

Exhibit 2: Letter dated April 13, 2008, from Pyrotech Consultants Inc. to Chief Garrity, Devens Fire Department.

Exhibit 3: Letter dated April 30, 2008 from the Commonwealth's Secretary of the Executive Office of Energy and Environmental Affairs to the Department of Public Safety.

Reasons for Variance

The issue is whether Appellant should be granted a variance from certain earthquake/seismic structural requirements when the Project requires the availability/use of certain amounts of Phosphorus Oxichloride (POCL₃), a "highly toxic material" as defined by 780 CMR 307.0. Section 1612.2.5 states: "All buildings shall be assigned to one of the Seismic Hazard Exposure Groups in accordance with Table 1612.2.5." Pursuant to Table 1612.2.5, the Project falls within Seismic Hazard Exposure Group III, based on the presence of "high toxic materials as defined by 780 CMR 307.0 where the quantity of the material exceeds the exempt amounts of 780 CMR 307.8." 780 CMR 1612.2.5, Table 1612.2.5

By way of background, the essence of Appellant's hardship is as follows:

Upon review of the POCL₃ Material Safety Data Sheet, CH2M HILL [the Project's engineering consultant] found the hazard classification of toxic to be inconsistent with the 6th Edition 780 CMR. CH2M HILL reclassified POCL₃ as highly toxic to comply with the 6th Edition and 7th Edition CMR Section 307.2 Definitions. The new hazard classification requires a different seismic hazard exposure group than the one used at the commencement of the project construction. The significant impact of this reclassification would result in interconnecting footings throughout the building. At the time of the chemical reclassification the footings were poured. (Exhibit 1, Appellant's Application).

The Project will require the storage of 40 gallons of POCL₃, an amount which would not be allowed under the 6th Edition of the Code but which would be allowed under the 7th Edition.

Appellee did not oppose the request for a variance and Appellee's Fire Chief supported the grant of a variance. (See Exhibit 1, letter dated April 16, 2008 from Building Commissioner and letter dated April 17, 2008 from Devens Fire Chief). In sum, the Devens Fire Chief stated that he felt "very strongly that this building is designed as high hazard occupancy and is protected with all the appropriate life safety devices that assure that this product can be stored at this site without causing any concern." (letter dated April 17, 2008 from Devens Fire Chief).

The Board considered that Appellant is seeking a variance from the requirements in the 6th Edition of the Code and that the Appellant's proposal complies with the requirements in the 7th Edition of the Code.

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