State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER
401 East State Street
P.O. Box 402, Mail Code 401-07
Trenton, New Jersey 08625-0402
Tel. (609) 292-2885 • Fax (609) 292-7695
www.nj.gov/dep

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

SHAWN M. LaTOURETTE
Commissioner

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, SOLID WASTE COMPLIANCE AND ENFORCEMENT Petitioner, v. DELAWARE RIVER TUBING, INC. & GREGORY CRANCE, Respondents.	ADMINISTRATIVE ACTION FINAL DECISION AND ORDER, WITH PARTIAL REMAND OAL DKT NO.: ECE 06951-22 AGENCY REF. NO.: PEA200002-U2523

This Order addresses the challenge by Delaware River Tubing, Inc., and Gregory Crance (collectively Respondents) to an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) issued by the New Jersey Department of Environmental Protection (Department) on April 26, 2021, for violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (SWMA), and its supporting regulations, specifically N.J.A.C. 7:26-2A.8(j)1. The AONOCAPA assessed a civil administrative penalty of $18,000 against Respondents jointly and severally for disrupting the Pastore Landfill repeatedly without written approval from 2015 through 2020 by clearing the top of the Landfill and using it as an employee and customer parking lot.

On August 28, 2023, Administrative Law Judge Dean J. Buono (ALJ) issued an Initial Decision dismissing the AONOCAPA. The ALJ concluded that the Department had not proven

by a preponderance of the evidence that either Respondent, Delaware River Tubing, Inc. (DRT) or Gregory Crance (Crance), had violated N.J.A.C. 7:26-2A.8(j)1.

For the reasons set forth herein, I hereby **ADOPT** in part and **REJECT** in part the Initial Decision as discussed below.

FACTUAL AND PROCEDURAL BACKGROUND

The Pastore Landfill (or Landfill) is a sanitary landfill[1] located at 776 Frenchtown Road in Alexandria Township, Hunterdon County. Although operations at the Landfill have ceased and the Landfill has not received solid waste since approximately 1993, the Landfill was not closed properly in accordance with the Department's landfill closure regulations in the Solid Waste rules at N.J.A.C. 7:26.[2] The landfill closure regulations at N.J.A.C. 7:26-2A.7(i) require, among other things, that a closed landfill have a thick final cover across the top of the landfill at least 18 inches deep and overlain by a minimum 6-inch erosion layer and impermeable cap, completely isolating the landfilled solid waste from the surrounding environment, but portions of the cap at the Pastore Landfill are as shallow as one inch. In addition, there has been no demarcation of the boundaries of the landfill area in accordance with N.J.A.C. 7:26-2A.9(e)(2)(i), which would account for spread and erosion of the Landfill's slopes.

Because of this inadequate closure, uncontrolled methane is leaking from the Landfill. Due to the flammable nature of methane gas, there is an increased risk of explosion on the Landfill from activities which tend to create fire or sparks, such as driving or parking a vehicle on the

---

[1] As discussed below, a sanitary landfill is defined as a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste. N.J.A.C. 7:26-1.4.

[2] Under the SWMA, it is the responsibility of the owner or operator of a landfill to properly fulfill closure requirements. See N.J.S.A. 13:1E-103. For purposes of this dispute, responsibility for closure appears to be with Crown Vantage, Inc./Crown Paper Company, the last operator of the Pastore Landfill, or De Sapio Properties Six, LLC (De Sapio), the current owner of the Landfill and the neighboring property at 788 Frenchtown Road. (T6:5; 156:14-16; 23:14-22; 25:1-2; 180:6-9.)

Landfill, cigarette use, and open fire pits. (T24:11-17.) Without proper studies as required under the Department's landfill closure regulations, the Department is unsure which parts of the landfill are releasing methane. (T23:25-24:8.) A further major concern due to the inadequate closure of the Landfill is a significant discharge of leachate that is running from the Landfill into the Delaware River.[3] (T24:23-25:1.) Increased weight on the Landfill, such as the weight of vehicles, may put pressure on the Landfill, increasing the rate of leachate discharge. (T25:3-5.)

The Landfill and the adjacent property at 776 Frenchtown Road are owned by De Sapio Properties Six, LLC (De Sapio). During the events of this case, De Sapio leased a portion of the property and the use of an attached parking lot to DRT,[4] a seasonal business that rents innertubes to the public for rafting trips on the Delaware River. (T25:18-26:7.) As part of its business, DRT allows customers to park at its leased headquarters at 776 Frenchtown Road, adjacent to the Landfill, where DRT buses customers to and from designated rafting drop-off and pick-up points along the Delaware River. DRT also provides tents and a DRT bus at the property where customers may change clothing before or after their rafting trips. (T25:18-26:7.) The parking lot is immediately adjacent to the Landfill and there is no fence or barrier between it and the Landfill. (DEP-1.)

The enforcement action in this matter is the culmination of a lengthy series of inspections, discussions with Respondents, and observations on the Landfill undertaken by two Department inspectors from 2015 through 2020. During this period, Department inspectors observed numerous and repeated activities in violation of the Department's Solid Waste rules. Prompted by

[3] Leachate is defined in accordance with the Solid Waste rules as "liquid that has been in contact with solid waste." N.J.A.C. 7:26-1.4.

[4] While there were no recorded site visits by the Department in 2018, the record otherwise indicates that DRT has continuously leased building space and parking lot usage from De Sapio and used the same during the summer months from at least 2015 through 2020.

a community report that cars were parking on the Landfill, Department inspector Carole Mercer (Mercer) first visited the Landfill on August 25, 2015, and observed a makeshift road leading to the peak of the Landfill where cars were parked in a clearing that had been created. (T39:24-40:8, T40:22-41:2, T43:5-13, T44:9-11; DEP-2.) The clearing extended from the Landfill's peak to the Landfill's eastern border, thus artificially extending the previously existing parking lot at 776 Frenchtown Road. Following these observations, Mercer spoke with Gregory Crance's son, Seth Crance, who was managing DRT's headquarters that day. Seth claimed that De Sapio cleared the landfill and created the new entry road from the parking lot to the peak of the Landfill. (T41:17-25; DEP-2.) Seth reported that while the only cars parked on the Landfill that day were employee cars, customers were also allowed to use it on weekends as overflow parking. (T42:1-4; DEP-2.) DRT was instructed to cease parking equipment or vehicles on the Landfill.

Mercer also spoke with Gregory Crance during this visit and informed him that the activities observed on the Landfill constituted disruptions that, without prior Department approval, were considered violations of the Department's Solid Waste rules. (T42:8-24; DEP-2.) Following this visit, the Department issued Respondents a warning letter, on September 3, 2015, again informing DRT that it was required to immediately cease parking equipment or vehicles on the Landfill. (DEP-3; T45:23-46:1.) DRT did not respond to the letter. (T50:15-17.)

Mercer separately met with De Sapio as well, on January 1, 2016, to discuss DRT's disruptions of the Landfill. (DEP-4.) Mercer warned De Sapio, as the landlord, that his tenant could not park on the Landfill and recommended that a fence or barrier be installed to prevent future disruptions. (T54:14-21.) Despite this, several months later the Department received further reports of Landfill disruptions. The Department consequently performed another on-site inspection on April 8, 2016, during which Mercer observed that roughly a third of an acre of

additional vegetation had been cleared from the Landfill since her previous visit. (DEP-6; T60:23-61:3; T62:9-13.) By this time, the expanded parking lot and the peak of the Landfill had been covered in stone gravel. (T52:24-53:2.) As a result, on May 3, 2016, Mercer again visited with De Sapio on-site to discuss DRT's disruptions of the Landfill. (DEP-7.) De Sapio was again informed his tenant could not park on the Landfill, and that any future work on the Landfill needed to cease unless and until the Department approved such work. (DEP-7.) Following these discussions, and as a result of the repeated violations observed up to this point, the Department issued a Notice of Violation (NOV) against De Sapio on May 27, 2016. (DEP-8.) In a phone call with Crance on June 27, 2016, Crance indicated that he was working with De Sapio to close the Landfill and bring it into compliance. (DEP-9.)[5]

Notwithstanding the issuance of an NOV, however, during the next site visit Mercer observed white lines had been drawn on the expanded lot, demarcating parking spaces extending onto the Landfill, upon which several cars were parked. (DEP-10; T77:10-19.) Mercer witnessed two DRT employees arrive and park their vehicles in this area. (DEP-10.) In addition to the parked cars, portable toilets and changing tents had been installed within the boundaries of the Landfill. (T80:25-81:6; T84:9-16.) Although the makeshift roads were still present, two poles connected by a chain had been installed near the entrance, blocking access to the Landfill's peak. These poles, however, were installed in the ground within the Landfill without Department approval.[6] (DEP-10; T77:20-78:1.)

---

[5] Both parties also attended a meeting with the Department on October 17, 2016, in which the parties discussed compliance steps and hiring a consultant to review the Landfill. (DEP-12, DEP-13.) However, this is the extent of any evidence in the record showing any relationship that existed between the parties beyond their relationship as landlord and tenant.

[6] Mercer later testified she was unsure whether the poles were installed by De Sapio or DRT, or whether the installation had been a joint effort.

During this visit, Mercer observed that, within the boundaries of the legal parking lot, large semi-permanent concrete barriers were placed by neighboring businesses to prevent DRT customers from utilizing parking spots designated for the other businesses sharing the property at 776 Frenchtown Road with DRT. (DEP-10.) Mercer would later testify that she presumed that, because the spaces were thus designated and available for customers and employees of the neighboring businesses, it was unlikely that anyone other than DRT customers and employees were utilizing the portion of the parking lot that was extended onto the Landfill. Moreover, during Mercer's last visit of 2016, Mercer observed that DRT appeared to be closed for the season and, as it happened, the parking lot was empty of customer and employee vehicles. DRT's equipment had been removed as well. (DEP-11; T88:8-11.) During the next site visit, DRT being again open for business in 2017, Mercer observed that portable toilets were again installed within the boundaries of the Landfill and a pink DRT bus, used as a changing location for customers, was parked several feet within the boundaries of the Landfill. (DEP-14; T96:13-23.) The makeshift road was still in place along with the two poles and connecting chain. Ibid.

The Department's inspectors continued to visit the site and continued to observe disruptive activity on the Landfill. During site visits in 2019, the Department inspectors observed several pairs of shoes, evidence of a campfire, and a box of empty beer cans on the Landfill's peak, vehicles again parked on the expanded portion of the parking lot on the Landfill, and portable toilets installed on the northern end of the Landfill. (DEP-15; DEP-16; T100:8-15; T104:4-11.) The Landfill was still cleared of vegetation and covered with stone gravel, and photographs taken by Mercer during this time show two rows of cars parked fully or partially within the boundaries of the Landfill. (DEP-15; DEP-17; T106:5-14; T107:2-9.)

Based on these numerous repeated violations, the Department issued a second NOV against Respondents on October 15, 2019, citing the makeshift road created on the Landfill, vehicles parked on the Landfill, portable toilets, and evidence of the public using the Landfill for changing or camping, including abandoned shoes, beer cans, and a fire pit. (DEP-21; T168:13-18.) The Department determined that these disruptions were all operational in nature and were thus the responsibility of Respondents to correct rather than the property owner, De Sapio. (T168:19-25.) As with the first NOV, the second NOV required that DRT remove all vehicles and equipment from the Landfill and cease any further expansions or improvements to the parking lot within the boundaries of the Landfill. (DEP-21.)

Despite the various attempts by the Department to prevent further disruptions, Department inspectors observed, at the start of the 2020 summer season, that new gravel was spread onto the entire surface of the Landfill along with further clearing of vegetation. (DEP-22.) Cars, a DRT bus, and construction machinery were once again observed parked on the Landfill, and portable toilets and DRT inner tubes were found on the Landfill. (DEP-22; T171:16-173:23; DEP-23; DEP-24; T177:9-12.) Consequently, on October 14, 2020, the Department issued a third NOV against Respondents and De Sapio. (DEP-25.) As with the first and second NOVs, the third NOV again required that DRT remove all equipment and vehicles from the Landfill and cease any further expansion or improvements to the parking lot within the boundaries of the Landfill. Ibid. This NOV also required that Respondents schedule a follow-up meeting with the Department within ten days of receipt of the NOV. Id. at 2. DRT never contacted the Department, but the Department's inspector testified that the construction equipment, portable toilets, and DRT buses were later removed from the Landfill. (T182:2-10.)

On April 26, 2021, following this lengthy series of inspections, the Department issued the contested AONOCAPA, citing Respondents with violations on nine separate dates where Respondents failed to obtain written approval from the Department prior to "clearing the top of the landfill and using it as an employee and customer parking lot." Based on the repeated violations, the AONOCAPA assessed a penalty of $18,000. (DEP-26.) On August 12, 2021, Respondents requested an adjudicatory hearing to contest the AONOCAPA and corresponding penalty. The Department granted Respondents' request and subsequently transmitted the matter to the Office of Administrative Law (OAL), where a hearing was held before ALJ Buono on April 3, 2023. During the hearing, the Department presented testimony from its two inspectors along with twenty-six documents, the majority of which were the contemporary notes taken by the inspectors after their site visits.[7] Respondents presented no evidence or witness testimony.

On August 28, 2023, ALJ Buono issued the Initial Decision, dismissing the AONOCAPA after concluding the Department had not proven by a preponderance of the evidence that Respondents had violated N.J.A.C. 7:26-2A.8(j)1. To this effect, the ALJ stated only that "there is no evidence whatsoever that [Respondents] disrupted nor authorized or instructed DeSapio [sic] to disrupt the Pastore Landfill" and held that "no allegations against [Respondents] constitute a disruption within the language of the law." The Department filed exceptions to the Initial Decision on September 8, 2023, approving the Initial Decision's Findings of Fact and recommending they be adopted in their entirety, but finding the Decision's conclusions of law to be "wholly unsupported by the facts on the record and the court's own finding of facts." Specific issues raised by the Department were: (1) the Initial Decision's confusion between the responsibilities of a

[7] Due to the nature in which the Initial Decision's findings of fact was drafted, there is no express credibility determination by the ALJ for either witness. However, as the findings of fact positively cite to their testimonies and find as fact the statements made during their testimonies, the Initial Decision implied, and for purposes of the Final Decision I will presume, that ALJ Buono found Carole Mercer and Devin Gallagher's testimony to be credible.

landfill property owner versus other members of the public regarding landfill disruptions; (2) the disconnect between the ALJ's final conclusion and the abundant evidence in the record, including the ALJ's finding of facts that DRT disrupted the Landfill; and (3) the court's finding that DRT did not lease the Landfill or any area within the boundary of the landfill, as there are no facts in the record supporting this finding.

Respondents filed neither exceptions nor a reply.

DISCUSSION

The law governing this case is the SWMA and its supporting regulations, specifically N.J.A.C. 7:26-2A.8(j)1, which states that:

> Written approval for disruptions shall be obtained from the Department prior to any excavation, disruption, relocation, or removal of any deposited material, which may or may not involve solid waste, from either an active, terminated, or closed sanitary landfill. . . . For purposes of this section, disruptions are defined as follows: (i) Minor disruption means the performance of a site investigation at a landfill for the purpose of gathering and evaluating information about the landfill's environmental or physical properties. . . . (ii) Major disruption means the construction of buildings, roadways, parking areas, and other site improvements on top of a landfill.

As such, to determine if there was a violation, the Department must show by a preponderance of the evidence that the activities observed (1) occurred on a sanitary landfill; (2) are considered a disruption under the Solid Waste rules at N.J.A.C. 7:26-2A.8(j)1; and (3) are attributable to Respondents.

In this matter the Department bears the burden of proof; consequently, the record will be reviewed de novo. Before evaluating the above, I wish first to address the liability of Gregory Crance in his individual capacity,[8] an issue that has not been previously addressed. Without

[8] Until his death on May 10, 2021, (T9:15-16) DRT was owned and operated by Gregory Crance.

examining whether an individual who passed away during litigation can be held personally liable, there was no evidence in the record pointing to Crance's liability as an individual versus liability as the owner of the DRT. There is long established case law discussing when an officer or owner of a company may be held personally liable for the conduct of their company. See generally N.J. Dep't of Envtl. Prot. v. Standard Tank Cleaning Corp., 284 N.J. Super. 381, 401-03 (App. Div. 1995) (liability turns not on officer's position but whether they had actual responsibility for the condition resulting in the violation or were in a position to prevent the violation yet failed to do so). However, the record presents very few instances where Crance was involved in any capacity. Further, the record presents nothing indicating Crance had actual responsibility for controlling or preventing the violation. Id. at 403.

As a result, I **FIND** that the Department has not proven by a preponderance of the evidence that Crance was personally liable for the allegations set forth in the AONOCAPA. As such, the AONOCAPA against Gregory Crance in his individual capacity is hereby **DISMISSED** and I turn now to determine whether the activities observed are attributable to DRT rather than both Respondents.

Identifying the Landfill

The Solid Waste rules define a sanitary landfill as "a solid waste facility at which solid waste is deposited on or into the land as fill for the purposes of permanent disposal for a period of time exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste." N.J.A.C. 7:26-1.4. Although there is no dispute that the Pastore Landfill is a sanitary landfill subject to the Solid Waste rules, the parties dispute the boundaries of the Landfill and, in particular, whether the side slopes are considered part of the Landfill.

Although DRT contends that the side slopes of a landfill would not be considered "the landfill" for purposes of determining if a disruption had occurred, as explained in the Department's testimony, the Department has consistently interpreted its regulations such that a landfill "consists of the entire area of the landfill," including the area on the top of the landfill, under the ground, and the side slopes consisting of the area between the ground's natural grade and the peak of the landfill. (19:6-16.) In fact, as the Department noted, the side slopes are an area of particular focus for the Department because this area is where erosion and leachate breaks frequently occur. (T19:24-20:5.)

Beyond the deference the Department is afforded in interpreting its own regulations, considering the slopes of a landfill as part of the landfill under the definition at N.J.A.C. 7:26-1.4 is consistent when read with the entirety of the Department's Solid Waste rules. In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 488-89 (2004) (citing In re Distrib. of Liquid Assets, 168 N.J. 1, 10-11 (2001)); Allstars Auto Group, Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 158 (2018) (quoting Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009)) (deference is appropriate due to the agency's specialized expertise and superior knowledge in the particular field they regulate); Marino v. Marino, 200 N.J. 315, 330 (2009) (goal of statutory construction is to read statutes in harmony).

For example, throughout N.J.A.C. 7:26-2A.9, which governs the closure and post-closure care of sanitary landfills, owners or operators of a landfill must provide monitoring data and engineering reports that specifically discuss the stability and maintenance plans for the landfill's slopes. Id. at (c)(11)(iii), (e)(4)(v). Such review is necessary to determine how much weight the landfill's slopes can support, thus avoiding lateral movement of the landfill's sides. See e.g., Bergen Cty. Util. Auth. v. N.J. Dep't of Envtl. Prot., 1990 N.J. Env. LEXIS 5, *48 (Jan. 5, 1990)

(discussing whether the slope of a landfill meets the required standards under N.J.A.C. 7:26-2A). Accordingly, I **CONCLUDE** that the slopes or sides of a landfill are included in the definition of landfill for purposes of determining if a disruption has occurred under N.J.A.C. 7:26-2A.8(j)1.

Consequently, the side slopes of the Pastore Landfill are subject to N.J.A.C. 7:26-2A.8(j)1. As was often noted during the pendency of this case, however, the Pastore Landfill was never properly closed and thus a recent delineation of the Landfill's boundary does not exist. Nevertheless, until that delineation is performed, the Department, as the agency tasked with monitoring and managing landfills in the State, may rely on the expertise of its staff, as supported by credible evidence, to determine the approximate boundary of the Landfill. Allstars Auto Group, 234 N.J. at 158 (finding deference is appropriate due to the agency's specialized expertise and superior knowledge in the particular field they regulate). To this end, as noted in the Initial Decision, "the Department has made a meticulous estimate of the [L]andfill boundaries."

This meticulous estimate was described in detail in Mercer's testimony before ALJ Buono.[9] Mercer explained the first step was to look for visual indicators, such as where the land began to slope, as this is "usually a good physical indicator of the edge of [a] landfill." (T34:5-6.) Multiple field measurements were then taken across the parking lot starting at a static marker established at Frenchtown Road.[10] (T35:2-11; DEP-1.) Using Department software, the measurements were marked on a GIS aerial map and then compared with a site closure plan that had been drafted by Crown Vantage, Inc./Crown Paper Company, the last operator of the Landfill, during the initial attempts to close the Landfill. (DEP-1; T36:9-37:5; T132:15-133:4; T156:14-16.) Based on these measurements and the Department's expertise and knowledge in the field, the Department

[9] The result of this process was submitted as Department exhibits DEP-1 and DEP-18.

[10] This marker can be seen in aerial photography and the 1995 site plan for the Landfill included in exhibit DEP-1.

determined and I **FIND** that the activities described in the Department's AONOCAPA occurred on a sanitary landfill, including the parking of vehicles as far as sixty to seventy feet within the boundaries of the Landfill. (T153:8-12).

Disruption of Landfill

A disruption under N.J.A.C. 7:26-2A.8 does not necessarily require significant disruptive action to a landfill, such as digging up the land or building on the landfill, although these actions would be considered disruptions under the Solid Waste rules. (See T20:9-13.) Instead, a disruption involves anything that can impact a landfill's protective and containing materials, including creating additional weight on the landfill's peak or slopes, as this increases the likelihood for methane or leachate discharge. (See T20:25-21:4; T21:14-19.) Under the regulations, minor disruptions are those activities often classified as investigatory work, such as digging test pits, borings, and sampling areas of a landfill. N.J.A.C. 7:26-2A.8(j)1i. (T21:5-12.) On the other hand, a major disruption is any other non-investigatory activity that could disturb the landfill. Whether it be minor or major, to avoid a violation for a minor or major disruption the actor must receive prior written approval from the Department to undertake the activity. Id. at (1).

Here, the facts clearly establish that over the span of many years there were numerous, non-investigatory activities on the Landfill, including the parking of vehicles on the Landfill, amounting to repeated disruptions. Although DRT contends that a disruption cannot occur if the actor is unaware of the exact boundaries of the landfill, specifically as part of a landfill closure proceeding, the Solid Waste rules do not consider the intent of the actor, but instead consider only whether a disruption occurred and whether prior approval from the Department was provided. As the Department did not approve of any of the above-discussed activities, I **FIND** they are major disruptions under N.J.A.C. 7:26A.8(j)1.

Disruptions Attributable to DRT

First, as an initial matter, as liability under N.J.A.C. 7:26-2A.8(j)1 is not dependent on whether a party is the owner or operator of the sanitary landfill, I **FIND** that the DRT is a responsible party for purposes of this AONOCAPA. Liability under N.J.A.C. 7:26-2A.8(j) turns only on if the individual was the person conducting the disruption. See id. (j)1, 6. DRT does not dispute that the activities cited in the AONOCAPA are attributable to DRT. Instead, DRT's arguments pivot on its assertion that the activities cited in the AONOCAPA did not occur on the Landfill and are therefore not subject to N.J.A.C. 7:26A.8(j)1.[11] As concluded above, however, the activities indeed occurred on portions of the Landfill subject to the provisions of the Solid Waste rules and are considered major disruptions under N.J.A.C. 7:26-2A.8(j)1. As such, I turn now to determine, activity by activity, whether these disruptions are otherwise attributable to DRT.[12] Upon reviewing the record, I **FIND** that the Department has met its burden of proof in most, but not all, of the activities cited in the AONOCAPA as described in detail below.

Vehicle Parking

Across fifteen visits from 2015 through 2020, the Department's inspectors observed vehicles parked on the Landfill nine times—once on the Landfill's peak and eight times on the slopes of the Landfill. (See DEP-10; T77:10-19, T82:1-11; DEP-14; DEP-15; DEP-16; T104:4-

[11] DRT also asserted that because De Sapio did not contest the AONOCAPA filed against him, and that AONOCAPA cited the same conduct, they could not both be liable for the same conduct. (Rb at 3.) However, the only AONOCAPA at issue here is that issued to Respondents. Consequently, this argument is not addressed further.

[12] The ALJ found that "DRT is not a responsible party for the [L]andfill site," noting that DRT is not listed in the Department's Compliance Evaluation Reports under the "Responsibility Entity(s)" heading. (Initial Decision at 13-14.) However, as the Department explained, this section of the report is automatically generated based on information in the Department's system, which includes a record of entities responsible for closing the landfill; these entities are automatically generated under the "Responsibility Entity(s)" section when a report is created. (T112:2-12.) Moreover, the requirements at N.J.A.C. 7:26-2A.8(j) are not addressed solely to owners or operators of a landfill. The regulations apply only to the owner or operator merely to the extent that in cases where the owner or operator has previously received approval from the Department as part of a revised or renewed permit, closure or post-closure plan approval, or approval for other specific construction activities, a separate disruption approval is not required. Id. at (1)(iii).

11; DEP-17; T106:5-17, T107:22-9; DEP-19; T163:10-15; DEP-20; T167:7-11; DEP-22; T171:16-173:23; DEP-23; T175:20-176:5; DEP-24; T177:9-12.) The record also shows that the cars parked on the Landfill belonged to DRT staff or their customers, as, on days when DRT was not operating, Department staff did not observe any parking disruptions. (DEP-11.) It further appears these vehicles are not likely attributable to those businesses sharing the property at 776 Frenchtown Road with DRT because it appears said businesses had installed semi-permanent barriers in the legal portion of the parking lot to ensure their customers parked on the existing lot off of the Landfill. (DEP-10.) Moreover, DRT has not denied that it had control over the vehicles parked on the Landfill's slopes and has presented no evidence contesting the Department's determination that it had control over these vehicles. Thus, the evidence in the record supports a finding that the vehicles parked on the Landfill as identified in the AONOCAPA are a major disruption of N.J.A.C. 7:26-2A.8(j)1 for which DRT is liable. I therefore **REJECT** the Initial Decision to the extent it found otherwise and **AFFIRM** the AONOCAPA as to these activities.

Expansion & Maintenance of Parking Lot

The second major dispute between the parties involves the expansion and continued maintenance of the parking lot, including a makeshift road to the Landfill's peak. The specific activities include: (1) clearing vegetation from the Landfill's peak and slopes; (2) placing gravel on the Landfill's peak and slopes; (3) creating and maintaining a road to and on the Landfill; (4) installing two poles and a chain blocking access to this make-shift road; and (5) demarcating parking spaces along the eastern slope of the Landfill. (DEP-2; T40:22-41:2; DEP-4; T52:24-53:2; DEP-6; T62:9-13; DEP-7; DEP-10; T77:10-78:1; DEP-14; T96:13-23; DEP-15; DEP-16; DEP-17; T106:5-14; DEP-19; DEP-20; DEP-22; T170:17-23, T171:9-11; DEP-23; DEP-24.) While the Department contends DRT is liable for these activities because DRT may have been

working with De Sapio to legalize use of the Landfill as a parking lot, neither of the Department's witnesses had knowledge of whether DRT performed these activities either alone or in concert with De Sapio. (T117:4-7; T120:19-24; T188:5-25.) It is entirely likely that De Sapio had acted alone, considering that De Sapio could benefit from an expanded parking lot regardless of whether the lot is used by DRT staff and customers or another tenant leasing space on De Sapio's property.

Further, while it is hearsay (see N.J.A.C. 1:1-15.5), Mercer testified that Seth Crance stated the Landfill was cleared and the lot expanded by De Sapio, while admitting that DRT was responsible for the vehicles parked on the Landfill. (DEP-2; T41:17-25.) This is supported by statements from De Sapio to Mercer on May 3, 2016 (as recorded in her contemporaneous record), in which De Sapio reportedly stated he was the one to illegally expand the lot, place gravel, and install the roads, although De Sapio believed this conduct was legal at the time. (DEP-7; DEP-8.) While DRT may have benefited from the expansion of the lot, liability under N.J.A.C. 7:26-2A.8(j)1 arises out of the actor's conduct not a beneficiary to the conduct. Consequently, if De Sapio's liability was at issue in this matter, it seems the record could support a finding that he was liable for these disruptions. However, this case concerns DRT's liability and the record does not show by a preponderance of the evidence that DRT was involved in the creation or maintenance of the expanded lot or makeshift roads, either in connection with or independent of De Sapio.

Therefore, I **FIND** that the Department has not proven by a preponderance of the evidence that DRT expanded or maintained the parking lot or the makeshift road and **ADOPT** the Initial Decision in this regard.

Construction Equipment

Other disruptions of the Landfill included (1) parking of construction equipment on the Landfill (DEP-15; DEP-22); (2) installation of portable toilets on the Landfill (DEP-10; DEP-15;

DEP-23); (3) placement of changing tents on the Landfill (DEP-10); (4) parking of a DRT bus on the Landfill for customer changing (DEP-14; DEP-15; DEP-16; DEP-17; DEP-19; DEP-20; DEP-22; DEP-23); (5) storing of DRT's rental tubes on the Landfill (DEP-22); and, (6) signs of other activities on the Landfill from an old camp fire, abandoned shoes, and empty beer boxes and cans (DEP-15; DEP-19).

Although indeed the construction equipment could have been rented, purchased, and/or used by DRT, there is no evidence showing any connection to DRT beyond the proximity of the equipment to its headquarters and the probable use of the equipment in the expansion of the parking lot onto the Landfill. While the construction equipment was likely used in concert with the activity expanding the parking lot in violation of the Solid Waste rules, there is enough reasonable doubt, as I found above regarding the expansion of the parking lot, regarding whether it was DRT acting in this regard versus De Sapio. Moreover, beyond scant evidence showing the equipment was occasionally present on the Landfill (see DEP-15; DEP-22), there is nothing else in the record connecting the equipment's existence to the DRT. Thus, when also considering that the construction activity disruptions discussed above were not found to be attributable to the DRT, , I **FIND** that the Department has not met its burden of proof regarding the parking of construction equipment on the Landfill as a disruption attributable to DRT and I **ADOPT** the Initial Decision in that regard.

Portable Toilets & Changing Tents

There is no direct evidence connecting the placement of the portable toilets or changing tents to DRT. Common sense, of course, would support an inference that DRT had placed the portable toilets and changing tents on the Landfill, as the portable toilets and tents were in direct proximity to each other, DRT's parking lot, and often a DRT changing bus. Although DRT had

ample opportunity to present evidence, testimony, or arguments to dispute the Department's assertion that the portable toilets and tents were placed by DRT for its customers' use, DRT presented no such evidence, testimony, or argument. What remains, then, is the Department's inference. To prevail on its inference that objects were placed on the Landfill by DRT, the Department must establish that its inference is more probable than not. Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006) (finding "a litigant must establish that a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met."). Unlike with the construction activities discussed above, there is no evidence in the record establishing an alternative inference beyond the Department's. The circumstances surrounding these disruptions as detailed above and the lack of any objection from DRT lends enough weight to the Department's assertion to **FIND** that indeed it is more likely than not that DRT placed both the toilets and tents on the Landfill and thus caused a disruption. I therefore **REJECT** the Initial Decision to the extent it found otherwise and **AFFIRM** the AONOCAPA accordingly.

Rental Tubes & DRT Bus

Regarding DRT's rental tubes and changing bus, DRT did not dispute ownership of these items nor that they were located on the Landfill. The testimony from the Department's inspectors and the documentation in their site-visitation summaries clearly show that the rental tubes and changing bus were placed or parked on the Landfill. (DEP-14; DEP-15; DEP-16; DEP-17; DEP-19; DEP-20; DEP-22; DEP-23.) The only argument indirectly raised by DRT against the Department's claim specific to parking the DRT changing bus is whether the slopes of the Landfill are part of the Landfill for purposes of the Solid Waste rules. This issue was resolved above and so shall not be repeated here. Regardless, the argument concerning the slopes of the Landfill has no bearing on the location where the rental tubes were stored, and DRT did not address whether

this area was also contested as part of the Landfill. Therefore, as the record shows that the areas identified are part of the Landfill and the rental tubes and changing bus were placed in those areas, I **FIND** that DRT caused a disruption of the Landfill through these activities and **REJECT** the Initial Decision to the extent it found otherwise and **AFFIRM** the AONOCAPA accordingly.

Other Items Found on Landfill

Finally, the connection between the charcoal, shoes, and beer cans and box to DRT is tenuous. While it is possible that these items could have been left behind by DRT customers before or after using DRT's services, nothing in the record indicates that DRT was involved in these activities. As DRT noted, the Landfill is not fenced or blocked from easy access and the Landfill abuts not only the parking lot but a public road and a State park. As such, it is just as likely that members of the public, with no connection to DRT, trespassed onto the Landfill and abandoned these items as it is likely that a DRT customer did so. Consequently, I **FIND** that the Department did not meet its burden of proof regarding whether this disruption is attributable to DRT and I **ADOPT** the Initial Decision in that regard.

AONOCAPA Penalty

My determination above does not fully resolve this contested case. ALJ Buono did not address whether the penalty assessed by the Department in the AONOCAPA was proper, as such analysis was unnecessary at the time, given the ALJ's conclusion that the Department did not prove that DRT committed the violations contained in the AONOCAPA. Assessment of whether the penalty amounts in the AONOCAPA are supported by the Department's rules will require review by the ALJ. Thus, this contested case must be remanded back to OAL for consideration of the penalty amount assessed in the AONOCAPA.

CONCLUSION

Having reviewed the record, and for the reasons set forth above, I hereby **ADOPT** in part and **REJECT** in part the ALJ's Initial Decision and remand the matter back to the OAL for a determination on the appropriateness of the assessed penalty. IT IS SO ORDERED.

Dated: May 28, 2024

Shawn M. LaTourette, Commissioner
Department of Environmental Protection

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
v.

DELAWARE RIVER TUBING, INC.
AND GREGORY CRANCE,

OAL DKT. NO.: ECE 06951-22
AGENCY DKT. NO.: PEA200002-U2523

SERVICE LIST

Candice McLaughlin, Esq., DAG
Division of Law
25 Market St., P.O. Box 93
Trenton, NJ 08625
Candice.McLaughlin@law.njoag.gov

Gaetano M. De Sapio, Esq.
Attorney & Counselor at Law
P.O. Box 476
10 Creek Road
"The Little Cottage" at the Bridge
Milford, NJ 08848
desapiolaw@hunterdonlawyer.com