

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

Re: Rice Oil Company

Declaratory Ruling #436

Remand Order

This proceeding involves a jurisdictional opinion, issued pursuant to 10 V.S.A. §6007(c), which asserts jurisdiction pursuant to 10 V.S.A. Ch. 151 (Act 250) over a proposed development on land leased by Rice Oil Company (Rice Oil) in the Town of Springfield, Vermont (Project).

I. History

On July 7, 2004, the District #2 Environmental Commission Coordinator (Coordinator) issued Jurisdictional Opinion #2-210 (JO) in which she determined that the proposed development by Rice Oil of a gas station/convenience store/McDonald's Restaurant at the Junction of Routes I-91, 5 and 11 in Springfield (Project) requires an Act 250 permit.

On August 6, 2004, Nick Balboni of SVE Associates, on behalf of Rice Oil, filed a letter with the Coordinator, "appealing the jurisdictional ruling requiring the filing of an Act 250 Permit." The letter stated that the facts on which the JO was based were no longer accurate, as certain aspects of the Project had changed. The letter concluded:

In conclusion, due to the modifications in the scope of the work and the fact that the jurisdictional opinion was made based on incomplete information, we request that you reconsider your opinion that an Act 250 [permit] is required for this property. On behalf of Rice Oil, SVE Associates appeals the jurisdictional opinion #2-210 issued on July 7, 2004.

The letter included a \$100.00 "filing fee."

The Coordinator treated the letter as a Petition for Declaratory Ruling and filed the letter with the Environmental Board (Board) on August 10, 2004. Board Chair Patricia Moulton Powden set this matter for a Prehearing Conference.

On September 20, 2004, the Chair convened a Prehearing Conference with the following participants:

Rice Oil by Robin Stern, Esq.
Southern Windsor County Regional Planning Commission (SWCRPC) by Tom Kennedy
Agency of Natural Resources by Elizabeth Lord, Esq.

II. Remand

At the Prehearing Conference, on behalf of Rice Oil, Ms. Stern requested that Balboni's August 6, 2004 letter be treated as a request for reconsideration, not a Petition to the Board for a Declaratory Ruling. Her oral motion that this matter be remanded to the Coordinator for action on the reconsideration request was not opposed by any party present at the Prehearing Conference.

Based on the Balboni letter, which appears to introduce facts not considered by the Coordinator into the equation, the Chair finds that it is appropriate to remand this matter to the Coordinator.

III. Order

1. This matter is remanded to the District 2 Environmental Commission Coordinator for reconsideration.

2. This Order is issued pursuant to EBR 16(C) and is binding on all parties unless a written objection to it, in whole or in part, is filed on or before **Wednesday, September 29, 2004**. Any response to any objection shall be filed with the Board within **ten** days of the date that such objection is filed with the Board.

Dated at Montpelier, Vermont this 22nd day of September 2004.

ENVIRONMENTAL BOARD

*/s/Patricia Moulton Powden*_____
Patricia Moulton Powden, Chair