

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

**RE:** Green Mountain Heat Products, Inc.  
Manchester Center, VT 05255

Reinstatement of Land Use Permit #8B0208-1-EB  
Findings of Fact, Conclusions of Law and Order

This decision pertains to a petition to Reinstate Land Use Permit #8B0208-1-EB ("the Permit") filed with the Environmental Board ("the Board") on July 2, 1984, by Green Mountain Heat Products, Inc. Prior to its revocation, the Permit authorized the construction and use of an industrial building adjacent to the East Manchester Road in Manchester, Vermont. On October 17, 1984, the Board notified the parties of its intent to designate its Chairman to act as administrative hearing officer in this matter pursuant to Board Rule 41 and 3 V.S.A. §811. Having received no objection, a public hearing was convened on October 30, 1984, in Manchester, Vermont, with Margaret P. Garland serving as hearing officer.

The following participated as parties at the hearing:

Green Mountain Heat Products, Inc. by Janet Ward:  
Mary West for herself and her son William West.

The hearing was recessed on October 30, 1984, pending a view of the site, preparation of a proposal for decision, a review of the record, and deliberation by the full Board. A view of the site was conducted by the Chairman immediately after the hearing. No party having requested the opportunity to present oral argument to the Board, the Board determined the record complete on November 28, 1984. This matter is now ready for decision. The following findings of fact and conclusions of law are based upon the record developed at the hearing.

I. PROCEDURAL HISTORY

The following is a summary of the procedural history of this matter.

June 29, 1979: Land Use Permit #8B0208 was issued by the District #8 Environmental Commission ("the Commission"). Permit Condition #5 pertained to landscaping.

July 5, 1979: An appeal of the permit decision was filed by neighboring landowners Koch, Wilcox and West.

September 19, 1979: The Board issued amended Land Use Permit #8B0208-EB, based upon a stipulation of the parties, adding Condition #6 pertaining to landscaping.

October 13, 1981: A Petition to Revoke permit was filed with the Board by neighbor Koch.

March 9, 1982: The Board issued an order revoking Land Use Permit #8B0208-EB, subject to a compliance schedule established by the Board and based upon a stipulation of the parties.

April 18, 1984: The Board issued an order confirming the revocation of permit #8B0208-EB by virtue of the Permittee's failure to comply with the stipulated schedule.

July 2, 1984: Green Mountain Heat requested reinstatement of its permit.

## II. FINDINGS OF FACT

1. The Land Use Permit Revocation Order issued by the Board on March 9, 1982 was based upon the Permittee's failure to comply with landscaping requirements imposed in the original and amended land use permit issued to Green Mountain Heat Products. The Revocation Order required remedial steps in three areas:

- a) screening parallel to the East Manchester Road consisting of 15 fir trees at least 8' in height together with 15 seedlings (Condition #6);
- b) screening of the building's south and west sides with two staggered rows of conifers 5' to 6' tall on 8' centers (Revocation Order, paragraph 2);
- c) landscaping along the Permittee's northerly property line through the planting of 40 fir trees, 8' to 10' in height along the easterly-most 150' section of the line and 3' to 4' in height along the next 250' of the property line (Condition #5).

Separate provisions for replacement of dead trees were set forth for each area.

2. As of April 26, 1984, substantial additional planting remained to be done to achieve compliance with the requirements of the revocation order. See Exhibit #5. Between that date and the date of the hearing in this matter, substantial additional planting has been accomplished. The premises have been occupied by Wallace Computer since July, 1984.

3. Based upon a view of the site we find:

- a) the screening parallel to the East Manchester Road has been completed in conformance with the Revocation Order;
- b) building plantings have been installed as required, with two exceptions: first, no planting has been done in an area near an electrical service entrance on advice of Central

Vermont Public Service Corporation that such planting would pose a safety hazard; second, at least two of the trees are dead or dying.

- c) five of the trees along the northerly property line have died.
4. We, therefore, find that Petitioner has complied with the requirements of Condition #6 of Permit #8B0208-EB. We believe that it would be unreasonable to require the planting of trees adjacent to the building in an area known to contain electrical conduit. We, therefore, find that upon replacement of the two dead trees adjacent to the building's west side, Petitioner will be in compliance with paragraph #2 of the Compliance Schedule set forth in the Revocation Order. \*Petitioner has failed to comply with Condition #5 of Permit #8B0208-EB in that five dead trees have not been replaced.

### III. CONCLUSIONS OF LAW

Based upon the above findings, we conclude that Petitioner has now substantially complied with the requirements of our March 9, 1982 revocation order. However, full compliance will not be achieved until dead trees are replaced as required by the amended permit and such planting cannot now take place because of the imminent winter season.

Furthermore, we cannot ignore the Petitioner's extended pattern of noncompliance with pertaining to landscaping, including requirements imposed based upon agreements stipulated to by the Petitioner. Petitioner failed to comply with Condition #2 of the Revocation Order which carried an October 1, 1982 compliance date. We also note that this Board confirmed, by way of an order issued April 18, 1984, that Petitioner's permit was revoked. The Petitioner's building has thus been occupied and used without legal authority since April, if not since 1982.

**We, therefore,** conclude that Land Use Permit #8B0208-EB will be reinstated, subject to the following conditions:

1) On or before January 1, 1985, \$250 shall be deposited with Petitioner's counsel as escrow agent to assure the replacement of dead trees on or before June 15, 1985; the escrow fund shall be subject to the terms of an escrow agreement to be prepared by the Board;

2) On or before January 1, 1985, \$500 shall be paid to the State of Vermont as partial reimbursement for the substantial time and expense attributable to efforts at securing compliance

with the terms and conditions of Board permits and orders in this matter. Upon compliance with these two conditions, this Board will issue a reinstated land use permit to the Petitioner.

Dated at Norwich, Vermont this 28th day of November, 1984.

VERMONT ENVIRONMENTAL BOARD

By:

  
Margaret P. Garland, Chairman  
Lawrence H. Bruce, Jr.  
Dwight E. Burnham, Sr.  
Warren M. Cone