

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

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

**CHAIR'S PRELIMINARY RULING**

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 Preliminary Ruling postpones the Noise Demonstration and the site visit to the Page Brook Cedar Swamp scheduled for Wednesday, May 24, 2000 and reschedules the demonstration and site visit for Tuesday, June 6, 2000 with a rain date of Wednesday, June 7, 2000.

**I. PROCEDURAL SUMMARY**

On June 23, 1999, the District #7 Environmental Commission ("Commission") issued Land Use Permit #7C1079 ("Permit") and Findings of Fact and Conclusions of Law and Order ("Decision") authorizing the Project.

On July 23, 1999, RNKP filed a Motion to Alter with the Commission.

On August 9, 1999, in reaction to RNKP's Motion to Alter, the Commission issued the Revised Permit, Revised Findings of Fact and Conclusions of Law and Order ("Revised Decision") and Memorandum of Decision on RNKP's Motion to Alter.

On August 12, 1999, RNKP filed a Notice of Appeal to the Board from the Commission's Revised Decision.

On September 20, 1999, Chair Harding issued a Prehearing Conference Report and Order.

On January 19 and 26, 2000, the Environmental Board convened a public hearing in this matter. Due to the extraordinary number of witnesses, the Board was unable to finish taking testimony from all witnesses.

During the hearing RNKP offered demonstrative evidence relating to noise issues in this matter. Barre Granite Quarries, LLC requested, as an alternative to RNKP's videotape demonstration, that the Board conduct a third site visit to listen to the actual quarry operations while physically located at the quarry and at neighboring properties.

In a February 4, 2000 Recess Order, pursuant to Environmental Board Rule 20, the Board recessed this proceeding and ordered that all parties submit dates for which the party is NOT available for the reconvened hearing, that the deadline for filing supplemental findings of fact and conclusions of law be postponed to a future date, and that the parties submit memoranda expressing their positions on noise demonstrations.

On February 11, 2000, Permittee filed its Response to the Recess Order. Permittee's response proposes procedures for conducting noise demonstrations.

On February 14, 2000, RNKP filed its response to the Recess Order. RNKP's response includes its objection to noise demonstrations.

No other parties responded to the Recess Order.

In a February 22, 2000 Memorandum of Decision, the Board set out its proposed Noise Demonstration Protocol.

On April 28, 2000, ANR filed a letter requesting that the Board accept into evidence: a description of Page Brook Cedar Swamp; an excerpt from "Northern White Cedar-Dominated Swamps and Red Maple-Northern White Cedar Swamps of Vermont: Some Sites of Ecological Significance,"; "Northern White Cedar-Dominated Swamps of Vermont;" and an affidavit from Eric Sorenson.

On March 10, 2000, Permittee filed its response to the Noise Demonstration Protocol.

Also on March 10, 2000, Galway Kinnell filed his response to the Noise Demonstration Protocol.

Also on March 10, 2000, RNKP filed its response to the Noise Demonstration Protocol and proposed different noise demonstration protocol.

On March 22, 2000, Permittee filed its response to RNKP's proposed noise demonstration protocol.

On March 29, 2000, the Board deliberated on the parties' responses and filings concerning the proposed Noise Demonstration Protocol.

In a May 5, 2000 Memorandum of Decision, the Board set forth the final Noise Demonstration Protocol.

On May 10 and 17, 2000, the Board deliberated on ANR's request.

On May 16, 2000, RNKP filed a Motion to Alter the Noise Demonstration Protocol.

On May 17, 2000, the Board deliberated on RNKP's Motion to Alter.

On May 18, 2000, Permittees filed in opposition to ANR's request.<sup>1</sup>

In a May 18, 2000 Memorandum of Decision, the Board denied RNKP's Motion to Alter.

In a May 18, 2000 Memorandum of Decision, the Board granted, with conditions, ANR's request.

On May 23, 2000, Permittees filed a petition to continue the noise demonstration and the site visit to the Page Brook Cedar Swamp. Permittees state that RNKP's legal counsel approved the form and content of the petition.

On May 23, 2000, Anthony and Alice Sessions and Nova Kim communicated to the Board's legal counsel their concerns with rescheduling the noise demonstration and the hearing relating to the Page Brook Cedar Swamp.

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ANR filed and served its request on April 28, 2000. Environmental Board Rule 12(F) provides that "all memoranda in reply to a motion shall be filed within fifteen days of service of the motion." Fifteen days from April 28, 2000 is May 13, 2000 which was a Saturday, and therefore, Permittees had until May 15, 2000 to file their reply to ANR's request. Permittees filed on May 18, 2000. Thus, Permittees reply is out of time and was not considered by the Board during its deliberations on ANR's request.

## II. PRELIMINARY RULING

Pursuant to EBR 16(B), the Chair may make preliminary rulings as to party status and other procedural matters as are necessary to expedite and facilitate the hearing process. Any such ruling may be objected to by any interested party and the matter then resolved by the Board.

## III. DISCUSSION

Permittees petition to continue the May 24, 2000 noise demonstration due to the substantial threat of rain forecasted for that date. Permittees state that it is not possible to conduct and monitor the noise demonstration because the extremely sensitive noise equipment cannot be protected from the weather and would be damaged if used in rainy conditions. Furthermore, Permittees state that rain will significantly distort the equipment's ability to read background noise and noise emanating from the quarry.

Permittees also request that the Page Brook Cedar Swamp visit be similarly continued given the costs and expense of conducting two separate site visits.

Permittees state that RNKP's legal counsel agrees with the form and content of their petition.

## IV. ORDER

1. Permittees' petition to continue the noise demonstration is GRANTED.
2. Permittees' petition to continue the Page Brook Cedar Swamp site visit is GRANTED.
3. The Board orders Permittees to conduct the noise demonstration on June 6, 2000 with a rain date for the demonstration of June 7, 2000.
4. The Board's May 5, 2000 Memorandum of Decision, relating to the noise demonstration, is revised by replacing "**Wednesday, May 24, 2000**" with "**Tuesday, June 6, 2000 (rain date: Wednesday, June 7, 2000).**" The remainder of the Board's memorandum remains unchanged.
5. The Board's May 18, 2000 Memorandum of Decision, relating to the Page Brook Cedar Swamp, is revised by amending Section III. Order as follows:

C. On **Tuesday, June 6, 2000 (rain date Wednesday June 7, 2000)**, at **7:00 a.m.**, the Board will conduct a site visit to the Page Brook Swamp. The Board will convene at the Sheffield Quarry at 7:00 a.m. and walk to the swamp.<sup>2</sup> The Board will return to the quarry for the commencement of the Noise Demonstration Scheduled for 8:00 a.m. the same day.

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E. The Board will convene a 4th hearing day in this matter on **Tuesday June 6, 2000 (rain date: Wednesday, June 7, 2000) at 1:30 p.m.** at the **Wheelock Town Hall, Route #122, Wheelock, Vermont**. The participants are hereby informed that this hearing day shall proceed as follows:

- i. 30 minutes for the Permittees' expert's testimony, and the testimony of any party in support of Permittees, relating to the noise demonstration.
- ii. 30 minutes for RNKP's expert's testimony, and the testimony of any party in opposition to Permittees, relating to the noise demonstration.
- iii. 30 minutes for ANR's witness Eric Sorenson and for cross-examination by all parties and questions by the Board;
- iv. 20 minutes for the witnesses of any party appearing in support of ANR's witness and for cross-examination by all parties and questions by the Board;
- v. 30 minutes for Permittees' witnesses testifying with regard to ANR's filings relating to Page Brook Swamp and for cross-examination by all parties and questions by the Board;

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<sup>2</sup> Appropriate dress is suggested.

vi. 20 minutes for the witnesses of any party appearing in opposition to ANR's witness and for cross-examination by all parties and questions by the Board;

vii. 10 minutes for the witnesses of Permittees and parties in support of Permittees testifying with regard to the maps referenced in the Regional Plan for the Northeast Kingdom;

viii. 10 minutes for the witnesses of parties in opposition to Permittees testifying with regard to the maps referenced in the Regional Plan for the Northeast Kingdom; and

ix. The hearing will recess at 4:30 p.m.

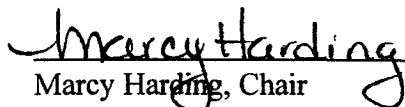
F. ANR must produce Eric Sorenson to accompany the Board during its June 6, 2000 (or rain date of June 7, 2000) site visit to Page Brook Swamp and for cross-examination by all parties and questioning by the Board during the hearing on June 6, 2000 (or rain date of June 7, 2000).

The remainder of the Board's memorandum remains unchanged.

6. This Chair's Preliminary Ruling is issued pursuant to EBR 16(B) and is binding on all parties unless a written objection to it, in whole or in part, is filed on or before **Thursday, June 1, 2000, at 4:30 P.M.**

Dated at Montpelier, Vermont this 23rd day of May, 2000.

ENVIRONMENTAL BOARD

  
Marcy Harding, Chair