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TESTIMONY FOR SB 127

BEFORE ASSEMBLY NATURAL RESOURCES COMMITTEE
April 30, 2003

Senate Bill 127 is the result of the investigations conducted by the interim Subcommittee on Industrial Explosions. The purpose of the Subcommittee was to investigate the incidents involving explosives and flammable gases in Clark and Douglas Counties respectively and to provide recommendations to this session of the Legislature for any legislation to improve the regulation of highly hazardous substances.

The Division of Environmental Protection participated in the Subcommittee meetings and recommended this proposed legislation. This Bill clarifies the Chemical Accident Prevention program requirements and unifies program processes by moving the technical regulatory requirements for conducting risk assessments from statute to regulation. The Chemical Accident Prevention Act, passed in 1991, requires facilities with regulated quantities of highly hazardous substances to register with the Division, and follow a process prescribed in statute to assess potential risks of chemical accidents and develop extensive plans to abate identified hazards. In 1997, the statute was amended to provide the Division with authority to adopt regulations and seek delegation for implementing the requirements of the federal CAA Risk Management Program. Extensive regulations were adopted to implement those requirements, resulting in two similar yet distinct processes, one prescribed in statute by the original law and one in regulations. In 1999, a permitting requirement for new facilities was added to the State statute and again regulations have been adopted to implement that requirement.

Although these various amendments have strengthened the original law, they have also added confusing and duplicative requirements that are difficult to administer, as well as, being understood by the regulated community and the public. Removing technical regulatory detail from the statute would help to harmonize program requirements and allow the Division staff and regulated facilities to focus on implementing an effective safety program, rather than expend staff time on cumbersome administrative requirements.

Aside from the technical changes, the significant provisions of the Bill include: *are in the following sections:*

Section 1 provides the Division with authority to conduct investigations at facilities handling highly hazardous substances including explosives.

Section 7 deletes the list of highly hazardous substances, authorizes the State Environmental Commission to adopt a list of highly hazardous substances and explosives in regulations and base that list on the Clean Air Act, the Federal OSHA and Alcohol, Tobacco, and Firearms regulatory lists and definitions and any other recognized guidelines and regulations. Subsections 2 and 4 reference the Federal lists and definitions.

Section 8 clarifies that the Commission adopt the regulations to include the implementation of the OSHA Chemical Process Safety Management program and the Division implements those regulations.

Section 9 removes the statutory definition of "explosive". Back in Section 7, subsection 3, the Commission was authorized the define "explosives" in regulations.

Section 12 authorizes the Commission to modify the amount and timing for payment of the annual fee based on a permit fee to construct and operate a new process. This section also requires civil fines to be placed in the Fund for the program as well as interest earned in the Fund.

Section 15 authorizes the Commission to adopt regulations to carry out the CAA provisions for the Risk Management program, which will include the list of highly hazardous substances and the EPA regulatory exemption for gasoline.

Section 16 increases the civil penalty to \$25k and adds a felony provision for significant bodily harm or death.

Section 18 authorizes the Commission to adopt regulations for inspections and the inspection record reports. It also authorizes the Division to issue orders for violations of law and regulations and establishes what must be in the orders. Subsection 4 requires the Division to work with the owner and operator before the order is issued.

Section 23 allows regulations adopted by the Division to remain in effect until the Commission adopts them.

In conclusion, the Division believes that this Bill will further the prevention of accidental releases of hazardous substances and assist the regulated community in determining how to comply with the program.

If you have questions, I would be happy to answer them.