



# Why Following the Law and Keeping Accurate Records Are Important

- They also now realize showing we violated the law is key to winning a quarry 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.
- Don't shoot yourself in the foot.



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# 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,

  
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.
- Electronic detonators are a virtual necessity if you want to win your case.

# Blasting Litigation: How Do We Defend These Claims?

- Science

- Pre-blast surveys must be accurate and complete.
- We must use seismographs that are properly calibrated, located and installed.
- Seismographs verify the science behind our blasting.











SAULS SEISMIC, INC.  
FIELD REPORT  
EXISTING CONDITIONS

SHEET 1 OF 9  
JOB NUMBER DRUSK1

SAULS SEISMIC, INC.  
SUMMARY SHEET OF EXISTING CONDITIONS

SHEET 9 OF 9

CLIENT: Drummond Coal TOWN: Jasper 35503  
INSPECTOR: BF JOBNAME: Surface Mine 1 INSPECTION NO. 228  
DATE: 7/11/08 TIME OF INSPECTION 12:45 AM  PM   
COMPLETE  INTERIOR  EXTERIOR  REFUSAL   
OCCUPANT: David Banks OWNER  TENANT   
ADDRESS: 2 Coover Rd ESTIMATE AGE: 40 YEARS  
OWNER & ADDRESS: Jasper Banks PHONE: 203-283-6431

CLIENT: David Banks INSPECTION #: 228  
STRUCTURE ADDRESS 2 Coover Rd.  
CITY / STATE / ZIP Jasper, Mo. 35503 PHONE # 3886439

**GENERAL DESCRIPTION**

FOUNDATION CONCRETE  CON BLOCK  BRICK  OTHER   
HOUSE SIDING Masonite Shingle Siding CONDITION GOOD  AVG  POOR   
ROOF AS CONDITION GOOD  AVG  POOR   
CHIMNEY N/A PICTURE NO 1-180  
NUMBER OF STORIES 1 PHOTO BANK FOLDER NO: 251-113  
PORCH 0 SR Conc FR W/D HOUSE LENGTH 90 WIDTH 84  
BROKEN GLASS N  E  S  W   
SIDEWALKS N  E  S  W   
MORTAR JOINTS GOOD  AVG  POOR   
WATER CITY  WELL  OTHER   
BASEMENT YES  NO   
WATER PRESSURE HIGH  LOW  MED   
WATER QUALITY CLEAR  MILKY  RUSTY   
WELL DEPTH \_\_\_\_\_ FT

*House Exterior & Roof poor Int. beautiful lots of remodeling  
Garage lot poor roof avg. some structural staining  
Concrete and some leaks and plans to replace some  
Has much plastic over looking area held in place by  
ties & blocks. Interior of garage done on bottom of spot 5x3 2.  
South room supposedly water bath new addition not finished  
Some light fixtures missing  
Apt interior of house (not in use)  
N.E. room was suspect. Colored wall removed w/ steps ascending  
to next level of house. Cr missing and some wall in room  
finished a crack in conc sidewalk on entrance to house.  
Some A.T.S. signs in H.C.B. that was visible noted in pictures  
Several cracks so some areas not paid need to exist good.  
Lots of cracks & asphalt missing in driveways N & N.W.  
I acknowledge I have been offered a complete inspection of my premises but have authorized an exterior  
inspection only.*

**ROOF AND DRAINAGE**

MAIN ROOF DRAINAGE ADEQUATE YES  NO  PORCH DRAINAGE YES  NO   
GUTTERS YES  NO  CONDITION AVG LOT DRAINAGE FLOWS NE  
D.S. YES  NO  CONDITION N/L  
D.S DRAINS TO: EARTH  TROUGH  CATCHBASIN  SEWER   
EROSION NEAR FOUNDATION WALL YES  NO  (COMMENT IF YES) \_\_\_\_\_  
WALL ALIGNMENT STRAIGHT  N  S  E  W   
BUILDING SETTLE YES  NO  (COMMENT IF YES) \_\_\_\_\_  
HOUSE FACES N  S  E  W   
COORDINATES LAT N 33° 51' 19.5" LONG W 89° 14' 54.5"

No claim to the quality of the survey or agreement with the results of the survey is given by your signature.

YOUR SIGNATURE GIVES PERMISSION FOR THE FIELD TECHNICIAN TO COMPLETE THE SURVEY ON THE PROPERTY. NO CLAIM TO THE QUALITY OF THE SURVEY OR AGREEMENT WITH THE RESULTS OF THE SURVEY IS GIVEN BY YOUR SIGNATURE.  
REPRESENTATIVE SIGNATURE: [Signature] DATE: 7/11/08 APPROVED BY: N.L.

Authorized Signature

- The items shown in this report are approximate only. This report does not address structural stability. It should be limited and confined to items specified in this report.
- KEY REVISIONS**
- NOTHING TO BE - NI
  - OUTSIDE - AS
  - BEAM - BS
  - WALL - BW
  - CEILING - BK
  - W/ GLASS - DG
  - INS - RID
  - FOUNDATION - FDH
  - FOUNDATION - FDN
  - FOUNDATION - FND
  - HOLLOW CONCRETE BLOCK - HCB
  - MORTAR JOINT SEPARATION - MUS
  - NOTICE - CT
  - NOTE - CONC.
  - CRACK - CR
  - CRACKED - CD
  - GRAZING - GR
  - EAST OVERALL - EOA
  - HIGHBOARD - HB
  - FOUNDATION - FDN
  - FOUNDATION - FND
  - HOLLOW CONCRETE BLOCK - HCB
  - MORTAR JOINT SEPARATION - MUS
  - NAIL POP - NP
  - NORTH OVERALL - NOA
  - PANELING - PL
  - PAVEMENT - PAV
  - PEELING PAINT - PP
  - PLASTER - P
  - RETRAINING WALL - RW
  - SEPARATION - SEP
  - SHEETROCK - SR
  - SOUTH OVERALL - SOA
  - SPALLING - SPL
  - STUCCO - STC
  - SUSPENDED TILE - ST
  - UNEVEN CEILING - UC
  - UNEVEN WALL - UW
  - UNEVEN FLOORS - UF
  - VARYING TILE - VT
  - WALLPAPER - WP
  - WATER STAIN - WS
  - WEST OVERALL - WOA
  - WOOD - WD

DATE OF INSPECTION: 7/11/08 INSPECTOR: BF APPROVED BY: \_\_\_\_\_





# 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





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