

**MINUTES OF THE
LAND RECLAMATION COMMISSION MEETING
HOLIDAY INN EXPRESS CONFERENCE ROOM
1200 GANNON DRIVE
FESTUS, MISSOURI
JULY 24, 2008**

Chairman, Jim DiPardo called the meeting to order at 10:00 a.m., at the Holiday Inn Express, Conference Room, located at 1200 Gannon Drive, Festus, Missouri.

Commissioners Present: Jim DiPardo; Dr. Gregory Haddock; Mimi Garstang; Ed Galbraith, Nick Matherly, Col. John Riffle and Bob Ziehmer.

Staff Present: Larry Coen, Staff Director; Bill Zeaman, Chris Thiltgen, Larry Slechta, Mitch Roberts, Mike Larsen, Mike Mueller, Joyce Luebbering, Dave Dowdy, Larry Hopkins, Guy Frazier, Teri Bibbs, Colleen Kenny, Larry Teson, Ron Dumey, Neil Elfrink and Tina Stockman.

Others Present: Harry Bozoian, Attorney General's Office; Steve Mauer, Bryan Cave LLP; Faye Matherly, Jean Riffle, James Owen and Laura Hawk, McCarthy, Leonard et al Law Firm; John Olivaria, City of Osage Beach; Mark Magruder, Magruder Limestone Company Inc; Dean McDonald, Magruder Limestone Company, Inc.; Harold Bono, Magruder Limestone Company, Inc.; Matt Lindsay, Magruder Limestone Company Inc.; Ted and Melanie Windels, concerned citizens; Mike and Jacqueline Atkisson, concerned citizens, and John Polhemus, Bryan Cave, LLP; Jane Martin, Scotts Concrete; Scott Martin, Scotts Concrete; and John Curran, Attorney for Jane Martin; Adam Troutwine, Attorney for Bee Enowski and Magruder Limestone Company Inc., Hendren Andrae LLC.

Approval of May 29, 2008 Meeting Minutes

Col. Riffle made a motion to approve the May 29, 2008 meeting minutes as written. Dr. Haddock seconded the motion. The motion was carried unanimously.

Dr. Haddock made a motion to take up the Magruder issue first out of the order as presented on the Agenda. He also inquired if this would be acceptable to all parties and all agreed.

Col. Riffle seconded the motion which carried unanimously.

Hearing Officer Status Report – Magruder Quarry, Miller County:

Chairman DiPardo asked why is the city not concerned about the proposed MoDOT blasting, but is so concerned about the proposed Magruder blasting? Mayor Lyons explained that construction blasting is different because it is controlled blasting, while quarry blasting is continuous and uncontrolled. She further explained that the sewer lines along the proposed highway construction are about 40 feet deep, while the lines running through the proposed quarry site are only 36 to 42 inches deep. Ed Galbraith asked what is known about the pipe along the highway that is not known about the pipe crossing the proposed quarry area? Mayor Lyons explained that MODOT is paying them to move some of the lines and the City has previously made repairs in some areas so there are more things known about the main lines along

the highway project. The lines across the Magruder property have not been disturbed since they were installed.

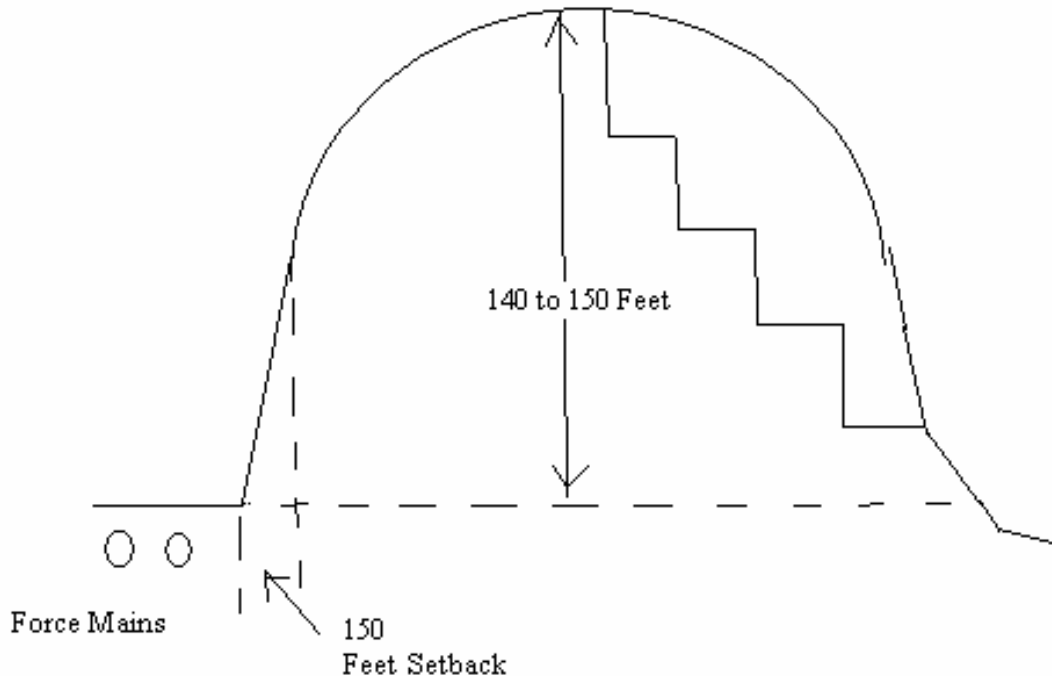
Mimi Garstang asked Mayor Lyons about the smaller approved APAC permit that is even closer to the sewer plant and also adjacent to the sewer force main pipes. Mayor Lyons explained that the sewer plant had contracted with APAC to flatten the ground on those 15 acres in order to allow for plant expansion. Since APAC did not get the other site at the time near the RV park, they (APAC) did not feel that the small 15 acre permit was viable any longer as a stand alone site, so no mining was ever done at that site. Ms. Garstang asked a follow-up question to clarify that the Sewer Board would still like to see this fifteen (15) acres mined for expansion if the treatment plant facilities were properly protected. Mayor Lyons responded that would be up to the Sewer Board but she is not sure how this would be accomplished.

Dr. Haddock asked about the lifespan of the two force mains. Mayor Lyons explained that the PVC pipe has been in service since 1984, and the ductile iron pipe has been in service since 2000. The lifespan of either force main is otherwise unknown. The City did have ductile iron pipe in another location that was guaranteed for 50 years, but failed after 25 years. Ed Galbraith asked if there was an asset management plan in place for these pipes? Mayor Lyons explained how the city services the rest of the sewer system but did not have a plan to service the force mains through the Magruder property.

Mr. Troutwine introduced Dean McDonald, Vice President of Magruder to help answer some of the Commissioners questions. Dean McDonald stated that there is not really any difference between construction blasting and quarry blasting. He also explained that blasting and excavation along the Highway 54 bypass will still go below the level of the force mains, even though they are about 40 feet deep. He said that in places the excavation will reach a depth of 85 feet, and will be within about 45 feet of the force mains. He stated that over 2 million tons of rock will be removed in a short period of time. When Mr. McDonald began to discuss information outside the scope of the hearing, Harry Bozoian as Attorney for the Commission, interrupted Mr. McDonald's presentation and asked him to conclude his remarks.

W. B. Tichenor explained that the issue of blasting just comes down to the measurement of the peak particle velocity, which is now governed by the Missouri Blasting Safety Act. A number of expert witnesses testified to this fact and provided examples where blasting has occurred close to buried lines without damage. Ed Galbraith asked about the concept of the pre-split face. Is there more about that concept that will help the Commission to understand it better? Mr. Galbraith stated that he wanted to add any condition that would provide safety and asked the Hearing Officer if this could be presented graphically. W. B. Tichenor explained that Mr. Dressler had provided a diagram of this concept for the quarry that is completely wrong in his report, Board Petitioner 23. Mr. Dressler's diagram shows the force mains above the quarry in elevation, but in reality the quarry will always be above the force mains in elevation. The Hearing Officer then completed a hand drawing for the Commission about the quarrying activities and how they relate to the force mains in the easement.

Magruder Quarry Diagram



The Mine Safety Standard is 4.9 inches per second, which is the maximum allowed. The mine plan when turned parallel to the force main pipes will be limited to about two (2) inches per second. Mr. Tichenor then referred to Paragraphs 101 and 102 in his recommendation for the calculations used to measure blasting vibrations. The blasting is specifically designed not to damage the floor of the quarry; therefore, vibrations in a downward direction towards the force mains will be minimized. Because of this he explained that he does not believe the concept of the pre-split face will add any protection for the pipes. He referred to Paragraph 103 of the Recommended Order which proves that no damages have occurred to pipelines in over 350 documented cases. In some of these cases the peak particle velocity was much greater than that being proposed by Magruder yet still did not cause any damage to the pipelines. The only documented case of blasting damage to a pipeline is when the pipe is within the fracture zone of the blasting crater, which cannot happen in this case if mining is set back at least 150 feet from the sewer easement. Since the force mains will always be below the level of the quarry floor, Mr. Tichenor does not believe that the pre-split face concept will add any safety at all to this project.

Ed Galbraith asked if the blasting effects are turned out and away from the pipes, then are the vibrations toward the pipes minimized? W. B. Tichenor answered that yes, they would be less than the vibration limits imposed by the Missouri Blasting Safety Act. The evidence on the record suggests that the ground takes away about half of the vibration before reaching the pipes.

Dr. Haddock then asked if the blasting vibrations are proportional all along the pipe depending on the distances from the blasting to the pipes? Dr. Haddock asked how the 150 foot set back was determined and the Hearing Officer explained that the Company had proposed this on the application simply because there were no mineable rock reserves within that 150 foot zone. The Hearing Officer agreed that the effect of vibration is proportional to distance.

Dr. Haddock also asked where did the 400 foot setback distance from the treatment plant facilities come from? W. B. Tichenor explained that the 400 feet came as a suggestion from the applicant, but in reality the peak particle velocity is controlled by the Missouri Blasting Safety Act. Then Dr. Haddock restated as a question that the 400 feet setback is really redundant because the Missouri Blasting Safety Act governs the peak particle velocity no matter what the company's blasting plan calls for and the seismograph will document the peak particle velocity readings. The comment was made that there is no blast plan for areas other than areas A, B and C.

Dr. Haddock then made the motion to accept the permit, but to limit it to the area south and west of the sewer line, to adopt the order of the Hearing Officer with the following changes: on condition number 2, increase the blasting distance to 200 linear feet instead of 150 linear feet from the easement, remove the limitation of 400 feet from the boundary of the plant facilities and in condition number 4 in addition to everything stated there to require annual reporting of the seismograph data to the Land Reclamation Commission, to our program. Colonel Riffle seconded the motion.

The Commission then took up discussion about the motion. Ed Galbraith asked to see the map so that everyone would clearly understand the area proposed in the motion. Ed Galbraith still expressed some concerns that the company should be required to install a pre-split face for additional protection. Jim DiPardo commented that a pre-split face is planned for the blasting activities along the Highway 54 bypass project. Dr. Haddock countered that installing the pre-split face would require drilling and blasting inside the 200 foot setback that the Commission is considering, which may defeat the purpose of the setback distance. Ms. Garstang agreed that requiring the pre-split installation could create additional risks closer to the lines. Jim DiPardo then said that a pre-split face can be installed by means other than drilling and blasting, but these options are very expensive.

Ed Galbraith then made a motion to add to the original motion a requirement that the Company submit a pre-split installation plan that would be approved by the program. Failing a second, this secondary motion died. Mr. Ziehmer asked to view the map for all the Commissioners to be sure of the area being considered in the motion. Dr. Haddock emphasized that he wants the company to develop seismograph data before mining closer to the treatment plant. Mimi Garstang commented that it was important to limit the permitted area so that no quarry traffic is crossing the pipeline easement. The Company asked to clarify that they would need to submit a new permit to mine the rest of this property. This was verified.

A vote of the original motion to issue the permit to the area west of the sewer easement with new conditions identified above was taken by role call, six (6) yes, and one (1) no:

Jim DiPardo-yes
Dr. Haddock- yes
Col. Riffle – yes
Bob Ziehmer - yes
Nick Matherly- yes
Mimi Garstang – yes
Ed Galbraith – no

Mr. Galbraith made a statement to the audience that while the Commission was not able to discuss a number of nuisance issues that are important to the public, this does not mean that the Commission did not hear or understand these concerns. He pointed out that the law is very specific regarding what the Commission must consider and those concerns that the Commission cannot consider. He just wanted to insure that everyone was aware of the Commission's legal restriction on this issue. Col. Riffle recommended to the City and County officials that they seriously consider planning and zoning. If they had planning and zoning, they could have determined the outcome of this quarry request at the local level. Mr. Garstang asked if the recommendation and final order of the Commission can be edited and signed today. Larry Coen said we were prepared to do this. Mr. Galbraith reminded the company that they have 10 years to be a good neighbor and prove that they can responsibly quarry the rest of their property. The hope is that Magruder could expand to the rest of their property without another hearing request.

The Commission took a short break at 11:10 a.m.

The staff worked with the Hearing Officer and the Commission's Attorney to amend the Hearing Officers Recommendation and the Final Order of the Commission to reflect the decision of the Commission regarding the reduced area of the permit and the additional special conditions. This was completed and the documents were signed and copies were made for all parties while the Commission was on break.

The Commission Meeting was called back to order at 12:00 p.m.

INDUSTRIAL MINERALS

Dredging Incorporated, Review of Issues & Recommendation to Release

Dr. Haddock made a motion to take this issue off the table. Col Riffle seconded the motion. The vote carried unanimously. During the May 29, 2008, Land Reclamation Commission meeting there was a decision to table the Dredging Incorporated, review of issues and recommendation to release. The decision to table this issue was based on the commission wanting both parties to come together with a plan by the first week in July. No agreement was reached by the first week of July however, on July 21, 2008, the Hendren Andre law firm submitted to Staff Director Larry Coen a recommended set of five (5) modifications proposed by Ms. Enowski to settle this matter. Mr. Zeaman then provided each of the Commissioners a copy of this letter, and asked that the Commission decide how to proceed.

Dr. Haddock asked Bill Zeaman to discuss the proposed modifications. Mr. Zeaman discussed both the proposed modifications and some of the concerns that Dredging, Inc. had already communicated to him. The Commissioners discussed the points brought out in this letter and reminded the parties that they had asked for this sort of agreement by July 1st, which was not completed. Ed Galbraith asked about the concept of “traversable by farm equipment,” and Jim DiPardo asked why tear out trees that are providing stability. Ed Galbraith asked if modification number 1 is a legal requirement, or something that Ms. Enowski wants? He observed that the rules require a better slope, but the existing trees are providing stability. Which should the Commission choose? Harry Bozoian asked if burning of the trees was allowable by state air laws? The explanation was given that local burn permits can be obtained most anywhere to burn vegetation appropriately. The Commissioners themselves had concerns about approving some of the five (5) modifications demanded by Ms. Enowski.

Dr. Haddock made a motion to strike modifications numbered one (1) and four (4) and on modification number five (5) they wanted to limit the removal of waste materials to anything over 100 pounds, that access to the site be unimpeded and that the reclamation work be completed within sixty (60) days. Ed Galbraith seconded the motion.

The Commission then discussed the motion and asked staff to explain the concept of traversable by farm equipment. It was explained that the rules actually use this description to determine acceptable final grading for reclamation. In this case trees are actually stabilizing the embankment between the mined pit and the river. Larry Coen explained that there have been other cases where the program determined that removing vegetation such as trees for reclamation can do more harm than good. The Commission then asked Dredging Incorporated if they had received a copy of this letter and if they had any concerns to express.

Mr. John Curran, Attorney for Dredging, spoke for the Company. He explained that he has the same concerns for modification number three (3) as the Commission had with number one (1), and they would rather not remove well established trees. They would also like to be able to burn the vegetation that needs to be removed rather than having to haul it off site. He further explained that he has been working on this issue since 1995, for thirteen (13) years and he is concerned that access has been a problem in all of that time and will likely be a problem now. Dr. Haddock stated that it was his intention that mature trees be left alone and not removed. Mr. Curran asked that the Commission consider adding drop-dead dates to their motion. On May 29th the Company understood that an agreement needed to be reached with Ms. Enowski by July 1, 2008. According to Mr. Curran, Ms. Enowski had explained to Jane Martin at the time that she had additional modifications which were not received until July 21, 2008. This is the sort of delay that has happened repeatedly, so today the Company would like to have specific dates set by the Commission. Harry Bozoian advised the Commission to order specific dates to grant access and to have work complete. Dr. Haddock amended his motion to require access within 30 days and project completion with another sixty (60) days, but Mimi Garstang expressed that 30 days was too long. Dr. Haddock then amended his motion to require that access be given within 15 days and that work be completed within another sixty (60) days. Mr. Galbraith agreed to second the revised motion.

Adam Troutwine, Attorney for Ms. Enowski asked to clarify the motion and asked for additional time to negotiate with the company. Dr. Haddock responded that the Commission had given the parties until July 1st to negotiate after their May Meeting which was not accomplished; therefore the Commission has no desire to give additional negotiation time. Mr. Bozoian asked Adam Troutwine if he thought his client would accept the Commission's decision. The answer was probably not. Ed Galbraith directed Mr. Troutwine to advise his Client that the Commission is nearly ready to release the bond today; however this is one last attempt to do something right for the environment. Mr. Troutwine explained that he understood.

A roll call vote on the motion to strike modification numbers one (1), four (4) and to amend five (5) as explained above and that access to the site be unimpeded within fifteen (15) days and that the reclamation work be completed within the following sixty (60) days was taken and passed four (4) to three (3). The votes were as follows:

Jim DiPardo – no
Dr. Haddock – yes
Col. Riffle – no
Nick Matherly – yes
Mimi Garstang – no
Ed Galbraith – yes
Bob Ziehmer - yes

Jim DiPardo made it very clear to the parties that this is the last opportunity that the Commission will allow to resolve this issue between Bee Enowski and Dredging Incorporated. The vote on this matter was four (4) to three (3) signifying that the Commission is nearly ready to terminate this issue today. If access is not granted quickly the Commission intends to release Dredging Inc. from the bond and liability associated with Permit 0638.

Hearing Request: Colonial Limestone on Formal Complaint 2712

Chairman DiPardo briefly introduced this topic. Then Dr. Haddock made a motion to deny the request for a hearing. Harry Bozoian advised that the Commission cannot really deny a hearing request in this case. There was no second to the motion.

The Commission expressed concern that the Company was not in attendance to present their request for a hearing. Bill Zeaman explained that he had advised the Company that a hearing under these circumstances is required and that is likely why the Company did not feel compelled to attend today's meeting. At the May 29, 2008 Land Reclamation Commission meeting, the Commission signed Formal Complaint #2712 issued to Colonial Limestone, Inc. The formal complaint was issued in response to the company's failure to abate a notice of violation that was issued in April 2008. The law does grant the right for the operator to request a hearing within fifteen (15) days of receiving the formal complaint.

Dr. Haddock then offered that he would be willing to serve as a Hearing Officer for the Commission and could hear the matter in August. Mimi Garstang then made a motion to grant the hearing and to appoint Dr. Haddock as the Hearing Officer and bring a recommendation back

to the Commission at the September 25, 2008 Meeting. Bob Ziehmer seconded the motion. The motion passed six (6) to one (1) by roll call vote. The votes were as follows:

Jim DiPardo – yes
Dr. Haddock – yes
Col. Riffle – no
Nick Matherly – yes
Mimi Garstang – yes
Ed Galbraith – yes
Bob Ziehmer – yes

Coal Bond Forfeiture Status Update

Since the last update provided to the commission on May 29, 2008, the following work has been completed by the program's bond forfeiture staff: All earthwork associated with the reclamation of the former National Refractories and Minerals Baumgarth "BS" clay mine has been completed. The earthwork for this mine site, located in Gasconade County, was completed in early July. Conversations with the landowner indicate his full satisfaction with the work completed. Subsequently the landowner completed the seeding and mulching of the areas disturbed. This mine site is expected to be presented to the commission for a full responsibility release during the regularly scheduled meeting of the commission in September.

Staff has also been working with the landowners of a former coal mine site located in Putman County in north central Missouri. The staff have corresponded with the landowners in order to prepare the former mine site for a release presentation before the commission in a separate agenda item later in this meeting. This former mine site was operated by Missouri Mining, Inc. during the late 1970's and early 1980's and is known as Mine #9. If approved by the commission this 22 acre release area will finally remove this entire mine site from the list of coal bond forfeiture projects.

Continuing wet weather and saturated ground conditions are hampering the unit's efforts to enter bond forfeited lands to conduct maintenance and repair activities. Like everyone else, program staff are waiting for the weather to return to a more normal summer pattern.

Coal Bond Forfeiture Responsibility Release Requests

The Land Reclamation Program's bond forfeiture staff has evaluated the former coal mine site known as Missouri Mining, Inc, Mine #9, 78-25-A4 for a total of 22 acres during the past two (2) months and is presenting it to the commission for their release consideration. This site has undergone permit revocation and bond forfeiture by the commission in the past. Although most of the former mine was released by the commission prior to permit revocation and bond forfeiture there remains a few small, isolated areas that were not released. These areas are now ready for release.

The site has been reviewed jointly with the Office of Surface Mining and, in addition, all current landowners of record have been notified that this site is to be recommended for complete and final release at this meeting of the Land Reclamation Commission. As of the date of this memorandum, no comments or objections have been received.

It is the recommendation of the program's bond forfeiture staff that the Missouri Land Reclamation Commission concurs with this request and releases the state from all further reclamation responsibility on the permit area of the former coal mining site listed above. Dr. Haddock made a motion to follow the staff's recommendation and release the state of Missouri from any further reclamation responsibility at Missouri Mining, Inc, Mine #9, 78-25-A4 for a total of 22 acres. The motion was seconded by Col. Riffle and carried unanimously.

Chairman DiPardo made a motion that in the interest of time all other items on the Agenda will be delayed until September 25, 2008 Meeting. The motion carried unanimously.

Recognition Proclamation – Mimi Garstang

Larry Coen presented the Commission's Proclamation to Ms. Garstang to honor her for her many years of service to the Commission and to the State of Missouri. Ms. Garstang expressed her appreciation to the Commission and Staff.

COMMENTS FROM THE PUBLIC

No comments from the public.

CLOSED SESSION

Col. Riffle made a motion that the Land Reclamation Commission meet in closed session on September 25, 2008 prior to the open meeting for the purpose of discussing personnel actions, legal actions, causes of actions or litigation as provided for in Section 610.021 RSMo, 2003. Bob Ziehmer seconded the motion which carried unanimously.

ADJOURNMENT OF MEETING

Motion was made and seconded to adjourn the meeting. The meeting adjourned at approximately 2:30 p.m.

Respectfully submitted,

Chairman