



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

NEW JERSEY DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
SOLID WASTE COMPLIANCE AND)
ENFORCEMENT,)

Petitioner,)

v.)

JIMMY BYRNE TRUCKING AND)
JIMMY BYRNE, INDIVIDUALLY,)

Respondents.)
)

ADMINISTRATIVE ACTION

FINAL DECISION

OAL DKT NO. ECE 09838-15

AGENCY REF. NO. PEA 130002-
206609

This Order addresses an appeal by Jimmy Byrne and Jimmy Byrne Trucking (JBT) (Respondents) of the Department's October 11, 2013 Notice of Civil Administrative Penalty Assessment (NOCAPA), charging Respondents with six violations of the Solid Waste Management Act (SWMA), N.J.S.A. 13:1E-1 et seq., and the Department's implementing Solid Waste Rules, N.J.A.C. 7:26. The NOCAPA cited Respondents for violating: (1) the N.J.A.C. 7:26-3.2(a)2 requirement to register any device used for the transportation of solid waste, based on the finding that a truck cab and two roll-off containers displayed inactivated solid waste decals; (2) the N.J.A.C. 7:26-3.4(h)1 requirement to carry a copy of any lease filed in connection with the registration of a solid waste vehicle and making the lease available to Department inspectors on request, based on a finding that the JBT cab was owned by Tri State Transfer Associates (TST) according to the motor vehicle registration and leased to JBT c/o Triple Crown Disposal but the driver of the JBT cab was not able to produce the lease when requested; (3) the N.J.A.C. 7:26-3.4(h)2 requirement that each registered solid waste vehicle used in the collection or

transportation of solid waste must have only current solid waste decals displayed, based on a finding that the truck cab displayed expired decals; (4) the N.J.A.C. 7:26-3.4(h)³ requirement to have affixed to the driver's side of the vehicle the capacity of the unit in letters and numbers at least three inches high so as to be visible to the solid waste facility operator, based on a finding that two roll-off containers were not marked with their capacity; (5) the N.J.A.C. 7:26-3.4(h) requirement to properly, permanently, and conspicuously display a current solid waste decal, the Department registration number, and the name of the registered company, based on the finding that a decal was taped to a roll-off container rather than being permanently affixed, and a truck cab displayed only the name of the equipment lessor, TST, and not the registered company, JBT; and (6) the provision at N.J.A.C. 7:26-5.6(a) that the submittal of inaccurate information or the making of a false statement in any application or other document required to be submitted to the Department may subject a violator to a penalty, based on the finding that Respondents intentionally submitted inaccurate information or made a false statement by claiming in June 2011 that they had not received the 2011-2013 registration decals originally mailed by the Department in May 2011, and later used both those original decals and replacement decals issued by the Department.

The Department assessed a \$4,500 penalty for the violation of N.J.A.C. 7:26-3.2(a)² and a \$45,000 penalty for the violation under N.J.A.C. 7:26-5.6(a), for a total penalty of \$49,500. The Department did not assess penalties for the other four violations because Respondents timely cured them in accordance with the Grace Period Law, N.J.S.A. 13:1D-125 et seq., and N.J.A.C. 7:26-5.4(g)⁶. Respondents requested a hearing, and the matter was transmitted to the Office of Administrative Law (OAL) where it was assigned to Administrative Law Judge (ALJ) Margaret M. Monaco. A hearing was held on February 3, 2016. Robert Gomez, a supervising environmental specialist for the Bureau of Solid

Waste Compliance and Enforcement, testified on behalf of the Department, and Jimmy Byrne testified for the Respondents.

The ALJ issued an initial decision on October 3, 2016, finding that Respondents had committed the six violations cited in the NOCAPA but disagreeing with the severity of conduct for the violation under N.J.A.C. 7:26-5.6(a). The ALJ concurred that the assessed penalty of \$4,500 for the N.J.A.C. 7:26-3.2(a)2 violation was appropriate. However, the ALJ rejected the penalty of \$45,000 assessed in accordance with N.J.A.C. 7:26-5.6(c)1 for intentionally submitting inaccurate or false information and instead imposed a penalty of \$1,000 in accordance with N.J.A.C. 7:26-5.6(c)2, which applies for any conduct other than that identified at N.J.A.C. 7:26-5.6(c)1 relating to the submittal of inaccurate or false information. The ALJ thus imposed a total penalty of \$5,500. On October 14, 2016, the Department filed exceptions challenging only the ALJ's conclusions concerning the penalty for the violation under N.J.A.C. 7:26-5.6(a) for submitting inaccurate or false information. Respondents replied to the Department's exceptions on October 21, 2016.

I accept the ALJ's recitation of the facts and her characterization of the testimony. The ALJ found that the Department offered no evidence that Respondents had asked for a second set of decals in order to obtain excess decals. The two sets of decals were visually indistinguishable and no letter accompanied the replacement decals advising the recipient of the status of the decals. The ALJ noted that the replacement decals brought to the inspection site had not been used on other equipment, and the fact that Respondents brought additional invalid decals to the site after the Department made them aware of the problem supported the conclusion that Respondents' use of the invalid decals was a mistake due to Byrne's inattention to his business while he was caring for his ill wife. While Byrne acted in error, the ALJ did not find that the evidence supported a finding of willful or intentional action or omission.

The ALJ concluded that Byrne's submission of inaccurate or false information warranted a \$1,000 penalty pursuant to N.J.A.C. 7:26-5.6(c)2.

In its exceptions, the Department argued that the ALJ's decision was an abuse of discretion because she disregarded evidence that undermined Byrne's credibility and supported a finding that Byrne intentionally or knowingly submitted inaccurate or false information. The Department argued that the ALJ improperly gave no weight to the evidence and arguments relating to Respondents' relationship with TST or Triple Crown Disposal, whose mailing address Byrne used. The Department also pointed to numerous discrepancies in Byrne's testimony to support an inference that he knowingly provided false information, and that such inference, combined with other circumstantial evidence, enabled the Department to meet its burden.

Respondents' reply to the Department's exceptions asserted that the ALJ's determination as to Byrne's credibility was not arbitrary, capricious, or unreasonable and was supported by sufficient, competent, and credible evidence as required by N.J.S.A. 52:14B-10. They also opposed the Department's request for additional findings of fact as unfair because they claim the facts listed in the Department's exceptions relate to issues in another matter pending in the OAL.

I agree with the ALJ that the Department did not meet its burden of demonstrating that the violation under N.J.A.C. 7:26-5.6(a) for submitting inaccurate information or false statements was committed purposefully, intentionally, deliberately, knowingly, or willfully such that the penalty under N.J.A.C. 7:26-5.6(c)1 applied. The Department had the burden of proving that Respondents acted purposefully, intentionally, deliberately, knowingly, or willfully by a preponderance of the evidence, the generally applicable standard in civil matters. Abbott v. Burke, 206 N.J. 332, 399 (2011). The preponderance of the evidence standard requires that the evidence demonstrate that "a desired inference is more probable than not." Ibid.

In determining that Byrne had not purposefully, intentionally, deliberately, knowingly, or willfully submitted inaccurate information or false statements to the Department, the ALJ implicitly found Byrne, a lay witness, to be credible. Byrne testified that because he was caring for his ill wife during the time he committed the violations, he was not attending to his business as he should have. The ALJ's decision is not arbitrary, capricious, or unreasonable, and is supported by sufficient, credible evidence in the record. See N.J.S.A. 52:14B-10(c); In re Xanadu Project at Meadowlands Complex, 415 N.J. Super. 179, 188 (App. Div.), certif. denied 205 N.J. 96 (2010).

The Department's exceptions point to numerous inconsistencies in Byrne's testimony which the Department claims demonstrate that Byrne is not credible as a general matter and, by extension, that it is more likely than not that Byrne intended to deceive the Department. These inconsistencies show some evidence of carelessness in responding, but do not demonstrate that it is more likely than not that Byrne intentionally deceived the Department as to the decals. Absent direct evidence that Byrne sought to obtain excess decals for improper use, those inconsistencies are insufficient to prove Byrne's intent. Further, facts relevant to the other pending matter are not at issue in this contested case challenging the Department's October 11, 2013, NOCAPA.

I ADOPT the ALJ's conclusion that the Department failed to establish by a preponderance of the evidence that Respondents intentionally provided false information to the Department. Respondents' submission of false information to the Department is nonetheless a violation of N.J.A.C. 7:26-5.6(a) and merits a penalty pursuant to N.J.A.C. 7:26-5.6(c)2.

I further find that the ALJ correctly assessed the penalties. Under N.J.A.C. 7:26-5.4(g), violations of N.J.A.C. 7:26-3.4(h), (h)1, (h)2, and (h)3 are minor while a violation of N.J.A.C. 7:26-3.2(a)2 is non-minor. A violation under N.J.A.C. 7:26-5.6(a) is also non-minor. See N.J.A.C. 7:26-

5.6(e). The Department did not assess penalties for the minor violations because Respondents cured them in accordance with the Grace Period Law, N.J.S.A. 13:1D-125 et seq., and N.J.A.C. 7:26-5.4(g)6.

The base penalty for violating N.J.A.C. 7:26-3.2(a)2 is \$4,500, in accordance with N.J.A.C. 7:26-5.4(g). The Department did not adjust this penalty upward under N.J.A.C. 7:26-5.4(f) because Respondents had not violated the same or a different rule in the twenty-four months prior to this violation. The ALJ accepted this finding and I concur.

As to the penalty for submitting inaccurate or false information, I find that the ALJ properly found that the evidence did not show that Byrne had intentionally submitted false information to the Department. Thus the lesser penalty of \$1,000 pursuant to N.J.A.C. 7:26-5.6(e)2 was appropriate.


Finally, it is undisputed that Byrne is the sole proprietor of JBT and was responsible for his company's management decisions. Thus Byrne and JBT are equally liable for the violations and equally responsible for the payment of penalties.

CONCLUSION

Having reviewed the record, and considered the Department's exceptions and the Respondents' reply thereto, I ADOPT the ALJ's initial decision in its entirety. Respondents are directed to pay the penalty of \$5,500 within twenty (20) days of this Order as set forth in paragraphs 9, 10, and 11 of the NOCAPA.

IT IS SO ORDERED.

DATE December 22, 2016



Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

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JIMMY BYRNE TRUCKING
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