

DRAFT TECHNICAL GUIDANCE: BLASTER'S LICENSE SUSPENSION AND
REVOCATION PROCEDURE

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING AND RECLAMATION**

DOCUMENT NUMBER: 562-2402-501

TITLE: Blaster's License Suspension and Revocation Procedure

EFFECTIVE DATE: January 28, 2002

AUTHORITY: Administrative Code of 1929 (Section 1917-A), The Non-coal Surface Mining and Reclamation Act, The Surface Mining Conservation and Reclamation Act, 25 PA Code Chapter 210, 25 PA Code Chapter 211, 25 PA Code Chapter 77, 25 PA Code Chapter 87, and 25 PA Code Chapter 88.

POLICY: The Department considers blaster's license suspension or revocation to be an appropriate enforcement action to be taken on serious violations, particularly incidents with potential to injure people or damage property or any deliberate act in violations of the blasting regulations.

PURPOSE: To provide a uniform procedure for the Department of Environmental Protection to suspend or revoke a blaster's license.

APPLICABILITY: Any blasting activity at which serious or deliberate violations of the blasting regulations occur, particularly incidents that have a high potential to injure people or damage property.

DISCLAIMER: The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures shall affect more stringent regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules that weight or deference. This document establishes the framework, within which the Department will exercise its administrative discretion in the future. The Department reserves the discretion to deviate from this policy statement if circumstances warrant.

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DRAFT TECHNICAL GUIDANCE: BLASTER'S LICENSE SUSPENSION AND REVOCATION PROCEDURE

TECHNICAL GUIDANCE:

Note: Blasting is recognized as an ultrahazardous activity. The blaster-in-charge is responsible for insuring that the public is protected from those hazards. The blaster-in-charge will be held to a high standard of care.

Initial Contact

Upon becoming aware of a serious or deliberate violation, the Blasting and Explosives Inspector contacts the Chief, Explosives and Safety Section, by telephone, voice mail, or e-mail with general information on the incident such as the county, township, permittee, permit number, blaster's name, and license number.

Investigation

The District Office will conduct a thorough investigation to determine the details of the incident resulting in the violation. The investigation should include at a minimum the Blasting and Explosives Inspector and the Surface Mine Conservation Inspector, if applicable. The investigation should be conducted as soon as possible.

At a minimum the Department's investigators should:

- a. Interview the blaster, driller, members of the blasting crew and other employees of the operation, and affected members of the public. Statements are to be recorded in writing.
- b. Examine the blast record, explosives purchase invoice, site maps, and the drill log.
- c. Take photographs of the area of the incident.
- d. Take measurements, prepare a map or sketch of the relative location of important features, including the safety zone.
- e. Check the blaster's license to determine if previous violations have been cited against the blaster.

Investigation Report

The Blasting and Explosives Inspector provides a written report of the investigation of the incident to the Chief, Explosives and Safety Section, within 30 days of the incident. The Chief, Explosives and Safety Section, will compile records of serious or deliberate violation incidents to provide information to prevent future problems.

DRAFT TECHNICAL GUIDANCE: BLASTER'S LICENSE SUSPENSION AND REVOCATION PROCEDURE

Enforcement Action

Action on blaster's licenses will be considered on a case-by-case basis. Incidents that result in or have the potential for injury or death are particularly serious and should result in license suspension or revocation.

Point System for Determining Appropriate Action

After careful review of all of the information gathered during investigation of the incident, points will be assigned using the criteria listed below. Points will be assessed for both negligence and seriousness.

Negligence

1.	Low - No clear causes of the incident were identified in the investigation. (Examples: Inspection of the highwall indicates no clay slips or fractures; blast record indicates acceptable stemming, acceptable powder factor, acceptable burden, acceptable spacing, and proper loading.) No deliberate actions of the blaster-in-charge resulted in the violation and poor judgment was not a factor. 1 Point
2.	Medium - Causes of the incident are determined. (Examples: Clay slips or fractures present in the highwall but not reported in drill records; blast record indicates relatively high powder factor, minimum stemming amounts, minimum burden, minimum spacing, or minor loading problems.) Actions of the blaster-in-charge were not deliberate, but resulted from moderately poor judgment. 2 Points
3.	High - Causes of the incident are obvious. (Examples: Clay slips or fractures present in the highwall and/or reported in drill records; blast record indicates high powder factor, unacceptable stemming amounts, unacceptable burden, unacceptable spacing, or major loading problems.) Actions of the blaster-in-charge were deliberate or resulted from poor judgment. 3 Points

Seriousness

1.	Low - An adequate safety area has been established and no property damage or minimum property damage has occurred. 1 Point
2.	Medium - An inadequate safety zone has been established or moderate property damage has occurred. 2 Points
3.	High - Death or injury or extreme cases of property damage or the incident had a high risk of causing death or injury. 3 Points

DRAFT TECHNICAL GUIDANCE: BLASTER'S LICENSE SUSPENSION AND REVOCATION PROCEDURE

In general, the Department will use the following guidelines when determining a course of action:

1. 2 total points - Necessity of a fact finding meeting determined by the District Mining Office.
2. 3 total points or more – A fact finding meeting is required to determine the appropriate enforcement action.
3. 5 total points or more – A fact finding meeting is required to determine an appropriate length of suspension of blaster's license or revocation of blaster's license.

Fact Finding Meeting

Fact finding meetings may be held at the District Mining Office or Central Office. When the case is evaluated and a determination is made that a fact-finding meeting is necessary, a letter will be sent to the blaster from either the District Mining Office or Central Office. The letter will indicate the date, time, reason for the meeting, and request that, if the blaster wishes to bring legal counsel, the Department is to be notified 14 days in advance of the meeting.

The fact-finding meeting will be conducted by the Chief, Explosives and Safety Section. At a minimum the Blasting and Explosives Inspector who cited the violation and the Chief, Explosives and Safety Section, must attend the meeting. If the blaster brings legal counsel, the Department must also have legal counsel present.

Information presented by the blaster at the fact finding meeting and the report of the incident prepared by the Blasting and Explosives Inspector will be used to determine the action taken.

License Suspension

The Suspension Order shall specify the date of the meeting, the statutory authorities, indicate the regulatory violations by Section and Chapter, and confirm the license suspension period. The requirements for license reinstatement shall also be stated and the right of appeal shall be specified. The Suspension Order shall be signed by Chief of the Explosive and Safety Section and hand delivered or sent to the blaster by certified mail. (Copy of typical notice attached.)

License suspensions may be for a minimum of 3 days to a maximum of 3 years. The duration of the suspension will be determined after the fact finding meeting examining the case and considering the blaster's history. If a determination is made to suspend a blaster's license, the point total for an incident will be taken in consideration when determining the appropriate length of the suspension.

When a blaster's license is suspended the length and date of the suspension will be recorded in the comments section of the electronic license record. After 3 years from the end date of the suspension, the suspension information will be removed from the record.

DRAFT TECHNICAL GUIDANCE: BLASTER'S LICENSE SUSPENSION AND REVOCATION PROCEDURE

Revocation:

Revocation of a blasters license is appropriate for incidents with a high degree of negligence or seriousness. If a recommendation to revoke a Blaster's License is reached at the meeting, the recommendation will be forwarded to the Bureau Director, District Mining Operations and the Bureau Director, Bureau of Mining and Reclamation. If the Bureau Director, District Mining Operations and the Bureau Director, Bureau of Mining and Reclamation concur with the recommendation for blaster's license revocation the Bureau Director, Bureau of Mining and Reclamation will direct the Chief, Explosives and safety to prepare a revocation order.

The Revocation Order shall specify the date of the meeting, the statutory authorities, indicate the regulatory violations by Section and Chapter. The right of appeal shall be specified. The Revocation Order shall be signed by Chief of the Explosive and Safety Section and hand delivered or sent to the blaster by certified mail. (Copy of typical notice attached.)

APPENDICES:

Appendix A: Notice of Suspension of Blaster's License

Appendix B: Notice of Revocation of Blaster's License

DRAFT TECHNICAL GUIDANCE: BLASTER'S LICENSE SUSPENSION AND
REVOCATION PROCEDURE

APPENDIX A

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:
(Blasters Name) : Blasting Violation
(and Address) :

NOTICE OF SUSPENSION OF BLASTER'S LICENSE

NOW, on this (Date), the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") has found and determined the following:

- A. The Department is the agency of the Commonwealth with the authority to administer and enforce the following statutes and regulations:
1. The Surface Mining Conservation and Reclamation Act, the Act of May 31, 1945, P.L. 1198, as amended 52 P.S. § 1396.1 et seq., ("Surface Mining Act").
 2. Section 1917-A of the Administrative Code, the Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §510-17 ("The Administrative Code").
 3. The Act of July 1, 1937, P.L. 2681, as amended, 73 P.S. §151 et seq., entitled
"An act relating to, and regulating the manufacture, storing, and possession of explosives requiring permits for magazines, prescribing permit fees and providing "penalties". 71 P.S. §510-1.
 4. The Act of July 10, 1957, P.S. 685, as amended, 73 P.S. §164 et seq., entitled
"An act regulating the use of explosives in certain blasting operations requiring examination and licensing of certain explosives, detonators and prescribing the fee thereof, and conferring powers and imposing duties on the Department of Labor and Industry". 71 P.S. §510-1
 5. The Act of May 18, 1937, P.L. 654, 43 P.S. §25-1, entitled "An act to provide for the safety and to protect the health and morals of persons while employed, prescribing certain regulations and restrictions concerning places where persons are employed, and the equipment, apparatus, materials, devices and machinery used therein".
 6. The Rules and Regulations of the Environmental Quality Board set forth at 25 PA Code Chapters 209, 210, 211, 77, 87 and 88.

**DRAFT TECHNICAL GUIDANCE: BLASTER'S LICENSE SUSPENSION AND
REVOCATION PROCEDURE**

- B. (Blasters Name) has been licensed by the Department as a blaster pursuant to license No.
- C. On or about (Date of Violation), (Name of Blaster) was the blaster in charge on a blasting operation operated by (Company Name) {pursuant to Surface Mining Permit No. _____} located in _____ Township
_____ County.
- D. Violations of the following regulations were found and determined to exist on Date at the (Company Name) operation:

{List Regulation Section(s) and Chapter(s)}

NOW THEREFORE, pursuant to the powers vested in the Department pursuant to 25 Pa. Code §210.2(f), License No. _____ held by (Name of Blaster), is hereby suspended for.

(Indicate suspension period and license reinstatement requirements)

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3438. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audio tape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

FOR THE COMMONWEALTH OF PENNSYLVANIA,

DEPARTMENT OF ENVIRONMENTAL PROTECTION

**Chief
Explosive and Safety Section
Bureau of Mining and Reclamation**

DRAFT TECHNICAL GUIDANCE: BLASTER'S LICENSE SUSPENSION AND
REVOCATION PROCEDURE

APPENDIX B

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DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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(and Address) :

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DRAFT TECHNICAL GUIDANCE: BLASTER'S LICENSE SUSPENSION AND
REVOCATION PROCEDURE

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- D. Violations of the following regulations were found and determined to exist on Date at the (Company Name) operation:

{List Regulation Section(s) and Chapter(s)}

NOW THEREFORE, pursuant to the powers vested in the Department pursuant to 25 Pa. Code §210.2(f), License No. _____ held by (Name of Blaster), is hereby revoked.

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FOR THE COMMONWEALTH OF PENNSYLVANIA,

DEPARTMENT OF ENVIRONMENTAL PROTECTION

**Chief
Explosive and Safety Section
Bureau of Mining and Reclamation**