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NEW JERSEY DEPARTMENT OF)	<u>ADMINISTRATIVE ACTION</u>
ENVIRONMENTAL PROTECTION,)	FINAL DECISION
SOLID WASTE COMPLIANCE AND)	
ENFORCEMENT)	OAL DKT. NO.: ECE 00014-23
)	AGENCY DKT. NO.: PEA 190002-
Petitioner,)	2747478
)	ON REMAND ECE 10303-19
v.)	
)	
CLASSIC CLEANING (doing business)	
as BIO-CLEAN OF NEW JERSEY))	
and ANDREW P. YURCHUCK,)	
individually,)	
)	
Respondents.)	

This Order addresses the appeal on remand by Classic Cleaning, a.k.a. Bio-Clean of New Jersey, and Mr. Andrew P. Yurchuck (collectively, Respondents) of a Notice of Civil Administrative Penalty Assessment (NOCAPA) issued by the New Jersey Department of Environmental Protection (Department) on March 11, 2019 for violations of the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Solid Waste Utility Control Act (N.J.S.A. 48:13A-1 et. seq.), and their supporting regulations. The NOCAPA assessed civil administrative penalties against Respondents in the amount of \$25,000 for 1) failure to comply with the conditions of their approved registration in violation of N.J.A.C. 7:26-3.2(c); 2) transporting regulated medical waste (RMW) without a license in violation of N.J.A.C. 7:26-16.3(a); and 3) transporting RMW without a Certificate of Public Convenience and Necessity (CPCN) in violation of N.J.A.C. 7:26H-1.6(a).

By letter dated April 7, 2019, Respondents requested an adjudicatory hearing to contest the NOCAPA. The Department granted Respondents' request and, on July 29, 2019, transmitted the matter to the Office of Administrative Law (OAL).

On June 6, 2022, Administrative Law Judge Sarah G. Crowley (ALJ Crowley), issued an Initial Decision reversing the NOCAPA and violations and dismissing the matter (Prior Initial Decision). ALJ Crowley concluded the Department failed to prove by a preponderance of the credible evidence that Respondents hauled any RMW or any solid waste they did not generate themselves, and thus Respondents' actions met a self-generator exemption to the Department's solid waste licensing requirements. The Department filed exceptions to the Prior Initial Decision on June 20, 2022. Respondents did not file exceptions or a reply.

On September 6, 2022, I issued a Final Decision (Prior Final Decision), rejecting ALJ Crowley's Prior Initial Decision on the basis that Respondents' violations for hauling RMW were indeed supported by a preponderance of the credible evidence on the record. I found that Mr. Yurchuck's testimony on behalf of Respondents had corroborated other more circumstantial evidence of Respondents' violations. As a result, I affirmed the violations in the NOCAPA. However, because ALJ Crowley had no need to, and therefore did not determine in the Prior Initial Decision whether the penalties in the NOCAPA had been properly assessed, I remanded the matter to OAL to make that determination.

On May 22, 2023, in accordance with the Prior Final Decision, ALJ Crowley held a hearing on the penalty assessments. Testimony was given on behalf of both the Department and Respondents. Robert Gomez, the Bureau Chief of the Department's Bureau of Hazardous Waste Compliance and Enforcement, testified on behalf of the Department regarding the violations issued to Respondents and the range of corresponding penalties that may be assessed in accordance with



the Department's regulations. Mr. Gomez stated that the mid-range penalty assessed to Respondents was appropriate considering there were several instances of the violations. Mr. Yurchuck testified on behalf of Respondents, contending they did not violate the Department's rules. Nevertheless, Mr. Yurchuck felt the Department should be more lenient in its penalty assessment because the violations were of a minor nature, according to Respondents, and Respondents undertook efforts to obtain the proper licensing after receiving the violations.¹

On June 20, 2023, ALJ Crowley issued a brief Initial Decision on remand, concluding based on the parties' testimony that the \$25,000 penalty issued to Respondents was both "reasonable and consistent with the New Jersey Civil Administrative Penalty Assessment in this matter." Respondents filed exceptions to ALJ Crowley's Initial Decision on remand on July 3, 2023. The Department did not file exceptions to the Initial Decision on remand or a reply to Respondents' exceptions.

Respondents contend in their exceptions that they were deprived of their right to cross-examine witnesses interviewed by the Department at the Borgata Hotel Casino and Spa (where the violations had occurred), and thus deprived of their right to challenge the witnesses' testimony, probe their knowledge and credibility, and present a comprehensible defense. Respondents contend it is reasonable to believe, if given the opportunity to cross-examine witnesses from the Borgata Hotel Casino and Spa, that they would have been able to expose inaccuracies or deficiencies in the witnesses' testimonies.²

¹ In a May 19, 2023 email to the Division of Law, Mr. Yurchuck also pointed to N.J.S.A. 52:14B-10.2, which could provide leniency for certain first-time offenders of some New Jersey agency regulations. However, this statute was not effective until June 19, 2023, over four years from the March 11, 2019 issuance of the NOCAPA in this matter.

² I do not address Respondents' exceptions because they are not responsive to the subject matter of the Initial Decision on remand, which concerns only the determination of the reasonableness or consistency of the penalties assessed against Respondents in the NOCAPA issued by the Department.



After a review of the record, and for the reasons set forth below, I ADOPT ALJ Crowley's June 20, 2023 Initial Decision on remand as MODIFIED herein.

DISCUSSION

In the Prior Final Decision, I affirmed the NOCAPA, finding that Respondents 1) failed to comply with the conditions of their approved registration in violation of N.J.A.C. 7:26-3.2(c); 2) transported regulated medical waste (RMW) without a license in violation of N.J.A.C. 7:26-16.3(a); and 3) transported RMW without a Certificate of Public Convenience and Necessity (CPCN) in violation of N.J.A.C. 7:26H-1.6(a). Based on those violations, the Department assessed total civil administrative penalties in the amount of \$25,000 against Respondents: a \$5,000 penalty for Respondents' violations of N.J.A.C. 7:26-3.2(c); a \$15,000 penalty for Respondents' violation of N.J.A.C. 7:26-16.3(a); and another \$5,000 penalty for Respondents' violation of N.J.A.C. 7:26H-1.6(a). As discussed above, ALJ Crowley concluded, and I concur, that the penalties issued to Respondents were both reasonable and consistent with the findings in the NOCAPA and the Department's penalty assessment provisions set forth in the Department' rules at N.J.A.C. 7:26-5.4 and 5.5, and N.J.A.C. 7:26H-5.18.

The Department assesses penalties for violations of N.J.A.C. 7:26-3.2(c) in accordance with N.J.A.C. 7:26-5.4(g). A violation of N.J.A.C. 7:26-3.2(c), failure to comply with the conditions of a solid and medical waste transporter registration application, is subject to a base penalty of \$5,000. If the violating party is a repeat offender or has violated another Department rule up to twenty-four months prior to the violation at issue, then the \$5,000 base penalty is subject to multiple severity factor offense multipliers of twenty-five, fifty, or one hundred percent. N.J.A.C. 7:26-5.4(f)3i through 5.4(f)3iv. The Department assesses penalties for violations of N.J.A.C. 7:26H-1.6(a), failure to obtain a CPCN prior to engaging in commercial regulated



medical waste transportation, in accordance with N.J.A.C. 7:26H-5.18(f). This violation is also subject to a base penalty of \$5,000, but with severity factor offense multipliers of two hundred fifty and five hundred percent for repeat offenses. N.J.A.C. 7:26H-5.18(e)3 and 5.18(f). Violations of N.J.A.C. 7:26-3.2(c) and 7:26H-1.6(a) are strict liability offenses as they do not require a determination of the violator's knowledge or intent.

Here, the Department assessed \$5,000 for Respondents' violation of N.J.A.C. 7:26-3.2(c) and \$5,000 for Respondents' violation of N.J.A.C. 7:26H-1.6(a). For both violations, \$5,000 is the base amount assessed in accordance with the rules discussed above. The only severity factor offense multipliers associated with these penalties are for repeat violations. The record shows that although Respondents were in violation of N.J.A.C. 7:26-3.2(c) and N.J.A.C. 7:26H-1.6(a), this was the first NOCAPA assessed against Respondents, and thus no severity factor offense multipliers were appropriate here. As such, the Department's assessment of \$5,000 for Respondents' violations of N.J.A.C. 7:26-3.2(c) and 7:26H-1.6(a) was reasonable and consistent with the findings in the NOCAPA and the Department's Solid Waste Rules. Accordingly, I ADOPT the ALJ's conclusion that the Department properly assessed \$5,000 penalties for each of Respondents' violations of N.J.A.C. 7:26-3.2(c) and N.J.A.C. 7:26H-1.6(a).

The Department assesses penalties for violations of N.J.A.C. 7:26-16.3(a), failure to obtain an A-901 license prior to engaging in commercial regulated medical waste transportation, in accordance with N.J.A.C. 7:26-5.5(f)2. The provision contemplates two broad categories of violations: "minor" and "non-minor." A "minor violation" (1) poses minimal risk to public health, safety, and natural resources; (2) does not materially and substantially undermine or impair the goals of the regulatory program; and (3) is capable of being corrected and compliance achieved within the time prescribed by the Department. N.J.A.C. 7:26-5.5(f)1. A violation that does not



meet these criteria is considered “non-minor.” A violation of N.J.A.C. 7:26-16.3 is considered non-minor.

The penalty for a non-minor violation is determined based on the “seriousness” of the violation and the “conduct” of the violator and is assessed in accordance with a series of ranges set forth in a matrix at N.J.A.C. 7:26-5.5(f)2. The seriousness and conduct of a non-minor violation are deemed major, moderate, or minor, based on considerations set forth at N.J.A.C. 7:26-5.5(g) and 5.5(h), respectively. The seriousness of a non-minor violation is moderate where it “[h]as caused or has potential to cause substantial harm to human health or the environment,” or “[s]ubstantially deviates from the requirements of the Act, or any rule promulgated . . . pursuant to the Act.” N.J.A.C. 7:26-5.5(g)2.³ Substantial deviation includes “violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.” Ibid. The conduct of a non-minor violation is considered moderate where the violation was an “unintentional but foreseeable act or omission by the violator.” N.J.A.C. 7:26-5.5(h)2.⁴

Here, the Department assessed \$15,000 for Respondents’ violation of N.J.A.C. 7:26-16.3(a) in accordance with 1) the non-minor nature of the violation, and 2) the Department’s determination that the seriousness and conduct of Respondents’ violation were moderate. The Department determined the seriousness was moderate because, as indicated in the NOCAPA, the failure to obtain an A-901 license prior to engaging in commercial waste transportation is a

³ The seriousness of a non-minor violation is major where it has caused or has potential to cause serious harm to human health or the environment, or seriously deviates from the rules by completely contravening or seriously impairing or undermining the operation or intent of the rules. N.J.A.C. 7:26-5.5(g)1. Minor seriousness applies to any violation that does not fit major or moderate violation considerations. N.J.A.C. 7:26-5.5(g)3.

⁴ The conduct of a non-minor violation is major where the violation was an intentional, deliberate, purposeful, knowing, or willful act or omission. N.J.A.C. 7:26-5.5(h)1. The conduct of a non-minor violation is minor where the violation does not fit the considerations of major or minor violations. N.J.A.C. 7:26-5.5(h)3.



substantial deviation from the rules. Prior to engaging in commercial waste transportation, one must apply for and be issued a valid A-901 license. The application process requires that the Department and New Jersey State Police vet any applicant prior to the applicant's entry into the industry. The vetting process consists of a criminal background check with the New Jersey State Police, submission of a Personal History Disclosure Statement, and submission of a Business Concern Disclosure. As the Department has indicated, engaging in commercial waste transportation without such vetting creates an un-level playing field within the solid waste industry and improperly bestows an economic advantage upon the violator. Further, by failing to obtain an A-901 license prior to engaging in commercial waste transportation, the violator undermines the purpose of the solid waste licensing scheme, which is designed to preclude criminal, incompetent, or unreliable individuals from participating in the solid waste industry and engaging in unsound or unfair business practices. N.J.S.A. 13:1E-126; N.J.A.C. 7:26-16.1. As such, transporting regulated medical waste without a license substantially deviates from the rules by substantially contravening and undermining the operation and intent of the rules. Therefore, I find the Department properly determined that the seriousness of Respondents' violation was moderate.

Likewise, the Department determined Respondents' conduct was "moderate." While Respondents indeed committed a violation of N.J.A.C. 7:26-16.3(a), their actions were unintentional. The Department determined that Respondents' actions were unintentional because Respondents believed they were acting as a self-generating solid waste transporter, exempt from the licensing requirements described above. Respondents' intent is shown clearly throughout the record, as they frequently insisted that they believed they were self-generating as part of a "clean-up," which they believed they were authorized to conduct as a registered self-generator. T122:19-25, T123:12-22. However, while Respondents did not intentionally commit the violation, the



illegality of their conduct was foreseeable. Respondents should have known they were in violation of the Department's Solid Waste Rules because, as noted by the Department, they were familiar with the regulations and had previously received compliance assistance from the Department. As a result, I find the Department properly determined that the conduct of Respondents' violation was moderate.

Finally, having determined the seriousness and conduct of the violation were moderate, the Department was required to and did assess the penalty in accordance with the matrix set forth at N.J.A.C. 7:26-5.5(f)2. The range established for a violation of N.J.A.C. 7:26-16.3(a), where the Department determines the violation is of moderate seriousness and conduct, is \$10,000 to \$20,000. As provided at N.J.A.C. 7:26-5.5(f)2, the Department is required to assess the penalty at the mid-point of that range, which is \$15,000, unless an adjustment is required in accordance with the factors set forth at N.J.A.C. 7:26-5.5(i).⁵ Here, there is nothing in the record to suggest these factors should require that the Department adjust the penalty from the mid-point of the range. As such, the Department's assessment of \$15,000 for Respondents' violation of N.J.A.C. 7:26-16.3(a) was reasonable and consistent with the findings in the NOCAPA and the Department's Solid Waste Rules. Accordingly, I ADOPT the ALJ's conclusion that the Department properly assessed \$15,000 penalties for Respondents' violation of N.J.A.C. 7:26-16.3(a).


⁵ The factors set forth at N.J.A.C. 7:26-5.5(i) are: (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—immediate implementation of measures to effectively mitigate the effects of the violation 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—implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation 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.



CONCLUSION

For the foregoing reasons, I ADOPT the ALJ's June 22, 2023, Initial Decision on remand, as MODIFIED above. IT IS SO ORDERED.

Dated: October 30, 2023



Shawn M. LaTourette, Commissioner
Department of Environmental Protection



NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
SOLID WASTE COMPLIANCE AND ENFORCEMENT

v.

CLASSIC CLEANING (doing business as BIO-CLEAN OF NEW JERSEY)
and ANDREW P. YURCHICK, individually,

OAL DKT NO.: ECE 10303-19
AGENCY REF. NO.: PEA 190002-2747478

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