

**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 RESPONSE BRIEF TO APPLICANT'S HEARING BRIEF

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

PETITIONER'S RESPONSE BRIEF
TO APPLICANT'S HEARING BRIEF

I. THE CLAIMS

It is clear to petitioners that the applicant is trying to obtain a permit that would lawfully allow him to operate a commercial quarry. Petitioners have asserted and demonstrated the applicant has engaged in quarrying for a commercial purpose prior to obtaining the necessary and required permits.

Larry Slechta testified that Robert Radmacher informed him they were quarrying and blasting prior to their 6/19/2012 phone conversation. (TR 557-6) (TR 559-13)

Robert Radmacher testified that they may have been removing quarried material from the property prior to Larry Slechta's inspection, and using it on other farms owned by Radmacher Land and Equipment Management Company. (TR 405-8)

Robert Radmacher also testified that they did mine directly from natural deposits that were exposed, and that said material was used for a commercial project on Chouteau traffic way. (TR 406-1)

The same material was also taken to other farms owned by Radmacher Land and Equipment Management Company. Some was even sold to a neighboring landowner. (TR 777-5)

While performing this quarrying activity the applicant's counsel would have you believe that no harm had been caused to the environment. However, the overburden and spoils from his quarrying activity was placed in a ravine just east of the mine site. The Army Corps of Engineers determined that this ravine was in fact an unnamed tributary to the Blackwater River, waters of the United States.

This damage to the environment was ultimately quantified by SCS Aqua Terra, a company hired by the applicant to measure his environmental impact. Their conclusion was that he filled 748 linear feet of streambed with material.

II. PETITIONERS' HEARING BURDEN

Petitioners' understanding of their burden of proof is different from that of opposing counsel's interpretation. If petitioners were asserting that their health safety or livelihood would be unduly impaired by a permitted activity they would be required to produce competent and substantial scientific evidence on the record. Petitioners have made no such claim. Furthermore there is nothing contained within RSMo. 444.760 to 444.790 providing the Department of Natural Resources has any direct authority to prevent the applicant from impairing any interested parties health safety and livelihood.

Many times I have been asked by people in the community, why won't the Department of Natural Resources help us? Why won't they protect our health safety and livelihood? The answer

is clear. The Department of Natural Resources has no jurisdictional authority to directly protect the citizens of the State from the applicant's actions. Their authority lies solely within environmental law, which means the authority they have been given is to protect the environment from the applicant, not the citizens. It is only through protection of the environment that the Department of Natural Resources has an **indirect** impact on health safety and livelihood of citizens.

Snyder exhibit 4L. p. 27 last paragraph, **concern:** What provisions does the county, state or quarry operator follow to secure the safety, health, and livelihood of those affected by the operation of the quarry? **Answer:** The state enforces environmental laws to maintain clean air, water and that the land will be reclaimed to a recognizable land use. **Environmental laws are designed to protect the environment, that in turn does protect your health, safety and livelihood.**

In *Saxony Lutheran High School Inc. v. Heartland Materials, LLC*, Saxony Lutheran's claim was that the issuance of the land reclamation permit would impair their health, safety and livelihood in the future. They were required to provide competent and substantial scientific evidence on the record demonstrating that their health, safety and livelihood would be unduly impaired by the issuance of a permit which had not yet been granted, and they failed. It is my opinion that is an unattainable standard. Again, petitioners in this case make no such claim.

To demonstrate **present acts of noncompliance** which have resulted in **harm to the environment** is attainable, and this is what petitioners have done in this case. Petitioners have provided evidence and testimony on the record demonstrating multiple present acts of noncompliance, and demonstrated the harm caused by the applicant's noncompliant activity.

The burden on the petitioners in this case is to demonstrate present acts of noncompliance at any single facility in Missouri that resulted in harm to the environment. This burden does not require the petitioners to demonstrate actual documented violations of environmental law, only non-compliant activity which has caused harm to the environment.

The petitioner is not required to provide competent and substantial scientific evidence on the record to demonstrate a present act of noncompliance. There is nothing within RSMo. 444.773 4. that states competent and substantial scientific evidence must be used to demonstrate present acts of noncompliance. If the legislature's intent was that competent and substantial scientific evidence on the record is required in making demonstrations of present acts of noncompliance, that language would be in the statute.

III. THE HEARING

The statute and regulation on which petitioners rely for permit denial are RSMo. 444.773 4. and 10 CSR 40 – 10.080(F) Multiple demonstrated present acts of noncompliance of any law administered by the Department of Natural Resources which has resulted in harm to the environment. RSMo. 444.772 10. 10 CSR 40 – 10.020 (2)(E)A.(II) permit application requirements. RSMo. 236.435 (1) 10 CSR 22 – 2.010(1) RSMo. 644.051 1.

IV. SCOPE OF ALLEGED NONCOMPLIANCES

Petitioners have demonstrated noncompliant activity by the applicant under three separate divisions administered by the Department of Natural Resources.

1. Division 40-land reclamation commission.
2. Division 20-clean water commission
3. division 22-dam and reservoir safety Council

Petitioners have not asserted in this case that all demonstrated acts of noncompliance resulted in harm to the environment.

The notification letters not sent to adjacent landowners is a requirement under 444.772 10. permit application process. The public notification not being posted at the entrance, and the SWPPP and inspection records not being kept on-site, are simply violations of general operating permit requirements. They are used in this case to demonstrate the applicant's noncompliance with the permit requirements. There is nothing within 444.773 4. prohibiting the commission from looking at present acts of noncompliance to suggest a reasonable likelihood of future acts of noncompliance.

V. LAND RECLAMATION COMMISSION REGARDING ISSUES IV. (B)(C)(D)

Petitioners fully understand the powers and jurisdiction of the Land Reclamation Commission. The land reclamation program cannot issue violations of environmental law administered by other departments of the agency, such as clean water and dam safety. The land reclamation commission must consider noncompliance of any environmental law **administered** by the Department of Natural Resources, not solely the ones over which they have direct authority. This is different from having jurisdiction over those other programs.

It is also true that the commission cannot consider noncompliance of laws and regulations not administered by the Department of Natural Resources, such as MODOT and COE.

This is not the case concerning issues of noncompliance of any law or regulation administered by the Department of Natural Resources, such as storm water pollution prevention and dam safety.

Petitioners will here re-address each of the 11 issues as outlined in applicant's brief to clarify petitioners' position in opposition to opposing counsel's interpretation.

A. ISSUES RELATIVE TO LAND RECLAMATION LAWS AND REGULATIONS

- 1. Fact**, applicant quarried limestone for a commercial purpose prior to obtaining a land reclamation permit.

For this petitioners rely on the testimony on the record.

Prior to obtaining any permits the applicant quarried the property with rock breakers and explosives. (TR 557-6).

Quarried limestone material was removed from the property and used at other locations. (TR 405-10) Quarried limestone material was also sold from this property to a neighboring landowner. (TR 777-21) This is a clear violation of 10 CSR 40 – 10.010 (1)

The applicant would have the commission believe that these were exempt activities under 10 CSR 40 – 10.010 (2) (B) 1. Individual for personal use only.

This exemption cannot apply to the applicant in this case, as he does not personally own the land which is being quarried. It is owned by a corporate entity, Radmacher Land and Equipment Management Company, and the applicant did not personally quarry the material, it was quarried by employees of Radmacher brothers excavating company, and it was not for personal use.

Removing quarried material from the site, and selling quarried material to neighboring landowners is a clear violation. A land reclamation permit must first be obtained before quarried limestone material may be removed from the site, or sold.

The testimony given by bill Zeaman had to do with removal of the material from the property as borrow after obtaining MORA 01538. Bill Zeaman testified that the term "commercial purpose" related to the sale or exchange of the minerals in a sale, barter or trade transaction. This is precisely what the applicant was doing prior to obtaining MORA 01538. (TR 526-3)

Robert Radmacher testified that he believed the issuance of MORA 01538 authorized the removal of quarried limestone material from the site as borrow. It does not. There is no permit required to remove unconsolidated materials from any site. The requirement is to have a general operating permit authorizing the excavation of the material, not its removal. The permit is to ensure that storm water pollution prevention measures have been put into place to protect the environment from damaging runoff.

Borrow material and quarried material are not the same thing. Consolidated limestone material which required blasting to be removed is quarried material and cannot be removed from the quarry site without a land reclamation permit and the MOG 49 permit. Exhibit Snyder I

There are exemptions which would allow for the removal of this type of material, none of which apply in this case.

444.776 2.(1) excavations for construction pursuant to engineering plans and specifications prepared by an architect, professional engineer, or landscape architect licensed pursuant to chapter 327, or any excavation for construction performed under a written contract that requires excavation of the materials or fill dirt and establishes dates for completion of work and specifies the terms of payment for work, shall be presumed to be for the purpose of construction and shall not require a permit for surface mining.

This exemption clearly does not apply as these excavations were not pursuant to engineering plans by an architect or professional engineer, there were no established dates for completion or terms of payment. The applicant chose to obtain a permit authorizing the operation of a borrow site, not the construction of a limestone quarry.

444.776 2. (2) excavations for purposes of land improvement where minerals removed from the site are excess minerals that cannot be used on the site for any practical purpose and at no time are subject to crushing, screening, or other means of benefit case in with the exception of removal of dead trees, decaying vegetation, tree limbs, and stumps shall be presumed to be for purposes of land improvement and shall not require a permit for surface mining, provided that: (C) a pit, peak or Ridge does not persist at the site as inconsistent with the purpose of land improvement.

This exemption also does not apply to the applicant. The applicant's quarrying activity was clearly not for land improvement. He obtained no general operating permit authorizing land improvement activity. The materials removed were not excess and the excavation did leave a pit and a ridge.

2. Applicant failed to mail certified letters containing a notice of intent to operate a surface mine as required by 444.772 10.

*At the time that a permit application is deemed complete by the director, the operator shall publish a notice of intent to operate a surface mine in any newspaper qualified pursuant to section 493.050 to publish legal notices in any county where the land is located. If the director does not respond to a permit application within 45 calendar days, the application shall be deemed to be complete. Notice in the newspaper shall be posted once a week for four consecutive weeks beginning no more than 10 days after the application is deemed complete. The operator shall also send notice of intent to operate a surface mine by certified mail to the governing body of the counties or cities in which the proposed area is located, and to the last known addresses of all record land owners of contiguous real property or real property **located adjacent to the proposed mine plan area.***

It is clear that the legislative intent was to legally obligate applicant to notify specific people, or specific groups of people as indicated in the statute, of his intent to operate a surface mine. These people are identified as the governing body of the counties or cities in which the proposed area is located. Land owners of contiguous real property and **land owners of real property located adjacent to the proposed mine plan area.**

In this case there are no land owners of contiguous real property to the mine plan area, as the mine plan area is setback from the property line. The mine plan area does not touch any other landowner's property at a point or along a line. All owners of real property that is contiguous with land owned by Radmacher Land and Equipment Management Company, are adjacent to the proposed mine plan area.

Ad-ja-cent: close or near: not distant: may or may not imply contact but always implies **absence of anything of the same kind in between.**

In AP 57 there is a list of 30 landowners, by this definition all are adjacent to the proposed mine plan area. There is no language in the statute defining adjacent has something more or less than 100 feet. The Department of Natural Resources does not have the authority to redefine a word as to change its meaning. The law must be followed as written. For these land owners to not be adjacent to the proposed mine plan area there would have to be one of two things in between, either another mine plan area or land owned by a person other than themselves or Radmacher Land and Equipment Management Company.

Whether something is or is not adjacent cannot be measured by distance, it has to do with proximity. For example: Two cities could be hundreds of miles apart and yet be adjacent, simply by not having another city, something of the same, in between.

This narrow interpretation by the Department of Natural Resources as to what is, or is not adjacent has in effect changed the meaning of the law. The Department of Natural

Resources does not have the authority to promulgate rules or regulations that run contrary to the intent of the statute. The 100 foot setback rule does exactly that.

To discover the legislature's intent, we must examine the words used in the statute, the context in which the words are used, and the problem the legislators sought to address with the statutes and enactment. Id. A statute must not be interpreted narrowly if such an interpretation would defeat the purpose of the statute. Id. It is presumed that the legislatures intended that every word, clause, sentence and provision of the statute have effect; conversely, it will be presumed that the legislature did not insert idle verbiage or superfluous language in a statute. Hyde Park housing partnership.v. Director of revenue, 805 S.W.2d 82,84 (Mo.1993)

Citizens of the state, that the applicant was required by statute to notify were not. This notification is a **requirement** in the permit application process, and it was not done.

Exhibit AP 48. This is a document prepared by the Department of Natural Resources. It is an overview of the necessary steps required in obtaining a land reclamation permit. Page 2, first paragraph reads:

“the company will also send certified letters to any neighbor whose property borders the proposed mine plan area (if the mine plan area is incised into land wholly owned by the operator then the owner legally does not have to send these letters out”.

This overview does not mention adjacent landowners to the mine plan area. It addresses only contiguous landowners. Furthermore this document has no statutory authority. If there is a discrepancy between the statute RSMo. 444.772 10. and this document, the statute will prevail.

The applicant's counsel has submitted no documentation of any statute or regulation not requiring these notification letters be sent to adjacent landowners. The Department of Natural Resources received no confirmations that these notices were sent as required. These notification letters are a **requirement** in obtaining a land reclamation permit, and they were not sent.

B. ISSUES RELATIVE TO CLEAN WATER LAW

1. Land disturbance without first obtaining in Missouri State operating permit from the clean water commission as required by the Missouri Clean Water Act and regulations. RSMo. 644.05 1.1 and 10 CSR 20 – 6.010(1) 10 CSR 20 – 6.200(1)

The applicant began land disturbance activities on this property soon after purchase. The condition of the property prior to the applicant's purchase was demonstrated in Snyder exhibit R.

The applicant was required to obtain a general operating permit prior to land disturbance activities greater than 1 acre. 10 CSR 20 – 6.010 (1) Snyder exhibit 6L demonstrates an area of land disturbance greater than 1 acre on February 16, 2012, five months prior to the applicant obtaining his first general operating permit.

The applicant was under no oversight from the Department of Natural Resources as he did not obtain the necessary permit when required. There was no SWPPP created and no land disturbance inspection reports being filled out. There were no specifically designed and installed BMPs to prevent contaminated storm water from leaving the site of land disturbance.

Petitioners demonstrated with rainfall data obtained from NOAA a rainfall event on March 22, 2012, of 2.20 inches. This was the last significant rainfall event prior to the drought that exposed part of Echo Lake's dry lake bed. This is five months prior to the applicant's first general operating permit MORA 01538.

Snyder exhibit C shows the property approximately one month prior to that rain event. On that exhibit a small check dam can be seen just below the farm pond in the stream channel. This small check dam is all that would have prevented sediments from flowing downstream.

Snyder exhibit 2A shows the watershed, approximately 60 acres, that flows through the small check dam. This check dam was not constructed pursuant to any engineering plans or drawings, it was simply constructed by placing materials in the streambed.

In applicant's response brief page 9 it states: Mr. Snyder did not attribute to the farm the "white stuff" that he observed in Echo Lake photographs.

This statement is completely false.

Q. so all of that white stuff you saw in that picture, you're not attributing all of that to the farm, are you?

A. I am. (TR 131-13)

Mr. Snyder is the only person who gave testimony that actually inspected Echo Lake during the period of drought. Mr. Snyder testified that the white material in Echo

Lake went no further upstream than the outfall from the applicant's property. (Snyder exhibit Y.) Neither Robert nor Tom Radmacher ever inspected the outfall from the property for sediment into the Blackwater River.

No other explanation was given as to a possible source for the white material.

2. Applicant made a misrepresentation to the clean water commission in the applicant's e-permitting certification and signature documents MORA 01538 by answering **NO** to the question, **is any part of the area that is being disturbed in a jurisdictional water of the United States? If yes, you must also receive a clean water act, section 404 permit for this site from the United States Army Corps of Engineers.**

When the applicant obtained his first general operating permit MORA 01538, for 9.15 acres on July 6, 2012, that permit did not cover all the applicant's land disturbance activities.

The applicant had begun construction of a check dam outside what would be the permitted area prior to obtaining the permit to manage storm water runoff from the site. This area of land disturbance should have been included in the first permit.

On December 4, 2012 the applicant submitted form G application for storm water general permit-land disturbance, changing the name of the facility from Radmacher Brothers borrow site, to AA quarry LLC. Again the applicant marked no to the question, **is any part of the area that is being disturbed in a jurisdictional water of the United States?** Exhibit Snyder 2T.

Although there were no jurisdictional waters of the United States within the 9.15 acre permitted area, the applicant's land disturbance activity was also outside the permitted area and in jurisdictional waters of the United States.

The construction of the check dam and the 748 linear feet of streambed that had been filled with overburden from the applicant's quarrying activity were proven to be inside jurisdictional waters.

On March 13, 2013 the applicant obtained a new general operating permit at the recommendation of Jimmy Coles, to cover the land disturbance activities that were outside the original permitted area where the check dam and lower dam had been constructed to bring the applicant into compliance.

3. Applicant failed to post the public notification sign contained within MORA 01538 in accordance with 10 CSR 20 – 6.020 (1)(E)(1)(2) and MORA 01538 permit body, page 3.C. Requirements.

Robert Radmacher testified that he chose the location to post the public notification. The failure to post a notification as required is a violation of 10 CSR 20 – 6.020 (1)(E)(1)(2). An alternate location is acceptable but it must be visible to the public and noted in the applicant's SWPPP.

There was no information in the applicant's SWPPP as to the alternate location. It is a requirement that this notification be posted where it can be seen, and read, from the public road that provides access to the site informing citizens that a land disturbance site has been authorized, and a phone number for anyone with questions or concerns, allowing citizens to be part of the public participation process.

4. Applicant failed to prepare a complete SWPPP. MORA 01538 permit body page. It is a requirement that the SWPPP contain certain elements. Permit body page 12 J. DUTY TO COMPLY.

The permittee must comply with all conditions of this general permit. Any noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and re-issuance, or modification; or denial of the permit renewal application.

The table of contents in the applicant's SWPPP does contain the necessary required elements, although many of those required elements are not contained within the SWPPP itself.

On page 3 of the applicants SWPPP all the following required elements are missing: Farmland impacts, wetland impacts, water quality impacts, **404 permit**, floodplain impacts, air quality impacts, noise impacts, cultural resources, threatened and endangered species.

Snyder 2M. MORA 01538. Page 4 C. REQUIREMENTS e. Discuss whether or not a 404/401 permit is required for the project and f. Name the person responsible for inspection, operation and maintenance of the BMPs.

This information is required to be in this SWPPP, providing inspectors with information to know that the 404/401 permit issue had been addressed. This is also addressed in addendum #2 page 4 Second paragraph.

There is also no information contained within the applicant's SWPPP identifying the person responsible for environmental matters, or the qualifications of the person.

5. Applicant failed to maintain SWPPP and land disturbance inspection reports on the site. MORA 01538 permit body page 3 C.2. REQUIREMENTS **a copy of the SWPPP must be available on-site one land disturbance operations are in progress.**

On November 20, 2012, Patrick Peltz performed his first visit to the site. He did not inspect the applicants SWPPP or land disturbance inspection reports during that visit. The SWPPP and inspection reports were inspected on November 28, 2012 during his second visit.

Mr. Peltz testified that the reason the SWPPP and inspection reports were to be kept on-site was so they could be immediately available, and not require two trips. (TR 914-12)

6. Applicant failed to prepare and maintain complete and accurate land disturbance inspection records as required. 10 CSR 20 – 6.200. MORA 01538 permit body page 9 C. 10. REQUIREMENTS.

Petitioners have demonstrated the applicant's land disturbance inspection reports were not maintained as required.

Between July 6, 2012 and January 31, 2014 the applicant prepared 35 inspection reports. They were not done on a weekly basis as required and they were not done within 24 hours of a rain event greater than ½ inch. If the applicant had maintained proper land disturbance inspection records according to date and rainfall amount there would have been 131 inspection reports on file.

These reports are a requirement of the general operating permit. Noncompliance with these requirements constitutes a violation of the Clean Water Act and is grounds for enforcement action.

Not only were these reports not done on the required interval, much of the information is false or inaccurate. Petitioners have demonstrated discrepancies in the reports that show many of the reports could not have been filled out on the indicated dates.

7. Applicant failed to design, install, and maintain appropriate storm water pollution control measures or BMP's. As required MORA 01538 permit body page 3 to 7.

There is no information contained within the applicant's SWPPP of any design plans or drawings for any BMPs used on the site. There was testimony by Tom Radmacher that the check dam had been modified several times making it larger.

(TR 642-1) If the check dam had been properly designed and constructed it would not have been necessary to modify at a later date.

C. ISSUES RELATED TO VIOLATION OF WATER QUALITY SECTION 401

The applicant failed to obtain a 401 clean water quality certification prior to placing fill materials into waters of the United States. 10 CSR 20 – 6.060

The applicant Robert Radmacher testified that he made the determination that a 404 and 401 were not required based on research he had performed. Exhibit AP 39. This is the document, based on applicant's testimony that he relied on in forming his conclusion.

Page one last paragraph reads: The following aquatic areas are generally **not protected** by the Clean Water Act: Page two, indicated by arrow reads: Erosional features (gullies and rills), and swales and ditches **that are not tributaries** or wetlands.

The ephemeral streams on the applicant's property were known, by the applicant, to be tributaries to the Blackwater River. (TR 802-3)

April 2, 2013 the applicant received notice of permit noncompliance from the Army Corps of Engineers, the violation of section 404 of the Clean Water Act.

The Army Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in the waters of the United States, including wetlands, require prior authorization from the Army Corps under section 404 of the Clean Water Act(33 USC 1344).

Although the Department of Natural Resources has no authority to determine what are or are not waters of the United States, the department is responsible for water quality, not the Army Corps of Engineers. Where a 404 permit is required, a 401 water quality certification must also be obtained from the Department of Natural Resources.

The 401 water quality certification that was issued May 6, 2014 was issued after the fact. The Department of Natural Resources has certified that the ongoing activities will not cause the general or numeric criteria to be exceeded nor impair beneficial uses established in water quality standards, 10 CSR 20 – 7.031, provided the following 13 conditions are met.

The department made no determination that the applicant's activity prior to the issuance of this permit did or did not exceed the standards. To my knowledge no site inspections or water quality testing have been done.

Applicant's counsel makes the claim in his brief that no harm to the environment from the applicant's actions has been demonstrated. The term that was most often used during the course of the hearing was environmental impacts. Each of the four environmental impacts noted on page 4 of AP 26 are the environmental impacts caused by the applicant's actions, along with the white material in Echo Lake.

Im-pact: to have a strong and often bad effect on (something or someone).

The fact that the applicant did not obtain the 401 water certification is a documented violation of law administered by the Department of Natural Resources. The harm or damage to the environment has been assessed, and is documented in the report.

The environmental impacts in this case were so severe, the destruction of 2,547 linear feet of streambed, that mitigation was required not only by the Army Corps of Engineers but also the Department of Natural Resources.

The water quality certification that was eventually obtained contains 13 conditions that must be followed to ensure water quality standards are not exceeded.

The first condition is mitigation. The purchase of 7,902 mitigation credits. The expense to the applicant was \$197,550. Had there not been environmental impacts, or harm to the environment, mitigation would not have been necessary or required. Neither the Army Corps of Engineers, nor the Department of Natural Resources, could lawfully require the applicant to purchase mitigation credits to offset damage to the environment if there were none.

D. ISSUES RELATED TO VIOLATIONS OF RSMo. 236 DAM SAFETY

Applicant constructed and modified a dam over 35 feet in height prior to obtaining a construction permit from the Department of Natural Resources Dam and Safety Council in accordance with 10 CSR 22 – 2.010(1)

Prior to February 9, 2013, the applicant, Robert Radmacher, instructed employees of Radmacher Brothers Excavating Company to construct a dam 28 feet in height.

The dam was constructed as a sediment basin to collect all silt and sediment produced by the mining operation and stockpiles throughout all phases, as described in the applicant's land reclamation permit application.

On April 29, 2013 the dam was photographed being lowered, 14 days after the report had been made to the Department of Natural Resources Dam Safety Program that the dam exceeded 35 feet in height.

The height of the dam was measured by Department of Natural Resources on May 15, 2013, and found to be 33.5 feet in height. So a dam that was constructed to be less than 28 feet in height was measured to be 33.5 feet tall after being lowered.

On April 5, 2013 the property had been surveyed by a licensed engineer, prior to the lowering of the dam, to document the extent of the environmental impacts caused by the applicant. The survey included elevations of the dam. Exhibit AP 60. The elevation at the downstream toe is not shown. It has been identified as outside the area shown on this exhibit.

Snyder exhibit 3D illustrates the location of the downstream toe. It is also marked with an elevation of 868.00. Snyder exhibit 2B shows the location of the downstream toe. Exhibit AP 60 shows a person with stadia rod at the downstream toe. The person in the photograph is Mr. Snyder.

The photograph was taken March 27, 2014 during Mr. Snyder's on-site inspection. Mr. Snyder requested that he be allowed to take a measurement of the dam and permission was granted. The purpose for the measurement was to determine the difference in elevation between the downstream toe and the PVC outlet, elevation 881.00.

The measurement was taken with a Brunson optical level. The difference in elevation was measured as 13.01 feet. As the stadia rod was not perfectly plumb, the number was rounded to 13.00 feet.

With the difference in elevation between the downstream toe on the outlet pipe 13 feet even, and the difference in elevation from the outlet pipe to the lowest point on the crest of the dam is 23.10 feet, the total height of the dam prior to being lowered was 36.10 feet. The dam was greater than 35 feet in height prior to being lowered. The numbers don't lie. These measurements can easily be duplicated by anyone with the proper training and equipment.

As for harm or damage to the environment the height of the dam is completely irrelevant.

The dam was constructed outside the permitted area. It was constructed as part of the necessary infrastructure to support quarry operations, not a farm pond. It was also constructed in waters of the United States without a 401 clean water certification from the Department of Natural Resources, and determined to be a cause for mitigation, as the dam itself destroyed 195 linear feet of streambed and the impoundment consumed another 1,524.

There is no farmland exemption for the construction of this dam. The applicant testified it was his belief that being farmland no 404/401 were required.

There are exemptions for land that is being **used for an agricultural purpose**. None of the applicant's land disturbance or construction activity would qualify as an agricultural purpose. The construction and operation of a commercial limestone quarry is commercial endeavor completely unrelated to agriculture. The material that had been quarried was not used for an agricultural purpose.

CONCLUSION

Petitioners have demonstrated that prior to obtaining any permit, the applicant caused a land disturbance greater than 1 acre in size. There was no SWPPP and there were no inspection reports being filled out. The applicant had created a point source discharge, and unregulated storm water was allowed to flow from the applicant's property into the Blackwater River.

The applicant wasn't simply doing land disturbance, he was actively quarrying the property, including blasting. He removed quarried material from the site to use on other properties he owned, and sold quarried material from the site to a neighboring landowner, for which he was reimbursed, all prior to obtaining a land reclamation permit.

Still with no general operating permit in place the applicant began filling a ravine with overburden and spoils from his quarrying activity. This ravine was filled to construct the lay down yard for the future quarry. This ravine was determined to be in waters of the United States by the Army Corps of Engineers and that there was no 401 clean water certification issued for this activity by the Department of Natural Resources.

After the applicant obtained a general operating permit for the construction and operation of a borrow site, he removed quarried materials for a commercial project that Radmacher Brothers Excavating Company had on Chouteau traffic way. He was also reimbursed for these materials.

The applicant failed to obtain the required MOG 49 permit to protect the environment from storm water discharges that flow through the quarry site and the stockpiles of quarried material.

Although a SWPPP was created, it was incomplete, and land disturbance inspection reports were not maintained as required. Without the installation of properly designed, installed and maintained BMPs, and without complete and accurate land disturbance inspections, there is no environmental protection. These are all necessary permit requirements to ensure water quality is maintained.

The applicant worked outside the boundaries of the 9.15 acre permitted area to construct infrastructure directly related to the quarry. The dam and haul road that were constructed are not an exempt agricultural activity, they were constructed specifically to support the quarry, and should have been constructed under the general operating permit.

This activity outside the permitted area caused additional harm to the environment. The placement of fill into waters of the United States without first obtaining a 401 water quality certification is another demonstrated noncompliance. Although the applicant was eventually brought into compliance with the issuance of an after-the-fact 401 permit, he was not in compliance prior to its issuance. The permit was only issued after the damage to the environment, caused by the applicant, had been mitigated.

The notifications not sent to the adjacent landowners is a violation of the requirements for issuance of a land reclamation permit. Permit cannot be issued without all necessary requirements being fulfilled.

Petitioners respectfully request a recommendation for permit denial based on testimony and evidence on the record demonstrating necessary and required public notifications to adjacent landowners which were never sent and multiple, demonstrated, present acts of noncompliance, of environmental law administered by the Department of Natural Resources, at this single facility that resulted in harm to the environment.

Respectfully submitted,

By 

Robert Snyder



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

CERTIFICATE OF SERVICE

I certify that on Wednesday, October 29th 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

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

Attorneys for Respondent

G. Steven Ruprect
sruprecht@brlawkc.com

Attorneys for Applicant

Daren Eppley
Daren.eppley@ago.mo.gov

Attorneys for Land Reclamation Program



Robert Snyder
Pro Se Petitioner