

State of Vermont
WATER RESOURCES BOARD

Re: **Stokes Corporation (Sarah Marie Motorcourt,
Route 7, Milton, Vermont)**
Docket No. **UST-93-03**

PREHEARING CONFERENCE REPORT AND ORDER

I. BACKGROUND

On March 8, 1993, the Water Resources Board (Board) received an appeal filed by **George P. Stokes** for the Stokes Corporation seeking reversal of the decision of the Hazardous Materials Management Division (HMD) of the Agency of Natural Resources (ANR) denying his request for 'reimbursement from the Petroleum Cleanup Fund, 10 V.S.A. § 1941, and the Environmental Contingency Fund, 10 V.S.A. § 1283, for costs associated' with connection to the Champlain Water District municipal waterline in Milton, Vermont. The Stokes Corporation, a Vermont corporation, filed its appeal pursuant to 10 V.S.A. §§ 1933 and 1269.

On March 15, 1993, the appellant was informed by Board staff that its notice of appeal was substantially incomplete. On April 12, 1993, the appellant submitted a supplemental filing to the Board. On April 23, 1993, the BRED, ANR entered an appearance. Notice of Appeal and Prehearing Conference was sent to persons required to receive notice and published in the Burlington Free Press on June 10, 1993, pursuant to Rule 18 of the Board's Rules of Procedure.

On Tuesday, June, 22, 1993, at 9:00 a.m., a prehearing conference was convened at the Congregational Church, 39 Main Street, Essex Junction, 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:

George P. Stokes for the Stokes Corporation, appellant
Mary L. Borg, Esq., Program Attorney for the HMD, ANR
Elizabeth Lord, paralegal with the HMD, ANR

On June 29, 1993, a draft prehearing conference report and order was circulated to the prehearing conference participants for comment. On July, 7, 1993, the Board received comments from both the appellant and ANR. On July 23, 1993, the Board's delegate, Kristina L. Bielenberg, issued a memorandum proposing new filing deadlines for inclusion in a final prehearing order. Neither the appellant nor ANR filed additional comments by the August 13, 1993, deadline. Therefore, a final prehearing report and order is now ready for issuance.

Prehearing Conference Report and Order

RE: Stokes Corporation (Sarah Marie Motorcourt)
Docket No. **UST-93-03**

Page 2

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 Stokes Corporation is entitled to reimbursement for its costs **in connecting the Sarah Marie Motorcourt** complex with the Champlain Water District (CWD) municipal water line in Milton, Vermont, from **the Environmental Contingency Fund (10 V.S.A. § 1283)**, from the Petroleum Cleanup Fund (18 V.S.A. § 1941), or from both programs in combination. The appellant **specifically** seeks reimbursement of approximately \$13,381.

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

III. WITNESSES AND EXHIBITS

1. At this time, the appellant plans to call the **following** witnesses: George P. Stokes and David Joachim, Milton Zoning Administrator.
2. At this time, the **ANR** reserves the right to **select** and call witnesses from the following agencies: Hazardous Materials Management Division -- Linda Elliott, Charles Schwer, Robert Finucane; Water Supply Division -- Howard Reeves, Rodney Pingree, **Ken Yelsey**, Jean **Nicolai**, Scott Stewart, Winslow **Ladue**; Department of Health -- Karen Creighton, Alfred Burns. The ANR also may call as a witness, David Joachim, Milton Zoning **Administrator**.
3. *During* the prehearing conference, the appellant and **the** ANR referred to various reports **and other** documents, including the so-called Griffin Report and the HMMD reimbursement policy; These should be offered as exhibits in **accordance** with, the terms of the order below.

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 and 1269.

Report and Order

RE: Stokes Corporation (Sarah Marie Motorcourt)
Docket No. UST-93-03

Page 3

V. ORDER

1. The following are parties as of right in this proceeding:
 - a. The Stokes Corporation, represented by George P. Stokes, **appellant**, pursuant to 10 **V.S.A. §§** 1933 and 1269.;
 - b. The Agency of Natural Resources, represented by Mary L. Borg, **Esq.** Program Attorney, **HMMD**, pursuant to Rule 22(A)(4) of the **Board's** Rules of Procedure.
2. On or before **4:30** p.m., November 16, 1993, parties shall file final lists of witnesses and exhibits **and** prefiled direct testimony for all witnesses they intend to present.
3. **On** or before **4:30** p.m., December 7, **1993**, parties shall file prefiled rebuttal testimony and revised lists **showing rebuttal** witnesses and exhibits.
4. On or before **4:30p.m., December 21, 1993**, parties shall file **in** writing all objections to the prefiled testimony' and exhibits previously identified, 'or such, objections shall be deemed waived.
5. No individual may be called as a witness in this matter if he or she has not been, identified in a witness list filed in compliance with this order. All reports and other documents that constitute substantive testimony **must** be filed with the **prefiled** testimony. **If prefiled** testimony has been submitted by the date specified, the witness will not be permitted to testify. Instructions 'for filing prefiled testimony are enclosed.
6. Parties shall file an original and five (5) copies **of** prefiled testimony, legal memoranda, all exhibits which **are 8 1/2** by **11 inches** or smaller, and any other documents **with** the Board, and mail one copy to each of the parties listed **on the** attached Certificate of Service.

Parties are required to file only lists identifying exhibits which are larger than 8 1/2 by 11 inches that they intend to **present** rather than the exhibits themselves. Exhibits must be made available for inspection **and copying** by any. parties prior to the hearing. Instructions for filing **exhibits** are enclosed.
7. The hearing **in** this matter will be recorded **electronically** by the **Board or**, upon request, by a stenographic reporter. **Any** party **wishing to** have a stenographic reporter 'present or a

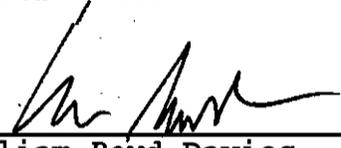
Prehearing Conterence Report and order
RR: Stokes Corporation (Sarah Marie Hotorcourt)
Docket No. UST-93-03
Page 4

transcript of the proceedings must submit a request by 4:30 p.m., Deaember 7, 1993, and make arrangements' for the appearance of the stenographic reporter, pursuant to Rule 28(C) of the Board's Rules of Procedure. One copy of any transcript made of proceedings must be filed with the Board at no cost to the Board.

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 5th day of October, 1993.

Water.Resources Board,
by its Chair



William Boyd Davies

Enclosure

c:\stokephg.ord/wp/kgd