

state of Vermont
WATER RESOURCES BOARD

Re: Webster d/b/a East Clarendon General Store
Clarendon, Vermont
Docket No. **UST-93-01**

PREHEARING CONFERENCE REPORT AND ORDER

I. BACKGROUND

On March 4, 1993, the Water Resources Board (Board) received a notice of appeal filed by Mary C. Ashcroft, Esq., on behalf of Judith Webster d/b/a East Clarendon General Store, Clarendon, Vermont, from a decision of the Hazardous Materials Management Division (HMMD) of the Agency of Natural Resources (ANR) denying reimbursement of certain costs from the Petroleum Cleanup Fund, 10 V.S.A. § 1941, incurred by Ms. Webster in repairing a leaking underground storage tank (UST). This appeal was filed pursuant to 10 V.S.A. § 1933.

On March 5, 1993, the appellant was informed by Board staff that her notice of appeal was substantially incomplete, pursuant to Rule 18(B) of the Board's Rules of Procedure. On March 22, 1993, the appellant supplemented her notice of appeal, and on March 26, 1993, Board staff informed the appellant that her filing was complete and docketed. On April 1, 1993, the ANR entered its appearance in this matter. A Notice of Appeal and Prehearing Conference was sent to persons required to receive notice and published in the Rutland Herald on July 17, 1993, pursuant to Rule 18(C) of the Board's Rules of Procedure.

On July 28, 1993, at 2:00 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**, pursuant to Rule 24(A) of the Board's Rules of Procedure. The following persons were present and participated:

Judith Webster
Mary C. Ashcroft, Esq., for Judith Webster d/b/a
East Clarendon General Store
Mary L. Borg, Esq., for **HMMD/ANR**.

On October 22, 1993, a draft prehearing conference report and order was circulated to the prehearing conference participants for comment. The Board received no comments from the parties by the November 5 deadline. Therefore, a final prehearing report and order is now ready for issuance.

II. ISSUES

Based on the appellant's notice of appeal, as supplemented, and the issues statement it presented at the prehearing conference the issue appears to be the following:

Whether Judith Webster d/b/a East Clarendon General Store is entitled to reimbursement from the Petroleum Cleanup Fund, 10 V.S.A. § 1941, for certain costs incurred by Ms. Webster in repairing a leaking underground storage tank (UST). The appellant seeks reimbursement of approximately \$ 4,250.

The ANR contends that as a matter of fact and law the appellant is not entitled to reimbursement from the Petroleum Cleanup Fund.

III. WITNESSES AND EXHIBITS

1. At this time, the appellant reserves the right to call the following witnesses: Judith Webster, and Mr. Jorgensen, a next door neighbor of East Clarendon General Store.
2. At the time, the ANR reserves the right to call the following agency staff as witnesses: Robert **Haslam**, Charles Schwer, William **Ahearn**. Additionally, the ANR reserves the right to call as witnesses the on-site technician who did testing at the appellant's site.
3. During the prehearing conference, the appellant and the ANR referred to various bills, agency regulations and policies, and other documents. Specifically, the appellant referred to ANR reimbursement policies dated **8/27/1990** and **12/2/92**, and the ANR cited Regulation 8-603 dated **2/1/91**. These writings must be offered as exhibits in accordance with the terms of the order below, if a party intends to rely on them in **support** of its case.

IV. STANDARD OF REVIEW

Any hearing on the merits in this appeal shall be conducted as a de novo proceeding, pursuant to 10 V.S.A. § 1933.

V. CONTINUANCE, FILING OF ADDITIONAL APPEALS AND CONSOLIDATION

At the prehearing conference, both the appellant and ANR indicated that a continuance might be helpful to allow the parties time to narrow issues in dispute, to determine whether certain reimbursement requests might be settled or paid by an insurer, to determine whether there is a third party claim regarding contamination at the Jorgensen site, and to assess whether additional requests for reimbursement might give rise to other appeals which should properly be consolidated with the present action.

If the parties determines that a continuance is needed, they should file a joint request with the Board in accordance with the terms set forth in the Order below. If the appellant anticipates that it will be filing additional related appeals prior to a hearing on the merits in this action, it should move for consolidation.

VI. SUPPLEMENTAL PREHEARING ORDER

A Supplemental Prehearing Order reflecting a schedule for filing motions on any preliminary matters, final witness lists, exhibits, prefiled testimony, and stipulations will be issued at a later date after consultation with the parties.

VI. ORDER

1. The following are parties as of right in this proceeding:
 - a. Judith Webster d/b/a East Clarendon General Store, appellant, pursuant to 10 V.S.A. § 1933
 - b. The *Agency* of Natural Resources (ANR), pursuant to Rule 22(A)(4) of the Board's Rules of Procedure.
 2. On or before 4:30 p.m., November 10, 1993, the parties shall jointly file a request for continuance with the Board if they agree that a continuance is needed. Such request shall propose a continuance for a stated period of months or identify a date on which such continuance shall expire unless an extension has been requested and granted by the Board.
 3. Parties in this proceeding shall file an original and five (5) copies of any motions, memoranda, or other filings with the
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Prehearing Conference Report and Order

RE: Webster d/b/a East Clarendon General Store
Docket No. UST-93-03

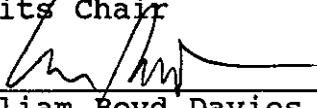
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Board, and mail one copy to each of the persons listed on the attached Certificate of Service. A certificate of service indicating delivery to all listed persons by hand or by first class mail shall also be filed with the Board and parties. The Board does not accept filings by FAX.

4. 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 19th day of 1993,
1993.

Water Resources Board,
by its Chair



William Boyd Davies

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