



Jeremiah W. (Jay) Nixon, Governor

Sara Parker Pauley, Director

## DEPARTMENT OF NATURAL RESOURCES

dnr.mo.gov

### MEMORANDUM

DATE: July 6, 2011

TO: Missouri Land Reclamation Commission

FROM: William S. Zeaman, Chief, Non-Coal Unit (*Original signed by William Zeaman*)  
Land Reclamation Program

SUBJECT: Formal Complaint 2724, J.M. Burger, Inc.

A Formal Complaint is one of the most serious enforcement actions prescribed in *The Land Reclamation Act* taken against an Industrial Mineral mine operator and the second to the last step before permit revocation and bond forfeiture. On November 29, 2010, staff on behalf of the director issued Notice of Violation 0860-002 for failure to control damaging erosion from leaving the permit area and violation 0860-003 for failure to reclaim in a timely manner. The notices were sent via certified mail and accepted by J.M. Burger, Inc., on December 8, 2010. The notices required the operator to install erosion control structures and to reclaim the mine site, no later than 120-days from receipt of the notice. The proposed administrative penalty assessment was set for the amount of \$870.00 for violation 0860-002 and \$1,000.00 for violation 0860-003. The proposed penalty assessments were accepted by J.M. Burger, Inc., on December 21, 2010. The operator did have fifteen (15) days to request an informal conference concerning the proposed penalty assessment and did not take action.

The Rules and Regulations at 10 CSR 40-10.070(3)(A)2. read:

**(3) Formal Complaint.**

**(A) The director shall issue a formal complaint to the commission if the—**

**1. Abatement measures have not been met within the prescribed time frame;**

In this case, abatement measure timeframes for violation 0860-002 & 0860-003 have expired.



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Because the permittee has neglected to take any action towards correcting the violations or to request an informal conference concerning the administrative penalty assessments, staff recommends that the Land Reclamation Commission sign the Notice of Formal Complaint for failure abate violations 0860-002 & 0860-003 within the prescribed timeframe. In addition, notify the permittee that a Formal Complaint has been filed against him and that he has fifteen (15) days to either request a hearing, correct the violation which is the basis of this Formal Complaint, or take no action which will result in a recommendation at the November 2011 commission meeting to revoke permit #0860 and request that the Attorney General's Office seek collection of the bond.

WSZ:tb

BEFORE THE  
LAND RECLAMATION COMMISSION  
STATE OF MISSOURI

In the Matter of	)	
J.M. Burger, Inc.	)	No. 2724
Permit 0860	)	
Formal Complaint	)	

NOTICE

Upon the filing of a Formal Complaint against the above by the director, which Formal Complaint is attached hereto, the Commission hereby orders that formal written notice of said filing, together with a copy of the Formal Complaint, be served upon the person complained against.

The Commission further notifies the operator that he has the right to request a hearing as provided in section 444.787 RSMo. if the request for such hearing is made within fifteen (15) days of receipt of this notice.

SO ORDERED this 28th day of July, 2011.

**LAND RECLAMATION COMMISSION**

\_\_\_\_\_  
James DiPardo

\_\_\_\_\_  
Dr. Gregory Haddock

\_\_\_\_\_  
Joe Gillman

\_\_\_\_\_  
John Madras

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Dr. Leslie Gertsch

\_\_\_\_\_  
Aaron Jefferies

\_\_\_\_\_  
Vacancy

BEFORE THE  
LAND RECLAMATION COMMISSION  
STATE OF MISSOURI

In the Matter of	)	
J.M. Burger, Inc.	)	No. 2724
Permit 0860	)	
Formal Complaint	)	

FORMAL COMPLAINT

The Director of the Land Reclamation Commission makes the following formal complaint against J.M. Burger, Inc., pursuant to Section 444.787, RSMo (Supp. 2009):

1. This site has been in reclamation or "closed" status as identified in the Annual Reclamation Status Report received on October 9, 2008.
2. On September 15, 2009, Environmental Specialist Amanda Weimer conducts an inspection. Sediment was noted as having the potential to leave the permit area as well as contemporaneous reclamation timeframes not being satisfied. The site has sat idle for several years. Operator is requested to submit quarterly reclamation up-date reports. Conference, conciliation and persuasion attempts are initiated to eliminate the violations.
3. From December 15, 2009 to September 15, 2010 the Land Reclamation Program did not receive any quarterly up-date reclamation reports from J.M. Burger, Inc.
4. On November 16, 2010, Environmental Specialist, Amanda (Weimer) Lowe conducts an inspection. Sediment was noted as leaving the permit area. In addition there was no recent attempt to satisfy grading, topsoil replacement and seeding requirements.
5. On November 29, 2010, J. M. Burger Inc., was issued Notice of Violation 0860-002 for failure to control sediment from leaving the site. The remedial action requirement was to immediately install temporary erosion control structures. In addition J.M. Burger, Inc., was issued 0860-003 for failure to reclaim in a timely manner. The remedial action requirement was to complete grading in 90-days and to re-vegetate the site in 120-days. These violations were sent via certified mail to J.M. Burger, Inc.
6. On December 8, 2010, J.M. Burger, Inc., receives Notices of Violation 0860-002 and 0860-003.
7. On December 10, 2010, proposed administrative penalty assessments for violations 0860-002 and 0860-003 are set at \$870.00 and \$1,000.00, respectively. These proposed penalty amounts were sent via certified mail to J.M. Burger, Inc.
8. On December 21, 2010, J.M. Burger, Inc, receives the proposed penalty assessments.

9. The Code of State Regulations at 10 CSR 40-10.070(4)(A) & (B) reads:

**"(4) Service of Notice of Violation, Formal Complaint or Commission Orders.**

**(A) A notice of violation, formal complaint or commission order shall be served on the person to whom it is directed or a designated agent by certified mail or hand delivered at the mine site.**

**(B) If the person to receive the certified materials refuses to accept delivery or to collect the mail, the requirements of this rule shall be deemed to have been completed."**

10. The Code of State Regulations at 10 CSR 40-10.070(3)(A)1. & 2., reads:

**"(3) Formal Complaint.**

**(A) The director shall issue a formal complaint to the commission if the—**

**1. Abatement measures have not been met within the prescribed time frame; or**

**2. Administrative penalties assessed by the commission have not been paid within ninety (90) days."**

11. Abatement measures for Notices of Violation 0860-002 & 0860-003 are not met within the prescribed timeframe. The overall time period for abatement was 120-days from receipt of the violations.

12. Again, 10 CSR 40-10.070(3)(A)1. reads that: "The director shall issue a formal complaint to the commission if abatement measures have not been met within the prescribed time frame". Section (3)(B) further reads: "The formal complaint shall be in writing, signed by the director and include: 1. The nature of the violation; 2. The law or regulation violated; 3. Remedial action required; 4. The statement that the operator has a right to a hearing; and 5. The proposed penalty assessment on the original violation." Section (3)(C) reads: "The operator may request a hearing by the commission within fifteen (15) days of receipt of the complaint by the operator."

13. The nature of the violation 0860-002 is failure to control damaging erosion from leaving the permit area as required by law for conducting surface mining as referenced in paragraph five (5) of this Formal Complaint. The reference to the statutes is in 444.774.1.(2) RSMo. which reads:

**" (2) As a means of controlling damaging erosion, the director may require the operator to construct terraces or**

**use such other measures and techniques as are necessary to control soil erosion and siltation on reclaimed land. Such erosion control measures and techniques may also be required on overburden stockpiles if the erosion is causing environmental damage outside the permit area..."**

14. The requirements to remediate this violation are for the operator to install temporary erosion control structures and to re-configure the stormwater outfall to allow additional time for sediment to settle.
15. The nature of Violation 0860-003 is failure to reclaim in a timely manner as required in a permit for conducting surface mining as referenced in paragraph five (5) of this Formal Complaint. The reference to the statutes is in 444.774. 2. RSMo. which reads:

**"An operator shall commence the reclamation of the area of land affected by its operation as soon as possible after the completion of surface mining of viable mineral reserves in any portion of the permit area in accordance with the plan of reclamation required by subsection 9 of section 444.772, the rules and regulations of the commission, and the conditions of the permit. Grading shall be completed within twelve months after mining of viable mineral reserves is complete in that portion of the permit area based on the operator's prior mining practices at that site. Mining shall not be deemed complete if the operator can provide credible evidence to the director that viable mineral reserves are present. The seeding and planting of supporting vegetation, as provided in the reclamation plan, shall be completed within twenty-four months after with mining has been completed survival of such supporting vegetation by the second growing season."**

16. The requirements to remediate this violation are for the operator to complete grading, install necessary erosion control measures as needed and revegetate all exposed areas.
17. The operator has a right to request a hearing. The request for a hearing must be received by the Staff Director within fifteen days from the date of this Formal Complaint.
18. The proposed administrative penalty assessment is set at \$870.00 for violation 0860-002 and \$1,000.00 for violation 0860-003.

The director determines that the abatement measures associated with Notices of Violation 0860-002 & 0860-003 are not met within the prescribed timeframe which is the basis of the Formal Complaint as referenced at 10 CSR 40-10.070(3)(A)1. It is the position of the director that failure to control damaging off-site erosion and failure to reclaim in a timely manner, as a part of a mining operation reclamation requirement and condition, constitutes adequate grounds, under the provision of 444.787.2 RSMo. to seek permit revocation. Permit revocation will occur if the operator fails to take action as outlined in paragraph fourteen (14) and sixteen (16) of this Formal Complaint.

WHEREFORE, the Staff Director requests that the Commission seek to forfeit the bond and revoke permit #0860 issued to J.M. Burger, Inc., provided that the operator does not request a hearing on this matter within fifteen (15) days of receipt of the formal complaint or properly abate the violations. The director will serve this complaint by certified mail. If J.M. Burger, Inc., does not respond to this Formal Complaint within 15-days from the date of this Formal Complaint, the Missouri Department of Natural Resources, Land Reclamation Program staff plans on presenting an order before the commission to revoke permit 0860 and for the Attorney General's Office to seek collection of the bond at the November 17, 2011, meeting of the commission.

Respectfully submitted

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Mike Larsen, R.G.  
Staff Director,  
Land Reclamation Program

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Date

CERTIFIED MAIL # 7008 2810 0000 2017 2910  
RETURN RECEIPT REQUESTED

July 29, 2011

Mr. Jarrett Burger  
J.M. Burger, Inc.  
2884 State Highway PP  
Commerce, Missouri 63742

Dear Mr. Burger:

You will have fifteen (15) days from the date on the Formal Complaint to request a hearing for the purpose of discussing the facts of this case. If you wish to request a hearing, a written request is required to be returned to the Director of the Land Reclamation Program within fifteen (15) days. The address is:

Mike Larsen, R.G., Staff Director  
Land Reclamation Program  
P.O. Box 176  
Jefferson City, MO 65102-0176

If you do not request a hearing within the fifteen (15) day period, the Commission as provided by section 444.778 RSMo. (Supp. 2009), may proceed to revoke permit #0860 issued to J.M. Burger, Inc. and order the Attorney General's Office to seek collection of the bond at the November 17, 2011 meeting of the commission.

Mr. Jarrett Burger  
July 29, 2011  
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If you have any questions concerning the contents of this material, you may contact me by telephone at (573) 751-4041.

Sincerely,

LAND RECLAMATION COMMISSION

Mike Larsen, R.G.  
Staff Director

ML:bz:tb

Enclosure: Formal Complaint 2724

c: First Community State Bank  
Cape Girardeau Branch  
1602 N. Kingshighway  
Cape Girardeau, MO 63701