

**State of Vermont
WATER RESOURCES BOARD**

**Re: Vermont Agency of Transportation (Route 7)
Docket No. WQ-03-01**

MEMORANDUM OF DECISION

Objections to legal standing are overruled, and a subpoena duces tecum is quashed.

I. Procedural Background

A. Permit and Notice of Appeal

On December 20, 2002, ANR issued a renewal permit (Permit) to the Vermont Agency of Transportation (AOT) authorizing the discharge stormwater runoff from Route 7 (Shelburne Road) in Shelburne and South Burlington to the LaPlatte River, Monroe Brook, Bartlett Brook, and Lake Champlain. The Permit addresses the stormwater that will discharge from Route 7 after AOT's planned widening and renovation of that stretch of highway.

On January 21, 2003, Friends of Route 7, Michael Serrano, Patricia J. Ondovchik, and Jack Dubrul II (Appellants) appealed the Permit to the Water Resources Board (Board). This appeal was timely filed pursuant to 10 V.S.A. § 1269. In their Notice of Appeal, the Appellants assert that ANR erroneously renewed the Permit because the Permit is not consistent with Watershed Improvement Permits (WIPs) that ANR has issued for Bartlett Brook and Monroe Brook and because ANR did not assess whether additional permit conditions are necessary to preserve and protect the quality of the receiving waters.

B. Prehearing Conference

Board Chair David J. Blythe convened a prehearing conference in this matter on March 6, 2003. At the prehearing conference, AOT objected to the legal standing of the Appellants, and ANR joined AOT's objections. In a Prehearing Conference Report and Order (Prehearing Order) issued March 13, 2003, Chair Blythe determined that the objections to standing raised at the prehearing conference shifted the burden of proving legal standing to the Appellants. The Prehearing Order therefore provided the Appellants a time certain to respond in writing to the standing objections of AOT. The Prehearing Order required the Appellants to support all factual allegations in their response with affidavits. AOT and ANR were provided with an opportunity to file written replies and were similarly instructed to support any factual allegations with affidavits.¹

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Pursuant to Board Rules of Procedure 23 and 28, the Board generally identifies any

C. Appellants' Statement on Standing

On March 27, 2003, the Appellants filed a detailed Statement on Standing, properly supported by affidavits. The Statement on Standing alleged that the Route 7 expansion will increase stormwater runoff into the receiving waters. The individuals who appealed alleged that their property may be harmed by increased erosion of the receiving streams, that their recreational use of Lake Champlain may be compromised by additional loads of pollutants entering the lake, and that their businesses may suffer from the reductions in tourism that could result from increased pollution of the receiving waters.

The Appellants alleged that the organizational appellant, Friends of Route 7, has both organizational and representational standing. The Appellants argued that the mission of this unincorporated association—protecting the interests of Route 7 property owners—will be thwarted by the water pollution and erosion that will be caused by the expansion of Route 7. Further, the

issues with regard to legal standing at the prehearing conference and then resolves any standing objections as preliminary matters. These procedures avoid the inefficiency and potential confusion of addressing standing objections at merits hearings. If a reasonable objection to legal standing is made, either at the prehearing conference or within a time-certain provided by a prehearing conference report and order, the burden of proving standing shifts to the appellant.

To resolve any standing objection prior to the merits hearing, the Board typically requires the appellant to file a supplemental notice of appeal or a statement making out a prima facie case of legal standing. The permittee is then afforded an opportunity to challenge the legal sufficiency of the appellant's allegations. In appropriate circumstances, the Board may require the appellant to file affidavits supporting its supplemental notice of appeal or statement on standing. These affidavits must detail the factual basis for the appellant's alleged standing and allow the permittee to dispute any relevant issues of fact relating to standing.

In most cases, the facts surrounding the standing issue are not in dispute and the Board can therefore decide the standing issue as a matter of law, based on the filings of the parties. However, if a factual argument relating to standing occurs, the Board may convene a limited evidentiary hearing to decide the facts before applying the law. See generally In re CCCH Stormwater Discharge Permits, No. WQ-02-11, Mem. of Decision at 7-8 (Vt. Water Res. Bd. Mar. 21, 2003) (describing procedures for resolving disputes relating to legal standing before the Board). As set forth herein, this appeal does not present material issues of fact with respect to the legal standing of the Appellants.

Appellants contended that Friends of Route 7 is acting on behalf of its members, who are concerned about the effects that the increased pollution from the expansion project will have on tourism, their businesses, their properties, and their use of Lake Champlain.

D. AOT's Subpoena Duces Tecum

Following receipt of the Appellants' Statement on Standing, AOT issued a subpoena duces tecum to David Melincoff—a member of Friends of Route 7 who signed an affidavit in support of the Appellants' Statement on Standing. The subpoena duces tecum that AOT issued to Mr. Melincoff seeks the following information:

1. Any and all statements of accounts of funds for "Friends of Route 7" from 1997 to the present.
2. All correspondence, meeting announcements, list of recipients and sendees, regarding all meetings noticed on Exhibit 5 to the Melincoff Affidavit
3. All memoranda, notes, or minutes and list of attendees of meetings, listed on Exhibit 5, to the Melincoff Affidavit.
4. All "memos sent to Friends of Route 7," as listed in Exhibit 5 to the Melincoff Affidavit and list of sendees, or recipients, or persons to whom the memos were sent or distributed.

(Subpoena Duces Tecum at 1.) The subpoena duces tecum commanded Mr. Melincoff to produce this information at AOT's Montpelier offices on or before Monday, April 14, 2003.

On April 14, 2003, Friends of Route 7 filed a Motion to Quash Subpoena Duces Tecum with the Board. Friends of Route 7 argued that while Mr. Melincoff was served with the subpoena on Thursday, April 10, 2003, counsel for Friends of Route 7 was unavailable until the following day, Friday, April 11, 2003, thus leaving only one business day to comply with the Monday, April 14, 2003 deadline that the subpoena provided. In its Motion to Quash, Friends of Route 7 also argued that the subpoena duces tecum unconstitutionally infringes on the rights of association of its members, that the subpoena duces tecum unlawfully seeks privileged attorney work product and attorney-client communications, and that the subpoena is unreasonably burdensome because the information sought would not alter the prima facie case of legal standing that Friends of Route 7 allegedly established. (Motion to Quash at 1-2.)

AOT filed an Objection to Appellants' Motion to Quash on the same date the Motion to Quash was filed--April 14, 2003. In its Objection, AOT agreed to allow additional time for

Friends of Route 7 to respond to the subpoena duces tecum. However, AOT maintained that the information sought is relevant to AOT's position that the organizational purpose of Friends of Route 7 is not germane to the alleged interests of its members in protecting water quality. AOT further contended that none of the information sought is privileged. (AOT's Objection at 1-3.)

In a conference call on April 15, 2003, counsel for the Board spoke with the parties about the subpoena duces tecum. The parties agreed to discuss this matter with the Board's Chair by conference call on April 17, 2003. The parties further agreed that the subpoena duces tecum would be stayed until this conference call took place.

The Chair discussed this matter by conference call with the parties, as scheduled, on April 17, 2003, and issued an Order on April 22, 2003 governing the subpoena and standing disputes. The April 22 Order required AOT to address in writing whether the Statement on Standing filed by the Appellants is sufficient on its face. AOT was further ordered to include in a separate section of its response any factual disputes with regard to the standing issue and to support its factual averments, to the extent possible, with affidavits. In addition, AOT was ordered to specifically identify any factual arguments that it is unable to support with affidavits and to proffer what it would expect to prove if its subpoena duces tecum were issued or if an evidentiary hearing on the issue of standing took place.

The Chair's Order provided ANR with an opportunity to weigh in on the standing dispute according to the deadline established for AOT. In addition, the Chair's Order stayed the subpoena duces tecum pending oral argument on the standing issue. Finally, the Chair's Order provided the Appellants with an opportunity to reply in writing to the written responses of AOT and ANR.

E. Memoranda on Standing

On April 25, 2003, AOT filed a Memorandum in Support of its Motion to Dismiss for Lack of Standing. AOT's Memorandum challenges the organizational and representational standing of Friends of Route 7 and also challenges the legal standing of the individual appellants. The Memorandum does not include a factual proffer or set forth separate factual disputes as required by the April 22, 2003 Chair's Order. Nevertheless, in its Memorandum (at 16) AOT renewed its request to the Board to compel the Appellants to comply with AOT's subpoena. In its cover letter, however, AOT withdrew its request for information related to the bank account of Friends of Route 7 as described in its AOT's subpoena duces tecum.

The essence of AOT's objections to the legal standing of the Appellants is that the true purpose of Friends of Route 7, and its members, has long been to replace AOT's current design for the expansion of Route 7 with a design that would provide greater automobile access to

Route 7 businesses. Most importantly, AOT alleged that the Appellants have long favored the replacement of the proposed raised median for the Route 7 project with a center turn lane, even though AOT has concluded that a center turn lane will be very dangerous. AOT argued, in essence, that the stormwater issues raised by the Appellants are pretextual—that the Appellants are using this appeal to force AOT to redesign the road in a manner that better suits their businesses. In support of this argument, AOT alleged that a center turn lane for the Route 7 project would increase the impervious surfaces of the road by 17% compared to the proposal for a raised, landscaped median, thus increasing the stormwater runoff. AOT also argued that an unincorporated association like Friends of Route 7 does not have legal authority to file an appeal from the issuance of a stormwater discharge permit by ANR.

ANR filed a letter in support of AOT's objections to the legal standing of the Appellants. ANR contended in its letter that the Appellants have brought this appeal for reasons completely unrelated to water-quality issues. The Appellants followed with a Reply in Support of Standing on May 7, 2003.²

F. Oral Argument and Deliberations

On May 13, 2003, the Board convened at its conference room in Montpelier and heard oral argument from AOT and the Appellants on whether the Appellants have legal standing in this matter. The Board deliberated immediately after the oral arguments and resumed its deliberations on June 3, 2003. This matter is now ready for decision.

II. Issue

Whether Friends of Route 7 and the individual appellants have legal standing to bring this appeal.

III. Discussion

A. Issues of Fact

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The Chair's April 22, 2003 Order in this matter set Monday, May 5, 2003 as the deadline for the Appellants to file a reply to AOT's memorandum in support of its standing objections. The Appellants' reply was received Wednesday, May 7. The cover letter and postmark indicate this reply was mailed on May 5. Board Rule of Procedure 9(C) and the Prehearing Order in this case make clear that filing deadlines require the material to be received by the Board on the due date. The Board has nevertheless considered this reply.

As a threshold matter, the Board must determine whether the Appellants' legal standing to bring this appeal may be determined as a matter of law or whether any factual arguments relating to the standing issue must be resolved first. After reviewing the factual allegations of the parties with respect to standing, the Board concludes that there is no genuine issue of material fact and that the issue of standing may be resolved as a matter of law. The parties characterize the facts somewhat differently, but their essential differences amount to legal disputes over the requirements for legal standing before the Board and whether or not the Appellants have satisfied those requirements. At oral argument, AOT confirmed that it does not challenge the veracity of the affidavits that the Appellants filed in support of their legal standing but only their legal sufficiency. The Board is therefore prepared to resolve the dispute relating to the legal standing of the Appellants as a matter of law. For purposes of this decision, the Board will accept as true the material factual allegations of both the Appellants and AOT.

B. Motion to Quash

The Chair's April 22, 2003 Order specifically instructed AOT to make a proffer of any additional facts it would expect to prove if its subpoena duces tecum issued or if an evidentiary hearing on standing were convened. AOT did not do so. Nevertheless, AOT continued to press the Board to allow its subpoena duces tecum to issue. AOT asserted that the purpose of the subpoena is to "provide information on the organizational purpose of Friends and that this purpose differs from that asserted by Appellants here and which purpose is not germane to water resource protection." (Mem. In Support of AOT's Mot. to Dismiss for Lack of Standing (Apr. 25, 2003) at 16.)

AOT has provided the Board with considerable documentary evidence and an affidavit indicating that the Appellants have long focused on replacing the raised center median with a center turn lane in the renovation plans for Route 7. Although AOT's subpoena duces tecum is intended to unearth additional materials to support this point, AOT's factual averments with regard to the activities of Friends of Route 7 and the individual appellants are not in dispute. Instead, the focus of the argument over standing is whether these activities demonstrate interests that are not germane to stormwater runoff and thus foreclose legal standing to appeal the Permit. The Board concludes that additional evidence on the subject of legal standing would not be relevant and that the subpoena duces tecum would therefore subject the Appellants to undue burden and needlessly complicate and delay these proceedings. Accordingly, pursuant to Board Rule of Procedure 5(E), the Appellants' motion to quash the subpoena duces tecum is granted, and the subpoena is quashed.

C. Legal Standing

1. Standard of Review

With regard to standing to appeal, the Vermont Water Pollution Control Act, 10 V.S.A. §§ 1250-1283, provides as follows: “Any person or party in interest aggrieved by an act or decision of the secretary pursuant to this subchapter may appeal to the board within thirty days.” 10 V.S.A. § 1269. As used in this provision, the term “person” is defined as “an individual, partnership, public or private corporation, municipality, institution or agency of the state or federal government and includes any officer or governing or managing body of a partnership, association, firm or corporation.” 10 V.S.A. § 1251(8).

Legal standing under section 1269 requires an interest in the resource beyond that of the general public, a concrete and particularized injury to that interest, and the ability of the Board to redress the alleged injury. See In re CCCH Stormwater Discharge Permits, at 4-6. Legal standing is available not only to individuals, but also to organizations. An organization may have standing in its own right, known as organizational standing, or standing to act on behalf of its members, known as representational standing. Organizational standing requires a tangible organizational interest to be threatened with injury by the action appealed and the redressability of this injury by the Board. Id. at 6. Representational standing requires that the members on whose behalf an organization is appealing would have standing individually, that the interests the organization asserts on behalf of its members are germane to the organization’s purposes, and that the relief the organization requests does not require the participation of these individual members in the appeal. Id. at 9.

2. Person

At the outset, AOT contends that Friends of Route 7 is not a “person” as that term is defined by section 1251(8) and that this unincorporated association therefore has no right to bring this appeal in its own name. AOT argues that an “officer or governing or managing body,” § 1251(8), of an unincorporated association must appeal on the association’s behalf. Thus, in AOT’s view, Friends of Route 7 cannot appeal directly, either in its own right or on behalf of its members.

The Board does not read the definition of “person” in section 1251(8) as prohibiting an unincorporated association from appealing a discharge permit. Section 1251(8) requires some assurance that an appeal filed in the name of an association has been authorized—that the appeal has not been lodged by a renegade member or faction of the association. Only a minimal showing that the managing body supports the appeal is required. That minimal showing is present here, given the affidavits of various members of Friends of Route 7.

The Board sees no basis in the Vermont Water Pollution Control Act for prohibiting an unincorporated association from appealing in its own name. Litigation may be more efficient if one entity acts on behalf of a group, and it would serve no purpose to subject an unincorporated

association to technical pleading requirements to effectively file a notice of appeal from the issuance of a permit by ANR. The Board has emphasized that the bar for establishing legal standing before the Board is not high and that the procedure for demonstrating legal standing in appeals to the Board does not need to be onerous or complicated. In re CCCH Stormwater Discharge Permits at 6-7. “The administrative appeals route provided by 10 V.S.A. § 1269 is intended to be remedial and should be construed liberally.” Id. at 4. See also In re City of Burlington (Bartlett Bay Wastewater Treatment Facility), No. WQ-01-04, Second Prehearing Conference Report and Order at 11 (Vt. Water Res. Bd. Apr. 18, 2002) (reaffirming that Board construes notices of appeal liberally).

Vermont law has long provided that an association may sue and be sued in its own name. See 12 V.S.A. § 814. See also 1 V.S.A. § 128 (providing that statutory construction of term “person” includes “unincorporated association”). Under Vermont’s Administrative Procedure Act, the definition of “person” includes “any . . . association . . . or public or private organization of any character.” 3 V.S.A. § 801(6). See also § 815(a) (providing aggrieved “person” with right to appeal decision in contested case).

At least one commentator on Administrative Law emphasizes the importance of the standing of associations to assert the interests of their members. See 3 Richard J. Pierce, Jr., Administrative Law Treatise § 16.12 (4th ed. 2002). Pierce dismisses the concern that the association may not represent the interests or views of its members on appeal. As Pierce explains, the courts do not look to the inner workings of an association. Doing so would place an unnecessary burden on the courts. Moreover, Pierce reasons that the whole point of an association may be to act as an effective vehicle for vindicating the interests of its members. Thus, an association acting for the collective may have more at stake than each of the members on whose behalf it is acting, and the association may do a better job in litigation than a jumble of individuals. Id.

Finally, allowing unincorporated associations to appeal directly under the Vermont Water Pollution Control Act is consistent with federal law. The stormwater permit at issue in this appeal is not a federal permit. However, the Vermont Water Pollution Control Act is intended, at least in part, to implement the federal Clean Water Act, 33 U.S.C. §§ 1251-1387. See 10 V.S.A. § 1258(b). Thus, the Vermont Water Pollution Control Act must generally be construed to comply with federal requirements.

Section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1), provides judicial review of federal actions to “any interested person.” “The term ‘person’ means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” § 502(5), 33 U.S.C.A. § 1362(5) (emphasis added). Federal regulations provide that states, like Vermont, delegated to administer the Clean Water Act’s NPDES permitting program cannot impose restrictions on standing more stringent than those

imposed by federal courts pursuant to section 509 of the Clean Water Act. 40 C.F.R. § 123.30. To prohibit an association from appealing an NPDES permit in its own name would exceed federal standing requirements.

In view of the foregoing, the Board concludes that the use of the term “person” in section 1269 does not prohibit an unincorporated association from filing a notice of appeal in its own name. The Board therefore rejects AOT’s argument that Friends of Route 7 is not a “person” entitled to file this appeal pursuant to section 1269.³

3. Interest

AOT asserts that the true interest of Friends of Route 7 and its members is to oppose the proposed raised median for Route 7 and to advocate for a center turn lane instead. AOT therefore concludes that Friends of Route 7 does not have an appealable interest. In support of this argument, AOT cited a series of Board cases relating to the legal standing of corporations. These cases are inapposite. The Board has required corporations to show that their appeals on behalf of their members are consistent with their corporate purposes and has looked to corporate documents to ascertain what those corporate purposes are. See In re CCCH Stormwater Permits at 12-15. An informal organization like Friends of Route 7 is subject to the same requirements for legal standing as an incorporated appellant. However, the purposes or interests of an unincorporated association, like those of an individual, are flexible and can be defined informally or implicitly. See id. at 9 (“the Board will not necessarily look to the laws governing corporations for ad hoc associations and other informal organizations.”). Even if it is true that the primary interest of Friends of Route 7 in the past has been opposition to the raised median, this organization would still have the requisite appealable interest for legal standing if one of its current interests includes the water resources associated with the Permit.

Precluding an unincorporated association from appealing a discharge permit to the Board because it has not in the past expressed a direct interest in the water resources affected would make no more sense than holding an individual appellant to the same requirement. Individuals and associations cannot be expected to know in advance, much less formally declare, all the interests they may someday need to protect. Such a cumbersome rule would invite needless investigations into the past activities of unincorporated associations to resolve challenges to standing and arbitrary restrictions on the rights of many loosely organized community or

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Because the Board has concluded that Friends of Route 7 is a “person” as that term is used in section 1269, the Board does not decide whether Friends of Route 7 may also be a “party” or how that term differs from the term “person” under the Vermont Water Pollution Control Act.

neighborhood groups to appeal to the Board. Limiting the appellate rights of unincorporated associations to matters affecting their past activities would require the members of unincorporated associations without a prior history of environmental advocacy but wishing to appeal a discharge permit to the Board to undertake the pointless exercise of reorganizing themselves into new associations with the declared purpose of protecting the water quality interests of their members. None of these consequences would serve the essential function of standing to ensure that Board decisions arise from actual controversies rather than issues of policy shared by the public at large. Appealing to the Board would simply become more complicated.

Certainly, if it were somehow revealed that the Appellants fabricated their recreational and business interests in water quality, neither Friends of Route 7 nor the individual appellants would have an interest that could be injured by the Permit in this case, and none of the Appellants would have standing. However, members of Friends of Route 7 and the individual appellants have sworn that they are interested in water quality and have identified specific interests that differ from those of the general public. AOT has questioned their sincerity but has not shown that the Appellants are lying or accused them of such. Nor does the Board have any basis for believing that the Appellants have been dishonest.

AOT claims that in determining whether Friends of Route 7 has the requisite interest to appeal on behalf of its members, the Board may look only to the interests of the members actually identified. The Board, in other words, would be unable to consider information provided by some members about the activities or interests of other members. Putting aside any issues relating to hearsay, which AOT has not raised, the Board finds no basis for a blanket rule requiring an unincorporated association to identify each and every one of the members whose interests the association represents on appeal. Perhaps if the knowledge or credibility of an association member supporting an appeal were at issue, then it might be appropriate for one or more additional members to come forward with additional information. Such circumstances are not present in this appeal, in which members of Friends of Route 7 have provided detailed affidavits describing how their interests and the interests of other members Friends of Route 7 may be injured by the Permit.

Based on the foregoing, the Board rejects AOT's assertion that Friends of Route 7 and the individual appellants do not possess sufficient interests in the water resources at issue to bring this appeal and that the interests asserted by Friends of Route 7 in these water resources are not germane to its organizational purposes.

4. Injury

AOT contends that the individual appellants have failed to specifically allege that they will not use the receiving waters as a result of the Permit. However, the Appellants have

expressed concern about how the discharge authorized by the Permit will affect their interests in the receiving streams and Lake Champlain. These concerns include the effects of increased pollution in Lake Champlain on their use of the lake for swimming and fishing and their consumption of the fish they catch in the lake. The Appellants have also expressed concern about the effects of the discharge from Route 7 on their property values and on tourism, which could in turn affect their businesses. The Board has never limited legal standing to appellants whose use of the resource would be entirely eliminated by the act that aggrieves them. Indeed, limiting permit appeals to those whose use of the affected waters would be obliterated by a permit would indirectly but substantially amend the classifications and criteria of the Vermont Water Pollution Control Act and the Vermont Water Quality Standards by removing any administrative remedy for all but the most egregious wrongs.

AOT argues that the Appellants have failed to demonstrate how any increased pollution from the Permit will affect the receiving waters. The Board has cautioned that merits issues are not to be confounded with standing issues. It has been enough to show that injury to the interests of an appellant might result from the issuance of the Permit. See In re CCCH Stormwater Discharge Permits at 5. See also In re Husky Injections Molding Systems, No. MLP-98-06, Mem. of Decision at 8 (Vt. Water Res. Bd. Feb. 22, 1999) (requiring only “modicum” of aggrievement to demonstrate legal standing). To require a technical case on the merits as a prerequisite to legal standing would allow the standing tail to wag the merits dog. Here, the Appellants have alleged that the Permit violates the conditions of existing WIPs, that the Permit fails to use up-to-date treatment systems, and that the Permit will lead to further violations of the Vermont Water Quality Standards in the receiving waters. These allegations are sufficient to demonstrate that the interests of the Appellants in the receiving waters may be injured by ANR’s issuance of the Permit under appeal.

Based on the foregoing, the Board rejects AOT’s argument that the Permit does not represent a sufficient injury to the interests of the Appellants to support the legal standing of the Appellants to bring this appeal.

5. Redressability

AOT stresses that the Board has no jurisdiction to address the issue of whether Route 7 is reconstructed with a raised median or a center turn lane. The Board agrees. However, the Appellants have not asked the Board to do so. Their Notice of Appeal is limited to the validity of the stormwater permit for the Route 7 project—a matter squarely within the Board’s jurisdiction. See 10 V.S.A. § 1269. The Board therefore concludes that the alleged injuries to the Appellants arising from the Permit are redressable by the Board.

IV. Conclusions

The individual appellants in this matter have demonstrated particularized recreational and business interests in the receiving waters, that those interests may be injured by the Permit under appeal, and that the Board has the authority to redress those injuries in its review of the Permit. The Board therefore concludes that the individual appellants have legal standing to bring this appeal.

Friends of Route 7 is a “person” as that term is used in 10 V.S.A. § 1269 and is authorized to bring this appeal on behalf of its members. The members of Friends of Route 7 would have standing if they appealed individually. The interests that Friends of Route 7 asserts on behalf of its members are germane to its organizational purpose of protecting the interests of its members that may be affected by the Route 7 renovation project. These member interests include recreational and business interests in water quality and stream bank stability. The relief Friends of Route 7 requests—review of the Permit to determine whether it complies with the Vermont Water Pollution Control Act and accompanying regulations and the Vermont Water Quality Standards—falls within the jurisdiction of the Board. Finally, although this point has not been contested, the Board finds that the relief requested would extend to all affected members of Friends of Route 7 and therefore does not require the participation of each of these individual members in this appeal. Consequently, the Board concludes that Friends of Route 7 has representational standing to bring this appeal. Having concluded that Friends of Route 7 has demonstrated representational standing, the Board does not address whether Friends of Route 7 would have organizational standing to bring this appeal.

V. Order

Accordingly, it is hereby **Ordered**:

1. Friends of Route 7 and each of the individual appellants have legal standing to maintain this appeal, and AOT’s objections to the legal standing of Friends of Route 7 and the individual appellants are **overruled**.
2. The Appellants’ motion to quash the April 14, 2003 subpoena duces tecum issued by AOT is **granted**, and the subpoena duces tecum is hereby **quashed**.

Dated at Montpelier, Vermont this 4th day of June, 2003.

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WATER RESOURCES BOARD
By its Vice Chair

/s/ John D.E. Roberts

John D.E. Roberts

Concurring:

Lawrence H. Bruce, Jr., Member
Michael J. Hebert, Member
Jane Potvin, Member