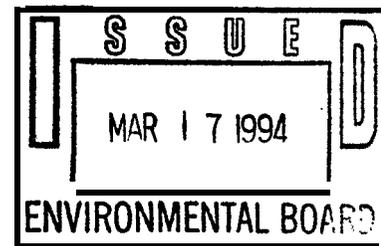


VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151



Re: Twin State Sand and Gravel Co., Inc.
Application #3 W07 11-EB

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

This decision pertains to an appeal of a permit issued to Twin State Sand and Gravel Co., Inc., (the Applicant) for rock quarrying and crushing at the site of a sand and gravel extraction project located off South Main Street in the Towns of Hartford and Hartland. As is explained below, the Environmental Board modifies various findings and conditions issued by the District #3 Commission pertaining to truck trips and hours of operation.

I. SUMMARY OF PROCEEDINGS AND FINDING OF JURISDICTION

On January 19, 1993, the District #3 Environmental Commission issued Land Use Permit #3W0711 to Twin State Sand and Gravel Co., Inc., authorizing the Applicant to continue a sand and gravel extraction operation and to quarry and crush up to 122,500 cubic yards of rock per year for 30 years. A permit is required under 10 V.S.A. § 6081(a) because the proposed project constitutes a substantial change to a pre-existing development. 10 V.S.A. § 6081(b); Board Rules 2(A)(5), 2(G).

On February 17, 1993, the Town of Hartford Planning Commission filed an appeal concerning 10 V.S.A. § 6086(a) (1) (air pollution), (5) (traffic), (7) (municipal services), (8) (aesthetics), (9)(K) (public investments), and (10) (regional plan).

On February 18, 1993, the Applicant filed, with the District Commission, a motion to alter the January 19, 1993 decision. On March 5, the District Commission issued a decision on that motion.

On March 31, 1993, the Hartford Planning Commission activated its appeal filed on February 17. On April 5, the Applicant filed a cross-appeal raising issues under all of the criteria raised by the Hartford Planning Commission, as well as Criteria 4 (soil erosion), 9(D) (earth resources), and 9(E) (extraction of earth resources). The cross-appeal also challenged various permit conditions.

On April 29, 1993, a prehearing conference was convened by Board Counsel Aaron Adler. A number of issues were raised regarding party status and the scope of the Board's review. The South End Alliance, Joe Alvin, Edward and Cathy Willey, Scott Willey, Rose Marie and Roger Henry, Maurice Doubleday, John **Elison**, Clayton **Luce**, Percy R. Knott, and Lee Adams all requested party status. Many of these people had obtained party status before the District Commission and sought to expand such status before the Board. Others did not have party status

3/17/94
Docket #3 W07 11-EB

before the District Commission and sought it before the Board. All such persons were directed to file written petitions for party status by a specified date.

On May 20, 1993, Board Counsel issued a prehearing conference report and order, which is incorporated by reference. On May 24, Rose Marie Henry filed a petition for party status. On May 26, the Hartford Planning Commission filed memoranda regarding the scope of the Board's review. On May 27, the South End Alliance filed a petition for party status and the Applicant filed a memorandum regarding the scope of review. On June 9, the Applicant filed objections to the party status requests submitted by Rose Marie Henry and the South End Alliance and also a responsive memorandum regarding the scope of review. The Board deliberated on June 16 concerning the scope of review and party status.

On July 9, 1993, the Hartford Planning Commission filed an unsigned stipulation for issuance of amended land use permit between the Applicant, the Town of Hartford, the Hartford Planning Commission, the South End Alliance, and others.

On July 21, 1993, Board Chair Elizabeth Courtney issued a memorandum advising parties of the Board's decisions on preliminary issues. That memorandum is incorporated by reference. All persons who had party status before the District Commission retained such status. In addition, the South End Alliance was granted party status on Criteria 5 and 9(K) pursuant to Board Rule 14(B)(1)(b) (materially assisting party) and the Board denied requests it had made for party status on other criteria. Rose Marie Henry's request to expand her party status was granted with respect to Criteria 1, 5 and 9(K) pursuant to 10 V.S.A. § 6085(c) and Rule 14(A)(3) (adjoining landowner) and was denied with respect to Criterion 9(D). All other requests to expand party status made orally at the prehearing conference were denied for failure to file written requests for party status in compliance with the prehearing conference order. The Board further ruled that opposing parties are precluded from arguing or presenting evidence that the Applicant's existing sand and gravel operation is illegal or was abandoned because District Commission ruled that operation constitutes a pre-existing development and no party appealed that ruling.'

'In the July 21 memorandum, the Chair stated that the Board would offer additional explanation of the decisions contained in the memorandum. In view of the fact that, as discussed below, the Board is granting the permit stipulated to by the Applicant and all statutory parties, such further explanation is not necessary.

On July 26, 1993, the Hartford Planning Commission submitted signatures to the stipulation. These signatures included those of all statutory parties, as well as other parties, but did not include all parties.

On July 27, 1993, the Board Chair issued a memorandum concerning the stipulation for amended land use permit. The memorandum is incorporated by reference. The Board had deliberated and concluded that the stipulation did not contain information on which the Board could find that the project meets the Act 250 criteria on appeal. The Board proposed to remand jurisdiction over the matter to the District Commission for consideration of the stipulation and receipt of such evidence as is necessary for evaluation of whether the stipulation meets the criteria.

On August 3, 1993, and August 4, 1993, respectively, the Applicant and the Hartford Planning Commission filed objections to the proposed remand order. On August 6, the Board issued a memorandum sustaining the objections to the remand order.

On August 12, 1993, the Hartford Planning Commission filed a notice of withdrawal of its appeal. On August 17, the Hartford Planning Commission filed a copy of an executed Agreement Regarding Issuance of Land Use Permit dated August 10, 1993, between the Applicant, the Hartford Planning Commission and the Town of Hartford, in which the Applicant agreed to adopt the terms of the July 9 stipulation as its proposal.

On August 18, 1993, the Board Chair issued a preliminary ruling authorizing the withdrawal of the Hartford Planning Commission's appeal and dismissing that appeal subject to the objection of any of the parties. No parties objected to this ruling.

On September 3, 1993, the Applicant filed confirmation that it limited its appeal so as to seek only the finding and permit modifications specified in the Agreement Regarding Issuance of Land Use Permit dated August 10, 1993. No parties objected to this filing.

During September 1993, the Applicant filed prefiled direct and rebuttal testimony and lists of exhibits and witnesses in accordance with Board requirements, and the South End Alliance filed as its prefiled testimony a letter from Roger Dickinson dated December 29, 1992. No other parties filed testimony. On September 29, 1993, the Applicant filed written objections to the admission of the letter from Mr. Dickinson.

The Board convened the hearing on October 6, 1993, in White River Junction. A site visit was taken. The hearings continued on October 7, 1993. The following parties participated in the hearings:

Twin State Sand and Gravel Co., Inc. (the Applicant), by
John D. Hansen, Esq.
The Hartford Planning Commission by Steven F. Stitzel, Esq.
The South End Alliance by William Ladd and Joe Alvin

At the hearing on October 7, 1993, the Board sustained the objection of the Applicant and excluded the letter of Roger Dickinson on the basis that the requirements for prefiling testimony had not been followed. On October 7, the Board recessed the hearing pending the filing of proposed findings by the parties and the Board deliberation and decision.

On October 15, 1993, confirming an oral motion made at the hearing on October 7, the Applicant filed a motion for a stay with respect to Condition #1 of Land Use Permit #3W0711 to the extent that the condition prohibits operation after November 15, 1993.

On October 26, 1993, the Chair issued a memorandum stating that the Board was granting the motion for a stay to the extent that Condition #1 prohibits operation after November 15th of each year upon condition that the last day of operation during 1993 is December 24. The stay was to remain in effect through December 24, 1993. The Chair's October 26 memorandum is incorporated by reference.

On November 8, 1993, the South End Alliance filed a petition for reconsideration and motion to reopen the hearing. On November 10, the Applicant filed a response in opposition to the petition for reconsideration and motion to reopen filed by South End Alliance. On November 17, the Board deliberated on, and voted to deny the South End Alliance's petition for reconsideration and motion to reopen hearing. On November 18, the Chair issued a memorandum to parties stating the November 17 decision.

On December 1, 1993, the Applicant and the Town of Hartford filed proposed findings of fact and conclusions of law, and the Hartford Planning Commission filed a letter. The Board conducted a deliberative session on December 8. On that date, the South End Alliance filed proposed findings of fact and conclusions of law, which the Board determined was not timely filed and therefore did not consider.

During January and February 1994, the actions of the Vermont Senate caused delay in the issuance of this decision. Specifically, on January 19, 1994, the Senate voted not to confirm the Board Chair and members Ferdinand Bongartz and Terry Ehrich, all of whom had participated in this matter.

On January 21, 1994, Governor Howard Dean re-appointed the Chair and members Bongartz and Ehrich. Lengthy confirmation hearings ensued. On February 17, to expedite this matter, the Chair appointed member Steve E. Wright as Acting Chair.

On March 9, 1994, following a review of the arguments and evidence presented, the Board declared the record complete and adjourned the hearing. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included, they are granted; otherwise, they are denied.

II. FINDINGS OF FACT

1. The Applicant seeks a land use permit under 10 V.S.A. Chapter 151 (Act 250) to add a quarry and a crusher to the site of an existing sand and gravel operation on a tract of land consisting of approximately 413 acres in the Towns of Hartland and Hartford, Vermont.
2. The Applicant has presented an erosion control plan. The permanent erosion and sediment control measures and structures designed for this project are detailed on Exhibits #TS-5 and TS-6. The limits of excavation for the quarry are to be maintained at a minimum of 600 feet from the property lines.
3. The limits of excavation for the continuing sand and gravel extraction operation are depicted on Exhibits #TS-2, TS-3, and TS-4. The maximum excavation of the gravel extraction operation will be maintained within a minimum five foot high earth berm constructed by excavating a sloping face at the property line of the eastern edge of the excavation floor. The inner toe of the earth berm will be approximately eight feet inside the property line.
4. All run-off and disturbed sediment within the affected area will be directed to a storm water retention basin. No untreated run-off will be permitted to leave this site. Erosion and sediment control measures will be inspected weekly and after each significant storm event. The Applicant proposes that its portable crusher will be at least 100 feet from any property line.

Twin State Sand and Gravel Co., Inc.

Application #3 W071 1-EB

Findings of Fact, Conclusions of Law, and Order

Page 6

5. On January 19, 1993, the District #3 Commission issued Land Use Permit #3W0711 and supporting findings of fact and conclusions of law (the Permit) pertaining to the proposed project. On March 5, 1993, the District Commission issued a memorandum of decision on a motion to alter the Permit. In the Permit as altered on March 5, 1993, the District Commission included a finding (#4b) and a condition (#3) which prohibit excavation or other construction within 100 feet of the property line. A 100-foot excavation setback limit will not significantly increase the level of protection of off-site locations from erosion and sediment impacts above the level of protection established by the erosion and sediment control plan proposed by the Applicant.
6. The project will not cause unreasonable soil erosion or any dangerous or unhealthy conditions due to any reduction in the capacity of the land to hold water if excavation or other construction is prohibited beyond the limits as depicted on the approved plans.
7. To transport product from the project site, it is necessary to use Connecticut River Road, South Main Street, other highways in the Town of Hartford, and other area highways. There are two categories of truck traffic which use the project site. First, there are private contractors who load directly from the pit and transport product to various locations in the area. Second, there are trucks contracted by the Applicant to transport product to the Twin State plant in West Lebanon, New Hampshire. Most of the truck trips generated by the project site are in the second category. However, in 1990 there were as many as 90 truck trips per day in the first category.
8. Trucks transporting product from the facility to the Twin State plant in West Lebanon follow an established route. This route is in the form of a loop so that loaded trucks use different highways from those used by unloaded returning trucks. The only place where both loaded and unloaded trucks use the same highway is on South Main Street south of Mountain Avenue and Connecticut River Road. By having loaded trucks and unloaded trucks travel along different highways, the impact of the truck traffic generated by this operation is mitigated.
9. Loaded trucks leave the pit and travel along Connecticut River Road and South Main Street through White River Junction, across the White River and Connecticut River, and proceed to the Twin State plant in West Lebanon. The unloaded return trip is via Interstate 89, Route 5, Sykes Avenue, and Mountain Avenue, and then proceeds south along South Main Street and

Connecticut River Road to the sand and gravel pit. This established route has been used on a daily basis for many years and has proven to be the safest and most efficient means to transport materials between these two locations. Only two left-hand turns are involved in this route and these are accomplished under controlled conditions. All of the other turns are **right-**hand turns, The result is that this route avoids conflicting traffic movements and the congestion which could result from such movements. Another benefit of this route is that it avoids having loaded trucks travel up the steeper grades of Mountain Avenue.

10. Truck trip data from 1990 are representative of the annual total and average daily traffic levels generated by the existing sand and gravel operations. In that year, there were 164 days of trucking operations during which there were 13,882 loaded trucks leaving the pit and 13,882 unloaded trucks returning to the pit by the different route, This yields an average of 85 round trips per day in 1990. On Connecticut River Road and South Main Street south of Mountain Avenue, the daily average was 170 trips because that section of the route is used by both outbound loaded and inbound unloaded trucks.
11. There were 158 round trips on the peak day in 1990 (316 one-way trips along South Main Street and Connecticut River Road).
12. Reasonable traffic projections predict that, allowing for normal growth of the sand and gravel operations and the addition of the quarry and crusher at this site, truck traffic will increase to an average of 116 round trips per day (232 one-way trips per day) in five years, and an average of 137 round trips per day (274 one-way trips per day) in ten years. It is further estimated that peak day traffic will increase to 174 round trips per day (348 one-way trips per day) within five years, and 206 round trips per day (412 one-way trips per day) within ten years.
13. Standard policy of the Vermont Agency of Transportation is to use five-year traffic projections in evaluating the impact of a development. In this regard, it is projected that the Applicant's operations will contribute an average of 31 more trucks per day to the public highways in Hartford and the surrounding area (62 more trucks per day on South Main Street and Connecticut River Road). In terms of peak day traffic, it is predicted that the Applicant will contribute an additional 46 trucks per day to these highways (92 more trucks per day on South Main Street southerly of Mountain Avenue and on Connecticut River Road).

14. The existing and projected levels of traffic generated by the Applicant represent only a small percentage of the traffic on the highways used to transport the Applicant's product. All of these highways are adequate to accommodate the projected increases in truck traffic. There was no evidence that the levels of service of any of these highways or intersections along the route used by the Applicant will be adversely affected by the projected increase in truck traffic.

15. Accident data from state and local records show no locations of concern regarding safety. South Main Street south of Mountain Avenue is the only roadway with limited width. In some places it is only 18 feet wide with shoulders ranging from one and a half to four feet. However, there are sidewalks along this section of roadway. Moreover, South Main Street in this location is not a heavily traveled road. It has a speed limit of 25 m.p.h. The Applicant's and other trucks have been using South Main Street on a daily basis for many years without any accidents or problems. The projected increase in traffic from the quarry will not cause any unsafe conditions. No improvements to the highways are necessary to accommodate the projected increase in traffic,

16. Condition #S of the Permit states:

No more than 180 one-way trips (90 round trips) shall be contributed to area highways from the subject land during any one day. The average number of one-way trips shall not exceed 169 trips per day for any two-week period of operation.

17. Condition #12 of the Permit states:

At the end of three years from issuance of this permit, the permittee, if it desires to increase the truck trip rate, shall first submit an amendment application. The application will need to address the results of monitoring traffic safety, noise, air quality from truck fumes, and congestion. The application would need to address the need for cost-sharing in any required highway or signalization improvements necessitated, in part, by project impacts. All other relevant criteria should also be addressed.

18. Condition #1 of the Permit requires that the project be completed as set forth in the findings of fact, In Findings #1g and 5a, the District Commission stated that the proposed project will be operated between April 15th and November 15th for each year.
19. In this appeal, insofar as traffic is concerned, the Applicant seeks only to amend Conditions #5 and 12 and Finding #1g. The Applicant seeks to amend Condition #5 as follows:

5. a. On the peak day, no more than 316 one-way trips (158 round trips) shall be contributed to area highways from the project. The average number of one-way trips per day for the following operation seasons shall not exceed the following limits:

1993 Operation Season	169 one-way trips per day
1994 Operation Season	177 one-way trips per day
1995 Operation Season	184 one-way trips per day

The average number of daily one-way trips shall be calculated on the basis of the total number of one-way trips during the operation season, May 1st (or such later date if road bans are lifted after May 1st) through December 24th.

b. Hauling of materials shall only occur between the hours of 7:00 a.m. and 5:00 p.m., Mondays through Fridays, May 1st (or such later date if road bans are lifted after May 1st) through December 24th.

c. The Permittee shall furnish monthly reports to the Town of Hartford documenting truck trips during the month.

20. The Applicant seeks to amend Condition #12 to read as follows:

12. At the end of the 1995 operating season, December 24, 1995, the Permittee, if it desires to maintain or increase truck traffic levels as stated above, beyond December 24, 1995, it shall apply for an amendment to this permit. If the Permittee fails to apply for such amendment by March 5, 1996, the Permittee shall

be restricted in future operations to levels as specified in the original permit (169 one-way trips average, 180 peak). All parties to this permit are pledged to a continued effort to identify a way to significantly decrease or remove truck traffic on South Main Street/Connecticut River Road that will allow the permittee to continue to remain competitive in its operations. It will be their goal to have agreed upon an acceptable solution by March 5, 1996.

21. The Applicant seeks to amend Finding #1g as follows:

1g. Hours for quarrying, crushing, screening and on-site trucking will be 7:00 a.m. to 5:00 p.m., Mondays through Fridays, with additional hours for on-site trucking and associated stockpile excavation scheduled for 7:00 a.m. to noon on Saturdays. The project will be operated between April 15th and November 15th of each year. Hauling of materials on Town or State roads shall occur only between the hours of 7:00 a.m. to 5:00 p.m., Mondays through Fridays, May 1st (or such later date if road bans are lifted after May 1st) through December 24th of each year.

22. The Applicant's proposed amendments to the Permit will result in a moderate increase in the average and peak days of the Applicant's truck traffic from the limits placed in the Permit by the District Commission. The Applicant's proposed amendments are within the project increases discussed in Findings 12 and 13, above.

III. CONCLUSIONS OF LAW

A. Scope of Review

10 V.S.A. § 6089(a), which governs appeals to the Board, specifies that the Board shall hold a de novo hearing on all findings requested by any party. Board Rule 40(A) provides:

Any party aggrieved by an adverse determination by a district commission may appeal to the board and will be given a de novo hearing on findings, conclusions and permit conditions issued by the district commission.

Two parties filed appeals in this matter. The Hartford Planning Commission's appeal concerned Criteria 1 (air pollution), 5 (traffic), 7 (municipal services), 8 (aesthetics), 9(K) (public investments, and 10 (regional plan). The Applicant's cross-appeal concerned the District Commission's Findings #1g, 4b, 5a, 5c, 5e, 7a, 9(D&E) 3 and 9(K)1, and Conditions #5, 9, 12, 2, 4, 6, 7, 8, 10, 14, 15, 16, 20, 24, 25, 26, and 27.

The Hartford Planning Commission withdrew its appeal and it was dismissed by the Board without objection. Subsequently, the Applicant limited its appeal so as to seek amendment of only Findings #1g, 4b, and Conditions #5, 9 and 12. Consequently, the scope of this appeal concerns Findings #1g (days and duration of trucking) and 4b (limits of excavation), and Conditions #5 and 12 (traffic), and 9 (limits of excavation).

The Applicant's limitation of its appeal resulted from a stipulation among it, the Hartford Planning Commission, the Hartford Board of Selectmen, and several other parties.

B. Soil Erosion

10 V.S.A. § 6086(a)(4) requires an applicant to demonstrate that a proposed project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result. The Applicant has presented a detailed and carefully engineered erosion and sediment control plan to address this criterion with respect to both the quarry, the crusher and the continuing sand and gravel operation on this site.

By this appeal, the Applicant seeks a revision to the District Commission's Finding #4b and Condition #9. This finding and condition prohibit excavation or other construction within 100 feet of the property line.

Based upon the evidence presented, the 100-foot excavation limit does not appear necessary for the project to comply with Criterion 4. The detailed erosion control plans presented by the Applicant are sufficient to control erosion from this project. Consequently, Finding #4b should be considered superseded by the Board's findings, above, and Condition #9 should be revised to state that no excavation or other construction shall occur beyond the limits as depicted on the approved plans.

C. Traffic Safety and Congestion

10 V.S.A. § 6086(a)(5) states that before granting a permit the Board shall find that the development will not cause unreasonable congestion or unsafe conditions with respect to the use of highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

The only means of transportation at issue in this appeal is highways. In this regard, the Applicant seeks to amend the District Commission's Findings #1g and Conditions #5 and 12 to allow for moderate increases in truck traffic above that permitted by the District Commission. Based on the foregoing findings of fact, the Board concludes that if the Applicant's traffic is limited as specified in these amendments, the project will not cause unreasonable congestion or unsafe conditions with respect to the use of highways. Accordingly, Finding #1g should be considered amended as request by the Applicant, and the Board will issue revised Conditions #5 and #12.

The Board notes that its findings and conclusions are based on levels of traffic that are projected to be safe and not to cause congestion. The Board further notes that the Applicant's proposed amendments to the Permit result from a stipulation of many of the parties and include a possible future review, under amended Condition #12, of traffic impacts caused by the project's operation. If the traffic impacts of this same project are reviewed again in an Act 250 proceeding under amended Condition #12, the Board's findings and conclusions should be deemed provisional and should not be viewed as limiting the judgment and discretion of the District Commission (or, on appeal, this Board) in such future proceeding. Other than in such proceeding under amended Condition #12, the Board's findings and conclusions shall be considered final.

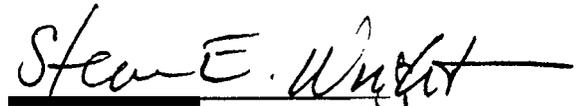
Twin State Sand and Gravel Co., Inc.
Application #3W0711-EB
Findings of Fact, Conclusions of Law, and Order
Page 13

IV. ORDER

Land Use Permit Amendment #3W0711-EB is hereby issued. Jurisdiction is returned to District #3 Environmental Commission.

Dated this 17th day of March, 1994.

ENVIRONMENTAL BOARD



Steve E. Wright, Acting Chair

Lixi Fortna

Arthur Gibb

Samuel Lloyd

William Martinez

Former Chair Elizabeth Courtney and former members Ferdinand Bongartz and Terry Ehrich heard this case and participated in the December 8, 1993 deliberation. They did not participate in this matter after February 22, 1994 because on that date the Vermont Senate voted not to confirm their re-appointment by the Governor on January 21, 1994.

c:\pah\decision\3W0711.dec
twins.dec (awp16)