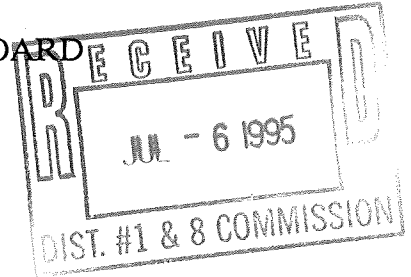


VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151



Re: State of Vermont, Agency of Transportation  
Declaratory Ruling Request #288

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DISMISSAL ORDER**

**I. SUMMARY OF PROCEEDINGS**

On June 24, 1993, a petition for a declaratory ruling was filed with the Environmental Board by the State of Vermont, Agency of Transportation, through its attorney, Thomas Viall, Esq., concerning whether an Act 250 permit was required prior to commencement of construction on Highway Projects STP 9268(15) and STP 9234(15) on Vermont Route 125 in the Towns of Middlebury and Ripton, Vermont. On September 2, 1993, the Board Chair convened a prehearing conference in Ripton.

On September 13, 1993, the Petitioner filed with the Board a Motion for Remand to District Commission. The Board deliberated on October 7, 1993 in White River Junction. On October 22, 1993, the Board issued a Memorandum of Decision staying this proceeding contingent upon the filing by Petitioner of an application for a permit with the District #9 Environmental Commission within 30 days. The Memorandum of Decision provided that if the District Commission denied a permit to Petitioner or imposed conditions not acceptable to Petitioner, Petitioner could reactivate this proceeding by notifying the Board within 30 days of the date of the District Commission's decision.

On April 29, 1994, the District #9 Environmental Commission issued a permit to the Petitioner.

A Proposal for Dismissal and proposed decision were sent to the parties on May 16, 1995, and the parties were provided an opportunity to file a Motion to Revoke Proposal for Dismissal before the full Board. No party filed a Motion to Revoke Proposal for Dismissal with the Board. The Board deliberated concerning this matter on June 21, 1995. This matter is now ready for decision.

**II. FINDINGS OF FACT**

1. The most recent Board file entry prior to the issuance of the Proposal for Dismissal in this matter is dated October 22, 1993.

2. On May 16, 1995, the Board Chair, John T. Ewing, issued the Proposal for Dismissal in this matter, which included a copy of the Docket

Management Notice.

3. No party filed a Motion to Revoke Proposal for Dismissal with the Board on or before seven days prior to the Board's deliberations in this matter.

### III. CONCLUSIONS OF LAW

10 V.S.A. § 6007(c) and 3 V.S.A. § 808 require that the Board consider and dispose of declaratory ruling petitions in a prompt manner. Pursuant to this authority, the Board has established a docket management protocol governing the failure of parties to diligently prosecute declaratory ruling petitions. This protocol is described in a Docket Management Notice provided to all parties. This notice states in pertinent part:

In any declaratory ruling petition proceeding, the Board Chair may issue, **without notice**, a Proposal for Dismissal where no document has been filed with the Board by the Petitioner:

After the expiration of six months from the most recent Board file entry in the case. However, if a continuance or stay with a definite termination date **which has been issued by the Board** is in effect, this time period will commence on the termination date; or

In the case of an indefinite continuance or stay **issued by the Board**, after the expiration of twelve months from the issuance of the continuance or stay by the Board.

The Board Chair may also issue, **without notice**, a Proposal for Dismissal upon request of the Board's Director of Administration, where twelve months have passed from the commencement of the petition proceeding, and in the opinion of the Director, the petition is not being diligently prosecuted.

Where the Board Chair has issued a Proposal for Dismissal, the Board will dismiss the petition at the next Board deliberation after 30 days have passed from the issuance of the Proposed Dismissal Order, unless any of the parties files a "Motion to Revoke Proposal for Dismissal" on or before seven days prior to the Board deliberation. A form motion will be provided to the parties when the Proposal for Dismissal is issued.

If a Motion to Revoke Proposal for Dismissal is timely filed in proper form prior to deliberation on the Proposal for Dismissal by the Board, the Board will postpone consideration on the proposal until the next Board deliberation after 30 days have passed. At that time, the Board will consider the motion and shall either revoke the proposal for dismissal, or dismiss the petition.

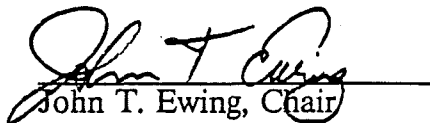
The most recent Board file entry prior to the issuance of the Proposal for Dismissal in this matter is dated October 22, 1993. On May 16, 1995, the Board Chair, John T. Ewing, issued a Proposal for Dismissal in this matter, which included a copy of the Docket Management Notice. No party filed a Motion to Revoke Proposal for Dismissal with the Board on or before June 14, 1995. As a result, dismissal of this petition by the Board is proper.

#### IV. ORDER

Dismissal of this matter is not contrary to the values embodied in Act 250. This matter is **DISMISSED WITH PREJUDICE**. This Dismissal Order is limited in effect to the petition proceeding before the Environmental Board.

Dated at Montpelier, Vermont this 28<sup>th</sup> day of June, 1995.

#### ENVIRONMENTAL BOARD



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