

**MISSOURI DEPARTMENT OF NATURAL RESOURCES  
LAND RECLAMATION COMMISSION**

In the Matter of:	)	
	)	
AA QUARRY LLC	)	Proceeding Under
AA Quarry Site # 2462	)	The Land Reclamation Act,
Johnson County, Missouri,	)	Sections 444.760 – 444.789, RSMo
New Site Permit Application	)	
	)	
DAVID EARLS,	)	
CREIGHTON & DIANE COX,	)	
SCOTT & DIANNE GARD,	)	
TAMMY HEIDER,	)	
BRAD & JESSICA MANTZEY,	)	
JAMES & SUSAN RICHARDS,	)	
ROBERT & LIESL SNYDER,	)	
TIM STAMM,	)	
	)	
<i>Petitioners,</i>	)	
	)	
v.	)	Permit # 1094
	)	
DEPT. OF NATURAL RESOURCES,	)	
KEVIN MOHAMMADI,	)	
Staff Director,	)	
Land Reclamation Program,	)	
Division of Environmental Quality,	)	
<i>Respondent,</i>	)	
	)	
AA QUARRY LLC.,	)	
<i>Applicant,</i>	)	
	)	

**ORDER SETTING UNCONTESTED MATERIAL FACTS**

Petitioners Earls, Cox, Gard, Heider, Mantzey, Richards and Stamm elected to make no response to the Order issued 12/24/13 giving parties until and including 1/8/14 to file their final agreement to the Proposed Stipulation of Uncontested Material Facts. In accordance with said Order, dtd 12/24/13, the failure to respond is deemed to have been consent with, and agreement to all Uncontested Material Facts not lined through in said Order.

Petitioners Snyder filed their opposition to Proposed Facts 54 and 55. Said Proposed Facts have been removed as Uncontested Material Facts.

Applicant and Respondent file their agreement to all Proposed Facts that were not lined through.

Accordingly, the following are set as Uncontested Material Facts in this matter.

**UNCONTESTED MATERIAL FACTS**

1. Radmacher Land and Equipment Management Company, LLC, a Missouri limited liability company owned by Robert Radmacher and Thomas Radmacher, was formed in the year 2004, with its principal office and place of business located in Pleasant Hill, Missouri (hereafter "RLE).

2. In January 2011, RLE purchased the 520-acre site located on AA Highway in Johnson County, Missouri, which is the subject of this permit dispute.

3. On July 6, 2012, Radmacher Brothers Excavating Co., Inc. (another company owned by the Radmacher Brothers) ("RadBro") applied for and received on 7/6/12 a "General Operating Permit" under the Missouri Clean Water Law and the Federal Water Pollution Control Act for 9.15 acres of the site, effective 7/6/2012 through 2/7/2017.

4. The permit allowed RadBro to engage in "construction or land disturbance activity" (eg., clearing, grubbing, excavating, grading, and other activities . . . ) together with storm water control measures, said activities being covered by the Land Disturbance Permit. (*July 6 MSOP MORA01538*)

5. On January 30, 2013, the Kansas City Regional Director of the Department of Natural Resources, Andrea Collier, P.E., sent a letter to RadBro enclosing a public notice for the proposed "Missouri State Operating Permit to Discharge", directing RadBro (AA Quarry) to post the public notice on a bulletin board at its place of business. A draft of the "Missouri Operating Permit" (General Permit MOG 49 1251) was attached to the letter. (*January 30, 2013 letter from DNR to AA Quarry.*)

6. AA Quarry on December 26, 2012, submitted its "Application for Authority to Construct" to the Missouri DNR Air Pollution Control Program. (*December 19, 2012 letter from Aquaterra (for AA Quarry) to DNR.*)

7. Kyra L. Moore, Director, forwarded a letter dated January 17, 2013, to Robert Radmacher of AA Quarry approving construction activities for a new open pit

quarry, but did not allow for operation. (*January 17, 2013 letter from DNR to AA Quarry.*)

8. On July 22, 2013, a permit to construct was issued to AA Quarries LLC. Susan Heckenkamp, New Source Review Unit Chief of the Air Pollution Control Program of DNR, on that date forwarded a letter and the permit to construct (No. 072013-014) to Robert Radmacher (*July 22, 2013 letter from DNR to AA Quarry.*) This permit was not appealed to the Air Conservation Commission. Future enforcement of the terms of that permit is through that Commission and the Air Pollution Control Program.

9. On July 20, 2012, Tom and Robert Radmacher prepared Articles of Organization for AA Quarry, LLC, (“AA Quarry”) a Missouri limited liability company (LC 1243292). The principal office and place of business of AA Quarry, LLC is also in Pleasant Hill, Missouri. The Missouri Secretary of State issued a certificate of organization for AA Quarry LLC on July 20, 2012 (*AA Quarry Articles of Organization*)

10. On November 16, 2012, AA Quarry prepared an application for land reclamation permit (*Permit Application for Industrial Mineral Mines under 10 CSR 40-10.020(1)*).

11. DNR Land Reclamation Program advised AA Quarry on January 22, 2013 by certified letter that after the public notices had been given regarding the permit application, DNR had received letters from the public regarding requests for a public meeting. DNR inquired if AA Quarry would agree to a public meeting being held. AA Quarry so agreed. (*January 22, 2013 letter from DNR to AA Quarry.*) AA Quarry proceeded to a public hearing on March 7, 2013.

12. On April 2, 2013, Respondent issued his written recommendation to the land Reclamation Commission to issue a new permit for a total of 214 acres of the 520-acre site. Respondent’s recommendation noted that concerns of the public were not all successfully resolved by the public meeting. The recommendation included Attachment 1, summary document prepared by DNR regarding the public meeting comments and staff responses. Respondent reported that he anticipated that members of the public would request a formal hearing and that timely requests and his recommendation would be placed on the agenda for the Land Reclamation Commission’s May 23, 2013 meeting. (*April 2, 2013 LRP Staff Recommendation Memorandum*)

13. On April 2, 2013, Tucker Frederickson of the DNR Land Reclamation Program advised Petitioners of their rights to request a public hearing from the Land Reclamation Commission. (*April 2, 2013 letter from DNR to certain Petitioners.*)

Petitioners thereafter requested a formal public hearing and between May 1 and May 3, 2013, Kevin Mohammadi advised that the Land Reclamation Commission would decide whether or not to grant a formal public hearing at the meeting on May 23, 2013. (*Example letter from DNR re: Request for Public Hearing and May 23, 2013 LRC Meeting.*)

14. At the May 23, 2013 Land Reclamation Commission meeting, a number of prospective Petitioners appeared and made statements, and after due consideration, the Commission voted to grant Petitioners a formal public hearing.

15. Respondent's determination that the application is complete is not challenged for purposes of the formal public hearing.

16. Respondent's staff has not found that Applicant has conducted mining operations without a permit in violation of the Land Reclamation Act.

17. On or about March 13, 2013, RadBro applied to the DNR Clean Water Commission for a second land disturbance permit (Missouri State Operating Permit, General Operating Permit No. MORA 02837). This permit also allowed for construction and land disturbance activities at the site and was issued effective March 13, 2013, again through the ePermitting system. (*DNR MSOP No. 02837*).

18. On or about March 5, 2013, Michael T. McFadden, Regional Project Manager of the Kansas City Corps of Engineers office, reviewed Applicant's construction activities at the dam and pond area and determined that Applicant was in noncompliance with General Condition 31 of the Nationwide Permit requiring a pre-construction notification to the Corps of Engineers district office before the start of construction activities.

19. On April 2, 2013, David R. Hibbs, Regulatory Program Manager in the Operational Division of the U.S. Department of the Corps of Engineers Kansas City District, issued to Applicant the official written "Notice of Noncompliance" with Permit No. NWK2013-00247 for the Applicant's project work asserting that the dam/pond work

was located in the head waters of "several unnamed tributaries" to the south fork of the Blackwater River, located above Echo Lake. (*April 2, 2013 Corps of Engineers Letter.*)

20. Applicant wrote a letter to Mr. McFadden on March 6 stating that Applicant was authorizing Nathan Hamm, P.E., Vice President Program Manager for SCS Aqua Terra to prepare Applicant's 404 application to bring the project into compliance. Applicant also hired Jim Feagons to perform the associated historical study needed for the permit. (*March 6, 2013 letter from Applicant to Corps of Engineers.*)

21. Applicant sent another letter dated April 4, 2013 to the Corps of Engineers confirming Applicant's intent to bring the project into compliance with all permit requirements. (*April 4, 2013 Letter of Applicant to Corps of Engineers.*)

22. A final 404 application was submitted to the Corps on June 6, 2013. (*Application to Corps of Engineers for 404 Permit.*)

23. The historical study by Mr. Feagons was submitted to the Corps on September 5, 2013.

24. The distances that Petitioners live measure in a direct line distance from the proposed quarry are: David Earls - .56 mile; Creighton & Diane Cox - .31 mile; Scott & Dianne Gard - .54 mile; Tammy Heider – 1.68 miles; Brad & Jessica Mantzey - .06 mile; James & Susan Richards - .44 mile; Robert & Liesl Snyder - .32 mile; and Tim Stamm - .73 mile.

25. AA Quarry, LLC ("Applicant") did not send notices by certified mail of its intent to operate a surface mine on the Quarry Property to the last known addresses of all land owners of record owning real property contiguous, or adjacent, to the Quarry Property.

26. On May 23, 2013, Petitioners attended a public meeting (the "Meeting") of the Land Reclamation Commission ("LRC"), presented their statements and evidence, and requested that the LRC grant them standing and formal public hearing before the LRC determined whether to grant Applicant's permit request. *See* Webcast of the Meeting on the DNR website.

27. Applicant placed fill materials in a stream that the Army Corp of Engineers has designated as the Waters of America (the "**Stream**"), which created a dam.

28. On Applicant's July 6, 2012 ePermit application, Applicant answered "No" to the question of whether its activities would disturb the Waters of America.

29. The Dam and Reservoir Safety Program representative informed Applicant during this discussion that if the Dam exceeded 35 feet in height, the State would be required to regulate the Dam for safety.

30. Applicant did not obtain permit before lowering the height of the dam. The owner is required to obtain a construction permit only if the dam is over 35 feet. DRSP cannot verify that the dam was ever over 35 feet in height.

31. Applicant removed material from the top of the Radmacher Lower Dam and placed that material at the downstream side of the dam, but above the channel.

32. Previously, on or about March 5, 2013, Michael T. McFadden, Regional Project Manager of the Kansas City Corps of Engineers office, reviewed Applicant's construction activities at the dam and pond area and determined that Applicant was in noncompliance with General Condition 31 of the Nationwide Permit requiring a pre-construction notification to the Corps of Engineers district office before the start of construction activities. *See* Notice of Permit Noncompliance attached to Applicant's Proposed Stipulations.

33. On April 2, 2013, David R. Hibbs, Regulatory Program Manager in the Operational Division of the U.S. Department of the Corps of Engineers Kansas City District, issued to Applicant the official written "Notice of Noncompliance" with Permit No. NWK2013-00247 for the Applicant's project work asserting that the dam/pond work was located in the head waters of "several unnamed tributaries" to the south fork of the Blackwater River, located above Echo Lake.

34. The term "Chip-and-seal" describes a surface pavement applied to a gravel road.

SO ORDERED: January 13, 2014.

MISSOURI DEPARTMENT OF NATURAL RESOURCES



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*Certification of Service*

I hereby certify a copy of foregoing has been sent via email this 13<sup>th</sup> day of January, 2014, to:

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W. B. Tichenor  
DNR – Hearing Officer