

STATE OF VERMONT
WATER RESOURCES BOARD

Petition of 10 Freemen to amend
rules regulating the use of the
public waters of Lewis Pond,
Town of Lewis, Vermont

10 V.S.A. § 1424

Decision

On the basis of its record in this proceeding, the Board has decided to delete the provision prohibiting internal combustion motors amending its rules pertaining to Lewis Pond as follows:

- [1. The use of internal combustion motors is prohibited, effective January 1, 1993.]
- [2.] 1. Vessels powered by motor shall not exceed a speed of 5 miles per hour (m.p.h.).
- [3.] 2. Vessels owned or operated by agencies of the State of Vermont shall comply with these rules at all times except in cases where law enforcement, emergencies or the performance of official duties require otherwise.

Accordingly, the Board shall proceed with the filing of its final proposal with the Legislative Committee on Administrative Rules.

The basis for this decision is described below in the Findings.

Background

In 1991 the Water Resources Board (Board) in response to a petition filed in 1989 adopted rules regulating the use of the public waters of Lewis Pond. In April of 1992 the Board was petitioned to amend those rules as indicated below:

- Rule 1. The use of internal combustion motors greater than six horsepower is prohibited, effective January 1, 1993.
- Rule 2. Vessels powered by motor shall not exceed a speed of 5 miles per hour (m.p.h.).
- Rule 3. Vessels owned or operated by agencies of the State of Vermont shall comply with these rules at all times except in cases where law enforcement, emergencies or the performance of official duties require otherwise.

On August 26, 1992, the Board conducted a public hearing at the Colchester Town Offices to consider the petition. A deadline of September 14, 1992, was established for the filing of written comment.

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In considering this petition the Board was guided by the provisions of 10 V.S.A. § 1424 and the Board's interpretations of this statute that have evolved during the more than 20 years it has been considering the policy issues raised by this petition. These Board practices are now expressed in Section 3 of the draft Use of Public Waters Policy. The petitioners and other prospective participants in this proceeding here provided copies of Section 3 of the draft Use of Public Waters Policy and advised to present their testimony on this petition with this guidance document in mind (WRB Memo 7/22/92).

Findings

1. Lewis Pond (Pond) is located in the Town of Lewis. The Pond is an oval-shaped water body with 64 acres of surface area that is approximately one mile across at its widest point. The Pond is shallow with a maximum depth of eight feet. Lewis Pond constitutes public waters within the meaning of 10 V.S.A. § 1422(6).
2. All of the surrounding land is owned by Champion International Corporation (CIC) which leases sixteen camps on the periphery of the Pond. Several of these camps are not accessible by road. A boat access is provided by CIC at the southeast end of the Pond.
3. Among the existing uses of the Pond are low-speed boating, fishing, and the quiet enjoyment of the Lake's aesthetic value. The Pond is stocked with trout by the Vermont Fish and Wildlife Department.
4. The current rule limiting motorboat speeds to 5 m.p.h. does not prevent the continued enjoyment of established uses and would meet most of the concerns of the petitioners who filed the 1989 petition regarding agitation of the lake bottom, excessive noise and wildlife harassment.
5. The use of internal combustion motors is an established use on Lewis Pond and is important for access to a number of camps not accessible by road. The existing rule prohibiting all use of internal combustion motors is not consistent with the Board's interpretation 10 V.S.A. § 1424 as reflected in the draft Use of Public Waters Policy. Section 3(d) of the Policy provides:

The Board will attempt to manage use conflicts in a manner that preserves all established uses to the greatest extent possible consistent with the characteristics of the water body, public safety, and environmental limitations.

6. The continued use of internal combustion motors at low speeds is consistent with the Pond's environmental limitations (i.e. its shallowness) and any public safety concerns.

7. The limited amount of noise associated with the use of internal combustion motors at low speeds is not unlike the noise generated by other uses of motors at the Pond such as chainsaws and electric generators. The draft Use of Public Waters Policy Section 3(e) provides:

When regulation is determined to be necessary, the Board will manage use conflicts using the least restrictive approach practicable.

8. Although the current (1992) petitioners only sought to amend the previous rule to allow internal combustion motors of less than 6 horsepower, the Board has decided not to impose what might be an artificial limit on motor size in light of the existing rule limiting speed. The Board feels this action is consistent with its draft Use of Public Waters Policy Section 3(f) which provides:

When regulation is determined to be necessary to resolve conflicts involving the operation of vessels, the Board will give priority to managing the manner in which vessels are used, such as by imposing speed limits, as opposed to restricting or prohibiting vessels on the basis of physical characteristics such as size or horse power.

Dated in Montpelier, Vermont this 22nd day of December, 1992.

Vermont Water Resources Board

BY: Dale A. Rocheleau
Dale A. Rocheleau, Chair

Board Members Concurring:

Dale A. Rocheleau
Mark DesMeules
Stephen Reynes

Board Members Opposed:
None