

State of Vermont
WATER RESOURCES BOARD

RE: Husky Injection Molding Systems, Inc.
Docket No. MLP-98-06 (DEC #98-13)
(Arrowhead Mountain Lake, Milton, VT)

SECOND PREHEARING CONFERENCE REPORT AND ORDER

I. BACKGROUND

The Prehearing Conference Report and Order, issued December 14, 1998, provided that a second prehearing conference would be convened shortly after the issuance of the Board's Memorandum of Decision on preliminary issues and that the purpose of such prehearing conference report would be to determine:

(1) whether the hearing scheduled for March 16, 1999, should be postponed and, if so, to what date it should be rescheduled; (2) if this matter is to proceed toward a hearing on the merits, the terms of a schedule for the prefiling of evidence, evidentiary objections, and other filings; or (3) if the parties intend to file one or more interlocutory appeals, the questions the Board would need to certify for court review.

Prehearing Conference Report and Order at 10-11, XI. Order, Item 14 (Dec. 14, 1998).

On February 22, 1999, the Water Resources Board issued a Memorandum of Decision in response to objections to the Chair's Preliminary Ruling on standing and party status and also addressing certain preliminary issues raised by the parties. A Memorandum also was issued by the Chair confirming that a second prehearing conference would be scheduled shortly addressing the matters set forth in the Prehearing Conference Report and Order, XI. Order, Item 14.

On February 23, 1999, a Memorandum was issued to the parties confirming that the second prehearing conference by teleconference would be held on March 4, 1999, at 2:00 p.m., initiated from the Board's office in Montpelier, Vermont.

On March 4, 1999, William Boyd Davies, Chair of the Water Resources Board ("Board") convened the second prehearing conference by teleconference in the above-captioned matter.

II. APPEARANCES

The following parties' representatives participated in the second prehearing conference by telephone:

Richard Prisco, Bryan Bouchard, Alan Cadorette, Jeffery Towne, Kenneth Cassidy,

Jeffrey Provost, Kevin Barron, Scott Carleton, Chris Bressette, and Michael Hathaway (individually and collectively, "Milton Appellants") and amicus curiae Building and Construction Trades Council of South Burlington ("BCTC") by John L. Franco, Jr., Esq.;

Husky Injection Molding Systems, Inc. ("Husky"), the Permit Applicant, by Dale A. Rocheleau, Esq., and William A. Mason, Esq., Downs Rachlin & Martin; and Town of Milton ("Town") and Town of Milton Planning Commission ("Town Planning Commission") by Gregg H. Wilson, Esq.

Participating in person from the Board's office in Montpelier, Vermont, were representatives for the Agency of Natural Resources ("ANR") and Department of Environmental Conservation ("DEC"), N. Jonathan Peress, Esq., and Steven Hanna, and for amicus curiae Agency of Commerce and Community Development ("ACCD"), John W. Kessler, Esq.

The Chittenden County Regional Planning Commission ("CCRPC") was not represented and did not participate in this prehearing

III. INTERLOCUTORY APPEAL

The Chair inquired of the parties' representatives whether any of them anticipated filing an interlocutory appeal. Husky reported that it would not be seeking interlocutory review of the Chair's preliminary rulings and therefore would not require certification of questions for court review.

IV. WITHDRAWAL OF APPEAL

Counsel for the Milton Appellants indicated that the Milton Appellants had met and concluded that they would neither take an interlocutory appeal nor proceed to prosecute the appeal before the Board, due to the Board's ruling on the interpretation of the "public good" standard in 29 V.S.A. ch. 11. He further advised the Board that a Notice of Withdrawal of Appeal had been prepared on behalf of the Milton Appellants and was in the mail to the parties.

The Chair asked each of the representatives of the parties present whether they objected to such a withdrawal. None objected to dismissal of this appeal based on the representation that the Milton Appellants sought permission to withdraw.

The Chair advised the parties that once the written Notice of Withdrawal of Appeal is received at the Board's office, the parties would be advised of the date of the meeting at which the Board would consider and take action with respect to the Milton Appellants' request. He further noted that the Board handles a Notice of Withdrawal of Appeal as a request for dismissal.

See Board Procedural Rule 21.

V. OTHER

There being no other business to be conducted, the Chair closed the second prehearing conference at approximately 2:25 p.m.

VI. ORDER

1. On or before **4:30 p.m., Thursday, March 18, 1999**, any party objecting to dismissal of the above-captioned matter based on the Milton Appellants' Notice of Withdrawal of Appeal, shall file its objections in writing with the Board. Any requests for oral argument must also be filed by this deadline.
2. If no objections to dismissal are filed by the deadline in Item 1, above, the Board will issue a summary Dismissal Order, without findings of fact, conclusions of law, and Order. If any party objects to this procedure, it should file its objection on or before **4:30 p.m., Tuesday, March 22, 1999**. A failure to file a timely objection shall be deemed waiver of the requirement of Procedural Rule 21 that a dismissal decision comply with the requirements of Procedural Rule 29.
3. The Board will deliberate with respect to dismissal of the above-captioned matter on **Tuesday, March 30, 1999**, at **9:30 a.m.**, in the Board's Large Conference Room, National Life Records Center Building, Montpelier, Vermont 05620-3201.
4. Pursuant to Procedural Rule 24(B), this Report and Order is binding on all parties who have received notice of the prehearing conference, unless a written objection to the Report and Order, in whole or in part, is filed on or before **4:30 p.m., Tuesday, March 16, 1999**, or a showing of cause for, or fairness requires, waiver of a requirement of this Report and Order. The filing of an objection shall not automatically toll that portion of the Report and Order to which an objection is made.

Dated at Montpelier, Vermont this 9th day of March, 1999.

WATER/RESOURCES BOARD



William Boyd Davies
Chair