



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ECE 00269-21

AGENCY DKT. NO.

PEA190001,252805

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

Petitioner,

vs.

CHARLES SIMSEK,

Respondent.

William T. Rozell, Deputy Attorney General, for Petitioner (Matthew J. Platkin,
Attorney General of the State of New Jersey, attorneys)

John J. Feczko, Esq., for Respondent

Hearing Date: June 2, 2023

Decided: July 28, 2023

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent appeals an Administrative Order and Notice of Civil Administrative
Penalty Assessment (AONOCAPA), dated March 5, 2019, issued by petitioner.

The New Jersey Department of Environmental Protection, Office of Legal Affairs, transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where it was filed on December 18, 2020.

A prehearing conference was conducted on January 21, 2021, and a prehearing order was entered on the same date.

A hearing was held on April 25, 2023. The record remained open to permit the parties to obtain a transcript of the hearing, and to submit written closing summations. Respondent submitted his summation on May 30, 2023. Petitioner submitted its summation on June 2, 2023, whereupon the record closed.

ISSUES

Did respondent engage in the collection, transportation and disposal of solid waste without a certificate of public convenience and necessity (CPCN) required to do so; and, did respondent exceed the limitations of his A901 exempt self-generator NJDEP transporter registration.

SUMMARY OF RELEVANT TESTIMONY

Petitioner's Case

Lawrence Lewis testified as follows:

DIRECT EXAMINATION

Mr. Lewis is employed by the NJDEP and works in the Transportation Oversight Unit Special Investigations. He is the supervisor of the unit.

He described his duties, which are broad and encompass solid waste and hazardous waste transportation.

Mr. Lewis described A901, which was an Assembly bill number from 1986. It refers to a license for the transportation of solid and hazardous waste and the disposal of the same.

In addition to the A901 license, an entity needs to obtain a Certificate of Public Convenience (CPCN) to provide for the transportation and collection of solid waste. Also, prior to the transportation of waste a Registration Statement is required. Any equipment used in the transportation of waste must also be registered with NJDEP.

NJDEP then issues a NJDEP number which must be displayed on the driver's side of a vehicle.

The A901 license is important. It gives the State the opportunity to vet the individual providing third party transportation. The process is very lengthy and can take anywhere from eight months to over one year. The cost of the application process is approximately \$1,200.

There is a "self generator exemption" for companies that do not provide third party transportation. This is when part of the day to day operations of a business may create waste. By example, Mr. Lewis mentioned a contractor, electrician or plumber that may create waste as part of their day to day operations. They are allowed to transport their self generated waste, but cannot transport third party waste.

Self generators must register with NJDEP. This application is less intensive than the A901 process. A self generator registration can be done within one month. The only cost is for the decal to be placed on the vehicle.

He is familiar with Mr. Simsek through reviewing the case file and the AONCAPA (Administrative Order and Notice of Civil Administrative Penalty Assessment).

Mr. Simsek does not have an A901 license. He is registered with NJDEP as a self generator. Mr. Lewis then reviewed Mr. Simsek's self generator application (P-10) and noted the telephone number listed and the DEP number 27553 assigned.

The AONCAPA was issued by Bob Gomez, Bureau Chief of the Bureau of Hazardous Waste Compliance and Enforcement. The issue date was March 5, 2019. The violations noted in the AONCAPA were: exceeding limitations of self generator registration; engaging in the business of solid waste transportation without an A901 license; and, failure to obtain a certificate of public convenience and necessity prior to engaging in solid waste collection and disposal.

The investigation was conducted by Ronald Feehan, NJDEP investigator who worked in the Transportation Oversight Unit. He is now retired. He conducted A901 compliance investigations. Mr. Feehan issued a report (P-2) regarding his investigation. The investigation began when Mr. Feehan was contacted by Sara Paris, the Code Enforcement Officer from Marlboro about a property owner who had three unsigned letters from Mr. Simsek. Mr. Simsek was afforded the opportunity to review the three letters, but did not respond. The non response caused another violation.

Sara Paris emailed Mr. Feehan and provided him with information regarding the owner of the property, Mr. Derhi, together with the Notice of Violation she served him, and letters from Mr. Simsek regarding removal of the waste on Mr. Derhi's property. (P-3, P-4, P-5, P-6, P-7, P-8 and P-9)

The letters from Mr. Simsek have his telephone number and his DEP number. The letters from Mr. Simsek to Mr. Derhi are dated August 27, 2017 (P-7), September 13, 2017 (P-8) and October 8, 2017 (P-9), respectively. All refer to removal of waste from Mr. Derhi's property.

Mr. Simsek cannot legally pick up waste, drop off a dumpster or accept money for waste pick up as he does not have an A901 license or a Certificate of Public Convenience and Necessity.

Mr. Feehan emailed Dolores Karau (P-11). Her email is the contact provided as part of Mr. Simsek's registration renewal. The email contained attachments, advised Mr. Simsek of the violations and requested a reply. Mr. Feehan sent another email to Ms. Karau and again requested a response from Mr. Simsek (P-12). Thereafter a

Notice of Violation was issued to Mr. Simsek dated December 26, 2017 (P-13). Mr. Simsek provided a response dated January 12, 2018 (P-14). He also provided a response to the AONOCAPA, which is dated March 29, 2019 (P-15).

Mr. Lewis went on to explain the penalties assessed for the three violations of the AONOCAP, and the reasons for the same. The total assessment for the three violations was \$25,000.

CROSS EXAMINATION

Regarding the AONOCAPA (P-1), the address is 806 6th Street, Secaucus, New Jersey. The three letters from Mr. Simsek to Mr. Derhi are not mentioned in the "Finding" section of the AONOCAPA. It only mentions the three violations.

Mr. Simsek's waste transportation registration application (P-10) does not ask for an email address.

The email from Mr. Feehan to Ms. Krause (P-11) mentions the three letters. Mr. Lewis was copied on this email. The second email from Mr. Feehan to Ms. Krause does not copy Mr. Lewis (P-11). Mr. Lewis did not know why he was copied of the first and not on the second.

Mr. Lewis did not know if Mr. Feehan had telephoned Mr. Simsek. There was no reference by Mr. Feehan to a telephone call to Mr. Simsek in Mr. Lewis' review of the documents. The Notice of Violation was mailed to Mr. Simsek. Mr. Lewis did not know if Mr. Feehan mailed copies of the emails to Mr. Simsek.

In Ms. Paris' email to Mr. Feehan she notes that she is not sure who wrote the three letters from Mr. Simsek to Mr. Derhi (P-3).

Mr. Lewis did not know if Mr. Feehan investigated whether the solid waste on Mr. Derhi's property belonged to the tree removal company or the construction company

that were tenant's at the property. There are no documents that DEP investigated who the garbage belonged to.

There is nothing in the documents that would suggest Mr. Feehan inquired as to how Mr. Derhi obtained the three Simsek letters. Nothing suggest that Mr. Feehan inspected the property. There is nothing to indicate that DEP investigated whether the property owner, the tree removal business or the construction business had any licenses. He did not know if DEP surveilled the property. The documents indicate it did not.

Mr. Lewis noted what occurs after Mr. Simsek's responses, to the Notice of Violation and the AONOCAPA, were received. He does not know if anyone from DEP contacted Mr. Simsek.

The DEP registration number is public information, and can be looked up.

There is no evidence, other than the three letters, that Mr. Simsek transported any debris that was not self generated.

RE-DIRECT EXAMINATION

A vehicle registration form was marked P-16 for identification and was admitted without objection.

Mr. Lewis described the document as a vehicle registration renewal summary. It was created on July 23, 2015. Equipment is to be re-registered every two years. In order to continue to transport solid waste in New Jersey the registration statement needs to be renewed. A new decal for equipment is issued. The applicant creates the renewal. On the form contact information is provided. P-16 is for Mr. Simsek's company. It was renewed again in 2017. On that renewal DoloresKarau@yahoo.com. This is the email used by Mr. Feehan.

RE-CROSS EXAMINATION

P-16 is an updated registration statement. It is required by N.J.A.C. 7:26-3.2(j).
It is at the discretion of the investigator to email, telephone or facsimile.

Charles Waters testified as follows:

DIRECT EXAMINATION

Mr. Walters is an investigator for the Environmental Enforcement and Justice Section, Division of Law. He has twenty-five years of experience in law enforcement. He has conducted hundreds of investigations.

He is familiar with Mr. Simsek through his investigation. As part of his investigation he spoke with Sara Paris. Ms. Paris showed him the email from Mr. Derhi (P-6) and the three letters from Mr. Simsek (P7, P-8 and P-9). Ms. Paris told him she had forwarded the three letters to Mr. Feehan. Ms. Paris told Mr. Walters she had forwarded the letters to DEP because of the violations with solid waste and her history with Mr. Derhi.

As part of his investigation he determined that the telephone number on the letters belonged to Mr. Simsek.

CROSS EXAMINATION

Mr. Waters did his investigation at the direction of the Deputy Attorney General Rozell.

He spoke personally with Mr. Derhi. Mr. Derhi denied he generated the letters. He did not question Mr. Derhi as to why the letters were not signed.

Respondent's Case

Charles Simsek, respondent, testified as follows:

DIRECT EXAMINATION

He is engaged in the excavation and demolition business. He sometimes does concrete and paving. He only has himself as an employee. He is self employed.

He sometimes uses a secretary.

He knows Mr. Derhi as they did work together. He knows him for two years. He placed a container on Mr. Derhi's property for Mr. Derhi to weld it. Mr. Simsek would take a stockade fence and tree wood and "stuff like that" as it is "a recycle" and does not need a license.

Mr. Simsek denied the three letters were from him.

He is familiar with an A901 license and knows the requirements for the same.

He denied hauling any waste from Mr. Derhi's property.

His container was there to be welded. It was filled and "they" called him to dump it. He declined and MAZZA Container Service transferred the contents from his container to their container.

He was aware the property had other businesses on it.

He denied sending the three letters. He denied authorizing the three letters.

He was not called by anyone from DEP.

He did receive violations in the mail.

He did not respond to the emails to Ms. Karau as he did not receive them.

Mr. Simsek reviewed sample letterheads from his business (R-1).

His company was never identified as Charles G. Simsek Disposal, as shown on P-7, P-8 and P-9. The style and font of his sample letterheads differ from the three letters produced by Mr. Derhi.

CROSS EXAMINATION

He did drop a container off at Mr. Derhi's property for welding purposes only.

He has been registered as a self generator since 2005.

He has known Mr. Derhi since 2015. He sold Mr. Derhi a bunch of steel. He has done work for Mr. Derhi "maybe twice a year". Mr. Simsek stated "he was too wacky for me."

Mr. Simsek did not do work at Mr. Derhi's property. He dropped a container there for welding. Mr. Derhi used it. Mr. Simsek told Mr. Derhi he could not use it. The only thing Mr. Simsek could take was wood and palettes. After this issue he no longer did work for Mr. Derhi.

Mr. Simsek confirmed that his name, DEP number and telephone number appear on P-7, P-8 and P-9.

Mr. Simsek only has one container. It is a roll off container, which he said was "ten yards, maybe twenty."

He did not contact the police that someone using his name on the letters. He stated that he would address it eventually.

Dolores Karau took care of his paperwork and billing. She is a long time friend.

He admitted that he requested the DEP "and stuff like that" be sent to Ms. Karau. He admitted that Ms. Karau had shown him correspondence from the DEP before sent to her email.

He denied seeing the emails from Mr. Feehan "until two years or three years ago."

Ms. Karau worked for Mr. Simsek for fifteen years. He did not pay her. He did not supply her with a computer. She worked remotely. Mr. Simsek does not do any administrative work. He does not take telephone calls. He does everything by word of mouth. People stop by the yard and ask him to do work.

Ms. Karau would make out invoices.

Mr. Simsek then reviewed the Notice of Violation (R-13). He had previously reviewed this in 2017. The Notice of Violation references the three letters. He agreed that he cannot legally offer roll off services. He stated he had a conversation with Mr. Feehan about the three letters and asked Mr. Feehan about them. This was sometime in 2017.

In his response to the Notice of Violation he does not refer to the letters. He explained he did not as he had not seen them. In his response, he stated he would do cleanup at the site. He also stated in his response he would apply for an A901 license. When he received the package he stated he did not want to be bothered with this.

His letterhead dated December 21, 2003 (R-1) is before he had a DEP registration. The other sample letterheads were dated in 2007 and 2011.

When asked why he did not submit a letterhead sample from 2017 he replied it's basically the same. He stated he had not changed it since 2011.

RE-DIRECT EXAMINATION

In 2017 he was preoccupied with health issues. His mother had a broken hip. This is why he was not as careful in reading the letters.

RE-CROSS EXAMINATION

He again denied authoring the three letters.

Dolores Karau testified as follows:

DIRECT EXAMINATION

She has been friends with Mr. Simsek for a lot of years. She helps him out administratively.

She denied authoring the three letters. Ms. Karau stated that any mailed letters would have been signed. Mr. Simsek never used the word "disposal".

CROSS EXAMINATION

She does not take calls for Mr. Simsek's business.

Ms. Karau confirmed her email address, but was unsure if she used it in 2017.

She does not specifically recall receiving the two emails from Mr. Feehan. Had she received them she would have referred them to Mr. Simsek. She may have received the emails. She just could not recall. It is possible it was an oversight on her part.

BY THE ALJ

She would do work for Simsek occasionally. She stated sometimes once a week, and sometimes once a month.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see Polk, supra, 90 N.J. 550. Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

When facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings. Credibility is the value that a finder of fact gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, its internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (8th Cir. 1963).

Both Mr. Lewis and Mr. Walters testified in a straightforward and direct manner. Nothing about their appearance or demeanor suggested that they were anything other than truthful. I deem them both credible.

Likewise, I deem Ms. Karau credible. Nothing about her seemed untoward. She appeared to be direct and forthright in her responses.

I had a good deal of trouble with the testimony of Mr. Simsek. Much of it simply did not make sense. By way of example, he testified that he was concerned that someone was using his name on the three letters. However, his response to why he did nothing about it made little sense. His response to the Notice of Violation does not jive with his testimony. In his response to the notice of violation he states Mr. Derhi hired him to clean up the property and dispose of his self generated waste. He stated he did not refer to the three letters in his response, which were noted in the Notice of Violation, because he had not seen them. In his testimony he indicated he only dropped off the container for welding. His response to the AONOCAPA Mr. Simsek adds more to his explanation, but again states he was doing cleanup work at the site. He never said he was doing cleanup during the course of his testimony. He did state he was going to take some recyclable debris. Again, he failed to address the three letters to Mr. Derhi. He testified that no one from DEP called him. Later he testified that he spoke with Mr. Feehan and inquired about the three letters. His answers seemed intentionally vague. I did not believe most of his testimony. His answers were largely non-sensical. I deem him not credible.

STIPULATED FACTS

Petitioner Department of Environmental Protection, Solid Waste Compliance and Enforcement ("Department" or "DEP"), by and through counsel, and Respondent Charles Simsek, by and through counsel, John J. Feczko, P.C., hereby submit the following stipulated facts which are relevant to the present matter, the Administrative Order and Notice of Civil Penalty Assessment issued to Charles Simsek (~~AONOCAPA"). Documents referenced herein are stipulated as to authenticity, but not to the veracity of the content:

1. The Parties stipulate that Charles Simsek holds NJDEP solid waste self-generator transporter registration #27553. The Parties further stipulate that Charles Simsek filed an initial transporter registration on or about May 3, 2005 (Exhibit P-10), which includes "The Affidavit of an Exempt Generator Under N.J.S.A. 13:1E-127g(1) through (7)" signed on May 3, 2005, claiming exemption from licensing indicating the waste would be generated through "paving, excavation and demo."

2. The Parties stipulate that NJDEP investigator Ronald Feehan sent Respondent Charles Simsek emails on November 29, 2017 (Exhibit P-1) and November 30, 2017 (Exhibit P-11). The Parties further stipulate that the emails identified as Exhibits P11 and P12 were sent to the email address: doloresKarau@yahoo.com.

3. The Parties stipulate that on December 26, 2017, issued a Notice of Violation ("NOV") (Exhibit P-13) to Respondent Charles Simsek for violations of "the Solid Waste Management Act, (N.J.S.A. 13:1E-1 et seq.) and the regulations promulgated thereunder (N.J.A.C. 7:26-1 et seq. and/or N.J.A.C. 7:26A-1 et seq.) and/or the Solid waste Utility Control Act, N.J.S.A. 48:13A-1 et seq. and the regulations promulgated thereunder (N.J.A.C. 7:26H-1 et seq.) . "

4. The Parties stipulate that Respondent Charles Simsek responded to the NOV by way of providing the Department with a completed Notice of Violation Compliance Response Form, dated January 12, 2018 (Exhibit P14). The Parties further stipulate that Charles Simsek signed the certification at the bottom of the Notice of Violation Compliance Response Form.

5. The Parties stipulate that on March 5, 2019, the Department issued an AONQCAPA (Exhibit P-1) to Respondent Charles Simsek for violations of "the Solid Waste management Act, N.J.S.A. 13:1E-1 et seq., and/or the Solid Waste Utility Control Act, N. J.A.C. 7:26-3.2 (c), N. J.A.C. 7:26-16.3 (a) , and N.J.A.C. 7:26H-1.6(a)."

6. The Parties stipulate that on March 29, 2019, Respondent Charles Simsek sent the Department a signed response (Exhibit P14) to the AONOCAPA.

FINDINGS OF FACT

Tikva Dehri is the owner of real property known as Block 268, Lot 74, in Marlboro Township, New Jersey. The address of said property is 61 Route 520, Englishtown (Marlboro Township, New Jersey. (P-4)

Sara Paris, the Zoning/Code Enforcement Officer for Marlboro Township issued a Final Notice of Violation to Ms. Dehri, dated October 24, 2017, for several zoning and other municipal code violations, including failure to remove bulky commercial items. (P-4)

Eiden Dehri is the son of Ms. Dehri and communicated with Ms. Paris regarding the Notice of Violation issued to his mother. (P-6)

Mr. Dehri informed Ms. Paris via email dated November 17, 2017 that he was attempting to clean up the property and had arranged for bulk pick up. He provided Ms. Paris with three letters, ostensibly from Mr. Simsek, regarding the removal of the bulk waste from the property. (P6, P-7, P-8 and P-9)

Ms. Paris contacted DEP and communicated with Ronald Feehan, an investigator with DEP, via email dated November 28, 2017. Ms. Paris provided Mr. Feehan with the Notice of Violation, photographs of the property depicting the bulk waste, and the three letters bearing Mr. Simsek's name. (P-3, P-4, P-5, P-6, P-7, P-8 and P-9).

Mr. Feehan prepared a Narrative regarding his investigation of the matter, in which he concluded that Mr. Simsek intended to engage in the business of solid waste collection. (P-2)

Mr. Feehan emailed Mr. Simsek twice, on November 29 and November 30, 2017, at the email address provided by Mr. Simsek to DEP, regarding his conclusion. (P-11 and P-12) There was no response to those emails.

In response to the NOV issued by DEP, P-13, Mr. Simsek stated "Mr. Eiden Derhi hires me periodically to do demo work and site cleanup at his various properties... In November I was hired to clean up the property and thereafter disposed (sic) of my self generated debris." (P-14) Mr. Simsek does not mention the three letters produced by Mr. Dehri and given to Ms. Paris. Those letters were specifically mentioned in the NOV.

In response to the AONOCAPA issued on March 5, 2019, P-1, Mr. Simsek expands on his prior response to the NOV, but again does not mention the three letters produced by Mr. Dehri to Ms. Paris.

Mr. Simsek, by his own testimony, knew of the three letters based on his conversation with Mr. Feehan. (T98:18 – T99:2)

Mr. Simsek engaged in the business of solid waste removal at the Dehri property, by his own admission in his response to the NOV, P-14, by stating he was hired to do site clean up.

Mr. Simsek is the holder a NJDEP solid waste self-generator transporter registration #27553. (P-10) He is not authorized to transport solid waste, other than that which is self generated.

Mr. Simsek does not hold the required license to transport solid waste. Mr. Simsek does not have the required certificate of public convenience and necessity to transport solid waste.

The statutes regarding solid waste, referred to as A-901, N.J.S.A. 13:1E-126 to 135, and the regulations promulgated thereunder, N.J.A.C. 7:26-16.1 et seq., have a licensing requirement to transport solid waste. Mr. Simsek did not have such a license.

LEGAL ANALYSIS AND CONCLUSION

DEP regulates solid waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

N.J.A.C. 7:26-3.2(a) states in pertinent part:

No person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department.

N.J.A.C. 7:26H-1.6(a) states:

No person shall engage in the business of solid waste collection or solid waste disposal as defined by N.J.S.A. 48:13A-3 unless such person is the holder of a certificate of public convenience and necessity issued by the Department.

N.J.A.C. 7:26-3.2(c) states:

No person shall engage in the transportation of solid waste in this State if such an operation does not meet the transporter requirements listed in this subchapter. In addition, the transporter shall comply with any other conditions or limitations which may be specified on the approved registration.

In the instant matter the burden of proof lies with DEP and the standard of proof is by a preponderance of the credible evidence.

The New Jersey Supreme Court, in In Re Polk, 90 N.J. 550, 560 (1982), states:

"This jurisdiction has long recognized that the usual burden of proof for establishing claims before state agencies in contested administrative adjudications is a fair preponderance of the evidence. In Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), we observed that: "In proceedings before an administrative agency, . . . it is only necessary to establish the truth of the charges by a preponderance of the believable evidence and not to prove guilt beyond a reasonable doubt." See In re Suspension or Revoc. License of Kerlin, 151 N.J. Super. 179, 184 n.2 (App.Div.1977) ("Where disciplinary proceedings with respect to a profession or occupation are vested in an

administrative agency in the first instance, the charges must be established by a fair preponderance of the believable evidence").

Petitioner has shouldered its burden of proof in the instant matter. The three letters Mr. Dehri produced to Ms. Paris imply that Ms. Simsek contracted to remove solid waste from the Dehri property. Given the totality of the evidence produced I can reasonably infer that those letters were produced by Mr. Simsek, as follows:

Mr. Simsek was aware of the three letters in 2017 by his own admission when he related a telephone conversation with Mr. Feehan regarding said letters. Mr. Simsek did not state in his response to the NOV that the letters were not his. Pointedly, he failed to mention them at all. In point of fact, he stated in his response that he was hired to do site cleanup. His later testimony that this would only encompass self generated waste and recyclable wood is non-sensical. I simply do not believe his testimony. It seemed entirely tailored to explain away what is evident: He was engaged in the business of transporting solid waste from the Dehri property.

Solid waste is defined in N.J.A.C. 7:26-1.6(a) as follows:

(a) A solid waste is any garbage, refuse, sludge, processed or unprocessed mixed construction and demolition debris, including, but not limited to, wallboard, plastic, wood, or metal, or any other waste material, except it shall not include the following:

1. Source separated food waste collected by livestock producers, approved by the State Department of Agriculture, who collect, prepare and feed such wastes to livestock on their own farms;
2. Recyclable materials that are exempted from regulation pursuant to N.J.A.C. 7:26A;
3. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26-1.7(g);
4. Spent sulfuric acid that is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year;
5. Dredged material, from New Jersey's coastal or tidal waters, which is regulated under the provisions of the following statutes: New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), Waterfront Development Law

(N.J.S.A. 12:5-3 et seq.), Riparian Interests (N.J.S.A. 12:3-1 et seq. and 18:56-1 et seq.), Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977 (33 U.S.C. § 1251.), and Federal Coastal Zone Management Act (16 U.S.C. §§ 1451. et seq.), and/or other relevant statutes and implementing regulations; or

6. Non-water-soluble, non-decomposable, inert solid, such as rock, soil, gravel, concrete, glass, and/or clay or ceramic products that do not contain concentrations of one or more contaminants that exceed the residential soil remediation standards for the soil ingestion-dermal and soil inhalation exposure pathways or non-residential soil remediation standards for the soil ingestion-dermal and soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards.

The photographs, P-5, of the bulk waste on the Dehri property certainly meet the above definition.

N.J.A.C. 7:26H-1.4 defines being engaged in the business of solid waste as follows:

"Engaged in the business of solid waste" means obligating oneself, through a contract or some other means, to provide collection, transportation, treatment, storage or disposal of solid waste in the State of New Jersey, including employment of a licensed hauler, including a subsidiary, to do the actual collection, transportation, treatment, storage or disposal.

Mr. Simsek, again by his own admission in his response to the NOV, P-14, stated he was hired by Mr. Dehri to perform site clean up. This cannot be interpreted to mean he was only going to remove self generated waste.

I **CONCLUDE** that Petitioner has met its burden of proof that Respondent exceeded the limitations of his A901 exempt self-generator NJDEP transporter registration in violation of N.J.A.C. 7:26-3.2(c); that he did so without the requisite license in violation of N.J.A.C. 7:26-16.3(a); and, that he did so without the requisite certificate of public convenience and necessity pursuant to N.J.A.C. 7-26H-1.6(a).

Having determined that Petitioner has met its burden regarding the AONCAPA it is necessary to determine the appropriate penalty.

N.J.A.C. 7:26-5.4(g) provides for a base penalty for the violation of N.J.A.C. 7:26-3.2(c) of \$5,000. This is the amount assessed in the AONCAPA.

N.J.A.C. 7:26-5.4(g) provides for penalty assessment for the violation of N.J.A.C. 7:26-16.3(a) based upon the seriousness of the violation. Petitioner assessed Respondent a penalty of \$15,000 based upon its determination that the seriousness of the conduct was moderate. See Transcript 46:1 – 48:16 and the Justification for Assessment in the AONCAPA. My own assessment of the seriousness of the conduct is in agreement that it is moderate. The \$15,000 penalty assessed is appropriate.

N.J.A.C. 7:26H-5.18(f) provides for a base penalty of \$5,000 for a violation of N.J.A.C. 7:26H-1.6(a) when a first offense. This is the penalty assessed by Petitioner for this violation.

I **CONCLUDE** that the penalties assessed in the AONCAPA are correct.

ORDER

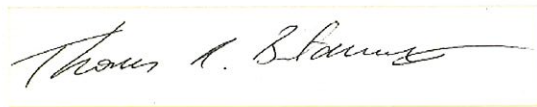
It is hereby **ORDERED** that AONCAPA issued in the instant matter is **AFFIRMED**, and that Petitioner shall comply with the terms thereof.

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.



July 28, 2023

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

July 28, 2023

Date Mailed to Parties:

July 28, 2023

db

APPENDIX

List of Witnesses

For Petitioner:

Lawrence Lewis

Charles Walters

For Respondent:

Charles Simsek, Petitioner

Dolores Karau

List of Exhibits

For Petitioner:

- P-1 AONOCAPA issued to respondent dated 3/5/19
- P-2 NJDEP Investigator Ronald Feehan's Investigative Narrative Re: DEP Registration #27553
- P-3 email from Marlboro Code Enforcement Office Sarah Paris to Investigator Feehan, 11/28/17
- P-4 Marlboro Department of Code Enforcement NOV issued to Tikva Dehri, 10/24/17
- P-5 two photographs attached to 11/28/17 email from Paris to Feehan
- P-6 email from Eidan Derhi to Paris, 11/17/17
- P-7 letter from respondent to Derhi, 8/27/17
- P-8 letter from respondent to Derhi, 9/13/17
- P-9 letter from respondent to Derhi, 10/8/17
- P-10 respondent Solid Waste & Medical Waster Transporter Registration application
- P-11 email from Feehan to doloreskarau@yahoo.com, 11/29/17
- P-12 email from Feehan to doloreskarau@yahoo.com, 11/30/17
- P-13 NJDEP NOV issued to respondent, 12/26/17
- P-14 Notice of Violation Compliance Response by respondent, 1/12/18
- P-15 Respondent response to AONOCAPA, 3/29/19
- P-16 Vehicle registration renewal

For Respondent:

R-1 letterhead samples

R-2 statement of Dolores Karau

Joint Stipulated Facts

Batista, Diana [OAL]

From: Batista, Diana [OAL]
Sent: Friday, July 28, 2023 12:11 PM
To: bglazman; Rozell, William (LPS)
Cc: Rozell, William (LPS)
Subject: RE: NJDEP/Solid Waste Compliance & Enforcement v. Charles Simsek (OAL Docket No.: ECE 00269-21
Attachments: ECE 00269-21 NJDEP v. Simsek (ID).pdf

Importance: High

Tracking:	Recipient	Delivery
	bglazman	
	Rozell, William (LPS)	Delivered: 7/28/2023 12:12 PM
	Rozell, William (LPS)	
	Betancourt, Thomas [OAL]	

Attached please find an Initial Decision before the Hon. Thomas R. Betancourt in the above matter. Kindly be guided accordingly. Thank you.



Diana M. Batista, Judicial Specialist 1

Office of Administrative Law

33 Washington Street, 7th Floor

Newark, NJ 07102

Thomas R. Betancourt, ALJ (973) 648-6084

Kelly J. Kirk, ALJ (973) 648-6063

John P. Scollo, ALJ (973) 648-6051

Batista, Diana [OAL]

From: Batista, Diana [OAL]
Sent: Friday, July 28, 2023 11:51 AM
To: Candice Hendricks; DEP Decisions; Hoagland Janice (depdecision@dep.state.nj.us); oal decisions [OAL]; Rick Keiser
Subject: RE: ECE 00269-21 NJDEP v. Simsek- Initial Decision (resent)
Attachments: ECE 00269-21 NJDEP v. Simsek (ID).pdf

Importance: High

Tracking:**Recipient**

Candice Hendricks
DEP Decisions
Hoagland Janice (depdecision@dep.state.nj.us)
oal decisions [OAL]
Rick Keiser
Betancourt, Thomas [OAL]

Delivery

Delivered: 7/28/2023 11:52 AM
Delivered: 7/28/2023 11:52 AM

Delivered: 7/28/2023 11:52 AM
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Importance: High

Tracking:**Recipient****Delivery**

bglazman

Rozell, William (LPS)

Delivered: 7/28/2023 12:12 PM

Rozell, William (LPS)

Betancourt, Thomas [OAL]

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