

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

| | | |
|------------------------------------|---|-----------------------------------|
| In the Matter of: |) | |
| |) | |
| STRACK EXCAVATING LLC |) | Proceeding Under |
| Permit #0832 Expansion |) | The Land Reclamation Act |
| Strack Quarry #1 |) | Sections 444.760 - 444-789, RSMo. |
| Cape Girardeau County, Missouri |) | |
| |) | |
| DIDDIMO CONSTRUCTION, LLC et al. |) | |
| Schneider Petitioners, |) | |
| |) | |
| v. |) | |
| |) | |
| DEPT. OF NATURAL RESOURCES, |) | |
| MIKE LARSEN, |) | |
| Staff Director, |) | |
| Land Reclamation Program, |) | |
| Division of Environmental Quality, |) | |
| Respondent, |) | |
| |) | |
| STRACK EXCAVATING LLC., |) | |
| Applicant. |) | |

SETTLEMENT AGREEMENT

COME NOW Petitioners Diddimo Construction, L.L.C., Dalhousie, L.L.C., EED Development, L.L.C. and S. Aaron and Angela Dombrowski and Applicant Strack Excavating LLC (hereinafter collectively the "Parties"), by and through their undersigned counsel, and hereby enter in the following Settlement Agreement with respect to the above-referenced matter.

WHEREFORE, Applicant Strack operates a quarry at 5120 State Highway 74 in Cape Girardeau County, Missouri and on or about June 28, 2010 applied to the Missouri Department of Natural Resources for an expansion permit proposing an expansion of approximately four acres as the site.

WHEREFORE, Petitioners, Diddimo Construction, L.L.C., Dalhousie, L.L.C., EED Development, L.L.C. and S. Aaron and Angela Dombrowski objected to the expansion permit,

alleging their health, safety and/or livelihood would be unduly impaired by the issuance of the permit.

WHEREFORE, on September 23, 2010 the Land Reclamation Commission granted Petitioners, Diddimo Construction, L.L.C., Dalhousie, L.L.C., EED Development, L.L.C. and S. Aaron and Angela Dombrowski a Formal Public Hearing¹ and subsequently designated a hearing officer to hear this matter.

WHEREFORE, the hearing was scheduled for August 22, 2011;

WHEREAS, the parties to this matter have discussed terms of settlement and agree to be bound by the following terms and conditions regarding issues of the permit without the need for a Formal Public Hearing on the matter;

NOW, THEREFORE, in consideration of the terms, conditions and mutual promises contained herein, it is acknowledged by all Parties that the Parties hereto do agree and contract with each other as follows:

1. Applicant Strack will utilize a water cannon at the existing plant and expansion site to curtail any particulate emissions that may result from blasting that occurs at the site. The water cannon will be used during blasting when conditions warrant.
2. The following language will be added as special conditions to Strack's expansion permit.
 - a. A water cannon will be utilized at Applicant Strack's quarry. When conditions warrant the water cannon will be used in conjunction with blasting to eliminate

¹ Numerous other individuals identified during the proceedings as the Pro Se Petitioners were also granted a Formal Public Hearing, but were dismissed from the matter on April 7, 2011 for failing to file any pleading setting forth their asserted grounds for denial of the permit expansion as required by the hearing officer's order in this matter.

particulate emissions associated with such blasting leaving the property's boundaries.

3. Strack further agrees to provide any seismograph readings that are taken by Strack to Petitioners through counsel for Petitioners, or to any other single point of contact/address subsequently provided to Strack in writing.

4. No quarry operations will occur on premises owned by Petitioners or on the development commonly known as Dalhousie.

5. The Parties agree that the additional terms to the permit resolve this matter and Petitioners will dismiss their pending claims within ten (10) days of the approval of this agreement by the Land Reclamation Commission.

6. Because industrial mineral permits are issued by the Land Reclamation Commission and this Settlement Agreement modifies the expansion permit by adding the water canon requirement, this Settlement is subject to the approval of the Land Reclamation Commission.

7. Strack shall be provided the opportunity to conduct a videotape inspection of the white house located adjacent to the Strack property.

8. Any additional terms and conditions may be added regarding the expansion permit application as deemed necessary by the Land Reclamation Commission.

9. Upon approval of this Settlement Agreement, no further challenges will be made to the expansion permit by Petitioners, Diddimo Construction, L.L.C., Dalhousie, L.L.C., EED Development, L.L.C. and S. Aaron and Angela Dombrowski. However, this Settlement Agreement does not affect any Parties' rights to challenge future permits or to prevent any Party from conveying to or pursuing with the Department of Natural Resources any incidents of particulate matter emissions at the site

10. The Parties enter into this Settlement Agreement to avoid further expensive, burdensome and protracted litigation. Nothing in this Settlement Agreement constitutes or is intended to constitute any finding of fact, admission of liability, or assessment of liability of the Parties with respect to any claim that has been asserted or could have asserted in this matter. This Settlement Agreement and the Parties' actions performed pursuant hereto shall not be deemed to be or construed as an admission of any allegations, nor shall they constitute any admission of any fact, liability or fault as to any claim or proceeding which has been, is now being or may be pursued by any person, agency or entity. This Settlement Agreement shall not be used and is not intended to be used as evidence or for any other purpose or in any other action or proceeding, other than as evidence of the Parties' efforts to compromise of their disputes relative to this matter.

11. This Settlement Agreement contains the entire agreement of the Parties with respect to its subject matter and supersedes all prior negotiations and agreements. There are no other agreements, promises, inducements, arrangements, understandings or contingencies between the Parties.

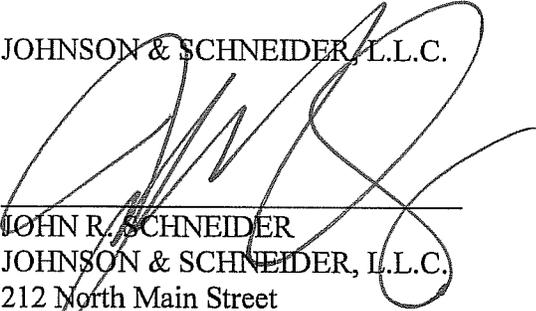
12. The provisions of this Settlement Agreement shall apply to and be binding on the Parties, their agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations and any persons acting under, through or for the Parties.

13. The persons executing this Settlement Agreement warrant and represent that they are authorized to sign on behalf of the represented party.

This SETTLEMENT AGREEMENT is executed this 15th day of September, 2011.

**ON BEHALF OF PETITIONERS DIDDIMO CONSTRUCTION, L.L.C., DALHOUSIE,
L.L.C., EED DEVELOPMENT, L.L.C. AND S. AARON AND ANGELA DOMBROWSKI**

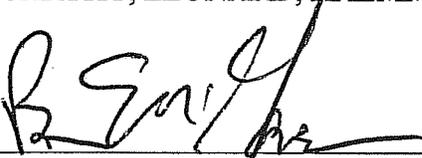
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ON BEHALF OF APPLICANT STRACK EXCAVATING, LLC

McCARTHY, LEONARD, KAEMMERER, L.C.



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| STRACK EXCAVATING LLC., |) | |
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FINAL ORDER APPROVING SETTLEMENT

Petitioners have agreed to voluntarily dismiss this action challenging the approval of Applicant’s Permit Expansion Application # 0832 for Strack Quarry No. 1 in Cape Girardeau County, Missouri. Petitioners’ voluntary dismissal will occur within ten days following the effective date of this Final Order. Petitioners and Applicant have reached a Settlement Agreement that resolves Petitioners’ concerns with the proposed Permit Expansion by including certain conditions in Applicant’s Permit. A copy of the Settlement Agreement is attached here as Exhibit A and incorporated herein by referenced. Applicant has voluntarily agreed to the issuance of a permit that includes the terms and conditions contained in the Settlement Agreement.

A hearing was scheduled in this matter for August 22, 2011. At the Request of the Parties, the Hearing Officer agreed to continue the hearing pending the issuance of an Order of the Commission approving the Parties' settlement.

IT IS HEREBY ORDERED THAT:

- 1) The Commission approves the Settlement Agreement dated September 15, 2011, entered into by the parties.
- 2) The Commission hereby incorporates the terms and conditions of the Settlement Agreement into the terms and conditions of the Permit Expansion for Permit #0832.
- 3) The Commission hereby approves the issuance of the Permit Expansion for Permit #0832.
- 4) The Secretary of the Commission to provide copies of this Final Order to the parties.

Entered this ____ day of _____, 2011.

Jim DiPardo, Chairperson

Dr. Gregory Haddock, Member

Dr. Leslie Gertsch, Member

Aaron Jeffries, Member

Joe Gillman, Member

John Madras, Member

Copies to be sent immediately by the Land Reclamation Commission to:

John R. Schneider, Attorney for Petitioner: hylee@jsslawfirm.com

Laura Bailey Brown and Timothy P. Duggan, Assistant Attorney General,
laura.brown@ago.mo.gov and tim.duggan@ago.mo.gov

Brian E. McGovern and Robert A. Miller, Attorney for Applicant,
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W. B. Tichenor, Hearing Officer, wbtichenor@gmail.com