

Court of Appeals Reverses and Remands MUSTFA Fund Procedural Case

In an unpublished opinion addressing only procedural issues, the Michigan Court of Appeals reversed and remanded for further consideration the Ingham County Circuit Court's decision affirming the denial of several claims by Ford Motor Company (Ford) for reimbursement from the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Fund for costs Ford incurred in cleaning up underground storage tank (UST) release sites. The MUSTFA Fund was established for reimbursing UST owners and operators for certain expenditures incurred in cleaning up petroleum released from USTs. To obtain reimbursement, a UST owner or operator is required to submit a claim to the MUSTFA Fund Administrator (the Administrator) of the Michigan Department of Environmental Quality (MDEQ) documenting the expenses and establishing that the claimant meets the eligibility requirements under the MUSTFA statute, Part 215 of the Natural Resources and Environmental Protection Act. The MUSTFA Fund has not accepted new claims since June 29, 1995.

Once a claim for a particular site has been approved by the Administrator, additional invoices may be submitted for reimbursement in connection with the original claim. Part 215, however, sets no time limit for the submission of these additional invoices. Under the procedures followed by the Administrator, after a site was determined to be eligible for reimbursement, additional invoices were submitted for review to a private third-party administrator (TPA) contracted by the Administrator to process MUSTFA Fund claims. After reviewing the invoices, the TPA would send a form entitled "Review of Claim for Payment" (RCP) to Administrator, who would then notify the claimant regarding payment. If a claimant wished to dispute the denial of a claim, Part 215 provides for an appeal to the MUSTFA Advisory Board that must be filed within fourteen days after the denial.

In its appeal of the circuit court's decision, Ford claimed that, since at least 1993, claimants whose reimbursement requests were denied by the TPA for inadequate documentation could submit a "request for reconsideration" to the TPA along with the appropriate documentation, and the claim would be reevaluated. Ford stated that it had submitted twenty-two such reconsideration requests and that other claimants followed the same procedure. Ford also claimed that the Administrator's procedure in such instances was to write letters directing the TPA to review the requests for reimbursement and to prepare a "reconsideration Review of Payment." Ford filed an affidavit and supporting documentation in the circuit court action to establish the existence of this procedure.

Conversely, MDEQ contended that its Procedure No. MUSTFA-5 specifically informed claimants that "[t]he TPA provides an informal opportunity of 1 review period, 30 - 45 days, for claimant to resolve any documentation issues." MDEQ claimed that the fourteen day period for filing an appeal begins when the RCP is filed with the Administrator. Additionally, MDEQ claimed that there was never a reconsideration period as described by Ford, and that even if there was, it would not be without time limits. Five of Ford's requests for reconsideration in 1997 were rejected by the Administrator as untimely appeals.

Ford appealed the rejected requests for reconsideration to the Ingham County Circuit Court, as provided for under Part 215. The circuit court decided the matter without a hearing, and issued an opinion affirming MDEQ's denials. Ford argued in its appeal to the Court of Appeals that the circuit court failed to provide any meaningful analysis in its brief decision and did not apply the proper standard of review in reaching its decision.

Upon review, the Court of Appeals found that there were two relevant questions that presented factual issues that should have been decided by the circuit court. The first question was whether a long-standing practice of accepting requests for reconsideration existed apart from the statutorily-mandated appeals procedure, and if so, the second question was whether MDEQ provided adequate notice to claimants that this established practice was going to be eliminated. According to the Court of Appeals, the circuit court merely stated that it would not substitute its opinion for that of the MDEQ, rather than making any specific factual findings with respect to the issues raised by Ford. The Court of Appeals characterized the case as a dispute between a party and an agency over procedural issues - in contrast to, for example, a contested case proceeding in which the agency would have made factual findings, which would normally be entitled to deference by the trial court. Thus, there were no factual findings at the administrative level that would have been entitled to deference by the trial court.

Therefore, the Court of Appeals held that remand was necessary to allow that circuit court to conduct a hearing, consider the evidence, and issue the factual findings that were necessary before the Court of Appeals could review the case. The Court of Appeals noted that if the reconsideration procedure was indeed found to be an established practice, MDEQ could not have eliminated it without providing adequate notice. The court also observed that the reconsideration procedure described by Ford would not have been inconsistent with Part 215, which specifically provides for the submission of additional work invoices and sets no time limits for their submission. Further, under Michigan case law, even if the reconsideration procedure was inconsistent with Part 215 or MDEQ's administrative rules, MDEQ was obligated to provide adequate notice before instituting changes to the procedure. The Court of Appeals also characterized as "somewhat disingenuous" MDEQ's argument that Ford had notice of the Administrator's intent to enforce the fourteen-day appeal time limit because the issue was not the enforcement of the time limit on formal appeals before the MUSTFA Advisory Board, but instead concerned the discontinuance of the alleged informal reconsideration procedure upon which Ford claimed it had relied.

Accordingly, the Court of Appeals reversed the circuit court's decision, and remanded the case for further proceedings consistent with the court's opinion.

Ford Motor Co. v. Dept. of Environmental Quality, No. 211307 Ingham County Cir. Ct. (May 9, 2000).

This article was prepared by Brian J. Negele, a partner in our Environmental Department, and previously appeared in the August, 2000 edition of the Michigan

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