

Dear Natural Resource Board,

This comment is in regards to Proposed Civil Citation 17EC00359 for Curran - Birge Real Estate Partnership in Springfield. This comment holds that the cited LUP 2S1314 Condition (#12) of the proposed citation is de facto in opposition to federal animal health regulations, and therefore both the citation and the condition should be withdrawn, because the federal rule preempts Act 250 from controlling animal movement. A request by the permit holder to removed condition #12 is currently pending with the local NRB District Commission.

Federal Regulation 9 CFR 309.13 requires that animals delivered to a slaughterhouse not be removed without the inspection and approval by a State or Federal livestock sanitary official. During the instance of the proposed citation, we contacted the Vermont State Veterinarians office. Due to the instance occurring on a Friday afternoon, and involving livestock from 2 states (VT and NY), inspection was deemed logistically infeasible that day or over the weekend. Therefore, the Federal Regulation preempts any condition in Act 250 that otherwise would purport to require removal of animals from the property without inspection by the State Veterinarian. (In re Changes in Physical Structures & Use at Burlington Int'l Airport for F-35A, 2015 VT 41, 117 A.3d 457 (2015)). Accordingly, the animals could not be moved without violating Federal Regulations and thus the Act 250 condition is not enforceable.

Nevertheless, regardless of planning or preventative maintenance programs, that machine breakdowns and other issues arise may arise at some point is statistically inevitability. LUP 2S1314 Condition (#12) places the permit holder in an untenable situation of either needing to violate the permit or violate federal regulations and possibly cause an animal infectious disease issue. Given this, we feel that LUP 2S1314 Condition (#12) should be removed, and this citation should not be issued. Our currently pending permit amendment application request this.

Thank you for considering these comments.

Respectfully submitted,
Arion Thiboumery