

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

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

**ORDER GRANTING APPLICANT’S MOTION TO EXCLUDE EVIDENCE OF  
ISSUES OUTSIDE OF THE LAND RECLAMATION COMMISSION’S  
JURISDICTION AND DISMISSING CLAIMS RELATIVE THERETO**

**Motion and Filings**

Applicant filed its Motion to Exclude Evidence of Issues Outside of the Land Reclamation Commission’s jurisdiction and to Dismiss Any Claims Relative Thereto. Applicant’s filed their Suggestions in Opposition to Applicant’s Motion. Respondent filed his Reply to Petitioner’s Suggestions in Opposition. Applicant filed its Reply in Further Support of its Motion.

**Ruling**

The Hearing Officer upon review of the filings herein made on this matter, applicable statutes and regulations, and case law cited by respective Counsels enters his Order Granting the Motion to Exclude Evidence and Dismiss Claims.

## **Analysis and Arguments Presented**

### ***Applicant***

Counsel for Applicant presents his analysis under four lines of argument. Those being:

- A. The Land Reclamation Commission has jurisdiction to determine whether Petitioners' complaints are within the scope of the Department of Natural Resources authority.
- B. The Land Reclamation Commission lacks jurisdiction and authority to consider any issues outside of environmental laws or regulations administered by the Department of Natural Resources.
- C. The Land Reclamation Commission cannot base its decision whether to issue a land reclamation permit on consideration of roads, blasting, or similar issues because those issues are regulated by other entities.
- D. Evidence of impact on health, safety, or livelihood outside of the scope of the environmental laws or regulations administered by the Department of Natural Resources should be excluded from the formal public hearing and must be dismissed with prejudice.

### ***Petitioners***

Counsel for Petitioners likewise puts forth his four lines of argument. They are:

- A. The Land Reclamation Commission has ruled on the jurisdictional issue.
- B. The Motion is an improper appeal.
- C. The Standing Regulation does not control or limit the Land Reclamation Commission, through the Hearing Officer, on the evidence received, considered, or entertained during the hearing.
- D. By granting Petitioners the hearing, the Land Reclamation Commission, through the Hearing Officer, may determine whether the Briefing Issues unduly impair the Petitioners' health, safety and livelihood even if these issues fall outside environmental laws and regulations that the Department of Natural Resources administers.

### ***Respondent***

Counsel for Respondent puts forth, in support of Applicant' position, a succinct, cogent, argument that under 10 CSR 40-10.080(2)(B), impacts to Petitioners must be within the authority of any environmental law or regulation administered by the Department of Natural Resources.

## **Background**

The Hearing Officer will not further burden the record of pleadings, orders and memoranda in this case by setting out a lengthy statement of background. After review of both the Applicant's and Petitioners' statements of Background in their respective filings, the Hearing Officer finds, for purposes of this Order, that Applicant's Background statement fairly and accurately presents the necessary information applicable to the present matter and adopts by reference Applicant's Background statement.<sup>1</sup>

## **Issue**

The issue to be addressed is whether the Land Reclamation Commission ("LRC"), and thereby the Hearing Officer in proceeding with this matter, has jurisdiction and authority to consider Petitioners' claims relating to: (1) the nature of Route AA and the impact of truck traffic on the road; (2) impact on property values from the operation of the proposed quarry; (3) blasting at the quarry; (4) noise and vibration resulting from operating the quarry and/or truck traffic; and (5) impact on the general aesthetics and beauty of the land in proximity to the proposed quarry site.

## **Decision**

The Hearing Officer finds Applicant's Suggestions in Support of its Motion and Reply in Further Support of its Motion to provide a sound basis for the decision on the pending motion.<sup>2</sup>

### ***Primary Jurisdiction Doctrine***

The LRC has original jurisdiction to determine whether it has subject matter jurisdiction to hear the Petitioners' concerns regarding the issue presented under Applicant's Motion. The primary jurisdiction doctrine provides that "courts will not decide a controversy involving a question within the jurisdiction of any administrative tribunal after that tribunal has rendered its decision."<sup>3</sup> The primary jurisdiction doctrine is applied "(1) where administrative knowledge and expertise are demanded; (2) to determine technical, intricate fact questions; and (3) where uniformity is important to the regulatory scheme."<sup>4</sup>

The LRC has primary original jurisdiction to determine factual issues that establish whether or not the Petitioners' claims that their health, safety, or livelihood are within the authority of any environmental law or regulation administered by the DNR, and thus whether the LRC can consider evidence of those claims in evaluation Applicant's permit request.<sup>5</sup> Land reclamation and the environmental laws and regulations administered by the DNR are uniquely within the LRC's knowledge and expertise. The issues involve technical and intricate questions of fact. Uniformity in determining standing and hearing evidence at formal public hearings for land reclamation permits is important to the Land Reclamation Act.

Therefore, under the primary jurisdiction doctrine, the LRC has authority to make the decision whether Petitioners' claims relating to traffic on Route AA, allegations concerning property devaluation, and safety of blasting at the proposed quarry constitute undue impairments to their health, safety, or livelihood within the jurisdiction of the DNR and LRC.

***Issues Outside Authority of Environmental Law or Regulation***

As an administrative agency, the LRC has only those powers which the Missouri Legislature has expressly or impliedly conferred.<sup>6</sup> Thus, the LRC lacks jurisdiction to consider evidence or make a determination on Applicant's permit based on claims of potential concerns related to road safety on Route AA, blasting, noise, vibrations, property devaluation, or the natural beauty of the area because such concerns are not within the authority of any environmental law of regulation administered by the DNR.

Specifically, the LRC is a department of the DNR. The DNR draws its authority from § 640.010 RSMo and the director of the DNR is to administer programs relating to environmental control and the conservation and management of natural resources. The DNR administers the air conservation commission, the clean water commission, the state environmental improvement authority, the state park board, the state soil and water districts commission, the state geologist, the state land survey authority, the state oil and gas council, the land reclamation commission, and the division of health in the maintenance of water dispensed to the public and licensing and regulating solid waste.

As an agency created by § 444.520 RSMo, and taking powers set forth in § 444.530, the LRC's "powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the power specifically granted."<sup>7</sup> The LRC has only such jurisdiction as is conferred upon it by statute.<sup>8</sup>

With respect to mining permits, the LRC's authority is government by the Land Reclamation Act.<sup>9</sup> The stated goal of the Land Reclamation Act is, among others, to:

" . . . strike a balance between surface mining of minerals and reclamation of land subjected to surface disturbances . . . and . . . to protect and promote health, safety and the general welfare of the people of the State."<sup>10</sup>

The Act is to balance state needs for the mining of minerals through surface mining operations while as far as practicable minimizing the adverse effects on the public and environment. To carry out that purpose of the act, the General Assembly adopted an elaborate permitting system found in §§ 444.770 through 444.773 as reflected also in the state regulations found in 10 CSR 40-10.020 – 10.040.

Pursuant to its authority in § 444.530.1, the LRC adopted and promulgated rules and

regulations regarding the administration of § 444.773. The rules and regulations are found at 10 CSR 40-10.010 to 10.100. Section 10 CSR 40-10.080 sets forth the requirements a petitioner must establish in order to have standing for a formal public meeting after a petition is filed under § 444.773 (3). Specifically, the petitioner must provide “good faith evidence of how their health, safety, or livelihood will be unduly impaired by the issuance of the permit. *The impact to the petitioner’s health, safety, and livelihood must be within the authority of any environmental law or regulation administered by the Missouri Department of Natural Resources.*” 10 CSR 40-10.080(2)(B) (Emphasis added). Necessarily, impact on a petitioner’s health, safety, or livelihood that is *not* within the authority of laws administered by the DNR does not provide standing, cannot be the basis for a formal public hearing, and cannot be the basis for the denial of a land reclamation permit. The issues sought to be advanced by Petitioners involving road traffic, blasting, noise, vibrations and real estate valuations are not within the authority of law administered by the DNR and thereby cannot be considered when addressing the Respondent’s recommendation that the land reclamation permit be issued.

The LRC and the DNR have also interpreted their regulations such that their jurisdiction does not encompass issues regarding blasting, public safety on roads and mine effect on property values, and that such issues are “. . . outside the regulatory authority provided by the program through the Land Reclamation Act,” and advises visitors to the DNR website that truck traffic and noise are not activities regulated by the DNR.<sup>11</sup> In Respondent’s initial memorandum recommending the issuance of the permit to Applicant, Kevin Mohammadi acknowledged that the DNR “does not have jurisdiction to address concerns related to road safety, blasting, noise, property devaluation or the natural beauty of the area.”<sup>12</sup> Therefore, it must be concluded that the LRC in granting a formal public hearing was acting in accordance with its understanding of the limitations of its jurisdiction to consider such claims. It is a fundamental concept that when reviewing an agency’s interpretation of its own regulations, significant deference is to be given to the agency action.<sup>13</sup> Therefore, where the LRC and DNR have interpreted their regulations to exclude jurisdiction over road safety, blasting, noise, property devaluation or the natural beauty of the area, deference should be given to such interpretation.

The principle that an agency cannot exceed its statutory authority was recognized by the Court of Appeals for the Eastern District in the *Curdt* decision.<sup>14</sup> This case is particularly instructive because it involved the Clean Water Commission (“CWC”), another agency under the DNR. In *Curdt*, landowners opposed the CWC’s order granting a utility a permit to operate a water purification lagoon on an adjoining property. The landowners claimed that the CWC acted arbitrarily because it did not consider whether the landowners’ riparian rights were violated by

the flow of the discharged water onto their property. The Court of Appeals held that as the Missouri Clean Water Law did not give the CWC the power to determine riparian rights, and the applicant was in full compliance with the Clean Water Law, therefore the CWC properly granted the permit without consideration of riparian rights.<sup>15</sup> The Court noted that the applicant was still obligated to comply with all other laws, ordinances, codes, and regulations, and if the applicant was, in fact, violating the landowners' alleged riparian rights, the proper course for seeking relief was in the courts and not in challenging the issuance of a clean water permit.<sup>16</sup>

Likewise in this case, the LRC cannot consider the personal interest that Petitioners seek to safeguard and ameliorate because those concerns (alleged effects relating to traffic on roads, blasting, property devaluation or natural beauty) are not interests directly affected by the consequences of surface mining and the restoration and reclamation of the mined land that falls within the authority of the Land Reclamation Act. The Petitioners' remedy for any claims regarding the alleged rights outside of DNR's jurisdiction lies in equity and not in the administrative procedure for the issuance of the subject permit. Therefore, the Petitioners' concerns regarding road safety, blasting, noise, property devaluation or the natural beauty of the area cannot be considered in evaluating the Applicant's permit.

***Decision Cannot be Based on Factors Outside Authority of  
Environmental Law or Regulation Administered by the DNR***

An agency such as the LRC cannot enlarge its authority by its own volition, or by its own holdings of waiver, estoppels or contract, because allowing it to do so would permit the LRC to give itself powers, rights, and duties beyond what the Missouri Legislature provided or intended.<sup>17</sup> Blasting, highway use, property valuation and other similar concerns are outside the powers given to the LRC by statute, and thus cannot be considered in the permitting process. Allowing the LRC to expand its consideration of issues into other areas, such as blasting or roads would cause the LRC to encroach on the authority of other agencies. Blasting is governed by the Missouri Blasting Safety Act,<sup>18</sup> which regulates the use of explosives in mining and charges the State Blasting Safety Board with "establishing and enforcing consistent statewide industry standards: regarding blasting, which specifically includes considerations of vibrations."<sup>19</sup> The LRC does not oversee or have any authority over blasting.<sup>20</sup>

Similarly, the Missouri Department of Transportation ("MoDOT") and the state highways and transportation commission are responsible for all state highways, including regulating vehicle carriers and vehicle weight.<sup>21</sup> The LRC has no authority to make decisions with respect to traffic on state highways, and cannot make permit issuance decisions based on trucks and traffic on AA Highway.

The Petitioners' demands that the LRC consider blasting and transportation issues and deny Applicant a permit based on these issues is a backdoor attempt to regulate blasting and traffic through the LRC. If the LRC were to hear evidence on allegations of vibrations or noise from blasting, or commercial vehicle use of AA Highway, and were to make a determination on Applicant's land reclamation permit on those grounds, the action would have the effect of regulating blasting, the effect of vehicles on roads, and the adequacy of roads for a particular purpose. The Petitioners' property valuation arguments are essentially a request for the LRC to engage in *de facto* zoning. If the LRC bases its decision regarding the permit on these issues, it will have performed functions that are specifically delegated to different government agencies. The LRC is neither qualified nor authorized under law to make zoning regulations.

The factors which Petitioners seek to advance relate to activities regulated by entities outside of the regulations and laws administered by the DNR. Accordingly, the decision on the issuance of the pending permit cannot rest in any form or fashion on such considerations, as the alleged factors fall outside the jurisdiction of the LRC to oversee and administer.

***Evidence Outside Scope of DNR Environmental Laws or Regulations***

The concerns cited by the Petitioner that do not fall under the authority of the DNR cannot be considered in the formal public hearing. Since the LRC cannot consider blasting vibrations, noise, property valuations, traffic or roads in its decision whether to issue Applicant a land reclamation permit, evidence which might address those concerns has no relevance in this proceeding. The concerns do not affect the Petitioners' standing for a formal public hearing.

Petitioners' assertion that Applicant's motion to exclude and dismiss is an attempt to negate their standing to have a formal public hearing is not well founded. Applicant is not seeking to reverse the LRC's decision to grant a formal public hearing. Nor does the pending motion constitute an appeal of the decision to grant the hearing. Applicant's motion seeks to clarify and to properly limit the scope of the hearing to issues that the LRC has authority to address and regulate in accordance with the applicable statutes and regulations. The question whether the LRC has jurisdiction to consider *all* issues raised by Petitioners at a formal hearing is significantly different from the question whether the Petitioners are entitled generally to a formal hearing in the first instance.

There is plainly no legal support for the proposition that once a petitioner has established standing and secured a hearing that he or she can raise any perceived impairment to health, safety, and livelihood regardless of whether the issue falls under DNR's jurisdiction. The assertions of possible impairments to health, safety, and livelihood relating to roads, blasting, noise, vibration, property values and general aesthetics are not within the expressed jurisdiction of the DNR.

Applicant's Motion to Exclude and Dismiss clearly sets a distinction between standing and jurisdiction to hear the claims and receive evidence on the elements that do not come under the purview of DNR's jurisdiction.

Petitioners agree that 10 CSR 40-10.080 sets forth restrictions for obtaining an evidentiary hearing. Yet they now advance the unpersuasive argument that having secured a formal hearing, the restrictions that any asserted impairments to health, safety, and livelihood must come within the authority of DNR environmental law or regulation has disappeared. There is no support for the Petitioners' claim that the LRC intended to grant a hearing on all issues presented or conceived by the Petitioners in the process leading up to the granting of the formal hearing. There is no evidence that the LRC, in granting the Petitioners' request for a formal hearing, affirmatively determined that the Petitioners could present evidence regarding issues over which the DNR and LRC does not have authority to regulate.

Petitioners seek to support their assertion based upon an email response made by Don Willoh to Petitioner Earls, which stated – "Mr. Earls, when the Commission passed the motion to grant the hearing, it did not include any restrictions or limiting conditions." The argument is not persuasive. In the first place, all that Mr. Willoh is reporting is that the LRC passed a motion to grant a formal public hearing. There, of course, was no need to set out any restrictions or limiting conditions, because 10 CSR 40-080(2) and (3) established the restrictions and limiting conditions. If there had been any need to set out any restrictions and limiting conditions in the motion granting the hearing, such matters would have had to simply been a restatement of the applicable provisions of the regulation, since this is the authority under which the LRC must operate relative to formal public hearings.

As correctly concluded by Counsel for Respondent,

"The Commission's granting of a hearing constitutes a finding that Petitioners made a good faith showing that their health, safety or livelihood may be unduly impaired by the issuance of the permit. Under 10 CSR 40-10.080(2) (B), impacts to Petitioners must be within the authority of any environmental law or regulation administered by the Department of Natural Resources. . . . Petitioners now must establish an issue of fact regarding such impact with competent and substantial scientific evidence, not merely good faith."<sup>22</sup>

The determine of the LRC in granting the request for a formal public hearing does not equate to a determination that the LRC had jurisdiction to consider any and all claims irrespective of whether such claims fell outside of the environmental laws or regulations administered by the DNR. Petitioners do not provide any line of argument suggesting that the DNR can exercise jurisdiction over and regulate the use of roads, blasting, property values, or noise and vibrations. Nor or any citations to any authorities provided to support such a line of argument.

Petitioners incorrectly seek to equate “standing” with “jurisdiction.” “Standing” means that the petitioners are merely required to demonstrate some personal interest at stake in the dispute, even though the interest might be attenuated, slight or remote.<sup>23</sup> Jurisdiction, however, is the tribunal’s authority to hear and determine a particular kind of claim. When a tribunal is engaged in the exercise of a special statutory power, the tribunal is confined strictly to the authority given it by statute.<sup>24</sup> Whether a state agency possess subject matter jurisdiction is a question of law controlled by statute.<sup>25</sup> In reviewing a contested administrative case, the courts will not uphold an agency decision that is “in excess of the statutory authority or jurisdiction of the agency.”<sup>26</sup> The Missouri Supreme Court has recognized that “[a] provision conferring standing does not confer subject matter jurisdiction when the latter does not otherwise exist.”<sup>27</sup> Accordingly, Petitioners’ assertion that a determination of standing under 10 CSR 40-10.080.2 (B) is the equivalent of a jurisdictional determination is simply wrong.

The interpretation of 10 CSR 40-10.080 suggested by Petitioners fails the test of fundamental logic, since under the position advanced by Petitioners the restrictions of the rule serve no purpose. There can be no reason to require Petitioners to establish standing by identifying only “good faith evidence of how their health, safety, or livelihood will be unduly impaired” the impact to which “must be within the authority of any environmental law or regulation administered by the Missouri Department of Natural Resources;” and then turn around and allow the LRC to take evidence and base its decision on issues outside of DNR environmental law and regulation. Petitioners’ argument seeks to render 10 CSR 40-10.080 as simply meaningless.

If an issue cannot be considered in determining whether a petitioner has standing to have a formal hearing, it defies logic that the issue could later be considered when making a decision about the permit through the means of the formal hearing. The proposed interpretation by Petitioners erases all circumstances in which the language of 10 CSR 40-10.080(2) (B) has meaning. Since issues related road traffic, blasting, noise, vibrations, property values and natural beauty of the area all fall outside the “authority of any environmental law or regulation administered by the” DNR, the Petitioners’ interpretation must be rejected. Such matters cannot be addressed by the staff of the LRC when the initial recommendation is made on whether to issue the permit. In other words, they are irrelevant to the issuance of the permit. Therefore, such issues cannot now be added to the list of permit requirements simply because Petitioners raised them in their attempt to secure a formal hearing. Furthermore, the general argument of Petitioners that the LRC has a duty and the authority to protect the public’s health and safety through any means possible, regardless of whether it involves DNR’s environmental laws and

regulations is contradictory to the authority given to the LRC in the statutes and regulations governing this permitting process. It likewise flies in the face of the clearly established legal principles established by case law addressing the jurisdiction of administrative agencies.

### ***Conclusion***

The LRC only has the authority given to it by the Missouri Legislature. It cannot expand its given authority to include regulation of blasting, vehicle traffic on state highways and roads, noise and vibration. Nor is there any authority for the LRC to deny a permit based upon matters of property values and general aesthetics. Since these matters are not within the environmental laws and regulations administered by DNR such issues cannot be considered at the formal public hearing in this case. Petitioners have failed to show that LRC has jurisdiction over these issues outside of the authority of the DNR. Receiving evidence on factors outside the authority of the LRC to regulate serves no purpose as such evidence would not be material or relevant to the issue of granting of the permit.

### **Order**

Applicant's Motion to exclude evidence relating to (1) the nature of Route AA and the impact of truck traffic on the road; (2) impact on property values from the operation of the proposed quarry; and (3) blasting at the quarry is granted. Petitioners' claims based upon nature of Route AA and the impact of truck traffic on Route AA, impact on property values from the operation of the quarry, and blasting at the quarry are dismissed.

### **Order on Petitioners' Offer of Proof**

The Hearing Officer will issue, as soon as possible, a separate order addressing the procedure to be following relating to Petitioners' desire to make their offer of proof on excluded evidence and dismissed claims.

SO ORDERED: November 26, 2013.

MISSOURI DEPARTMENT OF NATURAL RESOURCES



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### *Certification of Service*

I hereby certify a copy of foregoing has been sent via email this 26<sup>th</sup> day of November, 2013, to:

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W. B. Tichenor

DNR – Hearing Officer

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<sup>1</sup> Applicant’s Motion – I. Background, pp. 1 – 3

<sup>2</sup> The language hereinafter set forth comes in many instances verbatim from Applicant’s filings or Respondent’s Reply. The Hearing Officer has elected to not set out language in quotation marks and endnote citations in order to make for an easier reading document. The record will establish the language taken from each document. For such language, the Hearing Officer makes no claim as to originality, but references the reader to the individual filings which establish the authorship of either Mr. Ruprecht or Mr. Duggan, to avoid any assertions of plagiarisms.

<sup>3</sup> *Cooper v. Chrysler Grp., LLC*, 361 S.W.3d 60, 63 (Mo. App. 2011), reh’g and/or transfer denied (Jan. 23, 2012), transfer denied (Apr. 3, 2012) (citing *Killiam v. J & J Installers, Inc.*, 802 S.W.2d 158, 160 (Mo. banc 1991))

<sup>4</sup> *Cooper*, 361 S.W.3d 60,63 (citing *Killian*, 802 S.W.2d at 160; *Deckard*, 31 S.W.3d at 14; *Jones v. Jay Truck Driver Training Center*, 709 S.W.2d 114, 115 (Mo. banc 1986), overruled on other grounds by *McCracken v. Wal-Mart Stores East, LP*, 298 S.W.3d, 479, 479 n.3 (Mo. banc 2009))

<sup>5</sup> *See, Cooper*, 361 S.W.3d 60,63 (citing *Hannah v. Mallinckrodt, Inc.*, 633 S.W.2d 723, 726 (Mo. banc 1982); *see also Sheen v. DiBella*, 395 S.W.2d 296, 303 (Mo. App. 1965); *State ex rel. Ford Motor Co., v. Nixon*, 219S.W.3d 846, 849 (Mo. App. 2007); *Deckard v. O’Reilly Automotive, Inc.*, 32 S.W.3d 6, 14 (Mo. App. 2000), overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo. banc 2003); *State ex rel FAC Bearings Corp. v. Perigo*, 8 S.W.3d 118, 121 (Mo. App.1999)).

<sup>6</sup> *Curdt v. Missouri Clean Water Comm’n*, 586 S.W.2d 58 (Mo. App. 1979).

<sup>7</sup> *GS Technology Operating Co., Inc. v. Kansas City Power & Light*, 2004 WL 2752782 (Mo. P.S.C.) (citing *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. Banc 1979); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958)).

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<sup>8</sup> *Mikel v. Pott Indus./St. Louis Chip*, 896 S.W.2d 624, 626 (Mo. 1995) (citing *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (1940)).

<sup>9</sup> § 444.760-790 RSMo

<sup>10</sup> *See*, Land Reclamation Act Declaration of Policy at § 444.762 RSMo

<sup>11</sup> *See*, 7/1/13 DNR publication issued under names of Jay M. Nixon, Governor, and Sara Parker Pauley, Director; DNR website FAQ's; Publication 2191, page 6.

<sup>12</sup> Kevin Mohammadi Memo, page 2

<sup>13</sup> *State ex rel. Webster v. Missouri Res. Recovery, Inc.*, 825 S.W.2d 916, 913 (Mo. App. 1992)

<sup>14</sup> *See*, FN 6, *supra* for case citation

<sup>15</sup> *Curd*, at 61

<sup>16</sup> *Id.* at 60

<sup>17</sup> *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (1940) (citations omitted)

<sup>18</sup> § 319.300 et seq. RSMo

<sup>19</sup> §§ 319.300, 319.324 & 319.306-321. RSMo

<sup>20</sup> § 319.327 RSMo

<sup>21</sup> § 226.005 RSMo; Chapters 226-238 & Chapters 300-307

<sup>22</sup> Respondent's Reply

<sup>23</sup> *Continental Coal v. Mo Land Reclamation*, 150 S.W.3d 371, 378 (Mo. App. W.D. 2004)

<sup>24</sup> *Missouri Soybean Ass'n v. Missouri Clean Water Com'n*, 102 S.W.3d 10 (Mo. 2003)

<sup>25</sup> *Missouri Coalition for the Environment v. Herrmann*, 142 S.W.3d 700 (Mo. 2004)

<sup>26</sup> *Saxony Lutheran High School, Inc. v. Missouri Dept. of Natural Resources*, 404 S.W.3d 902, 905 (Mo. App. E.D. 2013)

<sup>27</sup> *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 13 n. 8 (Mo. 1981); *see also, Fort Zumwalt Sch. Dist. v. State*, 896 S.W.2d 918, 921 (Mo. 1995)