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

RE: MacIntyre Fuels, Inc., and Vermont Agency of Transportation — Declaratory Ruling Request #402

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Altered)

This is a petition for a declaratory ruling filed by MacIntyre Fuels, Inc. (MacIntyre Fuels) concerning the proposed construction of an intermodal fuel transfer facility adjacent to the Washington County Railroad line in Montpelier, Vermont, including the relocation of existing railroad tracks, installation of switches, construction of fuel storage tanks, piping, pumping equipment and a 30'x 36' canopy, and upgrading an existing gravel driveway off of Route 2 (the Project).

I. PROCEDURAL SUMMARY

On November 9, 2001, the District 5 Environmental Commission Assistant Coordinator (Coordinator) issued Jurisdictional Opinion #5-01-7 (JO) in which she determined that the Project constitutes development and requires a land use permit pursuant to 10 V.S.A. §§ 6001-6092 (Act 250).

On December 11, 2001, MacIntyre Fuels and the Vermont Agency of Transportation filed a Request for Reconsideration, which the Coordinator denied on January 9, 2002.

On January 30, 2002, MacIntyre Fuels filed a Petition for Declaratory Ruling with the Environmental Board (Board), appealing the JO pursuant to 10 V.S.A. § 6007(c) and Environmental Board Rule (EBR) 3. MacIntyre Fuels contends that the Project is exempt from Act 250 and does not require a land use permit.

On February 28, 2002, Board Chair Marcy Harding convened a Prehearing Conference with the following participants:

MacIntyre Fuels, by Thomas Z. Carlson, Esq.
Vermont Agency of Transportation (VTrans), by Del Thompson
Vermont Agency of Natural Resources (ANR), by Elizabeth Lord, Esq.
Patrick Malone, by Frederick Cleveland, Esq.

On February 28, 2002, Chair Harding issued a Prehearing Conference Report and Order (PCRO), which established a schedule, among other things.

On March 28, 2002, MacIntyre Fuels, VTrans, and ANR filed a stipulation of facts with exhibits.

On April 11, 2002, MacIntyre Fuels and VTrans filed a supplemental stipulation of facts with exhibits.

On April 17, 2002, the parties had the opportunity to present oral argument to the Board. Only MacIntyre Fuels participated, but did not present oral argument. Counsel for MacIntyre Fuels answered Board questions. The Board deliberated

immediately afterward and admitted the stipulation and exhibits into the record. The Board also deliberated on May 15, 2002. Based upon a thorough review of the record, related argument, and the proposed findings of fact and conclusions of law, the Board declared the record complete and adjourned.

On May 17, 2002, the Board issued Findings of Fact, Conclusions of Law, and Order. This altered decision is issued to correct one mistake and one typographical omission as provided for in EBR 31(A)(4). The mistake was in Section II. Supplemental Stipulation and the typographical omission was in Section V. Discussion, subsection *Conclusions.*

II. SUPPLEMENTAL STIPULATION

MacIntyre Fuels, ANR and VTrans, submitted a supplemental stipulation of fact and exhibits concerning permits on the Malone parcel. This stipulation was not authorized by the PCRO. The three participating parties waived their right to an evidentiary hearing based upon the original stipulation and exhibits, and the relevancy of the supplemental stipulation to the issue in this case is not clear. Therefore, the Board declines to consider this unauthorized filing.

III. ISSUE

The issue in this proceeding is whether the Project constitutes a development and requires a land use permit pursuant to Act 250.

IV. FINDINGS OF FACT[1]

1. MacIntyre Fuels seeks to construct an intermodal fuel transfer facility adjacent to the Washington County Railroad line in Montpelier, Vermont, including the relocation of existing railroad tracks, installation of switches, construction of fuel storage tanks, piping, pumping equipment and a 30'x36' canopy, and upgrading an existing gravel driveway off of Route 2 (the Project). The Project is designed for transfer of petroleum products from railroad cars to trucks, eliminating an entire category of incoming truck traffic through the area and allowing for elimination of aging petroleum product storage facilities in the area. Similar facilities have been constructed in the last several years adjacent to rail lines in Burlington, Rutland, White River Junction, Walpole, New Hampshire and North Stratford, New Hampshire, all on land leased from the railroads operating in each area.

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[1] These findings incorporate the stipulation of the participating parties, with only minor changes. To the extent that any proposed findings of fact are included within, they are granted; otherwise, they are denied. *See Secretary, Agency of Natural Resources v. Upper Valley Regional Landfill Corp.*, 167 Vt. 228, 241-242 (1997); *Petition of Village of Hardwick Electric Department*, 143 Vt. 437, 445 (1983).

2. The Project is shown on the plan entitled MacIntyre Fuels, Inc., Proposed Storage Tanks, Overall Site Plan, dated March 2000, last revised November, 2001, and prepared by Civil Engineering Associates, Inc. (Exhibit M3).

3. The State of Vermont, through its Agency of Transportation, owns the fee interest to the land beneath part of the Project site, including a spur of land that includes an existing driveway out to U.S. Route 2. The State owns hundreds of miles of railroad right-of-way in Vermont, over which freight service is provided by private railroad operators which lease particular lines from the State. This particular tract, consisting of rail line and right-of-way, extends for approximately 14 miles from Montpelier to Graniteville, and varies in width from 30 to 1500 feet (the Rail Parcel).[2]

4. The State of Vermont leases the Rail Parcel to Washington County Railroad Company (the Railroad) by way of an operating agreement dated September 30, 1999, extending for a term of 25 years until June 2024 (the Operating Agreement) (Exhibit M4).

5. MacIntyre Fuels in turn subleases the Rail Parcel from the Railroad (with the concurrence of the State) by way of a Sublease dated June 27, 2000, that likewise runs for a term extending until June 30, 2024 (the Sublease) (Exhibit M5).

6. In addition, in order to facilitate the Project and the needs of a neighboring property owned by Patrick Malone which covers approximately 96 acres and includes a variety of buildings (the Malone Parcel), the Railroad has proposed Malone Parcel to enter into a Reciprocal Lease Agreement with Patrick Malone pursuant to which: (i) the Railroad would lease from Malone (and sublease to MacIntyre Fuels) a small (40' x 100') strip of land adjacent to the Rail Parcel, together with the right to turn trucks around in an existing paved lot on the Malone Parcel; in exchange for (ii) Malone leasing two small parcels of the Rail Parcel onto which buildings owned by Malone encroach, together with rights for ingress and egress and utility placement over two existing driveways that extend from the Malone Parcel through the Rail Parcel to U.S. Route 2 (the Reciprocal Lease Agreement) (Exhibit M6). The term of the proposed Reciprocal Lease Agreement would correlate to the term of the Sublease and the Operating Agreement.

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[2] No evidence on the acreage of this 14-mile-long parcel was presented. However, the Board notes that the width of the parcel is at least 30' throughout. A parcel with dimensions of 14 miles (73,920 feet) by 30 feet is approximately 50.91 acres.

7. The Malone Parcel is subject to Land Use Permit #5WO489, as amended. Land Use Permit #5WO489-2 specifically authorizes construction of a 20,000 square foot cold warehouse and related sitework. That warehouse is the building located adjacent to the existing paved area to be used by MacIntyre Fuels for truck turn around.

8. The small strip of land leased by the Railroad from the Malone Parcel pursuant to the Reciprocal Lease Agreement is needed to accommodate only the canopy portion of the Project as shown on Exhibit M3. An additional portion of the Malone Parcel, the existing paved area, would be used by MacIntyre to allow trucks to turn around.

9. The City of Montpelier has both permanent zoning and subdivision bylaws. On October 26, 2001, MacIntyre Fuels received a Zoning Permit reflecting site plan approval from the City of Montpelier for the Project, including use of the driveway to U.S. Route 2 shown on Exhibit M3 (Exhibit M7).

10. Construction of the Project would involve physical alteration of approximately 58,000 square feet (less than two (2) acres) of land.

11. Construction of the Project would require relocation of existing railroad tracks, installation of switches, construction of three fuel storage tanks, piping, pumping equipment and a 30' x 36' canopy, and upgrading an existing gravel driveway off of U.S. Route 2, all as shown on Exhibit M3.

12. The Project would operate to allow efficient delivery of petroleum fuels by railroad to the Barre-Montpelier area. Railcars with capacity of approximately 27,000 gallons of fuel each would be delivered to the Project rail spur by rail engine and left temporarily. Product would be pumped from the cars to the interim storage tanks, monitored by automatic overfill protection systems and using state-of-the-art no-spill connections. The proposed storage tanks would have capacities of 100,000 gallons each for kerosene and diesel fuel, and a third tank of 150,000 gallons for #2 fuel oil. The smaller tanks are 26' x 26'. The larger tank is 26' x 40'. The tanks would be constructed in a concrete containment area which, together with the piping and pumping systems, is designed and constructed per approval of the State of Vermont Department of Labor and Industry. Trucks carrying up to 7500 gallons of product each would then be able to load product from the interim storage tanks by way of connecting to state-of-the-art no-spill connections located under the canopy shown on Exhibit M3. The canopy would be 30' x 36'. The only other structure to be constructed as part of the Project would be a 10' x 16' pumphouse/control center.

13. Unlike the large fuel storage tank farms of old, the Project is designed as an efficient intermodal transfer facility where relatively small quantities of product are actually stored on site at any one time, and those quantities are in nearly constant motion from railcar to tank to truck. The scale of the

Project can be seen on the Plan attached as Exhibit M3 and also in the photographs (Exhibits M8a, M8b, and M8c) of a similar intermodal facility constructed in 1994 in the railroad yard in Burlington, Vermont (the Burlington Facility).

14. The Sublease (Exhibit M5) calls for a token amount of stated rent ($1200 a year). The real consideration to the Railroad is reflected in paragraph 23, which states as follows:

> It is understood that the property is to be used for a business that will contribute freight traffic to the railroad. If no railcars are received in any 90 day period, except for good reasons beyond the control of the Lessee, such as an Act of God, or through the fault of the Railroad's inability to operate, then the Railroad may cancel this lease on thirty (30) days notice.

15. The Project's connection with the railroad is also evident in the design of the Project. The new rail spur would parallel a pipeline for transfer of product from railroad car to storage tank. The storage tanks themselves would rest on land where a track spur is currently located. The entire facility, except for the canopy and turn around area, is located within the existing railroad right-of-way.

16. The Project's connection with the railroad is also evident in a history and pattern of cooperation between the railroads and MacIntyre Fuels in the construction and operation of similar facilities in Burlington, Rutland, White River Junction, Walpole, New Hampshire and North Stratford, New Hampshire.

17. The statute at issue, 10 V.S.A. § 6001(3), provides in relevant part as follows:

> In the case of the project undertaken by a railroad, no portion of a railroad line or railroad right-of-way that will not be physically altered as part of the project shall be included in computing the amount of land involved. In the case of a project undertaken by a person to construct a rail line or rail siding to connect to a railroad's line or right-of-way, only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved.

18. The quoted portion of § 6001(3) was added by amendment in 1994, in the midst of a similar dispute involving the very similar intermodal transfer facility located in Burlington. The Burlington Facility is shown in the above

referenced photographs, and lies within the railroad yard shown on the Plan entitled "Station Map-Lands, Rutland Railroad Operated By the Rutland Railroad Company, Main Line from Station 6388+80 to Station 6441+60." Exhibit M9.

19. Adoption of the amendment to § 6001(3), and the fact that the land to be physically altered was less than 10 acres, caused the District Environmental Coordinator in the Burlington area to determine that the Burlington Facility did not constitute a development. See Jurisdictional Opinion attached as Exhibit M10.

20. The following is an excerpt from legislative consideration of the amendment. In a hearing held before the House Natural Resources and Energy Committee on April 6, 1994, one of the members said to his counterparts:

> In the context of the whole bill, you still need an Act 250 permit for anything you do in Vermont, more than 10 acres and it's a new construction . . . . Maybe you're building one of those facilities that take the containers off of trains and onto trucks or decontains them. You need to build a building for that, you need to store apparatus. If that installation is taking place on more than 10 acres, you are going to need a permit. That doesn't (change) that . . . I think multi-modal is what they were trying to get at. I think multi-modal is the issue . . . . I consulted with John K. Dunleavy about appropriate language because the Committee wanted some indication and this is what we came up with . . .

21. The Project is a multimodal facility, intended to facilitate and expand rail and truck transportation of petroleum products.

22. MacIntyre Fuels intends to join Patrick Malone in applying for amendment to Land Use Permit #5WO489 for approval of its limited use of the Malone Parcel to enable the Project and also to address current use of the Malone Parcel by its owner.

V. DISCUSSION

Development

The issue is whether the Project is a development. Development is "the construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes." 10 V.S.A. § 6001(3). There is no dispute that the Project involves the construction of

improvements for commercial or industrial purposes. The question is how much land is involved.

Involved land is defined, in relevant part, as:

> "The entire tract or tracts of land, within a radius of five miles, upon which the construction of improvements for commercial or industrial purposes will occur."

EBR 2(F)(1). Generally speaking, involved land is the entire tract or tracts upon which the proposed project will occur.

Limits on Jurisdiction over Rail Lines or Rail Sidings

MacIntyre Fuels argues that only the land to be physically altered should be included in computing the amount of involved land. The statute defining development contains two provisions specific to certain rail projects. First, "[i]n the case of a project undertaken by a railroad, no portion of a railroad line or railroad right-of-way that will not be physically altered as part of the project shall be included in computing the amount of land involved." 10 V.S.A. § 6001(3). Second, "[i]n the case of a project undertaken by a person to construct a rail line or rail siding to connect to a railroad's line or right-of-way, only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved." *Id.* The first provision applies to projects "undertaken by a railroad," and the second provision applies to projects "undertaken by a person."

MacIntyre Fuels is not a railroad, but it does propose to construct a rail siding to connect to a railroad's line or right-of-way. Therefore, the second railroad-related provision of 10 V.S.A. § 6001(3) applies. The plain language of the statute limits the extent of involved land only for a "project . . . to construct a rail line or rail siding to connect to a railroad's line or right-of-way." This Project does contain such a rail line or rail siding component. For that portion of the Project, "only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved." 10 V.S.A. § 6001(3). But because non-rail components of the Project are on the same tract, a different rule applies which requires a permit for the entire tract. This is discussed below.

Rail Siding

MacIntyre Fuels argues that the entire Project, which consists of relocation of existing railroad tracks, installation of switches, construction of three fuel storage tanks, piping, pumping equipment and a 30' x 36' canopy, and upgrading an existing gravel driveway off of Route 2, is a "rail siding." As MacIntyre Fuels describes it:

> The Project involves construction of a rail spur adjacent to an existing rail line, suitable for temporary parking of railroad cars while being

> loaded or unloaded. The rest of the Project is simply the plumbing and driveway improvements necessary to allow the railroad cars to be unloaded onto trucks for local delivery of shipped product. There is no structure for manufacturing, sorting, assembly, refining, packaging or similar activity of any sort within the Project.

(MacIntyre Fuels' Proposed Conclusion of Law #2.) MacIntyre Fuels would have the Board define "rail siding" broadly, to include rail sidings and anything related to them. But this would not be consistent with the plain language of the statute, which applies to rail sidings, and not the whole project where that project includes rail sidings.

MacIntyre Fuels' argument to the contrary, "rail siding" means track separate from the main rail line. The Federal Railroad Administration of the Department of Transportation defines a "siding" as "[a]n auxiliary track for meeting or passing trains." 49 CFR Sec. 236.802a; *see also*, Merriam-Webster's Collegiate Dictionary, at 1090 (10th ed. 1999)(defining "siding" as "a short railroad track connected with the main track."). It is clear that the non-track components of the Project – road improvements, a canopy for trucks, fuel pumping equipment and piping, and fuel storage tanks – are not rail "siding." It also appears that the track portion of the Project is not a "siding," but relocation of the existing line. Whether it is considered a rail line or rail siding, the portion of the Project that is the track is subject to the statute's limit on computing involved land. 10 V.S.A. § 6001(3).

With respect to the rail line, "only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved." 10 V.S.A. § 6001(3). With regard to the rest of the Project, involved land means the entire tract or tracts of land "upon which the construction of improvements for commercial or industrial purposes will occur." EBR 2(F).

Involved Land

Using the entire tract to calculate involved land sets a "'bright line' rule [which] is administrable, reasonable, and it is reasonably well crafted to serve the purpose of [Act 250]." *Re: Wesco, Inc.*, Declaratory Ruling #304, Findings of Fact, Conclusions of Law, and Order at 5 (Dec. 7, 1995)(quoting *Re: Salvas Paving, Inc*., Declaratory Ruling # 229, Findings of Fact, Conclusions of Law, and Order at 7 (June 20, 1991)(quoting *Re: G.S. Blodgett*, Declaratory Ruling # 122 (May 18, 1981))); *see also, Re: GHL Construction, Inc. and PAK Construction, Inc.,* Declaratory Ruling #396, Findings of Fact, Conclusions of Law and Order at 7 (December 27, 2001)*; Re: Roger Loomis d/b/a Green Mountain Archery Range*, #1R0426-2-EB, Findings of Fact, Conclusions of Law, and Order (Dec. 18, 1997); *Re: Richard and Barbara Woodard*, #5W1262-EB, Findings of Fact, Conclusions of Law, and Order at 8 December 18, 1997 *Re: Charles and Barbara Bickford*, # 5W1186-EB, Findings of Fact, Conclusions of Law, and Order at 25 (May 22, 1995)(where proposed project was to be located on 26 acres of a 192 acre parcel,

entire 192-acre tract was "involved land" for purposes of Act 250 jurisdiction), *aff'd*, Memorandum of Decision at 8 (Sept. 12, 1995). To do otherwise would be contrary to the purposes of Act 250. *Re: Stonybrook Condominium Owners Association,* Declaratory Ruling 385, Findings of Fact, Conclusions of Law, and Order at 10 (May 18, 2001)(quoting *Re: G.S. Blodgett*, Declaratory Ruling #122, Findings of Fact and Conclusions of Law at 3-5 (May 18, 1981)("A jurisdictional procedure that did not consider the entire tract of land to be built upon would invite developers to avoid the permit process by segmenting their projects, claiming each segment to be separable.")(citing *In re State Buildings Division*, D.R. #121 (October 29, 1980))); *see also*, *In re Stokes Communications Corp*., 164 Vt. 30 (1995) (where applicant leased one-acre parcel from owner of 92-acre parcel, entire 92-acre parcel was involved land).

MacIntyre Fuels' proposal calls for placement of the three large fuel storage tanks and fuel pumping equipment and piping on a tract that is 14 miles long, with the remaining non-rail components on a separate tract well over the 10-acre jurisdictional minimum. Given this, the Board must conclude that a permit is required for the Project.[3]

Vermont Railway Advisory Opinion

MacIntyre Fuels argues that the Project is not a development. In support of its argument, MacIntyre Fuels cites an advisory opinion in *Re: Vermont Railway*, AO 4-104 (Jan. 9, 1995). In that case, the district coordinator ruled that an intermodal fuel transfer facility, similar to the one proposed here, did not need an Act 250 permit: "the gasoline storage facilities proposed for the Battery Street and Briggs Street sites do not constitute a 'development' under 10 V.S.A. § 6001(3) or Environmental Board Rule 2(A)(2) because the two sites together total less than 10 acres." *Vermont Railway*, AO #4-104, at 2. An advisory opinion is not binding on the Board. Also, this AO is not persuasive because it involved application of a different statutory provision, the provision pertaining to projects undertaken by a railroad, and does not apply here.

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[3] This does not mean that every project located near railroad tracks will trigger Act 250 jurisdiction over the entire railroad parcel. Where all non-rail components of a project are located on an adjacent tract, connected to the railroad tract by a rail siding, only the portion of the railroad tract that is physically altered would be used to compute the amount of involved land. The area of land physically altered on the railroad tract, plus the area of the entire adjacent tract, would constitute the involved land of the project and determine whether a permit is required. Should a permit be required, Act 250 jurisdiction would not extend to the entire railroad parcel.

Legislative History

MacIntyre Fuels also argues that the following statement of a legislator involved in the process amending the definition of development to add the railroad provisions, supports applying the railroad provision to the entire project:

> In the context of the whole bill, you still need an Act 250 permit for anything you do in Vermont, more than 10 acres and it's a new construction . . . . Maybe you're building one of those facilities that take the containers off of trains and onto trucks or decontains them. You need to build a building for that, you need to store apparatus. If that installation is taking place on more than 10 acres, you are going to need a permit. That doesn't (change) that . . . I think multi-modal is what they were trying to get at. I think multi-modal is the issue . . . . I consulted with John K. Dunleavy about appropriate language because the Committee wanted some indication and this is what we came up with . . . .

This was what one member of the House Committee on Energy and Natural Resources said to another member during an April 6, 1994 hearing.

According to MacIntyre Fuels, this statement indicates that the legislature intended to apply the railroad provisions to any multimodal or intermodal transportation facility. The Board, however, is not persuaded. The legislator speaking says that the bill will not change the fact that a permit is required for a storage installation on more than 10 acres. More important, the plain language of Section 6001(3) is clear, so there is no need to look at legislative history. *See, In re Margaret Susan P.*, 169 Vt. 252, 262 (1999)("In construing statutes, our task is to look first at the statutory language itself to determine whether its meaning is plain; if the language is unclear and ambiguous, legislative history may be used to determine the intent of the Legislature") (citing *Holmberg v. Brent*, 161 Vt. 153, 155 (1993)). Where the project is not undertaken by a railroad, the statute limits jurisdiction over rail lines and rail sidings only. There is no ambiguity: the jurisdictional limit does not apply to fuel storage tanks, pumping equipment, road improvements, truck canopies, or related improvements. This quote from a committee member does not indicate otherwise.

Conclusions

The Project calls for the construction of improvements for commercial or industrial purposes on two adjoining tracts of land. One tract, the Rail Parcel, is 14 miles long.[4] The other tract, the Malone parcel, is 96 acres in size. Because MacIntyre Fuels is not a railroad, and because components of the Project which are

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[4] MacIntyre Fuels argues that the acreage of the Rail Parcel is irrelevant. This is not the case, however, because MacIntyre Fuels proposes to construct improvements on that parcel that are neither rail lines nor rail sidings.

not rail lines or rail sidings are to be constructed on each parcel, the amount of involved land is not limited to the amount of land to be physically altered.

To be clear, the proposed construction of improvements on either tract alone would require an Act 250 permit (or amendment, in the case of the Malone parcel). MacIntyre's proposal to construct the truck, the fuel storage tanks, and fuel pumping equipment and piping on the Rail Parcel, leaves the Board no alternative but to hold that the Rail Parcel is involved land, and a permit is required.

Stonybrook

Although the entire Rail Parcel must be included as involved land, MacIntyre Fuels may petition the Commission to narrow the scope of the permitted project for purposes of amendment jurisdiction. *See*, *Re: Stonybrook Condominium Associates, Inc.*, Declaratory Ruling #385, Findings of Fact, Conclusions of Law, and Order (May 18, 2001); *Re: Alpine Stone Corporation*, #2S1103-EB, Findings of Fact, Conclusions of Law, and Order at 43 (Feb. 4, 2002) (modifying *Stonybrook* by holding that the commission, not the coordinator, must review petitions to redefine the permitted project). If the Commission redefines the permitted project as something less than all the involved land, then a permit amendment will only be required for substantial or material changes to the permitted project, as limited by the Commission. EBR 34; *see also*, *Stonybrook*, Findings, Conclusions and Order, at 10-20.

VI. ORDER

1. The Supplemental Stipulation is stricken as an unauthorized filing.

2. The Project constitutes a development and requires a land use permit pursuant to Act 250.

3. Jurisdiction is returned to the District 5 Environmental Commission.

DATED at Montpelier, Vermont this 21st day of May, 2002.

ENVIRONMENTAL BOARD

/s/ Marcy Harding
Marcy Harding, Chair
John Drake
George Holland*
Alice Olenick
Robert H. Opel
Jean Richardson
Donald Sargent**

* DISSENT: Board Member George Holland. I would hold that the Project as described does not require a land use permit, although that portion of the Project on the Malone parcel may require an amendment to Malone permit.

** DISSENT: Board Member Donald Sargent. I would exclude the 14-mile Rail Parcel from jurisdiction because in my opinion the statute limiting involved land for projects undertaken by a railroad should apply to this project. Because the lease between the railroad and MacIntyre Fuels benefits the railroad by guaranteeing a minimum amount of business to the railroad, I believe that this is a railroad project. Therefore, I would hold that only the land to be physically altered on the Rail Parcel should be included in computing involved land. This land, together with the Malone Parcel, would trigger Act 250 jurisdiction.