

STATE OF VERMONT
SUPERIOR COURT - ENVIRONMENTAL DIVISION

In re Northeast Materials Group, LLC

Docket No. 143-10-12 Vtec

N.E. Materials Group Amended Act 250 Permit

Docket No. 35-3-13 Vtec

Decision on Motion to Coordinate and Scheduling Order

Appellants Neighbors for Healthy Communities (Appellants) move to coordinate these two pending appeals. Pursuant to Rule 2(d) of the Vermont Rules for Environmental Court Proceedings (V.R.E.C.P.), “where different violations or projects involve significant common issues of law or fact, the [C]ourt may advance, defer, coordinate, or combine proceedings and may make other orders that will promote expeditious and fair proceedings and avoid unnecessary costs or delay.” This rule gives the Court a “flexible case management tool,” allowing us to coordinate the conferences and hearings for multiple appeals concerning the same project. Reporter's Notes, V.R.E.C.P. 2. We grant Appellants’ motion so far as necessary to promote expeditious and fair proceedings and to avoid unnecessary costs or delay. The Court’s coordinated treatment of these matters is detailed in the following schedule.

The Parties in these two matters filed a Partial Stipulation Regarding Scheduling Order and separate, independent motions to supplement the partially stipulated schedule. Based upon these filings, pursuant to V.R.E.C.P. Rule 2(d) and the Court having duly considered all applicable matters, it is hereby ORDERED as follows:

Scheduling Order

I. Docket No. 143-10-12 Vtec (the crusher appeal):

1. This matter shall be trial ready on or before **October 31, 2013**.
2. If a party has not already done so, by no later than July 12, 2013, the parties shall provide the Court, in writing, with a list of their **UNAVAILABLE** dates for a single day trial during the months of November and December 2013.
3. On or before July 12, 2013, each party shall disclose to all other parties all information, documents, or materials required to be disclosed under Federal Rule of Civil Procedure (F.R.C.P.) 26(a)(1)(A)(i) and (ii).
4. On or before July 31, 2013, each party shall disclose to all other parties all expert witnesses and reports or other materials required under F.R.C.P. 26(a)(2).

5. If, as a result of the disclosures in paragraphs 3 and 4 above or as a result of discovery, a party wishes to present rebuttal evidence/witnesses, the party shall disclose such rebuttal evidence/witnesses within 15 days after the disclosure or discovery that gave rise to the need for rebuttal.
6. All depositions shall be concluded on or before **September 6, 2013**. Deposition of a rebuttal witness shall be concluded within 15 days of disclosure of such witness.
7. All dispositive motions, i.e., summary judgment, shall be filed on or before **September 20, 2013**. Any responses to such a motion shall be filed 20 days thereafter and replies shall be filed within 10 days thereafter. Surreplies shall not be filed without leave of Court.
8. Twenty days prior to the initial day of trial or earlier, each party must serve and file with the Court the name of each witness intended to be called at trial (other than impeachment only witnesses) and a list identifying each document or other exhibit to be offered at trial.

II. Docket No. 35-3-13 (the asphalt plant appeal):

1. This matter shall be trial ready on or before **July 1, 2014**.
2. Within 30 days of the Court's decision on the merits in Docket No. 143-10-12, the parties shall provide the Court, in writing, with a list of their UNAVAILABLE dates for a 3 day long trial, with a 4th day reserved, during the months of **July, August, and September, 2014**.
3. Within 30 days of the Court's decision in Docket No. 143-10-12, each party shall disclose to all other parties all information, documents, or materials required to be disclosed under Federal Rule of Civil Procedure (F.R.C.P.) 26(a)(1)(A)(i) and (ii).
4. Within 30 days of the deadline in the immediately preceding paragraph, each party shall disclose to all other parties all expert witnesses and reports or other materials required under F.R.C.P. 26(a)(2).
5. If, as a result of the disclosures in paragraphs 3 and 4 above or as a result of discovery, a party wishes to present rebuttal evidence/witnesses, the party shall disclose such rebuttal evidence/witnesses within 15 days after the disclosure or discovery that gave rise to the need for rebuttal.
6. With respect to each witness a party may use at trial under V.R.E. 702, 703, or 705, who is a medical doctor or medical care provider, or who is a "covered entity" or other person from whom disclosure of medical information is governed by the Health Insurance and Privacy

Act of 1996 (HIPAA) and/or its Privacy and Security Rule(s), the following shall be disclosed and/or provided:

- a. A detailed statement of the witness's opinions and the facts upon which such opinions are based.
 - b. If the witness's opinion relates to the medical condition of any party, copies of all treatment records in the witness's possession, custody, or control, or that have been reviewed by the witness.
 - c. If the witness's opinion relates to any opinion respecting any scientific, medical, epidemiological, or forensic issues, all documents, writings, materials, studies, or treatises the witness has reviewed.
7. With respect to any party, and with respect to any non-party witness who may be called as a witness at trial, if such witness may be offered for any purpose that relates to a medical issue or condition, the party who intends to offer such evidence or witness at trial shall provide to the other parties HIPAA releases from the party or non-party witness upon request by any party.
 8. All depositions shall be concluded on or before **April 1, 2014**. Deposition of a rebuttal witness shall be concluded within 15 days of disclosure of such witness.
 9. All dispositive motions, i.e., summary judgment, shall be filed on or before **May 1, 2014**. Any responses to such a motion shall be filed 20 days thereafter and replies shall be filed within 10 days thereafter. Surreplies shall not be filed without leave of Court.
 10. Twenty days prior to the initial day of trial or earlier, each party must serve and file with the Court the name of each witness intended to be called at trial (other than impeachment only witnesses) and a list identifying each document or other exhibit to be offered at trial.

If any changes in this schedule become necessary, the parties shall discuss the proposed changes with each other before presenting them to the Court.

Thomas G. Walsh
Environmental Judge

Date