



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.)

TUCKAHOE ROAD AUTO SALES, LLC,)

Respondent.)

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

Petitioner,)

v.)

TUCKAHOE ROAD AUTO SALES, LLC,)
AND MARK LEMOINE,)

Respondents.)

ADMINISTRATIVE ACTION
FINAL DECISION
(CONSOLIDATED)

OAL DKT NO.: ECE-WE 6988-09
AGENCY REF. NO.: PEA 060003-
168108

OAL DKT NO.: ECE-SW 2179-10
AGENCY DKT. NO.: PEA 060001-
U67

This Order addresses an appeal of two Administrative Orders and Notices of Civil Administrative Penalty Assessment (AONOCAPAs) issued on September 13, and 14, 2006, by the Department of Environmental Protection (Department) concerning a solid waste facility at 317

North Tuckahoe Road, Monroe Township, Gloucester County, Block 129.01, Lot 27 (the Property) owned and operated by Tuckahoe Road Auto Sales, LLC (Tuckahoe) and Mark Lemoine (Respondents). The AONOCAPAs cited Respondents for violations of the Solid Waste Management Act (SWMA), N.J.S.A. 13:1E-1.1 et seq., the Water Pollution Control Act (WPCA), N.J.S.A. 58:10A-1.1 et seq., and their respective implementing rules.

AONOCAPA PEA060001-U67 (hereafter the Solid Waste AONOCAPA) was issued to Tuckahoe and Mark Lemoine, individually and as a corporate officer of Tuckahoe, on September 13, 2006, alleging that Respondents operated a solid waste facility without obtaining a Solid Waste Facility Permit pursuant to N.J.A.C. 7:26-2.8(f) by storing approximately 50,000 tires¹ on the Property. The Department assessed a \$35,000 penalty for this violation, which was subsequently reduced to \$4,500,² and directed Respondents to remove the tires to an authorized facility.

AONOCAPA PEA06003-168108 (hereafter the NJPDES AONOCAPA) was issued to Tuckahoe on September 14, 2006, alleging that Tuckahoe failed to develop and implement a Stormwater Pollution Prevention Plan (SPPP) and Best Management Practices (BMPs) for the facility, in violation of New Jersey Pollutant Discharge Elimination System (NJPDES) General Permit NJ0107671, Authorization No. NJG0142212 issued to Tuckahoe under the General Permit, the WPCA, and N.J.A.C. 7:14A-6.2. The Department assessed a penalty of \$70,000 for these violations and directed Tuckahoe to immediately comply with the General Permit.

Respondents timely requested a hearing to challenge each of the AONOCAPAs and the cases were transferred to the Office of Administrative Law (OAL) where they were consolidated

¹ The reported estimated number of tires observed at the rear of the Property varies from 10,000 to 50,000 between the certifications submitted by the Department; however, Tuckahoe and Lemoine do not dispute that a large pile of tires existed at the rear of the property.

² After the matter was referred to OAL, the Department lowered the penalty to \$4,500. The rationale for the reduced penalty is explained below.

and initially assigned to Administrative Law Judge (ALJ) John Schuster III. While the matter was pending in OAL, the parties attempted to settle the matter but were unsuccessful. On August 26, 2016, the Department filed a motion for summary decision, which Respondents opposed. On April 13, 2017, the matter was re-assigned to ALJ Solomon A. Metzger. ALJ Metzger issued an Initial Decision granting the Department's motion on May 15, 2017. No exceptions were filed.

Based on my review of the record, I ADOPT the ALJ's findings and conclusions as to Respondents' liability and the appropriateness of the penalties as set forth in the Initial Decision and amplified below.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are substantially undisputed and are set forth in the certifications and exhibits submitted with the Department's summary decision motion. Tuckahoe operates a scrap metal processing and automobile recycling yard on the approximately five-acre Property.

Solid Waste AONOCAPA

On July 9, 2004, Department inspectors Amy (Bilder) Scaffidi, Harry VanSciver, and Michael Gage inspected the Property in the presence of Mark Lemoine. The inspectors found a pile of approximately 40,000 rimmed and unrimmed tires at the rear of the Property and informed Lemoine that the tires had to be removed to an approved disposal facility. On April 21, 2005, inspectors Scaffidi and Gage returned to the Property and observed the tires in the same condition.

The Department issued a Notice of Violation (NOV) on April 28, 2005, citing Respondents with constructing or operating a solid waste facility without a valid permit, and directed

Respondents to correct the violation. Five more inspections of the Property in 2005 and early 2006 found no meaningful progress in removing the tires.

NJPDES AONOCAPA

NJPDES General Permit NJ010761³ governed the discharge of stormwater from scrap metal processing/automotive recycling facilities during the time period applicable here. On April 28, 2002, Tuckahoe submitted a Request for Authorization (RFA) to operate under the General Permit and the required Certification, and on January 1, 2003, the Department issued Authorization No. NJG0142212 to Tuckahoe.

In accordance with its Authorization and the General Permit, Tuckahoe was required to prepare, certify, and implement a SPPP, detailing the facility operations, potential sources of pollutants, and how nonpoint (stormwater) pollution will be minimized, and incorporating industry-specific BMPs to protect water quality at the facility, which Tuckahoe was responsible for drafting and implementing. Tuckahoe was required to prepare its SPPP and BMPs by July 1, 2003, and maintain a copy of the SPPP on site and available for inspection. Within six months of receiving its Authorization, Tuckahoe was required to submit an SPPP Certification, together with a site map depicting the locations of activities, proposed and implemented BMPs, structures, cement pads, oil/water separators, septic systems, wells, and any nearby water bodies or wetlands. An annual certification was required thereafter.

The site-specific BMPs to be implemented under the General Permit include, among other things, that (1) a vehicle inspection area be established where automobiles and other scrap items

³ General Permit NJ010761 was issued March 1, 1995 and was renewed on December 12, 1999, and February 1, 2005. It has since expired and been replaced with a new scrap metal processing and recycling stormwater General Permit.

which may contain fluids will be inspected for leaks and/or evidence of discharges; (2) fluids from vehicles and other items be drained on a bermed concrete pad in a way that prevents discharge to stormwater or the ground surface; (3) other types of containers holding automotive and other fluid wastes be stored in secondary containment and not exposed to rainfall or stormwater; (4) removed car batteries be stored under cover, on an impervious surface; and (5) engine blocks and oily materials be stored in buildings or leak-proof containers.

Inspections for compliance with the General Permit

The Department conducted a series of inspections and issued four NOVs between August 2003 and August 2006. On August 25, 2003, inspector Sandy Cawley (Cawley) inspected the Property and was informed by Lemoine that he had not completed the SPPP. Cawley returned to the Property on September 4, 2003, and found that the SPPP was still not completed. On this date, Cawley observed batteries stored on the ground without cover, more than 20,000 unrimmed and uncovered tires, and vehicles containing fluids stacked three high at the rear of the Property. The Department issued Tuckahoe an NOV on September 5, 2003, for failure to develop and implement an SPPP as required by the General Permit.

On September 24, 2003, Cawley verified completion of the SPPP and that batteries were now being stored properly, but observed that vehicles containing fluids were still stacked at the rear of the yard. An inspection on March 31, 2004, revealed that batteries were no longer being properly stored, and BMPs for general facility maintenance had not been implemented.

On August 5, 2004, Cawley noted that the SPPP was not available for review on site and observed additional deficiencies on the Property: batteries were stored inside a truck liner but not under cover; removed gasoline tanks were stored on the ground without secondary containment;

motors were exposed to the elements and not stored in buildings or leak-proof containers; and the vehicle inspection area had not been established. After the inspection, Lemoine advised Cawley that he would remove gas tanks before the scheduled August 11, 2004, inspection, store all batteries in a covered truck by October 1, 2004, clean up and organize the front yard and vehicle draining area by October 1, 2004, collect all motors and store them in covered containers by January 1, 2005, and construct a roof over the secondary containment area by March 1, 2005. Cawley reinspected on August 12, 2004, and confirmed that gasoline tanks had been drained and removed and most of the engines were placed in covered containers. However, batteries had not been covered or moved and a vehicle inspection area had not been established. Lemoine advised her that these deficiencies would be corrected by October 1, 2004.

The Department issued Tuckahoe a second NOV on September 22, 2004, noting the areas of noncompliance observed during the two August 2004 inspections. The NOV also directed Tuckahoe to submit the annual certification by July 2004, and to prepare and implement an SPPP with BMPs outlined in the August 12, 2004 inspection report prepared by Cawley.

Cawley inspected the Property on October 7, 2004, noting that not all SPPP worksheets were available for review and that the BMPs outlined in her August 5, 2004, inspection report had not been implemented. She found that batteries had been removed from the Property. Cawley returned to the Property on January 6, 2005, but could not gain access. She observed that the area near the garage and office appeared to have been cleaned as directed.

On March 16, 2005, Cawley inspected the Property and confirmed that all motors had been removed but the vehicle draining area was disorganized. A BMP was developed by Cawley at the time, directing Lemoine to construct a roof over the second containment area by May 2005.

Cawley inspected the Property again on January 17, 2006, and noted the required annual certification had not been submitted to the Department. In addition, the SPPP needed to be updated to reflect the BMPs implemented to date. She also found a number of unsatisfied BMPs.

The Department issued the third NOV on February 2, 2006, noting all the areas of noncompliance observed during the recent inspections. The February 2, 2006, NOV required Tuckahoe to remedy all the deficiencies and provide a written response within fifteen days of receipt of the NOV. Tuckahoe responded by letter dated February 27, 2006, including a site map, but three required documents were missing: a timeline for updating the SPPP BMPs, implementation certification and annual certification.

On July 19, 2006, Cawley inspected the Property, noting that the annual certification had not been submitted in 2005. She also observed motors stored improperly, and that no additional cleanup of the front yard had occurred since the January 17, 2006, inspection. Tuckahoe had still not constructed a vehicle dismantling and fluid draining area.

The Department issued the fourth NOV on August 22, 2006, citing Tuckahoe with failure to implement and comply with BMPs in the February 2, 2006, NOV noted above, and causing uncontrolled discharges under a motor being stored on the ground next to the garage area. The NJPDES AONOCAPA was issued thereafter on September 14, 2006.

Tuckahoe's Site Investigation Report

On November 26, 2007, Tuckahoe submitted a report prepared by Brett Iwiki, an environmental scientist with The Whitman Companies, Inc. (Whitman Report), summarizing Iwiki's site investigation at the Property on November 15, 2007, in support of its response to the Department's Motion for Summary Decision. The Whitman Report indicated that Iwiki observed

no evidence of staining or stressed vegetation on or in the vicinity of the automobile, scrap metal, and tire storage areas, or the reusable motor oil and car battery storage area and that the on-site above-ground storage tanks and lift area were sound, with no evidence of staining. Also, several puddles of storm water were present but no sheen was observed on any of them. Iwiki notes that some areas were obscured from inspection by piles of vehicles and parts.

The Initial Decision

In the OAL, the Department filed a motion for summary decision as to both AONOCAPAs on August 26, 2016. Respondents opposed the motion, arguing that there were facts in dispute and that witness credibility required a hearing before the ALJ. On May 15, 2017, the ALJ granted the Department's motion, finding that the SWMA and the WPCA are strict liability statutes. Dep't of Env'tl. Prot. v. Lewis, 215 N.J. Super. 564 (App. Div. 1987). Accepting that the facts presented by the Department's motion for summary decision were "largely undisputed," the ALJ granted summary decision, finding Respondents liable for all the violations cited. The ALJ affirmed the penalty of \$4,500 jointly and severally against both Tuckahoe and Lemoine, and also affirmed the penalty of \$70,000 against Tuckahoe.

The ALJ noted that the Whitman Report was not persuasive because it was uncertified and recorded site conditions more than a year after the events cited in both AONOCAPAs, and did not "directly and meaningfully" address the charges set forth therein, but rather "glosse[d] past" them and thus did not create a genuine issue of material fact as required under Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995). Neither Respondents nor the Department filed exceptions.

DISCUSSION

Under N.J.A.C. 1:1-12.5, summary decision may be granted when the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Contini v. Bd. of Educ., 286 N.J. Super. 106, 121 (App. Div. 1995). When a party moves for summary decision, the non-moving party must submit responding affidavit(s) setting forth specific facts to show that there is a genuine issue that can be determined only in an evidentiary hearing. N.J.A.C. 1:1-12.5(b); see Housel v. Theodoridis, 314 N.J. Super. 597, 604 (App. Div. 1998) (to defeat a summary judgment motion, the non-moving party cannot simply “sit on his or her hands,” but must present specific facts showing there is a genuine issue for trial). Like the standard for summary judgment under N.J. Court Rule 4:46-2, the standard for a motion for summary decision requires the court or agency to determine whether the evidence, when viewed in the light most favorable to the non-moving party, is “sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Contini, 286 N.J. Super. at 122 (quoting Brill, 142 N.J. at 523). Applying this standard, the Department’s summary decision motion was properly granted because the evidence submitted by Tuckahoe and Lemoine does not raise any genuine issues of material fact.

Solid Waste AONOCAPA

The SWMA prohibits operation of a solid waste facility without authorization. N.J.S.A. 13:1E-4(a); N.J.A.C. 7:26-2.8(f). The SWMA is a strict liability statute, meaning that liability attaches so long as the Department can show a violation occurred; intent or willfulness need not be shown. Dep’t of Env’tl. Prot. v. Harris, 214 N.J. Super. 140, 147-48 (App. Div. 1986).

Here, the undisputed facts show that Respondents operated a solid waste facility without a permit. Over the course of the Department's inspections on July 9, 2004; April 21, 2005; May 6, 2005; July 29, 2005; November 11, 2005; January 17, 2006; and January 20, 2006, the Department observed a large pile of up to 50,000 tires and no significant effort to remove them. Respondents were notified of the violations by the April 28, 2005, NOV, yet they failed to take the required actions, even after the Solid Waste AONOCAPA was issued. Respondents have not submitted any evidence to the contrary; thus, summary decision was properly granted on the Department's motion.

Responsible Corporate Officer (RCO) Doctrine

The Department assessed penalties against both Tuckahoe and the company's owner, Lemoine, individually and as a corporate officer, for violations of the SWMA. Neither Respondents nor the Department addressed the RCO doctrine; however, some discussion is appropriate where personal liability is alleged against a corporate violator's officers.

The RCO doctrine has been found to apply where the rules implementing a statute include corporate entities and individuals in the definition of "person." The term "person" is used throughout the SWMA, see e.g., N.J.S.A. 13:1E-5, -9 -12, but is not expressly defined in N.J.S.A. 13:1E-3. The Department's regulations, however, define person to include "an individual, trust, firm, joint stock company . . . corporation (including a government corporation), corporate official, partnership, [or] association" N.J.A.C. 7:26-1.4. Furthermore, the SWMA holds "any person" who violates the act liable for penalties. N.J.S.A. 13:1E-9f. The SWMA grants the Department broad authority to regulate solid waste. N.J.S.A. 13:1E-14. "It is beyond cavil that an agency's authority encompasses all express and implied powers necessary to fulfill the legislative scheme

that the agency has been entrusted to administer.” In re N.J.A.C. 7:1B-1.1 et seq., 431 N.J. Super. 100, 126 (App. Div. 2013), certif. denied, 216 N.J. 8 (2014).

The RCO doctrine has been held to apply where “there [is] a showing that a corporate officer had actual responsibility for the condition resulting in the violation or was in a position to prevent the occurrence of the violation but failed to do so.” DEP v. Standard Tank Cleaning Corporation, 284 N.J. Super. 381, 403 (App. Div. 1995). “Liability and penalties under the SWMA extend beyond the corporation to corporate officers who have personal knowledge of the unlawful nature of the regulated activities and are in a position of authority to ensure that such activities do not continue.” See N.J. Dep’t of Env’tl. Prot. v. A. Montone Construction, OAL Dkt. No. ESW 10090-2005 S, 2007 N.J. AGEN LEXIS 1037, Final Decision (April 11, 2007) (citing N.J. Dep’t of Env’tl. Prot. v. Camden Asphalt & Concrete Co., Inc. and Albert Pangia, Jr., Individually, OAL Dkt. No. ESW-6344-01S, Agency Dkt. No. SW-07263-SW, 2003 N.J. AGEN. LEXIS 1039, Final Decision June 25, 2005; Standard Tank Cleaning Corporation, supra, 284 N.J. Super. at 403).

Here, the undisputed facts show that Lemoine was not only the point of contact for Tuckahoe but was responsible for facilitating removal of the tires, as shown during the Department’s inspections. Yet, despite being directed by the Department to remove the tires, Lemoine failed to act. Accordingly, the Department and the ALJ correctly assessed liability against both Lemoine, individually, and Tuckahoe.

NJPDES AONOCAPA

The WPCA prohibits the discharge of any pollutant into State waters except as in compliance with N.J.S.A. 58:10A-6. The WPCA, like the SWMA, is a strict liability statute. Dep’t of Env’tl. Prot. v. Lewis, 215 N.J. Super. 564, 572-73 (App. Div. 1987).

During all timeframes discussed herein, the General Permit applied to Tuckahoe's operation, requiring it to develop an SPPP to reduce or eliminate stormwater pollution using BMPs. The General Permit directs that noncompliance with BMPs or their schedule of implementation shall be considered a violation. General Permit Part IV, Section F.1.a. The Department issued the NJPDES AONOCAPA only after Tuckahoe repeatedly failed to comply.

The General Permit requires that Tuckahoe have an updated SPPP on site for inspection at all times, General Permit Part IV, Section D.3. Here, the undisputed facts show that Tuckahoe failed to have an updated SPPP available during the August 5, 2004, and October 7, 2004, inspections. Accordingly, the ALJ properly granted summary decision on this violation.

Tuckahoe was required to submit the SPPP Preparation Certification by July 2005, and the SPPP Implementation and Inspection Certification annually thereafter, demonstrating its implementation of all the SPPP requirements. N.J.A.C. 7:14A-6.3(a); General Permit Part IV, Section E.1.b.ii. (Attachment C); N.J.A.C. 7:14A-24.9(a)2.ii.; General Permit Part IV, Section E.1.c. (Attachment D). The undisputed facts show that Tuckahoe failed to meet these deadlines. Accordingly, the ALJ properly granted summary decision on this violation.

The General Permit requires that a vehicle inspection area be established where automobiles and scrap items which may contain fluids will be inspected for leaks and/or evidence of discharges. General Permit Part IV, Section F.2.c.i. The undisputed facts show that Tuckahoe failed to establish this area as observed during the August 5, 2004, August 12, 2004, January 17, 2006, and July 19, 2006, inspections; and as noted by the February 2, 2006, and August 22, 2006, NOV's. Accordingly, the ALJ properly granted summary decision on this violation.

The General Permit directed that Tuckahoe control or abate the discharge of pollutants as required by N.J.A.C. 7:14A-6.2(b)1. Here, the undisputed facts show that Tuckahoe failed to

completely implement BMPs established under its SPPP to limit rainwater contact with materials stored on site. Specifically, Tuckahoe failed to store batteries properly (inspections of September 4, 2003; March 31, 2004; August 5, 2004; and August 12, 2004); Tuckahoe failed to store engine blocks properly (inspections of August 5, 2004; August 12, 2004; January 17, 2006; and July 19, 2006); and Tuckahoe failed to store gasoline tanks properly (inspection of August 5, 2004).⁴ Accordingly, the ALJ properly granted summary decision on this violation.

PENALTY DETERMINATION

Solid Waste AONOCAPA

The Department is authorized to assess a maximum civil administrative penalty of \$50,000 for each violation under N.J.S.A. 13:1E-9(e) of the SWMA, and uses either the regulations at N.J.A.C. 7:26-5.4 or -5.5 to do so.

N.J.A.C. 7:26-5.4 establishes base penalties for specific listed violations. Pursuant to N.J.A.C. 7:26-5.4(g)2, the base penalty for a first violation of N.J.A.C. 7:26-2.8(f) is \$4,500. Pursuant to N.J.A.C. 7:26-5.4(f)3 and 4., the Department may assess a “severity component” if appropriate to add to the base penalty.

The Department also has discretion to assess a penalty under the penalty matrix at N.J.A.C. 7:26-5.5 when a violation is not listed at N.J.A.C. 7:26-5.4 or if the penalty amount determined under N.J.A.C. 7:26-5.4 is an insufficient deterrent based on the severity of the violations. The penalty matrix accounts for the severity of the conduct and the seriousness of the violation as minor, moderate, or major.

⁴At the August 12, 2004, inspection, Cawley observed that the gas tanks had been drained and removed to a walled containment area.

Here, in the penalty rationale included in the Solid Waste AONOCAPA, the Department cited to N.J.A.C. 7:26-5.4(g) but applied the N.J.A.C. 7:26-5.5 matrix to assess the penalty of \$35,000, having determined that the seriousness of Tuckahoe's violation was moderate and the conduct major. However, because the Respondents were not properly notified in the AONOCAPA of the rationale for assessing the higher matrix-based penalty under N.J.A.C. 7:26-5.5 rather than the base penalty under N.J.A.C. 7:26-5.4, the Department determined to impose the base penalty of \$4,500 pursuant to N.J.A.C. 7:26-5.4. In light of the faulty notice as to the initial assessment, I find that the penalty imposed by the Department and affirmed by the ALJ for this violation is correct.

NJPDES AONOCAPA

In the NJPDES AONOCAPA, the Department assessed a \$70,000 total penalty for Tuckahoe's violations of the General Permit. The rules governing penalties for violations of the WPCA require the Department to consider the seriousness of the violation and the conduct of the violator in assessing a penalty. N.J.A.C. 7:14-8.5. These factors are articulated at N.J.A.C. 7:14-8.5(e) – (h). The Department determined that Tuckahoe's conduct for each violation in the NJPDES AONOCAPA was moderate, meaning that the violation was unintentional but foreseeable. N.J.A.C. 7:14-8.5(h). Here, Department inspectors met with and spoke to Lemoine on multiple occasions about the requirements of the SPPP and implementation of BMPs to address them. Nonetheless, Tuckahoe failed to complete or implement BMPs from August 25, 2003, through July 19, 2006. Tuckahoe was well aware of its responsibilities under the General Permit, particularly after Cawley's inspections and receipt of the three NOVs; yet, Tuckahoe failed to

comply with the General Permit. Accordingly, the Department and the ALJ's determination that Tuckahoe's conduct was moderate is reasonable.

The Department assessed the total penalty for six distinct violations of the WPCA. First, pursuant to N.J.A.C. 7:14-8.5(e), the Department determined that the failure to update SPPP BMPs and maintain a copy of the SPPP on site constituted minor seriousness, and assessed a penalty of \$5,000, which is in the midpoint of the matrix range (\$3,000 - \$7,000). Minor seriousness is defined as any violation that is not an effluent limitation violation identified in N.J.A.C. 7:14-8.5(g)3ii or iii. N.J.A.C. 7:14-8.5(g)3i. Tuckahoe's failure to keep a copy of the SPPP on site meets the definition of minor seriousness, and the Department's determination, as affirmed by the ALJ, was reasonable.

The Department determined Tuckahoe's failure to submit the annual certifications as required by the General Permit to be of minor seriousness, and assessed a penalty of \$5,000, which is in the mid-point of the matrix range (\$3,000 - \$7,000). The violation is minor under N.J.A.C. 7:14-8.5(g)3ii and iii, and the Department's determination, as affirmed by the ALJ, was reasonable.

The Department determined that the remaining four violations were of moderate seriousness, which is defined as any violation that has caused or has the potential to cause substantial harm to human health or the environment. N.J.A.C. 7:14-8.5(g). Tuckahoe's failure to implement a vehicle inspection area; improper storage of batteries; improper storage of engine blocks; and improper storage of gasoline tanks all had the potential to cause substantial harm to the environment because of the threat of polluted run-off from fluids and other contaminants being transported off the site or to groundwater during rainfall events. The Department assessed a

\$15,000 penalty against Tuckahoe for each violation, which is the midpoint of the matrix range (\$10,000 - \$20,000).

Tuckahoe argues that the violations are not moderate in seriousness because the Whitman Report shows that no pollutants entered the groundwater. Even if actual environmental harm was not observed at that time, failure to implement the required BMPs and General Permit conditions had the potential to cause substantial harm to the environment, thus the penalty was proper. N.J.A.C. 7:14-8.5(g). The undisputed facts show Tuckahoe failed to implement the General Permit requirements as related to the vehicle inspection area, and storage of batteries, engine blocks, and gasoline tanks. Tuckahoe's compliance was slow and piecemeal, despite ample notice and opportunity to avoid enforcement action. These violations had the potential to expose harmful substances to the environment. Accordingly, as the ALJ found, the Department correctly assessed a \$15,000 penalty for each of these violations.

CONCLUSION

For the reasons set forth therein and above, I ADOPT the ALJ's Initial Decision affirming the Department's findings and penalties in the Solid Waste and NJPDES AONOCAPAs and directing payment of penalties in the amounts of \$4,500 and \$70,000, respectively. Tuckahoe and Lemoine are ORDERED to remove the tires being improperly stored on the Property as set forth in Paragraph 4 of the Solid Waste AONOCAPA if they have not already done so. Tuckahoe and Lemoine are also ORDERED to pay the penalty of \$4,500 as set forth in Paragraph 12 within twenty (20) days from the date of this Final Decision. Tuckahoe is further ORDERED to immediately comply with the General Permit as set forth in Paragraph 17 of the NJPDES

AONOCAPA and to pay the penalty of \$70,000 as set forth in Paragraph 24 within twenty (20) days from the date of this Final Decision.

IT IS SO ORDERED.

August 8, 2017
DATE



Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
WATER COMPLIANCE AND ENFORCEMENT, v.
TUCKAHOE ROAD AUTO SALES, LLC

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MARK LEMOINE

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(CONSOLIDATED)

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