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

Re: City of Barre Sludge Management Program
Declaratory Ruling #284

MEMORANDUM OF DECISION

This Memorandum of Decision pertains to various party status requests. Also included is a disclosure by Board Member Jean Richardson and a scheduling order (attached as Appendix A).

I. BACKGROUND

On September 29, 1992, the City of Barre requested an advisory opinion from the District #5 Environmental Commission regarding whether there was Act 250 jurisdiction over the City of Barre's Sludge Management Program (the Project) as it pertains to the application of sludge on farm land in Barre City and the Towns of Barre, Berlin, Calais, Orange, Williamstown, and Washington, Vermont (collectively the Area Farms). The sludge would be generated by the City of Barre's sewage treatment plant (the Barre Facility).

On October 27, 1992, the District Commission issued Advisory Opinion #5-92-24 which advised that there was Act 250 jurisdiction over the application of sludge on the Area Farms.

On November 25, 1992, the City of Barre appealed District Commission Advisory Opinion #5-92-24. On March 3, 1993, the Assistant Executive Officer issued Advisory Opinion #EO-92-277 which advised that an Act 250 permit amendment to Land Use Permit #500049 would be required prior to the application of sludge onto the Area Farms located in the Town of Barre, but that Act 250 jurisdiction did not extend to the application of sludge onto the remaining Area Farms.

On April 1, 1993, the City of Barre, pursuant to 10 V.S.A. § 6007(c), appealed from Assistant Executive Officer Advisory Opinion #EO-92-277 and petitioned for a declaratory ruling. The petition solely challenged the Assistant Executive Officer's conclusion that there is Act 250 jurisdiction over the application of sludge onto the Area Farms located in the Town of Barre.

On May 3, 1993, Chair Courtney convened a prehearing conference during which various individuals indicated that they intended to participate.

In its Prehearing Conference Report and Order issued on May 7, 1993, those persons and entities which indicated that they intended to participate were required to submit memoranda in support of their party status requests. Because not all persons and municipalities were properly notified of the

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petition for declaratory ruling, a Notice of Filing of Petition for Declaratory Ruling was also issued on May 7, 1993, and those not properly notified were given an opportunity to request party status.

On June 22, 1993, the Waste Facility Panel by its Chair, Elizabeth Courtney, convened a prehearing conference regarding the appeal of Interim Solid Waste Certification #I9303-WFP. The East Calais Fire District #1 Prudential Committee (Fire District) and John and Joan Harding (Harding) indicated at the prehearing conference an intention to seek party status in this proceeding. In the Waste Facility Panel's Prehearing Conference Report and Order, Chair Courtney ruled that the Fire District and Harding were required to submit written requests for party status in this proceeding on or before June 30, 1993.

On July 1, 1993, the Board deliberated on all party status requests.

## II. PARTY STATUS DECISIONS

1. On June 18, 1993, Julie Tonks and Philip Tonks voluntarily withdrew their request for party status since the land application sites adjoining their property have been withdrawn from the Project. The Board accepts the withdrawal and the Tonks are denied party status.

2. Because Beverly Frazier, the Town of Washington Planning Commission, and Robert Farnham failed to comply with Part III of the May 7, 1993 Prehearing Conference Report and Order, their requests for party status are denied.

3. On June 7, 1993, BBarry Stryker and Anne Stryker (Stryker) and Frank Johnson and Marilyn Johnson (Johnson) filed a written memoranda in support of their request for party status.

Stryker and Johnson own land in the Town of Barre which is directly adjacent to a site being used in the Town of Orange. Stryker and Johnson take the position that there should be Act 250 jurisdiction over the spreading of sludge wherever it occurs, regardless of whether it is within or without a five-mile radius from the Barre Facility.

On June 18, 1993, the City of Barre filed an objection to the Stryker and Johnson party status requests.

Because the spreading of sludge on an adjacent property may affect the interests of Stryker and Johnson under the provisions of 10 V.S.A. § 6086(a), the Board grants Stryker and Johnson party status under Board Rule 14(B)(l)(a), subject to the condition that one person act as spokesperson.

4. The Vermont League of Cities and Towns (VLCT) complied with Part III of the May 7, 1993 Prehearing Conference Report and Order. The Board grants VLCT party status under Board Rule 14(B)(l)(b).

5. On May 19, 1993, the Town of Orange Planning Commission filed a request for party status pursuant to the May 7, 1993 Notice of Filing of Petition for Declaratory Ruling. On June 6, 1993,: the City of Barre filed an objection to the Town of Orange Planning Commission party status request.

Because the spreading of sludge within the Town of Orange may affect the interests of Town of Orange residents under the provisions of 10 V.S.A. § 6086(a), the Board grants the Town of Orange Planning Commission party status under Board Rule 14(A) (I) .

6. On June 10, 1993, the Town of Barre Planning Commission filed a 'request for party status pursuant to the May 7, 1993 Notice of Filing of Petition for Declaratory Ruling. The City of Barre has not filed an objection to this request.

For the same reason that the Board grants party status to the Town of Orange Planning Commission, the Board grants the Town of Barre Planning Commission party status under Board Rule 14(A)(l).

7. The Board denies the Fire District and Harding party status in this proceeding due to their respective‘failure to submit a written request consistent with the Prehearing Conference Report and Order issued June 24 in proceeding Interim Certification #I9303-WFP.

## III. DISCLOSURE

Board member Jean Richardson has disclosed that Barry Stryker is employed by the University of Vermont Extension Service in connection with the Environmental Programs in Communities project (EPIC). Board member Richardson is the leader of the EPIC project and oversees aspects of the work of Barry Stryker. While Board member Richardson does not regard this as a conflict, any party that objects to her participation in this proceeding shall do so in writing on or before July 21, 1993.

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## IV. SCHEDULING ORDER

Attached hereto and incorporated herein as Appendix A is a scheduling order.

Dated at Montpelier, Vermont this 9th day of July, 1993.

ENVIRONMENTAL BOARD

Elizabeth Courtney, Chair
Ferdinand Bongartz
Terry Ehrich
Arthur Gibb
William Martinez
Jean Richardson

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

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APPENDIX A
SCHEDULING ORDER

1. On or before September 1, 1993, parties shall file final lists of witnesses and exhibits and prefiled testimony for all witnesses they intend to present.

2. On or before September 22, 1993, parties shall file prefiled rebuttal testimony and revised lists showing rebuttal witnesses and exhibits.

3. On or before October 13, 1993, parties shall file in writing all objections to the prefiled testimony and exhibits previously identified, or such objections shall be deemed waived.

4. The Environmental Board will convene a hearing in this matter on October 20, 1993, to be confirmed by subsequent notice with location.

5. No individual may be called as a witness in this matter if he or she has not been identified in a witness list filed in compliance with this order. All reports and other documents that constitute substantive testimony must be filed with the prefiled testimony. If prefiled testimony has not been submitted by the date specified, the witness will not be permitted to testify. Instructions for filing prefiled testimony are attached.

6. The Board may waive the filing requirements upon a showing of good cause, unless such waiver would unfairly prejudice the rights of other parties.

7. Parties shall file an original and ten copies of prefiled testimony, legal memoranda, all exhibits which are 8½ by 11 inches or smaller, and any other documents with the Board, and mail one copy to each of the parties listed on the attached Certificate of Service.

Parties are required to file only lists identifying exhibits which are larger than 8½ by 11 inches that they intend to present, rather than the exhibits themselves. Exhibits must be made available for inspection and copying by any parties prior to the hearing.

8. To save time at the evidentiary hearing, the Board will require that parties label their prefiled testimony and exhibits themselves and submit lists of exhibits which the Board can use to keep track of exhibits during the hearing. With respect to labeling, each person is assigned a letter as follows: B for the City of Barre, 0 for the Town of Orange Planning Commission, S for the Strykers and Johnsons, V for the Vermont League of Cities and Towns, and T for the Town of Barre Planning Commission. Prefiled testimony and exhibits shall be assigned consecutive numbers: for example, the City of Barre will number its exhibits B1, B2, B3, etc. If an exhibit consists of more than one piece (such as a site plan with multiple sheets), letters will be used for each piece, i.e., B2A, B2B, etc. The labels on the exhibits must contain the words ENVIRONMENTAL BOARD, Re: City of Barre Sludge Management Program, Declaratory Ruling #284, the number of the exhibit, and a space for the Board to mark whether the exhibit has been admitted and to mark the date of admission. Label stickers which can be used by the parties are available from the Board on request; parties must complete the information sought on the stickers prior to the hearing.

Concerning preparation of lists of exhibits, each list must state the full name of the party at the top and the Board's case number. There must be three columns, from left to right: NUMBER, DESCRIPTION, and STATUS. The list must include exhibits and prefiled testimony. An example is as follows:

CITY OF BARRE (B)
LIST OF EXHIBITS
RE: City of Barre Sludge Management Program
Declaratory Ruling #284

| Number | Description | Status |
|---|---|---|
| B1 | Prefiled testimony of John Smith | |
| B2A-D | Plan dated _____, sheets Al through A4 | |

The Board will use the status column to mark whether the exhibit has been admitted_

9. The hearings will be recorded electronically by the Board or, upon request, by a stenographic reporter. Any party wishing to have a stenographic reporter present or a transcript of the proceedings must submit a request by **September 1, 1993.** One copy of any transcript made of proceedings must be filed with the Board at no cost to the Board.

10. Pursuant to Board Rule 16, this order will be binding on all parties who have received notice of the prehearing conference, unless there is a timely objection to the order, or a showing of cause for, or fairness requires, waiver of a requirement of this order.