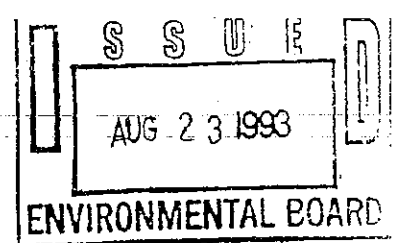


VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151



Re: U.S. Quarried Slate Products, Inc. and Declaratory Ruling Requests #279  
Scotch Hill Leasing Corporation by and #283  
James P.W. Goss, Esq.  
P.O. Box 578  
Rutland, VT 05702

Genier Slate Quarry  
c/o Victor C. Genier  
Fair Haven, VT 05743

MEMORANDUM OF DECISION AND STAY ORDER

On July 30, 1993, the Environmental Board issued Declaratory Rulings #279 and #283, concluding that a permit is required pursuant to 10 V.S.A. Chapter 151 (Act 250) for two different slate quarry operations located near each other off Blissville Road in Poultney. The quarries are operated by U.S. Quarried Slate Products, Inc. (US Slate) and Victor Genier. The Board further concluded that a permit is required prior to further operations on the quarry sites.

On August 12, 1993, the Board received the following from James P.W. Goss, Esq. on behalf of US Slate and Victor Genier: (a) a joint motion to bifurcate, (b) a motion on behalf of US Slate for reconsideration and continued operation, and (c) a separate motion for same on behalf of Mr. Genier.

On August 17, 1993, the Blissville Road Concerned Citizens Group filed a request for additional time to respond to the Motions for Reconsideration and on August 19 filed a Response to Motions for Reconsideration on the issue of allowing petitioners to continue operations until an Act 250 permit is issued to them, a Draft Response to Motion for Reconsideration by U.S. Quarried Slate Products Inc. on the remaining issues, and a Draft Response to Motion for Reconsideration by Victor Genier on the remaining issues. The Board deliberated on August 19, 1993.

The Board makes the following decisions:

- (a) The motion to bifurcate is denied because there are common questions of fact and law with respect to the two declaratory ruling petitions, and because the Board and the parties are and have been able to separate the facts and issues that need to be separated.
- (b) The Board will take the motions to reconsider under advisement because it believes that they deserve careful and unhurried consideration. The Board will deliberate further concerning them on September 8, 1993. Any further

comments by the parties concerning the motions must be filed no later than one week prior to such deliberation.

- (c) Under authority of Board Rule 42, the Board will issue a preliminary stay of those portions of paragraphs its July 30 order that state that a permit remains required prior to any further operations on the site. This will give both quarry operations an opportunity to operate on a limited basis and to apply for Act 250 permits.

In the context of a declaratory ruling that a permit is required, the issuance of a stay under Rule 42 is unprecedented. However, under the circumstances of this case, the Board believes that such issuance is warranted for the reasons stated below.

Rule 42 provides:

No decision of the board or a district commission is automatically stayed by the filing of an appeal. Any party aggrieved by a final order of the board or a district commission may request a stay by written motion filed with the board identifying the order or portion thereof for which a stay is sought and stating in detail the grounds for the request.

In deciding whether to grant or deny a stay, the board may consider the hardship to parties, the impact, if any, on the values sought to be protected by Act 250, and any effect upon public health, safety or general welfare. The board may issue a stay containing such terms and conditions, including the filing of a bond or other security, as it deems just.

With respect to that portion of the July 30 order stating that a permit is required prior to continued operation, the Board believes that a stay would be just in this case because each of the quarry operators initially received an advisory opinion that no permit was required that has been overturned. In addition, based on the evidence submitted during the hearings on this case and the Findings of Fact in the July 30 decision, the Act 250 values and the public health, safety, and general welfare can be protected by including the following requirements in the stay order that will apply during the period the stay is in effect:

- (a) No more than one overburden shot may occur.

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- (b) No more than two pillar shots may occur within any ten-day period.
- (c) Twenty-four hours notice must be provided prior to each and every blast to all parties to these declaratory ruling petitions and to all persons whose land adjoins the land on which the quarries are located.
- (d) There shall be no more than five truck trips into and five truck trips out of each quarry within any given 24-hour period.
- (e) The hours of operation for each quarry shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to noon on Saturday. No trucks may arrive before 7:00 a.m. or leave after 5:00 p.m.

In the motions, US Slate and Mr. Genier have sought stays to last until January 15, 1994. The Board will give further consideration to this request. However, as a preliminary matter, the requested period does not appear justified. US Slate represents in its motion that it is about to file an Act 250 application and that it projects that three months will be needed to complete the application process. US Slate has been on notice since November 1992 of the permit requirement and therefore should be prepared to proceed quickly. The Board will therefore grant US Slate a 90-day stay.

With regard to Mr. Genier, his first notice of the permit requirement is the July 30 decision. Therefore, the Board believes he should receive an additional 30 days to prepare an application. Consequently, the stay period for Mr. Genier will 120 days.

#### ORDER

1. The following underlined portion of paragraph three of the Board's July 30, 1993 order in this case is preliminarily stayed for 90 days unless extended:

An Act 250 permit was required prior to commencement of quarrying activities, and any associated construction, on the Eagle Tract by US Slate, and remains required prior to any further quarrying or related construction on that Tract, including the property of the Stovers discussed in the Findings, above.

2. The following underlined portion of paragraph four of the Board's July 30, 1993 order in this case is preliminarily stayed for 120 days unless extended:

An Act 250 permit was required prior to commencement of quarrying activities, and any associated construction, on the Sbardella Tract by Mr. Genier, and remains required prior to any further quarrying or related construction on that Tract.

3. The period of the above-mentioned stays shall run from the date this order is issued. Unless the stays are extended or voided in accordance with paragraphs six or seven, below, paragraphs three and four of the July 30 order shall be in effect upon expiration of the above-mentioned stays.

4. During the period that the stay of paragraph three of the July 30 order is in effect, US Slate may operate on the Eagle Tract in accordance with the following requirements:

- (a) No more than one overburden shot may occur.
- (b) No more than two pillar shots may occur within any ten-day period.
- (c) Twenty-four hours notice must be provided prior to each and every blast to all parties to these declaratory ruling petitions.
- (d) There shall be no more than five truck trips into and five truck trips out of the Tract within any given 24-hour period.
- (e) The hours of operation shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to noon on Saturday.

5. During the period that the stay of paragraph four of the July 30 order is in effect, Mr. Genier may operate on the Sbardella Tract in accordance with the following requirements:

- (a) No more than one overburden shot may occur.
- (b) No more than two pillar shots may occur within any ten-day period.

- (c) Twenty-four hours notice must be provided prior to each and every blast to all parties to these declaratory ruling petitions.
  - (d) There shall be no more than five truck trips into and five truck trips out of the Tract within any given 24-hour period.
  - (e) The hours of operation shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to noon on Saturday.
6. Upon violation of any of the requirements of paragraph four, above, the stay given to US Slate shall be void.
7. Upon violation of any of the requirements of paragraph five, above, the stay given to Mr. Genier shall be void.

Dated at Montpelier, Vermont this <sup>23<sup>rd</sup></sup> day of August, 1993.

ENVIRONMENTAL BOARD

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Ferdinand Bongartz  
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Member dissenting: Lawrence H. Bruce, Jr.