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

Re: Norwich Associates, Inc. (Farrell Gravel Pit)
Declaratory Ruling #275

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision pertains to a gravel pit located in the Town of Norwich. As explained below, the Environmental Board concludes that an Act 250 permit is not required at present for the pit.

I. SUMMARY OF PROCEEDINGS

The gravel pit is located on a tract of greater than ten acres off Route 5. Norwich Associates, Inc. (the Petitioner) currently is the legal owner of record. A principal of Norwich Associates, Anthony Farrell, bought the tract in 1967. The subject gravel pit is known as the Farrell Gravel Pit.

On September 20, 1991, District #3 Coordinator Robert Sanford issued Advisory Opinion #3-53, stating that a permit is required for the Farrell Gravel Pit under 10 V.S.A. Chapter 151 (Act 250).

On October 21, 1991, the Petitioner filed an appeal to the Executive Officer pursuant to Environmental Board Rule (EBR) 3(C) as it then existed.

-- On August 20, 1992, former General Counsel Stephanie J. Kaplan issued Executive Officer Advisory Opinion #EO-91-248. In relevant part, the General Counsel stated that insufficient information had been provided to determine whether a permit is needed.

On September 21, 1992, the Petitioner tiled this petition. A prehearing conference appears to have occurred on the petition on October 29, 1992. However, there were no further proceedings at that time because, by agreement of the parties, the matter was continued pending possible legislative or regulatory changes with respect to Act 250 jurisdiction over gravel pits.

Following appointment on February 1, 1995, Chair John T. Ewing took steps to clear the Board's docket. As a result, filings and deliberation occurred during June and July 1995 concerning whether to dismiss this petition.

On August 10, 1995, the Board issued an order stating that the Petition will not be dismissed and scheduling a prehearing conference. The conference, originally set for September 11, 1995, was postponed to September 18 at the Petitioner's request.

On September 18, 1995, Chair Ewing convened a prehearing conference in Montpelier. Following the prehearing conference, during September 1995, petitions for party status and oppositions thereto were filed.

On November 2, 1995, the Chair issued a prehearing conference report and order which is incorporated by reference. In relevant part, the preheating report and order included preliminary rulings as to party status. On November 13, the Petitioner filed an objection to those preliminary rulings. On November 27, the Norwich Fire District (the District) filed a request for a ruling on the Petitioner's objection as soon as possible. On November 29, the Petitioner filed an additional submission regarding party status.

The Board deliberated concerning party status on November 29, 1995 and issued a memorandum to parties on December 6, 1995 stating its decision on party status. The December 6 memorandum is incorporated by reference.

During December 1995, the parties filed prefiled testimony and lists of witnesses and exhibits. The Chair, acting as hearing officer pursuant to 10 V.S.A. § 6027(g), 3 V.S.A. § 811 and EBR 41, convened a hearing on January 3, 1996, with the following parties participating:

The Petitioner by C. Daniel Hershenson, Esq.-
The District (adjoining property owner) by Brion McMullan
Pompy Farms, Inc. (adjoining property owner) by Jeffrey Bogie

After hearing testimony and taking a site visit, the Chair recessed pending issuance of a proposed decision.

A proposed decision was sent to the parties on February 5, 1996, and the parties were provided an opportunity to file written objections, and to present oral argument before the full Board. On February 16, the District submitted a response to the proposed decision and requested-oral argument. On February 20, Pompy Farms did the same.

On February 28, 1996, the District filed a withdrawal of its request for oral argument and a copy of a stipulation with the Petitioner. The Board convened a public hearing on February 28, with Pompy Farms and the Petitioner participating.

The Board deliberated concerning this matter on February 28, 1996 and determined to approve the proposed decision with modifications. On that date, following a review of the proposed decision and the evidence and arguments presented

in the case, the Board declared the record complete. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

II. PARTY STATUS

On December 6, 1995, the Board issued a memorandum to parties stating its rulings on party status in this matter. In the memorandum, the Board granted party status to the District and to Pompy Farms, Inc. This was done over the Petitioner's objection. The memorandum states that a full discussion of the party status decisions will be contained either in a subsequent memorandum of decision or in the Board's final decision.

During oral argument on February 29, 1996, the Petitioner stated that its party status objections were moot in view of the proposed decision that it does not need an Act 250 permit. As demonstrated below, the Board has approved the proposed decision with modifications that do not affect the result.

Accordingly, the Board need not include a full statement of its party status ruling in this decision. Instead, the Board will only reiterate that the District and Pompy Farms, Inc. are granted party status as adjoining property owners pursuant to *10* V.S.A. § 6085(c) and EBR 14(A)(3).[1] In the alternative;. they-are granted-party-status under EBR 14(B)(l)(a) (affected interests).

The Board specifically disagrees with the Petitioner's contentions that-the party status categories of 10 V.S.A. § 6085(c) and EBR 14 do not apply to declaratory ruling proceedings. The Board interprets the relevant statutes and rules otherwise. See 10 V.S.A. §§ 6007(c), 6085(c); EBR 3 and 14. The Board's precedent and practice are consistent in this regard. See, e.g., Re: Interstate Uniform Services, Declaratory Ruling #147 at 3 (Sep. 26, 1984), and Re: Wesco. Inc., Declaratory Ruling Request #304, Memorandum of Decision at 3-6 (June 30, 1995).

III. WITHDRAWAL OF THE DISTRICT

The District's letter of withdrawal, filed February 28, 1996, states that it withdraws its request for oral argument on the basis of an agreement between it and the Petitioner. The agreement, which is attached to the letter filed February 28, is

---

[1] *EBR* 14(A)(3) *has since been recodijied to* 14(A)(S).

entitled "Stipulation." The gist of the Stipulation is that the Petitioner will not extract gravel within 500 feet of the District's property line for 10 years. The Stipulation also states that the Petitioner will first obtain an Act 250 permit if, after ten years, it seeks to extract gravel within 500 feet of the District's property line.

At oral argument on February 28, the Petitioner represented that it has no intention of extracting gravel within the area discussed in the Stipulation. The Board understands that the Petitioner has signed the Stipulation.

Administrative agencies have discretion to reject a withdrawal if allowing it would prejudice the public interests they are charged to protect. Jones v. Securities & Exchange Commission, 298 U.S. 1, 22 (1936); Oil, Chemical & Atomic Workers International Union, AFL-CIO v. National Labor Relations Board, 806 F.2d 269, 272 (DC Cir. 1986).

The public interests protected by the Board are those which arise under Act 250. Given the nature of the Stipulation between the District and the Petitioner, as well as the facts found by the Board below, the Board concludes that the Stipulation protects the Act 250 values. Accordingly, the Board grants the District's withdrawal on condition that the Stipulation be considered part of the record in this matter, that it be described in the findings of fact, and that it form part of the basis of the Board's ruling.

IV. ISSUES ON THE MERITS

In this matter, the issues are:

a. Whether District Coordinators may issue advisory opinions on their own motion.

b. Whether, pursuant to 10 V.S.A. § 6001(3) and EBR 2(A)(2), the Farrell Gravel Pit constitutes "development."

c. If so, whether, pursuant to 10 V.S.A. § 6081(a) and EBR 2(O), the Farrell Gravel Pit is exempt as a "pre-existing development."

d. Whether a substantial change has occurred or is proposed with respect to the Farrell Gravel Pit.

V. FINDINGS OF FACT

For the convenience of the reader, the following findings of fact are organized into sections keyed to the issues. The use of headings related to the issues does not mean that only the findings within the heading are relevant to a particular issue. Where findings from other sections are relevant, they are assumed and not repeated.

Facts on Issuance of Opinion on Coordinator's Motion

1. District Coordinators are employed by the Environmental Board and not by the District Commissions, and are assigned by the Board to, among other things, assist the District Commissions and to act as the primary enforcement personnel for their districts.

2. On December 20, 1990, the Board voted to delegate to its staff the authority to issue warnings and notices of alleged violation (NOAVs) pursuant to 10 V.S.A. § 8006 and to act as investigators pursuant to 10 V.S.A. § 8002(3).

3. On January 8, 1991, former Board Chair Stephen Reynes issued a memorandum listing the staff of the Board designated as investigators and authorized to issue warnings and NOAVs. The listed staff included, among other personnel, District Coordinator Robert Sanford.

4. On February 5, 1991, the Board and the Agency of Natural Resources (ANR) entered into a Memorandum of Understanding (MOU) for Cooperative Enforcement of Act 250. The MOU provides that "[i]n any potential enforcement case where jurisdiction is unclear, the District Coordinator will issue an advisory opinion on the matter."

5. On September 20, 1991, on his own motion, Mr. Sanford issued Advisory Opinion #3-53 (the Advisory Opinion), stating that an Act 250 permit is required for the Farrell Gravel Pit.

Facts on Act 250 Jurisdiction

Development

6. The Farrell Gravel Pit is located on an approximately 60-acre tract (the Pit Tract) off Route 5 in the Town of Norwich.

7. The Pit Tract is owned by the Petitioner. Persons or entities seeking gravel

from the Pit Tract extract the gravel themselves and pay the Petitioner with cash or services.

8. Extraction at the gravel pit is sporadic, depending on demand. There are weeks of no extraction, of occasional extraction, and of continuous daytime extraction.

9. For the years 1992, 1993, and 1994, the average annual extraction rate was 10,000 cubic yards. This extraction rate was determined based on current records.

10. In 1995, also based on current records, the extraction rate was at least 14,000 cubic yards.

11. Because demand fluctuates, considerable variation occurs in the number of loaded truck trips per day.

12. In 1995, it is estimated that approximately 1,000 trips had occurred from April through August.

13. The capacity of the trucks which haul gravel from the Farrell Gravel Pit is 14 cubic yards.

14. There is no credible evidence in the record that the Petitioner intends to operate the Farrell Gravel Pit in any manner other than how the Pit has been operated between 1992 and the present.

Pre-existing Development

15. Extraction at the Farrell Gravel Pit began in the mid-1930s. Although sporadic in nature, such extraction has continued to the present day.

16. Large volumes of material were extracted from the Farrell Gravel Pit during the late 1960s and early 1970s for the construction of Interstate 91.

17. Anthony Farrell, a principal in the Petitioner, became the owner of the Pit Tract in 1967. He later sold it to the Petitioner.

18. Neither Mr. Farrell nor the Petitioner possess records which show what the extraction was prior to June 1, 1970 (the effective date of Act 250). The Petitioner has sought records from entities which extracted from the Pit prior

19. Based on Mr. Farrell's credible testimony, a total of approximately **1.3** million cubic yards were extracted from the Farrell Gravel Pit prior to 1970.

20. Based on a 1.3 million cubic yard figure, and calculated as an annual average beginning in 1935 (since extraction began in the mid-1930s), the annual extraction rate prior to 1970 was approximately 37,000 cubic yards per year.

21. Prior to 1970, the Farrell Gravel Pit operation did not include a crusher or screener, and no structures were present on the Pit Tract.

22. During the early years of extraction on the Pit Tract, there were three different extraction sites. Over time, these sites grew large and coalesced, so that by the end of the 1960s they were one pit.

Substantial Change

23. Based on Mr. Goodrich's credible testimony, a total of approximately 1.5 million cubic yards were extracted from the Farrell Gravel Pit prior to 1972. Subtracting the amount extracted prior to 1970, a total of 200,000 cubic yards was extracted between 1970 and 1972.

24. Based on Mr. Goodrich's credible testimony, a total of approximately 500,000 cubic yards have been extracted from the Farrell Gravel Pit since 1972.

25. A total of approximately 700,000 cubic yards has been extracted from the Farrell Gravel Pit since 1970. Calculated as an annual average, the annual extraction rate since 1970 has been approximately 27,000 cubic yards per year.

26. All extraction on the Pit Tract since 1970 either has been in the pit hole created before 1970 or has been an expansion to that hole.

27. Since 1970, no crusher or screener is or has been used in connection with the Farrell Gravel Pit, and no structures, including septic systems, have been built.

28. The hours of operation are 6:00 a.m. to 6:00 p.m. Weekend operation occurs.

29. The District owns a tract of land immediately adjacent to the Farrell Gravel Pit on the south. The District has a well on this land which provides drinking water to the Town of Norwich. The access to the pit is within a 145-foot wellhead protection area for the District's well. The District has two monitoring wells within the pit area and its 2000-day zone of influence is situated approximately at one of those monitoring wells.

30. Extraction activity at the south end of the Farrell Gravel Pit would pose a risk to the quality of the District's water because such activity would involve removal of sand which serves as a filter to protect the water. Fuel oil from trucks associated with the Gravel Pit also poses a risk to the District's water.

31. In December 1994, petroleum products turned up in one test of the District's water. It is not certain whether the source of any such products is the Farrell Gravel Pit or some other candidate source (such as Route 5). Only one test of the District's water has shown petroleum products.

32. Presently no extraction is occurring at the south end of the Farrell Gravel Pit. No trucks or petroleum products are parked or stored at the Pit. No change in the Pit's access road has occurred.

33. -----Landowners-in the neighborhood of the Farrell Gravel Pit experience noise and truck traffic associated with the Gravel Pit.

34. -Landowners in the neighborhood-of the 'Farrell Gravel Pit include, but are not necessarily limited to, Pompy Farms, Inc., Jake Guest, and Christine Pinello, M.D. Many of the tracts in such neighborhood are in residential use. Pompy Farm' tract is in commercial use, including gravel extraction.

35. The Petitioner has submitted a draft "Reclamation and Grading Plan," Exhibit N1, a map dated October 1994 by T&M Associates of Lebanon, New Hampshire. The Petitioner represents that it will follow such plan.

36. The District has submitted, by letter filed February 28, 1996, a copy of a stipulation between it and the Petitioner (the Stipulation). In the Stipulation, the District and the Petitioner agree in relevant part that:

a. the Petitioner will not, for the next ten years, extract gravel within 500 feet of the boundary of the Pit Tract with the tract on which the District's well is located; and

b. should the Petitioner, after the ten years has passed, seek to extract gravel with 500 feet of such boundary, it will first obtain an Act 250 permit.

VI. CONCLUSIONS OF LAW

A. Issuance of Advisory Opinion on Coordinator's Motion

The Petitioner contends that the District #3 Coordinator's issuance of Advisory Opinion #3-53 was unauthorized because in its view neither 10 V.S.A. § 6007(c) nor EBR 3(C) authorizes issuance of an advisory opinion without a prior request. Therefore, the Petitioner argues, it should not have to press forward with appeal and petition for declaratory ruling and Advisory Opinion #3-53 should be considered null and void.

The Board has addressed this issue in Re: BHL Corporation, Declaratory Ruling #267 (Feb. 11, 1993), affirmed on other grounds, In re BHL Corp., 161 Vt. 472 (1994). In that case, the Board concluded, based on enforcement authorities, that district coordinators may issue advisory opinions on their own motion.

The Petitioner argues that the Board should reconsider its BHL ruling. It contends that the ruling was based on the enforcement MOU between the Board and ANR, and that an MOU cannot confer jurisdiction. Moreover, it asserts, the MOU is contrary to 10 V.S.A. § 6007(c), and agencies cannot contravene statute.

The Petitioner's argument is erroneous. 10 V.S.A. § 8004 authorizes the Board and ANR "to develop procedures for the cooperative enforcement of [Act 250]." Pursuant to this statutory authority, the Board and ANR entered into an MOU, in effect at the time of the Advisory Opinion, which authorized the District Coordinator to issue such an opinion.

Nothing about the statutorily-authorized MOU contradicts 10 V.S.A. § 6007(c), which at the time of the Advisory Opinion provided in relevant part:

> Prior to the partition or division of land, or prior to the commencement of development, any person may submit to the district coordinator an "Act 250 Disclosure Statement" and other information required by the board, and may request an advisory opinion from the district coordinator concerning the applicability of this chapter [Act 250].

While this provision authorized people to request advisory opinions from district

coordinators, it neither prohibited nor enabled coordinators to issue opinions on their motion. It was simply silent on the matter.

It was and is entirely reasonable for the Board and ANR to use their statutory mandate for enforcement procedures to authorize coordinators to issue advisory opinions on their own motion. Such issuance ensures that, in potential enforcement cases, the jurisdictional determination will be made in the first instance by the field personnel with the greatest expertise, and provides for an administrative avenue of relief because coordinator opinions are subject to appeal by means of a petition for declaratory ruling.

B. Develonment

Act 250 applies to "developments" and "subdivisions." 10 V.S.A. § 6081(a) provides:

> No person shall sell or offer for sale any interest in any subdivision located in this state, or commence construction on a subdivision or development, or commence development without a permit.

Accordingly, the first issue in determining the applicability of Act 250 is whether -a-project- is- a development or a subdivision. If a project is not one or the other, then it is not subject to Act 250. In this case, there is no allegation or evidence that the Farrell Gravel Pit is part of a subdivision.

10 V.S.A. § 6001(3) provides, in relevant part:

> "Development" means the construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes. "Development" shall also mean the construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality which has not adopted permanent zoning and subdivision bylaws.

In addition, EBR 2(A)(2) provides that "development" includes:

> The construction of improvements for any commercial or industrial purpose, including commercial dwellings, which is located on a tract or tracts of land of more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws,

> this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres.

In determining the amount of land involved, the Board counts the entire tract on which the improvements are located, as well as any other involved land. See EBR 2(F); In re Stokes Communication Corp., No. 94-208, slip op. (Vt., July 1, 1995); In re Costello Garage, 158 Vt. 655 (1992) (mem.).

Based on the foregoing facts and authorities, the Farrell Gravel Pit constitutes "development" under 10 V.S.A. § 6001(3) and EBR 2(A)(2) because it consists of construction of improvements for commercial purposes on a tract of more than 10 acres.

However, this is not the end of the Board's inquiry. Act 250 contains various exemptions for projects which constitute development but concerning which the General Assembly has nonetheless determined that an Act 250 permit should not be required. The Petitioner claims that the Farrell Gravel Pit falls within one of those exemptions. This claim is examined below.

C. Pre-existing Development

10 V.S.A. § 6081(b) provides as follows:

> Subsection (a) of this section [which requires obtaining a permit prior to "development"] shall not apply to development which is not also a subdivision, which has been commenced prior to June 1, 1970, if the construction will be completed by March 1, 1971.

Interpreting this "grandfather" clause, the Board has denominated these exempt developments as "pre-existing developments" and promulgated EBR 2(O), which states:

> "Pre-existing development" shall mean any development in existence on June 1, 1970 and any development which was commenced before June 1, 1970 and completed by March 1, 1971.

Based on the foregoing facts and authorities, the Board concludes that the Farrell Gravel Pit constitutes a preexisting development consisting of the commercial

extraction of gravel at a rate of approximately 37,000 cubic yards per year.*

With respect to this issue, the Petitioner has raised arguments concerning the burden of proof generally and specifically with respect to demonstrating an extraction rate prior to June 1, 1970. These arguments ask the Board to reconsider a previous ruling that the burden of proof to show that a development is exempt is on the person claiming the exemption. Re: Weston Island Ventures, Declaratory Ruling #169 at 5 (June 3, 1985); citing Bluto v. Employment Security, 135 Vt. 205 (1977). They also ask the Board to reconsider a previous ruling that, in establishing whether a gravel pit is within the exemption for a pre-existing development, the pit owner or operate must demonstrate the a pre-1970 extraction rate. Re: John Gross Sand and Gravel, Declaratory Ruling #280 - Findings of Fact, Conclusions of Law and Order (July 28, 1993) and Memorandum of Decision (Dec. 2, 1993).

In view of the Board's conclusion that the Pit constitutes a pre-existing development, it need not re-examine these prior rulings.

D. Substantial Change

Although the Farrell Gravel Pit falls within the exemption for a pre-existing development, that is not the end of the matter. 10 V.S.A. § 6081(b) and EBR -2(A)(5) state-that a permit is required for a "substantial. change" in a preexisting development. EBR 2(G) defines substantial change as any change which has the potential for significant impact upon one or more of the Act 250 criteria enumerated at 10 V.S.A. § 6086(a).

Past Board rulings define the question of substantial change as a two-stage inquiry. First, the Board evaluates whether there has been or will be a cognizable change to the pre-existing development. Second, the Board determines whether the change has the potential for significant impact with respect to one or more of the Act -- 250 criteria. Re: L.W. Haynes, Declaratory Ruling #192 at 7 (Sep. 5, 1987). With respect to identifying. the potential for significant impacts, the Board has stated that

[2] *At hearing on January 3, 1996, the Petitioner argued that it was appropriate to arrive at an average extraction rate. This appears appropriate in a case such as this one, in which it appears that records of extraction prior to 1970 do not exist, that such non-existence involves no bad faith, and that the best existing evidence of extraction amount is the pit's volume.*

the question is not whether the impacts will occur, but whether they may occur. Re: Robert and Barbara Barlow, Declaratory Ruling #234 at 11 (Sep. 20, 1991), affirmed, In re Barlow, 160 Vt. 513 (1993).

With respect to the "change" issue, the Board has previously concluded, in the Barlow case affirmed by the Court, that the term "change" includes an increase in the extraction rate and a change from sporadic to daily operation. Barlow, supra, Declaratory Ruling #234 at 11. Other types of changes considered to be cognizable under 10 V.S.A. § 6081(b) include, but are not necessarily limited to, changes in access roads or the addition of a crusher. See, e.g., Vermont Agency of Natural Resources v. Earth Construction, No. 93-427, slip op. at 4 (Jan. 12, 1996) (changes to access road) and Gross, supra, Findings of Fact, Conclusions of Law and Order at 11 (addition of crusher).

The Board also has previously concluded that:

> [C]ontiguous expansion of the excavation area within the pre-existing tract is not a change, provided that the excavation operation is expanded and operated in essentially the same manner as it was before June 1, 1970. It is in the nature of gravel pits to continue to expand the extraction area while following a gravel vein.

Re: Dale E. Percy, Declaratory Ruling #251 at 5 (March 26, 1992).

In the present case, no cognizable change to the Farrell Gravel Pit has occurred. There is no evidence of any single year since 1970 of extraction at a rate higher than the pre-existing rate. No structures (including septic systems), crushers, or screeners have been added. The evidence does not show any changes to the access road. Any expansion of the extraction area is contiguous to the pre-existing pit.

Extraction at the Pit also continues to occur in a sporadic manner and is not daily throughoutthe extraction season. The Pit remains essentially a "passive" gravel pit, meaning that those who wish to extract come and do so based on their needs.

Thus, as presently operated the Farrell Gravel Pit does not constitute a substantial change. If a change were to occur, it is likely that it would be substantial. This is because of the potential for significant impact with respect to the District's well, particularly if a change includes extraction at the south end of the Pit. However, the facts currently are otherwise. Moreover, based on the Stipulation summarized in Finding 36, above, it appears unlikely that, in the foreseeable future, there will be a potential for significant impact on the District's well.

Based on the foregoing, including but not limited to the Stipulation as summarized in Finding 36, above, the Board concludes that an Act 250 permit presently is not required for the Farrell Gravel Pit. Such a permit will be required in the future prior to any substantial change.

E. **Discussion of Pompy Farms' Contentions**

At oral argument on February 28, 1996, Pompy Farms made several contentions which the Board has considered. Among these are that records are available from those who presently extract at the Pit which the Board should review and that the Pit is large operation which is uncontrolled and thus has no limits.

The Board does not understand the issue of missing records to relate to the Pit's extraction. With respect to the current rate, the testimony at hearing was that those rates were developed based on existing records. It is the pre-1970 extraction rate for which records are claimed to be missing, and this claim is not rebutted by a showing that records of current extraction are available.

Moreover, the Board recognizes that an operation of this size may have

Given the sporadic nature of the Pit's operation, it may even be that neighbors correctly perceive increases in Pit activity above the levels of the recent past.

1, 1970 (Act 250's effective date), the Board's ability to regulate the Pit is related to the occurrence or proposal of a substantial change from the pre-1970 operation.

1. The District and Pompy Farms are granted party status as stated in

2. **The** District's withdrawal of February 28, 1996 is granted on condition that the Stipulation be considered part of the record in this matter, that it be described in the findings of fact, and that it form part of the basis of the Board's ruling.

3. **An** Act 250 permit presently is not required for the Farrell Gravel Pit. Such a permit will be required in the future prior to any substantial change.

4. This declaratory ruling is subject to EBR 31(D)(2), which provides as follows:

The board may reconsider a declaratory ruling. Any request for reconsideration must be received within 30 days from the date of the declaratory ruling in accordance with Rule 31(A) of these rules, unless the board finds an adequate showing of failure to disclose material facts or fraud.

Dated at Montpelier, Vermont this 3rd day of April, 1996.

ENVIRONMENTAL BOARD

John T. Ewing, Chair
Arthur Gibb
Marcy Harding
Samuel Lloyd
William Martinez
Rebecca M. Nawrath
Robert G. Page

ada - c:\wptext\dr275\norwich.dec