

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

Re: Newmont Slate Co., Inc.

~~Declaratory Ruling Request # 0000~~

DISMISSAL ORDER

This proceeding concerns a Petition filed by Newmont Slate Co., Inc. ("Petitioner") seeking a Declaratory Ruling ("DR") as to whether the construction of a building at its slate quarry constitutes a "replacement" pursuant to 10 V.S.A. § 6081(k)(1). This Order responds to a Motion to Withdraw the DR request filed by the Petitioner on March 10, 2000. As set forth in detail below, the Petitioner's Motion is granted and the petition is dismissed.

**I. PROCEDURAL SUMMARY**

On August 18, 1999, the District 1 Environmental Commission Assistant Coordinator ("Coordinator") issued Jurisdictional Opinion 1-3 15, in which she determined that Petitioner's removal of several small buildings ancillary to its quarrying operation and their replacement by a single building of approximately the same aggregate square footage required a permit pursuant to 10 V.S.A. §§ 6001-6092 ("Act 250").

On August 27, 1999, Newmont filed a Petition for Declaratory Ruling with the Environmental Board ("Board") pursuant to 10 V.S.A. §6007(c) and Environmental Board Rule ("EBR") 3.

On October 7, 1999, a Prehearing Conference Report and Order was issued.

On November 18, 1999, Newmont filed a Motion to Extend Time requesting to extend the dates for filing **prefiled** testimony, exhibits and other filings so that it could work toward entering into an Assurance of Discontinuance (AOD).

On January 21, 2000, Board Chair Marcy Harding issued a Continuance Order giving the Petitioner the additional time requested.

On March 10, 2000, Petitioner filed a Motion to Withdraw Petition for Declaratory Ruling, stating that it has now entered into an AOD.

**II. DISCUSSION**

The Board and district commissions are charged to protect and conserve the lands and environment of the state. 1969 Vt. Laws, No. 250 § 1 (Xdj. Sess.). An administrative agency has discretion to reject a motion to withdraw if withdrawal would

prejudice the public interest that the agency is charged to protect. See e.g., Rockwell Park Associates and Bruce J. Levinsky, #5W0772-5-EB, Dismissal Order (Feb. 17, 1994); H.A. Manosh Corp., Declaratory Ruling #247 (Dec. 13, 1991).

Allowing withdrawal of the Petition in this matter will not prejudice the public interest that the Board is charged to protect. The Petition for the DR was unopposed. Petitioner's entry into the AOD shows that the Board has met its duty to protect the public interest and renders the DR request unnecessary.

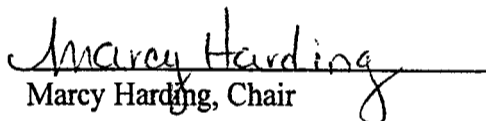
Based upon the foregoing, the Motion to Withdraw is granted. The effect of the withdrawal is that the Jurisdictional Opinion is final. The Petition is dismissed with prejudice. EBR 18(D).

### III. ORDER

1. The Petitioner's Motion to Withdraw Appeal is GRANTED. The Petition is dismissed with prejudice.
2. Jurisdictional Opinion 1-3 15 is final.

Dated at Montpelier, Vermont this 29th day of March, 2000.

ENVIRONMENTAL BOARD

  
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