

AA

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

RE: Disposal Specialists, Inc. by Memorandum of
 Douglas Richards, P.C. Decision
 7 Wall Street Application
 P.O. Box 200 #2W0161-1-EB
 Springfield, Vermont 05156-0200

This memorandum pertains to a motion for extension of time filed by Disposal Specialists, Inc.

As a result of the proceedings in Re: Browning-Ferris Industries, Declaratory Ruling #188, the Board issued an order on December 23, 1989. This order pertained to a landfill operated by Browning-Ferris Industries, Inc. (BFI) in Rockingham, Vermont. In relevant part, the order required BFI to obtain a land use permit pursuant to 10 V.S.A. Chapter 151 (Act 250) on or before July 1, 1989 or cease operations at the landfill.

On June 14, Disposal Specialists, Inc. (DSI), a wholly-owned subsidiary of BFI, filed with the Environmental Board a motion for extension of time or, alternatively, motion for interlocutory appeal. This submittal requested that the Board extend the time for obtaining a permit for the landfill and that the Board accept interlocutory appeal on whether the District Commission was allowed to recess hearings on the application pending consideration by the Agency of Natural Resources (ANR) of the landfill's closure and post-closure plan. As alleged by DSI, DSI filed an application for an Act 250 permit for the landfill operation with the District #2 Environmental Commission on January 13, 1989. DSI claims that a number of hearings were held by the District Commission on this application, the most recent of which was held on June 5, 1989. According to DSI, at that hearing the District Commission recessed further hearings on the application pending consideration by ANR of the closure and post-closure plan for the landfill.

On June 22 and 23, the Board's Assistant Executive Officer contacted a number of parties to inform them that the Board would deliberate on the motion for extension of time on June 28. These parties included DSI, ANR, the Town of Rockingham Board of Selectmen and Planning Commission, the Windham Regional Commission, and the Connecticut River Watershed Council. None of these parties objected to such consideration, and several of them, including ANR and the Watershed Council, orally stated that they supported

6/30/89

Disposal Specialists, Inc.
Application #2W0161-1-EB
Memorandum of Decision
Page 2

granting an extension. In addition, DSI informed the Assistant Executive Officer that the closure and post-closure plan was to be submitted to ANR by June 30.

On June 26, DSI submitted a letter indicating that it wished the Board to address its motion for interlocutory appeal regardless of the Board's decision on the extension issue, but that the motions could be considered separately. DSI also stated that ANR would need approximately sixty days to review the closure and post-closure plan. Further, DSI stated that its submission of the plan was to be done initially by June 1, but had been delayed because bad weather forced cancellation of aerial mapping activities required for the plan submittal.

The Board deliberated on the motion for extension of time in Berlin, Vermont on June 28, 1989, and determined to grant an extension to obtain an Act 250 permit until October 1, 1989.

ORDER

On the basis of the foregoing:

1. On or before October 1, 1989, BFI or DSI must obtain an Act 250 permit pursuant to 10 V.S.A. sec. 6081 to authorize continuing its current operation at the landfill.
2. If said permit is not obtained by October 1, 1989, operations at the landfill must cease.
3. No construction at, or expansion of, the landfill may occur at any time until an Act 250 permit has been issued authorizing such construction or expansion.
4. No ash may be disposed of in the landfill without an Act 250 permit authorizing such disposal.
5. Parties are instructed to file memoranda on or before July 18, 1989 on whether the motion for interlocutory appeal meets the standards for interlocutory appeal set out in Board Rule 43 and should therefore be accepted by the Board. Persons may file such memoranda if they have party status in the ongoing District Commission proceedings regarding the landfill. The Board will not hold a hearing on whether the interlocutory appeal motion should be accepted but will decide this issue on the basis of written submissions. If the Board determines to accept the interlocutory appeal, a prehearing **conference will** be held subsequently and at that time the procedure will be decided for addressing the issue raised by DSI concerning the District Commission's authority to recess further hearings pending action by ANR.

Dated at Montpelier, Vermont this 30th day of June, 1989.

ENVIRONMENTAL BOARD



Leonard U. Wilson, Chairman
Ferdinand Bongartz
Lawrence H. Bruce, Jr.
Arthur Gibb
W. Philip Wagner

D:DSI.MEM