

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

RE: Larry and Joan **Westall** by
David M. Sunshine, Esq.
P.O. Box 278
Richmond, VT 05477

MEMORANDUM OF DECISION
Land Use Permit Amendment
#4C0558-2-EB

On March 13, 1987, Larry and Joan **Westall** filed an appeal with the Environmental Board (Board) from the February 13 decision of the District #4 Environmental Commission denying the Applicants' request for reconsideration of Condition #13 of Land Use Permit #4C0558-2. There apparently is no dispute that while the permit was signed on December 22, 1986, it was not mailed from the District office until December 28 and not received by the Applicants' attorney until December 30. The Applicant filed a request for reconsideration on January 12, 1987. The Commission ruled that it had no jurisdiction to entertain the request because it was filed more than the 15 days after the decision as required by Board Rule 31(A).

An Agency has no jurisdiction to hear an appeal filed later than the time limit provided in the statute. See Allen v. Vermont Employment Security Board, 133 Vt. 166 (1975). The statute, 10 V.S.A., Chapter 151, does not provide for reconsiderations of permit conditions. Section 6087 provides that when a permit is denied, an applicant may apply for reconsideration within six months, and must include an affidavit that the deficiencies that were the basis for the denial have been corrected. In this case, the permit was issued and the applicant did not submit an affidavit, so § 6087 does not apply.

The Board has promulgated a rule to allow requests for reconsideration when a permit has been issued but the applicant or some other party believes some part of the decision should be altered. Rule 31(A) states that "[A] party may file within 15 days from the date of the decision such motions as are appropriate with respect to the decision." While the Board is clearly required to follow its own rules, the Board does not believe that the time limits provided in the rules must be applied as rigidly as jurisdictional time limits in the statute. Agencies also have the obligation to be fair to parties and to ensure that they are afforded due process. In this case, where the Commission's decision was mailed six days after it was issued, thereby substantially decreasing the time available to the Applicant to review the decision and file a motion, the Board believes the time in which to file a request to reconsider under Rule 31(A) should be computed from the date that the decision was mailed. January 12 was the fifteenth day from the date the decision was mailed; accordingly, the motion was timely filed. The Board will therefore remand

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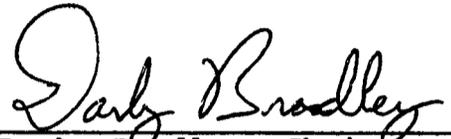
this appeal to the Commission with instructions to accept the motion to reconsider under Rule 31(A) and to proceed accordingly.

ORDER

The appeal is hereby remanded to the Commission to accept the motion to reconsider.

Dated at Montpelier, Vermont this 10th day of April, 1987.

ENVIRONMENTAL BOARD



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