

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

Re: IBM Corporation  
Land Use Permit #4C0354-2-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision, dated November 12, 1992, pertains to an appeal filed with the Environmental Board by IBM Corporation on June 18, 1992 from a Memorandum of Decision of the Chair of the District #4 Environmental Commission denying IBM's request to waive the application fees. The Board has determined to waive a part of the fee, for the reasons explained below.

I. SUMMARY OF PROCEEDINGS

On February 25, 1992, IBM submitted an application to the District #4 Environmental Commission for the construction of a new wastewater treatment facility to replace the sanitary portion of the existing treatment facility at the IBM plant in Essex Junction. Prior to submitting a completed application, IBM filed a written request with the Chair of the District Commission, pursuant to Board Rule 11(E), seeking waiver of all application fees except for the minimum \$25 fee and costs of publication and recording.

On March 10, 1992, the Chair of the District Commission issued a Memorandum of Decision denying IBM's request and ordering payment of a fee in the amount of \$19,154.01 based on IBM's representation of the project's construction costs. On March 20, IBM filed a motion for interlocutory appeal with the Board. By Memorandum of Decision dated May 4, 1992, the Board denied IBM's motion, but ruled that IBM could pay the fee "under protest" and take an appeal to the Board after issuance of the District Commission's decision on IBM's application, pursuant to Rule 40.

On June 12, 1992, the District Commission issued Land Use Permit Amendment #4C0354-2.<sup>1</sup> IBM filed this appeal with the Environmental Board on June 18, challenging the imposition of the application fee.

In a letter dated July 6, IBM waived the 40-day prehearing requirement of 10 V.S.A. § 6085. No prehearing

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<sup>1</sup>The District Commission issued a revised permit amendment on June 26, 1992 to correct an administrative error.

conference or hearing was scheduled. Instead, a notice of the appeal was published and an opportunity for the public to participate was provided. No parties or interested persons sought to participate. IBM agreed that it would submit prefiled testimony of a representative from IBM, a statement of facts, and a legal memorandum, and that a hearing would be held only if the Board decided to deny IBM's appeal or if the Board wanted an opportunity to question IBM's witnesses.

On August 12, IBM submitted prefiled testimony of John T. Booth, and on August 26 IBM filed a Statement of Facts, Memorandum of Law, and Proposal. The Board deliberated on April 22, 1992 and September 9, 1992. Because the Board was unable to reach a decision, a hearing was scheduled.

A public hearing was convened on October 21, 1992. Participating in the hearing on behalf of IBM were Gregg Wilson, Esq., John Booth, and Jeff Chapman. No other parties or interested persons appeared. After the hearing was recessed, the Board conducted a deliberative session.

## II. ISSUE

Whether to waive all or part of the fee for IBM's replacement sanitary wastewater treatment facility, pursuant to Board Rule 11(E).

## III. FINDINGS OF FACT

The facts below are based upon IBM's Statement of Facts and testimony of John Booth and Jeff Chapman.

1. IBM's project consists of the construction of a new wastewater treatment facility located next to the existing facility at its plant in Essex Junction. The new facility is located on a portion of an existing parking lot and existing roadway. As part of this project, approximately 600 feet of the East Perimeter Road will be located.
2. The new facility will replace an existing sanitary waste treatment facility which was built in 1965 and which needs replacing with newer technology. After the new facility is constructed, the old one will be demolished.
3. The new facility is being constructed adjacent to the existing one. It is being constructed in a different

location from the existing one in order to keep the system operating without interruption.

4. In 1980, IBM received an Act 250 permit for the expansion of the entire waste treatment plant. At that time, the part of the facility that is now being replaced was reviewed by the District Commission.
5. The wastewater treatment process in the new facility and its volume, method, and impacts will be no different from those of the existing facility. There will be no change in the type or volume of discharge being treated.
6. The process for the new plant is a type of activated sludge process called a Sequential Batch Reactor process. The existing sanitary treatment plant uses an extended aeration process which is a type of activated sludge process. The Sequential Batch Reactor and the extended aeration processes are fundamentally the same but with different-modes of operation.
7. No change in the existing Discharge Permit from the Agency of Natural Resources was required.
8. The new facility consists of two buildings, one of which will provide an enclosure around the treatment tanks. The second building will contain tanks for flow equalization and an operations control room.
9. If, in the future, IBM wishes to increase the volume of waste to be treated at this facility or otherwise expand, IBM will apply for an amendment to its land use permit as well as an amendment to its Discharge Permit.
10. At the time IBM filed its application in February 1992, IBM estimated total construction costs of \$4,506,827, for which it paid a fee of \$19,154.01. Since that time, IBM has received bids for the construction that total \$5,650,228. Of these costs, IBM attributes \$2,457,798 to the costs of construction of the building structures, site work, road relocation, and demolition of the existing facility, and \$3,192,430 to the costs of the electrical and mechanical equipment and the connections for the internal process from the inflow to the discharge.
11. IBM is willing to pay a fee of \$10,445.64 based upon the \$2,457,798 actual construction costs for the

building structures, site work, road relocation, and demolition of the existing facility. IBM seeks a refund of the fee it paid for the costs of the electrical and mechanical equipment and the connections for the internal process from the inflow to the discharge. Based upon the revised construction costs, the requested refund amounts to \$8,708.37.

#### IV. CONCLUSIONS OF LAW

A fee is generally required for the processing of Act 250 applications. For projects involving construction, the fee is \$4.25 for each \$1,000 of the first \$15,000 of construction costs. Rule 11(A). All or part of a fee may be waived as set forth in Rule 11(E), which states:

In the event that an application involves a project or project impacts that previously have been reviewed, the applicant may petition the chairman of the district commission to waive all or part of the fee if he or she finds that the impacts of the project have been reviewed in an applicable master permit application, or that the project is not significantly altered from a project previously reviewed, and that there will be substantial savings in the review process due to the scope of review of the previous application.

The Board concludes, based on the unique facts presented by IBM, that the fee for the equipment involved in the treatment process should be waived. The Board reaches this conclusion because it is convinced that the replacement of equipment will not significantly alter the treatment facility that was previously reviewed by the District Commission, and that the limited scope of review will provide substantial savings in the review process. There will be no change in the type and amount of discharge being treated. Although the machinery and mechanics involved in the treatment process will be replaced with newer technology, the type of process will remain the same as will the function of the process. A fee will be required for the new construction that has not previously been reviewed.

Accordingly, IBM will be refunded the difference between the fee already paid (\$19,154.01) and fee for the actual construction costs for new construction (\$10,445.64), which amounts to \$8,708.37.

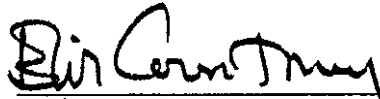
ORDER

1. The Board waives the fee for the costs of the electrical and mechanical equipment and the connections for the internal process.

2. IBM shall be refunded the amount of \$8,708.37.

Dated at Montpelier, Vermont this 16th day of November, 1992.

ENVIRONMENTAL BOARD

  
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