

At a Special Term of the Supreme Court of the State of New York, held in and for the County of Albany, at Columbia and Eagle Streets, Albany, New York on the 7 Day of February, 2006

PRESENT: Hon. Thomas J. McUmara
Acting J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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THE STATE OF VERMONT,

Petitioner,

-against-

**ORDER TO SHOW CAUSE
AND TEMPORARY
RESTRAINING ORDER**

THE NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and
INTERNATIONAL PAPER COMPANY,

Index No. 783-06

Respondents,

For a Judgment Pursuant to Article 78 of the New York
Civil Practice Law and Rules.

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UPON reading and filing the annexed Affirmation of Christopher A. Amato, Esq., dated February 7, 2006; the Affidavit of John H. Nuckles, sworn to on February 2, 2006, and the exhibits annexed thereto; the Affidavit of Dr. William C. Bress, sworn to on February 6, 2006, and the exhibits annexed thereto; the Verified Petition dated February 7, 2006, and the exhibits annexed thereto; and Petitioner's Memorandum of Law in Support of Article 78 Petition and Application for Temporary Restraining Order,

LET RESPONDENTS SHOW CAUSE at the Courthouse located at Columbia and

Eagle Streets, Albany, New York, on the ^{March} 3 day of ~~February~~, 2006, at 9:30 a.m. in the forenoon of that day, or as soon thereafter as counsel can be heard, why judgment should not be entered against Respondents pursuant to Article 78 of the Civil Practice Law and Rules:

- (i) annulling and declaring void Respondent New York State Department of Environmental Conservation's ("NYSDEC") determination that Respondent International Paper Company's ("IP") proposed test burn of tire-derived fuel ("TDF") at its Mill located in the Town of Ticonderoga, Essex County, New York is a Type II action exempt from environmental review under the State Environmental Quality Review Act ("SEQRA"), Environmental Conservation Law ("ECL") Article 8;
- (ii) enjoining Respondent NYSDEC to perform the duty imposed upon it by law to consider IP's long-range plan to permanently convert to burning TDF as a fuel as the "action" for purposes of environmental review under SEQRA;
- (iii) remanding this matter to Respondent NYSDEC for a new determination as to the environmental significance of the proposed action (defined as including IP's long-range plan to permanently convert to burning TDF), and whether an environmental impact statement should be required;
- (iv) enjoining Respondent NYSDEC from permitting or otherwise approving Respondent IP's test burn, or any component thereof, unless and until NYSDEC has made a new determination as to the environmental significance of the proposed action and fully complied with all procedural and substantive requirements of SEQRA;

(v) awarding Petitioner attorneys' fees and the costs and disbursements of this action;

and

(vi) granting such other and further relief as this Court deems just and proper.

GOOD AND SUFFICIENT CAUSE APPEARING THEREFOR, and Respondent NYSDEC having appeared by and through the Attorney General and having been heard on Petitioner's application for a temporary restraining order, it is hereby:

ORDERED, that Respondent New York State Department of Environmental Conservation is hereby restrained and enjoined from permitting or otherwise approving Respondent International Paper Company's proposed test burn of Tire-Derived Fuel at its Ticonderoga Mill located in the Town of Ticonderoga, Essex County, New York, until a final determination of the merits of this action by this Court; and it is further

ORDERED, that personal service on Respondents of a copy of this Order to Show Cause, together with the supporting affirmation and affidavits, and the Verified Petition, on or before 5:00 p.m. on the 7 day of February, 2006 shall be deemed good and sufficient service; and it is further

ORDERED that Respondents' opposing papers, if any, shall be served upon plaintiffs' attorney on or before 5:00 p.m. on the 25th day of February, 2006.

Dated: Albany, New York
February 7, 2006

ENTER:

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J.S.C.