

BEFORE THE RECLAMATION COMMISSION

DR. DANIEL T. BRAUER,

Case No. RC-18-001

Appellant,

-vs-

Review of Decision on Final
Reclamation; Permit IM-655

(M.J. Coates Construction Company, Inc.)

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee,

and

FINDINGS, CONCLUSIONS & ORDER OF THE RECLAMATION COMMISSION

M.J. COATES CONSTRUCTION CO., INC.,

Intervenor.

Appearances: Dr. Daniel T. Brauer, Appellant *pro se*; Gene Park, Brian Ball, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management; Matthew D. Harper, Brian P. Barger, Counsel for Intervenor M.J. Coates Construction Company, Inc.

Date Issued: August 28, 2019

BACKGROUND

On August 17, 2018, Appellant Dr. Daniel T. Brauer filed with the Reclamation Commission a *Notice of Appeal* from a decision of the Chief of the Division of Mineral Resources Management [the "Division"]. This Chief's decision ordered certain reclamation activities to be conducted on property located at 2036 State Route 725, Spring Valley, Ohio [the "property" or the "Brauer property"]. Dr. Brauer resides on this property. The property is also subject to an industrial minerals ["IM"] mining permit. Permit IM-655 is held by M.J. Coates Construction Company, Inc. ["Coates, Inc."].

As Coates, Inc. holds permit IM-655 and is the entity responsible for the successful reclamation of this site, M.J. Coates Construction Company, Inc. has been **granted** intervenor status in this appeal.

The Chief's decision sets forth reclamation activities that will need to be accomplished by Coates, Inc. in order for the company to obtain a final bond release on permit IM-655. Dr. Brauer's appeal seeks the Commission's review of the Chief's determination regarding the success of existing on-site reclamation, as well as a review of the remedial and/or additional reclamation work ordered by the Chief.

The Commission conducted two site views of the area. These views were held on October 24, 2018 and March 6, 2019. The parties, counsel and Commission members attended and participated in these views, observing relevant features on the Brauer property and on the IM-655 affected area.

This matter came on for hearing before the Commission on March 7, April 3 & 4, April 10 & 11, April 29, and May 8 & 9, 2019. During this eight-day hearing, the parties presented documentary evidence and examined witnesses appearing for and against them. Dr. Brauer was not represented by counsel in this matter.

After a review of the Record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The property at issue is located in Greene County, at 2036 State Route 725, Spring Valley, Ohio. A portion of this property has been utilized as a sand & gravel mining operation for many years. According to the testimony of a previous property owner, raised in the area and whose father was also raised in the area, mining has been occurring on this property since at least the late 1930's or early 1940's. An aerial photograph from 1956 confirmed that mining was occurring in the 1950's.

2. In 1975, the State of Ohio began regulating industrial minerals mining operations. Thereafter, existing operations were required to obtain mining permits. IM mining permits are issued for 10-year periods, with opportunity for renewal. When mining concludes, the permittee is required to reclaim the affected ground.

3. The property at issue was first permitted on May 21, 1979. The initial IM-655 permit was issued to landowners Joe & Doris Wheeler. The permit covered 28.3 acres.

4. In 1987, the Wheelers sold the property to James & Carol Graham. On March 17, 1987, permit IM-655 was transferred to James Graham. Mr. Graham contracted with M.J. Coates Construction Company, Inc. to conduct the actual mining operation. On July 24, 1990, permittee James Graham obtained a 10-year renewal of permit IM-655.

5. In 1991, M.J. Coates Construction Company, Inc. built a home on the property. This home was built for the Grahams and was situated within the footprint of the IM-655 permitted area. The IM-655 permit area was never revised to exclude the residential portion of the property. Thus, the permit IM-655 area continues to include not only the mining operation, but also the inhabited home and several new or existing outbuildings.

6. On April 1, 1997, Mr. Graham transferred permit IM-655 to Coates, Inc.

7. In 1998, Coates, Inc. constructed a sediment pond on the IM-655 area.¹ The purpose of the sediment pond was to control drainage coming from the affected area and to collect sediment run-off from surface waters draining into the pond.

8. On February 14, 2000, Coates, Inc. obtained a 10-year renewal of permit IM-655. At this point, the size of the permitted area was adjusted from 28.3 acres to 31.0 acres, although the permit appears to cover the same footprint.

¹ The sediment pond installed in 1998 is separate and distinct from the "lake" discussed at hearing. The sediment pond constructed in 1998 was located to the west (and slightly north) of the "burn pile." The proposed "lake" discussed at hearing is located towards the northwest corner of the IM-655 affected area, significantly north of the original sediment pond. At hearing, all parties referred to the partially-constructed "lake" as a sediment pond.

9. On July 26, 2006, Dr. Daniel Brauer purchased the property from James & Carol Graham. Dr. Brauer and his wife currently reside on the property.

10. In 2006, when Dr. Brauer moved on to the property, permit IM-655 was still considered "active," although very little actual mining was occurring.

11. In 2008, Dr. Brauer transferred the property to the DANIEL T. BRAUER REVOCABLE LIVING TRUST, with Daniel T. Brauer identified as the trustee.

12. Dr. Brauer is a veterinarian, with a practice in Kettering, Ohio, where he specializes in exotic and avian medicine. Dr. Brauer's wife, Dr. Lauren Schumacher, is also a veterinarian with this practice.

13. Dr. Brauer testified that he purchased the property on State Route 725 with the hope of creating a refuge consistent with his interest in animals. He has actively attempted to improve the property. Dr. Brauer currently raises and pastures cattle on a portion of the property. Dr. Brauer has developed a section of his property as the "girls' park," which is an exercise area for his family's dogs. He has also installed features to encourage visits from deer and other wildlife. It was Dr. Brauer's hope that the "back part" of his property – where the IM-655 operation is located – would be reclaimed in a manner consistent with his plans to create an attractive animal-and-wildlife-friendly property.

14. Generally, the Division and Coates, Inc. freely accessed the permit IM-655 area. However, at various times between 2010 and 2018, access to the IM-655 area was restricted by a locked gate at the property's entrance. Having visited this property, the Commission cannot understand why a Division inspector could not access the permit IM-655 area by merely walking around the gate, which would be within the inspector's legal authority. Additionally, Dr. Brauer testified that all involved parties had the ability to access the property by simply contacting him at his office.

15. On August 26, 2010, Coates, Inc. filed the **Final Report** for permit IM-655, indicating the end of mining and the beginning of reclamation. The number of acres actually "affected" by mining was reported as 12.6 acres out of the 31.0 permitted acres. Ohio law required the completion of all reclamation within three years, or – in this case – by August 26, 2013.

16. On July 27, 2011, at Dr. Brauer's request, Division Deputy Chief David Crow inspected the permit IM-655 area. Thereafter, on August 8, 2011, **Chief's Order 2561-IM** was issued to Coates, Inc. for delinquent reclamation. Coates, Inc. was required to comply with Chief's Order 2561-IM no later than October 31, 2011 (*i.e.*, within 12 weeks). At Coates, Inc.'s request, the Division extended this deadline five times. The final compliance deadline for Chief's Order 2561-IM became September 15, 2013, **109 weeks** (25 months) beyond the initial issuance date of the order.

17. Under Ohio law, landowner wishes do not dictate reclamation standards. Yet, in the Fall of 2011, Dr. Brauer began to inject himself into the reclamation process, proposing specific reclamation activities for the permit IM-655 area.

18. As an example of such a landowner-driven project, in 2011, pursuant to Dr. Brauer's request, all parties agreed to a plan providing for terraces on the reclaimed property. To aid in the terracing project, Dr. Brauer had materials brought on to the site. The IM-655 reclamation plan did not call for terracing, and without modifying the permit, there was no reason for terracing activities to have been allowed by the Division or undertaken by Coates, Inc.

19. As another example of landowner-driven reclamation, in 2011, Dr. Brauer requested that a permanent "lake" be installed on the affected area. The proposed permanent "lake" would be located northwest of the original sediment pond. Without permit modification, the Division allowed Coates, Inc. to begin construction of this "lake." Dr. Brauer was eventually informed by the Greene County Soil & Water Conservation District that a permanent "lake" could not effectively be developed in the local soils. Thereafter, Dr. Brauer asked that the partially-constructed "lake" be removed.

20. Although not engineered or intended as such, between 2011 (when construction began) and 2014 (when removal began) the partially-constructed "lake" functioned as a drainage control structure on the permit IM-655 area.

21. By constructing the proposed "lake" in 2011, and then removing the partially-constructed "lake" in 2014, the Division and Coates, Inc. elected to comply with Dr. Brauer's wishes, rather than follow the requirements of the IM-655 permit and reclamation plan.

22. Under Ohio law, and based upon the date on which Coates, Inc. filed its Final Report, full reclamation of permit IM-655 was due on August 26, 2013.

23. On November 26, 2013, **Chief's Order 2602-IM** was issued to Coates, Inc. This order: (1) cited failure to reclaim, (2) revoked permit IM-655, and (3) notified Coates, Inc. and Coates' surety that the surety could conduct the required reclamation or could forfeit the \$7,050 bond supporting permit IM-655.

24. On February 3, 2014, Chief Erdos conducted an informal conference with Marty Coates, Jr., to discuss Chief's Order 2602-IM. At the informal conference, Mr. Coates promised to complete reclamation during the Summer of 2014. Chief Erdos agreed to give Coates, Inc. "one last opportunity to fulfill [their] reclamation obligation." A new reclamation deadline was established. This deadline was neither honored nor enforced.

25. Sometime in mid-to-late May 2014, the embankment of the partially-constructed "lake's" dam was breached by Coates, Inc. releasing retained surface water and rendering the "lake" non-functional as a drainage control feature. The evidence is not clear as to exactly when or how the embankment was cut. However, based upon known dates, it appears that the partially-constructed "lake" was released before the mining area was successfully revegetated.

26. On several occasions after May 2014, there was extreme water run-off on the "lower" portion of the Brauer property (*i.e.*, in the area downstream of the mine site, near the "girls' park," flowing towards State Route 725) following significant rainfall. The run-off from these rainfall events had scouring effects on the lower portions of the stream channel.

27. The high-volume flows that occurred after May 2014 did not scour the upper portions of the existing stream channel, located between the removed "lake" and the 4-inch drainage pipe near the "girls' park."

28. In late May 2014, Division Engineer Scot Hindall inspected the permit IM-655 area. In a written report issued on July 8, 2014, Engineer Hindall recommended that storm water controls be installed on the permit IM-655 area. Specifically, Engineer Hindall recommended that the partially-constructed "lake" should continue to be used as a sediment control structure. This recommendation was not enforced by the Division Inspector, nor was it followed by Coates, Inc.

29. Between May 2014 and March 2016, reclamation deadlines were established by the Division, but were routinely "missed" by Coates, Inc., apparently without consequence. During this period, Inspector Mitchell (sometimes accompanied by his supervisors) continued to inspect the site.

30. One reason given by Coates, Inc. for its failure to meet reclamation deadlines was that an "economic downturn" had created an "unfavorable market." This rationale appeared acceptable to Division Inspector Mitchell and led Mitchell to excuse reclamation deadlines. But, regardless of economic conditions, the operator had an obligation to procure needed material and complete the required reclamation in a timely fashion.

31. On December 3, 2015, Coates, Inc. asked the Division to grant a grading release on the IM-655 area. On March 28, 2016, upon recommendation of Division staff, Chief Erdos approved Coates, Inc.'s grading release. Chief Erdos' approval indicated that Coates, Inc. had successfully graded the area. As a result, one-half of the posted bond was released.

32. Approximately 18 months later, on September 12, 2017, Coates, Inc. requested final bond release on the permit IM-655 area. Final bond release is granted when an area is successfully revegetated and fully reclaimed. A final bond release results in the release of all remaining moneys posted to ensure reclamation. A final bond release also marks the end of the permittee's and the Division's reclamation responsibilities for an area.

33. A Division inspection on September 19, 2017 showed gully erosion on portions of the IM-655 site and revealed that Coates, Inc. had failed to establish permanent vegetation on the entire 12.6 acres affected area.

34. On October 4, 2017, **Chief's Order 2674-IM** was issued, disapproving Coates, Inc.'s request for final bond release, and requiring that reclamation deficiencies be corrected by October 30, 2017.

35. On October 30, 2017, Coates, Inc. again requested final bond release. Both Division Inspector Mitchell and former Division Supervisor Lamielle recommended release. However, Division Chief Erdos rejected their recommendations.

36. On March 20, 2018, Chief Erdos, Deputy Chief Crow, former Supervisor Lamielle and Inspector Mitchell met with Dr. Brauer on site. Thereafter, on April 18, 2018, Chief Erdos issued a letter to Dr. Brauer. This letter discussed restoration of drainage patterns on the property and suggested that heavy run-off would diminish once the area was successfully revegetated. Regarding restoration of drainage patterns, Chief Erdos stated:

The Division has reviewed this issue taking into consideration historic aerial photos, historic topographic maps, the original application map, and the final reporting map. The Division was unable to conclude that the original pre-mining drainage patterns were not properly restored. However, given the noted off-site affectment to the existing drainage channel streams, the Division will work with the operator to determine corrective measures.

Regarding run-off in the "swale," or "girls' park" area, Chief Erdos stated:

During our site visit, drainage courses were functioning properly. However, significant down-cutting was noted in the main drainage swale adjacent to the field fence (off of permit area). This area was stabilized/enhanced by you; however, channel enhancements have been displaced by high volumes of run-off. It was also noted that debris within the channel was being uncovered during heavy rainfall events, suggesting that the channel was filled with materials previously (perhaps by previous landowner) to help stabilize the channel. ORC 1513.02(A)(10)(i) and the reclamation requirements of Chapter 1501:14-3 of the OAC require the operator to prevent flooding, landslides and flooding hazards; and further requires protection of existing natural streams on adjacent properties. Therefore, the Division will work with the operator to establish a drainage control plan that properly protects existing streams and prevents, to the extent possible, flooding and flooding hazards.

And, regarding the reclamation timeframe, Chief Erdos stated that:

... all reclamation activity is to be completed this upcoming growing season.

37. On May 17, 2018, Chief Erdos, Deputy Chief Crow, former Supervisor Lamielle and Inspector Mitchell met on site with Marty Coates, Jr. On June 4, 2018, Coates, Inc. sent a letter to Chief Erdos disputing some of the Chief's reclamation recommendations.

38. On July 19, 2018, Chief Erdos issued a **final appealable decision** to Dr. Brauer and Coates, Inc. On August 17, 2018, Dr. Brauer appealed this decision to the Commission.

39. Division Inspector Michael Mitchell began inspecting the IM-655 area in 2002. During the period between 2002 and 2018, Inspector Mitchell conducted 123 inspections of the permit IM-655 area. This means that, on average, these 12.6 acres were inspected about 8 times per year - significantly more than is typical. In fact, in 2012, 20 inspections of the site were conducted. Often inspection reports chronicled no change in the site's condition or repeated - verbatim - the language from a previous inspection report.

40. Despite Division Inspector Mitchell's frequent visits to the IM-655 area, reclamation of this site was not properly accomplished and was extremely delinquent.

41. The Division and Coates, Inc. initially opted to comply with Dr. Brauer's requests regarding specific on-site work, even if such work was not required by law or allowed by permit (*see e.g.: Findings of Fact #18 & #19*). But, beginning in November of 2015, Inspector Mitchell began to consider areas "disturbed" by Dr. Brauer's actions, or by his suggestions, to have been "removed" from Coates' reclamation responsibility.²

42. Dr. Brauer and his father, as well as hired landscapers, worked to improve the Brauer property. None of these individuals were familiar with this ground's original drainage patterns. Indeed, Dr. Brauer had only lived on this property during periods of mining or reclamation. Most significantly, Dr. Brauer is a veterinarian, not an experienced reclaimer or hydrologist. Thus, Dr. Brauer's ability to anticipate the features or installations that would best serve his property's drainage was - understandably - limited.

43. Prior to May 2014, Dr. Brauer (or someone under his direction) installed a 4-inch drainage pipe in the area of the "girls' park." Additionally, Dr. Brauer installed culverts on the lower portion of his property. During this time, Dr. Brauer also filled in a natural swale in the area of the "girls' park," changing the typical flow of surface water in the area.

44. After Coates, Inc.'s had breached the "lake's" embankment in or about May 2014, and following major rainfall events thereafter, high-volumes of surface water flowed across the lower portion of the Brauer property and scoured the lower reaches of the existing stream channel (this occurred downstream of the 4-inch drainage pipe installed by Dr. Brauer).

² Sixteen Division inspection reports, issued between November 2, 2015 and October 4, 2017, contained the following, or very similar, language:

... the landowner is interfering with the reclamation the operator will not be responsible for the repair to this area ...

In this way, Inspector Mitchell attempted to excuse Coates, Inc. from required reclamation and repair. However, Mitchell's position was contrary to established Ohio law. (*See Quality Ready Mix vs. Mamone*, 35 Ohio St. 3d 224 (1988).)

45. On October 4, 2017, **Chief's Order 2674-IM** was issued. This order found that Coates, Inc. had failed to establish permanent vegetation on the entire 12.6-acre affected area. No evidence was presented to establish that this area was ever properly seeded with the correct mixture of grasses and legumes.

46. In its current condition, the permit IM-655 area requires further reclamation in order to qualify for final bond release.

47. On October 26, 2018, upon joint motion of the parties, the Commission allowed **Temporary Relief** in this matter. Therefore, during the pendency of this appeal, Coates has not been required to reclaim the IM-655 area.

DISCUSSION

Industrial minerals ["IM"] mining operations are permitted and regulated by the Chief of the Division of Mineral Resources Management under the authority of Ohio Revised Code Chapter 1514. Ohio's IM laws require that mining and reclamation activities proceed in accordance with the mandates of Chapter 1514, and pursuant to the provisions of an approved mining and reclamation plan. (See O.R.C. §1514.02.)

A primary focus of Ohio's mining laws is to ensure the timely and proper reclamation of areas affected by mining. To ensure proper reclamation, Ohio law requires that performance bond be posted in support of a permit. (See O.R.C. §1514.04.) The purpose of this bond is to encourage reclamation.

Performance bond supporting an IM permit is released in two "phases." One-half of the bond is released after the operator has successfully graded and resoiled the area. (See O.R.C. §1514.05(A).) The remaining bond is released after the operator has established a successful and diverse vegetative cover that survives for at least two growing seasons. (See O.R.C. §1514.05(B); O.A.C. §1501:14-3-10(D).)

At the time of final bond release, the operator must not only show that revegetation has been successful, but must also establish that the area: (1) has been fully reclaimed consistent with all applicable requirements of the approved mining and reclamation plan, (2) complies with any outstanding Chief's orders, and (3) conforms with Ohio law.

EFFECT OF FINAL BOND RELEASE

In the Fall of 2017, Coates, Inc. sought a final bond release for permit IM-655. Final bond release is significant, as it marks the termination of an operator's reclamation responsibilities for an affected area. Once the operator achieves final bond release, the operator will not be required to return to the property for any further reclamation or repairs.

Final bond release also marks the termination of the Division's jurisdiction over a permitted site. Upon final release, the landowner becomes solely responsible for the area's condition and maintenance.

On December 6, 2017, both Division Inspector Mitchell and former Division Supervisor Lamielle recommended that a final bond release be granted. This means that both Mitchell and Lamielle believed that Coates Inc.'s reclamation of the permit IM-655 area was complete, compliant and successful.

Had bond been released in December 2017 (as recommended by Mitchell and Lamielle), both Coates, Inc. and the Division would have been forever released from any responsibility for this site.

In December 2017, Dr. Brauer still had concerns about the conditions on his property. Therefore, Dr. Brauer involved Division Chief Erdos. After visiting the site, Chief Erdos determined that reclamation was not complete. Against his staff's recommendations, Chief Erdos disapproved Coates, Inc.'s request for final bond release. Instead, the Chief set forth certain reclamation activities that would need to be completed in order for bond to be finally released.

THE PERMITTEE'S RESPONSIBILITY FOR RECLAMATION

Where land is being mined and reclaimed, there is a triad of "interested and involved parties," consisting of: (1) the permittee/operator, (2) the Division/regulator, and (3) the landowner.

Upon acquiring a mining permit, the permit applicant must file, and obtain the Division's approval of, a mining and reclamation plan. This plan is the "blueprint" that will guide the operator and the Division in ensuring proper reclamation of the site.

On April 1, 1997, Coates, Inc. became the permittee for permit IM-655. At that time, Coates, Inc. assumed responsibility to fully comply with the approved mining and reclamation plan and Ohio law. Such responsibility included completing reclamation in a legal, proper and timely manner.

Dr. Brauer purchased this property on July 26, 2006. At that time, the property had already been subject to mining for decades. Based upon Division inspection reports, it appears that most of Coates, Inc.'s active mining occurred between 1997 and 2004. Thus, when Dr. Brauer took possession of the property in 2006, very little material was being removed from the site.

Even though active mining had basically concluded around 2004, Coates, Inc. did not file its ***Final Report*** with the Division until six years later on August 26, 2010. The filing of the Final Report indicates that mining has concluded and triggers the three-year deadline for completion of all reclamation. This means that on August 26, 2010, it became Coates, Inc.'s statutory duty to complete reclamation by August 25, 2013. (*See O.R.C. §1514.02(A)(10)(k).*) This statutory duty cannot be excused or removed by actions of others, including actions of Division personnel or actions of a landowner. (*See Quality Ready Mix vs. Mamone, supra*).

THE LANDOWNER'S ROLE IN RECLAMATION

While the permittee is responsible to perform reclamation, and the Division is responsible to monitor and regulate reclamation, the landowner is also an interested party in this process. In fact, the landowner is possibly the person with the most interest in the successful reclamation of the property, as once reclamation is approved, the landowner will be solely responsible for the property. Yet, the landowner is not directly involved in the actual on-site reclamation activities.

The landowner is not subject to the terms and conditions of a permit. As an outsider to the regulatory process, the landowner may not even possess a full understanding of the Division's function or of the operator's statutory obligations. To a large extent, the landowner is asked to simply accept the permittee's on-site actions as reflective of the legal and permitting requirements.

When property is subject to an active permit, the landowner's role is really just to await final reclamation. This means that, for a period of time, the landowner's use of his own property may be restricted.

During this period, the landowner should be able to look to the Division (as the state-appointed regulator of the mining operation) for information relating to reclamation.

Ohio law required all reclamation of the IM-655 area to be completed by August 26, 2013. (*See O.R.C. §1514.02(A)(10)(k).*) Yet, final reclamation of this site has been delinquent for more than six years. The evidence revealed that conflicts between the landowner, the permittee, and the inspector developed as this area sat dormant and unreclaimed for month after month, and eventually year after year.

In 2011, Dr. Brauer began to suggest that specific reclamation activities be conducted on the property. The Commission recognizes that operators often engage in "gratuitous" reclamation, in an effort to please a landowner. This is generally considered part of a company's "good neighbor policy." However, the wants and desires of a landowner cannot override the requirements of Ohio law or the obligations imposed by permit.

Some of Dr. Brauer's suggestions were accepted by both Coates, Inc. and the Division. (*See Findings of Fact 18 & 19.*) Yet later (beginning in 2015), reclamation work implemented on Dr. Brauer's suggestion was classified by the Division inspector as "landowner interference," with Inspector Mitchell stating that such "interference" removed portions of the IM-655 area from the requirements of Ohio law and - ultimately - from Coates' reclamation responsibility. Whether Inspector Mitchell's "policy" was ever directly communicated to Dr. Brauer is unclear.

Inspector Mitchell's position that areas of landowner "interference" should be removed from a permittee's reclamation responsibility is both contrary to Ohio law (*see Quality Ready Mix vs. Mamone, supra*),³ and directly contradicts the testimony of Division Chief Erdos.

Landowner wishes do not dictate reclamation standards. The Commission is perplexed by the fact that, for a period of time, Dr. Brauer was allowed to play such an active role in dictating actual on-site reclamation activities. Reclamation is to proceed in accordance with the standards and time frames articulated by law and permit, not in accordance with the wishes and desires of a landowner.

THE DIVISION'S REGULATION OF PERMIT IM-655

Of course, the Division is also an involved and interested party when a property is mined and reclaimed. By law, the Division is responsible to permit, regulate, monitor and inspect mine sites. The Division should be the entity with the most knowledge and experience regarding mining and reclamation. The Division should also be in the best position to educate, advise and mediate between permittees and landowners, where necessary.

³ The Ohio Supreme Court in the *Quality Ready Mix* case held that by forgiving an operator's statutory reclamation duties because of landowner interference, the Division is effectively transferring reclamation responsibilities from a regulated party (the permittee) to an unregulated party (the landowner). The Court concluded that such a transfer of responsibilities undermines the regulatory framework prescribed by Ohio law, and is not allowed.

While the Commission observed "mistakes" made by all parties to this action, the biggest failure must be attributed to the Division. The Division's role in this matter was to regulate and oversee mining and reclamation. Yet, the Division failed in this task. It is true that, by the end of this project, Division Chief Erdos became directly involved and attempted to correct some Division failures. But, that does not negate the fact that Dr. Brauer had been made to deal with extremely delinquent reclamation for at least 6 years.

The Commission is at a loss to explain, or understand, the number of inspections that Inspector Mitchell conducted on these 12.6 affected acres. Viewed on a per-acre basis, the 12.6 acres affected under permit IM-655 are likely the most inspected ground in the State of Ohio. And yet, at the time of hearing, reclamation was unacceptable and extremely delinquent.

The evidence revealed that "mandatory" reclamation deadlines were repeatedly ignored by Coates, Inc. and routinely extended by the Division. Such Division extensions were often set with assurances that no future extensions would be allowed, or with threats that failure to meet an extended deadline would carry consequences. Yet, further extensions would then be allowed by the Division, seemingly without factual support or legal consequences. The Division has a responsibility to enforce regulatory deadlines. In its role as the state-appointed regulator, the Division should also understand the significance of reclamation deadlines to a landowner who is awaiting the completion of reclamation on his property.

THE CHIEF'S DECISION UNDER APPEAL

In early 2018, Division Chief Erdos became directly involved in the reclamation of permit IM-655. At that time, Chief Erdos attempted to address Dr. Brauer's reclamation concerns. These concerns were identified and set forth in a letter that the Chief issued on April 18, 2018. The April 18, 2018 letter also articulated the corrective actions expected of Coates, Inc. to bring the reclamation into compliance.

Regarding some items, the parties appeared to agree that more reclamation work was necessary. For example, all parties agreed that erosion and slips would need to be repaired, and that areas of sparse vegetation would need to be reseeded.

Ultimately, on July 19, 2018, the Chief Erdos issued an *appealable decision* listing nine specific concerns expressed by Dr. Brauer and setting forth the Division's reclamation expectations. Chief Erdos also set a 90-day deadline for the completion of repairs and the establishment of permanent vegetation.⁴

On August 17, 2018, Dr. Brauer filed an appeal of the Chief's July 19, 2018 letter. At the time of hearing, it appeared that four items remained in contention:

- Final restoration of drainage patterns.
- Sediment transportation/deposition and down-cutting of main drainage swale.
- Remaining stockpiles of material deposited by the landowner.
- The final reclamation timeframe.

While the parties typically addressed the first two items together, the Commission views the final restoration of drainage patterns and the down-cutting of the main drainage channel as separate and distinct. Therefore, the Commission will address these matters separately.

FINAL RESTORATION OF DRAINAGE PATTERNS

The area now covered by permit IM-655 has been mined for several decades. Early operations were not covered by mining permits, as Ohio law did not require such permits until the mid-1970's.

By the time that the first mining permit was issued for the area, this ground had already been altered by years of sand & gravel mining.

⁴ The Chief established a reclamation deadline of October 15, 2018. With the agreement of all parties, on October 26, 2018, the Commission Chairman approved a request for *Temporary Relief*, thereby suspending this reclamation deadline until the Commission renders a final decision in appeal RC-18-001.

At hearing, the parties sometimes attempted to distinguish between "pre-mining" drainage patterns, "natural" drainage patterns, and "original" drainage patterns. Regardless of the name assigned, no reliable evidence was ever presented to conclusively establish the drainage patterns that actually existed on this site before the ground was ever touched by mining.

Relying upon historic aerial photos, historic topographic maps, the original application map, and the final reporting map, Chief Erdos determined that he was "unable to conclude that the original pre-mining drainage patterns were not properly restored." In other words, Chief Erdos found that the available information supported a finding that pre-mining drainage patterns were restored.

The evidence at hearing, including historic maps, aerials, testimony of landowners, and the simple fact that water runs downhill, leads this Commission to agree with the Division Chief and conclude that Dr. Brauer did not prove that the current drainage patterns do not reflect pre-mining drainage. Thus, the Commission finds that the drainage patterns existing on the area today sufficiently reflects pre-mining drainage on the area.

In drawing this conclusion, the parties must understand that the permit IM-655 area is part of a much larger watershed. Watersheds and surface drainage are determined by topography and elevations, not by property lines or permit boundaries.

Drainage on the Brauer property comes not only from the mined area, but also from the watershed above. While being part of a larger watershed would not excuse a failure to properly restore drainage patterns, it does suggest that the volume of surface water traveling over the Brauer property involves more than just the surface water generated on the 12.6 affected acres.

Dr. Brauer never lived on this property prior to mining. Therefore, Dr. Brauer is not knowledgeable about the original - pre-mining - drainage patterns. The same is true of witness James Graham (who has a longer history with the property). The Commission does not doubt that drainage patterns have changed since Dr. Brauer moved onto the property in 2006. But, that does not negate a finding that original drainage patterns are restored.

The Commission finds that no evidence has been submitted to refute the Division Chief's conclusion that drainage patterns on this area have been restored.

SEDIMENT TRANSPORTATION / DEPOSITION AND DOWN-CUTTING OF THE MAIN DRAINAGE CHANNEL

This item appears to be Dr. Brauer's primary concern. Dr. Brauer testified that he has experienced extremely high volumes of run-off on the lower portion of his property. The Commission observed this down-cutting during site views. Also, Dr. Brauer presented videos and photos, showing heavy water flows on the lower portion of his property.

Dr. Brauer tied the increased run-off to the removal of the upstream "lake," which effectively functioned as a drainage control structure for at least three years.

In inspection reports, Inspector Mitchell suggested a connection between the release of the "lake" and increased run-off. Chief Erdos also makes this connection in his July 19, 2018 decision.⁵

In his final decision issued on July 19, 2018, the Division Chief required Coates, Inc. to undertake some non-specified repair work, in order to address the undercutting and erosion apparent in the lower reaches of the drainage channel.

⁵ The Chief's July 19, 2018 final decision stated in part:

... corrective measures to repair erosion in the larger stream channel are required. M.J. Coates is required to repair and stabilize the swale area where erosion occurred as a result of the elimination of the sediment pond [i.e., the "lake"] upstream of the swale, which more than likely contributed to the erosion in the channel.

In his April 18, 2018 letter to Dr. Brauer, wherein Chief Erdos identifies the relevant issues and concerns, the Chief cites O.R.C. §1514.02(A)(10)(i). This section of law requires an operator to prevent flooding, landslides and flooding hazards. The Chief cites this law in support of his decision to require Coates, Inc. to develop a plan to control drainage in the lower reaches of the channel.⁶

The Commission finds that the channel scouring that followed rainfall events only occurred in the lower portion of the Brauer stream channel. Thus, it is most likely that the channel scouring and erosion were caused by the installation of undersized drainage pipes and culverts in the vicinity of the lower reaches of the stream channel. Additionally, Dr. Brauer's alteration of the natural landform in the swale area likely added to scouring and erosion in the lower channel.

Chief Erdos required Coates, Inc. to address the drainage issue in the "girls' park" area. However, the Commission finds that Dr. Brauer's action created a choking point at the 4-inch drainage pipe. This constriction caused drainage to back-up and contributed to the extreme run-off issues. Thus, Dr. Brauer, and not Coates, Inc., caused the extreme run-off issues in the lower reaches of the stream channel.

The erosion of Dr. Brauer's lower stream channel technically occurred on permitted ground, but not on "affected" area. Given the unique facts of this case, including the fact that this permit area includes a residence and ground untouched by mining, the Commission finds that the law does not necessarily require Coates, Inc. to repair an eroded stream channel that is situated on "unaffected" ground, particularly where the damage was caused by the landowner and not by the permittee.

⁶ In his April 18, 2018 letter, the Chief states in part:

The Division recognizes that it is conceivable that during the mining and reclamation work conducted on Permit IM-0655, sediment may have travelled from the permit area, as observed and noted in the field. * * * significant down-cutting was noted in the main drainage swale adjacent to the field fence * * * This area was stabilized/enhanced by you; however, channel enhancements have been displaced by high volumes of run-off. * * * ORC 1514.02(A)(10)(i) and the reclamation requirements of Chapter 1501:14-3 of the OAC require the operator to prevent flooding, landslides and flooding hazards; and further requires protection of existing natural streams on adjacent properties. Therefore, the Division will work with the operator to establish a drainage control plan that properly protects existing streams and prevents, to the extent possible, flooding and flooding hazards.

(Brauer's Exhibit LE-1.) None of the Brauer property is "adjacent" to permit IM-655, as the entirety of the Brauer property – including inhabited residential areas – is included within the permitted area, but some areas are outside the "affected area."

REVEGETATION MUST BE SUCCESSFULLY COMPLETED IN ORDER TO ACHIEVE A FINAL BOND RELEASE

To receive a final bond release, the Division must find that a diverse cover of vegetation has been established and has survived for two growing seasons. (*See O.R.C. §1514.05(B); O.A.C. §1501:14-3-10.*)

The 2000 renewal permit for IM-655 sets forth the mixture of grasses, legumes and nurse crops that must be planted on this area. The permit even provides pound-per-acre calculations for each species. Species set forth in the permit's planting plan are expected to be actually planted. Thus, on IM-655, we would expect a combination of Orchard Grass, Kentucky #31 Fescue, Timothy Grass, Red Clover and Yellow Sweet Clover. There has been no evidence establishing that these species were ever planted on the affected areas of permit IM-655.

Revegetation is not considered successful unless the plantings survive for two growing seasons. There has been no evidence that the required mixture of cover has survived for two growing seasons. Indeed, as recently as April 18, 2018, the Division identified inadequate revegetation on the IM-655 area.

In order for final bond to be released, the Division must positively determine that a diverse cover of the appropriate species has been established. However, when reviewing a permitted area in response to a request for final bond release, the Division must also be satisfied that all outstanding reclamation has been successfully completed. At final bond release, the Division is asked to take one last look at a reclaimed area and determine whether reclamation is satisfactory before the property is returned to the landowner for all future care and maintenance. (*See O.R.C. §1514.05(B).*)

STANDING OF DR. BRAUER

On the seventh day of this eight-day hearing, counsel for Coates, Inc. inquired of Dr. Brauer as to whether the property at issue is held by him personally or whether it is held in trust. Coates, Inc. submitted into evidence a 2008 Quit Claim Deed showing the property's transfer from Daniel T. Brauer to THE DANIEL T. BRAUER REVOCABLE LIVING TRUST, with Dr. Brauer identified as Trustee.

On June 28, 2019, after the conclusion of the eight-day merit hearing, and upon filing its written closing argument, Coates, Inc. raised – for the first time – a claim that this appeal should be dismissed. Coates, Inc. asserted that Dr. Brauer lacks standing to prosecute this appeal based upon the fact that the property at issue is held in a trust.

To assure that this appeal proceeded in a timely and orderly fashion, the Commission conducted numerous pre-hearing conferences, and established pre-hearing deadlines for the filing of dispositive motions.

Commission Rule O.A.C. §1513-3-11(G) provides:

(G) Objections to jurisdiction are not waivable and may be raised at any point in an appeal. Motions to dismiss on jurisdictional grounds should be filed as expeditiously as practicable.

(Emphasis added.)

The term "expeditious" is defined as: "possessed of, or characterized by, ... efficiency and rapidity in action; ... quick; speedy." (*See Black's Law Dictionary.*)

Given that Coates, Inc. submitted the 2008 Quit Claim Deed between Dr. Brauer and the trust into evidence early in the hearing process, it is obvious that Coates, Inc. was aware of the Brauer Trust long before filing their closing arguments on June 28, 2019.

The Commission questions why such an argument, potentially determinative of whether this appeal could proceed at all, was put forward so late in the proceedings. If Coates, Inc. believed that Dr. Brauer truly lacked standing, such an argument should have been at the forefront of Coates, Inc's case.

The Commission finds that the timing of Coates, Inc's standing argument was not "expeditious," as is required by our procedural rules. Indeed, raising this issue at such a late stage in the proceedings violates the Commission's expectations that parties to our appeals will operate in good faith and will make timely presentations of critical arguments.

However, the Commission is also aware that the issue of jurisdiction is always in play. Thus, while a more timely motion would have been preferable and more procedurally compliant, the Commission cannot ignore Coates, Inc.'s jurisdictional issue.

~ O.R.C. §1513.13 allows "any person who is, or may be, adversely affected" by a decision of the Division Chief to bring an appeal. There is no statutory language limiting such a "person" to a legal landowner.

Standing may extend to various persons and entities. The requirement is only that the person be able to establish sufficient connection to, or harm from, the matter being challenged. (See In re 730 Chickens (1991), 75 Ohio App. 3d 475.) Indeed, this Commission has heard many appeals brought by citizen groups who have no ownership interest in the property under consideration. (See Greenbelt Advocates vs. Division & Jeffco Resources, 176 Ohio App. 3d 638 (7th District Court of Appeals, Belmont County, June 26, 2008).)

Where property is owned by a trust, the real party in interest is the beneficiary of that trust. Ohio courts have allowed trustees to represent the interests of a beneficiary. And, where the trustee and the beneficiary are the same person, that person is the real party in interest. (See Reitz vs. Giltz & Associates, Inc., 2006-Ohio-4175 (11th District Court of Appeals, Trumbull County August 11, 2006).)

The Commission has not seen the relevant trust document, and Coates – who makes this standing argument – has not presented it. However, the 2008 Quit Claim Deed identifies Dr. Brauer as the trustee. Additionally, the fact that Dr. Brauer lives on the property indicates that he is either the beneficiary or – at least – that he resides on the property with the consent and permission of the trust.

Significantly, the decision issued by Chief Erdos in this matter was not directed to the **trust** or to Dr. Brauer as **trustee**. Rather, the Chief addressed his appealable decision directly to Dr. Brauer as an individual and a landowner. This is true even though the Division would have been aware that the property was held in trust by at least August 2, 2010, when the Division received the Final Map for permit IM-655, as this map shows the permitted property as held in trust.

Practically speaking, all relevant and interested parties were represented in this action. Moreover, Dr. Brauer's ability to raise reclamation issues is not altered by the existence of a trust. Regardless of ownership status, the Division still has the legal responsibility to oversee and ensure proper reclamation. And, M.J. Coates Construction Company, Inc. still has the duty to perform reclamation to the standards of the law and its permit. The identity of the appellant does not alter these responsibilities. The Commission finds no jurisdictional defect relative to the identity of the appellant in this matter and is not persuaded to dismiss this appeal.

CONCLUSIONS OF LAW

1. The ultimate burden of persuasion in this matter is placed upon the Appellant Dr. Daniel T. Brauer to prove by a preponderance of the evidence that the Division Chief's decision under appeal was arbitrary, capricious or otherwise inconsistent with law. (See O.R.C. §1513.13(B).)

2. Pursuant to O.R.C. §1514.04, an operator must post performance bond, or its equivalent, with the Division, which will not be released unless reclamation is successfully completed.

3. Reclamation must be accomplished in compliance with deadlines articulated in statute. In accordance with O.R.C. §1514.02(A)(10)(k):

Ensure that mining and reclamation are carried out in the sequence and manner set forth in the plan and that reclamation measures are performed in a timely manner. All reclamation of an area of land affected shall be completed no later than three years following the mining of the area unless the operator makes a showing satisfactory to the chief that the future use of the area requires a longer period for completing reclamation.

(Emphasis added.)

4. Reclaimed areas must be revegetated with a diverse vegetative cover. (See O.R.C. §1514.02(A)(10)(e).) In accordance with O.A.C. §1501:14-3-10:

To establish a diverse permanent vegetative cover capable of self-regeneration, plant succession, and to control soil erosion, the operator shall comply with the following conditions and requirements:

* * *

(B) The permanent planting shall contain species of perennial grasses and legumes unless otherwise required by the future intended use and approved in the mining and reclamation plan. Small grains or fast-growing annual grasses may be used to provide adequate cover to control erosion and shall later be replaced by perennial species;

* * *

(D) The permanent vegetation shall be deemed to be a successful diverse vegetative cover capable of self-regeneration and plant succession if the vegetation planted in accordance with paragraph (B) of this rule has survived two growing seasons and if the permanent vegetative cover has been established and maintained * * *

5. During mining and reclamation, an operator must control drainage so as to prevent flooding and flood hazards (See O.R.C. §1514.02(A)(10)(i).) In accordance with O.A.C. §1501:14-3-11, an operator must construct drainage controls that shall:

- (B)(1) Direct drainage from the affected area to sediment and flood control impoundments and divert runoff around or away from the affected areas;
- (2) Protect existing natural streams; and
- (3) Be constructed with sufficient capacity to safely carry peak design flows;

6. In accordance with O.R.C. §1514.05, upon the completion of all reclamation of a mined area, including planting, an operator may seek a final bond release:

(B) At any time within the period allowed an operator by section 1514.02 of the Revised Code to reclaim an area affected by surface mining, the operator may file a request, on a form provided by the chief, for inspection of the area of land on which all reclamation, including the successful establishment of any required planting, is completed. The request shall include all of the following:

* * *

The chief shall make an inspection and evaluation of the reclamation of the area of land for which the request was submitted * * *. Thereupon, if the chief finds that the reclamation meets the requirements of this chapter, rules adopted under it, any orders issued during the mining and reclamation, and the specifications of the plan for mining and reclaiming and decides to release any remaining performance bond on deposit to ensure reclamation of the area on which reclamation is completed * * *

If the chief does not approve the reclamation performed by the operator, the chief shall notify the operator by certified mail * * *. The notice shall be an order stating the reasons for unacceptability, ordering further actions to be taken, and setting a time limit for compliance. * * *

(Emphasis added.)

7. M.J. Coates Construction Company, Inc. did not reclaim the permit IM-655 area in a timely manner, and did not establish that a longer reclamation period was necessary due to intended future use of the property.

8. Dr. Brauer did not establish that the pre-mining drainage patterns on the permit IM-655 area were not restored.

9. The Division properly denied a final bond release to M. J. Coates Construction Company, Inc. and properly ordered that additional reclamation work must be performed on the IM-655 site.

10. Based upon the evidence presented at hearing, the Commission **FINDS** that the Division Chief's July 19, 2018 decision, disapproving M.J. Coates Construction Company Inc.'s request for final bond release, was not arbitrary, capricious or inconsistent with law.

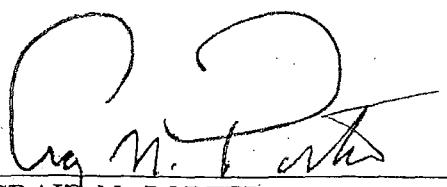
11. Based upon the site-specific facts of this case, the Commission **FINDS** that the Chief's directive requiring M.J. Coates Construction Company, Inc. to repair erosion in a section of a stream channel was arbitrary and capricious where the permittee did not affect the stream channel and where the evidence established that the landowner took actions to cause, or contribute to, such erosion.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby **AFFIRMS** the Division Chief's July 19, 2018 decision **in part**, consistent with this Decision. The Commission **VACATES** the Chief's July 19, 2018 decision **in part** consistent with Conclusion of Law #11.

PLEASE TAKE NOTICE that pursuant to the Commission Chairman's *Temporary Relief Order* of October 26, 2018, Temporary Relief is now **LIFTED** and the required reclamation of permit IM-655 shall proceed forthwith.

August 20, 2019
DATE ISSUED


CRAIG N. PORTER
Chairman, Reclamation Commission

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas of the county in which the operation is located, or to the Court of Appeals for Franklin County, within thirty days of its issuance, in accordance with Ohio Revised Code §1514.09 and Ohio Administrative Code §1513-3-22. If requested, copies of these sections of the law will be provided to you from the Reclamation Commission at no cost.

DISTRIBUTION:

Dr. Daniel T. Brauer, Via Certified Mail #: 91 7199 9991 7037 2054 3825 & E-Mail [doctors.dsdc@gmail.com]
Gene Park, Brian Ball, Via Inter-Office Certified Mail #: 6902 & E-Mail [gene.park@ohioattorneygeneral.gov;
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bpbarger@eastmansmith.com]

BEFORE THE RECLAMATION COMMISSION

DR. DANIEL T. BRAUER, : Case No. RC-18-001
Appellant, :
: Review of Decision on Final
-vs- : Reclamation; Permit IM-655
: (M.J. Coates Construction Company, Inc.)
DIVISION OF MINERAL RESOURCES :
MANAGEMENT, :
: Appellee, :
and :
: **INDEX OF EVIDENCE**
M.J. COATES CONSTRUCTION CO., INC., : **PRESENTED AT HEARING**
: Intervenor. :

Before: Craig N. Porter.

In Attendance: Richard Birt, Gilbert Kaster, George Mizer, Roger Osborne, Ray Rummell and Hearing Officer Linda Wilhelm Osterman.

Appearances: Dr. Daniel T. Brauer, Appellant *pro se*; Gene Park, Brian Ball, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management; Matthew D. Harper, Brian P. Barger, Counsel for Intervenor M.J. Coates Construction Company, Inc.

WITNESS INDEX

Appellant's Witnesses:

Alexander Schlop	Direct Examination, Cross Examination
Anthony Amburgey	Direct Examination; Cross Examination
Antonio Lamanna	Direct Examination; Cross Examination
Dr. Daniel T. Brauer	Statement on the Record; Cross Examination
James Graham	Direct Examination; Cross Examination

Appellee's Witnesses:

Tyson Lamielle	Direct Examination; Cross Examination
Michael Mitchell	Direct Examination; Cross Examination
Lanny Erdos	Direct Examination; Cross Examination

Intervenor's Witnesses:

Marty Coates, Jr.	Direct Examination; Cross Examination
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EXHIBIT INDEX

Joint Exhibits:

Joint Exhibit 1	Permit File for Permit IM-655; complete file with maps
Joint Exhibit 2	Deposition of Dr. Daniel T. Brauer; taken March 1, 2019 (101 pages)

Appellant's Exhibits:

Appellant's Exhibit AB-1	Montgomery County Environmental Laboratory, residential sample; taken February 22, 2019 (1 page)
Appellant's Exhibit AL-1	Corbins Painting, statement; dated May 30, 2017 (1 page)
Appellant's Exhibit AL-2	Willhoite & Son Fence Service, Inc., estimate; undated (1 page)
Appellant's Exhibit AL-3	Lamanna's Lawn and Landscaping, bill; dated January 3, 2019 (1 page)
Appellant's Exhibit AL-4	(1) Lamanna's Lawn and Landscaping, two invoices, undated; (2) Hageman Trucking, three invoices, dated February 11, 2012 and February 18, 2012; (3) Mockabee Trucking, invoice, dated September 2, 2008; (4) Bowersville Plant, three tickets, dated October 7, 2008 (8 pages, total)

Appellant's Exhibit C-1 through C-4	Four dated photographs; all from October 24, 2018 site view (4 pages)
Appellant's Exhibits D-1 through D-34	Thirty-four dated photographs; various dates (34 pages)
Appellant's Exhibits F-1 through F-91	Ninety-one dated photographs; various dates (91 pages)
Appellant's Exhibit JG-2	Gravel Pit Income; 1999 – 2006 (1 page) (<u>may</u> not have been accepted by the Commission during testimony)
Appellant's Exhibit JG-3	Letter from Chief Erdos to M.J. Coates Construction Company and Daniel Brauer; dated July 19, 2018 (4 pages)
Appellant's Exhibit LB-1	Handwritten listing of expenses and dozer hours for Loras and Joel, and diesel fuel expenses; between August and November 2017 (1 page)
Appellant's Exhibit LB-2 (A) through (H)	Images of checks showing payments to Loras Berns; between August and November 2017 (8 pages)
Appellant's Exhibit LB-3 (A) through (C)	Copies of receipts for fuel purchases, Springvalley Road Dog between August and November 2017 (3 pages)
Appellant's Exhibit LB – 4(A) and (B)	Invoices for equipment rental, Joel Lehmkuhl Equipment Rental, LLC; August and November 2017 (2 pages)
Appellant's Exhibit LE-1	Letter from Chief Erdos to Daniel Brauer; dated April 18, 2018 (4 pages)
Appellant's Exhibit LE-2	Letter from Chief Erdos to Martin J. Coates; dated February 24, 2014 (2 pages)
Appellant's Exhibit LE-7	Chief's Order 2602-IM; dated November 26, 2013 (4 pages)
Appellant's Exhibit LE-8	Chief's Order 2674-IM; dated October 4, 2017 (3 pages)
Appellant's Exhibit LE-9	Chief's Order XXXX-IM, unsigned; dated November 3, 2014 (4 pages)

Appellant's Exhibit LE-10	Chief's Order 2561-IM; dated August 8, 2011 (2 pages)
Appellant's Exhibit LE-11	Operator's Request for Approval of Reclamation, 2 nd (final) bond release; disapproved October 4, 2017 (1 page)
Appellant's Exhibit LE-12	Operator's Request for Approval of Reclamation; 1 st (grading) bond release; approved March 28, 2016 (1 page)
Appellant's Exhibit Map-1	Map of Brauer property, with hand-drawn additions and markings (1 oversized page)
Appellant's Exhibit MC-1	Letter from Attorney Jeffery J. Ferguson to M J Coates Construction Company; dated June 14, 2010 (1 page)
Appellant's Exhibit MM-1	Fax Cover Sheet dated April 12, 2010 and Copy of Lease/Deed Affidavit dated February 20, 2007 (2 pages)
Appellant's Exhibit MM-3(A) and (B)	<i>Miscellaneous Site Visit Memorandum</i> ; date of visit May 29, 2014; authored by Scot G. Hindall; report dated July 8, 2014 (2 pages)
Appellant's Exhibit MM-4	Cover of ODNR Division of Mineral Resources Management's publication <i>A Citizen's Guide to Mining and Reclamation in Ohio</i> (1 page)
Appellant's Exhibit MM-5	<i>GeoFacts, No. 19</i> , regarding Sand and Gravel; authored by ODNR Division of Geological Survey; revised November 2001 (2 pages)
Appellant's Exhibit MM-6	Series of Division Inspection Reports; from January 18, 1991 to May 17, 2018; various inspection dates (194 pages)
Appellant's Exhibit MP-1	Surface Mining Permit Renewal Application, permit IM-655; approved February 14, 2000 (5 pages)
Appellant's Exhibit ORC-1	Ohio Revised Code, Chapter 1514
Appellant's Exhibit OAC-1	Ohio Administrative Code, Chapter 1501:14

Appellant's Exhibit P-1	Local Climatological Data, Dayton Station; August 2014 (3 pages)
Appellant's Exhibit P-2	Local Climatological Data, Dayton Station; July 2015 (3 pages)
Appellant's Exhibit P-3	Local Climatological Data, Dayton Station; April 2016 (3 pages)
Appellant's Exhibit P-4	Local Climatological Data, Dayton Station; February 2019 (2 pages)
Appellant's Exhibit P-5	National Weather Service, Archived Climate Data; 1996 – present (2 pages)
Appellant's Exhibit P-6	Local Climatological Data, Dayton Station; May 2014 (3 pages)
Appellant's Exhibit P-7	E-mail from Dr. Brauer to NOAA Service Account regarding location of Dayton Station; April 15 & 16, 2019 (1 page)
Appellant's Exhibit P-8	Local Climatological Data; Hourly Precipitation; Dayton Wright Patterson AFB May 2014 (1 page)
Appellant's Exhibit TL-2	Letter from Tyson Lamielle to Daniel Brauer; dated May 12, 2015 (2 pages)

Division's Exhibits:

Division's Exhibit 1	Permit IM-655 Application Map; certified March 19, 1979 (1 page) (reduced version of Division's Exhibit 2)
Division's Exhibit 2	Permit IM-655 Application Map; certified March 19, 1979 (1 oversized sheet on poster board)
Division's Exhibit 3	Final Map, permit IM-655; certified July 7, 2010 (1 page) (reduced version of Division's Exhibit 4)
Division's Exhibit 4	Final Map, permit IM-655; certified July 7, 2010 (1 oversized sheet on poster board)
Division's Exhibit 5	Final Map, permit IM-655, certified July 7, 2010; with aerial photo overlay, aerial flown in 2012; exhibit created March 27, 2019 (1 page) (reduced version of Division's Exhibit 57)

Division's Exhibit 6	Permit IM-655 Renewal Permit, with application (operator M.J. Coates Construction Company); approved February 14, 2000 (20 pages)
Division's Exhibit 7	Permit IM-655 Renewal Permit, with application (operator James D. Graham); approved July 24, 1990 (14 pages)
Division's Exhibit 8	Year 20 Annual Map; Permit IM-655; dated November 17, 1999 (1 page)
Division's Exhibit 9	Division Inspection Report; inspection date of July 23, 2003 (1 page)
Division's Exhibit 10	Division Inspection Report; inspection date of March 19, 2008 (1 page)
Division's Exhibit 11	Division Administration Inspection Report; dated March 24, 2010 (1 page)
Division's Exhibit 12	Division Inspection Report; inspection date of June 17, 2010 (1 page)
Division's Exhibit 13	Division Administrative Inspection Report; dated June 23, 2010 (1 page)
Division's Exhibit 14	Division Inspection Report; inspection date of May 9, 2011 (1 page)
Division's Exhibit 15	Division Inspection Report; inspection date of July 20, 2011 (1 page)
Division's Exhibit 16	Division Administrative Inspection Report; dated August 10, 2011 (1 page)
Division's Exhibit 17	Division Inspection Report; inspection date of September 14, 2011 (2 pages)
Division's Exhibit 18	Division Inspection Report; inspection date of September 28, 2011 (1 page)
Division's Exhibit 19	Division Inspection Report; inspection date of February 27, 2012 (1 page)
Division's Exhibit 20	Division Administrative Inspection Report; dated March 7, 2012 (1 page)

Division's Exhibit 21	Division Inspection Report; inspection date of April 8, 2013 (1 page)
Division's Exhibit 22	Photograph; undated (1 page)
Division's Exhibit 23	Division Inspection Report; inspection date of September 24, 2013 (1 page)
Division's Exhibit 24	Division Inspection Report; inspection date of April 22, 2014 (2 pages)
Division's Exhibit 25	Division Inspection Report; inspection date of May 21, 2014 (2 pages)
Division's Exhibit 26	Photograph; undated (1 page)
Division's Exhibit 27	Photograph; undated (1 page)
Division's Exhibit 28	Photograph; undated (1 page)
Division's Exhibit 29	Division Inspection Report; inspection date of May 29, 2014 (2 pages)
Division's Exhibit 30	<i>Miscellaneous Site Visit Memorandum</i> ; date of visit May 29, 2014; authored by Scot G. Hindall; report dated July 8, 2014 (2 pages)
Division's Exhibit 31	Division Inspection Report; inspection date of September 17, 2014 (2 pages)
Division's Exhibit 32	Division Inspection Report; inspection date of November 13, 2014 (2 pages)
Division's Exhibit 33	<i>Notice of Appeal</i> to Reclamation Commission, with attached Chief's decision; filed by Dr. Daniel T. Brauer on August 17, 2018 (5 pages)
Division's Exhibit 34	Division Inspection Report; inspection date of April 28, 2015 (2 pages)
Division's Exhibit 35	Division Inspection Report; inspection date of November 2, 2015 (2 pages)
Division's Exhibit 36	Division Inspection Report; inspection date of December 7, 2015 (2 pages)

Division's Exhibit 37	Photograph; undated (1 page)
Division's Exhibit 38	Division Inspection Report; inspection date of March 8, 2016 (2 pages)
Division's Exhibit 39	Division Inspection Report; inspection date of June 30, 2016 (1 page)
Division's Exhibit 40	Division Inspection Report; inspection date of May 9, 2017 (2 pages)
Division's Exhibit 41	Division Inspection Report; inspection date of August 22, 2017 (2 pages)
Division's Exhibit 42	Division Inspection Report; inspection date of August 28, 2017 (1 page)
Division's Exhibit 43	Division Inspection Report; inspection date of September 19, 2017 (2 pages)
Division's Exhibit 44	Photograph; undated (1 page)
Division's Exhibit 45	Division Inspection Report; inspection date of November 7, 2017 (1 page)
Division's Exhibit 46	Division Inspection Report; inspection date of March 20, 2018 (1 page)
Division's Exhibit 47	Two photographs; undated (2 pages)
Division's Exhibit 48	Division Inspection Report; inspection date of May 17, 2018 (2 pages)
Division's Exhibit 49	<i>IM-0655 Coates Timeline – Lamielle</i> ; covering the period from June 17, 2010 to November 21, 2017 (4 pages)
Division's Exhibit 50	O.R.C. §1514.02 (7 pages)
Division's Exhibit 51	O.A.C. §1501:14-3-05 through O.A.C. §1501:14-3-13 (5 pages)
Division's Exhibit 52	Record of bonds released due to IM-6 approval for permit IM-655, dated March 24, 2016 and Operator's Request for Approval of Reclamation, 1 st (grading) bond release, approved March 28, 2016 (2 pages)

Division's Exhibit 53	Division Inspection Report; inspection date of June 8, 2016 (2 pages)
Division's Exhibit 55	Letter from Marty Coates to Chief Lanny Erdos; dated June 4, 2018 (5 pages)
Division's Exhibit 56	Letter from Chief Lanny Erdos to M.J. Coates Construction Company, Inc. and Daniel T. Brauer, DVM; dated July 19, 2018 (4 pages)
Division's Exhibit 57	Final Map, permit IM-655, certified July 7, 2010; with aerial photo overlay, aerial flown in 2012; exhibit created March 27, 2019 (1 oversized sheet on poster board)
Division's Exhibit 58	Appellant Dr. Daniel Brauer's Answers to Appellee Division's First Set of Interrogatories, Requests for Production of Documents, and Request for Admissions Propounded upon Appellant; dated February 8, 2019 (17 pages)
Division's Exhibit 59	Photograph; undated (1 page)
Division's Exhibit 60	Photograph; undated (1 page)
Division's Exhibit 61	Aerial photograph, Greene County Ohio, flown October 14, 1956, with notation of soil classifications, added July 1973 (one oversized page)
Division's Exhibit 62	Photograph; undated (1 page)
Division's Exhibit 63	Chief's Order 2602-IM; issued November 26, 2013 (5 pages)
Division's Exhibit 64	Operator's Request for Approval of Reclamation; filed October 30, 2017 (1 page)
Division's Exhibit 65	Status of Chief's Order; Order No. 2602-IM; Failure to Reclaim, Revocation of Permit; Notification to surety co. to [submit] a reclamation schedule (1 page)
Division's Exhibit 66	Surface Mining (IM) Final Report; permit IM-655; filed August 2, 2010 (2 pages)

Intervenor's Exhibits:

Intervenor's Exhibit I	Surface Mine Permit IM-655, granted to Joe & Doris Wheeler; dated May 21, 1979 (14 pages)
Intervenor's Exhibit II	Surface Mine Permit IM-655 Application Map from James D. Graham, certified December 8, 1978 (1 oversized page)
Intervenor's Exhibit III	General Warranty Deed, Graham to Brauer; signed July 21, 2006 (5 pages)
Intervenor's Exhibit IV	Quitclaim Deed, Brauer to Brauer Trust; signed April 30, 2008 (5 pages)
Intervenor's Exhibit V	Letter from Lamielle to Brauer; dated May 12, 2015 (2 pages)
Intervenor's Exhibit VI	Corrective Quitclaim Deed, Brauer to Brauer Trust; signed October 11, 2015 (5 pages)
Intervenor's Exhibit VII	Twenty-nine photographs; all dated May 27, 2016 (29 pages)
Intervenor's Exhibit VIII	Thirteen photographs; all dated November 21, 2017 (13 pages)
Intervenor's Exhibit IX	Photograph; dated May 19, 2018 (1 page)
Intervenor's Exhibit X	Ten photographs; dated October 24, 2018 (date of first site view) (10 pages)
Intervenor's Exhibit XI	Photograph; dated October 27, 2018 (1 page)
Intervenor's Exhibit XII	Photograph; dated November 1, 2018 (1 page)
Intervenor's Exhibit XIII	Photograph; dated February 7, 2019 (1 page)
Intervenor's Exhibit XIV	M.J. Coates Construction Company Vendor History with Daniel Brauer; between 2006 and 2009 (4 pages)
Intervenor's Exhibit XV	Series of Division Inspection Reports; from June 23, 2010 to May 17, 2018; with undated photographs related to the inspections; various dates (154 pages)

Intervenor's Exhibit XVI	Google Maps Aerial Photograph of Brauer property; image dated 2019 (1 page)
Intervenor's Exhibit XVII	Exhibit marked as Appellant's exhibit JG-4; map with markings (1 oversized page)
Intervenor's Exhibit XVIII	Undated aerial photograph of Brauer property; (1 page)
Intervenor's Exhibit XIX	Five photographs; all dated April 12, 2019 (5 pages)
Intervenor's Exhibit XX	Two photographs; both dated April 14, 2019 (2 pages)