

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 300
SURFACE MINED LAND CONSERVATION AND RECLAMATION ACT

SUBPART A: SURFACE MINED LAND CONSERVATION AND RECLAMATION ACT

9	Section	
10	300.10	Introduction
11	300.20	Permits
12	300.30	Fees
13	300.40	Bonds
14	300.50	Permit Application Requirements
15	300.60	Role of County Government in Reclamation
16	300.70	Departmental Consideration of Reclamation Plans
17	300.80	Public Filing of Approved Plans
18	300.90	Amendments to Permits
19	300.95	Transfer of Permits
20	300.100	Reclamation Planning
21	300.110	General Reclamation Requirements
22	300.120	Criteria For Types of Land Reclamation
23	300.130	Reclamation of Gob Disposal Areas and Outside Slopes of All Overburden Deposition Areas
24		
25	300.140	Reclamation of Slurry Pond Disposal Areas
26	300.150	Water Impoundment Structures
27	300.160	Affected Acreage Map
28	300.170	Violations and Forfeiture
29	300.180	Bond Release Procedure

SUBPART B: USE OF EXPLOSIVES IN NON-COAL
MINERAL EXTRACTION OPERATIONS

34	Section	
35	300.200	Scope of this Subpart
36	300.205	Purpose
37	300.210	Definitions Applicable to Subpart B
38	300.215	General Requirements
39	300.220	Monitoring
40	300.225	Use of Explosives; Control of Adverse Effects
41	300.230	Use of Explosives; Blasting Signs, Warnings and Access Control
42	300.235	Training
43	300.236	Examination

- 44 300.237 Application and Licensure
- 45 300.238 Fees
- 46 300.239 Denial, Issuance of Notice of Infraction, Suspension, Revocation and Other
- 47 Administrative Actions
- 48 300.245 Notices of Violation
- 49 300.246 Cessation Orders
- 50 300.247 Office of Mines and Minerals Decision
- 51 300.248 Hearings
- 52 300.249 Temporary Relief
- 53 300.250 Subpoenas

- 55 300.ILLUSTRATION A Tree Sampling Procedure
- 56 300.ILLUSTRATION B Typical Sections

57
 58 AUTHORITY: Implementing and authorized by the Surface-Mined Land Conservation and
 59 Reclamation Act [225 ILCS 715].

60
 61 SOURCE: Adopted January 6, 1976; codified at 8 Ill. Reg. 4507; amended at 14 Ill. Reg. 3548,
 62 effective February 22, 1990; amended at 20 Ill. Reg. 9546, effective July 1, 1996; recodified
 63 from the Department of Mines and Minerals to the Department of Natural Resources at 21 Ill.
 64 Reg. 16192; amended at 22 Ill. Reg. 8407, effective April 28, 1998; amended at 23 Ill. Reg.
 65 11231, effective August 26, 1999; amended at 26 Ill. Reg. 4372, effective March 11, 2002;
 66 amended at 37 Ill. Reg. 6779, effective May 1, 2013; amended at 41 Ill. Reg. 10490, effective
 67 July 28, 2017; amended at 48 Ill. Reg. _____, effective _____.

68
 69 **SUBPART B: USE OF EXPLOSIVES IN NON-COAL**
 70 **MINERAL EXTRACTION OPERATIONS**

71
 72 **Section 300.200 Scope of this Subpart**

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 74 This Subpart shall cover the use of explosives in non-coal mineral extraction operations pursuant
 75 to Section 6.5 of the Surface-Mined Land Conservation and Reclamation Act and includes all
 76 explosive use required for the purpose of surface mining operations. ~~This Subpart is~~**They are**
 77 intended to supplement and not supersede the requirements of any other federal or Illinois statute
 78 or regulation. Inasmuch as the provisions of this Subpart contradict such other statute or
 79 regulation, that statute or regulation shall control.

80
 81 (Source: Amended at 48 Ill. Reg. _____, effective _____)

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 83 **Section 300.205 Purpose**

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 85 The purpose of these regulations is to ensure that blasting operations are conducted to prevent
 86 injury to persons, ~~and~~ damage to public and private property and the safety and welfare of the

87 [public](#).

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89 (Source: Amended at 48 Ill. Reg. _____, effective _____)

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91 **Section 300.210 Definitions Applicable to Subpart B**

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93 "Act" means the Surface-Mined Land Conservation and Reclamation Act [225
94 ILCS 715].

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96 "Airblast" (also known as "air overpressure") means airborne waves resulting
97 from the detonation of explosives. Airblast may be caused by burden movement
98 or the release of expanding gas into the air. Airblast may or may not be audible.

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100 ~~"Act" means the Surface Mined Land Conservation and Reclamation Act [225~~
101 ~~ILCS 715].~~

102

103 "Attended at all Times" means that the Type 3 magazine and any explosives must
104 always be within the line of sight of, and visible to, a member of the work or
105 blasting crew authorized to enter the magazine.

106

107 "Authorized Person" means a person holding a current Illinois Surface Aggregate
108 Blasting License, Illinois Surface Coal Certification, Individual Explosives
109 License, or qualifying for an exemption pursuant to 62 Ill. Adm. Code
110 200.90(d)(5).

111

112 "Authorized Representative of the Department" means an employee of the Illinois
113 Department of Natural Resources, Office of Mines and Minerals, [Explosives and](#)
114 [Aggregate Division](#), qualified to conduct on-site inspections of blasting operations
115 in order to determine compliance with these regulations.

116

117 "Blast" means the detonation of explosives by an operator for a mineral extraction
118 operation.

119

120 "Blast Site" means an area where explosive material is handled during loading.

121

122 "Blasting Agent" means any material or mixture that:

123

124 consists of a fuel and an oxidizer intended for blasting, not otherwise
125 defined as an explosive, provided that the finished product, as mixed and
126 packaged for use or shipment cannot be detonated by means of a No. 8
127 blasting cap, as defined by the Bureau of Alcohol, Tobacco, Firearms, and
128 Explosives, U.S. Department of Treasury 18 U.S.C. Ch. 40, Sec. 841(e),
129 when unconfined; and

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is classified as a Division 1.5 material under 49 CFR 173.50 as now or hereafter amended.

"Blasting Operations" means the process of shot design, layout, drilling, loading, detonation, and recordkeeping.

~~"Licensed Blaster" means the person authorized to oversee and approve blasting operations on a blasting site.~~

"Blasting Zone" means any area within the operation that is designated in writing by the operator to the Department as being the area within which blasting operations will be conducted. The area of a blast within the influence of flying rock, missiles, debris, gases, and airblast.

~~"Blasting Operations" means the process of shot design, layout, drilling, loading, detonation and recordkeeping.~~

"Burden" means the distance from an ~~explosive~~~~explosives~~ charge to the nearest free or open face at the time of detonation of each hole.

"Continuing Violation" means a violation of these rules that is ongoing and unabated at the time of inspection.

"Cube Root Scaled Distance" means the distance, in feet, from the blast to a specific location, divided by the cube root of the maximum weight of explosives, in pounds, to be detonated ~~within~~ any eight millisecond period.

"Decibel" means the unit of sound overpressure commonly used to measure airblast from the detonation of explosives. It is also measured in pounds per square inch (p.s.i.), and is defined in terms of the overpressure by the equation:

$$dB = 20 \log P/P[0]$$

where:

dB = sound level in decibels

P = measured overpressure in p.s.i. (lbs./in.(2))

P[0] = 2.9 x 10⁻⁹ p.s.i. (lbs./in.(2))

The decibel scale is logarithmic.

"Density" means the mass of an explosive per unit of volume usually expressed in grams per cubic centimeter or pounds per cubic foot.

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"Department" means the Illinois Department of Natural Resources.

"Detonator" means any device containing an initiating or primary explosive that is used for initiating detonation in another explosive material. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, electronic detonators, blasting caps for use with safety fuse, detonating cord delay connectors, and nonelectric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires. Unless specifically classified otherwise, detonators are classified as a Division 1.1 material under 49 CFR 173.5.

"Director" means the Director of the Illinois Department of Natural Resources or such officer, bureau or commission as may lawfully succeed to the powers and duties of such Director. [225 ILCS 715/3]

"Earth Liners" means structures constructed from naturally occurring soil material that has been compacted to achieve a low permeability.

"Electric Detonator" means a detonator designed for, and capable of, initiation by means of an electric current.

"Electronic Detonator" means a detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

"Emulsion" means an explosive material containing substantial amounts of oxidizer dissolved in water droplets, surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

"Explosives" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion that can be classified as a Division 1.1, 1.2, or 1.3 material under 49 CFR 173.5 and detonators. The term includes high and low explosives and any explosive devices containing over one quarter ounce of explosive materials~~reacts at high velocity to liberate gas and heat, causing very high pressures.~~

"Geomembrane" means manufactured membrane liners and barriers of low permeability used to control the migration of fluids or gases.

"Inert Waste" means any solid waste that will not decompose biologically, burn,

216 serve as food for vectors, form a gas, cause an odor, or form a contaminated
217 leachate, as determined in accordance with 35 Ill. Adm. Code 811.202(b). Such
218 inert wastes shall include only non-biodegradable and non-putrescible solid
219 wastes. Inert wastes may include, but are not limited to, bricks, masonry and
220 concrete (cured for 60 days or more).

221
222 "Landfill" means a facility permitted by the Illinois Environmental Protection
223 Agency for the disposal of waste on land meeting the requirements of the
224 Resource Conservation and Recovery Act, P.L. 94-580, and regulations
225 thereunder, and without creating nuisances or hazards to public health or safety,
226 by confining the refuse to the smallest practical volume and covering it with a
227 layer of earth at the conclusion of each day's operation, or by such other methods
228 and intervals as the Illinois Pollution Control Board may provide by regulation.

229
230 "Licensed Blaster" means an individual licensed by the Department as provided in
231 Section 300.237. The person authorized to oversee and approve blasting
232 operations on a blasting site.

233
234 "Loading Density" means the weight of explosive loaded per unit length of
235 borehole occupied by the explosive, expressed as pounds/ft.

236
237 "Office of Mines and Minerals" means the subdivision of the Department of
238 Natural Resources charged with regulating the use of explosives in non-coal
239 mineral extraction operations pursuant to Section 6.5 of the Act.

240
241 "Operation" means the property limits of any non-coal mineral extraction
242 operation.

243
244 "Operator" means any person, firm, partnership or corporation engaged in and
245 controlling a surface mining operation, and includes political subdivisions and
246 instrumentalities of the State of Illinois.

247
248 "Particle Velocity" is a measure of ground vibration which describes the velocity
249 at which a particle of ground moves when excited by a seismic wave.

250
251 "Person" means any individual, partnership, corporation, or other legal business
252 entity.

253
254 "Programmer or Programming Unit" means a device for entering digital
255 information into an electronic detonator or electronic detonator system.

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257 "Protected Structure" means any dwelling, public building, school, church or
258 commercial or institutional building. Protected structures do not include:

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Structures owned by the operator; and

Structures subject to a waiver from the Department's airblast and ground vibration requirements granted to the operator.

"Scaled Distance" means the distance, in feet, from the blast to a specified location, divided by the square root of the maximum weight of explosives, in pounds, to be detonated ~~within~~ any eight millisecond period.

"Stemming" is inert material, and used placed in a borehole on top of or between separate charges of explosive material for the purpose of confining explosive materials or to separate charges of explosive material in the same borehole~~(usually crushed stone) that is placed above the explosives column, or vertically between columnar decks of explosives in a blast hole.~~

"Tagger" is a term used to describe a type of "on-bench" or field instrument designed to communicate with, record and/or program specific information for an electronic blast initiation component or detonator.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 300.215 General Requirements

- a) Each person who conducts blasting operations shall comply with all applicable State and federal laws governing the use of explosives.
- b) Each blast~~All blasting operations~~ shall be designed, executed and detonated by~~conducted under the direct supervision of~~ a licensed blaster ~~(persons licensed by the Department, as provided in Section 300.237 of this Part)~~. The licensed blaster ~~must~~shall be present during each phase of the loading and~~at the~~ detonation process. The licensed blaster may appoint another individual who is deemed competent and meets all requirements to handle explosives in Illinois to detonate a blast. However, the licensed blaster must be physically present during the detonation process~~of the blast.~~
- c) All blasting shall be conducted between sunrise and sunset except in emergency situations where unscheduled blasting is required to ensure operator or public safety. In such cases, the operator shall notify the Department in writing within 72 hours after the unscheduled blast, stating the ~~reasons~~reason(s) for the unscheduled blast. After review of the notification, the Department shall determine whether the unscheduled blast was an emergency and take enforcement action if necessary.

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- d) Blasts consisting of explosive materials loaded into blastholes and of which the explosives are unable to be removed and stored in a Department certified explosive storage magazine must be attended by an Individual Explosive License holder, Licensed Blaster, Illinois Surface Coal Certification holder, or persons meeting the exemptions of 62 Ill. Adm. Code 200.90(d)(5) at all times. No explosives shall be left unattended.
- e) Explosives may be used to clear blockage in crushing operations at any time provided the explosive charge does not exceed one pound, and ~~the~~ the operator complies with all other requirements of this Part, except those found in subsection (c) ~~above~~.
- f) Vehicles and equipment shall not be driven over explosive material or initiating systems.
- g) Prior to firing a blast:
 - 1) Ample warning shall be given to allow all persons to be evacuated.
 - 2) All access routes to the blasting zone shall be guarded or barricaded to prevent the passage of unauthorized persons or vehicles.
- h) When a misfire is suspected, the blasting zone shall be cleared of all personnel for:
 - 1) a minimum of 30 minutes when using safety fuse, detonating cord and electronic initiation systems; or
 - 2) a minimum of 15 minutes for electric and shock tube initiation systems.
- i) If explosive material is suspected of burning at the blast site, persons shall be evacuated from the endangered area and shall not return for at least one hour after the burning or suspected burning has stopped.
- j) During the approach and progress of an electrical storm, blasting operations shall be suspended and persons withdrawn from the blasting zone and relocated to a safe location.
- k) The source of energy used to initiate the blast shall not be connected to the blasting circuit until it has been confirmed that the blasting zone is clear, and it is safe to fire the blast.

- 345 l) Blastholes shall not be drilled where there is a danger of intersecting a misfired
346 hole or a hole containing explosives, blasting agents, or detonators.
- 347
- 348 m) Operators shall assure that the blast site is free of hazards prior to the arrival of
349 explosives including, but not limited to, highwall safety and ground stability.
- 350
- 351 n) Tamping shall not be done directly on a primer.
- 352
- 353 o) Work shall not resume in the blast area until a post-blast examination addressing
354 potential blast-related hazards has been conducted by a person with the ability and
355 experience to perform the examination.
- 356
- 357 p) Blasting activities incident to underground mining, including all blasts within 50
358 feet of the development of slopes and shafts, are considered a surface blast.

359 (Source: Amended at 48 Ill. Reg. _____, effective _____)

360 **Section 300.220 Monitoring**

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- 363 a) Duties of the Operator
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- 366 1) When the scaled distance has a value less than 65 at the closest protected
367 structure, the operator shall make a seismographic recording and airblast
368 recording at or as near as possible to that structure.
- 369
- 370 2) When any blast is within 500 feet of a landfill, the operator shall make a
371 seismograph recording at or near the closest part of the landfill to the blast.
372 This requirement shall not apply if a protected structure is located between
373 the blast and the landfill or if an alternative compliance method has been
374 approved by the Department in accordance with Section 300.225(f).
- 375
- 376 3) When the cubed root scaled distance to the nearest protected structure has
377 a value less than 350 and when the burden to hole depth ratio is greater
378 than 1.0, or the top stemming height is less than 70% of the burden
379 dimension, the airblast produced by the blast shall be measured at or as
380 near as possible to the closest protected structure. ~~This subsection shall not~~
381 ~~apply to horizontal blast holes drilled from the floor of the pit.~~
- 382
- 383 4) When field programmed times of electronic, or programmable detonators
384 are unable to be electronically documented or verified in subsection
385 (a)(5)(a)(xiv), the operator shall make a seismographic and airblast
386 recording for Department review, at or as near as possible to the closest
387 protected structure.

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54) The operator shall maintain blasting records as follows:

- A) A record of each blast shall be made, retained by the operator for at least ~~five~~three years and made available for inspection by the Department. Each blast record, as well as other documentation deemed relevant to that record, shall not be falsified or misrepresented. Units of measure shall be included on each blast record. The blast record should be based on the maximum pounds in any given hole in the blast. Records of blasts conducted since the Department's last inspection, or copies of such blasting records, shall be made available at the operation for inspection by the Department. The record is to be completed by the end of the work day following the day in which the blast occurred, including the seismograph meter reading, if ~~required~~available, and shall contain the following data:
 - i) Name of the mine operator for whom the blast is being conducted~~conducting the blast.~~
 - ii) The location, using global positioning data points, date and time of the blast. ~~If necessary to enforce the purposes of these regulations, the Department may require that the location of the blast be indicated as a point on a state plane coordinate system.~~
 - iii) Name, signature and licensure number of the licensed blaster responsible for the blast.
 - iv) Type of material blasted.
 - v) Number of holes, burden and spacing.
 - vi) Diameter and depth of holes.
 - vii) Type and amount of each explosive~~explosives~~ used, including any variation from the heaviest hole.
 - viii) Total weight of explosives used in pounds.
 - ix) Maximum weight, in pounds,~~Weight~~ of explosives used in any one~~per~~ hole.

- 431 x) Maximum weight of explosives, in pounds, detonated
432 within any eight millisecond period.
433
- 434 xi) Maximum number of holes or explosive decks detonated
435 within any eight millisecond period.
436
- 437 xii) Initiation system, including number of circuits and the
438 timer interval, if a sequential timer is used.
439
- 440 xiii) Type and length of stemming (deck and top).
441
- 442 xiv) Type of detonator and delay periods used, in milliseconds.
443 When electronic or programmable detonators are used,
444 field programmed times shall be documented utilizing a
445 date stamp which is derived from the machine used to
446 detonate the blast. This documentation should be
447 representative of the firing times at the instant of
448 detonation. This documentation is not required when
449 detonators are pre-programmed by the manufacturing
450 facility with labels indicating, in milliseconds, the nominal
451 firing time.
452
- 453 xv) Sketch of delay pattern, including decking, which indicates
454 all hole to hole connections and the firing times of each
455 hole as well as a directional indicator.
456
- 457 xvi) Distance and scaled distance to the closest protected
458 structure, using global positioning data points~~the best~~
459 ~~available information.~~
460
- 461 xvii) Location, using global positioning data points,~~or address~~
462 ~~of the closest protected structure,~~~~using the best available~~
463 ~~information.~~
464
- 465 xviii) Distance and scaled distance to the closest part of any
466 landfill within 500 feet of the blast.
467
- 468 xix) A hole diagram indicating borehole depth, subdrill,
469 borehole diameter, type and length of stemming, primer
470 location, location and size of inert decks, weight and type
471 of explosives used per explosive column.
472
- 473 xx) List of persons assisting with blast loading and initiation.

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- xxi) Drill log showing the physical characteristics of each hole.
- xxii) Seismograph recordings of airblast and ground vibration, when required.
- xxiii) Seismograph identification number.
- xxiv) The type of seismograph, sensitivity, and certification date of annual calibration which must be conducted within one year of the previous calibration date.

B) Air blast and/or ground vibration recordings, or photographic copies thereof, where required by the Department, shall be kept for a period of ~~five~~^{three} years following the date of the blast, and shall be available for inspection by the Department. Records of blasts conducted since the Department's last inspection, or copies of such blasting records, shall be made available at the operation for inspection by the Department. The recordings shall include the following information:

- i) Maximum airblast and/or ground vibration levels recorded.
- ii) The specific location of the monitoring equipment, its distance from the blast and the date and time of the recording.
- iii) Name of the person and/or~~and~~ firm making the recording.
- iv) Name of the person and/or~~and~~ firm analyzing the recordings. ~~The recording shall be signed and dated by the person performing the analysis.~~
- v) The type of seismograph~~instrument~~, sensitivity and ~~calibration signal or~~ certification date of annual calibration which must be conducted within one year of the previous calibration date.

C) As used herein, "seismographic recording", or "record of airblast recording", or "record" shall mean a visually inspectable cartesian representation of the time history of the particle velocity levels and/or~~or~~ airblast levels versus time. The particle velocity is shown by three traces representing mutually perpendicular components of

517 motion. The components are oriented vertically, transversely and
 518 longitudinally to the horizontal direction from the recording
 519 location to the location of the blast. The airblast time history is
 520 represented by a single trace. The record or recording includes
 521 either an analog representation, or a written description, of the
 522 vertical scale for the particle velocity traces and the airblast trace.
 523 The units for the particle velocity traces and scale are in inches per
 524 second. The units for the airblast trace and scale are millibars,
 525 pounds per square inch, or decibels. The recording shall also
 526 include an analog or descriptive time scale. The time units are in
 527 seconds.
 528

529 b) Duties of the Department

- 530
- 531 1) The Department shall conduct seismographic monitoring at any operation
 532 at such times and conditions as the Department deems appropriate.
 533
 - 534 2) The Department shall conduct inspections of the operation as follows:
 535
 - 536 A) Randomly without notice twice per year.
 - 537
 - 538 B) At such other times and conditions as the Department deems
 539 appropriate.
 - 540
 - 541 C) Less frequently than twice per year at operations where blasting is
 542 not regularly conducted.
 543
 - 544 3) All Department employees conducting official business shall inform the
 545 operator or the operator's designated representative, if either is present,
 546 upon arrival to and departure from the operation.
 547

548 (Source: Amended at 48 Ill. Reg. _____, effective _____)
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550 **Section 300.225 Use of Explosives; Control of Adverse Effects**

- 551
- 552 a) Blasting shall be conducted to prevent injury to persons and damage to public or
 553 private property outside the blasting zone.
 554
 - 555 b) Airblast limits
 556
 - 557 1) Airblast shall be controlled so that it does not exceed the values specified
 558 below at any protected structure, unless such structure is owned by the
 559 operator and not leased to any other person, or a waiver has been obtained

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in accordance with subsection (g) ~~below~~.

Lower frequency limit of measuring system, Hz + 3dB	Maximum level in dB
0.1 Hz or lower--flat response	134 peak
2.0 Hz or lower--flat response	133 peak
6.0 Hz or lower--flat response	129 peak

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2) The measuring systems used shall have a flat frequency response of at least 200 Hz at the upper end.

3) The person who conducts blasting may satisfy the provisions of this subsection (b) by meeting any of the three specifications in the chart in subsection (b)(1).

4) To ensure compliance with the limits contained in this Section, the Department may require an airblast measurement of any or all blasts, and may specify the location of such measurements.

5) Any exceedance of the airblast limitations listed in subsection (b)(1) shall be reported to an authorized representative of the Department immediately by phone and in writing within 24 hours of telephone notification. Telephone numbers can be found at www.dnr.illinois.gov/mines/ead/documents/districtmap.pdf.

c) Flyrock

1) Flyrock, including blasted material traveling in the air or along the ground, but excluding dust and detonation by-products, shall not be cast beyond the posted, pre-established blasting zone. Flyrock traveling outside the pre-established blasting zone shall be reported to an authorized representative of the Department immediately by telephone and in writing within 24 hours of telephone notification. Telephone numbers can be found at www.dnr.illinois.gov/mines/ead/documents/districtmap.pdf.

2) In the event of flyrock causing personal injury or property damage, or any flyrock cast outside the blasting zone, the blaster's license shall immediately be suspended for a period not to exceed 15 days from the date of the flyrock incident or until the Department conducts a complete investigation of the incident detailing any remedial action required.

3) In the event of flyrock causing personal injury or property damage or any

597 flyrock cast outside the blasting zone, a cessation order preventing further
 598 blasting of the bench or ledge in which the flyrock occurred shall take
 599 effect immediately.

600
 601 d) Ground vibration limits

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 603 1) In all blasting operations, except as otherwise authorized in this Section,
 604 the maximum peak particle velocity shall not exceed one inch per second
 605 at the location of any protected structure, unless such structure is owned
 606 by the operator and not leased to any other person or a waiver has been
 607 obtained in accordance with subsection (g) ~~below~~.

608
 609 2) Any exceedance of the ground vibration limitations listed in subsection
 610 (d)(1), including any exceedances of alternative methods of monitoring in
 611 subsection (f) shall be reported to an authorized representative of the
 612 Department immediately by phone and in writing within 24 hours of
 613 telephone notification. Telephone numbers can be found at
 614 www.dnr.illinois.gov/mines/ead/documents/districtmap.pdf.

615
 616 32) In addition to the requirements in subsection (d)(1) ~~above~~, when any blast
 617 is within 500 feet of a landfill, the blasting shall be conducted in order to
 618 control ground vibrations not to exceed five inches per second, at the
 619 closest part of the landfill. Blast monitoring shall comply with Section
 620 300.220(a)(2). The ground vibration limit shall not apply to the following;
 621 a landfill in the process of being mined through; mining activities
 622 associated with the construction of a landfill; a landfill containing only
 623 inert waste; or a landfill or any cell of a landfill that does not contain a
 624 geomembrane or earth liner.

625
 626 e) When the scaled distance has a value less than 65 at the ~~closest~~ nearest protected
 627 structure, a seismograph recording shall be made at or as near as possible to that
 628 structure. To ensure compliance with the limits contained in this Section, the
 629 Department may require a seismograph recording of any or all blasts and may
 630 specify the location at which such recordings are made.

631
 632 f) In lieu of the ground vibration ~~limits~~ limit(s) in subsection (d) ~~above~~, the operator
 633 may submit a written request to the Department to use an alternative compliance
 634 method. Such written request must be supported by sufficient technical
 635 information, which may include, but is not necessarily limited to, documented
 636 approval of such method by agencies in other states which regulate blasting
 637 operations at coal and/or non-coal mineral extraction operations. Upon submittal
 638 by the operator of a request to use an alternative compliance method, the
 639 Department shall issue a written determination as to whether the technical

640 information submitted provides sufficient justification for the alternative method
641 to be used as a means of demonstrating compliance.

642
643 g) Waivers

644
645 1) A waiver of the airblast and ground vibration limits in subsections (b) and
646 (d) ~~above~~ may be obtained by the operator in the following circumstances:

647
648 A) If the protected structure is owned by the operator and leased to
649 any other person; or

650
651 B) If the protected structure is not owned by the operator but the
652 owner of the structure has a bona fide financial interest in, or
653 commercial relationship with, the mining operation. The operator
654 shall provide written documentation of any such interest or
655 relationship to the Department upon request.

656
657 2) The waiver shall be signed by the owner of the structure unless the
658 operator is the owner. If the structure is leased to any other person, the
659 waiver must be signed by both the owner and lessee.

660
661 3) The waiver shall be in writing in a form approved by the Department, and
662 shall be submitted to the Department before conducting blasting
663 operations in accordance with the term of the waiver.

664
665 4) The operator is responsible for keeping complete and up to date records on
666 all waivers executed, including real estate and lease transactions that may
667 affect the validity of the waiver. These records shall be made available for
668 inspection by the Department.

669
670 5) The waiver provided for in this subsection (g) shall consist solely of a
671 waiver of the airblast and ground vibration limits set forth in this Section
672 and is not intended to exempt the operator from civil liability.

673
674 (Source: Amended at 48 Ill. Reg. _____, effective _____)

675
676 **Section 300.230 Use of Explosives; Blasting Signs, Warnings, and Access Control**

677
678 a) Specifications. Signs and markers required under this Part shall:

679
680 1) Be posted and maintained by the mine operator;

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682 2) Be of uniform design that can be easily seen and read; and

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- 3) Be made of durable material.
 - b) Duration of maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.
 - c) Blasting signs. The mine operator shall:
 - 1) ~~Display~~~~Conspicuously display~~ blasting signs~~sign(s)~~ along the perimeter~~edge~~ of any blasting zone. Signs shall be posted every 500 feet or less; that comes within one hundred (100) feet of any public road right-of-way; and at the point where any other road provides access to the blasting zone; ~~and~~
 - 2) At all entrances to the operation from public roads or highways, place conspicuous signs~~sign(s)~~ which indicate explosives are used at the operation and which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use;:-
 - 3) When explosive materials or initiating systems are brought to the blast site, the blast site shall be attended at all times by an authorized person; barricaded and posted with warning signs, such as "Danger", "Explosives", or "Keep Out"; or flagged against unauthorized entry; and
 - 4) Provide a map designating the current blasting zone which must be made available for onsite review and shall also be on file with the Department.
 - d) Warning and all-clear signals of different character or pattern that are audible within the blasting zone shall be given.
 - e) Access to the blasting site and blasting zone shall be controlled to prevent the presence of unauthorized personnel during blasting until an authorized representative of the operator has reasonably determined:
 - 1) That no unusual circumstances, such as undetonated charges, exist; and
 - 2) That access to and travel in or through the area can be safely resumed.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

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722
723 **Section 300.235 Training**
724

- 725 a) Training required in this Section~~herein~~, for those persons not previously trained in

726 the subjects required ~~in this Section~~ ~~herein~~, shall be conducted by ~~either~~ the
 727 Department, ~~the operator or the operator's training representative.~~ ~~The operator's~~
 728 ~~training representative may include but is not limited to junior colleges,~~
 729 ~~consultants and explosives manufacturers.~~ The training must meet the
 730 requirements of this Section.

- 731
- 732 b) The training for blaster's licensure shall include instruction in:
- 733
- 734 1) The design and layout of blasts, including geology, topography and the
 735 proper use of delays.
 - 736
 - 737 2) Control of ground vibration.
 - 738
 - 739 3) Control of flyrock and airblast.
 - 740
 - 741 4) Design and loading of boreholes.
 - 742
 - 743 5) Priming and boosting.
 - 744
 - 745 6) Tamping and stemming, including methods and materials.
 - 746
 - 747 7) Blast initiation systems.
 - 748
 - 749 8) The use of blasting machines.
 - 750
 - 751 9) The use of circuit testing equipment.
 - 752
 - 753 10) The general properties of explosives, including blasting agents and
 754 selection criteria.
 - 755
 - 756 11) Ground vibration, airblast and monitoring.
 - 757
 - 758 12) The use of ground vibration and airblast records as blast design factors.
 - 759
 - 760 13) The need for accurate reports and blasting logs and their proper
 761 preparation.
 - 762
 - 763 14) Current Illinois and Federal laws and regulations pertaining to blasting at
 764 the operation.
 - 765
 - 766 15) Planning for unpredictable blasting hazards to the public and mine
 767 personnel. Illustrative examples are adverse weather, stray electrical
 768 currents, flyrock, radio frequency energy and misfires.

- 769
770 16) Signs, warning signals and control of the potential flyrock area.
771
772 17) Site security and safety.
773
774 18) Handling, transportation and storage of explosives.
775
776 19) New technology as it develops and is implemented in the field.
777
778 20) Training and licensure requirements.
779
780 c) The licensed blaster shall provide direction and on-the-job training to all non-
781 licensed blasting personnel under his supervision.
782

783 (Source: Amended at 48 Ill. Reg. _____, effective _____)
784

785 **Section 300.236 Examination**
786

- 787 a) Written examinations for blaster licensure shall be administered at least
788 semiannually, on dates and at times and locations announced by the Department
789 via news releases and direct communication with operators and individuals who
790 request, in writing, to be so notified. In the case of occurrences beyond the
791 Department's control, scheduled examinations and training may be postponed
792 until the earliest opportunity. All persons scheduled for a regular examination
793 session will be so notified at least one week prior to the scheduled exam date.
794
795 b) Reexaminations shall be scheduled, if needed, for those persons who do not pass
796 the regularly scheduled examination. ~~The Department shall also allow for~~
797 ~~examination at this time for those persons who have newly applied for licensure.~~
798 All persons scheduled for ~~examination or~~ reexamination during the reexamination
799 session will be so notified at least one week prior to the scheduled reexamination
800 session.
801
802 c) If the applicant cannot attend the examination or reexamination session for which
803 the applicant~~he or she~~ is scheduled, the applicant shall so inform the Department
804 at least one day in advance of the examination date. Failure to do so will result in
805 the application being rejected, and the applicant having to reapply for licensure.
806 Any person who cannot attend such a session and who informs the Department in
807 accordance with this Section will be scheduled for the next examination or
808 reexamination session.
809
810 d) Applicants for blaster licensure shall be examined on the topics set forth in
811 Section 300.235(b).

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 300.237 Application and Licensure

a) Each applicant shall submit a completed application for licensure on forms supplied by the Department. The application shall be accompanied by the required fee, which is non-refundable. Any applicant whose completed application has been received, reviewed and accepted by the Department prior to a regularly scheduled examination session shall be scheduled for that session. The completed application shall include:

1) Proof of the applicant's blasting experience, which shall include:~~A~~

A) A notarized statement from the applicant's employer or a licensed blaster having personal knowledge of the applicant's blasting experience relating to the subjects listed in Section 300.235~~(b)~~ of this Part, and affirming that the applicant has had at least two years blasting experience within the previous five years as it relates to aggregate mining; or

B) A ~~notarized~~ notarized statement from an Illinois licensed blaster who directly supervised the applicant, affirming that the applicant has experience with the following: proper blast design to comply with the regulatory requirements of this Part, drilling, loading, initiation systems and delay timing, monitoring requirements, and ~~blasting~~ blast zone security and safety. The applicant's experience shall have included detailed involvement with at least 120 aggregate mining blasts which have taken place within the previous five years.

2) Proof that the applicant has successfully completed a blaster training course or courses that cover the material listed in Section 300.235~~(b)~~ ~~of this Part~~.

3) An applicant for original licensure, except for an applicant who has previously submitted fingerprint-based data to the Department, shall submit with the application, fingerprint-based data, or other state of the art criminal identification data or 2 sets of fingerprint cards on forms specified by the Department. The fingerprint cards shall be accompanied by the required non-refundable application fee.

b) The Department shall review each application, including required documents, for

- 855 completeness and the accuracy of the statements contained in the application and
 856 required documents. The Department's acceptance of an application shall be based
 857 on the applicant's compliance with the requirements of this Part.
 858
- 859 c) Each applicant shall be required to pass a written examination established and
 860 administered by the Department. The examination shall cover the subjects set
 861 forth in Section 300.235 ~~(b) of this Part~~. The minimum passing score shall be 70
 862 points ~~70% correct answers~~. The Department retains the sole right to determine
 863 whether any or all responses to examination questions are correct.
 864
- 865 d) Any applicant whose application is denied shall be so informed in writing, within
 866 30 days after the date the applicant is found to be not qualified. Reasons ~~Reason(s)~~
 867 for such denial shall be included with the notification. Each applicant who meets
 868 the requirements of subsection (a) ~~above~~ and who passes the examination required
 869 in subsection ~~(c)~~ ~~above~~ shall be issued a blaster license as soon as practicable
 870 thereafter, but not more than 45 days after the examination date. Any applicant
 871 who meets the requirements of Section 300.237(a) but who does not pass the
 872 examination shall be so notified within 15 days of the examination date. That
 873 applicant ~~person~~ may, upon written request, review their ~~his or her~~ examination at
 874 the Department's Springfield office. Such request must be made and the review
 875 completed not less than ten days prior to the reexamination date for which the
 876 applicant is scheduled. The review must be done during the Department's regular
 877 business hours. Any applicant ~~person~~ who does not pass the examination shall be
 878 scheduled for the next reexamination session, pursuant to Section 300.236(b) ~~of~~
 879 ~~this Part~~.
 880
- 881 e) An employed blaster shall have their Illinois Surface Aggregate ~~his or her~~ license
 882 readily available for inspection at the operation.
 883
- 884 f) A temporary blaster license will be issued to any individual who applies to the
 885 Department for such licensure and who provides a photocopy of his or her valid
 886 blaster license issued in another state, or the name of the state where the license
 887 was issued and the license number. The period of the temporary blaster license
 888 shall not exceed six months from the date of issuance. Such a temporary license
 889 shall be issued only once to any individual in any continuous five year period.
 890
- 891 g) Each license shall be valid for five years from the date of issuance. Renewal
 892 following expiration shall be in accordance with the application, examination and
 893 licensure requirements of this Part. Any applicant whose license has been expired
 894 for a period of two years or more from the date of expiration will be required to
 895 complete the training set forth in Section 300.235.
 896
- 897 h) Blaster licensure shall not be assigned or transferred.

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- i) Blasters shall not delegate their responsibility to any individual who is not a licensed blaster.

- j) The blaster shall take reasonable precaution to protect ~~their~~~~his or her~~ license from loss, theft or unauthorized duplication. Such loss, theft or duplication shall be reported to an authorized representative of the Department immediately by phone. Telephone numbers can be found at www.dnr.illinois.gov/mines/ead/documents/districtmap.pdf. A written notice, which can be in the form of email, must be submitted to the Department within 5 days after the phone notification, shall be executed under penalties of perjury, and shall include a description of the time, location, and circumstances surrounding the loss, theft or destruction of the license~~without delay.~~

- k) Applicants for blasting licensure must meet and maintain the qualifications as per Section 300.239.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 300.238 Fees

The following fees shall be paid to the Department for administration of the Act and are non-refundable. The fees submitted shall be in the form of a personal check, company check, cashier's check or money order made payable to the Illinois Department of Natural Resources, Office of Mines and Minerals.

- a) The fee for an application is \$150.
- b) The fee for reexamination of an applicant is \$50.
- c) The renewal fee for a license is \$150.
- d) The fee for a temporary license is ~~\$300~~150.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 300.239 Denial, Issuance of Notice of Infraction, Suspension, Revocation and Other Administrative Actions

- a) The Department shall deny an application for, or may revoke or suspend, a license under the provisions of this Section if the Department finds that the applicant or licensee:

- 941 1) has willfully violated any provisions of the Act or this Part;
942
943 2) has made material misstatement or knowingly withheld information in
944 connection with any original or renewal application;
945
946 3) has falsified or misrepresented documentation related to a blast record or
947 explosive use;
948
949 4) has been declared incompetent by any competent court by reasons of
950 mental or physical defect or disease unless a court has since declared the
951 applicant or licensee~~him~~ competent;
952
953 5) consumes alcohol or ~~unlawfully uses~~ or is under the influence of alcohol
954 or drugs in the workplace;
955
956 ~~5) has been convicted in any jurisdiction of any felony within the prior 5~~
957 ~~years;~~
958
959 6) is a fugitive from justice.
960
961 7) is under the age of 21 years old;
962
963 8) has been convicted in any court of a crime punishable by imprisonment for
964 a term exceeding one year;
965
966 9) is under indictment or formally charged for a crime punishable by
967 imprisonment for a term exceeding one year;
968
969 10) is an unlawful user of or addicted to any controlled substance;
970
971 11) has been adjudicated as a person with a mental disability;
972
973 12) is not a legal citizen of the United States or lawfully admitted for
974 permanent residence;
975
976 13) has been other than honorably discharged from the armed services; and
977
978 14) has any outstanding, unpaid, violations with the Department.
979
980 b) An applicant for original licensure, except for an applicant who has previously
981 submitted fingerprint-based data to the Department, shall submit with the
982 application fingerprint-based data, or other state of the art criminal identification
983 data or 2 sets of fingerprint cards on forms specified by the Department. The

984 [fingerprint cards shall be accompanied by the required non-refundable application](#)
985 [fee.](#)

986 **c)** Notice of Infraction

- 987
- 988
- 989 1) The Department shall, when in the best interest of protecting public safety
990 or public or private property, issue to the blaster a written notice of
991 infraction requiring remedial action when, on the basis of any inspection,
992 the Department determines that the blaster has committed any of the
993 following infractions:
- 994
- 995 A) Noncompliance with current Illinois or ~~federal~~[Federal](#) law or
996 regulations pertaining to blasting at the operation, including the
997 Illinois Explosives Act [225 ILCS 210].
- 998
- 999 B) Providing false information or a misrepresentation to obtain
1000 licensure.
- 1001
- 1002 C) Consumption of alcohol or unlawful use of drugs in the workplace.
- 1003
- 1004 D) Noncompliance with any order issued by the Department.
- 1005
- 1006 2) The maximum time allowed to abate the infraction by completing the
1007 remedial action shall be stated in the notice and shall include consideration
1008 of the nature of the infraction, as well as the availability of resources to
1009 complete the abatement. Remedial actions may include, but need not be
1010 limited to, a requirement to receive additional training or undergo
1011 reexamination to demonstrate competence.
- 1012
- 1013 3) A copy of such notice shall be forwarded to the blaster's employer.
- 1014
- 1015 4) Any such notice may be terminated when the remedial action has been
1016 completed, modified to correct deficiencies or errors or make other
1017 changes in the notice or to change the required abatement date, or vacated
1018 if the infraction did not occur or occurred as the result of sabotage by
1019 persons other than the blaster.
- 1020
- 1021 5) The blaster may file a request for review with the Department, and if
1022 desired, a hearing within 30 days after the receipt of the notice of
1023 infraction. The request shall include the blaster's name, licensure number,
1024 identification of the notice, and the date of the notice. The request shall be
1025 forwarded to: Illinois Department of Natural Resources, Office of Mines
1026 and Minerals, [Explosives and Aggregate Division, One Natural Resources](#)

1027 Way 524 S. Second St., Springfield, IL 62702~~62701-1787~~. If a hearing is
1028 requested, the hearing shall be conducted in accordance with Section
1029 300.248~~62 Ill. Adm. Code 300.245(b)~~ and shall be held in Springfield.
1030 The Department shall give at least five days notice of the date, time and
1031 location of the hearing to the blaster, the blaster's~~his or her~~ employer and
1032 any person who filed a report which led to the notice that was issued.

- 1033
1034 6) The filing of a request for hearing shall not act as a stay of the remedial
1035 actions required as part of the notice of infraction.

1036 de) License Suspension or Revocation

- 1037
1038
1039 1) The Department shall issue to the blaster a written notice for the blaster to
1040 show cause why the~~his~~ license should not be suspended or revoked for a
1041 specified period (not to exceed the term of the license) upon a finding of:
1042
1043 A) A willful commission of an infraction; or
1044
1045 B) A failure to complete the remedial action stated in a Notice of
1046 Infraction.
1047
1048 2) The blaster shall have 21 days from the receipt date of the notice, or other
1049 time period necessary for adequate response as may be set out in the
1050 notice, in which to file an answer and request a hearing. If the blaster files
1051 an answer to the show cause order and requests a hearing, a public hearing
1052 shall be provided and conducted in accordance with Section~~62 Ill. Adm.~~
1053 Code 300.248. The Department shall give 30 days written notice of the
1054 date, time and location of the hearing to the blaster, the blaster's employer
1055 and any person who filed a report which led to the order that was issued.
1056
1057 3) If the Department determines that the infraction resulting from the willful
1058 act on the part of the blaster creates an imminent danger to the health or
1059 safety of the public or imminent damage to public or private property, the
1060 Department shall immediately issue a temporary suspension of the
1061 blaster's license. The temporary suspension shall be in writing, and shall,
1062 with reasonable specificity, set forth the nature of the infraction and the
1063 imminent danger or damage incurred or about to be incurred. Such
1064 suspension shall be subject to a hearing to be provided not less than 15
1065 days after the blaster's receipt of the temporary suspension. The hearing
1066 shall determine whether the suspension shall be continued or terminated or
1067 whether the license shall be revoked. Temporary suspension issued under
1068 the authority of this subsection shall not exceed 15 days. The hearing shall
1069 be conducted in accordance with Section~~62 Ill. Adm. Code~~ 300.248 and

1070 shall be held at the Department's Springfield office.

- 1071
- 1072 4) Upon written notice of revocation, including the findings upon which the
- 1073 notice is based, the blaster shall without delay surrender the revoked
- 1074 license to the Department.
- 1075

1076 (Source: Amended at 48 Ill. Reg. _____, effective _____)

1077

1078 **Section 300.245 Notices of Violation**

1079

1080 a) An authorized representative of the Department shall issue a notice of violation if,

1081 on the basis of an inspection, the authorized representative~~he or she~~ finds a

1082 violation (of this Part) for which a cessation order may not be issued under

1083 Section 300.246.

1084

1085 b) A notice of violation issued under this Section shall be in writing, signed by the

1086 authorized representative who issued it, and shall set forth with reasonable

1087 specificity:

1088

1089 1) The nature of the violation;

1090

1091 2) Statute Sections or regulations violated;

1092

1093 3) The remedial action required, which may include interim steps;

1094

1095 4) A reasonable time for abatement, which may include time for

1096 accomplishment of interim steps; and

1097

1098 5) A reasonable description of the portion of the blasting area to which it

1099 applies.

1100

1101 c) A notice of violation shall be served upon the operator or an agent of the operator,

1102 if either is present on site. If the operator, or operator's agent, is not present, the

1103 notice of violation shall be mailed to the operator's address. The notice of

1104 violation shall be considered served when personally delivered or mailed.

1105

1106 d) The operator issued the notice of violation may provide the Department a written

1107 response to the violations~~violation(s)~~ within ~~fourteen~~(14) days after the delivery

1108 or mailing of the notice. Such written response may include a proposed

1109 alternative to the Department's specified remedial action needed to abate the

1110 violations~~violation(s)~~. The Department shall consider any information so

1111 submitted in determining the facts surrounding the violation and the amount of the

1112 penalty. The written response shall be submitted to the Illinois Department of

Natural Resources, Office of Mines and Minerals, [Explosives and Aggregate Division, One Natural Resources Way](#)~~524 S. Second Street~~, Springfield, Illinois ~~62702~~~~62701-1787~~.

- e) The notice of violation shall provide that the operator named in the notice has the right to request a hearing to contest the facts of the ~~violations~~~~violation(s)~~ alleged by the Department, as well as the civil penalty assessed, after the issuance of the Office of Mines and Minerals Decision, pursuant to Sections 300.247 and 300.248.
- f) A notice of violation issued under this Section shall continue in effect until modified, vacated or terminated by the Department. Termination shall not affect the right of the Department to assess civil penalties for those violations in accordance with Section 240.247(d). A notice of violation can only be terminated when all abatement action required by the Department has been completed.
- g) A notice of violation may be modified, vacated or terminated in writing by either:
 - 1) An authorized representative of the Department; or
 - 2) The issuance of an Office of Mines and Minerals Decision pursuant to Section 300.247.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 300.246 Cessation Orders

- a) Standards for Issuance
 - 1) An authorized representative of the Department shall immediately order a cessation of blasting operations if ~~the authorized representative~~~~he or she~~ finds, on the basis of any State inspection, any condition or practice, or any violation of Section 6.5 of the Act, which may cause injury to ~~persons~~~~person(s)~~ or ~~damage to~~ public or private property outside the blasting zone.
 - 2) If the cessation order will not completely abate the imminent danger or harm in the most expeditious manner possible, the authorized representative of the Department shall impose affirmative obligations on the operator to whom it is issued to abate the condition, practice or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

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3) Third and subsequent violations of the same rule within a one year period from the date of issuance of the first violation or the date of the final administrative or judicial decision may result in a cessation of blasting operations.

b) A cessation order shall be in writing, signed by the authorized representative who issued it, and shall set forth with reasonable specificity:

- 1) The nature of the condition, practice or violation;
- 2) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
- 3) The time established for abatement, if appropriate, including the time for meeting any interim steps; and
- 4) A reasonable description of the portion of the blasting zone to which it applies.

c) A cessation order shall be served upon the operator or an agent of the operator, if either is present on site. If the operator, or operator's agent, is not present, the cessation order shall be sent to the operator's address by certified mail, return receipt requested. The cessation order shall be considered served when personally delivered or mailed.

d) Mining operations and other activities intended to protect public health and safety and the environment may continue during the period of any cessation order unless otherwise provided in such order.

e) The operator issued the cessation order may provide the Department a written response to the violations~~violation(s)~~ cited on or before ~~fourteen~~ (14) days after the delivery or mailing of the order. Such written response may include a proposed alternative to the Department's specified remedial action needed to abate the violation. The Department shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty. The written response shall be submitted to the Illinois Department of Natural Resources, Office of Mines and Minerals, Explosives and Aggregate Division, One Natural Resources Way~~524 S. Second Street~~, Springfield, Illinois 62702~~62701-1787~~.

f) The cessation order shall provide that the person or operator named in the order has the right to request a hearing to contest the fact of the violation alleged by the

1199 Department, as well as the civil penalty assessed, after the issuance of the Office
1200 of Mines and Minerals Decision, pursuant to Sections 300.247 and 300.248. In
1201 addition, the cessation order shall provide that the operator named in the order has
1202 the right to request a hearing for temporary relief from the cessation of blasting
1203 operations, in accordance with Section 300.249.

1204
1205 g) A cessation order issued under this Section shall continue in effect until modified,
1206 vacated or terminated by the Department. Termination shall not affect the right of
1207 the Department to assess civil penalties for those violations in accordance with
1208 Section 240.247(d). A cessation order can only be terminated when all abatement
1209 action required by the Department has been completed.

1210
1211 h) A cessation order may be modified, vacated or terminated in writing by either:

1212
1213 1) An authorized representative of the Department; or

1214
1215 2) The issuance of an Office of Mines and Minerals Decision pursuant to
1216 Section 300.247.

1217
1218 i) The filing of a request for a hearing under Section 300.248 shall not operate as a
1219 stay of the cessation order. The cessation order may be stayed by the grant of
1220 temporary relief in accordance with Section 300.249.

1221
1222 (Source: Amended at 48 Ill. Reg. _____, effective _____)

1223
1224 **Section 300.247 Office of Mines and Minerals Decision**

1225
1226 a) Upon receipt of a notice of violation or cessation order, the Director of the Office
1227 of Mines and Minerals, or [the Director's](#)his designee, shall conduct an
1228 investigation and either affirm, vacate or modify the notice of violation or
1229 cessation order.

1230
1231 b) Modification of the Notice of Violation or Cessation Order may include:

1232
1233 1) Any different or additional remedial actions necessary to abate the
1234 violation and the time within which the violation must be abated;

1235
1236 2) The assessment of civil penalties for each and every act of violation;

1237
1238 3) Probationary or permanent modification or conditions on the blasting site
1239 which may include special monitoring or reporting requirements;

1240
1241 4) The extension of time set for abatement or for accomplishment of an

1242 interim step may be extended due to the existence of any additional
1243 conditions or factors in aggravation or mitigation of the violation,
1244 including information provided by the operator, if the failure to meet the
1245 time previously set was not caused by lack of diligence on the part of the
1246 operator to whom it was issued; and

1247
1248 5) Termination (when all abatement action required by the Department has
1249 been completed).

1250
1251 c) Inability to Comply

1252
1253 1) No cessation order or notice of violation issued under this Part may be
1254 vacated because of an inability to comply.

1255
1256 2) Unless caused by lack of diligence, inability to comply may be considered
1257 only in mitigation of the amount of civil penalty under subsection (d) ~~of~~
1258 ~~this Section.~~

1259
1260 d) Civil Penalty Assessment Process

1261 The Department shall assess a penalty for each notice of violation or cessation
1262 order. In determining the amount of civil penalties to assess, the Director of the
1263 Office of Mines and Minerals, or the Director's ~~his~~ designee, shall consider:

1264
1265 1) The operator's history of previous violations. For purposes of determining
1266 the history of violations, the Department shall consider only those
1267 violations occurring at the same mining operation within a one year
1268 period.

1269
1270 A) A violation shall not be counted if the notice or order is the subject
1271 of pending administrative review by the Department under Section
1272 300.248 or if the time to request such review has not expired, and
1273 thereafter it shall be counted for only one year after the date of the
1274 Department's final administrative decision or a final judicial
1275 decision affirming the Department's decision;

1276
1277 B) No violation for which the notice or order has been vacated shall
1278 be counted;

1279
1280 C) History of Violations

1281
1282 i) First violation of the rule, assess \$100.

1283
1284 ii) Second violation of the same rule within a one year period

from the date of issuance of the first violation or the date of the final administrative or judicial decision, assess \$250.

iii) Third and subsequent violations of the same rule within a one year period from the date of issuance of the first violation or the date of the final administrative or judicial decision, assess \$500.

2) The seriousness of the violation.

A) If the violation caused or could have been expected to cause injury or damage to~~did not cause injury to persons or cause damage to public or private property, or if the Department cannot clearly make the determination that the violation caused injury to persons or caused damage to public or private~~ property, add \$0.00 to \$1,000~~\$100~~.

B) If the violation caused injury to persons or damage to public or private property, add \$1,000 to \$3,500~~\$500~~.

3) The degree of culpability of the operator.

A) If the Department cannot make a determination that the operator failed to use reasonable care during blasting operations~~in the design or execution of the blast~~, add \$0 (no fine assessed).

B) If the Department determines that the operator did~~violation occurred due to the operator's failure to~~ use reasonable care but~~in~~ the design or execution of the blast resulted in undesirable effects, add \$0.00 to \$250.

C) If the violation occurred as a result of the operator's reckless or deliberate conduct, add \$250 to \$1,000~~\$750~~.

4) Administrative Requirements: In the case of a violation deemed by the Department to be~~of an~~ administrative in nature~~requirement, such as a requirement to keep records~~, the Department shall assess a civil penalty of up to \$100.

5) In the case of a violation/incident in which a blast is conducted without a licensed blaster, the Department shall assess a civil penalty of up to \$5,000 to the operator.

- 1328 e) The Office of Mines and Minerals Decision, including the civil penalty
 1329 assessment, shall be served on the operator within 60 days after the issuance of
 1330 the notice of violation or cessation order. The Office of Mines and Minerals
 1331 Decision shall provide that the operator has the right to request a hearing to
 1332 contest the facts of the violation and/or the civil penalty assessed in accordance
 1333 with Section 300.248(a). The Office of Mines and Minerals Decision affirming,
 1334 vacating, terminating or modifying the notice of violation or cessation order shall
 1335 be served by certified mail, return receipt requested, and shall be considered
 1336 served upon mailing.
 1337
- 1338 f) If the Office of Mines and Minerals Decision includes the assessment of a civil
 1339 penalty, and the operator named in such decision does not request a hearing in
 1340 accordance with Section 300.248(a) to contest the amount of the penalty, the
 1341 amount assessed shall be paid to the Department in full within 30 days after
 1342 service of the Office of Mines and Minerals Decision.
 1343
- 1344 g) An Office of Mines and Minerals Decision not appealed in accordance with
 1345 Section 300.248(a) within 30 days after service shall become a final
 1346 administrative decision of the Department. The operator's failure to request a
 1347 hearing in accordance with Section 300.248(a) shall constitute a waiver of
 1348 administrative rights~~all legal rights~~ to contest the Office of Mines and Minerals
 1349 Decision or the cessation order, including the amount of any civil penalty
 1350 assessed. The filing of a request for hearing under Section 300.248(a) shall not
 1351 operate as a stay of the Office of Mines and Minerals Decision.
 1352
- 1353 h) All civil penalties assessed and paid to the Department shall be deposited in the
 1354 Aggregate Operations Regulatory Fund.
 1355

1356 (Source: Amended at 48 Ill. Reg. _____, effective _____)
 1357

1358 **Section 300.248 Hearings**
 1359

- 1360 a) An operator shall have 30 days from the date of service of the Office of Mines
 1361 and Minerals Decision to request a hearing. All requests for hearing shall be
 1362 mailed or delivered to the Illinois Department of Natural Resources, Office of
 1363 Mines and Minerals, Explosives and Aggregate Division, One Natural Resources
 1364 Way~~524 S. Second Street~~, Springfield, Illinois 62702~~62701-1787~~.
 1365
- 1366 b) Upon receipt of a request for hearing submitted in accordance with subsection (a),
 1367 the Department shall provide an opportunity for a formal hearing upon not less
 1368 than 5 days after written notice mailed to the operator submitting the hearing
 1369 request. The hearing shall be conducted by a hearing officer designated by the
 1370 Director and shall be conducted in accordance with the following procedures:

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- 1) Pre-hearing conferences:
 - A) Shall be scheduled within 30 days after the request for hearing:
 - i) to define the factual and legal issues to be litigated at the administrative hearing;
 - ii) to determine the timing and scope of discovery available to the parties;
 - iii) to set a date for the parties to exchange all documents they intend to introduce into evidence during the hearing, a list of all witnesses the parties intend to have testify and a summary of the testimony of each such witness;
 - iv) to schedule a date for the administrative hearing; and
 - v) to arrive at an equitable settlement of the hearing request, if possible.
 - B) May be conducted via telephone conference if such procedure is acceptable to all parties to the hearing. In the event that a telephone conference is not acceptable to all parties, the pre-hearing conference shall be conducted at a place designated by the hearing officer.
 - 2) Either party may file motions for default judgment, motions for summary judgment, motions for protective orders and motions for orders compelling discovery. The Department's hearing officer shall grant or deny such motions within ~~fifteen~~ (15) days after service. Any order granting a motion for default judgment or a motion for summary judgment shall constitute the Department's final administrative decision as to the Office of Mines and Minerals Decision or cessation order being contested.
 - 3) If a settlement agreement is entered into at any stage of the hearing process, the operator to whom the notice of violation or cessation order was issued will be deemed to have waived all right to further review of the violation or civil penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect. All settlement agreements shall be executed by the hearing officer and shall constitute the Department's final administrative decision as to the Office of Mines and Minerals Decision or

1414 cessation order being contested.

1415

1416 4) All hearings under this Section shall be conducted in accordance with the
1417 contested case provisions set forth in Article 10 of the Illinois
1418 Administrative Procedure Act [5 ILCS 100/Art 10]. All hearings under
1419 this Section shall be conducted in Springfield, Illinois.

1420

1421 5) At the hearing the Department shall have the burden of proving the facts
1422 of the violation alleged in the notice of violation or cessation order at
1423 issue. The amount of any civil penalty assessed shall be presumed to be
1424 proper; however, the operator may offer evidence to rebut this
1425 presumption. The standard of proof shall be a preponderance of the
1426 evidence. The operator shall have the right to challenge the hearing
1427 officer if the operator believes the hearing officer is prejudiced against the
1428 operator ~~him~~ or has a conflict of interest. If the hearing officer disqualifies
1429 himself, the Director of the Department of Natural Resources shall
1430 designate a new hearing officer. The hearing officer shall conduct the
1431 hearing, hear the evidence and at the conclusion of the hearing render
1432 recommended findings of fact, recommended conclusions of law and
1433 recommendations as to the disposition of the case.

1434

1435 c) The Director of the Department of Natural Resources shall review the
1436 administrative record in a contested case, in conjunction with the hearing officer's
1437 recommended findings of fact, recommended conclusions of law and
1438 recommendations as to the disposition of the case. The Director of the
1439 Department of Natural Resources shall then issue the final administrative decision
1440 affirming, vacating or modifying the hearing officer's decision.

1441

1442 d) Judicial Review. Following service of the Department's final administrative
1443 decision, the operator may request judicial review of that decision in accordance
1444 with the Administrative Review Law [735 ILCS 5/Art III].

1445

1446 (Source: Amended at 48 Ill. Reg. _____, effective _____)