

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

RE: Berlin-Montpelier Inter- Findings of Fact, Conclu-
municipal Sewage Project sions of Law and Order
Declaratory Ruling No. 142

On January 31, 1983 a petition for an Advisory Opinion by the Executive Officer was filed with the Environmental Board (the "Board") by Robert J. Kurrle, Esq., on behalf of the Town of Berlin, from Environmental Coordinator's Advisory Opinion #5-83-1, concerning whether or not proposed construction of gravity sewers, force mains and a pumping station in the Town of Berlin and the City of Montpelier, Vermont requires an Act 250 permit under 10 V.S.A. §§6083-6089. On February 10, 1983 Mr. Kurrle requested that his petition be treated as a request for a Declaratory Ruling from the Board.

The Board convened a public hearing on this petition on February 23, 1983 at City Hall, Montpelier, Vermont. Parties present at the hearing were the following:

Petitioner, Town of Berlin by Robert J. Kurrle, Esq.; and City of Montpelier by Paul Giuliani, Esq.

The Board adjourned the hearing on February 23, 1983. This matter is now ready for decision.

A. FINDINGS OF FACT

1. On February 10, 1982 the Town of Berlin and City of Montpelier entered into an "Agreement On Sewage Treatment and Collection Between the City of Montpelier and the Town of Berlin, Vermont" (the "Agreement"). Exhibit #1.
2. The Town of Berlin proposes to construct 8.08 acres of gravity sewers, force mains and pumping stations in the Town of Berlin and City of Montpelier in order to convey sewage from the Town of Berlin to the City of Montpelier pursuant to the Agreement.
3. Following the construction and interconnection of the two systems, the Town of Berlin's sewage treatment plant located on 1.9 acres of land will be decommissioned.
4. Following the construction and interconnection of the two systems, the Town of Berlin's sewage will be treated at the City of Montpelier's sewage treatment plant which is located on 3.4 acres of land.

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5. The City of Montpelier's sewage treatment plant was designed and upgraded during the late 1970s and early 1980s to enable treatment of up to 3.9 million gallons of sewage per day. The Agreement allots the Town of Berlin up to 500,000 gallons per day of the 3.9 million gallon capacity. The City of Montpelier plant was redesigned and upgraded with the understanding that the Town of Berlin's sewage would be treated by the City of Montpelier.
6. No Act 250 permit was required for the redesign and upgrade of the City of Montpelier sewage treatment plant.

B. CONCLUSIONS OF LAW

1. 10 V.S.A. §6081(a) states in pertinent part that no person shall commence development without a permit. 10 V.S.A. §6001(3) defines development in part as:

[T]he 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.

Board Rule 2(A)(4) clarifies this definition of development to include municipal projects to be completed in stages as part of a plan or projects incidental to 'larger undertakings.

10 V.S.A. §6081(b) extends the application of subsection (a) to any "substantial change" in an otherwise excepted development. Board Rule 2(G) then defines "substantial change" as change which may result in significant impacts with respect to the so-called 10 criteria set forth in 10 V.S.A 6086(a).

The Board believes that the construction currently proposed to complete the interconnection of the Berlin and Montpelier sewer systems and the redesign and upgrade of the City of Montpelier sewage treatment plant should be viewed as one project. Therefore, since the City of Montpelier was not required to obtain an Act 250 permit for the redesign and upgrade of its plant, the Board will not now require a permit for the Berlin portion of the project. In reaching this conclusion, however, the Board has not determined that the proposed construction involves less than ten acres of-land or is not a substantial change.

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The Board notes that each time changes are proposed for a municipal or intermunicipal sewer project, such changes must be reviewed to determine whether or not the particular circumstances involve more than 10 acres of land or a "substantial change" for purposes of Act 250 as required by 10 V.S.A. §6081 and Board Rules 2(A)(4) and (G).

C. ORDER

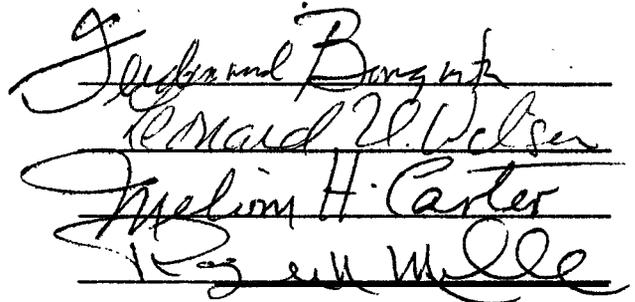
The Town of Berlin and the City of Montpelier need not obtain a land use permit pursuant to 10 V.S.A. 56081 for the proposed construction of gravity sewers, force mains and pumping stations.

Dated at South Burlington, Vermont this 3rd day of March, 1983.

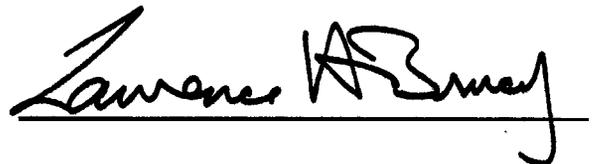
ENVIRONMENTAL BOARD

Members voting in favor of
this decision:

Leonard U. Wilson
Ferdinand Bongartz
Melvin H. Carter
Roger N. Miller


Ferdinand Bongartz
Leonard U. Wilson
Melvin H. Carter
Roger N. Miller

Member dissenting:
Lawrence H. Bruce, Jr.


Lawrence H. Bruce, Jr.