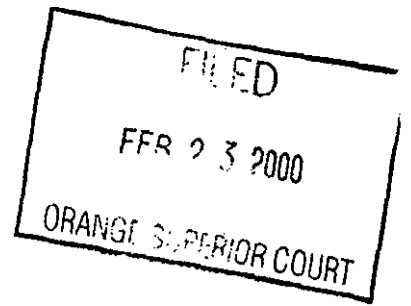


STATE OF VERMONT
ORANGE COUNTY, SS.



In re:)
UniFirst Corporation)
and)
Williamstown School)
District)

EO
AEO
BD

Orange Superior Court

Docket No. 11 I-8-98 Oecv

OPINION AND ORDER

Joyce M. Day and her son Alvin Day, Jr. appealed the decision of Water Resources Board dated May 7, 1998 as amended June 29, 1998 which reinstated the Discharge Permit issued by the Wastewater Management Division of the Department of Environmental Conservation, Vermont Agency of Natural Resources, with conditions. This matter came for a hearing on the merits of this appeal before the undersigned on December 15, 1999. Appellants appeal the decision of the Water Resources Board on the following five grounds:

1. The decision was contrary to law because UniFirst failed to demonstrate compliance with Vermont Water Quality Standard § 1-04.
2. The decision is unreasonable and contrary to law because the Board failed to make sufficient Findings.
3. The Discharge Permit does not comply with paragraph 44 of the Stipulation and Consent Decree.
4. The Discharge Permit unlawfully allows for the discharge of tetrachloroethylene (PCE) at a level which exceeds the applicable groundwater enforcement standard of the Ground Water Protection Rules and Strategy dated September 8, 1998.
5. The Discharge Permit unlawfully allows for the discharge of tetrachloroethylene (PCE) at a level which exceeds the Vermont Water Quality Standards for consumption of water and organisms.

Appeals of the Water Resources Board decisions (following a de novo hearing) are governed by 10 V.S.A. § 1270, which provides that “the court shall determine whether the board acted arbitrarily, unreasonably or contrary to law and shall issue its findings and order accordingly.” In

determining whether the Board's decision was "arbitrary," this court must determine if the "decision makes sense to a reasonable person." In re Petition of the Town of Sherburne, 154 Vt. 596, 605 (1990). However, even if the evidence presented to the Board was conflicting, the Board's findings will usually be upheld, unless the Board fails to explain the reasons for its decision. Id. When determining if the Board's findings were "unreasonable" deference must be given to the fact-finder, and this Court can not simply substitute its judgment for that of the Board. Id. at 605-606. In order to satisfy the third criteria delineated by 10 V.S.A. §1270, the Board must consider all the criteria required by the statute, "although it retains discretion in determining the relative weight to give each criterion." Id. at 607.

Appellant contends that the Board's decision was contrary to law and unreasonable because it failed to make sufficient findings and because UniFirst failed to demonstrate compliance with VWQS §1-04. This court disagrees and finds that pursuant to the above standards and for the reasons set forth more fully below, the Board's decision was not arbitrary, unreasonable, or contrary to law.

The Board held a hearing on this matter and heard live testimony from numerous witnesses. In addition, the Board reviewed pre-filed testimony and exhibits. The Board was presented evidence with respect to the possible alternative methods of disposal and it determined that the Discharge Permit's location for discharge was appropriate. Appellants have failed to show that this decision is not supported by the evidence or by the Board's findings. Although the Appellants contend there is evidence that other alternative sites for discharge would have a lesser impact and would not be unreasonable, this Court will not overturn the Board's decision with respect to this finding when its conclusions are supported by its findings: See, In re Putnev Paper Co. 1998 Lexis 170 (S.Ct. 1998) ("Matters regarding weight and sufficiency of the evidence are for the [Board] and not this

Court.”)

Further, although the Appellants contend that a finding of whether a reasonable alternative discharge site is available does not require any special technical expertise, this Court disagrees. The technical aspects of this matter are revealed by the use of expert testimony during the hearings, including the engineering aspects related to placement of a drainage pipe. As such, this Court will defer to the findings of the Board with respect to the issue of whether an alternative discharge site would be reasonable or would have a lesser impact. See, Sherburne at 607 (When technical issues are presented, “a reviewing court will defer more readily than where the issues in controversy are accessible to a generalist judge.”)

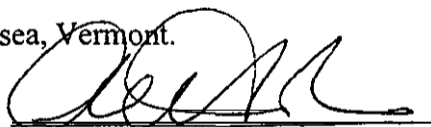
Appellants contend that the Board’s decision lacks sufficiency in its findings and therefore, is unreasonable and contrary to law. However, the Order delineates the Board’s findings of fact and the basis for its conclusions. The Order is sufficiently detailed to allow a reasonable person to ascertain the reasons for the Board’s decision and to formulate issues for appeal.

Appellant contends that the Order is contrary to the Consent Decree. However, the Appellants were not signatories to the Consent Decree and as such, do not have standing to raise this issue.. Appellants have also failed to show that the Discharge Permit allows for discharge of PCE at a level which exceeds any standards in the Ground Water Protection Rules and Strategy or the Vermont Water Quality Standards.

ORDER

For the foregoing reasons, the decision of the Water Resources Board is affirmed.

DATED this 23rd day of February, 2000, at Chelsea, Vermont.


Alan W. Cook
Presiding Judge