

State of Vermont  
Water Resources Board

In re: Appeal of Vermont Natural Resources Council  
Docket Nos. 92-02 and 92-05

Preliminary Order  
Party Status

BACKGROUND

On May 20, 1992, the Vermont Natural Resources Council ("VNRC") filed an appeal of the decision of the Agency of Natural Resources ("ANR") to issue a 401 Water Quality Certification to Snowridge, Inc. ("SRI") for construction of the Sugarbush Snowmaking Pond. The appeal was filed pursuant to 10 V.S.A. §1024(a). This appeal is the second appeal involving the Sugarbush snowmaking pond. The first appeal, Docket No. 92-02, is an appeal pursuant to 10 V.S.A. §1099(a) (Dam permit statute).

On June 1, 1992, the Board received a letter from Winooski One Partnership requesting party status under Water Resources Board Rule of Procedure ("Board Rule") 22(B) for Docket No. 92-02 (Dam permit) and Docket No. 92-05 (401 Certification). SRI objected to both requests. VNRC indicated that it had no objection and ANR indicated that it had no position.

A prehearing conference in Docket No. 92-05 was held on June 22, 1992, at which the Vermont Federation of Sportsmen's Clubs ("Federation") appeared and indicated its intent to seek party status. On June 26 the Federation filed a request for intervention in both Docket Nos. 92-02 and 92-05. The Federation's request was filed by Counsel for VNRC and was authorized by the Federation's Board of Directors. SRI and ANR objected to both requests.

On June 26, 1992, Peter Richardson, a resident of Norwich, Vermont, appearing pro se, filed a request for party status in both Docket Nos. 92-02 and 92-05. Both ANR and SRI filed objections to Mr. Richardson's request. VNRC took no position on Mr. Richardson's request.

DISCUSSION

The issue before the Board is whether to grant the requests for party status by these applicants, either by right of intervention or by permissive intervention.

The Vermont Administrative Procedures Act ("Act")

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Prehearing Conference Order

provides all parties in a contested case the opportunity "to respond and present evidence and argument on all issues involved." 3 V.S.A. §809(c). "Party" is defined by the Act to include "each person...properly seeking and entitled as of right to be admitted as a party." 3 V.S.A. §801(5). The Act does not define the circumstances that entitle a would-be intervenor to intervention as of right. The dam permit statute provides a conditional right to intervene on "persons and parties in interest." 10 V.S.A. §1099(a). A "person in interest" is defined as

"a person who has riparian rights affected by the dam, a substantial interest in economic or recreational activity affected by the dam, or whose safety would be endangered by a failure of the dam."

10 V.S.A. §1080(3). Meeting the definition of "person in interest" is the condition that must be met for intervention as of right. /1/ The 401 water quality certification statute does not provide either an unconditional or conditional right to intervene. See 10 V.S.A. §1024.

Board Rule 22(A) covers intervention as of right. Board Rule 22(B) provides for permissive intervention. Prior to considering a Board Rule 22(A) or 22(B) request for

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/1/ There is a difference between "person in interest" and "persons interested" in Title 10, chapter 43 (dams). The 1981 legislative amendment to the Dam statute defined "person in interest" and inserted the term into two sections, §1095, pertaining to unsafe dam petitions (replacing the term "taxpayer"), and §1099, the permit appeals section that is relevant in this case. Section 1085, pertaining to a notice of application and informational meeting, was also amended in 1981, but the term "interested persons" was left intact in the public service board notice of hearing clause and the term "persons interested" was inserted into the first sentence regarding notice of application. Had the legislature wanted to equate "interested persons" and "persons interested" (both in §1085) with "person in interest" (in §1095 and §1099), it had the knowledge and opportunity to do so in 1981. "Interested persons," as used in §1085, relates to situations where notice is designed to expand public involvement in the proceedings. In §1095 and §1099, "person in interest" addresses situations where limitation of participation is permitted.

represented by existing parties. Because Mr. Richardson failed to timely appear in Docket No. 92-02 and did not















