

State of Vermont
Water Resources Board

**Re: Middlebury College Snow Bowl
Docket No. 91-05**

**Authority:
10 V.S.A. §1269**

ORDER

Findings of Facts

The following Findings of Facts were stipulated to by the ANR and Middlebury College and filed with the Board on January 29, 1992:

1. On February 21, 1991, the Permits, Compliance and Protection section of the Department of Environmental Conservation forwarded a letter to Middlebury College notifying the school that it must obtain an indirect discharge permit by July 1, 1991, to comply with amendments to Chapter 47 of Title 10 of the Vermont Statutes (Water Pollution Control). On April 30, 1991, Middlebury College applied for an Indirect Discharge Permit. On October 3, 1991, the Agency of Natural Resources issued an Indirect Discharge Permit to Middlebury College. The issuance of this permit does not affect the appellant's right of appeal.

2. Section 14-403 of the Indirect Discharge Rules requires all existing sewage systems with a design capacity of 6500 gallons per day (gpd) or more to obtain an indirect discharge permit by July 1, 1991; Section 14-403 is based upon 10 V.S.A. §1263(f) which states, "Existing indirect discharges from on-site sewage disposal systems of less than 6500 gpd shall not require a permit."

3. The capacity of a system is based upon design flows which are set forth in the Environmental Protection Rules, Appendix 7-A, and which are incorporated by reference in the Indirect Discharge Rules §14-403.

4. Under the Environmental Protection Rules, cafeterias such as the Snow Bowl facility are determined to have a daily flow quantity of 50 gpd per seat.

5. The Snow Bowl is licensed by the Health Department for 250 seats; According to the Environmental Protection Rules, the sewage system has a design capacity of 12,500 gpd.

6. There is no dispute between the parties on the interpretation of the Indirect Discharge Rules or Appendix 7-

A of the Environmental Protection Rules.

7. Middlebury has no records to indicate what the sewage system was engineered or designed to accommodate.

8. Middlebury's record-keeping of the actual sewage system demands of the Snow Bowl for January 13, 1991 through March 25, 1991 indicate that the facility uses less than 6500 gpd; the highest sewage demand, as measured by Middlebury's meters, was 3942 gpd.

9. The sole matters for the Board to determine are those legal questions set forth in the Prehearing Order dated September 3, 1991.

10. The parties waive any rights to an evidentiary hearing and further waive all rights to argue orally before the Board on the substantive issues presented.

The Board makes these additional Findings of Facts:

11. On June 10, 1991, the Water Resources Board ("Board") received a properly filed appeal from Middlebury College, pursuant to 10 V.S.A. §1269, appealing a decision of the Agency of Natural Resources ("ANR"), Department of Environmental Conservation ("DEC"), Permits, Compliance and Protection Section, requiring Middlebury College to obtain an indirect discharge permit by July 1, 1991 for its Snow Bowl facility.

12. A Motion to Dismiss was filed by the ANR on July 19, 1991. The ANR argued that the validity of an Indirect Discharge Rule was at issue, that the Board could not rule on the validity of an Indirect Discharge Rule and that only the Washington Superior Court could issue a declaratory judgment on the validity of a rule. Middlebury College filed a reply memorandum to the Motion to Dismiss on July 26, 1991.

13. A Prehearing Order was issued by the Board on September 3, 1991.

14. The Board issued a Preliminary Order on January 20, 1992, holding that it has jurisdiction under 10 V.S.A. §1269 to determine the statutory interpretation of the last sentence of 10 V.S.A. §1263(f). The Board denied the Motion to Dismiss filed by the ANR.

