



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ECE 07445-22

AGENCY DKT. NO. PEA210002-U3937

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Petitioner,

v.

**MJJ TRUCKING, LLC , JEAN AUGUSTINE,
INDIVIDUALLY, JHON F. OROZCO GIRALDO,
INDIVIDUALLY, AND JOINTLY AND SEVERALLY,
Respondents.**

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

Jhon F. Orozco-Giraldo, pro se, and on behalf of MJJ Trucking, LLC, respondent,
pursuant to N.J.A.C. 1:1-5.4(a)(5).

Record Closed: May 9, 2024

Decided: June 5, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Respondents, MJJ Trucking, LLC, (MJJ Trucking) and Jhon F. Orozco-Giraldo, (Orozco)
(collectively referred to as respondents), appeal an Administrative Order and Notice of Civil

Administrative Penalty Assessment (AONOCAPA), dated March 3, 2022, issued by petitioner, New Jersey Department of Environmental Protection, (DEP).

PROCEDURAL HISTORY

On March 3, 2022, the DEP issued its AONOCAPA, containing factual and legal findings, against MJJ Trucking and Orozco,¹ individually, and jointly, and severally. Below is a listing of the requirements and noncompliance alleged against respondents herein:

As the result of follow up compliance evaluations conducted on July 13, 2021, and December 7, 2021, the Department [DEP] has determined that Respondents failed to comply with applicable requirements as follows:

Requirement:

Pursuant to N.J.A.C. 7:26 2.8(e), no person shall engage or continue to engage in the disposal of solid waste in this State without first having filed a completed application for and received approval of a SWF Permit (solid waste facility). Pursuant to N.J.A.C. 7:26-2.8(f), no person shall engage in the operation of a SWF without such permit.

Description of Noncompliance:

Solid waste in the form of soil mixed with construction and demolition waste was deposited at 8 and 12 Hemlock Road, Byram Township, N.J. The construction and demolition waste on both properties was observed to be but not was not limited to concrete, brick, block, asphalt, and wood. Slight diesel odors were detected coming from the material deposited at 8 Hemlock Road. Analytical results of soil samples taken from both properties indicated an exceedance of the Residential Soil Ingestion-Dermal and inhalation Exposure Pathways thresholds.

Requirement:

Pursuant to N.J.A.C. 7:26- 3.2(a), no person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department.

¹ The AONOCAPA also named Jean Augustin (Augustin), as a respondent. However, the DEP did not present any proofs as to Augustin in this matter, and there no findings regarding the same.

Description of Noncompliance:

Respondents failed to obtain an approved registration statement from the Department prior to engaging in the transportation of solid waste.

Requirement:

Pursuant to N.J.A.C. 7:26- 3.4(b), all collected solid waste shall be properly deposited at an approved facility in accordance with N.J.A.C. 7:26-1 and 2. Solid waste or recyclable materials shall be deposited at a solid waste or recycling facility only to the extent the materials contained in an individual loa are waste types and recyclable materials permitted for acceptance at the facility and commingled only to the extent permitted in the operating approvals for that facility N.J.A.C. 7:26-3.4(b).

Description of Noncompliance:

Respondents transported solid waste to 8 and 12 Hemlock Road in Byram Township, N.J., which are residential properties and are not approved solid waste facilities.

Requirement:

Pursuant to N.J.A.C. 7:26-16.3(a), no person shall engage or continue to engage in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in this State without a license, or without complying with all the provisions of N.J.S.A. 13: 1E-126 et seq., and with the provisions of this subchapter and of N.J.A.C. 7:26-16A. Every applicant and permittee shall file a disclosure statement with the Department and the Attorney General at the time the application is filed, unless exempted under (d) below. Applicants for siting under the Major Hazardous Waste Facilities Siting Act, N.J.S.A.13: 1E-49 et seq., shall file a disclosure statement at the lime specified in N.J.A.C. 7:26-13A.6. N.J.A.C. 7:26-16.3(a).

Description of Noncompliance:

Respondents engaged or continued to engage in the collection, transportation, treatment, storage, transferor disposal of solid waste in this State without a license, or without complying with all the provisions of N.J.S.A. 13: 1E-126 et seq.

Requirement:

Pursuant to N.J.A.C. 7:26H1.6(a), no person shall engage in the business of solid waste collection or solid waste disposal as defined by N.J.S.A. 48:13A-3 unless such person is the holder of a certificate of public convenience and necessity issued by the Department. N.J.A.C. 7:26H-1.6(a).

Description of Noncompliance:

Respondents failed to obtain a Certificate of Public Convenience and Necessity prior to engaging in the business of solid waste collection or solid waste disposal.

The Department conducted a follow-up compliance evaluation on 12/07/21 and determined that this violation had not been corrected.

Based on the facts set forth in these FINDINGS, the Department has determined that MJJ TRUCKING LLC has violated the Solid Waste Management Act, N.J.S.A. 48:13A-1 et seq, and/or the Solid Waste Utility Control Act, N.J.S.A 48:13A-1, et seq and the regulations promulgated pursuant thereto, specifically, N.J.A.C 7:26-2.8(c), N.J.A.C. 7:26-2.8(f), N.J.A.C 7:26-2.8(e), N.J.A.C 7:26-2.8(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), and N.J.A.C 7:26H-1.6(a).

The AONOCAPA also assessed a \$50,000 civil administrative penalty against respondents, MJJ Trucking and Orozco jointly and severally, and required them to, inter alia, remove all solid waste from the Property and dispose of it at an approved facility.

On April 4, 2022, MJJ Trucking and Orozco submitted a request for an administrative hearing, and defenses to the charges contained in the AONOCAPA. Respondents deny the DEP findings and charges contained in the AONOCAPA

The DEP then transmitted this matter to the Office of Administrative Law (OAL), where it was filed on August 29, 2022. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

An in-person hearing was held on May 17, 2023.

At the conclusion of the hearing the DEP requested time to order and obtain a hearing transcript and provide written summations herein. The DEP's written summation was received on June 26, 2023, and respondents' summation was received on July 17, 2023.

I closed the record on May 9, 2024.

FINDINGS

Testimony

At the hearing the following individuals testified on behalf of the DEP: Robert Clark (Clark), Christian Reid (Reid), Judy Tonkin (Tonkin), and Detective, John Olevo (Olevo). Orozco and William Bejarano (Bejarano), testified in support of respondents. At the hearing Orozco's wife, Jennifer Alzate, (Alzate), assisted him and Bejarano as a Spanish language interpreter.

Robert J. Clark:

Robert J. Clark (Clark) is an Environmental Specialist with the DEP. Clark testified that on June 12, 2021, the DEP was notified by Byrum Township officials concerning a potential environmental complaints involving the properties located at 8 Hemlock Road, and 12 Hemlock Road, Byrum Township, New Jersey. Clark testified on June 16, 2021, he performed a site inspection of the two properties and then took soil samples as to 12 Hemlock Road. (P-4) Clark testified that he observed construction and demolition debris, which consists of material like concrete, asphalt, brick, block, metal, and petroleum odors coming from the soil at 8 and 12 Hemlock Road, which warranted the need for soil sampling.

Clark testified that the DEP then received a second complaint from Byrum Township officials after a rainstorm event on fourth of July weekend 2021. Clark stated that the DEP was sent photos of the property behind 12 Hemlock Road, which depicted runoff of a diesel or gasoline-like shimmer on the road, which Clark testified is concern of contamination of nearby water sources. On July 13, 2021, Clark sampled the material that been deposited at 12 Hemlock Road and 8 Hemlock Road (Id.) Clark testified as to the laboratory processing and that the laboratory testing found that the samples all contained contaminants, including hexachlorobenzene, benzo(a)pyrene, chromium, lead, and arsenic at levels that exceeded the Residential Ingestion-Dermal and Inhalation Soil Exposure Pathway Standards, which makes the material categorically solid waste. (P-6).

Clark testified that after he received the soil sampling results from the laboratory confirming the soil contamination (P-6), on October 27, 2021, he returned to 12 Hemlock Road, to gather additional information from the property owner, Christian Reid (Reid) and his wife.² Clark stated after speaking to Reid and his wife, regarding how they came to hire the company that brought the soil to the property, he prepared his inspection report (P-7).

Clark then testified that following the results of his investigation, the DEP issued its findings and penalty in the AONOCAPA (P-1). In response to questions from the undersigned, Clark confirmed that the AONOCAPA was issued relying on his investigation and the soil sample results (P-5, P-6 and P-7). Clark confirmed that he relied on a criminal investigation conducted by the Sussex County Prosecutor's Office, which was not included in his investigation reports which he testified to in the hearing.

Christian Reid

Christian Reid (Reid) resides at 12 Hemlock Road, Byram Township (12 Hemlock Road). He testified that in late May 2021, he decided to obtain some soil to level out a portion of his yard. He stated that he went to Facebook Marketplace on social media and contacted an individual, who advertised soil and subsequently met with that individual and his wife, at 12 Hemlock Road. Reid testified that the man, whom he later learned from John Olevo of the Sussex County Prosecutor's Office was named "Tony Galvez" the "broker", offered to provide at no cost, the soil as well as level it out without cost if Reid acquired at least 25 loads of dirt from him. Reid stated that he agreed. Reid stated that no contract or paperwork was provided by the man he met .

Reid stated that he and Galvez agreed that the work would start the next day or the day after. He stated that within a day or two of agreeing to the soil, the soil was dropped off in the morning, Reid did not see them drop off the initial soil. Reid stated that later in the evening when he got home, he recalled two men driving a dark body dump truck with the

² Clark clarified that "Christian Van Orden" is Christian Reid, as Van Orden is Reid's wife's maiden name, which appears on the deed to the property.

name "MJJ Trucking" drop off a bulldozer. Reid described the bulldozer as being small no more than eight feet tall and five feet wide, with a curved bottom and had a plow in the front. (T104:15-19). Reid stated he recalled the dump truck had a "soccer ball mural on the back". (T106:13-16). Reid testified after the bulldozer was dropped off, the two men left and did not drop off any soil.

Reid stated that on the fourth day of the soil work at his home, he saw "MJJ, maybe five times that day alone, but I saw them also maybe three times the day before as well on Friday" (T111:18-20). Reid testified that he saw MJJ "dumping" soil on his property on said dates. (T111:21-25). Reid recalled that he saw "at least two MJJ trucks" on his property (T112:2-25).

Reid then testified that on Monday when he arrived home from work, he saw a lot of dirt on his property, and he became upset over the same. Reid testified that he called Galvez and told him he was upset about the amount of soil that was left on his property. Reid said Galvez did nothing to help. Reid then stated that he saw Orozco and another man at his neighbor's property at 8 Hemlock Road, where they were unloading soil. He stated he spoke with Orozco about Galvez and was told Galvez was not a "good guy". (T115:2-T117:13).

Reid stated that after the soil was brought to his property, he was notified by Byrum Township of a problem for not having clean soil certificates, and he then retained an attorney. Reid stated that he later spoke to Clark and a Olevo regarding how he came to hire Galvez and his company.

On cross-examination Reid stated that he did not recall seeing Orozco at his property between Wednesday and Saturday, or at his neighbor's property on Monday, but he did remember seeing the MJJ truck dropping off soil at both properties. Reid also answered on cross-examination that he did not hear his wife Brittany speak to Clark in response to her interactions with the workers who came to drop off soil at their property. (P-7).

In response to questions from the undersigned, regarding if Reid had seen Orozco on his property between Wednesday and Monday, he responded that "yes"; and in what capacity, to which Reid stated: "Dropping off the trailer, picking up the machine and dropping

dirt. Not ever pushing dirt.” (T137:2-3). Reid confirmed that on Monday, when he arrived home to find that fill had been dropped off on his lawn, he saw Orozco and another worker, along with Orozco’s truck at 12 Hemlock Road picking up the bulldozer to take it away, but he did not see Orozco doing any soil work. (T138:2-25).

Judy Tonkin

Judy Tonkin (Tonkin) testified that she owns and resides at 8 Hemlock Road. She recalled that in the summer of 2021, her neighbor Reid asked her if she needed any soil for her property, as he knew someone that was doing work on his property that would have additional soil. She stated that she was interested and then a man showed up at her home the next day to discuss the arrangement to have the soil brought to her home.

Tonkin testified that when she awoke the next day, a black truck bearing MJJ Trucking was on her property and had already brought the soil and deposited the same in a ravine in her property. She stated there was a machine in addition to the black truck, which she called a “back hoy” that was leveling the dirt on her property. She stated there were two workers on her property that she did not interact with. Tonkin also testified that she could not identify Orozco as being one of the two men on her property. She confirmed she did not have any paperwork with the company that she allowed onto her property to deposit the soil.

Tonkin stated officials from the Township came to her property and had the soil work stopped, and that she later received a violation notice from the Township that has not been resolved. She recalled that she later spoke on several occasions with Olevo from the Sussex County Prosecutor’s Office.

Tonkin testified that in discussing the events with Reid and his wife, Brittany, she later learned the man who had come to her door was the “broker” as he was the one whom Reid had contacted on Facebook Marketplace. Tonkin stated:

THE COURT:

Does Tony ring a bell. How did you know today to call him a

broker, how did you find out that that was his title if you will, broker.

THE WITNESS:

After the whole thing went down and Christian and Brittany and I were talking and this is like the immediate aftermath, we figured out that the man that actually Christian talked to that was running the Facebook ad, that MJJ Trucking was not part of his business, like part of his corporation or LLC or whatever it was, that they were separate entities and that some were like he probably hired MJJ Trucking, but that he was not the one that the broker was the middle man who arranged all of this.

[T159:2-15].

On cross-examination, Tonkin confirmed that the black truck with the MJJ Trucking name was on her property, and she could not identify either of the two men on her property.

John Olevo

John Olevo (Olevo) is a detective in the Sussex County Prosecutor's Office (SCPO), where he performs administrative and criminal investigations. Olevo testified that in November 2021, a telephone call was made to the SCPO from the Reid's personal attorney to report that Reid's were victims of a crime. Olevo was assigned to investigate the matter. Olevo stated:

A: I don't recall his name, but he [Reid's attorney] called to report that they were the victims of a crime, specifically they had responded to a Facebook ad for free soil and when the soil was delivered to the residence it was later discovered that the soil was contaminated, and I believe it also had materials that were classified as a solid waste mixed in as well.

Q Okay. So you proceeded to interview those witnesses, correct?

A I spoke to Mr. and Mrs. Reid informally at first. Now, the Reid's had some license plates of the people involved, they had some names which for the most part, actually I believe all of them were made up, but they had some telephone numbers and they also supplied me like I said a couple of license plates and just working for the motor vehicle records, you know, I looked up the

registration, get a driver's license number off the registration and then go to a different branch of the New Jersey Motor Vehicle files and pull up the driver's license numbers. Now, for one of the people involved in this case they provided both a picture of them standing in front of a car with a New Jersey license plate, I ran the plate, determined who the registered owner of that car was and then when I ran the driver's license number the picture matched the picture that they had provided me with the gentleman.

Q: That was the person whose Facebook name was Ton or Tony Galvez, is that correct?

A I believe that's it, yes, sir.

Olevo then testified to the Attorney General guidelines for conducting a photo identification lineup, and that a photographic lineup was conducted with Reid as a witness in order to determine the individuals who were at his property. Olevo stated that in order to eliminate any bias, including blind administration, the lineup was administered by another detective who did not know the identity of any suspects). (T170:11-T172:24). Olevo stated that during the photographic lineup, Reid, with "80% confidence, positively identified Orozco as a person who had been at his house delivering soil and also delivering equipment." (T173:2-4). Olevo stated he was "highly confident that [Reid's] recollection of events were accurate," given that the event had occurred thirteen months prior, and Olevo's experience as a criminal investigator. (T173:5-23).

In response to questions from the undersigned, Olevo confirmed that when he conducted his investigation in this matter the DEP had already issued its findings as to MJJ Trucking and Orozco, and that no criminal charges were issued against respondents in this matter. Olevo also affirmed that he did not interview Orozco as part of his investigation. (T178:9-23).

William Bejarano

William Bejarano (Bejarano) testified that in June 2021, he was employed by MJJ & Sons Trucking, which became BJ Excavating. He stated he was a driver, and his boss was "Lorena", who is married to Galvez. Bejarano stated that he was currently employed with MJJ Trucking, and he has known Orozco for some time. Bejarano recalled that in

June 2021, he had driven to 8 and 12 Hemlock Road to drop off soil as requested by Lorena. Bejarano stated that Orozco did not work for Lorena or Galvez and that he did not drop off any soil at 8 and 12 Hemlock Road. He stated that Orozco was involved because he rented his bulldozer to Loreana and Galvez's company.

On cross-examination, Bejarano was asked to read the certification prepared by Orozco's attorney (P-3). After reading the certification, Bejarano stated that there were two errors as to "points 3 and 4".(T195:17-20). Specifically, point 3 should have read that Bejarano resigned from MJ & Sons, and they did not pay him because the same. As to point 4, Bejarano testified that the date "June 14th" as the date he was sent to deliver soil to 8 and 12 Hemlock Road was incorrect, as he remembers is late May or early June 2021. T196:24-197:9. Further on cross-examination, Bejarano testified that the document attached to his certification (P-3), was prepared by "Teo" at MJ & Sons, and it showed the number of delivery of soil to 8 and 12 Hemlock Road.

Bejarano was then shown two tickets from B.J. Excavating dated June 7 and 8, 2021, that were attached to the answer to interrogatories (P-9). Bejarano testified that he obtained the two tickets from B.J. Excavating and that they had been prepared by "Altheo". In response to why had he not provided to the two tickets to Orozco's attorney, he responded that he did not have the tickets when she prepared the certification. (T203:16-T204:8).

Orozco

Orozco testified that he went to Reid's property to drop off the "machine", the bulldozer and on the following Monday, he went to Tonkin's property to pick up the bulldozer. He denied dropping off any soil for Galvez, MJ and Sons or BJ Excavating. He denied contracting with Reid or Tonkin to bring soil to their properties.

Orozco testified that he has two dump trucks, one black and the other blue. He stated he dropped off the bulldozer at 8 Hemlock Road on his trailer and he drove his truck to pick up the bulldozer at 12 Hemlock Road. He testified that he went two times to 8 and 12 Hemlock Road; once to drop off the bulldozer and then to pick it up after he was told

the "job is done". (T206:21-25). Orozco described that when he went to pick up the bulldozer at 8 Hemlock Road, and met with Reid and his wife Britany, who was pregnant and upset about the soil work that had been done. He stated that Britanny asked him if she could take a photograph of his truck and he agreed.

Orozco continued to deny that he brought soil to the two properties, and believed he was being targeted by the DEP. Orozco stated:

They're trying to find somebody to find, like to find somebody guilty, since they only have him they're blaming him for everything, but they're not saying the truth. What I can see from everything is that they just want to grab the only person that they have which is me to blame for everything. Because I didn't even know there was a detective involved, because all the information that I had that I could provide I gave it to Mr. Knoblauch.

[T212:7-12]

Orozco then testified as to emails that Reid had forwarded to his attorney, which show how the Reid's contracted Galvez, the broker on Facebook Marketplace, and interactions they had with him (R-1). (T215:8-25-T216-25). Orozco then testified to text messages that Bejarano had provided him (R-1), that show communications between Bejarano and Lorena regarding a pick up of soil in Newark (T220:2-25).

On cross-examination, Orozco was asked questions concerning his certified answers to interrogatories and why he did not include that Bejarano was an employee of his when he answered the interrogatories (P-9). Orozco responded that he did not understand the question was asking him about Bejarano's employment with Orozco but if he knew him. Orozco was asked about the value of the bulldozer and why he would rent it to Augustine, someone he did not know without having a contract. Orozco stated that he did not know Augustine, but that a friend named "Kevin" called him about Augustine needing to rent a bulldozer. He testified that he rented the bulldozer to Augustine for \$800, for less than a week. He stated that he never met Augustine but was told where to bring the bulldozer.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates 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 (9th Cir. 1963); see Polk, 90 N.J. 550.

Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record. State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I **FIND** the testimony of Clark to be credible, as he presented testimony that was consistent and corroborated by the inspection reports which he authored. I **FIND** Clark had no bias toward respondents and was simply conducting an investigation. I **FIND** Clark's testimony to be unfailing, as he testified concerning the methodology and results in the soil samples taken at 8 Hemlock Road and 12 Hemlock Road. With the exception of the recitation of facts contained in the general comments section of the reports that are challenged by Orozco, I **FIND** Clark's testimony as **FACT** herein.

I **FIND** Reid's testimony credible concerning how he came about contracting with Galvez through Facebook Marketplace to have the soil deposited on his property. I **FIND**

that Reid provided testimony that was consistent with his reporting to Clark and Olevo regarding his interactions with Galvez and the work that was performed on his property, and I **FIND** the same as **FACT** herein.

I **FIND** that Reid did not provide credible testimony regarding Orozco bringing soil and depositing the same on Reid's property. While Reid did report to Clark that he saw the bulldozer dropped off at his property on a trailer and truck bearing "MJJ Trucking" his testimony was not convincing that he had actually seen Orozco dropping off soil at his property. Reid testified that he was home one of the four days that soil was dropped off at his home, and I **FIND** his testimony identifying Orozco on said not credible. I **FIND** Reid's testimony credible as to seeing the MJJ Truck on his property, as the same is not disputed. However, I **FIND** Reid's testimony inconsistent and not credible concerning seeing Orozco delivering soil to his property.

I **FIND** Tonkin's testimony credible that she did not hire Galvez or his company and that the soil was delivered to her home after speaking with Reid. I **FIND** that Tonkin was not able to identify any of the workers at her home. I **FIND** Tonkin's testimony as **FACT** herein.

I **FIND** Olevo provided credible and consistent testimony concerning his investigation. I **FIND** Olevo procedures in conducting the photo identification was consistent with the Attorney General Guidelines and reliable therein and is also consistent with Orozco's own testimony that Brittany Reid took a photograph of him.

I **FIND** that Olevo's investigation could have been more fruitful had he interviewed Orozco, as it would have provided additional information concerning the events that transpired herein. With the exception of Reid telling Olevo that Orozco was on his property dropping off soil, I **FIND** Olevo's testimony as **FACT** herein.

I **FIND** Bejarano provided credible testimony regarding his position as driver with MJ and Sons and B.J. Excavating. I **FIND** Bejarano provided credible testimony regarding the work tickets (R-3 and P-9), depicting the drop off of soil at 8 and 12 Hemlock Road. I **FIND** Bejarano's testimony credible as to MJ and Son and B.J. Excavating's procedures

concerning the pick up and drop off of soil at properties. I **FIND** Bejarano's testimony as **FACT** herein.

I **FIND** Orozco's testimony credible that he did not drop off any soil at 8 and 12 Hemlock Road. I **FIND** Orozco's conduct in the hearing and his testimony displayed conviction that his involvement in this matter was dropping off and picking up the bulldozer. I **FIND** Orozco's testimony credible that he had no business connection with Galvez and his company.

I **FIND** Orozco's testimony discloses a lack of command of speaking and understanding English, which hindered his defense, and also created misunderstandings in his communications with Reid. I **FIND** Orozco's testimony to be **FACT** herein.

ADDITIONAL FINDINGS

Based on the testimony and evidence admitted in the hearing, I make the following additional **FINDINGS**:

With the exception of Orozco denying that he was at both 8 and 12 Hemlock Road to drop off soil and the related witness account of the same, I **FIND** the DEP's factual allegations contained in the AONOCAPA to be **FACT** herein.

LEGAL ANALYSIS AND CONCLUSIONS

In New Jersey, the collection, transportation, disposal, and overall involvement in the solid waste industry is strictly regulated. See, e.g., N.J.S.A. 13:1E-126 to -135.6. Persons, whether corporations or individuals, who engage in this industry must abide by strict licensing requirements. See, e.g., N.J.A.C. 7:26-16. Further, disposing of material at a location that is not a licensed solid waste facility is strictly prohibited. N.J.A.C. 7:26-2.8(e). Violations of these laws are subject to strict liability, where the violator's mental state is irrelevant to their liability.

Specifically, solid waste law prohibits any person from transporting solid waste without obtaining a Department-approved registration statement, N.J.A.C. 7:26-3.2(a), and disposing of solid waste without a solid waste facility ("SWF") permit. N.J.A.C. 7:26-2.8(e). Additionally, solid waste must be deposited in a Department-approved facility. N.J.A.C. 7:26-3.4(b). More broadly, solid waste law also requires any person involved in the collection, transport, transfer, or disposal of solid waste to have both a license issued pursuant to N.J.A.C. 7:26-16.3(a) ("A901 license") and a Certificate of Public Convenience and Necessity ("CPCN") issued by the Department. N.J.A.C. 7:26H-1.6(a). Failure to abide by any of these regulatory requirements triggers liability without regard to mental state.

The soil sampling of 8 and 12 Hemlock Avenue demonstrated that the material deposited there by Galvez and his company, MJ and Sons and B.J. Excavating was contaminated beyond the regulatory standard, the DEP determined that all the material brought to the two properties were categorically solid waste. N.J.A.C. 7:26-1.6(a)6; -1.13. The DEP concluded that MJJ Trucking and Orozco are "persons" as defined by solid waste law, and thus subject to its regulation. N.J.A.C. 7:26-1.4.

Based on these findings, and because MJJ Trucking and Orozco have no licenses, permits, or authorizations to engage in any component of the solid waste industry, the DEP issued its AONOCAPA on March 3, 2022 against respondents finding respondents liable for five violations, jointly and severally: (1) engaging in the disposal of solid waste without a SWF permit in violation of N.J.A.C. 7:26-2.8(e), (2) engaging in the transportation of solid waste without a Department-issued registration statement in violation of N.J.A.C. 7:26-3.2(a), (3) depositing solid waste at a location that is not an approved solid waste facility in violation of N.J.A.C. 7:26-3.4(b), (4) engaging in the collection, transportation, treatment, storage, transfer, or disposal of solid waste without a license in violation of N.J.A.C. 7:26-16.3(a), and (5) engaging in the business of solid waste collection or solid waste disposal without a CPCN in violation of N.J.A.C. 7:26H-1.6(a). The AONOCAPA also assessed a \$50,000 civil administrative penalty against MJJ Trucking and Orozco, jointly and severally, and required them to, inter alia, remove all solid waste from the Property and dispose of it at an approved facility.

The DEP bears the burden of proving a violation by a fair preponderance of the credible evidence. In re Polk, 90 N.J. 550, 561 FN1 (1982). In matters involving the interpretation of regulations, however, the Department's interpretation is entitled to substantial weight. Dep't of Env'tl. Prot. v. Alden Leeds, 153 N.J. 272, 285 (1998).

The proofs in this matter reveal that MJJ Trucking did not engage in the alleged findings contained in the AONOCAPA, as Galvez contacted Orozco for the purpose of renting the bulldozer, which he delivered and picked up when requested. The only proof presented by the DEP that respondents are liable for disposing and transporting solid waste as alleged in the AONOCAPA are Reid and Tonkin's testimony that they "saw" a truck bearing MJJ on the property. As for Reid's testimony that he "saw" Orozco dropping off soil at his property, I have determined the same was not credible for the reasons set forth herein.

Moreover, Reid and Tonkin's testimony regarding seeing the MJJ truck unloading soil, is contradicted by Bejarano's testimony that Galvez had several drivers and trucks, and that Orozco was involved because he had a bulldozer. The record reveals that the only connection between respondents and the illegal transport and disposal of solid waste in this matter by respondents is the bulldozer.

For the reasons set forth herein, I **CONCLUDE** that the DEP has failed to satisfy its burden of proof by a preponderance of the credible evidence that respondents, MJJ Trucking and Orozco are liable as contained in the AONOCAPA of March 3, 2022, and the DEP's findings are **REVERSED**.

ORDER

It is **ORDERED** that the DEP's AONOCAPA of March 30, 2022, is **REVERSED**.

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 the final decision in this matter. If the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** does not adopt, modify or reject this order within forty-five days and unless such time limit is otherwise extended, this initial 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 order was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 5, 2024
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency:

June 5, 2024

Date E-Mailed to Parties:

June 5, 2024

JCM/lr

APPENDIX

List of Witnesses

For Petitioner:

Robert Clark

Christian Reid

Judy Tonkin

John Olevo

For Respondent:

Jennifer Alzate, Orozco's spouse, appeared as a Spanish language interpreter.

William Bejarano

Jhon F. Orozco Giraldo

List of Exhibits

For Petitioner:

P-1 3-30-2022 Enforcement document

P-2 Hearing request

P-3 Bejarano's certification

P-4 6-16-21 inspection report

P-5 7-13-21 inspection report

P-6 Sample report

P-7 10-27-21 inspection report

P-9 Answers to Interrogatories

For Respondent:

R-1 Emails and texts

R-2 Text messages

R-3 Work tickets

R-4 Orozco's certification