

**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,)	§§ 444.760, <i>et seq.</i> 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>)	

**RESPONDENT'S RESPONSE TO
MEMORANDUM ON PROPOSED STIPULATIONS
OF UNCONTESTED MATERIAL FACTS**

BACKGROUND

1. Radmacher Land and Equipment Management Company, LLC, a Missouri limited liability company owned by Robert Radmacher and Thomas Radmacher, was formed in the year 2004, with its principal office and place of business located in Pleasant Hill, Missouri (hereafter "RLE).

RESPONDENT AGREES.

2. In January 2011, RLE purchased the 520-acre site located on AA Highway in Johnson County, Missouri, which is the subject of this permit dispute.

RESPONDENT HAS NO INFORMATION TO CONFIRM OR REFUTE THIS STATEMENT.

3. On June 19, 2012, an inspection was conducted by the Department of Natural Resources ("DNR"), Land Reclamation Program. The Land Reclamation Program concluded that limestone rock on the site was not being mined and sold commercially; but was being used for farm purposes and/or personal use of the owner of the property and that no land reclamation permit was needed by RLE to perform such work.

RESPONDENT AGREES.

LD PERMIT NO. 01538

4. On July 6, 2012, Radmacher Brothers Excavating Co., Inc. (another company owned by the Radmacher Brothers) ("RadBro") applied for and received a "General Operating Permit" under the Missouri Clean Water Law and the Federal Water Pollution Control Act for a portion of the site, effective 7/6/2012 through 2/7/2017.

RESPONDENT AGREES AND NOTES THAT PERMIT MORA01538 WAS ISSUED JULY 6, 2012, FOR 9.15 ACRES.

5. The permit allowed RadBro to engage in "construction or land disturbance activity" (eg., clearing, grubbing, excavating, grading, and other activities . . .) together with storm water control measures. (*July 6 MSOP MORA01538*)

RESPONDENT AGREES AND NOTES THAT THESE ACTIVITIES ARE COVERED BY THE LAND DISTURBANCE PERMIT.

6. Simultaneous with the issuance of this permit, RadBro furnished a Storm Water Pollution Prevention Plan (SWPPP) dated July 6, 2012 for an estimated construction period of August 30, 2012 through December 31, 2015, noting that the project site was designated for the purpose of "borrow materials" for RadBro's business, and that land disturbance would be allowed for construction of temporary exits, staging areas, grading, stockpiling, excavation and final grading. The total projected disturbed land was identified as 9.15 acres near the center of the 520-acre site. (*July 6 SWPPP*)

RESPONDENT AGREES.

7. DNR Water Pollution Control Program conducted an investigation of the site on November 20, 2012. DNR concluded that the Radmacher Brothers Borrow Site was in compliance with its July 6, 2012 Missouri State Operating Permit (MSOP MORA 01538), the Missouri Clean Water Law, and the Clean Water Commission Regulations. ~~DNA-DNR~~ found no evidence that material was being mined and hauled off site for commercial purposes.

RESPONDENT AGREES, WITH THE CORRECTION INDICATED, AND NOTES THAT THE INSPECTION WAS CONDUCTED BY A REPRESENTATIVE FROM THE KANSAS CITY REGIONAL OFFICE WATER POLLUTION COMPLIANCE AND ENFORCEMENT UNIT. THE INSPECTOR FOUND THAT THE FACILITY WAS IN COMPLIANCE WITH PERMIT MORA01538.

8. Another routine DNR site inspection occurred on November 28, 2012, and all of the SWPPP documents were examined. All required records were made available and found to be up to date. The DNR inspector found no violations of MORA01538.

RESPONDENT AGREES; SEE RESPONSE TO #7 ABOVE.

9. On December 14, 2012, Andrea Collier, PE, Regional Director of the Kansas City Regional Office ~~of DNR Water Pollution Control Program~~, sent a letter to Robert Radmacher for the Radmacher Brothers Borrow Site confirming the DNR conclusions. (*December 14, 2012 DNR letter to AA Quarry - Compliance Inspection and Compliance Report*)

RESPONENT AGREES, WITH THE CORRECTION INDICATED.

10. On January 30, 2013, the ~~DNR-Kansas City~~ Regional Director of the ~~Water Pollution Control Program~~ Department of Natural Resources, Andrea Collier, P.E., sent a letter to RadBro enclosing a public notice for the proposed "Missouri State Operating Permit to Discharge", directing RadBro (AA Quarry) to post the public notice on a bulletin board at its place of business. A draft of the "Missouri Operating Permit" (General Permit MOG 49 1251) was attached to the letter. (*January 30, 2013 letter from DNR to AA Quarry.*)

RESPONDENT AGREES, WITH THE CORRECTION NOTED.

PERMIT NO. ~~072023-14072013-014~~

11. AA Quarry on December ~~1926~~, 2012, submitted its "Application for Authority to Construct" to the Missouri DNR Air Pollution Control Program. (*December 19, 2012 letter from Aquaterra (for AA Quarry) to DNR.*)

**RESPONDENT AGREES, WITH CORRECTIONS INDICATED,
AND FURTHER NOTES THAT THE APPLICATION WAS DATED
DECEMBER 19, BUT WAS RECEIVED BY THE AIR POLLUTION
CONTROL PROGRAM ON DECEMBER 26.**

12. Kyra L. Moore, Director, forwarded a letter dated January 17, 2013, to Robert Radmacher of AA Quarry approving construction activities for a new open pit quarry. (*January 17, 2013 letter from DNR to AA Quarry.*)

RESPONDENT AGREES AND NOTES: A PRE-CONSTRUCTION WAIVER WAS ISSUED. THIS ALLOWED THE COMPANY TO BEGIN CONSTRUCTION, BUT DID NOT ALLOW FOR OPERATION.

13. On July 22, 2013, Susan Heckenkamp, New Source Review Unit Chief of the Air Pollution Control Program of DNR, forwarded a letter to Robert Radmacher for AA Quarry enclosing Missouri Department of Natural Resources Air Conservation Commission "Permit to Construct" (No. 072 013-014.) (*July 22, 2013 letter from DNR to AA Quarry.*) This permit was not appealed to the Air Conservation Commission. Future enforcement of the terms of that permit is through that Commission and the Air Pollution Control Program.

RESPONDENT AGREES, BUT NOTES: A PERMIT TO CONSTRUCT WAS ISSUED ON JULY 22, 2013 TO AA QUARRIES, LLC. THE PERMIT WAS SENT TO ROBERT RADMACHER.

AA QUARRY APPLICATION

14. On July 20, 2012, Tom and Robert Radmacher prepared Articles of Organization for AA Quarry, LLC, ("AA Quarry") a Missouri limited liability company (LC 1243292). The principal office and place of business of AA Quarry, LLC is also in Pleasant Hill, Missouri. The Missouri Secretary of State issued a certificate of organization for AA Quarry LLC on July 20, 2012 (*AA Quarry Articles of Organization*)

RESPONDENT AGREES.

15. On November 16, 2012, AA Quarry prepared an application for land reclamation permit (*Permit Application for Industrial Mineral Mines under 10 CSR 40-10.020(1)*).

RESPONDENT AGREES.

16. The initial application required amendment and the final application was received by the DNR Land Reclamation Program on or about December 6, 2012.

RESPONDENT AGREES.

17. Respondent determined that the application was complete within the requirements of the Land Reclamation Act and implementing regulations. On December 11, 2012, the DNR Land Reclamation Program advised AA Quarry by letter that:

1. The AA Quarry application was complete;

RESPONDENT AGREES.

2. Under 10 CSR 40-10.020(2)(H) AA Quarry was required to advertise notice of intent to operate a surface mine in a local newspaper authorized for legal publications [in the county where the mine is located](#); and

RESPONDENT AGREES, BUT REQUESTS THE CHANGE INDICATED.

3. AA Quarry should send certified mail notices to: (a) contiguous or adjacent landowners, [if landowners were required to receive notice](#), and (b) county officials in the county in which the mine was to be located. (*December 11, 2012 letter DNR to AA Quarry*)

RESPONDENT AGREES, BUT REQUESTS THE QUALIFIER NOTED.

18. On December 17, 2012, Robert Radmacher confirmed with the DNR that because the AA Quarry mine plan area utilized a 100-foot setback from the boundary lines of the 520-acre site for mining operation limits, the certified mail notice to contiguous or adjacent landowners was not necessary.

RESPONDENT AGREES.

19. AA Quarry satisfied the notice requirements set forth in the regulations and provided evidence to the DNR by submitting an affidavit of publication in a local newspaper and certified mail return receipt regarding the letter sent to the governing authority in Johnson County, Missouri. (*Notice and Affidavit*)

RESPONDENT AGREES.

20. DNR Land Reclamation Program advised AA Quarry on January 22, 2013 by certified letter that after the public notices had been given regarding the permit application, DNR had received letters from the public regarding requests for a public meeting. DNR inquired if AA Quarry would agree to a public meeting being held. AA Quarry so agreed. (*January 22, 2013 letter from DNR to AA Quarry.*) AA Quarry proceeded to a public hearing on March 7, 2013.

RESPONDENT AGREES.

21. On April 2, 2013, Respondent issued his written recommendation to the land Reclamation Commission to issue a new permit for a total of 214 acres of the 520-acre site. Respondent's recommendation noted that concerns of the public were not all successfully resolved by the public meeting. The recommendation included Attachment 1, summary document prepared by DNR regarding the public [hearing-meeting](#) comments and staff responses. Respondent reported that he anticipated that members of the public would request a formal hearing and that timely requests and his recommendation would be placed on the agenda for the Land Reclamation Commission's May 23, 2013 meeting. (*April 2, 2013 LRP Staff Recommendation Memorandum*)

RESPONDENT AGREES, BUT REQUESTS THE CHANGE INDICATED.

22. On April 2, 2013, Tucker Frederickson of the DNR Land Reclamation Program advised Petitioners of their rights to request a public hearing from the Land Reclamation Commission. (*April 2, 2013 letter from DNR to certain Petitioners.*) Petitioners thereafter requested a formal public hearing and between May 1 and May 3, 2013, Kevin Mohammadi advised that the Land Reclamation Commission would decide whether or not to grant a formal public hearing at the meeting on May 23, 2013. (*Example letter from DNR re: Request for Public Hearing and May 23, 2013 LRC Meeting.*)

RESPONDENT AGREES.

23. At the May 23, 2013 Land Reclamation Commission meeting, a number of prospective Petitioners appeared and made statements, and after due consideration, the Commission voted to grant Petitioners a formal public hearing.

RESPONDENT AGREES.

24. Respondent's determination that the application is complete is not challenged for purposes of the formal public hearing.

RESPONDENT AGREES.

25. Respondent's staff has not found that Applicant has conducted mining operations without a permit in violation of the Land Reclamation Act.

RESPONDENT AGREES.

LAND DISTURBANCE PERMIT [MORA02837](#)

26. On or about March 8, 2013, Jimmy Coles of the Water Pollution Control Program orally advised AA Quarry that it should obtain a second land disturbance permit for the dam pond construction area on site which was outside the original Land Disturbance Permit 9.15 acre boundary.

RESPONDENT REQUESTS CLARIFICATION OF THE STATEMENT, NOTING: Mr. Coles advised that a land disturbance

permit be obtained to cover any and all areas, or potential areas, where land disturbance activities may be conducted. Mr. Coles advised that over-permitting (covering more area than might be disturbed) is acceptable as long as the SWPPP accurately reflected any disturbances as they occur.

27. On or about March 13, 2013, RadBro applied to the DNR Clean Water Commission for a second land disturbance permit (Missouri State Operating Permit, General Operating Permit No. MORA 02837). This permit also allowed for construction and land disturbance activities at the site and was issued effective March 13, 2013, again through the ePermitting system. *(DNR MSOP No. 02837).*

RESPONDENT AGREES THAT MORA02837 WAS ISSUED ON MARCH 13, 2013 TO AA QUARRY, LLC, FOR LAND DISTURBANCE ACTIVITIES ON 104.77 ACRES. NOTE THE SUGGESTED CLOSING OF THE PARENTHESIS AT THE END OF THE PARAGRAPH.

404 PERMIT

28. On or about March 5, 2013, Michael T. McFadden, Regional Project Manager of the Kansas City Corps of Engineers office, reviewed Applicant's construction activities at the dam and pond area and determined that Applicant was in noncompliance with General Condition 31 of the Nationwide Permit requiring a pre-construction notification to the Corps of Engineers district office before the start of construction activities.

RESPONDENT AGREES.

29. The Corps of Engineers advised that the project could be brought into compliance by Applicant by submitting a pre-construction notification and a permit application to the district office regarding both the work already completed and any work planned in the future.

RESPONDENT AGREES.

30. On April 2, 2013, David R. Hibbs, Regulatory Program Manager in the Operational Division of the U.S. Department of the Corps of Engineers Kansas City District, issued to Applicant the official written "Notice of Noncompliance" with Permit No. NWK2013-00247 for the Applicant's project work asserting that the dam/pond work was located in the head waters of "several unnamed tributaries" to the south fork of the Blackwater River, located above Echo Lake. (*April 2, 2013 Corps of Engineers Letter.*)

RESPONDENT AGREES.

31. Applicant wrote a letter to Mr. McFadden on March 6 stating that Applicant was authorizing Nathan Hamm, P.E., Vice President Program Manager for SCS Aqua Terra to prepare Applicant's 404 application to bring the project into compliance. Applicant also hired Jim Feagons to perform the associated historical study needed for the permit. (*March 6, 2013 letter from Applicant to Corps of Engineers.*)

RESPONDENT AGREES.

32. Applicant sent another letter dated April 4, 2013 to the Corps of Engineers confirming Applicant's intent to bring the project into compliance with all permit requirements. (*April 4, 2013 Letter of Applicant to Corps of Engineers.*)

RESPONDENT HAS NO RECORD OF THIS.

33. A final 404 application was submitted to the Corps on June 6, 2013. (*Application to Corps of Engineers for 404 Permit.*)

RESPONDENT AGREES.

34. The historical study by Mr. Feagons was submitted to the Corps on September 5, 2013.

RESPONDENT AGREES.

DAM

35. A dam was built on the site beginning in November of 2012 through early 2013. The dam was investigated May 9, 2013, Robert A. Clay, P.E., Chief Engineer [for the](#) Dam and Reservoir Safety Program for DNR. Mr. Clay wrote a letter on May 15, 2013, stating that he was on site May 9, 2013. He measured the height of the dam and surveyed it with an automatic Sokkia level. He determined the height of the dam at less than 35 feet (33.5 feet) and therefore did not require a permit. (*May 15, 2013 letter from DNR.*)

RESPONDENT AGREES. Please note the edit suggested.

SEPTEMBER 4, 2013 COMPLIANCE INSPECTION

36. Land disturbance for some of the property where the quarry is proposed is authorized by permit MORA02837 (effective 3/13/2013 through 2/7/2017) issued by the DNR Water Protection Program. On September 4, 2013, a DNR inspector conducted a routine water pollution compliance inspection at the site. The inspector found two non compliances or violations of MORA02837. According to the inspection report, Applicant corrected the violations and sent pictures verifying the corrective actions to the DNR inspector on September 5, 2013. The inspector concluded that no further corrective action was required. The site was deemed in compliance by DNR effective September 5, 2013. (*September 20, 2013 letter from DNR to AA Quarry regarding Compliance Inspection and attached Report.*)

RESPONDENT AGREES, NOTING THAT THE SPILLED OIL AND DAM TOE EROSION WERE CORRECTED THE DAY FOLLOWING THE INSPECTION.

Petitioner's Proposed Stipulation of Uncontested Material Facts

37. Petitioners are residents of the area either directly surrounding, or in close proximity to, the proposed quarry site.

**RESPONDENT OBJECTS BECAUSE THE STATEMENT IS
VAGUE. THE ACTUAL DISTANCES OF RESIDENTS TO THE
PROPOSED QUARRY ARE:**

David Earls
444 NW 1851st Rd.
Kingsville, MO 64061 – .56 mile

Misty & Darren Cutright
405 NW AA Highway
Kingsville, MO 64061 - .12 mile

LeeAnn Hamilton
Jess Hamilton
378 NW 1851 Rd
Kingsville, Mo. 64061 - .21 mile

Laura Jones
1826 NW 530th Road
Kingsville, MO 64061 - 2.07 miles

Randy and Clara Cravens
1844 NW 530 Rd.
Kingsville, MO 64061 - 2.04

Robert and Liesl Snyder
276 NW AA Hwy
Kingsville, MO 64061 - .32 mile

Laurie and James Martin
370 NW 1771 Rd.
Kingsville, MO 64061 - .78 mile

Tim Stamm
1920 NW 500th Road
Kingsville, MO 64061 - .73 mile

Creighton and Diane Cox
1884 NW 260th Road

Kingsville, MO 64061 - .31 mile

Tammy Heider
1740 NW 450 Road
Kingsville, MO 64061 - 1.68 miles

Lorri Adams
389 NW 1851st Rd.
Kingsville, MO 64061 .41 mile

Kyle Stout
1883 NW 260th Road
Kingsville, MO 64061 - .18 mile

Brad & Jessica Mantzey
407 NW AA Hwy.
Kingsville, MO 64061 - .06 mile

James & Susan Richards
408 NW AA Hwy.
Kingsville, MO 64061 - .44 mile

Linda Burton
1776 NW 200 Rd
Kingsville, MO 64061 - 1.23 miles

Cary Brown
382 NW 1851 Road
Kingsville, MO 64061 - .38 mile

ADD

Scott & Dianne Gard
448 NW 1851 Road
Kingsville, MO 64061 - .54 mile
816-566-0519

RESPONDENT NOTES: On average, Petitioners live 0.7 miles measured in a direct line distance from proposed quarry. There are four (4) Petitioners residing less than a quarter mile from proposed quarry. Five (5) petitioners reside between 0.26 miles and a half mile

of the proposed quarry. Three (3) Petitioners reside more than a half mile but less than three-quarters of a mile of the proposed quarry.

One (1) Petitioner resides more than three-quarters of a mile but less than a mile of the proposed quarry. Four (4) Petitioners reside greater than one mile with two (2) of those Petitioners living about two miles of the proposed quarry.

38. Prior to obtaining its Missouri State Operating Permit specifically identifying the project, RLE began land disturbance activities on a 9 ½ acre portion of the Proposed Quarry Property. *Photograph of land disturbance that Terraserver, a satellite imaging company, took on February 16, 2012.*

RESPONDENT OBJECTS: To the best of knowledge and belief, the area had been previously disturbed by the previous land owner; Respondent has no evidence that RadBros conducted land disturbance prior to obtaining a land disturbance permit. Aerial photos taken in previous years (indeed, several years prior to the Rachmacher brothers' purchase of the property) show disturbance in the area of the 9.15 acres.

39. Prior to obtaining a Land Reclamation Permit (“LRP”), RLE had rock crushers and excavation equipment (collectively, the “Quarrying Equipment”) on the Borrow Site. *Photographs attached to Applicant’s Land*

Reclamation Permit Application; photographic enlargements dated August 27, 2012.

RESPONDENT AGREES.

40. Additionally, and prior to obtaining the LRP, RLE blasted and excavated consolidated limestone material from the Borrow Site. *Google earth Photographs.*

RESPONDENT AGREES.

41. RLE provided some of the consolidated limestone material that it blasted and excavated from the Borrow Site to Radmacher Brothers Excavating Co., Inc. (“RadBro”), another company that the Radmacher Brothers own. RadBro entered into a construction contract (the “Contract”) with the City of Kansas City, Missouri (the “City”), to provide material, work, and services on a project known as the Choteau Trafficway (the “Choteau Project”).

RESPONDENT HAS NO RECORD OF THIS.

42. RadBro obtained from RLE consolidated limestone material that RLE blasted, excavated, and removed from the Borrow Site (the “Quarried Limestone”) to use as road base material, which was within the scope of materials and work that RadBro was obligated to provide and perform under the Contract. *Google earth Photographs;*

RESPONDENT HAS NO RECORD OF THIS.

43. RadBro incorporated the cost of the Quarried Limestone as part of their Contract.

RESPONDENT HAS NO RECORD OF THIS.

44. RadBro received all payments due from the City on the Contract, including, without limitation, payment for the cost of the Quarried Limestone.

RESPONDENT HAS NO RECORD OF THIS.

45. AA Quarry, LLC (“Applicant”) did not send notices by certified mail of its intent to operate a surface mine on the Quarry Property to the last known addresses of all land owners of record owning real property contiguous, or adjacent, to the Quarry Property. *See Answer, p 5.*

RESPONDENT AGREES.

46. Applicant did not post the public notification that the Missouri Department of Natural Resources (“DNR”) provided to Applicant at the main entrance to the proposed quarry site. *See Exhibit 2.*

RESPONDENT OBJECTS BECAUSE THE STATEMENT IS VAGUE. RESPONDENT AVERS: If this is concerning the public notice for the MO-G49 permit (the general state operating permit issued under Clean Water Commission rules for limestone quarries), Jimmy Coles observed the draft posted at the entrance to the quarry site, while Mr. Coles was on-site for inspection on September 4, 2013.

As a point of information, see 10 CSR 20-6.020(1)(E)2, which provides that public notice of the proposed permit may be posted near the entrance of the facility.

47. Applicant also did not post the public notification sign so that it was visible to the public from the public road that provides access to the main site entrance. *See Exhibit 2.*

RESPONDENT OBJECTS BECAUSE THE STATEMENT IS VAGUE. RESPONDENT AVERS: If this is concerning the public notice for the MO-G49 permit (the general state operating permit issued under Clean Water Commission rules for limestone quarries), Jimmy Coles observed the draft posted at the entrance to the quarry site, while Mr. Coles was on-site for inspection on September 4, 2013. *As a point of information, see 10 CSR 20-6.020(1)(E)2, which provides that public notice of the proposed permit may be posted near the entrance of the facility.*

48. On May 23, 2013, Petitioners attended a public meeting (the “Meeting”) of the Land Reclamation Commission (“LRC”), presented their statements and evidence, and requested that the LRC grant them standing and formal public hearing before the LRC determined whether to grant Applicant’s permit request. *See Webcast of the Meeting on the DNR website.*

RESPONDENT AGREES.

49. During the Meeting, Petitioners presented good faith evidence to the LRC concerning undue impairment that the proposed quarry operation ~~would have on~~may cause to their health, safety, and livelihood as a result of residing in close proximity to the proposed quarry. *Id.*

RESPONDENT AGREES, REQUESTING THE CHANGE NOTED.

50. Additionally, Petitioners presented evidence of Applicant's noncompliance with applicable statutes and regulations, including, without limitation, Applicant's land disturbance activities and quarry operations prior to seeking and obtaining required permits, together with damage to the environment. *Id.*

RESPONDENT OBJECTS AND DISAGREES THAT THERE WAS EVIDENCE OF DAMAGE TO THE ENVIRONMENT. ALSO, KCRO HAS NO DOCUMENTED EVIDENCE OF DAMAGE TO THE ENVIRONMENT.

51. Following Petitioners statements, the Commission voted to grant a formal public hearing based on all claims that Petitioners advanced during the Meeting. *Id.*; see also **Exhibit 4**, which is an email from counsel for DNR to petitioner David Earls answering question of what issues or claims that Petitioners advanced at the Meeting could be brought forward at the formal public hearing.

RESPONDENT AGREES.

52. Applicant placed fill materials in a stream that the Army Corp of Engineers has designated as the Waters of America (the “**Stream**”), which created a dam. See **Exhibit 5**, photographs taken by Petitioner Jim Martin, an adjacent land owner.

RESPONDENT AGREES.

53. On Applicant’s July 6, 2012 ePermit application, Applicant answered “No” to the question of whether its activities would disturb the Waters of America. See attachments to Applicant’s Proposed Stipulations.

RESPONDENT AGREES.

54. Petitioner, Robert Snyder, contacted an investigator with the DNR Dam Safety Program, Paul Simon, and reported that Applicant, or one of its affiliated entities, had constructed a dam on the Quarry Property (the “**Radmacher Lower Dam**”) and that the Radmacher Lower Dam exceeded the 35 foot height maximum set forth in the regulations governing the DNR Dam [and Reservoir](#) Safety Program.

RESPONDENT AGREES, BUT OFFERS THIS CLARIFICATION: The Missouri Dam and Reservoir Safety Program (DRSP) within the Department of Natural Resources regulates dam 35 feet or taller, based on the height of the dam on a field survey conducted by licensed engineers on staff with the program. On May 9, 2013, DRSP determined by survey using a Sokkia automatic level, that the dam was less than 35 feet high.

Although Mr. Tom Radmacher admitted that the dam had been lowered, DRSP has no way of knowing whether the dam ever exceeded 35 feet high. The DRSP cannot base a decision to regulate a dam on measurements made by adjacent landowners using approximate methods. Therefore, a permit is not required for the dam and DRSP will not conduct regular inspections.

55. Shortly after Mr. Snyder's complaint, the ~~Department of~~ Dam and Reservoir Safety Program provided advance warning to Applicant that it would be visiting the Quarry Property within the next few weeks to inspect the Dam, including, without limitation, measuring the height of the Dam, to make sure that Applicant was in compliance with DNR Dam and Reservoir Safety Program regulations. See Answer, p 6.

RESPONDENT AGREES, REQUESTING CORRECTIONS INDICATED, AND OFFERS THIS CLARIFICATION: The Missouri Dam and Reservoir Safety Act (chapters 236.400 through 236.500 RSMo) does not give DNR the authority to do unannounced inspections. Section 236.425(4) states "The chief engineer shall administer the provisions of sections 236.400 to 236.500 by (4) Entering, at any reasonable time, any private or public premises as necessary to make an investigation or inspection of a dam or reservoir, or records kept, pertaining thereto, and such inspection *shall follow reasonable notice to the owner given prior to such*

investigation or inspection except in the case of an emergency threatening public safety, life or property, in which case such inspection or investigation may be made without prior notice.”

DRSP staff followed these requirements of the law in scheduling the inspection of the quarry dam.

56. The ~~Department of~~ Dam and Reservoir Safety Program representative further informed Applicant during this discussion that if the Dam exceeded 35 feet in height, the State would be required to regulate the Dam for safety.

RESPONDENT AGREES, REQUESTING THE CORRECTION INDICATED.

57. Upon receiving notification of the pending visit from the ~~Department of~~ Dam and Reservoir Safety Program, and prior to the actual inspection, which was scheduled for May 9, 2013, Applicant lowered the height of the Radmacher Lower Dam. *See Exhibit 5.*

RESPONDENT AGREES, BUT REQUESTS THE CHANGE INDICATED. THE OWNER ADMITTED THAT THE DAM HAD BEEN LOWERED.

58. Applicant failed to obtain a new permit before lowering the height of the dam.

RESPONDENT AGREES, BUT WITH THIS CLARIFICATION:

The owner is required to obtain a construction permit only if the dam is over 35 feet. DRSP cannot verify that the dam was ever over 35 feet in height.

59. Applicant removed material from the top of the Radmacher Lower Dam and placed that material at the downstream toe of the dam. *See* Exhibit 5.

RESPONDENT HAS NO INFORMATION TO CONFIRM OR REFUTE THIS STATEMENT.

60. Applicant failed to put in place any Best Management Practices, as defined in MORA02837 (“Operating Permit 2”), prior to, or after, placing the materials at the downstream toe of the Radmacher Lower Dam.

61. The Radmacher Lower Dam was built as a sediment detention basin to support Applicant’s quarry operations, and not as a livestock watering reservoir. *See* Applicant’s Land Reclamation Application attached to Applicant’s Proposed Stipulations.

RESPONDENT AGREES.

62. Applicant has modified the original design of the Radmacher Lower Dam to increase the storage capacity.

RESPONDENT HAS NO INFORMATION TO CONFIRM OR REFUTE THIS STATEMENT.

63. Previously, on or about March 5, 2013, Michael T. McFadden, Regional Project Manager of the Kansas City Corps of Engineers office, reviewed Applicant's construction activities at the dam and pond area and determined that Applicant was in noncompliance with General Condition 31 of the Nationwide Permit requiring a pre-construction notification to the Corps of Engineers district office before the start of construction activities. See Notice of Permit Noncompliance attached to Applicant's Proposed Stipulations.

RESPONDENT AGREES.

64. On April 2, 2013, David R. Hibbs, Regulatory Program Manager in the Operational Division of the U.S. Department of the Corps of Engineers Kansas City District, issued to Applicant the official written "Notice of Noncompliance" with Permit No. NWK2013-00247 for the Applicant's project work asserting that the dam/pond work was located in the head waters of "several unnamed tributaries" to the south fork of the Blackwater River, located above Echo Lake. See Notice of Permit Noncompliance attached to Applicant's Proposed Stipulations.

RESPONDENT AGREES.

65. The width of AA Highway is 21 feet.

RESPONDENT HAS NO INFORMATION TO CONFIRM OR REFUTE THIS STATEMENT.

66. AA Highway was originally constructed in the 1950s as a farm road.

RESPONDENT HAS NO INFORMATION TO CONFIRM OR REFUTE THIS STATEMENT.

67. The term “Chip-and-seal” describes a surface pavement applied to a gravel road.

RESPONDENT HAS NO INFORMATION TO CONFIRM OR REFUTE THIS STATEMENT.

68. Gravel highways do not have solid understructure.

RESPONDENT HAS NO INFORMATION TO CONFIRM OR REFUTE THIS STATEMENT.

69. According to the Missouri Department of Transportation, approximately 20,000 vehicles pass through the intersection of US 50 and AA Highway per day.

RESPONDENT HAS NO INFORMATION TO CONFIRM OR REFUTE THIS STATEMENT.

70. There are 535 residences in Johnson County within one mile East and West, and one mile South, of the Quarry Property along AA Highway and US 50. According to the Johnson County Tax Assessor, the market value of these residences is \$68 million. Of these properties, 65% are taxed through the Holden R-11 School District tax levy. *See **Exhibit 6***, listing of properties within this radius of the proposed quarry and their tax assessed values.

RESPONDENT HAS NO INFORMATION TO CONFIRM OR REFUTE THIS STATEMENT. RESPONDENT FURTHER AVERS: The Land Reclamation Act 444.762 RSMo provides that it is the policy of the state to strike a balance between surface mining minerals and reclamation of land subjected to surface disturbance

by surface mining to, among other things, “protect and perpetuate the taxable value of property.” In this connection, on February 28, 2013 at 9:50AM, Land Reclamation Program Staff did speak with Mr. Mark Reynolds Johnson County Tax Assessor. Staff learned that there are four other quarries in Johnson County and none of those quarries had a decrease in taxable value of property for houses in the general area of those quarries. In regards to where the proposed quarry is located, that land will increase from a 12% tax rate, which is currently charged for agriculture land, to a 32% tax rate for commercial property, if the permit application receives approval. Also, the equipment on site will be taxed as personal property.

Respectfully submitted,

CHRIS KOSTER
Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was electronically mailed, this 5th day of December, 2013 to:

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