

STATE OF VERMONT
ENVIRONMENTAL BOARD
10 V.S.A. CHAPTER 151

RE: Henry A. LaGue, Jr. Findings of Fact,
Suzanna LaGue Conclusions of Law, and
R.D. #4 Order
Montpelier, VT 05602 Application #5W0496-EB

This is an appeal from a condition of Land Use Permit #5W0496, issued by the District #5 Environmental Commission on April 8, 1980, authorizing the development and use of a sixty-four unit apartment complex in Berlin, Vermont. The District Commission had on February 1, 1980, denied a permit for this project. The denial was based on the fact that the Berlin sewage treatment plant was operating without any valid Water Resources permits to discharge wastes; and, therefore, because this development would increase the amount of effluent discharged by the plant, the Commission could not find that the project would satisfy all applicable regulations regarding the disposal of wastes. On April 8, 1980, the Commission granted the applicant's Motion for Reconsideration, and issued a permit for the project on the condition that no construction could commence on the project until a Temporary Pollution Permit had been issued for the municipal plant. This decision was based upon the representation of the Department of Water Resources that the plant would be entitled to receive a valid permit by April 30, 1980. On May 2, 1980, when it appeared that the treatment plant's permit would be delayed, the applicant appealed the related condition of the Land Use Permit to this Board.

The Environmental Board held a public hearing on this matter on June 10, 1980, in South Burlington, Vermont, with the following parties present:

The applicant by Henry A. LaGue, Jr. and John Kilmurry, Esq.

State of Vermont Agency of Environmental Conservation by
Stephen Sease, Esq.

Vermont Natural Resources Council and Citizens for Vital
Communities, by Darby Bradley, Esq.

FINDINGS OF FACT

1. The Berlin municipal sewage treatment plant was built in 1966 as a secondary treatment plant with a capacity of 250,000 gal./day. However, because of inadequate design,

it has been unable to provide satisfactory secondary treatment. Between 1971 and 1977, the plant's operation was governed by a Discharge Permit or a Temporary Pollution Permit (TPP) pursuant to state and federal law. Between 1977 and August 1979, the plant was subject to an Enforcement Compliance Schedule Letter (ECSL), authorized by the federal Clean Water Act. This authorization converted to a TPP which was in effect between January 1979 and September 30 1979.. Since October, 1979, the plant has been operating without any state or federal permit. However, the Department of Water Resources now expects the plant to be eligible for a TPP by August, 1980.

2. The Berlin municipal sewage treatment plant is presently treating 198,000 gal./day, approximately 52,000 gallons below its design capacity. The LaGue project would contribute an additional 14,000 gal./day to the plant. Hookup and connection approval for this flow from this project was granted by the Town of Berlin and approved by the State of Vermont on November 28, 1978. At the time of granting the hookup approval, Berlin had a valid ECSL, which converted to a valid TPP. The project flow has been carried as part of the plant's committed reserve since the fall of 1978.
3. This project will not create any undue pollution to the Stevens Branch of the Winooski River, the receiving stream for discharges from the Berlin plant. When flows from the LaGue project are added to the existing plant discharges, the resulting decrement in dissolved oxygen in the stream would be approximately 1/100 mg/liter, a minor decrease in water quality.

CONCLUSIONS OF LAW

1. The addition of the LaGue project to the Berlin treatment plant and the consequent increase in effluent discharged into the Stevens Branch is within the design capacity of the Berlin treatment plant, and will result in a minimal decrease in the water quality of the Stevens Branch. We therefore conclude that this project will not result in undue water pollution.
2. This project was granted hookup permission at a time when the Berlin treatment plant was governed by a valid ECSL that satisfied applicable state regulations governing the disposal of wastes. Pursuant to changes in federal law, the ECSL was converted to a valid TPP. Although that TPP has now lapsed, the state's representatives have indicated that they expect a new TPP to be issued for this plant in the near future. This project has been carried as part of the committed reserve of this plant since November 1978.

Reasonably viewed in those circumstances -- particularly, the shifting requirements of the law, the project's long-standing hookup approval and the project's minimal impact on water quality -- the project satisfies the underlying purposes of criterion 1 of 10 V.S.A. 156086(a). The Board concludes that this project satisfies the applicable state regulations regarding the disposal of wastes even though the municipal treatment plant does not have a valid Discharge Permit or TPP at the present time.

ORDER

Condition #13 of Land Use Permit #5W0496, relating to the Temporary Pollution Permit for the Berlin municipal treatment plant, is hereby declared void and will be removed from the permit, Jurisdiction over this permit and project is returned to the District Environmental Commission.

Dated at Montpelier, Vermont, this 30th day of June, 1980.

ENVIRONMENTAL BOARD

By 
Margaret P. Garland
Chairman

Members voting to issue
this decision:

Ferdinand Bongartz
Dwight E. Burnham, Sr.
Melvin H. Carter
Margaret P. Garland

Members opposed:

Donald B. Sargent
Leonard U. Wilson