

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

RE: **Felix Callan** MEMORANDUM OF DECISION AND
Box 230 - Loomis Hill REVOCATION ORDER
Waterbury Center, Application #5W0550
VT 05677

On March 11, 1988, the Environmental Board received a petition to revoke Land Use Permit #5W0550 (the permit) from Judy Barker and AWARE, a neighborhood association. The permit, issued on June 1, 1979, authorizes Felix **Callan** to extract a maximum of 5,000 yards of gravel per year from his pit on Loomis Hill in Waterbury Center. The Petitioners alleged that the 5,000 yards per year extraction rate has been substantially exceeded.

A prehearing conference was convened on April 19, at which time the parties agreed to attempt to stipulate to the amount of gravel that was extracted in the last few years. On May 10, the parties filed a stipulation of agreed facts, signed by Felix **Callan** and the Petitioners.

The Board received Proposed Sanctions from the Petitioners on June 8. On July 14, the Board held a hearing for the parties to present oral argument on the proposed remedy. The Permittee was represented by Anthony Ciaraldi and the Petitioners were represented by Robert Davison.

FINDINGS OF FACT

1. **Felix Callan** owns a gravel pit on Loomis Hill in Waterbury Center, Vermont. On June 1, 1979, Dr. **Callan** received Land Use Permit #5W0550 authorizing the extraction of a maximum of 5,000 cubic yards of gravel per year.
2. Jerome Salvas d/b/a Salvas Paving has operated the **Callan** Gravel Pit since 1985 under an agreement with the Permittee.
3. During 1985, 12,739 cubic yards of gravel were extracted from the pit.
4. During 1986, 37,686 cubic yards of gravel were extracted from the pit.

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5. During 1987, 23,852.5 cubic yards of gravel were extracted from the pit.
6. The Permittee was paid \$1.00 per yard for the gravel periodically as it was extracted over the 3-year period from 1985 to 1988.
7. The Permittee has applied to the District Commission for an amendment authorizing the extraction of 60,000 yards per year. The Permittee has offered to reduce the request to 20,000 yards per year.

CONCLUSIONS OF LAW

A land use permit issued pursuant to 10 V.S.A. Chapter 151 (Act 250) may be revoked by the Board after a hearing in accordance with Board Rule 38 upon the Board's finding, among other things, that "the applicant or his successor in interest has violated the terms of the permit or any permit condition, the approved terms of the application, or the Rules of the board. . . ." Rule 38(A) (2) (b). Rule 38(A) (3) provides that "[u]nless there is a clear threat of irreparable harm to public health, safety, or general welfare or to the environment by reason of the violation, the board shall give the permit holder reasonable opportunity to correct any violation prior to any order of revocation becoming final." However, "[i]n the case where a permit holder is responsible for repeated violations, the board may revoke a permit without offering an opportunity to correct a violation" Rule 38(A)(3).

In this matter, there is no dispute that the Permittee violated the terms of his permit by exceeding the allowed amount of gravel extraction by 59,277.5 cubic yards of gravel over three years. An evidentiary hearing is not required because in the stipulation which he signed and filed with the Board, the Permittee admitted violating his permit. The Board believes that providing an opportunity to the Permittee to correct the violations is not required because the 5,000 yard extraction limit was repeatedly exceeded over several years.

ORDER

Land Use Permit #5W0550 is hereby revoked.

Dated at Montpelier, Vermont this 20th day of
September, 1988.

ENVIRONMENTAL BOARD

Leonard U. Wilson

Leonard U. Wilson, Chairman
Samuel Lloyd
Jan S. Eastman
Lawrence H. Bruce, Jr.
Ferdinand Bongartz
Arthur Gibb
Elizabeth Courtney
Roger N. Miller

(Participants)

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