

state of Vermont  
WATER RESOURCES BOARD

**In re: Bluffside Farms, Inc.**  
Docket No. 90-04

DISMISSAL ORDER

On April 17, 1990, the Water Quality Division of the Department of Environmental Conservation (DEC), Agency of Natural Resources (ANR), issued Management of Lakes and Ponds Permit No. 88-20 (the encroachment permit or MLP Permit No. 88-20) to Bernard and Suzanne Carrier (the permittees) authorizing the placement of an eight-inch diameter, 162-foot long fire water intake pipe into Lake Memphremagog, City of Newport. 29 V.S.A. ch. 11. On April 27, 1990, Bluffside Farms, Inc., and Daniel Scott (the appellants), through their attorney Duncan Frey Kilmartin, Esq., of the firm **Rexford** and Kilmartin, filed a notice of appeal with the Water Resources Board (Board), pursuant to 29 V.S.A. § 406(a), seeking de novo review of the DEC's permit decision.

The Appeal was noticed on May 3, 1990, and a prehearing conference was held at the Water Resources Board offices in Montpelier, Vermont, at 2:30 p.m. on May 29, 1990. The only persons **entering** timely appearances in this matter were the appellants,<sup>1</sup> the Agency of Natural Resources represented by Andre Rouleau and Anne F. Whiteley, Esq., and the permittees, represented by Robert P. Davison, Jr., Esq.

A Prehearing Conference Report was issued on June 1, 1990. On August 8, 1990, the Board issued an order confirming party status and clarifying the issues on appeal. On December 6, 1990, after this matter was noticed for a hearing on the merits, the permittees moved for a continuance of the hearing. On January 18, 1991, the Board issued an order granting the parties a continuance of indefinite duration.

On August 29, 1994, the Board issued an order terminating the continuance as of September 23, 1994, and appointing **Kristina L. Bielenberg, Esq.**, to serve as hearing referee for this appeal. A second prehearing conference was noticed and convened by the hearing referee on October 24, 1994. On November 30, 1994, a Prehearing Conference Report and Order was issued, setting forth a filing schedule for prefiled testimony, exhibits and other filings.

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<sup>1</sup> On May 29, 1990, attorney Kilmartin filed with the Board an Entry of Appearance and Petition for Party Status listing Richard Scott, in addition to Bluffside Farms, Inc., and Daniel Scott, as appellants in this proceeding.

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On June 7, 1995, a week before the first deadline for pre-filed testimony and exhibits, the permittees, through attorney Davison, informed the Board that they withdrew their applications for the encroachment permit. On June 8, 1995, the Board's hearing referee advised all of the parties of the permittees' filing and provided them with an opportunity to file written objections or requests for oral argument in response to her recommendation that the Board declare MLP Permit No. 88-20 null and void and dismiss this appeal. Only the appellants' attorney, Mr. Kilmartin, responded by the deadline set forth in the hearing referee's memorandum of June 8, and he indicated support for the referee's proposal of action.

On June 20, 1995, the Board reviewed the file in this matter. The Board considered the permittees' communication of June 7, 1995, and determined that MLP Permit No. 88-20 should be declared null and void and that dismissal of the above-captioned appeal for mootness is not contrary to the intent and purpose of 29 V.S.A. ch. 111.

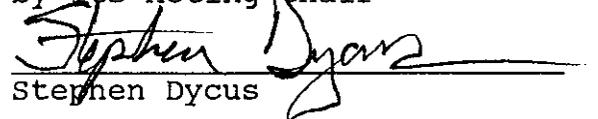
**ORDER**

Therefore, it is hereby ordered that:

1. MLP Permit No. 88-20 is declared null and void: and
2. The above-captioned appeal is hereby dismissed.

Dated at Montpelier, Vermont, this 29<sup>th</sup> day of June, 1995.

Vermont Water Resources Board  
by its Acting Chair

  
Stephen Dycus

Concurring:  
Stephen Dycus  
Ruth Einstein  
Jane Potvin

Abstaining: William Boyd Davies, Chair

Absent: Elaine Little