

TESTIMONY

Before

The United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials

Hearing on

“Reducing Regulatory Burdens and Ensuring Safe Transportation of Hazardous Materials”

Presented By

David W. Boston
President
Owen Compliance Services, Inc.
Godley, TX

On behalf of

Institute of Makers of Explosives
1120 Nineteenth St., NW, Suite 310
Washington, DC 20036
202-429-9280

April 12, 2011

Chairman Shuster, Ranking Member Brown, and members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials, I greatly appreciate the opportunity to appear before you at this hearing. I am David Boston, President of Owen Compliance Services, Inc., the regulatory compliance division of Owen Oil Tools LP. Owen Oil Tools is a manufacturer, distributor, and exporter of specialty explosive devices without which the exploration, production, and maintenance of oil and gas wells would cease. We are a small business with the majority of our 350 employees at our manufacturing plant in TX, but we also distribute from other locations in TX as well as AR, LA, MS, OK, CO, WV, PA, and ND as well as several locations in Europe, Asia, and South America.

I am also the chairman of the Institute of Makers of Explosives' (IME) Approvals and Special Permits Subcommittee. The IME is the safety and security institute of the commercial explosives industry. IME represents U.S. manufacturers, distributors and motor carriers of commercial explosive materials and oxidizers as well as other companies that provide related services. I will be presenting testimony on behalf of IME members who have been adversely affected by recent changes to procedures and requirements within the Approvals and Permits Program administered by the U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA).

Background of PHMSA's Approvals and Permits Program

PHMSA regulates the transportation of hazardous materials so closely that they may not be moved any distance, via any transport mode unless a DOT regulation, permit or approval authorizes the movement of those materials. This blanket prohibition, requiring a specific DOT authorization for transportation, makes efficient consideration of such authorizations critical to the hazmat industry.

When Congress passed the Hazardous Materials Transportation Act (HMTA) in 1975, it authorized DOT to issue regulations, including approvals, for the safe transportation in commerce of hazardous materials, and provided authority to allow exemptions, now called "special permits", from such regulations for persons transporting these materials if equivalent or a greater level of safety would be achieved, or if the exemption was in the public interest in the event no existing level of safety was established. Thus, special permits and approvals are regulatory tools and are not authorizations that allow someone to do something unsafe. According to DOT, no deaths and fewer than two serious injuries per year have been attributed to packages shipped under special permits or approvals for over ten years.¹

The process of applying for and maintaining such authorizations involves more paperwork and accountability than is required to petition for rule changes. In both instances, the authorizations are issued to specifically identified individuals, in response to detailed applications (that are incorporated by reference in the authorizations), under criteria that are at least as stringent as the otherwise applicable regulations. Moreover, holders of these particular authorizations face the constant risk of having them revoked, suspended, or modified without warning and with limited rights for affected parties to petition redress. All special permits, and many approvals, also have expiration dates, requiring timely filing of applications for renewal. All require reporting of the holder's experience with the authorization so that PHMSA can properly evaluate the appropriateness of the authorization. The biggest difference between a special permit and an approval is that a special permit is an alternative means to comply with the

¹ Hazardous Materials Information System. This safety record for special permit and approval shipments should not be that surprising given that the safety record for all hazardous materials shipments, estimated to be 438 million movements a year, averaged over the last decade only 12.7 fatalities per year, less than the average 18 fatalities that occur annually on the Capital Beltway.

regulations in domestic commerce, while an approval may apply to domestic or international transportation and can only be issued if the application meets specific criteria in PHMSA's regulations. By providing alternate, yet safe, means to conduct hazardous materials operations in ways not yet envisioned in the regulations, special permits provide a means for the regulations to stay abreast of technological advances. On the other hand, approvals are affirmations by PHMSA that the applicant has met regulatory requirements and is authorized to engage in closely controlled activities allowed by the regulations. Currently, there are thousands of special permits and approvals within the PHMSA program; many have been renewed or have remained unchanged for decades.

PHMSA Regulates the Commercial Explosives Industry Through Special Permits and Approvals

Just over 100 years ago, the first federal hazardous materials law was enacted to regulate the transportation of explosives by rail. At that time, the nation consumed about 500 million pounds of explosives annually – half of it black powder and the other half dynamite – and hundreds of people died every year in explosives incidents. Now, through technological advances, insensitive ammonium nitrate-based explosives and explosive devices have largely replaced those more dangerous explosives. Billions of pounds of these products and millions of these devices are now consumed each year, and no death in the United States has been attributed to the transportation of these products since the early 1970s. The industrial explosives industry today is many times safer than it was 100 years ago. In spite of this safety record, the commercial explosives industry is effectively regulated through special permits and approvals, rather than solely through the Code of Federal Regulations.

Among PHMSA's various approval authorities is the authority to approve the classification of explosives. PHMSA's Hazardous Materials Regulations (HMR) require that new explosives be approved before they are offered for transport. Once an explosive has been approved, that approval remains valid unless explosive properties are altered or a change is made in an underlying regulation. Prior to approval, the HMR require that explosives be examined and tested by a laboratory approved by PHMSA. The testing criteria are based on standards recognized worldwide, and typically cost tens of thousands of dollars. The expense of this rigorous testing, both in terms of product sacrificed as well as the costs of the tests, is borne by the applicant. Given that the testing is difficult and time consuming, explosive products are often grouped into "families" when the size of the products, not design characteristics or explosive specifications, differs. Testing is performed on the largest product within the family and all other products in the family receive the classification of that largest product. Before classification approvals can be issued, administrative and technical reviews must be completed by PHMSA. When the process, as outlined in the HMR is followed, there is no evidence of misclassification of explosive products.

One type of special permit in use since the late 1970s allows for the bulk transport of the billions of pounds of Division 1.5 and 5.1 materials that are essential for blasting. This innovation has enabled a shift from the industrial use of piece-count high explosive products like dynamite to ammonium nitrate-based products and decades of zero-fatality transportation. The explosives industry now transports virtually all bulk explosives and blasting agents in vehicles operating under special permit. Without these permits, the commercial explosives industry would be crippled, and with it key industries – energy production, mining, construction – that underpin the U.S. economy.

Regulatory Shortcomings of PHMSA's Approvals and Permits Program

In the 111th Congress, the majority of the House Transportation & Infrastructure Committee initiated an intense and limited review of PHMSA's Approvals and Permits program. As a result, PHMSA developed

standard operating procedures (SOP) for the Approvals and Permits program without providing for public notice and comment. The HMTA provides specifically that “procedures” used to “issue, modify, or terminate a special permit” must be established by notice and comment rulemaking.² Approvals are authorized under the general rulemaking authority of the HMTA.³ In 2007, Executive Order 13422 modified Executive Order 12866 stipulating that guidance documents having “a significant impact on society” should be “subject to an appropriate level of review ... by the public.”⁴ In support of this directive, the Administrative Conference of the United States has recommended that,

[A]gencies should use notice-and-comment procedures voluntarily except in situations in which the costs of such procedures will outweigh the benefits of having public input and information on the scope and impact of the rules, and of the enhanced public acceptance of the rules that would derive from public comment.⁵

The Conference defined agency programs as including licenses and permits. In the spirit of these directives and recommendations, IME has repeatedly urged the agency to submit these substantive procedures to notice and comment rulemaking, but to no avail.

Absent the due process protections of public review, these new procedures have resulted in new burdensome paperwork requirements that deliver no commensurate safety benefit. They also rely on unknown fitness criteria that have the potential to shut businesses down. These requirements affect every applicant for a special permit or approval, every applicant for renewal, and every applicant seeking “party to” status on special permits. The new SOPs have saddled companies endeavoring to expand into new areas of operation with unexpected and unnecessary layers of confusion, delay and frustration. PHMSA’s new procedures and lack of industry input have turned the agency’s program from one that safely facilitated commerce to one that frustrates commerce.

- Paperwork Burden

The investigations of the Approvals and Permits Program in the last Congress revealed paperwork retention gaps; none attributable to a death or serious injury. In fact, the Inspector General testified before Congress that none of his recommendations took these transportation safety outcomes into account.⁶ Instead, his focus was on procedural inadequacies, primarily involving agency loss of documents that had been submitted properly by applicants. Rather than simply asking holders of those special permits and approvals, whose paperwork PHMSA had misplaced, lost, or discarded, to resubmit documents, PHMSA proceeded in the fall of 2009, without notice and comment, to restructure the program. A complex tiered system of application reviews, including costly site visits, based on unpublished and unknown standards, was established.⁷

² 49 U.S.C. 5117(a).

³ 49 U.S.C. 5103(b)(1)(B) & (2).

⁴ “Implementation of Executive Order 13422 (amending Executive Order 12866) and the OMB Bulletin on Good Guidance Practices,” OMB, M-07-13, April 25, 2007.

⁵ Recommendation 305.92-1, Administrative Conference of the United States.

⁶ Testimony of Calvin Scovel, IG, DOT, responding to a question of Rep. Bill Shuster, “Have you identified any fatalities, injuries, or property damage from [identified special permit and approvals program] weaknesses?”, Mr. Scovel responds, “We have not, sir. Those were not included in the scope of our reviews of the Special Permits and Approvals Program.” Hearing record, “The Department of Transportation’s Oversight and Management of Hazardous Materials Special Permits and Approvals,” House Transportation and Infrastructure Committee, April 22, 2010, page 21.

⁷ Special Permits Program Standard Operating Procedures, Version 1.0 (October 2009) and Approvals Program Standard Operating Procedures, Version 1.0 (August 2010).

Further escalating the complexity and time needed to file and process special permit applications, PHMSA proposed and expedited the finalization of rules that radically increased the types of data applicants for special permits are required to submit.⁸ This rulemaking allowed only a 30-day comment period, and requests for extension were denied by PHMSA. Among other things, the new rules require applicants to submit the name, address, physical address(es) of all known locations where the special permit would be used. These data sets could include thousands and thousands of customers in a company's distribution chain along with estimates of the number and amount of shipments. Even if accurate when provided, this commercial information would quickly be outdated. How PHMSA could possibly make use of this information to enhance safety was never explained by the agency. It has the hallmark of an enforcement-driven fishing expedition that imposes on the regulated industry, and the agency itself, significant additional costs and time required to process applications. This rule should be withdrawn.

Without notice and comment, PHMSA has used the approvals process to establish by administrative fiat unpublished requirements covering the classification of and allowable packaging for explosives, terminating long-standing practices without any record of incident fatality or serious injury. First, PHMSA began to issue classification approvals with expiration dates. The pointless paperwork burden created by this policy and the disruption to the global commerce of U.S. classified products caused the agency to withdraw the policy.⁹ Still, classification approvals with expiration dates remain in use as the agency has not announced a policy to recall and reissue affected approvals.¹⁰ Next, PHMSA staff appear to be "second guessing" the results of tests for the classification of explosives that are required by regulation to be performed by a laboratory approved by PHMSA.¹¹ Since the work is done by laboratories that PHMSA has audited and approved, the agency should not second guess the results of these tests. Applications must include detailed documentation about product specifications, packaging requirements, and any transport limitations for PHMSA's technical review. Family approvals provide a safe, efficient means for industry to comply with the costly and time-consuming explosives approval requirements and have been used safely for more than two decades. Yet, without any evidence of abuse or risk to public safety, PHMSA has announced that it is relooking at the merit of family approvals, and has asked some applicants to break up long-standing family groups. This only adds to the costs and burdens on both the applicant and the agency to prepare and process additional applications.

PHMSA's actions lack transparency and predictability, and have increased costs with no corresponding safety benefit. The misuse of the Approvals and Permits program to justify bureaucratic empire building must stop. It is harming U.S. competitive interests and causing companies that can to take business off-shore.

⁸ Proposed 75 FR 43898 (July 27, 2010). Finalized 76 FR 454 (January 5, 2011).

⁹ 75 FR 54419 (September 7, 2010).

¹⁰ On March 21, 2011, IME received a letter from PHMSA addressing questions we asked in November 2010. Question 9 dealt with the protocol the agency planned to follow in reissuing classification approvals without expiration dates. While not explaining the protocol, PHMSA stated that it "has replaced classification approvals set to expire in 2010 and 2011." However, on March 25, 2011, the American Pyrotechnics Association submitted documentation to PHMSA that over 1,800 classification approvals had not been reissued.

¹¹ 49 CFR 173.56(b).

- Fitness Criteria

In 1996, the HMR were amended to allow PHMSA to make a determination of “fitness” of special permit and approval applicants based on information available to the agency. At the time the rule was promulgated, the agency requested this authority to retrospectively address egregious violations of the terms of these authorizations; the fitness process was never intended to be applied prospectively.

In 2009, without notice and an opportunity for public comment and in spite of the regulated community’s long-standing safety record, PHMSA redefined the historic use of the agency’s fitness authority and established a 3-tier “fitness” determination scheme. Tier 1 is a desk audit, tiers 2 and 3 are detailed to PHMSA’s enforcement staff, and at tier 3, a site visit is required. These fitness procedures have had detrimental consequences to the regulated community with no commensurate safety benefit:

- In various documents and forums, PHMSA has disclosed the criteria that it uses under tier 1 to determine whether an applicant is “fit.” However, the criteria differ.
- PHMSA has not disclosed criteria that constitute “unfit” at any tier. Thus, every adverse determination is arguably arbitrary and capricious, and industry is afforded no opportunity for prior compliance. This uncertainty has a chilling effect on business decision-making, whether to hire new workers or advance new lines of business. At the same time, foreign competitors are not subject to this level of scrutiny.
- All applicants transporting “table 1”¹² materials automatically incur a tier 3 review, even if the desk audit indicates a flawless safety record. These applications are often put on hold and significantly delayed because PHMSA lacks the resources to conduct timely site visits. The discriminatory practice is not justified based on risk.
- According to the SOPs, these extensive fitness reviews must be performed each and every time an applicant files for a special permit or approval. This process represents an enormous logistical and staff burden on the agency for no apparent safety benefit.
- An internal audit of the new fitness scheme resulted in a recommendation to toughen fitness criteria, not because of a history of incidents, but simply because too many applications are being approved at the tier 1 level of scrutiny. No safety justification was offered for the stricter standard.

PHMSA has suggested that the agency is not obligated to establish fitness criteria through rulemaking because “this is something that relates to the internal processes within PHMSA.”¹³ We respectfully disagree. The problem is that the standards and criteria used to determine an applicant’s fitness are unknown. This lack of objective standards introduces an unacceptable degree of uncertainty in the

¹² Table 1 materials, including division 1.1, 1.2, and 1.3 explosives, are those described in the HMR as requiring placards regardless of quantity or mode of transportation.

¹³ Testimony of Cynthia Quarterman, Administrator, PHMSA, responding to a question of Rep. Jim Oberstar. Hearing record, “The Department of Transportation’s Oversight and Management of Hazardous Materials Special Permits and Approvals,” House Transportation and Infrastructure Committee, April 22, 2010, page 29.

regulatory process that denies business the opportunity to comply and thus to plan for future commercial activities.

Industry must understand the performance standard against which it will be measured. Last year, 30 industry associations, including IME, petitioned PHMSA for rulemaking to establish objective fitness standards and criteria similar to many other DOT fitness-based programs. Without measurable, definitive standards the current procedures are inherently arbitrary. We can easily envision situations where the outcome of fitness evaluations may differ based on the agency personnel involved in the review. It is this type of unpredictability that worries our members. While the SOPs include steps for administrative appeals, these procedures are little consolation if a company has no meaningful opportunity to avoid being declared unfit in the first instance.

The new fitness procedures were drafted, approved and implemented without any consideration of the costs imposed on industry or any increased safety benefits. In addition, PHMSA has yet to consider, through rulemaking, alternative approaches that may have reduced regulatory uncertainty. The agency's actions contravene the spirit and intent of the President's recent Executive Order 13563 which directs "Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness."¹⁴ PHMSA's revised fitness determination protocols and criteria are the type of over-regulation that President Obama wants his administration to fix.

- Processing Backlog

Despite promised improvements, an unprecedented backlog of special permit and approval applications has developed as a result of the agency's new paperwork and processing requirements. Some applications that have languished for years remain unaddressed. Other applications that typically took weeks to process, now take months. Some have been denied for trivial matters in order to bring down backlog statistics, only to have them recycle back into the system for processing. Some applications are in the queue because PHMSA made errors in the authorization documents issued, rendering the proof of the authorization worthless, and applicants are having to petition for corrections.

According to data from the PHMSA database, there are in excess of 4,000 explosives approval applications that are pending and of those a significant proportion have been pending longer than the PHMSA-quoted 120 day target (many have been pending for more than 1 year):

¹⁴ 76 FR 8940 (February 16, 2011). Executive Order 13563 affirming and builds on former President Clinton's Executive Order 12866.

Submitted in:	# Pending
2007	15
2008	68
2009	645
10-Jan	28
10-Feb	19
10-Mar	81
10-Apr	29
10-May	12
10-Jun	8
10-Jul	2
10-Aug	2
10-Sep	16
10-Oct	53
10-Nov	187
> 120 days	1,165

Submitted in:	# Pending
10-Dec	197
11-Jan	406
11-Feb	689
11-Mar	1,445
11-Apr	111
< 120 days	2,848

Total	4,013
--------------	--------------

Data compiled: 4/5/11 9:30 AM CST

Source: PHMSA Approvals Search at:

<http://prod-web1.phmsa.dot.gov/hazmat/regs/sp-a/approvals/search>

Industry has been told that the application processing procedures in the SOPs, like the fitness criteria, are internal agency procedures with no external effect. However, any delay in the processing of applications due to the agency's new multi-layered clearance procedures results in lost business opportunities. Many of the companies that are adversely impacted are involved in the development of new technologies intended for worldwide distribution. These competitive American industries are now subjected to additional and unnecessary challenges in the global race to market – challenges imposed by our own government.

PHMSA is now using this backlog and its inflated application processing procedures to justify imposing a user fee on special permit and approval applicants. The fee would cover the costs of the special permit and approvals program as well as a portion of PHMSA's general operating budget even though only a small percentage of the regulated community are actually holders of these permits and approvals and the Federal Government is the largest user of the program. PHMSA's user fee proposal is not fair or equitable. It is a hidden tax on companies that innovate and produce goods needed in the US economy which is struggling to recover. This initiative should be summarily rejected by the Subcommittee.

- *Incorporation by Reference*

While approvals, as other regulatory standards, may safely remain unchanged for years, Congress never intended that special permits be a long-term solution for the transportation innovations they authorize. The expectation is that proven special permits that have future, long-term use would be incorporated into the HMR. Regrettably, PHMSA's failure to incorporate proven special permits into its regulations now exposes the commercial explosives and other industries to the current whims of agency action.

Despite the flawless fatality and injury record associated with the bulk trucks used for decades by the explosives industry, traffic accidents have occurred. One such traffic accident in 2007 prompted a PHMSA inspector with no technical experience in the chemistry of explosives or the use of these bulk trucks to find, among other things, that the trucks are “prone to rollover” and to recommend that rollover protection be installed on all such trucks.¹⁵ IME responded with data showing that the center of gravity on these vehicles was no greater and in general lower than comparable vehicles carrying other types of hazardous materials. Furthermore, the off-road terrain where these vehicles have to operate necessitates engineering features to ensure stability. Although PHMSA never officially responded to industry’s technical challenge of the agency’s finding, PHMSA felt compelled to impose some technology enhancement on these vehicles. In October 2009, the agency rescinded, by administrative fiat, four special permits under which bulk explosives vehicles operate and reissued the permits with several new conditions.¹⁶ Among these was a requirement for three battery disconnect switches. This standard prompted a request for a meeting with the agency after company engineers expressed concern about fire hazards from the redundant wiring, which would create more exposure of explosives cargos to sources of electrical ignition. At this November 2009 meeting with the agency, PHMSA’s acting deputy administrator dismissed industry’s concerns and stated that three disconnect switches were necessary because they were “safer.” Nevertheless, in December 2009, in the face of growing industry concern, PHMSA, again by administrative fiat, rescinded and rewrote the October 2009 special permits to require “a redundant system capable of shutting off all mechanical and electrical systems in the event of a rollover incident or incident when truck [*sic*] is in upright position.”

By this time, IME members had scoured the world looking for technologies that would meet the conditions of the December 2009 special permits for battery disconnect. At that time, the only technology identified was manufactured in Australia. Estimates of the cost of the device and vehicle installation and downtime ran as high as \$5,000 per truck. Thus, at the height of the economic downturn, industry was faced with procuring a costly, single-source, untested product, manufactured by a foreign source as the only option available to meet the PHMSA standard. While IME continued appeals to PHMSA about the interpretation of the standard,¹⁷ which ultimately resulted in yet another revision of the affected four special permits in December 2010,¹⁸ one IME member company decided to

¹⁵ Action Memo to PHMSA headquarters from Kevin Boehne, Chief Central Region, OHME, concerning an incident investigated by Fred Simmons, ER-07-01, June 1, 2007.

¹⁶ SP 8554, SP 10751, SP 11579, and SP 12677.

¹⁷ Did the requirement include the shutdown of emergency communications equipment, cab dome lights, and other low amperage devices? Did the agency understand that serious damage to vehicle electronics would result from the mandated monthly hard shutdown test?)

¹⁸ The December 2010 revisions again were made by administrative fiat. This time even ignoring recommendations of FMCSA, whom we asked to get involved given this agency’s vehicle expertise. Moreover, it is unconscionable that the agency did not respond to industry’s concerns, which were made on the record in January 2010, until 10 days before the December 2009 standard would have gone into effect. As explained above, the explosives industry operates by virtue of these permits. If the conditions cannot be met, the agency has effectively shut the industry down. In the meantime, this latest revision affirmed our worst fears that the agency did not intend “redundant” to mean a system and a backup, but rather two of the same devices. Also, the revision did not address the issue of emergency communications equipment and low amperage devices, or concerns about destructive shutdown tests. Industry requested a meeting with PHMSA in January 2011 to address these concerns. At the meeting held on March 1, 2011, PHMSA verbally announced another standard, “to eliminate as practicable, all ignition sources in the event of an incident, including electrical current [and] mechanical operation.” When PHMSA engineers were asked how they would retrofit a vehicle to meet this standard, they did not have a solution.

purchase and install the single-source technology. Last week, the Subcommittee heard testimony about what happened in the ensuing 12 months, including two incidents of uncontrolled shutdown of loaded vehicles traveling at speed when the disconnect system malfunctioned.

PHMSA's use of the special permit program to demand the retrofit of vehicles carrying explosives with untested technology in order to operate bulk equipment despite the industry's stellar safety record is a clarion call for more accountability and transparency. Instead of using scarce resources to incorporate these decades old, proven special permits into the HMRs as Congress intended, PHMSA has created a perverse upside-down regulatory environment where it is more difficult to move a truckload of significantly less risky explosive precursors, such as Division 5.1 oxidizers, than to move a truckload of Division 1.1 explosives, such as dynamite.

Conclusion

Special permits and approvals are necessary regulatory tools. The Approvals and Permits Program, which provides safety benefits to the public, has been successfully run for decades without serious incident and without user fees. Industry wants the certainty of regulations and believes that changes to how PHMSA implements these regulatory authorities should be subject to notice and comment rulemaking. PHMSA should be guided by the principles recently espoused by DOT that "there should be no more regulations than necessary and those that are issued should be simple, comprehensible, and impose as little burden as necessary."¹⁹ We are at a loss to understand how PHMSA's current interpretation of its prerogatives under the Approvals and Permits Program has been allowed to deviate from this mark. PHMSA's extensive bureaucratic changes would not have saved one life or prevented one death. They have created wasteful delays and expenditures of resources. This Subcommittee should ensure that the damage done to the Approvals and Permits Program be fixed.

Finally, PHMSA has been woefully delinquent in the timely adoption of proven special permits into the HMR. The special permits that allow for the bulk delivery of blasting agents and oxidizers are proven, have general applicability, and future effect. They are the very type of permit PHMSA's own rules envision being incorporated into the HMR.²⁰ The Subcommittee should restrain PHMSA from investing its scarce resources toward imposing on the regulated community special permit conditions that include untested technologies that are not based on incident data.

The changes we have seen to the Approvals and Permits Program in the last 18 months have not enhanced safety, but have created a cloud of business uncertainty that has stifled growth and made it more difficult to preserve or protect U.S. jobs. As citizens, we collectively share responsibility to help get our economy back on track. As an industry, our businesses touch every major segment of the economy. To help us do our job, we need transparency and accountability from those who regulate us. Notice and comment rulemaking protects the interests of all stakeholders. We appreciate your attention to these concerns.

Thank you.

¹⁹ 76 FR 8941 (February 16, 2011).

²⁰ 49 CFR 107.113(i).

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name:
David W. Boston

(2) Other than yourself, name of entity you are representing:
Owen Compliance Services, Inc.; Owen Oil Tools LP, Institute of Makers of Explosives

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES

If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

None



Signature

April 5, 2011

Date

RESUMÉ OF:

David W. Boston

President
Owen Compliance Services, Inc.
P.O. Box 765
12001 County Road 1000
Godley, TX 76044-0765



HIGHLIGHTS:

33 years experience in Federal Compliance Programs for explosives components manufacturing and distribution including: DOT, ATF, DOC, DOS, DOD, EPA, and OSHA. 30 years experience in design, manufacture, testing, use, classification, and transport of explosive devices.

Represents (since 1995) the Institute of Makers of Explosives (IME) on the United Nations Committee of Experts on Transportation of Dangerous Goods (UNCETDG), participating in both the TDG and GHS sub-committees. Gained consultative status for IME at these committees in 2007. Serves as IME's Head of Delegation.

Served as secretary for the UNCETDG working group on UN Test Series 6(c). Serves as secretary for the UN working group on explosives.

Expert in U.S. Department of Transportation explosives classification and approval requirements. Experienced in Canadian explosives approval requirements. Extremely knowledgeable in U.S. **Hazardous Materials Regulations** (49 CFR, Subchapter C). Experienced in CE certification and BAM IDZ certification requirements.

Experienced in export compliance programs including munitions and commercial products containing military and non-military explosives, general, and individual validated licenses; commodity jurisdiction determination (U.S. Department of State); and commodity classification (U.S. Department of Commerce/BIS).

- Led industry group that worked with BIS to develop better guidelines for export control of commercial devices containing explosives. Resulting regulation, published/effective September 1, 1999, resulted in significant decontrol, elimination of administrative/regulatory burden on industry, and trade barriers to US explosives industry exports.
- Instigated and worked closely with the IME in preparation of its foreign availability assessment that led to the export decontrol of oil well perforators.
- Knowledgeable in U.S. **Export Administration Regulations** and **International Traffic in Arms Regulations**.

Excellent, cooperative contacts developed within ATF, DOT, BIS, Department of Natural Resources (Canada), Health & Safety Executive (UK), Directorate for Fire and Explosion Prevention (Norway), TNO Prins

Maurits Laboratory (Netherlands), Institut National de L'Environnement Industriel et des Risques (INERIS, France), and national competent authorities worldwide.

Computer literate including: a) proficient in a wide variety of word processing, database, spreadsheet, desktop publishing, web publishing, and other computer software, b) proficient in setup and use of Windows operating systems, and c) proficient in hardware installation and configuration. Beginning in 1999, served as Matrix Business Administrator (Compliance).

EDUCATION:

B.B.A., Business Management/Labor Relations; Texas Wesleyan College; Fort Worth, Texas; May 11, 1979

PROFESSIONAL AFFILIATIONS:

Institute of Makers of Explosives

- IME representative on UNCETDG, 1995 - present
- Company representative on Transportation and Distribution, Technical, Safety, and Environmental Affairs Committees, 1984 – Present.
- Chairman, Safety and Health Committee, 2001 – 2003
Vice Chairman, 1999 – 2000.
- Participant on the OSHA 1910.109 rewrite sub-committee, 1991 – present. Chairman, 1998 – present.
- Participant on the Coast Guard sub-committee, formed to develop industry guidelines on handling of explosives in ports, 1998 – present. Chairman, 2000 – present.
- Board of Governors, 1992 – present.
- Chairman, Sub-Committee for Export Controls, 1991 – present.
- Chairman, Approvals and Special Permits Sub-committee, 2009 – present.
- Chairman, UN Sub-committee, 1995 – present.
- Chairman, Transportation and Distribution Committee, 1988 - 1989
Vice Chairman, 1986 – 1987.
- Chairman, Ad Hoc Committee to develop and publish IME publication *Guide Through the Regulations for Proper Classification and Transportation of Explosive Materials*, 1985 – 1989.

International Society of Explosives Engineers

- ISEE member, 1995 – 2006

National Fire Protection Association International

- NFPA member, 2001 - Present

**EMPLOYMENT
HISTORY:**

1993 - Present

Sporting Arms and Ammunition Manufacturers' Institute

- SAAMI representative on UNCETDG, 1995 - 2005

President

Owen Compliance Services, Inc.; Godley, Texas

Founded hazardous materials regulatory compliance consulting company. Developed, marketed, presented seminar compliant with DOT HM-126F training requirements. Services include: explosives classification and approval (domestic and foreign), ATF compliance, UN POP compliance, research and analysis of government hazmat compliance requirements, export control compliance (DOC & DOS), OSHA compliance, EPA compliance, and CE Certification.

1990 - 1993

Director of Regulatory Affairs and Corporate Secretary

OWEN Oil Tools, Inc.; Fort Worth, Texas

Responsible for all aspects of regulatory compliance (federal, state, municipal) for this commercial shaped charge manufacturer. Also responsible for development and implementation of company safety program.

Served as Corporate Secretary responsible for maintenance of company records, preparation of corporate resolutions, and authentication and verification of corporate agreements.

1988 - 1990

General Manager, Administration, Safety, Regulatory Compliance

GOEX, Inc.; Cleburne, Texas

Responsible for Personnel, fleet management, general administration, safety, government compliance programs, and disaster response coordination.

1984 - 1988

Manager, Corporate Administration

GOEX, Inc.; Cleburne, Texas

In addition to those listed above, responsibilities included management of data processing, credit and collections, and lease management.

1983 - 1984

Special Projects Manager

Pengo Industries, Inc.; Fort Worth, Texas

Managed special projects for parent company of GOEX, Inc. Projects included compensation program for salaried employees; management of SL-1 telephone system; company newsletter; and DOT explosives approvals and exemptions for GOEX, Inc.

1980 - 1983

**Administration Manager
Pengo Industries, Inc.; Fort Worth, Texas**

Provided overall coordination of the following departments and activities: administration (including word processing and telex support), personnel, maintenance, telecommunications, fleet management, and excess asset management and disposition.

1978 - 1980

**Assistant Administration Manager
Pengo Industries, Inc.; Fort Worth, Texas**

Provided many of the same functions listed above plus developed company catalog and prepared international quotations for perforating and electric wireline equipment and systems.

1976 - 1978

**Explosive Quality Control Supervisor
Gearhart-Owen Industries, Inc.; Fort Worth, Texas**

Performed daily quality control testing of shaped charges. Developed QC testing manual and charge acceptance criteria.