

Lighten Up ... Your Blasting Risk
The Importance of Good Recordkeeping
M. Bowling - Friedman Leak PA



LIGHTEN UP!

Introduction

- **Keeping good records is an absolute pre-requisite to winning any quarry/nuisance lawsuit.**
- **While we as lawyers love to take credit for trial victories, the truth is that quarry 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 the use of explosives and quarry operations.**

Introduction

- 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 company has followed the law.
- Perception is reality.



Quarry Litigation

- Quarry cases can be difficult to win.
- Changes in public perception about quarrying and blasting have made cases more difficult to defend.
 - ✓ Public perception 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.

Quarry Litigation

- ✓ **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.**

BLASTING DAMAGE

**If you are damaged from blasting
in this area, please call either:**

Clifford W. Hardy, Attorney 205-428-7348

or

Ken Simon, Attorney 205-250-6662

No Representation is made as to the quality of legal service to be performed or the expertise of the lawyer to perform such services.





Why following the law and accurate recordkeeping is important

- **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 or our own rules is key to winning the case.**
- **Inaccurate 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 any 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.**
- **Some examples of what can divert attention from the real issue; are we damaging the plaintiffs with dust, noise, etc.**



STATE OF ALABAMA
SURFACE MINING COMMISSION

P. O. BOX 8000 - JASPER, ALABAMA 35802
(205) 681-4200

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, 



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,

A handwritten signature in black ink that reads "Robert Allen".

Robert Allen
Attachment Officer

/eap

Dust Suppression Inspection

ID: [Redacted]
 ARE: 04
 Employee Name: Jay Ladd
 Supervisor's initials: _____

Weather Conditions: [Redacted]
 Date: 10/5/06 Shift: 1st

If the condition is met, check the corresponding box. If repairs are defective, mark X in the box and describe corrective actions below.

Source Code	Water Spray Locations*	Is desired spray pattern produced?	Is spray directed toward material?	Is waste unlogged?	Is there sufficient water pressure?	Barley enclosures adequate?	Are spare sprays in stock?
	Jaw crusher	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
	Jaw crusher discharge	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
	Crusher feed	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
	Crusher discharge					<input checked="" type="checkbox"/>	
	Dry screen discharge						

Corrective Actions (If only supervisor if any problems are found that cannot be corrected immediately or if spare parts are needed.)

Having sprayers not spraying

Approved: EHS Times
 Revision: 09/25/04
 Retain Record for 3 years
 4-07-0498-001-02
 Control Environmental Services
 permit or attachment dated
 Distribution: Plant
 ID: 6994053
 Oct. 10, 2003



Dust Suppression Inspection

Plant: 06 Weather Conditions: [redacted]
Employee Name: Joey Carter Date: 10/06/06 Shift: 1st
Supervisor's initials: _____

If the condition is met, check the corresponding box. If nozzles are defective, mark X in the box and describe corrective actions below.

Source Codes	Water Spray Locations*	Is desired spray pattern produced?	Is spray directed toward material?	Is nozzle unclogged?	Is there sufficient water pressure?	Backup enclosure adequate?	Are water sprays in stack?
	Jaw crusher	✓	✓	✓	✓	✓	
	Jaw crusher discharge	✓	✓	✓	✓	✓	
	Crusher feed	✓	✓	✓	✓	✓	
	Crusher discharge	✓	✓	✓	✓	✓	
	Dry screen discharge	X					

Corrective Actions (Identify equipment if any problems are found that cannot be corrected immediately or if spare parts are needed.)
*perhaps on No. 10000 doesn't work
The dust is killing job.*



Dust Suppression Inspection

Site: [Redacted]
 Plant: 04
 Employee Name: Ally Spain
 Supervisor's Initials: _____

Weather Conditions: clear
 Date: 1-30-06 Shift: 1st

If the condition is met, check the corresponding box. If sprays are defective, mark X in the box and describe corrective actions below.

Source Codes	Water Spray Locations*	Is dusted spray pattern produced?	Is spray directed toward material?	Is waste enclogged?	Is there sufficient water pressure?	Backup enclosures adequate?	Are more sprays in need?
	Jaw crusher	✓	✓	✓	✓		✓
	Jaw crusher discharge	✓	✓	✓	✓		✓
	Crusher feed	✓	✓	✓	✓		✓
	Crusher discharge	✓	✓	✓	✓	✓	✓
	Dry screen discharge	X	X	X	X	X	X

Corrective Actions (Notify supervisor if any problems are found that cannot be corrected immediately or if spare parts are needed.)



Dust Suppression Inspection

Site: _____

Weather Conditions: clear

Plant: 04

Employee Name: Philip Spies

Date: 1-22-07

Shift: 1st

Supervisor's initials: _____

If the condition is met, check the corresponding box. If sprays are defective, mark X in the box and describe corrective actions below.

Source Codes	Water Spray Locations*	Is desired spray pattern produced?	Is spray directed toward material?	Is nozzle unlogged?	Is there sufficient water pressure?	Do bag enclosures adequate?	Are spare sprays located?
	Jaw crusher	✓	✓	✓	✓		✓
	Jaw crusher discharge	✓	✓	✓	✓		✓
	Crusher feed	✓	✓	✓	✓		✓
	Crusher discharge	✓	✓	✓	✓	✓	✓
	Dry screen discharge						

Corrective Action: [Notify supervisor if any problems are found that cannot be corrected immediately or if spare parts are needed.]

Approval: EMS Team Revision: 09/20/04 Contact: Environmental Services Distribution: Plant

Main Record for 5 years.

This form is required by Air Quality Permit # 4-07-0498-001-02 permit or assessment date: Oct. 10, 2003

*If this permit is amended verify water spray locations with revised amendment.



Dust Suppression Inspection

Site: _____
 Plant: _____
 Employee Name: Sony Cole
 Supervisor's initials: _____

Weather Conditions: _____

Date: 1-26-07 Shift: 2nd

If the condition is met, check the corresponding box. If sprays are defective, mark X in the box and describe corrective actions below.

Source Codes	Water Spray Locations*	Is desired spray pattern produced?	Is spray directed toward material?	Is nozzle unclogged?	Is there sufficient water pressure?	Are filters clean? (if present)	Are spare sprays in stock?
	Jaw Crusher	✓	✓	✓	✓		
	Belt C-1 to C-2	✓	✓	✓	✓		
	Crusher Feed	✓	✓	✓	✓		
	Crusher Discharge						

Corrective Actions (Notify supervisor if any problems are found that cannot be corrected immediately or if spare parts are needed.)

Lots of dust from Hazing crusher.



How accurate records help

- **Good records allow us to play on people's perception that something that is legal is okay.**
- **It allows us to focus on what our operations look, feel, and sound like from the plaintiff's property.**

How Do We Defend These Claims?

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

How do we defend these claims ?

● Compliance

- ✓ Compliance equates to proper record keeping and following the rules.
- ✓ If we follow the rules we can rely on studies that say we cannot damage a home or cause health problems.
- ✓ 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.

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.

● Science

- ✓ **If we comply with the law we can rely on studies and testing that shows we are not causing damage or health problems.**
- ✓ **Science requires the use of all available technology.**

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.
- ✓ **Electronic detonators are becoming a “must do” if you plan on winning a blasting lawsuit.**

Quarry 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

How Do We Defend These Claims?

● Explanation

- ✓ If we do the first two we can explain why we are not the problem.
- ✓ In blasting cases 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

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 you can 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.**

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