

State of Vermont,
WATER RESOURCES BOARD

In re: Ann and Paul DesLauriers Authority: 3 V.S.A.
Docket NO. EPR-93-05 § 2873(c)(4)

DECISION

Ann and Paul DesLauriers timely appealed; on procedural and substantive grounds, a decision of the Department of Environmental Conservation, Agency of Natural Resources, concluding that Water Supply and Wastewater Disposal Permits #WW-4-0261-2 and #WW-4-0261-3, issued to Eric Fritzeen for six condominium units in Colchester, Vermont,, should not be revoked. For the reasons set forth below, the July 1993 decision of the ANR is reversed and this matter is remanded for further, revocation proceedings consistent with the conclusions in this decision.

I. PROCEEDINGS BELOW

Ann and Paul DesLauriers own property in Colchester, Vermont. Adjacent to their property is a parcel of land, off Lakeshore Drive., formerly owned by Roger Villemaire and now owned by Eric Fritzeen.

Beginning in 1987 or 1988, Mr. Villemaire proposed to develop on the parcel a twenty-unit condominium project served by a mound disposal field. The Department of Environmental Conservation ("DEC") issued Water Supply and Wastewater Disposal Permit #PB-4-1461 for this project which became the subject of a revocation appeal filed by the DesLauriers with this Board. In re: Appeal of DesLauriers, 89-08 (July 19 1991). When Mr. Villemaire was unable to obtain the necessary permits, for this project, he proposed to construct a nine-unit development served by a mound disposal field. The DEC issued Water Supply and Wastewater Disposal Permit #WW-4-0261 for this project on October 31, 1991. However, in a subsequent revocation proceeding in which the DesLauriers were petitioners, the permit, while upheld, was conditioned to require the applicant to obtain an easement from an adjoining landowner to meet set-back requirements under the Environmental Protection Rules ("EPRs"). Since this easement was never obtained, Mr. Villemaire's permit was revoked by operation of law.

The present controversy concerns a permit issued by the DEC to Mr. Fritzeen for an in-ground wastewater disposal system intended to serve a six-unit condominium project. This permit is Water Supply and Wastewater Disposal Permit #WW-4-

0261-2, issued on January 7, 1992.' On April 17, 1992, **Ann and Paul DesLauriers** filed a petition for revocation, or in the **alternative** an appeal, **of this permit.**

On July 23, 1992, 'a prehearing conference was **convened** by the Commissioner.. The hearing officer, Bernard Johnson, **determined** that **the Commissioner** had no jurisdiction to hear a **formal** appeal of Permit #WW-4-0261-2, and the matter proceeded as a Petition for Revocation **only.** Party status was granted to **the** following persons, who participated in the prehearing, conference:

Ann and Paul DesLauriers, by Michael. Marks, Esq.:
Eric Fritzeen, by William' Robinson, Esq.;
Department of Environmental Conservation, Permits,
Compliance and Protection Division, by **Kurt Jansen,**
Esq.

Three preliminary legal issues **were** identified at the **prehearing** conference; these **issues were** then briefed by the parties:- Review of the briefs indicated the existence of a factual dispute among **the parties,** requiring a hearing on the **merits.** A hearing was convened on February 18, 1993 and heard by **Bernard Johnson.** As additional testimony was required, a second day of testimony was scheduled, and the hearing was **concluded** on March 26, 1993. The ANR issued **its decision** on July 19, 1993. The **ANR** concluded that the permits issued to Mr. Fritzeen should **not be** revoked.

The DesLauriers **appealed** to the Water Resources Board ("**Board**"), seeking review of the **ANR's** decision. The parties in this appeal are: **Ann and Paul DesLauriers ("the appellants"),** represented by **Michael Marks, Esq. of the firm Tarrant & Marks;** **Eric Fritzeen ("the applicant")** represented by John Gravel; Esq. of the **firm Bauer, Anderson, Gravel & Abare;** and the Agency of Natural Resources ("**ANR**"), by Kurt Jansen, Esq. The appellant filed a **legal** memorandum on January 28, 1994, and the applicant responded on February 14, 1994. Oral argument was **held before** the Board on March., 29, 1994. ~

¹ The DEC subsequently granted an amendment to Permit #WW-4-0261-2, which became part of the hearing on the merits. **The amendment, Permit #WW-4-0261-3, corrected a typographical error contained in Permit #WW-4-0261-2, and is in all other respects identical to Permit #WW-4-0261-2.**

II. ISSUES ON APPEAL

The appellants raise five issues on appeal. In their Notice of Appeal, the appellants stated nine issues, but subsequently **consolidated them** into the five issues outlined here. **Appellants'** Brief, at 1 (January 28, 1994).

1. Whether the **applicant's** own data demonstrate that **the** separation between the waste water disposal system ("**the system**") and the impermeable silt layer complies with the requirement of the **EPRs that there be at** least three feet of vertical separation between the bottom of stone and a subsoil with a percolation rate of slower than sixty **minutes** per inch;
2. Whether the applicant's own data demonstrate that the **system** complies with the EPR requirement that **there be** at least three feet of vertical **separation between** the system and the seasonal high groundwater level;
3. Whether **the** applicant 'designed the system **using** the **percolation** data required by the **EPRs**;
4. Whether the system is defective and will result in the **release** of **inadequately** treated effluent **into** Lake Champlain; and
5. Whether the **ANR** improperly granted this permit without any notice of the permit application to the appellants, **despite** the fact that the **appellants** were parties in a previous contested case in which the ANR revoked a permit for a system in the same location.,

III. DISCUSSION

This appeal was filed pursuant to 3 V.S.A. § 2873(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 ("**Rules**"). Rule 30 states, in relevant part: ,

Factual conclusions of the Agency shall be upheld by the Board if evidence available to and presented to the Agency fairly and reasonably supports those conclusions. The Agency's interpretation of statutes and rules shall be upheld if not erroneous.

The Board may affirm, reverse with directions to the Agency, remand to the Agency for

reconsideration or **further proceedings**, or modify the **decision** of the **Agency**, as each **case** may warrant.

When **applying** for a permit, the applicant bears the **burden of proof** that the proposed project complies with applicable **EPRs. 2-02K(2)**. The party supporting a petition for **revocation of the permit** bears the **burden of proceeding and of proving** that the permit or decision should be revoked. **EPR Section 2-02F(5)**.

1. Vertical separation between system and impermeable silt layer,

The first issue is whether the **data** before the **ANR** fail to **fairly** and reasonably support the conclusion that the separation between the bottom of the system and the impermeable silt layer **satisfies the requirement** of the **EPRs. EPR 7-07A(1)(e)** provides:

All **disposal systems** shall have a minimum of three feet below the bottom, of stone to a **subsoil with a percolation rate** of slower than 60 minutes per inch.

There is no dispute that there is an impermeable silt layer at the site of the proposed **leach field**, having: a percolation rate of slower than **sixty minutes per inch**. The **EPRs** thus require, the proposed system to maintain three feet of **vertical separation** between the stone forming the bottom of the disposal field and the top of the **silt layer**. Because the approved plan shows a base of **stone six inches** below the surface, the applicant must show a vertical separation from the surface of the ground to the **silt layer** of forty-two inches in the area of the proposed **leach field**.

The appellants argue that data from well "W-17", taken October 1998 and **submitted by** the applicant's hydrogeologists, indicating a vertical depth to the **silt layer of forty-one inches**, show that the system does **not** meet the three-foot requirement of **EPR 7-07A(1)(e)** and therefore violates the requirement by one inch.

The applicant responds that the system is not **in violation** because the three-foot requirement is modified by the margin for deviation allowed by **EPR Appendix 7-E, Section II(D)**, regarding plot plans for proposed **projects**. That section provides:

The plot plan shall have a minimum of five (5) foot contour intervals and 90% of the contours shall be accurate within one-half contour interval and no inaccuracies shall exceed one contour interval. The consultant shall be responsible for the accuracy of the contour on the plot plan in areas of the project where contours are of critical importance (disposal areas, sewer lines, etc.).

The applicant contends that because he has recorded contours at two-foot intervals, any one contour measurement may be off by one foot. The applicant argues that the system may therefore meet the requirement of EPR 7-07A(1)(e) even though the actual measurement of the depth from the surface to the silt layer is as much as one foot less than the, rule plainly requires.

The Board disagrees with the applicant's analysis. The exception found in EPR Appendix 7-E refers to the accuracy of an applicant's plot plan, not to actual vertical separation distance. Moreover, Appendix 7-E provides that "the consultant shall be responsible for the accuracy of the contour on the plot plan in areas of the project where contours are of critical importance (disposal areas, sewer lines, etc.)." The applicant's reading of EPR 7-07A(1)(e) nearly eliminates the three foot vertical separation requirement. In a plan showing contours at five foot intervals, the EPRs would allow a two and one-half foot inaccuracy in 90% of the measurements. Using the reasoning urged by the applicant in this case, one could argue that the EPRs permit a person using five foot contour intervals to design a system with an actual vertical separation distance of only six inches to the impermeable silt layer. This reasoning eviscerates the EPR's requirement of a three foot vertical separation between the system and the impermeable silt layer.

EPR 7-07A(1)(e) is a hard and fast rule. It unequivocally states that all disposal systems shall have the required three feet of separation between the bottom of stone to the impervious layer. The EPRs allow imperfections in a plan's depiction of surface elevation, relieving an applicant of the burden of accurately depicting every square inch of a site's topography, but they nonetheless require adherence to the three-foot vertical separation requirement in areas of critical importance.

The applicant presented evidence to the ANR to indicate **that** the disposal trenches, as designed, would **come** within **three feet of the** impervious layer. The **EPRs require** disposal trenches to be installed on a level. **EPR 7-08A**. The purpose of this requirement **is** to assure even distribution of effluent.. Appellants' Brief at 6 (January 28, 1994). Data prepared by **the applicant's** engineer and submitted by the appellants to the **ANR show** that the elevation of the **surface** of the trench disposal area is 170 feet above sea level, at one end, while it is 168 feet at the other end. Appellants' **Exhibit Three, Attachment Three, showing Permit #WW-4-0261-2**, approved January 7, 1992. Thus, the elevations at the two ends of the **trench disposal** area vary by up to two feet. Given this deviation, it **is impossible** to maintain the required three feet of vertical separation from the system to **the** silt layer. **If** the separation is maintained at one end **of the field**, it will necessarily violate the requirement at the other **end'of .the** field. Measurements of the depth from the surface to the **silt** layer taken at the two ends of the field illustrate this point. **See** Appellants' **Exhibit Three, Attachment Three,, showing test pit data** submitted by Applicant's engineer. The depth to silt layer at the higher end of the field is five feet, while **the depth to silt layer** at the lower end of the field is three feet, six inches: Because the ground elevation at the higher end is two feet **greater** than **the elevation at** the lower end, the depth to the silt layer at the higher end would have to be at least two feet **greater than** that at the lower end to allow the laying **of a level** trench: The **depth** to the silt layer at the higher **end** would therefore **have to be at least five' feet**, six inches, but the depth there is **only** five feet, violating the separation requirement by six inches.

The applicant alleged at oral argument that **the site** had been modified between the time of the 1988 application for the twenty-unit project, **and** the digging of the **new** observation wells in 1991 for the subsequent permit application. Tape Recording of oral **Argument, Side 1**, March 29, 1994. Those modifications purportedly included grading and brush removal. However, the record contains no **comparative** topographic information which quantifiesthose changes. Therefore, there **is** no evidence in the record to demonstrate that any modifications to the site since 1988 would bring the project into compliance.

The ANR addressed the issue of vertical separation to silt layer in its decision by stating that the appellants,' expert witness relied upon imprecise contour lines in **calculating** that the disposal **trenches** lacked one **inch**

attaining the **required** three feet of vertical separation to the silt layer. In re: Eric Fritzeen, ANR Decision on Petition for Revocation, #WW-4-0261-2, at 10 (July 19, 1993). **The ANR** reasoned that because **the EPRs** do not require the contour lines to be precise, the witness therefore based his findings upon faulty assumptions. **Id.**

The Board finds upon reviewing the record, however, that the evidence does not fairly **and** reasonably support the **ANR's** conclusion. The appellants' witness relied on **the** data from well W-17, submitted by the applicant's own hydrogeologist, **to** show an **inadequate** depth to the silt layer.

We are aware of the margin for deviation permitted by EPR Appendix 7-E, and are cognizant of the **fact** that the contour lines shown on the applicant's plans could deviate from the **land's** actual contours to the extent provided, therein. **However,** EPR Appendix 7-E's provision that an applicant's consultant be responsible for accuracy within a project's critical **areas** implies a much stricter standard for contour lines within the area of a **disposal** field. **In other** words, contour lines in critical areas must be precise. We therefore take the applicant's contour measurements **at face** value. The two-foot variance in elevation shown in **the** design 'plan, **together** with actual measurements of the depth to the silt layer **at** the different surface elevations, demonstrates the impossibility of laying **level** trenches within the disposal field area in compliance with EPR 7-07A(1)(e). Moreover, the data from well W-17 conclusively support the appellants' contention that the system violates the EPR **requirement** of a three-foot vertical separation to the silt layer. Therefore; we find **that the** appellants: have conclusively demonstrated **that the record does not** reasonably and fairly support the **ANR's** conclusion that the three-foot vertical separation distance required by EPR 7-07A(1)(e) has been met.

2. Separation between system and seasonal high groundwater level

The second issue is whether the data before the **ANR** fail to fairly and reasonably support the conclusion that the separation between the system and the seasonal high groundwater level satisfies the requirement of the **EPRs**.

EPR 7-07A(1)(c) provides:

High seasonal groundwater level is the height of soil mottling or the highest **annual** elevation to which the soil is saturated for

a week or more.... The consultant shall report any mottled condition or **groundwater observed....** All **disposal systems shall** have a minimum of three feet below the bottom of stone to the seasonal high **groundwater.**

As stated above, the approved **plan shows** a base of stone six inches below the surface. The applicant must therefore show a **vertical** separation from the surface to high seasonal groundwater of forty-two inches in the **area of the proposed disposal field.**

The appellants argue that data taken from **observation well "OW-10"**, submitted in 1998 by the applicant's engineer, and showing a depth to **seasonal high groundwater of thirty-seven inches**, demonstrate that the system does not meet the three-foot requirement of **EPR 7-07A(1)(c)**. They contend that the applicant and the **ANR have** ignored the 1989 data and have instead chosen more favorable data that would support the permit application. They insist that **EPR 7-07A(1)(c)** allows no such discretion, **and** that seasonal high groundwater is defined by the highest reading on record.

The applicant **responds in his brief** that because OW-10 was installed to test an earlier **system** designed for a **twenty-unit** project, it does not **relate** to the system **at issue** and to the **"new elevations."** Applicant's Reply Memorandum, February 11, 1994, at 7. We note that **the EPRs make** no distinction **among projects** based upon **size or number of units**, and that regardless of the size of the project all disposal systems must meet the requirement that there be three feet of vertical separation distance between the system **and** the seasonal **high groundwater** level. In other words, the requirement is **independent** of the capacity of the system. **Therefore,** the fact that OW-10 was installed to test an earlier system **for** a larger project does not **change** the significance of **that well's** data.

As we stated above, the applicant alleged at oral argument that he graded the ground contours between 1988 and 1991 in order to bring the site into compliance, and that the 1991 test pits were taken after the modifications. The applicant **also** drew our attention to a new **topographical** survey for 1991, **included** in the record. We reiterate that the applicant submitted **no** data to the **ANR** to quantify the changed elevations **at** the site of **the disposal field**, and that the record includes no 1988 **elevations** to **serve** as a

benchmark.'

'In finding that the system complied with the requirement that there be three feet of vertical separation between the system and the seasonal high groundwater level, the ANR relied on the personal, expert observations of Marsha Thompson, ANR Assistant-Regional Engineer, who was present when the test pits were dug in the disposal field area in June 1988 and December 1991. In re Eric Fritzeen; ANR Decision on Petition for Revocation, #WW-4-0261-2, at 11 (July 19, 1993). Ms. Thompson's observations were corroborated by the applicant's engineer; Id. However, Ms. Thompson neither disputed the accuracy of the data from OW-10; nor rebutted the data from that well with superseding data.

We find that the data for OW-10 from April 5, 1988 through April 12, 1988, taken by the applicant's own engineer, showing a seasonal high groundwater level, of thirty-seven inches, demonstrate that the site does not comply with the requirement that there be three feet of vertical separation between the system and the seasonal high groundwater level. Appellants' Exhibit Three, Attachment Seven. We note that the data found in the applicant's August 1988 hydrogeological evaluation of the disposal area contradict the applicant's engineer's data. However, we further note that the hydrogeologist completed later revisions to the first evaluation which still do not square with the engineer's

² Even if the applicant had filled in the disposal field area to bring the system into compliance, he would still have had to comply with EPR 7-08A, which outlines requirements relating to the installation of an absorption trench type disposal system in disturbed native material or fill. The only instance in which he would not have to comply with EPR 7-08A would be if the site modifications fell under the special exception of EPR 7-14. EPR 7-14 lists requirements an applicant must fulfill in order to convert an unsuitable site into a site which complies with the EPRs. Acceptable site modifications under EPR 7-14 may include the installation of a curtain drain to lower the water table, construction of a mound system, or regrading the site. Nowhere in the applicant's brief does he state that his case falls under the special exception of EPR 7-14, or that he is attempting to comply with the requirements of that section. The Board notes that while the applicant installed a curtain drain, he presented no data to demonstrate the ability of the drain to lower the groundwater level.

data.³ We assume that the hydrogeologist's revisions supersede his earlier, conflicting report, and we therefore rely on the later revisions. Data from Test Pit 107 and from the loading trench, both, found in the area of the disposal field, also indicate noncompliance with the three-foot requirement.⁴

³ We rely on Appellants' Exhibit Three, Attachment Seven, for the data from OW-10. We also rely on Appellants' Exhibit Three, Attachment Nine, to corroborate the data found in Attachment Seven and to supersede the inconsistent data found in Appellant's Exhibit Three; Attachment Eight.

Appellant's Exhibit Three, Attachment Seven, entitled "Observation Well Readings, 8-26-88", prepared by the applicant's engineer, shows a depth to water table of 37" for April 12, 1988.

Attachment Eight, "Hydrogeologic Evaluation of the 6,000 GPD Wastewater Disposal Areas", dated August 1988, done by applicant's hydrogeologist, at page 6, "Table I - Depth to Seasonal High Water Table", shows a depth to water table of 3.50' or 42" for April 6, 1988, in contrast with Attachment Seven's depth for April 6, 1988, of 32".

Attachment Nine, "Revisions to the Hydrogeologic Evaluation", also prepared by the applicant's hydrogeologist and dated October 1988, at page 3, "Seasonal Minimum Unsaturated Soil Profile's, as determined from mottling or Spring 1988 groundwater monitoring data," shows a "predicted seasonal high groundwater level" of 2.67', or roughly 32". This agrees with the April 5 and April 6 measurements shown on Attachment, 7. The measurements taken from the five observation wells shown on this page agree with the measurements shown on Attachment Seven for April 5, 1988 through April 9, 1988, except for "OW-3", which shows a discrepancy of 2.4 inches.

⁴ Data for Test Pit 107 ("TP107"), Attachment Eight, "Hydrogeological Evaluation", page 2-3, notes "probable seasonal high water table at approximately 3'" for TP107, logged on June 17, 1988. This attachment also shows, on page 6, a depth to water table for TP107 of 3.00' or 36" for June 17, 1988.

Attachment Nine, page 3, shows a "predicted seasonal high groundwater level" of 3.0' or 36" for TP107.

Data for Loading Trench, Attachment Nine, page 3, shows a "predicted seasonal high groundwater level" of 3.0' or 36" for the loading trench.

The **Board** finds that the appellants have conclusively shown that the evidence presented to the ANR demonstrates that the system violates the requirement of a three-foot vertical **separation** to the **seasonal high groundwater** level provided in **EPR 7-07A(1)(c)**. Therefore, the record does not fairly and reasonably support the **ANR's** conclusion that the three-foot requirement has been met.

3. Percolation test data

The third issue is whether the data before the **ANR** fail to fairly **and** reasonably support the conclusion that the applicant **submitted** the proper percolation test data in support of his application.,

The appellants contend that **the applicant** did not submit the percolation **data required** by the **EPRs**. The **EPRs** require an applicant to perform percolation testing for each disposal 'area. **EPR 7-07A(1)**. Tests are to **be conducted** entirely within the most dense, ' least permeable soil in the site. **EPR Appendix 7-C**. Absorption trench **type** systems **must be** designed based upon the **second slowest** percolation rate for the site. **EPR 7-08A(1)(c)**.

The appellants argue that the applicant incorrectly relied upon old percolation tests previously submitted,, and that no valid test was ever performed upon this site. Furthermore, they contend that the application **rate ultimately** used for the **system**, 0.8 gallons per square foot per day, appropriate for a site **with a** percolation-rate **of nine** minutes per inch; far exceeds the assumptions upon which Ms. Thompson based her actual approval of the system.

The applicant responds that he relied upon both old **and** new percolation data. The 'old data include **results** of percolation tests in support of **the** original application, dated March **13**, 1990. Appellant's **Exhibit Three**, Attachment One. The old data also include the hydrogeological study conducted. in 1988 in support of the original application. Appellant's **Exhibit Three**, Attachment Eight. The applicant **also** responds **that he** submitted new test pit data taken by his consultant in 1991. Appellants' **Exhibit Three**, Attachment Three.

The ANR disposed of this issue in its decision by

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referring only to the 1988 hydrogeological data, 'which indicate that the second slowest percolation test result in the upper three feet of soils, from a depth of approximately thirty inches, was eight minutes per inch, and by concluding that the current system was properly sized in accordance with E P R 7-08A(1)(c).

The 1988 hydrogeological data prepared by the applicant's expert include test pit data showing soil profiles in the primary and secondary areas. Appellant's Exhibit Three, Attachment Eight. It also includes permeability calculations. None of these data show the percolation test results referred to in the ANR's decision. The permeability calculations include a notation that they were based upon a trench test conducted during July 1988, but these data were not submitted as part of the record. The result of the permeability calculations is a figure expressed in feet per day, which does not correspond to any of the information cited in the ANR's decision, or to the percolation rate table of EPR 7-08. The ANR's decision references the EPRs, and the EPRs describe application rates in terms of gallons per square foot per day.

Given the inadequacy of the record, it is impossible for the Board to determine how the ANR arrived at the decision to approve the application rate used in the design of the system. Therefore, we find that the data before the ANR fail to fairly and reasonably support the ANR's conclusion that the applicant submitted the proper percolation test data demonstrating the system's compliance with the EPRs.

4. Effluent discharge

The fourth issue is whether or not the data before the ANR fairly and reasonably support the conclusion that the system will not result in the discharge of inadequately treated effluent into Lake Champlain. The appellants argue that the system, as designed, does not allow sufficient travel time for the effluent from the system to reach Lake Champlain. The applicant responds that it has complied with the minimum isolation distances required by the EPRs, and that the EPRs impose no travel time requirements. See EPR Appendix 7-D.

The EPRs are designed to prevent health hazards and water pollution to both groundwater and surface water. EPR I-01. EPR Appendix 7-D provides that minimum isolation distances may be increased if necessary to provide adequate protection. Thus, the objective of providing adequately treated effluent is intertwined with the technical requirements as a whole, set forth under the EPRs. If an applicant fails to meet the

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requirements of the EPRs with respect to the critical areas (i.e., the disposal field), 'that applicant is not entitled, to any presumption that his system provides adequate protection under EPR 1-01, even if he has complied with the requirement for minimum isolation, distances under' the EPRs. In the instant case, however, the Board finds it unnecessary to rule on the issue of effluent discharge because the appellants have met their burden of showing that the applicant has failed to comply with the EPRs concerning vertical separation distances to silt layer and seasonal high groundwater.

5. Notice Requirement

The last issue is whether the ANR improperly granted this permit without any notice of the permit application to the appellants, despite the fact that the appellants were parties in a previous contested case in which the ANR revoked a permit for a system in the same location.. The appellants argue that because the permit for the nine-unit development was the subject of a revocation proceeding and therefore a contested case; the ANR could not grant an amendment to that permit without notice to all previously admitted parties.

The applicant responds that notice was not required here because the permit was a new application. It paid an application fee to the ANR, not just an amendment fee, for full review of its project.

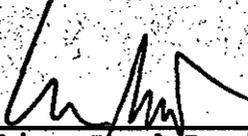
The Board concludes that because the permit at issue was a new application, and not an amendment, no notice to the appellants was required. Nevertheless, the Board is troubled by the fact that the appellants did not receive notice of the permit application for permit #WW-4-0261-2, even through the ANR strictly complied with technical notice requirements. given the procedural history, of this case, the Board believes as a matter of sound policy that the appellants should have received notice of the application. The ANR has no clear rules of procedure governing whether a particular application is for a continuation of a previous project or for an entirely new project. -The ANR should adopt a procedural rule stating clearly the distinction between an amendment to an existing permit and a permit for a new project.

IXV. **CONCLUSION**

For the foregoing reasons, the decision of the Department of Environmental Conservation, Agency of Natural Resources, concluding that Water Supply and Wastewater Permits #m-4-0261-2 and #WW-4-0261-3 should not be revoked, is hereby

reversed and this matter is remanded for further revocation proceedings consistent with the conclusions in this decision.
SO ORDERED.

Dated at Montpelier, Vermont, this 1st day of June, 1994.



William Boyd Davies, Chair
Water Resources Board, by its Chair

Concurring:

William Boyd Davies.
Mark DesMeules
Stephen Dycus
Ruth Einstein
Sane Potvin

⁵ The appellants have requested revocation of the permit, but given the appellate standard of 3 V.S.A. § 2873(c)(4). and the Board's Rules of Procedure (Rule 30), the Board does not have the power to revoke the permit, but may remand with instructions.