



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ECE 06951-22

AGENCY REF. NO. PEA200002-

U2523

**NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Petitioner,

v.

DELAWARE RIVER TUBING, INC.

AND GREGORY CRANCE,

Respondents.

Candice McLaughlin, Deputy Attorney General, for petitioner (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Gaetano M. DeSapio, Esquire, for respondents

Record Closed: July 12, 2023

Decided: August 28, 2023

BEFORE DEAN J. BUONO, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The New Jersey Department of Environmental Protection (DEP/Agency), alleges that Delaware River Tubing, Inc. ("DRT") and Gregory Crance violated N.J.A.C. 7:26-

2A.8(j)(1) when they disrupted the Pastore Landfill by clearing the top of the landfill, laying down gravel, and using the landfill as an overflow parking lot, despite years of warnings from DEP. As such, this court should affirm the April 26, 2021, Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") issued by DEP. To the contrary, respondents suggest that the DEP, without specific proof of any sort, DRT engaged in activities of landfill disruption without a permit under N.J.A.C. 7:26-2A.8(J)(i) and therefore, as a tenant, should be penalized for actions of its landlord, the owner of the landfill, or for the actions of others over which they have no control.

A hearing was held on April 3, 2023, and the DEP presented testimony and documentary evidence whereas, respondents, on the other hand, presented no witnesses and attempted to rebut the DEP's evidence. After the hearing the parties were afforded opportunities to submit closing summations. The last summation was submitted on July 12, 2023, and the record closed on that date.

TESTIMONY

Carole Mercer, Environmental Specialist III, testified on behalf of the DEP that she has been with the DEP for almost ten years as a supervisor for solid waste inspection. She went into detail and explained how and what a landfill is within the definitions of the DEP and how it is managed.

She explained that a landfill is an area that receives waste and is covered every day. However, the purpose of covering the landfill is to contain the waste within. It's important not to perforate that covering. The disruption in a landfill is one of the difficulties with managing it including putting a building on it, putting rocks, or clearing it. Anything that is not a permissible disruption is illegal and will be discovered with soil boring. In this particular case there was no permit or approval that was applied for or received for this location.

The Pastore Landfill is a closed site and has not accepted any waste since 1993. Incidentally, there are several environmental concerns about this landfill including the

control of methane. There is no fence around the site, so it is essentially an unrestricted area.

Here, Delaware River tubing receives people at the Pastore Landfill site and takes them in a bus so that they can flow down the river at which point in time they are received in a bus and taken back to the Pastore Landfill site. It was at this point that several of the exhibits were discussed. Including, DEP-1 which is a map showing where the parking lot was being utilized and where she inspected the site and the location of the disruption on May 3, 2016. DEP-2 is the report that came from the DEP employee that there were vehicles being parked on the site. At this point she met with Crance who explained about this disruption and of the vehicles being parked, the gravel and the mowing of grass.

It was at this point after there was no compliance that Mercer took enforcement opportunities through a warning letter dated September 3, 2015. She was very aware that Crance received the letter because he specifically told her that the vehicles being parked there were employees of Delaware River tubing. This was clearly not the case. In DEP-4, she described her January 19, 2016, inspection of the area in which one of the items DEP-1 revealed was the area had been covered in stone after being cleared to be used as a parking lot. She explained that this was not permissible use and function and that it needed to be fixed by the owner DeSapio Properties #6, LLC (DeSapio Properties) or Delaware River Tubing. Various other exhibits included DEP-6 from April 8, 2016, that revealed another inspection where vegetation was removed and approximately one third of an acre was removed since January of that year. DEP-7 was another inspection from May 3, 2016, where she met with DeSapio and used a measuring wheel to determine the clearing and use of the parking lot. In the pictures it clearly shows ponding and tire tracks. DEP-8 revealed another inspection that occurred on May 27, 2016, revealing the same information.

She recalled that after the discussion with Crance he indicated that he didn't want to break any rules and was talking to DeSapio about rectifying the situation. However, in DEP-10, an inspection occurred on October 2, 2016, wherein there were white lines added for parking and poles embedded in the landfill. The photos depict the

poles and points of ingress and egress and vehicles parked in line spots within the landfill boundaries. Also, in the photographs were land clearing equipment that was important in creating the parking lot. The remainder of the exhibits from DEP-11 through DEP-17 revealed much of the same parking lot area and vehicles parked in the landfill.

On cross-examination, she admitted that the owner and property owner are responsible for the use and other portables. The property owners are DeSapio Properties and James River Paper Co., not Delaware River tubing. There is a lease agreement between Delaware River tubing and DeSapio Properties, but she did not have any specific knowledge that Delaware River Tubing cut brush or did any of the physical work on the landfill site. In fact, it is her understanding that DeSapio Properties' employees maintain the parking lot by mowing it and creating the parking area on the landfill site. Interestingly though she also admitted that its commonsense that because of the agreement between Delaware River Tubing and DeSapio Properties that Delaware River Tubing would receive the benefit of having a parking area. In fact, there are several other live businesses in that building with Delaware River Tubing and at any given time there are between 15 and 100 cars in the parking lot.

Devon Gallagher also testified on behalf of the DEP in that he is an Environmental Specialist 2 and that during his inspection of the properties he noted multiple violations within the landfill boundaries on multiple occasions. From his first inspection on August 28, 2020, through his last inspection on October 14, 2020, there were multiple violations including Porta Johns, bus and vehicle parking along with physical structure violations. Interestingly, and very prophetic was that he stated all of these violations were "operational in nature and not ownership in nature" in other words, Delaware River Tubing was receiving the direct benefit from the actions of the owner.

On cross-examination, he admitted that anybody can have access to the landfill and that there was no evidence Delaware River Tubing put gravel, lines or any Porta Johns on the landfill site.

FINDING OF FACTS

Based upon a consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, **I FIND** the following **FACTS**:

On April 26, 2021, DEP issued Delaware River Tubing, Inc. and its owner, Gregory Crance, an AONOCAPA for violating the Solid Waste Management Act regulations by using the Pastore Landfill as a parking lot. The AONOCAPA ordered DRT to stop parking on the landfill and assessed a civil administrative penalty of \$18,000 based on repeated violations over the course of six years. The Pastore Landfill is a historic landfill previously operated by Crown Vantage, Inc./Crown Paper Company as one of several disposal sites in Hunterdon County. (T6:5; T156:14-16.) In approximately 1993, the landfill stopped accepting waste. (T23:8-12.) The landfill waste was covered by a thin layer of soil, but never properly closed. (T238:20.) Proper closure of a landfill involves complying with the Solid Waste Management Act by capping the landfill and installing systems to control pollution such as methane emissions and leachate. (N.J.S.A. 13:1E- 1 et seq.; N.J.A.C. 7:26-2A.9; T18:13-25.) Crown Paper began the closure application process, but never implemented a closure plan. (T132:15-133:4; T156:14-16.) The Pastore Landfill remains out of compliance and the prior operators of the site and the current owner of the site, DeSapio Properties #6, LLC, remain liable for proper care and closure of the landfill. (N.J.S.A. 13:1E-103; T23:14-22; T25:1-2; T180:6-9.)

DRT leases 788 Frenchtown Road, Milford, New Jersey 08848 ("the site") from DeSapio Properties #6, LLC. (T26:11-16.) The site consists of a 1-story building containing DRT's office, a parking area next to the building, and the remainder of the property is the Pastore Landfill. (DEP-1; T32:1-14.) In the summer, DRT rents innertubes to the public for rafting trips on the Delaware River. (T25:18-26:7.) DRT customers park at the DRT headquarters, rent a tube or raft, and then DRT brings them by bus to an area where they can enter the Delaware River, float down the river, and then DRT buses pick them up and bring them back to the DRT headquarters. (T25:18-26:7.)

The landfill is not fenced in. (T25:6-11; T56:8-21.) The DRT parking lot is immediately adjacent to the landfill. (DEP-1.) Over the years, DRT expanded the parking lot to stage equipment and to accommodate overflow parking on busy summer days. (DEP-2; T153:8-155:9.)

"I noticed that an entry 'road' leading up to the top of the landfill had been created by mowing down vegetation for access. Once I was on the top of the landfill, I noted more vehicles parked in a cleared area about 1 acre in size (visual estimate only). I proceeded to the office area where I met with the owner's son, Seth Crance, who told me the following information: Delaware River Tubing is leasing the building and the parking from the property owner, Anthony DeSapio. The cars on top of the landfill today were employee vehicles only, but that on the weekends, the 'overflow' lot on the top of the landfill is full of customer cars because it is a lot busier than the weekdays."

(DEP-2.)

DEP Solid Waste Compliance & Enforcement Environmental Specialist Carole Mercer, who inspected the site multiple times between 2015 and 2019, testified that using the Pastore Landfill as a parking lot could result in serious harm to the environment and public health, particularly because the additional weight of vehicles and equipment could exacerbate dangerous methane emissions and leachate discharging into the Delaware River. (T42:14-17.)

"I think that the biggest concern for – for DEP is the fact that there is uncontrolled methane, which is flammable, being released from the landfill. It's not properly controlled. It's not being collected. It's not being burnt off. It's just entering the environment and because there hasn't been a complete study done, you know, we don't even know necessarily exactly which parts of the landfill, you know, could potentially be dangerous with methane releases in different areas. Which you know, again, hasn't been characterized for us yet.

But – so, it's kind of an unknown, but we know from certain studies that there are pretty high levels of methane coming out of that landfill and you know, we have observed things like barbeque pits and people parking up there and

potentially lighting cigarettes. Like, that's -- that's really dangerous. There's a -- there's a risk of explosion.

So I would say that from a public health standpoint, that would be DEP's number one concern. You know, for the safety of the public who have -- at least, on occasion, going up and parking on the top of that landfill.

The other concern, major concern that we have, is that there's already a significant leachate discharge that is exiting the landfill and running down directly into the Delaware River. Again, that's part of a separate enforcement case with the property ownership. But parking vehicles on that landfill especially when it's busy, you know, there's a potential for that to increase."

(T23:25-25:5.)

In 2016, DRT and DeSapio Properties began working together to obtain permission from DEP and Alexandria Township to expand the DRT parking area onto the top of the landfill. (DEP-4, DEP-5, DEP-9, DEP-12, DEP-13; T75:23-76:2; T87:2-5; T90:11-91:2; T115:7-116:10; T199:25-120:13.) "DeSapio Properties is willing to work with the NJDEP to assist in moving toward the closure of the Pastore Landfill. The funds that can support the investigation and future engineering controls will come as a result of an agreement that allows Delaware River Tubing (DRT) to utilize a portion of the landfill as parking and equipment storage." (DRT-5.) DEP was not opposed to the concept of expanding the parking area onto the landfill, but the landfill needed to be properly capped and undergo the formal closure process to determine whether the landfill was stable enough to bear the weight of a parking lot without exacerbating the existing leachate and methane issues. (T54:14-55:22; T59:6-12; DEP-5; DEP-9.) DEP met with DRT president Gregory Crance and DeSapio Properties, and engineers from Intex, Inc. multiple times to discuss the process. (DEP-4; DEP-5, DEP-7, DEP-8, DEP-9, DEP-12, DEP-13; T54:14-55:22.) DRT and DeSapio Properties elected not to proceed with the plan to close the landfill, purportedly because the process is expensive. "After the meeting, DeSapio and Greg Crance told me that they were unsure about submitting the report to us because the consultant said there were possible landfill gas issues, and to install a system would cost upwards of \$50,000." (DEP-13.)

As detailed in testimony by Mercer and DEP Solid Waste Compliance & Enforcement Environmental Specialist Devin Gallagher, a portion of the DRT parking lot encroached upon the eastern portion of the landfill. (T35:2-37:10; T78:24-79:14; T82:3-11; Devin, DEP-18.) Mercer and Gallagher each conducted independent field measurements and analyses, and both determined that the parking area encroached upon the landfill and witnessed cars parked in that area of the parking Lot. (DEP-1, DEP-7, DEP-18; T82:3-11.)

DRT and DeSapio Properties were repeatedly warned verbally and in writing that mowing, creating roads and parking lots, and using the landfill as a parking lot or for staging equipment constitutes a disruption of the landfill and is a violation of DEP regulations. (DEP-2, DEP-3, DEP-9, DEP-12, DEP-13, DEP-21, DEP-25, DEP-26; T41:5-42:24; T49:18-50:14; T54:14-55-21; T63:9-13; T75:1-22; T90:10-18; T165:18-19; T168:19-169:2.) "Constructing and utilizing a parking lot on the top of a landfill is a disruption of the landfill which requires Department approval prior to the commencement of such an activity. Written approval was not obtained." (DEP-3.) "Utilizing the landfill as a parking lot, I consider a disruption, yes." (T165:18-19.)

Year after year, DEP returned to the site to assess compliance, and each year DRT continued to use the landfill for parking and staging equipment. (DEP-1-25; T96:19-23; T97:20- 22; T98:13-17; T100:8-16; T104:4-20; T106:9-14; T107:22-108:9.) Ignoring the initial September 2015 Warning Letter and multiple clear directives from DEP, by April 8, 2016, DRT and DeSapio Properties cleared vegetation from the top of the landfill and laid down a fresh layer of gravel to create a parking lot anyway. (T54:3-12; T62:7-15; DEP-6; DEP-7.)

By August 2, 2016, the new parking lot had been striped with white paint to create parking spaces. (DEP-10; T77:10-19; T78:24-79:14.) Regarding her August 2, 2016, site inspection, Mercer explained: "These are vehicles parked in the expanded parking lot area that was expanded within the boundaries of the landfill. And then when I showed up on this date, not only was the parking lot expansion still there, but white lines had been painted on it and as you can see vehicles are parked there." (T82:3-8.)

In 2017, DRT began placing portable toilets on the landfill for their customers to use and began parking a school bus that was converted into a swimsuit changing room on the landfill. "In addition, several porta-potties have been placed in this area – a few within the boundaries of the landfill; these porta potties were not present during the last inspection. In addition, a DRT bus being used as a changing area was parked several feet within the boundaries of the landfill as well." (DEP-14; T96:19-23; T97:20-22; T98:13-17.) "In addition, portable toilets were also staged within the boundaries of the landfill on the northern end of the site." (DEP-16; T104:19-20.)

In addition to continuing to direct DRT customers and employees to park on the landfill, DEP saw evidence of other recreational activity on top of the landfill, including discarded clothing, a case of empty beer cans, and a fire ring. (DEP-15; T100:8-16; T159:6-8; T159:21-24.) "Upon arrival, the parking lot area abutting the landfill was approximately 1/3 full. The vehicles were parked in spaces that encroach onto the eastern landfill boundary." (DEP-15.) Explaining what she saw at the site on August 15, 2019, Mercer testified: "This is the day that we observed on the top part of the landfill, so people had obviously used the top part of the landfill, and we found several pairs of shoes that had been left up there from I guess, people changing and forgetting them or whatever. Evidence of some sort of fire, in the form of like a ring of charcoal, that was also on the top of the landfill." (T100:8-16; T159:6-8.) Gallagher explained that a campfire ring on the landfill would be dangerous because "methane could potentially be leaking from the landfill. Methane is a highly flammable gas and any sort of ignition source could cause an explosion." (T159:21-24.)

There were multiple vehicles in the pictures that were parked in spaces that encroach into the eastern landfill boundary. Additionally, portable toilets were also staged within the boundaries of the landfill on the northern end of the site. (DEP-16; T104:19-20.) As such, the DEP issued DRT a Notice of Violation on October 15, 2019, citing unauthorized landfill disruptions in violation of N.J.A.C. 7:26-2A.8(j)(1). (DEP-21.)

Nevertheless, DRT continued to improve the site for parking, including clearing the top of the landfill again in the summer of 2020. "However, I did observe that the

entire surface of the landfill had been covered in gravel. This gravel was not present during the previous inspection, indicating that it was most likely placed on the landfill in order to facilitate more overflow parking." (DEP-22.) "Inspectors arrived at 13:00 and observed customer vehicles parked on the surface of the landfill. The inspectors then took photos from where the edge of the landfill begins and it was clear that vehicles were parked on the landfill itself. Inspectors also noted that the landfill area has been covered in gravel and shows clear signs of vehicles being parked even further on the landfill than was seen on this day." (DEP-24.) In response, DEP issued DRT another Notice of Violation on October 14, 2020, citing unauthorized landfill disruptions in violation of N.J.A.C. 7:26-2A.8(j)(1). (DEP-25.)

On April 26, 2021, DEP issued DRT and Gregory Crance an Administrative Order and Notice of Civil Administrative Penalty Assessment for years of flagrant noncompliance. (DEP- 26.) DRT and the Estate of Gregory Crance have challenged the AONOCAPA.

LEGAL ANALYSIS AND CONCLUSION

The DEP argues that DRT disrupted the Pastore Landfill by clearing the landfill and using it as a parking lot thereby violating N.J.A.C. 7:26-2A.8(j)(1).

N.J.A.C. 7:26-2A.8 - Sanitary landfill operational and maintenance requirements

(j) Approval of and standards for disruption of landfills shall be in accordance with the following:

1. 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. Specific guidance for the preparation of an application for disruption approval is provided in the Department's Technical Manual for Sanitary Landfill Permits and Approvals. For the 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. Minor disruptions include, but are not limited to, the performance of soil borings and test pits, methane gas surveys, and installation of piezometers and observation wells.

ii. Major disruption means the construction of buildings, roadways, parking areas and other site improvements on top of a landfill.

iii. In cases where the landfill owner and/or operator has submitted documentation and received prior approval from the Department in the form of a revised or renewed solid waste facility permit, closure and post-closure plan approval or other approval for specific construction activities, a separate disruption approval shall not be required.

In their post-brief submission, the DEP argues that they produced an abundance of uncontroverted evidence that DRT disturbed the Pastore Landfill multiple times over the course of six years. Both Mercer and Gallagher testified that the DRT never had or applied for a landfill disruption permit from DEP. (T22:22-25; T58:9-13; T190:18-22.)

The agency has determined that DRT's conduct, including clearing the landfill, laying down gravel, using the landfill as a parking lot for DRT employees and customers, and staging equipment such as portable toilets and changing rooms, constitutes a disruption of the landfill. (DEP-3; DEP-21; DEP-25; DEP-26; T21:5-22:25.) As Mercer explained about landfill disruptions, "you don't have to dig up the landfill. You don't have to expose waste. A disruption can be one of many different things. It can be as much as actually building a building at – in some location on the landfill . . . It can be minor things. It can be putting rock. It can be clearing areas that aren't supposed to be cleared on a landfill. It can be disruption of the slope so that leachate breaks might occur. It could be parking . . . Anything that – that creates additional weight, especially significant weight on the landfill is a potential issue as far as, you know, increased methane releases potentially and also, you know, potential increase of leachate. Discharges out of the landfill." (T20:9-21:4.)

Here, there is no real dispute that the cars parked on the landfill during the various DEP inspections belonged to DRT, DRT employees, and/or DRT customers. Mercer testified about her conversation with DRT employee Seth Crance on August 25, 2015, regarding cars that were parked on top of the landfill that day: "Seth Crance admitted to me when I had the conversation with him that that was – those were their employee vehicles and so that's why it was issued to Delaware River Tubing, as a warning." (T50:6-9; see also T42:1-4; DEP-2.) Mercer and Gallagher repeatedly observed DRT using the landfill for parking on August 25, 2015, August 2, 2016, August 15, 2019, August 17, 2019, August 20, 2019, August 24, 2019, August 30, 2019, August 9, 2020, and August 28, 2020. (DEP-2; DEP-10; DEP-15; DEP-16; DEP-17; DEP-19; DEP-20; DEP-23; DEP-24; T40:22-42:4; T77:11-19; T104:4-8; T106:12-14; T158:3-7; T158:23- 5; T163:10-19; T166:15-21; T175:20-176:5; T177:9-16.)

They allege that DRT tried to claim that it is impossible to disrupt the Pastore Landfill because the boundaries of the landfill have not been delineated during the landfill closure process. By that reasoning, DRT could build an apartment building on top of the landfill, build a swimming pool in the landfill, or any number of dangerous and illegal activities, simply by DeSapio Properties refusing to comply with DEP's landfill closure regulations. This reasoning is even more pernicious given that DeSapio Properties and DRT were working together to secure parking on top of the landfill. One violation of the Solid Waste Management Act does not justify another.

Proper delineation of the landfill boundaries will involve taking soil borings to determine the exact depth and boundaries of the landfill, which may have spread over time. (T133:3-4.) Despite a precise delineation, DEP has taken measurements, evaluated historic maps and satellite images, and made visual assessments of the slope of the landfill, and has made a meticulous estimate of the landfill boundaries. (DEP-1; DEP-7; DEP-18; T33:16-37:10; T153:8-156:13.) Mercer has been inspecting landfills within DEP's Division of Solid Waste Compliance and Enforcement for ten years. (T16:2-17:25.) Gallagher has been a DEP Environmental Specialist inspecting landfills since 2018. (T148:16-25.) Both Mercer and Gallagher conducted independent analyses, and based on those calculations, DEP is confident that part of the DRT

parking lot encroaches on the eastern portion of the landfill. (DEP-1; DEP-7; DEP-18; T33:16-37:10; T153:8-156:13.)

They claim that both Mercer and Gallagher provided detailed testimony about how they each came to the conclusion that the parking lot was within the landfill boundary. (T33:16-37:10; T153:8-156:13.) In contrast, DRT presented no evidence whatsoever to contradict the calculations of DEP. Therefore, the court should accept the uncontroverted evidence submitted by the expert agency that a portion of DRT's parking lot was located on the Pastore Landfill, and that Mercer and Gallagher observed cars parked in the portion of the parking lot that was on the landfill on at least nine occasions. (DEP-2; DEP-10; DEP-15; DEP-16; DEP-17; DEP-19; DEP-20; DEP- 23; DEP-24; T40:22-42:4; T77:11-19; T104:4-8; T106:12-14; T158:3-7; T158:23-5; T163:10-19; T166:15-21; T175:20-176:5; T177:9-16.)

Furthermore, it was apparent that DRT and DeSapio Properties were repeatedly warned verbally and in writing that mowing, creating roads and parking lots, and using the landfill as a parking lot or for staging equipment constitutes a disruption of the landfill and is a violation of DEP regulations. (DEP-2, DEP-3, DEP-9, DEP-12, DEP-13, DEP-21, DEP-25, DEP-26; T41:5-42:24; T49:18-50:14; T54:14-55-21; T63:9-13; T75:1-22; T90:10-18; T165:18-19; T168:19-169:2.) DRT ignored those warnings and gradually expanded the parking area further into the landfill, including mowing the area, laying down gravel across the entire landfill surface, and painting parking spaces on the gravel. Clearly by April 8, 2016, DRT and DeSapio Properties cleared vegetation from the top of the landfill and laid down a fresh layer of gravel to create a parking lot anyway. (T54:3-12; T62:7- 15; DEP-6; DEP-7.) By August 2, 2016, the new parking lot had been striped with white paint to create parking spaces. (DEP-10; T77:10-19; T78:24-79:14.)

DRT argues, there is no evidence in the record that can serve as a basis for penalizing DRT for parking, placing portable toilets, placing gravel or mowing on top of the landfill or frankly any other violation. DEP testified about concerns that it has with other activity at the landfill. Even assuming that the concerns were legitimate DEP presented no evidence that DRT created the conditions. DRT is not a responsible party

for the landfill site. In each of the DEP compliance evaluation reports DEP consistently identified DeSapio Properties #6, Inc., Georgia Pacific, LLC, James River Paper Corp., and Pastore SLF. At no point in the reports, or the testimony, was DRT ever identified as a responsible party for the landfill site. In fact, the testimony was that DeSapio Properties #6, Inc. and Georgia Pacific were the responsible parties for the landfill. (T11:11-16.) That being acknowledged, the testimony discloses that either DeSapio Properties or Georgia Pacific conducted or permitted the offending activities.

DRT does not appear to dispute that that the landfill was cleared, and a parking lot was created. The crux of DRT's defense appears to be that DRT's landlord, DeSapio Properties, not DRT, was responsible for clearing the landfill and maintaining the parking lot. However, this position ignores the evidence in the record that DeSapio Properties and DRT were working together to expand the parking lot for the exclusive benefit of DRT. (T41:11-25; T75:17-76:2; T87:2-5.)

Case in point, Gregory Crance, Yuuji Crance, and Anthony DeSapio all attended the landfill disruption permit coordination meeting at DEP on October 17, 2016. (DEP-12; DEP-13.) On June 27, 2016, Gregory Crance called DEP and told Mercer "that he was doing the best he could to work with DeSapio so that they could hopefully get an approval for additional parking on the next year." (T75:17-76:2; see also T87:2-5; DEP-9.) Mercer created an entry on a DEP phone log following the phone call: "Crance called me to discuss Pastore Landfill . . . He said that DeSapio has asked him to help him with this situation and that they decided to go with another engineering firm that specializes in closed landfills (he didn't have the name)." (DEP-9.)

Also, there was evidence that the DRT placed toilets and changing rooms on the landfill for their customers to use and began parking a school bus that was converted into a swimsuit changing room on the landfill. (DEP-14; T96:19-23; T97:20-22; T98:13-17.) By the Summer of 2019, the row of portable toilets on the landfill had grown from approximately four toilets to ten, and a full-sized school bus was being used as a changing room on the landfill. (DEP-14; DEP-15; DEP-16; T104:19-20.) The additional weight of the buses, equipment, and foot traffic on the landfill could exacerbate existing

methane emissions and leachate running into the Delaware River. (T20:25-21:4; T142:18-143:19.)

Additionally, there was evidence that the landfill surface was being used by DRT patrons for tailgating either before or after their rafting trip. DEP saw evidence of other recreational activity on top of the landfill, including discarded clothing, a case of empty beer cans, and a charcoal fire ring. (DEP-15; T100:8-16; T159:6-8; T159:21-24.) As DEP explained, the landfill should have been fenced in to prevent DRT's customers, who probably had no idea that the area was a landfill, from going on top of the landfill for any reason. (T25:6-13; T56:8-15; T58:14-18.) As Mercer and Gallagher explained, potential methane emissions present a very serious public safety.

However, respondents argue that DRT had no legal or practical control over its landlord DeSapio Properties or their conduct and activities on the landfill site that DeSapio owned. DRT did not lease the landfill or any area within the boundary of the landfill.

They further argue that DEP had no evidence that DRT performed any of the offending activities but believed that it was "common sense" that it had something to do with it. However, common sense is an inference and not evidence of a fact. They argue that neither the DEP nor this Court could draw an inference that DRT mowed or spread gravel on the landfill when there was absolutely no evidence or observation of the same and there was no proof that DRT was a legal partner of DeSapio in dealing with its landfill property. DRT leases from DeSapio Properties, a portion of a commercial building located on the same tax parcel but outside of the boundaries of the landfill. There are apparently three other tenants who conduct commercial operations out of the building: an auto repair shop, a dog training company, and gym/exercise facility. The tenants are entitled to use the existing parking lot on the premises which was there at the time that DRT began to lease a portion of the building. Interesting is where are they in this litigation? Gallagher's testimony was very prophetic in that, all of these violations were "operational in nature and not ownership in nature." In other words, Delaware River Tubing was receiving the direct benefit from the actions by the owner. But there is no evidence whatsoever that DRT nor Crance disrupted nor

authorized or instructed DeSapio to disrupt the Pastore Landfill. Finally, in accord with the language in N.J.A.C. 7:26-2A.8(j)(1), no allegations against DRT or Crance constitute a disruption within the language of the law.

Based on the above, I **CONCLUDE** that the Agency has not proven by a preponderance of the evidence that the DRT nor Crance violated N.J.A.C. 7:26-2A.8(j)(1) when the Pastore Landfill was disrupted.

ORDER

Based upon the forgoing, I **ORDER** that the determination of the DEP in its Administrative Order and Notice of Civil Administrative Penalty Assessments against the DRT and Gregory Crance is hereby **DISMISSED**.

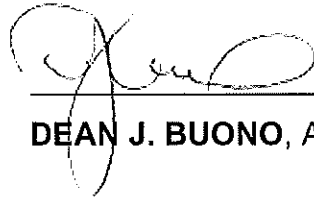
I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** for consideration.

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.

August 28, 2023

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

August 28, 2023

Date Mailed to Parties:

August 28, 2023

DJB/cb

APPENDIX

WITNESSES

For petitioner

Carole Mercer
Devin Gallagher

For respondents

None

EXHIBITS

For petitioner

DEP-1	Maps w/original map
DEP-2	Compliance Summary, 2015
DEP-3	Warning Letter to DRT
DEP-4	Compliance Summary, January 2016
DEP-5	Follow up Summary by Intex
DEP-6	Compliance Summary, April 2016
DEP-7	Compliance Summary, May 3, 2016
DEP-8	Compliance Summary, May 27, 2016
DEP-9	Phone Log, June 27, 2016
DEP-10	Compliance Summary, August 2, 2016
DEP-11	Compliance Summary, September 16, 2016
DEP-12	Sign-in Sheet
DEP-13	Email from V.G., November 4, 2016
DEP-14	Compliance Summary, August 1, 2017
DEP-15	Compliance Summary, August 15, 2019
DEP-16	Inspection Report, August 17, 2019
DEP-17	Compliance Summary, August 20, 2019
DEP-18	Landfill Boundary Memo
DEP-19	Compliance Summary, August 24, 2019

DEP-20	Compliance Summary, August 30, 2019
DEP-21	Notice of Violation, October 5, 2019
DEP-22	Inspection, July 29, 2020
DEP-23	Compliance Summary, August 9, 2020
DEP-24	Inspection, August 28, 2020
DEP-25	Notice of Violation, October 14, 2020
DEP-26	AONOCAPA, Charging Document

For respondents

None