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S.G.R. CONTRACTING, LLC, AND RONALD G. SAINT-JUSTE,	)	ADMINISTRATIVE ACTION FINAL DECISION
Petitioners, v.	)	
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	OAL DKT NO.: EER 06146-24-24
	)	AGENCY REF. NO.: P.I.# 1020333
Respondent.	)	

This order addresses an application for emergent relief filed by S.G.R. Contracting, LLC (S.G.R.) and Ronald G. Saint-Juste (Saint-Juste) (collectively, Petitioners) under N.J.A.C. 1:1-12.6. Petitioners seek a ruling barring the New Jersey Department of Environmental Protection (Department) from introducing the transcript of Saint-Juste's testimony, taken in connection with S.G.R.'s earlier A-901 application (since withdrawn), in this proceeding before the Office of Administrative Law (OAL) on their application for a Self-Generation Exempt Transporter Registration (Self-Generator Registration) under the Solid Waste Management Act, N.J.S.A. 13:1E-1- et seq. (SWMA), and its associated rules, N.J.A.C. 7:26-1 et seq. The confidentiality of the transcript is also significant to the merits of the underlying case, which are not presently before me, as the transcript formed the basis for the Department's denial of S.G.R.'s Self-Generator Registration.

In accordance with N.J.A.C. 1:1-12.6(c), Administrative Law Judge Julio C. Morejon (ALJ) issued an Initial Decision on July 19, 2024, denying Petitioner's emergent application to bar Saint-Juste's testimony, applying the injunctive review criteria set forth in N.J.A.C. 1:1-12.6(a) and Crowe v. DeGioia, 90 N.J. 126 (1982). ALJ Morejon concluded Petitioners failed to meet their burden of proof that, absent judicial intervention, they would face irreparable harm. After reviewing the record, and for the reasons set forth below, I ADOPT the Initial Decision as MODIFIED below.

FACTUAL AND PROCEDURAL BACKGROUND

On October 20, 2020, S.G.R. applied and submitted disclosures to the Department and the Attorney General for a license to commercially transport and dispose of solid waste in the State of New Jersey (A-901 license). Following a review of S.G.R.'s application and a background investigation under N.J.S.A. 13:1E-128, the Attorney General sought additional information as authorized by N.J.S.A. 13:1E-128 and -129. On October 16, 2021, the Attorney General submitted a request for information, which S.G.R. answered on December 20, 2021, and S.G.R. provided further sworn testimony through Saint-Juste on March 22, 2022.

Following Saint-Juste's sworn oral testimony on behalf of S.G.R., but prior to the Department issuing a decision, on October 18, 2023, S.G.R. withdrew its A-901 application. S.G.R., which is a licensed home improvement contractor, then filed a Self-Generator Registration application to transport solid waste under N.J.A.C. 7:26-3.2 on the same date. On January 26, 2024, the Department issued a Notice of Denial to S.G.R. concerning its Self-Generator Registration application, explaining that "[b]ased on testimony Applicant provided under oath in connection with their prior A-901 application, Applicant had engaged in the transport and disposal

of solid waste without the required A-901 license, and disposed of waste in violation of state law . . . ."

On February 6, 2024, Petitioners submitted a Request for Administrative Hearing, and the case was subsequently transmitted to OAL as a contested matter. On June 3, 2024, the Department stated during a status conference its intention to provide a transcript of Saint-Juste's testimony under seal pursuant to N.J.A.C. 1:1-14.1 and Rule 1:38-3(a), as the testimony was subject to the confidentiality requirements of the A-901 statute at N.J.S.A. 13:1E-133 and its regulations at N.J.A.C. 7:26-16.14(a)2iii. The Department filed a letter in lieu of a formal motion to seal the record on June 17, 2024. S.G.R. objected to the Department's request to submit the A-901 transcript, even under seal, ultimately filing their pending Application for Emergent Relief on June 24, 2024. On July 10, 2024, the Department filed its opposition to Petitioners' emergent application. Oral argument was held on July 11, 2024, and the ALJ issued an Initial Decision on July 19, 2024. Petitioners filed exceptions on August 1, 2024, and the Department answered by letter brief on August 7, 2024.

INITIAL DECISION

In his Initial Decision, ALJ Morejon concluded that Petitioners failed to provide clear and convincing evidence to establish the existence of imminent, irreparable harm they would suffer under either N.J.A.C. 1:1-12.6(a) or the factors laid out in Crowe. The ALJ based his conclusion on several factors. Petitioners failed to assert in their motion for emergent relief that they would suffer irreparable harm under N.J.A.C. 1:1-12.6(a), and instead asserted at oral argument that the admission of the testimony was itself the irreparable harm. Additionally, the ALJ found the application of the "irreparable harm" prong of Crowe to be inappropriate here, as probative

damaging evidence (i.e. Saint-Juste's A-901 testimony) is always harmful and prejudicial. See State v. Robertson, 228 N.J. 138, 149 (2017).

The ALJ found the type of irreparable harm the Crowe factors are meant to weigh and prevent is distinct from the harm Petitioners claim they will face, as Petitioners' argument was, in essence, that the admission of Saint-Juste's testimony is harmful to their case. Moreover, the ALJ found S.G.R.'s argument that the Department violated the A-901 statute's confidentiality requirements to be "illogical," as N.J.S.A. 13:1E-131 and N.J.A.C. 7:26-16.14(k)2 allow for confidential information to be disclosed pursuant to "proceedings involving an alleged violation of this act" and "in the course of necessary administration [of the A-901 statute]," respectively.

While S.G.R. argued a Self-Generator Registration is not subject to the A-901 statute or the confidentiality exemption provision at N.J.A.C. 7:26-16.14(k)2, the ALJ found that argument to be "contradicted by a plain reading [of] the rule," because the confidentiality exemption is not limited "to only A-901 license determinations, but the administration of the [SWMA] itself." Accordingly, the ALJ concluded the Department's use of the A-901 transcript under seal in these proceedings "clearly falls under the exemption to disclosure in N.J.A.C. [7:26-]16.14(k)2."

EXCEPTIONS

Petitioners submitted exceptions to the Initial Decision by letter dated August 1, 2024, and the Department responded by letter brief on August 7, 2024. All but two of Petitioners' exceptions restate relevant facts, statutes, and regulations, and require no discussion. To address the remaining exceptions, first, Petitioners argue that under Burnett v. Gloucester County Bd. of Chosen Freeholders, 409 N.J. Super. 219, 242 (App. Div. 2009), "[w]here injunctions are creatures of statute, all that need be proven is a statutory violation." Second, Petitioners continue to argue that provisions at N.J.A.C. 7:26-16.14(k)2, authorizing the release of confidential information under

the A-901 statute, are not applicable to proceedings arising due to a Self-Generator Registration application. In its response, the Department reiterates the ALJ's Initial Decision, which held that a plain reading of N.J.A.C. 7:26-16.14(k)2 reveals that a Self-Generator Registration does fall under the A-901 statute. The Department and the ALJ are correct.

DISCUSSION

Upon an independent review of the record, the ALJ properly set forth the facts of this case and reached the proper factual and legal conclusions. As such, I ADOPT the Initial Decision, as explained below.[1]

The A-901 Statute

In 1983, the New Jersey Legislature passed what is commonly known as the A-901 statute, N.J.S.A. 13:1E-126 -135 (P.L. 1983, c. 392). The purpose of this act is to "foster and justify the public confidence and trust in the credibility and integrity of the conduct of . . . the collection, transportation, treatment, storage, and disposal of solid waste." N.J.S.A. 13:1E-126. To this end, the legislature imposed strict standards on entities that carry out this work, directed the Attorney General to investigate the character and qualifications of those entities, and authorized the Department to deny a license to any entity that does not exhibit "sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste or hazardous waste." N.J.S.A. 13:1E-133.

It is alleged that in this case, Petitioners failed to meet this high standard of public trust, as sworn testimony given by Saint-Juste on behalf of S.G.R. revealed that they "engaged in the transport and disposal of solid waste without the required A-901 license, and disposed of waste in

[1] This Final Decision must also address a minor point raised by both Petitioners and the Department, who agree that the Initial Decision should be modified to correctly reflect the citations for the provisions concerning confidentiality and permissible disclosure under the SWMA and its regulations at N.J.S.A. 13:1E-133 and N.J.A.C. 7:26-16.14(a)(2)(iii). I MODIFY the Initial Decision accordingly.

violation of state law, including but not limited to DEP regulations." However, the conduct of Petitioners and whether S.G.R. would have received an A-901 license are not at issue in this case, as S.G.R. withdrew its application for an A-901 license and instead filed a Self-Generator Registration application, which is a registration issued "solely for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste generated by that person." N.J.A.C. 7:26-16.3(d)(2). DEP denied S.G.R.'s Self-Generator Registration application.

In recognition that information uncovered during an A-901 license investigation could include sensitive personal information and could be prejudicial, the Legislature required that such information must be kept confidential. N.J.S.A. 13:1E-131, N.J.A.C. 7:26-16.14. There are limited exceptions to confidentiality, including among them disclosure in "proceedings involving an alleged violation of this act" and "in the course of the necessary administration of [the A-901 statute]." N.J.S.A. 13:1E-131, N.J.A.C. 7:26-16.14(k)2. Petitioners argue that the use of confidential information in the evaluation of their Self-Generator Registration application and its release to OAL does not fall within this exception, because this proceeding does not specifically involve the issuance or denial of a license under the A-901 statute. The Department argues, in contrast, that a Self-Generator Registration does fall under the scope and necessary administration of the A-901 statute, as the ALJ found.

Although it is true that a Self-Generator Registration is not subject to the same level of scrutiny as an A-901 license application, it is a creation of the SWMA and the A-901 statute and is subject to their provisions and implementing rules, including the exemption at N.J.S.A. 13:1E-127(g)(2). Although the record reveals some confusion between the SWMA in general (N.J.S.A. 13:1E et. seq.) and the A-901 statute specifically (N.J.S.A. 13:1E-126 -135), a careful reading of the applicable statutes and regulations reveals that the Department has complied with both.

As defined in the A-901 statute, a "license" does not include a Self-Generator Registration. In fact, an entity that holds a Self-Generator Registration is an "exempt transporter." N.J.A.C. 7:26-1.4; N.J.A.C. 7:26-16.2. Accordingly, Self-Generator Registration applicants such as Petitioners are not subject to most of the procedures of the A-901 statute, including investigatory procedures. However, they are subject to the standards of the SWMA. One of those standards is that "[n]o 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). An "approved registration" is "the registration of a solid waste disposal site, transporter, or any other solid waste or hazardous waste facility issued by the Department after review and approval of the registration statement." N.J.A.C. 7:26-1.4. While a Self-Generator Registration is not a "license" under the A-901 statute, it is clearly a registration statement under the SWMA, and therefore subject to the standards laid out in N.J.A.C. 7:26-16.8. Those standards include a finding 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." N.J.A.C. 7:26-16.8(a). Petitioners argue that a Self-Generator Registration application must be approved unless there is a finding that the applicant does not meet the standards of the SWMA, but this misconstrues the rules. In fact, the Department must make a finding that the applicant does meet these standards. N.J.A.C. 7:26-16.8(a). In this case, the Department could not do so, because of Saint-Juste's prior sworn testimony.

The remaining question is whether the confidentiality provisions of the A-901 statute protect that testimony from consideration in this matter. They do not. As the Department agues, and the ALJ found, approval of a Self-Generator Registration falls within the meaning of "the

necessary administration of [the A-901 statute]" which is an explicit exception to the A-901 statute's confidentiality provisions. N.J.S.A. 13:1E-127(g)2, N.J.A.C. 7:26-16.14(k)2. This language, in turn, is the basis for the exempt transporter classification. See N.J.A.C. 7:26-16.3(d)2 (ref'd by N.J.A.C. 7:26-1.4 and N.J.A.C. 7:26-16.2). The language of N.J.S.A. 13:1E-127(g)2 authorizes the Department to adopt "regulations to limit the scope of this exemption based on volume or other standards." N.J.A.C. 7:26-3.2(g) is such a regulation, applying the disqualification standards of the A-901 statute to Self-Generator Registrations. Petitioners' Self-Generator Registration application is therefore subject to the A-901 statute and falls within the confidentiality exception at N.J.S.A. 13:1E-127(g)2, and may be disclosed to OAL.

Furthermore, as explained by the Department in its response to Petitioners' exceptions, the language at N.J.A.C. 7:26-16.14(k)2 "including issuance of Administrative Orders denying or revoking a license, or granting a license on condition" does not limit what is "[i]n the course of the necessary administration of N.J.S.A. 13:1E-126 et seq." Instead, a plain reading of (k)2 in its entirety indicates that this language provides examples of actions involved in administering the A-901 statute. It is an inclusive list, not an exclusive list. Contrary to Petitioners' argument, it is both illogical and contrary to public policy to read the rule language as limiting "the necessary administration of N.J.S.A. 13:1E-126 et seq." to only issuing Administrative Orders denying or revoking licenses, or granting conditional licenses. Accordingly, confidential information such as Saint-Juste's testimony may be disclosed to an ALJ within the context of a contested case under the plain meaning of the rules at N.J.A.C. 7:26-16.14(k)2, and it also may be relied upon by the Department in a denial of a Self-Generator Registration.

Burnett v. Gloucester County Bd. of Chosen Freeholders

Petitioners cite Burnett for the proposition that "[w]here injunctions are creatures of statute, all that need be proven is a statutory violation." Burnett, 409 N.J. Super. at 242. But that is not applicable to this case. Burnett arose in the context of the Open Public Meetings Act, N.J.S.A. 10:4-6 to -21, which authorizes injunctive relief in a proceeding in lieu of prerogative writ when a public body does not conform with the Open Public Meetings Act. N.J.S.A. 10:4-16. The SWMA has no similar provision making such relief available against the Department, and even if it did there was no statutory violation in this case. To receive emergent relief, Petitioners must satisfy the burden of proof and framework described under N.J.A.C. 1:1-12.6(a) and Crowe v. DeGioia, 90 N.J. 126 (1982), which they have failed to do.

N.J.A.C. 1:1-12.6(a)

Applications for emergent relief before OAL are authorized by N.J.A.C. 1:1-12.6, which limits emergent relief to cases where "irreparable harm will result without an expedited decision . . . ." N.J.A.C. 1:1-12.6(a). In general, irreparable harm must be immediate and substantial. Subcarrier Communications v. Day, 299 N.J. Super. 634, 639 (App. Div. 1997). In addition, there must be clear and convincing proof of such irreparable harm, American Employers' Ins. Co. v. Elf Atochem N.A., Inc., 280 N.J. Super. 601, 610-11 n.8, (App. Div. 1995), which Petitioners must provide. In this case, Petitioners failed to meet their burden of demonstrating irreparable harm, arguing only that a statutory violation constitutes irreparable harm. But again, the Department has not violated any statute here. Furthermore, assuming that Petitioners did argue that the release of Saint-Juste's transcript to OAL would cause irreparable harm despite its authorization by the A-901 statute and implementing regulations, that harm would be too speculative to warrant emergent relief. As noted by the ALJ, at this stage the transcript and its contents are an allegation that has

not been found to be fact. If this case proceeds to the merits and that occurs, that would be the appropriate time for Petitioners to seek relief. If the mere knowledge by a judge of adverse testimony were enough to constitute irreparable harm, no judicial system could function. This also goes to the balancing test required by Crowe.

The Crowe Factors

Under the test articulated in Crowe, emergent relief may only be granted if Petitioners demonstrate, by clear and convincing evidence, that: (1) they will suffer irreparable harm if relief is not granted; (2) they have a reasonable probability of success on the merits; and (3) the public interest and the relative hardships to the parties favor a stay. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982); Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013); Waste Mgmt. of N.J., Inc. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 519-20 (App. Div. 2008).

As the ALJ explained in his Initial Decision, in this case Petitioners have failed to meet their burden under Crowe. In fact, they have not attempted to address Crowe, instead relying on their statutory argument. Even without considering Petitioners' burden to meet the Crowe factors, however, a brief examination of the record shows that regardless, they do not meet the Crowe factors. As already discussed, they have failed to show irreparable harm under N.J.A.C. 1:1-12.6(a), and the same is true under Crowe. As to the second factor, as discussed above the applicable law favors the Department, not Petitioners, and so Petitioners do not have a likelihood of prevailing on the merits of the underlying claim. Finally, when the equities and interests of the parties are balanced under the third Crowe factor, they weigh in favor of the Department. As discussed above, the A-901 statute exists because of the strong public interest in ensuring that solid waste is handled in a responsible manner by ethical persons. Courts, including OAL, exist to resolve cases and controversies through the determination of facts and application of law. To grant

Petitioners emergent relief and prevent judicial consideration of their past alleged misconduct would undermine both the A-901 statute and the fair enforcement of New Jersey's environmental laws, harming the public interest.

To the extent that the disclosure of Saint-Juste's testimony to OAL might cause any reputational or other harm to Petitioners, it was for this reason (and in compliance with the A-901 statute) that the Department sought to submit the transcript of Saint-Juste's testimony under seal. As the ALJ noted, the allegations within the transcript would still be subject to the ordinary standards of evidence and, if considered under seal, remain confidential from the public. One of the confidentiality exceptions listed at N.J.S.A. 13:1E-131 pertains to "proceedings involving an alleged violation of this act." The Department's motion to seal would have complied with the A-901 statute and protected Petitioners while the proceeding continued.

CONCLUSION

After reviewing the record, and for the reasons set forth above, I ADOPT the ALJ's Initial Decision of July 19, 2024, as MODIFIED as set forth above. IT IS SO ORDERED.

Dated: November 25, 2024

Shawn M. LaTourette
Commissioner

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AND RONALD G. SAINT-JUSTE,

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