

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

In the Matter of:)	
AA QUARRY LLC,)	
AA Quarry Site #2462)	
Johnson County, Missouri,)	Proceeding Under
New Site Permit Application)	The Land Reclamation Act
)	§§ 444.760-444.789, RSMo
ROBERT SNYDER, et al,)	
LIESL SNYDER, et al,)	
)	
<i>Petitioners,</i>)	Permit #1094
)	
v.)	
)	
DEPT. OF NATURAL RESOURCES,)	
KEVIN MOHAMMADI,)	
Staff Director,)	
Land Reclamation Program,)	
Division of Environmental Quality,)	
)	
<i>Respondent,</i>)	
)	
AA QUARRY LLC,)	
)	
<i>Applicant,</i>)	

**PETITIONER’S BRIEF IN SUPPORT OF THEIR REQUEST THAT THE HEARING
OFFICER RECOMMEND DENIAL OF APPLICANT’S PERMIT TO CONSTRUCT A
LIMESTONE QUARRY IN JOHNSON COUNTY, MISSOURI**

BRIEF OF PETITIONERS ROBERT AND LIESL SNYDER, ET AL.

Robert and Liesl Snyder
276 NW AA Hwy
Kingsville, MO 64061
Telephone: (816) 806-4869
E-mail:snyauto@swbell.net

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General Operating Permit Body

PETITIONERS BURDEN OF PROOF

Section 444.773 4.

“In any public hearing, if the commission finds, based on competent and substantial scientific evidence on the record, that an interested party’s health, safety or livelihood will be unduly impaired by the issuance of the permit, the commission may deny such permit. If the commission finds, based on competent and substantial scientific evidence on the record, that the operator has demonstrated, during the five-year period immediately preceding the date of the permit application, a pattern of noncompliance at other locations in Missouri that suggest a reasonable likelihood of future acts of noncompliance, the commission may deny such permit. In determining whether a reasonable likelihood of noncompliance will exist in the future, the commission may look to past acts of noncompliance in Missouri, but only to the extent they suggest a reasonable likelihood of future acts of noncompliance. Such past acts of noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a reasonable likelihood of future acts of noncompliance. In addition such past acts of noncompliance shall not be used as a basis to suggest a reasonable likelihood of future acts of noncompliance unless noncompliance has caused or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor.”

Petitioners understanding is that the first half of the statute applies solely to the commission, not the petitioner. The standard described in this portion of the statute is quite high, and rightly so, due to the fact that the commission would be denying a permit for a lawful activity, based on a noncompliance or a violation of law which has not yet occurred. Petitioners have made no such claim in this case as to past acts of noncompliance at other locations in Missouri suggesting a reasonable likelihood of future acts of noncompliance. There is no mention in this part of the statute as to “present acts” of noncompliance. This part of the statute applies only to the commission. The statute goes on to say;

“If a “hearing petitioner” or the commission demonstrates either “present acts of noncompliance” or a reasonable likelihood that the permit seeker or the operations of associated persons or corporations in Missouri will be in noncompliance in the future, such a showing will satisfy the noncompliance requirement in this subsection. In addition, such basis must be developed by multiple noncompliance of any environmental law administered by the Department of Natural Resources at any single facility in Missouri that resulted in harm to the environment or impaired the health, safety or livelihood of persons outside the facility.”

In the second part of the statute the words “hearing petitioner” are used for the first time, identifying the petitioner as separate from the commission. It is also the only time the term

“present acts of noncompliance” is used. So what is the standard, or the burden, that the petitioner is required to meet under the statute? It is the petitioners understanding that the language in the statute is stated simply to “demonstrate present acts of noncompliance”. It does not require competent and substantial scientific evidence on the record, nor does it require that the noncompliance be identified and reported by Department of Natural Resources personnel to the commission. The standard for demonstrating present acts of noncompliance is lower than the standard for demonstrating future acts of noncompliance because these noncompliances have in fact already taken place, and have been “demonstrated” by testimony and photographic evidence on the record, by the petitioner, in this formal administrative hearing. It also states that “such a showing will satisfy the noncompliance requirement in this subsection”. Based on information in this portion of the statute the petitioners’ obligation is simply to “demonstrate multiple present acts of noncompliance, of any environmental law administered by the Department of Natural Resources at any single facility in Missouri that resulted in harm to the environment.”

One such example is petitioners exhibit Snyder 6L, which shows land disturbance, and quarrying activity, in an area greater than 1 acre in size on February 16, 2012. This was over five months prior to the first permit being issued to this site. (MORA 01538). This is a clear violation /noncompliance of Missouri clean water law. While conducting these activities, without an operating permit in place, and having not yet created A SWPPP, the applicant placed fill materials into what are waters of the United States for the construction of a check dam. All prior to obtaining a 401 clean water certification from the Department of Natural Resources. The applicant’s unregulated attempt to try and protect the environment actually caused harm, to the extent that said harm had to be mitigated. Petitioners believe this argument satisfies the requirement set forth in the statute.

Petitioners further believe that having demonstrated multiple present acts of noncompliance, of any environmental law administered by the Missouri Department of Natural Resources, at any single facility in Missouri, which has resulted in harm to the environment, does satisfy the petitioners’ burden of establishing issues of fact. “Once such issues of fact have been established, the burden of proof for those issues is upon the applicant for the permit.”

STATEMENTS OF FACT

Prior to Larry Slechta's inspection on 6/19/2012, the applicant was quarrying and blasting rock at the site. (TR 557 1-16)(TR 559-13 to 560-2) Snyder 2P

Larry Slechta informed the applicant by phone the need for obtaining a permit prior to commercial use. (TR 558-18 to 559-6)

Larry Slechta never gained access to the property for inspection during his investigation. (TR 557 17-24)

Prior to obtaining general operating permit MORA 01538 the applicant had disturbed an area greater than 1 acre in size. (TR 118-18 to 119-7) Snyder 6L 640.710RSMo 10 CSR 20 – 6.010

Prior to 2/16/2012 the applicant did place fill materials into an unnamed ephemeral stream while constructing a ditch check. Snyder C

Quarried rock material had been removed from the site prior to obtaining a land reclamation permit. (TR 405 2-18) 444 .770 RSMo 10 CSR 40 – 10.010 (1) (A) 2.

Applicant applied for and received general operating permit MORA 015382 to supply quarried limestone materials for a Radmacher Brothers project on Chouteau traffic way.(TR 405 20 to 406 3)

Applicant is familiar with operating permits from the Department of Natural Resources for operating borrow sites. (TR 406 7-13)

The applicant Robert Radmacher instructed his employees to construct a dam 28 feet tall. (TR379 6-15)

The dam that was being constructed by the applicant's employees was not surveyed as it was constructed. (TR 742 22 to 744 25)

Applicant's exhibit AP 67 demonstrates the profile of the dam as designed, not as constructed. (TR 745 7-16)

The applicant's dam, which was constructed without being surveyed, was built to a tolerance of "a foot or so". (TR 747 3-8)

The applicant Robert Radmacher had discussions with his brother Tom Radmacher, about lowering the height of the dam, prior to the April 22 meeting with the Army Corps of Engineers about lowering the height of the dam. (TR 749 18 to 750 12)

The applicant Robert Radmacher instructed his brother Tom Radmacher to start cutting down the top of the dam prior to any mitigation plan being submitted or approved. (TR 751 17-21)

When the large detention basin was lowered it was cut off level, taken down in layers. (TR 755 5-15)

Tom Radmacher was lowering the height of the dam between April 29 and May 3 of 2013. The Department of Natural Resources dam safety program took their first measurements may 9, 2013. (TR 761-23 to 762-8)

The applicant Robert Radmacher did not try to obtain or determine the need for any permit for the work they were doing in what would be the 9.15 acre borrow site. (TR 765 5-15)

The applicant quarried with explosives to provide materials for the Radmacher Brothers project on Chouteau traffic way. (TR 768 2-15)(TR 772-4 to 775-8)(TR 790 3-9) 444.770 RSMo 10 CSR 40 – 10.010 (1) (A) 2.

The applicant Robert Radmacher did know the property contained limestone prior to purchase. (TR 768-16 to 770-7)

The applicant Robert Radmacher did quarry directly from natural deposits and remove material from the site to be used at multiple different locations. (TR 776 3 to 782-17) 444.770 RSMo 10 CSR 40 – 10.010 (1) (A) 2.

The applicant's check dam had been modified over time to make it larger. (TR 793 8-11)

Sediment not stopped by the check dam would have flowed toward Echo Lake. (TR 802 3-10)

The applicant made no inspections of Echo Lake during the drought. (TR 802 25 to 803 7)

Tom Radmacher was the person designated to keep land disturbance inspection records. (TR 572 2-19) (TR 574 1-24)

Tom Radmacher has no formal training. (TR 575 12-17) (TR 582 2-10) permit body. C 9.

Land disturbance inspection records were not actually filled out by Tom Radmacher. (TR 577 2-22)

The driveway leading to the public notification sign is not a public road. (TR 586 11-13)

Tom Radmacher has never measured the rainfall at the site. (TR 593 12 to 594 10)

Land disturbance inspection record shows that 404 modifications were made prior to Army Corps inspection. (TR 631 1-9)

Rock check dam was not designed and built to specified plans, it was enlarged over periods of time. (TR 642 8-18) permit body C.1.

Thomas Radmacher has never been down to the Blackwater River. (TR 646 23 to 647 10)

The applicant should have obtained both a 404 permit, from the Army Corps of Engineers, and a 401 clean water certification from the Department of Natural Resources prior to causing impacts to the waters of the United States. (TR 670 1-23) (TR 675 1-19)

Primary detention basin was larger than expected for an agricultural exemption. (TR 673 8-24)

The applicant's activities had in fact impacted the waters of the United States. (TR 675 20 to 676 5)

Nathan Hamm had the applicant's property surveyed to determine the amount of impacts. The survey took place on April 5, 2013 and was performed by Isaac Sheldon registered land surveyor. (TR 683-12 to 689-17)

Nathan Hamm states as an engineer and as an environmental specialist these two devices (the detention basin and the check dam) would capture water and sediments. Then when asked if he had an opinion as to their effectiveness, he had no opinion. (TR 700 7-16)

Nathan Hamm determined the height of the dam to be approximately 34 feet, without having the elevation at the downstream toe of the dam. (TR 714 11 to 715 11)

The Department of Natural Resources commented that the 401 certification was granted after the fact, and the Department of Natural Resources had no opportunity to make suggestions to reduce the impacts. (TR 728 2 to 729 19)

During Mr. Peltz's investigation of the site he did not identify the boundaries of the 9.15 acre permitted area. The large sediment detention basin that was being constructed during his inspection was not inside the permitted area. (TR 882 4-23)

A sediment detention basin is required for every land disturbance area of 10 acres or more, not by the acreage depicted on the permit. The applicant did ultimately have to obtain a new land disturbance permit because he had exceeded the boundaries of the 9.15. (TR 906 6 to 907 15) permit body A.1.

It is not advisable to increase the water velocity into a detention basin. (TR 908 23 to 909 14)

Mr. Peltz's site inspection was not completed in one visit, it required two. (913 15 to 914 14)

It is a requirement that BMPs be placed inside the permitted area. (TR 915 to 916 5)

The check dam that was designed to catch sediments was itself constructed in waters of the United States, so any contaminants that flowed into it would have been in violation. (TR 917 2 918 3)

Applicant moved materials from inside the permitted area to outside of the permitted area. (TR 925 14 to 926 14)

Land disturbance inspection records were not filled out on a weekly basis, nor within 24 hours of a half-inch or greater rain event. (927 11 to 928 24) permit body C. 10.

The quarrying of limestone is not an agricultural activity. (929 8-25)

BMPs are not located within the permit area. (930 3-22)

Insufficient or improper land disturbance inspection forms are a violation. (TR 931 3-20)

Duty to comply, the permittee must comply with all the conditions of this general permit. (TR 934 5-23) permit body J.

Patrick Peltz advised the applicant that he should obtain a new permit for the work being done outside the 9.15 acre permitted area on March 7, 2013. Two days after the inspection by Michael McFadden, from the Army Corps of Engineers. (TR 321 9 to 322 10) (TR 347 9 to 348 4)

MORA 02837 was issued for land disturbance activities in relation to the development of the property as a future limestone quarry with the permitted area of 104.77 acres, not a borrow site. (TR 319 to 320 6)

Quarried limestone material from this site was used on a Radmacher Brothers project on Chouteau traffic way (320 24 to 321 8) 444.770 RSMo 10 CSR 40 – 10.010 (1) (A) 2.

Tom Radmacher did not discover any unsatisfactory features while performing his land disturbance inspections. (335 15 to 336 3)

BMPs are to be installed to improve water quality before it leaves the permitted area. (336 4 to 337 5) permit body C. J.

Rip rap is sized limestone 4 to 8 inches in size. (338 25 to 339 5)

An MOG 49 permit is a general permit for storm water discharges from limestone quarries. (TR 341 11-22)

Applicant's SWPPP does not contain the necessary requirements. (TR 352 19 to 352 to 35414) permit body C.g.

Patrick Peltz did not indicate to the applicant that the public notification sign needed to be moved, even though it was not visible from the public road that provides access to the site. (TR 256 8-18) 10 CSR 20 – 6.020 (B) (C) 2. (E) 3. 1.2.

Patrick Peltz's site inspection was done at the request of Mitch McConnell and Andrea Collier. (TR 357 14 to 358 4)

Applicants are required to follow the terms and conditions in their SWPPP. (TR 361 14 to 363 1) permit body j.

Inspectors would make the determination as to whether land disturbance activities are agricultural. (TR 365 20 to 366 14)

During Jimmy Cole's inspection he did not ascertain the boundaries of the previous 9.15 acre permitted site, nor could he locate any BMPs within that area. (TR 371 17 to 374 16)

ARGUMENT

On January 19, 2011 the property was purchased at 381 NW AA Highway Kingsville Missouri. It was purchased by Radmacher Land and Equipment Management Company. The applicant Robert Radmacher was aware prior to purchase that this property contained deposits of Bethany Falls limestone. Shortly after the purchase of this property the applicant Robert Radmacher, and his brother Tom Radmacher, an employee the Radmacher Brothers excavating company, began quarrying rock from the center of the property. They used some of the quarried limestone material on this property to fill erosional ravines. They also used some of this material on other properties they own in the area. Some was even sold to a neighbor. 444.770 RSMo 10 CSR 40 – 10.010

August 18, 2011 the Palmerton Parish Company drilled five test holes at this location to determine the quality and the quantity of the limestone on the site. This was seven months after the date of purchase.

This site was quarried primarily on evenings and weekends. These activities could be heard by the surrounding property owners, which includes the petitioners. What was heard was the banging of the rock hammer, and the noise of the steel dozer tracks running back and forth over the ground.

On June 12, 2012 a complaint was made to the Department of Natural Resources Land Reclamation Program, of noises that sounded like quarrying. An investigation was performed, but the inspector never gained access to the quarried site. His conclusion, that this was not a commercial quarry site was based solely on a phone conversation with Robert Radmacher, even though he was told they were blasting and quarrying.

At this point in time the land disturbance area had already surpassed 1 acre in size, as demonstrated in Snyder Exhibit 6-L. It is a violation of Missouri clean water law to create an area of land disturbance greater than 1 acre prior to obtaining a general permit. 444.710 RSMo 10 CSR 20 – 6.010 permit body C. j.

Having no permit, there was no oversight from the Department of Natural Resources or any other state or federal agency. No SWPPP had been created. No land disturbance inspections reports were being filled out. The applicant has been in the excavation and earthmoving business for over 30 years, with permitting as a part of his daily business activities. He is not unfamiliar with the process or the permits required. Permit body C. 2.

In an attempt to manage storm water runoff prior to obtaining any permits, the applicant began construction of a check dam by placing rocks in a stream below the outfall of an existing farm pond. This farm pond and the streams leaving this property were in fact waters of the United States. So the applicant's attempt to manage storm water was in fact a violation of federal law and did cause harm to the environment. 644.026 RSMo 10 CSR 20 – 6.060 (1) (2)

The applicant obtained his first general operating permit for 9.15 acres on July 6, 2012. Even though he was already quarrying and blasting consolidated limestone material, he informed the Department of Natural Resources that this was to be a borrow site not a quarry. The applicant stated he believed having this permit authorized the use of these quarried limestone materials on a commercial project for Radmacher Brothers excavating company. General operating permits do not authorize the quarrying of consolidated limestone material. The storm water runoff from a land disturbance site is much different than storm water runoff from a quarry operation.

The management of storm water runoff from a limestone quarry is done with the MOG 49 permit, which requires sampling and testing. Storm water runoff from a limestone quarry is much more damaging to the environment. Limestone material is water-soluble and has the ability to change the pH level of the water, harming both plants and animals. The reason the MOG 49 permit that has been applied for has not yet been issued is because it coincides with the issuance of a land reclamation permit. If he does not have the land reclamation permit, he is not supposed to be quarrying. So if he is not quarrying why does he need the MOG 49?

The image that the applicant used to show his mine plan boundaries in his land reclamation permit application came from Google earth and the image date is August 27, 2012. The land disturbance area that the applicant created is clearly visible in the photograph that he supplied to the Department of Natural Resources. At this point in time the applicant had already exceeded the boundaries of the 9.15 acre permitted area. Snyder exhibit I is a close-up of the same image. It clearly shows quarrying activity, rock crushing equipment, and stockpiles of quarried material exposed to the weather. This is precisely the type of activity that is authorized only under a land reclamation permit and the MOG 49.

The same image that the applicant used to show his mine plan area also shows the condition of Echo Lake during the drought. Snyder exhibit Y is another close-up of the same image August 27, 2012. It shows the layer of sediment that was last deposited into Echo Lake before the drought, when the applicant's check dam was nothing more than a few rocks in the stream.

MORA 01538 was issued on July 6 of 2012. The date of the photograph is August 27, 2012. The first land disturbance inspection report that Tom Radmacher filled out was done on September 15, 2012. Over two months after obtaining the permit, and almost a month after the date of the photo. Not exactly done on a weekly basis as required. 640.710 RSMo 10 CSR 20 – 6.010 (1) (A) (5) (A)

November 2012 Patrick Peltz made two visits to the site. He inspected the applicant's SWPPP and found it to be complete, but it was not. He inspected the applicant's land disturbance inspection forms and found them to be sufficient, but they were not.

During his inspections Mr. Peltz did not identify the boundaries of the 9.15 acre permitted area, instead he inspected the entire property. The dam that was being constructed on the property during Mr. Peltz's visit was not within the permitted area.

The applicant had no permit for the dam construction activity. No SWPPP, no BMP's, and no 401 clean water certification for the construction of the dam. This dam was also being constructed in waters of the United States. 644.026 RSMo 10 CSR 20 – 6.060 (1) (2)

In 10 CSR 40 – 10.050 (4) (B) 4. It states, sediment ponds shall be built to the requirements of the publication natural resources conservation service conservation practice standard, POND (No.) CODE 378 (NRCS MOFOTG, December 1998). This dam was not being constructed pursuant to any architectural plans or drawings. It was being constructed as if it were just a farm pond, not related to the quarry.

Mr. Peltz also failed to inform the applicant that his public notifications were to be visible from the public road, to provide residents in the area the opportunity to participate in the permitting process. 640.710 RSMo 10 CSR 20 – 6.020 (B) (C) 2. E 3. E 1. 2.

The construction of the detention basins and haul road are to support quarry operations and are not exempt agricultural activities. These are vital pieces of the infrastructure required to support the commercial quarry operations, as described in the applicant's land reclamation permit application. The material that was quarried from this site, including crushed and sized limestone, was used to construct the basins and haul road that were being used for a commercial purpose- the construction of the limestone quarry. 444.770 RSMo 10 CSR 40 – 10.010 (1) (A) 2.

Section 444.776 2. No permit is required, land reclamation permit, under sections 444.760 to 444.790 for the purpose of "moving" minerals or fill dirt within the confines of real property where excavation occurs, or for the purpose of removing minerals or fill dirt from the real property as provided in this section.

There is a clear difference between the "moving of minerals", and their use in a commercial project. The minerals at the site were not simply moved. They were crushed, and sized, and used in the construction of a limestone quarry. This activity would require a land reclamation permit.

An inspection was done on March 5, 2013 by Michael McFadden from the Army Corps of Engineers. The determination was made that these unnamed ephemeral streams were in fact tributaries to waters of the United States. The applicant was found to be in violation of condition 31, failure to give pre-notification prior to placing fill or dredge into waters of United States. Where a 404 permit is "required" a 401 clean water certification must also be obtained. The 401 is obtained through the Department of Natural Resources. The applicant did not obtain a 401 clean water certification prior to placing fill materials into waters of the United States. 444.026 RSMo 10 CSR 20 – 6.060 (1) (2)

Two days following Michael McFadden's inspection on March 7, 2013, staff from the Department of Natural Resources visited the site prior to the Lone Jack meeting. This would include Kevin Mohammadi, Bill Zeaman, James Helgeson, and others. During this visit Jimmy Coles informed the applicant Robert Radmacher that he might want to consider getting a new

land disturbance permit to cover the work which had been done outside the permitted area. The new permit MORA 02837 was subsequently issued on March 13, 2013 to cover 117 acres. 640.710 RSMo 10 CSR 20 – 6.010 (1) (A) (5) (A)

On April 5, 2013 Aqua Terra surveyed the site to determine the extent of the damage to the environment. They needed to measure the impacts, the number of feet of streambed that had been filled with earth, or flooded by water. The survey was performed by a land surveyor licensed in the state of Missouri. The equipment that he used was GPS-based. All the elevations that were taken and shown on the survey are relative to sea level. There were two critical measurements they needed to take of the dam to prepare their impact study. The first would be the elevation of the spillway. This they would need to determine how much streambed would be inundated by water when the Lake was at full pool. They determined this to be 1524 linear feet.

The second critical measurement would be the distance between the upstream toe of the dam and the downstream toe of the dam. They would need these measurements to determine the amount of streambed that was lost by the construction of the dam itself. Exhibit AP 60 is only a partial representation of what would have been shown on the complete survey. The location of the upstream toe and the downstream toe are not shown on this partial survey. Aqua Terra determined that the construction of the dam destroyed 195 linear feet of streambed, and yet Nathan Hamm testified that no measurement was ever taken at the downstream toe of the dam. It would be impossible to determine that 195 linear feet of streambed had been lost without having these measurements.

AP 58 and AP 60 were created after Paul Simon, from the Department of Natural Resources dam safety program informed the applicant that he would be inspecting the newly constructed dam and measuring its height.

The applicant Robert Radmacher testified that the dam was lowered in an attempt to reduce his mitigation expense. Removing material from the top of the dam would have no effect on the mitigation expense. It would not lower the water level of the lake, thereby exposing streambed which had been flooded. Nor would it reduce the 195 linear feet of streambed which has been destroyed by the construction of the dam itself.

None of the proposed mitigation plans included removing material from the top of the dam. No mitigation plans had been accepted or approved by the Army Corps of Engineers. Exhibit AP 19 Notice of permit noncompliance, dated April 2, 2013 Front Page, paragraph 4. Clearly states, “We request that you conduct no further work in waters of the U.S. until your permit noncompliance is resolved.”

The applicant clearly had no authorization from the Army Corps of Engineers to remove material from the top of the dam. Robert Radmacher was informed, by Paul Simon, from the Department of Natural Resources dam safety program, that if during their inspection the dam was found to be

over 35 feet tall it would be regulated by the state, and that it would have to meet certain design requirements. 10 CSR 22-2.010 (3)

Knowing that the dam would have to meet specific design and safety requirements if over 35 feet tall, and be regulated by the state, reducing the height of the dam would prevent that regulation.

On July 6, 2012 the applicant received his first general operating permit MROA 01538. This permit required the creation and implementation of a SWPPP. This permit also contained requirements for site inspections and reports. Permit body, C. 10. These inspections reports were to be performed every seven days or within 24 hours of a ½ inch or greater rain event. Petitioners have demonstrated through Snyder Exhibit, 2Z and 6J that the inspection reports were not done as required. Between July 6, 2012 and January 31, 2014 the applicant had only performed 35 inspections. Snyder exhibit, 6J demonstrates based on measured rainfall at the closest recording station and the calendar that there should have been 131 inspections during this period of time.

Petitioners have also demonstrated that much of the information contained within these inspection reports is inaccurate or false. For example land disturbance inspection record number will 7, dated December 23, 2012, shows new permit MORA 02837. This permit was issued on March 13, 2013 and should not have appeared on the applicants land disturbance inspection records prior to number 13, dated March 29, 2013. There is no way the applicant could have known this permit number three months prior to its issuance.

Another example would be land disturbance inspection record number 12, March 1, 2013. States, made detention basin modifications for 404 permit. Mike McFadden inspector from the Army Corps of Engineers did not inspect the site until March 5, 2013. How could they be making these modifications based on an inspection which is not yet taken place?

The purpose of these inspections is to identify and repair deficiencies. Land disturbance inspection record number 18, July 7, 2013 states, "5 inches rain cause running in rip rap on basin." The damage was noted on the report but no correction was ever made. Snyder exhibit 2-D, photograph taken on August 20, 2013 shows the damage on the basin still unrepaired. On September 4, 2013 Jimmy Coles performed an on-site inspection and found two violations. One being an oil spot on the ground about 2 feet in diameter, and the other being the erosion on the back of the basin. Inspection report number 25, September 13, 2013 demonstrates the deficiencies were found by Department of natural resources staff, and corrected at their request. For over three months these deficiencies went undetected by the applicant's inspector Thomas Radmacher. This clearly demonstrates the applicant's inability or unwillingness to do what is required to protect the environment.

CONCLUSION

“If a hearing **petitioner** or the commission **demonstrates** either **present acts of noncompliance** or a reasonable likelihood that the permit seeker or the operations of associated persons or corporations in Missouri will be in noncompliance in the future, **such a showing will satisfy the noncompliance requirement in this subsection.** In addition, **such basis must be developed by multiple noncompliances of any environmental law administered by the Department of natural resources at any single facility in Missouri that resulted in harm to the environment** or impaired the health safety or livelihood of persons outside the facility.”

So what are the present acts of noncompliance, and how have they harmed the environment?

The applicant created a land disturbance area greater than 1 acre in size prior to obtaining a permit. He excavated and quarried in this unpermitted area, with no SWPPP and no land disturbance inspection reports, and no MOG 49 permit.

Storm water was allowed to wash through this site and flow downstream with no regulation from the Department of Natural Resources. (Snyder exhibit 4K) Petitioners demonstrated a rainfall event on March 22, 2012 of 2.20 inches of rain. This was the last significant rainfall before the drought event that expose the bottom of Echo Lake.

Petitioners’ claim that this is how the white material was deposited in Echo Lake was not refuted by the applicant and no other possible source was demonstrated.

This rain event was four months prior to the applicant obtaining his first general operating permit, the MORA 01538. While still unpermitted, the applicant began construction of a check dam, placing fill materials into what are waters of the United States. The check dam itself destroyed 80 linear feet of streambed. An additional 748 linear feet were filled with soil and rock. These activities require a 401 clean water certification be issued from the Department of Natural Resources, which the applicant did not have.

On July 6, 2012, the applicant received his first general operating permit, MORA 01538 for the operation of a borrow site. This permit allowed land disturbance activities in a 9.15 acre area.

The public notification sign that was provided within this permit was posted where it could not be seen from the public road. Under this permit the applicant began removing quarried limestone material from the site, and using it on a Radmacher Brothers project. This is a clear violation, as general operating permits do not authorize the removal of quarried limestone material. For this he would need a Land Reclamation permit and the MOG 49.

Applicant also began crushing and sizing limestone material to be used for construction projects at the site. This included the construction of a dam and sediment detention basin and a haul road to transport water to support quarry operations.

Although the applicant had obtained a general operating permit, this dam was constructed outside the permitted area. This dam was also constructed in waters of the United States while the applicant still had no 401 clean water certification.

The construction of the dam itself destroyed hundred 195 linear feet of streambed. The impoundment consumed 1524 feet of streambed. In applicant's exhibit AP 60 these are referred to as jurisdictional impacts. The jurisdictional impacts, or harm to the environment, demonstrated in this document, the applicant has not denied.

All the issues that petitioners have raised throughout the course of these proceedings the applicant had the ability to prevent. The general operating permit that the applicant received contained within it all the necessary information needed to follow the laws and be compliant. All the applicant needed to do was read the permit and implement the required procedures. Instead he chose to do business as usual. (TR 765 10-13)

Petitioners request, based on information presented on the record in the formal hearing that the hearing officer's recommendation be for denial of the permit due to applicant's multiple present acts of noncompliance which have caused harm to the environment.

Petitioners further believe that these multiple present acts of noncompliance also demonstrate a reasonable likelihood of future acts of noncompliance.

Respectfully submitted,

By 
Robert Snyder



Liesl Snyder
Robert and Liesl Snyder
276 NW AA Hwy
Kingsville, MO 64061
(816)806-4869
snycarto@swbell.net
PRO SE PETITIONERS

CERTIFICATE OF SERVICE

I certify that on Friday, October 10th, 2014, we served a true and accurate copy of the above via electronic mail on:

W.B. Tichenor, DNR-Hearing Officer
3710 Shadow Glen Court
Columbia, Missouri 65203-4844
wbtichenor@gmail.com

G. Steven Ruprect
sruprecht@brlawkc.com

Attorneys for Applicant

Timothy P. Duggan
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65102
Tim.duggan@ago.mo.gov

Daren Eppley
Daren.eppley@ago.mo.gov

Attorneys for Land Reclamation Program

Attorneys for Respondent



Robert Snyder
Pro Se Petitioner