



PRE-HEARING CONFERENCE REPORT & ORDER #2

State of Vermont
Natural Resources Board
District 8 Environmental Commission
440 Asa Bloomer State Office Building
88 Merchants Row, 4th Floor
Rutland, VT 05701-5903
<https://nrb.vermont.gov/>

CASE NO: 8B0503-3

Poulin Grain, Inc.
24 Railroad Square
Newport, VT 05855

LAW/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 – 6111 (Act 250)

I. Introduction

On July 1, 2020, Poulin Grain, Inc., 24 Railroad Square, Newport, VT 05855 filed an Act 250 application seeking authorization to expand the operating hours of the processing plant/conveyors and deliveries from the currently approved hours of 7:00AM to 7:00PM Monday through Saturday to 4:00AM to 11:00PM Monday through Saturday. The project is located at 1873 VT Route 67E in North Bennington and Shaftsbury, Vermont.

A prehearing conference ("PHC") pursuant to Act 250 Rule 16 was held remotely (due to the coronavirus/"COVID-19") by Microsoft Teams videoconferencing software on August 7, 2020, for the above-referenced application. The Commission, with Acting Chair Rick Kobik presiding, explained the purpose of the prehearing conference, discussed the Rule 34(E) "Stowe Club Highlands Analysis" and identified the implicated Act 250 Criteria, considered preliminary party status requests, and discussed a site visit and non-adversarial meeting/negotiation session and hearing schedule.

The Commission issued a Prehearing Conference Report and Order ("PHCRO#1") on September 24, 2020. In the PHCRO#1, the Commission identified preliminary party status determinations, posed to all parties the question regarding the method for holding the merits hearing given the coronavirus (COVID-19) State of Emergency, and also posed preliminary questions regarding the relevant issues identified during the PHC.

II. Party Status and Friends of the Commission

- A. Patricia Barber, adjoining landowner, was present at the PHC but due to technological challenges, was unable to provide testimony requesting party status, and had not pre-filed a

written petition. A written petition requesting party status was also not received by the Commission pursuant to the PHCRO#1 deadline^a.

Pursuant to 10 V.S.A. § 6085(c)(6), the Commission will re-examine its party status decisions prior to the close of the hearing and will state its final party status decisions either in the decision it issues on the case or in a separate memorandum.

Rule 5(d)(1) of the Vermont Rules for Environmental Court Proceedings sets out how a party or person denied party status may take an interlocutory appeal of a District Commission decision on party status.

B. Friends of the Commission

On its own motion, the Commission will afford Patricia Barber non-party participation under relevant criteria 5, 8, 9K, and 10 as a 'Friend of the Commission' pursuant to 10 V.S.A. § 6085(c)(5), and is granted the rights of full participation allowed under 10 V.S.A. § 6085(c)(5).

Any objections to the granting of Friends of the Commission status to Patricia Barber shall be filed before November 4, 2020.

III. Order

A. Additional Evidence

Pursuant to Act 250 Rule 20, the Commission requests submission of the following additional preliminary information from the Applicant:

1. Provide documentation of the number of received bulk shipments and client deliveries that have occurred within the 'proposed expanded hours' during the past 12 consecutive months.

The Applicant shall provide a response to question 1 above on or before November 30, 2020.

Additionally, the Applicant and all Parties should be prepared to provide oral testimony at the hearing or pre-file supplemental documentary evidence prior to the hearing and no later than 4:30PM on November 30, 2020, regarding the relevant issues identified in the PHCRO#1. Parties and preliminary parties may ask other questions at the hearing. The Commission reserves the right to request additional evidence from the Parties.

All electronic responses shall be submitted pursuant to the filing requirements outlined in the first PHCRO.

^a The Commission allowed adjoining landowner Patricia Barber another opportunity to petition for party status as it was determined that the technological difficulties experienced by Ms. Barber during the prehearing videoconference were "good cause for failure to request party status in a timely fashion, and the late appearance [would] not unfairly delay the proceedings or place an unfair burden on the parties".

B. Site Visit, Hearing, and Informal Non-adversarial Meeting

At the PHC, the Commission discussed a site visit, non-adversarial meeting/negotiation session, and the possibility of a remote hearing in lieu of an in-person hearing.

1. **SITE VISIT:** The Commission has scheduled a site visit to observe the full range of operations of both daytime and extended operating hours (to the extent possible), to be held on:

Date: November 4, 2020

Time: 11:30 AM

All Parties will convene at the **Project Site at 1873 VT Route 67E in North Bennington, Vermont**. All Parties intending to participate shall adhere to the following protocols (a through l) prior to and during the site visit:

- a. On or before 4:30 PM on October 30, 2020, all prospective attendees must submit the following information in writing (which may be via email to the District Coordinator kim.lutchko@vermont.gov and NRB Staff NRB.Act250Rutland@vermont.gov):
 - (i) their name and intent to attend the site visit;
 - (ii) affirmation that they will abide by the following protocols: <https://nrb.vermont.gov/documents/covid19-statement7>
 - (iii) if unable to attend the site visit, Parties may provide the location of points of interest, if any, and a brief description of what they want the Commission to observe during the site visit (at each identified location, as applicable, and which may include locations on the development tract and/or other off-site locations). Any additional locations shall be identified with a street address and accompanied by a written description of the location where the Commission is to stand and observe; it may be supported by a map for additional clarification, if desired. If the point of interest to be observed by the Commission during the site visit is not on the Project tract and is on private property, the requesting party is responsible for ensuring access permission from the landowner (note that all site visit participants may observe the identified points of interest, and thus access may need to allow for persons other than the Commission and Act 250 staff).
- b. No more than 25 people may attend the site visit. If this attendance limit is reached, or expected to be reached, the Commission will limit site visit attendance as necessary and will provide notice to all of the prospective attendees of any site visit limitations.
- c. If any portion of the site visit will be conducted inside, all occupancy limits established by the Agency of Commerce and Community Development must be followed even if that results in a limit of less than 25 people. See <https://accd.vermont.gov/content/maximum-retail-occupant-load-during-covid-19> (last visited October 19, 2020).
- d. No one may attend the site visit who has displayed the following [CDC-recognized symptoms of COVID-19](#): fever (100.4 or higher), cough, shortness of breath or difficulty

breathing, chills, fatigue, muscle pain or aches, headache, sore throat, congestion or runny nose, nausea or vomiting, diarrhea, and/or new loss of taste or smell.

- e. No one may attend the site visit if they have had contact with a person diagnosed with COVID-19 unless they have self-quarantined for 14 days following such contact or 7 days followed by a negative COVID-19 test.
- f. No one may attend the site visit unless they are in compliance with the current requirements for cross-state-travel, as applicable. See <https://accd.vermont.gov/covid-19/restart/cross-state-travel> (last visited October 19, 2020)
- g. Everyone attending the site visit must observe strict social distancing of six feet.
- h. Everyone attending the site visit must wear face coverings over their nose and mouth when in the presence of others.
- i. Everyone attending the site visit must have access to either a hand washing station, consisting of soap and water, or hand sanitizer.
- j. Everyone attending the site visit must have completed a VOSHA-approved and employer-sponsored training program regarding COVID-19. Additional information about VOSHA-approved training may be found on the Vermont Agency of Commerce and Community Development's website. See <https://accd.vermont.gov/covid-19/business/restart> (last visited October 19, 2020).
- k. No more than three people shall occupy any single vehicle traveling to or from the site visit.
- l. Everyone attending the site visit must refrain from touching communal objects, including but not limited to site plans, unless they are cleaned and disinfected between each touch.

- 2. **HEARING:** In response to PHCRO#1, the parties waived their rights to an in-person hearing and instead agreed to a process that will allow for the **hearing to be held via Microsoft Teams videoconferencing software**. The Commission has set forth the following hearing schedule:

Date: December 11, 2020

Time: 10:00 AM

The Commission will evaluate the Project in accordance with Act 250 Rule 34(E) – Stowe Club Highlands Analysis, and second in accordance with the implicated criteria of the 10 environmental criteria of 10 V.S.A., § 6086(a). The Commission intends to narrow the scope of the merits hearing to criteria 5 – Traffic and Pedestrian Safety, 8 - Aesthetics (noise), 9K – Impact on Public Investments, and 10 - Local and Regional Plans, unless that scope is expanded by the Commission at the hearing.

The following persons or organizations may participate in the PHC and hearing for this project:

- a. Statutory parties: The municipality, the municipal planning commission, the regional planning commission, any adjacent municipality, municipal planning commission or regional planning commission if the project lands are located on a town boundary, and affected state agencies are entitled to party status.
- b. Those persons granted preliminary party or Friends of the Commission status, under the criteria with respect to which each has been preliminarily granted party or Friends status.

Steps for Participating in the Hearing Remotely

- The platform we will be using is Microsoft Teams. Download the Microsoft Teams free application, which is available for Windows and Mac desktop devices and iOS and Android mobile devices. Create an account once downloaded.
 - **Download here:** <https://products.office.com/en-us/microsoft-teams/download-app>
 - **Microsoft Teams Training Resources:** <https://support.office.com/en-us/article/join-a-teams-meeting-078e9868-f1aa-4414-8bb9-ee88e9236ee4>
- To receive a Microsoft Teams invitation to the hearing videoconference, email the District Coordinator/Act 250 office (kim.lutchko@vermont.gov and Sabrina.urich@vermont.gov) no later than **Monday, December 7, 2020 at 4:30PM**. You will then receive a Microsoft Teams calendar invitation with both a direct link for participating in the conference via video, or you may use the following call-in information:

Dial-in: 1-802-828-7667

Conference ID: 198 025 406#

If you experience any technical difficulties or need assistance troubleshooting with Microsoft Teams, the District Coordinator/Act 250 office will be available by phone or email beginning at 09:45AM on December 11, 2020 to assist you: Sabrina.urich@vermont.gov / 802-786-5920 or kim.lutchko@vermont.gov / 802-786-5099.

3. **INFORMAL MEETING:** The Commission will set forth a schedule for an informal, non-adversarial meeting between the Applicant and Adjoining Preliminary Parties for the exchange of information and resolution of issues to settle differences, pursuant to Rule 16(D), if agreed upon by those Parties. Any such meeting (date TBD) will be held via Microsoft Teams videoconferencing software.

This Prehearing Conference Report and Order #2 is issued pursuant to Rule 16(C) and is binding on all parties unless a written objection is filed by 4:30PM November 4, 2020.

An appeal from this order may be filed with the Environmental Court in accordance with 10 V.S.A. Chapter 220 and the Rules for Environmental Court Proceedings.

Questions regarding this Prehearing Conference Report and Order can be directed the District Coordinator at 440 Asa Bloomer State Office Building, 88 Merchants Row 4th Floor, Rutland, VT 05701-5903 or kim.lutchko@vermont.gov or NRB.Act250Rutland@vermont.gov.

Dated at Rutland, Vermont this 21st day of October 2020.

By /s/ Rick Kobik
Rick Kobik, Convening Officer and Acting District Commission Chair, District 8 Commission

Other participating Commissioners: Michael McDonough and Don Miller.

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A). Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

E-Notification CERTIFICATE OF SERVICE #8B0503-3

I hereby certify that I, the undersigned, sent a copy of the foregoing Prehearing Conference Report and Order #2 on October 21, 2020, by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to NRB.Act250Rutland@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify the District Office of any email address changes.**

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FOR INFORMATION ONLY

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