

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151

RE: Browning-Ferris Industries by Alteration and
Douglas Richards, Esq. Dismissal Order
P.O. Box 200 Declaratory Ruling
Springfield, VT 05156-0200 #188

On October 19, 1988, Browning-Ferris Industries (BFI) filed a motion for clarification and/or alteration, pursuant to Board Rule 31(A) of the Environmental Board's order of October 11, 1988 regarding BFI's landfill in Rockingham, Vermont. This order was based on the Board's declaratory ruling in this matter of the same date. In its motion, BFI stated that it was unclear from the order whether BFI was required to discontinue all landfill operations until a permit has been granted pursuant to 10 V.S.A. Chapter 151. BFI also requested that, if the Board's intent was to require BFI to suspend operations, the Board alter its order to allow current landfill operations to continue subject to BFI's applying for a permit by a certain date.

On November 10, 1988, BFI appealed Declaratory Ruling #188 to the Supreme Court. On that date, BFI moved the Board for a stay of the Board's October 11 order pursuant to Board Rule 42. BFI requested this stay on the grounds that the Board's October 11 order could be interpreted to require that current landfill operations cease by November 18, 1988, and that compliance with this requirement would cause irreparable harm to the municipalities served by the landfill and have an adverse effect on public health, safety and general welfare.

The Board deliberated on these motions on November 29, 1988 in St. Albans Bay.

DECISION

The Board's order of October 11, 1988 stated:

On or before November 18, 1988, BFI must apply for an Act 250 permit pursuant to 10 V.S.A. § 6081 to authorize continuing its current operation. No additional construction at or expansion of the landfill may occur until a permit has been issued.

The Board agrees with BFI that this language is unclear with regard to whether BFI must cease current operations at its landfill. Accordingly, the Board will alter its order to require that BFI apply no later than January 15, 1989 for a permit to continue its current operation. If BFI does not

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obtain this permit by July 1, 1989, then current operations at the landfill must cease at that time. Accordingly, BFI may continue its current landfill operations through July 1, 1989. It may also continue these operations afterward if and only if a permit for the operations is obtained by July 1. Further, no construction at, or expansion of, the landfill may occur at any time until a permit has been issued specifically allowing such construction or expansion.

The Board has determined that this schedule allows BFI a reasonable time (over six months) to apply for and obtain a permit for its current landfill operations. Because the October 11 order is today revised and no longer operative, there is no reason to stay the order. The Board therefore denies **BFI's** motion to stay.

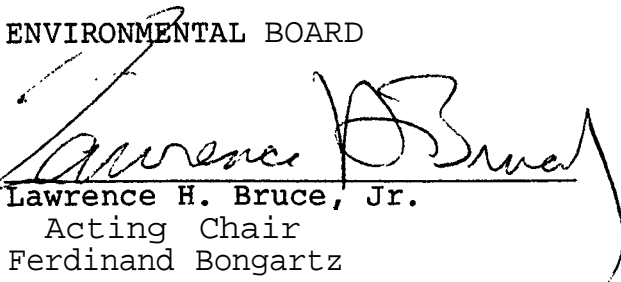
ORDER

1. On or before January 15, 1989, BFI must apply for an Act 250 permit pursuant to 10 V.S.A. § 6081 to authorize continuing its current operation at the landfill.
2. On or before July 1, 1989, BFI must obtain said permit or cease operations at the landfill.
3. No construction at, or expansion of, the landfill may occur at any time until an Act 250 permit has been issued authorizing such construction or expansion.
4. No ash may be disposed of in the landfill without an Act 250 permit authorizing such disposal.
5. **BFI's** motion to stay is hereby denied.

Dated at Montpelier, Vermont this 23rd day of December, 1988.

ENVIRONMENTAL BOARD

BY:


Lawrence H. Bruce, Jr.

Acting Chair
Ferdinand Bongartz
Jan S. Eastman
Elizabeth Courtney
Samuel Lloyd
Arthur Gibb