

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

In the Matter of:)	
)	
BUILDEX, INC.,)	LRP Permit No. 0387
New Market Plant Site)	Proceeding Under
Platte County, Missouri)	The Land Reclamation Act,
Permit Expansion Application)	Sections 444.760 through 444.790,
)	RSMo.
CONCERNED CITIZENS)	
OF PLATTE COUNTY,)	
ALAN & PAULA WEBB,)	
KARI KNABE,)	
SUSAN BROWN,)	
JERALD & LORENE FANSHER,)	
)	
Petitioners,)	
)	
v.)	
)	
LEEANE TIPPETT-MOSBY,)	
Acting Staff Director,)	
Land Reclamation Program,)	
Division of Environmental Quality,)	
Respondent,)	
)	
BUILDEX, INC,)	
Applicant,)	
)	
)	

ORDER ON SCOPE OF DISCOVERY

Upon review of Applicant’s Motion on Scope of Discovery, Suggestions in Support, Respondent’s Response, Petitioners’ Response, Applicant’s Reply to Petitioners’ and Respondent’s Responses, the following Order is entered.

The basis upon which the Commission may deny Applicant’s permit are:

- (1) a finding based upon competent and substantial scientific evidence that a petitioner’s health, safety, or livelihood will be unduly impaired by impacts from activities that the recommended mining permit authorizes;¹ and/or

(2) a finding based upon competent and substantial scientific evidence that the operator has, during the five year period immediately preceding the date of the permit application, demonstrated a pattern of non-compliance² at other locations in Missouri that suggests a reasonable likelihood of future acts of noncompliance.³ The Commission may also deny issuance of the permit for failure to comply with statutory and regulatory permitting requirements pertaining to the present Permit Expansion Application.⁴

Therefore, discovery is limited to those matters pertaining to: (1) permitting and operation requirements for the proposed expansion site; (2) air pollution, sediment and run off related to the proposed expansion site as the same will unduly impair a petitioner's health, safety or livelihood; and (3) past acts of noncompliance of environmental law administered by the Missouri Department of Natural Resources, evidenced by the issuance of a Notice of Violation (NOV) or a Notice of Excess Emissions (NOEE).

Discovery is excluded on issues seeking to address property devaluation, road maintenance, public health risks or safety issues, noise pollution, dust outside the proposed mining site, blasting activities, potential impacts on businesses in the area where the mining site will be located, environmental impact studies or assessments, or lack thereof, allegations of harshness to land by strip mining, and assessments on the possible results of future flood events that could be associated with surface mining at the proposed mining site. These matters are outside the laws administered by the MDNR and are irrelevant in this proceeding. Discovery is also excluded on issues relating to the excavation and processing activities or procedures at Applicant's current site, except within the context of an act of noncompliance of environmental law administered by the MDNR evidenced by a NOV or NOEE.

Certificate of Service

I hereby certify that a copy of the foregoing has been sent as an email attachment on this 17th day May of 2009, to:

Charles F. Speer & Tammy R. Dodson, Speer Law Firm, PC, Attorneys for Petitioners,
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Kara Valentine, Assistant Attorney General, Attorney for Respondent,
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Electronic copy sent to:

Dana Foster, Assistant to General Counsel – dana.foster@dnr.mo.gov

Leann Tippett-Mosby, DNR – leann.tippitt.mosby@dnr.mo.gov

Mike Larsen, DNR – mike.larsen@dnr.mo.gov

SO ORDERED May 17, 2009.

MISSOURI DEPARTMENT OF NATURAL RESOURCES



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¹ Section 444.773.4 RSMo; 10 CSR 40-10.080 (3) (D);

² Past acts of noncompliance must be of environmental law administered by MDNR where acts resulted in harm to the environment or impaired the health, safety, or livelihood of persons outside the facility. 10 CSR 30-10.080 (3) (F).

³ Section 444.773. 4 RSMo; 10 CSR 40-10.080(3) (E).

⁴ Section 444.772; 10 CSR 40-10.020.