

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 103-9-16 Vtec

Morrisville Hydroelectric Proj Water Quality

ENTRY REGARDING MOTIONS

Count 1, ANR Decision Other (103-9-16 Vtec)

Count 2, ANR Decision Other (103-9-16 Vtec)

Count 3, ANR Decision Other (103-9-16 Vtec)

Title: Motion to Amend Statement of Questions (Motion 3)
Filer: American Whitewater & VPC, Inc
Attorney: Daniel P. Richardson
Filed Date: December 22, 2016

No response filed

Title: Motion to Amend and Clarify Statement of Questions (Motion 4)
Filer: Morrisville Water & Light
Attorney: Gregory M. Eaton, Clara E. Conklin
Filed Date: December 22, 2016

No response filed

The motions are GRANTED.

On December 22, 2016, appellant Morrisville Water & Light Department (MWLD) and cross-appellant American Whitewater and Vermont Paddlers Club, Inc. (AW/VPC) each filed motions to amend their respective Statements of Questions. No response was filed to either motion.

A Statement of Questions “functions as a cross between a complaint filed before the Civil Division and a statement of issues filed before the Vermont Supreme Court.” In re Conlon CU Permit, No. 2-1-12 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. May 10, 2012) (Durkin, J.) (citation omitted). Like a civil complaint, it puts other parties on notice of the issues to be decided during litigation; like a supreme court appeal, it also limits the scope of issues to be addressed. Id.

We may grant a motion to amend a Statement of Questions pursuant to V.R.E.C.P. 5(f). As with motions to amend complaints under V.R.C.P. 15, we generally take a liberal view in granting motions to amend Statements of Questions. Buchwald Home Occupation CU Permit, No. 181-12-13 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Apr. 1, 2014) (Walsh, J.). We may deny a motion to amend if there “has been undue delay or bad faith by the moving party, [if] the amendment will prejudice other parties, [or if] the amendment is futile.” Id. (citing Colby v. Umbrella, Inc., 2008 VT 20, ¶ 4, 184 Vt. 1). We may deny a motion on grounds of prejudice, “for

example, where a motion to amend [is] submitted after trial, after a statement of questions [has] already been amended, or after a motion for summary judgment [has been] denied.” In re All Metals Recycling, Inc. Discretionary Permit Application, No. 171-11-11 Vtec, slip op. at 10 (Vt. Super. Ct. Envtl. Div. Apr. 23, 2012) (Walsh, J.).

AW/VPC moves to amend its Statement of Questions by consolidating Questions 3 and 4, by defining terms in other questions, and by re-phrasing certain questions for clarity.

MWLD seeks to amend its Statement of Questions by consolidating Questions 2 and 3; striking Question 8; adding citations to rules and statutes to amended Questions 3, 4, 5, and 12; and changing the wording of amended Questions 12 and 13.

The proposed amendments appear designed to clarify the issues on appeal. They have also been agreed to by, or incorporate suggestions from, the other parties. The parties have not yet engaged in discovery and are only beginning to engage in motion practice. In motions to dismiss and for summary judgment the parties refer to, and appear to accept, the amended Statements of Questions.

We see no delay or bad faith in the motions to amend. The other parties’ acceptance of the motions suggests that they will not be prejudiced by the amendments. There is also no indication the amendments are futile. The motions to amend also appear to serve the purpose of amending Statements of Questions, i.e. to clarify and focus the issues to be litigated. For these reasons, Motions 3 and 4 are **GRANTED**.

So ordered.

Electronically signed on February 07, 2017 at 03:22 PM pursuant to V.R.E.F. 7(d).



Thomas G. Walsh, Judge
Superior Court, Environmental Division

Notifications:

Gregory M. Eaton (ERN 1720), Clara E. Conklin (ERN 7978), Attorneys for Appellant Morrisville Water & Light Dept

Leslie A. Welts (ERN N/A), Jennifer S. Duggan (ERN 7163), Attorneys for Interested Person Agency of Natural Resources

Daniel P. Richardson (ERN 1502), Ryan P. Kane (ERN 6705), Attorneys for Cross Appellant American Whitewater & VPC, Inc

Interested Person Barrett M. Singer

Interested Person Christine Hallquist

Anthony L. Iarrapino (ERN 4781), Attorney for Interested Person Friends of Green River Reservoir

For Informational Purposes Only Michael J. Wickenden

Jon Groveman (ERN 5336), Attorney for Cross Appellant Vermont Natural Resources Council

Robert J. Carpenter (ERN 8064), Attorney for Cross Appellant VT Council of Trout Unlimited

Interested Person Town of Morristown