there be a time frame associated like within 6 months or a year from time of application?

211.124. Blasting activity permits. (a):

(10). A map indicating the location where explosives will be used ***and the proximity of explosives use to public roads, buildings or other structures.***

How do we account for this when there are multiple shots on the same BAP?

(17). Same as above.

211.126 Fees:

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

For clarity is this two separate fees or one $85 fee? If it is two will the first one change from year to year?

211.151. Prevention of damage or injury.

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

As mentioned in the definitions above there needs to be a clear understanding of what "a nuisance" actually means if we can be cited for it.

211.154. Preparing the blast.

(a): ...***blasts that blaster-in-charge detonates. The blasting activity permittee is responsible for the effects of all blasts detonated pursuant to the Blasting Activity Permit.***

As written there is not a clear distinction between who is responsible for blasting under a BAP and a Blasting Module 16.

(d): ... ***or at-the-hole communication prior to loading a blast. The permittee must ensure that a written drill log or at-the-hole communication is available to the blaster-in-charge.***

Does there need to be a definition of "*at-the-hole communication*"? How will this be verified for compliance?

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 must be posted on all sides of the blast site at a distance of 100 feet from the blast site.

For clarity does this mean 4 signs EACH on all sides? What is the basis for 100 feet?

Subchapter J. CIVIL PENALTIES

General comment:

How will being charged civilly and making remittance under this section affect a company's or its employees' rights during possible criminal charges brought about by injuries or property damage associated with non-compliance to this proposed rulemaking? Will there be a legal review as part of the overall rulemaking?

211.204. System for assessment of penalties.

What is the basis for the "per-day" charges as it relates to blasting incidents? They generally are singular events.

Will there be a clear breakdown for monetary assessment of each criteria category in 211.204 (b)?

- How will each of the six categories be measured?
- Will positive history of no violations be included?
- Will an assessment worksheet be created?

(1) Seriousness.

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

How can this be measured fairly, consistently or without bias? It should be removed.

(4) Cost to the Commonwealth.

(iv), ***Cost of preventive or restorative measures taken to prevent or lessen the threat of damage to a property or environmental value, or to prevent or reduce injury to a person.***

This is too wide open to abuse of its intent. There are no limitations. Who will do this and how will this be determined? Need more information.

(e) Last Sentence:

When violations may be attributed to two or more persons, a penalty of up to the regulatory maximum may be assessed against each person.

Is this any person on the blast crew; or blaster-in-charge, permitees. Define "attributed to".

Conclusion:

As mentioned above we appreciate the opportunity to make comments on this proposed rulemaking. Current and relative Pennsylvania regulations for Blaster's Licenses and the Storage, Handling and Use of Explosives are important to the viability of our company and the permittees we service.

We hope our comments help in the board's stated goals to update explosives use requirements to reflect current practices and eliminate antiquated requirements while providing more consistency between the requirements for construction blasting and blasting for mining operations.

Our aim in this assistance is to promote participation in an outreach process that will foster a collaborative approach to rulemaking.

We look forward to having direct participation in future efforts to this end.

Respectfully submitted,

John A. Benedict, CMSP
Sr. Safety & Compliance Manager

Summary Document – Maurer & Scott Inc. Comments to Proposed Rulemaking Environmental Quality Board, [25 PA CODE CHS. 210 & 211], Handling and Use of Explosives

We are commenting on:

1. 211.101. Definitions: Blast area: ***remove "the potential for".*** Nuisance: ***Not clear.***

2. 211.103. Enforcement, (d) 1 and 2: ***How long are restrictions?***

3. 211.124. Blasting activity permits. (a): ***How do we account for multiple events?***

4. 211.126 Fees: (c): ***Is this one fee or more?***

5. 211.151. Prevention of damage or injury. (b): ***Remove or clarify by definition.***

6. 211.154. Preparing the blast. (a): ***Need clarification for BAP vs a Blasting Module 16***, (d): ***Define "at-the-hole-communication" and how will this be verified?***

7. 211.155: Preblast measures. (7): ***Basis for 100 feet. 4 signs each side?***

8. Subchapter J. CIVIL PENALTIES: General Comment: ***How will being charged civilly and making remittance under this section affect a company's or its employees' rights during possible criminal charges brought about by injuries or property damage associated with non-compliance to this proposed rulemaking? Will there be a legal review as part of the overall rulemaking?***

9. 211.204. System for assessment of penalties.

   (a) ***Basis for per day charges?***

   (b) ***Monetary breakdown of assessments?***

      (1) Seriousness. (vii): ***Remove.***

      (4) Cost to the Commonwealth. (iv): ***Need to add restrictions.***

   (e) ***Define "attributed to".***