

State of Vermont
WATER RESOURCES BOARD

PREHEARING CONFERENCE REPORT AND ORDER

- RE: Home Depot, USA, Inc., et al.** **Authority:**
Docket No. WQ-00-06 (DEC Permit M-0460) 10 V.S.A. § 1269
c/o James P.W. Goss, Esq.
Reiber, Kenlan, Schwiebert, Hall & Facey, P.C.
P.O. Box 578
Rutland, VT 05702-0578
- RE: Home Depot, USA., Inc., et al.** **Authority:**
Docket No. CUD-00-07 (DEC #1999-284) **10 V.S.A. §1269 and**
c/o James P.W. Goss, Esq. **Vermont Wetland**
Rules, Section 9
- RE: Home Depot, USA, Inc., et al.**
Docket No. CUD-00-08 (DEC #1999-284)
c/o James P.W. Goss, Esq.

I. PROCEDURAL BACKGROUND

On May 24, 2000, the Waste Management Division, Department of Environmental Conservation (“DEC”), Agency of Natural Resources (“ANR”) issued a discharge permit for stormwater runoff into waters of the state (“DEC Permit #1-0460”) to Home Depot, USA, Inc., Ann Juster, and Homer and Ruth Sweet, collectively (“Permit Applicants”). DEC Permit #1-0460 authorizes the Permit Applicants to discharge treated and controlled stormwater runoff from the roadways, parking, and roofs associated with the Rutland Mall Route 4, Rutland, VT, to an unnamed tributary of Tenney Brook.

On June 2, 2000, the Water Quality Division, DEC, ANR, issued a conditional use determination (“CUD”) (“DEC #1999-284”) to the Home Depot, USA, Inc., and Homer and Ruth Sweet, collectively (“CUD Applicants”). DEC #1999-284 authorizes the Applicants to fill 16, 480 square feet of Class Two Wetland and 53,938 square feet of wetland buffer as part of reconstruction and expansion of the Rutland Mall, Route 4, Rutland, VT.

On June 15, 2000, Friends of Vermont’s Way of Life, Inc. (“Friends”) appealed DEC Permit #1-0460 and DEC #1999-284 to the Board and sought consolidation of the two appeals. On June 30, 2000, Rutland Region First, Inc. (“RRF”) appealed DEC #1999-284 to the Board. All three appeals were timely filed and docketed.

On June 23, 2000, counsel for the Permit and CUD Applicants filed notices of appearance in WQ-00-06 and CUD-00-07, respectively. Counsel for the Permit and CUD

Applicants further indicated that he would be filing in the near future a Motion in Opposition to Joinder of Appeals and a Memorandum in Opposition to the Requests for Party Status.

A joint Notice of Appeals and Prehearing Conference was issued on July 5, 2000, and published in the Rutland Herald on July 7, 2000, in accordance with Water Resources Board Procedural Rule ("Procedural Rule") 22.

On July 10, 2000, counsel for the CUD Applicants filed a notice of appearance in CUD-00-08. Counsel for the CUD Applicants indicated that he would be filing a Memorandum in Opposition to the Request for Party Status.

On July 17, 2000, counsel for the ANR entered his appearance in all three appeals.

On July 19, 2000, at 3:00 p.m., Water Resources Board ("Board") Chair David J. Blythe convened a prehearing conference at the Board's Conference Room in Montpelier, Vermont, in the above-captioned matters, pursuant to Procedural Rule 28. 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:

Friends of Vermont's Way of Life, Inc. ("Friends"), Appellant in WQ-00-06 and

CUD-00-07, by David L. Grayck, Esq. of Cheney, Brock & Saudek, P.C.;

Rutland Region First, Inc. ("RRF"), Appellant in CUD-00-08, by Stephanie A.

Lorentz of Lorentz, Lorentz & Harnett, P.C.

Home Depot USA, Inc., et al., Applicants in WQ-00-06 and CUD-00-07 and -08

(collectively "Applicants"), by James P.W. Goss, Esq. of Reiber, Kenlan,

Schwiebert, Hall & Facey, P.C.

Agency of Natural Resources ("ANR") by Jon Groveman, Esq. and Andy

Raubvogel, Esq.

Attorney Goss clarified that in addition to representing Home Depot USA, Inc., he represent the Sweets, as owners of the land upon which the mall is located, and Ann Juster, lessee.

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 appeals of discharge permits, pursuant to 10 V.S.A. § 1269, and CUD

decisions, pursuant to 10 V.S.A. § 1269 and Section 9 of the Vermont Wetland Rules (“VWR”). As a part of his duties in a contested case proceeding, the Chair is authorized to convene prehearing conferences to expedite the hearing process. Procedural Rule 28.

The Chair described the purpose of a prehearing conference. He specifically noted that the purpose of a first prehearing conference, such as this one, is to: (1) identify parties or persons seeking party status; (2) clarify the issues in controversy; including any preliminary issues; (3) see if there is any interest amongst the participants in entering negotiations to narrow or eliminate any issues in controversy; and (4) attempt to establish a schedule and hearing day agenda to reflect both the participants’ and Board members’ schedules. See Procedural Rule 28.

The Board’s counsel noted that party status determinations, scope of appeal issues, and scheduling matters would be taken under advisement and ruled upon in the preheating conference report and order (“Prehearing Order”) that would be issued a few days after the prehearing conference or in a subsequent order. See Procedural Rule 28(B).

III. INTRODUCTIONS AND DISCLOSURES

The Chair introduced himself and staff to those present at the prehearing conference. He identified the current members of the Board: members Blythe, Farr, Roberts, and Potvin. He noted that there was one vacancy on the Board which is expected to be filled by the Governor some time in September, but that in the event that such appointment was not timely made, he might have 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). Accordingly, he distributed to the prehearing conference participants copies of biographical notes for each of the current Board members, as well as biographical notes for former Board members Davies, Einstein and Osherenko. See attachment.

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 identified persons from serving as decision makers in this proceeding. Counsel for the Applicants indicated that his clients had no objections to the participation of any of the current or former Board members identified by the Chair. Counsel for the Appellants and the ANR did not disclose whether they had any objections to these current or former Board members. Accordingly, the Prehearing Order establishes a deadline by which any written objections or requests for further disclosure must be filed.

The Chair advised the prehearing conference participants that if new appointments are made to the Board during the pendency of this appeal, additional disclosures will be

made to the parties so that they may have an opportunity to any requests for Board member disqualification.

IV. EX PARTE CONTACTS

The Board's counsel cautioned would-be parties to the three appeals against communicating directly with Board members during the pendency of proceedings before the Board. 3 V.S.A. §813. 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).

V. STANDARD OF REVIEW

The Board's counsel explained that any hearing on the merits in these appeals shall be conducted as a de nova proceeding pursuant to 10 V.S.A. § 1269. As a consequence of the de novo standard, the prehearing conference participants were forewarned that any evidence that might have been submitted to the ANR in support of or in opposition to the application for the Discharge Permit or the CUD, including the applications themselves, must be resubmitted to the Board in the form of prefiled exhibits.

Should these appeals be decided on the merits after a hearing or hearings, the Board will issue an order affirming, reversing or modifying the act or decision of the Secretary of ANR. 10 V.S.A. § 1269. The Permit and CUD Applicants have the burden of proof, by a preponderance of the evidence, to show that a permit and decision should issue for the Project and, if so, with what conditions.

VI. INFORMAL DISPUTE RESOLUTION

The Chair advised the preheating conference participants that the Board encourages alternative dispute resolution. He noted that additional time could be built into the schedule of this proceeding to allow for such informal resolution if the parties believe that the issues in this proceeding can be resolved and narrowed through negotiation or mediation.

VII. PRELIMINARY ISSUES

A. CONSOLIDATION

Because the three appeals had been filed from ANR permit decisions issued for the same Project -- namely, the reconstruction and expansion of the Rutland Mall to accom-

moderate the Home Depot development -- they were jointly noticed to achieve economic and administrative efficiency. The Chair inquired of those present whether consolidation of two or more of the appeals for purposes of filings, hearing, and decision, would be appropriate. He noted that it is not uncommon for the Board to consolidate appeals where the same project, the same parties, and substantially the same issues are involved in order to avoid duplication of testimony and unnecessary expense, and where no party would be prejudiced. See Procedural Rule 33. It was noted that counsel for the Friends had requested that the Discharge Permit and CUD appeals be consolidated.

None of the prehearing conference participants objected to the consolidation of the two CUD appeals, CUD-00-07 and CUD-00-08. Counsel for the Applicants, however, opposed consolidation of WQ-00-06 with the other two appeals. He urged the Chair to keep the dockets and records separate since the issues were different in the Discharge Permit and CUD appeals, and he did not want his client to be placed in the position of having to move a reviewing court to bifurcate the appeals and the records should the Applicants decide to appeal one-Board permit decision and not another. Counsel for the Friends urged consolidation because it would provide for greater efficiency in the presentation of evidence and there might be some overlap in evidence and argument, but he noted that he was not seeking consolidation of the causes of action.

The Board's counsel inquired of the parties whether it might not be possible to stipulate to certain facts about the Project, thereby eliminating some redundancy in the presentation of evidence, or have certain witnesses prefile the same testimony in both proceedings and be available for cross-examination at a certain time in the hearing day to accommodate the concerns of all.

The Chair agreed to take the participants concerns under advisement and subsequently issue a ruling. The parties agreed to work together to come up with a set of stipulated facts and attempt to resolve other issues concerning possible overlap of evidence and issues on the assumption that WQ-00-06 and the two CUD appeals would not be consolidated but would be scheduled back-to-back on the same day.

B. STANDING/ PARTY STATUS

Counsel for the Applicants indicated that he intended to object to the standing/ party status of the Friends and RRF in the three appeals. He had indicated this in his entries of appearance, but had not had an opportunity to file motions prior to the prehearing conference. He indicated that he would do so within the week.

Based on this representation, the Chair indicated that he would establish a deadline

of July 27, 2000, for the filing of motions objecting to standing/ party status and supporting legal memoranda, and likewise set a deadline for responsive memoranda. It was agreed that the deadline for these responsive memoranda would be Thursday, August 17, 2000. Because a determination that a party lacks standing would result in dismissal of its appeal, the Chair indicated that the parties would be provided an opportunity to request oral argument before the full Board on August 29 or September 19, 2000. He noted that a tentative date and time would be set forth in the Prehearing Order and confirmed after the August 17, 2000 deadline.

C. SCOPE OF PROJECT AND ISSUES UNDER APPEAL

The Chair requested clarification concerning the scope of the Project authorized by the Discharge Permit. The Permit Applicants' representatives indicated that the Project encompasses the redevelopment of the Rutland Mall (also known as the old Juster Mall), including substantial redesign and reconstruction of the parking lot and stormwater infrastructure. A detention pond will be enlarged, a new catchment basin will be constructed, new piping will be installed, and a new point of discharge will be created. The Discharge Permit authorizes these infrastructure changes to accommodate stormwater discharge for the entire mall.

The Chair then asked counsel for the Permit Applicants whether he needed any clarification concerning the issues identified by the Friends in its notice of appeal. Counsel for the Permit Applicants stated that since the Board would be considering the Project de novo, he intended to provide the Board with evidence addressing the applicable Vermont Water Quality Standards ("VWQS") and ANR requirements. He asserted, however, that as a matter of law, the Friends are not entitled to raise in their appeal the issue of whether a discharge permit under 10 V.S.A. §1263 is required for the Project.' He said that such an issue is properly raised in another forum, such as by a declaratory ruling request tiled with the ANR. Furthermore, he argued that his clients applied for a stormwater discharge permit and the only issue on appeal is whether they are entitled to such a permit based on a de novo hearing at which they can present their application and supporting evidence.

Counsel for the Friends indicated that he was prepared to raise as a preliminary

¹ Issue (1) identified by the Friends in its Notice of Appeal was: "Whether the Discharge complies with 10 V.S.A. §§ 1263 and 1264, including but not limited to 10 V.S.A. § 1263(a), (c), and (d)(1)-(4); and 10 V.S.A. § 1264(a), (b), and(c)." Friends' Notice of Appeal at 2 (Jun. 25, 2000). The Chair understands the Permit Applicants' objection to extend only to Board review of those sections of 10 V.S.A. § 1263 identified in Issue 1 and not the Board review under the other statutory sections.

issue for Board decision the question of whether the scope of its appeal can include consideration of whether a discharge permit is needed for waste that will allegedly be generated by Home Depot's operations (i.e.: waste water from the Home Depot garden center). Accordingly, counsel for the Friends agreed to file its motion and supporting memorandum on or before August 17, 2000, and counsel for the Permit Applicants agreed to file a responsive memorandum on or before noon, August 25. ANR was advised that it could also file a responsive memorandum by this deadline. The Chair noted that the Board shall reserve time for oral argument on this preliminary issue on the same date reserved for oral argument on the standing questions and confirm such opportunity for argument by notice issued after August 17, 2000.

The Chair requested clarification concerning the scope of the Project authorized by the CUD and a description of the wetland resources allegedly affected by the Project. Counsel for the CUD Applicants stated that stormwater from the mall currently discharges from a culvert into a man-made ditch and a tributary of Tenney Brook. The Project entails moving a section of the ditch. The area of impact is classified as a Class Two wetland and *both a portion of the wetland and its buffer zone will be affected by the Project.

The Chair then asked counsel for the CUD Applicants whether he needed any clarification concerning the functions identified by the Friends and RRF as at issue in their appeals. He indicated that he did not need clarification.

Counsel for RRF asked how concerns about cumulative impacts might be addressed in the appeal. The Board's counsel responded that Section 8.5(a) of the Vermont Wetland Rules requires an evaluation of cumulative impacts and that RRF or any other party may present evidence or cross-examine witnesses concerning this subject matter.

D. COST OF LEGAL NOTICE

The Board's counsel noted that, pursuant to Procedural Rule 22(B), appellants are responsible for the cost of publishing the initial notices of appeal proceedings. She noted that since there were two sets of Appellants and three appeals, the cost of publication of the joint notice of appeal and prehearing conference in the Rutland Herald was divided between the Friends and RRF. She further noted that on July 12, 2000, the two appellants were sent a bill prorating the costs of publication, such that each must reimburse the Board in the amount of **\$100.80**.

As of the date of the prehearing conference, neither Appellant had sent a check to the State of Vermont for reimbursement of publication costs as requested. Counsel for the Friends and RRF each indicated that they would be sending a check to the Board promptly

after the prehearing conference. A deadline for receipt of these checks is set forth in the Prehearing Order.

E. OTHER PRELIMINARY ISSUES

There were no other preliminary issues raised by the prehearing conference participants.

VIII I S S U E S

A. DISCHARGE PERMIT APPEAL

The issues identified by the Friends in its Notice of Appeal at 2 (Jun. 15, 2000) are:

- (1) Whether the Discharge complies with 10 V.S.A. §§ 1263 and 1264, including but not limited to 10 V.S.A. § 1263(a), (c), and (d)(1)-(4); and 10 V.S.A. § 1264(a),(b), and (c).
- (2) Whether the Discharge complies with the Vermont Water Quality Standards ("VWQS"), including, but not limited to, Sections 1-02, 1-03, 1-04, 2-05, and 3-03.
- (3) Whether the Discharge complies with the ANR's Stormwater Management Procedure ("SMP"), including, but not limited to Chapter Once, Sections A, B, E, F, G, I, J 1-8 and the DEC's Permit Application Review Procedures ("PARP"); and Chapter Two, Sections A, B, C, D, and E.²

As noted in Section VI.C above, counsel for the Permit Applicants objects to Board consideration of whether a discharge permit is required for its Project pursuant to 10 V.S.A. § 1263. Accordingly, the scope of issue (1) is in dispute and will be resolved by the Board in its rulings on preliminary issues.

B. The CUD APPEALS

The Board's counsel advised the prehearing conference participants that the Board has routinely used the following analysis to assess whether a CUD should be issued for a

² If a prehearing conference participant intends to rely on regulations or guidance documents of the ANR, either in briefing on preliminary issues or in filings for the merits hearing, it shall provide the Board with an original and seven copies of the relevant sections and ask the Board to officially notice said material.

Project in a Class Two wetland and/or its buffer zone:

- (1) Whether the Project will result in an undue adverse effect on protected wetland functions? Section 8.5(a) of the VWR
- (2) If the Project will result in an undue adverse effect on protected functions, are these impacts minimal? Section 8.5(a) of the VWR
- (3) If the undue adverse effect on protected functions is more than minimal, has this impact been sufficiently mitigated to the extent necessary to achieve no net undue adverse effect? Sections 8.5(b) of the VWR

The Chair noted that the Board presumes that a Class II wetland is significant for all ten functions listed in Section 5 of the VWR. The Chair noted, however, that in a de novo proceeding the applicant for a CUD is expected to present evidence on the impacts of its project with respect to only such wetland functions specifically identified by the appellant in his or her notice of appeal.

The Friends and RRF each assert that the functions at issue are: 5.1 (water storage for flood water and storm runoff); 5.2 (surface and groundwater protection); 5.3 (fisheries habitat); 5.4 (wildlife and migratory bird habitat); 5.7 (education and research in natural science); 5.8 (recreational value and economic benefits); 5.9 (open space and aesthetics); and 5.10 (erosion control through binding and stabilizing the soil). The Friends also assert that the ANR failed to take into consideration the cumulative impacts of the Rutland Mall and past permitted activities on the wetland and stream in question and the Board must take into consideration these impacts in its analysis. RRF emphasized in its appeal that the ANR failed to adequately evaluate cumulative and on-going impacts and, further, that the Applicants failed to provide sufficient evidence concerning Project mitigation.

IX. WITNESSES, EXHIBITS, AND PREFILING SCHEDULE

The Board's counsel explained to the prehearing conference participants that **prefiled** testimony and exhibits would be required in this proceeding. All counsel present indicated that they were familiar with the **prefiling** process.

The Board's counsel asked each prehearing conference participant to provide a preliminary list of witnesses to help get a sense how long a hearing or hearing(s) will be required to address the matters on appeal. A final determination concerning the hearing schedule would not be made until all lists of witnesses are prefiled.

A. DISCHARGE PERMIT APPEAL

Counsel for the Permit Applicants indicated that he would likely call two witnesses, both employed by Dubois and King: David Conger, an engineer with respect to stormwater issues; Art Dreher, general project engineer for the Project.

Counsel for the Friends stated that he would likely call two witnesses: Dan Maxon to address stormwater issues and perhaps another witness, yet to be identified.

Counsel for ANR reported that he would likely call one or two witnesses, who would be technical staff from the Waste Water Management Division.

B. CUD APPEAL

Counsel for the CUD Applicants indicated that he would call two or three witnesses: Charlotte Brodie, a Wetlands Biologist; Don Mason, Fisheries Biologist; and possibly Art Dreher to address erosion issues.

Counsel for the Friends said he would call one or two witnesses: a CUD expert and maybe a fisheries biologist.

Counsel for RRF indicated that she would call one or two witnesses: Peter Spear, Biologist, and perhaps another CUD expert.

Counsel for ANR reported that he would be calling two witnesses: Peter Kiebel of the Wetlands Office and a fisheries biologist, Chet McKenzie.

The Board's counsel expressed the hope that the hearing(s) would take no more than a full day and the prehearing conference participants all agreed that this was feasible, if both the Discharge Permit and CUD proceedings were consolidated or held back-to-back on the same. Toward this end, the prehearing conference participants were encouraged to work together to avoid duplication of witness testimony and exhibits and, if possible, to prepare stipulated facts, identify exhibits to which there are no objections, and develop a joint site visit itinerary.

The Board's counsel noted that an order governing the pre-filing of evidence, with specific instructions for the pre-filing of testimony and exhibits, would be issued following the Board's rulings on preliminary issues. She advised the prehearing conference participants that the Board's usual practice is to stagger the filing of prefiled evidence such that the applicant files first; two or three weeks later, the other parties prefile their direct

evidence; and two or three weeks after that, all parties simultaneously prefile rebuttal evidence. A week or so later, all parties may file written evidentiary objections and, a week after that, responses to evidentiary objections. The Chair rules on evidentiary objections, hearing day scheduling issues, and other matters as necessary at a second prehearing conference held a few days before the Board's hearing. Objections to the Chair's rulings may be preserved for Board review at the beginning of the hearing day. She also noted that the Board generally required prefiled proposed findings of fact, conclusions of law, and orders in the form of proposed permits of CUDs. The prehearing conference participants indicated that they were comfortable with the staggered tiling of prefiled evidence as outlined by the Board's counsel.

With respect to all filings, including prefiled testimony and exhibits and various pleadings, the parties are required to file an original and seven copies with the Board as well as serve persons on the Board's certificate of service. The Chair emphasized that "Filing with the Board" means that a parties' submissions must be received at the Board's office by the deadline stated in a Prehearing Order or in subsequent orders of the Board or Chair. See Procedural Rules 8, 9, and 10.

The Board's counsel urged all prehearing conference participant to look at their calendars and alert her of any major scheduling conflicts between now and the proposed hearing dates.

X. HEARING DAY SCHEDULE

The Board's counsel indicated that a hearing with respect to the pending appeals is tentatively scheduled for **Tuesday, November 21 or Tuesday, December 12, 2000**, and she urged the prehearing conference participants to reserve these dates until further notice and so notify their witnesses. Counsel for the Friends indicated that he had an Act 250 hearing scheduled for December 13 so that he preferred the earlier hearing date. The Board's counsel indicated that the Board had not yet set its schedule for 2001 so she could not state what dates might be available in January.

The Board's counsel noted that the hearing would be scheduled at a public facility in close proximity to the subject wetland, somewhere in the Rutland area. She distributed to the preheating conference participants two sample hearing day schedules. See attachment.

The Board's counsel asked the prehearing conference participants whether it would be advisable for the Board to conduct a site visit in October or November 2000, if it appears that this matter will not go to hearing until winter. All counsel urged the Board to

conduct a site visit before snow fall -- that is, by mid-November -- if a hearing can't be held until December or later. The Board's counsel advised those present to work together to develop a joint site visit itinerary so that the Board's time is efficiently used on the day of the hearing. She suggested that parties identify the specific stations and sequence of stations they wish the Board to view; and then do a dry run of the site visit to get a better idea of the time involved in conducting the visit.

XI. SERVICE LIST

The Board's counsel advised the prehearing conference participants that they should use the certificate of service accompanying the Prehearing Order to determine who should receive copies of all filings. She noted that parties are not required to serve filings on persons listed under the "For Your Information" section of the certificate of service. She further noted that parties or their representatives are responsible for advising the Board of any changes in addresses, including changes related to the assignment of new 911 street numbers or seasonal changes in residence.

Of the persons listed on the ANR's service lists who were sent a copy of the Board's Notice of Appeals and Prehearing Conference, the following did not receive copies because the address information was incomplete, inaccurate, or because the addressee had moved away or was unknown: Jack Boyajian, Israel Mac, John and Judith Hansen et al., Florence Round, and Pond Meadow Condominiums. If any of the prehearing conference participants have correct or current address information for these persons/entities, they are encouraged to provide this information to the Board.

XII. OTHER

Those intending to participate in this proceeding are advised to obtain copies of the Procedural Rules, effective February 22, 1999, as well as the VWR, to prepare for the hearing in this matter. These rules are available by downloading text from the Board's Web site: <http://www.state.vt.us/wtrboard>

XIII. ORDER

1. The parties to this consolidated proceeding are:
The Discharge Permit and CUD Applicants, pursuant to Procedural Rule 25(B)(1);
ANR, pursuant to Procedural Rule 25(B)(5);

A ruling concerning the standing/party status of the Friends and RRF will be issued by the Board following briefing, oral argument (if requested), and deliberations.

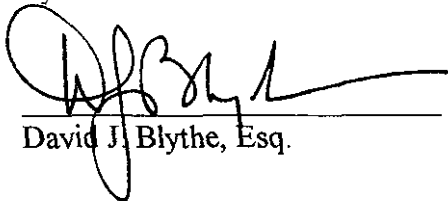
2. On or before **4:30 p.m., Thursday, July 27, 2000**, the Appellants shall each submit to the Board a check for \$100.80 to cover the prorated cost of newspaper publication of the initial notice of the above-captioned appeals. Said checks should be made payable to the State of Vermont and sent to Karen Dupont's attention c/o Vermont Water Resources Board, National Life Records Center Building, Drawer 20, Montpelier, Vermont 05620-3201.
 3. The Applicants have challenged the standing of the Friends with respect to Docket No. WQ-00-06 and the Friends and RRF with respect to Docket Nos. CUD-00-07 and CUD-00-08, respectively. On or before **4:30 p.m., Thursday, July 27, 2000**, the Applicants shall file any Motions Opposing the Standing/ Party Status Requests of the Appellants in the three appeals. Said motions shall be supported by legal memoranda and any requests for oral argument.
 4. Any requests for disqualification of any of the current Board members or former Board members identified in Section III. above, or any requests for further disclosure, shall be filed on or before **4:30 p.m., Thursday, July 27, 2000**. Any such request for disqualification shall be supported with a statement of alleged facts and a memorandum of law in support of such disqualification. The failure to file a timely request for disqualification or request for further disclosure shall be deemed waiver of any objections to the participation of any current or former Board member identified in Section III. above.
 5. On or before **4:30 p.m., Thursday, August 17, 2000**, the Friends and RRF shall file any legal memoranda responding to objection(s) to their standing. Said memoranda shall be accompanied by any requests for oral argument.
 6. On or before **4:30 p.m., Thursday, August 17, 2000**, the Friends shall file any motion with supporting legal memorandum on the issue of the Board's authority to decide the question whether a discharge permit under 10 V.S.A. § 1263 is required for the Project. Said filing shall be accompanied by any request for oral argument.
 7. On or before **12:00 noon, Friday, August 25, 2000**, the Permit Applicants and ANR shall file any legal memoranda responding to the Friends' motion and supporting memorandum. Said memoranda shall be accompanied by any requests for oral argument.
 8. If oral argument is timely requested as provided in Items 3. and 5.-7. above, it shall be held at **9:30 a.m., Tuesday, August 29, 2000**, at the **Cabot Masonic Temple (Green Mt. Lodge) on Main Street, Cabot, Vermont**. Confirmation of said oral
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argument shall issue upon the receipt of the first of any requests for oral argument.

9. Should the Board decide that the Friends and RRF have standing/ party status, Docket Nos. CUD-00-07 and CUD-00-08 shall be consolidated. Docket No. WQ-00-06 shall not be consolidated with any CUD appeal, but will likely be scheduled on the same day as any hearing on CUD issues.
10. The issues in this proceeding are those discussed in VIII. above, unless modified by a Board preliminary ruling on the scope of the issues on appeal.
11. Until preliminary issues in these appeals are resolved by the Board, no order setting forth the requirements or deadlines for the prefiling of evidence will issue. However, the parties are forewarned that should the Board decide to hear this matter on the merits, prefiling deadlines will be established for the months of October through November.
12. Parties shall file an original and seven **collated copies** of motions, legal memoranda, and any other documents filed with the Board, and mail one copy to each of the persons listed on the Board's Certificate of Service. The Certificate of Service may be further revised if party status objections are made and further determinations have been made. Legal memoranda shall be no more than **twenty-five pages** and proposed findings of fact and conclusions of law shall be no more than **fifty pages**, See Procedural Rule 10.
13. Pursuant to Procedural Rule 28(B), this Prehearing Order is binding on all parties who have received notice of the prehearing conference, unless a written objection to the order, in whole or in part, is filed on or before **4:30 p.m., Thursday, July 27, 2000**, or a showing of cause for, or fairness requires, waiver of a requirement of this Prehearing Order. The filing of an objection shall not automatically toll that portion of the order to which an objection is made.

Dated at Montpelier, Vermont, this 21st day of July, 2000

WATER RESOURCES BOARD
By its Chair



David J. Blythe, Esq.