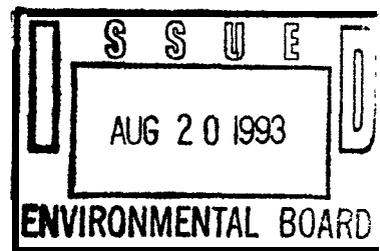


VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151



Re: Cabot Creamery Cooperative, Inc.
Application #5W0870-13-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision pertains to an appeal of a permit amendment approving a program for land application of washwater from a dairy product manufacturing facility located in Cabot. As is explained below, the Environmental Board concludes that, with additional conditions, the land application program complies with the Act 250 criteria on appeal.

I. SUMMARY OF PROCEEDINGS AND FINDING OF JURISDICTION

On June 29, 1992, the District #5 Environmental Commission issued Land Use Permit #5W0870-13 (the Permit), authorizing the Applicant to use a land application program for the disposal of dairy processing wastewater and washwater resulting from the operation of its production plant in the Village of Cabot. Proposed land application sites are located in Marshfield, Hardwick, Walden, and potentially other towns. The Permit also deletes Condition 1 from Land Use Permit #5W0870 (Revised) and Condition 5 from Land Use Permit #5W0870-3A. These conditions had, respectively, required construction of a waste treatment facility by 1991 and prohibited the use of manure pits for the injection of waste byproducts. A permit amendment is required for the land application program pursuant to Board Rule 34.

The Permit was issued without supporting findings of fact and conclusions of law. On July 23, 1992, the District Commission issued findings and conclusions in support of the Permit. On July 28, Richard Scheiber (the Appellant) filed a motion to alter the Permit with the District Commission pursuant to Rule 31(A). On August 27, the District Commission issued a decision on the motion to alter, granting it in part and denying it in part. The District Commission also issued revisions to its findings.

On September 28, 1992, the Appellant filed an appeal with the Board. On October 13, the Applicant filed a cross-appeal.

On November 2, 1992, Board Chair Elizabeth Courtney convened a prehearing conference in Montpelier. On November 10, the Chair issued a prehearing conference report and order. During the remainder of November, parties filed memoranda of law concerning preliminary issues and party status requests_

On December 23, 1992, the Board issued a memorandum of decision on the preliminary issues and party status requests. In response to motions to alter that decision filed by the parties, on January 20, 1993, the Board issued a supplemental memorandum of decision, revising portions of the December 23 decision. The Board incorporates by reference the December 23 decision as revised by the January 20 decision, and the January 20 decision,

During February 1993, the parties filed lists of witnesses and exhibits, prefiled testimony, and written evidentiary objections. The Appellant also filed subpoena requests for several witnesses. Prior to hearing, the Chair agreed to call one of the witnesses (Gordon MacArthur of the Vermont Agency of Transportation) and to defer ruling on the remainder of the subpoena requests until argument on them could be heard by the full Board.

The Board convened hearings on February 24 and 25 and March 10, 1993, with the following parties participating:

The Applicant by William W. Schroeder, Esq. and Peter Kunin, Esq.
The Appellant, pro se
The State of Vermont Agency of Natural Resources (ANR)
by Kurt Janson, Esq.
The Town of Walden by Roger Fox'

During the February 24-25 hearings, after hearing argument from the parties, the Board announced that all but two of the Appellant's remaining subpoena requests were denied because the Board believed that sufficient information would otherwise be entered into the record concerning the issues to which those witnesses would testify. The Board deferred ruling on the last two witnesses, William Livingston and Richard Villamil, because it was not able to determine whether their testimony would be necessary. On February 25, immediately following the hearing, the Board decided that it possessed enough information to render it unnecessary to issue a subpoena to those witnesses. Mr. Livingston testified voluntarily at the March 10 hearing.

'The matter of Walden's party status has been contested. The Board concludes below that Walden is a statutory party entitled to participate as of right.

After taking a site visit and hearing testimony, the Board recessed the matter pending filing of proposed findings of fact and conclusions of law, review of the record, deliberation, and decision.

On March 30, 1993, the Applicant filed a copy of a report it made to the Town of Walden. On April 2, ANR, Walden, the Applicant, the Appellant, and Jessica Miller filed proposed findings of fact and conclusions of law. Walden also filed a separate memorandum on party status and the Applicant also filed a separate "Memorandum on Outstanding Issues." On April 8, the Applicant filed an objection to consideration of Ms. Miller's proposed findings. On April 14, Ms. Miller filed a reply.

The Board deliberated concerning this matter on May 6, 1993. On August 9, the Applicant and ANR filed replies to a letter they had received from the Appellant concerning re-opening the hearings in this case. This letter had not yet been received by the Board. On August 10, the Appellant filed a letter requesting that the hearings be re-opened. On August 12, the Appellant filed a response to the August 9 filings. On August 17, following a review of the evidence and arguments presented in the case, the Board declared the record complete and adjourned. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied. The Appellant's request to re-open is denied.

II. ISSUES

1. Whether, pursuant to 10 V.S.A. §§ 6084(a), 6085(c) and Board Rule 14(A)(1), the Town of Walden is a party by right.
2. Whether, pursuant to 10 V.S.A. § 6089(a) and Rule 40(D), the impacts of the proposed project on Walden town roads are part of this appeal.
3. Whether to reconsider the Board's prior decision concerning the Appellant's request for party status, and therefore request for appeal rights, on 10 V.S.A. § 6086(a)(9)(K) (public investments and facilities).
4. Whether to grant the Applicant's objection to consideration of the proposed findings of fact and conclusions of law filed by Jessica Miller.
5. Whether, as set out in the Board's memorandum of decision dated December 23, 1992 (as revised by its decision of January 20, 1993), the Applicant has met the additional burden of proof imposed by the Board. In connection with this issue, the Board will consider the question raised by the Applicant as to

whether evidence is relevant if it relates to methods of waste disposal other than construction of a waste treatment plant or land application.

6. If the additional burden of proof has been met, whether the Applicant's proposal for land application of waste complies with 10 V.S.A. § 6086(a)(1)(B) (Criterion 1(B) - waste disposal).

7. If the additional burden of proof has been met, whether the Applicant's proposal for land application of waste complies with 10 V.S.A. § 6086(a)(S) (Criterion 5 - traffic). The appeal on Criterion 5 is limited to the allegation that unsafe conditions with respect to the roads will be caused by trucks used for land application.

8. If the additional burden of proof has been met, whether the Applicant's proposal for land application of waste complies with 10 V.S.A. § 6086(a)(7) (Criterion 7 - local governmental services). The appeal on Criterion 7 is limited to impacts on town roads from trucks used for land application.

9. If the additional burden of proof has been met, whether the Applicant's proposal for land application of waste complies with 10 V.S.A. § 6086(a)(8) (Criterion 8 - aesthetics). The appeal on Criterion 8 is limited to impacts on residential homes of noise, shaking, and dust caused by trucks used for land application.

III. FINDINGS OF FACT

1. Cabot Creamery Cooperative, Inc. (the Applicant) owns and operates a manufacturing facility located in the Town of Cabot (the Facility). The Applicant manufactures cheddar cheese, cottage cheese, butter, yogurt, and sour cream. The Applicant is a successor corporation to Cabot Farmers' Cooperative Creamery Company, Inc.
2. On September 15, 1986, the District #5 Commission issued Land Use Permit #5W0870 and supporting findings of fact and conclusions of law. On October 29, 1986, the District Commission issued Land Use Permit #5W0870 (Revised) and supporting decision. These permits pertain to the Facility. The District Commission's findings concerning application #5W0870 began with an introduction which states in relevant part:

On April 25, 1986, an application for an Act 250 permit was filed by Cabot Farmers' Cooperative Creamery Company, Inc., Box 128, Cabot, Vermont for a project generally described as the construction of a new truck bay, a 50,000 gallon waste disposal holding tank, a 30,000 gallon whey storage silo and a 50,000 gallon milk storage silo. These improvements will be made at the Creamery's facility in Cabot, Vermont. Additionally, this application encompasses a review of overall waste disposal practices including a spray irrigation site on the Creamery tract and multiple land application sites throughout the towns of Cabot, Marshfield, Hardwick, Walden, Danville and Greensboro.

3. As part of its review of waste disposal for the Facility, the District Commission considered the construction of a waste treatment plant. In relevant part, the District Commission stated under Finding of Fact I(B) (waste disposal):

The crucial element in the Commission's review of this application is the applicant's consistent statement of intent to proceed with a phased program culminating in the construction of a waste treatment facility which will replace the current methods of disposal herein discussed. (Exhibit 2 - Applicant). The construction and operation of the treatment facility were estimated as being a reality no later than 1991 and, perhaps, as soon as 1988 (Exhibit 20 - Applicant). Pursuant to Environmental Board Rule 2(G) and 2(F), this treatment facility will be subject to the review and approval of this Commission prior to construction.

4. Based on the above-referenced Finding of Fact I(B), Land Use Permit #5W0870 stated in Condition 11:

The uses of the land application sites and the spray irrigation system are authorized until November 1, 1991. By November 1, 1990, the permittee shall fully advise the Commission of the status of its design work for the construction of a permanent waste treatment facility.

5. The District Commission's decision on application #5W0870 states that Richard Scheiber (the Appellant) was granted party status on this

application under Rule 14(B). Within 15 days of the District Commission's decision on the application, the Appellant and another permitted party filed a motion to alter pursuant to Board Rule 31(A). The District Commission subsequently issued Land Use Permit #5W0870 (Revised).

6. The decision supporting the revised permit states that the motion addressed three areas of concern, including in relevant part:

The establishment of November 2, 1991 as a deadline by which time a permanent waste treatment facility will be completed and fully operational. The parties requested that condition #11 in the permit be revised to include this requirement.

7. The District Commission's decision on this portion of the motion was as follows:

The Commission has decided to grant the parties' request regarding the revision to condition #11. The original proceedings were characterized by representations from the permittee that such a treatment facility would be constructed by no later than 1991. This view is clearly reinforced by the permittee's description of the mandate as stated in its October 8th response. The Commission concludes that the revised condition #11 will provide increased clarity and a statement of intent relative to the final and permanent resolution of the waste disposal issues addressed [sic] in our September 15th decision.

8. The District Commission therefore issued Land Use Permit #5W0870 (Revised), which in Condition 1 revised Condition 11 to read as follows:

The uses of the land application sites and the spray irrigation system are authorized until November 1, 1991. By November 1, 1990, the permittee shall fully advise the Commission of the status of its design work for the construction of a permanent waste treatment facility. The permanent waste water treatment facility will be completed and be fully operational by no later than November 2, 1991.

9. The District Commission's decisions regarding application #5W0870 were not appealed to the Board pursuant to 10 V.S.A. § 6089(a).
10. At the time that the District Commission's decisions were issued, the State of Vermont Agency of Natural Resources (ANR) believed that the Applicant would have to treat its waste through use of a wastewater treatment plant in order to meet state regulations. Subsequently, ANR concluded that a properly administered land application program was a preferable alternative to use of a waste treatment plant and would comply with those regulations.
11. On November 8, 1990, the Applicant filed the amendment application which is the subject of this appeal. Part of the application includes a request to delete Condition 11 of Permit #5W0870 as revised by Condition 1 of Permit #5W0870 (Revised). The Applicant does not want to build the required wastewater treatment plant. Instead, the Applicant seeks approval of a program for land application of dairy waste.
12. The Applicant's manufacturing operations generate three types of dairy waste: concentrated whey, polished permeate, and washwater. The whey is taken to a treatment facility in the Town of Georgia. The permeate and the washwater are discharged into the environment. In the winter and spring, the permeate is stored in ponds. In the summer and fall, the permeate is dispersed by a fixed-spray irrigation system onto fields behind the Facility. The only discharge at issue in this appeal is the washwater.
13. The majority of the washwater comes from water used to clean machinery and equipment used in the manufacturing of cheddar cheese. Water also is used to clean up spilled milk and whey, to wash the interior of the Facility, and to clean bulk milk trucks, milk storage tanks, cheesemaking vats, and pipelines. In addition, water is used to clean a cutting and packing plant that is part of the Facility, to clean equipment associated with other (non-cheddar cheese) product lines, and to rinse whey from cottage cheese curd.
14. All of the Facility's washwater is collected in a series of floor drains which drain to a central sump. From the sump, the washwater is pumped to two washwater holding tanks.
15. In addition to washwater, the Applicant drains cottage cheese whey, some buttermilk waste, and condensed steam from boilers into the washwater disposal system.

16. The washwater in the holding tanks is a biodegradable mixture containing milk, cottage cheese whey, cheddar cheese whey, cheese curd, cleaners, and sanitizers. The cleaners and sanitizers meet the standards of the U.S. Food and Drug Administration. The washwater contains no hazardous chemicals, heavy metals, or human waste. It has a BOD (biochemical oxygen demand) content of approximately 10,500 milligrams per liter. By comparison, whey has a BOD content of approximately 40,000 milligrams per liter.
17. In 1992, the Applicant generated an average daily volume of 63,000 gallons of washwater.
18. From the holding tanks, the washwater is loaded into spray trucks. The trucks have tanks on them to hold the washwater. The Applicant currently has four such trucks in regular use and two other trucks available as back-up. The Applicant generates an average of approximately 19 truckloads of washwater per day. The water from the holding tanks is the only dairy waste that the Applicant applies to the land.
19. Once loaded, the spray trucks transport the washwater to farm fields to apply the washwater to the land. The truck drivers spray the washwater onto fields designated as land application sites using a high-powered spray gun mounted on the truck. The spray gun articulates back and forth to provide an even application of water. The soil acts as a kind of filter to absorb BOD so that less BOD reaches groundwater or surface water.
20. The land application sites are located in the Towns of Cabot, Danville, Hardwick, Marshfield, Peacham, East Montpelier, Plainfield, Greensboro, Walden, and Albany. The sites are situated in the drainage basins of the Black, Lamoille, Passumpsic, Stevens, and Winooski Rivers, all of which are Class B waters. The sites within Walden are all within five miles of: (a) the Facility, (b) land application sites in Cabot that are within five miles of the Facility, or (c) other land application sites in Walden that are within five miles of (b).
21. The Applicant's land application program currently includes approximately 178 sites owned by approximately 43 different landowners. The total acreage of the sites is approximately 2,076. The Applicant has assigned a number to each site.

22. On September 12, 1990, pursuant to 10 V.S.A. § 1263, the Department of Environmental Conservation of the ANR issued Indirect Discharge Permit #ID-9-0043 (the IDP) to the Applicant. The JDP authorizes and regulates the discharge of the polished permeate and the washwater. The IDP approves the land application program with conditions, including requirements to sample and test groundwater and surface water and to make biennial reports concerning the results. The IDP has since been amended administratively without substantive change.
23. The IDP limits the Applicant to spray on the approved fields at a rate not exceeding 0.25 inches per day May 15 through September 15 and 0.13 inches per day September 16 through May 14. The IDP limits the amount of washwater disposed of on any given field to no more than 27,152 gallons per acre per year (one inch per acre per year).
24. By letter dated February 26, 1993, the Applicant transmitted its first biennial report to ANR. The testing done during the previous biennium revealed no detectable impacts on the quality of groundwater or surface water.
25. If implemented in accordance with the IDP, the Applicant's land application program will have less impact on surface water quality than would a direct discharge from a properly operating wastewater treatment plant.
26. The IDP requires the Applicant to enter into a written agreement with each landowner authorizing the Applicant to use the sites on his or her property. The Applicant proposes that these agreements include language requiring the landowners to notify the Applicant if the land application site is being used in any way that is incompatible with land application of washwater. For example, septage disposal on a field is incompatible with washwater application.
27. In protecting water quality, the exact spray location within a given field is important. Each of the fields subject to the land application program has been mapped to depict topographical features, defining characteristics, and areas which are suitable for applications by season. The maps also show areas to be avoided, including water supplies, natural surface waters, and residences.

28. The Applicant has a staff of four spray truck drivers, including one driver who serves as a supervisor. The drivers work flexible shifts, depending on road and weather conditions and production volume. The supervisor keeps master records and coordinates schedules, in addition to his driving duties.
29. The Applicant's Environmental Affairs Manager is responsible for managing all aspects of the spray truck program, including managing the trucking operation, finding new farm fields for spray applications, obtaining authorizations to use farm fields, scheduling spray applications, and complying with permit requirements.
30. The drivers of the spray trucks have easy access to the site maps if they wish to consult them before spraying. Drivers can locate the approved portions of the fields through topographic features, physical improvements, and their familiarity with the fields.
31. To ensure that the drivers apply washwater pursuant to the terms of the IDP, the Applicant has adopted a formal written training policy, a formal written job description, a formal written ongoing training policy, and checklists of daily operating procedures. The Applicant has posted each spray truck with a sign telling drivers not to spray if: (a) measured depth to groundwater is less than 36 inches; (b) there is surface ponding or run-off; (c) wind velocity or direction is inconsistent with use of the field; and (d) sludge has been applied to the field.
32. For each load, drivers are required to enter into logbooks kept in the trucks the field name, field number, quantity of washwater disposed of, and time of application.
33. The Environmental Affairs Manager holds weekly meetings with the drivers to discuss spraying activities and to ensure compliance with the IDP. The Manager conducts random observations of spray truck applications, on a weekly basis, to ensure compliance with the IDP requirements. The Manager also checks his observations against the logbooks.
34. During the winter, washwater will sometimes melt through the snow to the soil beneath because it is usually warm when applied. Sometimes the washwater does not melt through the snow. During the spring thaw such washwater, if on a slope, could run off into surface water. The Applicant will use flat sites for spraying during the winter to ensure that, for any

washwater which does not melt down to the soil, such washwater will percolate into the ground during the spring thaw.

35. On cold, windy days during the winter, the spray sometimes turns into a fog or mist. On occasion, this mist has been blown outside of the approved location for spraying. Dairy wastes have been observed entering the Winooski River and Molly's Pond in Cabot.
36. There is no evidence in the record that identifying markers are posted on the spray fields showing that they are in fact the spray fields or that the spray trucks are identified by a number and the Applicant's name.
37. Up to mid-December 1992, the Applicant's spray trucks used six main routes to haul washwater from the Facility to the land application sites. During the period from September 15, 1990 to September 15, 1992, the number of average daily trips, not including return trips, for the spray trucks was distributed over the six routes as follows:

<u>Route</u>	<u>Average Daily Trips</u>
Lower Walden Road	5.9
Danville Hill Road	4.7
Marshfield Road	3.1
Walden Station Road	2.4
Elm Street	2.0
Thistle Hill Road	0.5

38. Truck volumes on the main routes decrease as the distance from the Facility increases because spray trucks turn off on side roads to reach the land application sites.
39. In December 1992, the Town of Walden Board of Selectmen asked the Applicant to divert loaded spray trucks off of the Lower Walden Road (also known as the South Walden Road). The Appellant lives on this road. The Applicant agreed to keep loaded spray trucks off the Lower Walden Road. Except during the spring thaw, empty spray trucks continue to use that road on return from land application sites. As a result of this change, there are some additional truck trips on Walden Station Road.
40. During the period December 20, 1992 to January 30, 1993, after the Applicant implemented Walden's requested change, the number of average

daily trips, not including return trips, for the spray trucks was distributed over the six routes as follows:

<u>Route</u>	<u>Average Daily Trips</u>
Lower Walden Road	0.5
Danville Hill Road	0.6
Marshfield Road	9.6
Walden Station Road	7.2
Elm Street	1.3
Thistle Hill Road	0.8

41. Approximately three times during the last four years, a spray truck has slid off a road. During 1990, on at least three occasions, spray trucks sat in the middle of traveled roads, blocking traffic. On at least two of these occasions, the spray trucks did so while spraying. On another occasion in 1990, a spray truck lost control while in the vicinity of a group of school children taking a supervised walk. The truck came within inches of injuring the children.
42. Other types of commercial trucks, including loaded log trucks, home heating fuel trucks, bulk milk trucks, and trucks carrying the Applicant's products, use the same roads as the spray trucks.
43. The spray trucks constitute approximately two percent of the total daily traffic in the Cabot area and approximately seventeen percent of the total truck traffic in the area.
44. Area roads, including those in the Towns of Cabot and Walden, and particularly the Lower Walden Road: show signs of distress due to the passage of heavy trucks.
45. The Applicant's tax payments to the Town of Cabot are adequate to cover the costs to Cabot resulting from the spray trucks' use of Town roads.
46. There is no evidence in the record that the Applicant makes payments to the Town of Walden for costs resulting from the spray trucks' use of Walden Roads. The Applicant and the Walden Selectboard have agreed that the Applicant will undertake the following actions:

- a. All loaded spray trucks are to be diverted off the Lower Walden Road and will travel on the Walden Heights Road.
 - b. All spray trucks, loaded or unloaded, will be diverted off the Lower Walden Road during the spring thaw.
 - c. Twice a year, the Applicant will supply Walden with a written report, showing how many loaded and unloaded trips are made by the spray trucks on each Walden road.
 - d. The Applicant will make its personnel available to Walden to discuss problems or concerns.
47. The agreement between the Applicant and Walden is reflected in a letter to the Applicant from the Walden Selectboard dated February 20, 1993.
48. The agreement between the Applicant and Walden will assist Walden in maintaining the Lower Walden Road by reducing the number of loaded spray trucks on the road.
49. The Board is not persuaded that the Applicant's spray trucks cause homes to shake when the trucks drive by, or that, given the existing area truck traffic, noise and dust from the spray trucks will be out of context.

IV. CONCLUSIONS OF LAW

1. The Town of Walden is a party by right to this proceeding because many of the spray sites are located in Walden and these sites are part of the development. 10 V.S.A. §§ 6084(a), 6085(c); Board Rule 14(A)(1). See also 10 V.S.A. § 6001(3) and Board Rules 2(A)(2), and 2(F) with respect to involved land.

2. Impacts of the proposed project on Walden town roads are part of this appeal. The Appellant's notice of appeal raises the compliance of the project with 10 V.S.A. § 6086(a)(7) (local governmental services) with respect to the ability of local governments to maintain roads affected by the Applicant's land application program. The notice is general in terms of which local governments are affected and does not exclude impacts on Walden town roads. 10 V.S.A. § 6089(a); Board Rule 40(D); In re Taft Corners Associates, Inc., No. 92-215, slip op. at 8 (April 30, 1993).

3. The Board declines to reconsider its prior decision in this matter concerning the Appellant's party status request under 10 V.S.A. § 6086(a)(9)(K) (public investments and facilities).

4. The Applicant's objection to the proposed findings of Jessica Miller, who was granted party status by the District #5 Commission with respect to 10 V.S.A. § 6086(a)(8) (aesthetics), is granted to the extent Ms. Miller's proposed findings do not pertain to aesthetics.

5. Based on Finding 10, above, the Board concludes that the Applicant has met the additional burden of proof set forth in the Board's decision of December 23, 1992, as altered by its decision of January 20, 1993. Specifically, the Board believes that this application is an outgrowth of a change in regulatory circumstances because ANR has changed its policy and now believes land application is appropriate. In reaching this conclusion, the Board rules that the only relevant alternative to land application in this proceeding is the construction of a waste treatment plant because the Board believes that the "waste treatment facility" contemplated by Permit #5W0870 was and is a waste treatment plant.

6. With respect to the application's compliance with Criterion 1(B) (waste disposal), the Applicant has filed an indirect discharge permit (referred to in the Findings as the IDP). Under Rule 19(E)(1)(e), this permit creates a presumption that the Applicant's land application program complies with Criterion 1(B). Under Rule 19(F), this presumption may be rebutted if a preponderance of the evidence shows that undue water pollution is likely to result, or that technical noncompliance with applicable regulations will result in, or substantially increase the risk of, undue water pollution. Where evidence shows that water pollution may result, the Board may impose conditions to prevent such pollution from becoming undue. Re: University of Vermont, et al., #4C0895-EB, Findings of Fact, Conclusions of Law, and Order at 20 (April 3, 1993), citing In re Chester and Bertha Deni.o, No. 89-214, slip op. at 9 (April 3, 1992) (Board may impose conditions to ensure that adverse effect on aesthetics is not undue).

The evidence demonstrates that the land application has some potential for water pollution. Specifically, on occasion, mist from the spraying of the Applicant's washwater has been blown outside of approved locations for spraying. Dairy wastes have been observed entering the Winooski River and Molly's Pond in Cabot.

The Applicant has a program in place to control the land application process and ensure that the washwater is applied to the land in the appropriate

manner and location. In view of the potential for water pollution that exists despite this program, the Board concludes that additional conditions are needed. The Board will therefore condition the permit to require that: (a) the number of all of the application fields must be posted on the fields such that drivers and the public can find the appropriate locations for spraying; (b) each spray truck must be assigned a number, and (c) each spray truck must be posted, on the rear and on each sides of the tank, with the assigned number and the Applicant's name, the lettering to be at least eight inches high.

The Board believes that numbering and posting the fields will provide increased clarity for the drivers concerning where to spray and therefore will help to minimize the potential for inappropriate spraying. The Board also believes that, in situations concerning observation of a truck that appears to be spraying in an inappropriate location, numbering and posting the fields and the trucks will make it easier to ascertain exactly which truck and driver are involved and therefore will provide an added incentive to ensure compliance. The Board further believes that conditions requiring the Applicant to take these actions are appropriate and commensurate with the identified potential for water pollution.

In Land Use Permit Amendment #5W0870-13, the District #5 Commission included conditions that relate to ensuring that water pollution does not become undue. These are Conditions #5 through #15, #19, and #20. No party has challenged these conditions.

With the conditions discussed above that the Board will issue, with the conditions issued by the District Commission, and based on the foregoing Findings of Fact, the Board concludes that the IDP is not rebutted, and that this application complies with Criterion I(B).

7. With regard to the application's compliance with Criterion 5 (traffic safety), some potential for traffic safety problems exists, because spray trucks sometimes slide off roads, sometimes sit in the middle of roads while spraying, and, on at least one occasion, have nearly collided with school children. The Board therefore believes that a condition requiring the numbering and posting of the trucks, as described above, is needed to provide an added incentive to the drivers of the trucks to drive safely. The Board also believes that such a condition is appropriate and commensurate with the identified potential for traffic safety problems.

In Land Use Permit Amendment #5W0870-13, the District #5 Commission included conditions that relate to traffic. These are Conditions #21 and #22. No party has challenged these conditions.

With the condition discussed above that the Board will issue, with the conditions issued by the District Commission, and based on the foregoing Findings of Fact, the Board concludes that this application complies with Criterion 5.

8. With respect to the compliance of the application with Criterion 7 (local governmental services), the Town of Walden and the Applicant have reached an agreement with respect to the use of Walden roads by the spray trucks. This agreement is reflected in a February 20, 1993 letter from Walden to the Applicant. In addition, the District Commission has issued conditions relating to minimizing the impact of the trucks on the ability of local governments to maintain their roads. These are Conditions #16, #17, #19, and #23. No party has challenged these conditions. The Board notes that Condition #16 refers to a June 2, 1992 agreement between Walden and the Applicant.

With the agreement between the Applicant and Walden reflected in the February 20, 1993 letter, with the conditions issued by the District Commission, and based on the foregoing Findings of Fact, the Board concludes that this application complies with Criterion 7. The Board will alter Condition #16 of the District Commission's permit to conform to the February 20, 1993 letter.

9. With regard to the compliance of the application with Criterion 8 (aesthetics), this appeal is limited to noise, shaking, and dust caused by spray trucks. Based on the foregoing Findings of Fact, the Board concludes that the application complies with Criterion 8.²

²The Board notes that the District Commission issued Condition #18 relating to aesthetics. This condition appears related to the effect of odors. Such effect is not within the scope of the *appeal* to the Board.

V. ORDER

Land Use Permit Amendment #5W0870-13-EB is hereby issued.
Jurisdiction over this matter is returned to the District #5 Commission.

Dated at Montpelier, Vermont this 20th day of August, 1993.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair

Feruinand Bongartz

Terry Ehrich

Lixi Fortna

Samuel Lloyd

William Martinez

Jean Richardson

Steve E. Wright

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