

State of Vermont
WATER RESOURCES BOARD

RE: Champlain Marble Company
61 Main Street
Proctor, VT 05765

Docket No. CUD-97-06
(Appeal of DEC File CUD #95-466)
Fisk Quarry Wetlands, Isle La Motte

SECOND PREHEARING CONFERENCE REPORT AND ORDER

I. BACKGROUND

On March 12, 1998, at 10:00 a.m., William Boyd Davies, the Chair of the Water Resources Board ("Board"), convened a Second Prehearing Conference in the above-captioned matter. The purpose of this prehearing conference was to hear oral argument with respect to evidentiary objections, to establish a final agenda for the hearing, and to resolve such other issues as might be necessary in order to expedite the hearing process. See Rule 24, Board Rules of Procedure.

Those parties participating in the preheating conference were:
Champlain Marble Company ("Appellant"), represented by Paul S. Kulig, Esq.
Agency of Natural Resources ("ANR"), represented by Andy Raubvogel, Esq.,
and Jon Groveman, Esq.
Linda Fitch, pro se, on behalf of herself and her mother, Violet Fitch
South Shore Associates ("SSA"), represented by Stephanie J. Kaplan, Esq.

Also present were Merrill Hemond, witness for Linda Fitch, and Kristina L. Bielenberg, Associate General Counsel to the Board.

II. MOTION TO DISMISS

Following appearances by the parties, the Chair discussed with the parties how procedurally he proposed to address the Motion to Dismiss ("Motion") filed by SSA on March 9, 1998. With the agreement of the parties, he set a deadline of **4:30 p.m., Monday, March 23, 1998**, for the filing of any written memoranda in response to the Motion and suggested that any such filing identify prefiled testimony exhibits, or portions thereof, addressing the issue to be decided. He also indicated that oral argument before the Water Resources Board would be heard with respect to the Motion at **10:00 a.m., Tuesday, March 31, 1998**, in the National Life Records Center Building, Room R2B, National Life Drive, Montpelier, Vermont.

The Chair also brought to the parties attention the express language contained in the Prehearing Conference Report and Order, dated September 17, 1998, that "any change to the May 19, 1997, operational plan would be grounds for return of jurisdiction to the ANR" and

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further, that when the Appellant was provided with a continuance to enable it to determine whether it wished to amend its operational plan and seek approval from ANR, it declined to do so and sought continued Board review.

III. EVIDENTIARY RULINGS

The Chair heard oral argument with respect to various evidentiary objections filed by the parties on March 9 and 10, 1998. All parties present participated in the oral argument. The Chair's **Evidentiary Rulings** are memorialized in a separate order dated March 17, 1998. With the parties' agreement, the Chair established a deadline of **Monday, March 23, 1998**, for the filing of written objections to the Chair's Evidentiary Rulings. He advised the parties that the Board would hear oral argument and review any objections on **Tuesday, March 31, 1998**, following argument on the **pending Motion**.

Counsel for SSA and Linda Fitch specifically objected to the Chair's rulings respecting the need for **prefiled** foundation to support the admissibility of **photographs**, and they reserved the right to raise this issue with the Board on March 31, 1998.

After the preheating conference, but also on March 12, 1998, the Board received a filing from the Appellant objecting to admission of oversized Exhibit LF-36 (now renumbered LF-35), a 'Cross Sectional View of Noise Path from Start Point to Fitch House. Since the other parties have not had an opportunity to respond to this objection, the Board will allow limited oral argument on this objection on **Tuesday, March 31, 1998**, prior to issuing a ruling on the admissibility of this exhibit.

IV. SITE VISIT REPORT

At the preheating conference, it was noted that Cathy O'Brien had filed a proposed site visit report, and that the Appellant and Linda Fitch had each filed responsive comments. The parties were informed that a copy of a proposed site visit report would be circulated to them prior to its adoption by the Board at the merits hearing in this matter. (See copy of Draft Site Visit Report enclosed with this mailing.)

V. SUPPLEMENTAL EVIDENCE RE: ICE STORM DAMAGE

On January 22, 1998, the Board received a letter from Linda Fitch describing briefly the supplemental evidence she wished to submit at hearing regarding the effects of the January ice

storm damage at the Project site. In his Order of February 5, 1998, the Chair ruled that he would allow parties to supplement their prefiled testimony at hearing and allow the admission of exhibits for the limited purpose of address changes to the wetland resulting from that storm.

At the prehearing conference, Linda Fitch represented that she would make available to the parties, no later than March 31, 1998, copies of any supplemental filings, including photographs, which she proposed to offer at hearing, so that others might have an opportunity to prepare and respond at the hearing on the merits.

Bill Davies disclosed for the record that he is legal counsel for the Orleans Electric Company and a personal friend of the Manager of that corporation. He noted that the Orleans Electric Company crew had done extensive repairs to electric service in Isle LaMotte following the January ice storm. However, he further disclosed that he personally knows nothing about the nature of the repairs that they performed in the area of the Project site.

VI. HEARING DAY SCHEDULE

The Chair advised the parties that they and their witnesses should plan to be available from 8:00 a.m. to 9:30 p.m. on both days of the hearing, Monday and Tuesday, April 13 and 14, 1998. He identified the order of presentation of evidence: Champlain Marble, followed by ANR, SSA, and Linda Fitch. He noted that each party would have an opportunity to cross-examine and, if necessary, recross the witnesses of another party and sponsors of the witness would have an opportunity to pose questions on redirect and re-redirect. He also noted that the Board would pose questions to the witnesses, usually after the parties' cross-examination.

The Chair asked the parties to identify the estimated amount of time they would need to cross-examine witnesses. The Appellant reported approximately 6 hours; ANR, 3 to 4 hours; SSA, 3 to 4 hours; and Linda Fitch stated that she and Linda Tiedgen would use no more than 3 to 4 hours. With an estimated 18 hours total of cross-examination, the Chair urged the parties to eliminate redundancy in cross-examination.

The Chair noted that the General Purpose Room at St. Anne's Shrine would not be available for use for the hearing on April 13 and 14. The parties agreed that the Board staff could select a hearing location in Burlington, Colchester or St. Albans, if necessary, due to the limited availability of public meeting spaces in Isle LaMotte and surrounding communities.

VII. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

At the prehearing conference, the Chair noted that the ANR had prefiled proposed findings of fact, conclusions of law, and order even though the Prehearing Conference Report and Order of September 17, 1997, had not established a deadline for this filing. With the agreement of the parties, the Chair established a deadline of **4:30 p.m., Friday, April 24, 1998**, for proposed findings of fact, conclusions of law, and order. He further advised the parties that ANR would be permitted to supplement its proposed findings of fact, conclusions of law, and order by this same deadline.

VIII. ORDER

1. On or before **4:30 p.m., Monday, March 23, 1998**, the parties shall file any written memoranda in response to the Motion to Dismiss. They should identify in such filing any prefiled testimony exhibits, or portions thereof, addressing the issue to be decided.
2. On or before **4:30 p.m., Monday, March 23, 1998**, any objections to the Chair's Evidentiary Rulings shall be filed in writing. Said objections shall specifically identify the ruling at issue and set forth with particularity the arguments offered in support of reversal or modification of that ruling.
3. The Board shall oral argument with respect to the Motion to Dismiss and any evidentiary objections at **10:00 a.m., Tuesday, March 31, 1998**, in the National Life Records Center Building, Room R2B, National Life Drive, Montpelier, Vermont.
4. The hearing in this matter will be held on **Monday, April 13**, and **Tuesday, April 14**, at a location and time to be confirmed by separate notice.
5. On or before **4:30 p.m., Friday, April 24, 1998**, the parties shall file proposed findings of fact, conclusions of law, and orders. To the extent that any party elects to file such document prior to the hearing on the merits, it may supplement its filing on or before the above deadline.
6. Pursuant to Rule 24(B) of the Board's Rules of Procedure, this order will be binding on all persons who have received notice of the Second Prehearing Conference, unless there is a timely objection to this Prehearing Conference Report and Order filed by **4:30 p.m., Monday, March 23, 1998**, or a showing of cause for, or fairness requires waiver of a requirement of the order. Except as modified by this and subsequent orders, the

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Prehearing Conference Report and Order of September 17, 1998, remains in full force and effect.

Dated at Montpelier, Vermont, this 17th day of March, 1998.

Water Resources Board,
by its Chair



William Boyd Davies

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