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

RE: Crushed Rock, Inc.
P.O. Box 133
Pittsford, VT 05763

Findings of Fact, Conclusions of Law, and Permit Revocation Order - Land Use Permits #1R0489 and #1R0489-1

On August 19, 1986 Jody Lafaso and other residents of the Town of Clarendon, Vermont, filed a petition with the Environmental Board ("Board") requesting the revocation of Land Use Permits #1R0489 and #1R0489-1 issued to Crushed Rock, Inc. ("CRI"). Permit #1R0489 was issued on May 1, 1984, and authorized CRI to operate a gravel pit and stone quarry east of the Clarendon River near Route 133 in Clarendon. Permit #1R0489-1 was issued on May 13, 1986, and extended the original hours of operation of the pit. The petition alleged that CRI had violated the conditions of both permits limiting blasting, hours of operation, trucking, erosion, and operation of machinery.

A prehearing conference was held on August 29 in Rutland, Board Chairman Darby Bradley presiding. The following persons participated in the prehearing conference and requested party status:

Permittee Crushed Rock, Inc., by A. Jay Kenlan, Esq.
Town of Clarendon ("Town"), by William Bloomer, Esq.
State of Vermont, by Stephen Sense, Esq. and Gordon Gebauer, Esq.
Mr. & Mrs. Donald Gilman, Mr. & Mrs. John Furneaux, Mr. & Mrs. Clifford Andrews, Mr. & Mrs. Norman Gilman, Mr. & Mrs. John Lafaso, Mr. & Mrs. Joseph Cichon, Mr. & Mrs. Larry Chapman, Mr. & Mrs. Joseph Turner, Ms. Lynn Easterbrook, Mr. & Mrs. Peter Sokolich, Mr. & Mrs. Ronald Wilder (adjoining landowners), Mr. & Mrs. Randy Pinkham, Mr. & Mrs. Roy Jacobsen, Mr. & Mrs. Walter Fabian, Mr. Guy Alderdice, Sr., Mr. & Mrs. Edward McCormack (adjoining landowners), and Dan McMahon by Richard F. Sullivan, Esq./1/
Pike Industries, Inc., by Stephen Cosgrove, Esq.
George and Hazel Kearney, adjoining landowners/2/
Chester and Eileen Doaner, by Neal Vreeland, Esq., adjoining landowners

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/1/ Arthur and Theresa Witham, who are adjoining landowners, did not appear at the prehearing conference, but appeared and were represented by Richard Sullivan, Esq. at the September 17th and 22nd hearings.

/2/ The Kearneys were represented by Richard Sullivan, Esq. before the Board during the hearings on the minutes.

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Docket # 306.

Tony and Bonnie Constantino
Arthur and Colette Knox
Walter and Louise Rabidou
George Bartlett
Yvette Bourassa
Gary and Margo MacDonald
3Nancy Posch

A Prehearing Conference Report and Order was issued on September 9. In that Order, the Chairman made preliminary decisions concerning party status, identified the alleged violations, and set forth the organization of the proceedings. The Board convened a public hearing on the petition in Rutland on September 17 and 22. At the conclusion of the September 22 hearing, the Board announced orally its decision to revoke the permits as of September 22 at 5:30 p.m. and ordered the access road to the gravel pit and quarry closed except to allow the removal of equipment from the site. The oral decision was followed by a Memorandum of Decision and Order issued on September 23. This document sets forth the complete findings of fact, conclusions of law and order of the Board, and supersedes the oral order and September 23 Memorandum of Decision.

I. ISSUES PRESENTED

The Board was presented with two principal issues in this proceeding. The first issue was whether there had been violations of the permits in question. The Petitioners argued that CRI had exceeded the permit limits on blasting at the quarry (size of blasts, time and frequency of blasts), trucking (number of daily loads, covering of loads), operation of more than one piece of heavy machinery simultaneously, and sedimentation of the Clarendon River. CRI denied that any violations had occurred, and claimed that some of the limits which the Petitioners alleged had been violated were guidelines rather than strict limits of the permit.

The second issue was whether, if the Board found that the violations had occurred, revocation was the appropriate remedy. CRI took the position that revocation was an extreme remedy, and that the Board must give CRI an opportunity to take corrective action, should the Board find that violations had occurred.

In addition, several subsidiary issues were presented. These included requests for party status by the Petitioners and other persons, and the issue of whether the Board was

disqualified as a matter of law from hearing the revocation request. The latter question was raised after the Board, through the Vermont Attorney General, had sought a Temporary Restraining Order and Preliminary Injunction in proceedings before the Rutland Superior Court in order to halt the blasting. Each of these issues is discussed below.

II. PARTY STATUS

Permit revocation proceedings under Act 250 are governed by 10 V.S.A. § 6090(c) and Board Rule 38. Rule 38(A) (1) requires that notice and hearing procedures follow the requirements of Rule 40, which governs appeals of District Commission decisions on permit applications to the Board. Rule 40(B) states that the Board must provide notice to parties in accordance with 10 V.S.A. § 6089(a), which in turn refers to § 6085(c). Section 6085(c) states in part:

> (c) Parties shall be those who have received notice, adjoining property owners who have requested a hearing, and other persons as the board may allow by rule.

In effect, the persons who have party status in a permit revocation proceeding are the same as those who would have party status in a hearing on an application for an Act 250 permit. Parties include the permit holder, the municipality in which the project is located, the municipal and regional planning commissions, the State of Vermont, and adjoining property owners who have requested a hearing. The Board may admit other parties under Rule 14(B). That rule gives the Board broad discretion in deciding whether to confer party status on persons who are not adjoining property owners, but who claim that either their interests are affected or they can offer evidence or cross-examination which will assist the Board in reaching a decision.

In this case, CRI, Town of Clarendon, and adjoining property owners (to the extent their property interests are affected) are entitled to party status as a matter of right. The Board therefore granted party status to adjoiners Chester and Eileen Doaner, George and Hazel Kearney, Edward and Alice McCormack, Ronald and Judith Wilder, and Arthur and Theresa Witham.

In the Prehearing Conference Report and Order, the Chairman made a preliminary decision denying party status to the remaining persons, including Pike Industries, who were seeking such status. The decision was based upon the following factors: (1) the interests of these persons were

substantially similar to other persons having party status as a matter of right; (2) parties were represented by counsel: and (3) the need for judicial efficiency required some limitations on the number of persons having the right of cross-examination and other attributes of party status. In his preliminary ruling, the Chairman made it clear that all persons who sought party status would have an opportunity to testify, and that any person who felt that his or her interests had not been fairly represented during the hearings could renew the request for party status at the close of testimony. In addition, persons denied party status could ask the full Board to review the Chairman's preliminary decision.

The Board affirmed the Chairman's decision on the basis of the reasons stated, with one exception. From the representations made at the September 17 hearing, it appeared that Pike Industries, which had been operating the quarry since the spring of 1986, had substantially different interests from those of CRI, and that therefore Pike's interests may not be fairly represented by CRI. The Board therefore granted party status to Pike. There were no objections from any party to the granting of party status to Pike.

III. DISQUALIFICATION OF THE BOARD

During the September 17 and 22 hearings, CRI and Pike made several motions asking the Board to stay, dismiss, or disqualify itself from the permit revocation proceedings. The motions were based on the fact that the Board had, through the Attorney General's office, sought and obtained a Temporary Restraining Order ("TRO") in Rutland Superior Court seeking to halt the blasting. The suit was filed on September 5, 1986, and a TRO was issued by agreement on that date. A hearing on a Preliminary Injunction was scheduled for September 23. The moving parties argued that the Board had waived its right to conduct revocation proceedings by electing to bring an action for injunctive relief and monetary penalties, that it was constitutionally impermissible to the Board to sit as judge in a revocation proceeding while it was a party in court proceedings involving the same issues, and that the Board had exceeded its authority in adopting Rule 38.

Enforcement matters under Act 250 are generally within the province of the Board. The General Assembly has given the Board a variety of enforcement tools to ensure proper compliance with the Act and permits issued under it. Among these tools are criminal penalties, including imprisonment (10 V.S.A. § 6003), civil enforcement, including injunctive

relief (10 V.S.A. § 6004), assurances of discontinuance (10 V.S.A. § 6005), civil penalties (10 V.S.A. § 6006), and permit revocation (10 V.S.A. § 6090(c)). These tools may be used separately or in combination with each other. See 10 V.S.A. § 6004 and Board Rule 38(A) (4). Criminal penalties, civil enforcement and civil penalties require court proceedings. Assurances of discontinuance and revocations are handled by the Board directly.

At the time of the prehearing conference held on August 29, it appeared that the Petitioners' principal concerns were over the blasting, and especially the size of the blasts which they claimed were cracking foundations and walls and threatening an historic structure and spring used in a commercial water bottling enterprise. CRI and Pike therefore agreed to halt the blasting for a period of one week to allow the parties to work out a settlement of the problems raised by the Petitioners. By the middle of the following week; it appeared that the issues had not been resolved, and that blasting would resume after September 5. Because the Board could not hear the revocation petition before September 17 and there was no assurance that the revocation proceedings could be completed in one day, the Board decided to seek a TRO and preliminary injunction.

Without a voluntary agreement by CRI, injunctive relief was the only way in which the Board could ensure that alleged permit violations would not continue and additional harm would not be incurred, pending resolution of the issues raised in the revocation petition. The Board has no authority under the statute or its rules which allows it to suspend a permit or order an alleged violator to take or refrain from certain actions without an opportunity for a hearing. Board Rule 38(A) (1). In deciding to seek an injunction when it appeared that the voluntary agreement would expire on September 5 and blasting would resume, the Board was able to maintain the status quo until the revocation petition could be heard. The Board did not predetermine that violations had occurred or that revocation was the appropriate remedy if violations had in fact occurred. In the absence of any other authority to take summary action when confronted with allegations of permit violations and substantial harm resulting therefrom, the Board's decision to seek injunctive relief was appropriate and did not bar the Board on constitutional grounds from hearing the petition for revocation.

IV. FINDINGS OF FACT

1. The Permittee Crushed Rock, Inc. ("CRI") was formed in 1982 by the John A. Russell Corporation, a contractor/builder in the Rutland area, and Geomapping Associates, a geological consulting firm. At that time, CRI acquired an option in over 200 acres of land east of the Clarendon River, which was part of the "Chapman Farm." The site contained approximately 20 acres of sand and gravel, which the Russell Corporation intended to use as part of its construction business, as well as extensive reserves of marble and dolemite which could be quarried.

2. CRI filed an application for an Act 250 permit to operate the gravel pit and quarry on the Chapman Farm on June 9, 1983. Board Exhibit #6. CRI's intent was to operate a long-term quarry supplying crushed rock aggregate for State highway projects in the Rutland region, as well as gravel, sand and stone to other construction projects in the area. At the time, there was no other source of crushed rock aggregate in the area.

3. The size and scope of the gravel and quarry operation was set forth in the application and accompanying exhibits, which were prepared by Geomapping Associates. Exhibit E of the application (Board Exhibit #4) indicated that production of rock and gravel from the project would range from 20,000 to 80,000 tons per year, with the 80,000 ton figure being extraordinary. Blasting would be limited to a total of 1,000 pounds of explosives per blast, 250 pounds per "delay," and there would be no more than two blasts per week. Board Exhibit #2, Finding of Fact #1./3/ Exhibit E also indicated that truck traffic would range from 10 to 40 loads per day. Board Exhibit #5, which was prepared by Geomapping Associates, indicated that normal truck frequence will average 20 trucks per day during the peak construction season. Other exhibits addressed issues of access, air pollution, erosion, and the other criteria of Act 250. Board Exhibits #3, 4, 5, and 6.

/3/Explosives are set in sequence, with individual explosions being delayed by milliseconds, in order to reduce the magnitude of the shock waves created by the blast.

4. On May 1, 1984, after several hearings in which there was little controversy, the District #1 Commission issued Land Use Permit #1R0489 authorizing the operation of the pit and quarry. The permit contained specific restrictions concerning the operation of the rock and gravel crushing and screening equipment, access to the site, hours of operation, and erosion control. The permit obligated the permittee and its assigns and successors in interest, to complete the project in accordance with the conditions of the permit, the Commission's Findings of Fact and Conclusions of Law, and the Applicant's plans and exhibits. The decision of the Commission was not appealed.

5. CRI operated the pit and quarry during 1984 and 1985. During that period, there was a total of 10-12 blasts at the quarry. The amount of explosives used in each blast was at or below 1,000 pounds. There were no complaints about the manner in which CRI maintained its operation.

6. In January 1986, the State of Vermont, Agency of Transportation, issued contracts for the construction of the Route 4 Bypass, a 3.5 mile divided highway project located to the south and west of the City of Rutland. The contract called for large quantities (190,000 cubic yards) of crushed rock aggregate to be used in the subbase of the highway./4/ Pike Industries, which was interested in securing the subcontract to supply the aggregate, first approached CRI in the winter of 1986 to see about leasing the quarry. A lease was drafted in May, and was eventually executed by CRI on August 7 and by Pike on August 21. In addition, Pike purchased Geomapping's one-half ownership interest in CRI.

7. Pike began clearing trees at the quarry site in late March, 1986. On April 7, it detonated its first blast. During the succeeding months until August 28, Pike detonated 29 more blasts. As Pike's blasting logs reveal (Board Exhibit #12), the amount of explosives used in each blast ranged from 369 pounds to 20,043 pounds. Twenty-nine of the blasts exceeded 1,000 pounds of total explosives, and twelve blasts exceeded

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/4/A cubic yard of crushed rock aggregate weighs 1.5-1.7 tons, depending upon rock size. Using an average figure of 1.6 tons, the supplier would have had to blast 304,000 tons of rock to satisfy the contract.

10,000 pounds total. The amount of explosive per "delay" ranged up to 884 pounds, with 15 blasts having more than 250 pounds of explosive per delay. Six blasts occurred after 5:00 p.m. On three occasions during the month of June, there were a total of three blasts during a one-week period. A total of 300,000-400,000 tons of stone and dolemite have been blasted at the pit since April, 1986.

8. Truck traffic from the quarry was considerably higher than the amount represented in the exhibits which accompanied CRI's 1984 permit application. See Board Exhibits #4 and #5. Pike's area manager estimated that between 200 and 300 loaded trucks left the site each day during the summer. These volumes were confirmed on at least two occasions when over 50 loaded trucks left the site in a 1½-2 hour period.

9. Through Geomapping Associates, the company in whose name the original Act 250 permit was issued, Pike sought two amendments to Land Use Permit #1R0489. On May 13, 1986, the District #1 Commission issued Land Use Permit Amendment #1R0489-1, which allowed the pit/quarry to operate from 6:30 a.m. to 5:30 p.m. from Monday through Friday, and from 8 a.m. to 2 p.m. on Saturdays. No blasting was allowed before 7:00 a.m. or after 5:00 p.m. On July 11, Pike applied for Land Use Permit Amendment #1R0489-2 to locate an asphalt plant at the quarry site. The proceedings on the second amendment were still pending at the time of the Board's hearings on the revocation request.

10. The Board heard no substantial evidence upon which to base a finding that CRI (or its successors in interest) had caused sedimentation to the Clarendon River, operated the quarry before 6:30 a.m., operated more than one crusher at a time at the quarry, or operated the crusher more than six hours per day. The Board does find that CRI (or its successor in interest) exceeded the limit of 1,000 pounds of explosive per shot on 29 occasions and the limit of 250 pounds per delay on 15 occasions. In addition, the Board finds that blasting was conducted after 5:00 p.m. on a weekday on at least six occasions, on Saturday afternoons on at least two occasions, and that more than two blasts per week occurred on three occasions. The Board also finds that CRI or its successors in interest extracted approximately 304,000 tons of stone in 1986, an amount substantially in excess of the 80,000-ton annual maximum stated in the application, and that as a result truck traffic from the quarry site was far in excess of the maximum traffic volumes which

were applied for in the original permit application filed in 1984. Finally, the Board finds that trucks carrying gravel and crushed rock from the project site at times were not covered to minimize fugitive dust, although that problem appears to have been corrected after mid-August.

V. CONCLUSIONS OF LAW

The principal issues before the Board are whether the activities described in the Findings are sufficient to allow the Board to find that the permits have been violated, and if so, whether the appropriate remedy is revocation of the permit. The authority for revocation of a permit is set forth in 10 V.S.A. § 6090(c):

> (c) A permit may be revoked by the board in the event of violation of any conditions attached to any permit or the terms of any application, or violation of any rules of the board.

Board Rule 38(A)(2) further amplifies the grounds for permit revocation:

> (2) Grounds for revocation. The board may after hearing revoke a permit if it finds that: (a) The applicant or his representative willfully or with gross negligence submitted inaccurate, erroneous, or materially incomplete information in connection with the permit application, and that accurate and complete information may have caused the district commission or board to deny the application or to require additional or different conditions on the permit; or (b) the applicant or his successor in interest has violated the terms of the permit or any permit condition, the approved terms of the application, or the Rules of the board; or (c) the applicant or his successor in interest has failed to file an affidavit of compliance with respect to specific conditions of a permit, contrary to a request by the board or district commission.

Issues of Violation. CRI and Pike have never denied that the blasting, excavation and truck activities described in the Findings of Fact above actually occurred. Pike's attorney admitted from the outset of the hearings that the blasting exceeded 1,000 pounds of explosives per blast and 250 pounds per delay, and that some of the blasts had occurred after hours. He admitted that the amount of rock

excavated and removed in 1986 was substantially greater than the 80,000 figure given in CRI's original application for the gravel pit and quarry. There was no dispute that daily truck traffic from the project site was much higher than the 10-40 loads CRI had estimated in 1983. These admissions were subsequently corroborated by the testimony of Pike's Area Manager during the hearings.

CRI's and Pike's defense rests on the argument that none of these activities was specifically conditioned or limited in the permits themselves, and that the information presented in the original application and accompanying exhibits were intended to be "best estimates" or guidelines rather than strict limitations. CRI and Pike argue that if the District Commission had intended to place strict limits on blasting, excavations, or trucking, the Commission should have included these limits as specific conditions in the permit itself, and that a person should be entitled to rely upon what is set forth in the town's land records. Since only the permit is recorded and not the Commission's findings of fact and conclusions of law, they argue, Pike should not be bound by limits of which they had no notice.

Their arguments miss the mark for two reasons. First, the plain language of the permits themselves incorporate as conditions the Commission's findings of fact and conclusions of law, as well as the plans and exhibits prepared by CRI. Condition #1 of Land Use Permit #1R0489 (Board Exhibit #1) states:

> The project shall be completed as set forth in Findings of Fact and Conclusions of Law #1R0489, in accordance with-the plans and exhibits stamped "Approved" and on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.

Condition #1 of Land Use Permit #1R0489-1, which was not formally admitted as an exhibit in the hearings but of which the Board may take judicial notice, maintains all of the conditions of the original permit in effect, except for the hours of operation as stated in the permit amendment.

The specific conditions,"findings and exhibits which the Board concludes were not adhered to during 1986, and therefore constitute a violation of Condition #1 of original permit, are as follows:

1. Condition #13 of Permit #1R0489 relating to Saturday operation.

2. Condition #3 of Permit #1R0489-1 relating to hours of operation.

3. Condition #6(iii)(d) of Permit #1R0489 relating to covering of trucks.

4. Finding of Fact #1 for Permit #1R0489 relating to size and frequency of blasts.

5. Application Exhibit E (Board Exhibit #4) for Permit #1R0489 relating to magnitude of trucking and excavations.

6. Project Description of Permit #1R0489 (Board Exhibit #5, page 9) relating to magnitude of truck traffic.

The second reason that the arguments of CRI and Pike miss the mark is that under the Act 250 process, the District Commissions (and the Board on appeal) have to rely on the information included with applications as presented by applicants. They cannot speculate on what an applicant might do after receiving a permit, unless information is elicited during the review process which indicates that some larger or different activity is being contemplated. See the Board's discussion in Levinsky, Declaratory Ruling #157 (August 8, 1984). In this case, there was no reason for the District Commission to believe in 1983 that the gravel pit and quarry operation would be any different from that described in CRI's application. The hearings before the Commission were not controversial, and the project was approved basically as proposed.

There is no legal reason that documents and exhibits which have been filed by the applicant or introduced during the hearing cannot be incorporated into the permit by reference. The purpose of recording the permit is to give notice to persons who may subsequently acquire an interest in the involved land that the permit exists and that there may be certain limitations on the use of that land. Those people then have a duty to seek out the additional information, in this case by reviewing the Findings of Fact, Conclusions of Law and the 'plans and exhibits on file at the District Commission office. If every detail of a particular application had to be specifically described in a condition of the permit, permits would run hundreds of pages for complicated projects, clogging the land records of Vermont's

towns and severly delaying the process of issuing Act 250 permits. The Board finds that incorporation of the findings and exhibits by reference is an acceptable method of providing notice to permittees and successors in interests of the requirements of the land use permits.

A specific condition must be spelled out in a permit whenever the Commission does not accept the application as submitted. If, for example, an applicant applies for a 100-unit condominium project and the Commission approves only 60 units because the other 40 units would be located on primary agricultural soils, the Commission must spell out the change in a specific condition, so that the permittee can know what has been approved and what has not. The Commission may also want to include a specific condition where some issue was particularly controversial during the hearings, even if the Commission has accepted the applicant's position, so that all parties know what was decided. Neither of these situations arose, however, in the Commission's proceedings on the permits at issue here.

The Board concludes that CRI and Pike have violated the conditions attached to Land Use Permits #1R0489 and #1R0489-1, as well as the approved terms of the application, and that such violations constitute grounds for permit revocation under 10 V.S.A. § 6090(c) and Board Rule 38(A)(2).

Issues of Remedy. As discussed earlier, the General Assembly has given the Board a variety of enforcement tools to correct permit violations and wide discretion in selecting which tool is appropriate in a given situation. The magnitude and number of violations, the impact of the violations upon the environment or the community, the knowledge and intent of the permittee or its successors in interest, the economic gain realized by the violator, and the responsiveness of the permittee to correct a violation after it has been pointed out are all factors which the Board must weigh in selecting an appropriate remedy.

CRI and Pike argue that permit revocation is too drastic a remedy, and that under the Board Rules, they are entitled to an opportunity to correct the violation. In its offer of proof at the close of the September 22 hearing, CRI said it was prepared to show that CRI was a separate entity from Pike and had no knowledge until August 1986, that violations may have been occurring, that as soon as CRI learned of the violations, it attempted to get Pike to correct the situation and respond to the complaints of the neighbors and the community: that there had been no

violations or complaints prior to 1986; and that CRI had done everything it could to ensure the permit was being complied with. CRI and Pike both argued that the Board should balance the public interest in completing the Route 4 bypass, and offered to cease all quarrying operations and limit truck traffic at the site until the court proceedings on the temporary restraining order and preliminary injunction had been resolved.

For purposes of deciding upon a remedy, the Board accepts CRI's and Pike's offers of proof to be true. Weighed against those offers, however, is the inescapable conclusion that (1) the Permittee was knowledgeable about the Act 250 process; (2) the violations of the limits on blasting and truck traffic were substantial and continued over many months; (3) the violations caused or had the potential to cause significant harm in terms of damage to structures, the environment, and public facilities (traffic on highways), as well as to disrupt the life of the Clarendon community; (4) both CRI and Pike benefited financially from the violations; and (5) the violations continued, even after the protests of the neighbors and the town became known, until legal proceedings were formally commenced before the Board and in the courts. The fact that Pike may have been the principal actor in the violations does not allow CRI, as Permittee, to escape the consequences of its failure to ensure that its agents or assignees adhere to the terms of the permit. Pike's arguments that it was not aware of the District Commission's requirements, because it did not attend the hearings on the original permit application, are similarly unpersuasive. Pike, as assignee of the permit, gained no more rights than those which CRI had received under the permit. Pike had a duty to discover what plans the District Commission had reviewed and approved in 1984 and, if those plans did not conform with Pike's intentions, to apply for an amendment if the new operation would be a "material" or "substantial" change. See Board Rule 34.

Board Rule 38(A) (3) gives a permit holder reasonable opportunity to correct a violation. That opportunity may be limited, however, in two circumstances. The first is when there is a clear threat of irreparable harm to public health, safety, or general welfare or to the environment by reason of the violation. The second is where the permit holder is responsible for repeated violations.

The Board finds that both circumstances exist in this case. There is no question that the blasting, which was as much as 20 times greater than the permitted levels and frequently more than 10 times greater, had the potential to cause significant damage to buildings and structures in the neighborhood. Some of that damage may be irreparable, at least without substantial expense, delay and litigation. In addition, the violations continued over a period of many months. After weighing all of the evidence presented in this case, as well as the offers of proof presented by CRI and Pike, the Board can find no reasonable basis for allowing the Permittee or its successors in interest an opportunity to correct such gross and willful violations.

The Board concludes that Land Use Permits #1R0489 and #1R0489-1 should be revoked.

Stay of Decision. At the close of the hearings on September 22, CRI requested that the Board stay its decision pending a resolution of the Superior Court proceedings on the injunction and an appeal of the Board's decision to the Vermont Supreme Court. The principal purpose of the request for an injunction was to maintain the status quo pending a hearing on revocation, as previously discussed. As a result of the Board's decision to revoke the permits, there appears to be no need to pursue the injunction, and that aspect of the complaint filed by the Attorney General may be dismissed. The State of Vermont may still pursue an action for civil penalties under 10 V.S.A. § 6006.

As for CRI's request for a stay pending appeal, Board Rule 42 states that the Board may consider the hardship to the parties, the impact on the values sought to be protected by Act 250, and any effect upon public health, safety or general welfare. For the same reasons given in the discussion of the opportunity to correct a violation, the Board cannot conclude that the equities and hardships in this case weigh in favor of the Permittee.

The request for a stay is denied.

ORDER

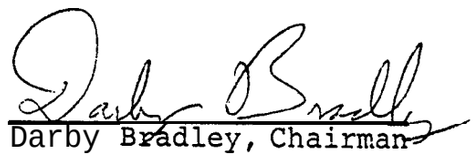
I. Land Use Permits #1R0489 and #1R0489-1 are hereby revoked as of Monday, September 22, 1986 at 5:30 p.m. No quarry or gravel operations, including the removal of existing stockpiles, shall be conducted at the site.

2. Crushed Rock, Inc. shall keep the gate on the access road to the project site closed and locked at all times, except to allow the removal of equipment currently on the site.

3. This Decision and Order shall supersede the Board's oral decision announced at the close of the September 22 hearings and its written Memorandum of Decision and Order dated September 23, 1986.

Dated at Montpelier, Vermont this 17th day of October, 1986.

ENVIRONMENTAL BOARD



Darby Bradley, Chairman

Board members participating:

Ferdinand Bongartz
Lawrence H. Bruce, Jr.
Elizabeth Courtney
Samuel Lloyd
Roger Miller/5/

/5/Board member Dwight Burnham voted in favor of revocation after the September 22 hearing, but was absent during, the Board's final deliberation on this decision.

CR3010