



September 29, 2011

Thomas D. Doty, PE
Senior Engineer/Project Manager
DuBois & King, Inc.
28 North Main Street
Randolph Vermont 05060

Re: Jurisdictional Opinion 5-16
Village of Northfield Sewer Line Extensions Along Vermont Routes 12 and 12A
Town of Northfield

Dear Mr. Doty:

This letter constitutes a Jurisdictional Opinion pursuant to Act 250 Rule 3 and is issued in response to your requests dated April 6, 2011 and July 26, 2011. This Jurisdictional Opinion was circulated for comment on August 11, 2011 as a proposed decision and comments were requested by August 29, 2011. No comments were filed in response to the proposed Jurisdictional Opinion. This office provided a preliminary response on April 22, 2011 to your April 6, 2011 inquiry, generally outlining the jurisdictional analysis to be applied. Subsequent to our May 31st telephone conversation, which included John Benson from your office, I retrieved correspondence between our offices in 2001 concerning a similar extension of sewer lines. That correspondence is cited below in the "Facts" portion of this Jurisdictional Opinion and copies are attached. As explained below, the proposed sewer line extensions are "substantial changes" to the pre-existing municipal sewerage system and, accordingly, an application for a land use permit will be required for the review and approval of the District 5 Environmental Commission.

FACTS

1. The Village of Northfield intends to construct extensions of municipal sewer line in the Town of Northfield along Vermont Routes 12 and 12A. The proposed sewer line extensions are depicted on the site plans prepared by DuBois & King, Inc. and filed with this office on April 7, 2011.
2. The proposed project will include the construction of approximately 15,000 feet of 8-inch diameter gravity sewer and associated manholes, a main pump station and two smaller pump stations. The project also includes approximately 4,800 feet of force main, of which about 4,000 feet will be in the same trench as the gravity sewer.
3. The sewer line extensions will eliminate from service approximately 150 septic systems currently in use within the source protection area for the Village of Northfield water supply. The lines will also be accessible to undeveloped tracts along the routes.
4. DuBois & King, Inc. has calculated that the amount of land to be disturbed by the proposed construction of improvements is 8.48 acres.
5. Portions of the proposed project will pass through tracts of land subject to existing land use permits: the Tucker trailer park (5W0288), the Trombley trailer park (5W0222) and Norwich University (5W1490).

6. As explained in a memorandum dated January 10, 2011 from this office to Chuck Goodling at DuBois & King, Inc., and accompanying a jurisdictional Project Review Sheet dated January 8, 2011, the Village of Northfield wastewater treatment facility and associated sewer collection system was constructed in 1966 to treat an average daily flow of 1.63 million gallons per day (MGD) of sewage. *
7. The 2001 submittals did not detail the amount of land involved in the 1966 sewerage infrastructure project, and that calculation was not provided in your July 26, 2011 letter. For purposes of this Jurisdictional Opinion, it is presumed that the “pre-existing” Village of Northfield sewerage infrastructure involved at least 10 acres of land in the construction of improvements.

CONCLUSIONS

Changes to “pre-existing” municipal wastewater treatment systems require land use permits if the changes are “substantial”. Act 250 Rule 2(C)(7) defines “substantial change” as:

Any change in a pre-existing development or subdivision which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. Section 6086(a)(1) through (a)(10).

The provisions of 10 V.S.A. 6081(d) provide exemptions from the “substantial change” jurisdictional analysis for certain categories of improvements to pre-existing municipal projects. 10 V.S.A. 6081(d)(1) states the following pertinent exemption standard:

Municipal, county, or state wastewater treatment facility enhancements that do not expand the capacity of the facility by more than 10 percent, excluding the extension of a wastewater collection system or an expansion of the service-area boundaries of a wastewater treatment facility.

The proposed sewer line extensions along VT Routes 12 and 12A do not qualify for the aforementioned exemption from the “substantial change” analysis, consistent with the last clause of the exemption language. Thus, the Rule 2(A)(7) analysis is necessary.

As was preliminarily indicated in the April 22, 2011 memorandum from this office, the existing Village of Northfield sewerage system would constitute “development” if proposed today because 10 or more acres were involved in the construction of improvements [See Village of Ludlow Declaratory Ruling 212 (1989) and Village of Waterbury Declaratory Ruling 227 (1991)].

* The 2001 jurisdictional Project Review Sheet was issued in response to a proposed project description involving a phosphorus removal upgrade to the treatment plant (with related reduction in plant discharge to 1.0 MGD). That project was to also include extensions of sewer lines into five areas of the town, three of which areas coincide with the areas to be served by the proposed sewer line extensions in the present Jurisdictional Opinion. The 2001 proposed project was to involve approximately 21 acres in construction of improvements and the Project Review Sheet indicated that a land use permit was required for reasons detailed in the January 10, 2001 memorandum from this office.

The question of whether or not the proposed sewer line extensions, which are cognizable physical actions under the Rule, may result in significant adverse impact under any of the criteria of Act 250 requires an affirmative conclusion under at least two criteria when consideration is given to Environmental Board precedents such as Town of Stowe [100035-9-EB: May 22, 1998] in which the potential secondary growth impacts of municipal sewerage infrastructure was found germane under criteria 1(E) (increased nonpoint source pollution) and 9(A) (rates of growth). In addition, the District 5 Environmental Commission and other Commissions have identified potential secondary growth impacts under criterion 9(B) from extensions of municipal sewerage infrastructure. [See, eg, Village of Morrisville 5L0059-4: April 25, 2008; Town of Milton 4C0046-7: November 6, 2003. The proposed Village of Northfield project presents the potential for impacts under criteria 1 (Air-dust), 1(E) (stream crossings), 4 (erosion and runoff), 5 (traffic), 9(A) (growth impacts) and 9(B) (primary agricultural soils).

In conclusion, the proposed Village of Northfield sewerage infrastructure extensions constitute "substantial change" under Rule 2(C)(7) and, therefore, a land use permit will be required.*

Sincerely,

/s/ *Edward Stanak*
Edward Stanak
District Coordinator

* Two additional jurisdictional comments are relevant given the applicable facts. First, the proposed sewer line extensions may be considered as phases of the larger undertaking that was evaluated in 2001 and resulted in the issuance of the unappealed Project Review Sheet dated January 8, 2011. Secondly, even if the proposed project did not require the filing of a substantive application for the review of the District Commission, administratively amended land use permits would be needed to reflect changes to three previously permitted projects cited above in fact #5.

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Natural Resources Board Rule 3(A).

Reconsideration requests are governed by Natural Resources Board Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Ctr. Bldg., National Life Drive, Montpelier, Vermont 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660)

