

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

RE: Crushed **Rock**, Inc. by Memorandum of Decision
Peter Hall, Esq. and Order
Abell, Kenlan, Land Use Permits #1R0489
Schweibert & Hall and #1R0489-1
P.O. Box 578
Rutland, Vermont 105701

I. BACKGROUND

In August, 1986, certain residents of the Town of Clarendon filed a petition with the Environmental Board seeking **revocation** of Land Use Permits #1R0489 and 1R0489-1 (hereinafter **referred** to as the Permits) held by Crushed Rock that **authorized** operation of a quarry and gravel pit (the Quarry) in Clarendon, Vermont. The Board held hearings on September 17 and 22 of that year. At the conclusion of the hearing on September 22, after hearing offers of proof on the issue of the **appropriate** remedy, the Board orally revoked Crushed **Rock's** Permits on the basis of clear, undisputed evidence of repeated violations. On September 23 the Board issued a Memorandum of Decision and Order, and on October 17 the Board issued its Findings of Fact, Conclusions of Law, and-Permit Revocation Order. Crushed Rock and Pike Industries appealed the Board's decision to the Supreme Court.

The Court affirmed the Board's authority to conduct revocation proceedings in this matter, and noted that Crushed Rock did not 'challenge the Board's findings of repeated violations of the Permits. In re Crushed Rock, Inc., 150 Vt. 613, **620-21** (1988). The Court held, however, that the Board had erred in failing to provide the parties with the opportunity to present evidence in support of their position that the Permits should not be revoked. The Court therefore vacated the revocation order and ordered that "**the** appellants [be] provided a new hearing solely on the remedy to be imposed for breach of the permit." **Id.** at 625-26.

A prehearing conference was held on January 27, 1989, with the following parties present:

Crushed Rock, Inc. (Crushed Rock) by Peter Hall, Esq.
Pike Industries, Inc. (Pike) by Jim Gallagher, Esq.
Town of Clarendon (Town) by William J. Bloomer, Esq.

Mr. and Mrs. Ronald Wilder, Mr. and Mrs. Edward **McCormack**, Mr. and Mrs. Arthur **Witham**, and Mr. and Mrs. George Xearney (the Neighbors) by Christopher Sullivan, Esq.

At the prehearing conference, the parties discussed the scope of the evidentiary hearing to be held and agreed to file briefs and present oral argument on the following issues: 1) what remedies, if any, other than revocation of the permit are available under 10 V.S.A. § 6090(c) and 2) the appropriate scope of the hearing, including what factual and legal issues are relevant to the Board's consideration and a description of the evidence to be presented and its relevance.

Following the submission by the parties of memoranda of law and oral argument before the Board, the Board issued a Memorandum of Decision dated June 30, 1989, delineating the scope of the hearings and scheduling a date for the hearing. The hearing was postponed at the request of the parties. Pike agreed not to resume operation of the Quarry pending a final decision by the Board.

On February 15, 1990, Pike filed with the Board a document entitled "Stipulation, Settlement Agreement and Consent Decree" (hereinafter referred to as the Stipulation) which had been negotiated among Pike, Crushed Rock, the Town, and the Neighbors. On February 21, 1990 the Board convened a public hearing, with the following parties present:

Crushed Rock by Peter W. Hall, Esq.
Pike by Gregory S. Clayton, Esq.
Town of Clarendon by William J. Bloomer, Esq.
The Neighbors by Christopher Sullivan, Esq.

At the hearing, the parties described the Stipulation and answered questions from the Board. After taking a brief recess and **deliberating**, the **Board** announced that it will draft an order based upon the Stipulation that incorporates only those provisions of the Stipulation that are of direct concern to the Board and within the Board's jurisdiction, that the Board's order will operate independently of any agreement among the parties, and that the order will be sent to the parties for their comments.

Accordingly, on March 30, 1990, the Board sent a Proposed Memorandum of Decision and Order to the parties. On May 9, Gregory Clayton, on behalf of Pike, filed the site beautification and site security plans to be attached to the

Board's Order as Exhibits A and B. On May 14, William Bloomer, on behalf of the Town of Clarendon, filed a request with the Board for a hearing to review the plans. On May 15, Peter Hall, on behalf of Crushed Rock, sent a letter to the Board describing proposed changes to the order.

On May 24 the Board deliberated on the site beautification and site security plans, the Town's request for a hearing, and Crushed Rock's requested changes to language in the order. The Board determined that the plans are adequate for submission to the District Commission. The Board decided to deny the Town's request for a Board hearing to review the plans because the parties will have the opportunity to participate fully when the District Commission reviews the plans in the context of an amendment application. The Board incorporates in the order below those changes suggested by Crushed Rock that it deemed appropriate.

II. DECISION

The Board is authorized pursuant to 10 V.S.A. § 6090(c) and Rule 38(A) to revoke a permit under certain circumstances. Rule 38(A) sets out the grounds for revocation, which include that "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. ..." Unless there is a clear threat of irreparable harm to public health, safety, or general welfare or to the environment, or the permit holder is responsible for repeated violations, the Board must provide an opportunity for the permit holder to correct the violations before revoking a permit.

In its previous decisions in this matter, the Board found that grounds for revocation of the Permits existed by virtue of the undisputed repeated violations of the Permits by Crushed Rock and Pike. Crushed Rock and Pike now ask the Board to allow operation of the Quarry under conditions as set out in the Stipulation.

The Stipulation contemplates operation of the Quarry with an opportunity to correct past violations under strict conditions of operation. The Board has reviewed the Stipulation and incorporated and modified its terms as appropriate. Based upon the provisions of the Stipulation embodied in the following order, the Board has decided to provide an opportunity to correct the violations.

Rule 38(A) provides that if the Board allows the permit holder an opportunity to correct the violations, "the board shall clearly state in writing the nature of the violation and the steps necessary for its correction or elimination." For purposes of describing the nature of the violations, the Board incorporates the Findings of Fact and Conclusions of Law from the Board's October 17, 1986 decision in this matter, except to the extent that the Conclusions of Law are modified by this decision to allow the opportunity to correct the violations.

An Order that incorporates the appropriate conditions of the Stipulation within the jurisdiction of the Board is included below. Should Crushed Rock and Pike fail to adhere to the conditions and restrictions in the Order, the Permits will be revoked.

III. ORDER

It is hereby ORDERED that Land Use Permits #1R0489 and 1R0489-1 will be revoked unless Crushed Rock and Pike comply with the following conditions:

1. Limited Resumption of Operations

Crushed Rock and Pike shall be permitted to resume operations at the Clarendon, Vermont Quarry subject to the terms of Land Use Permits #1R0489 and 1R0489-1, including the Findings of Fact and Conclusions of Law and the Board's decision dated October 17, 1986. In addition, Crushed Rock and Pike agree that the interpretation of the requirements of the Permits, until amended otherwise, shall be consistent with the Environmental Board's interpretation of the Permits as set forth in the Board's decision dated October 17, 1986.

2. Strict Compliance With Permit Conditions

At all times, the operations of Crushed Rock and Pike and their successors and assigns at the Quarry shall be in strict compliance with all requirements, conditions, limitations, and restrictions of the Permits, consistent with the Board's interpretation of the Permits set forth in the Board's October 17, 1986 decision. In addition to the actual violator's responsibility for any violations of the Permits that may occur, Crushed Rock shall be responsible, as the Permit holder, for the

actions of any tenants, lessees, or other persons or parties using the Quarry, insofar as any such action is determined to have violated the Permits.

3. Permit Reaquirements

Pursuant to the Stipulation of the parties, Crushed Rock and Pike shall comply with the following additional restrictions on operations at the Quarry:

a. Trucking Volumes

No more than 40 truckloads per day of products from the Quarry may be removed from the Quarry. This shall constitute a maximum limitation on truckloads per day, and not an average. The limitation on the amount of product that may be removed per year as stated in the Permits remains in force unless amended by the District Commission.

b. Onerational Hours

Operation of the Quarry, including operation of crushers, machinery, generators, and any other heavy machinery, shall be limited to the following hours as permitted under Land Use Permit #1R0489-1: From 6:30 a.m. to 5:30 p.m. Mondays through Fridays and from 8:00 a.m. to 2:00 p.m. on Saturdays, except that no blasting or crushing operations shall be conducted at any time on weekends. No blasting shall occur before 7:00 a.m. or after 5:00 p.m. on any day. In addition to weekday operations, the sale of Quarry products will be permitted between the hours of 9 a.m. and 12 noon on Saturdays, provided that no more than 20 truckloads of Quarry products may be removed from the Quarry during the Saturday hours of operation. The Quarry shall be closed all day Sundays.

c. Covering of Trucks

All trucks leaving the Quarry shall be covered. Pike and Crushed Rock shall be responsible for ensuring the covering of all trucks.

4. Obtaining a Permit Amendment

Prior to resuming operations at the Quarry, Crushed

Rock shall seek and obtain a permit amendment from the District #1 Environmental Commission to authorize the following:

a. Site Beautification

During 1990, Crushed Rock shall apply for approval from the District Commission to undertake general improvements and beautification of the Quarry and access road, including pavement of the access road to the Quarry, installation of a sign to the Quarry, and any other measures necessary to improve the overall aesthetics and appearance of the Quarry. Crushed Rock shall submit the site beautification plan attached hereto as Exhibit A to the District Commission for its review and shall obtain approval, as it may be modified by the District Commission, prior to commencement of any site beautification activities. The District Commission shall review the plan to ensure that it provides reasonable mitigation of the visual impacts of the Quarry.

b. Site Security

During 1990, Pike or Crushed Rock shall improve security of the Quarry by installing fencing or other federally approved barricade along the top of the Quarry, and will take such other measures to improve the safety and security of the Quarry as necessary. Crushed Rock shall submit the site security plan attached hereto as Exhibit B to the District Commission for its review and shall obtain approval, as it may be modified by the District Commission, prior to installing fencing or implementing any other measures to improve site security. The District Commission shall ensure that site security measures are reasonable to achieve their purpose.

c. Cessation of Weekend Operations

Crushed Rock and Pike shall obtain a permit amendment authorizing the hours of operation and the restrictions on weekend operations as provided in paragraph 3. b., above.

d. Additional Blastina Safeauards

On or before the Friday before any week in which blasting is scheduled, Pike or Crushed Rock shall send written notice to the individual Petitioners in this

proceeding, to any other persons requesting such notice in writing, and to all statutory parties of the dates and times of blasting scheduled for the coming week. Pike or Crushed Rock shall maintain a list of all persons who have requested notice. Such written notice shall be delivered in person or by certified mail. All blasting shall conform to the schedule set forth in such notice, and all blasts shall be preceded by a whistle, consistent with blasting regulations and industry practices.

e. Blasting Monitoring

Pike or Crushed Rock shall conduct on and off-site seismic monitoring of all blasting and shall furnish the results of such monitoring to the Petitioners, to any other persons requesting such results in writing, and to all statutory parties to the Act 250 proceedings. Upon written request by any of the above-listed people, Pike or Crushed Rock will conduct supplemental seismic monitoring at the residence or property of any person in the vicinity of the Quarry. Pike or Crushed Rock shall submit a proposed protocol for such monitoring to the District Commission for its review and approval before an amendment can be issued.

f. Quarterly Reports on Operations

Pike or Crushed Rock shall submit to the District #1 Environmental Commission, by affidavit, quarterly reports listing the number of tons of stone extracted and crushed, dates and **numbers of** blasts, number of truckloads hauled from the Quarry per day, and daily hours of operations. Copies of blasting logs and seismic monitoring reports shall be attached to the quarterly reports. Reports shall be furnished on the first of January, April, July, and October of each year. **Such** reports shall be made available for public inspection by Pike or Crushed Rock and shall also be furnished to any person who so requests.

5. Timetable of Operations

The operations at the Quarry shall resume in accordance with the following timetable:

During 1990 no blasting or crushing operations shall occur at the Quarry. Work permitted during 1990 shall be limited to clean up, improvements, beautification,

removal of some or all stockpiled rock, and installation or removal of equipment, subject to conditions imposed in any permit amendment issued by the District Commission. No blasting or crushing operations shall occur at the Quarry after 1990 unless the permit amendments, described in Section 4, above, have been obtained. If those permit amendments have been obtained, operations at the Quarry may resume in 1991 only in accordance with the terms of the Permits, consistent with the Board's interpretation of the Permits set forth in **its decision** dated October 17, 1986, this order, and any amendments to the Permits.

This Order is binding on Crushed Rock, Inc., Pike Industries, Inc., and their successors and assigns.

Dated at Montpelier, Vermont this 8th day of June, 1990.

ENVIRONMENTAL BOARD



Stephen Reynes, Chairman
Ferdinand Bongartz

Lawrence II. Bruce, Jr.

Rebecca Day

Arthur Gibb

Samuel Lloyd

Charles Storrow

Attachments

a:ROCK(S1)

EXHIBIT A

SITE BEAUTIFICATION

n
Site beautification will consist of three elements: (1) landscaping of the entrance area; (2) installation of a sign identifying the Quarry; and (3) paving of the quarry access road. Each is discussed below:

1. Landscaping of Entrance Area. To improve its appearance, the entrance to the quarry will be landscaped in accordance with the attached plan of Philip **J. Bushey, Sr.** Two hundred feet of split rail fence will curve around either side of the entrance, against a backdrop of 3'-4' Dark American Arborvitae. A bed of sixteen 2' Rugosa Rose will be placed at the center of each arc,.

2. Installation of Sign. A 3' by 5' sign will be installed in the entrance area identifying the quarry. The entrance sign will be set into a base of natural **quarry** stone.

3. Pavement of Access Road. The access road will be paved from Route 133 back to the bridge over the Clarendon River, minimizing dust and improving the overall appearance of the entrance to the quarry.

QUARRY SITE

OPEN FIELD

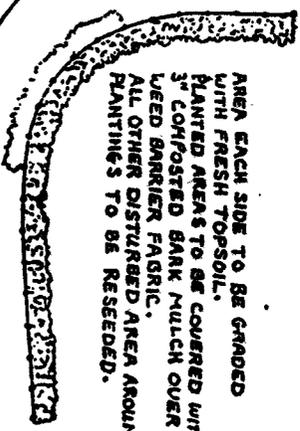
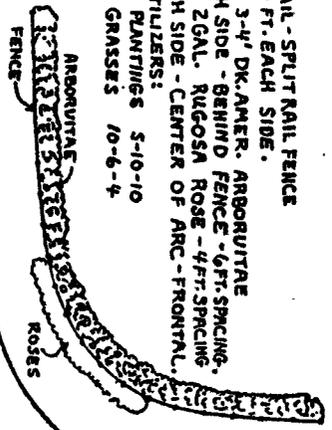
ROAD TO
CRUSHED ROCK, INC.
CLARENDON SPRINGS, VERMONT

OPEN FIELD

3 RAIL - SPLIT RAIL FENCE
200 FT. EACH SIDE.
3/4 3-4" DK. AMER. ARBORVITAE
EACH SIDE - BEHIND FENCE - 6 FT. SPACING.
16 - 2 GAL. RUGOSA ROSE - 4 FT. SPACING
EACH SIDE - CENTER OF ARC - FRONTAL.
FERTILIZERS:
PLANTINGS 5-10-10
GRASSES 10-6-4

AREA EACH SIDE TO BE GRADED
WITH FRESH TOPSOIL.
PLANTED AREAS TO BE COVERED WITH
3" COMPOSTED BARK MULCH OVER
LEED BARRIER FABRIC.
ALL OTHER DISTURBED AREA AROUND
PLANTINGS TO BE RESEDED.

SCALE 1" = 30'
PHILIP J. BUSHNEY, SR.
CIVIL ENGINEER
EAST WASHINGTON
259-2542



WEST RUTLAND RT-113

MIDDLETOWN SPRINGS

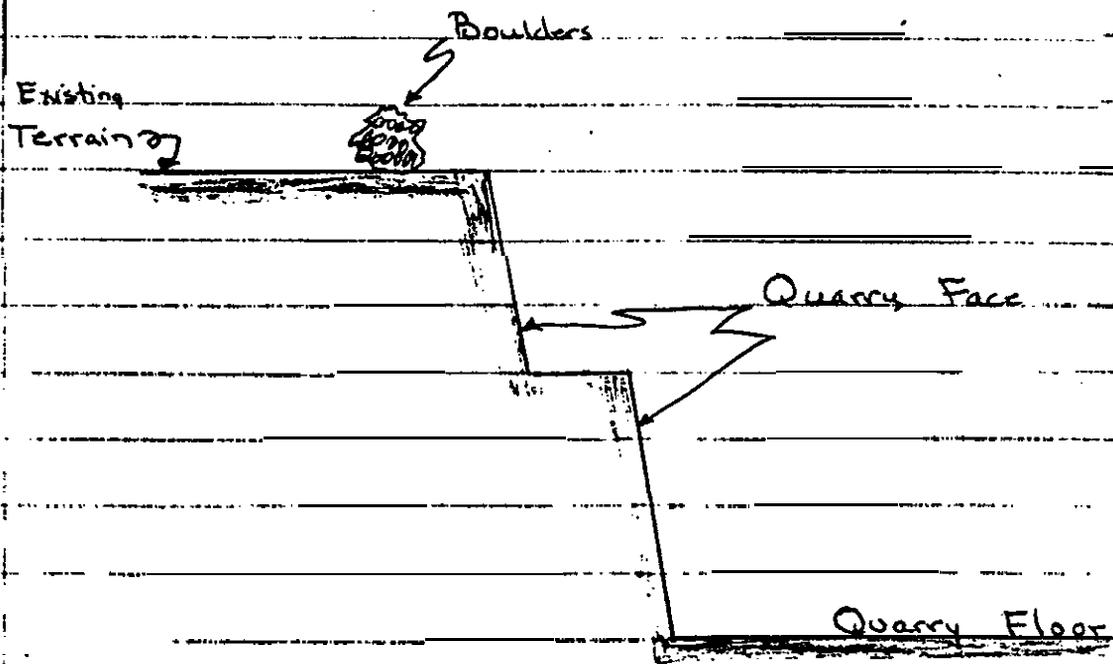
EXHIBIT B

SITE SECURITY

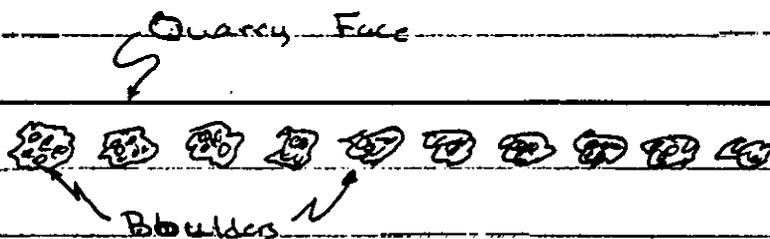
Site security will consist of two elements: (1) protection of exposures at the top of the quarry; and (2) use of the existing access road gate, to bar access to the quarry after operational hours. Each is discussed below:

1. Protection of Exposures at Top of Quarry. To demarcate the upper edges of the quarry and prevent vehicles or persons from accidentally going too close to the quarry faces, 5' to 6' diameter boulders will be placed along the top exposure of the quarry, 1' to 2' apart, as reflected on the attached plan. These boulders will each weigh approximately three and one-half tons. This method of protection is used across the quarrying industry, within and without Vermont, and is accepted by the Mine Safety and Health Administration.

2. Access Road Gate. To prevent after-hours access to the quarry by vehicles, the existing access road gate will be locked at the conclusion of each work day.



Cross-Section



Plan

Boulders are spaced 1 to 2 feet, are 5 to 6 feet in diameter and weigh approximately $3\frac{1}{2}$ tons