State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, SOLID WASTE COMPLIANCE AND ENFORCEMENT,	)	ADMINISTRATIVE ACTION FINAL DECISION
Petitioner,	)	
v.	)	OAL DKT NO. ECE 07448-15 AGENCY REF. NO. PEA 150001-U2353
DGRT STABLES, LLC DOING BUSINESS AS DGRT SERVICES, MICHAEL D'ANGELO AND DERRICK GREENBERG,	)	
Respondents.	)	

This matter is an appeal of the Department's Amended Notice of Civil Administrative Penalty Assessment (NOCAPA) issued on October 16, 2015 to DGRT Stables, LLC, dba DGRT Services (DGRT), Michael D'Angelo and Derrick Greenberg, individually, charging DGRT, D'Angelo and Greenberg with failure to obtain the required solid waste license allowing them to collect, transport, transfer, or dispose of solid waste or hazardous waste, in violation of the Solid Waste Management Act (SWMA), N.J.S.A. 13:1E-1 et seq., and the Solid Waste Rules, N.J.A.C. 7:26-16.3(a), as well as the failure to obtain a Certificate of Public Convenience and Necessity, in violation of the Solid Waste Utility Control Act (SWUCA), N.J.S.A. 48:13A-1 et seq., and the Solid Waste Utility Regulations, N.J.A.C. 7:26H-1.6(a). The NOCAPA assessed a total penalty

of $100,000 consisting of a $50,000 penalty for the violation of N.J.A.C. 7:26-16.3(a) and N.J.A.C. 7:26H-1.6(a) and an economic benefit penalty of $50,000. A hearing was requested, and the matter was transferred to the Office of Administrative Law where it was assigned to Administrative Law Judge (ALJ) Ellen S. Bass.

On March 21, 2016, the Department moved for summary decision. Respondents filed a brief opposing the motion on April 13, 2016, but filed no certifications or affidavits to controvert the Department's evidence. The Department filed a reply brief on April 14, 2016. In her May 20, 2016 initial decision, the ALJ granted the Department's summary decision motion, concluding that Respondents failed to obtain the proper authorizations to collect, transport, or dispose of solid waste, that the $100,000 penalty was reasonable and correct, and that Greenberg and D'Angelo should be held individually liable for the violations. Respondents filed exceptions on June 3, 2016. The Department replied to Respondents' exceptions on June 9, 2016.

FACTUAL AND PROCEDURAL BACKGROUND

DGRT[1] was formed on December 1, 2011 and dissolved on May 13, 2015. Greenberg was DGRT's president, sole owner, and managing officer in 2013. Greenberg authorized D'Angelo to act on DGRT's behalf and, while not DGRT's payroll employee, D'Angelo served as DGRT's consultant and daily operations manager. D'Angelo had authority to enter into contracts and incur expenses on DGRT's behalf. He exercised joint decision-making authority with Greenberg. The two men communicated with each other daily about DGRT's business.

On April 20, 2013, D'Angelo, on behalf of DGRT, signed a handwritten contract with VisionStream LLC (VisionStream) to deliver 2000 loads of clean fill to a development project

[1] DGRT Stables, LLC is referred to as "DGRT Services" in record documents.

located at 3996 Route 516, Old Bridge, New Jersey between May 1, 2013 and June 30, 2013. The contract stated that "[m]aterial brought to the site will need to pass the . . . Old Bridge Township requirements and NJ Residential criteria and USEPA requirements." The VisionStream site was being developed as a mixed-use commercial and residential property.

On May 15, 2013, D'Angelo signed a letter agreement with Michael Mecca of Mecca Trucking LLC (Mecca Trucking), located at 580 Marin Boulevard, Jersey City (Mecca site), stating that DGRT would remove recycled concrete aggregate (RCA) fill commingled with asphalt millings from the Mecca site. The material originated from the demolition of a warehouse formerly located on the Mecca site. The letter agreement stated that "[b]y accepting the RCA/Fill [DGRT] acknowledge[s] and accept[s] all New Jersey environmental rules, regulations and specifications associated with the disposal location where [DGRT is] taking this RCA." Furthermore, in the agreement letter D'Angelo confirmed that Mecca provided him with an analytical report dated July 24, 2012 for two soil analyses of the RCA material, noting that one met New Jersey soil remediation standards while the other showed "minor exceedances in the NJ residential criteria." The letter also stated, "Please acknowledge that you understand . . . that the only representation made, is what this analysis represents."

Specifically, the July 24, 2012 analytical report provided the analytical results from samples of fill material from the Mecca site. Multiple samples from different locations on the site were analyzed for a single parameter, Aroclor, more commonly known as polychlorinated biphenyl (PCB). Separately, one sample of fill was tested for a wider range of substances, including metals, volatile organic compounds, pesticides, and herbicides. The analytical report for this sample showed a concentration of 0.279 milligram/kilogram (mg/kg) for benzo(a)pyrene, a known carcinogen. The Department has established 0.2 mg/kg for benzo(a)pyrene as both the

residential and the non-residential direct contact soil remediation standard in the Remediation Standards rules at N.J.A.C. 7:26D, Appendix 1.

A May 14, 2013 letter from VisionStream to DGRT stated that the data provided by DGRT on the Mecca site material "met the requirements for [the VisionStream] site." In the May 14, 2013 letter, Vision Stream requested that DGRT provide a detailed delivery schedule with the start date, the number of loads, two-week advanced notice of deliveries, and a format for DGRT's delivery tickets. DGRT then subcontracted with and paid an excavator to remove the material from the Mecca site. It also subcontracted with various trucking companies and organized the transport of 895 loads of fill from the Mecca site to the VisionStream site between May and July of 2013 and invoiced Mecca and VisionStream for removal and delivery of the material by load.

In August 2013, the Department investigated an allegation that fill had been received at the VisionStream site that did not meet environmental standards for residential use. During its inspection of the VisionStream site, the Department observed piles of dirt and fill material which was being used to raise the grade of the property and learned that VisionStream was constructing a mixed-use commercial-residential development on the property. The Department determined that DGRT transported solid waste without a solid waste license or a Certificate of Public Convenience or Necessity in violation of N.J.A.C. 7:26-16.3(a) and N.J.A.C. 7:26H-1.6(a), respectively, and that the material transported failed to meet standards for residential or non-residential use.

On October 4, 2013, the Department issued a Notice of Violation to D'Angelo and DGRT for violations of the SWMA. D'Angelo responded in November 2013 that he "did not haul solid waste to [his] knowledge" nor would he be engaging in the solid waste industry in the

future.[2] The Department then issued a NOCAPA to DGRT Stables, LLC and D'Angelo on February 4, 2015 assessing penalties of $50,000 against each party for a total of $100,000. On March 13, 2015, the Department corrected the penalty calculation to reflect a $50,000 aggregate penalty. On August 17, 2015, the Department moved to amend the NOCAPA to add Derrick Greenberg, DGRT's owner and president, as a respondent and to amend the penalty to include a separate penalty for economic benefit. The ALJ granted the Department's motion and on October 16, 2015, the Department issued an amended NOCAPA charging DGRT Stables, LLC, D'Angelo, and Greenberg (Respondents) with violating N.J.A.C. 7:26-16.3(a) and N.J.A.C. 7:26H-1.6(a). The NOCAPA also assessed a total penalty of $100,000 consisting of a $50,000 penalty for the violations and an economic benefit penalty of $50,000. The Department perfected service of the amended NOCAPA and the law firm of Starkey, Kelly, Kenneally, Cunningham and Turnbach entered an appearance in OAL on behalf of all Respondents.

The amended NOCAPA assessed the penalty as to both violations in accordance with N.J.A.C. 7:26-5.5. The seriousness of the violation was major because the fill was contaminated with benzo(a)pyrene at a concentration above the residential and non-residential direct contact soil remediation standard for this compound and had potential to cause serious harm to human health and the environment. The conduct was major because Respondents knew that the analytical report demonstrated that the Mecca site material exceeded the residential direct contact standard for the compound. The penalty range for major seriousness and major conduct is between $40,000 and $50,000. The Department adjusted the base, mid-point penalty of $45,000, to the maximum allowed amount of $50,000 because the violation was egregious, i.e.,

[2] Despite D'Angelo's response, pursuant to an Administrative Consent Order with the Department, VisionStream later hired a Licensed Site Remediation Professional (LSRP) to address the contamination caused by the Mecca site material.

contaminated material was deposited on a proposed residential site which later had to undergo remediation as a result of the violation.

The Department also assessed an economic benefit penalty of $50,000 pursuant to N.J.A.C. 7:26-5.9 based on Respondents' profit realized from not complying with the solid waste requirements. Copies of canceled checks and invoices showed that Mecca paid DGRT $223,650 for removing the material, and VisionStream paid DGRT $40,220 for delivering the Mecca site material, representing total payments of $263,870 to DGRT. Although Respondents claimed receipt of only $25,850 from VisionStream, they provided no invoices or bank statements from the relevant time period to support their claim.

As to expenses, the Department calculated that DGRT paid subcontractor trucking companies $179,000 based on the average cost per load and number of loads delivered to the VisionStream Site. DGRT also paid a subcontractor to excavate the material for a total of $17,900.[3] The Department calculated DGRT's overall expenses at $196,900. Respondents' profit/loss statement states that DGRT "paid out as job related expenses" the greater amount of $250,399 according to "a review of bank record[s]." Respondents, however, failed to provide supporting dates, check numbers, or bank records for these claimed expenses.

The Department calculated the difference between total payments received and overall expenses, that is, the economic benefit, to be $66,970 and assessed the maximum economic benefit penalty of $50,000.

Based on her review of the record, the ALJ granted the Department's motion for summary decision. She found that the Mecca site material, which was RCA commingled with asphalt millings and contaminated with benzo(a)pyrene in excess of the New Jersey residential

[3]Three other canceled checks contain the information necessary to calculate the expense per load excavated and show that DGRT paid the subcontractor $20 per load.

soil remediation standard, was solid waste as defined by N.J.A.C. 7:26-1.4, -1.6(a) and (c). She found that DGRT did not hold the required approvals to transport solid waste; that Greenberg, as the president and sole owner of DGRT, was aware of the key aspects of DGRT's business with Mecca and VisionStream; that D'Angelo was DGRT's consultant and day-to-day operator and directly involved in the transport of the Mecca site materials; and that Greenberg and D'Angelo exercised joint decision making for DGRT's business affairs. Thus, she found all three respondents liable for the violation of N.J.A.C. 7:26-16.3(a), which requires transporters of solid waste to hold a solid waste license.

The ALJ found that the penalty of $50,000 for the violation of N.J.A.C. 7:26-16.3(a) was appropriate. She agreed that the violation was of major seriousness because Respondents' actions had the potential to harm human health by transporting material contaminated with a known carcinogen to a site undergoing residential and commercial development and that they frustrated the state's ability to minimize the risk to the public posed by solid waste transporters who possess insufficient reliability, expertise and competency when engaged in the solid waste industry without approvals. She pointed out that Respondents knew that the analytical reports showed exceedances of the criteria, did not investigate further and went ahead to move the fill material. The ALJ also found that Respondents' conduct was major because they arranged for the transport of the Mecca site material despite being told by Mecca that the analytical report showed exceedances of the New Jersey residential soil remediation standard.

The ALJ found that DGRT earned $66,970 in profits from its business with Mecca and VisionStream, based on VisionStream's payments to DGRT and DGRT's expenses to transport the material from the Mecca site. She noted that while Respondents claimed that their expenses for transporting the Mecca site material to the VisionStream site totaled $250,399, Respondents

failed to submit any records to substantiate that claim. The ALJ found that the Department's calculations accounted for the $5,000 amount by which Respondents asserted they had been underpaid. As to the basis for the economic benefit penalty, the ALJ observed that while Respondents asserted that the Department's figures were inaccurate, they offered "no invoices, canceled checks, formal accounting documents, or certifications."

Respondents' exceptions contend that a disputed issue of fact exists as to whether the Mecca site material was solid waste for which an A-901 license was required under the SWMA and N.J.A.C. 7:26-16.3(a) because the evidence contradicted a finding that an unsafe level of benzo(a)pyrene existed at the Mecca site. They also allege that evidence demonstrated that their conduct and the seriousness of their actions were neither major nor moderate because they detrimentally relied upon representations from VisionStream and Mecca that the material met environmental standards. Respondents asserted that the economic benefit penalty was incorrect repeating its claim that DGRT received only $220,000 from Mecca, and that VisionStream still owed DGRT $40,220. Respondents did not challenge the imposition of individual liability upon Greenberg as a corporate officer or upon D'Angelo as a consultant, decision-maker, and supervisor of day-to-day operations. In its reply, the Department noted factual inaccuracies in Respondents' exceptions and argued that the ALJ's decision was correct, reiterating arguments made in its motion briefs and noting that the penalty and economic benefit assessment were appropriate based on the major conduct here and Respondents' strict liability for violation of the SWMA.

DISCUSSION

Summary decision motion

The grant of a motion for summary decision is appropriate "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). Thereafter, "an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." N.J.A.C. 1:1-12.5(b). A genuine issue of material fact exists "when 'the competent evidential materials . . . are sufficient to permit a rational fact[-]finder to resolve the alleged disputed issue in favor of the non-moving party.'" E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 350 (App. Div. 2010) (alteration in original) (quoting Piccone v. Stiles, 329 N.J. Super. 191, 194 (App. Div. 2000)). The summary decision inquiry determines "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Tomeo v. Thomas Whitesell Constr. Co., 176 N.J. 366, 370 (2003) (quoting Brill v. Guardian Life Ins. of Am., 142 N.J. 520, 536 (1995)).

I find that Respondents have failed to raise any genuine issues of disputed fact as to the acts of noncompliance with the SWMA and the penalty assessed in the amended NOCAPA. The ALJ thus correctly applied the standard for summary decision under N.J.A.C. 1:1-12. She noted that the salient facts concerning the transportation of solid waste were undisputed. I therefore ADOPT the ALJ's conclusion that the Department is entitled to summary decision as a matter of law against DGRT, and against Greenberg and D'Angelo, individually.

The SWMA prohibits persons from transporting solid waste to a place other than an authorized solid waste facility "regardless of intent," and no person is permitted to engage in solid waste disposal except at an authorized solid waste facility "regardless of intent." N.J.S.A. 13:1E-9.3(a), (b). N.J.A.C. 7:26-16.3(a) prohibits a "person" from "engag[ing] or continu[ing] to engage in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in this State without a license." Respondents neither applied for nor held a solid waste license. They contend, however, that no such license was required because the Mecca site material did not meet the definition of solid waste. Specifically, Respondents claim that a genuine dispute of material fact exists because the VisionStream letter stated that the analytical data for the Mecca site material was deemed to meet environmental requirements and the Mecca letter agreement stated that the analytical report showed that the fill met Department standards for soil remediation.

The SWMA defines "solid waste" at N.J.S.A. 13:1E-3 as "garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities." N.J.A.C. 7:26-1.6(a) defines "solid waste" as "garbage, refuse, sludge, or any other waste material." "Other waste material" can be "any solid, . . . [or] semi-solid material, including but not limited to spent material, sludge, by-product, . . . or any other material which has served or can no longer serve its original intended use, which" is "discarded or intended to be discarded," "applied to the land or placed on the land . . . in a manner constituting disposal," or "recycled." N.J.A.C. 7:26-1.6(a). "A material is also solid waste if it is 'disposed of' by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters." N.J.A.C.

7:26-1.6(c). One of the many categories of solid waste defined at N.J.A.C. 7:26-1.4 is "construction and demolition waste" which means "waste building material and rubble resulting from . . . demolition operations on . . . commercial buildings, pavements, and other structures."

In contrast to the definitions above, N.J.A.C. 7:26-1.4 defines "clean fill" as "an uncontaminated nonwater-soluble, nondecomposable, inert solid such as rock, soil, gravel, concrete, glass and/or clay or ceramic products." N.J.A.C. 7:26-1.4 further states that "[c]lean fill shall not mean processed or unprocessed mixed construction and demolition debris."

No genuine factual dispute exists as to whether the Mecca site material was solid waste for which a license was necessary to collect, transport, and dispose of under N.J.A.C. 7:26-16.3(a). The Mecca site construction demolition material consisted of recycled concrete aggregate mixed with asphalt millings. Under N.J.A.C. 7:26-1.4, this material is "construction and demolition waste," and not "clean fill." Respondents disposed of the Mecca site material by placing it onto the land at the VisionStream site. As a result, the material or constituents thereof may have entered the environment by being emitted into the air or discharged into ground or surface waters as described in N.J.A.C. 7:26-1.6(c). As a result of the Respondents' actions, VisionStream was required to hire an LSRP to undertake remediation.

Respondents' argument that the May 2013 letter from VisionStream and the Mecca letter agreement create a dispute of fact as to whether an unsafe level of benzo(a)pyrene was contained in the Mecca site material is unavailing for two reasons. First, the Mecca site material meets the definition of solid waste as defined at N.J.A.C. 7:26-1.4 regardless of whether benzo(a)pyrene was present in the material. Second, as a factual matter, both letters refer to the analytical report that undisputedly shows the presence of benzo(a)pyrene at a level above the Department-established residential soil remediation standard. Respondents have not offered any other testing

results which demonstrate that the Mecca site soil samples satisfied the applicable residential soil remediation standard.

Individual Liability

Respondents did not raise any exceptions to the ALJ's finding of individual liability against them.[4] The ALJ found Greenberg and D'Angelo individually liable for their respective roles in the commission of the solid waste violations. N.J.S.A. 13:1E-9(b) allows the Commissioner of the Department to levy a civil administrative penalty when he or she "finds that a person has violated any provision of [the SWMA], or any rule or regulation adopted . . . pursuant [thereto]." N.J.A.C. 7:26-1.4 defines "person" to include both an "individual" as well as a "corporate official."

The ALJ correctly found that Greenberg, as DGRT's president and sole owner, the individual who was aware of key aspects of DGRT's business with Mecca and VisionStream, and the corporate officer who would have been in a position to prevent the violations of the SWMA and rules was liable as a responsible corporate officer. See DEP v. Standard Tank Cleaning Corp., 284 N.J. Super. 381, 403 (App. Div. 1995) (explaining that the responsible corporate officer doctrine applies when an officer was an actual participant in the operations that resulted in a violation, was responsible for the condition that caused the violation, or was in a position to prevent the violations). She also correctly found D'Angelo individually liable. He was individually involved as the consultant and manager responsible for DGRT's daily operations and played an integral role in the transport of the Mecca site material without a solid waste license. He interacted closely with Greenberg and was a key decision maker concerning DGRT's operations. See DEP v. Strategic Envtl. Partners, ECE 05826-13, Final Decision (Feb.

[4] Respondents also did not challenge the imposition of individual liability on Greenberg and D'Angelo in their opposition papers to the Department's summary decision motion.

17, 2016) (op. at 28) (finding that a person who was not a member of the corporation but was responsible for the day-to-day operations when the SWMA violations occurred was not entitled to whatever protection a corporate shield might provide).

Penalty Assessment

The Department is authorized to assess a maximum civil administrative penalty of $50,000 for each violation of the SWMA under N.J.S.A. 13:1E-9(e). Each day during which a violation continues constitutes a separate and distinct offense. The Department assesses penalties using the tables at N.J.A.C. 7:26-5.4(g) for violations of specific rules reflected in that provision. For rules not specifically referenced, such as N.J.A.C. 7:26-16.3, the Department assesses a penalty under N.J.A.C. 7:26-5.5(a)2. Pursuant to N.J.A.C. 7:26-5.5(f)2, the Department shall assess civil administrative penalties based on the seriousness of the violation and the conduct of the violator, categorized as major, moderate, or minor, and shall set the penalties at the mid-point of the ranges, unless adjusted under N.J.A.C. 7:26-5.5(i).

A violation is major if it "[h]as caused or has the potential to cause serious harm to human health or the environment" or if it "[s]eriously deviates from the requirements of the Act, or any rule promulgated . . . 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." N.J.A.C. 7:26-5.5(g)1. Major conduct includes "any intentional, deliberate, purposeful, knowing or willful act or omission by the violator." N.J.A.C. 7:26-5.5(h)1.

I find that the ALJ correctly determined that Respondents' violation of N.J.A.C. 7:26-16.3 is of major seriousness because their actions created the potential for serious harm to

prospective residents of and visitors to the VisionStream site and to the environment around the site due to potential exposure to benzo(a)pyrene, a carcinogen. She also properly determined that Respondents failed to obtain a solid waste license as required by N.J.A.C. 7:26-16.3. By doing so they undermined 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. Solid waste licensure also helps to prevent irresponsible participants from causing significant adverse impacts on human health and the environment. N.J.A.C. 7:26-16.8(a).

I further find that the ALJ correctly designated Respondents' conduct as major. The Mecca letter agreement alerted Respondents to exceedances of the Department's residential soil remediation standard. Respondents claimed that VisionStream's letter led them to believe that the Mecca site material was clean fill. Respondents thus chose to give credence to VisionStream's letter over Mecca's written statement that scientific analysis of the material demonstrated exceedances of the Department's residential soil remediation standard. Knowing that Mecca stated the analytical report showed "minor exceedances," Respondents failed to follow up on the analytical report, and transported the Mecca site material to the VisionStream site anyway.

The midpoint of the penalty range for a violation that is major in both seriousness and conduct is $45,000. The Department may increase or decrease the penalty from the midpoint based on "any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment." N.J.A.C. 7:26-5.5(i). The ALJ found that the Department appropriately adjusted the penalty to the maximum amount of $50,000 because Respondents' actions created a risk to the public by contaminating a future residential site with a carcinogen,

later requiring the developer to take remedial action to ensure that that the benzo(a)pyrene contamination would not cause further or future harm to the public.

N.J.A.C. 7:26-5.9 authorizes the Department to assess a penalty for the "economic benefit (in dollars) which the violator has realized as a result of not complying with . . . the requirements of the Act, or any rule promulgated" thereto in an amount no greater than $50,000. The ALJ properly determined that no genuine issue of material fact existed as to the accuracy of the $50,000 economic benefit penalty assessment. The Department established that Respondents received payments totaling $263,870 from Mecca and VisionStream. Canceled checks show that Mecca paid DGRT $223,650 to remove the Mecca site material.[5] Invoices and check numbers demonstrate that VisionStream paid DGRT $51,500 for delivering 1146 loads of fill material, 895 of which came from the Mecca site. A payment per load of $44.94 meant that VisionStream paid DGRT $40,220 for the Mecca site material. While Greenberg claimed that DGRT had no record of receiving the entire $40,220 balance from VisionStream, VisionStream provided the Department with the invoices from DGRT with the amounts charged, the check numbers and the date VisionStream paid Respondents.

As for expenses, checks written to three different subcontractors show that DGRT paid them $200 per load to transport the Mecca site material to the VisionStream site. At that rate, the transport cost for 895 loads equals $179,000. Similarly, checks show that DGRT paid subcontractors $20 per load for excavating Mecca site material for a total cost of $17,900. The Department calculated DGRT's total expenses for excavating and transporting the Mecca site material at $196,900. DGRT's profits for transporting the Mecca site material thus totaled

[5] Respondents claim they received only $220,000 from Mecca but they provide no supporting records. In contrast, Mecca's bank records are clear—on the back of each of the seven checks, which together add up to $223,650, is handwritten "DGRT Stables, LLC, For Deposit only" with DGRT's account number.

$66,970 after expenses. Respondents assert a dispute of material facts by claiming that bank records do not show payments from VisionStream in the amount of approximately $5000,[6] and by claiming that their expenses totaled $250,399; however, they failed to explain these asserted discrepancies with any supporting documentation. Mere assertions unsupported by competent evidential materials are insufficient to show the existence of disputed issues of material fact. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995); E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 350 (App. Div. 2010).

I find that the Department reasonably calculated Respondents' economic benefit at $66,970 based on the costs and profits per load transported multiplied by the number of loads as supported by certifications and documentation. The Department considered Respondents' expenses in its calculation. Respondents objected to the Department's calculations but failed to supply any certifications or affidavits to support their claims. Their mere objections do not defeat summary decision on the record concerning economic benefit. I conclude, therefore, that the economic benefit penalty of $50,000 is appropriate.

CONCLUSION

Having reviewed the record, and considered the exceptions and the replies thereto, I ADOPT the ALJ's initial decision concluding that there are no genuine issues of material fact as to whether Respondents transported and disposed of solid waste without having obtained the required approvals in violation of N.J.A.C. 7:26-16.3(a) and N.J.A.C. 7:26H-1.6(a) and find that

[6] Amounts invoiced to VisionStream but not paid to DGRT were not part of the calculation of payments received. DGRT invoices sent to VisionStream actually totaled $57,100 but VisionStream acknowledged that the difference between the invoiced amount and the amount paid to DGRT was $5800—one payment was withheld and some truck loads had been short filled. Thus the $5,000 that DGRT stated was unpaid by VisionStream has been taken into account.

the ALJ properly granted the Department's summary decision motion. As directed in the NOCAPA, Respondents are ordered to refrain from engaging in the transportation, disposal, or other activities constituting participation in the solid waste industry, unless they first apply for and secure an A-901 license and Certificate of Public Convenience and Necessity. Respondents are further directed to pay the penalty of $50,000 and the economic benefit penalty of $50,000, together totaling $100,000, within twenty (20) days of this Order as set forth respectively in paragraph 13 and paragraph 21 of the October 16, 2015 NOCAPA and the invoice attached thereto.

IT IS SO ORDERED.

9/30/16
DATE

Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, SOLID WASTE COMPLIANCE AND
ENFORCEMENT v. DGRT STABLES, LLC,
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MICHAEL D'ANGELO, AND
DERRICK GREENBERG

OAL DKT. NO. ECE 07448-15
AGENCY REF. NO. PEA 150001- U2353

SERVICE LIST

Alton Kenney, Esq.
Starkey, Kelly, Kenneally, Cunningham, & Turnbach
1593 Route 88 West
Brick, New Jersey 08724
E-mail: akenney@starkeykelly.com

Elspeth Faiman Hans, DAG
Division of Law
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093
E-mail: Elspeth.Hans@lps.state.nj.us