

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

RE: William Blachly
RD 1
Marshfield, VT 05658

Findings of Fact, Conclusions of
Law and Order: Land Use Permit
Revocation #5W0781-EB

This decision pertains to proceedings to revoke Land Use Permit #5W0781 ("the Permit") which were initiated by motion of the Environmental Board on July 10, 1985, pursuant to Board Rule (EBR) 38(A) and 10 V.S.A. § 6090. The Permit was issued on September 13, 1984, to William Blachly authorizing the operation of a 100 seat summer theater located in Calais, Vermont.

On July 17, 1985, the Board notified the parties that the proceedings in this matter would be conducted by a member of the Board as administrative hearing officer pursuant to EBR 41 and 3 V.S.A. § 811. No party objected to the use of this procedure.

On July 29, 1985, a prehearing conference was convened by the Board's Executive Officer. The following participated in that conference:

The Permittee, William Blachly;
State of Vermont, Agency of Environmental Conservation
("AEC") by Philip Dodd;
The Calais Planning Commission by Mary Cherington;
Kristina Bielenberg;
John Walker;
Susan Shedd.

A Proposed Decision was issued by the hearing officer on August 23 and was forwarded to all parties of record. No party having requested the opportunity to present oral argument, the Board reviewed the record and adjourned the hearing on September 11. This matter is now ready for decision.

I. ISSUES PRESENTED AND PARTIES' POSITIONS

These proceedings were initiated by the Board based upon information that the Permittee had failed to comply with the requirements of Condition #5 of the Permit which reads as follows:

Prior to any performances in the 1985 or ensuing seasons, the permittee shall design a permanent restroom facility and receive approval from the Department of Water Resources and Environmental Engineering under the Environmental Protection Rules. Such approval must be incorporated by means of an amended land use permit. Any alternative means of waste disposal must likewise receive the Commission's review and approval.

Mr. Blachly does not feel that permanent sewage disposal facilities are necessary for his small, summertime theater. He would prefer to secure approval to use portable toilets at the site. AEC will not approve portable toilets for an operation of this scope based primarily upon concerns for public health. However, AEC would consider disposal methods other than the conventional septic tank-leach field method. Mr. Walker, an adjoining property owner, is interested in seeing that Mr. Blachly complies with all requirements imposed by the Permit. **Kristina Bielenberg** and **Susan Shedd** are performers at the theater and are interested in minimizing the regulatory burdens imposed on **Mr. Blachly**.

At the Prehearing Conference, it was evident that the parties were in substantial agreement concerning the extent to which Mr. Blachly has complied with Condition #5. Furthermore, the parties reached substantial agreement concerning a remedy in this case. Therefore, an evidentiary hearing does not appear necessary. The following findings of fact, conclusions of law and order are based upon agreements reached by the parties during the Conference.

II. FINDINGS OF FACT

1. Condition #5 of the Permit required Mr. Blachly to secure AEC approval for a permanent restroom facility at his theater prior to commencing performances during the 1985 summer season. Mr. Blachly has not, as of this date, secured such approval. Performances were conducted at the theater on all four weekends in July.
2. **Mr. Blachly** sought approval from the Protection Division Regional Engineer to use portable toilets during the 1985 and ensuing seasons. The Regional Engineer denied such approval, concluding that portable toilets would not comply with the Environmental Protection Rules.
3. The Regional Engineer's determination was appealed by Mr. Blachly to the Department of Water Resources and Environmental Engineering and, subsequently, to the Commissioner of the Water Resources Department. In both instances, the Regional Engineer's decision was affirmed.
4. AEC granted Mr. Blachly permission to continue operation of the theater with portable toilets until July 27, 1985, while he was pursuing appellate remedies. However, **Mr. Blachly's** operations terminated on that date and no further performances will be held during 1985.

5. Mr. Blachly is interested in pursuing three alternative remedies:
- a. Appealing the Commissioner's decision to the Water Resources Board in an effort to gain permission to use portable toilets;
 - b. Working with the Regional Engineer to secure approval for a permanent concrete vault privy installation at the site;
 - c. Applying to the District #5 Commission for an amendment to the Permit authorizing additional performances, thereby increasing revenues available to install a permanent sewage disposal system.

III. CONCLUSIONS OF LAW

10 V.S.A. § 6090 provides, in pertinent part:

(b) A permit may be revoked by the board in the event of violation of any conditions attached to any permit or the terms of any application, or violation of any rules of the board.

EBR 38(A) outlines the procedure to be followed in regard to permit revocation. Except in circumstances of repeated permit violation or when health, safety, welfare or environmental threats are presented, Rule 38(A) requires the Board to offer permit violators an opportunity to correct violations prior to permit revocation.

Based upon the above stipulated facts, we conclude that Mr. Blachly has failed to comply with Permit Condition #5 in that no permanent restroom facility had been approved by AEC prior to the commencement of the 1985 summer theater season. However, because performances have terminated for the year, there is no current health, safety, welfare or environmental threat posed by this condition breach. Therefore, it is appropriate under these circumstances to establish an abatement schedule. The schedule we establish requires Mr. Blachly to pursue to fruition one of the three alternative courses described in Finding #5 before opening for the 1986 performance season. Should he fail to adhere to this schedule, the Permit will be revoked effective June 1, 1986.

IV. ORDER

Based upon the above findings of fact and conclusions of law, it is hereby ORDERED that Land Use Permit #5W0781 will be revoked, effective June 1, 1986, unless on or before that date the Permittee accomplishes one of the following:

- 1) Secures a ruling from the Vermont Water Resources Board that portable toilets are a permissible means of waste disposal for the project and secures an amendment to Land Use Permit #5W0781 pursuant to Condition #5 authorizing the use of such facilities.
- 2) Installs a concrete vault privy at the site with the approval of the Regional Engineer; or
- 3) Installs a conventional septic tank-leach filed disposal system or other system approved by the Regional Engineer pursuant to the Environmental Protection Rules.

Prior to June 1, 1986, the Permittee shall certify in writing to this Board that he has complied with the requirements of this Order.

Dated at Montpelier, Vermont this 13th day of September, 1985.

VERMONT ENVIRONMENTAL BOARD

By:


Darby Bradley, Chairman
Ferdinand Bongartz
Dwight E. Burnham, Sr.
Samuel Lloyd
Roger N. Miller
Donald B. Sargent