



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, WATER COMPLIANCE AND ENFORCEMENT,
Petitioner,
v.
AUTO SCRAP, INC.,
Respondent.1

ADMINISTRATIVE ACTION
FINAL DECISION

OAL DKT NO.: ECE-WE 15484-12
AGENCY REF NO.: PEA120002-95291

This matter arises from Auto Scrap, Inc.'s (Auto Scrap) challenge to the Department of Environmental Protection's (Department) April 17, 2012 Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA), in which the Department found that Auto Scrap, which operates an auto recycling facility located at 34-38 Stover Avenue, Kearny, Hudson County, had violated conditions of its New Jersey Pollutant Discharge Elimination System (NJPDDES) Stormwater Discharge General Permit, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (WPCA), and the rules promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq. Based on those violations, the Department assessed a civil administrative penalty against Auto Scrap in the total amount of \$55,000.

1 The caption to the Initial Decision incorrectly named Auto Scrap as the Petitioner instead of the Department. The caption in this Final Decision is revised to reflect the proper status of the parties.

On or about May 18, 2012, Auto Scrap requested an administrative hearing. The Department granted Auto Scrap's request on July 17, 2012, and transferred the matter to the OAL where the Department filed a motion for summary decision as to Auto Scrap's liability and the penalty.<sup>2</sup> Auto Scrap did not oppose the Department's motion. Administrative Law Judge (ALJ) Michael Antoniewicz issued an Initial Decision in which he granted summary decision in favor of the Department, finding Auto Scrap liable for the violations set forth in the AONOCAPA and affirming the \$55,000 penalty.

Based on my review of the record, I ADOPT the Initial Decision with the clarifications set forth below.

#### FACTUAL AND PROCEDURAL BACKGROUND

I ADOPT the ALJ's recitation of the facts and briefly recount only those facts essential for this decision.

Auto Scrap operates an auto recycling facility in Kearny located approximately 900 feet from the lower Passaic River. Since 1999, Auto Scrap has been authorized to discharge stormwater from that facility under certain conditions through a NJPDES permit. On February 1, 2005, the Department issued to Auto Scrap NJPDES Permit No. NJG0139432, with an expiration date of January 31, 2010. Among other conditions, Auto Scrap was required to implement Best Management Practices (BMPs), including paving the facility, in order to prevent exposure of pervious ground to stormwater contaminated with motor oils from Auto Scrap's recycling operations, and to prevent oily materials from flowing towards the street or the Passaic River.

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<sup>2</sup> Janette Faulk appeared on behalf of Auto Scrap as a principal of a close corporation.

From May 1, 2002 through March 21, 2012, the Department conducted numerous inspections of the Kearny facility and found that Auto Scrap had failed to implement BMPs, including failure to pave areas of the facility. Based on its inspections, the Department issued Notices of Violation to Auto Scrap in May 2002, April 2003, December 2004, and March 2012.<sup>3</sup>

The Department subsequently issued the AONOCAPA under review to Auto Scrap on April 17, 2012 for permit violations observed during the Department's February 17, 2011 and March 21, 2012 inspections.<sup>4</sup> Specifically, during the February 2011 inspection, the Department observed that Auto Scrap had: (1) failed to prevent exposure of fluids from vehicles and other scrap materials to stormwater or the ground surface, in violation of Part IV, Section E.2.d.v. of the permit; and (2) failed to place used engine blocks on a concrete pad that drains to an oil/water separator, in violation of Part IV, Section E.2.k.i and ii of the permit. Based on its March 21, 2012 inspection, the Department found that the two above-noted violations continued to exist, and that Auto Scrap had additionally failed to provide a containment system under the hydraulic systems of stationary scrap processing equipment which drain to an oil/water separator, in violation of Part IV, Section E.2.l.iii of the permit. The Department assessed a penalty of \$20,000 for each of the first two violations, and a penalty of \$15,000 for the third violation, resulting in a total penalty of \$55,000.

To remedy the cited violations, Auto Scrap developed a plan in June 2013 to pave the facility. The Department and Auto Scrap agreed to a completion deadline of April 2014.

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<sup>3</sup> Auto Scrap's consultant also submitted certification forms and reports to the Department in April 2005, January 2009 and February 2012, documenting that Auto Scrap was not in compliance with its permit, and that additional paving was needed.

<sup>4</sup> Although the permit issued on February 1, 2005 was set to expire on January 31, 2010, in accordance with the terms of the permit and N.J.A.C. 7:14A-2.8 the permit conditions continued in force until the effective date of a new permit, which was issued on October 1, 2013. Thus, the permit issued in 2005 remained fully effective and enforceable at the time the Department issued the AONOCAPA.

However, upon inspections of the facility in April, May, June, and October 2014, the Department found that, although some of the agreed upon areas had been paved, the paving remained incomplete. The Department issued another Notice of Violation to Auto Scrap based on the October 2014 inspection.

On July 24, 2015, the Department filed a motion for summary decision in the OAL; Auto Scrap did not submit any opposition. The ALJ issued his Initial Decision on September 10, 2015, granting the Department's motion. The ALJ accepted the facts set forth by the Department in its motion papers as findings of fact, and found Auto Scrap liable for the violations cited in the AONOCAPA. The ALJ also affirmed the \$55,000 penalty.

On September 22, 2015, the Department filed minor exceptions to correct certain dates referenced in the Initial Decision but otherwise concurred therewith.<sup>5</sup> Auto Scrap did not respond or file any exceptions.

### DISCUSSION

Summary decision is appropriate where “the pleadings, discovery and affidavits ‘show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.’” E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 350 (App. Div. 2010) (quoting N.J.A.C. 1:1-12.5(b)). A genuine issue of material fact exists only “when ‘the competent evidential materials . . . are sufficient to permit a rational fact[-]finder to resolve the alleged disputed issue in favor of the non-moving party.’” Ibid. (alterations in original) (quoting Piccone v. Stiles, 329 N.J. Super. 191, 194 (App. Div. 2000)).

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<sup>5</sup> I agree with the minor exceptions correcting three dates in the Initial Decision. No further discussion of the exceptions will be necessary for this decision.

Here, it is undisputed that Auto Scrap was issued an NJPDES permit under the WPCA and its implementing rules. Pursuant to the permit, Auto Scrap was obligated to implement certain BMPs at its auto recycling facility that are intended to prevent exposure of the ground to oil-contaminated stormwater and to prevent contaminated stormwater from flowing toward the street or the Passaic River. It is also undisputed that the Department conducted inspections of the facility in February 2011 and March 2012, and determined that Auto Scrap had failed to pave its facility as required and was therefore in violation of the permit. Accordingly, I find that the Department is entitled to summary decision with regard to Auto Scrap's liability for violations of the permit, the WPCA, and the implementing rules.

The Department assessed a total penalty of \$55,000 against Auto Scrap pursuant to N.J.S.A. 58:10A-10.d, which authorizes the Department to assess a civil administrative penalty of not more than \$50,000 per violation per day in accordance with the uniform penalty policy set forth at N.J.A.C. 7:14-8.5. The penalty amount was determined based on the penalty matrix at N.J.A.C. 7:14-8.5(f), which takes into account the seriousness of the violation, N.J.A.C. 7:14-8.5(g), and the conduct of the violator, N.J.A.C. 7:14-8.5(h).

The Department determined that each of Auto Scrap's permit violations constituted a moderately serious violation, which includes "any violation... which substantially deviates from the requirements of the [WPCA]... or any violation of any... permit now or hereafter issued pursuant thereto...." N.J.A.C. 7:14-8.5(g)2iv. As discussed above, it is undisputed that Auto Scrap failed to implement certain BMPs at its auto recycling facility in violation of its permit. Accordingly, the Department's determination that Auto Scrap's violations were moderate in seriousness was appropriate.<sup>6</sup>

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<sup>6</sup> In addition, the ALJ concluded based on the Department's motion papers that Auto Scrap's violations had the

The Department also designated Auto Scrap's conduct to be moderate. Such conduct includes any unintentional but foreseeable act or omission. N.J.A.C. 7:14-8.5(h)2. I find nothing in the record that warrants disturbing the Department's determination that Auto Scrap's permit violations were unintentional but foreseeable, particularly since the record establishes that the Department had on numerous occasions provided Auto Scrap with notice of the need to pave its facility. Thus, I find the Department's determination of moderate conduct to be appropriate.

In accordance with N.J.A.C. 7:14-8.5(f), the Department started at a penalty of \$15,000, the midpoint of the penalty range for violations of moderate seriousness and moderate conduct, for each of the three violations. Pursuant to N.J.A.C. 7:14-8.5(i), the Department may, in its discretion, decrease or increase the penalty from the midpoint based on the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedy any environmental damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Any impacts on the receiving water ... resulting from the violation; and
8. Other specific circumstances of the violator or violation.

For the first two violations (failure to prevent exposure of fluids from vehicles and other scrap materials to stormwater or the ground surface, and failure to place used engine blocks on a

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potential to cause harm to human health and the environment. See N.J.A.C. 7:14-8.5(g)2i. This basis for finding that Auto Scrap's violations are moderate in seriousness had not been cited in the AONOCAPA but was discussed in the certification of Richard T. Paull, Bureau Chief of the Department's Northern Bureau of Water Compliance and Enforcement. Mr. Paull certified that Auto Scrap's violations resulted in the discharge of oil-contaminated pollutants to the pervious ground where they may percolate to ground water and bypass the drains leading to the oil-water separators, thus having the potential to cause serious harm to human health or the environment. I therefore concur with the ALJ's conclusion.

concrete pad that drains to an oil/water separator), the Department determined that an adjustment to the top of the penalty range was appropriate because those violations had been observed during the Department's February 17, 2011 inspection and continued to exist until at least the March 12, 2012 inspection. Thus, the Department assessed a penalty of \$20,000 for each of those two violations. For the third violation, observed on March 12, 2012, the Department determined that there was insufficient evidence to warrant adjusting the penalty from the midpoint of the range and assessed a penalty of \$15,000, resulting in a total penalty of \$55,000.

I concur that the continuation of the first two violations from February 17, 2011 to at least March 2012 warranted an increase in the penalty from the midpoint to the top of the applicable penalty range. I also concur that application of the factors at N.J.A.C. 7:14-8.5(i) to the facts and circumstances here demonstrates that a decrease in the penalty amount from \$15,000 per violation is not appropriate. As discussed in the Initial Decision, the Department had issued Notices of Violation to Auto Scrap as far back as 2002. Despite those notices, and despite reports prepared by its own consultant stating that paving was needed, Auto Scrap did not remedy the permit violations. Furthermore, Auto Scrap's violations may impact the receiving waters, since oil-contaminated stormwater may percolate to ground water or flow into the nearby Passaic River.

Although I agree that a decrease from the midpoint of the penalty range is not warranted, some clarification of the Initial Decision is required. In applying the third factor, the ALJ appropriately noted that Auto Scrap had not taken any measures to mitigate the violations by the Department's February 2011 and March 2012 inspections. However, the Initial Decision and the Department's motion papers also noted that Auto Scrap failed to meet the agreed-upon deadlines to remedy the violations after the AONOCAPA was issued. Similarly, with regard to the fourth

and fifth factors, the Initial Decision and the Department's motion papers refer to facts and circumstances that arose after the AONOCAPA. Since the question presented by the Department's motion was whether the \$55,000 penalty in the AONOCAPA was properly assessed, any measures that Auto Scrap had or had not taken subsequent to the Department's issuance of the AONOCAPA would not factor into the determination of that penalty. With this clarification, I find the \$55,000 penalty to be reasonable and appropriate under the circumstances.

#### CONCLUSION

After review of the record and the Initial Decision, I conclude that the ALJ properly granted summary decision in favor of the Department. I ADOPT the ALJ's Initial Decision affirming the Department's determination that Auto Scrap violated its permit, the Water Pollution Control Act, and the Department's rules, and affirming the \$55,000 penalty. Auto Scrap is hereby ORDERED to pay the civil administrative penalty of \$55,000 as set forth in paragraph 19 of the AONOCAPA within 20 days from the date of this Final Decision.

IT IS SO ORDERED.

DATE: December 1, 2015



Bob Martin, Commissioner  
New Jersey Department of  
Environmental Protection



NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,  
WATER COMPLIANCE AND ENFORCEMENT

v.  
AUTO SCRAP, INC.

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