

## STATE OF MICHIGAN

### STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

SUBJECT: Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended

Petition of The Enterprise Group Property Development Corp., LLC  
Baseline Environmental Assessment (BEA)  
BEA ID #: B200600708JK

at a session of the State Office of Administrative Hearings and Rules held in Lansing, Michigan, on June 30, 2006, Dennis W. Mack, Administrative Law Judge, Presiding

On June 27, 2006, The Enterprise Group Property Development Corp., LLC, (Petitioner) filed a Petition for a Contested Case Hearing. The Petition challenges the April 5, 2006, rejection of the BEA by the Department of Environmental Quality (DEQ), Remediation and Redevelopment Division (RRD). The Administrative Law Judge raises, *sua sponte*, the question of whether the Petitioner has a right to a contested case hearing.

### OPINION AND ORDER

A basic tenant of administrative law is an agency has only those powers provided to it by statute. See *York v Detroit*, 438 Mich 744, 275 NW2d 356 (1991); *Coffman v State Board of Examiners in Optometry*, 331 Mich 582; 50 NW2d 322 (1951). This Tribunal is charged with the responsibility of rendering final agency decisions after its *de novo* review of an application for a permit or license. In performing this function the Tribunal must operate under the authority of a statute or administrative rule because "doubtful power does not exist." See *In Re Quality Service Standard*, 204 Mich App 607, 611; 516 NW2d 142 (1994). Absent that lawful authority to perform its function this Tribunal lacks subject matter jurisdiction and "any action with respect to such a cause, other than to dismiss it, is absolutely void." *Fox v Board of Regents of the University of Michigan*, 375 Mich 238, 242; 134 NW2d 146 (1965). The administrative rules governing contested cases before the DEQ acknowledge this principle and provide the process for addressing a question of jurisdiction. R 324.22(c).

The right to a contested case hearing arises in one of two manners. The first implicates fundamental due process protection.<sup>1</sup> The right arises when an agency seeks to

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<sup>1</sup> See US Const, Am XIV; Const 1963 art 1, § 17. See also *Goldberg v Kelly*, 397 US 254; 90 S.Ct. 1011; 25 L Ed2d 287 (1970); *Bundo v City of Walled Lake*, 395 Mich 679; 238 NW2d 154 (1976).

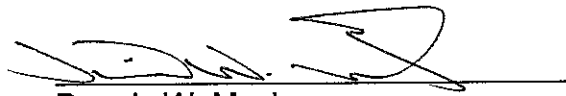
modify or terminate an existing license or entitlement.<sup>2</sup> It is to ensure these protections are afforded that the Administrative Procedures Act was enacted.<sup>3</sup> MCL 24.201 *et seq.* This Petition challenges RRD's determination that the BEA submitted by the Petitioner is inadequate. This action cannot be characterized as an attempt to modify or terminate an existing license or entitlement. Therefore, I conclude, as a Matter of Law, the Petitioner does not have a due process right to a contested case hearing.

The right to a contested case hearing is also created through the statute and/or administrative rules implicated in the agency action. See *Delly v Bureau of State Lottery*, 183 Mich App 258, 263; 454 NW2d 141 (1990); *McBride v Pontiac School District*, 218 Mich App 113, 122; 553 NW2d 646 (1996). The Petition does not cite to any authority for this Tribunal to hear this case. The reason for this is obvious: there is no express or implied authority under either Part 201 or its administrative rules that provides the right to a contested case hearing on the issue raised in the Petition. As a result, this Tribunal has no authority but to dismiss this case.

**THEREFORE, IT IS ORDERED:**

The Petition of The Enterprise Group Property Development Corp., LLC, on the Determination on Baseline Environmental Assessment, BEA ID # B200600708JK, is DENIED.

Date: June 30, 2006



Dennis W. Mack  
Administrative Law Judge

cc: Mr. Richard C. Lindsey, Jr., Marcoux Allen, P.C., P.O. Box 787, Jackson, Michigan 49204-0787

Mr. Andrew W. Hogarth, DEQ, RRD, P.O. Box 30426, Lansing, Michigan 48909-7926

<sup>2</sup> "Due process applies to any adjudication of important rights." *In Re LaFlure*, 48 Mich App 377, 385; 210 NW2d 482 (1973). See also *Board of Regents v Roth*, 408 US 564; 92 S.Ct. 2701; 33 L Ed2d 548 (1972).

<sup>3</sup> "To ensure that a petitioner is afforded due process, hearings in the Tax Tribunal are conducted in accordance with the provisions of Chapter 4 of the Administrative Procedures Act...." *Georgetown Place Cooperative v City of Taylor*, 226 Mich App 33; 572 NW2d 232 (1997).