

500.8 Regulating Blasting Within the Town Ordinance

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SECTION I – TITLE

The title of this ordinance is the Town of Berry Ordinance Regulating Blasting within the Town 500.8

SECTION II – AUTHORITY

This ordinance is adopted to protect the public health, safety and welfare of residents of the Town of Berry. This ordinance is authorized by the powers granted to the Town of Berry by the Town's adoption of Village powers under Wisconsin Statute 60.10(2)(c) and is in accord with Wisconsin Statute 61.34(1) and Wisconsin Administrative Code SPS 307.

SECTION III – PURPOSE AND INTENT

The purpose of this ordinance is to regulate the use of explosives in non-metallic mining operations and in demolition of structures that require, at a minimum, a class 3 blaster's license under Wisconsin Administrative Code SPS 305.20 and issued by the Wisconsin Department of Safety and Professional Services. This ordinance is intended to limit the adverse effects of blasting on persons or property outside any controlled blasting site area.

SECTION IV – DEFINITIONS

When used in this ordinance, the terms below shall be defined and limited as follows:

- A. Affected building or structure. A building or structure within a distance extending 1,000 feet from the outer perimeter of a controlled blasting site area.
- B. Airblast. An airborne shockwave resulting from the detonation of explosives.
- C. Baseline Record. Pre-blasting test results, including well test results, of record

that are measured after the longest period with no blasting activity.

- D. Blast area. The area of the blast as determined by the blaster in charge within the influence of flying rock missiles, the emission of gases, and concussion as determined by the blaster in charge.
- E. Blast site. The area where explosive materials are handled during the loading of blast holes, including 50 feet in all directions from the perimeter formed by the loaded blast holes and 50 feet in all directions along the full depth of the blast hole.
- F. Blaster. Any individual holding, at a minimum, a valid class 3 blaster's license issued by the Wisconsin Department of Safety and Professional Services as defined in Wisconsin Administrative Code SPS 305.20(1)(b). The blaster shall also hold any other licenses required by law to conduct blasting and related activities in the Town. Refer to Exhibit A: Wisconsin Administrative Code SPS 305.20.
- G. Blaster in charge. The qualified person in charge of and responsible for loading and firing the blast.
- H. Blasting. The use of explosives to loosen, penetrate, move or shatter masses of solid materials. Blasting does not include the discharge of a firearm.
- I. Controlled blasting site area. An area that surrounds a blast site for which the operator has a legal right and duty to take all reasonable means to assure the safety of persons and property, either because the operator owns the area, because the operator has leased or has some special agreement with the owner of that area, or because the operator or blaster owes a special duty to other persons or property under other applicable regulations or laws.
- J. Ground vibration. A shaking of the ground caused by the elastic wave emanating from a blast.
- K. Non-metallic mining or Non-metallic mining operation. These terms as used in this ordinance can refer to any of the following:
 - 1. Extraction from the earth of mineral aggregates or non-metallic minerals for off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading and dredging of such materials.
 - 2. Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, or blending of the mineral aggregates or non-metallic minerals obtained by extraction from the mining site or with materials transferred from off-site.
 - 3. Manufacturing processes aimed at producing non-metallic products or byproducts of such manufacturing processes for sale or use by the operator.
 - 4. Stockpiling of non-metallic products for sale or use off-site and stockpiling of waste materials.
 - 5. Transport of the extracted non-metallic materials, finished products or waste materials to or from the extraction site.
 - 6. Disposal of waste materials.
 - 7. Reclamation of the extraction site.
- L. Operator. The individual or business entity conducting blasting activities, applying for a permit to blast, or operating a non-metallic mining operation.
- M. Permit or Blasting Permit or Permit to Blast. A permit to engage in blasting or other activities authorized under this Ordinance.
- N. Town. The Town of Berry, Dane County, State of Wisconsin

- O. Town Board. The Town Board of the Town of Berry.
- P. Town Clerk. The Clerk/Treasurer of the Town of Berry.

SECTION V – APPLICABILITY

No person, business or other entity may conduct blasting activities within the Town of Berry, without first obtaining a valid permit in accordance with the requirements of this Ordinance and any other applicable state, federal or local law, statute or regulation.

- A. This ordinance shall apply:
 - 1. To any person who blasts in the Town of Berry in order to establish a footing, foundation, or other method of support for the construction, placement or erection of a structure.
 - 2. To any person who conducts blasting in the Town of Berry as part of a non-metallic mining operation.
 - 3. To any person who blasts in the Town of Berry in order to demolish buildings or other structures when these projects require, at a minimum, a class 3 blaster's license under Wisconsin Administrative Code SPS 305.20 and issued by the Wisconsin Department of Safety and Professional Services.

SECTION VI – THE APPLICATION

- A. Applications for a permit to blast shall require an individual who holds a valid blaster's license issued by the Wisconsin Department of Safety and Professional Services with the proper classification to affix their signature accepting responsibility for the blasting activity and its compliance with local and state regulations.
- B. Applications for a blasting permit may be submitted by and issued to a blasting business entity, provided that an individual who holds a valid blaster's license issued by the Wisconsin Department of Safety and Professional Services with the proper classification supervises the blasting activities.
- C. Applications for a blasting permit shall require all necessary Town, County and State permits and compliance with all Town, County and State regulations including, but not limited to, the requirements of this ordinance.
- D. The applicant shall submit a completed application form together with all additional, required documentation to the Town Clerk.
- E. The application shall include the following information on the form itself or on documents attached to the form:
 - 1. Applicant name including all individuals of a partnership, and officers of a corporation including a limited liability corporation, license number, address, contact phone numbers, and email address of the applicant.
 - 2. Signature indicating acceptance of responsibility for blasting activity by an individual who holds a valid blaster's license issued by the Wisconsin Department of Safety and Professional Services with the proper classification, name, address, license number, contact phone numbers, and email address of the blaster in charge of the blast, if different than the applicant.
 - 3. Name, address, contact phone numbers, and email address of any person, agent or employee in charge of the operation who will respond to inquiries by the Town.
 - 4. A map showing the location of the blasting site and a description of the operation at the site, including the location of all buildings located within 1,000 feet of the

- controlled blasting site, names, addresses and contact information of owners of those buildings.
5. Proof of financial assurance. Applicant shall provide proof of financial assurance as more specifically set forth in the proof of insurance section in Section XIV of this Ordinance.
- F. An application shall be regarded as complete only when all of the information requested in Section VII(E)(1-5) of this Ordinance has been provided to the Town Clerk on the application form, or on attachments to the application form.

SECTION VII – BLASTING LIMITS

- A. Blasting operations including a blasting site located any distance from a residence, private well, or inhabited structure that is not owned or controlled by the Operator:
1. Shall not exceed ground vibration resulting from Operator's blasting of 0.30 inches per second on at least 85% of its blasts within any single calendar year, measured at the residence or inhabited structure closest to the site of the blast which is not owned or controlled by the Operator and shall not exceed ground vibration resulting from Operator's blasting of 0.40 inches per second on any blast within any single calendar year, measured at the residence or inhabited structure closest to the site of the blast that is not owned or controlled by the Operator. Notwithstanding any other provision in this subsection, the Operator shall not exceed the ground vibration limitation imposed by the Wisconsin Department of Safety and Professional Services in Figure 7.44 of Chapter SPS 307, or 0.65 inches per second, whichever is more restrictive, on any blast; and
 2. Airblast resulting from Operator's blasting shall not exceed 123 dB on at least 85% of its blasts within any single calendar year, measured at the residence or inhabited structure closest to the site of the blast that is not owned or controlled by the Operator, and, airblast shall not exceed 128 dB on any blast within a single calendar year. Notwithstanding any other provision in this subsection, the Operator shall not exceed the airblast limitation imposed by the Wisconsin Department of Safety and Professional Services in Chapter SPS 307 on any blast.

SECTION VIII – PRE-BLASTING SURVEY

- A. Prior to obtaining a blasting permit, the applicant shall notify, in writing, all residents or owners of buildings or other structures, including, but not limited to, wells, located within 1,000 feet from the blasting site that the applicant intends to apply for a blasting permit from the Town of Berry. The written notification shall include a statement indicating that, upon the written request, the applicant will perform a pre-blasting survey, which would provide a baseline record of the pre-existing condition of buildings or structures against which the effects of blasting can be assessed, and which would include both the interior and exterior of the buildings. The notice shall indicate that no survey will be done unless the resident or owner makes a written request for the pre-blast survey and a water quality test for existing wells. The resident or owner shall make any request for a pre-blast survey or water quality test to the applicant, in writing. The applicant shall conduct a pre-blast survey only of requested dwellings or structures and conduct water quality testing for existing wells at the applicant's expense.

- B. If the resident or owner requests a copy of the well test, then, within 48 hours of the request, the operator shall provide the copy.
- C. The Town reserves the right to require a baseline well pre-blast test and/or any post-blast well testing at any well being used, not owned by the operator, within 1,000 feet of the blast site.
- D. Any pre-blast water quality and sediment testing shall be conducted by an independent survey company and a laboratory approved by the State of Wisconsin or an organization selected by the applicant and acceptable to the Town. Reasonable and reasonably related costs of such independent survey shall be the sole responsibility of the Operator. A pre-blasting well test conducted after a period of at least 180 days with no blasting shall establish a baseline for well test values.

SECTION IX – PROCEDURES

Upon receipt of a completed application form and the permit fee(s), the Town Clerk shall place the application on the agenda for the next meeting of the Town Board. The Town Board shall review the application. If it determines that the permit application is complete and the proposed blasting activity will comply with all the applicable provisions of this ordinance, the Town Board may grant a blasting permit. If the Town Board determines that the application is incomplete or that the proposed blasting activity will not be conducted in conformity with the provisions of this ordinance or Wisconsin Administrative Code SPS 307, the Town Board may deny the permit.

SECTION X – NOTIFICATION OF BLASTING

Notification must be given to the following persons and by the following means at least 24 hours prior to the initial blasting at a blast site as well as prior to all subsequent blasting events at the blast site:

- A. At least 24 hours prior to initial blasting at a blast site, the Operator shall notify all residents or owners of affected buildings. The blaster shall make all reasonable efforts to ensure timely and effective notice that a blasting operation is to begin, using such means as a written notice, a phone call, email or verbally in person.
- B. A resident call list shall be established for the purpose of notifying persons living in the vicinity of the blast site at least 24 hours prior to a blasting event. A resident shall be placed on this call list only upon request to be so listed and called. The call list must be maintained and used by the Operator prior to any blast.
- C. Whenever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph or steam utilities, these utilities shall be notified no less than 72 hours prior to commencing blasting.
- D. Verbal, in person or by phone, or written, on hard copy or email, notice shall be given to the Town of Berry at least 24 hours prior to the onset of any blasting event. If a schedule including dates and times of blasting events is known at the time of application, making that schedule part of the application may serve as written notice. If part of the application form, further notice shall be required only if there is deviation from the schedule.

SECTION XI – BLASTING SCHEDULE

All blasting and crushing operations shall be conducted between 8:00 a.m. and 4:00 p.m., Monday through Friday, unless the following condition applies:

- A. The Town Board has granted a variance from blasting hours for a temporary or occasional event reasonably needed for business purposes. Extended hours on weekdays or the hours of 9:00 a.m. to 2:00 p.m. on Saturdays may be granted by variance.

SECTION XII – BLASTING LOG

An accurate blasting log shall be prepared and maintained for each blast fired, and a true and complete copy of this log shall be kept by the Operator for a period of not less than 5 years and furnished to the Town of Berry within 3 working days of a request for a copy of said log by the Town Clerk or Town Board. The Town of Berry may require that the Operator furnish an analysis of any particular blasting log to be prepared by the Operator. Each blasting log shall include, but not be limited to, the following information:

- A. Name, signature and license number of the blaster in charge of the blast.
- B. Specific blast location, including address, bench and station number if applicable.
- C. Type of blasting operation.
- D. Date and time of the blast.
- E. Weather conditions at the time of the blast.
- F. Diagram of the blast layout and the delay pattern.
- G. Number of holes.
- H. Hole depth and diameter.
- I. Spacing
- J. Burden
- K. Maximum holes per delay.
- L. Maximum pounds of explosives per delay.
- M. Number, type and length of stemming used between decks.
- N. Total pounds and type of explosives used.
- O. Distance to nearest inhabited building not owned by the Operator.
- P. Type of initiation used.
- Q. Seismographic and airblast records, which shall include all of the following:
 - 1. Type of instrument and last laboratory calibration date.
 - 2. Exact location of instrument and the date, time, and distance from the blast.
 - 3. Name of the person and firm taking the reading.
 - 4. Trigger levels for ground and air vibrations.
 - 5. The vibration and airblast levels recorded.

SECTION XIII – MONITORING

- A. The Operator shall monitor all blasts at the closest location to the controlled blast area of any affected building or structure beyond the controlled blast area, provided, however, that the Operator may monitor at another location approximately the same distance from the perimeter of the controlled blast area, if the Operator is unable to obtain permission to conduct the monitoring from the owner of the preferred location.
- B. The Town of Berry by its Town Clerk or Town Board, may, at its discretion, require the relocation of the monitoring equipment to a more suitable site.

SECTION XIV – FINANCIAL ASSURANCE

- A. Each application for an explosives use permit as herein stated, or a renewal thereof, shall be accompanied by a Certificate of Insurance for a Commercial General Liability Policy against claims for bodily injury, death, or property damage arising out of the blasting operation. Said Policy of Insurance shall have limits of coverage of not less than five million (\$5,000,000.00) dollars in the aggregate and two and one-half million (\$2,500,000.00) dollars per occurrence.
- B. Each insurance policy shall provide that it shall not be cancelled by the insurance company, except after not less than 90 days' notice to the Town, in writing, by registered or certified mail. Not less than 30 days prior to the expiration of the 90 day notice of cancellation, the blaster must deliver to the Town a replacement insurance policy in absence of which all blasting shall cease. The liability insurance must be issued by a company licensed by the State of Wisconsin to issue the policy.

SECTION XV – PERMIT DURATIONS, RENEWALS AND FEES

- A. A short-term permit may be issued for a single blasting event and shall be valid for 14 days from the effective date of the permit. The non-refundable fee for a temporary permit shall be as determined by the Town Board. No renewal of short-term permit will be granted within a calendar year. A regular permit is required if blasting exceeds 14 days. All provisions of this ordinance apply.
- B. A regular permit shall be granted for a period of no more than 180 days. The non-refundable fee for a 180 day permit shall be as determined by the Town Board.
- C. An application for a renewal of any existing regular permit shall be made at least 60 days prior to anticipated blasting and may be made 60 days prior to the expiration date of the existing permit. The Town Board, at its discretion, may meet to consider approval, denial, or alteration of a regular permit renewal.

SECTION XVI – REVOCATION AND SUSPENSION

- A. The Town Board, on its own motion or following due review and investigation of a written complaint, may suspend or revoke the blasting permit for any violation of provisions or requirements of this ordinance or of other applicable State and Federal law.
- B. In general, the Town Clerk shall provide the Operator with no less than 72 hours' notice of a meeting where action to suspend or revoke the blasting permit is on the agenda. Written or verbal notice of the suspension, and of conditions that must be met to reinstate the permit, shall be promptly given to the Operator at the address contained in the application.

SECTION XVII – PENALTIES

In addition to reducing the permitted blasting level and the denial, suspension or revocation of a permit issued under this ordinance, any person who violates any provision of this ordinance shall be subject to forfeiture in an amount not less than \$1,000 nor more than \$10,000 for each day of continued violation, plus the Town's legal costs including, but not limited to, the cost of prosecution.

SECTION XVIII – SEVERABILITY AND INTERPRETATION

- A. Should any section, clause, provision or portion of this ordinance be adjudged unconstitutional or invalid, unlawful or unenforceable by a final order of a court of

competent jurisdiction, including all applicable appeals, the remainder of this ordinance shall remain in full force and effect.

- B. The provisions of this ordinance shall be liberally construed in favor of the Town of Berry and shall not be construed to be a limitation or repeal of any other power now possessed or granted to the Town of Berry.

SECTION XIX – NO LIABILITY FOR DAMAGES

This ordinance shall not be construed as an assumption of liability by the Town of Berry for damages because of injuries sustained or property destroyed by any person's failure to comply with the requirements set forth herein.

SECTION XX – EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the day after passage and publication as required by law.

Dated this 15th day of April, 2019

Posted: April 17, 2019

Published: April 25, 2019

Brenda Kahl, Clerk/Treasurer

Jeff Davis, Supervisor

Joe Kruchten, Supervisor

Anthony Varda, Chair

Michael Statz, Supervisor

Duane Haag, Supervisor