

ILLINOIS POLLUTION CONTROL BOARD  
January 22, 2004

REPUBLIC BANK OF CHICAGO, as Trustee )  
of Trust #2234, ARISTOTLE HALIKIAS, )  
LENA HALIKIAS, MICHAEL HALIKIAS, )  
NIKOLAS HALIKIAS, NOULA HALIKIAS, )  
and PATRICIA HALIKIAS, as beneficiaries )  
of Trust #2234, )  
 )  
Complainants, )  
 )  
v. ) PCB 04-69  
 ) (Citizens UST Enforcement)  
SUNOCO, INC. (R & M), )  
 )  
Respondent. )

ORDER OF THE BOARD (by G. T. Girard):

On December 12, 2003, complainants filed a motion (Mot.) to reconsider or clarify a December 4, 2003 order by the Board accepting this matter for hearing. The Board's order struck as frivolous allegations that the respondent violated implementing regulations adopted by the Office of State Fire Marshal (OSFM). On December 29, 2003, respondent filed a response (Resp.) in opposition to the motion. On January 7, 2003, pursuant to a hearing officer order, complainant filed a reply (Reply).

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), we observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). The Board denies the motion to reconsider because the motion does not present new evidence or a change in the law to indicate that the Board's decision was in error. However, the Board grants the motion to clarify. Specifically, the Board will address the issues raised concerning the scope of the Board's authority to review OSFM regulations.

**ARGUMENTS**

Complainants argue that the Board erred in striking from the complaint allegations that the respondent violated the OSFM regulations. Mot. at 3. Complainants maintain that the Board does have the authority to "enforce the regulations" of the OSFM because a violation of OSFM regulations "would give rise to a violation" of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)). *Id.* Further, complainants maintain that alleging violations of OSFM

regulations is appropriate and the Board “has confused” a frivolous complaint with what the Board considers a “frivolous allegation” in the complaint. Mot. at 3-4.

Respondent argues that the Board should deny the motion as the Board correctly struck allegations relating to OSFM regulations. Resp. at 2. The respondent also maintains that the Board acted properly in striking the allegations *sue sponte*. *Id.*

In the reply, complainants argue that the OSFM regulations are a part of the Illinois Leaking Underground Storage Tank Program established under the Act. Reply at 3. Therefore, complainants maintain that violation of the OSFM regulations constitute a violation of the Act and are enforceable by the Board pursuant to Section 31(d) of the Act (415 ILCS 5/31(d) (2002)). Reply at 3.

### **DISCUSSION**

The Board disagrees with the complainants’ position that the Board has broad authority to review OSFM decisions. The Board is an administrative agency and as such is a creature of statute and any power or authority claimed by the Board “must find its source within the provisions of” the Act (415 ILCS 5/1 *et seq.* (2002)). Granite City Division of National Steel Company v. Pollution Control Board, 155 Ill. 2d 148, 613 N.E.2d 719, 729 (1993). The Board’s authority includes holding hearings upon “complaints charging violations of the Act or of regulations thereunder” and reviewing decisions by the Illinois Environmental Protection Agency on permits. Landfill, Inc. v. Pollution Control Board, 74 Ill. 2d 541, 387 N.E.2d 258, 262 (1978).

The Board has been granted the authority by the Illinois legislature to review specific decisions by the OSFM pursuant to Section 57.9(c) of the Act (415 ILCS 5/57.9(c) (2002)). However, that authority has not been extended to hearing complaints alleging violations of regulations adopted by OSFM under statutory provision other than the Act (415 ILCS 5/1 *et seq.* (2002)). Therefore, the Board lacks the authority to determine if the specific provisions of the OSFM regulations indicated by complainants have been violated and, therefore, allegations of such violation have been stricken as frivolous.

Furthermore, the Board also disagrees with complainants’ assertion that the Board has confused a frivolous complaint with at frivolous allegation. The Board has on numerous occasions struck allegations (*i.e.* Mellon v. Illinois Department of Transportation, PCB 01-21 (Oct. 5, 2000) and Logsdon v. Bowman, PCB 01-42 (Sept. 21, 2000)). In those cases, the Board struck allegations, *sue sponte*, because the allegations requested “relief that the Board does not have the authority to grant” or failed “to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202. Thus, the Board’s decision to strike frivolous allegations in the instant complaint is consistent with prior Board precedent and with the definition of “frivolous” found in the Board’s rules. Therefore, the Board properly struck complainants’ allegations that respondent violated implementing regulations adopted by the OSFM.

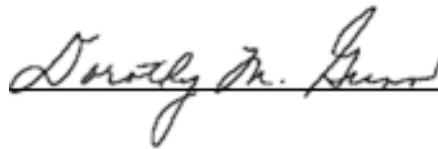
**CONCLUSION**

The Board denies the motion for reconsideration because the motion does not present new evidence or a change in the law that indicates that the Board's decision was in error. However, the Board grants the motion to clarify. The Board finds that the Board lacks statutory authority to determine if a violation of OSFM regulations has occurred as alleged in this case. The Board properly struck as frivolous complainants' allegations that respondent violated implementing regulations adopted by the OSFM.

IT IS SO ORDERED.

Board Member N.J. Melas abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 22, 2004, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board