

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001-6092

Re: Vermont Egg Farms, Inc.
Declaratory Ruling #317

MEMORANDUM OF DECISION

This Memorandum of Decision addresses a Motion to Alter ("Motion") filed pursuant to Environmental Board Rule ("EBR") 31(A) by John and Lorri Tremblay, Alan and Jeannine Chadwick, Donald and Frances Besette, Brian Besette, Patrick and Kay Laroche, Bernard and Susan Rainville, Henry and Raymonde Choiniere, Bernard and Arlene Trahan, Jeff Trahan, George and Patricia Britch, Steve Tremblay, Cindy Shedrick, Paul Tremblay, Marc and Ann Dandurand, Frederick and Maryann Greenia, Jacques Rainville and Concerned Citizens of Franklin County ("Petitioners") and Rural Vermont with regard to Re: Vermont Egg Farms, Inc., Declaratory Ruling #317, Findings of Fact, Conclusions of Law and Order (June 14, 1996) ("Decision"). As explained below, the Environmental Board ("Board") denies the Motion.

I. BACKGROUND AND PROCEDURAL SUMMARY

The Decision contains a detailed summary of the background and procedural history prior to issuance of the Decision.

On July 15, 1996, the Petitioners and Rural Vermont filed the Motion.

On July 23, 1996, Vermont Egg Farms, Inc.. ("VEF") filed a response to the Motion.

On August 28, 1996, the parties presented oral argument and the Board deliberated relative to the Motion.

II. EBR 31(A)

EBR 31(A) authorizes motions to alter as follows:

(A) Motions to alter decisions. A party may file within 30 days from the date of a decision of the board or district commission one and only one motion to alter with respect to the decision. However, no party may file a motion to alter a decision concerning or resulting from a motion to alter.

(1) All requested alterations must be based on a proposed reconsideration of the existing record. New arguments are not allowed, with the exception of arguments in response to permit conditions or allegedly improper use of procedures, provided that

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the party seeking the alteration reasonably could not have known of the conditions or procedures prior to decision. New evidence may not be submitted unless the board or district commission, acting on a motion to alter, determines that it will accept new evidence.

(2) A motion to alter should number each requested alteration separately. The motion may be accompanied by a supporting memorandum of law which contains numbered sections corresponding to the motion. The supporting memorandum should state why each requested alteration is appropriate and the location in the existing record of the supporting evidence. Any reply memorandum of law should also contain numbered sections corresponding to the motion. Additional requirements concerning motions and memoranda are set out in Rule 12 of these rules.

(3) The board or district commission shall act upon motions to alter promptly. The running of any applicable time in which to appeal to the board or supreme court shall be terminated by a timely motion filed under this rule. The full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion. It is entirely within the discretion of the board or district commission whether or not to hold a hearing on any motion.

(4) The board or district commission may on its own motion, within 30 days from the date of a decision, issue an altered decision or permit. Alterations by board or district commission motion shall be limited to instances of manifest error, mistakes, and typographical errors and omissions.

In general, Board decisions under EBR 31(A) indicate that a motion to alter is in the nature of reconsideration and that the motion should not ask the Board to reconsider matters it was not asked to consider originally. Re: Finard Zambias Associates, #1R0661-EB, Memorandum of Decision (Jan. 16, 1991).

III. DECISION

The Board concludes that the Decision is sound for the reasons stated therein.

Specifically, the Decision states the Board's conclusion that Act 250's definition of "farming" is plain on its face. 10 V.S.A. § 6001(22) (1993) defines farming, in part, as "the raising, feeding or management of ... poultry" and "the on-site storage, preparation and sale of agricultural products principally produced on a farm." VEF will be raising, feeding and managing chickens for the purpose of producing eggs. Additionally, VEF will be storing and preparing the eggs for sale by grading, washing, and packing the eggs. Accordingly, based on the plain language of the definition of "farming," VEF's Project constitutes "farming" under Act 250.

Because VEF's Project is "farming" which is below the elevation of 2500 feet, the Project is excepted from the definition of "development" contained in 10 V.S.A. § 6001(3) (1993) and EBR 2(A) (2). Therefore, the Project does not require an Act 250 permit. 10 V.S.A. § 6081(a) (1993).

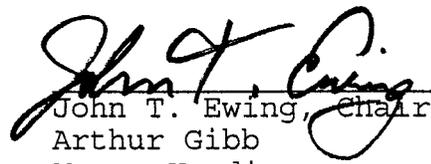
Even though the Project does not require an Act 250 permit, its size and scope are such that it will cause numerous environmental impacts. Because the trend in agriculture is toward larger and more concentrated farms, the Board believes that the impacts of such farms should be subject to regulatory review. However, as stated in the Decision, the Board concludes that it does not have jurisdiction to review the impacts of VEF's Project. The Board believes that reaching any other conclusion in this case would be a usurpation of the authority of the legislature.

IV. ORDER

The Motion is denied.

Dated at Montpelier, Vermont this 4th day of September, 1996.

ENVIRONMENTAL BOARD



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