



## KANSAS AGGREGATE PRODUCERS ASSOCIATION

800 SW Jackson, Suite 1408, Topeka, KS 66612  
Telephone: 785-235-1188 ♦ Facsimile: 785-235-2544  
Edward R. Moses, Managing Director

### TESTIMONY

Before the  
Senate Committee on Federal & State Affairs

By the  
Kansas Aggregate Producers Association

Regarding SB 227  
Concerning Explosives; enacting the Kansas explosives safety act.

March 6, 2013

Mr. Chair and members of the committee, my name is Woody Moses, Managing Director of the Kansas Aggregate Producers' Association. Thank you for the opportunity to provide testimony in opposition to SB 227. The Kansas Aggregate Producers' Association (KAPA) is a statewide trade association comprised of over 170 members and one of the few industries to be represented in every county of this state producing vital construction materials. In the process of producing these materials we routinely handle, transport, store and use explosives in order to provide the necessary materials to our economy. As such, any legislation dealing with explosives and blasting processes is of vital importance.

As the state's largest consumer of explosives and blasting products our members are very concerned about the provisions contained in the proposed Kansas Explosives Act (SB 227) as proposed by the Kansas Fire Marshall's office. Simply put, we feel this bill is too broad in both its scope and purpose. Kansas already has a very precise and comprehensive set of laws and regulations dealing with the manufacture, transportation, storage, sale, licensing, training and use of explosive materials. This body of governance has been carefully developed over many years and includes a precise distribution of authorities between the United States Department of Transportation, the Bureau of Alcohol, Tobacco and Firearms, the Mine Health and Safety Administration, the Occupational Health & Safety Administration, the Kansas State Fire Marshall, Kansas Office of Emergency Preparedness and many local units of government. In addition our industry goes beyond these requirements by sponsoring the annual Morgison Safety Program, sponsoring the Sunflower Safety Council of the J. A. Holmes National Mine Safety Association and working with the HEARTLAND Chapter of International Society of Explosives Engineers on blaster training and certification. This current scheme has served Kansas well and we see no reason to upset it by enacting legislation which would

simply overlap and adds nothing to an existing framework. Especially as we see no clear or compelling reason to do so. Enactment of SB 227 will:

- Create unnecessary confusion between existing Federal, State and Local authorities,
- Lead to unnecessary costs, imposed by the creation of more government and bureaucracy (please observe there are no repealers in this bill) to be born by the public and private sector in Kansas, and
- Possibly threaten national security, state security and public safety through the myriad of confusion it would create.

The reality is that we already have a finally tuned system of explosives safety and regulation, which more than adequately promotes the public safety and allows for the safe development of our natural resources. In other words “if it ain’t broke, then don’t fix it”, especially by creating more government, more taxes and more bureaucracy. We urge this committee to reject SB 227 as ill considered and unnecessary.

Thank you for receiving our comments on SB 227, I will be happy to respond to any questions you may have at the appropriate time.

# MATRIX OF KANSAS AGGREGATE REGULATION

## National

### United States Army Corps of Engineers

- 401 Permit
- 404 Permit
- 410 Permit

### United States Department of Labor

- Mine Safety & Health Administration
- River Dredging
- Occupational Safety & Health Administration
- Bureau of Wage Standards

### United States Department of Homeland Security

- Bureau Alcohol Tobacco & Firearms
- U.S. Coast Guard (Adjacent to Navigable Rivers)
- Federal Emergency Management Administration

### Environmental Protection Agency

- Storm Water Regulations
- Process Water Regulations
- Spill Prevention
- Air Quality Regulations
- Wetlands

### United States Department of Interior

- U.S. Geological Survey
- Bureau of Mines
- Bureau of Reclamation

### Federal Communication Commission

### United States Department of Agriculture

- Soil Conservation Service

### United States Department of Transportation

- Hazardous Materials
- Explosives Transportation

### Federal Bureau of Investigation

## State

### Kansas Department of Health & Environment

- Water Quality Regulations
- Air Regulations
- Solid Waste Regulations
- Stormwater Regulations

### Kansas Department of Agriculture

- Division of Water Resources
- Agrilme Sales
- Division of Weights & Measures
- State Conservation Commission
  - Reclamation Plans
  - Mining Licenses
- State Watersheds

### Kansas Geological Survey

### Kansas State Fire Marshall

- Blasting Certification
- Blasting Notification

### State Emergency Response Commission

- Blasting Permits

### Kansas Corporation Commission

- Motor Carrier Safety Regulations
- Mandatory Drug Testing
- Safety Regulations

## Regional

- Groundwater Management Districts
- Watershed Districts
- Drainage Districts
- Flood Control Districts
- Regional Planning Commissions

## Local

- Zoning Boards
- Planning Commissions
- Emergency Preparedness Jurisdictions
- Fire Departments
- County Commissions
- City Governments



## TESTIMONY

Date: March 6, 2013  
Before: The Senate Committee on Federal & State Affairs  
By: Philip H. Porter  
Regarding: SB 227 – Enacting the Kansas Explosives Act

Good Morning Mr. Chairman and Members of the Committee:

My name is Philip Porter, General Manager, Buckley Powder Company. Buckley Powder Company distributes explosives and performs blasting services throughout Kansas. I am also the President of the HEARTLAND Chapter of the International Society of Explosives Engineers, which is a non-profit organization of users of explosives whose purpose is to advance the safe, scientific use of explosives. Explosives are an integral part of a modern society. If it cannot be grown, it must be acquired with the use of explosives. I appreciate the opportunity to appear before you today in opposition to SB 227.

I was introduced to explosives by my father who owned an explosives distribution company and have personally managed manufacturing or distribution sites in eleven states, in addition to sales and marketing roles throughout North America. I have witnessed first-hand the transition from a loosely regulated industry to a highly regulated industry. Because of this experience, I can tell you that the explosives industry is not opposed to regulations. Quite frankly we have through the years welcomed "common sense" regulations. Too many times we have been the recipient of regulations that over reach and are not based in scientific fact or established legal precedent. Our opposition to this proposed legislation is based on the open ended nature of this bill. In the five pages of this bill there are four references to regulations adopted after the bill has been passed. It is our opinion that the laws, rules, regulations, standards and practices for the use of explosives are sufficiently established by law, legal precedent and time. Because of these general national standards any and all rules or regulations should be offered in writing and a part of the act. It is not necessary to have rules established after the law is passed.

Secondly, we feel a properly established Advisory Board should be part of any governance over the explosives industry. The explosives using community is already heavily regulated by a minimum of seven Federal agencies. We as an industry are always welcome participants in developing rules to keep our people and our communities safe. Due to the extremely technical aspects involved in the manufacture, transportation or use of explosives, there are many specialized facets of our business. Experts of these specialized aspects cannot be hired from the



colleges nor are these individuals readily available in the job seeking public. It is for this reason that the industry has many individuals and working associations that collectively work with federal and state agencies to monitor and amend existing regulations. Many states utilize industry experts on governing boards in order to more effectively manage the use of explosives within their state. We agree with this approach and it is our opinion that a properly established Advisory Board that gives equal weight and authority to both the representatives of the Fire Marshall Office and industry experts should be utilized. This board would through the Fire Marshall's Office provide common sense standards that are properly vetted for proven safety criteria and are aligned properly with existing federal standards and legally established practices. Overlapping agencies do not create effective or efficient regulations and do not advance the safe use of explosives.

The explosives using community presently has a good working relationship with the Kansas Fire Marshall's Office. We do not oppose this legislation through ill will or acrimony. We just feel there is a more prudent way to advance the goal of safe, proper, effective use of explosives for the citizens of the State of Kansas.

I thank you for your time. I would be glad to respond to any questions at the appropriate time.

Philip H. Porter  
General Manager  
Buckley Powder Company  
6731 W 121<sup>st</sup> Street, Suite 220  
Overland Park, KS 66210



The PEXCO Company, LLC.  
9900 Skyview Lane  
Lenexa, Kansas 66220  
Phone (913) 907-5022  
Fax (913) 782-1076  
E-Mail [rpilshaw@pdb-kc.com](mailto:rpilshaw@pdb-kc.com)



Fax: (816) 464-2375

Date: March 6, 2013  
Before: The Senate Committee on Federal & State Affairs  
By: Russell N Pilshaw  
Regarding: SB 227 – Enacting the Kansas Explosives Act

Good Morning Mr. Chairman and Members of the Committee:

My name is Russell N Pilshaw – President/Member of The PEXCO Company, LLC – Lenexa, Kansas. The PEXCO Company, LLC performs drilling and blasting services throughout the Midwest and is headquartered in Lenexa, Kansas. I am also a 37 year member of the International Society of Explosives Engineers and the Past - President of the HEARTLAND Chapter of that organization. This organization has been responsible for the training of hundreds of blasters and regulators within the State of Kansas, as to the safest and best practices when using and handling commercial explosives products in and around the general public.

In 2010 over 23 million pounds of explosives were used safely within the State of Kansas for construction of our infrastructure, quarrying of building materials and mining of our natural energy resources. In fact when we look around us - there is not much that we consume today that did not have its origins based on the initial use of explosives. I am proud of being a part of this very technical industry and I appreciate the opportunity to appear before you today in opposition to SB 227.

My primary concern is that, as one of the most regulated industries, the blasting industry, and in particular PEXCO, is not opposed to regulations, but as is the case within Kansas each city, municipality, or county has its' own blasting regulations, which may or may not have been written based on the science of blasting. The State regulations and the current SB 227 do not establish a common requirement for many of the areas of concern to the general public's safety or the safe use of explosive, in general. Currently, each municipality may or may not have enacted regulations that have been based on emotions of fear and unfounded concern for damages that are claimed to be from blasting.

As the owner of a specialty drilling and blasting company, I welcome regulations that are based on a common goal of the "safe use of explosives" that is based on facts, rather than the emotions of persons that are not part of the blasting industry. SB 227 was not written and does not begin to regulate the "safe use of explosives" it appears to be a funding mechanism for what may or may not cover "future" regulations for the safe use of explosives - as my father has said so many times – if its' not in writing its' not real –The Safe Use of Explosives is real and the regulations should be in writing, consistent with fact and be enforced.

I work weekly with the various fire marshals of numerous cities and municipalities' within Kansas in obtaining blasting permits for construction projects and have over the years had various members of those organizations in our training classes. Even though they understand the general explosives and blasting rules may say one thing - their regulations say another – they would like to see a coordinated state regulation that would be the same from city to city. For example, when I work within certain footage from one city to another the cost of doing a project may increase by a significant

amount, due to the inconsistency of the regulations. In other situations we are required to notify people at an arbitrary distance - outside a safe zone of blasting that explosives will be used in a certain area at a certain time – with this requirement we cannot control the information and as a result information as to the location of explosive activity could be disseminated to persons that of adverse character.

To reiterate what others have said “Too many times we have been the recipient of regulations that over reach and are not based in scientific fact or established legal precedent. Our opposition to this proposed legislation is based on the open ended nature of this bill. In the five pages of this bill there are four references to regulations adopted after the bill has been passed.” - “It is our opinion that the laws, rules, regulations, standards and practices for the use of explosives are sufficiently established by law, legal precedent and time. Because of these general national standards any and all rules or regulations should be offered in writing and a part of the act. It is not necessary to have rules established after the law is passed.”

Overlapping agencies and dissimilar blasting regulations do not create effective use of a state or local regulators time or advance the safe use of explosives.

Again, The explosives using community presently has a good working relationship with the Kansas Fire Marshall’s Office. We do not oppose this legislation through ill will or acrimony. We just feel there is a more prudent way to advance the goal of safe, proper, effective use of explosives for citizens of the State of Kansas.

I thank you for your time. I would be glad to respond to any questions at the appropriate time.

Russell N Pilshaw  
The PEXCO Company, LLC  
9900 Skyview Lane  
Lenexa, Kansas 66220  
913-907-5022



## Testimony

Date: March 6, 2013  
Before: The Senate Committee on Federal & State Affairs  
By: John Holliday  
Regarding SB227 –Enacting the Kansas Explosives Act

Good morning Mr. Chairman and Committee Members

My name is John Holliday, Operations Manager for the Central States Division of Austin Powder Company. I have been in the explosive industry since 1977 working for several companies. During my career I have held various positions including blaster and technical representative. I have served on the Technical board to the Institute of Makers of Explosives and the advisory board to the Research Center for Energetic Materials. Currently my responsibilities include the safety and operation of our storage, transport and shot service personnel and equipment. Austin Powder Company delivers explosive products to several customers within Kansas and performs blasting services to other customers.

I am opposed to this bill as written due to the potential for excessive or inordinate regulations. Well-meaning and well-intentioned regulations that are redundant at best and superfluous at worst are a hindrance to efficient and economical operations. Austin Powder Company places safety above all aspects of our company's operations, however I cannot support any legislation that would unnecessarily impose burdensome restrictions to safety without the complete input from all involved. I concur with others today that an Advisory Board should be established to provide an avenue for the establishment of any additional safety regulations



The explosive industry is in a state of rapid technical change and development. Many of the current regulations that are in effect from various State or Federal agencies have not necessarily kept pace. However industry practices, custom, and standard operating procedures are all a result of the commitment to safety. The Fire Marshall's Office is the ideal agency for oversight and management of regulations affecting the explosive industry within Kansas. The safe application of explosive technology is a vital part of economic development. I urge you to consider legislation that promotes rather than hinders future progress.

Thank you for your time and the opportunity to present my comments.

John Holliday  
Operations Manager  
Austin Powder Company  
1406 Jean Rae Dr  
Columbia, MO 65203  
573-999-7218

# BAYER Construction Company, Inc.

P.O. Box 889 • Manhattan, Kansas 66505-0889 • (785) 776-8839 • Fax (785) 776-8968

## TESTIMONY

**Date:** March 6, 2013  
**Before:** The Senate Committee on Federal & State Affairs  
**By:** Kelly Briggs, President  
Bayer Construction Co., Inc.  
**Regarding:** SB 227 – Enacting the Kansas Explosives Act

Good morning Mr. Chairman and Members of the Committee.

My name is Kelly Briggs, President and Chief Operations Officer of Bayer Construction Company located in Manhattan, Kansas.

Bayer Construction operates five (5) portable limestone crushing plants in North East and North Central Kansas. Bayer Construction is also involved in civil site preparation, water and sewer line construction. Bayer Construction holds explosive storage permits in Riley, Pottawatomie, Clay, Dickinson and Geary counties and has an excellent working relationship with the Kansas State Fire Marshall's office and the Emergency Preparedness Directors of these counties.

I am sure others agree that our industry bears a heavy burden of regulations. The use of explosives has oversight from the Mine Safety Health Administration; Alcohol Tobacco and Firearms; the Kansas State Fire Marshall, and individual County Emergency Preparedness Directors. I feel there are more than adequate rules and regulations currently in place to ensure safe use and handling of explosives in Kansas.

Last year alone, Bayer Construction used over 44,000 pounds of explosives without loss or incident. Bayer Construction maintains an advanced level of employee training with seven (7) certified blasters and twenty-three (23) explosive handlers.

As a small business owner, whose company will be directly affected by this proposed legislation, I stand opposed to SB227 because it offers nothing regarding the safe use and handling of explosives that does not already exist.

This open-ended bill permits regulation without due process. There is potential for unintended consequences and confusion when rule making is left to the discretion of Agencies instead of Lawmakers. Adding regulation to our already burdened industry, one that has experienced a greater than 50% decline in independent producers since 1986, is economically unwise.

I thank you for your time. I would be glad to respond to any questions at the appropriate time.

**Kelly Briggs, President and Chief Operations Office**  
**Bayer Construction Co., Inc.**  
**120 Deep Creek Road, Manhattan, KS 66505-0889**



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## TESTIMONY

Date: March 6, 2013  
Before: The Senate Committee on Federal & State Affairs  
By: Steven Johnson  
Production Manager, Hunt-Martin Materials  
Regarding: SB 227 – Enacting the Kansas Explosives Act

Good Morning Mr. Chairman and Members of the Committee:

My name is Steven Johnson, District Production Manager for Hunt-Martin Materials, a joint venture between Hunt Midwest Mining and Martin Marietta Materials, located at 7381 W. 133<sup>rd</sup> Street, Overland Park, KS. Hunt-Martin Materials operates both surface and underground aggregate mining operations in the greater Kansas City area. I appreciate the opportunity to appear before you today in opposition to SB 227.

As an operator of active mining operations and a large user of explosives we are a highly regulated industry. With respect to explosives alone we currently are regulated by Bureau of Alcohol, Tobacco, and Firearms, the Mine Safety and Health Administration, and both state and local Fire Marshall's offices and as such no stranger to rules and regulations. We operate in a responsible well established manner and have set our blasting practices with regard to current rules and regulations, industry standards, nationwide company policy, and legal precedent. We are recognized as a leader in our industry and are engaged members of the communities we serve, and as such do not feel that additional regulation is necessary.

The current set of rules and regulations that govern the use of explosives have been developed over time and with regard to requirements of all groups involved. The open nature of this bill allows for regulations to be adopted without proper debate and consideration being given to the potential consequences. Some potential consequences include confusion between State and Federal compliance requirements, unnecessary additional regulatory cost, implementation of unreasonable or unrealistic blasting procedures, and lack of a defined appeal process to name a few.

In summary the use of explosives is a highly technical and critical component of the mining process. We feel that there are sufficient rules and regulations currently in place to ensure the safe and proper use of these materials. This proposed bill provides no additional benefit to the Industry, or the community, and only provides for duplication and additional cost to both the State and the Industry when neither can afford the extra burden.

Thank you for your time and I would be glad to respond to any questions you may have.

Steven Johnson  
Production Manager  
Hunt-Martin Materials  
7381 W. 133<sup>rd</sup> Street, Suite 401  
Overland Park, KS 66213



## TESTIMONY

Date: March 6, 2013  
Before: The Senate Committee on Federal & State Affairs  
By: Keith Henderson  
Technical Manager, Buckley Powder Co.  
Regarding: SB 227 – Enacting the Kansas Explosives Act

Good Morning Mr. Chairman and Members of the Committee:

My name is Keith Henderson, Technical Manager Buckley Powder Company. I would like to thank you for allowing me time to address the committee regarding SB 277. I am a current Board Member for the International Society of Explosives Engineers (ISEE), and I am the Chairman for the ISEE Public Education & Public Relations (PEPR) Committee as well as a member of ISEE's Government Affairs Committee. I am also a member of several other professional organizations.

I have been in the explosives industry over 20 years, beginning as a blaster trainee, then as a lead blaster for nearly 8 years, responsible for over 1500 blasts. As Technical Manager for Dyno Nobel and Buckley Powder Company I have developed and provided training for our blasters, and other blasters throughout the industry. I am also a guest lecturer for Kansas and Missouri Blaster Training seminars. I also guest lecture for two different explosives courses offered at Missouri S&T for electronic detonators and vibration control. I am responsible for neighbor relations and complaint response, product introduction and training, and Technical services including signature hole analysis, profiling, boretraking, Velocity of Detonation Recording (VODR), fragmentation analysis, and high speed video analysis.

The International Society of Explosives Engineers (ISEE) was formed in 1974 as a professional society dedicated to promoting the safety, security and the controlled use of explosives in mining, quarrying, construction, manufacturing, demolition, aerospace, forestry, avalanche control, art, automotive, special effects, exploration, seismology, agriculture, law enforcement, and many other peaceful uses. To this end, the ISEE works closely with U.S. Federal Agencies inclusive of ATF, DOT, DHS, MSHA to name a few.

The ISEE offers a forum for members throughout the society (including industry regulators and education) to submit, review, and discuss industry understanding and standards for the use of explosives. This supports the promotion of safe explosives use through sound scientific research regarding explosive use. Safety is of top priority among explosive manufacturers and users. Sound scientific blast designs are the safest for the public at large, but also provide the best results for the user.

My concern and opposition to this bill are related to the lack of parameters associated with the promulgation of rules, and the addition of regulations in areas already regulated under federal law.

The terms used in SB 227 are general and unlimited, and as a result could lead to easy adoption of rules that could be overly burdensome on every user of explosives. In addition, the complexity of the use of explosives would demand a level of expertise beyond basic training offered to many within the promulgating authority. In other words, it would be optimal to use the input of rule promulgation from industry professionals including manufacturers, distributors, users, seismic specialist and the regulating authority. The I.S.E.E., its chapters, and members have been involved in the development of Federal and State standards since their inception. I am not aware of any state that has adopted standards for explosives and blasting that did not seek the advice of industry experts. This would help insure that rules are based on current scientific standards, eliminating concern that rules would be too arduous for the users of explosives, and not too lax to provide adequate regulation or safety to the general public.

The proposed bill also duplicates current standards in place for the manufacturing and storage of explosives. This is already governed by ATF, and at times additionally covered by MSHA and OSHA as well. This includes initial approval of storage as well as annual audits and inspection of storage sites. The transportation of explosives is covered by the Federal Department of Transportation under the Federal Motor Carrier Safety Administration. In light of this fact I question why additional rules would be necessary when the explosives industry is often the leader in safe transportation of products.

The International Society of Explosives Engineers is always supportive of regulatory laws that have a positive impact on the safety of explosive manufacturing, transportation and use. The problem with SB 227 is that the bill lacks specifics and restrictions to assure that sound scientific rules will be promulgated. It is a "blank check," if you will, to enact any rules deemed necessary, with no protection for the impact that it may have on those in the industry.

Safety is always the top priority for all involved in explosives; our lives literally depend on it. The industry's main concern though is related to our sense of responsibility to the public at large. I know of no individual or company within the industry that doesn't put safety of the general public ahead of production and profitability goals.

Thank you for your time and I would be glad to respond to any questions you may have.

Keith Henderson  
Technical Manager  
Buckley Powder Co.  
8 White Pine Ct.  
Union, MO 63084  
314-709-0272