



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

THOMAS GRANDE,

Petitioner,

v.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
SOLID AND HAZARDOUS WASTE
MANAGEMENT PROGRAM,

Respondent.

ADMINISTRATIVE ACTION

FINAL DECISION

(Consolidated)

OAL DKT. NO. EER 12748-16
AGENCY REF. NO. 505769eer

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

Petitioner,

v.

BLUE BOX DEMO & RECYCLING, LLC,
AND THOMAS GRANDE,
INDIVIDUALLY,

Respondents.

OAL DKT. NO. ECE 15037-16
AGENCY REF. NO. PEA 140002-U1980

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

Petitioner,

OAL DKT. NO. ECE 15038-16
AGENCY REF. NO. PEA 140002-540915

v.

PLATINUM SERVICES, LLC AND
THOMAS GRANDE, MANAGING
MEMBER,

Respondents.

This Order addresses the consolidated appeals of two Administrative Orders and Notices of Civil Administrative Penalty Assessment (AONOCAPA) issued by the New Jersey Department of Environmental Protection (Department) to Thomas Grande (Grande) and the companies he owns, Blue Box Demo & Recycling, LLC (Blue Box Demo) and Platinum Services, LLC (Platinum), for violations of the Solid Waste Management Act (SWMA), N.J.S.A. 13:1E-1 et seq., the Solid Waste Utility Control Act (SWUCA), N.J.S.A. 48:13A-1 et seq., and their implementing regulations, as well as the denial of a Petition for Approval of an Ownership Change (Petition) and sale of assets of All County Garbage, LLC (All County) to Grande. Specifically, on February 2, 2015, the Department issued AONOCAPA PEA140002-U1980 to Blue Box Demo and Grande, assessing a total penalty of \$28,000 and alleging that Blue Box Demo advertised itself as a solid waste transporter without registering with the Department, and without possessing an A-901 license or a Certificate of Public Convenience and Necessity (CPCN). On the same date, the Department issued AONOCAPA PEA140002-540915 to Platinum and Grande, assessing a total penalty of \$25,000 and alleging that Platinum allowed Blue Box Demo to advertise itself as a solid waste transporter using Platinum's registration number, and transported waste without a A-901 license or a CPCN. On June 14, 2014, Damian V. Mancini, owner of All County Garbage, LLC (All County), filed the Petition with the Department for approval to sell the assets of All County, which operated as a solid waste transporter, to Grande, who was hired as All County's general

manager in June 2014. The Petition for Sale of Assets required both Mancini and Grande to cooperate with the Department's A-901 investigation. On October 2, 2015, the Department denied the Petition because All County and Grande failed to demonstrate the necessary qualifications to engage in the business of solid waste collection. Grande appealed the AONOCAPAs and the denial of the Petition.

The three matters were transferred to the Office of Administrative Law (OAL) where they were assigned to and consolidated for hearing before Administrative Law Judge (ALJ) Susan Scarola.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2012, the Department received a complaint that Platinum was storing waste in an industrial park in Department-registered containers. In the course of responding to the complaint, the Department inspected the storage area associated with the address 81 Pension Road, Suite 111, Manalapan, Monmouth County. The Department did not find any waste as alleged by the complainant but the Department observed that the door to the office building adjacent to the storage area listed information for both Platinum and Blue Box Demo. The Department's further investigation that Grande owned both businesses at that location.

Platinum registered with the Department in 2010 as a transporter of self-generated solid waste under registration number 24121. Grande submitted the registration and certified that Platinum was not a commercial solid waste business, and was exempt from the requirements of A-901 and the SWUCA because it would only collect, transport, treat, store, or dispose of self-generated waste. In his OAL testimony, Grande admitted that Platinum transported non-self-generated waste on multiple occasions.

Grande advertised Blue Box Demo on a website, www.BlueBoxDemo.com, which identified the company as providing “commercial, residential and industrial containers ...demolition and recycling services” in addition to other general contracting and cleanup services. The Department’s investigation revealed that the website domain was created on August 10, 2011. The website reflected Platinum’s registration number and also provided a blank contract for “Dumpster Rentals & Demolition.” The Blue Box Demo website also provided a link to All County’s website, which reflected Platinum’s solid waste registration number. Blue Box Demo did not have a registration number and did not hold an A-901 license or a CPCN.

On April 28, 2014, the Department issued a Notice of Violation (NOV) to Blue Box Demo and Grande, and a separate NOV to Platinum and Grande, for engaging in the commercial transportation of solid waste without an A-901 license or CPCN. The Department also cited Blue Box Demo for advertising as a solid waste transporter without registering with the Department, and cited Platinum for exceeding the limitations of its registration by knowingly allowing Blue Box Demo to advertise as a solid waste transporter using Platinum’s registration number. Thereafter, the Department issued the AONOCAPAs to Blue Box Demo and Grande, and to Platinum and Grande, on February 2, 2015.

Before the AONOCAPAs were issued, Grande sought to resolve the violations by attempting to purchase All County, which possessed an A-901 license and a CPCN. Grande assisted All County’s owner, Mancini, to prepare the Petition, which was filed with the Department in June 2014 and took a position with All County as general manager at about the time of the Petition. As a result, Grande was required to submit an A-901 personal history disclosure statement and both Mancini and Grande were required to cooperate with the Department’s investigation concerning the Petition, as required under N.J.A.C. 7:26H-2.5(a). During the

investigation, the Department requested additional discovery and information concerning the Petition, which was not provided. On October 2, 2015, the Department denied the Petition based on the unresolved violations cited in the AONOCAPAs, Mancini's failure to file an accurate CPCN report for 2013, Grande's failure to file a personal disclosure statement and to decommission the Blue Box Demo website after the AONOCAPAs were issued, and Mancini and Grande's failure to provide sufficient information to the Department demonstrating that Grande possessed the qualification and financial responsibility necessary to engage in the business of solid waste collection such that the Department could approve his acquisition of All County. On August 1, 2016, All County voluntarily surrendered its A-901 license and CPCN. As a consequence, All County was no longer a regulated solid waste transporter, and Department approval was not needed for the sale of assets. Accordingly, the Department rescinded the Petition denial in October 2016.

In the OAL, the Department filed a motion to dismiss Grande's challenge to the Petition denial as moot because it had been rescinded. The ALJ consolidated the motion with the AONOCAPA challenges for hearing, which was held on April 17, 2017. Ronald Feehan, an investigator in the Department's Division of Solid and Hazardous Waste Compliance and Enforcement, testified on behalf of the Department, and Grande testified *pro se* on his own behalf, and on the behalf of Blue Box Demo and Platinum.

The ALJ issued an Initial Decision on July 5, 2017. The ALJ found both Feehan and Grande to be credible witnesses. With regard to the Petition denial, the ALJ found that Mancini's voluntary surrender of the All County A-901 license precludes Grande from operating All County, or Platinum or Blue Box Demo, as a solid waste transporter. She thus found the Petition was moot based on the Department's rescission, but also found that "[g]iven that [the Department] permitted [All County] to be acquired by Grande, it would appear that it had reconsidered its previous

conclusions that Grande could not provide safe, adequate, and proper service, and that the information sought from Grande and ... [All County] had been satisfied.”

The ALJ affirmed the violations as cited in the AONOCAPAs.¹ With regard to AONOCAPA PEA140002-540915, she concluded that Platinum allowed Blue Box Demo to use its Department registration number, violating N.J.A.C. 7:26-3.2(c); and transported non-self-generated solid waste without an A-901 license, violating N.J.A.C. 7:26-16.3(a), and without a CPCN, violating N.J.A.C. 7:26H-1.6(a). With regard to AONOCAPA PEA140002-U1980, the ALJ found that Blue Box Demo engaged in the transportation of solid waste without a registration, violating N.J.A.C. 7:26-3.2(a)1; and transported non-self-generated solid waste without an A-901 license, violating N.J.A.C. 7:26-16.3(a), and without a CPCN, violating N.J.A.C. 7:26H-1.6(a).

The Department filed exceptions to the Initial Decision limited to a clarification that its motion to dismiss Grande’s appeal of the Petition denial was based on the fact that, once All County surrendered its A-901 license and CPCN, it was no longer a regulated solid waste transporter and therefore no approval by the Department was needed for Grande to acquire All County; the Department’s motion was not based on any findings as to Grande’s qualifications to operate a solid waste business. Grande did not file exceptions, and did not reply to the Department’s exceptions.

LEGAL DISCUSSION

Pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., the Department is charged with the

¹ The ALJ interchanged the OAL docket numbers for the two AONOCAPAs on page 21 of the Initial Decision. For clarity, the AONOCAPAs are identified by their respective agency reference numbers here.

regulation of solid waste in New Jersey, including the collection, transportation, storage, and disposal of solid waste. The A-901 law² (see N.J.S.A. 13:1E-126 to 135) and implementing regulations (N.J.A.C. 7:26-16.1 et seq.; N.J.A.C. 7:26-16A.1 et seq.) were adopted to impose a licensing requirement on the solid waste industry, preclude individuals with criminal records, habits, or associations, or known to be so deficient in reliability, expertise, or competence with specific reference to the solid and hazardous waste industries, from participating in the industry, and minimize the dangers of unsound, unfair, and illegal business activities. N.J.S.A. 13:1E-126; see also Trade Waste Mgmt. Ass’n v. Hughey, 780 F.2d 221 (3d Cir. 1985) (holding that the State of New Jersey had a compelling interest in keeping the solid waste industry free from the influence of organized crime through the enactment of the A-901 statute). The Department has promulgated rules to issue, regulate, and revoke licenses to meet the Legislature’s intent. See N.J.A.C. 7:26-3.2; N.J.A.C. 7:26-16.1 to 16.24. In addition, the Department is charged with ensuring that only qualified persons engage in the business of solid waste collection or disposal, N.J.S.A. 48:13A-6, and does so through issuing a CPCN to qualified applicants. N.J.A.C. 6:26H-1.1 to 1.24. The Department has the authority to enforce all of its “codes, rules and regulations . . . related to solid waste collection and disposal.” N.J.S.A. 13:1E-9.

The Department had the burden of proving that Blue Box Demo, Platinum, and Grande violated the regulatory requirements by a preponderance of the evidence. Abbott v. Burke, 206 N.J. 332, 399 (2011). The preponderance of the evidence standard requires that the evidence demonstrate that “a desired inference is more probable than not.” Ibid.

² “A-901” is the name (after its bill number) by which the 1983 amendments to the Solid Waste Management Act codified at N.J.S.A. 13:1E-126 to 135 are commonly known.

In his hearing testimony, Grande admitted that he owns Blue Box Demo and that he established the website as a “marketing campaign” to determine whether the company would generate business. (Tr. 66:20-25).³ By using the website and promoting the entity as one that offers roll off container services and pricing without a registration number issued specifically to Blue Box Demo (Tr. 37:8-11, 67:11 to 68:17, 70:5-21), Blue Box Demo acted as a prime contractor or subcontractor for the transportation of solid waste in violation of N.J.A.C. 7:26-3.2(a)1. Further, Blue Box Demo promoted itself as a transporter of solid waste without an A-901 license (Tr. 50:14-19, 77:4-12) in violation of N.J.A.C. 7:26-16.3(a), and without a CPCN (Tr. 50:14-17) in violation of N.J.A.C. 7:26H-1.6(a).

As to Platinum, Grande admitted that he is the managing partner of Platinum (Tr. 59:14-16), which held a registration authorizing only the transportation of self-generated solid waste (Tr. 85:4-9). By allowing Blue Box Demo to use Platinum’s registration beyond the terms of the A-901 exemption, Grande and Platinum violated N.J.A.C. 7:26-3.2(c). (Tr. 67:11-17, 67:22-24). Further, Grande admitted to hauling non-self-generated solid waste (Tr. 71:20 to 72:24, 84:19 – 85:8); therefore, Platinum and Grande engaged in the business of solid waste without an A-901 license in violation of N.J.A.C. 7:26-16.3(a) and without a CPCN (Tr. 43:17-22) in violation of N.J.A.C. 7:26H-1.4.

Thus, as to the AONOCAPAs, I find that the ALJ correctly affirmed the violations cited by the Department and I ADOPT the Order as set forth in the Initial Decision. As to the dismissal of Grande’s appeal of the Petition denial, I ADOPT the ALJ’s Order as set forth in the Initial Decision. However, I MODIFY the ALJ’s decision to reflect that the Department’s rescission of the denial was based on All County’s having ceased to be a regulated solid waste entity because it

³ “Tr” refers to the transcript of the hearing held in the OAL on April 17, 2017.

had surrendered its A-901 license and CPCN, rather than on the Department's having determined to approve or otherwise affirmatively permit the transfer of ownership of All County to Grande.

PENALTY DETERMINATION

Penalties for violations of the SWMA and implementing regulations are assessed under N.J.A.C. 7:26-5.4, and if not listed there, under N.J.A.C. 7:26-5.5. Each violation constitutes an additional, separate, and distinct violation. N.J.A.C. 7:26-5.5(b). Minor violations pose minimal risk to the public health, safety, and natural resources, do not materially and substantially undermine or impair the goals of the regulatory program, and are corrected within the time prescribed by the Department. N.J.A.C. 7:26-5.5(f)(1). Penalties for non-minor violations are assessed at the midpoint of the applicable range as set forth in the matrix in N.J.A.C. 7:26-5.5(f)2 based on the seriousness of the violation and conduct of the violator.

Major seriousness applies when a violation has caused or has the potential to cause serious harm to human health or the environment or seriously deviates from the requirements of the law. N.J.A.C. 7:26-5.5(g)1. Moderate seriousness applies when a violation has caused or has the potential to cause substantial harm to human health or the environment or substantially deviates from the requirements of the law. N.J.A.C. 7:26-5.5(g)2. Minor seriousness applies to violations that are not major or moderate. N.J.A.C. 7:26-5.5(g)3.

Major conduct includes any intentional, deliberate, purposeful, knowing or willful act or omission by the violator. N.J.A.C. 7:26-5.5(h)1. Moderate conduct includes any unintentional but foreseeable act or omission by the violator. N.J.A.C. 7:26-5.5(h)2. Minor conduct is conduct that is not major or moderate. N.J.A.C. 7:26-5.5(h)3.

The Department may adjust the penalty from the midpoint of the matrix range based on the compliance history of the violator, the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation or to prevent future similar violations, any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation, or other circumstances of the violator or the violation. N.J.A.C. 7:26-5.5(i).

Penalties for violations of the SWUCA and implementing regulations are assessed under N.J.A.C. 7:26H-5.18, and if not listed in that section, under N.J.A.C. 7:26H-5.19. There is a base penalty multiplier for multiple violations of the same rule. N.J.A.C. 7:26H-5.18(e).

The Department assessed penalties against Platinum and Grande of \$5,000 for violating N.J.A.C. 7:26-3.2(c), \$5,000 for violating N.J.A.C. 7:26H-1.6(a), and \$15,000 for violating N.J.A.C. 7:26-16.3(a), for a total penalty of \$25,000. Similarly, the Department assessed penalties against Blue Box Demo and Grande of \$8,000 for violating N.J.A.C. 7:26-3.2(a)1, \$5,000 for violating N.J.A.C. 7:26H-1.6(a), and \$15,000 for violating N.J.A.C. 7:26-16.3(a), for a total penalty of \$28,000.

The ALJ affirmed the Department's assessment of the penalties against Platinum and Grande, and against Blue Box Demo and Grande, with the exception of those assessed for violating N.J.A.C. 7:26-16.3(a) (transportation of solid waste without an A-901 license). The ALJ found that Platinum and Blue Box Demo are separate and distinct entities; thus, it is appropriate to assess penalties against each entity separately. See N.J.A.C. 7:26-5.5(b). However, the ALJ modified the penalty to \$10,000 against each entity because, although the violations were foreseeable based on Grande's experience in the solid waste industry, the ALJ found that the inter-relationship between Platinum and Blue Box Demo should be considered to avoid duplicative punishment for similar

conduct; Grande cooperated extensively with the Department; Grande attempted to purchase All County in order to operate legally; and Grande's conduct and that of Blue Box Demo and Platinum did not result in unusual or extraordinary costs or impact to the public or environment.

I ADOPT the ALJ's conclusions and find, further, that she appropriately reduced the penalty from \$15,000 to \$10,000 as to the violations of N.J.A.C. 7:26-16.3(a) based upon the factors listed in N.J.A.C. 7:26-5.5(i).

CONCLUSION

Having reviewed the record, I ADOPT the Initial Decision for the reasons set forth therein and above, except that I MODIFY the Initial Decision to correctly reflect that the rationale for the Department's rescission of the Petition denial was based on All County's surrender of its solid waste credentials. I ADOPT the ALJ's findings as to penalties. Blue Box Demo and Grande are directed to pay the total penalty of \$23,000 as set forth in paragraph 12 of AONOCAPA PEA140002-U1980, within 30 days of the date of this Final Decision. Platinum and Grande are directed to pay the total penalty of \$20,000 as set forth in paragraph 12 of AONOCAPA PEA140002-540915, within 30 days of the date of this Final Decision.

IT IS SO ORDERED.

October 3, 2017

DATE

A handwritten signature in blue ink, appearing to read "Bob Martin", is written over a horizontal line.

Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

THOMAS GRANDE V. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM
OAL DKT. NO. EER-12748-16
AGENCY REF. NO. 505769EER

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, SOLID WASTE
COMPLIANCE AND ENFORCEMENT V. BLUE BOX DEMO & RECYCLING, LLC, AND
THOMAS GRANDE, INDIVIDUALLY
OAL DKT. NO. ECE-15037-16
AGENCY REF. NO. PEA140002-U1980

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, SOLID WASTE
COMPLIANCE AND ENFORCEMENT V. PLATINUM SERVICES, LLC, AND THOMAS
GRANDE, MANAGING MEMBER
OAL DKT. NO. ECE-15038-16
AGENCY REF. NO. PEA140002-540915

SERVICE LIST

Thomas Grande
Blue Box Demo & Recycling, LLC
Platinum Services, LLC
21 Belle Terre Drive
Manalapan, New Jersey 07726

Ray Lamboy, DAG
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, NJ 08625
E-mail: Ray.Lamboy@law.njoag.gov