

POND VIEW, INC.

v.

BOARD OF ENVIRONMENTAL PROTECTION

Submitted on Briefs September 30, 2009

Decided October 6, 2009

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Pond View, Inc. appeals from a judgment by the Superior Court (Kennebec County, *Jabar, J.*) affirming the order of the Board of Environmental Protection requiring removal of three underground fuel storage tanks on the Pond View property. We review the Board's findings directly for an abuse of discretion, error of law, or findings not supported by the evidence. *York Ins. of Me., Inc. v. Superintendent of Ins.*, 2004 ME 45, ¶ 13, 845 A.2d 1155, 1159.

Contrary to Pond View's assertions, the Board did not err in upholding the Department of Environmental Protection's enforcement action because: (1) the DEP's findings that Pond View violated DEP rules were supported by substantial evidence in the record, *see Pine Tree Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 634 A.2d 1302, 1304 (Me. 1993); (2) the agency's interpretation of those rules was reasonable, *see FPL Energy Me. Hydro LLC v. Dep't of Env'tl. Prot.*, 2007 ME 97, ¶ 11, 926 A.2d 1197, 1201; and (3) Pond View has not met its burden to show that it was impermissibly singled out for enforcement as compared to similarly situated persons, in violation of the equal protection clauses of the Maine and United States Constitutions, *see Polk v. Town of Lubec*, 2000 ME 152, ¶ 14, 756 A.2d 510, 513. Additionally, there was no violation of due process because Pond View was provided with notice and an impartial

hearing, *see Pelkey v. City of Presque Isle*, 577 A.2d 341, 343 (Me. 1990), and the use of different attorneys to advise the Board and the DEP was not mandated under the facts of this case, *see Superintendent of Ins. v. Attorney Gen.*, 558 A.2d 1197, 1202 (Me. 1989).

The entry is:

Judgment affirmed.

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