

A motion was made by Mr. Reilly to invoke Rule 11 and was passed by unanimous vote.

LOCAL LAW NO. “J” FOR 2015

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, TO BE KNOWN AS THE PUBLIC DRINKING WATER PROTECTION LAW

Introduced: 8/10/15

By Mr. Reilly:

Section 1. Title

This Local Law shall be known as the “Public Drinking Water Protection Law.”

Section 2. Legislative Findings

The Albany County Legislature hereby finds and determines that public water systems are sourced from streams, rivers, lakes, and reservoirs. Certain industrial activities, including blasting, pose a potential threat to public drinking water supplies. Residents are at a high risk of developing significant health issues from ingestion and exposure to contaminated drinking water, including gastrointestinal illness, reproductive problems, and neurological disorders. Infants, young children, pregnant women, the elderly, and immunocompromised persons may be especially at risk for becoming ill after drinking contaminated water.

The Albany County Legislature hereby further finds and determines that the Safe Drinking Water Act (SDWA) ensures the quality of drinking water in the United States. Under SDWA, the U.S. Environmental Protection Agency (EPA) has established National Primary Drinking Water Regulations (NPDWRs or primary standards) that set mandatory water quality standards for drinking water contaminants to protect the public against consumption of drinking water contaminants that present a risk to human health by limiting the levels of contaminants in drinking water. The EPA also oversees the states, localities, and water suppliers who implement those standards.

The Albany County Legislature hereby further finds and determines that municipalities play a crucial role in managing activities that affect source water quality and availability.

The purpose of this local law is to protect public health and safety by requiring blasting entities, as part of their best management practice, to notify municipalities located within Albany County prior to any blasting if such blasting occurs within a two mile radius of a municipal water source.

Section 3. Definitions

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

- (A) “Municipal Water Source” is any reservoir or well located within Albany County which serves as a source of public drinking water supply for Albany County residents.
- (B) “Municipal filtration plant” is any facility that treats and provides public drinking water through a public water system.
- (C) A “public water system” is a system for the provision of water to the public for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year, as defined in the National Primary Drinking Water Regulations.
- (D) “Blaster” is a person licensed as such by the New York State Department of Labor.
- (E) “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.
- (F) “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.
- (G) “Blast effect area” refers to the area within a two mile radius of a blast.
- (H) “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.
- (I) “Quality” is defined in the Albany County Department of Health’s promulgated rules and regulations pursuant to Section 6 of this Local Law, and shall reference the list of contaminants and their maximum contaminant levels (MCLs) set by the National Primary Drinking Water Regulations.

(J)

Section 4. Notification

Responsibility of Blaster:

- a. **Blasting Schedule:** Any blaster or blasting entity who intends to blast within Albany County shall notify by United States certified mail, the governing body of a municipality, prior to any blasting, if such blasting

occurs within a two mile radius of a municipal reservoir or well providing drinking water to residents of such municipality. Such notification shall occur at least sixty (60) days in advance of the blast date. Additionally, a copy of the blast schedule shall be sent by United States certified mail to the Commissioner, Albany County Department of Health.

The notification shall include the following information:

1. The specific location of the blast;
2. The date and time the blast is scheduled to 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.

b. Additionally, at least sixty (60) days in advance of the blast date, any blaster or blasting entity must contact the New York State Department of Environmental Conservation and the governing bodies of all municipalities within the blast effect area and inquire whether there are any known or suspected subsurface contaminants within the blast effect area. If there are any known or suspected areas of contamination, then the blaster shall disclose the same to the Albany County Department of Health, which is authorized to require an investigation to be conducted at the blaster's expense to confirm the nature and extent of such contamination. If any such contamination is confirmed to exist within the blast effect area, then the blaster shall be obligated, prior to the start of blasting, to remediate the same to the satisfaction of the Albany County Department of Health.

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 Section. If after such investigation the Blaster chooses not to proceed with blasting within two miles of the contaminated area, then it will not be obligated to remediate the same.

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. 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. 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) Rebuttable Presumption:

Increased levels of contaminants above maximum acceptable contaminant levels set by the National Primary Drinking Water Regulations, when detected at any municipal reservoir, municipal well, or any municipal filtration plant(s) sourced by such reservoir or well, within six months of blasting activity(ies) shall, unless proven otherwise by clear and convincing evidence, be attributable to said blasting activity, if the blast effect area is within two miles of such municipal reservoir or well.

(C) The Blasting Entity will be liable for all reasonable costs incurred in remediating and restoring any public water supply to its pre-blast condition

(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.

(E) The Health Commissioner may, in his absolute discretion, require the posting of a bond or other security in an amount deemed adequate to guarantee sufficient funds are available to remediate, as set forth above.

Section 8. 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 9. 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 10. 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 11. Preemption

If any part or provision of this Local Law is inconstant 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 12. 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 13. 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 14. Effective Date

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

Referred to Conservation and Improvement Committee. 8/10/15

*Favorable Recommendation – Conservation and Improvement Committee.
9/14/15*

A motion was made to refer to Conservation and Improvement Committee and on roll call vote, the following voted in favor: Mss. Benedict, Busch, Messrs.

Carman, Clouse, Ms. Connolly, Messrs. Crouse, Dawson, Hogan, Mss. Kinsch, Lockart, Messrs. Mendick, Stevens and Tunny – 13

Those opposed: Messrs. Beston, Bullock, Ms. Chapman, Messrs. Clay, Clenahan, Commisso, Corcoran, Cotrofeld, Domalewicz, Ethier, Feeney, Higgins, Jacobson, Joyce, Mackey, Ms. Maffia-Tobler, Mr. Mayo, Mss. McKnight, McLean Lane, Messrs. Morse, Nichols, O'Brien, Rahm, Reilly, Simpson and Ward – 26

Motion to refer to Conservation and Improvement Committee failed.

On roll call vote on the adoption of the Local Law, the following voted in favor: Messrs. Beston, Bullock, Ms. Chapman, Messrs. Clay, Clenahan, Clouse, Commisso, Ms. Connolly, Messrs. Corcoran Cotrofeld, Dawson, Domalewicz, Ethier, Feeney, Higgins, Jacobson, Joyce, Mackey, Ms. Maffia-Tobler, Mr. Mayo, Mss. McKnight, McLean Lane, Messrs. Mendick, Morse, Nichols, O'Brien, Rahm, Reilly, Simpson, Stevens, Tunny and Ward – 32.

Those opposed: Mss. Benedict, Busch, Messrs. Carman, Crouse, Hogan, Mss. Kinsch and Lockart – 7.

Local Law was adopted. 9/14/15