

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

Re: J. P. Carrara & Sons, Inc.
Application #1R0589-3-EB

MEMORANDUM OF DECISION

This decision pertains to several issues raised subsequent to the hearing in this matter and prior to the parties' filing proposed findings of fact and conclusions of law. For the reasons explained below, the Environmental Board has determined 1) to deny the Applicant's Objection to the Expansion of the Scope of the Hearing to Include Nonblasting Noise, and 2) to reopen the hearing for the limited purpose of taking evidence on noise from the quarry operation from activities other than blasting.

I. BACKGROUND

At the hearing in this matter held on February 3, 1993, the Board made an oral ruling that it would allow evidence on noise generated by the quarry operation from activities other than blasting. The Board stated that if parties needed additional time to prepare supplemental testimony, the Board would hold a hearing on this issue some time in June. No parties filed a motion for reconsideration of the Board's ruling. Attorney Goss stated that he might request a further hearing to address non-blasting noise, depending upon the Board's response to noise standards that he would propose.

The parties could not agree on when to file proposed findings. Therefore, the Board Chair sent a memo to parties that required the filing of proposed noise standards for the Board's **consideration**.¹ The memo provided that if the Board did not accept the Applicant's proposed noise standards, a hearing would be held on June 3.

On April 30, Attorney Goss filed an Objection to the Expansion of the Scope of the Hearing to Include Nonblasting Noise, and a Memorandum With Respect to Standards for Nonblasting Noise. On that date, Attorney Readnour filed a letter concerning noise levels at the quarry. On May 3, Attorney Readnour filed a letter requesting oral argument if the Board decides to reconsider its decision concerning nonoperational noise. On May 4, Attorney Goss filed a Supplemental Legal Memorandum Regarding Request to Reconsider/Response to Filing of Roy and Marilyn Seymour Regarding Audible Noise.

¹This was the procedure suggested by Attorney Goss.

6/10/93
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The Board deliberated on May 6, 1993.

II. DECISION

At the hearing on February 3, the Board made an oral ruling to allow testimony concerning nonblasting noise resulting from the quarry operation. No parties filed for reconsideration of this ruling. Board Rule 31(a) provided that a motion to alter a decision of the Board or district commission must be filed within 30 days from the date of the decision. Attorney Goss's objection to the Board's oral ruling was not filed until April 30, almost three months after the Board's ruling. The Board must therefore deny Attorney Goss's objection as an untimely filed motion to alter **decision.**²

With respect to the proposed noise standards submitted by Attorney Goss, the Board believes that a hearing will be necessary in order to understand the basis for the proposed standards and to determine appropriate standard, based on evidence of the parties. Accordingly, the Board will schedule a hearing on the issue of nonblasting noise at the quarry.

²Attorney Goss contends that the Applicant awaited a written order from the Board with respect to its February 3 oral ruling, and claims it waited to file its objection until such written order was issued. However, the Board did not intend to issue a written order until its final decision in this matter, nor did it state at the February 3 hearing or at any subsequent time that a written order would be issued prior to its final decision. At no time since the February 3 hearing did Attorney Goss request the Board for a written order on its ruling prior to a final decision.

ORDER

1. The **Permittee's** objection to the Board's February 3 ruling is hereby denied as untimely filed.
2. The Board will convene a hearing on nonblasting noise from the quarry.³

Dated at Montpelier, Vermont this 9th day of June, 1993.

ENVIRONMENTAL BOARD

Elizabeth Courtney

Elizabeth Courtney, Chair
Ferdinand Bongartz
Terry **Ehrich**
Samuel Lloyd
William Martinez
Steve E. Wright

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³Before a written decision could be issued, the Board's General Counsel telephoned Attorney Goss and Attorney Readnour to inform them of the Board's ruling and the scheduling of the hearing on June 3, in order that the parties would have sufficient time to prepare their testimony prior to the June 3 date. In response, Attorney Goss filed a motion for interlocutory appeal to the Supreme Court from the Board's February 3 ruling, and a request to suspend the proceedings until an interlocutory appeal is either granted and decided or finally denied by the Supreme court. Parties were notified that the parties that the hearing scheduled for June 3 would be cancelled and, instead, the Board would deliberate on the motion for interlocutory appeal.