

**State of Vermont
Water Resources Board**

ORDER REGARDING MOTION

Case Name: Lowe's Home Centers, Inc., South Burlington, Vermont
Docket No: WQ-03-15

Title of Motion: **Emergency Motion to Clarify Order**
Filed by: **Lowe's Home Centers, Inc. (Lowe's)**
Date Motion filed: **August 31, 2004 (via e-mail)**
Reply filed: **By Conservation Law Foundation (CLF) on September 3, 2004 (via e-mail)**

 Motion Granted
X Motion Denied
X IT IS HEREBY ORDERED:

Lowe's argues that the Board's recent decision was issued pursuant to Rule 13.12 of the Water Pollution Control Regulations, 12 Vt. Code R. 033 002 (2004). This rule provides in part that, when the Secretary of ANR requires a person to apply for an individual permit who is already covered by a general permit, the general permit coverage remains in force until the individual permit is issued. *Id.* § 13.12(D). Even if Lowe's were correct that the Board stands in the shoes of the Secretary of ANR in the context of this *de novo* appeal, Rule 13.12 would not apply because the Board did not require that Lowe's apply for an individual permit. But the Board stands in the shoes of the Secretary only insofar as it must hear the evidence on appeal as if no prior proceeding had occurred. Moreover, the statute authorizing adoption of the Water Pollution Control Regulations authorizes the adoption of rules "necessary for the proper administration of the secretary's duties" under the statutes governing water pollution control. 10 V.S.A. § 1251a. It does not appear to authorize ANR to regulate the effect of a Board decision on appeal. Therefore, Rule 13.12 of ANR's Water Pollution Control Regulations does not apply to the Board's order of August 26, 2004, which reversed the Secretary's decision to authorize coverage of Lowes' construction project under the General Permit.

DATED in Montpelier, Vermont this 3rd day of September, 2004.

WATER RESOURCES BOARD
By its Chair
/s/ John F. Nicholls

John F. Nicholls

Concurring:
Lawrence Bruce, Member
John D.E. Roberts, Vice Chair

Dissenting:
David Blythe, Acting Member*
Michael J. Hebert, Member*

* Members Blythe and Hebert will file a separate dissenting opinion.
cc: Service List