



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ECE 07607-24

AGENCY REF. NO.

PEA200002-U2523

(ON REMAND ECE 06951-22)

**NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Petitioner,

v.

**DELAWARE RIVER TUBING, INC.,
AND GREGORY CRANCE,**

Respondents.

Candice McLaughlin, Deputy Attorney General, for petitioner (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Gaetano M. De Sapio, Esq., for respondents (De Sapio Law Office, attorneys)

Record Closed: September 25, 2024

Decided: November 8, 2024

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, the New Jersey Department of Environmental Protection (DEP/Agency), alleged that respondents Delaware River Tubing, Inc. (DRT) and Gregory Crance violated N.J.A.C. 7:26-2A.8(j)(1) when they disrupted the Pastore Landfill by clearing the top of the landfill, laying down gravel, and using the landfill as an overflow parking lot, despite years of warnings from the DEP, and issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) to respondents on April 26, 2021. Respondents argued that the DEP suggested, without specific proof of any sort, that DRT engaged in activities of landfill disruption without a permit under N.J.A.C. 7:26-2A.8(j)(1), and, therefore, as a tenant, should be penalized for actions of its landlord, the owner of the landfill, or for the actions of others over which they have no control.

The DEP transmitted the contested case to the Office of Administrative Law, where it was filed on August 16, 2022, under OAL docket number ECE 06951-22. A hearing was held on April 3, 2023, and the DEP presented testimony and documentary evidence. Respondents presented no witnesses, but attempted to rebut the DEP's evidence. After the hearing, the parties were afforded the opportunity to submit closing summations. On August 28, 2023, I issued an Initial Decision concluding that the DEP had not proven that DRT disrupted the landfill in violation of N.J.A.C. 7:26-2A.8(j)(1).

On May 28, 2024, the DEP Commissioner issued a Final Decision and Order adopting in part and rejecting in part the Initial Decision. The Final Decision remanded the case to the Office of Administrative Law for a determination of the appropriateness of the \$18,000 penalty assessed in the AONOCAPA. The remanded matter was filed at the OAL on May 31, 2024, under OAL docket number ECE 07607-24. Both parties submitted briefs on the issue.

DISCUSSION AND CONCLUSIONS OF LAW

The initial decision in this case was very difficult and close because it was obvious that DRT was using the property and gaining the benefit of all they were accused of, but were not caught with their proverbial “hand in the cookie jar.”

In the Final Decision, the Commissioner found that some of the conduct that constituted landfill disruptions was attributable to DRT, and some conduct was not attributable to DRT. (5/28/24 Final Decision at 14.) The Commissioner determined that DRT was responsible for vehicles parking on top of and on the slopes of the landfill, placing portable toilets and changing tents on the landfill, parking a DRT bus that served as a customer dressing room on the landfill, and storing rental tubes on the landfill. (*Id.* at 14–19.) The Commissioner determined that the DEP had not proven by a preponderance of the evidence that DRT was responsible for expanding and maintaining the parking lot on top of the landfill, placing construction equipment on the landfill, and placing charcoal, shoes, and beer cans on the landfill. (*Ibid.*)

Civil administrative penalties are authorized by the Solid Waste Management Act and comply with the penalty-assessment rubric outlined in N.J.A.C. 7:26-5.4(g)(3). “The violations of N.J.A.C. 7:26-2A, Additional Specific Disposal Regulations for Sanitary Landfills, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation, are as set forth in the following table.” N.J.A.C. 7:26-5.4(g)(3). The table specifically requires a penalty of \$4,500 for each violation of N.J.A.C. 7:26-2A.8(j)(1).

The DEP observed landfill disruptions on many occasions between 2015 and 2020, but only assessed one \$4,500 penalty for the violations described in each of three Notices of Violation issued on September 3, 2015, October 15, 2019, and October 14, 2020. (DEP-3; DEP-21; DEP-25; DEP-26.¹)

¹ The exhibits and transcripts referenced in this initial decision on remand are identified in the initial decision in the matter docketed as ECE 06951-22.

The September 3, 2015, Notice of Violation was issued following an inspection on August 25, 2015, where DEP inspectors observed vehicles parked on top of the landfill and confirmed with DRT staff that the cars belonged to DRT employees and the DRT customers parked on top of the landfill on the weekends. (DEP-2; DEP-3; T153:8–155:9.) “Once I was on the top of the landfill, I noted more vehicles parked in a cleared area about 1 acre in size (visual estimate only). I proceeded to the office area, where I met with the owner’s son, Seth Crance, who told me the following information: . . . The cars on top of the landfill today were employee vehicles only, but that on the weekends, the ‘overflow’ lot on the top of the landfill is full of customer cars because it is a lot busier than the weekdays.” (DEP-2.) The Commissioner’s Final Decision found that parking on the landfill constitutes a major disruption for which DRT is liable. (5/28/24 Final Decision at 14–15.) The AONOCAPA did not assess an additional penalty for each type of landfill disruption observed, i.e., parking on the landfill, clearing the landfill, storing equipment, etc. Rather, it assessed one \$4,500 base penalty, per N.J.A.C. 7:26-5.4(g)(3), because a landfill disruption was observed on August 25, 2015. The single \$4,500 penalty assessed based on the September 3, 2015, Notice of Violation is appropriate because the DEP observed DRT using the landfill as a parking lot, a major disruption.

The DEP also assessed a single \$4,500 penalty based on the October 15, 2019, Notice of Violation. (DEP-21; DEP-26.) That Notice of Violation was issued in response to landfill disruptions that the DEP observed during inspections on August 15, 2019, August 17, 2019, August 20, 2019, August 24, 2019, and August 30, 2019. (DEP-15; DEP-16; DEP-17; DEP-19; DEP-20; DEP-21.)

During each of those inspections, the DEP observed DRT parking on the top or slopes of the landfill, and during the August 17, 2019, inspection, the DEP observed portable toilets on the landfill. (DEP-15; DEP-16; DEP-17; DEP-19; DEP-20; DEP-21.) Therefore, the \$4,500 penalty assessed in the AONOCAPA is appropriate because it is based on multiple observed landfill disruptions.

Finally, the DEP assessed a single \$4,500 penalty based on the October 14, 2020, Notice of Violation. (DEP-25; DEP-26.) This Notice of Violation was issued based on landfill disruptions observed during inspections on August 9, 2020, and August 28, 2020.

Those disruptions included DRT customers parking on top of and on the slopes of the landfill. (DEP-23; DEP-24; DEP-25.) Therefore, the \$4,500 penalty assessed based on the October 14, 2020, Notice of Violation is appropriate and should be affirmed.

In addition, if the violator violates the same rule more than once within twelve months, an additional \$4,500 penalty must be assessed. N.J.A.C. 7:26-5.4(f)(3)(i). Here, DRT was assessed an additional \$4,500 for the violations from the October 15, 2019, Notice of Violation (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 (violations that were observed during inspections on August 9, 2020, and August 28, 2020).

Therefore, the total penalty assessment is \$18,000—\$4,500 for each of the Notices of Violation (9/3/15, 10/15/19, 10/14/20), and an additional \$4,500 for violating the same rule within twelve months pursuant to N.J.A.C. 7:26-5.4(f)(3)(i). (DEP-3; DEP-21; DEP-25; DEP-26.)

I **CONCLUDE** that the civil administrative penalties totaling \$18,000 assessed in the AONOCAPA are appropriate. These penalties serve the public interest because of the serious threat of harm to the environment and public safety. As the Commissioner's Final Decision recognized, using the Pastore Landfill as a parking lot could result in serious harm to the environment and public health, particularly because the additional weight of vehicles and equipment could exacerbate dangerous methane emissions and leachate discharging into the Delaware River. (5/28/24 Final Decision at 2–3; T42:14–17.)

ORDER

Based upon the foregoing, I **ORDER** that the determination of the DEP in its Administrative Order and Notice of Civil Administrative Penalty Assessment to impose penalties totaling \$18,000 on the DRT and Gregory Crance is hereby **AFFIRMED**.

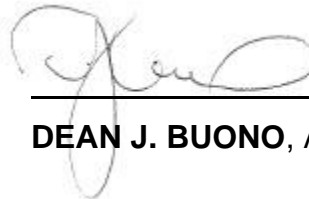
I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Environmental Protection does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, OFFICE OF LEGAL AFFAIRS, DEPARTMENT OF ENVIRONMENTAL PROTECTION, 401 East State Street, 4th Floor, West Wing, PO Box 402, Trenton, New Jersey 08625-0402**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 8, 2024

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

DJB/oni