

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

RE: **Stanmar, Inc.**
c/o Stanley Snider
Boston Post Road
Sudbury, MA 01776

MEMORANDUM OF DECISION
Land Use Permit #6L0135-6
Revocation Proceedings

This decision pertains to Land Use Permit Revocation proceedings initiated by the Environmental Board ("the Board") on October 2, 1985, on its own motion based upon a request filed with the Board on October 1, by the District #5 Environmental Commission ("the Commission"). Land Use Permit #6L0135-6 ("the Permit") authorized the construction of a replacement wastewater disposal system consisting of changes to an existing sewage treatment plant, construction of storage and treatment lagoons, and installation of spray irrigation equipment for the secondary treatment of 120,000 GPD of effluent, ancillary to the operation of the Smugglers' Notch ski area on lands owned by **Stanmar, Inc.** and the State of Vermont adjacent to Route 108 in Cambridge, Vermont.

The Board's Chairman convened a prehearing conference in this matter on October 21. At the Permittee's request, the public hearing in this matter was postponed until after December 1. The Board convened its hearing in this matter on December 18, 1985, and the following participated as parties in the hearing:

Permittee **Stanmar, Inc.** by Jonathan Brownell, Esq.;
Cambridge Planning Commission by Bill Ward, Chairman;
Lamoille County Development Council by Anthony Ciaraldi;
Agency of Environmental Conservation ("AEC") by Stephen Sease, Esq.;
Smugglers* Notch Homeowner's Association by Philip J. Fitzpatrick, Esq.

The hearing was recessed on December 18, pending the conduct of a site visit, a review of the record, and deliberation. On January 8, the Board determined the record complete and adjourned the hearing. This matter is now ready for decision. This decision is based upon the record developed at the hearing.

The Commission's October 1 revocation request focused upon two deficiencies on the part of **Stanmar**:

- 1) Exhibit #3 of the Commission's permit proceedings set forth the Applicant's project construction schedule which specified that construction would commence within 24 hours of Act 250 permit issuance; while the Permit was issued August 14, construction did not begin for a period of 24 days.

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- 2) Condition #7 of the Permit requires the submission of a surety agreement to the Commission within 15 days of permit issuance; no such agreement had been submitted as of October 1.

Furthermore, as a result of the Prehearing Conference, an additional area of concern was raised: whether the Permittee would comply with the AEC Certification's requirement that all construction be completed on or before December 1, 1985, the Certification having been incorporated into the Land Use Permit via Condition #4.

At the Prehearing Conference, **Stanmar** representatives stated that the Permittee decided on August 14--in the midst of the Commission's proceedings on #6L0135-6--that the Corporation would not proceed to construct the aerated lagoon component of the project. This decision was made without notice to the Commission which proceeded to issue its permit in reliance upon **Stanmar's** representations that the disposal system approved in the Permit (including the aerated lagoon) would be constructed in accordance with the time schedule submitted by **Stanmar** and admitted as Exhibit #3. However, upon being notified by the Board on October 3, that permit revocation proceedings would be commenced, **Stanmar** immediately mobilized its resources in an effort to complete the entire project as approved by the December 1 deadline.

Based upon our visit to the project site and a review of the testimony and exhibits submitted on December 18, we find that **Stanmar** has substantially completed the project as approved by the Commission. While all components of the aerated lagoon had not been completed by the December 1 deadline (See Exhibit #4, December 5 letter from Delaney to Flanders) and some fine grading, seeding and mulching remains to be completed (See Exhibit #7), AEC has certified the system as having been constructed in accordance with the Certification and as ready for operation (See Exhibit #8). Therefore, subject to the completion of final site work, we conclude that the project has been completed as approved.

Not until December 11, did the Permittee file with the Commission documentation in an effort to fulfill the surety requirements of Condition #7. This submission was a restatement of language previously submitted to the Board on November 13./1/ While **Stanmar** offered no justification for its failure to comply with the deadline set forth in Condition #7, we are confident that the surety issue is now being addressed.

/1/ In a preliminary ruling issued December 6, the Board's Chairman ruled that any proposed surety arrangement must first be submitted to the Commission. No party objected to this ruling and **Stanmar** responded by filing language with the Commission on December 11.

We, therefore, conclude that Stanmar is in substantial compliance with the terms and conditions of Land Use Permit #6L0135-6. However, we further conclude that but for the Board's initiation of Permit Revocation proceedings, Stanmar would not have made the effort to complete the aerated lagoon this fall. We also conclude that deferring construction of the lagoon until September increased the risk that inclement weather would preclude completion of the project this year. While we appreciate the effort made by Stanmar and its contractors in completing this project, we admonish the Permittee to carefully comply with permit terms and conditions in the future and to communicate with the Commission or this Board if unavoidable events impede Stanmar's strict compliance with permit requirements.

Based upon the above findings and conclusions, we determine that revocation of Land Use Permit #6L0135-6/2/ is not appropriate.

This decision is contingent upon the Permittee's compliance with the following condition, in addition to all other terms and conditions of Land Use Permit #6L0135-6:

The Permittee shall file with the District #5 Environmental Commission and with the Environmental Board, copies of the reports/evaluations required by Conditions 30 and 38 of Certification of Compliance #6L0135-6, at the same time said documents are submitted to the Agency of Environmental Conservation.

This case is remanded to the District Commission with the directive that the above condition be incorporated as an amendment to Land Use Permit #6L0135-6 by way of administrative amendment pursuant to EBR 34(D).

Dated at Montpelier, Vermont this 8th day of January, 1986.

VERMONT ENVIRONMENTAL BOARD

By:


Darby Bradley, Chairman

^{12/} Permit #6L0135-5 (Revised), referred to in the Board's hearing notice, is in essence superseded by Permit #6L0135-6.