

State of Vermont
WATER RESOURCES BOARD

RE: Alpine Pipeline Company
c/o James P.W. Goss, Esq.
Docket No. EPR-00-10

PREHEARING CONFERENCE REPORT AND ORDER

On September 12, 2000, at 3:00 p.m., Water Resources Board ("Board") Chair David J. Blythe, Esq., convened a prehearing conference at the Board's Conference Room in Montpelier, Vermont, in the above-captioned matters. The Chair was assisted in the conduct of the prehearing conference by the Board's Associate General Counsel, Kristina L. Bielenberg, Esq. The following persons entered timely appearances and participated by teleconference:

Alpine Pipeline Company ("Alpine"), by James P.W. Goss, Esq.; and
Agency of Natural Resources ("ANR"), by Andrew Raubvogel, Esq.

I. PROCEDURAL BACKGROUND

On June 13, 2000, the ANR issued Water Supply and Waste Water Disposal Permit # WW-1-0779-1 ("Permit") to Alpine, a Vermont corporation, for general upgrades and improvements to its pipeline which connects land uses in the Route 4 corridor between Killington and Rutland City to the Rutland City Municipal Sewage Disposal System (the "Project").

On July 12, 2000, Alpine appealed the Permit to the Board, objecting to certain specific terms of the Permit conditions. The appeal was filed pursuant to 3 V.S.A. §2873(c)(4), 10 V.S.A. § 905, and 10 V.S.A. ch. 61.

On August 4, 2000, this appeal was deemed substantially complete and docketed EPR-00-10. A Notice of Appeal and Prehearing Conference was issued on August 11, 2000, and published in the Rutland Herald on August 14, 2000, in accordance with Board Procedural Rule ("Procedural Rule") 22.

On September 6, 2000, Alpine filed a Motion to Dismiss its appeal pursuant to Procedural Rule 24 on the basis that the issues that gave rise to its appeal were moot. Alpine further waived oral argument pursuant to Procedural Rule 24.

On August 12, 2000, at 3:00 p.m., Board Chair Blythe convened the aforementioned prehearing conference by teleconference in Montpelier, Vermont, pursuant to Procedural Rule 28. This Prehearing Conference Report and Order ("Prehearing Order") memorializes the discussions at that conference and the Chair's preliminary rulings.

II. PURPOSE OF PREHEARING CONFERENCE

The Chair explained that the Water Resources Board is a five-member citizen Board appointed by the Governor. He noted that one of the Board's duties is to hear appeals from Water Supply and Waste Water Disposal Permits. As a part of his duties in a contested case proceeding, the Chair explained that he is authorized to convene preheating conferences to expedite the hearing process. Procedural Rule 28. He also has authority to issue preliminary rulings, including dismissal orders. However, any such preliminary ruling may be objected to by any party within fifteen days of the issuance of such ruling unless some other deadline is so ordered. If any objection is timely filed, the preliminary ruling must be reviewed by the Board, which shall render a final decision. Procedural Rule 23.

III. PARTY STATUS

Alpine and ANR are parties of right pursuant to Procedural Rule 25(B)(1) and (5), respectively. Board counsel noted that ANR had not entered a written notice of appearance. Counsel for ANR agreed to submit such a filing in order to document its participation in this appeal.

IV. PENDING MOTION TO DISMISS

The Chair noted that there was a pending Motion to Dismiss filed by Alpine. Unless ANR had an objection, the Chair indicated that he would include in the Preheating Order certain party status rulings and a preliminary ruling dismissing this matter. This ruling would be self-executing in that after fifteen days, assuming no objections were filed, the dismissal order would become final and binding. The Chair noted, however, that if either Alpine or ANR, or both, preferred to have this matter remanded to the ANR, instead of being dismissed, they should make such a request so that he could issue an order accordingly. In any event, the Chair asked both Alpine and ANR whether they would waive the requirement that any order must contain written findings of fact and conclusions of law pursuant to Procedural Rule 34 and also whether they would waive oral argument before the Board.

Counsel for Alpine and ANR both indicated that they waive oral argument and the right to have a decision containing findings of fact and conclusions of law pursuant to Procedural Rule 34. Counsel for Alpine and ANR each explained to the Chair why dismissal of this appeal was preferable to a remand to the ANR for further action on the Permit. Accordingly, the Chair decide to dismiss the appeal consistent with the parties' intentions.

V. DISCLOSURES

The Chair noted that in all likelihood this matter will be resolved without referral to the Board. However, if an objection is timely filed, the Board would be convened to hear the matter. Therefore, he identified the current members of the Board: members Blythe, Farr, Roberts, and Potvin.. The Chair noted that there is one vacancy on the Board which is expected to be filled by the Governor some time this fall. In the event that an objection to the Prehearing Order is filed and the vacancy on the Board is not timely filled, the Chair noted that he has the power to appoint a former Board member to hear and decide any preliminary or other matters in this appeal pursuant to 10 V.S.A. § 905(1)(F). If he elects to appoint a former Board member, the Chair indicated that the parties would have an opportunity to file any request for disqualification.

The Chair asked the prehearing conference participants whether they were aware of any **conflicts** of interest or other disqualifying interests which might prevent one or more of the current identified Board members from serving as decision makers in this proceeding.

Counsel for Alpine and ANR each indicated that they were aware of no facts supporting disqualification of any of the four current Board members.

VI. EX PARTE CONTACTS

The Chair cautioned would-be parties to the appeal against communicating directly with Board members until any order disposing of this matter becomes final and binding. 3 V.S.A. 5813. All persons having procedural questions are directed to bring them to the attention of the Board's staff handling this case, **Kristina L. Bielenberg, Esq.** (Phone: 828-5443).

VII. ORDER

1. The parties of right to this appeal are:

Alpine Pipeline Company, pursuant to Procedural Rule 25(B)(1); and
Agency of Natural Resources, pursuant to Procedural Rule 25(B)(5).
 2. The issues raised in Docket No. EPR-00-10 are moot and this appeal is hereby ***dismissed***.
 3. This Preheating Order shall become final and binding upon the parties and those who received notice of the Prehearing Conference, unless an objection to this order is filed on
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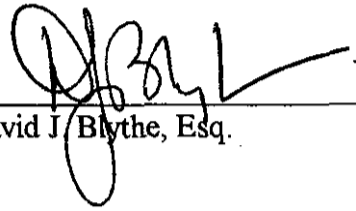
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or before **4:30 p.m., Thursday, September 28, 2000**

Dated at Montpelier, Vermont, this 13th day of September, 2000

WATER RESOURCES BOARD

By its Chair



David J. Blythe, Esq.