



State of New Jersey

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

Petitioner,

v.

JAMES D. BYRNE AND JIMMY BYRNE
T/A
JIMMY BYRNE TRUCKING,

Respondents.

) ADMINISTRATIVE ACTION

) FINAL DECISION AND ORDER

) OAL DKT. NO. ECE 00323-16

) AGENCY DKT. NO. A9A140001-206609

This decision addresses an Amended Notice of Revocation and Debarment, dated November 24, 2015 (Amended Notice), issued by the State of New Jersey, Department of Environmental Protection (NJDEP), Division of Solid and Hazardous Waste, to James D. Byrne (Byrne) and Byrne's sole proprietorship, Jimmy Byrne T/A Jimmy Byrne Trucking (JBT) (collectively "respondents") pursuant to the solid waste disclosure, investigation, and review program known as A-901, N.J.S.A. 13:1E-126 to -135, and the Solid Waste Utility and Control Act (SWUCA). N.J.S.A. 48:13A-1 to -13. The Amended Notice revoked respondents' A-901 license and Certificate of Public Convenience and Necessity (CPCN), which are necessary to participate in the solid waste industry, and barred respondents from the solid waste industry for a minimum of five years. This Amended Notice alleged activity by respondents that called into question their fitness to participate in the solid waste industry, their willingness or ability to comply with the State's solid waste laws, and deceit and/or misrepresentations they have made relating to

their solid waste activity. On February 8, 2021, Administrative Law Judge (ALJ) Kelly J. Kirk issued an Initial Decision affirming the Department's revocation of Byrne's A-901 approval and CPCN as well as Byrne's debarment from the solid waste industry for at least five years. For the reasons set forth below, I hereby ADOPT the Initial Decision.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises under the "A-901" amendment to the Solid Waste Management Act, N.J.S.A. 13:1E-1 to -227, and under the SWUCA, N.J.S.A. 48:13A-1 to -13. The A-901 statute is found at N.J.S.A. 13:1E-126 to -135 and its implementing regulations are codified at N.J.A.C. 7:26-16.1 to -16.23. The SWUCA regulations, including regulations related to CPCNs, are found at N.J.A.C. 7:26H-1.1 to -1.24. To be considered fit to possess an A-901 license, and applicant must demonstrate . . . sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste . . . given the potential economic consequences for affected counties, municipalities and ratepayers or significant adverse impacts upon human health and the environment which could result from the irresponsible participation therein or operation thereof[.]” N.J.S.A. 13:1E-133.

Byrne is a sole proprietor doing business as JBT. He has operated the company since 1991. JBT is a transporter of solid waste for which Byrne holds an A-901 license and a CPCN.

The Department issued the Amended Notice on November 24, 2015, informing respondents that DEP was revoking their A-901 approval, inactivating the forty-three solid waste transporter decals and twenty-three hazardous waste decals issued to Byrne for the then-current registration period; revoking their CPCN and prohibiting Byrne from acting as a key employee, equity holder, or debt holder of any A-901 approved company for five years following the effective



date of the revocation; and requiring Byrne to obtain prior approval from the Department to participate in the solid waste industry after the debarment period ends. It is this Amended Notice that is the subject of this Order. Exh. P-1.

The Amended Notice alleged, *inter alia*, that Byrne used his licensed operation to conceal the illegal waste activities of Tri-State Transfer Associates, Inc. (TST or Tri-State) and Vito Pesce, both of which are unauthorized to engage in New Jersey's solid waste industry; that Byrne has used multifarious aliases (including Jimmy Byrne, Jimmy Byrne JBT, Jimmy Byrne Trucking, Jimmy Byrne Trucking, Inc., TST, and TST Assoc. Leasing) and addresses, federal employer identification numbers (FEINs), U.S. Department of Transportation (USDOT) identification numbers, and Environmental Protection Agency (EPA) identification numbers in the course of his sole proprietorship; and that Byrne has repeatedly made misrepresentations to State and federal regulators regarding the number of vehicles in his fleet, the ownership and leasing of those vehicles, the location of his operation, and his status as a sole proprietor with no equipment, no personnel, and no assets. Exh. P-1 (Amended Notice).

As a result of these allegations, NJDEP's Amended Notice revoked Byrne's A-901 approval and CPCN on the grounds that the enumerated allegations constituted deceit and misrepresentation in solid waste activity and reflected a lack of the required reliability, integrity, competency and expertise necessary to participate in New Jersey's solid waste industry. N.J.S.A. 13:1D-133; N.J.S.A. 13:1E-134; N.J.S.A. 48:13A-9(e); N.J.A.C. 7:26-16.9(a)(2); N.J.A.C. 7:26H-1.11; N.J.A.C. 7:26H-1.6. Exh. P-1.

By letter dated December 14, 2015, respondents requested a hearing. The Department granted the hearing request and transmitted the Amended Notice to the Office of Administrative



Law pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 13:1E-133 and -134 for a hearing as a contested case.

After filing motions, the parties agreed that a separate decision, Dep't of Env'tl. Prot. v. Jimmy Byrne Trucking and Jimmy Byrne, ECE 09838-15, 2016 N.J. AGEN LEXIS 1294 (Final Decision, December 22, 2016) should be accorded res judicata regarding certain violations cited in the Amended Notice that is the subject of the instant matter. Thus, NJDEP could not relitigate paragraphs 8, 9, and 14 of the Amended Notice. As such, the issues in those paragraphs were not part of the record in this A-901 proceeding and the ALJ properly did not discuss them other than to note that the earlier AO/NOCAPA matter had preclusive effect.

At the beginning of the plenary hearing, NJDEP withdrew Paragraph 6 of the Amended Notice. 1T 20:6¹. Paragraphs 1-5, 7, 10-13, 15-19 of the Amended Notice, and all subsequent paragraphs, were thereafter the subject of the plenary hearing, which took place on December 11, 2019, and January 8, 2020. On March 6, 2020, the parties submitted their final post-hearing briefs and the ALJ closed the record. The ALJ issued an Initial Decision affirming NJDEP's revocation and debarment on February 9, 2021. Respondents filed exceptions to this decision on March 5, 2021, to which the NJDEP replied on March 5, 2021. This decision follows.

Solid Waste Management Act, A-901 Supplement, and Solid Waste Utility Control Act

The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., enacted over 50 years ago, recognizes that:

the collection, disposal and utilization of solid waste is a matter of grave concern to all citizens and is an activity thoroughly affected with the public interest; that the health, safety and welfare of the people of this State require efficient and reasonable solid waste collection and disposal service or efficient utilization of such waste....

¹ 1T = Transcript – December 11, 2019
2T = Transcript – January 8, 2020



N.J.S.A. 13:1E-2.

In order to ensure the Solid Waste Management Act's success, and in response to a long history of the vulnerability of the waste industry to organized crime, Trade Waste Management Assn., Inc. v. Hughey, 780 F.2d 221, 233 (3rd Cir. 1985) (“Trade Waste”), the Legislature enacted Assembly Bill A-901 (hence the “A-901” moniker) in 1983, to ensure “strict State regulation to those persons involved in the operations of these licensed activities so as to foster and justify the public confidence and trust in the credibility and integrity of the conduct of these activities.” N.J.S.A. 13:1E-126. The Legislature gave NJDEP the widest latitude possible to carry out its mission, which was necessary given New Jersey’s long, and almost unique history of regulating the solid waste industry as a public utility. N.J.S.A. 13:1E-126; Trade Waste, supra, 780 F.2d at 223.

To participate in the State’s solid waste industry, a party must submit background information and be investigated by the Attorney General. N.J.S.A. 13:1E-128. Thereafter, the NJDEP reviews the results of this investigation to determine whether the applicant has exhibited or is likely to exhibit “. . . sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste . . . given the potential economic consequences for affected counties, municipalities and ratepayers or significant adverse impacts upon human health and the environment which could result from the irresponsible participation therein or operation thereof. . .” N.J.S.A. 13:1E-133.

A party seeking to participate in the solid waste industry must also obtain a CPCN, which requires an applicant to demonstrate it is qualified by experience, training or education to engage in such business. N.J.S.A. 48:13A-6a. NJDEP shall not issue a CPCN to any person who has been denied approval of a license under the A-901 program or whose license has been revoked by the



NJDEP. N.J.S.A. 48:13A-6a(2).

NJDEP can revoke an A-901 approval and debar an individual from the solid waste industry if the licensee no longer meets the standard of sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste. N.J.S.A. 13:1E-134a; N.J.A.C. 7:26-16.9(a)1. Ignorance or disregard of the Solid Waste Management Act is evidence that an applicant has failed to exhibit sufficient integrity, reliability, expertise and competency to engage in solid waste and/or hazardous waste activities. Sasso's Sea-Gull Disposal, Inc. v. DEPE, 94 N.J.A.R.2d(EPE) 67, *27 (Initial Decision, October 01, 1993), (aff'd by Final Agency Decision January 3, 1994). NJDEP can also revoke an A-901 license for fraud, deceit or misrepresentation in the conduct of the licensed activity. N.J.S.A. 13:1E-134b; N.J.A.C. 7:26-16.9(a)2. The burden of proof rests on NJDEP to show by a preponderance of the evidence that a licensee's right to engage in the solid waste transportation business should be revoked. Dep't of Env'tl. Prot. v. Louis Pinto & Son, Inc., 311 N.J. Super. 552, 556 (App. Div. 1998). Upon a finding that an A-901 license holder's approval has been revoked, that person or entity cannot apply for reinstatement for at least five years. N.J.A.C. 7:26-16.12(a). NJDEP can also revoke a party's CPCN under N.J.S.A. 48:13A-9(e), and N.J.A.C. 7:26H-1.11(a)(4) and -1.6(d), all of which allow revocation if an A-901 license is revoked.

In this case, NJDEP revoked Byrne's and JBT's A-901 approval because he lacked integrity to engage in the collection or transportation of solid waste under N.J.S.A. 13:1E-133a and -134b and N.J.A.C. 7:26-16.9(a)(2), and engaged in deceit or made misrepresentations under N.J.S.A. 13:1E-134b; N.J.A.C. 7:26-16.9(a)2. NJDEP revoked respondents' CPCN as a function of the A-901 revocation under N.J.S.A. 48:13A-9(e), and N.J.A.C. 7:26H-1.11(a)(4) and -1.6(d). The ALJ found that Byrne allowed unlicensed entities to use his A-901 license, and made



misrepresentations or engaged in deceit in his testimony and A-901 licensing submissions.

DISCUSSION

FINDINGS OF FACT

I ADOPT the ALJ's finding of facts as set forth in the record and discussed as follows:

James "Jimmy" Byrne is the sole proprietor of JBT, located at 558 Tiffany Street, Bronx, New York. JBT holds an A901 waste transporter license that was issued by NJDEP in 1991, as well as a CPCN issued by NJDEP. Byrne's wife, Eve Byrne, was the president and owner of Tri-State, an asbestos transfer station, located at 1199 Randall Avenue, Bronx, New York. Randall Avenue and Tiffany Street intersect, and 1199 Randall Avenue is located diagonally across the intersection from 558 Tiffany Street. Tri-State is licensed to transport hazardous waste and polychlorinated biphenyls (PCBs) in New York, but has never been licensed to transport waste in New Jersey. Accordingly, neither Tri-State nor its principals have undergone the scrutiny required under the A-901 and CPCN processes to ensure that they have the requisite integrity and experience to avoid the concerns the statutory and regulatory provisions are designed to address. Eve Byrne passed away from cancer on March 18, 2014. Tri-State is now owned by Byrne's daughter Jamie Byrne Baranoff. The sign on the Tri-State building at 1199 Randall Avenue lists an emergency call number that is Byrne's cell phone number. (P-10).

Clean Earth of North Jersey is a NJDEP-permitted, licensed waste facility that accepts both hazardous and nonhazardous waste for transfer and transportation to out-of-state landfills or hazardous waste facilities for disposal. Vito Pesce was the president of Triple Crown Disposal, located at 2 Fish House Road, Kearny, New Jersey. Byrne used this Kearny address as a mailing address. The ALJ found that Byrne provided no reasonable explanation for the use of Triple Crown's address. Pesce was never licensed to work in the waste industry in New Jersey. A State



investigation revealed that Pesce and/or Triple Crown operated illegally out of Clean Earth's facility. 1T 25:19-27:11. The record contains information showing that Byrne used his personal credit card to pay \$26,623.08 to Clean Earth on behalf of Triple Crown Disposal. P-7. Triple Crown Disposal then paid Tri-State Transfer Associates \$29,510.76, reflecting a service charge of \$2,887.68 for the use of Byrne's A-901 license. P-7.

The evidence in the record shows that Byrne allowed an unlicensed entity, Tri-State, to use his A-901 credentials. Vehicle equipment leases from Tri-State to JBT state that the equipment is to be used exclusively by JBT. Lease certifications accompanying each lease stated that JBT must "exercise exclusive use, possession and control over each piece of equipment or operator." The ALJ found that the leased equipment bore NJDEP decals issued to Byrne, and that Tri-State used those vehicles in violation of the leases and certifications that specified that they would be under Byrne's exclusive use and control.

The ALJ found that Byrne's testimony was often contradictory and unclear. For example, Byrne testified that the drivers of his trucks were employed by Jimmy Byrne Associates, but at another point testified that they were employed by Tri-State. He also testified that the drivers are paid by Jimmy Byrne Associates, and later that Tri-State paid them.

ANALYSIS

The evidence in the record shows that Byrne made misrepresentations to the Division of Law in the Attorney General's Office and to NJDEP, and in his testimony at hearing and allowed unlicensed entities to use his A-901 credentials. This "fronting" of his A-901 credentials allowed others to illegally participate in solid waste collection and transportation in New Jersey.

Taken together, this information supports the ALJ's determination that NJDEP has proven by a preponderance of the evidence that respondents' authority to engage in solid waste activity



should be revoked. For instance, despite indicating to the Division of Law that Vito Pesce had no involvement with Byrne and/or JBT, Exh. P-6, six months earlier, Byrne paid a debt Pesce owed to Clean Earth. In return, Pesce reimbursed Tri-State, plus a \$2,887.68 service charge. Since neither Pesce nor his company, Triple Crown Disposal, possessed A-901 approval, and since Clean Earth would not accept payment from an entity without A-901 approval, Pesce could not pay Clean Earth himself. 1T 111:16–112:2. What is troubling about this incident is that Byrne paid Clean Earth for work he knew that his A-901 licensed company had not done. Byrne was not obligated to submit this payment for work done by others at Clean Earth. Yet, he affirmatively chose to submit payment to Clean Earth on behalf of a company he knew was not A-901 approved. 1T 111:22–112:7; 2T 92:2-15; 2T 119:24–120:2. In other words, Byrne perpetuated Pesce’s illegal participation in New Jersey’s heavily regulated solid waste industry. Moreover, the transaction falsely implied that he had done the work in question at Clean Earth. During the hearing, Byrne acknowledged the payment, testifying that the \$2,887.68 Pesce paid him was his profit for providing payment to Clean Earth because he was A-901 approved. 2T 24:13–25:3; 2T 92:16-25, 2T 93:20. In other words, Byrne knowingly utilized his A-901 approval to allow an unapproved person to illegally participate in the solid waste industry in New Jersey, and thereafter misrepresented his relationship with Pesce to the Division of Law when he said he had no involvement with Pesce.

The interrelationship of Pesce and respondents and Byrne’s lack of candor is further illustrated by the physical relationship of the parties, as evidenced by the record. Particularly, the record demonstrated that the relationship between Pesce and Byrne in the solid waste business included Byrne using Pesce’s company’s (Triple Crown Disposal) New Jersey address for receipt of respondents’ mail. This necessitated interaction with each other so that Byrne could collect his



mail from Pesce. 2T 57:20-25. As discussed above, Byrne falsely indicated that he and Pesce had no relationship, however the record shows that they shared a common business address, and Byrne admitted that Triple Crown Disposal used Tri-State to dispose of asbestos. Exh. P-6.

The next grounds for revoking Byrne's solid waste authority to operate concerns his company's involvement with Tri-State, which operates an asbestos transfer station in New York. Tri-State was formerly owned by Byrne's now-deceased wife and currently by his daughter, Jaime Byrne Baranoff, a full-time school teacher in New York City. 2T 30:9-31:2. The Amended Notice alleged that Byrne used his A-901 approval as a cover for unauthorized activities by Tri-State, which is unlicensed for solid or hazardous waste activities in New Jersey. Ex. P-1.

ALJ Kirk identified numerous occasions when Byrne used his company's identity interchangeably with Tri-State and similarly named companies owned by Byrne, his late wife or his daughter. Initial Decision, at 29-33. When interviewed by the State Police, Byrne admitted that Tri-State transported waste in New Jersey and used equipment that had JBT's decals affixed to it. Exh. P-2, p. 2. In fact, at the hearing, Byrne testified that, "Tri-State is the one that I have a lease that does the work" and Tri-State is driving the trucks to pick up the waste. 2T 127:22-24. He also testified that he did not remember that JBT was required to exercise exclusive use, control, and possession of the trucks he leased to transport waste in New Jersey. 2T 75:1-5, 2T 79:5-80 :4.

Significantly, and further illustrating the relationship of the entities and individuals involved, Byrne agreed that his "role in this bigger operation is to procure decals so that Tri-State can transport waste in New Jersey." 2T 137:19-22 And, when Byrne produced JBT's payroll ledger at the hearing at his attorney's request, it turned out that he instead produced Tri-State's payroll ledger. Exh. R-3; 2T 10:17-11:17, 2T 122:1-13. Ultimately, Byrne did not produce a payroll ledger for JBT. Instead, at least as of 2012, Byrne said that JBT had no employees, key



employees, or persons managing financial accounts, and was not doing any business. Exh. P-6 ¶5. As a result, Byrne had to lease equipment or drivers for his business. In reality, the absence of any financial records for JBT creates an inference that any solid waste transportation in New Jersey by JBT was in reality done by Tri-State, which Byrne was using his A-901 approval to “front” for. In light of these facts, the ALJ found that the two companies were “inextricably involved and irretrievably intertwined.” ID at 40.

Byrne, as a licensee, obtained an approved registration statement from NJDEP and was entitled to transport waste or use properly leased vehicles to do so in New Jersey. Tri-State did not have any such approval. NJDEP’s solid waste leasing requirements direct that a person with an approved solid waste registration, such as Byrne, shall not allow another person to use equipment registered with NJDEP unless such person is an employee of the registrant or unless such use is in accordance with a lease of vehicle operators pursuant to N.J.A.C. 7:26-3. (see N.J.A.C. 7:26-3.2(a)4). A licensee who files a lease in connection with the registration statement for a solid waste vehicle which the licensee will operate shall ensure that such lease is signed and provide for the exclusive use, control and possession of such equipment by the licensee. N.J.A.C. 7:26-3.2(i). Despite this regulatory framework and despite certifying to NJDEP that he would, Byrne did not ensure that the vehicles he leased would be under his exclusive use, control and possession because JBT lacked any employees to exercise the requisite use, control and possession, 2T 134:11-14; and he allowed Tri-State to use its own employees and vehicles in lieu of JBT doing so. 2T 137:13-18. In fact, he was not familiar with NJDEP’s lease certification requirements. 2T 75:1-5. He therefore violated N.J.A.C. 7:26-3.2 when he failed to ensure exclusive use, control and possession of the leased equipment. He consequently demonstrated a lack of integrity,



reliability, expertise and competence. N.J.S.A. 13:1E-133(a); Sasso's Sea-Gull Disposal, Inc. v. DEPE, 94 N.J.A.R.2d(EPE) 67, *27.

The owners of Pinnacle, an asbestos-abatement company located in New Jersey, advised NJDEP that asbestos waste from their New Jersey asbestos abatement work was shipped to Tri-State's transfer station in New York by Tri-State. 1T 29:2-12; 1T 30:1-11; 1T 30:11-18. Manifests with Tri-State's name on them confirmed that Tri-State was the transporter, using JBT's credentials to haul the waste from New Jersey to Tri-State's New York facility. *Ibid.* When asked during the hearing, Byrne could not explain why JBT's DEP Waste transporter registration numbers were on Tri-State's manifests and invoices in New Jersey. 2T 96:14-97:2.

Additionally, Byrne's office is located in close proximity to Tri-State, and a sign on Tri-State's building lists Byrne's cell phone number as Tri-State's emergency contact phone number. Exh. P-10; 2T 101:22-102:6, 2T 83:1-5, 2T 107:11-108:9. The connections between Byrne and Tri-State produced a colloquy during the OAL hearing that demonstrated the connection between JBT and Tri-State and led the ALJ to question Byrne's credibility. In JBT's annual A-901 update, Byrne listed his company's e-mail address as TSTJB@aol.com. Exh. P-9. That logically would seem to stand for Tri-State Transfer Jimmy Byrne, but when asked about this e-mail address, Byrne denied that it stood for Tri-State Transfer Jimmy Byrne. He said it was "just initials." 2T 83:6-16. I have no reason to disagree with the ALJ's statement that Byrne's explanation for his email address was "convoluted and inexplicable." Initial Decision at 33. Collectively, this evidence amply supports the ALJ's finding that Byrne allowed Tri-State to utilize respondents' NJDEP credentials and that Byrne was fronting for Tri-State.

The hearing also addressed issues relating to Byrne's deceit and/or misrepresentations and his understanding relating to the leasing of vehicles. Throughout his testimony and in his



submission to NJDEP, Byrne made clear that he was JBT's only employee, 2T 40:1-5; Exh. P-6. He later explained that employees of Tri-State drive the trucks transporting waste, but they are paid by Jimmy Byrne Associates, not the licensed entity JBT. 2T 136:16-21. That lack of additional employees demonstrates that Byrne made misleading statements in the leases he filed with NJDEP in 2013 to rent Tri-State's equipment because he certified to DEP on those leases that an "employee of Jimmy Byrne t/a Jimmy Byrne, the lessee, will drive the leased vehicle." Exh. P-4. Hence, Byrne did not comply with the terms of the leases he filed with NJDEP.

The Initial Decision also extensively discussed Byrne's failure to follow NJDEP's rules for leasing vehicles. There was nothing wrong with Byrne leasing vehicles from Tri-State since NJDEP's solid waste regulations allow a licensed company to lease vehicles or operators from an unlicensed entity for solid waste purposes. N.J.A.C. 7:26-3.2. The requirements for leasing are, however, very detailed, ibid., consistent with the purpose of the Solid Waste Management Act to strictly regulate solid waste activity. N.J.S.A. 13:1E-2. No person shall engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the NJDEP. N.J.A.C. 7:26-3.2(a). A person who has not obtained an approved registration statement shall not, through a subcontract or any other means, engage in the transportation of solid waste. N.J.A.C. 7:26-3.2(a)5.

Based on the foregoing discussion of the evidence, I find that NJDEP established by a preponderance of the evidence that respondents made misrepresentations or engaged in deceit in their solid waste activity; and demonstrated a lack of integrity, reliability, expertise and competence.

Respondents submitted exceptions to the Initial Decision, arguing that the evidence submitted before the ALJ in the A-901 proceeding was ministerial in nature because it was similar



to the violations presented in Dep't. of Env'tl. Prot. v. Jimmy Byrne Trucking and Jimmy Byrne, ECE 09838-15, 2016 N.J. AGEN LEXIS 1294 (Final Decision) that were found to not be intentional; that Byrne had no involvement with or knowledge of Pesce's operations; and that Byrne is currently attempting to sell his A-901 license and customer accounts, which would result in the departure of Byrne from New Jersey's solid waste industry without the need for further litigation. NJDEP filed a reply to respondents' exceptions arguing that respondents' actions were far from ministerial, that respondents' exceptions relying on the proposed sale of JBT were untruthful, and that the evidence supported the ALJ's determinations with respect to the respondents' involvement with Pesce. The NJDEP's reply further asserted that any pending sale of respondents' business is outside the scope of the record. The NJDEP reply also highlighted Byrne's failure to exercise exclusive use, possession and control over the equipment they leased from Tri-State; and emphasized that NJDEP expressly withdrew any allegations in the Amended Notice relating to the prior AO/NOCAPA, Dep't. of Env'tl. Prot. v. Jimmy Byrne Trucking and Jimmy Byrne, ECE 09838-15, 2016 N.J. AGEN LEXIS 1294 (Final Decision), so any comparison of the evidence in this case and the AO/NOCAPA case was inappropriate.

I find that respondents' exceptions lack merit. First, they were unaccompanied by any transcript or transcript citation. In re Morrison, 216 N.J. Super. 143, 158 (App. Div. 1987). Their reliance on a pending petition to sell assets is inappropriate because evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions. N.J.A.C. 1:1-18.4(c). Even if it were appropriate, respondents seek to profit from the sale of their license, which is incongruous with one of the grounds for the revocation: that Byrne essentially sold (or more accurately rented out) his A-901 approval, when Vito Pesce paid Byrne to use respondents' A-901 license to pay for Pesce's activity at Clean Earth. He separately



allowed another unlicensed company, Tri-State, to use respondents' A-901 approval so Tri-State could transport waste from New Jersey to Tri-State's facility in Brooklyn. Further, I find that Byrne's potential ability to sell the license is not relevant to rejection or modification of the Initial Decision, as it does not have any bearing on the ALJ's findings of fact or conclusions of law.

As to the alleged ministerial nature of the violations before ALJ Monaco in the previous case against Byrne, those violations were not part of this case after NJDEP withdrew them, so determining their ministerial nature is not necessary. They further play no role in my decision.

Respondents argue that the other evidence before ALJ Kirk was ministerial in nature. To the contrary, it shows that Byrne engaged in deceit and misrepresentation in his solid waste activity. The activities at issue are not merely ministerial or paperwork violations but run contrary to the A-901 program's purpose to "extend strict State regulation to those persons involved in the operations of these licensed activities so as to foster and justify the public confidence and trust in the credibility and integrity of the conduct of these activities." N.J.S.A. 13:1E-126. As discussed above, Byrne furthered Pesce's illegal participation in the solid waste industry when, knowing that Pesce's company did not have A-901 approval, he paid invoices to Clean Earth on Pesce's behalf. 1T 111:22-112:2, 2T 92:2-15, 2T 119:24-120:2. He then compounded that intentional disregard for the requirements applicable to participation in the solid and hazardous waste industries in New Jersey seven months later when he represented to the Attorney General's office that he was not involved with Pesce. Exh. P-6. This intentional misuse of the A-901 license by Byrne for profit, and then his subsequent misrepresentation to the Division of Law about his association with Pesce undermines the purpose of the A-901 statute and is not merely ministerial, as evidence of misrepresentation provides grounds for the revocation of an A-901 license. N.J.S.A. 13:1E-126; N.J.S.A. 13:1E-134b. I therefore reject that part of respondents' exceptions, as well as all other



previously discussed parts of respondents' exceptions, because they provide no grounds to reverse or modify the Initial Decision.

Overall, the Initial Decision and the evidence in this case convince me that NJDEP has proven by a preponderance of the evidence that Byrne used his A-901 approval to conceal Tri-State's and Pesce's unauthorized solid or hazardous waste operation in New Jersey and that the respondents made numerous misrepresentations to State and federal regulators about their operation. This activity, as explained above, constitutes deceit and misrepresentation, which qualify as grounds to revoke respondents' A-901 approval. N.J.S.A. 13:1E-134b; N.J.A.C. 7:26-16.9(a)2. Respondents also used different aliases and identifiers to mask their activity which demonstrates a lack of reliability, integrity, competency and expertise, for which revocation is allowed pursuant to N.J.S.A. 13:1E-133a, -134a. I therefore find and order that the respondents' A-901 approval be and hereby is revoked and that the forty-three solid waste transporter decals and twenty-three hazardous waste decals issued to Byrne for the then-current registration period are hereby inactivated.

Once an A-901 approval is revoked, a CPCN becomes immediately invalid. N.J.A.C. 7:26H-1.6(d). Based on the finding that respondents' A-901 approval should be revoked, I hereby revoke their CPCN also. Respondents' CPCN therefore is invalid as of the date of this decision. Because no person shall engage in solid waste collection or disposal unless such person holds a CPCN, N.J.A.C. 7:26H-1.6(a), I hereby find that the revocation of respondents' CPCN precludes the respondents from prospectively collecting or disposing of solid waste.

Finally, under N.J.A.C. 7:26-16.12(a), the NJDEP will not issue a license to any person who has had their license revoked for any of the reasons set forth in N.J.A.C. 7:26-16.9, for a period of five years following such denial or revocation. Because respondents' license has been



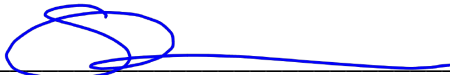
revoked pursuant to N.J.A.C. 7:26-16.9, the respondents are precluded from seeking a new license for five years from the date of this decision. N.J.A.C. 7:26-16.12(a). Respondents further cannot participate in the solid waste industry until they complete the A-901 background, disclosure and approval process at N.J.S.A. 13:1E-126 *et seq.* and N.J.A.C. 7:26-16, so they shall not commence any solid waste activity until they receive the approvals required by the A-901 statute and regulations. Consequently, Byrne and JBT are hereby debarred from the solid waste industry and their CPCN is revoked. In re Fiorillo Bros. of N.J., 242 N.J. Super. 667, 688 (App. Div. 1990) (principals debarred because they participated in and guided the company in its flagrant and widespread violations).

CONCLUSION

For the foregoing reasons, I conclude the ALJ properly issued an Initial Decision in favor of the NJDEP and ACCEPT the ALJ's findings of fact and conclusions of law. Accordingly, I find and order that respondents' A-901 approval be and hereby is revoked and that the forty-three solid waste transporter decals and twenty-three hazardous waste decals issued to Byrne for the then-current registration period are hereby inactivated. I also hereby revoke their CPCN, which is invalid as of the date of this decision and precludes them from collecting or disposing of solid waste. Finally, Byrne and JBT are hereby debarred from the State's solid and hazardous waste industry for five years from the date of this order, and they shall not commence any solid waste activity until they receive the approvals required by the A-901 statute and regulations.

IT IS SO ORDERED.

DATE: January 13, 2022


Shawn M. LaTourette, Commissioner
New Jersey Department of
Environmental Protection



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

v.

JAMES D. BYRNE AND JIMMY BYRNE T/A JIMMY BYRNE TRUCKING, Respondents.

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