



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

(CONSOLIDATED)

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
WATER COMPLIANCE AND
ENFORCEMENT,**

Petitioner,

v.

TUCKAHOE ROAD AUTO SALES, LLC.,

Respondent,

And

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

Petitioner,

v.

**TUCKAHOE ROAD AUTO SALES, LLC., AND
MARK LEMOINE,**

Respondents.

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

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

Robert J. Kinney, Deputy Attorney General, for petitioner (Christopher S. Porrino, Attorney General of New Jersey, attorney)

Robert Agre, Esq., for respondents

Record Closed: May 4, 2017

Decided: May 15, 2017

BEFORE **SOLOMON A. METZGER**, ALJ t/a:

This consolidated matter arises out of two Administrative Orders and Notices of Civil Administrative Penalty Assessment (AONOCAPA) issued under the Solid Waste Management Act, N.J.S.A. 13:1E-1.1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1.1 et seq., and their respective regulations. Respondents requested a hearing and the matters were transmitted to the Office of Administrative Law as contested cases, pursuant to N.J.S.A. 52:14B-1 to -15, and consolidated. The Department of Environmental Protection has now filed a motion for summary decision, N.J.A.C. 1:1-12.5; Brill v. Guardian Life Ins. Co. of Amer., 142 N.J. 520 (1995). The solid-waste infraction alleges the unpermitted and longstanding presence on site of a large quantity of tires (Tire AONOCAPA); the water-pollution violations relate to runoff controls (Stormwater AONOCAPA). Mark Lemoine is named personally only in the Tire AONOCAPA.

The facts are substantially undisputed and are largely set forth in the certifications and exhibits submitted with the motion. Respondent Tuckahoe Road Auto Sales, LLC, operates a salvage yard in Monroe Township, Gloucester County. The site is approximately five acres, and the property has been used as a salvage yard for many decades. An inspection in July 2004 revealed a pile of some 40,000 rimmed and un-rimmed tires. The inspectors informed Mr. Lemoine, the owner, that the un-rimmed tires might collect water and breed mosquitos, and that they were to be processed and removed to an approved disposal facility. Inspectors returned in April 2005 to find the same condition. A notice of violation (NOV) was issued on April 28, 2005. Additional inspections in 2005 and early 2006 observed no meaningful progress. The Tire AONOCAPA was issued in September 2006 alleging that respondents were operating a solid-waste facility without a permit. A penalty of \$35,000 was assessed; however, the Department has since lowered the figure to \$4,500.

In August 2003 inspectors began monitoring compliance with the storm-water-control element of the company's New Jersey Pollutant Discharge Elimination System Permit. The terms of the permit required the company to prepare a stormwater pollution prevention plan (SPPP) using best management practices (BMP) by July 1, 2003, and to achieve compliance by July 1, 2004. Over the course of multiple inspections spanning from August 2003 through July 2006, the inspectors found that the SPPP was not developed timely; was not on site during all inspections; and was not submitted for annual certification. Moreover, substantive elements of the SPPP had not been realized. No concrete dismantling pad had been constructed to safely drain fluids from salvage vehicles. At various inspections there were either engines, batteries, or fuel tanks on the ground, uncovered and open to the elements. The stormwater AONOCAPA was issued in September 2006.

Respondents submitted the report of Brett Iwicki, dated November 26, 2007. He inspected the site, and although some surfaces were obscured because autos and parts were piled high, he determined that there were no visible signs of contamination on the property. This is the substance of the motion record.

The Solid Waste Management Act and Water Pollution Control Act are strict-liability statutes, Dep't of Env'tl Prot. v. Lewis, 215 N.J. Super. 564 (App. Div. 1987). The Tire AONOCAPA cites failure to have a permit for the storage of solid waste, N.J.A.C. 7:26-2.8(f). The Stormwater AONOCAPA focuses on inattention to the steps by which compliance is achieved. The SPPP is designed to limit the encounter of runoff with contaminants. Respondents filed an uncertified report recording site conditions more than a year after the events noticed in the two AONOCAPA's. Under Brill, fact questions are created by opposing the movant's papers directly and meaningfully. The question addressed by the Iwicki report—whether contaminants were released—glosses past the charges.

The Tire AONOCAPA imposed a penalty of \$35,000, but as set forth in the certification of Raimund Belonzi, a notice error occurred. Instead of citing to N.J.A.C. 7:26-5.5(g), which authorized a higher penalty based on the nature of the violation, the

AONOCAPA cited to N.J.A.C. 7:26-5.4(g), which specified a penalty of \$4,500. The Department then decided to pursue the lower figure.

The Stormwater AONOCAPA assessed six specific infractions in accordance with the matrix adopted at N.J.A.C. 7:14-8.5. The first two were deemed “minor” and are: failure to timely prepare, update and maintain a copy of the SPPP on site, and failure to submit the SPPP for annual certification. In each instance the penalty was \$5,000, the mid-point of the range. Four of the violations were deemed of “moderate seriousness,” meaning that they had the potential to cause substantial harm to health, or the environment. These are: failure to construct an impervious area for draining vehicle fluids, improper storage of batteries, improper storage of engine blocks, and improper storage of gas tanks. In each instance the concern is that runoff might carry pollutants from these salvage parts into ground or surface water systems. Each of these violations was assessed at \$15,000, the mid-point of the range.

Thus, the sum of the penalties is \$74,500.

Based on the foregoing, summary decision is granted with respect to the Tire AONOCAPA, and respondents are jointly and severally responsible to pay the penalty of \$4,500. Summary decision is granted as against the company in the amount of \$70,000 on the Stormwater AONOCAPA. Respondents are directed to remediate the violations in accordance with the terms of each AONOCAPA.

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.

A handwritten signature in black ink, appearing to read 'Solomon A. Metzger', with a long horizontal stroke extending to the right.

May 15, 2017

DATE

SOLOMON A. METZGER, ALJ t/a

Date Received at Agency:

Date Mailed to Parties:

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