

HOUSE No. 4645

The Commonwealth of Massachusetts

PRESENTED BY:

Paul W. Mark

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to drinking water safety.

PETITION OF:

NAME:

Paul W. Mark

DISTRICT/ADDRESS:

2nd Berkshire

HOUSE No. 4645

By Mr. Mark of Peru, a petition (subject to Joint Rule 12) of Paul W. Mark relative to blasting.
Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to drinking water safety.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21G of the General Laws is hereby amended by adding the
2 following section:-

3 Section 21. (a) As used in this section, the following terms shall have the following
4 meanings:-

5 “Blast”, the rapid release of heat and large quantities of high-pressure gases that expand
6 rapidly with sufficient force to overcome confining forces resulting from the very rapid
7 decomposition of a chemical compound or mixture initiated by heat, shock, impact, friction or a
8 combination of these conditions; provided, that the department may vary this definition and may
9 establish exemptions from this definition in regulation.

10 “Blast effect area”, all properties within a 1 mile radius of a blast.

11 “Blaster”, a person who holds a valid certificate of competency issued pursuant to section
12 20B and is qualified to be in charge of and responsible for the design, loading and firing of a
13 blast; provided, that the department may vary this definition in regulation.

14 “Blasting entity”, a person, corporation or other legal business entity that blasts or
15 engages a blaster to blast either on its own behalf or on behalf of another person, corporation or
16 other entity within the commonwealth.

17 “Blasting program”, a blast or series of blasts conducted for a certain project.

18 “Resident”, any person or persons who own or reside at a property within the blast effect
19 area.

20 “Testing”, the sampling and analysis of the private water supply of a resident in a blast
21 effect area conducted by the department according to the standards set by the department.

22 “Water quality reduction”, a decrease in water quality including, but not limited to a
23 decrease in the recharge rate, volume or yield, or an increase in turbidity, as such terms shall be
24 defined by the department.

25 (b) No blaster or blasting entity shall conduct a blast that results in contamination or
26 water quality reduction of a private drinking water supply.

27 (c) A blaster or blasting entity who intends to blast within the commonwealth shall
28 publish the blasting schedule in a newspaper of general circulation in the city or town in which
29 the blasting will occur at least 60 days prior to the start of the blasting. The blasting schedule
30 shall include, but shall not be limited to: (1) the specific location of the blast or blasts; (2) the
31 date and time when each blast will occur; (3) a description of how access to the blast effect area

32 will be controlled to prevent property damage and personal injury; and (4) the types and patterns
33 of blast warnings and signals that will be used to notify residents that blasting has been
34 completed and passage through the area is safe.

35 (d) A copy of the blasting schedule, as described in subsection (c), shall also be sent by
36 certified mail to the department, the local board of health for the city or town in which the
37 blasting will occur, and all residents within the blast effect area at least 60 days in advance of the
38 blasting.

39 (e) A blaster or blasting entity who intends to blast within the commonwealth shall send a
40 written notice by certified mail to each resident within the blast effect area at least 60 days prior
41 to the start of the blasting. Said notice shall be sent simultaneously with the blasting schedule as
42 described in subsection (c), and shall include, but not be limited to: (1) a description of the
43 procedures to ensure the safety of the drinking water in the blast effect area; (2) an offer to
44 provide pre-blast testing to be conducted by the department at the expense of the blaster or
45 blasting entity; (3) contact information in order to schedule the pre-blast testing; (4) an
46 explanation of the pre-blast testing procedure and reporting requirements; and (5) detailed
47 instructions on how to request such testing.

48 (f) Records of all blasts must be maintained by the blaster or blasting entity for a period
49 of at least 5 years from the date of a blast, or the date of the last blast of a blasting program.
50 These records shall be made available for inspection upon written request by, and at no cost to,
51 the public.

52 (g) The failure of a blaster or blasting entity to send a notice or maintain records required
53 by this section, as determined by the department, shall result in a civil penalty not to exceed
54 \$15,000 per violation.

55 (h) The blaster or blasting entity shall be responsible for the reasonable costs of any pre-
56 blast testing requested by a resident, which shall be conducted by the department. The
57 department shall send a written report, by certified mail, detailing the results of the pre-blast
58 testing to the blaster or blasting entity and the requesting resident within 30 days of completion
59 of the testing.

60 (i) A resident within the blast effect area who suspects post-blast private drinking water
61 supply contamination or water quality reduction may file a complaint with the department within
62 6 months of the date of a blast, or the date of the last blast of a blasting program. The
63 department shall develop a standard complaint form and shall make copies available
64 electronically to each local board of health.

65 (j) Upon receipt of a complaint from a resident within the blast effect area pursuant to
66 subsection (i), the department shall initiate an investigation. The blaster or blasting entity shall
67 make its blast records available to the department in a timely manner for the purpose of
68 investigating any complaint. The department may, by written request, require the blaster or
69 blasting entity to pay for post-blast testing for any resident within the blast effect area who has
70 filed a formal complaint.

71 (k) The blaster or blasting entity shall be responsible for the costs of post-blast testing
72 requested pursuant to subsection (i). The post-blast testing shall be conducted by the department
73 within 30 days of the date on which the complaint is filed. The department shall send a written

74 report, by certified mail, detailing the results of the post-blast testing to the blaster or blasting
75 entity and the requesting resident within 30 days of completion of the testing.

76 (l) The department may require a blaster or blasting entity to refrain from conducting
77 blasts in a blasting schedule until all necessary post-blast testing has been completed and the
78 report has been provided to the necessary parties.

79 (m) A blaster or blasting entity shall be liable for the contamination or water quality
80 reduction of a resident's private water supply without proof of negligence. In the absence of
81 clear and convincing evidence to the contrary, a blast shall be considered the cause of any
82 contamination or water quality reduction of a private drinking water supply. After an
83 investigation and upon a determination by the department that a blaster or blasting entity caused,
84 by its blasting, the contamination or a water quality reduction of a resident's drinking water
85 supply, each such violation shall result in a civil penalty not to exceed \$15,000 per violation.

86 (n) The blaster or blasting entity shall also take steps to remedy each violation by
87 eliminating the contamination or water quality reduction, and shall provide an alternate water
88 supply to any effected resident at the blaster's expense until the contamination or water quality
89 reduction is fully eliminated. The blaster or blasting entity shall be responsible for the cost of
90 final testing conducted by the department for the purpose of confirming the elimination of any
91 contamination or water quality reduction caused by the blasting. The department shall send a
92 written report, by certified mail, detailing the results of the final testing to the blaster or blasting
93 entity, the local board of health, and any effected resident.

94 (o) A failure by the blaster or blasting entity to pay for any required pre-blast, post-blast
95 or final testing, or comply with any remedial procedures required in this section, as determined
96 by the department, shall result in a civil penalty not to exceed \$15,000 per violation.

97 (p) This section shall not apply to: mines subject to state or local municipal regulation
98 under chapter 21B; water well drillers subject to state regulation under chapter 21G; or a blast
99 undertaken by, or under contract with and specifically regulated by, the state or federal
100 government, the United States military, a city or town or an agency or division of a city or town.

101 (q) The commissioner of energy and environmental affairs may suspend the application
102 of this section for state, county or municipal projects if the commissioner determines that
103 adequate safeguards have been implemented to prevent private drinking water contamination and
104 water quality reduction.

105 (r) The department shall promulgate rules and regulations necessary to implement this
106 section.

107 SECTION 2. The department of environmental protection shall promulgate rules and
108 regulations defining “recharge rate”, “turbidity”, “volume” and “yield” as referred to in
109 subsection (a) of section 20D of chapter 90 of the General Laws on or before 90 days after the
110 date on which this act is signed into law.