

**State of Vermont
Environmental Board
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M E M O R A N D U M

TO: Members of the Land Use Permitting Process Study Committee

FROM: Lou Borie, Chief Coordinator

DATE: December 4, 2001

SUBJECT: Challenges to Rebuttable Presumptions

The information presented below is a summary of the five Act 250 cases between 1993 and 1997 where a presumption of compliance created by an ANR permit was challenged. In four of the five cases the presumption was successfully rebutted. (The information presented earlier indicated that the presumptions had been rebutted in all five cases, but further research determined that in one case the permit was not rebutted.) The four cases where Rule 19 permits were successfully rebutted resulted in the issuance of three permits and one set of partial findings.

Case #1

Case No. and Description: #2W0911, Stratton Sun Bowl Development: 425 residential units, 73 single family homes, 18-hole golf course, swim and tennis club, additional parking spaces, expansion of snowmaking pond, and major expansion of wastewater treatment facilities. Filed 9/18/91.

ANR Permit(s) Challenged: Stormwater Discharge Permits #1-1106 and 1-1107

Outcome: The stormwater permits were challenged by Stratton Area Citizens and successfully rebutted, based on evidence that there would be significant impacts to Class A and Class B watersheds resulting in violations of the Vermont Water Quality Standards. Based on evidence presented, an Act 250 permit was issued on 8/9/93 for a portion of the development in the Class B watershed -- 58 units (the number approved by ANR), swim and tennis club, the treatment facility expansion, the snowmaking pond, and the additional parking spaces. Stratton was subsequently sold and the new owner (Intrawest) redesigned the project and filed a master plan application, which was subsequently approved by the District Commission. The master plan approval included a requirement for a water quality remediation plan to clean up the two watersheds which the Commission was originally concerned about.

Case #2

Case No. and Description: #5L1125, Mt. Mansfield Co.: Sewage Treatment Plant for new base lodge. Filed 11/5/93.

ANR Permit Challenged: Indirect Discharge Permit #9-0256

Outcome: Indirect Discharge Permit challenged and successfully rebutted by citizens group (RIPPLE). After several interim decisions, the District Commission issued a Memorandum of Decision 6/28/96, ruling

that the presumption created by the Discharge Permit had been rebutted. An interlocutory appeal to the Environmental Board was dismissed. The project was subsequently redesigned and a master plan application submitted to District Commission. Sewage treatment plant will not be constructed. Instead, the Mt. Mansfield Company will rely on the Town of Stowe's municipal treatment plant.

Case #3

Case No. and Description: #100035-9, Town of Stowe: municipal treatment plant expansion. Filed 7/9/96.

ANR Permit Challenged: Discharge Permit #3-1232

Outcome: Discharge Permit challenged and successfully rebutted by citizens group (RIPPLE) based on water quality impacts to the Little River. However, after reviewing all evidence presented, the District Commission made positive findings on all criteria and issued a permit on 12/6/96. The permit was appealed to the Environmental Board, which denied the project under Criteria 1(B) - Waste Disposal, 1(E) - Streams, 9(A) - Impact of Growth, 9(H) - Scattered Development, and 10 - Town and Regional Plans. The project was eventually approved by the district commission after the applicant and the town addressed the deficiencies noted by the Board.

Case #4

Case No. and Description: #8B0480-1, David Mance, 17 lot subdivision. Filed 1/19/94.

ANR Permit Challenged: Subdivision Permit #EC-8-0883-2

Outcome: Subdivision Permit challenged and successfully rebutted by neighbors based on inadequate depth to groundwater for wastewater systems on three lots. Applicant reduced project to 14 lots. Permit issued on 11/14/94; no appeal taken.

Case #5

Case No. and Description: 6F0414, Ed Weed Fish State Fish Hatchery, Grand Isle. Filed 7/12/91.

ANR Permit(s) Challenged: Discharge Permit #3-1312.

Outcome: On its own motion, the District Commission challenged the presumption created by the Discharge Permit, based on concerns that the hatchery would degrade the water quality of Lake Champlain. After conducting its own inquiry and investigation the Commission determined that the evidence did not support a rebuttal of the presumption. The Commission issued a permit for the hatchery on 8/23/91.

ANR Presumptions of Compliance Challenged, 1993 - 1997				
Case No. & Description	ANR Permit Challenged	Successfully Rebutted?	Act 250 Permit Issued?	Appeal to Env. Board?
#2W0911, Stratton Sunbowl Development - 425 units, golf course, ww treatment exp., pond	Stormwater Discharge Permits #1-1106, 1-1107	Yes	Yes (for partial project)	No
#5L1125, Mt. Mansfield Co. – Sewage treatment plant for new base lodge	Indirect Discharge Permit #9-0256	Yes	Partial findings issued	Yes - Interlocutory appeal dismissed
#100035-9, Town of Stowe municipal treatment plant expansion	Discharge Permit #3-1232	Yes	Yes	Yes - Board Denial
#8B0480-1, David Mance, 17 lot subdivision	Subdivision Permit #EC-8-0883-2	Yes	Yes (for modified project)	No
#6F0414, Ed Weed State Fish Hatchery, Grand Isle	Discharge Permit #3-1312	No	Yes	No