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

Re: NJM Realty Limited Partnership
L.U.P. #2W0312-EB (Revocation)

MEMORANDUM OF DECISION

This decision pertains to re-activating revocation proceedings regarding a gravel pit in Newfane which had been stayed. As is explained below, the Environmental Board has decided to re-activate the proceedings.

BACKGROUND

On June 29, 1990, the Board issued a memorandum of decision concerning Land Use Permit #2W0312 (the permit) in which it initiated revocation proceedings on its own motion pursuant to 10 V.S.A. § 6090(c) and Board Rule 38(A). It also stayed those proceedings to allow an opportunity for negotiation and entry into an Assurance of Discontinuance pursuant to 10 V.S.A. § 8007. On September 16, 1991, the Board's Assistant Executive Officer notified parties that the Board would consider re-activated the proceedings because there has been no resolution of this matter. The Board deliberated on September 25, 1991.

DECISION

The Board will re-activate revocation proceedings. There is at least one admitted violation here. Further, over a year has been given for settlement which has not occurred.

The admitted violation involves Condition 3 of the permit, which required the Permittee to create a rehabilitation plan and escrow agreement to guarantee rehabilitation prior to opening the pit. In a June 6, 1989 filing with the Board, the Permittee admitted that it had created neither a plan nor an escrow agreement.

Given that the Permittee has admitted that no rehabilitation plan and escrow agreement were created, the Board does not believe an evidentiary hearing is necessary. Instead, the Board will hold oral argument on the following issues:

1. Whether the Board should revoke the permit because the Permittee failed to create a rehabilitation plan and escrow agreement as required by Condition 3 of the permit.
2. Whether Rule 38(A) requires the Board to give the

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Permittee further opportunity to comply prior to issuance of a final revocation order. Rule 38(A) states:

[T]he board shall give the permit holder reasonable opportunity to correct any violation prior to any order of revocation becoming final.

The Board believes that this requirement may have been fulfilled by the lengthy opportunity given for entry into an Assurance.

For the purpose of adjudicating these issues, the Board will take notice pursuant to 3 V.S.A. § 810 of the following documents:

- a. Land Use Permits #2W0312 and #2W0312-1.
- b. The **Permittee's** answer filed June 6, 1989.
- c. **Proposed Assurance of Discontinuance and cover letter dated August 29, 1991** signed by Anne F. Whiteley, Esq. and addressed to **Tim O'Connor, Esq.**

Parties will be given an opportunity to file written legal memoranda prior to oral argument. Parties are advised that oral argument is legal argument and is not a forum for presentation of witnesses.

ORDER

1. Revocation proceedings are re-activated.
2. The Board will hold oral argument on the issues identified above.
3. Oral argument will likely be scheduled for October **30, 1991**. A notice with time and location will be issued. **Parties are** strongly advised to set this date aside on their calendars.
4. Any written legal memoranda shall be filed on or before October 24, 1991. Parties shall include an original and ten copies and mail one copy to each party on the certificate of service.

Dated at Montpelier, Vermont **this 27th** day of September, 1991.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Ferdinand Bongartz
Lixi Fortna
Arthur Gibb
Samuel Lloyd
Charles F. Storrow
Steve E. Wright

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