

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A., Chapter 151

RE: L. H. & A. Realty Co., Inc. Findings of Fact, Conclu-  
Morrisville, VT 05661 sions of Law, and Order  
Land Use Permit #5L0856-EB

This decision pertains to an appeal filed with the Environmental Board ("Board") on September 29, 1986 by the Applicant from Land Use Permit #5L0856 issued on August 12, 1986 by the District #5 Environmental Commission ("Commission"). That permit authorized the construction of an addition to the Applicant's building leased by McMahon Chevrolet/Oldsmobile for use as a spray paint shop for-auto repair. The project is located at the intersection of Routes 15 and 100 in Morristown, Vermont.

On October 15, 1986, the Board notified the parties that it would conduct the hearing in this matter by way of an administrative hearing officer pursuant to 3 V.S.A. § 811 and Board Rule 41. No party having objected to this procedure, the Board's Chairman convened a public hearing on October 29 in Morristown, Vermont. The following parties participated in the hearing:

Applicant Louis Ferris  
Tom Crow, owner of McMahon Chevrolet  
Francis Favreau, Morristown Health Officer  
Lamoille County Development Council by Anthony Ciaraldi  
State of Vermont, Agency of Environmental Conservation  
by Ken Rota.

The Chairman recessed the hearing and took a site visit on October 29. On November 20 the Chairman issued a Proposed Decision and the parties were notified of their right to present written objections or oral argument to the full Board. No party having requested the opportunity to present oral argument, the Board conducted a deliberative session on December 3. At that time the Board reviewed the proposed decision, determined the record complete, and adjourned the hearing. This matter is now ready for decision. The following findings of fact and conclusions of law are based exclusively upon the record developed at the hearing and upon observations made at the site visit.

I. ISSUES IN THE APPEAL

The Applicant appealed from condition #4 of Land Use Permit #5L0856-EB which required the Applicant to seal the floor drain in the addition with concrete. The Applicant argues that there is no chance that toxic substances will enter the floor drain and that it is therefore not necessary

to seal the drain. The Agency of Environmental Conservation is concerned that an accidental spill of paint or other toxic substances into the drain could cause contamination of the groundwater or the soils.

II. FINDINGS OF FACT

1. The Applicant owns a 7,000 sq. ft. building at the corner of Routes 15 and 100 in Morrystown, Vermont that is leased to McMahon Chevrolet ("Lessee") for use as an automobile dealership and body shop. An automobile dealership and garage have been located in the building since it was built approximately 26 years ago, well before the adoption of Act 250 in 1970.
2. The McMahon Chevrolet structure consists of a 100' x 62' main building (show room and garage), and a 34' x 31' attached body shop. It also includes a new 16' x 24' addition, which will be used for spray painting and is the subject of the current appeal. There are two drains in the floor of the garage, one drain in the floor of the body shop, and one drain in the floor of the new addition. The drains all lead to an existing dry well that is 12' x 10' x 12' deep and filled with crushed stone. There is a separate septic system for the sanitary waste generated at the dealership.
3. As part of the automobile repair operation, cars are spray painted. Before the construction of the addition, the cars were spray painted in the main shop. Because of the problem of dust in the main shop, the Lessee wanted a separate room to use solely for spray painting cars.
4. The only activity that will take place in the addition is the spray painting of cars. The cars will be washed in the maintenance area and then taken into the addition for painting.
5. Prior to painting the cars, the Lessee will sweep the floor and remove any accumulated dirt and debris. It will then spray the walls and floor with water to keep the dust from getting on the paint. After the cars have been sprayed, they will be taken back to the body shop area for any additional work, including sanding and polishing, that may be required.
6. There is a large exhaust fan in the addition that draws any airborne paint spray to outside the building. No paint settles on the walls or the floor. No other solvents are used in the addition.

7. The water supply for homes and businesses in the area of this project is provided by the Village Water & Light Department from two reservoirs and a water distribution system. There are no private water supplies in the area.
8. The Agency of Environmental Conservation is concerned about the use of dry wells where there is any use of paint because of the possibility that solvents in the paint may enter the dry wells and migrate into the groundwater or the soils, causing a potential threat to groundwater or public health. Rather than allowing the water to enter the dry well through the drain, the Agency recommends that the Lessee use squeegies to absorb any water that accumulates after wetting down the painting room. The Agency proposes that the dry well be capped, or that the Permittee be required to install one up-gradient and three down-gradient monitoring wells. The cost per monitoring well is **\$600-\$800**.
9. The paints which will be used by the Lessee tend to consist of 80% solvents and 20% resins. While most of the solvents will evaporate within 30 minutes after the paint is sprayed and exposed to the air, an accidental spill **may** cause solvents to enter the drain prior to evaporation, and thus reach the dry well and groundwater. As a precaution, the Lessee will not store any paints or other solvents in the addition.

## II. CONCLUSIONS OF LAW

We are unable to conclude that the existence of a drain in the 16' x 24' addition will pose any greater potential threat to the groundwater than already exists at this site. The drains in the addition lead to the same dry well which services the drains from the main garage and body shop rooms. If the procedures as described by the Lessee are followed, the chance of solvents or other toxic substances entering the dry well from the new addition seems remote. The Board agrees with the Agency of Environmental Conservation that some risk of groundwater contamination does exist. However, that risk is a function of the drainage system of the existing building, **rather than** as a function of the new **addition./1/** Indeed, it is more likely

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**/1/** The Board does not have jurisdiction over a commercial development which was built prior to April 1, 1970, unless there is a "substantial change" in the development. 10 V.S.A. § 6081(b).

that an accidental spill would take place in the main garage area and body shop, where paints and solvents are stored and where cars are being serviced, than in the new addition. In any event, the new addition does not increase the risk of environmental contamination over current levels.

We will therefore delete Condition #4 of Land Use Permit #5L0856 and not require that the drain be cemented. Cars may be spray painted in that room, as long as the procedure as described in the findings of fact herein are followed and no paints, solvents or other potential pollutants are stored in the new addition. We caution, however, that as long as the drains lead to a dry well, the potential exists for ground water or soil contamination from toxic substances used in the garage and spray painting operation. The Permittee should take all precautions to avoid contamination by not using toxic substances in areas where they could accidentally enter the drains in any of the rooms .


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III. ORDER

Land Use Permit #5L0856-EB is hereby issued in accordance with the findings of fact and conclusions of law herein. Jurisdiction over this matter is returned to the District #5 Environmental Commission.

Dated at Montpelier, Vermont this 12th day of December, 1986.

ENVIRONMENTAL BOARD



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