

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

RE: Rodney and Sandy Rogstad
Declaratory Ruling Request #369

CHAIR'S PROPOSED DISMISSAL ORDER

This proposed order of dismissal pertains to the timeliness of a petition for a declaratory ruling filed by Rodney and Sandy Rogstad ("Rogstads") through Hal J. Wilkins, concerning the applicability of 10 V.S.A. Chapter 15 1 ("Act 250") to the removal of earth material from their 14 acre parcel off Route 14 in Westminster, Vermont ("Project"). For the reasons explained below, I propose that the petition be dismissed.

I. BACKGROUND

On July 8, 1998, Assistant District #2 Coordinator Linda Matteson issued Jurisdictional Opinion #2-1 13 ("Opinion"). The Opinion concludes that the Project is subject to Act 250 jurisdiction and, accordingly, requires an Act 250 permit.

On August 20, 1998, the Rogstads appealed from the Opinion and filed a petition for a declaratory ruling ("Petition") with the Environmental Board ("Board").

II. DECISION

Environmental Board Rule ("EBR") 3(D) and 16(B) and 10 V.S.A. § 6007(c) allow the Chair of the Board to make preliminary rulings without convening a prehearing conference. If any party objects to the ruling, then the ruling shall be reviewed and the matter resolved by the Board.

In accordance with EBR 3(D) and 16(B), I propose to dismiss the Petition since it was untimely filed pursuant to 10 V.S.A. § 6007(c). 10 V.S.A. § 6007(c) provides, in pertinent part:

An appeal from a jurisdictional opinion of a district coordinator must be filed within 30 days of the mailing of the opinion to the person appealing.'

(Emphasis added.)

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

Although section 6007(c) specifies a filing fee of \$25.00, this reference has been superseded by 10 V.S.A. §6083a (d), effective July 1, 1998, which requires payment of a filing fee of \$100.00, plus publication costs.

In this case, the Opinion was issued on July 8, 1998. The Petition was received by the Board on August 20, 1998. The Petition was filed with the Board after the 30-day deadline had passed.

Filing deadlines are jurisdictional and the Board therefore has no discretion to waive a deadline established by statute. In re Town of Putney Interim Solid Waste Certification, No. 93-185, slip. op. (Vt. Sept. 22, 1993); Allen v. Vermont Employment Security Board, 133 Vt. 166 (1975). The Board has dismissed a petition for a declaratory ruling where the petition was filed after the 30-day statutory deadline. Re: Earth Construction Company, Declaratory Ruling Request #278 at 2 (March 16, 1993). The Board has also dismissed appeals of permits where such appeals were filed after the 30-day statutory deadline for filing appeals. See, e.g., Re: Haystack Group, #700002-10-EB, Memorandum of Decision (March 29, 1989); Re Club 107, #3 W0196-3-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).

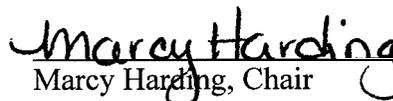
Because the 30-day filing deadline is established by statute with no provision for extensions, neither the Board Chair nor the Board has the discretion to extend the deadline for the submission of a petition for a declaratory ruling. Accordingly, a petition filed beyond the deadline must be dismissed.

III. ORDER

1. The Petition is dismissed.
2. Any party who objects to this Order shall file a written objection with the Board **on or before Tuesday, September 15, 1998**.
3. If there is an objection to this Order, then the Board will deliberate with respect to the objection on September 22, 1998, and issue a decision on or before October 12, 1998.
4. If there is no objection, then this Order shall become final, the Petition shall be dismissed, the Opinion shall be final and binding upon the Rogstads and all parties, and the Project shall require an Act 250 permit.

Dated at Montpelier, Vermont, this 26th day of August, 1998.

ENVIRONMENTAL BOARD



Marcy Harding, Chair