

State of Vermont
WATER RESOURCES BOARD

RE: Putney Paper Company
Docket No. WQ-98-03
(Appeal of Discharge Permit #3-1128)

Statutory Authority:
10 V.S.A. §1269

**CHAIR'S ORDER REQUIRING WRITTEN SUMMARY OF ISSUES
NOTICE OF THIRD PREHEARING CONFERENCE**

I. BACKGROUND AND DISCUSSION

On May 19, 1998, Nathaniel Hendricks ("Appellant") filed an appeal of the Agency of Natural Resources' ("ANR") issuance of Discharge Permit #3-1128 ("Permit") to the Putney Paper Company ("Putney Paper") with the Vermont Water Resources Board ("Board"). On August 21, 1998, I convened a prehearing conference relative to this matter. The following persons participated in the August 21, 1998 prehearing conference:

Appellant, pro se;
ANR, through Jon Groveman, Esq.; and
Putney Paper, through Peter Van Oot, Esq.

At the prehearing conference, Appellant was ordered to file both: (1) a written request for party status stating why he has standing to bring the appeal; and (2) a list of citations corresponding to each of the "comments" raised in Appellant's Notice of Appeal that was filed on May 19, 1998. The order to file a list of citations provided Appellant with his third opportunity to clarify the legal issues presented in his Notice of Appeal. ANR and Putney Paper were each provided an opportunity to respond to both the request for party status and the revised statement of issues.

On August 28, 1998, Appellant filed a written request for party status, a request for enlargement of time, and a list of citations which, Appellant argues, relate to the issues raised in his Notice of Appeal filed on May 19, 1998. On September 11, 1998, Putney Paper filed an objection to Appellant's party status and a request that the appeal be dismissed. Putney Paper also submitted materials in support of its objection to party status. Also on September 11, 1998, ANR filed a response to the Appellant's filing.

On October 22, 1998, Chair Davies issued an Order denying Appellant's request for an enlargement of time and granting his petition for party standing with a limitation on the extent of such standing to only those substantial interests sought to be protected in this proceeding, namely, the Appellant's water supply wells. Chair Davies noted the objections filed by the other parties but declined to specifically rule on Putney Paper's Motion to Dismiss until Appellant had explained: (1) how each of the Appellant's "comments" were related to protection of Appellant's water supply wells; and (2) the

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legal rationale, supported by a citation to an *applicable* law or regulation, for including the comment as an issue in this appeal. See Chair's Rulines on Party Standing and Notice of Prehearing Conference, dated October 22, 1998. The Chair's October 22, 1998 Order also served as notice of a second preheating conference.' The second preheating conference was conducted on November 2, 1998 at 2:00 p.m. with the following persons participating:

ANR, through Jon Groveman, Esq.; and
Putney Paper, through Peter Van Oot, Esq.

Appellant did not attend the preheating conference and claims to have had no notice of the prehearing conference? Notwithstanding the inclusion of his name on the certificate of service, the Board staffs specific recollection that a copy of the Order was sent to Mr. Hendricks, a history of successful mailings via U.S. Postal Service from the Board's office to Appellant's address, and the general reliability of the U.S. Postal Service, we will accept the Appellant at his word that the October 22, 1998 Order did not arrive. However, to expedite what is typically a very routine matter of discretely identifying the relevant legal issues in a contested case, Appellant is required by this Order to provide the information that he would've been required to provide at the November 2, 1998 prehearing conference by a written filing due not later than 4:30 p.m. on Monday, November 23, 1998. For more specific instructions as to the nature of the filing, Appellant is directed to review the October 22, 1998 Order, Section II.B. of this Order, and any previous orders issued relative to this matter.

As noted in the October 22, 1998 Order, if the Appellant is unsuccessful in clearly linking the comments he has raised to applicable legal authority by providing specific citations, or if, with respect to those issues for which a citation or legal nexus is provided, he fails to demonstrate how they relate to the substantial interest he seeks to protect in

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The **prehearing** conference was scheduled for, and convened on Monday November 2, 1998. Appellant did not attend the **prehearing** conference nor did he contact Board staff concerning his unavailability on that day. Board counsel attempted to contact Appellant at his residence on the day of the prehearing conference. He was unable to do so and instead **left** a voice message with the particulars of the hearing date, time and location. Appellant contacted Board counsel on November 11, 1998 and claims not to have received the October 22, 1998 Order. Accordingly, he also claims not to have had notice of the November 2, 1998 prehearing conference.

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In view of Mr. Hendricks' claim that he had not received the Chair's October 22, 1998 Order, an additional copy has been sent along with this Order via **Certified Mail**, **return** receipt requested.

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this proceeding, such comments will be dismissed from consideration in this appeal.

II. ORDER

A. Notice of Third Preheating Conference

The third prehearing conference will be held in the Board's Montpelier Office on **Monday, December 7, 1998 at 2:00 p.m.** Any party wishing to participate by telephone shall contact Karen Dupont at (802) 828-2870 or kdupont@envboard.state.vt.us, not later than Thursday, December 3, 1998 to so indicate.

The third preheating conference will focus on resolving the outstanding question concerning the discrete legal issues on appeal. Also, based on the written filings described below, and the presentation of argument at the preheating conference, I will further consider Putney Paper's pending Motion to Dismiss. After conclusion of the third prehearing conference, a final statement of issues will be distributed to parties in the form of a Prehearing Conference Report and Order³. In addition to determining the issues on appeal, we will discuss the schedule for pre-filing and the merits hearing and identify any other preliminary issues.

B. Filings for Consideration at the Third Prehearing Conference

Appellant shall file, **not later than Monday, November 23, 1998** a written summary of the following: (1) the discrete legal issues for which he maintains adequate legal authority exists to warrant inclusion of such issue in this appeal, with any *applicable* provisions of state or federal law specifically identified; and (2) for each issue he seeks to pursue based on adequate legal authority, a written description of how the issue relates to the quality of his drinking water supply wells.

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Should **Putney** Paper prevail on its Motion to Dismiss with respect to all comments or issues presented, a Chair's Dismissal Order rather than a **Prehearing** Conference Report and Order may issue.

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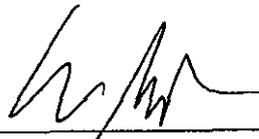
On or before 12:00 noon, on Tuesday, December 1, 1998, any party may respond to the Appellant's written filing or supplement the pending Motion to Dismiss.

Such filings shall be provided to all parties identified on the attached certificate of service as required by Water Resources Board Rule of Procedure 19.

It is so ordered.

Dated at Montpelier, Vermont on this 13th day of November, 1998

WATER RESOURCES BOARD
by its Chair



William Boyd Davies
Chair