

STATE OF VERMONT
WATER RESOURCES BOARD

In re: Town of Milton
Docket No. MLP-97-02 (Appeal of DEC Permit 97-14,
Arrowhead Mountain Lake, Milton, VT)

CHAIR'S PRELIMINARY RULING

I. BACKGROUND

On June 6, 1997, the Department of Environmental Conservation ("DEC"), Agency of Natural Resources, issued a Management of Lakes and Ponds ("MLP") permit, DEC Permit 97-14 ("Permit"), to the Town of Milton ("Town") under the provisions of 29 V.S.A. Chapter 11. The Permit decision authorizes the construction of a new bridge over Arrowhead Mountain Lake and an associated lakeshore launching facility for small portable watercraft for use by the general public, both in Milton, Vermont ("Project").

On June 19, 1997, The Iron Workers District Council of New England, 444 Washington Street, Woburn, Massachusetts, and Wilburn Parker, 10 School Street, St. Johnsbury, Vermont ("Appellants"), filed an appeal of the Permit decision with the Water Resources Board ("Board"), pursuant to 29 V.S.A. § 406(a).

II. CHAIR'S PRELIMINARY RULING

Under Water Resources Board Rules of Procedure ("WBR") 21, the Board's Chair may issue preliminary rulings as to matters of party status and other procedural matters as are necessary to expedite and facilitate the hearing process. Any such ruling may be objected to by any party, in which case the ruling shall be reviewed by the Board. The Board may also, on its own motion or at the request of a party, consider the dismissal of any matter for reasons provided by its rules, by statute, or by law. The Board shall allow oral argument, with notice to the parties, prior to any such dismissal.

Under 29 V.S.A. § 406(a), an MLP permit decision can be appealed to the Board by any person aggrieved by that decision "*within* 10 days from the date of notice of the action." (Emphasis added.)

Filing deadlines are jurisdictional and the Board has no discretion to waive a deadline established by statute. In re Town of Putney Interim Solid Waste Certification, No. 93-185, slip. op. (Vt. Sept. 22, 1993); Allen v. Vermont Employment Security Board, 133 Vt. 166 (1975).

Under WBR 19(b), all documents submitted to the Board with respect to the

commencement of contested case are "deemed to have been filed on the date of actual receipt at the office of the Executive Officer." Unlike the Vermont Rules of Civil Procedure, the WBRs do not provide that when the period of time prescribed is less than 11 days, intermediate Saturdays, Sundays, and State or federal legal holidays shall be excluded in the computation. See V.R.C.P. 6(a); also, Int. Assoc. of Firefighters v. Montpelier, 133 Vt. 175, 177 (1975) (Vermont Rules of Civil Procedure do not apply to administrative proceedings).

The DEC issued the Permit on Friday, June 6, 1997. The Permit decision alerted all interested persons that this action would become effective in 10 days unless an appeal was filed with the Board. It specifically stated that an appeal must be taken "within 10 days of the date of this decision." Permit at 7 (June 6, 1997).

The deadline for receipt of notices of appeal at the office of the Executive Officer was Monday, June 16, 1997. The Appellants filed their appeal on Thursday, June 19, 1997. This was thirteen days after the issuance of the Permit and, therefore, three days after the deadline for the filing of appeals. Accordingly, the Appellants' appeal should be dismissed as untimely under the ten-day requirement provided for in 29 V.S.A. § 406(a). Dismissal is warranted where an appeal is untimely filed. See, In re: Stephen H. Dana, Docket No. CUD-97-01, Chair's Preliminary Ruling (June 17, 1997).

Therefore, pursuant to WBR 21, the Chair issues a preliminary ruling providing for the dismissal of this matter, subject to the right of the Appellants to file written objections and for other parties and interested persons to respond. See, III. Order, paragraphs 1 and 3. Additionally, in order to expedite consideration of the dismissal issue and any other preliminary matters including, but not limited to, those related to standing and party status, representation, and filing schedules, the Chair's ruling sets forth a filing schedule for motions and petitions and a hearing date. See, III. Order, paragraphs 4, 5, 6 and 7.

III. ORDER

1. The Appellants' appeal of MLP-97-02 is dismissed with prejudice, unless a timely objection to this Order, in whole or part, supported by legal memorandum, is filed with the Water Resources Board by the Appellants on or before **4:30 p.m., Monday, June 30, 1997.**

2. If no objection is filed, then this Order shall become final without any further action by the Water Resources Board, and the Appellants' appeal, MLP-97-02, shall be **DISMISSED WITH PREJUDICE.**

3. If a timely objection is filed, then any party or interested person may file a written response, supported by legal memorandum, to any such objection on or before **4:30 p.m., Thursday, July 10, 1997.**

4. On or before **4:30 p.m., Monday, June 30, 1997**, any party or interested person shall file with the Board any motions or other pleadings on preliminary issues, including, but not limited to, notices of appearance, supplemental filings related to standing, petitions for party status pursuant to WBR 22, statements of representation pursuant to WBR 23, and any other filings related to preliminary issues.

5. On or before **4:30 p.m., Thursday, July 10, 1997**, any party or interested person shall file with the Board any objections supported by legal memoranda in response to any filings made in accordance with paragraph 4 of this Order.

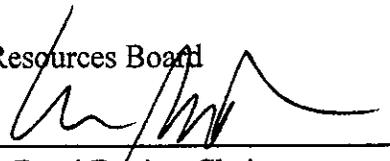
6. The Board will convene a hearing at which it will hear oral argument on any objection timely filed by the Appellants to the dismissal of this appeal, followed by argument with respect to any pending preliminary matters arising under paragraphs 4 and 5 of this Order. Said hearing shall begin at **10:00 a.m. on Friday, July 18, 1997, in Room R2B, National Life Record Center Building, National Life Drive, Montpelier, Vermont.**

7. If an objection to dismissal of this matter is timely filed and the Board reverses this Order, the Board shall continue its hearing of July 18, 1997, to a date, time and place certain, and issue such rulings and scheduling orders as are necessary to dispose of all preliminary matters prior to any hearing on the merits.

8. Any filings made with the Board shall include an original and five (5) copies as well as a certificate of service certifying that a complete copy of that filing has been made with each of persons identified on the Board's certificate of service (attached). Failure to comply with these requirements may be grounds for the Board to not accept such filing for action.

Dated at Montpelier, Vermont this 20th day of June, 1997.

Water Resources Board



William Boyd Davies, Chair