1. Criterion 1 (Air)

I. Requirements for Issuance of Permit

10 V.S.A. § 6086(a)(1) provides that before granting a permit, the board or district commission shall find that the subdivision or development will not result in undue water or air pollution.

II. Burden of Proof

The burden of proof for Criterion 1 is on the applicant. 10 V.S.A. § 6088(a). The applicant must present sufficient evidence to support a finding that the development will not result in undue air pollution.

III. Analysis

- A. Has the applicant provided sufficient evidence that the project or facility will not result in undue air pollution?
 - Whether a pollutant is "undue" usually depends on facts such as the nature and amount of pollution, character of the surrounding area, whether the pollutant complies with certain standards or recommended levels, whether the pollutant will cause adverse health effects, and whether effective measures will be taken to reduce the pollution.
 - 2. Air pollution may include, among other things:
 - a. Industrial/manufacturing emissions such as paint fumes, saw dust, chemical vapors, and fly ash
 - b. Vehicle exhaust
 - c. Excessive dust and smoke during construction
 - d. Dust from rock crushers
 - e. Excessive noise during construction
 - f. Odor
 - g. Processing or storage of radioactive materials
 - h. Noise, to the extent that it may have an adverse effect on health

- i. Radiofrequency radiation, to the extent that it may have an adverse effect on health
- An Air Pollution Control Permit creates a rebuttable presumption that the emission covered by the permit will not create undue air pollution.
 - a. This presumption shifts the burden to the party opposing the applicant to produce credible evidence that the applicant has not complied with criterion 1. However, the presumption may be rebutted by any evidence in the record, regardless of which party produced it. Evidence of undue air pollution may include, but is not limited to, a showing that the air will be unduly harmed even at permitted levels, that the permitted levels will cause adverse health effects, or that another chemical will be emitted for which the project is not permitted.
 - b. The burden of persuasion lies always with the applicant. If credible evidence is produced, then applicant must produce additional evidence sufficient to persuade the court that the project will not result in undue air pollution.
- 4. If sufficient evidence, then project complies with criterion 1 for Air Pollution. If no, are there mitigating measures which can be required in order to bring the project into compliance with criterion 1?
- B. The following "pollutants" have been adjudicated under criterion 1
 - Noise- The Board regulates noise as air pollution where it rises above annoyance and aggravation, i.e. where it has the potential to cause adverse health effects. Adverse health effects include both physical effects, such as damage to hearing, and psychological effects. Effects of noise that amount to annoyance and aggravation are analyzed under criterion 8 (Aesthetics).
 - 2. Radio Frequency Radiation (RFR)- Sources of RFR may cause undue air pollution if they are likely to cause adverse health effects. As of the <u>Burlington Broadcasters</u>, <u>Inc.</u> decision, there is not

enough scientific information regarding non-thermal effects of RFR to warrant a finding of adverse health effect. Thermal effects of RFR cannot exceed 2% of the Maximum Permissible Exposure for electromagnetic radiation.

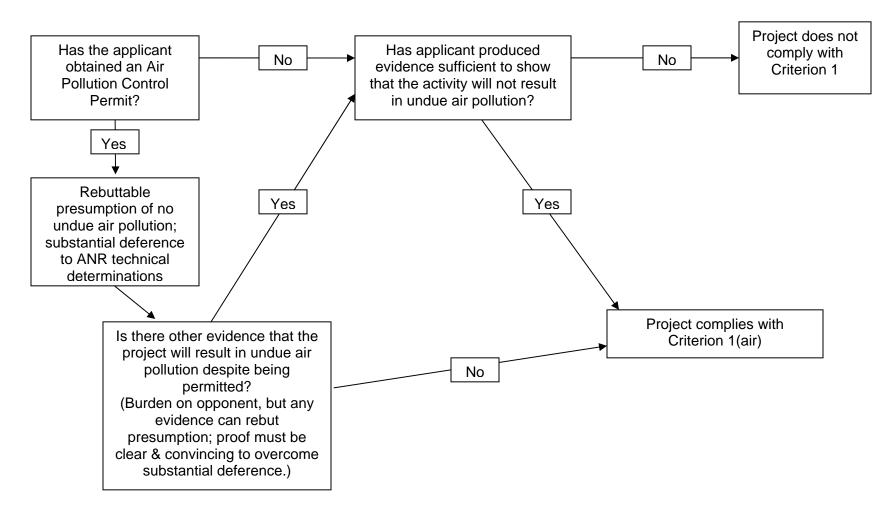
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Act 250 Training Manual

Will the activity result in "undue air pollution"?

Shifting of presumptions and burdens of production.



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