

**State of Vermont
WATER RESOURCES BOARD**

**In re: Request for adoption of
a rule limiting comments from
non Vermont residents in
proceedings under 10 V.S.A. § 1424**

Authority 3 V.S.A. § 806

DECISION

The Board considered the petition requesting that it amend the Vermont Use of Public Waters Rules limiting the circumstances under which non-Vermont residents could participate in proceedings under 10 V.S.A. § 1424 at its meeting on May 31, 1995. The Board, by the unanimous vote of all members present, decided to deny this petition because the requested rule is contrary to Vermont law and would be inappropriate public policy.

I. BACKGROUND

The Vermont Water Resources Board (Board) received a petition on May 24, 1995, requesting that it adopt a rule amending the Vermont Use of Public Waters Rules that would limit the participation of non-Vermont residents in rulemaking proceedings regarding the regulation of the use of public waters under 10 V.S.A. § 1424. In summary, this petition requested that the Board "disallow written and oral comment from people that are not residence (sic) of the State of Vermont" except when "a solution to a problem is presented that is not favored towards one side or the other."

The Board treated this petition as a request to amend the Vermont Use of Public Waters Rules under 3 V.S.A. § 806, which provides as follows:

§ 806. Procedure to request adoption of rules or procedures

A person may submit a written request to any agency asking the agency to adopt, amend or repeal a procedure or rule. Within 30 days of receiving the request, the agency shall initiate rule-making proceedings, shall adopt a procedure, or shall deny the request, giving its reasons in writing.

II. DISCUSSION

A. The action requested is contrary to Vermont law.

Petitions filed with the Board under 10 V.S.A. § 1424 are requests to initiate a rulemaking regarding the regulation of public waters. The Vermont Administrative Procedure Act (3 V.S.A. Chapter 25) proscribes the process by which all agencies of state government, including this Board, must proceed in any

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rulemaking. Among the applicable provisions of the Vermont Administrative Procedure Act is the requirement (3 V.S.A. § 840 (c)) that any state agency proposing a rule "shall afford all persons reasonable opportunity to submit data, views or arguments, orally or in writing" (emphasis added). The term "person" is defined (3 V.S.A. §801(6)) to mean "any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency" (emphasis added).

Accordingly, the Vermont Administrative Procedure Act allows participation in any rulemaking by all persons whether or not they are Vermont residents. The Board is not aware of any provision of Vermont law that gives it the authority to adopt the restrictions on full public participation in a rulemaking proceeding in contravention of the Vermont Administrative Procedure Act as requested by the May 24, 1995 filing. The Board cannot adopt rules that are inconsistent with applicable state law.

B. Even if Vermont law did not require denial, the action requested would be inappropriate public policy.

Even if Vermont law did not require the denial of this requested rule, the Board would deny the request on the grounds that it would be inappropriate public policy to limit participation in such proceedings. The Board can think of no circumstance in which limiting participation in the manner requested would be conducive to good public policy decision making. There are many circumstances in which the Board believes that testimony of people who may not be Vermont residents (however that term might be interpreted) should be considered. A partial list of examples would include persons with expertise in boating safety, water resource management, or recreational planning; representatives of governmental agencies from outside Vermont jurisdictions with expertise or experience with the issue under consideration; persons who own shoreland property or who recreate on the waters potentially affected by requested rules; and representatives of out-of-state corporations whose business interests may be affected.

Moreover, the requested restrictions would inhibit public participation and would be impractical to implement. How would the Board determine the legal residency of persons seeking to comment at public hearings or in writing?

It should be noted that under current law petitions can only be filed by Vermont residents or Vermont town selectboards. Once filed, such petitions are reviewed by the Vermont Water Resources Board under the Vermont Use of Public Waters Rules. The review standard is what decision is in "the best interests of all the citizens of the state" of Vermont. Any decision to adopt new rules or amend existing rules, must be reviewed by a Legislative Committee consisting of eight members of the Vermont legislature.

III. ORDER

The petition filed on May 24, 1995, requesting the adoption of rules amending the Vermont Use of Public Waters Rules is denied.

Dated at Montpelier, Vermont this 15th day of June, 1995.

For the Vermont Water Resources
Board



William Boyd Davies
Chair

Board members concurring
William Boyd Davies
Stephen J. Dycus
Ruth Einstein
Jane B. Potvin

Board member not participating
Gail Osherenko


Certificate of Service

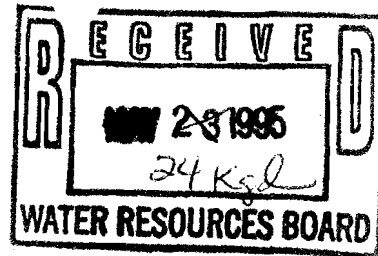
I hereby certify that I, William A. Bartlett, Executive Officer of the Vermont Water Resources Board, sent a copy of the foregoing DECISION, In re: Request for adoption of a rule limiting comments from non Vermont residents in proceedings under 10 V.S.A. § 1424 by U.S. Mail, postage prepaid, on this 15th day of June, 1995 to the following:

Joe Frankiewicz
Box 444-50 East Road
Wallingford, VT 05773

Agency of Natural Resources
c/o Barbara Ripley, Secretary
William Brierley, Commissioner
103 South Main Street
Waterbury, VT 05671

Dated at Montpelier, Vermont this 15th day of June, 1995.

By 
William A. Bartlett
Water Resources Board
58 East State Street
Drawer 20
Montpelier, Vermont 05620-3201



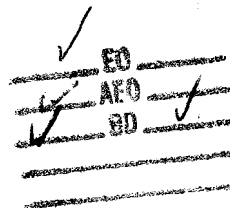
The name of the petitioner for disallowing out of
staters comment is:

Joe Frankiewicz

Box 444-50 East Rd.

Wallingford, Vt. 05773

446-2343



We the undersigned do hereby petition the Water Resources Board to disallow written and oral comment from people that are not residence of the state of Vermont. In accordance with the "Use of Public Waters policy" of 10/5/94 section 2.2, the best interest of both current and future generations of the state of Vermont.

A. Written comment received by the Water Resources office with an out of state address not be put on file as written comment and not be presented to the board to be read.

B. The person conducting the hearing, explain to all present, before oral comment is heard, those who are not residence of the state of Vermont are not allowed to speak.

C. People from out of state written or oral comment be allowed only when a solution to a problem is presented that is not favored towards one side or the other. EXAMPLE: All boats be allowed on odd days of the month, and prohibit all boats on even days.

Signature	Printed Name	Name of Town Registered to vote in
William Valentine	William Valentine	Tinmouth
Ann Hasbina	Ann Hasbina	Wells, VT.
Stanley B. Potter	Stanley Potter	Rutland VT.
Susan D. Potter	Susan D. Potter	Rutland VT.
John Campbell	John P. Campbell	" " "
Ben Bohlin	BEN BOHLIN	TINMOUTH VT
Edward Brown	Ed Brown	North Field Falls VT
Cheryl Hackett	Cheryl Hackett	Rutland Town VT.
Stuart Wright	STUART WRIGHT	Clarendon VT
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6.		

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Signature	Printed Name	Name of Town Registered to vote in
1. <i>Steven Zimmer</i>	Steven E Zimmer	Arlington VT 05250
2. <i>Theodore Lewis</i>	Theodore Lewis	DANBY, VT.
3. <i>Randy Magill</i>	Randy Magill	Tinmouth VT
4. <i>Melinda Magill</i>	Melinda Magill	Tinmouth VT
5. <i>Robert J. Targen</i>	Robert J. Targen	Wallingford VT
6. <i>Glenda Zimmer</i>	Glenda Zimmer	Wallingford VT
7. <i>Connie L. Edmunds</i>	Connie L. Edmunds	Tinmouth, VT
8. <i>James G. Edmunds</i>	James G. Edmunds	Wallingford VT.
9. <i>Kevin T. Reed</i>	KEVIN T. REED	Wallingford, VT
10. <i>Ronald L. Mullin</i>	Ronald L. Mullin	Wallingford, VT.
11. <i>Joseph P. Frankiewicz</i>	JOSEPH P. FRANKIEWICZ	TIN MOUTH, VT
12. <i>Anne Robbins</i>	Anne Robbins	Tinmouth, VT.
13.		
14.		
15.		
16.		

STATE OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
NOTIFICATION, VI-600-
FOR CONTROL OF CONTAMINANTS IN WATER

EXHIBIT 1

Statewide Water Quality

VI-600-
VI-600-

Statewide Water Quality

VI-600-
VI-600-

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Robert J. Dwyer

