

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Ch. 151

Re: Pike Industries, Inc.
and Inez M. Lemieux

Land Use Permit
Application #5R1415-EB

Memorandum of Decision

This matter involves an appeal by Pike Industries, Inc. (Pike) to the Environmental Board (Board) from Findings of Fact, Conclusions of Law, and Order (Decision) issued by the District 5 Environmental Commission (Commission) concerning Land Use Permit Application #5R1415. The Decision denied Pike authorization to operate a stone quarry and aggregate processing facility on a 90± acre tract located in the Town of Williamstown (Project).

Pending before the Board are several party status petitions. For the reasons stated below, the Board grants all such petitions.

I. History

The history of this matter through August 19, 2004, may be found in the Prehearing Conference Report and Order issued on that date.

Following the Prehearing Order, the parties filed memoranda on party status.

The Board deliberated on October 27, 2004.

II. Discussion

A number of non-statutory parties were granted party status on certain criteria by the Commission; those parties retained such status as Pike chose not to appeal these grants. A summary of those grants appear in the Prehearing Order and are not repeated here.

The Commission Decision also denied party status to some non-statutory parties. Pending before the Board are requests for party status filed by those parties.

a. *The ROQIN parties*

The so-called ROQIN parties¹ seek party status as to 10 V.S.A. §§6086(a)(2), (5) and (9)(K).

Criteria 5 and 9(K)

In their memorandum in support of party status, the ROQIN parties assert concern for traffic safety and congestion as a result of the Project and that they use and travel the roads near and around the Project site on a regular basis.² Pike argues that the ROQIN parties do not live close enough to the Project to be impacted.

The question of party status under 10 V.S.A. §§6086(a)(5) and (9)(K) does not necessarily turn solely on where the petitioner resides relative to a proposed project. Rather, the relevant inquiry is whether the petitioner uses the roads that may be impacted by a project on a regular basis. See *Re: Okemo Mountain, Inc., #2S0351-30-EB (2nd Revision), #2S0351-31-EB, and #2S0351-25R-EB, Memorandum of Decision at 11 (May 22, 2001)*. A project may cause a hazardous condition or congestion at a point some distance from the actual project site or the petitioner's home; conversely, a person may live immediately adjacent to a proposed project but never drive the roads that the project will use. Therefore, the location of a petitioner's residence is only one factor that may be relevant to a consideration of party status under Criterion 5, to the extent that it demonstrates that the petitioner's use the roads may be impacted on a regular basis and that the petitioner may thus experience impacts that differ from those experienced by the public in general.

The Board concludes that the ROQIN parties' regular use of the public roads and their proximity to the Project site results in a particularized interest that distinguishes them from the general public.³

¹ The ROQIN parties include Shirley Poulin, Barrett and Lynda Gregoire, Thomas and Cheryl Semprebon, Kevin Burrell, Pierre and Carmen Ducharme, Joe and Sandy Cafarelli, Ray and Lucy Jalbert, Joe and Suzie Willette, Jeff and Karen Blow, Roland and Claudette Riendeau, and Larry and Michelle Lessard. To the extent that these people seek party status as ROQIN parties as to only 10 V.S.A. §6086(a)(2), (5) and (9)(K), the Board will not address each person's claims individually.

² The Board's site visit and the maps provided by the parties reveal that the ROQIN parties all live near the Project site.

³ The Board further notes that the wording in the petitions just barely provides evidence that the ROQIN parties' interests exceed those of the general public. A more substantial showing of specific facts relating to the ROQIN parties' frequency of use of

The Board grants the ROQIN parties Environmental Board Rule 14(A)(6)⁴ party status as to 10 V.S.A. §§6086(a)(5) and (9)(K).

Criterion 2

The ROQIN parties also seek party status as to 10 V.S.A. §6086(a)(2). Ordinarily, whether a project has a sufficient water supply is generally not a criterion on which adjoining or other neighbors obtain party status. However, the ROQIN parties have alleged that the lack of sufficient water at the Project site to meet the needs of the Project may necessitate the use of the area roads to truck water to the Project. Concerns over the use of the roads are more generally covered within a consideration of Criteria 5 and 9(K); however, the Board will grant the ROQIN parties EBR 14(A)(6) party status, insofar as the potential need for water at the Project may have impacts on the local roads.

b. Barrett and Lynda Gregoire: The Gregoires seek party status as to 10 V.S.A. §§6086(a)(1)(air), (1)(G), (3), (8)(aesthetics), (9)(E) and (10).

No party has opposed the grant of party status to the Gregoires as to 10 V.S.A. §§6086(a)(1)(air), (1)(G), (3), (8)(aesthetics), (9)(E), and (10), and the Board finds sufficient support in their petition for party status on these criteria. The Board grants the Gregoires EBR 14(A)(6) party status as to these criteria.

c. Kevin Burrell : The Decision denied Kevin Burrell party status as to 10 V.S.A. §§6086(a)(1)(air), (2), (3), (5), (9)(E), (9)(K) and (10).

No party has opposed the grant of party status to Burrell as to 10 V.S.A. §§6086(a)(1)(air), (3), (9)(E) and (10), and the Board finds sufficient support in his petition for party status on these criteria. The Board grants Burrell EBR 14(A)(6) party status as to these criteria.

d. Jeff and Karen Blow: The Decision denied the Blows party status as to 10 V.S.A. §§6086(a)(1)(air) and (3).

the public roads and whether the point of potential congestion or unsafe condition cannot be avoided in their travels, would have provided the Board with a clearer picture of the particularized interests at issue.

⁴ The Board is aware that some of the ROQIN parties may also enjoy EBR 14(A)(5) party status as to these criteria. However, as there are no legal consequences between a grant of (A)(5) or (A)(6) party status, the Board will simply grant 14(A)(6) status.

The Board concludes that the Blows' party status petition makes allegations sufficient to support their claim for EBR 14(A)(6) party status under 10 V.S.A. §§6086(a)(1)(air), and (3).

e. *Larry and Michelle Lessard*: The Decision denied the Lessards party status as to 10 V.S.A. §§6086(a)(10).

As residents of Williamstown, the site of the Project, the Lessards are entitled to party status under 10 V.S.A. §6086(a)(10)(Town Plan). *Re: John J. Flynn Estate and Keystone Development Corp., #4C0790-2-EB, Memorandum of Decision at 6 -7 (Oct. 8, 2003).*

III. Order

The *Preliminary Issues* are answered in the affirmative, and party status is granted, as set forth above.

Dated at Montpelier, Vermont this 19th day of November 2004.

ENVIRONMENTAL BOARD

*/s/Patricia Moulton Powden*_____
Patricia Moulton Powden, Chair
George Holland
Samuel Lloyd
* Patricia A. Nowak
Alice Olenick
Karen Paul
Richard C. Pembroke, Sr.
Jean Richardson
Christopher D. Roy

* Board Member Nowak, dissenting. I dissent from the Board's decision granting party status as to all petitioners. I believe that the Board has expanded the concept of what is a "particularized interest" beyond its ordinary meaning. I see very little difference between the interests of the petitioners and the general public, see *Re: Okemo Limited Liability Company, et al., #2S0351-24B-EB, Memorandum of Decision at 7 (May 10, 2004)*, and I would therefore deny the petitions.