

**State of Vermont  
WATER RESOURCES BOARD**

**RE: Hannaford Bros. Co. and Lowes Home Center, Inc.  
Docket No. WQ-01-01**

**ORDER  
AMICUS CURIAE REQUEST OF CYNOSURE, INC.**

July 27, 2001, was the deadline for parties to the above-captioned appeal to file legal memoranda in response to a Motion to Alter filed by the Agency of Natural Resources (“ANR”) seeking changes in a Memorandum of Decision (“MOD”) issued by the Board on June 29, 2001.

On July 27, 2001, Cynosure, Inc., a Vermont corporation, filed a letter with the Water Resources Board (“Board”) requesting Amicus Curiae status in this proceeding. Cynosure’s filing included legal and policy arguments in support of dismissal of this appeal and, in the alternative, reconsideration of the MOD. Cynosure served copies of its request on the parties to this proceeding.

On July 31, 2001, the Board deliberated with respect to Cynosure’s motion and determined that it should be granted Amicus Curiae status pursuant to the Rule 26 of the Board’s Rules of Procedure. The Board determined that Cynosure has an interest in the outcome of this proceeding in that a part of its mission is to “unify and coordinate public and private efforts directed toward the attraction, encouragement, financing, and development of private industry and commerce within Northwestern Vermont.” Cynosure alleged that the outcome of this proceeding may establish precedent affecting how future development will occur in northwestern Vermont. Furthermore, Cynosure alleged that it owns industrial properties in Burlington, Colchester, and Milton, Vermont, and that the Board’s determinations in this proceeding may affect its ability to develop those properties. Cynosure offered to file legal memoranda and argument on the stormwater management issues presented by this case. See In re: Vermont Marble Company (OMYA), Docket No. WQ-92-12, Preliminary Order: Amicus Curiae Requests (July 1, 1993) (In Section 401 water quality certification appeal, Board granted amicus curiae status to hydroelectric utility operators whose facilities might undergo relicensure and therefore be subject to precedent created by Board’s rulings in the pending case.)

The Board concludes that Cynosure may be able to assist the Board in its decision making process with respect to legal questions at issue in this appeal, by providing analysis and argument that the nominal parties may not be able to adequately present. In re: Dean Leary, Docket No. MLP-94-08, Preliminary Order: VBMA Motion for Leave to Participate as Amicus Curiae (Oct. 16, 1995).

Therefore, the Board grants Cynosure's request for leave to participate as amicus curiae subject to the following conditions:

1. Cynosure's participation shall be limited to the filing of memoranda and the presentation of oral argument on the legal issues arising during the course of this proceeding. For this purpose, the Board encourages Cynosure to retain legal counsel.
2. In conformance with Rule 26 of the Board's Rules of Procedure, the Board identifies the Applicants, Hannaford and Lowes, as the parties whose position as to affirmance or reversal Cynosure is most closely allied. Therefore, Cynosure shall file its legal memoranda within the times allowed and by the deadlines set for the Applicants in any future orders of the Board or Board Chair.
3. With respect to the Applicants' pending Motion to Dismiss and ANR's Motion to Alter, Cynosure's July 27, 2001, filing shall be deemed its memorandum in support of dismissal of this appeal or reconsideration of the Board's MOD. Cynosure may present up to five minutes of oral argument in support of each motion, for a total of ten minutes, at oral argument scheduled for **2:00 p.m. on August 7, 2001**, at the **Hardwick Memorial Building in Hardwick, Vermont**. See Notice of Oral Argument (July 26, 2001).

Dated at Montpelier, Vermont this 1st day of August, 2001.

WATER RESOURCES BOARD  
By its Chair

/s/ David J. Blythe

---

David J. Blythe, Esq.

Concurring:  
Lawrence H. Bruce, Jr.  
Jane Potvin  
John D.E. Roberts  
Mardee Sánchez

Re: Hannaford Bros. Co. and Lowes Home Center, Inc.

Docket No. WQ-01-01

Order: Amicus Curiae Request of Cynosure, Inc.

Page 3

---

f:\users\tinab\hannford\orders\hanf1.ord