

Mailing address:
State Office Building PO
Montpelier, Vermont 05602



Location:
58 East State Street
Montpelier, Vermont 05602

CURRENT MAILING ADDRESS:

58 East state street
Drawer 20
Montpelier, VT
05620-3201

STATE OF VERMONT
ENVIRONMENTAL BOARD
MONTPELIER, VERMONT 05602
802-828-3309

DATE: December 1, 1995
TO: Parties
FROM: John T. Ewing, Chair *JTEwing*
RE: Appletree Point Associates Limited Partnership
(formerly Fairfield Associates, Ltd.),
Land Use Permit #4C0570-EB (Revised)

This memorandum constitutes the final decision of the Environmental Board regarding a proposal by the Strathmore Homeowners' Association (the Association) to reduce the scope of, and eventually eliminate, the stormwater monitoring program in place at the above-referenced development. The Board approves the proposal as follows:

Pursuant to Condition #29 of Land Use Permit #4C0570-EB (Revised), issued March 29, 1985 (the Permit), the Strathmore Homeowners' Association's (the Association's) proposed reduction and elimination of stormwater monitoring came on for hearing before a panel of the Board on October 6, 1995. The hearing panel issued a proposed decision on October 16, 1995. Opportunity was given to the parties to request oral argument or file written exceptions, or both. No such requests or exceptions were filed. The Board deliberated on November 29, 1995. Members participating in this matter include: myself, John M. Farmer, Arthur Gibb, Marcy Harding, Samuel Lloyd, William Martinez, Rebecca M. Nawrath, and Steve E. Wright.

Condition #29 of the Permit required that a stormwater monitoring program be submitted within 60 days and required implementation of that program upon approval by the Board. The condition states in relevant part:

The Board retains continuing jurisdiction throughout the term of this permit to, either on its own motion or the motion of a party, convene additional hearings to review the performance of the Permittee's stormwater collection and treatment system. The Board retains the authority to impose reasonable additional requirements should it determine that the system is not performing in the manner represented to the Board by the Permittee.

The findings of fact and conclusions of law supporting the Permit indicate that Condition #29 was issued pursuant to 10 V.S.A. § 6086(a)(1) (water pollution) and (8) (aesthetics).

Subsequent to issuance of the Permit, a stormwater monitoring program was submitted to the Board. On March 23, 1987, then-Chair Darby Bradley wrote a letter to Susan Haitsma, a consultant for the Permittee, stating that:

[T]he Board has reviewed the Strathmore water quality monitoring program dated February 4, 1987 prepared by Wagner, Heindel, and Noyes, Inc., and on March 18 voted to approve the plan as being in compliance with Condition #29 of Fairfield Associates' permit.

Because the approval of the original program was issued simply as a written statement from the Chair, the decision on the Association's proposed changes to that program is being issued in a similar manner, without formal findings of fact and conclusions of law.

The Association is the overall homeowners' association for the subject development and is a successor-in-interest to the Permittee. The Association's proposal can be summarized as follows:

1. tri-barrel(WQ-ert)
 - 2) on the following schedule through fall 1996:
 - a. Winter sampling: December, January, or February
 - b. Summer sampling: June, July, or August
 - c. Fall sampling: September, October, or November
2. Discontinue sampling at the Surf Road culvert (WQ-3) and at the von Turkovich swale (WQ-4).
3. Continue complying with stormwater quantity monitoring requirements (such as the photo log in the 1987 monitoring plan) at stations WQ-1 and WQ-2. Discontinue stormwater quantity monitoring at WQ-3 and WQ-4.
4. Send final report to Environmental Board after sampling in fall 1996; then discontinue monitoring altogether unless the Board requests more work.

Based on Exhibits #1 through #9 submitted by the Association at hearing on October 6, 1995, and on the testimony of the witnesses presented by the Association at that hearing, the proposed reduction in stormwater monitoring will not result in undue water pollution or an undue adverse effect on aesthetics under 10 V.S.A. § 6086(a)(1)

and (8) and is approved. This statement is subject to the following:

1. The final report shall be submitted to the Board no later than 60 days following the fall 1996 sampling.
2. The final report shall be submitted to the Board as part of a request under Environmental Board Rule (EBR) 37 for a certificate of compliance that the Association has complied with that portion of Condition #29 relative to stormwater monitoring. The purpose of this requirement is to protect the Association, should it cease monitoring, from subsequent claims of non-compliance with the stormwater monitoring program. As stated in EBR 37, a certificate of compliance "estops" claims of non-compliance unless fraud or misrepresentation is shown
3. Upon receipt of the final report and request as stated in number 2, immediately above, the Board will issue a memorandum giving parties an opportunity to request a hearing. If no hearing is requested, the Board may determine the matter in deliberative session or may set a hearing on its own motion.
4. Similar to any Act 250 permit, this approval shall be subject to revocation under 10 V.S.A. § 6090(c) and EBR 38(A). For the purposes of EBR 38(A)(2), the exhibits and testimony submitted to the Board on October 6, 1995 shall be considered information submitted "in connection with the permit application," the terms of this approval shall be considered among "the approved terms of the application," and the requirement to submit a certificate of compliance shall be considered "an affidavit of compliance with respect to specific conditions of a permit."

The Board reminds parties that it retains jurisdiction under Condition #29 to impose additional requirements and that such jurisdiction will continue even after the proposed discontinuance of stormwater monitoring in fall 1996.

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