

the required facility permit, by transporting categorical solid waste and disposing of it at 12 Hemlock Road and 8 Hemlock Road in Byram Township (collectively the properties) over a week-long period in early June 2021.

On June 5, 2024, Administrative Law Judge Julio C. Morejon (ALJ) issued an Initial Decision reversing the Department's findings in the AONOCAPA and the AONOCAPA itself. The ALJ concluded the Department had not proved by a preponderance of the evidence that the Respondents are liable for the violations contained in the AONOCAPA.

For the reasons set forth herein, I hereby ADOPT the Initial Decision as discussed below.

PROCEDURAL HISTORY

On March 30, 2022, the Department issued an AONOCAPA against Respondents jointly and severally, listing noncompliance with the following regulations: N.J.A.C. 7:26-2.8(e), (f); N.J.A.C. 7:26-3.2(a); N.J.A.C. 7:26-3.4(b); N.J.A.C. 7:26-16.3(a); N.J.A.C. 7:26H-1.6(a). (P-1.) Assessing a civil penalty of \$50,000, the AONOCAPA also required Respondents to remove all solid waste from the properties and dispose of it at an approved facility. On April 4, 2022, Respondents requested an administrative hearing. (P-2.) The Department granted the request and subsequently transferred the matter to the Office of Administrative Law, where a hearing was held before ALJ Morejon on May 17, 2023. During the hearing the Department presented testimony from the following individuals:

Robert Clark (Clark), an Environmental Specialist of the Department, who testified as to the investigation of the properties, and his determination that the material deposited was solid waste.



Christian Reid (Reid), a homeowner residing at 12 Hemlock Road, who testified as to how he contracted to have the material delivered to his property, and his observations of the activities occurring at his and his neighbor's properties throughout the week.

Judy Tonkin (Tonkin), the homeowner of 8 Hemlock Road, who testified as to why material was delivered to her property and her observations of these deliveries prior to the activity being halted by Byram Township staff.

John Olevo (Olevo), a detective with the Sussex County Prosecutor's Office (SCPO), who testified as to his investigation into this matter and the photographic lineup conducted with Reid to identify a potential suspect present at the properties during the events in question.

Respondents presented testimony from William Bejarano (Bejarano), a truck driver who transported the material and disposed of it at the properties during the events in question, and from Orozco himself, testifying as to his involvement in the events. Both Bejarano and Orozco were assisted by Orozco's wife, Jeniffer Alzate (Alzate) acting as a Spanish-language interpreter.²

Both parties presented limited contemporaneous documentary evidence, including Clark's investigation reports and sampling results and work tickets produced by Bejarano. The remaining evidence consisted of certifications and answers to interrogatories by Bejarano and Orozco, and hearsay communications between Reid's wife and Clark as well as text messages between Bejarano and an unnamed employee of MJ & Sons (also doing business as BJ Excavating).³

² ALJ Morejon stated on the record that he is fluent in Spanish, and the transcript shows multiple times throughout the hearing where he is clearly responding to statements and questions made by Orozco, Bejarano, and Alzate in Spanish. The record does not show that Orozco's wife, Alzate, is a registered court interpreter or whether she has any relevant training. It appears from comments made in the filings and record that Alzate has acted as Orozco's translator throughout this matter.

³ Throughout the transcript, the company known as MJ & Sons or BJ Excavating appears under several variations of these names, but all clearly refer to the same entity. That entity is separate from MJJ Trucking, one of the Respondents in this case.



The Department filed a written summation on June 26, 2023, with the Respondents' written summation filed on July 17, 2023. The record was closed on May 9, 2024, and the Initial Decision was issued on June 5, 2024. The ALJ concluded that the Department failed to satisfy its burden of proving by a preponderance of the credible evidence that Respondents were liable for the transportation and disposal of solid waste as described in the AONOCAPA. The ALJ found not credible certain testimony supporting the Department and found credible contradictory testimony supporting Respondents. The Department filed exceptions on July 8, 2024.⁴ The Department argued that the Initial Decision should be rejected because the ALJ's conclusions regarding the credibility of witness testimony were arbitrary, capricious, and unreasonable. Respondents did not file exceptions or a reply to the Department's exceptions.

FACTUAL HISTORY

The following is a summation of the undisputed facts as taken from the Initial Decision and the record.

The events in this matter took place in late May to early June 2021.⁵ Reid wished to expand the level portion of his property, and thus searched on Facebook Marketplace for someone selling dirt. Reid came across an offer posted by a Ton Gelvez (Gelvez).⁶ Gelvez offered to provide Reid with twenty-five to thirty truckloads of dirt for free, including providing a service to level out the deposited dirt. Gelvez and Reid came to an agreement but did not memorialize it in writing.

Within a few days of this conversation Reid returned home from work to find several loads of dirt had been delivered to his property. Later that night a black truck with a soccer mural on the

⁴ The time limit for filing exceptions was extended due to good cause shown by the Department. Therefore, the exceptions were accepted in accordance with N.J.A.C. 1:1-18.4(d).

⁵ The exact dates are unknown but the activity cited in the AONOCAPA likely took place around June 2 to June 7, based on the testimony of the homeowners and a daily sheet maintained by one of the drivers. (P-9.)

⁶ Certain parts of the record reference this person as Tom Gelvez.



back arrived with a yellow trailer and a bulldozer. Orozco and another, unnamed individual, unloaded the bulldozer, and left shortly thereafter. Over the next several days further loads of dirt were delivered to Reid's home. Reid was at work for at least two of these days, and was at home the third day. During this time multiple loads of dirt were delivered by at least one black and one purple truck. An individual was operating the bulldozer pushing the dirt flat. The record is unclear whether Orozco was driving any of the trucks depositing material at the property. The record is also unclear on whether any of the trucks were MJJ Trucking vehicles. However, the record is clear that whoever was operating the bulldozer was not Orozco.

During this period, Tonkin and Reid had a conversation in which Reid offered Tonkin the opportunity to also receive material from Gelvez. Tonkin agreed and ultimately entered into a "handshake" agreement with Gelvez in which Gelvez agreed to deposit soil at Tonkin's property to fill up a ravine bordering her land. Gelvez and Tonkin did not enter into a written contract or agreement.

On the final day work was performed, dirt was deposited at Tonkin's property (and possibly on Reid's property) starting early in the morning. Sometime in mid-morning Byram Township staff arrived at the property and put a stop to the activity. Sometime that day Orozco arrived and picked up the bulldozer. He spoke with Reid, Reid's wife, and Tonkin. Orozco agreed to photographs being taken of his truck and informed them he was part of MJJ Trucking, LLC, a different company than MJ & Sons / BJ Excavating, and had only visited the properties two times, once to drop off the bulldozer and a second time to pick it up.

Clark was first assigned to this matter around June 12, 2021, and performed an on-site inspection on June 16, 2021. As part of his inspection, Clark spoke with the Reids and Tonkin along with Township officials and wrote a contemporaneous report. (P-4.) Clark observed minor



amounts of solid waste at the properties, specifically construction and demolition debris, and detected a slight diesel-like odor coming from the deposited dirt. The week following July 4th, Clark was notified by Township staff that a major rain event had caused debris to wash out soil and fill material from the 12 Hemlock Road property down onto the neighboring property (111 Forrest Lake Drive), exposing additional construction and debris materials. Clark did not observe the rain event but was sent photographs by Township staff and the homeowner of 111 Forrest Lake Drive. In the photographs Clark observed a diesel or gasoline like shimmer on the runoff, which Clark believed meant the deposited material contained gasoline or an oil-saturated soil. Clark testified that this is problematic as this can lead to contamination of nearby water sources.

On July 13, 2021, Clark along with another DEP specialist performed an on-site inspection of the two properties. (P-5.) Subsequent analysis of samples collected at this time identified hexachlorobenzene, benzo(a)pyrene, chromium, arsenic, and lead contamination at levels exceeding permitted residential standards. (P-6.) This made the material categorically solid waste.

Clark performed a final on-site inspection on October 27, 2021, to observe the condition of the properties and to gather and clarify information provided by the Reids (e.g., names, phone numbers, license plate numbers, truck decals). Clark testified that the DEP determined Orozco and MJJ Trucking were liable as transporters of solid waste because of information provided by SCPO from an ongoing investigation. However, this information was not included in the record. (T73:25-74:4, T75:15-23.)

Sussex County Prosecutor's Office Detective Olevo testified that in November 2021, the Reids' attorney contacted the SCPO to report the Reids had been the victim of a crime, and the matter was assigned to him. Olevo interviewed the Reids, obtaining photographs, telephone numbers, names, and license plate numbers. During a properly administered photographic lineup



conducted in July 2022, Reid identified Orozco with 80% confidence as a person who had delivered soil and equipment to his property. Based on his professional experience, Olevo was highly confident in Reid's recollection of events. As part of his investigation Olevo spoke with Township investigators but he did not reach out to Orozco at any point.

THE ALJ'S CREDIBILITY DETERMINATIONS

The majority of the evidence in this matter came from witness testimony. The ALJ made credibility determinations and factual findings for each of the witnesses and their testimonies.

The ALJ found Clark's testimony to be credible as his testimony was consistent and corroborated by his contemporaneous inspection reports. The ALJ also found Clark had no bias toward Respondents. Except for Clark's recitation of facts contained in the reports' general comments sections, the ALJ found Clark's testimony as fact.

For Detective Olevo, ALJ Morejon found Olevo provided credible and consistent testimony as to his investigation. The ALJ also found the process Olevo described for conducting the photographic lineup as consistent with the Attorney General Guidelines as well as consistent with Orozco's own testimony that Reid's wife took a photograph of him. The ALJ found Olevo's testimony—except for his hearsay statements regarding Reid claiming Orozco dropped off soil—as fact. But the ALJ also found that Olevo's investigation could have been more fruitful had he interviewed Orozco.

The ALJ found as fact Tonkin's testimony in general and specifically noted that Tonkin's testimony was credible regarding how the dirt came to be delivered to her property and that she could not identify the workers at her home.

ALJ Morejon found only a portion of Reid's testimony to be credible. Specifically, the ALJ found as fact Reid's testimony regarding how he contracted with Gelvez and the work that was



performed on his property, as this was consistent with his reports to Clark and Olevo. The ALJ also found Reid's testimony that he saw an MJJ Trucking truck at his property, in general, as credible—this fact is undisputed. However, the ALJ found the remaining portions of Reid's testimony not credible. Specifically, the ALJ found that Reid's testimony regarding seeing Orozco dropping off soil on the one day Reid was home was inconsistent and not credible.

The ALJ found Bejarano's testimony credible regarding his position as a driver for MJ & Sons / BJ Excavating, that the work tickets (P-9, R-3) demonstrated soil was dropped off at 8 and 12 Hemlock Road, and regarding the procedures used by MJ & Sons / BJ Excavating as to how it picks up and drops off soil at designated properties. Bejarano's testimony was found as fact.

Finally, the ALJ found Orozco's testimony credible that he did not deliver dirt to 8 or 12 Hemlock Road and that he had no business connection with Gelvez and his company; Orozco's testimony was found as fact. The ALJ also found that Orozco's conduct during the hearing and his testimony displayed a conviction that Orozco's involvement in this matter was limited solely to the delivery and renting of the bulldozer. In addition, the ALJ found that Orozco's testimony displayed a lack of command of speaking and understanding the English language, hindering his defense, and creating miscommunications with Reid.

EXCEPTIONS

Only the Department filed exceptions in this matter. In summary, the Department argues the ALJ's findings of fact are arbitrary, capricious, and unreasonable, and that the conclusions of law are unsupported by the findings of fact. The Department argues that the ALJ failed to adequately explain why Reid's testimony was not credible, omitted testimony tending to bolster Reid's credibility, omitted any explanation as to why Respondents' witnesses were credible, and made conclusions of law unsupported by findings of fact due to an apparent contradiction between



the ALJ's description of Tonkin's testimony and the ALJ's later analysis of the same. The Respondents did not file a response to these exceptions.

DISCUSSION

The AONOCAPA in this matter cited numerous violations of the SWMA and SWUCA regulations, specifically N.J.A.C. 7:26-2.8(e), (f) (no person shall engage in the disposal of solid waste without first having a solid waste facility (SWF) permit, nor shall any person operate a SWF without authorization); N.J.A.C. 7:26-3.2(a) (no person shall transport solid waste without first acquiring a registration statement from the Department); N.J.A.C. 7:26-3.4(b) (collected solid waste must be deposited at an approved facility per N.J.A.C. 7:26-1 and -2); N.J.A.C. 7:26-16.3(a) (no person shall collect, transport, treat, store, transfer, or dispose of solid waste or hazardous waste without a license); and N.J.A.C. 7:26H-1.6(a) (no person shall collect or dispose of solid waste without first obtaining a certificate of public convenience and necessity from the Department).

To succeed, the Department must prove by a preponderance of the evidence that Respondents engaged in the transportation and/or disposal of solid waste, without the proper authorization. In re Polk, 90 N.J. 550, 561 n.1 (1982). These laws are subject to strict liability, such that the Respondents' mental state is not relevant to proving liability. To determine if the Department met its burden, the record is reviewed de novo.

It is uncontested that based on the sampling conducted by Clark and the results of his investigation, the material deposited at 8 and 12 Hemlock Road is categorically solid waste. N.J.A.C. 7:26-1.6(a)(6), -1.13. It is further uncontested that neither 8 nor 12 Hemlock Road have a SWF permit, nor do they operate as SWFs. Additionally, per the SWMA and its regulations, Orozco and MJJ Trucking would each qualify as a "person" subject to SWMA regulations.



N.J.S.A. 13:1E-9(f); N.J.A.C. 7:26-1.4. Finally, Respondents did not contest that they have no licenses, permits, or permission authorizing them to engage in the transportation or disposal of solid waste. Therefore, Respondents' liability in this case turns solely on whether Respondents engaged in the transportation or disposal of the material found at 8 and 12 Hemlock Road.

Deference to an ALJ's Credibility Determinations

It is well understood that in administrative proceedings agency heads may not reject or modify findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious, or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record. N.J.S.A. 52:14B-10(c). Here, the ALJ considered the credibility of the witnesses and where relevant noted that one witness's testimony was inconsistent to the point it was not credible, and another's demeanor indicated credibility to the ALJ. As stated within the ALJ's credibility analysis, credibility rests on the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). This includes the fact finder's "observations of the character and demeanor of witnesses and common human experience that are not transmitted by record." State v. Locurto, 157 N.J. 463, 474 (1999) (internal citations omitted).

Review by an agency head of an Initial Decision is not the same as a review by the Appellate Division, however, a review of their opinions may be instructive as to how an agency head should review an ALJ's credibility findings. See, e.g., D.L. v. Dept. of Human Servs., 2024 N.J. AGEN LEXIS 167, *48-50 (Jan. 4, 2024). The Appellate Division defers to a trial court's factual findings as the trial court can make first-hand credibility judgments and get a "feel of the case' . . . that can never be realized by a review of the cold record." New Jersey Div. of Youth &



Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (citing New Jersey Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 293 (2007)). Further, “[w]hen the credibility of witnesses is an important factor, the trial court’s conclusions must be given great weight and must be accepted . . . unless clearly lacking in reasonable support.” Reese v. Weis, 430 N.J. Super. 552, 568 (2013) (quoting New Jersey Div. of Youth & Family Servs. v. F.M., 375 N.J. Super. 235, 259 (App. Div. 2005)). See also Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 607 (1989) (deference to trial court’s factual findings is especially appropriate when the evidence is largely testimonial and involves questions of credibility). Thus, the ALJ’s credibility findings should be given deference, so long as their conclusions are not so “clearly mistaken” or “wide of the mark,” such that the findings would result in an injustice. New Jersey Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007); In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997) (citing Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974)).

The record in this case rests primarily on the testimony of lay witnesses. Specifically, the observations of Reid and Tonkin versus Bejarano and Orozco. Thus, the ALJ’s credibility determinations should be given great deference, but must also have reasonable support to be upheld. See Reese, 430 N.J. Super. at 568.

Tonkin’s Testimony

Tonkin’s testimony is limited as she observed only portions of the activities on the last day, which were halted around mid-morning by Byram Township staff. Tonkin testified she cannot remember faces over the extended period between the events and the hearing. (T150:5-6; T150.) Tonkin testified that she observed MJJ Trucking trucks deliver dirt to her property, however her memory is of purple trucks, while Orozco testified that he owns only two black trucks and one blue truck. (T144:4-19; T151:17-23; T157:11-18; T206:15-17.) The ALJ found her testimony



credible regarding her relationship with Gelvez and how soil came to be delivered to her property. (Initial Decision at 14.) He also found Tonkin could not identify any of the workers at her home. (*Ibid.*) The ALJ did not specifically note whether he found her testimony regarding observing MJJ Trucking trucks at her property credible. However, the ALJ seemed to question her credibility as to the accuracy of her memory during the hearing. The ALJ asked how she knew for certain it was MJJ Trucking at her property over such a long period of time, when she could not recall faces over that same period. Tonkin's response was simply "because it was a purple truck that had MJJ Trucking on it." (T151:17-23.) It is unclear how credible the ALJ found this response to be, as Tonkin subsequently stated that the trucks working on her property did not have MJJ Trucking on them. (T151:24-T152:3, T152:10-19.) Regardless, the ALJ's finding that Tonkin's testimony was credible is supported by reasonable evidence in the record.

Bejarano's Testimony

Bejarano testified regarding his past employment by MJ & Sons / BJ Excavating as a truck driver, during which time he personally participated in the dumping of dirt at the properties. The ALJ found Bejarano's testimony credible, and this determination is supported upon a de novo review of the record, even when considering the potential impeachment of his testimony due to his undisclosed employee relationship with Orozco. The ALJ found Bejarano's testimony to be fact regarding his position as a driver for MJ & Sons / BJ Excavating, that the work tickets (P-9, R-3) demonstrated the delivery of soil to 8 and 12 Hemlock Road, and regarding the procedures and available equipment and workers used by his prior employers in picking up and dropping off soil. (Initial Decision at 14-15.) At trial, the Department's counsel asked Bejarano if "someone looking at this would think you're less credible if they knew that you are testifying on behalf of your boss?" (T197:23-25) and the ALJ objected on the grounds that the question asks for a legal conclusion of



credibility. The ALJ was fully aware of Bejarano's potential conflict of interest and nonetheless found his testimony credible.⁷

Reid's Testimony

The record also supports the ALJ's credibility determinations regarding Reid's internally inconsistent testimony, for example regarding whether Reid saw Orozco dumping dirt at this property. (See T115:2-20; T116:23-24; T132:16-20; T136:18-T137:3; T138:2-T139:5.) Reid recalled Orozco being at his property only to pick up and drop off the bulldozer, but not dumping—or potentially moving—dirt.⁸ (T103:12-21; T113:18-22; T114:3-6; T129:9-17.) Reid recalled MJJ Trucking trucks at his property, once black with a soccer mural (T105:22-106:16), other times purple and black (T111:17-24; T112:4-22; T129:19-24). It should be noted that Bejarano testified that MJ & Sons / BJ Excavating owns trucks in purple, red, black, white, and grey, and that a purple MJ & Sons truck was present at the properties. (T186:21-25; T187:25-188:4.) Reid recalled seeing MJJ Trucking trucks throughout the week, including seeing them deliver dirt multiple times (T111:17-24; T114:3-6) on days he was at work; but for those days, he also testified the delivery of dirt was completed by the time he arrived home. (T103:12-21; 108:6-10, 13-19.)

Reid's most inconsistent testimony regarded whether he saw Orozco and/or an MJJ Trucking truck at Tonkin's property on the day in which he was at work and the activity was stopped by the township by mid-morning. (T116:23-24; T150:22-T151:9.) Reid claimed to have personally seen Orozco delivering dirt (T115:2-20; T136:18-T137:3), saw MJJ Trucking

⁷ I also note that in its exceptions, the Department did not claim that Bejarano's failure to disclose his employee relationship with Orozco impacted Bejarano's credibility, instead directing its discussion of Bejarano's employment entirely to Orozco's failure to disclose the relationship in written discovery. That issue is addressed below.

⁸ In Reid's testimony when answering questions from the ALJ, Reid used the phrase "toiling" which he seemed to mean either dumping dirt and/or pushing dirt in the bulldozer. (T137:6-17; T138:2-39:5.) But Reid also testified earlier that the bulldozer operator was not Orozco. (T108:11-12; T114:3-6.)



deliveries but not Orozco (T129:9-17; T132:16-20), and saw Orozco not delivering dirt (T132:16-20; T:138:2-T139:5). Further, Reid's recollection of MJJ Trucking vehicles delivering dirt at Tonkin's property was not truly corroborated by Tonkin. As stated previously, Tonkin could only recall purple MJJ Trucking vehicles delivering dirt, while Orozco only owns a blue and two black trucks. (T206:16-17.) Due to these various inconsistencies, the ALJ's determination that Reid's testimony was not credible has reasonable support from the record even without a finding as to Reid's conduct or demeanor while testifying.

Orozco's Testimony

Finally, the ALJ's credibility determination as to Orozco seems to rest heavily on his conduct and demeanor during the hearing and when testifying. The record, specifically the transcript of the hearing, may be a review of a "cold record," E.P., 196 N.J. at 104, but it is full of consistent and frequent assertions by Orozco as to his limited involvement and his attempts to make the record as accurate as possible. Orozco's testimony and statements are consistent throughout the transcript as well as in his answers to interrogatories and certifications (the latter made over a year before the hearing). (P-2, P-9, R-4.) Finally, the ALJ's opportunity to observe Orozco's conduct first-hand throughout the various proceedings must be given due consideration. Therefore, the ALJ's credibility determination for Orozco's testimony is also reasonably supported by the record.

Response to the Department's Exceptions

The Department raised four exceptions to the ALJ's Initial Decision.

Inconsistencies and credibility of Reid's testimony

The Department first argues the ALJ provided insufficient explanation as to why Reid's testimony was not credible, including failing to include descriptions of his demeanor which could



be used by a reviewing court to determine whether the ALJ's discretion was arbitrarily exceeded. (Department's Exceptions at 9, quoting Middletown v Murdoch, 73 N.J. Super. 511, 523 (App. Div. 1962).) The Department also takes exception to the ALJ's explanation that the testimony was inconsistent, without specifying if it was internally inconsistent or inconsistent with other testimony. (Id. at 9-10.) If it was the latter, the Department believes it was arbitrary to not include a description of Bejarano's and Orozco's conduct (to determine if discretion was arbitrarily exceeded) and to not address the potentially impeaching evidence that Orozco did not disclose his full relationship with Bejarano when responding to written discovery. (Id. at 10.)

The Department's reliance upon Murdoch is misplaced. Murdoch stands for the proposition that fact finders must state their belief or disbelief of a witness's testimony and their reasons for that belief or disbelief. It does not require them to describe the demeanor or conduct of witnesses. 73 N.J. Super. at 523. While additional details would have been beneficial for my review of the ALJ's decision, the ALJ did specifically find that Reid's testimony was inconsistent and thus not credible. Upon a de novo review of the record there was adequate support showing Reid's testimony was internally inconsistent, which sufficiently supports the ALJ's determination.

Omission of facts bolstering Reid's credibility

Next, the Department argues that facts in the record which would bolster Reid's credibility appear to have not been considered by the ALJ. Specifically, Reid's testimony about the color of the trucks, the sounds they made, the logo on the side, the soccer mural, and his familiarity with Orozco because Reid gave him leftovers when Orozco initially delivered the bulldozer. (Department's Exceptions at 11.) It was not arbitrary or capricious of the ALJ to not specifically



take note of Reid's testimony on the color, logos, or sound of the trucks.⁹ The ALJ's decision regarding Reid's lack of credibility was based on internal inconsistencies in Reid's description of the timing and activities of Orozco and MJJ Trucking vehicles. None of the details cited by the Department change this central fact of the ALJ's analysis. Furthermore, there are numerous reasons why the ALJ may have properly discounted the specific details cited by the Department. The accuracy of Reid's recollection is called into question by the two years that elapsed between the events and the hearing, the lack of any corroborative documentary evidence, and the fact that the only photograph taken of any of the trucks was of Orozco and his MJJ Trucking truck when he picked up the bulldozer (a fact not disputed by Respondents). Further, that Reid remembered specific colors or logos is not probative as his testimony was based solely on his memory of events from two years prior, and by his own admission his wife was the only one who documented any of the information about the trucks or individuals on the last day work was done, specifically Orozco's presence as he was picking up his bulldozer. (T115:14-17; P-7. See also T207:24-T208:6.) Thus, the inclusion of these facts would not have supported Reid's credibility. Additionally, Reid's testimony that he was familiar with Orozco is not disputed, as Orozco testified, he came to the properties twice and spoke with Reid, his wife, and Tonkin on the second visit. This also explains Reid's ability to identify Orozco in Olevo's photo lineup.¹⁰ Consequently, not specifically addressing Reid's familiarity with Orozco was not arbitrary, capricious, or unreasonable as it was not disputed the two individuals had seen and spoken with each other at the properties.

⁹ Not mentioning the sound of trucks is not arbitrary, as the fact that Reid heard trucks arriving at his property is not contested.

¹⁰ Further, to the extent the Department's argument relies on Olevo's testimony on Reid's level of confidence in identifying Orozco, the record only supports Olevo's ability to opine on whether Reid honestly believed his recollection to be correct, not whether Reid's recollection was in fact correct. (T168:10-17; T173:11-16.)



Omission of facts weighing against Bejarano's and Orozco's credibility

The Department argues that the ALJ failed to include findings of fact in the record which may negatively impact the credibility of Bejarano and Orozco. Specifically, that (1) Orozco did not disclose during discovery that Bejarano became an employee of Orozco in October 2021, after quitting MJ & Sons; (2) Bejarano initially provided work tickets that occurred after the events likely took place and only provided tickets dated closer to the probable timeline close to the hearing date after learning when the events likely took place; (3) Orozco, in his hearing request, initially claimed to not know Augustin, but in his interrogatories a year later claimed to know Augustin as the person he rented his bulldozer to; and (4) there was no evaluation of the improbability that Orozco rented a bulldozer to Augustin, who he had never met, without a written contract, indicating a lack of credibility.

It is true that these facts weigh against the credibility of Bejarano and Orozco, and that they were not addressed by the ALJ. However, a review of the record suggests that none of them are as probative as the Department suggests, and it was reasonable for the ALJ to make his credibility determinations despite them.

The disclosure of Bejarano's employee relationship with Orozco has already been addressed, insofar as Bejarano's testimony was credible despite it. In addition, Orozco's claim that he failed to disclose the relationship in written discovery due to a misunderstanding is equally credible. The Department's request to state whether Bejarano "has ever been an employee, or contractor," although grammatically correct, would not necessarily be clear to a non-English speaker, and the ALJ found that even with his wife translating, Orozco's lack of command of the English language created misunderstandings. A more detailed question, such as whether Bejarano "is now or has ever been your employee, or contractor" may well have elicited a different response.



The fact that Orozco's wife was a fluent English speaker and served as his translator throughout these events, which the Department notes in its exceptions, would not prevent Orozco from being confused, nor make the ALJ's determinations arbitrary and capricious.

Regarding the receipts provided by Bejarano, Bejarano testified he was working in Byram transporting soil for MJ & Sons for months. (T188:23-T189:2.) It is reasonable that he provided work tickets for the wrong dates, as even during the hearing the exact dates the events occurred was unclear. It is not clear when Bejarano learned of the more likely dates the events took place, but he provided more accurate tickets which had the tendency to show dirt was delivered to the properties by MJ & Sons, specifically transported by Bejarano. Bejarano explained, and the ALJ found credible, that he had images of only the incorrect tickets with him on his phone at the time that his certification was prepared by Orozco's attorney, and he later retrieved the more accurate work tickets from a computer.

Orozco's testimony regarding Augustin, initially claiming he did not know him and later identifying him as the person who rented his bulldozer, although inconsistent, does not make it arbitrary and capricious for the ALJ to have found him credible. Orozco knew of Augustin only due to a mutual friend who recommended Orozco's bulldozer rental services, he was paid in cash by someone who was not Augustin (R-4), and when initially responding to the AONOCAPA did not realize that Augustin's full name was Jean Augustin. As Orozco's interactions with Augustin seem to be limited, it is reasonable that his recollection changed since first receiving the AONOCAPA.

Finally, Orozco's testimony is credible regarding his decision to rent his bulldozer to Augustin, whom he did not know, without a written contract. Orozco's testimony made it clear that the presence of a hidden GPS tracker on the bulldozer gave him confidence that the machine



would not be stolen. (T223:4-10.) Moreover, Orozco testified that he was connected to Augustin by a mutual friend, “Kevin.” (T230:4-9.) This fact, overlooked by the Department in its exceptions, also supports the plausibility of Orozco’s decision to rent the bulldozer. It is not that different from the fact that both Reid and Tonkin agreed to permit a stranger, found via Facebook Marketplace, to deposit numerous loads of dirt on their properties at no cost to either of them, and without knowing the source or cleanliness of the dirt, purely on a handshake agreement. Orozco may have made an unwise business decision, but it was no more or less unwise, or impactful to his credibility, than Reid or Tonkin’s.

All the issues the Department raises to question the credibility of Bejarano and Orozco are in fact consistent with the ALJ’s conclusions that Bejarano and Orozco were credible witnesses. While it might have been helpful for the ALJ to address them in his credibility analysis, it was not arbitrary, capricious, or unreasonable to omit them.

Inconsistency between findings of fact and conclusions of law

The Department argues ALJ Morejon’s conclusions of law are not supported by the ALJ’s factual findings as the ALJ initially stated that Tonkin’s testimony was found to be fact but later said her testimony was contradicted by Bejarano’s. Specifically, the Department points to Tonkin’s testimony that she saw at least one MJJ Trucking truck transporting and dumping dirt at her property. (T144:4-19.) The Department argues that consequently the Initial Decision’s conclusions of law should be reconsidered de novo. An ALJ’s legal conclusions are not afforded any deference and are considered de novo as a matter of course. To the extent the Department intended to ask that I review the Initial Decision’s findings of fact de novo, I FIND that Tonkin’s credible testimony was contradicted by Bejarano’s and Orozco’s own credible testimonies, and that overall



the record supports a finding that Tonkin's recollection may have confused the MJ & Sons trucks for one of MJJ Trucking's trucks.

Upon a de novo review of the record, while giving ALJ Morejon's credibility determinations the appropriate level of deference, I FIND that the Department has failed to show that it is more likely than not that Respondents engaged in the transportation or disposal of solid waste per the violations cited in the AONOCAPA. Consequently, I ADOPT the ALJ's conclusion that the AONOCAPA, with respect to Orozco and MJJ Trucking, must be dismissed.

CONCLUSION

Having reviewed the record, and for the reasons set forth above, I hereby ADOPT the ALJ's Initial Decision of June 5, 2024, as MODIFIED as set forth above.

IT IS SO ORDERED.

Date: October 18, 2024


Shawn M. LaTourette, Commissioner
Department of Environmental Protection



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

v.

MJJ TRUCKING, LLC, JEAN AUGUSTINE, INDIVIDUALLY, JHON F. OROOZCO,
INDIVIDUALLY, AND JOINTLY AND SEVERALLY,

OAL DKT. NO.: ECE 07445-22

AGENCY DKT. NO.: PEA210002-U3937

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