

State of Vermont
WATER RESOURCES BOARD

CHAIR'S ORDER AND NOTICE OF ORAL ARGUMENT

**RE: Paul Dannenberg
P.O. Box 187
Huntington, VT 05462**

**Docket Number:
WQ-99-07
(Appeal of ANR Permit Re:
Application #1999-C01)**

**Statutory Authority:
10 V.S.A. §1269**

I. BACKGROUND

On November 17, 1999, the Water Resources Board ("Board") received an appeal, pertaining to Agency of Natural Resources' ("ANR") issuance of an Aquatic Nuisance Control Permit granting Application No. 1999-C01 ("Permit"). The Permit was issued to James R. Martin of Huntington ("Permittee"). The appeal was filed by Paul Dannenberg ("Mr. Damrenberg") pursuant to 10 V.S.A. § 1269. The Permit authorizes permittee to use Aquashade®, a U.S. EPA-registered aquatic pesticide, to control nuisance aquatic plants and algae in two private ponds located in Huntington. Mr. Damrenberg maintains that he is aggrieved by the issuance of the Permit and in support of that assertion states that, among other things, he owns a shallow spring within 300± feet of the larger of the two ponds which may be affected Permittee's application of Aquashade®.

On December 17, 1999, Board Chair, Gerry Gossens, convened the initial prehearing conference in the referenced matter. Participating in the prehearing conference were the Permittee, James Martin, Esq., Paul Damrenberg, Esq., and the ANR, by Jon Groveman, Esq. and Ann Bove. No other person either appeared at the conference or filed a written request to participate in this proceeding.

At the prehearing conference, Mr. Dannenberg tiled a written request for party status and the participants briefly described the issues in this proceeding. Participants observed that there were several preliminary issues that should be addressed before scheduling a hearing on the merits. The preliminary issues identified by the participants and Board staff included the threshold question of Mr. Dannenberg's party standing, the appropriate scope of the appeal and other issues as required to properly frame the issues. Participants also agreed to pursue an attempt to resolve this matter informally. The prehearing conference was concluded prior to a full discussion of all issues and without establishing a definitive schedule for the prefiling of direct testimony. Rather, Chair Gossens requested that the parties pursue a facilitated or mediated discussion during the early part of January in an attempt to resolve all or some of the disputes giving rise to the appeal. Chair Gossens set forth a deadline for a status report on any progress toward settlement, which report was due on January 20, 2000.

As of January 20, 2000, no status report was filed. However, on February 3, 2000, Mr. Dannenberg filed a "Status Report" in which he stated that "Two parties in this matter

agree to a request for a thirty (30) day extension to attempt to mediate this matter.” The reasons provided for the extension request were the illness of the Mr. Dannenberg and the unavailability of the mediator. The Permittee was not contacted regarding the request, and accordingly, did not participate in making the request. In contrast, on February 4, 2000, Permittee filed an Opposition to Appellant’s Request of an Extension (“Opposition Letter”). In the Opposition Letter, Permittee contends that the appeal is without merit for various reasons, some of which are germane to the Board’s jurisdiction, and some of which appear to stem from matters unrelated to the Aquatic Nuisance Control Permit in question. In any event, Permittee sought no relief from the Chair other than to deny the pending request for continuance of thirty days. Permittee confirmed that as of February 3, 2000, no mediation had occurred.

On February 14, 2000, Mr. Dannenberg filed a “Reply to Permittee’s Opposition for Appellant’s Request for an Extension,” seeking to allow the deadline for an attempt to mediate this matter to extend to February 21, 2000, again citing illness and scheduling issues as the reasons for the delay. Based on representations made in Mr. Dannenberg’s letter, the mediation discussed at the initial prehearing conference on December 17, 1999 was scheduled to be held on February 10, 2000.

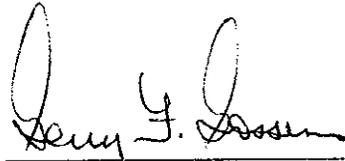
On February 14, 2000, shortly after what the Board’s staff understands to have been an unsuccessful attempt at mediation, the Permittee repeated concerns with the merit of Mr. Dannenberg’s appeal, this time in a “Motion to Dismiss the Dannenberg Appeal for Lack of Standing.” The Motion to Dismiss concerns only the issue of whether Mr. Dannenberg is a person aggrieved pursuant to 10 V.S.A. §1269.

II. ORDER

1. The Board will hear oral argument on the limited question of Mr. Dannenberg's standing to file the appeal at its regularly scheduled Board meeting on **March 14, 2000 at 12:00 p.m.** Each participant shall be allowed not more than 10 minutes to argue before the Board, with 30 minutes total time allocated.
2. Prior to such argument, Mr. Dannenberg and the ANR shah have an opportunity to file written responses to the Permittee's Motion to Dismiss, **not later than 4:30 p.m. on Wednesday, March 8, 2000.**
3. The pending Motions to extend the time for mediation of this matter until February 21, 2000 are granted. Should the Board deny the Motion to Dismiss, any party seeking additional time in which to further pursue informal resolution of this matter shall file a written request.

Dated at Montpelier, Vermont, this 24th day of February, 2000.

VERMONT WATER RESOURCES BOARD



Gerry R. Gossens
Chair