

ILLINOIS POLLUTION CONTROL BOARD  
May 18, 1995

TNT HOLLAND MOTOR EXPRESS, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 94-133  
 ) (UST Fund)  
 OFFICE OF THE STATE FIRE MARSHAL, )  
 )  
 Respondent. )

OPINION AND ORDER OF THE BOARD (J. Theodore Meyer):

This matter is before the Board on a TNT Holland Motor Express (TNT) Motion for Summary Judgment filed March 27, 1995. Respondent, Office of the State Fire Marshal (OSFM), filed its Response to Petitioner's Motion for Summary Judgment on April 10, 1995.

In this matter, TNT contests OSFM's denial of eligibility, specifically, OSFM's ability to reconsider a prior final determination. In a letter dated March 15, 1994, OSFM issued a final determination finding petitioner eligible to seek reimbursement. OSFM subsequently sent a second final determination letter to petitioner dated March 17, 1994 denying eligibility, stating that no release had been reported. Each letter stated that it was a final determination.

Summary judgment is proper only when the pleadings, affidavits, admissions and other items in the record show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. (Williamson Adhesives, Inc. v. IEPA, (August 22, 1991), PCB 91-112.)

The Board is persuaded that no genuine issue of material fact exists as to the letters sent to petitioner by OSFM. OSFM sent a final determination letter to TNT on March 15, 1994, and attempted to reverse that determination two days later. Unless statutorily authorized, an administrative agency may not reconsider its final determination, even in the face of mistake or error. (Reichhold Chemicals, Inc. v. Illinois Pollution Control Board, 204 Ill.App.3d 674, 561 N.E.2d 1343 (3rd Dist. 1990).) In clarifying this statement, the court in Reichhold pointed out that the Board is statutorily authorized to review its orders. Id.

Since appellate case law is uncontroverted regarding the inability of an administrative agency such as OSFM to review its own final determination, we are compelled to grant summary judgment. However, we do so reluctantly because, based on the

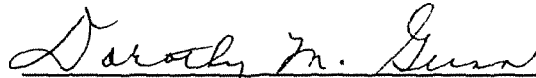
record before us, it appears that TNT would not be eligible to access the UST fund.

Therefore, the Board hereby grants TNT's motion for summary judgment, and closes the docket.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rule of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246. "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18<sup>th</sup> day of May, 1995, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board