

**State of Vermont  
WATER RESOURCES BOARD**

**RE: Ann and Paul DesLauriers (Revocation appeal,  
Permit #WW-4-0261-2 and #WW-4-0261-3)  
Docket No. EPR-93-05**

**PREHEARING CONFERENCE REPORT AND ORDER**

**I. : BACKGROUND**

On August 4, 1993; the Water Resources Board (Board) received a notice of appeal filed by attorneys Tarrant & Marks, on behalf of Ann and Paul DesLauriers of Colchester, Vermont. The appellants seek review of a decision issued by the Department of Environmental Conservation, Agency of Natural Resources (ANR), concluding that Water Supply and Wastewater Permits' #WW-4-0261-2 and #WW-4-0261-3, issued to Eric Fritzeen for six condominium units of Lakeshore Drive in Colchester, Vermont; should not be revoked. The appeal was filed pursuant to 3 V.S.A. § 287,3(c)(4).

On September 17, 1993, the appellants were informed by Board staff that their notice of appeal was deemed complete and docketed, Rule 18, Board's Rules of Procedure. On that same date, Board staff requested the ANR to forward a documents list and record of appeal. Rule 30, Board's Rules of Procedure. The documents list and record, including tape cassettes of the ANR proceeding, were received by the Board on October 5, 1993.

A notice of the appeal and prehearing conference was sent to persons required to receive notice on October 14, 1993, and published, in the Burlington Free Press - on October 22, 1993, pursuant to Rule 18, (C) of the Board's Rules of Procedure. On November 9, 1993, at 1:30 p.m., a prehearing conference was convened at the Board's Conference Room, 58 East State Street, in Montpelier, Vermont, by the Board's delegate, Kristina L. Bielenberg. See Rule 24(A), Board's Rules of Procedure. The following persons were present at the prehearing conference:

Ann DesLauriers, appellant  
Michael Marks, Esq., Tarrant & Marks, , ,  
for Ann and Paul DesLauriers, appellants  
John C. Gravel, Esq., for Eric Fritzeen, the permittee

"Kurt Janson, Esq., who had entered an appearance for the ANR on November 4, 1993, was not present at the prehearing conference.

On November 17, 1993, a draft Prehearing Conference Report and Order was circulated to the above persons for comment. None of the prehearing conference participants filed objections or comments by the November 29 deadline with respect to this document's terms. Therefore, a final Prehearing Report and Order is now ready for issuance.

**Prehearing Conference Report and Order**

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**II. ISSUE**

The issue in this appeal appears to be the following:

Whether certain water supply and waste water permits (#WW-4-0261-2 and #WW-4-0261-3) issued to Eric Fritzeen by the Department of Environmental Conservation, Agency of Natural Resources, should be revoked for certain alleged failures in the permit application and permit application process identified in the appellants' Notice of Appeal at 2.

The ANR determined that the permits should **not be** revoked. Pursuant to Rule 30 of the Board's Rules of Procedure, the Board may **affirm, reverse with** directions to the ANR, remand to the ANR for reconsideration or further proceedings, or modify the decision of the ANR, as the case **may warrant**.

**III. STANDARD OF REVIEW**

Pursuant to 3 V.S.A. § 28+3(c)(4), the standard of review is appellate. Therefore, this proceeding is governed by the procedural requirements and appellate standards set forth in Rule 30 of the Board's Rules of Procedure.

The record on appeal shall consist of all documents, and materials reviewed or considered by the ANR in making its decision, including the tape recordings of its proceedings. This record is on file at the Board's office and available for inspection and copying. Any party may supplement this record, with the Board's approval, with any materials which were before the ANR but omitted from the agency's document list or any material offered to the ANR prior to and in respect to its decision but not considered by that agency, in accordance with the terms set forth in the Order below.

The parties may submit written memoranda and argument to the Board with reference to the record, statutes, rules and other legal authorities relevant to this matter. The parties may request oral argument before the Board, although the scheduling and conduct of such argument shall be within the discretion of the Board. Terms governing the filing of memoranda and requests for oral argument are set forth in the Order below.

**IV. STENOGRAPHIC RECORD**

Any oral argument scheduled in this matter shall be recorded by electronic sound recording device. Upon the written request

of any party filed in accordance with the terms of the Order below, oral argument will be recorded by a qualified stenographer in addition to electronic sound recording. The party requesting a stenographic recording shall be responsible for arranging the appearance of, and payment to, the stenographer. A transcript shall be prepared by the stenographer on the request of any party and a copy shall be provided to the Board without cost. The stenographic and transcription expenses shall be borne by the party requesting the stenographic recording; however,, that party shall be reimbursed on a pro-rata basis 'by any other party requesting a copy of the hearing transcript. See Rule 28(C) of the Board's Rules of Procedure.

V. ORDER

1. The following are parties as of right in this proceeding:
  - a. Ann and Paul DesLauriers, appellants, pursuant to 3 V.S.A. § .2873(c) (4);
  - b. Eric Fritzeen, the permittee, pursuant to Rule 22(A) of the Board's Rules of Procedure;
  - c. The Agency of Natural Resources (ANR), pursuant to Rule 22(A) (4) of the Board's Rules Of Procedure.
2. The parties, having not filed requests for disclosures from Board members concerning actual or potential conflicts of interest by the December 8, 1993, deadline, are deemed to have waived objection to the participation of those Board members. Members of the water Resources Board understand that they are under, a continuing obligation to make disclosures, concerning any actual or potential conflicts of interest reasonably known to them.
  1. The parties, having not-filed requests to supplement the record in this matter by the December 8, 1993, deadline, are deemed to accept as the record on appeal the documents and tape recordings filed by the ANR on October 5, 1993.
  2. On or before 4:30 p.m., January 14, 1994, any party wanting to brief any factual or legal issues in this matter shall file a written memorandum with the Board.
  3. On or before 4:30 p.m., January 28, 1994, any party wanting to respond to any memoranda filed on or before January 14, 1993, may file a responsive memoranda with the Board.

**Prehearing Conference Report and Order**

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6. On or before 4:30 p.m., January 28, 1994, any party wanting to present oral argument to the Board in support of or in opposition to a memoranda filed with the Board, shall file a written request with the Board.
7. Parties in this proceeding shall file an original and five (5) copies of any motions, memoranda, or other filings with the Board, and mail one copy to each of the persons listed on the attached Certificate of Service. A certificate of service indicating delivery to all listed persons by hand or by first class mail shall also be filed with the Board and parties. The Board does not accept filings by FAX.
8. Pursuant to Rule 24(B) of the Board's Rules of Procedure, this order will be binding on all parties who have received notice of the prehearing conference, unless there is a timely objection to the order, or a showing of cause for, or fairness requires, waiver of a requirement of this Order.

Dated at Montpelier, Vermont, this 21<sup>st</sup> day of December, 1993.

Water Resources Board  
by its Chair

  
William/Boyd Davies

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