

# Keeping Good Records

Jeff Freidman – Mike Bolling



Improving Processes. Instilling Expertise.



**DYNO**  
Dyno Nobel



# KEEPING GOOD RECORDS; WHY IT MATTERS

# INTRODUCTION

- Keeping good records is an absolute pre-requisite to winning any blasting/nuisance lawsuit.
- While we as lawyers love to take credit for trial victories, the truth is that blasting cases are really won or lost long before suit is filed.
- People are suspicious about things they don't understand.
- This is especially true for things they perceive as dangerous; like explosives.
- Jurors and judges draw from their own experiences when analyzing any new situation.
- Almost everyone makes decisions based on first impressions or perceptions and these first impressions or perceptions are almost impossible to overcome.
- When people are faced with deciding whether something is wrong or dangerous, the first question they ask is whether the activity is legal.
- Perception is reality.





# Blasting Litigation

- **Blasting cases can be difficult to win.**
- **Changes in public perception about blasting have made cases more difficult to defend.**
  - ✓ **Public perception about blasting has changed in recent years because of growth in the quarrying and mining industry.**
  - ✓ **There are now more quarry operations in close proximity to people's homes than ever before.**
  - ✓ **More people have also had to deal with blasting and construction because of highway projects, shopping center construction and coal mines.**
  - ✓ **No one wants to live near a quarry.**
  - ✓ **The internet allows plaintiffs to easily tell their story to the public at large.**
  - ✓ **This change is evidenced by negative stories in the media and blatant attempts by plaintiffs' lawyers to generate blasting litigation.**

Video materials supplied by Metro Monitor may be used for file and reference purposes only. Copyright laws prohibit reproduction, sale, rebroadcast, distribution, public demonstration or exhibition, or use in litigation.



WBRC - 6  
Birmingham

10:00 PM











## **WHY FOLLOWING THE LAW AND KEEPING ACCURATE RECORDS ARE IMPORTANT**

- **Judges and jurors believe blasting can cause damage.**
- **We are guilty until proven innocent.**
- **Plaintiffs try to take advantage of this by playing on these perceptions.**
- **They now video blasts because they realize they look worse than they are.**
- **They also now realize showing we violated the law is key to winning a blasting case.**
- **Inaccurate blasting records, even if they don't reflect a violation, play on people's suspicions and affect their perception about whether we are causing damage.**
- **Accurate records are a must to win a blasting case.**

## HOW ACCURATE RECORDS HELP

- If we have a clean history and good records we can pressure the regulatory authorities to help us defend these cases.
- Which of these cases would be easier to defend?



STATE OF ALABAMA  
SURFACE MINING COMMISSION

P. O. BOX 2390 - JASPER, ALABAMA 35502-2390  
(205) 221-4190

June 28, 2004

Re: Blasting complaint near Graysville, Al

Mr. Richard McFalls  
Carr & Assoc. Engineers  
2052 Oak Mtn. Drive  
Pelham, AL 35124

Dear Mr. McFalls:

As you requested, I have sent you the accompanying map and the following information on my investigation of blasting complaints on Pine Hill Drive. The mine apparently arousing the complaints is [REDACTED] has only recently taken over this mine from [REDACTED] and they have introduced somewhat different, and perhaps one could say, more aggressive, blasting practices. We have not found any violations, however; nor has my monitoring found any ground vibrations or airblasts likely, in my opinion, to cause damage. I monitored at a complainant's home on Pine Hill drive from 5/25/04 until 6/17/04 and found the highest ground vibration to be 0.115 in/s Peak Particle Velocity. I monitored at a neighboring home during the period 2/25/03 until 4/22/03 with a maximum PPV of only 0.095 in/s. These are far below the regulatory limit of 1.0 in/s and the widely recognized lower limit for "Threshold" or minor cosmetic damage of 0.5 in/s. The actual Scale Distances from the blasting to these houses is over 90, the level above which the US DOI Office Of Surface Mining has never found any damage what ever.

The map is more for illustrative purposes than for measurements. I did GPS my most recent complainant's home and what I take to be the nearest point on the active highwall. They are over 6000 feet apart. Because of the great distances from the blast sites to the homes, both the ground vibrations and air overpressures are very low frequency. The air overpressures would largely be below the threshold of human hearing but would create resonance in houses which would be mistaken for ground vibrations. As I noted above, however, I haven't seen anything in my monitoring to suggest there might be blasting damage in the neighborhood, nor would I attribute to blasting any of the conditions I have observed at the complainants houses. If I can be of any further help, please don't hesitate to call.

Sincerely,

Handwritten signature of Bill Kitchens in blue ink.

Bill Kitchens, PG



JUN 06 2004



STATE OF ALABAMA  
SURFACE MINING COMMISSION

P. O. BOX 2390 — JASPER, ALABAMA 35502-2390  
(205) 221-4130

April 2, 2002

CERTIFIED MAIL

[REDACTED]  
[REDACTED]  
JASPER AL 35503

Dear Mr. [REDACTED]

RE: Blaster Certification No: [REDACTED]

On March 13, 2002, an inspection of permit [REDACTED], addressed the fact that peak particle ground vibration limits for blasting operations had been exceeded on March 11, 2002. Notice of Violation 02-RTW-002 was issued to [REDACTED] and yourself for you signed the records as being the blaster in charge for the shot in question. On June 8, 2001, you were issued a warning letter because you were the supervisor over blasting operations that exceeded peak particle velocity limits on May 23rd, 25th, 30th and 31st of the year 2001.

Please be advised that a hearing has been scheduled to review your continued certification as a certified blaster in light of the above described violations of the blasting regulations. The hearing will be April 25, 2002, at 10:00 a.m. at the offices of the Alabama Surface Mining Commission. The office is located in the Pinnacle Bank Building in downtown Jasper. The purpose of this hearing will be to determine whether or not your certification should be suspended or revoked.

The hearing will be presided over by Director Randall C. Johnson and will be open to the public. You may be represented by an attorney or other representative of your choice should you so desire.

Your failure to attend this hearing may result in the immediate revocation of your blaster certification and surrender of your certificate to the Alabama Surface Mining Commission.

Sincerely,

Robert Allen  
Assessment Officer

/eap

# HOW ACCURATE RECORDS HELP

- **Good records allow us to play on people's perception that something that is legal is okay.**
- **It also shifts the focus from our records to the plaintiff's damages.**



# HOW ACCURATE RECORDS HELP

## ● Legal Issues

- ✓ **Blasting usually imposes strict liability.**
- ✓ **This does not mean you are liable if the plaintiff claims you damaged their property.**
- ✓ **It means you are liable if they prove you damaged their property.**
- ✓ **Due care and compliance with applicable law are no defense but are absolutely necessary to win at trial.**

# Blasting Litigation: How Do We Defend These Claims?

- **Blasting cases can be won**
  - ✓ **Compliance**
  - ✓ **Science**
  - ✓ **Explanation**

# Blasting Litigation: How Do We Defend These Claims?

- Compliance

- ✓ Compliance equates to proper record keeping and following the rules.
- ✓ Regulations are based on studies by the Department of Transportation and the U.S. Bureau of Mines.
- ✓ If we follow the rules we can rely on studies that say we cannot damage a home.

# Blasting Litigation: How Do We Defend These Claims?

- Compliance

- ✓ **The only way to prove compliance is through proper record keeping.**
- ✓ **Proper record keeping requires commitment, diligence and deliberateness.**
  - Don't confuse commitment and involvement.
  - Don't confuse quickness with deliberate action.

# Blasting Litigation: How Do We Defend These Claims?

## ● Compliance

✓ **Proper record keeping will help verify that:**

- We care about the public.
  - We follow our own rules.
  - We see the regulations as the minimum standard and hold ourselves to a higher standard.

# Blasting Litigation: How Do We Defend These Claims?

## ● Science

- ✓ Science requires the use of all available technology.



# Blasting Litigation: How Do We Defend These Claims?

## ● Science

- ✓ We must use seismographs that are properly calibrated, located and installed.
- ✓ Seismographs verify the science behind our blasting.



# Blasting Litigation: How Do We Defend These Claims?

## ● Science

- ✓ **With proper seismic readings we can compare the vibration levels caused by our blasting to vibrations caused by:**
  - Slamming doors
  - Thunderstorms
  - Thermal heating and cooling
- ✓ **Science also includes doing pre-blast surveys properly.**
  - Before any blasting
  - Complete surveys

# Blasting Litigation: How Do We Defend These Claims?

## ● Explanation

- ✓ Explanation requires proof of what caused the damage.
- ✓ We cannot dispute that the damage is there.
- ✓ In order to win a case, we must generally show what caused the damage.
  - It was there already
  - Caused by poor construction or poor maintenance
  - Natural settlement
  - Consistent with a house of this age





Funk 082

## **Blasting Litigation: How Do We Defend These Claims?**

- **Everyone has cracks and sometimes there is no evidence proving the damage was already there.**
- **In cases where there is no evidence the damage was there before our blasting, compliance and accurate records are the only way we can prove we did not cause the damage.**

# WHAT CAN YOU DO

- **Slow down**
- **Proofread**
- **Don't procrastinate; complete your reports on site.**
- **Make sure records are kept safe and secure.**
- **Voice any concerns before a problem develops: avoid the Stockholm Syndrome.**
- **A few extra minutes at the end of your long day can save the company thousands of dollars and a lot of legal headaches.**