

**From:** Will Towle  
**To:** [NRB - Comments](#)  
**Subject:** J.M. Rowley Corporation Proposed AO Public Comment  
**Date:** Wednesday, October 31, 2018 3:34:41 PM

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NRB Comments:

This office represents J.M. Rowley Corporation.

My client objects to each alleged violation, and without waiver on any other issue, I write predominantly to address a core issue regarding the allegations within Count III.

III. Failure to obtain an Act 250 Permit Amendment pursuant to Act 250 Rule 34(A) [Fuel Storage Area construction]

The tanks are new or used out-of-service tanks. Storage of fuel tanks of various types is a historical and pre-existing use of this parcel.

Only a minor portion of this large parcel is involved in the Act 250 permitted sand pit operation. The parcel itself is an old farm, with fields and farm buildings along the Lamoille River and the West Milton Road. The Act 250 permitted sand pit is over a half mile away from the farm buildings (as the crow flies) up an access road in the upland wooded section of the lot.

Out by the road, is an old barn/Quonset hut. This building has been the site of agricultural and business activity for probably at least a hundred years. My client has stored or serviced fuel tanks over for almost 40 years near the barn/Quonset hut. We believe this use is not an Act 250 violation and is a pre-existing use. We believe the tanks could be returned to this location. However, this is not in either business's or the State's interest.

Due to concerns about recent high water events experienced by the Lamoille River (which is across the Milton Road from the parcel) after Irene and Sandy caused the fuel distribution business to move the tanks in approximately 2014 to a higher portion of the parcel, but still near the barn/old farm part of the parcel. This was done, at the business's expense, solely to avoid the risk of having a flood event wash the tanks down river.

We do not believe the relocation of the tanks is a "substantial change" which results in any significant adverse impact with respect to any of the Act 250 criteria. Act 250 Rules 2(C)(7), Code of Vt. Rules 12 004 060-3. As merely a reconfiguration of an pre-existing use which pre-dates the Act 250 application, we do not believe this is "commencement of development" under the law. 10 V.S.A. § 6081.(a). Alternatively, any violation based on use would be beyond any applicable statute of limitation. 10 V.S.A. § 8015.

The business wants to find an alternate site for the tanks and has been actively and aggressively looking for an alternative site. This requires finding an replacement site, doing the engineering, getting the municipal permitting, and construction. Unfortunately, the town of Milton denied previous attempts to permit the existing use on the existing site, and the town of Milton also

rejected an additional site which the business had under contract. Today, the business has a suitable lot under contract, has the engineering complete, and is in the municipal permit process – all of which takes time. It is anticipated that the new site will not be ready until August 2019. There is no environmentally compelling reason to prohibit using the existing site until the new site is ready and moving the tanks back to their historic site closer to the river is in neither the business's nor the State's best interest. We believe the business should be allowed until at least August 1, 2019 to move the tanks.

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