



State of New Hampshire
Department of Safety

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

John J. Barthelmes
COMMISSIONER OF SAFETY

DECISION & ORDER

In the Matter of:

**Rocky Bound Pond in
Croydon, New Hampshire**

HISTORY:

The Department of Safety received a petition requesting a rule to implement a speed limitation of ten (10) miles per hour except between the hours of 11:00 AM and 1:00 PM and 4:00 PM and 6:00 PM daily when this restriction shall be a speed limit of 30 miles per hour within Rocky Bound Pond in Croydon, New Hampshire. In addition, the rule shall state that all water skiing, if conducted during the hours of 11:00 AM and 1:00 PM and 4:00 PM and 6:00 PM daily shall be in a counter-clockwise direction at all times on Rocky Bound Pond. The public beach shall represent the 12:00 hour for determining the counter-clockwise direction. Ray Newcomb submitted the petition of behalf of Rocky Bound Pond Association, hereafter Association or Petitioner.

This petition requests amendments to existing rule Saf-C 5102.72. The petition was signed by at least twenty-five (25) co-petitioners, members of Rocky Bound Pond Association, all property owners, in support of the petition. The petition presented the basis for the petition, which is summarized as follows:

The name of the pond in the current rule is misspelled and should be changed to Rocky Bound Pond. Moreover, the requested speed limit restriction and times do not match the sign placed on the public beach, a sign placed by the state with NH Department of Safety at the bottom of the sign. The current practice and posted sign is inconsistent with the existing administrative regulation.

The petition requested a hearing pursuant to RSA 270:12 to address concerns and provided the specific reasons within and the attached petition of names signatory thereto. Thirty six (36) property owners and members of the Association signed the petition. Also, the Petitioner notified all abutting property owners of the petition by certified mail as required by RSA 270:12-III. The Department of Safety posted the petition and hearing notice on its Website at least 14 days before the hearing, on or about September 11, 2013. Finally, the hearing notice was posted in the NH Union Leader on or about September 13, 2013.

Pursuant to RSA 270:12 and the New Hampshire Code of Administrative Rules, Saf-C 409, a public hearing was held on Friday, September 27, 2013 at 10:00 a.m. at the Croydon Town Hall, Croydon, New Hampshire. Christopher Casco, Hearings Examiner, Administrator of Hearings, conducted the public hearing.

OPENING REMARKS:

Everyone present was informed:

1. The public hearing was audio-recorded;
2. The audio-recording would be preserved for seventy-five (75) days and an explanation of the procedure by which to receive a copy of the recording;
3. The opportunity to sign the appropriate "sign-up sheet" to present comment on the petition;
4. They could review the legal notice clipping from the newspaper, along with the original petition and any other documents;
5. How and where to submit written comment that must be received within seven (7) days from the hearing date by the Department of Safety;
6. Abutting property owners were notified of the petition by certified mail;
7. The hearing notice was posted at the state house; and
8. The Department posted the petition and hearing notice on its Website at least 14 days before the hearing.

The Notice of Hearing was read into the record and the petition and all supporting documents were available for review by interested persons. Notification of the public hearing was published in the NH Union Leader, Friday, September 13, 2013. An online proof of the

posting from the newspaper was displayed as the newspaper clipping was not available on the date of hearing. The clipping has been received and is part of the hearing file.

STATISTICS:

One (1) person spoke in favor of the petition. No one signed to speak against the petition. Five (5) persons signed, not speaking, but wishing to record themselves in favor of the petition, and again, no one signed wishing to record themselves against the petition.

Prior to and/or after the hearing, no letters were received via mail, E-mail or facsimile for or against the petition. The hearing was closed to public comment at the conclusion of the business day on Friday, October 4, 2013.

EXHIBITS:

- Two photographs depicting signs posted at the public beach which announce the speed limit and time restrictions as they have been practiced for many years.
- A document dated May 15, 1975 from the Association detailing the desired speed limit and water skiing restrictions on the pond.

SYNOPSIS OF TESTIMONY:

Mr. Harry Newcomb spoke in favor of the petition. The requested speed limit restriction has been on a posted sign since 1975. This restriction was proposed by the Association after a meeting and is reflected by Exhibit 1 dated May 15, 1975. It is unclear why that recommendation did not ultimately become the approved rule. The fact that it did not match the current administrative regulation, Saf-C 5102.72 became known when they attempted to replace the sign. As a result of the discrepancy, the Association filed the petition. People using the pond respect this restriction and follow it. The Marine Patrol is on the water approximately twice per year. The residents self police the water if necessary to ensure compliance with the speed rule. This rule is in the interest of public safety and protects the rights of all users of this body of water. No one has expressed opposition to the petition, and all interested parties were notified.

The petitioners submitted minutes from an Association meeting on May 15, 1975 that documents the desired speed limit and water skiing restrictions on Rocky Bound Pond. These restrictions have been on the

signs posted on the shore front and have been the practice since 1975. It is unclear why the administrative regulation, now contained in Saf-C 5102.72, has the incorrect name of the pond and incorrect speed limit and times. They are looking to clarify this discrepancy with the petition, and make state law consistent with what is desired.

SYNOPSIS OF LETTERS RECEIVED:

No letters were received via mail, E-mail and/or facsimile before or after the public hearing. The record remained open for the public comment period and expired with no submissions.

DISCUSSION:

In gathering findings of fact, the following is given consideration:

RSA 270-D: 2 General Rules for Vessels Operating on Water.

"...Vessels shall be operated at headway speed only, while passing under all bridges. VI. (a) To provide full visibility and control and to prevent their wake from being thrown into or causing excessive rocking to other boats, barges, water skiers, aquaplanes or other boats, rafts or floats, all vessels shall maintain headway speed when within 150 feet from: (1) Rafts, floats, swimmers; (2) Permitted swimming areas; (3) Shore; (4) Docks; (5) Mooring fields; (6) Other vessels. . . ."

Saf-C 409.04 Criteria for Review.

(a) The commissioner shall, after the hearing, adopt rules of the type authorized by RSA 270:12 if it appears that, consistent with RSA 270:1, II, the rule shall provide for the safe and mutual enjoyment of a variety of uses, taking into consideration the factors in (b) below.

(b) In determining whether to adopt such rules the commissioner shall consider the following:

- (1) The size of the body of water or portion thereof for which action is being considered;
- (2) The effect that adopting or not adopting the rule(s) would have upon:
 - a. Public safety;
 - b. The maintenance of residential, recreational and scenic values;
 - c. The variety of uses of the body of water or portion thereof;

- d. The environment and water quality; and
 - e. Threatened and endangered species;
- (3) The number of people affected, either directly or indirectly, by adopting or not adopting the rule(s); and
- (4) The availability and practicality of enforcement of the rule(s).

The numbers of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition are given weight in determining findings. The ultimate determination, however, must be made based on the relevant and governing statutory and administrative rule authority.

The exhibits and testimony provided the fact-finder general information in reference to the size and configuration of the area being considered. Rocky Bound Pond covers approximately 72 acres. The petition and testimony presented make clear that what is being requested is the actual practice in this area and has been since 1975. It appears that due to an error in the process, what the Association agreed upon for the speed limit and time restrictions did not get enacted as the administrative rule. This only became known when they tried to replace the sign, and review of the current administrative rule revealed the discrepancy. In addition, the rule misspells the pond name. Both problems will be corrected by approving the petition. The petition is consistent with a variety of uses and is consistent with public safety.

Moreover, the requested speed limit of 10 miles per hour except between the hours of 11:00 AM and 1:00 PM and 4:00 PM and 6:00 PM daily when the speed limit shall be 30 miles per hour and that water skiing shall be done in a counter-clockwise direction with the 12:00 hour determining the counter-clockwise direction is clearly within the public interest. This restriction has a long history of practice without complaint or problem. This history proves that this petition is reasonable and proper and it satisfies the legal standard of review. Not a single person testified or submitted a letter of objection. Consequently, the petition should be approved.

FINDINGS OF FACT:

1. That pursuant to RSA 270:12, twenty-five (25) or more residents or property owners petitioned John J. Barthelmes, Commissioner of the Department of Safety to conduct a public hearing to

regulate motor boat usage on Rocky Bound Pond in Croydon, New Hampshire.

2. Official notice for the hearing was published in a newspaper of statewide circulation, the New Hampshire Union Leader, Manchester, NH on September 13, 2013.
3. The hearing notice was posted at the state house.
4. All abutting property owners were notified of the petition by certified mail.
5. The petition and hearing notice was posted on the Department of Safety Website on or about September 11, 2013, at least 2 weeks prior to the public hearing.
6. A public hearing was held on Friday, September 27, 2013 on the issues raised in the petition and was conducted pursuant to RSA 541, RSA 270:12 and Administrative Rule Saf-C 409 at the Croydon Town Hall, 879 NH Rte. #10, Croydon, New Hampshire.
7. The petition seeks to adopt a rule setting a speed limit on Rocky Bound Pond in Croydon, NH of 10 miles per hour except between the hours of 11:00 AM and 1:00 PM and 4:00 PM and 6:00 PM daily when this restriction shall be a speed limit of 30 miles per hour, and that all water skiing, if conducted during the hours of 11:00 AM and 1:00 PM and 4:00 PM and 6:00 PM daily shall be in a counter-clockwise direction at all times. The public beach shall represent the 12:00 hour for determining the counter-clockwise direction.
8. A sign at the public beach reflects the rule that the petition seeks.
9. The Association agreed to this as the desired speed, time, and water skiing regulation at a meeting in 1975.
10. Since 1975, the restrictions sought in paragraph 6 above have been practiced on the pond without complaint, and residents follow those restrictions.
11. It is unknown why the current regulation, Saf-C 5102.72 does not reflect what is on the sign, or why the name of the pond is misspelled as Rockbound Pond. The rule sets the speed limit at 10 miles per hour except from 4:00 PM to sunset daily when the speed limit is 25 miles per hour.

12. Granting the petition will correct the discrepancy.
 13. The approximate size of the proposed area is approximately seventy-two (72) acres.
 14. The effect which adopting or not adopting the rule(s) would have upon the public safety is considered. Adopting the rule will be consistent with public safety since it has been the accepted practice.
 15. While no documentation was received to evaluate erosion caused by manmade elements in contrast to natural erosion and curtailing shoreline erosion, there was no evidence of any erosion problem due to boating.
 16. No testimony was received in reference to the maintenance of residential values, but based on the evidence, it may be inferred that adopting the proposed rule will have a positive impact since that is what is expected.
 17. The proposed regulation is consistent with recreational and scenic values.
 18. The variety of uses of the waters within Rocky Bound Pond on the environment, water quality, or threatened and endangered species will not be adversely impacted by the petition.
 19. In addition, the number of people affected, either directly or indirectly, by adopting or not adopting the rule and the availability and practicality of enforcement of the rule is considered. Not adopting the rule will be detrimental because it is the longstanding accepted practice.
 20. The New Hampshire Marine Patrol enforces the statutes and rules governing the public waters within Rocky Bound Pond in Croydon, New Hampshire, and navigational laws are enforced through that agency. Marine Patrol will be able to properly enforce the proposed rule.
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I recommend that the following Conclusion of Law and Disposition be approved based upon the Findings of Fact listed within this report.

Respectfully submitted,



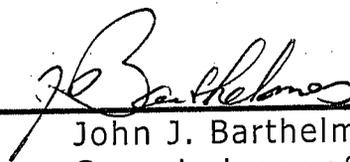
Christopher Casco
Administrator of Hearings

CONCLUSION OF LAW:

The information submitted was thoroughly considered within the petition, along with the public commentary received. The evidence demonstrates that the petition is in the public interest fulfilling the purpose of law. There is sufficient proof to show cause that the speed limit, time and water skiing restrictions requested in the petition should be established pursuant to RSA 270:12 and NH Code of Administrative Rule Saf-C 409 on Rocky Bound Pond in Croydon, New Hampshire.

DISPOSITION:

It is hereby ordered that the petition be GRANTED. Rulemaking to amend Saf-C 5102.72 in accordance with the petition shall be done forthwith.



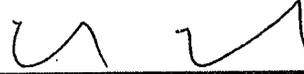
John J. Barthelmes
Commissioner of Safety

Appeal: RSA 541:3 and RSA 541:6

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion. Within thirty days after the application for a rehearing is denied, or, if the

application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

I certify that a copy of the order has been forwarded to the below named via first-class mail or electronic mailing (as applicable).



Christopher Casco
Administrator
Bureau of Hearings

Date of mailing: 10/16/13

A copy of this order was sent to the following:

Ray Newcomb, Petitioner Designee (to be distributed to petitioners as necessary)

Town Clerk/Administrator
Croydon, New Hampshire

Colonel Robert Quinn, Director
NH State Police/Division of Safety Services

CC: File

[A copy was sent to those submitting an E-mail address]