

STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

March 11, 2011

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Stephen G. Jeffery, Esq.  
231 S. Bemiston Avenue  
Suite 800  
Clayton, Missouri 63105

Dear Mr. Jeffery:

The following is in response to public notice comments submitted to the Department of Natural Resources regarding Draft Missouri State Operating Permit MOG491196 serving Strack Excavating, LLC, prepared by Ryan Russell Kemper, Esq. of Thompson Coburn, LLP, on behalf of Saxony Lutheran High School and Save Our Children's Health, Inc., received on February 12, 2011. We appreciate the comments and will try to respond to them in a factual and objective manner.

1. The comments requested volumetric discharge limits in the permit. Effluent limits in permits are established to ensure no violation of water quality standards occur in the receiving stream. There is no water quality standard or effluent regulation for discharge volume, therefore this is outside the authority of the Missouri Clean Water Law. The department may not consider as relevant comments or objections to a permit based on issues outside the authority of the Clean Water Commission, (see Curdt v. Mo. Clean Water Commission, 586 S.W.2d 58 Mo. App. 1979). Missouri's water quality standards and effluent regulations control water quality, not quantity. Therefore, limits on the volume of discharges cannot legally be included in Missouri State Operating Permit, whether general or site specific.
2. The comments stated that the draft permit as written fails to protect the "beneficial reuse" of Hubble Creek. More specifically, you state that the permit does not require the permittee to demonstrate how they will comply with the conditions of the permit. Operating permits include conditions the department determines to be necessary to protect water quality and the designated uses of the receiving stream. In many cases it is not possible for a permittee to make a reliable demonstration that they have complied with these conditions before the permit is issued, particularly for a facility that has not been constructed yet. This is one of the reasons why the department conducts inspections. During an inspection the facility is reviewed for compliance with all of the conditions of the permit, as well as ensuring that no other regulated activities are being conducted that aren't authorized by the permit. It is not possible to grant your request, and the permit will remain unchanged.
3. The comments requested that the department require this facility to obtain a site specific permit, rather than coverage under the general permit. As stated in your letter, the regulation states that situations where a site specific permit should be required include when a Total Maximum Daily Load applies to the discharge, where the facility has failed to comply with the conditions of the general permit, or where the discharge is a

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significant contributor of pollutants which impairs the receiving stream. In this case there is no Total Maximum Daily Load, the facility has not violated any conditions of the permit, and the discharge has not begun, so it has not been shown to impair the receiving stream. The permit contains effluent limits and conditions that the department believes are protective of the receiving stream, when discharge does occur. Therefore none of the cases specifically called out in the regulation apply. The regulation allows for other cases when the department determines a site specific permit should apply, but we have not identified any such conditions in this situation, nor are any provided in your letter. You also did not suggest any new requirements that would appear in such a permit that would be more protective than the conditions in the general permit.

We appreciate your comments on the draft permit and hope this letter adequately responds to your concerns. If you have any additional questions or comments, please contact the Southeast Regional Office at 2155 N. Westwood Blvd., Poplar Bluff, MO 63901, or by telephone at (573) 840-9750.

Sincerely,

SOUTHEAST REGIONAL OFFICE

  
Gary L. Gaines, P.E.  
Regional Director

GLG:sk

c: John Madras, WPP  
U.S. EPA, Region VII