

# WMC

WISCONSIN MANUFACTURERS & COMMERCE

January 10, 2019

Town of Deerfield Board Members  
Attn: Town Clerk  
838 London Road  
Deerfield, WI 53531

Dear Town of Deerfield Board Members:

I am writing today to support Forever Sandfill & Limestone and strongly urge the Town of Deerfield to renew their Oak Park Quarry conditional use permit.

Wisconsin Manufacturers & Commerce (WMC) is Wisconsin's chamber of commerce and manufacturers' association. We have nearly 4,000 members of all sizes and across every sector of Wisconsin's economy. Since our founding more than 100 years ago, WMC has been dedicated to making Wisconsin the most competitive state in which to do business. WMC consistently and vigorously advocates for policies that will lead to economic growth and a better business climate here in Wisconsin. WMC has a significant interest in the outcome of this permitting decision because of its impact on business statewide.

The Oak Park Quarry is an incredibly valuable member of the Deerfield community. The quarry does not simply exist in the Town of Deerfield, but rather it is an active participant in supporting the community, by producing necessary, quality products at an affordable cost. The Town of Deerfield, Dane County and Wisconsin as a whole benefits from the quarry. Without aggregate available, concrete and asphalt is no longer readily available, or is available at a much higher cost as transportation distance and the fuel required increases.

The quarry contributes significantly to the vibrant, rural economy, and has done so in a prudent, thoughtful manner for decades. Equally as important, the quarry, and the 45 local families that rely on the employment by the quarry, are just as much a part of the community as the others with significant interest in this permitting process. The quarry has done its due diligence in hiring countless experts to present evidence supporting the decision for renewal and has done all it can to comply with the arguably unlawful blasting ordinances.

The Wisconsin Supreme Court has repeatedly held that municipalities are prohibited from regulating where an ordinance (1) logically conflicts with state legislation; (2) defeats the purpose of state legislation; or (3) goes against the spirit of state legislation. It also stated that where the legislature has "adopted a complex and comprehensive statutory structure" an ordinance that runs counter to that structure violates the spirit of the legislation and is preempted.

Specifically, in *Lake Beulah v. Village of East Troy* the Supreme Court held that a local high capacity well permit requirement was preempted because it required an additional local permit “which would require the submission of information in addition to what [a permittee] was required to submit to the DNR.” *Lake Beulah v. Village of East Troy*, 2011 WI 55, ¶17.

“[T]he ordinance is invalid because it conflicts with, defeats the purpose of, and violates the spirit of the legislature's delegation of authority to the DNR to regulate high capacity wells in Wis. Stat. § 281.11 and § 281.12 and its creation of a comprehensive permitting framework for high capacity wells in Wis. Stat. § 281.34 and § 281.35. Thus, the ordinance is preempted by state law.” *Lake Beulah v. Village of East Troy*, 2011 WI 55, ¶2.

The Town Ordinances set out unreasonably stringent regulations on blasting which are nearly impossible to comply with. There is blasting activity that would be permitted by the State law and regulations that is prohibited by the Town Ordinances. As in *Lake Beulah*, the Town's permit would “actually prohibit [this activity] from operating as it currently does” and as is permissible under state law. *Id.* at ¶17

The Wisconsin Supreme Court has repeatedly made clear that “[w]here the legislature has ‘adopted a complex and comprehensive statutory structure,’ an ordinance that runs counter to that structure violates the spirit of the legislation and is preempted. *Id.* at ¶17 (quoting *DeRosso Landfill Company, Inc. v. City of Oak Creek*, 200 Wis. 2d 642, 652, 547 N.W. 2d 770 (1996)).

For that reason, the “ordinance frustrates the legislature's purpose in creating a comprehensive regulatory scheme” under DSPS. *Id.* at ¶18. The Wisconsin Legislature has expressly provided a complex and comprehensive statutory structure and regulatory scheme for quarry blasting. Wisconsin, through enacting Chapter 101, which entrusts the Department of Safety and Professional Services with promulgating rules “to effect the safety of...quarries” and “provide for the establishment of *uniform* limits on permissible levels of blasting resultants” and ensure safety and to prevent against “unreasonable annoyance.” Wis. Stat. § 101.15 (2)(b) (emphasis added).

Wisconsin Administrative code further adopts the National Fire Protection Association (NFPA) Explosive Materials Code into Wis. Admin. Code § SPS 307 and has promulgated rules in addition to those national standards and has thus enacted those uniform statewide limits. Wisconsin statutes and administrative code have set out very specific, uniform standards that must be complied with as it relates to controlling the adverse effects of blasting.

Finally, the permitting scheme imposed by the Town's ordinance in addition to the comprehensive regulatory and licensing scheme created by Chapter 101 and Wis. Admin. Code § SPS 307 “does not merely provide additional requirements, but...may prohibit the operation of” this quarry which is otherwise authorized by DSPS under this regulatory scheme. *Id.* at 19. Given the Wisconsin Supreme Court's clear proscription against ordinances like the Town's blasting ordinance, the blasting requirements cannot lawfully be included in the Conditional Use Permit.



Businesses need regulatory certainty, and deserve to be regulated in a manner that complies with the law. We are therefore very concerned by the Town of Deerfield's apparent willingness to refuse to renew the permit, or place unlawful regulations preempted by Supreme Court case law into the permit. Such action, if taken, would set an untenable precedent for all business in Wisconsin who rely on local permitting to conduct their day-to-day operations. WMC respectfully urges the Town of Deerfield to renew the Oak Park Quarry conditional use permit, and refrain from imposing unlawful blasting regulations that are preempted under state law.

Sincerely,

*/s/ Lane Ruhland*

Lane Ruhland  
Director, Environmental & Energy Policy