



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ECE 00323-16

AGENCY DKT. NO. A9A140001-206609

**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.

William T. Rozell,¹ Deputy Attorney General, for petitioner (Gurbir S. Grewal,
Attorney General of New Jersey, attorney)

John A. Gonnella, Esq., for respondents

Record Closed: March 6, 2020

Decided: February 9, 2021

BEFORE **KELLY J. KIRK**, ALJ:

¹ Petitioner was represented at the hearing by Ray Lamboy, DAG.

STATEMENT OF THE CASE

This matter involves an Amended Notice of Revocation and Debarment, dated November 24, 2015² (Amended Notice), issued by the State of New Jersey, Department of Environmental Protection (Department or NJDEP), Division of Solid and Hazardous Waste, to James D. Byrne (Byrne) and Jimmy Byrne T/A Jimmy Byrne Trucking. The Amended Notice alleges, inter alia, that Byrne used his licensed operation to conceal the illegal waste activities of an unlicensed company, Tri-State Transfer Associates, Inc. (TSTA), which operates an asbestos transfer station in New York; that Byrne used his licensed operation to conceal the involvement of Vito Pesce, who is unauthorized to engage in the solid waste industry in New Jersey, and who from 1999 to 2011 operated an illegal asbestos transfer facility at Clean Earth of North Jersey's hazardous waste facility in Kearny, New Jersey; that Byrne has used multifarious aliases (including Jimmy Byrne, Jimmy Byrne JBT, Jimmy Byrne Trucking, Jimmy Byrne Trucking, Inc., TSTA, and TST Assoc. Leasing) and multiple 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.

PROCEDURAL HISTORY

By Amended Notice dated November 24, 2015, the Department notified respondents that it was revoking the A901 license, inactivating the forty-three solid waste transporter decals and twenty-three hazardous decals issued to Byrne for the then-current registration period, revoking the Certificate of Public Convenience and Necessity and prohibiting Byrne from acting as a key employee, equity holder, or debt holder of any A901 licensed company for five years following the effective date of the revocation, and requiring Byrne to obtain prior approval after the debarment period ends. By letter dated

² Said Notice superseded a February 2014 Notice of Revocation and Debarment.

December 14, 2015, respondents requested a hearing. The Department transmitted the matter 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.

On July 27, 2016, respondents filed a motion to compel more specific answers to interrogatories. On August 1, 2016, the Department filed a motion to take official notice pursuant to N.J.A.C. 1:1-15.2. On August 10, 2016, respondents filed opposition to the Department's motion. On August 11, 2016, the Department filed opposition to respondents' motion. On August 19, 2016, respondents filed a reply relative to the motion to compel. On October 21, 2016, respondents filed a motion in limine that facts determined in an October 3, 2016, initial decision on Department of Environmental Protection v. Jimmy Byrne Trucking, ECE 09838-15,³ be res judicata. On October 21, 2016, the petitioner submitted a letter agreeing that res judicata is applicable and that a final decision on Department of Environmental Protection v. Jimmy Byrne Trucking, ECE 09838-15, was due on November 17, 2016. By letter dated February 24, 2017, petitioner submitted a copy of the final decision. By letter dated January 31, 2018, the petitioner withdrew its motion to take official notice and respondents withdrew their "res judicata" motion, as both parties agreed that the final decision in Department of Environmental Protection v. Jimmy Byrne Trucking, ECE 09838-15, was binding and the Department could not relitigate paragraphs 8, 9, and 14 of the Amended Notice.⁴ Likewise, the parties agreed to attempt to resolve the discovery dispute that was the subject of respondents' motion to compel, and if not resolved the parties would request oral argument. By letter dated May 7, 2018, the Department provided additional documents and confirmed that the parties had agreed that all discovery issues were resolved.

The hearing was scheduled for October 23, 2018, October 24, 2018, and November 14, 2018. The parties appeared on October 23, 2018, at which time possible settlement was discussed, and the October 24, 2018, and November 14, 2018, hearing dates were adjourned at the request of the parties, and rescheduled for July 22, 2019, July 23, 2019, and July 24, 2019, as respondent was going to be out of state for several

³ Department of Environmental Protection v. Jimmy Byrne Trucking, ECE 09838-15, Initial Decision (October 3, 2016), adopted, Comm'r (December 22, 2016), <https://njlaw.rutgers.edu/collections/oal/>.

⁴ At the time of the hearing, paragraph 6 was also withdrawn by the Department.

months beginning in January 2019. By letter dated July 17, 2019, respondents requested, with consent, adjournment of the hearing dates because respondent had a buyer for his business that included the license to operate in New Jersey. The hearing was rescheduled for December 11, 2019, and January 8, 2020. By letter dated December 4, 2019, petitioner confirmed that the parties were unable to settle. The hearing was held on December 11, 2019, and January 8, 2020, and the record closed on March 6, 2020, upon receipt of the parties' post-hearing briefs.

FACTUAL DISCUSSION

Ronald Feehan and Anthony Ricci testified on behalf of the petitioner. James Byrne testified on behalf of respondents.

Background

I **FIND** the following preliminary **FACTS** in this case:

James "Jimmy" Byrne (Byrne) is the sole proprietor of Jimmy Byrne t/a Jimmy Byrne Trucking, located at 558 Tiffany Street, Bronx, New York. Byrne's cell phone number is (516) 903-9158. Byrne's email address is TSTJB@aol.com. 558 Tiffany Street is owned by TST Associates Holding. TST Associates Holding is owned by Byrne's daughter, Jaime Byrne Baranoff (Baranoff). Baranoff is a full-time high-school teacher.

Jimmy Byrne Trucking holds an A901 waste transporter license issued by the Department in 1991. The DEP waste transporter registration number for Jimmy Byrne Trucking is 19551. Jimmy Byrne Trucking also holds a Certificate of Public Convenience and Necessity (CPCN) issued by the Department. The solid waste utility registration number for Jimmy Byrne Trucking is SW1986. Jimmy Byrne Trucking is authorized to transport solid waste and hazardous waste in New Jersey. Jimmy Byrne JBT's USDOT number is 1712531. Byrne no longer uses the trade name Jimmy Byrne JBT, and now uses the trade name Jimmy Byrne Trucking.

Byrne's wife, Eve Byrne, was the president and owner of Tri-State Transfer Associates, LLC, 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 and has never been licensed to transport waste in New Jersey. JBT. NY DEC 2A456 is Tri-State's permit number from the New York Department of Environmental Conservation (NYDEC). Tri-State's USDOT number is 1422307. Eve Byrne passed away on March 18, 2014, from cancer. (R-1.) She had been diagnosed with cancer approximately eight years prior and was undergoing chemotherapy treatments. Tri-State is now owned by Baranoff and the day-to-day operations of Tri-State are supervised by her ex-husband, Bruce Baranoff, who was preceded in that function by Ron Fink.

Clean Earth of North Jersey (CENJ or Clean Earth), located at 115 Jacobus Avenue, Kearny, New Jersey, is a New Jersey DEP-permitted, licensed waste facility that accepts hazardous and nonhazardous waste for transfer and transportation to out-of-state landfills and/or hazardous facilities for disposal.

Ronald Feehan has been employed by the Department in the Bureau of Hazardous Waste Compliance and Enforcement as an investigator in the Transportation Oversight Unit for twenty-five years. Feehan assisted coworker Bob Harkins in performing an investigation of CENJ after Harkins' inspection revealed an asbestos transfer operation on CENJ's property that was not part of CENJ's operation.

Vito Pesce was the president of Triple Crown Disposal, 2 Fish House Road, Kearny, New Jersey. Pesce was never licensed to work in the waste industry in New Jersey.

Anthony Ricci has been employed by the New Jersey State Police (NJSP) since 2004. The NJSP conducts confidential A901 compliance investigations for the Division of Law of the New Jersey Attorney General's Office. In 2013, as an investigator with the Business Integrity Unit, Ricci was assigned to complete several interviews involving

Jimmy Byrne Trucking, after an investigation of CENJ revealed that Pesce and/or Triple Crown was operating illegally out of CENJ's facility.

On or about April 4, 2013, respondents' attorney, John A. Gonnella, Esq., mailed to the Department "four (4) Lease Agreements for twenty-one (21) vehicles leased by Jimmy Byrne Trucking," "[i]n accordance with [the] Conditional License." (P-4.)

The Equipment Lease Agreements are on JIMMY BYRNE T/A JIMMY BYRNE TRUCKING letterhead. The letterhead reflects an address of "558 Tiffany Street, Bronx, New York 10474," and telephone numbers "Office (516) 903-9158 Fax (718) 617-5183." The Equipment Lease Agreements are all dated May 1, 2013, and reflect "Jimmy Byrne t/a Jimmy Byrne Trucking" as the Lessee and "Tri-State Transfer Associates, Inc." (Tri-State) as the Lessor. Tri-State's address is reflected as "1199 Randall Avenue, Bronx, New York 10474." The Equipment Lease Agreements reflect the term as May 1, 2013, to April 30, 2014, and the payment as \$750 "per day based on usage per day." Paragraph 4 states: "The parties to this Lease hereby agree that the equipment leased hereunder shall be utilized exclusively during the Lease period by the Lessee." Paragraph 5 states: "Lessor is responsible for insurance in an amount no less than \$1,000,000,00 [sic] for Liability and **IS RESPONSIBLE FOR ALL MAINTENANCE ON THE EQUIP.**" Paragraph 7A states: "An employee of Jimmy Byrne t/a Jimmy Byrne Trucking, the Lessee, will drive the Leased Vehicle." The Equipment Lease Agreements were signed by Eve Byrne as president of Tri-State, and by Jimmy Byrne as sole proprietor of Jimmy Byrne t/a Jimmy Byrne Trucking. (P-4.) Paragraph 9 of the Equipment Lease Agreements is different in each agreement, as it reflects a list of the year, make, type, and VIN number of equipment to be leased. The first Equipment Lease Agreement is for six roll-off trucks. The second Equipment Lease Agreement is for one van-truck and three box trucks. The third Equipment Lease Agreement is for three tractors and three trailers. The fourth Equipment Lease Agreement is for five trailers. (P-4.)

Although the attached list of equipment differs on each Lease Certification, the language of the Lease Certifications is identical, and all but the second Lease Certification

reflect NJDEP #19551⁵ at the top of the first page. The Lease Certifications reflect the "Name of Licensee, Permittee or Exempt Transporter" as "Jimmy Byrne t/a Jimmy Byrne Trucking," and are certified by its "owner" Jimmy Byrne. The Lease Certifications reflect the Overnight Location as "1199 Randall Avenue **and** 558 Tiffany Street, Bronx, New York." (P-4.) The equipment on the lists attached to each of the four Lease Agreements corresponds with the equipment listed in each of the Equipment Lease Agreements. (P-4.) Paragraph 3 states: "I further certify that my company and I understand that it must exercise exclusive use, possession and control over each piece of equipment or operator which is included in the NJ DEP registration statement; and such equipment or operator is used to transport solid and/or hazardous waste. N.J.A.C. 7:26-3.2(i)7(i)3 and N.J.A.C. 7:26G-7.2(a)12." Paragraph 4 states: "I further certify that my company and I understand that it must take reasonable measures to ensure that the above-described equipment or operator will not, during the period of this lease, be used by any other person for the purpose of transporting solid and/or hazardous waste. N.J.A.C. 7:26-3.2(i)7(i)4 and N.J.A.C. 7:26G-7.2(a)12." Paragraph 5 states: "my company and I understand that the above-described equipment and/or operator is or will be under the exclusive management, direction and control of a permittee, licensee, or exempt transporter while being used to conduct solid and/or hazardous waste activities for permittee, licensee, or exempt transporter. N.J.A.C. 7:26-3.2(j) and N.J.A.C. 7:26G-7.2(a)13." The Lease Certifications reflect that the term of the lease is May 1, 2013, to April 30, 2014, and that "For each piece of equipment used for any particular day, the rental fee of \$750.00 per day will be paid." On the signature portion, it contains the language, "I am aware that if any of the foregoing information or statement is willfully false, I am subject to punishment." The lessor is reflected as Tri-State at 1199 Randall Avenue, Bronx, New York, and signed by Eve Byrne, president, with a telephone number of (718) 617-0771 on May 1, 2013. The lessee is reflected as Jimmy Byrne t/a Jimmy Byrne Trucking at 558 Tiffany Street, Bronx, New York, and signed by Jimmy Byrne, sole proprietor, with a telephone number of (516) 903-9158 on May 1, 2013. (P-4.)

⁵ Additionally, the first Lease Certification has "COUNTY ENVIRONMENTAL & WASTE ENFORCEMENT" at the top center.

A New Jersey Apportioned Cab Card (Cab Card) is a motor-vehicle registration that identifies a vehicle with rights to leave New Jersey and travel to specific states and return to New Jersey.

The New Jersey Apportioned Cab Cards, registration dates July 1, 2012, for two of the six roll-off trucks (VIN #s: 2NKBL50X4CM307767, 2NKBL50X4CM307766) listed in the first Equipment Lease Agreement and Lease Certification reflect the owner as "TRI STATE TRANSFER ASSOC IN," the carrier as "JIMMY BYRNE JBT C/O TRIPLE CROWN DISPOSAL 2 FISH HOUSE ROAD KEARNY, NJ 07032," and the carrier responsible for vehicle safety as "USDOT: 1712531 JIMMY BYRNE JBT 1199 RANDALL AVE BRONX, NY 10474." (P-4, DEP1008–1016.) The corresponding New Jersey Insurance Identification Cards, effective March 4, 2013, to March 4, 2014, all reflect the insured as "Jimmy Byrne JBT c/o Triple Crown Disposal 2 Fish House Road Kearny, NJ 07032." (P-4, DEP1008–1016.) The New Jersey Apportioned Cab Cards, registration dates July 1, 2012, for three of the six roll-off trucks (VIN #s: 1M2AG11C46M023857, 1NP TLBEX88N760268, 1XPHD49X98N764246) listed in the first Equipment Lease Agreement and Lease Certification all reflect the owner as "TRI STATE TRANSFER ASSOC IN," the carrier as "JIMMY BYRNE JBT C/O TRIPLE CROWN DISPOSAL 2 FISH HOUSE ROAD KEARNY, NJ 07032," and the carrier responsible for vehicle safety as "USDOT: 1422307." (P-4, DEP1008–1024.) The corresponding New Jersey Insurance Identification Cards, effective March 4, 2013, to March 4, 2014, all reflect the insured as "Jimmy Byrne JBT c/o Triple Crown Disposal 2 Fish House Road Kearny, NJ 07032." (P-4, DEP1008–1024.) The New Jersey Apportioned Cab Card, registration date November 1, 2012, for one of the six roll-off trucks (VIN #: 1NPALUTX56N635425) listed in the first Equipment Lease Agreement and Lease Certification reflects the owner as "TRI STATE TRANSFER ASSOC IN," the carrier as "JIMMY BYRNE JBT C/O TRIPLE CROWN DISPOSAL 2 FISH HOUSE ROAD KEARNY, NJ 07032," and the carrier responsible for vehicle safety as "USDOT: 1422307." (P-4, DEP1008–1019.) The corresponding New Jersey Insurance Identification Card, effective March 4, 2013, to March 4, 2014, reflects the insured as "Jimmy Byrne JBT c/o Triple Crown Disposal 2 Fish House Road Kearny, NJ 07032." (P-4, DEP1008–1020.)

The New Jersey Vehicle Registration, good through May 2013, for the van-truck (VIN #: 1FTSS34P74HA72851) in the second Equipment Lease Agreement reflects the owner as "TRI STATE TRANSFER ASSOC IN 1199 RANDALL AVENUE BRONX NY 10474," and the corresponding New Jersey Insurance Identification Card, effective March 4, 2013, to March 4, 2014, reflects the insured as "TRI STATE TRANSFER ASSOCIATES INC 1199 RANDALL AVENUE BRONX, NY 10474." The New York State Registration for two of the box trucks (VIN #s: J8DF5C13X17701903, 1GBJ7H1C71J505590) in the second Equipment Lease Agreement reflects "TRI-STATE TRANSFER ASSOCIATES INC 1199 RANDALL AVE BRONX NY 10474," and the corresponding New York State Insurance Identification Cards reflect "TRI;STATE;TRANSFER ASSOCIATES; INC 1199 RANDALL AVE BRONX NY 10474" and "TRI-STATE;TRANSFER ASSOC; INC 1199 RANDALL AVE BRONX NY 10474," respectively. (P-4, DEP1025–1037). The New Jersey Apportioned Cab Card, registration date November 1, 2012, for the third box truck (VIN #: 1FVACWDCX5HU04519) listed in the second Equipment Lease Agreement reflects the owner as "TRI STATE TRANSFER ASSOC IN," the carrier as "JIMMY BYRNE JBT C/O TRIPLE CROWN DISPOSAL 2 FISH HOUSE ROAD KEARNY, NJ 07032," and the carrier responsible for vehicle safety as "USDOT: 1712531 JIMMY BYRNE JBT 1199 RANDALL AVE BRONX, NY 10474," and the Insurance Identification Card, effective March 4, 2013, to March 4, 2014, reflects the insured as "Jimmy Byrne JBT c/o Triple Crown Disposal 2 Fish House Road Kearny, NJ 07032." (P-4, DEP1025–1037.)

The New Jersey Apportioned Cab Cards, registration dates September 1, 2012, for two of three tractors (VIN #s: 1XPFDDB0X11D563493, 1XP5DB9X02N576701) listed in the third Equipment Lease Agreement and Lease Certification reflect the owner as "TST ASSOC LEASING LLC," the carrier as "JIMMY BYRNE JBT C/O TRIPLE CROWN DISPOSAL 2 FISH HOUSE ROAD KEARNY, NJ 07032," and the carrier responsible for vehicle safety as "USDOT: 1422307." (P-4, DEP1038–1046.) The corresponding New Jersey Insurance Identification Cards, effective March 4, 2013, to March 4, 2014, reflect the insured as "Jimmy Byrne JBT c/o Triple Crown Disposal 2 Fish House Road Kearny, NJ 07032." (P-4, DEP1038–1046.) The New Jersey Apportioned Cab Card, registration date September 1, 2012, for the other tractor (VIN #: 2HSCHSCR57C480090) listed in the third Equipment Lease Agreement and Lease Certification reflects the owner as "TRI STATE TRANSFER ASSOC INC," the carrier as "JIMMY BYRNE JBT C/O TRIPLE

CROWN DISPOSAL 2 FISH HOUSE ROAD KEARNY, NJ 07032,” and the carrier responsible for vehicle safety as “USDOT: 1422307.” The corresponding New Jersey Insurance Identification Card, effective March 4, 2013, to March 4, 2014, reflects the insured as “Jimmy Byrne JBT c/o Triple Crown Disposal 2 Fish House Road Kearny, NJ 07032.” (P-4, DEP1038–1048.) TST Associates Leasing, LLC, is owned by Baranoff.

The New York State Registration for one of the three trailers (VIN #: 1S8AL4828W0009672) listed in the third Equipment Lease Agreement and Lease Certification reflects the owner as “TST ASSOCIATES LEASING LLC 558 TIFFANY ST BRONX NY 10474,” and the corresponding New York State Insurance Identification Card reflects “TST ASSOCIATES LEASING; LLC 558 TIFFANY ST BRONX NY 10474.” (P-4, DEP1038–1050.) The New York State Registrations for two of the trailers (VIN #s: 1S8AD3820N0007940, 1H9DKK3D4L1022029) listed in the third Equipment Lease Agreement and Lease Certification reflect the owner as “TRI STATE TRANSFER ASSOCIATES INC 1199 RANDALL AVE BRONX NY 10474,” and the corresponding New York State Insurance Identification Cards reflect “TRI;STATE;TRANSFER ASSOCIATES; INC 1199 RANDALL AVE BRONX NY 10474.” (P-4, DEP1038–1054.)

The New York State Registrations for four of the trailers (VIN #s: 4FNC134C8WS11320, 1S8AD3820N0007940, 4FNC134C8W2511320, 1H9DKK3D4L1022029) listed in the fourth Equipment Lease Agreement and Lease Certification reflect the owner as “TRI STATE TRANSFER ASSOCIATES INC 1199 RANDALL AVE BRONX NY 10474,” and the corresponding New York State Insurance Identification Cards, effective March 4, 2013, to March 4, 2014, reflect “TRI;STATE;TRANSFER ASSOCIATES; INC 1199 RANDALL AVE BRONX NY 10474.” (P-4, DEP1055–1069.) The New York State Registration for one of the five trailers (VIN #: 1S8AL4828W0009672) listed in the fourth Equipment Lease Agreement and Lease Certification reflects the owner as “TST ASSOCIATES LEASING LLC 558 TIFFANY ST BRONX NY 10474,” and the corresponding New York State Insurance Identification Card, effective March 4, 2013, to March 4, 2014, reflects “TST; ASSOCIATES LEASING; LLC 558 TIFFANY ST BRONX NY 10474.” (P-4, DEP1055–1063.)

A Motor Carrier Identification Report (Application for U.S. DOT Number) is Form MCS-150 from the USDOT Federal Motor Carrier Safety Administration. (P-5.) The Biennial Update or Changes, dated February 6, 2009 (2009 Biennial Update), reflects the name of the motor carrier as "JIMMY BYRNE" doing business as "JIMMY BYRNE JBT," the principal street address as "C/O TRIPLE CROWN DISPOSAL 2 FISHHOUSE ROAD," the city as "KEARNY," the mailing address as "C/O TRIPLE CROWN DISPOSAL 2 FI," the mailing city as "KEARNY," the principal business phone number as "(516) 903-9158," the principal business fax number as "(718) 617-5183," the USDOT number as "1712531," and the internet email address as "TSTJB@AOL.COM." No company operation is circled. The only operation classification circled is "B. Exempt For-Hire" and the only cargo classification circled is "DD. OTHER ASBESTOS." No hazardous materials carried or shipped were circled. The signature reflects "JIMMY BYRNE" and title "S/P." (P-5, DEP640.) A second Motor Carrier Identification Report Biennial Update or Changes, dated April 19, 2011 (2011 Biennial Update), reflects the name of the motor carrier as "JIMMY BYRNE" doing business as "JIMMY BYRNE JBT," the principal street address as "1199 RANDALL AVE," the city as "BRONX," the mailing address as "1199 RANDALL AVENUE," the mailing city as "BRONX," the principal business phone number as "(718) 617-0771," the principal contact cellular phone number as "(516) 903-9158," the principal business fax number as "(718) 617-5183," the USDOT number as "1712531," and the internet email address as "TSTJB@AOL.COM." The only company operation circled is "A. Interstate Carrier," the operation classifications circled are "A. Authorized For-Hire" and "L. Other HAZARDOUS WASTE," and the only cargo classification circled is "DD. OTHER ASBESTOS/HAZARDO..." The hazardous materials carried or shipped circled are "C" and "B" for "NN. HAZARDOUS WASTE." The signature reflects "JIMMY BYRNE" and title "S/P." (P-5, DEP641.) A third Motor Carrier Identification Report Biennial Update or Changes, dated April 1, 2013 (2013 Biennial Update), reflects the name of the motor carrier as "JIMMY BYRNE" doing business as "JIMMY BYRNE TRUCKING," the principal street address as "1199 RANDALL AVE," the city as "BRONX," the mailing address as "1199 RANDALL AVE," the mailing city as "BRONX," the principal business phone number as "(516) 903-9158," the principal contact cellular phone number as "(516) 903-9158," the principal business fax number as "(718) 617-5183," the USDOT number as "1712531," and the internet email address as "TSTJB@AOL.COM." The only company operation circled is "C. Intrastate Non-Hazmat Carrier," the only operation

classification circled is "C. Private Property," and the only cargo classification circled is "A. GENERAL FREIGHT." No hazardous materials carried or shipped are circled. The signature reflects "JIMMY BYRNE" and title "SOLE PROPRIETOR." (P-5, DEP642.)

An August 20, 2012, letter from John A. Gonnella, Esq., attorney for "James Byrne and his company, Jimmy Byrne JBT sole proprietor," responded to the July 17, 2012, request for information from the New Jersey Office of the Attorney General as follows:

1. Jimmy Byrne Trucking Inc. was de-activated in 2001 by the accountant, Nicholas Gerbasi. The re-activation of Jimmy Byrne Trucking Inc. is an accounting nightmare requiring the filing of separate returns each year beginning in 2001 and through the present date.

This entity has not done any business from 2001 to the present. James Byrne does not want to re-activate this company. See, New York State Dissolution by Proclamation enclosed as Exhibit A. Also enclosed as Exhibit B is the NJDEP Transporter vehicle registration card showing registered transporter to be Jimmy Byrne JBT.

2. The EPA number NYD 986938645 is the number assigned to Tri-State Transfer Assoc., Inc., owned entirely by Eve Byrne which is an asbestos transfer station licensed by the DEC in New York, which also includes license to haul hazardous waste and PCB—see Exhibit C.

The EPA number assigned to Jimmy Byrne d/b/a JBT is NYD 982740961—see Exhibit D.

The EPA number assigned to Jimmy Byrne Trucking, Inc., the de-activated company was NY00002918923—see Exhibit E.

3. The FEID number for Jimmy Byrne JBT (sole proprietor) is 131-30-3358.

The FEID number 11-3366695 is Tri-State Transfer Assoc., Inc. which is Eve Byrne's company.

4. The DOT number 1712531 is for Jimmy Byrne JBT.

The DOT number 1422307 is Tri-State Transfer Assoc. Inc. which is Eve Byrne's company.

The other DOT number 223453—James Byrne has no knowledge.

5. Jimmy Byrne JBT currently has no employees, no key employees, no persons managing financial accounts, no persons with hiring or firing authority and no persons making decisions with respect to solid or hazardous waste. This company currently is not doing any business.

Jimmy Byrne Trucking Inc. has been de-activated since 2001.

Jimmy Byrne Associates has drivers that drive exclusively for Tri-State Transfer Assoc., Inc. which is an asbestos and hazardous facility licensed by New York DEC and owned by Eve Byrne. The drivers for Jimmy Byrne Associates are paid by Jimmy Byrne Associates from revenue derived from Tri-State Transfer Assoc. Inc.

6. There is no involvement between Jimmy Byrne JBT and Triple Crown Disposal. Jimmy Byrne JBT uses the address of 9 Fishhouse Road, Kearny, New Jersey as its New Jersey address to receive correspondence. Catherine Pesce and Vito Pesce have no involvement with Jimmy Byrne JBT or Jimmy Byrne Associates. Triple Crown Disposal uses Tri-State Transfer Assoc., Inc. as its asbestos disposal site. Other than using this facility as a disposal site, Triple Crown Disposal, Catherine Pesce or Vito Pesce are not involved in the operations of Tri-State Transfer Assoc. Inc.
7. Tri-State Transfer Assoc. Inc. is a New York State licensed asbestos facility owned and operated by Eve Byrne; see New York DEC license annexed as Exhibit F.

Due to a medical condition that requires chemotherapy and radiation, James D. Byrne assists Eve Byrne on occasion to keep Tri-State Transfer Assoc. Inc. functioning. He receives no salary, nor does he own any capital stock in the company.

8. There is no equipment, personnel or property shared between Jimmy Byrne JBT and Tri-State Transfer Assoc. Inc.
9. There is no involvement between Express Waste Services, LLC and Jimmy Byrne JBT. Jimmy Byrne Trucking Inc. has been de-activated since 2001. On information and belief, Express Waste Services LLC is a licensed N.Y. BIC and N.Y. DEC company and might utilize the Tri-State Transfer Assoc. Inc. site for disposal of asbestos.

10. James D. Byrne needs information in order to respond to this inquiry.
11. Jimmy Byrne Trucking Inc. was de-activated in 2001 upon the advice of their accountant.
12. There has been no business activity for Jimmy Byrne Trucking Inc. since 2001; therefore there are no records for any hazardous waste transported to Tri-State Transfer Assoc. Inc.

[P-6.]

Per a Transaction Receipt from CENJ, 334 S. Warminster Road, Hatboro, PA 19047, for customer ID "JIM911," Billing Information "Jimmy Byrne Jimmy Byrne Trucking [123 Main Street, Anytown, NY 12345⁶]," Byrne's American Express card was charged \$26,623.08 for Invoice number "PSI0010661 etc.," on January 9, 2012. (P-7.) Invoice 30135 from Triple Crown Disposal, dated February 16, 2012, reflects "PAID 03/16/2012" for "1/9/2012 PAY CLEAN EARTH FOR PCBS ON AMERICAN EXPRESS 26623.08 SERVICE CHARGE 2,887.68." (P-7.) A check from TRIPLE CROWN DISPOSAL LLC II, dated March 12, 2012, in the amount of \$29,510.76, payable to Tri-State Transfer Associates, Inc., and cashed on March 15, 2012, reflects the memo "Inv. 30135 3/16/12." (P-7.)

TST (Tri-State Transfer Assoc., Inc.) Non-Hazardous Waste Manifests for handling and transportation of asbestos No. 99121, dated April 20, 2011, for Schneider Elevator Corporation in Morristown, New Jersey, and No. 102143, dated August 3, 2011, for The Valley Hospital in Ridgewood, New Jersey, reflect the following:

JBT. NY DEC 2A456
NJ DEP SW1896⁷
D.E.C. 2A-501
D.E.C. 2A-456
NJDEP 19551⁸

⁶ A fictitious address is used for Byrne's home address for privacy.

⁷ NJ DEP SW1896 is the solid waste utility registration number for Jimmy Byrne Trucking, not Tri-State. Tri-State does not have an NJ DEP solid waste utility registration number, as it is not licensed in New Jersey.

⁸ NJDEP 19551 is the New Jersey DEP waste transporter registration number for Jimmy Byrne Trucking. Tri-State does not have a New Jersey DEP waste transporter registration number, as it is not licensed in New Jersey.

The corresponding Tri-State Invoices (No. 27564, dated June 6, 2011, for date of service April 20, 2011, and No. 28224, dated August 10, 2011, for date of service August 3, 2011), reflect:

JBT. NY DEC 1A375
NJ DEP SW1896

The Annual A901 Update for 2018 for Jimmy Byrne T/A Jimmy Byrne Trucking, mailing/physical address of "558 Tiffany St., Bronx, NY 10474," reflects "Jimmy Byrne" as the contact person, and the company phone number as "917-792-4266." The name of the person to be contacted in reference to the forms was "JIMMY BYRNE," title "SOLE PROPRIETOR," office phone "917-792-4266" and cell phone "516-903-9158." It reflects NJDEP Transportation/Hauler ID # HAZ-50071, CPCN # SW-2986, USDOT # "1712531" and USEPA # "NY0000201823," and that the work of the company is "Transportation and disposal of asbestos and hazardous waste." It listed "ALL locations where equipment is stored, in the State of New Jersey or elsewhere, where your company is operating or proposes to operate: offices, equipment storage, or any other aspect of a recycling, solid waste or hazardous waste business" as "558 TIFFANY STREET, BRONX, NY 10474," description of property use as "2ND STORY OFFICE," and property owner as "TST ASSOCIATES HOLDING." The "Equipment and Drivers" portion reflects that the lessor does not lease twenty or more drivers to JBT, and does not lease ten or more pieces of equipment to JBT. It reflects the lessor as "TRI-STATE TRANSFER ASSOC., INC.," and the contact person as "JAIME BYRNE BARANOFF" at phone number "917-602-8444," with the number of pieces of equipment and drivers listed as "AS NEEDED." It reflects that Jimmy Byrne is the sole proprietor, the date equity was obtained as "May 1, 1994," and his business phone as "917-792-4266" and cell phone as "516-903-9158." (P-9.)

The sign on the Tri-State building at 1199 Randall Avenue reflects the number for Tri-State asbestos transfer station as (718) 617-0771 and reflects "EMERGENCY CALL 516-903-9158." The emergency call number is Byrne's cell-phone number. (P-10.)

The Final Decision in the matter of Department of Environmental Protection v. Jimmy Byrne Trucking, ECE 09838-15, reflects that the Commissioner adopted the Initial Decision, which held that the Department failed to establish by a preponderance of the evidence that Jimmy Byrne Trucking intentionally provided false information. (R-2.)

An Application for CPCN for Solid Waste Collection and/or Disposal dated February 6, 1992, reflects that the nature of the application was a solid waste disposal certificate. (R-4.) The application was made by “JIMMY BYRNE dba JBT,” transporters of contaminated soil and hazardous waste, which business started in June 1975. The address of “each office in New Jersey from which the business is to be conducted” reflects “JIMMY BYRNE dba JBT 1 GRAPHIC PLACE MOONACHEE [sic] NEW JERSEY 02024.”

Letters ostensibly from the New York State Department of Environmental Conservation, Division of Environmental Permits, to Eve Byrne, president, Tri-State, dated March 30, 2012, and July 12, 2010, reflect that DEC Permit No. 2-6007-00006/00001 was modified as set forth therein. (R-5.) A letter ostensibly from the New York State Department of Environmental Conservation, Division of Environmental Permits, to Jaime Byrne Baranoff, president, Tri-State, dated April 23, 2015, reflects that an application for permit renewal was received by the NYDEC on January 6, 2015. A letter ostensibly from the New York State Department of Environmental Conservation, Division of Environmental Permits, to Jaime Byrne Baranoff, president, Tri-State, dated March 29, 2017, reflects that the renewed and modified permit was enclosed.

An Administrative Consent Order between Express Waste Services, LLC, 61 Frelinghuysen Avenue, Newark, New Jersey, and Ronald DeLucia, Individually, and Vito Pesce, Individually, dated January 26, 2017, reflects a finding that Pesce was the president of Triple Crown Disposal, LLC, and an agreement that starting on the date of execution of the Administrative Consent Order for a period of ten (10) years, Pesce shall refrain from any activity regulated under N.J.A.C. 7:26 (solid waste), N.J.A.C. 7:26g (hazardous waste), or N.J.A.C. 7:26A (recycling); Pesce shall not have any involvement in any waste or recycling company in New Jersey, whether as owner, debtholder, director, employee, consultant, lessor, independent contractor, customer, broker, or landlord; Pesce shall not exert any influence or control over operations or management of any New

Jersey waste or recycling company; and Pesce shall submit a certification to the NJDEP annually to verify those requirements. (R-6.) The Administrative Consent Order does not reference Jimmy Byrne or Jimmy Byrne Trucking.

An NJDEP Settlement Agreement in In the Matter of CENJ, dated June 29, 2015, reflects the following findings:

1. Clean Earth of North Jersey Inc. ("CENJ") is a wholly owned subsidiary of Clean Earth Inc. CENJ holds a Solid & Hazardous Waste Treatment, Storage and Transfer Facility Permit, an A901 license and a CPCN, authorizing the company to operate a waste facility in Kearny Township, Hudson County, New Jersey.
2. Until January 2014, CENJ also operated an asbestos packaging facility at this property.
3. Prior to November 1998, the facility was owned and operated by S&W Waste Inc. In November 1998, Clean Earth Inc. acquired S&W Waste Inc.
4. In 1999, S&W Waste Inc. signed a Work-For-Hire agreement with a person named Vito Pesce, wherein Mr. Pesce would rent the asbestos facility from S&W Waste Inc. and operate it.
5. By June 2001, CENJ held ownership and control of the Facility. The operations of the asbestos facility continued as before, under the terms of the Work-For-Hire Agreement. . . .
6.
7.
8. In December 2011, NJDEP learned of Mr. Pesce's involvement with the asbestos facility and requested more information from CENJ on Mr. Pesce's involvement. CENJ provided a thorough response and immediately terminated the Work-For-Hire Agreement and ended Mr. Pesce's involvement with the Facility.

[R-7.]

The Settlement Agreement does not reference Jimmy Byrne or Jimmy Byrne Trucking.
(R-7.)

A transcript from In the Matter of The A901 Investigation of Clean Earth of North Jersey, dated August 2, 2012, reflects that in an examination by Raghu Murthy, deputy attorney general, the sworn testimony of Robert Fixter, ostensibly general manager and vice president of CENJ at that time, was, in part, as follows:

Q. I wanted to ask about a few other companies. Jimmy Burns [sic] Trucking, does Clean Earth, did Clean Earth ever do any business with them?

A. Not to my knowledge. [R-8 at T52:3–6.]

Q. Did he ever—how did he end up transporting the material?

A. I believe he hired us to transport the material and we hired Auchter Industrial Vac Service who is a licensed hazardous and solid waste hauler in New York State and New Jersey. [R-8 at T81:8–13.]

Q. Okay. Did you ever work with—did TNJ ever do any work for Tri-State?

A. I am not positive, but I believe that after the DEP investigation started which I believe is around this time period that we were invoicing DJM and Vito requested that we invoice someone else. [R-8 at T109:13–18.]

Q. Right.

A. I wanted that changed. Once we changed it, all invoicing went to DJM as a customer. Then we did the work for DJM where they, where we brought in waste from New York City School Construction, and then towards the end of the project, DEP investigation began, and then Vito requested that we invoice another entity.

Q. That was called what?

A. I believe it's Tri-State. [R-8 at T110:4–12.]

Q. And they would be from the time period December 22, 2011? How long did you bill to Tri-State?

A. Project went on. I think we only, if we did in fact invoice Tri-State, I think it might have been only for the last couple of shipments if not the last shipment. [R-8 at T113:10–16.]

Three Uniform Hazardous Waste Manifests (008927373JJJ, 008927374JJJ, 008927375), each for a New York public school, all dated December 22, 2011, reflect the generator's name as the public school, the transporter as "AUCHTER INDUSTRIAL VAC SERVICE INC.," and the designated facility name and site address as "Clean Earth of North Jersey, Inc., 105 Jacobus Ave South Kearny, NJ 07032." They are for polychlorinated biphenyls solid mixture, and 008927375 was also for mercury. The corresponding invoices for those manifests from CENJ reflect the "Sold To" name as "JIMMY BYRNE TRUCKING, 1199 RANDALL AVE, BRONX, NY 10474," and the Customer No. as "JIM911." Similarly, CENJ's "FINANCE COPY" for those manifests reflect the Customer # as "JIM911" and the Customer as "JIMMY BYRNE TRUCKING," with the comments "AUCHTER INDUSTRIAL VAC SERVICE INC. Transporting for Clean Earth, I." (R-9.)

On December 23, 2011, Fixter ostensibly sent an email to Vicki Quail with the subject "Jimmy Byrne," stating: "Vicky for OA 30800069045, manifest 008927373JJJ we need to bill for 30 yards. Although we picked up a 40 yard container the container was not full." (R-9.) A CENJ Sample Report reflects that this was for "Public School 10K," Generator "JIM911," and the Customer was "Auchter Industrial Vac Service Inc." The corresponding Uniform Hazardous Waste Manifest reflects the Generator as "Public School 10K (K010)," the transporter as "Auchter Industrial Vac Service Inc.," and the designated facility name and address as "Clean Earth of North Jersey, Inc., 105 Jacobus Ave South Kearny, NJ 07032." (R-9.)

A CENJ "FINANCE COPY 2" reflects the Customer # as "JIM911," the Customer as "JIMMY BYRNE TRUCKING," the Job Site as "Public School 40K (K040)," the Carrier as "AUCHTER INDUSTRIAL VAC SERVICE INC.," comments "AUCHTER INDUSTRIAL VAC SERVICE INC. Transporting for Clean Earth, I," and scheduled date December 22, 2011, for polychlorinated biphenyls solid mixture. The corresponding Uniform Hazardous Waste Manifest reflects the Generator as "Public School 40K (K040)," the transporter as "Auchter Industrial Vac Service Inc.," and the designated facility name and address as "Clean Earth of North Jersey, Inc., 105 Jacobus Ave South Kearny, NJ 07032," for polychlorinated biphenyls solid mixture.

Testimony

Ronald Feehan

An A901 license, named after the Assembly Bill, requires an application and disclosure documents, and an “REC (reliability, expertise, and competency) check,” (which now also includes integrity). Additionally, after receiving the license, in order to haul solid non-hazardous waste, a CPCN is required, and all vehicles must be registered, with evidence of registration and insurance, with the Department’s registration department to have decals issued for the equipment. Leases are required if the registrant does not have ownership of or title to the equipment.

The CENJ investigation revealed that asbestos waste was being shipped to Tri-State. CENJ’s scale was being used to scale the equipment in, but there was a building at the CENJ site where Vito Pesce operated a company—Triple Crown Disposal—where asbestos-laden vehicles would pull into the building, the asbestos would be transferred into other vehicles in the building, the empty vehicles would weigh out on the CENJ scale and leave, and then the full asbestos-laden vehicles would be weighed out and sent to Tri-State. Pesce was operating an asbestos transfer station within the four corners of the permit issued to CENJ. There was an enforcement action to stop Pesce/Triple Crown Disposal’s activity at CENJ.

Harkins and Feehan attempted to determine who was transporting the material from Triple Crown Disposal to New York. They obtained “ten-day notification” documents for asbestos removal in New Jersey from the New Jersey Department of Labor, Asbestos Licensing and Control, (NJDOL) and noticed that on some documents Tri-State was listed as the “transporter” and was using the NJ DEP registration number for Jimmy Byrne Trucking. They interviewed the owners, O’Brien and Whelan, of one of the companies—Pinnacle—an asbestos-abatement company. O’Brien and Whelan advised that for their New Jersey asbestos abatement work all the waste was shipped to Tri-State’s transfer station in New York. O’Brien and Whelan further advised that they dealt with Byrne, and that the transportation was by Tri-State, not Jimmy Byrne Trucking. Manifests with Tri-State’s name on them indicated that Tri-State was the transporter, or at the very least the

broker, both of which require an A901 license in New Jersey. Because this was essentially license/registration fronting, Feehan and Harkins accompanied New Jersey State Police (NJSP) Detective Sergeant Brett Bloom, who oversaw the A901 unit, and NJSP Investigator Anthony Ricci to interview Byrne at 558 Tiffany Street. Byrne stated that the transfer station was owned by his wife, who was ill and in Florida undergoing cancer treatment, so he was sort of filling in for her with Tri-State. Byrne was unable to answer many questions about Tri-State. Byrne stated that he had trouble with his memory. Byrne admitted that he got decals so that Tri-State could transport asbestos through New Jersey. However, there is an exemption in the regulations and Tri-State could have done that without any decals if Tri-State did not stop in New Jersey and take waste on, or offload waste, or store waste in excess of twenty-four hours. Tri-State would not need a license or anything from the DEP to merely travel through New Jersey. Obviously, Byrne gave the decals to Tri-State to put on their trucks because he had registered those trucks through leasing with the NJ DEP. Byrne stated that Pesce did a lot of business with Tri-State.

It is important for a licensee to exercise exclusive control over the equipment to prevent fronting of one's license and registration and to give the Department a level of confidence in the lessee that the lessee can control the lessor. One cannot allow someone else to use their license. The CPCN and the equipment is registered pursuant to that license and certification. The carrier responsible for vehicle safety is the licensee, with the DOT number that is on the card. Byrne cannot allow his registered equipment and his license and CPCN to be used by an unlicensed company to come to New Jersey to pick up waste and transport it because that is "fronting"—allowing someone else to utilize his credentials. Decals were issued to him for specific equipment and his license was used to obtain the decals and registration of his company with the NJ DEP. Tri-State does not have credentials to haul waste in New Jersey because it would need its own license, CPCN, registration, and equipment registered to Tri-State. Trucks were being used by Tri-State, but with the New Jersey decals for Jimmy Byrne Trucking. Those trucks should have been used by Jimmy Byrne Trucking because of documentation of exclusive use and control of the equipment.

Anthony Ricci

The NJSP obtained asbestos forms from the Division of Labor that led to a company called "Pinnacle," so Ricci accompanied the NJ DEP and conducted interviews of Whelan and O'Brien. The information on Pinnacle came from the DOL asbestos documents. Feehan must be given ten days' notice of the transport and only a licensed A901 company can do the transportation. By virtue of the identifiers, Jimmy Byrne Trucking's NJ DEP number, the transportation was per the license and authority of Jimmy Byrne Trucking. Whelan and O'Brien explained that Pinnacle utilized the transportation services of Tri-State to transport waste and had an ongoing relationship with Tri-State, dealing exclusively with Byrne.

After the Pinnacle interviews, Ricci, NJSP Detective Sergeant Bloom, Feehan, and Harkins made an unannounced visit to Jimmy Byrne Trucking in January 2013. Byrne had been presented at the interview with extensive documentation, including hazardous-waste manifests, DOT documentation, and motor-carrier documents, showing Tri-State using the A901 authority of Jimmy Byrne Trucking, but never explained how it occurred. Byrne said he had trouble with memory. Byrne had reported Jimmy Byrne Trucking to be inactive, with no equipment, and no bank accounts or records. The location he was using was Tri-State's, he did not pay for or lease the location, and he did not pay for or lease the Triple Crown location. Byrne was given an opportunity to produce business records, but never produced them. The value of the company is the authority and the decals.

Respondents' attorney's letter of August 20, 2012, was a response to the Division of Law's July 2012 request for information. It appeared from the investigation that Byrne used the names Jimmy Byrne Trucking and Jimmy Byrne JBT and Jimmy Byrne Trucking, Inc., interchangeably. Jimmy Byrne Associates was never licensed to work in the waste industry in New Jersey. Tri-State was never licensed to work in the waste industry in New Jersey. Byrne was interviewed about decals and the relationship between Jimmy Byrne Trucking and Tri-State.

From his review of records, Pesce was involved with Triple Crown, but it may have been owned by his wife, Catherine Pesce. Triple Crown was not licensed to work in the

waste industry in New Jersey. Byrne advised that Triple Crown was operated by Pesce. Byrne did not provide an answer for why he used Triple Crown's address. It did not make sense logistically that the owner of an A901 license company out of New York, who lives in New York, would have mail delivered to Kearny, New Jersey. He obviously had a relationship with Triple Crown, and he identified Triple Crown as a customer of Tri-State, whereby it used the transfer station as a disposal site.

Byrne explained that he made the payment on behalf of Triple Crown because Triple Crown owed a debt that Pesce was unable to pay to CENJ because he did not possess an A901 license, and Pesce needed an A901-licensed company to make the payment because CENJ would not accept payment from a company not licensed by the State to haul waste into that transfer site. Byrne further explained that he was going to get paid if he did anything, so that \$2,887.68 was a service charge.

James Byrne

The corporation Jimmy Byrne Trucking, Inc., was deactivated in 2001 and Byrne did not know if the corporation had any licenses. Byrne was the sole owner. Jimmy Byrne Trucking, Inc., was never operated under the DEP license as a waste hauler. Jimmy Byrne Associates is a corporation owned by Baranoff. Jimmy Byrne Associates' drivers drive for Tri-State. Byrne is a paid employee of Jimmy Byrne Associates. There is a formal lease between Jimmy Byrne Associates and Tri-State.

Byrne knows Pesce because they both had been New York City police officers. Byrne does not know DeLucia. The company DJM performed some work as a subcontractor for Byrne on a job in New York. Byrne was not sure who Michael

Colombino was, but thought he was associated with DJM. There are no payroll records⁹ of any payments to Triple Crown Disposal, Express Waste,¹⁰ Colombino, or DJM.

No payments were made to Vito Pesce by Jimmy Byrne Trucking from 2013 to 2019. Pesce was not part of the operation of Jimmy Byrne Trucking. Triple Crown was a customer of Tri-State only in New York. Byrne receives his mail "care of" Triple Crown at 2 Fish House Road, Kearny, but his trucks were parked elsewhere. He had no business involvement with Triple Crown or Pesce, and he never went there. Pesce would give him the mail. He used that address because he needed a New Jersey mailing address. He did not know how often Pesce brought him the mail or if he ever got mail. He had no idea if Triple Crown was licensed to operate a disposal facility in New Jersey. He denied that his sole proprietorship ever did any work for Pesce.

Triple Crown did work with CENJ. Byrne did not know who ran the day-to-day operations of CENJ or who owned it. Byrne does not know Fixter but may have met him. Byrne did invoice on behalf of Pesce, but Byrne did not do the work. "That job was from Brooklyn. Clean Earth needed a 901 company to pay the bill. I paid the bill for a profit." Byrne did not haul any waste on behalf of Pesce, Triple Crown, or CENJ. Byrne was not familiar with Auchter Industrial Vac Service. Auchter was the transporter, which is reflected on the dump receipts. Tri-State never billed CENJ. Pesce had a job in Brooklyn and CENJ supplied the trucks. When the job was done, CENJ called him and said they needed an A901 company to make the payment for Pesce. He did not know why an A901 company was needed. Byrne paid the bill with his American Express card, not knowing Pesce was in any kind of trouble. He charged a fee for making the payment. He had never done that before and has not since. When asked, "why did Triple Crown pay Tri-State Transfer Associates instead of paying you, especially considering the fact that you used your personal American Express card to pay Clean Earth?" his response

⁹ Although Exhibit R-3 is identified in the binder as "Payroll Ledgers, Jimmy Byrne Trucking Sole Proprietorship, 2013 through 2019," and Byrne was asked to refer to the payroll ledgers with respect to whether payments were made to various individuals or companies, the payroll ledgers were for Tri-State Transfer Associates for January 2013 to September 2019. After DAG Lamboy's objection, Byrne was asked, "In any event, is there any records revealing that you made any payments" to Pesce, DeLucia, Express Waste, or Triple Crown, to which Byrne's response was that there were not.

¹⁰ When asked if he knew a company by the name of Express Waste, Byrne's response was, "I know it's Vito's company." However, when thereafter asked, "If I were to tell you that's not the case and it's Ron DeLucia's company, would you accept that?," his response was, "I didn't know that."

was, "Because it shows James Byrne." Later, he testified that he directed Pesce to make it out to Tri-State. Byrne offered to make the payment for a profit, and he spoke to Pesce and Pesce agreed to pay him.

Byrne is not involved with Tri-State, does not receive payments from Tri-State, and does not supervise employees of Tri-State. When asked, "When you tell one of the employees of Tri-State Transfer Associates or Jimmy Byrne Associates to drive a truck or place a decal or you dispatch them somewhere, they do what you tell them to do, correct?," his response was, "No, I would tell Ron Fink" because it was hazardous waste. He told Ron Fink, an employee of Tri-State, to tell the drivers what to do only for hazardous waste. Byrne denied being Fink's supervisor.

Pinnacle was a customer of Tri-State and Jimmy Byrne Trucking.

Jimmy Byrne t/a Jimmy Byrne Trucking has leased equipment from Tri-State for approximately the last eight to ten years. Byrne made payments to Tri-State pursuant to the lease agreements, by check. Jimmy Byrne Trucking earns income or profit or compensation from customers, which is how it makes the lease payments. Byrne denied that the lease requires that a Jimmy Byrne Trucking employee drive the leased vehicles.

Byrne has had no violations with the NJDEP from 2014 going forward. Any transgression occurred before Eve Byrne passed away.

Byrne was aware that a licensee must exhibit competency, integrity, and expertise at all times, aware that he was required to disclose all key employees of Jimmy Byrne Trucking to the Attorney General's Office, and aware that he had to file an annual update with the Attorney General's Office.

Jimmy Byrne JBT and Jimmy Byrne Trucking are both sole proprietorships. Deborah Pinto, former bureau chief at the Department, made him change everything to Jimmy Byrne t/a Jimmy Byrne Trucking. She told him to change his USDOT number, which he did. He currently operates as Jimmy Byrne Trucking. He formerly operated as Jimmy Byrne JBT. Jimmy Byrne JBT is now Jimmy Byrne Trucking, but it is not the same

sole proprietorship because they made Byrne change the DOT number. Presently Jimmy Byrne Trucking's only employee is Byrne, the sole proprietor; it does not own any equipment; it does not have any assets. Baranoff is trying to sell Tri-State and Byrne is trying to sell his DEP license.

Byrne is currently doing business as Jimmy Byrne Trucking. Some of Jimmy Byrne Trucking's customers are ETS Contracting in Brooklyn and Apex Development, Inc., which companies are also customers of Tri-State. Byrne explained that Jimmy Byrne Trucking moves the hazardous waste to Cycle Chem in New Jersey, which is why Jimmy Byrne is involved with Apex and EA and whoever else. Tri-State does the transportation per the lease. Jimmy Byrne Trucking leases Tri-State's equipment, but Tri-State transports the waste in New Jersey. Byrne does not personally receive compensation from Tri-State. He bills Tri-State to do the transportation.

Byrne currently is probably leasing four or five roll-offs and twenty containers from Tri-State, but right now is not doing any work in New Jersey so he is not being supplied any drivers from Tri-State.

The payroll ledgers supplied were for Tri-State and not for Jimmy Byrne Trucking. He would have to check with the accountant to determine whether he maintains a general ledger for Jimmy Byrne Trucking. The accountant is also the accountant for Tri-State and Byrne personally. Jimmy Byrne Associates is the company that leases drivers to Tri-State.

Tri-State's ledgers reflect payments to Sprint, which is Byrne's cell-phone carrier, but Byrne does not know whether he pays for his own cell-phone number. Payments to "Jimmy Byrne As" were to Jimmy Byrne Associates, the company that leases drivers to Tri-State. "Jimmy Byrne Tr" was Jimmy Byrne Trucking, but Byrne does not know why payments of \$7,000 or \$3,300 were made by Tri-State to Jimmy Byrne Trucking. He does not know why Tri-State paid Triple Crown \$2,700.

Discussion

Byrne offered no reasonable or cogent explanations for the problems in his business operations or documentation, and his testimony was often contradictory and unclear. By way of example:

- Byrne testified that he is a paid employee of Jimmy Byrne Associates, but also testified that he does not know what he is paid to do for the company.
- Byrne testified that he did not know if Jimmy Byrne Trucking receives revenue from Tri-State, or how he gets paid as Jimmy Byrne Trucking or the sole proprietorship, and that his company “probably” earns a profit from hazardous waste. Byrne also testified that Jimmy Byrne Trucking bills for the work in New Jersey and it pays Tri-State to do the hauling. Jimmy Byrne Trucking invoices the customers in New Jersey, not Tri-State, and it is payable to Jimmy Byrne t/a Jimmy Byrne Trucking. When asked, “What’s the connection between your services that you perform with your New Jersey license and Tri-State? Like how do they become involved if you’re doing a job in New Jersey with your New Jersey license?,” the response was, “Jimmy Byrne does the hazardous waste in New Jersey but Tri-State is the one that I have a lease that does the work.” Byrne explained that he leases the vehicles from Tri-State, and Tri-State is driving the trucks to pick up the waste. Tri-State is performing the work and Jimmy Byrne Trucking brings the waste to Cycle Chem in New Jersey. “I get the work, Tri-State does the work, I bill the work, and I pay Tri-State. I know it’s confusing.” He also testified that customers call Byrne. When asked, “But then Tri-State’s trucks and Tri-State’s employees come into New Jersey and then they do the removal?,” the response was, “No, it’s usually brought from New York into New Jersey. In other words, New York doesn’t have a hazardous facility, but Jersey does.” He does not remove anything. He only transports and disposes of it. “Tri-State has the license in New York to pick it up and I have the license in Jersey, Jimmy Byrne.” If Tri-State picks up asbestos at a school, it is in a Tri-State-owned truck driven by a Tri-State-employed driver, and that driver drives the truck into New Jersey and does the transportation and

disposal. The Tri-State trucks reflect Tri-State's name on them, but have Jimmy Byrne Trucking decals on them.

- Byrne testified that the drivers of the Jimmy Byrne Trucking trucks were employed by Jimmy Byrne Associates, but at another point testified they were employed by Tri-State. Byrne also testified that the drivers are employees of Tri-State and Jimmy Byrne Associates leases them to Tri-State, but also testified that Jimmy Byrne Associates does not lease drivers to Tri-State. Byrne also testified that the drivers are employed by Tri-State but paid by Jimmy Byrne Associates. When asked if Jimmy Byrne Trucking pays Jimmy Byrne Associates for the leased drivers or if Tri-State Transfer pays Jimmy Byrne Associates, he testified that Tri-State pays.
- Byrne testified that he did not know if he leases equipment from TST Associates Leasing, and that it could be a typographical error. Byrne testified that the address of TST Associates Leasing LLC is "1199 Randall Avenue," but thereafter testified "or 558 Tiffany," and that he did not know.
- Despite that the Lease Agreements state, "An employee of Jimmy Byrne t/a Jimmy Byrne Trucking, the Lessee, will drive the Leased Vehicle," Byrne denied that it was required that his employees drive the truck. Byrne testified, "I guess I do" understand the regulations governing the transportation of waste in New Jersey, but he also testified that he was not familiar with the lease certification requirement, and did not remember if he was required to exercise exclusive use, control, and possession of the truck he leased to transport waste in New Jersey. Byrne also testified that he is not familiar with the filing requirements at the USDOT.
- When asked about the use of Tri-State's address and USDOT number on Cab Cards, Byrne's responses were generally that he did not know or that 2012 was during the period when his wife was ill and undergoing chemotherapy, and that Fink was taking care of it. Byrne also testified that due to his wife's illness Jimmy Byrne Trucking did not do any business or have any employees or equipment

during the years in question, and he relied on Fink to do his paperwork. However, when asked if “Fink was taking care of the operations of Jimmy Byrne Trucking at that time,” Byrne’s response was, “No, he would call me, and I would give him what I know.” Byrne also testified that Fink was “probably” operating Jimmy Byrne Trucking at that time.

- Byrne testified that he did not know if Jimmy Byrne Trucking ever uses the DOT number of Tri-State, and said “not that I know of” when asked if Tri-State uses the DOT number of Jimmy Byrne Trucking. Byrne testified that he does not have his own customers, and that his customers are Tri-State’s customers that do work in New Jersey. However, he also testified that Jimmy Byrne Trucking has its own customers, too. Although Byrne referenced the lease several times, he also several times testified that Tri-State is transporting the waste in New Jersey.
- Byrne testified that his sole proprietorship did not do business with Clean Earth¹¹, and could not explain why there was an invoice for \$11,575.96 from CENJ to Jimmy Byrne Trucking at Tri-State’s address.
- Although the Department represented to Byrne that there has only ever been one waste transporter license issued to him by the Department, Byrne testified that one was issued to Jimmy Byrne t/a Jimmy Byrne Trucking and another was issued to Jimmy Byrne JBT.
- When asked if he had an explanation for why Jimmy Byrne Trucking was using the address and phone number of Tri-State in the biennial update, his response was, “I guess we were sharing the office.”

Some Cab Cards reflect the owner as Tri-State, but the insured as Jimmy Byrne JBT. Some Cab Cards reflect the owner as TST Associates Leasing, LLC, but the insured as Jimmy Byrne JBT. Some registrations reflect the owner as Tri-State, and the insured

¹¹ Other than the American Express payment.

as Tri-State. Some registrations reflect the owner as TST Associates Leasing, LLC, and the insured as TST Associates Leasing, LLC.

The Cab Cards reflect the carrier as “JIMMY BYRNE JBT C/O TRIPLE CROWN DISPOSAL 2 FISH HOUSE ROAD KEARNY, NJ 07032,” but some reflect the carrier responsible for vehicle safety as “USDOT: 1712531 JIMMY BYRNE JBT 1199 RANDALL AVE BRONX, NY 10474,” and some reflect only “USDOT: 1422307.” Additionally, some New York State Registrations and corresponding Insurance Identification Cards reflect the owner as Tri-State at 1199 Randall Avenue, while other New York State Registrations reflect the owner as “TST ASSOCIATES LEASING LLC 558 TIFFANY ST BRONX NY 10474,” and the corresponding Insurance Identification Cards reflect “TST;ASSOCIATES LEASING;LLC 558 TIFFANY ST BRONX NY 10474.” Of concern in relation to the foregoing is that no reasonable explanation for the use of Triple Crown’s address was provided by Byrne, Jimmy Byrne Trucking’s address was not 1199 Randall Avenue, and its USDOT number was not 14422307, which was Tri-State’s USDOT number, and TST Associates Leasing, LLC, is not an entity identified on the Equipment Lease Agreement or Lease Certifications. Although Byrne testified that he was required to obtain a new USDOT number, the A901 application in 2018 for Jimmy Byrne Trucking reflects 1712531, which was the same USDOT number for Jimmy Byrne JBT. Additionally, Feehan testified that the carrier responsible for vehicle safety should be the licensee, which is Jimmy Byrne Trucking, but some of the Cab Cards reflect Tri-State as the carrier responsible for vehicle safety, and the ones that properly reflect Jimmy Byrne JBT and its proper USDOT number reflect Tri-State’s address. Further, despite Byrne’s testimony, and a letter from his attorney dated August 20, 2012, that Jimmy Byrne JBT had no employees and was not doing business, Jimmy Byrne JBT was the carrier and the carrier responsible for vehicle safety on 2012 Cab Cards, and was the insured on all the corresponding New Jersey Insurance Identification Cards.

The 2009 Biennial Update reflects a principal street address and mailing address as c/o of Triple Crown Disposal, 2 Fish House Road, and the principal business phone number as “(516) 903-9158.” However, the 2011 Biennial Update reflects the principal street address and mailing address as 1199 Randall Avenue and the principal business phone number as “(718) 617-0771.” The 2009 and 2011 Biennial Updates reflect the

name of the motor carrier as “JIMMY BYRNE” doing business as “JIMMY BYRNE JBT.” Thereafter, the 2013 Biennial Update reflects the name of the motor carrier as “JIMMY BYRNE” doing business as “JIMMY BYRNE TRUCKING,” the principal street address and mailing address as 1199 Randall Avenue, and the principal business phone number as “(516) 903-9158.” Of concern is that Jimmy Byrne Trucking’s address was not 1199 Randall Avenue, and its phone number was not (718) 617-0771.

In view of the foregoing, I **FIND** that information on the Cab Cards, registrations, insurance cards, and Biennial Updates was inconsistent and did not comport with the terms of the Equipment Lease Agreements or Lease Certifications.

The Equipment Lease Agreements state that the lease payment was \$750 per day “based on usage per day,” and the Lease Certifications certify that “a rental fee of \$750 per day would be paid for each piece of equipment used for any particular day.” This suggests that there would be times when the equipment would not be utilized by Jimmy Byrne Trucking, and therefore Tri-State would not be paid. However, based upon the Lease Agreements and Lease Certifications, Jimmy Byrne Trucking’s decals were to have been affixed to the equipment and it was to be under the exclusive use, possession, and control of Jimmy Byrne Trucking. It makes no sense that Tri-State would agree to this provision unless it was in fact utilizing the equipment certified to be within the exclusive use, possession, and control of Jimmy Byrne Trucking because Tri-State would not only not be paid on the days that the equipment was not being utilized by Jimmy Byrne Trucking, but it would also be unable to utilize the equipment.

Additionally, the Equipment Lease Agreements state, inter alia, that the “equipment leased here under shall be utilized exclusively during the Lease period by the Lessee,” and “An employee of Jimmy Byrne t/a Jimmy Byrne Trucking, the Lessee, will drive the Leased Vehicle.” The Lease Certifications certify, inter alia, that the Lease Agreements “contain the true terms of the lease”; “that my company and I understand that it must exercise exclusive use, possession and control over each piece of equipment or operator which is included in the NJDEP registration statement”; “that my company and I understand that it must take reasonable measures to ensure that the . . . equipment or operator, will not . . . be used by any other person for the purpose of transporting solid

and/or hazardous waste”; that “my company and I understand that the . . . equipment and/or operator is or will be under the exclusive management, direction and control of a Permittee, Licensee, or Exempt Transporter while being used to conduct solid and/or hazardous waste activities for Permittee, Licensee, or Exempt Transporter”; and that “When used for solid and/or hazardous waste transportation purposes, [vehicles with affixed decals] may only be used pursuant to the lease.” Notwithstanding the foregoing statements and certifications, Byrne testified that his company had no drivers and Tri-State’s employees were the drivers of the vehicles; there were no records showing what business was conducted by his company; the equipment was being utilized by Tri-State in connection with work performed in New Jersey; the equipment was, at varying times, used, possessed, and controlled by Tri-State, and the operators were drivers employed by Tri-State. Accordingly, I **FIND** that respondent did not exercise exclusive use, control, and possession of the equipment included in the NJ DEP registration statement; respondent did not take reasonable measures to ensure that the equipment or operator was not used by any other person for the purpose of transporting solid and/or hazardous waste; and the equipment and/or operator was not under the exclusive management, direction, and control of respondent while being used to conduct solid and/or hazardous waste activities. As such, I further **FIND** that certified statements made to the Department in the Lease Certification were false.

A 2011 Tri-State Non-Hazardous Waste Manifest reflects “JBT. NY DEC 2A456”; “NJ DEP SW1896”; “D.E.C. 2A-501”; “D.E.C. 2A-456”; and “NJDEP 19551.” And the corresponding Tri-State Invoices reflect: “JBT. NY DEC 1A375” and “NJ DEP SW1896.” NJ DEP SW1896 is the solid waste utility registration number for Jimmy Byrne Trucking, not Tri-State. Tri-State does not have an NJ DEP solid waste utility registration number—NJ DEP WSW186 is Jimmy Byrne Trucking’s utility registration number for its CPCN. NJDEP 19551 is the solid waste transporter registration for Jimmy Byrne Trucking, not Tri-State, although it reflects “JBT.” NY DEC 2A456 is Tri-State’s DEC permit number from the New York Department of Environmental Conservation. Byrne testified that he did not know why Jimmy Byrne Trucking’s numbers were on Tri-State’s manifests and invoices, and that he did not know if Tri-State was licensed to transport waste in New Jersey. Additionally, the manifests and invoices reflect that the waste was transported to Tri-State and that Tri-State invoiced for it. Although Byrne testified that Tri-State was

owned by his wife, and then his daughter, and operated by Ron Fink, and thereafter by his ex-son-in-law, there is enough evidence of a clear nexus—not just familial—between Byrne and Tri-State. His cell-phone number is printed on the side of the Tri-State building as its emergency contact, and his explanation for this was convoluted and inexplicable, as was his explanation that his email address, TSTJB@aol.com, was just initials and did not stand for “Tri State Transfer Jimmy Byrne.” Byrne submitted Tri-State records, and his Jimmy Byrne Trucking business licenses and permits are being utilized by Tri-State. Accordingly, I **FIND** that Byrne allowed Tri-State to utilize his New Jersey DEP credentials.

ANALYSIS AND CONCLUSIONS OF LAW

N.J.S.A. 13:1E-1 to -230 is known as the “Solid Waste Management Act,” wherein the Legislature found and declared to be public policy of New Jersey that the collection, transportation, treatment, storage, and disposal of solid waste are critical components of the economic structure and, when properly controlled and regulated, make substantial contributions to the general welfare, health, and prosperity of the state and its inhabitants by minimizing the serious health and environmental threats inherent in the management of these wastes; that the regulatory provisions of the Solid Waste Management Act are designed 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; that the solid and hazardous waste industries in New Jersey can attain, maintain, and retain integrity, public confidence, and trust, and promote the general public interest, only under a system of control and regulation that precludes the participation therein of persons with known criminal records, habits, or associations, and excludes or removes from any position of authority or responsibility any person known to be so deficient in reliability, expertise, or competence with specific reference to the solid or hazardous waste industries that his participation would create or enhance the dangers of unsound, unfair, or illegal practices, methods, and activities in the conduct of the business of these industries. N.J.S.A. 13:1E-126.

An “applicant” means any business concern that (1) has filed a disclosure statement with the Attorney General and is seeking a license, provided that the business concern has furnished the department and the Attorney General with any information required pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.). N.J.S.A. 13:1E-127(a). No person may engage or continue to engage in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in New Jersey without a license, or without complying with all the provisions of N.J.S.A. 13:1E-126 et seq., and with the provisions of Subchapter 16 and of N.J.A.C. 7:26-16A. N.J.A.C. 7:26-16.3(a). Every applicant and permittee must file a disclosure statement with the Attorney General at the time the application is filed, unless exempted. N.J.S.A. 13:1E-128(a)(1); N.J.A.C. 7:26-16.3(a). The disclosure statement must include, inter alia, the full name, business address, telephone number, email address, and Social Security number of the applicant or the permittee, and of any officers, directors, partners, or key employees thereof; the full name and business address of any business concern which collects, transports, treats, stores, brokers, transfers or disposes of solid waste or hazardous waste, or that engages in soil and fill recycling services, in which the applicant or the permittee holds an equity interest; a description of the experience and credentials in, including any past or present licenses for, the collection, transportation, treatment, storage, brokering, transfer or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling services, possessed by the applicant or the permittee, as the case may be, and by the key employees, officers, directors, or partners thereof; the full name and business address of any individual or business concern that leases real property or equipment used for the collection, transportation, treatment, processing, storage, brokering, transfer, or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling services, to the applicant, permittee, or licensee; and any other information the Attorney General may require that relates to the competency, reliability or integrity of the applicant or the permittee. N.J.S.A. 13:1E-127(e)(1), (2), (3), (4), (9), (11); N.J.A.C. 7:26-16.4.

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. 7:26-3.2(a). The registration period is biennial, unless otherwise established by the Department, and runs from July 1 through June 30 of each odd-numbered year. Ibid. A registrant shall not allow, through a subcontract or any other

means, any such registered equipment to be used by another person, unless such person is an employee of the applicant or registrant, or unless such use is in accordance with a lease of vehicle operators pursuant to this subchapter. N.J.A.C. 7:26-3.2(a)(4).

No license shall be approved by the Department unless the Department finds that the applicant or permittee, in any prior performance record in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste, has exhibited sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste or hazardous waste, or to operate the solid waste facility or hazardous waste facility, 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, or if no prior record exists, that the applicant or permittee is likely to exhibit that integrity, reliability, expertise and competence. N.J.A.C. 7:26-16.8(a). No person shall be issued an approved registration if that person is disqualified for any of the reasons set forth in N.J.A.C. 7:26-16.8. N.J.A.C. 7:26-3.2(g).

All solid waste vehicles, registered with the Department for the transportation of solid waste, must be owned or leased by the applicant, and, if leased, a copy of the lease, along with a copy of the Motor Vehicles Registration card, shall be supplied when filing the registration statement. N.J.A.C. 7:26-3.2(h). A permittee, licensee or exempt transporter who files a lease in connection with the registration statement for a solid waste vehicle, which the permittee, licensee or exempt transporter will operate, shall ensure that such lease is signed and dated by the parties thereto, and provides for the exclusive use, control and possession of such equipment by the permittee, licensee, or exempt transporter during the lease. N.J.A.C. 7:26-3.2(i). Additionally, N.J.A.C. 7:26-3.2(i) sets forth the terms and language required to be included in the lease, including, "my company and I understand that it must exercise exclusive use, possession and control over each piece of solid waste equipment which is included in this application for a registration statement while such equipment is used to transport solid waste," N.J.A.C. 7:26-3.2(i)(7)(3), and, "my company and I understand that it must take reasonable measures to ensure that the above-described equipment will not, during the period of the lease, be used by any other person for the purpose of transporting solid waste," N.J.A.C. 7:26-

3.2(i)(7)(4). In addition, when a permittee, licensee, or exempt transporter files a lease in connection with an application for a registration statement for a solid waste vehicle, the lease shall provide that the leased equipment is or will be under the exclusive management, direction, and control of the permittee, licensee, or exempt transporter while being used to conduct solid waste activities for the licensee, permittee, or exempt transporter. N.J.A.C. 7:26-3.2(j).

In all situations in which the Department issues decals to a permittee, licensee, or exempt transporter for affixation to the solid waste vehicle(s) of a lessor from which the permittee, licensee, or exempt transporter is leasing solid waste vehicles, when used for solid waste transportation purposes, such vehicles may only be used pursuant to the lease, and in compliance with all requirements of Subchapter 26. N.J.A.C. 7:26-3.2(k). Use of decaled vehicles by a lessor receiving decals for its vehicles pursuant to a lease, for the transportation of solid waste within, or into or out of, New Jersey other than pursuant to a lease with a permittee, licensee, or exempt transporter, constitutes unlicensed hauling, and shall subject the lessor to penalties and debarment from involvement in the solid and hazardous waste and recycling industry in the State of New Jersey, including a prohibition on leasing solid or hazardous waste vehicles or solid or hazardous waste operators to permittees, licensees, and exempt transporters. N.J.A.C. 7:26-3.2(k)(3).

The Department, after notice and opportunity for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, may revoke the registration of a solid waste transporter for (1) any of the disqualifying reasons set forth in N.J.A.C. 7:26-16.8 and -16.9; (2) violation of any applicable provision of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., this chapter, any administrative order issued by the Department, or any environmental protection statute of this state; or (3) a pattern of violations of the environmental protection statutes or regulations of this or any other state or of the United States. N.J.A.C. 7:26-3.2(m).

The provisions of any law to the contrary notwithstanding, no license shall be approved by the Department unless the Department finds that the applicant, or the permittee, as the case may be, in any prior performance record in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling services, has exhibited sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste or hazardous waste, or to operate the solid waste facility or hazardous waste facility, or engage in soil and fill recycling services, 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, or if no prior record exists, that the applicant or the permittee is likely to exhibit that integrity, reliability, expertise and competence. N.J.S.A. 13:1E-133(a). Likewise, no license shall be approved if the Attorney General determines that there is a reasonable suspicion to believe that a person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, the permittee or the licensee, or the business concern that has been issued a soil and fill recycling license, or to have rented or leased at any cost or at no cost real property, vehicles or other equipment used for the collection, transportation, treatment, processing, storage, brokering, transfer, or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling services, to the applicant, the permittee, the licensee, or the business concern that has been issued a soil and fill recycling license, does not possess a reputation for good character, honesty and integrity, and that person or the applicant, the permittee or the licensee, or the business concern that has been issued a soil and fill recycling license fails, by clear and convincing evidence, to establish his reputation for good character, honesty and integrity. N.J.S.A. 13:1E-133(c). Any applicant or permittee who is denied a license pursuant to N.J.S.A. 13:1E-133 shall, upon a written request transmitted to the Department within thirty days of that denial, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). N.J.S.A. 13:1E-133.

Any license or soil and fill recycling license may be revoked by the Department pursuant to the Administrative Procedure Act, for any cause which would require

disqualification, pursuant to subsection a., b., c., e. or f. of section 8 of P.L.1983, c.392 (C.13:1E-133), from receiving a license or a soil and fill recycling license upon original application, or for fraud, deceit or misrepresentation in securing or maintaining the license or soil and fill recycling license, or in the conduct of the licensed activity. N.J.S.A. 13:1E-134(a), (b). Similarly, in addition to any other cause set forth in N.J.A.C. 7:26, any license may be revoked by the Department for any cause which would require disqualification, pursuant to N.J.S.A. 7:26-16.8, from receiving a license upon original application, or for fraud, deceit, or misrepresentation in securing the license, or in the conduct of the licensed activity. N.J.A.C. 7:26-16.9(a)(1), (2).

The Department may, upon notice, after hearing, by order in writing, revoke or suspend a CPCN issued to any person engaged in the solid waste collection or solid waste disposal business upon finding that such person: (1) has refused or failed to comply with any lawful order of the Department; (2) has failed or refused to comply with the provisions of N.J.S.A. 48:13A-7.16 through -7.18; (3) has violated any provision of N.J.S.A. 48:13A-1 et seq., N.J.S.A. 48:13A-7.1 et seq., or N.J.S.A. 13:1E-1 et seq., or any rule, regulation or order adopted or issued thereunder; (4) has been denied approval of a license or has failed to renew a license or has had a license revoked pursuant to N.J.S.A. 13:1E-126 et seq.; or (5) fails to submit the annual fee as required by N.J.S.A. 48:13A-7.4, the annual assessment as required by N.J.S.A. 48:2-62, or the annual licensing renewal fee as required by N.J.A.C. 7:26-16 on or before the deadlines established by the Department. N.J.A.C. 7:26H-1.11(a). Any solid waste collector who receives a notice of intent to revoke or suspend a certificate may, upon a written request to the Department within twenty days of receipt of notice, request an adjudicative hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1.1 et seq. N.J.A.C. 7:26H-1.11(b). When the Department determines that the contested suspension or revocation is necessary to alleviate an imminent danger to the environment or the public health, safety or welfare, the Department may suspend the license immediately and provide a hearing on an expedited basis. N.J.A.C. 7:26H-1.11(c). No person shall continue to engage in the business of solid waste collection or solid waste disposal if the Department has entered a final order suspending or revoking the CPCN held by such person. N.J.A.C. 7:26H-1.11(d).

N.J.S.A. 48:13A-1 to -13 is known as the “Solid Waste Utility Control Act,” and solid waste utility regulations are codified at N.J.A.C. 7:26H-1.1 et seq. The Department of Environmental Protection shall revoke or suspend the CPCN issued to any person engaged in the solid waste collection business or the solid waste disposal business upon the finding that such person: (a) has violated any provision of P.L. 1970, c. 40 (C. 48:13A-1 et seq.) or P.L. 1991, c. 381 (C. 48:13A-7.1 et al.), or any rule, regulation or administrative order adopted or issued pursuant thereto; or (b) has violated any provision of any laws related to pollution of the air, water or lands of this state; or (c) has refused or failed to comply with any lawful order of the Department; or (d) has had its registration revoked by the Department of Environmental Protection; or (e) has been denied approval of a license under the provisions of P.L. 1983, c. 392 (C. 13:1E-126 et seq.), or has had its license revoked by the Department of Environmental Protection, as the case may be. N.J.S.A. 48:13A-9.

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 CPCN issued by the Department. N.J.A.C. 7:26H-1.6(a). Unless otherwise provided by statute or Department rule, no certificate shall be issued to any person until such person has registered with and is licensed by the Department in accordance with N.J.A.C. 7:26-16. N.J.A.C. 7:26H-1.6(b). No person may bid for a solid waste collection contract or solid waste disposal contract with a municipality or other political subdivision or commercial or industrial entity unless that person is the holder of a CPCN issued by the Department. N.J.A.C. 7:26H-1.6(c). If a license, as defined at N.J.A.C. 7:26-16.2, is denied, revoked, or withdrawn, the certificate shall immediately become invalid. N.J.A.C. 7:26H-1.6(d).

No license shall be approved by the Department if the Attorney General determines that there is a reasonable suspicion to believe that a person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, does not possess a reputation for good character, honesty and integrity, and that person or the applicant, permittee or licensee fails, by clear and convincing evidence, to establish his reputation for good character, honesty and integrity. N.J.A.C. 7:26-16.8(d).

The Department will not issue a license to any person who has had an application denied, or a license revoked, for any of the reasons set forth in N.J.A.C. 7:26-16.8 or -16.9, for a period of five years following such denial or revocation. N.J.A.C. 7:26-16.12(a). A person that is a business concern shall be considered as the same person if the management structure of the business concern includes the person or persons that were the cause of the original disqualification. N.J.A.C. 7:26-16.12(b).

The Department argues that the A901 license should be revoked for three reasons: (1) Mr. Byrne has been “fronting” for an unlicensed company, Tri-State, for years, and by all appearances Jimmy Byrne Trucking is a sham, with no equipment, no assets, no employees, and no customers, relying on a sham lease to acquire DEP equipment decals so Tri-State can illegally transport waste in New Jersey; (2) Mr. Byrne used his license to launder a payment of \$26,623 on behalf of Triple Crown Disposal and its president, Vito Pesce, who operated an illegal asbestos transfer station in Kearny, New Jersey; and (3) Mr. Byrne lacks the requisite integrity, reliability, expertise, and competency to hold an A901 license. Conversely, respondent argues that any incongruities in interviews or transgressions were due to memory problems and/or Byrne’s wife’s illness and passing, and that since he resumed business in 2014, there have been no issues with non-compliance.¹²

With respect to the Department’s allegation that Byrne has been “fronting” for Tri-State, there were no payroll or other business records in evidence to establish Jimmy Byrne JBT and/or Jimmy Byrne Trucking as a going business concern, and Byrne testified that his company, which was the applicant/licensee, has no equipment, no assets, and no employees. Byrne’s testimony relative to the operations of both Jimmy Byrne Trucking and Tri-State was contradictory and confusing, and it is clear from the documentation that the two entities are inextricably involved and irretrievably intertwined.

¹² Respondent argues that certain violations are *res judicata*. However, it is noted that this was undisputed, and paragraphs 6, 8, 9, and 14 of the Amended Notice were withdrawn. As such, they are not considered herein and do not form the basis for any finding or conclusion herein. Moreover, the civil-administrative-penalty conduct of “intentional, deliberate, purposeful, knowing or willful” is not referenced in the regulations cited herein.

With respect to the Department's allegation that Byrne "used his license to launder a payment," it has not been established that Byrne's conduct meets the definition of laundering. However, it is evident that Byrne's involvement in the transaction at issue was predicated upon his possession of a strictly regulated State-issued A901 license, and it runs counter to the applicable statutes and legislative intent for a licensee to utilize an A901 license in the manner in which Byrne utilized it.

With respect to the Department's allegation that Byrne lacks the requisite integrity, reliability, expertise, and competency to hold an A901 license, Byrne's records and testimony raise significant concerns about reliability, expertise, and competency. Although not unreasonable that Byrne may have had some lapses or not been entirely clear during the period that his wife was ill or passed away, during the hearing it was apparent that Byrne remains unable to answer questions regarding the operations of Jimmy Byrne Trucking—including present operations. By way of example, when it was represented to Byrne that the phone number listed in the 2018 A901 Annual Update (which was not the number previously used for Jimmy Byrne Trucking) had been called by DEP investigator Steve Hulls on December 17, 2018, and was answered "Tri-State," Byrne denied that the number was Tri-State's and testified that it is Jimmy Byrne Trucking's number. However, his testimony relative to this number, including whose it was and where the number would ring and how the number would be answered, was convoluted and incomprehensible. He also testified that he did not know who completed the annual update, and guessed he filled it out together with an employee of Tri-State who answered the phone and did the paperwork. While perhaps not purposeful, intentional, deliberate, knowing, or willful, Byrne's failure or inability to offer a cogent explanation for his various companies and the operation of those companies certainly does not foster and justify public confidence and trust in the credibility and integrity of the conduct of these activities.

In view of the foregoing, I **CONCLUDE** that the Department has established by a preponderance of the credible evidence deceit or misrepresentation in the conduct of the licensed activity, based upon the manner in which Jimmy Byrne Trucking and Tri-State operate together and based upon utilization of the A901 license to make a payment; established that Byrne made misrepresentations to the Department in the conduct of his

licensed activities; and established that respondents have not exhibited sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste or hazardous waste. I further **CONCLUDE** that the foregoing are grounds for revocation of the A901 license and CPCN, and that the revocation is **AFFIRMED**. Further, since the Department will not issue a license to any person who has had a license revoked for failure to exhibit sufficient integrity, reliability, expertise, and competency for a period of five years following a revocation, I **CONCLUDE** that the debarment for a period of five years is also **AFFIRMED**.

Respondent's argument that the entire-controversy doctrine should apply and the subject claims be barred, raised for the first time in a reply brief, is untimely and unpersuasive, as there was no evidence that respondent filed a motion to consolidate the matters or, since the matters were not consolidated, filed an entire-controversy-doctrine motion.

ORDER

It is hereby **ORDERED** that the Department's revocation of respondent's A901 license and CPCN and debarment of James Byrne for five years is **AFFIRMED**.

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.

February 9, 2021

DATE

Date Received at Agency:

Date Mailed to Parties:
mm



KELLY J. KIRK, ALJ

APPENDIX

LIST OF WITNESSES

For Petitioner:

Ronald Feehan
Anthony Ricci

For Respondents:

James Byrne

LIST OF EXHIBITS

For Petitioner:

- P-1 Amended Notice of Revocation and Debarment, dated November 24, 2015
- P-2 NJSP Interview of James Byrne
- P-3 (Not in Evidence)
- P-4 Letter from John A. Gonnella, Esq., to NJDEP, dated April 4, 2013, and Lease Agreements
- P-5 Motor Carrier Identification Reports
- P-6 Letter from John A. Gonnella, Esq., to NJDEP, dated August 20, 2012
- P-7 Email, transaction receipt, paid invoice, and check
- P-8 Non-Hazardous Waste Manifests and Invoices
- P-9 Annual A901 Update for 2018
- P-10 Photograph of Tri-State property

For Respondents:

- R-1 Death Certificate for Eve Byrne
- R-2 Final Decision/Initial Decision, OAL Dkt. No. ECE 09838-15
- R-3 Payroll Ledgers, Jimmy Byrne Trucking Sole Proprietorship 2013–2019

- R-4 Application for Certificate of Public Convenience and Necessity for Solid Waste Collection and/or Disposal
- R-5 Letters from NYS DEC to Tri-State
- R-6 Administrative Consent Order (In the Matters of Express Waste Services, LLC, and DeLucia and Pesce)
- R-7 Settlement Agreement (In the Matter of CENJ)
- R-8 Transcript (Robert Fixter of CENJ)
- R-9 Hazardous Waste Manifests and Invoices (public schools)