

## LOCAL LAW NO. "B" FOR 2015

### A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK PROTECTING DRINKING WATER

Introduced: 4/13/15

By Messrs. Mackey, Reilly, Feeney, Cotrofeld, Morse, Mss. Maffia-Tobler, McKnight, Chapman, Messrs. Ward, Corcoran, Bullock, O'Brien, Beston, Clay, Clenahan, Commisso, Ms. Connolly, Messrs. Domalewicz, Ethier, Higgins, Jacobson, Joyce, Mss. Kinsch, Mr. Mayo, Ms. McLean Lane, Messrs. Nichols, Rahm, Simpson, Ms. Busch, Messrs. Stevens and Crouse:

BE IT ENACTED by the Albany County Legislature as follows:

#### **Section 1. Title**

This Local Law shall be known as the "Drinking Water Protection Law."

#### **Section 2. Legislative Findings**

The Albany County Legislature hereby finds and determines that the County must protect surface and groundwater within its borders, particularly surface and groundwater used for drinking water.

The Albany County Legislature hereby further finds that recent disclosures regarding the possible contamination and/or the reduction in volume/yield of well-water throughout parts of the County of Albany may result from industrial activities, including blasting, and raise concerns that unsuspecting residents in Albany County utilizing private water systems may be endangered unless well-water sampling and analysis is completed in order to identify areas of water contamination and/or a reduction in water volume/yield.

The purpose of this local law is to protect public health and safety by requiring the completion of well-water sampling and analysis prior, and subsequent, to any blasting within Albany County that may affect the quality or volume/yield of surface and groundwater drinking water supplies within a one (1) mile radius of the blasting location.

#### **Section 3. Definitions**

As used in this local law, the following terms shall have the meanings indicated:

- (A) "Blaster" is a person licensed as such by the New York State Department of Labor.

- (B) “Blast” is the rapid release of heat and large quantities of high-pressure gases that expand rapidly with sufficient force to overcome confining forces resulting from the very rapid decomposition of a chemical compound or mixture initiated by heat, shock, impact, friction, or a combination of these conditions.
- (C) “Blasting entity” is a person, a corporation or other legal business entity that blasts or engages a blaster to blast either on its own behalf or on behalf of another person, corporation or other entity within Albany County.
- (D) “Blast effect area” consists of all properties within a one (1) mile radius of a blast.
- (E) “Blasting notification” is defined as a written notice in which blast information is provided by the blaster or blasting entity, to include, but not be limited to, the following: the blasting area, the date(s) and time(s) of the blasting, how access to the blasting area will be controlled and the types and patterns of blast warnings and signals that will be used.
- (F) “Independent provider” is any person, corporation or other legal business entity certified by the New York State Department of Health and approved and designated by the Albany County Department of Health to conduct pre-blast and post-blast water quality sampling, analysis, and reporting on same for residents in Albany County.
- (G) “Quality” is defined in the Albany County Department of Health’s promulgated rules and regulations pursuant to Section 6 of this Local Law.
- (H) “Volume/Yield” is defined in the Albany County Department of Health’s promulgated rules and regulations pursuant to Section 6 of this Local Law.
- (I) “Recharge rate” is defined in the Albany County Department of Health’s promulgated rules and regulations pursuant to Section 6 of this Local Law.
- (J) “Private drinking water supply sampling and analysis” is defined in the Albany County Department of Health’s promulgated rules and regulations pursuant to Section 6 of this Local Law, with that definition encompassing, at a minimum, the presence of any hazardous substance as that term is defined in the rules and regulations of the New York State Department of Environmental Conservation and, in

the case of a well providing drinking water, the recharge rate and turbidity of any such well.

(K) “Resident” is any property owner within Albany County.

#### **Section 4. Notification**

(A) Responsibilities of Blaster:

(i) **Blasting Schedule** – Any blaster or blasting entity who intends to blast within Albany County shall publish a blasting notification in newspapers that have general circulation within Albany County at least sixty (60) days in advance of the blasting. Additionally, a copy of the schedule shall also be sent by United States certified mail to the Commissioner, Albany County Department of Health, and to all residents within the blast effect area at least sixty (60) days in advance of the blasting. The schedule shall include the following information: 1) the specific location of the blast; 2) the date and time when each blast will occur; 3) a description detailing how access to the blast effect area will be controlled to prevent property damage and personal injury; and 4) the types and patterns of blast warnings and of signals that blasting has been completed and passage through the blast effect area is safe. Pursuant to Section 6 of this local law, the Albany County Department of Health is permitted to promulgate regulations that supplement this list and the requirements of this subsection.

(ii) **Pre-Blast Private Drinking Water Supply Sampling and Analysis** - Any blaster or blasting entity who intends to blast within Albany County shall notify residents within the blast effect area of its intention in writing by United States certified mail at least sixty (60) days before any blasting occurs. The Albany County Department of Health shall provide a full description of the content required for the mailed notification in its rules and regulations promulgated pursuant to Section 6 of this Local Law. The blaster or blasting entity will, at a minimum, include the following information in its mailed notification to residents within the blast effect area: 1) an offer to provide free of charge to any resident and at the blaster’s or blasting entity’s expense pre-blast private drinking water supply sampling and analysis conducted and reported by an independent provider; 2) contact information in order to schedule the pre-blast private drinking water supply sampling and analysis; and 3) that a report detailing the results of the pre-blast private drinking water supply sampling and analysis shall be provided to the Albany County Department of Health and to the resident within thirty (30) days of completion of the sampling and analysis.

(B) Residents within the blast effect area who require guidance regarding the pre-blast private drinking water supply sampling and analysis may contact the Albany County Health Department at the following address, telephone number and facsimile number:

Albany County Department of Health  
175 Green Street  
Albany, New York 12202  
Telephone: (518) 447-4580  
Fax: (518) 447-4698

## **Section 5. Blast Records**

Records of all blasts must be maintained by the blasters or blasting entities for a period of at least five (5) years from the date of a blast, or the date of the last blast, if more than one blast occurs in a blasting program. These records shall be made available for inspection upon written request by, and at no cost to, the public.

## **Section 6. Albany County Health Commissioner's Authority**

The Albany County Health Commissioner is authorized to promulgate rules and regulations and take any and all other reasonable actions necessary to implement and enforce this local law. In addition, the Commissioner is expressly delegated the authority to promulgate and adopt rules and regulations that makes Sections Four, Seven, Eight and Nine of this Local Law applicable to public drinking water supplies. Any rules and regulations so promulgated shall be made available on the County of Albany website in a manner approved by the Commissioner.

## **Section 7. Pre-Blast Private Drinking Water Supply Sampling and Analysis**

Blasters or blasting entities shall be responsible for the reasonable costs of the pre-blast private drinking water supply sampling and analysis requested by residents and conducted by the independent provider pursuant to Section 4.

## **Section 8. Post-blast Private Drinking Water Supply Sampling and Analysis**

(A) Formal Complaints - Residents within the blast effect area who suspect post-blast private drinking water supply contamination or a reduction in water volume/yield may file a formal complaint with the Albany County Health Department within six (6) months of the date of a blast, or the date of the last blast, if more than one blast occurs in a blasting program.

(B) Investigation – The Albany County Health Department Commissioner is authorized to initiate an investigation upon receipt of a formal complaint from a resident within the blast effect area and take any and all reasonable suppression, abatement and remediation actions that the Commissioner deems necessary and proper to protect an individual or public health and safety. Blasters or blasting

entities shall make their blast records available to the Albany County Department of Health for any resident who has filed a formal complaint.

(C) Responsibilities of Blaster or Blasting Entity – Upon receipt of a formal complaint from a resident within the blast effect area, the Albany County Department of Health may require the blaster and/or blasting entity to pay for post-blast private drinking water supply sampling and analysis to be performed within thirty (30) days of the request date, and reported, by an independent provider. The report detailing the results of the post-blast private drinking water supply sampling and analysis shall be provided to the Albany County Department of Health and to the resident within thirty (30) days of completion of the sampling and analysis.

## **Section 9. Penalties**

(A) Civil Penalty for Lack of Notice – If the Albany County Department of Health finds and determines that any blaster or blasting entity failed to meet the pre-blast notification requirements in Section 4 of this Local Law and as further described in the Albany County Department of Health rules and regulations promulgated under Section 6 of this Local Law, such violation shall be punishable by a civil penalty not to exceed \$15,000 per violation.

(B) Civil Penalty for Water Contamination and/or Volume/Yield Reduction

(i) No blaster or blasting entity shall conduct a blast that reduces the quality of a drinking water supply, results in the presence in a drinking water supply of any hazardous substance, as that term is defined in the rules and regulations of the New York State Department of Environmental Conservation, or which shall increase the turbidity of such drinking water supply.

(ii) No blaster or blasting entity shall conduct a blast that results in the recharge rate in any well used for drinking water by a resident to decrease.

(iii) Unless proven otherwise by clear and convincing evidence, a blast shall be considered the cause of the presence in a drinking water supply of any hazardous substance, as that term is defined in the rules and regulations of the New York State Department of Environmental Conservation, and, in the case of a well providing drinking water, the cause of any reduction in the recharge rate of any such well, or an increase in the turbidity of such drinking water supply

(iv) After an investigation and upon a finding by the Albany County Department of Health that any blaster or blasting entity caused by its blasting contamination of a resident's drinking water, a functional reduction in the recharge rate/yield of a groundwater well supplying drinking water to a resident, or an increase in the turbidity of such drinking water supply, such violation shall be punishable by a civil penalty not to exceed \$15,000 per violation. In addition, the blaster shall be required to abate each violation and provide alternate water

supplies to an affected resident at the blaster's expense until the contamination or turbidity is fully abated and the recharge rate is restored to pre-blast conditions.

(C) Civil penalties collected by the Albany County Department of Health under this Local Law may be used for abatement purposes for any wells used to provide drinking water to residents within the County that have been compromised as a result of blasting.

(D) Nothing contained herein shall be construed to prevent or prohibit the commencement of any civil or administrative action or proceeding to enjoin any conduct constituting a violation hereof or to recover any penalty therefor or any damages occasioned thereby.

### **Section 10. Health Commissioner's Power to Suspend or Modify**

The Commissioner of Health may, in his/her absolute discretion, suspend or modify the requirements of this law:

(A) when he/she deems it necessary to do so to protect the health, safety, and welfare of the public or

(B) for State, County or Municipal projects if, in his/her opinion, adequate safeguards have been implemented to prevent well contamination.

### **Section 11. Mines and Water Well Drillers**

This Local Law shall not apply to:

(A) mines subject to local municipal regulation or state regulation under Title 27 of Article 23 of the Environmental Conservation Law or

(B) water well drillers subject to state regulation under Title 15 of Article 15 of the Environmental Conservation Law .

### **Section 12. State Environmental Quality Review Act compliance**

This County Legislature determines that the adoption of this Local Law constitutes a "Type II action" as said term is defined in the State Environmental Quality Review Act ("SEQRA"), and that no further action with respect to same is required under SEQRA.

### **Section 13. Preemption**

If any part or provision of this Local Law is inconsistent with any federal or state statute, law, rule or regulation, then such statute, law, rule or regulation shall

prevail. If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law, or the application thereof to other persons or circumstances.

#### **Section 14. Reverse Preemption**

This Law shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this Law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The Albany County Legislature may determine via resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this Section.

#### **Section 15. Severability**

If any clause, sentence, paragraph, section, subdivision or other part of this Local Law or its applications shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or otherwise invalidate the remainder of this Local Law which shall remain in full force and effect except as limited by such order or judgment.

#### **Section 16. Effective Date**

This Local Law shall be effective immediately upon filing with the Office of the Secretary of State.

*Referred to Health Committee. 4/13/15*

*Favorable Recommendation - Health Committee. 4/29/15*

*On roll call vote the following voted in favor: Ms. Benedict, Messrs. Beston, Bullock, Ms. Busch, Mr. Carman, Ms. Chapman, Messrs. Clay, Clenahan, Clouse, Commisso, Ms. Connolly, Messrs. Corcoran, Cotrofeld, Crouse, Dawson, Domalewicz, Ethier, Feeney, Higgins, Hogan, Jacobson, Joyce, Mss. Kinsch, Lockart, Mr. Mackey, Ms. Maffia-Tobler, Mr. Mayo, Mss. McKnight, McLean Lane, Messrs. Mendick, Morse, Nichols, O'Brien, Rahm, Reilly, Simpson, Stevens, Tunny and Ward – 39.*

*Those opposed: -0.*

*Local Law was adopted. 5/11/15*