

**State of Vermont
WATER RESOURCES BOARD**

**ORDER GRANTING REQUEST TO
CONSOLIDATE HEARINGS**

**RE: Killington Ltd.
Killington Road
Killington, Vermont 05751**

**Docket No. WQC-97-10
(Appeal of DEC's issuance of §401
Water Quality Certificate)
and
Docket No. MLP-97-09
(Appeal of DEC Permit #97-26)**

I. BACKGROUND

On Friday, January 26, 1998, Curtis Bourdon, Esq., on behalf of certain interested persons', filed with the Water Resources Board ("Board") a Motion to Consolidate Hearings ("Motion") in the above-referenced matters. No motions in opposition to that request have been filed with the Board.

II. DISCUSSION

In support of the Motion, Attorney Bourdon cited to Board Rule of Procedure ("WBR") 26, entitled Joint Hearings, which governs the consolidation of proceedings which are pending before more than one state agency and where, upon consent of the other agency, those proceedings are combined before the Board to avoid duplication of testimony and unnecessary expense. No specific provision of the WBRs specifically authorizes the consolidation of two or more independent proceedings which are pending before the Board. Notwithstanding, the logic and purpose of WBR 26, the Board Chair's authority under WBR 21 to expedite and facilitate the hearing process, and the Board's inherent authority to promote administrative efficiency justify such a consolidation in the referenced cases. The gathering of evidence and opportunities for cross-examination in a

1

Attorney Bourdon has withdrawn as counsel for the following individuals: Nicholas J. Lenge, Thomas and Joseph Calabrese, Lucas Krupywnyckyj, Thomas and Valerie Hickey, Allison Peck, Gilford and Shirley Richardson, Jonathon and Paula Tucker, William and Janice Nacel, William and Debra Belanger, George and Patricia Hodgdon, Paul M. Darr, Christine Baranowski, and Barry and Lynne Lawson. On January 26, 1998, Attorney Stephanie J. Kaplan, Esq. entered an appearance as co-counsel for all of the above-named appellants except William and Debra Belanger. Attorney Kaplan will remain as co-counsel for those individuals. On February 6, 1998, Paul Gillies, Esq. entered an appearance as substitute lead counsel for several of the above-named appellants and intervenors. On February 13, 1998, Attorney Gillies filed a corrected Notice of Appearance on behalf of the following: Nicholas J. Lenge, Joseph Calabrese, Thomas Calabrese, George and Patricia Hodgdon, Gilford and Shirley Richardson, Thomas and Valerie Hickey, Allison Peck, William and Janice Nacel, Jonathon and Paula Tucker, and Lucas Kmpywnyckyj.

A joint hearing will expedite and simplify the proceedings from the Board's standpoint. Moreover, it will simplify the Board staffs' administration and coordinated management of filing schedules and other procedural issues in these cases.

Coordination of these appeals and a joint hearing can reasonably be expected to simplify preparation of testimony and filings in these cases, eliminate redundancy and decrease expenses associated with these cases. This Board has followed a similar course of action in previous cases in which absent some consolidation of proceedings there would be a significant likelihood of duplicative testimony, repetition of legal argument and where there was a substantial identity of both the issues on appeal and the parties in interest. See for example, In re Snowridge (Appeal of VNRC), Docket Nos. WQ-92-02 and WQ-92-05; Interim Order (June 15, 1992) (Board granted request to conduct joint hearings but declined to consolidate proceedings relating to a dam order appealed pursuant to 10 V.S.A. §1099(a) and a 5401 Certification appealed pursuant to 10 V.S.A. §1024(a)).

As noted in the January 26, 1998 Motion, there are several legitimate reasons why the referenced appeals should be consolidated at least for the purpose of conducting a joint hearing and establishing joint filing schedules. As in the Snowridge case, while the parties are not identical in each of the proceedings, there is a substantial identity of parties in interest.

The ruling to consolidate the evidentiary hearings will not effect the merger of these independent "causes of action." Thus, with regard to procedural matters in these appeals, there are several ongoing issues concerning party status as well as pending legal questions relative to a determination of the appropriate scope of these respective appeals. It would complicate, rather than simplify, these appeals if the Board were to consolidate or otherwise combine its determinations on the relevant legal issues currently under consideration. Accordingly, these will be determined independently and will not be the subject of joint rulings or consolidation. See for example Re: Palisades Landfill and Drayton and the Rainbow Trust, #WA480-WFP, #WA480-WFP-Amendment #1, #5W0164-15-WFP, #5W0164-17-WFP, #5W0164-17-WFP (Revised), Memorandum of Decision at 3 (June 28, 1993) (Consolidated appeal pursuant to § 6106(b) does not merge the appeals into a single cause, or change the rights of the parties, or make those who are parties in the Act 250 permit appeal parties in the ANR appeal, or vice versa.)

While it is expected that the Board's findings of fact in these cases will be combined, the Board will issue its conclusions of law in such a manner that those

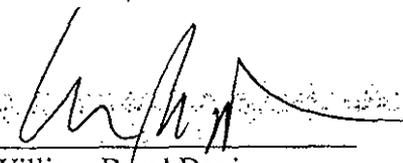
conclusions are clearly linked to the underlying appeal and not merely consolidated into a single order.²

III. ORDER

The January 28, 1998 Motion to Consolidate Hearings is granted subject to the limitations discussed above. The attached combined certificate of service shall be used for subsequent filings in these cases and the caption listed on this Order shall become the caption for all filings germane to the consolidated hearing.

Dated at Montpelier, Vermont, this 23rd day of February 1998.

Water Resources Board
by its Chair



William Boyd Davies

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2

Thus, for purposes of preparing proposed findings of fact, conclusions of law, and orders, the parties may wish to propose findings of fact which are combined and which are therefore applicable to both cases, while proposed conclusions of law might be more appropriately tiled separately for each respective case.