

WATER COUNCIL MEETING

NH Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

October 9, 2013
9:00 a.m.

Members present: Chairman Gilbert, Councilors Butler, Gosse, Hinds, Rastallis, and Varotsis

Members absent: Councilors Henderson, Lyons, O'Brien, and Rawnsley

Also present were Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

Chairman Gilbert called the meeting to order at 9:03 a.m.

1. Approval of Minutes of the September 11, 2013 Meeting

- ***Motion made by Councilor Varotsis to approve the minutes, second by Councilor Butler. Motion passed unanimously.***

2. Status of Appeals

Appeals Clerk, Paula Scott, presented an update on the following appeals:

I. New Appeals

II. Decision and Orders that need to be written finalized and issued.

III. Hearings or PHCs Pending

Docket No. 13-01 WC – Edward and Robin Monty

RE: 12/05/12 Subsurface construction Approval No. 2012111282 issued to Hanna E. Perutz, Trustess

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Recused Member: Deborah Hinds

Status: January 3, 2013 received Notice of Appeal. 1/4/13 issued receipt of appeal letter. 1/28/13 received Motion to Dismiss from permittee. February 7, 2013 received Objection to Motion to Dismiss. Council accepted the appeal on 2/13/13 and appeal acceptance letter issued on 2/14/13. 2/26/13 received letter from permittee. 2/28/13 received appearance from Robert Murphy, Jr. for the permittee. March 13, 2013 received appearance from Richard de Seve for DES. April 10, 2013 issued Order on Motion to Dismiss which was denied. 4/11/13 sent Notice of Pre-hearing Conference schedule for May 13, 2013. 5/8/13 sent Notice of Unexpected Conflict, Hearing Officer unable to attend scheduled PHC via email. 5/9/13 sent Notice of Rescheduled PHC, scheduled for 5/17/13. Pre-Hearing Order(PHO) issued on 5/17/13 continuing the PHC. 6/5/13 received DES' Motion to Stay. Hearing Officer to rule on this. June 13, 2013 received Objection to Motion to Stay and Assented-to Motion to Stay. 6/14/13 issued ruling on Motion to Stay, which was granted, with a status report due by September 15, 2013. 9/13/13 received Appellant's Status Report.

Docket No. 13-05 WC – Colby Brook Park Realty Trust

Re: 6/11/13 Administrative Order No. 13-010 WD

Hearing Officer: David Conley, Esq. assigned on 9/11/13

Status: July 11, 2013 received Notice of Appeal. 7/12/13 issued receipt of appeal letter. Council to accept or dismiss appeal at the August 14, 2013 meeting. 8/26/13 received Appearance of Kerry Barnsley for the Department and received Amendment to the Administrative Order being appealed. As the August meeting was cancelled, Council to act on Notice of Appeal at the September 11, 2013 meeting. Appeal accepted by the Council 9/11/13. 9/12/13 issued appeal accepted letter. 9/18/13 issued notice of Pre-Hearing Conference(PHC) scheduled for 10/22/13 at 9:30 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Dockets No. 12-01 WC – David Sundman, et al.

Re: 12/19/11 Alteration of Terrain Permit No. AoT-0353 for Dalton Valley Drag

Hearing Officer: David Conley assigned on 2/9/12

Status: Received appeal that appears to be timely on January 18, 2012. Issued receipt of appeal letter on January 20, 2012. Council accepted the appeal Feb. 8, 2012, notice was issued Feb.9, 2012. Mar. 20, 2012 received Motion to Continue PHC. Mar. 26, 2012, Motion was granted. Rescheduled PHC for May 2, 2012 at 9 a.m. At the Council's 4/11/12 meeting, the Council voted to consolidate appeal Docket Nos. 09-05 WC – North Country Alliance for Balanced Changed and 12-01 WC David Sundman, et al. Notice of the consolidated appeals and PHC were issued April 12, 2012. PHC was held on 5/2/12, a second PHC is scheduled for Aug. 27, 2012 @ 9 a.m., and a hearing is scheduled for Sept. 12, 2012 @ 10 a.m. Notice given 5/2/12 via PHO. 8/23/12 received Appellant's Partially Assented-To Motion to Continue Hearing and PHC; Appellant North Country ABC's Motion for Partial Summary Judgment; and Appellant North Country's ABC's Memorandum in Support of Motion for Partial Summary Judgment. 8/27/12 received Stipulation to Dismissal of Appeal of Permit WPS-8289A. 8/30/12 Order regarding Dismissal of Appeal by agreement was issued. In accordance with the dismissal, Docket No. 09-05 WC Dalton Valley Drag, LLC is withdrawn from the Council's docket. September 4, 2012 received Status Update from the Department regarding Docket No.12-01 WC. The license action is under Reconsideration. 9/13/13 sent letter requesting status of appeal be filed no later than October 9, 2013. No letter was received and if none is received by 4 p.m. today the appeals clerk was directed to send a reminder letter.

Docket No. 12-19 WC – Cities of Rochester, Dover and Portsmouth, NH

RE: 11/5/12 Certification of NPDES Permit No. NH0100196 issued to the Town of Newmarket(PNA filed 12/5/12)

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Status: January 18, 2013 received Notice of Appeal. 1/25/13 issued receipt of appeal letter. February 4, 2013 received Appearance for Atty. Evan Mulholland. 2/8/13 received Joint Motion to Continue. Council accepted Appeal and granted Joint Motion to Continue on 2/13/13 with Notice issued on the same date. No action required until final disposition of United State Environmental Appeals Board (EAB) and Federal Court.

Docket No. 12-20 WC – Cities of Rochester, Dover and Portsmouth, NH

RE: 11/5/12 Certification of NPDES Permit No. NH0100871 issued to the Town of Exeter(PNA filed 12/5/12)

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Status: January 18, 2013 received Notice of Appeal. 1/25/13 issued receipt of appeal letter. February 4, 2013 received Appearance for Atty. Evan Mulholland. 2/7/13 received Joint Motion to Continue. Council to accept or decline appeal. Council accepted Appeal and granted Joint Motion to Continue on 2/13/13 with Notice issued on the same date. No action

required until final disposition of United State Environmental Appeals Board (EAB) and Federal Court.

Docket No. 13-06 WC – Old Dutch Mustard Co., Inc.

Re: 7/19/13 Administrative Order No. 13-012 WD

Hearing Officer: David Conley, Esq. assigned on 9/11/13

Status: August 19, 2013 received Notice of Appeal. 8/20/13 issued receipt of appeal letter.

Council to accept or dismiss appeal at its September 11, 2013 meeting. If the Council accepts the appeal the appellant requests a Stay for 60 days to allow the appellant and the Department to discuss settlement. Appeal accepted and Stay granted 9/11/13. 9/12/13 issued appeal accepted letter which also granted the requested 60 day Stay. 9/16/13 received Appearance from Atty. Mary Maloney for the Department.

3. New Business

a. Env-Wq 1100 Public Bathing Places

Ted Diers and Tim Wilson, Watershed Bureau

Ted gave a brief review of the program regarding public pools. Tim then reviewed the changes being proposed. Current safety standards are being incorporated along with standardized pool construction guidelines. Plans and designs must be prepared by a licensed engineer in the state. Questions from the Council were addressed.

4. Old Business

Chairman Gilbert reminded the Council these rules have already been presented and unless there are changes these they will go forward.

a. Env-Wq 405 Geothermal System Rules

Debra Sonderegger & Mitch Locker, Drinking Water Groundwater Bureau

No new questions or comments.

b. Env-Dw 505 Backflow Prevention

Holly Green and Wade Pelham, Drinking Water Groundwater Bureau

No new questions or comments.

c. Env-Dw 902 Rules for Protecting the Purity of Regulated Waters

Holly Green and Paul Susca, Drinking Water Groundwater Bureau

A letter received from one of the equestrians was read by Chairman Gilbert. Reactions to the presentations last month were shared. It was generally felt this may not be good to put these horse rules in the state rules and just let Manchester regulate. Paul shared the purpose for these rules are source water protection. Manchester Water Works is trying to balance recreational uses with insuring the purity of the drinking water. Concerns by the equestrians and concerns by Manchester Water Works were heard and they are urged to try to find some accommodations. The Council is not supporting or denying the rules. Any progress will be presented to the Council in November and December. The rules process should move forward.

The public hearing will be in mid-December or early January.

d. Env-Dw 1001 Grants for Surface Water Treatment, Regional Water Systems, and Groundwater Investigations

Holly Green and Dan Dudley, Drinking Water Groundwater Bureau
No new questions or comments.

e. Env-Wq 2200 Certified Salt Applicator Program

Eric Williams and Earl Chase, Watershed Bureau
Further questions were addressed.

Councilor Butler asked that in the future the public comment period schedule for each of the rules be included.

5. Other Business

6. Next Meeting

November 13, 2013 at 9:00 a.m.

7. Adjournment

- ***Councilor Varotsis made a motion to adjourn, second by Councilor Gosse. Motion passed unanimously.***

Meeting was adjourned at 9:57 a.m.