



**MINUTES OF THE
LAND RECLAMATION COMMISSION MEETING
LEWIS AND CLARK STATE OFFICE BUILDING
NIGHTINGALE CREEK CONFERENCE ROOM
1101 RIVERSIDE DRIVE
JEFFERSON CITY, MISSOURI
NOVEMBER 20, 2008**

Chairman, Jim DiPardo called the meeting to order at 10:10 a.m., at the Department of Natural Resources, Nightingale Creek Conference Room, located at 1101 Riverside Drive, in Jefferson City, Missouri.

Commissioners Present: Jim DiPardo, Dr. Gregory Haddock, Joe Gillman, Nick Matherly, Col. John Riffle, Bob Ziehmer, Kevin Mohammadi present for Ed Galbraith. Not present: Ed Galbraith.

Staff Present: Larry Coen, Staff Director; Bill Zeaman, Chris Thiltgen, Larry Slechta, Mike Larsen, Mike Mueller, Joyce Luebbering, David Dowdy, Larry Hopkins, Teri Bibbs, Larry Teson, Teresa Schubert, Amanda Weimer, Steve Femmer and Tina Stockman.

Others Present: Harry Bozoian and Matt Briesacher, Attorney General's Office; Mike Carlson, Gredell Engineering; Steve Rudloff, Mo. Limestone Producers Association; Wayne D. Barnett, Mike Puffinberger, and Dennis Woolman, Buildex, Inc.; Stephen Preston, Office of Surface Mining; M. Douglas Harpool, BLMH PC., Representing Branson Development; Scott Bailey, Branson Dev., L.L.C.; Perry Schneider, Journagan; Susan Brown, Land Owner; Paula and Alan Webb, Land Owners; Jon McLaughlin, Land Owner; and Andy Ferguson, Land Owner.

Approval of September 25, 2008 Meeting Minutes

Col. Riffle made a motion to approve the September 25, 2008 Meeting Minutes as written. Nick Matherly seconded the motion. The motion was carried unanimously.

INDUSTRIAL MINERALS

The Staff Director of the Land Reclamation Program has reviewed, evaluated, and approved the following Industrial Mineral bond release requests.

This summary is being provided for the Commission's information:

| Company | Permit # | Mine | Land Use | Acres Released | Amount Released |
|---|-----------------|--|-------------------|-----------------------|------------------------|
| A&M Quarries, Inc. | 0116 | Cass County, Site #0144 | Water/Wildlife | 30 | \$11,500.00 |
| Galamba Processing Services, L.L.C. | 0887 | Jackson County, Manchester Quarry Site #1887 | Development | 22 | \$15,000.00 |
| Val Gross Plumbing | 0856 | Jackson County Truman Rock, Site #1814 | Development | 8 | \$8,000.00 |
| Woodlane Rentals Partnership dba Cave Sand & Gravel | 0767 | Pulaski County, Site #2, #0736 | Agriculture/Water | 6 | \$8,000.00 |

Staff presented the above request for bond release to the Staff Director. The Staff Director approved the releases noted above following review of the requests along with photographs taken during the bond release inspections.

Confirmation of the approval has been sent to the company and bonding entities.

Hearing Request: Leo Journagan Construction Company, Taney County

On August 11, 2008, the Missouri Department of Natural Resources, Land Reclamation Program received a permit expansion application from Leo Journagan Construction Company, Inc., proposing to expand the Hollister South mine site by 160-acres in Taney County. After the application was deemed complete the company published the public notice once a week, beginning on September 2, 2008 for four consecutive weeks in the *Branson Tri-Lakes Daily News*, a newspaper that is qualified to publish Public Notice's in Taney County. The Public Notice was last published on September 23, 2008.

The Staff Director received a letter during the comment period concerning the proposed permit expansion application. The letter provided comments and requests for a meeting and a hearing. During a phone conversation we learned that Journagan Construction declined a Public Meeting. Therefore, we are presenting a hearing request today. Mr. Thiltgen stated that a representative from both the Applicant and the Petitioner are present at today's meeting.

We have a hearing request record on file that was signed by Scott Bailey, Vice President of Development for GEP, Inc.. Therefore we present a request for a hearing before the commission at today's meeting. On October 28th, 2008, the Staff Director did send a letter informing the person that requested a hearing of the time, location of and how to prepare for today's meeting.

The Land Reclamation Act requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit. In addition, the "Act" at 444.773.1, RSMo, requires the Director to consider any written comments when making the notice of recommendation. After consideration of issues provided in the received letter, it is the Director's recommendation to issue the permit expansion application, for an additional 160 acres in Taney County sought after by Leo Journagan. The Director's recommendation for approving this expansion application to the existing Hollister South site is based on the fact that the company has satisfied the requirements for application completeness. The second step in the process involves the Land Reclamation Commission making the final decision on whether or not people have standing to grant a public hearing.

Doug Harpool, Legal Council for the Branson Creek Development provided an overview of their concerns. Branson Creek is a master plan Development which includes 7,200 acres in their plan which is ten (10) years old. The plan includes two golf courses, one of which will host a major PGA event next year. There is also one airport. There are multiple home plots and neighborhoods, and the Branson Creek Development has been named one of the top 100 retirement locations in the US. They have spent between \$100 Million and \$150 Million so far on the development costs. The subdivision nearest the proposed Mine Expansion includes three to five acre lots, catering to equestrian events, the area has its own lake and private boat docks, and there are four (4) wells to provide drinking water.

Mr. Harpool stated that we are here today asking for a hearing to provide evidence that the expansion of the Journagan Quarry as designed will unduly impair the development plans. Mr. Harpool passed out packets of information for consideration. There are concerns about water quality and impacts to the lake and golf courses. There are two gated communities in the plans, and the value of these properties will be impaired where the quarry will be visible from planned homes. The information provided includes a letter from an appraiser which documents that these properties will lose substantial value, if the quarry plan is approved.

Turkey Creek has had environmental issues in the past from another existing quarry further away than this proposed quarry. The Development has met with Journagan to seek a resolution, but Journagan has never offered anything definitive to resolve their concerns. They are still willing to meet with them, but need to fulfill promises that have been made to a number of people.

Harry Bozoian asked if there is planning and zoning in the area which there is. He then asked if the development plans had gone through the zoning process, and it did. Finally, he asked if the quarry had gone through the zoning process, and Mr. Harpool did not know. Mr. Mohammadi asked about the impacts to Turkey Creek, Mr. Harpool explained that downstream neighbors had contacted DNR about sediment in the Creek which was found to originate from another Journagan facility further away. Dr. Haddock asked Mr. Harpool about the entrance of the Development if the quarry would be visible to Development Visitors. Mr. Harpool agreed but said Mr. Bailey could provide a better answer.

Scott Bailey of the Branson Creek Development gave some further comments. He stated regarding Turkey Creek, that in the spring of 2007, there were complaints about silt that was determined to come from another Journagan quarry. He tried to resolve their concerns and the hearing request with Journagan, but no resolution could be reached. He stated that there is too much money at stake now to let this go, as there are potentially 12,000 home sites that could be affected by the quarry expansion. He stated that the cheapest lands in the development should sell for about \$50,000 per acre, but the quarry expansion could affect the property values so much that the Branson Creek Development could suffer as much as a \$50 Million loss. He provided a packet to the Commission with letters from Appraisers to document property values. Dr. Haddock inquired about the land outside the area. Mr. Bailey replied that acreage outside the Development is selling for about \$2,000 per acre, which is substantially less than the expected sales of \$50,000 to \$100,000 per acre. Col. Riffle asked about zoning for the development and Mr. Bailey replied that it is mixed use zoning. He had met with Alan Journagan in late October and early November, but no resolution was reached. They had discussed two (2) or three (3) options for resolution. Branson Creek Development is concerned that the view from every property will be impacted by the rock quarry. Mr. DiPardo asked when they had last met with Journagan. Mr. Bailey explained that it was late October or early November.

Mr. Gillman inquired about water wells in the development, their size and depth. Mr. Bailey was not sure about the size and depth, but they are concerned about the impact of the wells. Mr. Bailey explained that they have two (2) large capacity wells and two (2) smaller capacity wells. Mr. Gillman asked if there had been any impacts from the existing quarry. Mr. Bailey replied not at this time but they are concerned once the quarry moves closer. Mr. DiPardo asked about the depth of the wells. The two (2) larger wells were 1500 and 1900 feet. The two smaller ones are about 700 feet. Dr. Haddock asked about the number of acres of development where the view of the quarry would be a concern. Mr. Bailey explained that they own 7200 acres and they plan to develop 3800 acres. However, the quarry will still be visible from some of the acres. Dr. Haddock then asked if they had considered buying the property of concern and Mr. Bailey stated that this has been discussed with Mr. Journagan. Mr. Mohammadi asked how the development will handle their wastewater treatment. Mr. Bailey explained that they have installed their own treatment system.

Perry Schneider, Environmental Compliance for Journagan discussed the quarry expansion plans. He stated that the expansion calls for 160 additional acres. Journagan is asking the Commission to deny the hearing and issue the Permit because we do not believe that the Petitioner has proven that their health, safety, or livelihood will be impaired by the Permit. He did meet with Branson Creek Development, and had asked for a copy of their development plans, but never received those plans. Regarding zoning, he stated that the 160 acres are zoned agricultural, and in Taney County agricultural zoning includes mining, so no zoning issues need to be resolved. He believes that the real concern involves forty (40) acres that touch the development property, but the development representatives have never explained their use for those adjacent acres. He stated that Journagan operates twelve quarries in Missouri and has no compliance issues.

Bill Zeaman affirmed that on November 5th, the program inspected four (4) of the Journagan quarries and there were no compliance issues noted. Past issues, including the siltation concerns brought up by the Branson Creek Development have all been corrected.

Mr. Schneider requested that the Commission deny the hearing request and issue the permit. Mr. DiPardo asked if Journagan is running out of rock at their current quarry. Mr. Schneider explained that they still have rock but it is not the same quality as the rock in the proposed expansion. The Pearson Rock formation in the expansion area is a much better rock to meet the state highway specifications. Mr. Gillman asked if they are only interested in the Pearson or will they be using other rock as well. Mr. Schneider confirmed that they have use for several layers of rock, but they need Pearson for highway projects.

Commissioners asked if both parties had tried to resolve their concerns. In discussion both parties had talked about the Northeast 40 acres of the proposed expansion being reserved as a buffer between the two properties; however no resolution was reached. Commissioners then expressed they felt neither party was fully answering their questions therefore, they directed both parties to communicate further about a resolution.

Dr. Haddock made a motion to table this issue and suggested that both parties discuss their concerns and keep Bill Zeaman informed of their progress. Col. Riffle seconded the motion. Mr. Schnieder asked about the basis for tabling this issue since the development has not answered questions about health, safety and livelihood. Then Mr. DiPardo explained that the Company and the Development are telling two (2) very different stories and the Commission needs to understand this much better before deciding the issue. Mr. Schnieder asked about buffer requirements in the rules. Mr. Coen explained that the issue is no longer a permit issue. The Staff agrees that the Permit is complete, but the Commission has questions that have not been answered. Mr. Schneider asked what those questions are. Dr. Haddock stated that there are different view points on which acres are bordering the development. Mr. DiPardo stated that both parties have indicated a lack of communication from the other party. The Commission does not feel that either party is being straight forward with their answers today and the Commission wants answers before making a decision. Commissioners stressed that both parties need to be good neighbors. The motion passed by roll call vote 7 to 0 to table this issue.

Hearing Request: Buildex, Inc., Platte County

Chris Thiltgen provided Commissioners with copies of materials not in the Published packet. On August 28, 2008, the Missouri Department of Natural Resources, Land Reclamation Program received a permit expansion application from Buildex, Inc., for 183-acres in Platte County. The Permit application was received on September 8th and after it was deemed complete the company published the public notice once a week, beginning on September 24, 2008 for four consecutive weeks in *The Platte County Citizen*, a newspaper that is qualified to publish Public Notice's, in Platte County. The last publication date was October 15th, 2008.

The Staff Director received letters during the comment period concerning the proposed permit expansion application. The letters provided comments and requests for a meeting and a hearing. On October 14th the Program received a letter from Mr. Woolham declining a Public Meeting stating that he had already met with the Petitioners and did not feel that another meeting would be productive. We have a hearing request record on file that was signed by the Concerned Citizens of Platte County, Inc., Alan and Paula Webb, Kari Knabe, Susan Brown, Andrew Burk and Jerald Fansher. Therefore we present a request for a hearing before the commission at the November 20, 2008 Meeting. The Staff Director did send a letter informing the People that requested a hearing of the time, location of and how to prepare for the November 20, 2008 commission meeting.

The Land Reclamation Act requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit. In addition, the "Act" requires the Director to consider any written comments when making the notice of recommendation. After consideration of issues provided in the received letters, it is the Director's recommendation to issue the permit expansion application, for an additional 183 acres in Platte County sought after by Buildex, Inc. The Director's recommendation for approving this expansion application is based on the fact that the company has satisfied the requirements for application completeness.

The second step in the process involves the Land Reclamation Commission making the final decision on whether or not people have standing to grant a public hearing. Mr. Thiltgen noted that both Petitioners and the Company are present to address the Commission.

Susan Brown, one of the petitioners, lives about a mile northeast of the Buildex plant. Buildex mines shale for simulated gravel for specialty concrete. She has lived in this location for 16 years, and she believes that the dust from the processing plant is far worse than it was 16 years ago. She believes the equipment at the plant is aging and it needs to be replaced. She then presented a power point presentation showing the equipment and dust emissions that she is concerned about. She stated that the dust contains crystalline silica which is a known carcinogen and can cause several lung diseases. While her biggest concern is the emissions from the kiln, she's also concerned about silt and gravel from the plant, filling the road ditches and washing on to the road pavement, which can make driving conditions hazardous. She stated that they have had a Public Meeting with Buildex, DNR and a number of the Citizens and things are just not improving. She believes that on October 30th an Air Inspector from DNR found dust emissions from the plant. She is asking for a formal hearing to be granted. Mr. DiPardo asked if the Air Program is responding to their concerns. Ms. Brown explained that she calls them and notifies them of her dust concerns but the problem is usually fixed by the time they inspect, however she believes they observed the dust problem on October 30th. Dr. Haddock then asked about local zoning. Ms. Brown explained that Buildex is grandfathered in the zoning regulations. He then asked if the Grandfather clause also applied to new areas and Ms. Brown did not know. Col. Riffle asked if EPA had been in to investigate. Ms. Brown answered not that she is aware of. Mr. Mohammadi asked if her real concern was the existing operation and not really the expansion request. She stated that is true for her, but cannot speak for others. Mr. Mohammadi asked the staff if they had checked with other Programs to see how many complaints had been

filed. Mr. Thiltgen answered that he did check, not on the number of complaints, but that there were no violations issued.

Mr. Ferguson has lived nearby for the past year and a half. He wanted to develop his property and home for resale, but now won't be able to sell if this expansion is approved. He sees the dust emissions quite often. He indicated that he also has concerns about the condition of the road from truck traffic and their lack of reclamation where they have already mined. He stated that the company he works for uses the haydite product created by Buildex, and he has no problems with where they are located now. However, the expansion would move them closer to his property which concerns him. Mr. Haddock asked if he has observed the dust emissions and he stated that he has. Mr. Mohammadi asked if he knew about Buildex when he bought the property two (2) years ago and he did.

Paula and Alan Webb have observed the dust emissions which may occur after hours, on weekends or holidays when state inspectors are not likely to be available. She provided the Commission dated photographs to show her concerns. Bob Ziehmer asked Mr. Coen if the Program coordinates with others in the Department on these complaints and secondly what is this Commission's obligation regarding dust emissions from the Quarry. Mr. Coen explained that it is a violation of the Air Law for dust emissions to leave the property of the facility. Mr. Coen also stated that dust can be omitted as long as it is captured or dissipated before it leaves the property. Finally, Mr. Coen stated that we do work quite often with other Programs on mining complaints. Mr. DiPardo asked why they can't issue violations when they see dust on houses. Mr. Coen explained that Air Inspectors must observe the dust crossing the property line in order to issue a violation. The Webbs stated that Buildex is grandfathered into planning and zoning, so that they have no recourse at the local level. They also believe that the dust occurs from a variety of sources on the mine site, not just the kiln. The proposed expansion will bring the mine closer to their property. They also have concerns for the poor condition of the road used by the trucks and for haydite spills on the road. They stated that the scrubber works 24 hours a day emitting dust. Ms. Webb provided a video to the Commission to show some of the dust emissions that they are concerned about. Ms. Webb also expressed concern about three (3) individuals whose letters were never received by the staff, that they won't be able to participate in the hearing if it is granted. Dr. Haddock explained that this is the hearing request and a hearing officer would determine who can participate in a hearing. Col. Riffle asked if the Citizens get copies of the reports from the Complaint Investigations. Ms. Webb stated that they do not automatically receive investigation reports. However, if they ask for them, they can get copies and she has obtained some. She also stated that she believes a violation is being issued from the October 30th investigation, but she has not seen that report yet. Ms. Webb also expressed concern that since the Company is Grandfathered into local zoning then no one can regulate them in the County. Mr. DiPardo observed that they may be grandfathered in for Planning and Zoning but they are not grandfathered into DNR. Mr. Gillman asked if they are grandfathered because they were in business before the County had zoning and Ms. Webb agreed that was the case. Mr. Mohammadi asked Ms. Webb if her main concern was the old equipment and the current operation rather than the expansion request. She stated that it is both. She has concerns about their emissions from their old equipment, but she also has concerns about their

expansion, because they will be crossing the highway closer to her home and interfering with her view of open space and wildlife. Col. Riffle asked if Buildex has any sort of local permit to operate. Ms. Webb explained that she did not believe so. Ms. Webb stated that the citizens must rely on DNR to control and regulate this facility. Mr. Webb explained if the expansion is granted it would destroy their property value, because no one wants to buy a home near a strip mine. In addition, the expansion area is in a flood plain and their mining will impact how water behaves during flood events. The road ways are already impacted by silt and rock during flooding and disturbing this area will likely make it worse. Mr. DiPardo explained that the Commission does not have any control over the property values, but the Commission is very concerned about their health issues.

Mr. McLaughlin lives about 1000 feet north of the Buildex plant and his son has lateral scleroderma, which is related to exposure to crystal valite, from heated silica dust. He has contacted the DNR and EPA repeatedly since 1995. He does not believe that DNR is enforcing the law, but anytime they wanted to write a violation they could. Dr. Haddock asked if he had medical documentation about his son's condition, and he explained that he does have documentation and he is working with an attorney to pursue this issue with Buildex. Mr. DiPardo asked staff to report what they observed in recent inspections.

Chris Thiltgen described his most recent inspection of Buildex in which he observed no violations of dust on the property including the kiln operation. During his inspection all of the equipment was running and the only emissions he saw was steam. Commissioners Haddock and Mohammadi asked about the emissions in the video as opposed to the inspection. Mr. Thiltgen explained that he did not see dust emissions as seen in the video. Mr. Webb asked if his inspection was unannounced and Mr. Thiltgen responded that the Company knew that he was coming. Commission Gillman asked Chris if his inspection was related to the land reclamation permit or the air permit. Chris stated that it was the Land Reclamation Permit. Mr. McLaughlin stated that anytime DNR wants to inspect the site, they can see trucks running over haydite on the road which creates dust, because of his concerns for health he requests a Public Hearing.

Dennis Woolman, President of Buildex asked the Commission to grant the permit. He stated that the haydite operation is much like a cement kiln. Buildex has operated since 1944, and the current equipment was installed in 1972. He stated that most of the visible emissions are steam. He stated that the kiln operates 24 hours a day for about eleven months a year. They abide by their air, water and mining permits and they strive to be a good neighbor. He stated that the air law allows for 2 hours of equipment malfunction before shutting down equipment and three days are allowed by law to self report any emission exceedances. He stated that the Weston shale is about 80 feet thick and they mine about an acre and a half per year. They abide by all air, water, mining laws of the DNR, and the requirements of MSHA and the COE. Dr. Haddock asked how often it was necessary to report an equipment problem, which is about once every two months or so. Mr. Woolman also explained that the kiln emissions are lower than 20% opacity. Col. Riffle asked if they had copies of inspection reports for the facilities on hand. Mr. Woolman explained that he does have copies in the Company's file. Commissioner Ziehmer asked what type of dust is emitted by their facility. Mr. Woolman replied that the emissions contain silica dust.

Commissioner Ziehmer asked to clarify if dust can be emitted legally for two (2) hours due to equipment malfunction. Mr. Woolman replied they have two (2) hours to repair but not ignore it for two (2) hours. The amount of dust leaving the property would depend on the wind. Mr. DiPardo asked about the homes covered in dust, and Mr. Woolman reminded the commission that there are gravel roads and farming on the neighboring properties that create more dust than the quarry. Mr. DiPardo asked about the report of a violation on October 30th. Mr. Woolman explained that he was not aware of a violation on that date. Mr. Woolman stated that he believes DNR is checking his plant about once a week. Mr. Gillman then asked about the issue of being grandfathered into planning and zoning. Mr. Woolman explained that they will have to get zoning approval, but the zoning board required that they obtain their state mining permit first. Commissioner Riffle asked how soon this will occur. Mr. Woolman said he did not know. Jim DiPardo asked Mr. Coen to explain the difference between local zoning and state permit for mining. Mr. Coen explained that our permit does not impact a zoning permit so Buildex will need both permits in this case. Jim DiPardo asked whether the mining permit or local zoning has to be issued first. Mr. Coen replied that it doesn't matter either permit may be issued first. Mr. Woolman stated that Platte County planning and zoning is requiring Buildex to get their Mining Permit first.

Michael Puffinbarger, Quality Control for Buildex, stated that the video shown by Mr. and Mrs. Webb was taken at a time when their plant scrubber was down creating the dust that was seen in the video. The current zoning is agriculture and that they will need to obtain a special use permit from local zoning once they obtain their mining permit. He stated that there are 27 to 30 people employed at Buildex. He worked in coal mining for 22 years prior to coming to Buildex, and he always has concerns for company employees when there are dust emissions. Employees are more at risk for health concerns from dust because they work in it everyday. He wants to ensure that none of the employees are harmed by the silica dust.

Commissioner Ziehmer and Commissioner Haddock asked about the source of water that Buildex uses for dust suppression. He stated that water ponds on the property are used, and these are available year round. Employee questions were asked again, and he stated that most employees have been there for 20 years or more. Commissioners asked if Buildex ever runs out of water for dust suppression, which does not happen.

Commissioner DiPardo asked if MSHA requires employees to wear dust masks. He stated that MSHA monitors employees randomly once a year. They select four (4) or five (5) people to wear dust pumps to measure for silicosis. The last MSHA violation for silicosis dust was three (3) or four (4) years ago. MSHA inspections are always unannounced. Jim DiPardo asked if they ever run out of water. He replied they never have. Mr. DiPardo asked about the date of the video which showed the plant emissions, which was May 12th or 13th, 2008. Mr. Puffinbarger also stated that Buildex is working to add another water pump system to better control dust emissions.

Wayne Barnett, Vice President of Production, stated that Buildex wants to be a good neighbor, and they work with MoDOT, Platte County and MDNR to stay in compliance. This year they

achieved 96.3% operating time, which indicates very few breakdowns. They are continuously upgrading their equipment, and the plant has improved immensely in the past 20 years. He explained that the processing area is not expanding, just the number of acres proposed for mining. Commissioner Mohammadi asked when the second water pump would be installed, and Buildex explained that the second pump is in place, but they must shut down on Tuesday to make the electrical connections.

Commissioner Mohammadi asked about rocks or haydite on the road. Buildex explained that there are about 60 to 70 trucks per day entering and leaving the plant, but these are customers. Buildex does not own over the road trucks. Dr. Haddock asked if the highway department ever had concerns about product on the roads, and this has happened one time. Dr. Haddock asked how the Company plans to move the materials from the expansion area to their Plant. The company will use a conveyor to transport product from the mine to the processing plant, so trucks will not be used for that. Commissioner Mohammadi asked about the product from the kiln which is like lava, how is that product used. Mr. Barnett explained that it becomes light weight aggregate to use in concrete. Jim DiPardo asked if roads around the area are all paved and many are not. He then asked if Buildex Trucks use the gravel roads. Mr. Barnett explained that Buildex does not have over the road trucks, their quarry trucks do not leave the property. The only trucks leaving the property are customers. Paula Webb stated that there have been problems with siltation from the plant to the road ditches since 1987, and this causes product fines to cover the road during rainstorms.

Ms. Webb talked about the land and mining, and plans already on file, with DNR in Kansas City indicate that Buildex plans to move the processing area closer to the mine site. Jim DiPardo asked if the Program's files are the same as the Kansas City files and they are not. The Kansas City files would contain Air and Water issues and our Program files contain Land Reclamation issues. Susan Brown asked to submit an information sheet on silica dust which was received into the file. Mr. Barnett explained that they are not moving their plant but they do plan to move their crusher to the mine site. Also he explained that the expansion is for 183 acres but they only plan to mine 45 acres. The remaining acreage will be a buffer area. Ms. Webb stated to the Commission that Buildex was cited for noncompliance on the latest air inspection on October 30th, by the regional office air inspector, Mike Miller. Buildex representatives had no knowledge of this notice of noncompliance.

Nick Matherly commented that the written materials state that there are no known violations of their air permit but the Petitioners believe that a violation is being issued from an October 30th inspection and they have video showing dust emissions. He also commented that the video might show a lot of steam. The Commissioners asked program staff to verify the air inspection and the noncompliance.

While waiting on the phone call to KCRO the Commission asked the Staff to proceed to the next topic.

Coal Bond Forfeiture Status Update

Since the last update provided to the commission on September 25, 2008, the following work has been completed by the program's bond forfeiture staff:

Universal Coal and Energy Co., Inc. – Mines #1 and #4 – Howard County

Contract work has been completed for final earthwork at a permanent program permit located in Mine #1 and on several acres of "old state law" permit lands also in Mine #1. This work involved the clean-up of some remaining coal processing waste from the old preparation plant area located adjacent to the work site and also the final repairs on a sediment pond. This completes work remaining on a nine acre permanent program permit area of this former mine and will ready the permit for a presentation to the commission for a release request at the next meeting to be held in January of 2009. The work also remedied several problem areas in the "old law" portion of Mine #1.

In the Mine #4 area, the staff has been working closely with the landowners to identify and fix problems related to erosion, revegetation and pond repairs. Contract work for the year has been completed. One additional contract for final rock placement, pond spillway repair and minor revegetation work will be necessary before all required work will be completed. At this time it is expected that one of the two remaining permanent program permits at Mine #4 will be ready to present to the commission in January, 2009 for their release consideration. The other permanent program permit should be ready for a release presentation either during the March or May meeting of 2009.

There are also two remaining interim law permits at this mine site where maintenance work for erosion control, minor revegetation work and pond repairs remains to be completed. This work should be completed during the early portion of 2009. If completed during the first portion of 2009, these two permits will also be presented to the commission for a release consideration during either the March or May meetings of 2009.

Missouri Mining, Inc. – Mines #5 and #11 – Putnam County

Staff has been working with the landowners of two former coal mine sites located in Putnam County in north central Missouri. The staff has corresponded with the landowners in order to prepare the former mine sites for a release presentation before the commission in a separate agenda item later in this meeting. These former mine sites were operated by Missouri Mining, Inc. during the late 1970's and early 1980's and are known as Mines #5 and Mine #11. If approved by the commission this will remove 151 acres from the list of coal bond forfeiture lands.

Coal Bond Forfeiture Responsibility Release Request

The Land Reclamation Program's bond forfeiture staff has evaluated the former Missouri Mining coal mine sites #5 and #11 during the past two months and is presenting them to the commission for their release consideration. These sites have undergone permit revocation and bond forfeiture by the commission in the past.

The mine sites identified below have been reviewed jointly with the Office of Surface Mining and, in addition, all current landowners of record have been notified that these sites are to be recommended for complete and final release at this meeting of the Land Reclamation Commission. As of the date of this memo, no comments or objections from the landowners have been received. It is the recommendation of the program's bond forfeiture staff that the Missouri Land Reclamation Commission concurs with this request and releases the state from all further reclamation responsibility on the permit areas of the following coal mining sites: Missouri Mining, Inc. Mine #5 for 39 acres and Missouri Mining, Inc. Mine #11 for 112 acres. Dr. Haddock stated that Chairman DiPardo had stepped out for a moment but the Commissioner will need to vote on this issue. Kevin Mohammadi made the motion to accept the staff's recommendation to release the State from any further responsibility on Missouri Mining Pits #5 and #11. Bob Ziehmer seconded the Motion which was taken by roll call vote in Jim DiPardo's absence. Chairman DiPardo returned to the meeting at this time.

PERMITS, CONTRACTS AND DESIGN

Coal Permitting Activities Update

This report covers coal permitting activities between September 10, 2008, the date of the last update, and the date this memo was prepared, October 24, 2008.

During this reporting period, LRP received five (5) new coal permit actions that require review and approval. These five (5) permit actions were finalized during this reporting period. LRP staff reviews are proceeding on schedule. Since preparing this report we have received a transfer application for Continental Coal to transfer ownership of Owego Coal from Bob Caylor. Then Program Staff is in the process of reviewing and approving that Transfer Application.

Abandoned Mined Lands Status Update

Abandoned Mine Land (AML) Reclamation Projects

Billy Creek/ Blacksmith

The Billy/Blacksmith Creek AML Reclamation project located in Adair County is nearing completion. The four-acre gob pile reclaimed at the Blacksmith site has been completely graded, amended with ag-lime, covered with high quality soil, and seeded and mulched. An inspection of the site on October 20, 2008, revealed that the permanent vegetation was coming up and the site was stabilized.

C.L. Richardson of Ashland, Missouri, is currently working to finish up the Billy Creek site. The contractor has incorporated significant quantities of agricultural lime (200 lbs./acre) into the sub grade coal waste, and the four-acre gob pile has been covered with one and one-half feet of uncontaminated borrow material. As of the date of this memo, the contractor had hauled the excess coal waste to the disposal area and graded the material into the excavated borrow pit. Upon dry site conditions, the contractor will treat the disposed coal waste with ag-lime and cover the disposal area with two-feet of uncontaminated cover material. The limestone riprap has been

installed to repair the massive existing erosion gullies and the eroding stream banks have been armored with riprap stone.

This \$245,088.30 project has been completed. It was completed by the contract completion date of November 6, 2008.

Harrisburg/Thornhill

Gredell Engineering Resources, Inc. is nearing completion of the preliminary design of the Harrisburg/Thornhill Reclamation Project (Boone and Howard Counties). This reclamation project is considering the design and reclamation of approximately 115 acres associated with six areas of abandoned mine lands located near Harrisburg, Missouri. The scope of work for this project will include excavating and burying coal waste, grading and re-contouring the site to eliminate dangerous piles and embankments, eliminating acid pit impoundments, mitigating acid mine seeps, and revegetating the site to reduce erosion. Task 1 which includes landowner meetings and familiarization of the problem area is complete. Gredell Engineering has met with the landowners to accept their concurrence with the conceptual design. Currently the design firm is composing a detailed summary that identifies the problems of concern and provides alternative solutions for reclamation. Upon receipt of the preliminary design report, the AML unit will review the findings and make preparations for a final design contract as appropriate.

West Montrose Reclamation Project

The West Montrose Reclamation Project will reclaim approximately 70 acres of barren and eroding mine spoils located in the Germantown area, approximately two miles west of Montrose, Missouri. The AML staff has completed the design and contract specifications for the project and staff is currently waiting for a wetland determination to be made by the U.S. Army Corps of Engineers. Reclamation of this site will include elimination a dangerous high wall located adjacent to a county gravel road, grading and recontouring dangerous piles and embankments, eliminating acid water impoundments, and revegetating the barren spoils to control erosion.

Highland Highwall Reclamation Project

The Highland High wall Reclamation Project is an approximate 70 acre project located west of Calhoun, Missouri, in Henry County. Reclamation will address approximately 70 acres of pre-law coal mine land where reclamation was basically left incomplete by the mining company. At the time of mining this site, the coal companies were merely required to grade the spoils to slopes traversable by farm machinery, and there was no requirements to backfill and eliminate the high walls. Hence, reclamation of this site will eliminate the extremely dangerous high wall that is located immediately adjacent to a county gravel road. Additionally, dangerous piles and embankments will be graded and revegetated to control erosion. The AML staff continues to conduct on-site investigation and preliminary design activities on this project.

Edwards Shaft

On September 3, 2008, Limback Drainage, LLC completed reclamation of the Edwards Shaft Reclamation Project, located near Corder, Missouri, in western Lafayette County. Reclamation entailed closing the entry of an underground coal mine portal and constructing a diversion to

prevent pond water from entering the mine shaft. The work included excavation and removal of the old timbers and fractured cap rock. The shaft opening was exposed and rock and soil fill was pushed into the opening, thus barring access to the shaft. The area of the opening was then backfilled with nearby soil material, graded, and shaped to match the contours of the surrounding area using a track hoe and dozer. Approximately 250 yards south of the main portal were two collapsed areas and third area where mine drainage was exiting the same mine shaft. The two collapsed areas were excavated, shaped, and graded. The mine drainage area was excavated to expose the water discharge and a four-inch PVC pipe was inserted into the opening to provide a controlled discharge point for mine water drainage. The area where the pipe entered the shaft was covered with riprap stone and the area was graded and shaped to match the surrounding contours.

Stroup Shaft

In a letter dated October 16, 2008, the Office of Surface Mining provided authorization to proceed with reclamation of the Stroup Shaft in Joplin, Missouri. The Stroup shaft is a vertical lead/zinc mine shaft that is located inside a storage facility. The storage unit is an occupied structure and this vertical opening poses a potential danger to the customers who utilize the facility. The vertical opening is approximately 15 feet in diameter and 10 feet deep. Reclamation will encompass backfilling the shallow shaft with concrete to the near surface and covering the concrete plug with one-inch minus limestone base. The mine shaft is filled with water to the surface; hence the water will need to be pumped prior to filling with concrete. The AML staff is currently working to complete an under \$25,000 contract to complete this work.

OTHER BUSINESS

Presentation of 2009 Meeting Dates were discussed and agreed on. Jim DiPardo asked if the Commission will do a tour again this year and Mr. Coen stated that we plan to do that in July.

Hearing Requests and Public Meetings Discussion

Larry Coen introduced the issue tabled from the last meeting and explained that the Commission needed to further discuss the issue. Larry had reminded the Commission that the concern is related to the fact that many times parties have not talked at all prior to appearing before the Commission to present their hearing request. In September, Commissioners had discussed tabling hearing requests when parties have never met. This may not be possible when looking at the law. The Land Reclamation Act provides that an Operator has a right to decline a public meeting and the Commission cannot adopt a policy contrary to State Law.

Larry introduced Steve Rudloff, Executive Director of the Missouri Limestone Producers Association and he is also representing the Mining Industry Council for this discussion. Mr. Rudloff stated that when this portion of the law was written, the idea of a facilitated public meeting was written as an option but was never intended to be a requirement. Mr. Rudloff explained that he understands the value of parties discussing these issues before coming to the Commission, but there are at least three (3) reasons why an Operator might decline a formal meeting request. First, meetings that are facilitated by the State Program require time and

usually guarantee a delay of at least two (2) months if the Public pursues a hearing request anyway. Second, the Mine Operator feels that he loses some control of the situation when he agrees to let the Program facilitate the Meeting because the Program cannot deny the Public Access to the Meeting and many people attend those who have not requested a hearing. Finally, not all Operators are comfortable discussing their differences with the Public in front of the Program Staff. Steve acknowledged that the Program has a good relationship with the Industry but still operators may not be comfortable discussing issues of conflict in front of the State Inspectors.

Resumed Buildex Issue

In a phone call with the Kansas City Regional Office, Chris Thiltgen and Commissioner Joe Gillman verified with Mike Cunningham of KCRO that Buildex will be getting a Notice of Excess Emissions from Inspector Mike Miller based on his October 30th Air Inspection. He measured the opacity of the dust emissions at 24% and the legal limit is 20%. The company will have the opportunity to explain the noncompliance event, which may be excused for equipment malfunction. Based on the Company's response the Notice of Excess Emissions may be upgraded to a Notice of Violation or it could be dropped. Mr. DiPardo asked Mr. Cunningham how DNR would notify the Company of the non compliance. Mike Cunningham explained that Mike Miller's notes indicate he had discussed the Complaint with Mr. Barnett of Buildex. Mr. DiPardo then asked Mr. Barnett if he had that discussion. Mr. Barnett stated he had discussed the Complaint and the dust problem with Mike Miller on October 30th but there was no mention of a violation. Mr. Ziehmer asked for legal advice on whether the Commission should consider air violations of the processing area when considering granting a hearing on the mining permit. Mr. Bozoian explained that the Notice of Excess Emissions is not a violation until the Department has completed a review of the Company's response and determines that a Notice of Violation is warranted. It is not a violation yet, however to answer the Commission question it is within the Commission's authority to consider anything related to health, safety or livelihood that results from mining activities. Jim DiPardo asked if the Company will need a new air permit. Mr. Barnett explained they do plan to move their crusher to the new area but they do not need a new air permit to change that. Mr. Bozoian clarified that the Commission does not regulate the air permit, but the Commission can consider any health, safety or livelihood at the facility when considering the hearing request. Mr. Barnett stated that they plan to abandon the old crusher and install a new one closer to the mine site. They currently have another 45 acres to mine in their existing permit.

Col. Riffle made a motion to go into closed session to discuss options, but failing a second, no action was taken on this motion. Other commissioners wanted an open discussion. Mr. Ziehmer stated that he has some serious concerns about the health effects of silica dust. There has been testimony presented today from Petitioners that silica dust is leaving the property. He would like to hear other Commissioners concerns about this issue.

Dennis Woolman stated that DNR had offered to install an air monitor on one of the individual's private property, but the offer was turned down. He also offered that Buildex would run samples on neighboring properties. Mr. Puffinbarger stated that a lot of dust originates from gravel roads

in the area and from farming operations and there is silica in that dust also. Kevin Mohammadi stated there has been no evidence presented that Buildex is violating their Air Permit . Jim DiPardo stated he is still concerned about the silica dust. He then asked the Petitioners if Buildex monitors air emissions near their homes would that satisfy their concerns. Petitioners generally did not feel that this would resolve all of their issues . Mr. McLaughlin shared with the Commission he has learned that the dust created in the incinerator process is a different form of dust than is found on gravel roads and farm land. Dust from the kiln contains a form of silica that is very fine like asbestos dust and is a Class 1 Carcinogen. Susan Brown stated they really need a hearing granted to investigate all of these issues.

Commissioner DiPardo then made a motion to go into closed session, which was seconded by Col. Riffle and passed 6 to 1 by roll call vote. Dr. Haddock was the dissenting vote. The Commission went into Closed Session at 2:10 p.m. and returned to Open Session at 2:44 p.m.

After resuming the open session, Commissioner Gillman made a motion to approve the hearing request, which was seconded by Commissioner Matherly. Bob Ziehmer stated there has been sufficient testimony to create a lot of concern about silica dust. The motion was passed six to one by roll call vote. Commissioner Haddock opposed the motion to grant a hearing. Jim DiPardo asked Harry Bozoian to explain what happens next. Mr. Bozoian explained that a hearing officer would be appointed, all parties will present their concerns in the hearing and the Hearing Officer will make a final recommendation back to this Commission. Mr. Coen added that the formal hearing is not a Public Speaking forum but is a very formal legal proceeding like going to Court in which all parties are generally represented by an attorney.

Hearing Requests and Public Meetings Discussion- Resumed

Chris Schwedtmann commented that as a representative of APAC, and Chair of the Environmental Committee of MLPA, he would like to see the Missouri Limestone Producers Association provide educational forums to the mining industry in order to show them the value of meeting with the Public. He believes that this will be a lot more productive than the Commission trying to adopt a policy to require meetings. Dr. Haddock stated that he believes there is educational value to the discussions that take place in our Commission Meetings. He believes that Chairman DiPardo does a good job of making people talk, even when they have not talked before. He believes there is real value in the discussions that take place in the Land Reclamation Commission Meetings.

Comments from the Public

No comments from the public.

CLOSED SESSION

Mr. Ziehmer made a motion that the Land Reclamation Commission meet in closed session on January 22, 2009 prior to the open meeting for the purpose of discussing personnel actions, legal actions, causes of actions or litigation as provided for in Section 610.021 RSMo, 2003. Col. Riffle seconded the motion which carried unanimously.

ADJOURNMENT OF MEETING

Motion was made and seconded to adjourn the meeting. The meeting adjourned at approximately 3:30 p.m.

Respectfully submitted,

Chairman