

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

RE: Barre Granite Quarries, LLC
William and Margaret Dyott
Land Use Permit Application #7C1079-EB (Revised)
Docket #739

CHAIR'S SECOND RULING ON PRELIMINARY STAY

This proceeding concerns Land Use Permit #7C1079 (Revised) ("Revised Permit") pertaining to Barre Granite Quarries, LLC and William and Margaret Dyott ("Permittees") authorizing the Permittees to reactivate and expand abandoned granite quarries located on the Dyott, Padula and LeCours properties in the Town of Sheffield, Vermont ("Project"). The Revised Permit has a maximum granite extraction rate of 400,000 cubic feet per year for sale to market. Additionally, the Revised Permit allows for the annual extraction of 400,000 to 800,000 cubic feet of waste granite with on-site storage in grout piles.

This Chair's Ruling reaffirms and further clarifies the April 13, 2000 Chair Ruling on Preliminary Stay.

I. PRELIMINARY STAY

Pursuant to Environmental Board Rule ("EBR") 42, the Chair may issue a preliminary stay which shall be effective for a period not to exceed 30 days. Any preliminary stay shall be reviewed by the Environmental Board ("Board") within that 30 day period. A party may file a motion to dissolve a preliminary stay within 10 days of issuance.

II. PROCEDURAL SUMMARY

In an April 13, 2000 Chair's Ruling on Preliminary Stay ("April 13th Ruling"), Chair Harding stayed certain activities relating to the Revised Permit.

On April 17, 2000, Permittees filed a letter with the Board setting forth the Permittees' interpretation of Section IV.2.D of the April 13th Ruling. Permittees' interpretation is that the only truck traffic that was stayed under the Chair's ruling relates specifically to granite hauling.

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On April 18, 2000, Alice Sessions filed a letter with the Board arguing her belief that "related trucking activities" addressed by the April 13th Ruling includes truck traffic other than granite hauling trucks.

On April 18, 2000, Residents for Northeast Kingdom Preservation ("RNKP") filed a letter with the Board requesting that the April 13th Ruling be clarified with respect to "related traffic."

On April 18, 2000, Permittees filed a letter with the Board specifying truck traffic, other than granite hauling, which is "necessary for the minimal operation of the quarry."

III. DISCUSSION

This Chair's Ruling reaffirms and further clarifies the April 13th Ruling. The purpose and intent of the April 13th Ruling was:

- ▶ to prevent potential irreversible adverse impacts and damage to the natural environment at the Sheffield quarry during the time the quarry resumes its operations and for a period of 30 days while the Board considers RNKP's Motion for Long-Term Stay, and
- ▶ to alleviate unsafe traffic conditions relating to granite hauling.

The April 13th Ruling was not intended to wholly prevent the quarry from operating.¹ Rather, the Permittees may operate in compliance with the Revised Permit, subject to the limitations set out in the April 13th Ruling and as further clarified below.

A. Clarification of the April 13th Ruling:

The April 13th Ruling orders that:

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The Board wants the quarry fully operating at the time of the scheduled noise demonstration. If operating equipment, particularly that listed in numbers 1-3 in section B. below, is not brought in, the quarry may not be fully operational on May 24, 2000 for the noise demonstration.

1. RNKP's Motion for Preliminary Stay is DENIED to the extent that Permittees can operate the Sheffield quarry, with exception of the limitations set out at number 2 below, only in full compliance with the Revised Permit and Revised Decision. All conditions set forth in the Revised Permit and Revised Decision must be met prior to resuming quarry operations.

Subsection 2.D. specifically addresses granite hauling and the conditions which must be met prior to the hauling of granite. This subsection states:

D. All hauling of granite from the Sheffield quarry, and related trucking activities, is preliminarily stayed for 30 days or until all road improvements have been made and a qualified inspector's report is filed with the Commission verifying that all required improvements have been satisfactorily made as required by Revised Permit condition number 59.^s This inspectors' report must be filed with the Commission and served on all parties. This inspectors' report must also be filed with the Board and be approved by the Board Chair.

Footnote number 5 addresses the posting of speed limits and the potential legal prohibition of posting a limit less than 25 mile per hour. This footnote directs Permittees to evaluate and resolve this issue prior to hauling granite.

Condition number 59 of the Revised Permit states: "[t]he regular hauling of granite from the quarry may not proceed until all road improvements have been made..." Condition number 55 of the Revised Permit states "[a]ll involved roads shall be posted for trucks to a limit of 20 mph. (subject to considerations in permit findings under criterion 5.)..." The Commission's Findings of Fact and Conclusions of Law under Criterion 5, at page 27, states that "...we will require that the applicant work with Glover and Sheffield to have all impacted roads posted for a maximum speed of 20 mph. This effort notwithstanding, we will require that the applicant include language in every trucking contract clearly stating that a condition of the contract is that any truck traveling between Route 16 and the quarry access not travel at a speed in excess of 20 mph."

Reading these provisions together, it is clear that truck traffic speed is to be limited. There are three means to limit the speed of quarry related truck traffic:

1. the roadways can be posted with speed limit signs.
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2. conditions limiting speed can be included in trucking contracts, and
3. orders can require speed limits.

First, the April 13th Ruling recognizes legal and practical problems with posting speed limits at 20 miles per hour in this case. Second, the Revised Permit requires conditions limiting the speed of trucks in the trucking contracts. Third, this Chair's ruling orders, at Section IV below, a maximum speed limit for trucks of 20 miles per hour. The Chair's order is the strongest means of limiting truck speed because violations of the order are subject to enforcement measures pursuant to 10 V.S.A. Chapters 201 and 211.

Accordingly, the Chair hereby suspends condition number 55 of the Revised Permit and will allow truck traffic as specified in the April 13th Ruling and this ruling without the posting of speed limits. The Chair requires, however, that Permittees address this speed limit posting issue and advise the Board of the Permittees' efforts and abilities to comply with condition number 55 of the Revised Permit by Thursday, May 4, 2000 at 12:00 noon so that the Board may consider this issue during its deliberations on the Motion for Long-Term Stay.

B. Clarification of Truck Traffic and Stayed Activities:

The April 13th Ruling prohibits the hauling of granite and trucking activities specifically relating to the hauling of granite. In its April 18, 2000 letter, Permittees set forth the truck traffic, other than granite hauling, "necessary for the minimal operations of the quarry." This "other" truck traffic includes:

1. A Flatbed FordLTL9000 transporting an Excavator 320 (1 trip),
2. A Flatbed FordLTL9000 transporting a Compressor (1 trip),
3. A Flatbed FordLTL9000 transporting a container of machinery and parts (1 trip), and
4. Service and delivery vehicles including, but not limited to, a fuel truck for diesel (weekly); a blasting powder delivery truck (once every 3 weeks); a municipal waste disposal truck (once every 3 weeks); and a sanitary pump out truck (once per month).

Permittee also states that emergency vehicle trips and service vehicle trips, potentially required in the event of equipment failure, may be necessary.

The Chair concludes that the truck traffic identified in numbers 1 through 3 of Permittees' April 18, 2000 letter represent safety concerns similar to granite hauling

traffic. These truck trips are, however, finite in number and duration and, according to Permittees, necessary for the minimal operations of the quarry. Accordingly, upon balancing of the hardships, the Chair does not stay these truck trips, but does require specific conditions, as set forth in Section IV Order below, during their occurrence to alleviate safety concerns.

The Chair concludes that the truck traffic identified in number 4 of Permittees' April 18, 2000 letter², as conditioned below, and emergency vehicle traffic does not represent safety concerns as this traffic is similar in nature to the truck traffic on the subject roads which occurred prior to the presence of the quarry. Accordingly, the Chair does not stay this truck traffic.

Any and all other truck traffic, including service vehicle traffic, is stayed.

IV. ORDER

1. Chair Harding hereby clarifies that the reference to "related trucking activity" in Section IV.2.D. of the April 13th Ruling includes only trucks specifically relating to granite hauling.

2. The following additional truck traffic may occur, as conditioned below, during the period of the Preliminary Stay:

1. One Flatbed FordLTL9000 transporting an Excavator 320 (1 trip),
2. One Flatbed FordLTL9000 transporting a Compressor (1 trip),
3. One Flatbed FordLTL9000 transporting a container of machinery and parts (1 trip), and
4. Service and delivery vehicles limited to one fuel truck for diesel (once per week); one blasting powder delivery truck (once every 3 weeks); one municipal waste disposal truck (once every 3 weeks); and one sanitary pump out truck (once per month).

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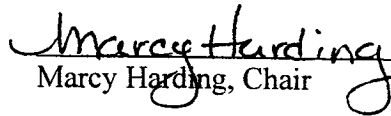
Permittees' letter is somewhat vague with respect to the number of truck trips. This ruling specifically identifies in Section IV.2.4. below the number of truck trips which are permitted during the period of the preliminary stay.

Conditions:

- A. The truck trips in 1-4 above, must be specifically approved by the Glover Road Foreman and the Sheffield Road Foreman.
 - B. The truck trips identified by numbers 1 - 3 above must be individually escorted into and out of the quarry, between the quarry and Route 16. The escort vehicle should travel in front of the truck at a distance ensuring the safe warning to oncoming traffic. The escort vehicle must use its hazard lights or other warning lights.
 - C. The trucks identified in 1 - 4 above and all escort vehicles must not exceed a speed of 20 miles per hour.
3. Emergency vehicle traffic is not stayed or conditioned.
 4. Any and all other truck traffic, including truck traffic relating to service needs, is stayed. Should Permittees need additional truck trips, Permittees should file a petition with the Board, including service on all parties, for specific relief from the Preliminary Stay.
 5. Permittees shall advise the Board by **Thursday, May 4, 2000 at 12:00 noon** of their efforts and abilities to comply with Revised Permit Condition number 55 relating to the posting of speed limits on involved roads.
 6. Permittee shall provide the Board, and serve on all parties, an up-to-date truck log by **Thursday, May 4, 2000 at 12:00 noon**.

Dated at Montpelier, Vermont this 21st day of April, 2000.

ENVIRONMENTAL BOARD


Marcy Harding, Chair