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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,	ADMINISTRATIVE ACTION FINAL DECISION
Petitioner,	OAL DKT NO.: ECE 07607-24
v.	AGENCY REF. NO.: PEA200002-U2523
DELAWARE RIVER TUBING, INC., AND GREGORY CRANCE,	(ON REMAND ECE 06951-22)
Respondents.	

This Final Decision addresses the challenge by Delaware River Tubing, Inc., and Gregory Crance (collectively Respondents) to an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) issued by the New Jersey Department of Environmental Protection (Department) on April 26, 2021, for violations of the Solid Waste Management Act, N.J.S.A. 13:lE-1 et seq. (SWMA), and its supporting regulations, specifically N.J.A.C. 7:26-2A.8(j)1. The AONOCAPA assessed a civil administrative penalty of $18,000 against Respondents jointly and severally for disrupting the Pastore Landfill repeatedly without written approval from 2015 through 2020 by clearing the top of the landfill and using it as an employee and customer parking lot.

Following a hearing held on April 2, 2023, Administrative Law Judge Dean J. Buono (ALJ) issued an Initial Decision on August 28, 2023, dismissing the AONOCAPA and holding that the

Department failed to prove by a preponderance of the evidence that Respondents were responsible for the disruptions to the landfill. The Department filed exceptions to the Initial Decision on September 8, 2023, approving the Initial Decision's Findings of Fact and recommending they be adopted in their entirety, but arguing that the Decision's conclusions of law are "wholly unsupported by the facts on the record and the court's own finding of facts." Respondents filed neither exceptions nor a reply.

I issued a Final Decision on May 28, 2024, holding that Respondents were responsible for certain disruptions that occurred on the landfill, specifically vehicles parking on top of and on the slopes of the landfill, placing portable toilets and changing tents on the landfill, storing rental tubes on the landfill, and parking a bus that served as a customer dressing room on the landfill. I found that Respondents were not responsible, however, for expanding and maintaining the parking lot on top of the landfill, placing construction equipment on the landfill, or placing charcoal, shoes, and beer cans on the landfill. Because the Initial Decision dismissed the AONOCAPA in its entirety without considering whether the penalty assessed was proper, I then remanded the case to the Office of Administrative Law to determine whether the penalty assessed in the AONOCAPA was proper.

Both parties filed briefs on remand, and the ALJ issued an Initial Decision on November 8, 2024, finding that the civil administrative penalties totaling $18,000 assessed in the AONOCAPA were appropriate. Neither party filed exceptions.

For the reasons set forth herein, I hereby ADOPT the Initial Decision as discussed below.

DISCUSSION

The facts of this case are not in dispute. A detailed description of Respondents' use of the Pastore Landfill in violation of the SWMA can be found in the 2024 Final Decision and need not

be repeated here. See N.J. Dep't of Envtl. Protection v. Del. River Tubing, Inc., 2024 N.J. AGEN LEXIS 336 (May 28, 2024). The only issue presently before me is whether the penalties assessed by the Department are supported by the Department's regulations. This is a legal question subject to de novo review. Following a review of the facts and the law, I conclude that the penalties assessed were correct.

The $18,000 penalty imposed by the AONOCAPA is made up of four separate $4,500 penalties. The SWMA regulations require prior Department approval for any major disruptions to landfills, such as those that occurred here. N.J.A.C. 7:26-2A.8(j)1. Under the regulations, failure to obtain written approval of the Department prior to a major disruption carries a penalty of $4,500. N.J.A.C. 7:26-5.4(g)3. In this case, the ALJ concluded, and the record supports, that the September 3, 2015, Notice of Violation was based on numerous instances of Respondent-controlled vehicles parking on top of the landfill, an activity for which Respondents were found responsible by the 2024 Final Decision. Similarly, the October 15, 2019, Notice of Violation was based on five separate instances of Respondent-controlled vehicles parking on top of the landfill, as well as one instance of portable toilets being found on top of the landfill. Finally, the October 14, 2020, Notice of Violation was based on two additional instances of Respondent-controlled vehicles parking on top of the landfill.

On each of these three occasions, the Department assessed a $4,500 penalty against Respondents, because Respondents were observed creating major disturbances on the landfill without prior authorization. Finally, if a violator violates the same rule more than once within twelve months, an additional penalty must be assessed. In this case, the amount of that penalty is $4,500. N.J.A.C. 7:26-5.4(f)3i. Less than a year passed between the October 15, 2019, Notice of Violation (covering violations that were observed during inspections on August 15, 2019, August

17, 2019, August 20, 2019, August 24, 2019, and August 30, 2019) and the October 14, 2020, Notice of Violation (covering violations that were observed during inspections on August 9, 2020, and August 28, 2020). Accordingly, the fourth and final $4,500 penalty was also properly assessed.

It should be noted that Respondent's assertion that the $18,000 penalty assessed by the AONOCAPA cannot stand unmodified, given that the 2024 Final Decision was partially in their favor, is unavailing. The original penalty, although based on the complex fact pattern of this case, constituted the required penalty for any violation of the relevant SWMA regulations for each of the three Notices of Violation. Even after the 2024 Final Decision limited the scope of the actions for which Respondents were liable, sufficient facts remain underlying each Notice of Violation to demonstrate three violations of the SWMA that each carry a penalty of $4,500. As a result, the fourth penalty, for violating the same regulation twice within twelve months, also still applies. Accordingly, the AONOCAPA properly assessed a penalty of $18,000 against respondents.

CONCLUSION

Having reviewed the record, and for the reasons set forth above, I hereby ADOPT the ALJ's Initial Decision. IT IS SO ORDERED.

Date: January 30, 2025

Shawn M. LaTourette, Commissioner
New Jersey Department of Environmental Protection

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AND GREGORY CRANCE,

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