

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

Re: Earth Construction Company
Declaratory Ruling Request #278

MEMORANDUM OF DECISION

This decision pertains to the timeliness of a petition for a declaratory ruling filed by Earth Construction Company (the Petitioner) concerning the applicability of 10 V.S.A. Chapter 151 (Act 250) to the operation of a gravel pit in East Montpelier. For the reasons explained below, the Board dismisses the petition because it was filed after the deadline established in the statute.

I. BACKGROUND

On October 1, 1992, Board Counsel Aaron Adler issued an advisory opinion in which he concluded that an Act 250 permit is required for continued operation of a gravel pit and the proposed operation of a quarry by the Petitioner. The advisory opinion stated that an appeal of the opinion must be filed on or before November 2, 1992. On November 9, 1992, a petition for a declaratory ruling was received at the Board offices from the Petitioner. The petition was dated November 2.

On December 10, 1992, General Counsel Stephanie J. Kaplan sent a memorandum to parties notifying them that the petition was filed thirty-nine days after the issuance of the advisory opinion and inviting them to file legal memoranda concerning whether the petition was timely filed.

On January 6, 1993, the Petitioner's attorney, Marc B. Heath, submitted a letter to the Board stating, among other things, that everyone else on the service list received the petition on November 3, and that he believes the Board has jurisdiction to determine the issues presented.

The Board deliberated on January 13, 1993.

II. ISSUE

Whether the petition for a declaratory ruling must be dismissed because it was filed after the statutory deadline.

III. DECISION

10 V.S.A. § 6007(3)(c) provides, in pertinent part:

[P]rior to the commencement of development, any

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person may ... request an advisory opinion from the district coordinator concerning the applicability of this chapter. An advisory opinion of a district coordinator may be appealed to the executive officer of the board, or directly to the board, in the discretion of the appellant. The executive officer may assign appeals to an assistant executive officer. Appeals from an advisory opinion of a district coordinator or the executive officer or an' assistant executive officer must be filed within 30 days of the mailing of the advisory opinion. Appeals to the board are by means of a petition for declaratory ruling and must be accompanied by a \$25.00 filing fee.

(Emphasis added)

A document is considered "filed" with the Board on the date it is received at the Board's office. Board Rule 12(A).

The advisory opinion was issued on October 1. Based upon the statute, any appeal of that opinion should have been filed by October 31, or November 2 since October 31 was a Saturday.¹ The petition was not filed, however, until November 9, thirty-nine days after the date the advisory opinion was issued and seven days after the deadline stated in the advisory opinion.

Filing deadlines are jurisdictional and the Board therefore has no discretion to waive a deadline established by statute. Allen v. Vermont Employment Security Board, 133 Vt. 166 (1975). The Board has dismissed a number of appeals filed after the 30-day statutory deadline for filing

¹Board Rule 6 states:

In computing any period of time prescribed or allowed by Act 250, these rules, or an order of the board or district commissions, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless this day is a Saturday, Sunday, State legal holiday, or the day after Thanksgiving, in which event the period runs until the end of the next day which is not a Saturday, Sunday, State legal holiday, or the day after Thanksgiving.

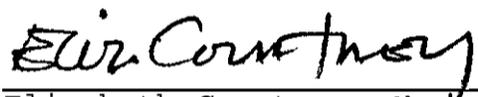
appeals. See, e.g., Re: Haystack Group, #700002-10-EB, Memorandum of Decision (March 29, 1989); Re: Club 107, #3W0196-3-EB, Memorandum of Decision (Feb. 2, 1987); Re: Puppy Acres Boarding Kennel, #2W0568-2-EB, Memorandum of Decision (Oct. 11, 1985), aff'd, In re Puppy Acres Boarding Kennel, No. 85-490 (Vt. 1986). Although this is an appeal of an advisory opinion rather than of a district commission decision, the Board believes that because the filing deadline is established by statute with no provisions for extensions, it has no discretion to extend the deadline and must therefore dismiss this petition.

IV. ORDER

The petition for a declaratory ruling filed by Earth Construction Company is hereby dismissed.

Dated at Montpelier, Vermont this 16th day of March, 1993.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Terry Ehrich
Arthur Gibb
Samuel Lloyd
Steve E. Wright

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