

Act 250 Amr to expand tailing footprint & vertical Rise

Name of Proceeding	Date Initiated	Date Concluded	Venue	Discussion
Initial regulatory decision	August 6 2002	September 30 2002	Solid waste management program	Omya requested that SWMP determine that waste from its manufacturing process was an exempt earth material. Based on the information provided the SWMP determined that the material was exempt. No notice was given of this proceeding or its outcome.
Request for reconsideration	December 12 2002	December 23 2002	Commissioner, Department of Environmental Conservation	After 30 day period, adjoining landowners requested that the DEC Commissioner reconsider the initial program decision. Then Commissioner Reccia requested that staff examine all site issues in a multimedia fashion.
Commissioner's Draft Reconsideration	N/A	October 2 2003	Commissioner, Department of Environmental Conservation	Commissioner Wennberg reviewed multimedia analysis and made an initial regulatory decision. This decision found that Omya was not subject to the solid waste rules but that dam safety regulations and an underground injection control permit. This decision was sent to parties for public comment.
Commissioner's Final Reconsideration	N/A	November 23 2003	Commissioner, Department of Environmental Conservation	Commissioner Wennberg reviewed comments and revised his opinion determining that while the waste was an "earth material" it had the potential to pose a threat to public health and the environment so therefore it was not exempt and a certification was required.
Review of the Commissioner's Decision	December 19 2003	February 3 2004	Secretary, Agency of Natural Resources	All parties requested that the Secretary review and reverse the Commissioner's decision. VCE and VLS both asserted that the waste was not an earth material and therefore was not subject to the exemption. Omya challenged the technical data the commissioner relied upon. Then-Secretary Elizabeth McLain remanded the decision to Commissioner Wennberg for further consideration. The process was to create a formal administrative record.
Declaratory Ruling	February 7 2004	April 29 2005	Commissioner, Department of Environmental Conservation	Formal process initiated. Formal administrative record developed. Determination that Omya waste was an earth material, that they may pose a threat to public health and the environment and therefore required a certification and were not exempt.
Legislative Actions; Tax Statutes and Section 5	N/A	June 3 2005	Legislature	Omya requested to be exempt from the solid waste franchise tax (\$6.00/ton). Legislature created the section 5 study committee to examine the existing site data, the toxicological data, the site hydrogeology, and report to the legislature in January, 2008.

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Declaratory Judgment action against State		pending	Vt. Supreme Court	The law school challenged the validity of the earth materials exemption to the solid waste rules as being beyond the Agency's statutory authority. Since the initiation of this lawsuit the exemption has been repealed. The state has argued that the law school does not have standing (there is no redressability since VLS prevailed administratively) and that the case is moot.
Imminent and substantial endangerment	November 12 2004	pending	Federal District Court	The law school initiated this citizens suit under SWDA and RCRA that (1) Omya's disposal operations were an "open dump" as defined by federal statute; and (2) Omya's disposal operations constitute an "imminent and substantial endangerment" under RCRA. Procedurally, discovery has closed in the case and VLS has filed its second motion for summary judgment. Omya will respond within the next 60 days and will likely cross-file for summary judgment.
Enforcement discretion decision			Commissioner, Department of Environmental Conservation	The DEC Commissioner issued a letter to Omya stating that he was conditionally using his discretion not to enforce against them for the failure to operate without a permit. At this time, it is my opinion, that Omya is in violation of more than one of the conditions of this letter.
Application for interim certification	August 15 2005	pending	Solid waste management program	

Regulatory or Enforcement Action	State Authority	Duration	Strengths	Weaknesses	Recommendations	Notes
Interim Certification	10 VSA 6605b	Not more than 2 years	Statutory acknowledgement that parts of rule/statute will not be met in permit terms. Allows for transition from existing operations to proposed operations. Would allow scientific analysis that is ongoing to be completed prior to a "permanent" solution.	Requires affirmative findings on the potential health and environmental impacts that we are not prepared to make. Based on the current application, would allow a continuation of existing management practices which are not acceptable.	The interim certification was always seen as a bridge from current management activities to more regulatorily appropriate management activities. If based on the current data set, we are not prepared to issue a certification then this option should be abandoned.	
Full Certification	10 VSA 6605	Not more than 5 years	It is the normal course of business (both with respect to how other companies are treated and how Omya must be treated in the long term). The process is clear. The standards have been applied at numerous other facilities.	Data issues remain in the short term. Concerns remain about management practices. Current site would either require a significant number of rule variances (10 VSA 6613) or is not a permissible site.	This is an option for Omya though more likely they would want a mining certification (see below).	
Mining Categorical Certification	10 VSA 6605c	Not more than 5 years	From a regulatory standpoint there are few requirements and little oversight.	Limited to mining wastes with chemicals added (i.e. small amounts of cutting oils or solvents get mixed with granite fines). Omya does not fit this definition because they beneficiate their wastes (significant industrial process that takes a raw material and processes it into a finished product). Does not provide an adequate level of environmental protection based on the complexity of this waste stream.	Not really an option but may be raised by Omya in discussions.	

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Mining Full Certification	10 VSA 6605	Not more than 5 years	Is the new normal course of business with mining facilities. This certification contains most of the technical requirements of a full certification but allows some more flexibility in meeting the environmental requirements.	The same issues that were presented under the "full" certification will arise here, though there would be fewer requirements needing a variance	In the long term, this is where Omya has to be. This will likely be at another site with changes in their management practices, unless there is a major change in policy direction.	
6610a Order	10 VSA 6610a	limited	Does not have to be filed with the environmental court. Could allow for a limited non-permitted transition from current to future operations	These orders are not frequently used. It would require a violation (ie operation w/o a permit). They require notice and opportunity for comment (an evidentiary hearing) at the Agency level and may be appealable de novo to environmental court. There would need to be some adequate notice and participation by adjoining landowners (which will result in an evidentiary hearing). Is limited in its operation. Orders could be used to give a limited period to close the existing facility and should not be a means to allow continued operation.	Not recommended unless everyone (including the adjoiners/VCE/VLS) agree in the approach because it effectively gives litigants two opportunities to put on a full case. I think that we must always be mindful of how enforcement orders are used and the precedent they may set.	

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Assurance of Discontinuance	10 VSA 8007	limited	It is the normal course of enforcement. Filed with the environmental court and approved by the AG's Office.	This would require a violation. The AG's Office would have the ability to overfile if they disagree with ANR's decision. It is limited in its operation to the closure of the facility.	This option is better than a 6610a order and if enforcement is the preferred route this should be the way. Again one should be mindful of the precedent. Should discuss option w/enforcement if the chosen option.	
Administrative Order	10 VSA 8008	limited	It is the normal course of enforcement. It would allow the Agency to take control of the situation regardless of others opinions on the matter.	This option will result in litigation. It will require violations. Typically avoided if a settlement can be reached	Again one should be mindful of the precedent. Should discuss option w/enforcement if the chosen option.	
A.G. referral and enforcement action	10 VSA 8221	limited	Benefits are limited. It would transfer ultimate decisionmaking authority away from the Agency and have the same limits as other enforcement orders.		Not recommended.	