

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 157-12-16 Vtec

Costco Act 250 Permit Amend. Jurisdictional Opinion (#4-252)

ENTRY REGARDING MOTION

Act 250 Jurisdictional Opinion (157-12-16 Vtec)

Title: Motion for Summary Judgment (Motion 3)

Filer: R.L. Vallee, Inc.

Attorney: Jon T. Anderson

Filed Date: June 14, 2017

Response in Opposition filed on 07/17/2017 by Attorney Mark G. Hall for
Cross Appellant Costco Wholesale Corp.

Response in Opposition filed on 07/17/2017 by Attorney Gregory J. Boulbol for
the Vermont Natural Resources Board

Reply in support of summary judgment motion filed on 08/21/2017 by
Attorney Alexander J. LaRosa for R.L. Vallee

The motion is DENIED.

By its pending motion, Appellant R.L. Vallee ("Vallee") seeks summary judgment on the sole legal issue raised in its Statement of Questions: whether Costco Wholesale Corp. ("Costco") should be "required to obtain a formal amendment to its Act 250 Land Use Permit (#4C0288-19C) in order to modify the stormwater system previously approved by the District Commission." Appellant R.L. Vallee's Statement of Questions at 1, filed on December 30, 2016.

Costco has proposed a revision to how treated stormwater is delivered from its final treatment in what is referred to as Wet Pond #1 to Sunnyside Brook. Those revised plans were the subject of a prior proceeding which has become final, due to the failure of any party, including Vallee, to appeal. Costco Stormwater Permit Amendment Appeal, No. 84-7-15 Vtec (Vt. Super. Ct. Envtl. Div. Jul. 29, 2016)(Durkin, J.).

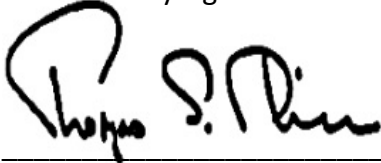
The pending appeal was filed by Vallee from a jurisdictional opinion (#4-252) issued by the District 4 Environmental Commission Coordinator who concluded that the revisions to Costco's stormwater treatment system that were the subject of our Docket No. 84-7-15 Vtec also did not constitute a change under Act 250 Rule 34(A) that was material enough to require Costco to apply for and receive an amendment to its Act 250 Permit.

On the same day that Vallee filed its motion for summary judgment, the Vermont Natural Resources Board (“NRB”) also filed a motion on June 14, 2017, seeking summary judgment in its favor and against Vallee on Vallee’s sole legal Question. By Decision issued today, this Court has granted the NRB’s summary judgment request, relying upon the prior decision in the Costco Stormwater Permit Amendment Appeal, the undisputed facts, and law that applies to when an amendment to a pre-existing Act 250 permit is required.

We refer the reader to our Decision issued today concerning the NRB’s summary judgment motion. For all the same reasons addressed in that Decision, we do hereby **DENY** Vallee’s summary judgment request. We conclude that the undisputed facts presented by the parties, when analyzed under the applicable law, do not allow us to render summary judgment for Appellant Vallee.

So Ordered.

Electronically signed on December 08, 2017 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).



Thomas S. Durkin, Superior Judge

Notifications:

Jon T. Anderson (ERN 1856), Attorney for Appellant R.L. Vallee, Inc.

Alexander J. LaRosa (ERN 5814), Co-counsel for Appellant R.L. Vallee, Inc.

Gregory J. Boulbol (ERN 1712), Attorney for the Vermont Natural Resources Board

Mark G. Hall (ERN 2537), Attorney for Cross Appellant Costco Wholesale Corp.