

**State of Vermont
WATER RESOURCES BOARD**

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

CHAIR'S ORDER

On February 26th, 2001, the Board's Chair, David J. Blythe, Esquire, issued a Prehearing Conference Report and Order (Prehearing Order) for this appeal. The Prehearing Order included, among other things, a filing schedule and proposed hearing date. On May 17, 2001, Chair Blythe issued an Order suspending the filing schedule and proposed hearing date set forth in the Prehearing Order, pending the Board's resolution of the preliminary issues raised by this appeal. The Board issued a Memorandum of Decision addressing the preliminary issues raised by this appeal on June 29, 2001. The Memorandum of Decision ordered that a hearing would be conducted in this matter and that the hearing would be consistent with the Board's rulings on the preliminary issues and an accompanying scheduling Order. On July 18, 2001, Chair Blythe issued an Order suspending the filing deadlines and proposed hearing dates set forth in the June 29, 2001, scheduling Order, pending resolution of a motion to dismiss and a motion to alter filed in this matter. The Board denied the motion to dismiss and the motion to alter in a decision issued August 29, 2001.

Accordingly, it is hereby **Ordered**:

1. The parties shall prepare their cases and coordinate with each other as necessary to complete the hearing in this matter within one ordinary business day.
2. On or before **4:30 p.m., Tuesday, September 25, 2001**, Hannaford Brothers Company and Lowes Home Centers, Inc. (applicants) shall file final lists of direct witnesses and exhibits. They also shall file all direct prefiled testimony and exhibits they intend to present. For each expert witness, they shall file a resume or other statement of qualification. All reports and other documents upon which an expert witness relies in making his or her professional opinion shall be filed as prefiled exhibits. Prefiled direct exhibits larger than 8½ by 11 inches must only be identified to the parties, but one copy of all such exhibits must be prefiled with the Board and made available for inspection and copying at the Board's office by any party prior to the hearing.
3. On or before **4:30 p.m., Tuesday, October 9, 2001**, all parties other than the applicants shall file final lists of direct witnesses and exhibits. They also shall file all direct prefiled testimony and exhibits they intend to present. For each expert witness, they shall file a resume or other statement of qualification. All reports and other documents upon which an expert witness relies in making his or her professional opinion shall be filed as prefiled exhibits. Prefiled direct exhibits larger than 8½ by 11 inches must only be identified to the

parties, but one copy of all such exhibits must be prefiled with the Board and made available for inspection and copying at the Board's office by any party prior to the hearing.

4. On or before **4:30 p.m., Tuesday, October 23, 2001**, all parties shall file final lists of rebuttal witnesses and exhibits and prefiled rebuttal testimony and exhibits they intend to present. For each expert witness, they shall file a resume or other statement of qualification. All reports and other documents upon which an expert witness relies in making his or her professional opinion shall be filed as prefiled exhibits. Prefiled rebuttal exhibits which are larger than 8½ by 11 inches must only be identified to the parties, but one copy of all such exhibits must be prefiled with the Board and made available for inspection and copying at the Board's office by any party prior to the hearing.
5. No individual may be called as a witness in this matter if he or she has not filed prefiled testimony or exhibits in compliance with this Order. All reports and other documents that constitute substantive testimony must be filed with the prefiled testimony. If prefiled testimony has not been submitted by the date specified, the witness may not be permitted to testify.
6. On or before **4:30 p.m., Tuesday, October 30, 2001**, any party may file in writing any evidentiary objections to prefiled testimony and exhibits previously filed. If objections are not timely filed, they shall be deemed waived. Any objections shall be supported by legal memoranda.
7. On or before **4:30 p.m., Tuesday, November 6, 2001**, any party may file in writing any responses to evidentiary objections to prefiled testimony and exhibits previously filed. If responses are not timely filed, they may be excluded. Any objections shall be supported by legal memoranda.
8. On or before **4:30 p.m., Tuesday, November 13, 2001**, all parties shall submit a single, combined list of all prefiled testimony and exhibits.
9. On or before **4:30 p.m., Tuesday, November 13, 2001**, the parties shall file any stipulations. These may be in the form of joint statements of fact or proposed joint decisions.
10. On or before **4:30 p.m., Tuesday, November 13, 2001**, the parties shall file proposed findings of fact, conclusions of law, and orders, including any proposed permit and/or conditions.
11. On or before **4:30 p.m., Tuesday, November 13, 2001**, amici curiae may file proposed conclusions of law.

12. The Board will schedule a site visit in connection with the hearing. The parties shall work together to develop a joint proposed site-visit itinerary so that the Board's time is used efficiently on the day of the hearing. The parties shall identify the specific stations and sequence of stations they wish the Board to view, and then do a dry run of the proposed site visit to confirm the time sequence involved. The parties shall file their proposed site-visit itinerary on or before **4:30 p.m., Tuesday, November 13, 2001**. To the extent the parties cannot agree concerning the relevancy of any proposed site-visit itinerary item, they should communicate their disagreement in writing in a submission to the Board so the Chair may rule on the scope and content of the proposed site visit.
13. The parties shall work together to develop a joint proposed hearing-day agenda. The parties shall file their proposed hearing-day agenda on or before **4:30 p.m., Tuesday, November 13, 2001**.
14. The hearing will be recorded electronically by the Board or, at the request of any party, by a qualified stenographic reporter, provided such request is made on or before **4:30 p.m., Monday, November 26, 2001**. Any party wishing to have a stenographic reporter present or a transcript of the proceedings must make his or her own arrangements with a reporter. One copy of any transcript made of the proceedings must be filed with the Board at no cost to the Board. To ensure the availability of a complete and accurate transcript of the hearing in this matter, the parties are encouraged to engage the services of a qualified stenographer. See Procedural Rule 32(B).
15. The Chair or his designee will conduct a second prehearing conference on **Tuesday, November 27, 2001, at 1:00 p.m.** at the Board's office in Montpelier, Vermont. The purpose of this prehearing conference is to address any pending evidentiary objections, site-visit issues, or other matters requiring rulings preliminary to the hearing in this matter and to develop a hearing-day agenda. Any party wishing to participate in this conference by telephone should so advise the Board's Secretary, Karen Dupont (802-828-2870), on or before **12:00 noon on Wednesday, November 21, 2001**. The Board's staff will arrange the conference call.
16. On **Tuesday, December 11, 2001**, the Board will convene a hearing in this matter. The hearing will take place at a public facility in close proximity to the water resources at issue. The specific time and location of this hearing shall be announced in a subsequent notice.
17. On or before **4:30 p.m., Wednesday, December 26, 2001**, any party may file any revised or supplemental proposed findings of fact, conclusions of law, and orders, including any permit and/or conditions.

18. On or before **4:30 p.m., Wednesday, December 26, 2001**, amici curiae may file any revised or supplemental conclusions of law.
19. The Board may waive the filing requirements set forth herein upon a showing of good cause, unless such waiver would unfairly prejudice the rights of other parties.
20. Parties and amici curiae shall file **an original and 7 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. Legal memoranda shall be no more than 25 pages and proposed findings of fact and conclusions of law shall be no more than 50 pages. See Procedural Rule 10. Additionally, all prefiled testimony and exhibits must be clearly organized with respect to the issues which are to be addressed. All prefiled testimony must be double-spaced and line numbered. All prefiled testimony and accompanying exhibits must be placed in a binder and contain a table of contents, if the evidence in total is more than 50 pages in length. See Procedural Rule 30.2. Parties should file an original and 7 collated copies of any prefiled testimony. The parties should also provide the Board with an original and 7 collated copies of any exhibits offered into evidence. See Procedural Rules 9 and 30.

Each party should label its exhibits, including any prefiled testimony, with its name. The labels should contain the words WATER RESOURCES BOARD, Re: Hannaford Bros. Co. and Lowes Home Center, Inc., No WQ-01-01, the number of the exhibit, and a space for the Board to mark whether the exhibit has been admitted and to mark the date of admission. The completed labels should be affixed to all exhibits prior to submission to the Board. Label stickers are available from the Board upon request.

With respect to labeling, each party is assigned letters as follows: "HL" for the permit applicants; "ANR" for the Agency of Natural Resources, and "CLF" for the Conservation Law Foundation and the Voice for Potash Brook. Exhibits should be assigned consecutive numbers. For example, the applicants should number their exhibits HL-1, HL-2, HL-3, etc. If an exhibit consists of more than one piece (such as a site plan with multiple sheets), letters should be used for each piece, e.g., HL-2A, HL-2B, HL-2C, etc. However, each page of a multi-page exhibit need not be labeled.

Each exhibit list should state the full name of the party at the top and the Board's case name and number. There should be three columns, from left to right: NUMBER, DESCRIPTION, and STATUS. An example follows:

APPLICANTS' LIST OF EXHIBITS
Re: Hannaford Bros. Co. and Lowes Home Center, Inc., No. WQ-01-01

<u>Number</u>	<u>Description</u>	<u>Status</u>
HL-1	Prefiled Direct Testimony of _____	
HL-2	Permit Application filed with ANR on _____.	
HL-3A-D	Survey dated _____, sheets 3A through 3D	

The Board will use the "Status" column to mark whether or not the exhibit has been admitted.

Exhibits offered to ANR for its consideration in evaluating the permit request, if they are to be considered by the Board de novo, must be introduced into the evidentiary record for this proceeding. Exhibits attached to briefs, if they are to be considered by the Board, must also be introduced into the evidentiary record for this proceeding.

21. Pursuant to Procedural Rules 23 and 28(B), this Order is binding on all parties and amici curiae, unless a written objection to this Order, in whole or in part, is filed on or before **4:30 p.m., Monday, September 10, 2001**, or a showing of cause, or fairness requires, waiver of a requirement of this Order. The filing of an objection shall not automatically toll that portion of this Order to which an objection is made.

Dated at Montpelier, Vermont, this 29th day of August, 2001.

WATER RESOURCES BOARD
By its Chair

/s/David J. Blythe
David J. Blythe, Esq.