

STATE OF VERMONT
ENVIRONMENTAL BOARD
10 V.S.A. CHAPTER 151

RE: City of Burlington Declaratory Ruling No. 125
 Resource Recovery Project
 Burlington, Vermont 05401

A petition for a declaratory ruling was filed with the Environmental Board on November 14, 1980 by the City of Burlington, Department of Streets (the City), concerning the applicability of 10 V.S.A. Chapter 151 (Act 250) to a proposed resource recovery project to be located in that City. The Environmental Board heard this matter in a public hearing on January 27, 1981, with Leonard U. Wilson, Chairman, presiding.

The following parties were present:

Petitioner, City of Burlington, by Richard C. Whittlesey, Esq. and James R. Ogden
Chittenden County Regional Planning and Development Commission, by Arthur R. Hogan, Jr.
State of Vermont, Agency of Environmental Conservation, by Richard Valentinetti
The City of Winooski, by William Wargo, Esq.

Burlington Recycling, which had requested party status at the pre-hearing conference, withdrew its petition before **the Board**.

Findings of Fact

1. The City of Winooski presented a petition for party status in this matter pursuant to Board Rule 12(C). The Board finds that the resource recovery facility could adversely affect the interests of the City of Winooski under the provisions of 10 V.S.A. §6086(a). Specifically, we find that the disposal of fly ash and other residue from the facility could adversely affect Winooski's interest in the water quality of the Intervale wetlands and the Winooski River. We also find that the facility could emit air pollution into a shared air basin with difficult air quality problems, and that this pollution might adversely affect air quality in Winooski. We therefore find that Winooski is entitled to party status in this proceeding.

2. The Burlington Department of Streets proposes to construct a resource recovery facility on a parcel of City-owned land consisting of approximately six acres. This facility will have three purposes. It will be a refuse incinerator, intended to reduce by approximately 75% the volume of solid waste that the City deposits in its landfill. It will be a resource recovery facility, designed to remove recyclable

metals from the City's wastestream for sale as scrap. Finally, the incineration process will produce as a by-product high temperature water, which will be piped to major buildings of the University of Vermont and the Medical Center Hospital of Vermont to be utilized for heating and cooling those buildings.

3. The high temperature water transport line will be laid underground within a designated 15 foot right-of-way, 7,475 feet in length. Consequently, at least 2.57 acres of land will be directly involved in the construction of that line. We reasonably expect that the construction of this line will in fact involve the entire width of the roadways in which the easement lies, as the City's witnesses testified that the line would not be confined to a single traffic lane. However, due to our findings below, with respect to the City's landfill, we find that it is unnecessary to determine exactly how much additional land would thus be involved in the project.
4. The resource recovery facility is the key element of a proposed integrated solid waste management system which includes the plant itself, the high temperature water transportation lines, and the City's landfill in the Intervale, a tract of approximately 16 acres located about 1/4 mile from the facility site. Upon review of the testimony and exhibits presented to the Board, we find the landfill is incident to the use of the proposed resource facility. This finding is based upon the following facts:
 - (a) The Executive Summary of the Feasibility Study for the facility (Exhibit #6), and the City's schematic solid waste flow diagram (Exhibit #4), clearly state that the facility and the landfill are operational components of a single waste disposal system. Under the proposed plan, 15% of the City's municipal solid waste -- materials such as stumps and construction debris that would not burn well -- would be trucked directly to the City's landfill. The remaining 85% would be trucked to the facility, where it would be processed and burned. The residue from that process -- ashes and unburned materials that are not reclaimed, amounting to about 10% of the volume of the solid waste delivered to the facility -- would also be trucked to the landfill for disposal.
 - (b) The City's proposal to build the resource recovery facility is the City's response to existing problems with its landfill. The facility would make it possible for the City to operate the landfill much longer and on different terms than would be the case without the facility. The

existing landfill is located on the edge of a wetland. **Leachate** from this landfill has been the subject of considerable concern. The State of Vermont Solid Waste Management Program has refused to certify the site under existing state regulations (See Exhibits #8 and #9). Without the implementation of the resource recovery program, the state would permit the landfill to be used for only as long as it would be reasonable for Burlington to develop an alternative landfill site, at most two or three more years. If the resource recovery facility is constructed, however, the state will permit the City to operate the landfill for at least five years, and may authorize its use for several succeeding **five-year** periods.

5. The construction and operation of the resource recovery facility will physically alter the use of the City landfill in several ways:
 - a. The landfill will continue to be used for the disposal of municipal solid waste, both directly and indirectly, for a much longer period of time than it would otherwise be used without the construction of the facility. Witnesses for the City and the state testified that if the resource recovery facility were not built, the landfill would be operated for a maximum of three more years at present disposal levels. On the other hand, if the facility is constructed, the landfill will be operated for two or three more years at present disposal levels (until the recovery facility comes on line), and then for up to 25 additional years as the repository for **non-processable** waste and the ash from the resource recovery facility. The Executive Summary for the project states that "[u]tilization of the City's landfill in this manner would result in extending its useful life through the year **2005.**" Exhibit #6 at E-1).
 - b. The nature of the fill to be placed in the landfill will be substantially altered by the operation of the resource recovery facility. Witnesses for the state and the City testified that the ash residue generated by the facility will be more concentrated than "ordinary" municipal waste, and therefore would require additional precautions in disposal.
 - c. In order for the landfill to be utilized as the disposal site for the facility's ash, the physical construction of improvements must occur on the site. The State's solid waste management program

will require at least the following: development of a 65'-70' horizontal separation barrier between the refuse and the water course at the base of the site, created by substantial fill of dirt, concrete, building demolition and other materials; provisions for methane gas control and monitoring; and provisions to channel and direct surface water flow at the base of the site (See Exhibit #8). These physical alterations are the "construction of improvements" within the meaning of that term as defined in Board Rule 2(D) because they would both modify and extend the use of the landfill site.

6. The construction and operation of the resource recovery facility will directly involve more than ten acres of City-owned land. The plant itself is located on a parcel of **slightly** over six acres; the high-temperature water lines will directly involve at least 2.57 acres; and the landfill, which is an integral component of this project, covers approximately 16 acres. We find that this project will involve at least 24.57 acres of land owned by the petitioner.

Conclusions of Law

1. Based upon the evidence submitted to the Board, and our Findings of Fact reported herein, we conclude that the City of Burlington's resource recovery facility is a "development" for municipal purposes within the meaning of those terms in 10 V.S.A. §6001(3). The **project** therefore requires a permit pursuant to 10 V.S.A. §6081(a). The statute states:

"The word 'development' also means the construction of improvements on a tract of land involving more than 10 acres which is to be used for municipal or state purposes. In computing the amount of land involved, land shall be included which is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings."

2. Moreover, even if we concluded that the physical alterations that this project will require at the landfill site would not be the "construction of improvements" within the meaning of that term in the Act and the Board's Rules, this Board would still conclude that the project involved more than 10 acres of land and was therefore subject to the jurisdiction of the Act. This conclusion is based upon our finding that the landfill disposal area for the resource recovery project is land "incident to the use" of the resource recovery facility. The Supreme Court has held, "It is clear that there is no warrant for

restricting the term ["involved land"] to the acreage actually used in the construction of improvements. . . . Such an interpretation [would be] inconsistent with the concept of land that is 'incident to the use,' which land is required to be included in computing the amount of land involved." Committee to Save the Bishop's House v. Vt. Medical Center, 137 Vt. 142,152 (1979). The City's plans for the landfill are integrally related to the development of the resource recovery facility, and the landfill will be a key component of that facility's operation. The legislature addressed just this type of circumstance when it enumerated several examples of land uses which would be "incident to the use" of a development project. Although the term is not to be limited to the enumerated examples, one of those examples is directly analogous to the issue before the Board. Among the enumerated examples are leaching fields, i.e., disposal areas for a project's wastewater. We believe the term "incident to the use" also encompasses land which is to be utilized for the disposal of a project's solid waste residue, at least where the disposal of that residue will have substantial physical and operational effects on the disposal site.

ORDER

The City of Burlington Department of Streets may not commence construction on the resource recovery facility or any of its components without receipt of a land use permit as required by 10 V.S.A. §6081(a).

Dated at Montpelier, Vermont this 11th day of March, 1981.

ENVIRONMENTAL BOARD

By Leonard U. Wilson
Leonard U. Wilson
Chairman

Members participating
in this decision:
Leonard U. Wilson
Dwight E. Burnham, Sr.
Melvin H. Carter
Daniel C. Lyons
Donald B. Sargent