

STATE OF VERMONT
WATER RESOURCES BOARD

Petition of the Cole Pond
Association for the adoption
of rules regulating the use of
the public waters of Cole Pond,
Town of Jamaica, Vermont

10 V.S.A. § 1424

DECISION

The petitioners requested the Water Resources Board (Board) to adopt the following rules regulating the use of the public waters of Cole Pond:

1. The use of vessels powered by internal combustion motors is prohibited.
2. The use of houseboats or boats with living facilities is prohibited.
3. Except in an emergency situation or as authorized by the Vermont Transportation Board in accordance with 5 V.S.A. Chapter 9, aircraft are prohibited from landing or taking off.
4. Vessels powered by electric motors are prohibited from operating at speeds in excess of 5 miles per hour (m.p.h.).
5. Waterskiing is prohibited.
6. The submersion of boat trailers is prohibited.

On the basis of its record in this proceeding, the Board has decided to proceed with the adoption of the following rules for Cole Pond:

1. The use of internal combustion motors is prohibited, effective January 1, 1993.
2. Vessels powered by motor shall not exceed a speed of 5 m.p.h.

The Board has decided not to proceed with the adoption of the balance of the rules requested by the petitioners either because those rules would be redundant with the rules to be adopted or inconsistent with the guidance provided by 10 V.S.A. § 1424(b) and (c).

The Board does intend to review with affected state agencies and the Vermont Legislature, as a statewide policy issue, the issue of the use of small bodies of water by aircraft.

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The Board also intends to review with the Legislature the questions of whether restrictions on internal combustion motors at Cole Pond and elsewhere should provide a limited exemption for certain categories of boaters (e.g. persons with disabilities, elderly).

The basis for the Board's decision on the Cole Pond Association's (Association) petition is described below.

PROCEDURAL HISTORY

On June 27, 1990, the Association filed a petition requesting the adoption of six rules regulating the use of the public waters of Cole Pond as described above. In response to that petition, the Board on June 19, 1991, proposed the requested rules for purposes of public review and comment. The Board conducted a public hearing on the proposed rules on August 14, 1991, at the Manchester Elementary School in Manchester Center, Vermont. The deadline for the submittal of written comment was August 21, 1991.

The Board reviewed its record in this matter at its regular meetings on September 11, and October 30, 1991.

FINDINGS

1. Cole Pond (the Pond) is located in the Town of Jamaica, Vermont. The Pond is oval shaped with a surface area of approximately 41 acres and a maximum depth of 13 feet. The Pond constitutes public waters within the meaning of 10 V.S.A. § 1422(6).
2. The Pond's shoreline is moderately developed with numerous camps. There is no public access to the Pond.
3. The Pond is used for fishing, swimming and boating. Internal combustion motors are not regularly used on the Pond in accordance with an informal understanding observed by shoreland property owners for the past 12 to 15 years. Electric motors are occasionally used on the Pond at low speeds principally by fishermen.
4. The Vermont Legislature has enacted legislation which prohibits the residential use of vessels on any lake or pond which does not have a state approved sanitary waste pumpout facility (23 V.S.A. § 3315(g)). The Pond has no such facility and one is not planned for the immediate future. Nevertheless, the Association requests a rule prohibiting the residential use of vessels as a contingency

in the event that a pumpout facility is proposed in the future. The Board does not feel that the adoption of rules for potential conflict that are purely speculative in nature is consistent with the guidance of 10 V.S.A. § 1424.

5. The petitioners by their designated representative indicated that their requested rule prohibiting water-skiing was redundant if the rules prohibiting internal combustion motors and establishing a 5 m.p.h. speed limit for electric motors were adopted.
6. The requested rules prohibiting the submersion of boat trailers and the landing of aircraft are principally directed at reducing the risk that eurasian milfoil (milfoil) might be spread to the Pond by those means. The Pond is currently not colonized by milfoil.
7. There are several means by which milfoil might be spread. Boat trailers and aircraft are potential sources but there are many others including by wildlife.
8. While sympathetic to the petitioner's objective of reducing the risk of the introduction of milfoil to the Pond, the Board has determined that the rules requested on that basis are not appropriate for several reasons: (1) It is doubtful that such rules would substantially reduce whatever level of risk currently exists; (2) such rules, particularly prohibiting the "submersion of boat trailers" would create hardships for established uses on the Pond that are disproportionate to any limited benefit; and (3) such rules would create a precedent likely to be copied by a large number of petitioners seeking to protect "their" lake or pond from the spread of milfoil. Accordingly, the Board has decided not to proceed with the adoption of a rule prohibiting boat trailers or aircraft.
9. The use of the Pond as a landing site for aircraft is not an established use. There is only one known occasion in which an aircraft (a helicopter) landed on the Pond. While a rule prohibiting the use of the Pond by aircraft (except in emergencies or other special cases) may be appropriate to prevent conflicts with established uses, the Board believes this issue needs first to be considered in the context of whether there should be some general statewide policy in this regard.
10. The adoption of rules prohibiting the use of internal combustion motors and limiting the speed of vessels powered by electric motor to 5 m.p.h. will not affect any

Petition of the Cole Pond Association
Town of Jamaica, Vermont
Page 4

established uses on the Pond and indeed will prevent conflicts with those uses which are established.

Dated at Burlington, Vermont, this 20th day of November, 1991.

Vermont Water Resources Board

By: Dale A. Rocheleau
Dale A. Rocheleau, Chair

Board Members Concurring:

Dale A. Rocheleau
Elaine B. Little
Mark DesMeules
Jonathan Lash

Board Members Opposed:

none