

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

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

MEMORANDUM OF DECISION

This decision pertains to a request by Jon Readnour, Esq. on behalf of his clients, Roy and Marilyn Seymour, for the Board to compel the production of certain documents in the possession of J. P. Carrara & Sons, Inc. (the Applicant). For the reasons explained below, the Board has decided to issue a subpoena to the Applicant for the documents requested by the Seymours.

DECISION

This appeal concerns an amendment sought by the Applicant to amend a finding that supports its permit to conduct a quarry operation in Clarendon. The District #1 Environmental Commission issued an amended permit. Both the Applicant and the Seymours appealed this permit to the Board.

The Seymours have asked the Applicant to provide certain documents consisting of blasting logs and other seismographic records in the possession of the Applicant. The Applicant objects to providing any such records, arguing that they are not relevant to this proceeding.

The Board believes that blasting records kept by the Applicant are relevant to this proceeding. In the Board's decision dated April 23, 1992, the Board stated:

Given the fact that vibration and effect have been found up to ten times the distance as had been found under criterion 1, the question arises whether such level of impact would constitute undue air pollution, and if so, what additional conditions for blasting may be appropriate. The Board will therefore remand this matter to the District Commission for such determination and permit amendment proceeding.

Accordingly, the Board will require the Permittee, if it wishes to continue blasting with vibration and effect beyond a 200 foot radius from the charge location, to file an application for an amendment so that the District Commission can make an appropriate determination based upon more accurate evidence of impact.

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This decision guides the Board's consideration of the Applicant's amendment application.

Since appeals to the Board are heard de novo, the Board must now determine what the effects of the blasting will be at the levels that blasting occurs. Without documentation of prior blasting, the Board would not be able to determine at what level certain effects occur. The Board wishes to resolve these issues in this proceeding and needs the records of the blasting that has taken place since this operation was first permitted in order to be able to understand the cause and effect relationship between blasting at specific levels and the effects. Since, apparently, the Applicant has possession of blasting records, provision of these records should not impose an undue burden on the Applicant.

The Board will therefore issue a subpoena to the Applicant for the documents requested in the November 9, 1992 letter of Jon Readnour to James Goss. These records should be submitted to the Board and will then be available for inspection by any party to this proceeding.

The Board notes that under the Administrative Procedure Act, if documents requested by a subpoena issued by an agency are not produced, either the agency or an aggrieved person may bring a proceeding in superior court to compel the production of the documents. 3 V.S.A. §§ 809a, 809b. Should J. P. Carrara & Sons not produce the documents requested, the Environmental Board will institute an action in superior court to compel production of the documents.

ORDER

1. The Board will issue a subpoena to Richard Carrara to produce the following documents which the Board believes are relevant to this proceeding and which are now, or have ever been, in the possession of J. P. Carrara & Sons, Inc.:

All blasting logs, seismographic records, and related documents prepared by J. P. Carrara & Sons, Inc. or by any of its agents or employees in connection with blasting at the quarry that is the subject of this proceeding from February 17, 1988 to the present time.

2. The documents shall be provided to the Environmental Board and will be available for inspection by any parties to this proceeding.

Dated at Montpelier, Vermont this 21st day of December,
1992.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Ferdinand Bongartz
Terry Ehrich
Lixi Fortna
Arthur Gibb
Samuel Lloyd
William Martinez
Steve E. Wright

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