

25. Criterion 9(E) (Extraction of earth resources)

I. Requirements for Issuance of a Permit

In reviewing an application for extraction or processing of mineral and earth resources, including fissionable material, the commission must (1) find that the project will not unduly harm the environment or surrounding land and (2) approve a site rehabilitation plan that will leave the site in a condition suitable for alternative use or development.

No permit can be granted for extraction below natural water bodies or impoundments except gravel, silt, sediment, natural gas, and oil.

The statute provides:

Extraction of earth resources. A permit will be granted for the extraction or processing of mineral and earth resources, including fissionable source material:

(i) when it is demonstrated by the applicant that, in addition to all other applicable criteria, the extraction or processing operation and the disposal of waste will not have an unduly harmful impact upon the environment or surrounding land uses and development; and

(ii) upon approval by the district commission of a site rehabilitation plan which insures that upon completion of the extracting or processing operation the site will be left by the applicant in a condition suited for an approved alternative use or development. A permit will not be granted for the recovery or extraction of mineral or earth resources from beneath natural water bodies or impoundments within the state, except that the gravel, silt and sediment may be removed pursuant to the rules of the agency of natural resources, and natural gas and oil may be removed pursuant to the rules of the natural gas and oil resource board.

10 V.S.A. § 6068(a)(9)(E).

II. Burden of Proof

The applicant has the burden to demonstrate that there will be no unduly harmful impact upon the environment or surrounding land uses and development. 10 V.S.A. § 6068(a)(9)(E).

III. Analysis

Undue Harm

The applicant must first demonstrate that their earth extraction and/ or processing project will not cause undue harm to the environment or neighboring land uses.

The Commission considers 9(E) to include and to go beyond aesthetic impacts. 9(E)'s impact consideration encompasses interference with enjoyment of the land. Thus, any specific effects covered by or demonstrated for other criteria, such as air, noise, or water pollution, may also be raised under this criterion if the project involves earth resources. *Re: John and Marion Gross d/b/a John Gross Sand and Gravel, #5W1198-EB, Findings of Fact, Conclusions of Law, and Order at 16 (Apr. 27, 1995).*

Site Rehabilitation plan

The requirement that the applicant provide a rehabilitation plan demonstrates that projects extracting earth resources must be subject to greater scrutiny and control than less environmentally significant acts. *Re: Richard and Elinor Huntley, Declaratory Ruling 419, at 7 (Jul. 3, 2003), rev'd on other grounds, In re: Richard and Elinor Huntley, 2004 VT 115.*

For any project involving extraction or processing of earth resources, the applicant must provide a site rehabilitation plan. This plan should detail how the site will be restore, how the disrupted land will be reclaimed after extraction, and how the land will be prepared for another use. *Re: John and Marion Gross d/b/a John Gross Sand and Gravel, supra, at 16.*

The rehabilitation plan must have sufficient detail about the entire site (e.g. what would become of quarry holes and basins, ground cover, vegetation, grading infiltration basis, stormwater controls, access roads, hillside quarries, refueling areas, and buildings). *Re: McLean Enterprises Corp., #2S1147-1-EB, Findings of Fact, Conclusions of Law, and Order at 57 (Nov. 24, 2004).* Likewise, the plan must restore the site nearly as possible to its original state, assuring that it fits better with the surrounding landscape, furnishes better habitat for wildlife, and is more consistent with local and regional land use policies. *Re: Alpine Stone Corp., ADA Chester Corp., and Ugo Quazzo, #2S1103-EB, Findings of Fact, Conclusions of Law, and Order at 28 (Feb. 4, 2002).*

The site rehabilitation plan must account for financing the restoration. In this respect, the commission may require an up-front contribution to an account that will

fund the restoration in order to prevent default on the plan should the permittee abandon the project. *Re: McLean Enterprises Corp. supra*, at 57.

Analysis Applied

In *Barre Granite Quarries, LLC William and Margaret Dyott, #7C1079* (Revised)-EB, Findings of Fact, Conclusions of Law and Order at 88-89 (Dec. 8, 2000) the Board found that in light of the fact that permit conditions limited hours of operation, imposed noise limits both at the Quarry boundary and the boundaries of neighboring parcels, and the Quarry has detailed operation and maintenance plans and blasting procedures which will safeguard against unduly harmful impacts, the project will successfully mitigate any potential undue harm to the environment or neighboring land uses.

The Board also approved the Quarry Reclamation Plan and corresponding Reclamation Escrow Agreement which required an annual deposit of \$15,000 to be utilized for reclamation. If the costs of reclamation exceeded the amount of funds in the reclamation escrow account, the Permittees remained responsible for all necessary reclamation activities.

Jurisdiction

Jurisdiction over an extraction project ends when the permit expires. *In re: Richard and Elinor Huntley, 2004 VT 115 ¶1.* Thus, in order to assure that rehabilitation plans are carried out as permitted, the Commission must establish expiration dates that will not arise until well after the cessation of the permitted project and the completion of the rehabilitation plan. Expiration dates set too soon after the completion of a project will divest the commission of its ability to enforce the rehabilitation plan because jurisdiction over the land dissolves when the permit expires. *In re: Richard and Elinor Huntley, 2004 VT 115 ¶14* (reversing *In re: Richard and Elinor Huntley, #419*, Memorandum of Decision (July 3, 2003), held that the Legislature intended jurisdiction to attached even after the permit expiration because 10 V.S.A §6086(a)(9)(E)(ii) demands that the site be rehabilitated for an “approved alternative use or development,” and only the commission was in a position to approve or disapprove of that future use, therefore necessitating jurisdiction).

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