



The Applicant submitted additional evidence and the Commission held further hearings. On April 14, 1986, the Commission issued supplemental findings and denied the permit for Phase I based on negative findings on Criteria 1(A), 1(B), 2, 3, and 4. The Applicants filed a Motion for Reconsideration on April 28, 1986. On June 4 the Commission issued a Memorandum of Decision in which it stated that it would reconsider Criterion 4 on erosion control but would not reconsider other, unspecified issues. The Commission further stated that the decision was final with respect to all criteria except Criterion 4, and set a deadline for parties to file responding memoranda. Within the time allowed, the Applicant filed an objection to the Commission's findings and a request for an opportunity to submit further evidence on those criteria on which the Commission denied the permit. The Commission did not respond to the Applicant's request.

On February 20, 1987, Lisa Barrett filed a motion with the Commission requesting a declaration that the permit denial was a final decision. On May 18 the Commission reopened the hearings and ruled that its decision was not final because the Commission's failure to respond to the Applicant's request of the previous June in effect left the proceedings open. The Commission therefore proceeded to schedule another hearing for the purpose of taking evidence under Criteria 1(A), 1(B), 2, and 3 as well as Criterion 4. It was from this decision of the Commission that the parties appealed to the Board under Board Rule 43.

#### Decision

Board Rule 43 governs appeals to the Board from interlocutory orders or rulings of District Commissions. It is in the Board's discretion whether to accept such an appeal. The factors the Board must consider are whether there is a controlling question of law as to which there is substantial ground for difference of opinion and whether an immediate appeal may materially advance the application process.

The Commission's decision that its June, 1986 decision was not a final order meets the first standard for allowing an interlocutory appeal. The interpretation of the Commission's order and the meaning of "finality" in the context of this case can be considered a controlling question of law. The Board does not believe, however, that an interlocutory appeal would materially advance the application process. If the Board accepted the appeal and, after reviewing the Commission's decision determined that it was a final decision, the consequences would be that parties could appeal from that decision. However, the

Commission had not yet made final findings on Criterion 4. An appeal of a decision that is not a complete decision certainly would not materially advance the application process. Should any party subsequently object to the Commission's final findings on Criterion 4, a separate appeal would have to be taken to the Board. This is clearly an inefficient method of conducting application proceedings. Furthermore, there is nothing in the statute that allows an appeal to the Board from an incomplete decision, other than 10 V.S.A. § 6086(b) that provides for review and appeal of Criteria 9 and 10 only. Therefore, unless the Applicant is proceeding under that section, the Commission must complete its review of an application and issue a decision on all criteria before the decision is considered final for purposes of appeal to the Board.

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ORDER

The motion for an interlocutory appeal is hereby denied.

Dated at Montpelier, Vermont this 9th day of July, 1987.

ENVIRONMENTAL BOARD



Darby Bradley, Chairman

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Lawrence H. Bruce, Jr.

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