



**Miami-Dade Limestone
Products Association, Inc.**

September 18, 2018

VIA ELECTRONIC MAIL

State of Florida
Division of State Fire Marshal
Office of the Director
200 East Gaines Street
Tallahassee, Florida 32399-0322

**Re: Miami-Dade Limestone Products Association/ Initial Comment on the
"Construction Materials Mining Activities Consultation and Study Preparation
Services - Final Report," prepared by RESPEC and dated July 2018 (the
"Construction Materials Mining Report" or "Report")**

State Fire Marshal's Office:

On behalf of the Miami-Dade Limestone Products Association and its principal mining members (CEMEX USA; Titan America; Vulcan Materials Company; and White Rock Quarries), we submit this threshold comment on the Report for your prompt consideration. Specifically, the Construction Materials Mining Report errs in its legal analysis of Sections 552.25 and 552.30 of the Florida Statutes. The Report concludes that local governments may regulate blasting vibrations and may do so more strictly than the State of Florida's regulations. In doing so, the Report specifically overlooks section 552.30(1), "Construction Materials Mining Activities," which grants the State Fire Marshal "the sole and exclusive authority" to promulgate standards, limits, and regulations regarding the use of explosives in conjunction with construction materials mining activities¹ (emphasis added). Such authority to regulate the use of explosives shall include "directly or indirectly, the operation, handling, licensure, or permitting of explosives and setting standards or limits, including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast and time, date, occurrence, and notice restrictions."² (emphasis added).

In the body of the Report, under Sections 5.1.2, 5.1.3, 5.4, 5.5, and 5.7, the principal analysis of the municipal and county codes occurs. Due to the mistaken interpretation of Section

¹ "Notwithstanding the provisions of S. 552.25, the State Fire Marshal shall have the sole and exclusive authority to promulgate standards, limits, and regulations regarding the use of explosives in conjunction with construction materials mining activities. Such authority to regulate use shall include, directly or indirectly, the operation, handling, licensure, or permitting of explosives and setting standards or limits, including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast and time, date, occurrence, and notice restrictions. As used in this section, "construction materials mining activities" means the extraction of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials for shipment offsite by any person or company primarily engaged in the commercial mining of any such natural resources." Fla. Stat. §552.30(1) (2018).

² *Id.*



Miami-Dade Limestone Products Association, Inc.

552.30, the Report discusses the regulatory provisions of other local governments and state agencies that regulate blasting, including Miami-Dade County and Lee County, calling out the key differences between their regulations and those promulgated under the authority of the State Fire Marshal's office in the Florida Administrative Code. That faulty interpretation leads to a similarly erroneous conclusion in Section 5.7 of the Report that "local governments may regulate more strictly than statewide codes." See Exhibit A, which includes a summary of the enumerated provisions.

Because the scope of RESPEC's Contract with the State was limited to the evaluation of potential changes to the Florida Administrative Code, the Report specifically notes that its primary recommendations and actions items focused on the Florida Administrative Code and not other Codes, and in this respect, the vast majority of the Report is not impaired by the flawed statutory construction/legal analysis. Therefore, we ask that the provisions of the Report that are mistaken as a matter of law be redacted or otherwise corrected as soon as possible to minimize confusion to the public, including homeowners, elected officials, and other stakeholders.

Respectfully submitted,

Miami-Dade Limestone Products Association



Miami-Dade Limestone Products Association, Inc.

EXHIBIT A

- Section 5.1.2 - "Municipal and County Ordinances, Rules, and Regulations."
 - Within this subsection, the Report cites to Section "552.25" of the Florida Statutes and then concludes: "This statute allows cities, towns, and counties to have ordinances that limit blasting vibrations." The Report continues on to state that "Florida cities, towns, and counties may have different ordinances than what the FSFM [Florida State Fire Marshal] enforces."

- Section 5.1.3 - "552.30 Construction Materials Mining Activities."
 - The Report quotes Subsection 552.30(2)³ of the Florida Statutes that provides for the establishment of ground vibration standards consistent with the United States Bureau of Mines, Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria. The Report fails to mention, however, subsection (1) of 552.30, which provides the clear and unequivocal language of preemption, starting with the key phrase "[n]otwithstanding the provisions of Sec. 552.25, the State Fire Marshal shall have the sole and exclusive authority to promulgate standards, limits, and regulations regarding the use of explosives in conjunction with construction materials mining."

- Section 5.4 - "Miami-Dade County, Florida Code of Ordinances."
 - This subsection of the Report enumerates the "key points in the county ordinance that differ from the FAC [Fla. Admin. Code], which include: blanket limit of 0.75 in/s regardless of frequency; monitoring 3 mutually perpendicular directions at one location 1 mile away from the blast if no house is within 1 Mile of blast. This implies that the operator is required to report ground-vibration wave forms and raw data files.
 - Other subparts of Section 5.4 discuss other Miami-Dade Code provisions that regulate blasting records, notice, and the like.

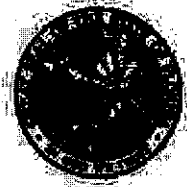
- Section 5.5 - "Lee County Development Code."
 - Similar to the discussion of Miami-Dade County Code, this subsection of the Report enumerates the "key points" in the development code that differ from the FAC [Fla. Admin. Code], which include:

³ "The State Fire Marshal shall establish statewide ground vibration limits for construction materials mining activities which conform to those limits established in the United States Bureau of Mines, Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria (Figure B-1). The State Fire Marshal may, at his or her sole discretion, by rule or formal agreement, delegate to the applicable municipality or county, the monitoring and enforcement components of regulations governing the use of explosives, as recognized in this section, by construction materials mining activities. Such delegation may include the assessment and collection of reasonable fees by the municipality or county for the purpose of carrying out the delegated activities." Id. at §552.30(2).



Miami-Dade Limestone Products Association, Inc.

- 0.3 in/s limit for habitable structures
- Varying limits for differing types of structures
- Seismograph monitoring.
- Other subparts of Section 5.5 discuss other Lee County Code provisions on record keeping, blasting intensity limits, and monitoring.
- Section 5.7 - "Summary,"
 - As one of the conclusions in the Summary, the Report states that "local governments may regulate more strictly than statewide codes."



CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA

November 27, 2018

Miami-Dade Limestone Products Association, Inc.
Attn: Victoria Thomas, Registered Agent
13292 NW 118th Avenue
Miami, Florida 33178

RE: Miami-Dade Limestone Products Association, Inc./Initial Comment on the
"Construction Materials Mining Activities Consultation and Study Preparation Services –
Final Report," prepared by PESPEC and dated July 2018 (the "Construction Materials
Mining Report" or "Report")

Dear Miami-Dade Limestone Products Association, Inc.:

The Department of Financial Services ("Department") is in receipt of your September 18, 2018, correspondence regarding what you characterize as errors in the Report's legal analysis of sections 552.25 and 552.30, Florida Statutes ("MDLPA Correspondence"). We thank you for bringing your concerns to our attention and for providing us with an opportunity to review the issues you raised and provide this response.

Section 552.25, Florida Statutes, enacted in 1955, provides that nothing contained within chapter 552 shall affect any existing ordinance, rule, or regulation pertaining to explosives of any local government not less restrictive than the provisions of chapter 552, or affect, modify, or limit the power of local governments to make ordinances, rules, or regulations pertaining to explosives within their respective limits.

Section 552.30(1), Florida Statutes, enacted in 2000 and after section 552.25, provides that the State Fire Marshal "shall have the sole and exclusive authority to promulgate standards, limits, and regulations regarding the use of explosives in conjunction with construction materials mining activities." Notably, Section 1.0 of the Report, entitled "Introduction", expressly cites to this statute and states that the State Fire Marshal has exclusive authority over this regulatory area.

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Chasity O'Steen • General Counsel

Office of the General Counsel

Plaza Level 11, The Capitol • Tallahassee, Florida 32399-0301 • Tel. 850-413-2898 • Fax 850-413-2950

Email • Chasity.O'Steen@fdfs.state.fl.us

AFFIRMATIVE ACTION • EQUAL OPPORTUNITY EMPLOYER

Ms. Victoria Thomas
November 27, 2018
Page Two

The State Fire Marshal also possesses the sole discretion to "delegate to the applicable municipality or county, the monitoring and enforcement components of regulations governing the use of explosives . . . by construction materials mining activities." § 522.30(2), Fla. Stat. (2018).

The excerpted portions of Sections 5.1.2, 5.1.3, 5.4, 5.5, and 5.7 referenced in the MDLPA Correspondence are consistent with the statutes cited above. For example, Section 5.1.2 states that section 552.25 "allows cities, towns, and counties to have ordinances that limit blasting vibrations." The limitations on blasting vibrations noted in Section 5.1.2 are not related to construction materials mining activities, which is governed by section 552.30. Similarly, the local ordinances referenced in Sections 5.4 and 5.5 are governed by section 552.25 because these local ordinances are not related to construction materials mining activities.


As noted in the MDLPA Correspondence, Section 5.1.3 provides a direct quote of the language in section 552.30(2) and does nothing more than compare this language to the language in Rule 69A-2.024, *F.A.C.*, which implements section 552.30. The sentence from Section 5.7 cited in the MDLPA Correspondence could be construed as an error only to the extent that a reader excerpts the sentence and reads it in isolation, without reading the Report and applying the sentence in context.

The Report consists of 94 pages of technical information, and that is excluding the numerous appendices to the document. Though we cannot agree that the excerpted provisions cited in the Report contain misstatements of law, we do agree that excerpted portions of the Report could be confusing to a reader who does not read the Report in total and grasp the regulatory framework in sections 552.25 and 552.30. Since the Report is a public record, we cannot redact it. However, in an attempt to prevent any further confusion by members of the public who access the Report, which is available on the Department website, we will be posting a copy of the MDLPA Correspondence and this response with the Report.

The Department hopes this information is helpful and responsive to the issues identified in the MDLPA Correspondence. Please do not hesitate to contact me if you have additional questions.

Thank you.

Sincerely,


Chasity H. O'Steen
General Counsel

CHO/bp

cc: Director Julius Halas, Division of State Fire Marshal
Mr. Nathan T. Rouse, RESPEC
Mr. Tristan Worsey, RESPEC