

**State of Vermont  
WATER RESOURCES BOARD**

**Re: Lime Kiln Quarries  
Town of Colchester, Vermont**

**Docket No. WET-01-04DR**

**DECLARATORY RULING**

Saint Michael's College (Saint Michael's), through its consultant, EIV Technical Services, petitions the Water Resources Board (Board) to issue a declaratory ruling that two quarries, known as the Lime Kiln Quarries, in the Town of Colchester, Vermont, and identified as wetlands on the Vermont Significant Wetland Inventory (VSWI) Maps, are not wetlands. The Board determines pursuant to 3 V.S.A. § 808 (1995), 10 V.S.A. § 905(7) (1999), and Board Rule of Procedure 16(B) that the Lime Kiln Quarries are not wetlands within the meaning of the Vermont Wetland Rules (VWR) and that the VSWI maps should be updated accordingly.

**I. PROCEDURAL HISTORY**

Saint Michael's filed its petition for a declaratory ruling with the Board on June 27, 2001. On June 29, 2001, the Board's Executive Officer determined that the petition had been filed in substantial compliance with the Board's Rules of Procedure, docketed the petition, and sent Saint Michael's a letter of acknowledgment. The petition includes a certification of support signed by wetland biologist April Moolaert from the Wetlands Office of the Agency of Natural Resources (ANR). Under Board Rule of Procedure 16(B), a petition for a declaratory ruling is reviewed as a contested case.

The petition identifies the persons whose interests may be affected by issuance of the relief requested, as required by Board Rule of Procedure 16(B)(2). On June 29, 2001, the Board provided personal notice of the petition to persons required to receive notice pursuant to Board Rule of Procedure 22. In addition, the Board published notice of the petition in the Burlington Free Press on July 2, 2001. In accordance with Board Rule of Procedure 22, the Board provided 7 days from the issuance of written notice for interested persons to file written comments or to request a hearing.

The deadline to file written comments or to request a hearing (or both) was July 9, 2001. No comments were filed, and no person requested a hearing. Accordingly, the Board did not hold a hearing in this matter.

At its regular meeting on July 10, 2001, the Board deliberated with respect to the petition. The Board's deliberations were based solely on the information in the petition. As set forth herein, the Board grants the petition for a declaratory ruling.

## II. FINDINGS OF FACT

1. The Lime Kiln Quarries are located in the Town of Colchester, on either side of Lime Kiln Road, between Route 15 and the Winooski River, on the property of Saint Michael's College.
2. VSWI Map 13A denotes the Lime Kiln Quarries as palustrine open-water intermittently exposed/permanent wetlands (POWZ). (The petition includes a copy of the area of the VSWI map depicting the Lime Kiln Quarries. A copy of that map is attached.)
3. The Lime Kiln Quarries were active lime quarries from the mid 1800's through 1971. The quarries have been abandoned since that time and have filled with water, mostly from rain, with some surface runoff. The water level in the quarries is approximately 22 feet above the water surface of the nearby Winooski River.
4. The surface area of the east quarry is 1.75 acres, and the west quarry has a surface area of 2.25 acres. The quarry walls are roughly vertical. The median height of the walls is 110 feet. The water depth in the quarries is approximately 50 feet, although abandoned equipment reaches closer to the water's surface. An underwater tunnel beneath Lime Kiln Road connects the two quarries.
5. The Lime Kiln Quarries lack wetland hydrology, wetland soils, and wetland vegetation.
6. Wetland biologist April Moulaert from ANR's Wetlands Office visited the Lime Kiln quarries on June 19, 2001, and concluded that the quarries do not constitute wetlands under the VWR.

## III. CONCLUSIONS OF LAW

The Board has the power and duty to protect significant wetlands. See 10 V.S.A. §§ 905(7)-(9). Under the VWR, an area identified as a wetland on the VSWI maps is presumed to be a significant wetland. VWR § 4.2.b. However, not all areas designated as wetlands on the VSWI maps are in fact wetlands within the jurisdiction of the VWR. Re: Shirley Urie, No. WET-96-04DR, Decision at 2 (Vt. Water Res. Bd. Jan. 8, 1997). To be considered a wetland under the Vermont Wetland Rules, an area must be characterized by hydric soils, hydrophytic vegetation, and wetland hydrology. See VWR § 3.2.a. See also VWR §§ 2.14, 2.15, 2.29, 2.31 (defining hydric soils, hydrophytic vegetation, wetlands, and wetland hydrology, respectively).

The Board has the authority to issue declaratory rulings as to the applicability of laws within its jurisdiction. See 3 V.S.A. § 808 (1995), Board Rule of Procedure 16(B). The Board's authority to issue declaratory rulings extends to declaring that a particular body of water or other feature identified as a wetland on the VSWI maps is not a wetland. Re: Stanley Gawet (Marble

Quarry), No. WET-95-03DR, Decision (Vt. Water Res. Bd. Feb. 15, 1996); Re: Gold Stone Marble Co. Quarry, No. WET-91-03DR, Decision (Vt. Water Res. Bd. Oct. 30, 1991).

The Lime Kiln Quarries appear on VSWI Map 13A. However, the Board concludes that these quarries are not wetlands. The Board reaches this conclusion on the basis of the uncontroverted evaluation of the quarries performed by Saint Michael's, through its consultant, EIV Technical Services. That evaluation is credible in that it thoroughly investigated the quarries according to the criteria for identifying wetlands specified in the Vermont Wetland Rules and because the evaluation was supported by ANR's Wetlands Office.

#### **IV. ORDER**

The Lime Kiln Quarries, located in the Town of Colchester, currently classified as significant wetlands, are hereby declared not to be wetlands within the meaning of the Vermont Wetland Rules. The Wetlands Office shall update the VSWI map accordingly.

Dated at Montpelier, Vermont this 11th day of July, 2001.

WATER RESOURCES BOARD

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David J. Blythe, Chair

Concurring:

Lawrence H. Bruce, Jr., Member  
Jane Potvin, Member  
John D. E. Roberts, Vice Chair  
Mardee Sánchez, Member