

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

Findings of Fact and
Conclusions of Law
Petition to Revoke
Land Use Permit
#8B0208-EB, as amended

This matter concerns a petition for revocation of Land Use Permit #8B0208-EB, as amended, filed with the Environmental Board (the "Board") on October 15, 1981, by Raymond G. Koch, an adjoining property owner. The District #8 Environmental Commission issued Land Use Permit #8B0208 to Green Mountain Heat Products, Inc. ("Green Mountain") on June 29, 1979. The permit specifically authorizes an industrial facility, including building, parking area, and service drive located off East Manchester Road in the Town of Manchester, Vermont. The permit was subsequently appealed and a new permit issued by the Board on September 19, 1979, in accordance with a Stipulation filed by the parties on September 10, 1979. The permit was amended as of February 22, 1980.

A pre-hearing conference was held on November 17, 1981, and a hearing was held on January 12, 1982 at City Hall, Rutland, Vermont. Parties present at the hearing were:

Petitioner, Raymond G. Koch by himself and represented by Harvey D. Carter, Jr., Esq.;
Permittee, Green Mountain Heat Products, Inc., John Ward, President by Gerald P. Cantini, Esq.; and
Mary West, pro se.

At the January 12, 1982, hearing, parties agreed to stipulate to a landscaping plan and schedule that would determine the effective date of the permit revocation. Such a Stipulation was filed with the Board on February 10, 1982. Under the provisions of the Administrative Procedure Act, 3 V.S.A. §809 (d), the parties to a contested case may make informal disposition of the case by stipulation, unless otherwise precluded by law. On March 4, 1982, the Board reviewed the testimony and evidence and the parties' Stipulation. The Board makes the following findings of fact and conclusion of law:

FINDINGS OF FACT

1. There is no dispute among the parties that the permittee has failed to comply with Conditions #5 and #6 of Land Use Permit #8B0208-EB relative to landscaping. The Board finds, therefore, that the permittee is in violation of Land Use Permit #8B0208-EB, as amended. The Board further finds that there is no indication that the violations pose "a clear and imminent threat to public health or safety," as specified in Board Rule 24.

- 2 . The Stipulation filed by the parties contains five paragraphs relating to a schedule for compliance, inspection of the premises, and landscaping requirements not previously specified in Land Use Permit #8B0208-EB, as amended.
3. The Board finds that paragraphs #1 and #3 of the Stipulation are relevant to the petition for revocation and concludes that said paragraphs will be incorporated into the terms and conditions of Land Use Permit #8B0208-EB. Paragraph #5, specifying an inspection of the premises to determine compliance, will also be incorporated with minor amendments.
4. Paragraph #2 of the Stipulation requests that additional landscaping conditions be included as part of the permit. The condition in question was originally imposed by the Manchester Planning Commission. Because this condition is not contrary to the meaning and requirements of Act 250, the Board agrees to incorporate paragraph \$2 of the Stipulation into the terms and conditions of Land Use Permit #8B0208-EB.

CONCLUSION 0" LAW

The Board concludes that the permittee is in violation of Conditions #5 and #6 of Land Use Permit #8B0208-EB, as amended. **However**, as the violations do not constitute a clear and imminent threat to public health or safety, the Board grants the permittee reasonable opportunity to correct the violations as required by Board Rule 24. This reasonable opportunity to correct the violations is the schedule for compliance stipulated to by all parties. The Board accepts the parties' Stipulation for this purpose. The Board concludes that the petition for revocation should be granted and revocation will be effected according to the terms of the parties' Stipulation.

ORDER

The petition for revocation is hereby granted and the permittee is ordered to comply with the following terms and conditions:

1. The revocation of Land Use Permit #8B0208-EB, as amended, shall become effective on June 1, 1982, unless the permittee fully complies with Condition #6(a) and (c) of said permit;
2. The revocation of Land Use Permit #8B0208-EB, as amended, shall become effective on October 1, 1982, unless the permittee complies with the following condition:

The building shall be screened by foundation plantings of mixed indigenous conifers (white pine, red pine and white spruce) on staggered eight-foot centers on the west and south sides. These trees shall be five- to six-feet tall, but may be pruned when the height reaches the eaves of the building. These trees may replace the low plantings, but are not intended to replace the hardwood trees or tall bushes. These trees and bushes shall be replaced if they die for as long as the property is used for industrial use: and

3. The revocation of Land Use Permit #8B0208-EB, as amended, shall become effective on June 1, 1983, unless the permittee fully complies with Condition #5 of said permit.
4. Jean Vissering, Parks Planner for the Agency of Environmental Conservation or her successor or duly authorized representative, as agent for the Board, is directed to inspect the permittee's premises on each of the above dates to determine whether the permittee has fully and faithfully complied with the conditions as required above. Failing said certification of compliance, Land Use Permit #8B0208-EB is hereby revoked.

All other conditions of Land Use Permit #8B0208-EB, including Condition #6(b), remain in full force and effect. Jurisdiction is returned to the District #8 Environmental Commission for all conditions except those amended herein. The Environmental Board retains jurisdiction over the terms of this revocation order pursuant to its permit revocation authority.

Dated at Montpelier, Vermont this 9th day of March, 1982.

ENVIRONMENTAL BOARD

By Jan S. Eastman
Jan S. Eastman
Executive Officer

Members participating
in this decision:
Leonard U. Wilson
Lawrence H. Bruce, Jr.
Melvin H. Carter
Warren M. Cone
Priscilla Smith