



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

THOMAS GRANDE,

Petitioner,

v.

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

Respondent.

OAL DKT. NO. EER 12748-16

AGENCY DKT. 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 DKT. NO. PEA140002-
U1980

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

Petitioner,

v.

**PLATINUM SERVICES, LLC, AND
THOMAS GRANDE, MANAGING MEMBER,**

Respondents.

OAL DKT. NO. ECE 15038-16
AGENCY DKT. NO. PEA140002-
540915

CONSOLIDATED

Thomas Grande, appearing pro se¹

Ray Lamboy, Deputy Attorney General, appearing for the New Jersey Department of Environmental Protection (Christopher S. Porrino, Attorney General of New Jersey, attorney)

Record Closed: April 17, 2017

Decided: July 5, 2017

BEFORE **SUSAN M. SCAROLA**, ALJ:

STATEMENT OF THE CASE

Three appeals are consolidated for determination: in the first one, Thomas Grande (Grande) appeals the denial of a Petition for Approval of an Ownership Change (Petition) by the New Jersey Department of Environmental Protection/Solid and Hazardous Waste Management Program (DEP/HWMP).² In the second two, the New Jersey Department of Environmental Protection/Solid Waste and Compliance Enforcement (DEP/CE) issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) against Blue Box Demo & Recycling, LLC, (Blue Box) and Grande, individually, and another against Platinum Services, LLC,

¹ Grande had previously been represented by counsel, but by the hearing was no longer represented.

² To avoid confusion, the parties will be referred to by name, rather than as petitioner or respondent.

(Platinum) and Thomas Grande as managing operator, that Blue Box, Platinum and Grande contest.

PROCEDURAL HISTORY

By letter dated October 23, 2015, Grande filed a request for an administrative hearing to appeal the denial of the Petition. The DEP/HWMP granted the request and transmitted the matter to the Office of Administrative Law (OAL), where it was filed on August 23, 2016, as docket number **EER 12748-16**. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On February 2, 2015, the DEP/CE issued an AONOCAPA against Blue Box and Grande, individually, and another against Platinum and Grande, as managing operator. On April 6, 2015, Blue Box, Platinum, and Grande filed an amended request for an administrative hearing. The DEP/CE granted the request and transmitted the matters to the OAL, where they were filed on October 3, 2016, as docket numbers **ECE 15037-16** and **ECE 15038-16**, respectively. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On January 11, 2017, the DEP/SWM filed a motion under EER 12748-16 to dismiss the Petition because the ownership transfer had been approved. Grande filed no opposition to the motion.

The motion and the matters were consolidated for hearing by Order dated May 25, 2017. The hearing was held on April 17, 2017, and the record closed.

FACTUAL DISCUSSION

Ronald Feehan testified that he has been an investigator with the DEP in solid-waste management for twenty-five years and has performed thousands of investigations. He also works in compliance and with the “A901 license” unit of the State Police. An “A901” is a license for persons who handle solid and hazardous waste—it gives them the authority to operate a waste business, including transportation, disposal, and transfer collection. Not every hauler or transporter requires an A901

license. Entities that self-generate garbage, such as a homeowner or a demolition company, can use their own containers to transport the garbage and waste to the dumping facility, and do not need the A901 license.

A Certificate of Public Convenience and Necessity (CPCN) is required to register equipment and to get DEP-labeled decals that are placed on equipment to show it has been approved to carry or transport non-hazardous waste. When equipment has been properly registered, an identification card and decal with the vehicle identification number and license number are issued to show it has been licensed. Trucks and trailers are tracked by these decals.

The investigation involving Grande commenced in October 2012, after the DEP received a complaint from a George Bell that Grande was storing waste in the back of Pension Park, an industrial park in Manalapan.

When Feehan went to Manalapan, he found an office for Platinum and Blue Box, with a telephone number on the door, but no one was there. Feehan saw no trucks or anything stored improperly.³ Between 2012 and 2014, the investigation continued and the relationship between these two entities became clearer. Feehan asked the Attorney General's Office to look up Platinum and Blue Box, and another business entity, JMG. JMG was a company that had a self-generating-waste license. Feehan found a website for Blue Box that listed a DEP license for Platinum that had been with JMG. A home-improvement-contractor (HIC) license that was listed on the Blue Box website had originally been issued to JMG and had expired. The phone number provided for Blue Box was the same as for Platinum.

Feehan downloaded a recycling contract from Blue Box's website. The website also contained a form contract for a service agreement for renting a container from Blue Box. The website was registered to Grande with his address. The information Feehan gathered was that JMG's DEP license was being used by Platinum and had been

³ That aspect of the investigation was ultimately discontinued, as there was no evidence of improper storage and Bell provided no further evidence to support his allegations.

transferred to it, and the HIC license for JMG which had expired was listed on the website for Blue Box.

The initial transporter application for Platinum was approved as license number 24121, which had previously been issued to JMG. The business phone was the same as that listed at the Pension Park office.

As of September 9, 2010, Grande was the owner of Platinum, which was a company that handled its self-generated waste under the account that had been JMG's. The email for Platinum was JMG's. Platinum was supposed to have one truck and eight containers.

In an Affidavit of Exempt Generator for Platinum, and signed by Grande, it was noted that "Platinum operates as a small interior demolition company." In the application, Grande agreed that he would not misuse solid waste and certified that he would neither receive nor transport waste from other parties. This application also used the same phone number as Blue Box, but made no mention of that company.

An add-on to the registration was submitted to include a vehicle. The email was the same address for JMG, but the name was Platinum and the number is what had been transferred to Platinum from JMG. The DEP needed to know from whom the vehicle was leased. Platinum's email was <Bruce@blueboxdemo.com>, but the NJDEP license number 21421 belonged to Platinum and not Blue Box. The proposed lease agreement between Bruce Keehn (BK) and Blue Box was rejected by the DEP on November 10, 2011. The insurance card had the name of Bruce Keehn, who was the partner who had started with Grande in Platinum. BK Landscaping was leasing the vehicle to Platinum. The vehicle was ultimately registered, but just sending it in did not make it accepted.

Other states also regulate the transportation of waste products, and some states, not at all. New Jersey is not unusual in its regulatory scheme. However, it may take two years to get a license in New Jersey compared to shorter wait times in other jurisdictions.

The Petition

Grande's Petition to transfer ownership of All County Garbage, LLC, (ACG) to him was denied, based on: N.J.S.A. 48:13A-6(a) and N.J.A.C. 7:26H-3.3(b)(7) (the denial referenced the two pending AONOCAPAs, although they had not yet been transmitted to the OAL); N.J.S.A. 48:13A-6(a), failing to file a disclosure statement until eight months after the request was made; and N.J.A.C. 7:26H-2.5(a)(3), having a website that, until September 2015, transferred viewers to ACG, which made it look as if Blue Box had the required license.

The DEP contends that this Petition is now moot, as in a letter dated February 14, 2017, it noted that "this matter [the denial of the petition] is moot because the [DEP] rescinded its denial, and by his own admission, Mr. Grande has already acquired [ACG]." However, as Damien Mancini, the owner of ACG, had surrendered his license, ACG could not operate as a waste-disposal business unless or until Grande could obtain an A901 license.

The AONOCAPAs

Following the investigation, on February 2, 2015, the DEP issued AONOCAPAs to each company. On ECE 15037-16, Blue Box and Grande were ordered to cease engaging in the collection, transportation and disposal of solid waste that they do not self-generate without first obtaining a CPCN; to cease engaging in transportation of solid waste in a manner that necessitates having to obtain an A901 license; and to cease using their registered equipment in a manner that exceeds their A901 exempt-transporter registration requirements.

On ECE 15038-16, Platinum and Grande, as managing operator, were ordered to cease engaging in the transportation of solid waste without first obtaining an approved registration, or use DEP-approved registration credentials or equipment of other transporters; to cease advertising and providing roll-off service without first obtaining an A901 license; and to cease engaging in the business of solid waste

through advertising roll-off service and pricing without first obtaining a CPCN issued by the DEP.

Violation notices were also issued to each company in the AONOCAPA (which reflected the notice originally given in the notification letters of April 2014). On ECE 15037-16, Blue Box and Grande were cited for violations of N.J.A.C. 7:26-3.2(a)(1), engaging in transportation of solid waste using registration or DEP credentials on other transporters (exceeding the limits of a self-generator); N.J.A.C. 7:26-16.3(a), advertising roll-off service without an A901 license; and N.J.A.C. 7:26H-1.6(a), advertising roll-off without a CPCN.

The penalties assessed for Blue Box and Grande for ECE 15037-16 totaled \$28,000. This was calculated on assessing the conduct as moderate. The penalty for transporting solid waste without a registration was \$8,000. The second-violation penalty for advertising roll-off service without an A901 license did not have a base charge, so a matrix grid with a range was used. The conduct was rated moderate, as was the seriousness of the offense. The matrix range was \$10,000–20,000, so \$15,000 was used. The third violation had a base penalty of \$5,000. No aggravating factors were present. Added together, the total was \$28,000.

On ECE 15038-16, Platinum and Grande, as managing operator, were cited for violations of N.J.A.C. 7:26H-1.6(a), advertising roll-off without a CPCN; N.J.A.C. 7:26-16.3(a), advertising roll-off service without an A901 license; and N.J.A.C. 7:26-3.2(c), using equipment in a manner exceeding A901 exempt-transporter license.

The penalties assessed for Platinum and Grande for ECE 15038-16 were in the total amount of \$25,000. Exceeding the limits of registration was a penalty of \$5,000. The second-violation penalty for advertising roll-off service without an A901 license did not have a base charge, so the matrix grid with a range was used. The conduct was rated moderate, as was the seriousness of the offense. The matrix range was \$10,000–20,000, so \$15,000 was used. The third violation, for using equipment in a manner exceeding A901 exempt-transporter license, had a penalty of \$5,000. No aggravating factors were present. Added together, the total was \$25,000.

The reason expressed for the separate AONOCAPAs was that Blue Box was advertising for container rentals and had no registration. It had no equipment, as that was all Platinum's. The violations were not combined because each company had separate findings and a distinct legal entity. Grande was listed separately on each, as he was the person responsible for each unique corporate entity.

Thomas Grande testified that he is the owner of Blue Box and Platinum. (He had started Platinum with a partner who later left.) Platinum never did anything it was not supposed to do. What happened is that when he found out what the DEP wanted, he followed its directions. Any issues brought to his attention by the DEP were dealt with right away by him. Therefore, the fines set forth in the AONOCAPAs were not justified. Grande did not run from the charges. He addressed the matter, as he did not want to break the law. He ran a legitimate business and was not a shady company. He admitted he transported waste that was not self-generated on a few occasions.

Grande had worked nineteen years in the waste industry without a problem, and now the DEP was not letting him work. He was marketing Blue Box with a plan to develop this business. To resolve the AONOCAPAs, he offered to pay the DEP a compromise settlement of \$25,000 over five years, conditioned upon being approved for an A901 license so he could work.

Grande spoke with Feehan after he received the violation notices and the AONOCAPAs. To get an A901 license to continue his businesses, the DEP gave him the option of purchasing a company that already had a license so that he could work right away. Grande remembered that Mancini had a business which he traded as ACG, and that he might want to sell an interest. That was how Grande became operations manager of ACG, which was owned by Mancini. The intention was for him to operate it with Mancini, using Mancini's A901 license, and, ultimately, for him to purchase Mancini's interest in ACG. That way he would be able to haul waste that was not self-generated. To try to get ACG's A901, Grande had to bring ACG into compliance with the DEP. He had to change the form of the company to an LLC, and he had his

accountant do this. He paid outstanding taxes and fees and company debt. Both he and Mancini believed the transfer would happen.

It became a process. Grande contacted the DEP so often about this that he was called “harassing” by the DEP. But all he wanted to do was to correct whatever it was that had been done wrong. He wanted to own ACG and work as its operations manager; he then expected to apply for and be approved for his own A901 license. He tried to resolve the situation, because it seemed the issues could be addressed and settled.

On June 6, 2014, Grande petitioned the DEP to have Mancini/ACG sell its stock to Grande. Grande paid Mancini \$10,000, but Grande could not take ownership until the sale would be approved by the State. There was no indication that the State would disapprove the sale. When he was denied by the DEP, he asked for a hearing.

After he was no longer represented by counsel, the Attorney General’s Office brought Mancini and him in for interviews and to give statements. Grande gave sworn testimony about the history of ACG and the A901 he wanted to acquire, as well as about Platinum and Blue Box. Grande wanted to see the transcript of his statement to the Attorney General, but the DEP would not give it to him. He was told the statement was “confidential.”

Mancini told Grande that while he was giving his statement, the Attorney General’s Office turned off the tape recorder and coerced and pressured him to surrender his A901 license. Mancini said he was given two options: revoke, disbar, and litigate, or surrender the license, so he surrendered it. When that happened, Grande and ACG were shut down because the A901 license that was required for ACG to operate was gone.

JMG had been formed in 2002 or 2003, before either Platinum or Blue Box, and was registered as a self-generated-waste transporter. Grande knew it was illegal to use the DEP decals for anything but that. JMG was also a home-improvement company with a registration number. Platinum was formed in 2010 and was registered with the

DEP as a self-generated-waste transporter. Grande certified on behalf of Platinum that it would not transfer anything but self-generated waste.

Blue Box was formed after Platinum. Grande registered the <BlueBoxdemo.com> website and started marketing it to see if he could pull in business. Blue Box was not registered as a self-generated-waste transporter, but used Platinum's number. Neither was Blue Box registered as an HIC. The HIC number used for Blue Box had been JMG's, which had gone out of business. Grande was "treading water" to see if Blue Box could be developed as a business. His work was commercial and his cell-phone number was the business number.

Blue Box offered ten-, twenty-, and thirty-yard containers. Grande wanted to see what kind of business he could bring in, but the containers had decals belonging to Platinum, not Blue Box.

Blue Box would take no hazardous materials. On four or five occasions, he gave friends and neighbors a box if they were cleaning out their house or something like that. He admitted that on those occasions he would transfer waste he had not generated himself. But he always transferred this waste as ACG, which had Mancini's A901, or as Platinum, and never as Blue Box. Grande used Mazza and Sons, Freehold Cartage, Meyer Group, and Lemcor as his transfer stations.

Blue Box did not rent any single dumpsters. Grande used the contract that showed up on the website for both companies, although this contract did not address demolition jobs. The Blue Box website was later taken down, and any web traffic was directed elsewhere.

Pension Park was a forty-unit business condominium park and was where his business was located. Maintenance fees were paid to George Bell, the person who had complained to the DEP. Grande identified invoices dated 2010 and 2011 for loading dumpsters for the Pension Park complex. One invoice noted "load 8 dumpsters with wood pallets and 2 dumpsters with C&D [construction and demolition] waste." Grande

had done work at the complex for years. As far as he was concerned, trash was the same thing as waste.

Mancini surrendered his A901 license in August. The DEP banned Grande from transfer sites after Mancini's A901 license was surrendered, but Grande still had boxes in the field. The DEP wanted home addresses of his customers. Grande was asked to return the decals, and he returned about half. He acknowledged that he continued to use the ACG A901 license even after Mancini surrendered it because he had stranded dumpsters that needed to be emptied. Grande dumped his waste boxes and shut down the business. He had a hook-lift truck and could not find another A901 license to use. Grande now must rely on recycling to earn a living. Platinum is dormant, and Blue Box is used as a recycle pickup.

Findings

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

I accept the testimony of Feehan as credible, as the facts he presented regarding use of registration numbers, failure to register, and inappropriate use of the registration are largely undisputed by Grande. I also accept Grande as credible as to his efforts to maintain his businesses, the violations he acknowledged, and his efforts to try to resolve these matters with the DEP and to comply with DEP regulations.

Accordingly, I make the following **FINDINGS** of **FACT**:

As to the Petition, I **FIND** that Mancini applied to transfer his stock in ACG to Grande on or about June 6, 2014. The denial was issued on October 2, 2015, more than a year after the petition was filed, and was based on Grande's two pending AONOCAPAs (addressed below), the failure to file a personal disclosure statement, and the Blue Box website that had remained open until September 2015, as well as the lack of financial compliance by Grande in Blue Box and Platinum, and Mancini's lack of financial compliance regarding ACG, as well as the failure of Mancini to answer discovery questions by May 2015. Mancini and Grande complied with some of the requests for discovery and compliance, but did not satisfy all the requests of the DEP before the denial was issued.

I also **FIND** that Mancini surrendered his A901 license during the petition process, thus negating the ability of Grande to operate ACG with it.⁴

However, the petition for approval of an ownership change of ACG is moot, as ownership in fact has been transferred to Grande, although without Mancini as a part-owner or the use of his license, ACG cannot be used as a transporter of non-self-generated solid waste.

I **FIND** that Platinum is registered as an A901 exempt transporter with registration number 24121. Grande is the owner of Platinum, which has an address at Pension Road, Manalapan. Platinum assumed the DEP registration number from JMG. Platinum hauled waste materials that it had not self-generated, and permitted its registration number to be used by Blue Box.

I **FIND** that Blue Box maintained a website that advertised rental and collection of dumpsters when full. Registration number 24121—which belongs to Platinum—appeared on the Blue Box Demo website as its transporter number. The website also listed the HIC license number that had been JMG's and had expired. Blue Box had no

⁴ The issue of whether Mancini was coerced into surrendering his A901 license is not before the OAL.

A901 license or CPCN or transporter registration, although the website described these activities. Blue Box had no authority to use Platinum's registration number to transport solid waste. In addition, BK Landscaping was listed as a lessor for a vehicle used by Blue Box that had been registered by Platinum with the DEP.

LEGAL ANALYSIS AND CONCLUSION

The Petition—EER 12748-16

The DEP denied the petition for the transfer of ownership of ACG from Mancini to Grande based on its conclusion that neither Grande nor Mancini had provided adequate information or assurances for the DEP to conclude that it could render safe, adequate and proper service.

N.J.S.A. 48:13A-6(a) provides that “[n]o person shall engage, or be permitted to engage, in the business of solid waste collection or solid waste disposal until found by the [DEP] to be qualified by experience, training or education to engage in such business, and is able to furnish proof of financial responsibility, and unless that person holds a certificate of public convenience and necessity issued by the [DEP].”

N.J.A.C. 7:26H-3.3(b)(7) provides that “[p]etitions for authority to sell or transfer stocks of any solid waste utility shall conform to the requirements of N.J.A.C. 7:26H-2, to the extent applicable, and shall . . . provide . . . [t]he qualifications and the business or technical experience of the proposed officers, directors and stockholders, or other principal management and operating personnel with particular respect to their ability to carry out the utility's obligation to render safe, adequate and proper service.”

N.J.A.C. 7:26H-2.5(a) provides procedures for Department review and approval or denial of a petition. N.J.A.C. 7:26H-2.5(a)(3) provides that “[w]ithin 14 days of receipt of notification of deficiency, the applicant shall inform the Department, in writing, of its intent to either withdraw the petition or supply the information requested to make the petition complete. The petitioner shall correct all deficiencies within 30 days of

notification of incompleteness. Failure to correct all deficiencies shall result in the rejection of the petition without prejudice.”

Here, the disclosure statement was filed, albeit eight months late, and the website that transferred viewers to ACG was finally changed in September 2015. The AONOCAPAs remained pending.

However, as of February 14, 2007, the petition became moot because the DEP rescinded its denial and permitted Grande to acquire ACG, albeit without the A901 license previously held by Mancini. Given that the DEP permitted ACG 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 from Grande and the compliance it sought from ACG had been satisfied.

ECE 15037-16—Blue Box and Grande

N.J.A.C. 7:26-3.2(a)(1) provides that no person shall engage in the transportation of solid waste in this state without first obtaining an approved registration statement from the Department. N.J.A.C. 7:26-16.3(a) provides that every person acting as a prime contractor who engages in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in this state must have a license in accordance with the statutory scheme, and must file a disclosure statement with the Attorney General. In addition, that person engaged in the business of solid-waste collection or disposal shall hold a CPCN. N.J.A.C. 7:26H-1.6(a).

Here, it is uncontroverted that Blue Box, an entity owned and operated by Grande, engaged in the transportation and disposal of solid waste without the approved registration. It further provided roll-off service without obtaining an A901 license or a CPCN.

ECE 15038-16 Platinum and Grande as Managing Operator

N.J.A.C. 7:26-16.3(a) provides that every person acting as a prime contractor who engages in the collection, transportation, treatment, storage, transfer, or disposal of solid waste or hazardous waste in this state must have a license in accordance with the statutory scheme, and must file a disclosure statement with the Attorney General. In addition, that person who is engaged in the business of solid-waste collection or disposal shall hold a CPCN. N.J.A.C. 7:26H-1.6(a).

N.J.A.C. 7:26-3.2(c) provides that an operation of transporting solid waste must meet the transporter requirements, and N.J.A.C. 7:26-3.2(c)(1) provides that DEP solid-waste-transporter registration certificates and decals are void if altered. Altered or stolen solid-waste-transporter registration certificates and decals must be confiscated upon discovery.

Here, Platinum had been issued a registration as a non-generator of solid waste. However, the decals provided to Platinum were used by Blue Box, and its registration number was used on Blue Box's website. In addition, Grande admitted that he disposed of non-self-generated solid waste without having the appropriate A901 license or the CPCN.

Penalties

Pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Department is responsible for the regulation of solid waste in New Jersey, including the collection, transportation, storage, and disposal of solid waste. Toward that end, the Department has been given the power and duty to promulgate rules and regulations concerning solid-waste collection and disposal activities. See N.J.S.A. 13:1E-6. The Department has promulgated regulations governing the transportation of solid waste. See N.J.A.C. 7:26-3.1 et seq.

N.J.A.C. 7:26-5.5(a) provides:

(a) The Department shall assess penalties under this section, and not under N.J.A.C. 7:26-5.4 when:

1. Because of the specific circumstances of the violation, the Department determines that the penalty amount under N.J.A.C. 7:26-5.4 would be too low to provide a sufficient deterrent effect as required by the Act; or
2. The violation is not listed under N.J.A.C. 7:26-5.4.

(b) Each violation of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, and any parameter contained therein, pursuant to the Act, shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(d) For each parameter that is required to be monitored, sampled or reported, the failure to so monitor, sample or report shall constitute an additional, separate and distinct violation.

(e) Where any requirement of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, pursuant to the Act, may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(f) The Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the midpoint of the following ranges as follows:

1. A violation that meets the criteria at (f)1i through iii below and the criteria at N.J.A.C. 7:26-5.10(c)1 through 5 is minor. Such a minor violation shall be subject to a grace period of 30 days if the violation meets the criteria at (f)1i through iii below

and N.J.A.C. 7:26-5.10. If compliance is not achieved in the required time period, the violator shall be subject to a \$3,000 penalty, to be assessed in accordance with the procedures set forth at N.J.A.C. 7:26-5.10.

- i. The violation poses minimal risk to the public health, safety and natural resources;
- ii. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and
- iii. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

2. A violation that does not meet the criteria set forth in (f)1 above is non-minor and the penalty shall be assessed at the mid-point of the following ranges, unless adjusted pursuant to (i) below.

SERIOUSNESS				
		Major	Moderate	Minor
CONDUCT	Major	\$ 40,000-	\$ 30,000-	\$ 15,000-
		\$ 50,000	\$ 40,000	\$ 25,000
	Moderate	\$ 30,000-	\$ 10,000-	\$ 3,000-
		\$ 40,000	\$ 20,000	\$ 6,000
	Minor	\$ 15,000-	\$ 3,000-	N/A*
		\$ 25,000	\$ 6,000	

*N/A means not applicable.

(g) The seriousness of the violation shall be determined as major, moderate or minor as follows:

- 1. Major seriousness shall apply to any violation which:
 - i. Has caused or has the potential to cause serious harm to human health or the environment; or
 - ii. Seriously deviates from the requirements of the Act, or any rule

promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement;

2. Moderate seriousness shall apply to any violation which:

i. Has caused or has the potential to cause substantial harm to human health or the environment; or

ii. Substantially deviates from the requirements of the Act, or any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved pursuant to the Act; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement; and

3. Minor seriousness shall apply to any violation not included in (g)1 or 2 above.

(h) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may adjust the amount determined pursuant to (f), (g) and (h) above to assess a civil administrative penalty in an amount no greater than the

maximum amount nor less than the minimum amount in the range described in (f) above, on the basis of the following factors:

1. The compliance history of the violator;
2. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;
 - i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range.
3. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;
 - i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range.
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or the violation.

On ECE 15037-16, the DEP seeks a penalty of \$28,000, representing \$8,000 for the violation of N.J.A.C. 7:26-3.2(a)(1); \$15,000 for the violation of N.J.A.C. 7:26-16.3(a) (graded on a matrix as moderate in seriousness and moderate in conduct); and \$5,000 for the violation of N.J.A.C. 7:26H-1.6(a).

On ECE 15038-16, the DEP seeks a penalty of \$25,000, representing \$5,000 for the violation of N.J.A.C. 7:26-3.2(c); \$15,000 for the violation of N.J.A.C. 7:26-16.3(a) (graded on a matrix as moderate in seriousness and moderate in conduct); and \$5,000 for the violation of N.J.A.C. 7:26H-1.6(a).

The DEP urges that because Blue Box and Platinum are separate business identities, the fines should appropriately be leveled on each company. Grande, on the other hand, urges that because he had control of both companies and the violations were essentially the same, the penalties should be mitigated to a more reasonable amount.

The two penalties that could be adjusted are the two that were assessed on the penalty matrix set forth above. In each matter, the conduct was rated as moderate and the seriousness was rated as moderate. The result was a range between \$10,000 and \$20,000, and the midpoint was used, for a \$15,000 penalty for each AONOCAPA, or a total of \$30,000. The conduct was deemed “moderate” because “this was a foreseeable act by [Grande, Blue Box, and Platinum].” The regulation provides that the midpoint is the starting penalty amount unless other factors are presented to mitigate the penalty.

Here, the inter-relationship between Platinum and Blue Box must be taken into consideration to avoid duplicative punishment for similar conduct, such as penalizing Platinum for letting Blue Box use its registration, and then penalizing Blue Box for using that same registration. While they are two distinct offenses, clearly the interplay between these two entities should be considered when assessing the appropriate amount of the penalty.

Grande testified that the violations have been corrected and that he had ceased engaging in the conduct for which he was cited, although this has had a deleterious effect on his business. He also indicated that he had a previous work history in the industry and had received no violations prior to these.⁵ However, because of his experience in the industry, Grande should have known that his conduct with both Platinum and Blue Box violated the regulations.

Grande did cooperate extensively with the DEP and responded to its concerns. He tried to do what he could to alleviate the problems with Platinum and Blue Box by

⁵ Grande indicated that he would like to apply for an A901 license, but felt the process would be drawn out for years and that he would be denied based on the AONOCAPAs. But if the purpose of the AONOCAPAs is to bring a violator into compliance, that has surely happened here.

attempting to purchase (and then purchasing) ACG. In addition, the DEP has not cited any conduct of Grande, Platinum, or Blue Box that caused unusual or extraordinary costs or impacted directly, or indirectly imposed, on the public or the environment as a result of the violation. Accordingly, some consideration is warranted here.

I **CONCLUDE** that on each of the violations of N.J.A.C. 7:26-16.3(a), the lower end of the range on the matrix should be used, so that each \$15,000 violation would be reduced to \$10,000. The penalties sought to be imposed for the violations of the other charges shall remain as set forth above. The result is that on ECE 15037-16, the total penalty would be \$23,000, and on ECE 15038-16, the total penalty would be \$20,000.

ORDER

I **ORDER** that, as to **EER 12748-16**, Grande's appeal of the determination of the DEP to deny his Petition to purchase All County Garbage is **DISMISSED** as **MOOT**.

I **ORDER** that, as to **ECE 15037-16**, the Department's determination that respondents Platinum and Grande violated N.J.A.C. 7:26-3.2(a)(1), N.J.A.C. 7:26-16.3(a), and N.J.A.C. 7:26H-1.6(a) be and hereby is **AFFIRMED**. I **ORDER** that the DEP's assessment of a penalty is **MODIFIED** to \$23,000, representing \$8,000 for the violation of N.J.A.C. 7:26-3.2(a)(1), \$10,000 for the violation of N.J.A.C. 7:26-16.3(a), and \$5,000 for the violation of N.J.A.C. 7:26H-1.6(a).

I **ORDER** that, as to **ECE 15038-16**, the Department's determination that respondents Blue Box and Grande violated N.J.A.C. 7:26-3.2(c), N.J.A.C. 7:26-16.3(a), and N.J.A.C. 7:26H-1.6(a) be and hereby is **AFFIRMED**. I **ORDER** that the DEP's assessment of a penalty is **MODIFIED** to \$20,000, representing \$5,000 for the violation of N.J.A.C. 7:26-3.2(c), \$10,000 for the violation of N.J.A.C. 7:26-16.3(a), and \$5,000 for the violation of N.J.A.C. 7:26H-1.6(a).

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.

July 5, 2017

DATE



SUSAN M. SCAROLA, ALJ

Date Received at Agency:

Date Mailed to Parties:

/cb

APPENDIX

WITNESSES

For the Department of Environmental Protection:

Ronald Feehan, Investigator

For Thomas Grande, Blue Box Demo & Recycling, LLC, and Platinum Services LLC:

Thomas Grande

EXHIBITS

For the Department of Environmental Protection:

- P-1 Narrative
- P-2 Blue Box Demo website
- P-3 Blue Box Dumpster Rental & Demolition Contract
- P-4 Platinum Transporter Registration and Application
- P-5 Affidavit of Exempt Generator Under N.J.S.A. 13:1E-127(g)(1) through (7)
- P-6 Solid and/or Medical Waste Add-on Form
- P-7 Information Required for Leased Equipment, Vehicles and/or Operators
- P-8 Notice of Violation to Blue Box
- P-9 Notice of Violation to Platinum
- P-10 AONOCAPA for Blue Box
- P-11 AONOCAPA for Platinum
- P-12 Not provided
- P-13 Not provided
- P-14 Not provided
- P-15 Not provided
- P-16 Not provided
- P-17 Not provided
- P-18 Not provided

P-19 Petition for authority to sell 100 percent of petitioner's stock

P-20 Not provided

P-21 Compliance Response Forms from attorney dated June 15, 2014

P-22 Invoice from Platinum to Pension Park dated October 5, 2010

For Thomas Grande, Blue Box Demo & Recycling, LLC, and Platinum Services

LLC:

None