



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, SITE REMEDIATION COMPLIANCE AND ENFORCEMENT, Petitioner, v. HOOD FINISHING PRODUCTS (KASNER), Respondent. ADMINISTRATIVE ACTION FINAL DECISION OAL DKT NO.: ESR 3310-13 AGENCY REF. NO.: PEA 120005-G000039686

This matter involves Hood Finishing Products, Inc.'s (Hood) challenge to the Department of Environmental Protection's (Department) September 21, 2012 Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) charging Hood with violations of the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6, et seq., the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, and the Site Remediation Reform Act (SRRA), N.J.S.A. 58:10C-1 et seq., and the regulations promulgated under these statutes, N.J.A.C. 7:26B, 7:26C, and 7:26E. Specifically, the Department cited Hood with failure to remediate its industrial establishment located at 59 Berry Street and 61 Gurley Avenue, Franklin Township, Somerset County (the Berry Street site), as required by N.J.A.C. 7:26B-3.3(a) and N.J.A.C.

7:26C-2.3; failure to hire a licensed site remediation professional (LSRP) upon the occurrence of an ISRA triggering event as defined in N.J.A.C. 7:26C-2.2(a), and to provide the Department, within 45 days, the LSRP's name and license information and the scope of remediation, including the number of contaminated areas of concern and impacted media, in violation of N.J.A.C. 7:26C-2.3(a)1 and 2; and failure to pay fees and oversight costs as required by N.J.A.C. 7:26C-4, in violation of N.J.A.C. 7:26C-2.3(a)4. The Department assessed a total penalty of \$35,000, including a penalty of \$20,000 for failure to remediate the site and a penalty of \$15,000 for failure to hire an LSRP and to provide the required notice to the Department. The Department declined to assess a penalty for Hood's failure to pay fees.

Hood's president, Dr. Erick Kasner (Kasner), requested a hearing on behalf of Hood and on March 7, 2013, the Department transferred the matter to the Office of Administrative Law (OAL), where it was assigned to Administrative Law Judge (ALJ) Susan M. Scarola. Kasner appeared on behalf of Hood, as the principal of a close corporation. In the OAL, Hood filed, on April 17, 2014, a motion to dismiss the Department's AONOCAPA, which the ALJ treated as a motion for summary decision. The Department opposed the motion and cross-moved for summary decision on May 7, 2014. Hood filed two additional motions—one on June 12, 2014 to dismiss or mitigate the fees assessed by the Department, and another on June 17, 2014, seeking to depose Joshua Gradwohl (Gradwohl), the Department staff member most familiar with the compliance issues raised in this matter. The Department opposed both motions. The ALJ heard oral argument on the motions on July 18, 2014, and issued her Initial Decision on September 18,

2014, granting the Department's motion for summary decision, ordering Hood to pay the penalties and fees, and denying Hood's three motions.

Based on my review of the record, including Hood's September 29, 2014 exceptions and the Department's October 6, 2014 reply to Hood's exceptions, I find that the ALJ's findings and conclusions were correct and, consequently, ADOPT the Initial Decision.

FACTUAL AND PROCEDURAL BACKGROUND

I ADOPT the ALJ's recitation of the facts and identify here only the salient facts necessary for this decision.

From June 1, 1998 to August 21, 2003, Hood leased the Berry Street site to operate an industrial establishment involving the manufacture and distribution of woodworking materials, including wood finishes, stains and finish removers. The Berry Street site was owned during that period by Berry-Somerset, LLC. Hood ceased operations on July 23, 2003, see N.J.S.A. 13:1K-8 ("closing operations"), and vacated the property on August 21, 2003. Hood's cessation of operations was a triggering event under ISRA, requiring it to notify the Department within five days of closure, N.J.S.A. 13:1K-9(a), and to remediate the site, N.J.S.A. 13:1K-9(b). Although Hood claims to have filed notice, called a General Information Notice (GIN), with the Department on September 13, 2003¹, the Department's first-received notice of Hood's closure was the submission of a Preliminary Assessment Report (PAR) by the landlord, Berry-Somerset, to the Department on October 5, 2004. The

¹ Hood's motion papers contained a copy of a signed and notarized September 13, 2003 GIN and a letter dated September 23, 2013 addressed to Joshua Gradwohl, in which Hood's president refers to the GIN. While the sending and receipt of the GIN is a fact in dispute, it is not material because the Department's AONOCAPA is not premised on failure to submit a GIN.

PAR was followed by Berry-Somerset's submission of a GIN on December 4, 2004, reflecting Hood's July 2003 cessation of operations.

Department Site Remediation staff inspected the Berry Street site on December 20, 2004 to evaluate Berry-Somerset's PAR and documented a number of deficiencies, including an area of stressed vegetation at a corner of the building that was not included in the PAR and the failure to include the results of any investigation undertaken by the then-current tenant, NBSF Cabinets. The Department documented these and other deficiencies in a January 4, 2005 report issued to Berry-Somerset and listed the actions required to complete the PAR. Berry-Somerset undertook no action to remedy the deficiencies.

Groundwater sampling undertaken on January 25, 2006² on behalf of NBSF Cabinets, now a prospective purchaser of the Berry Street site, documented soil and groundwater contamination, including methylene chloride, a major component of nine Hood products. NBSF Cabinets purchased the property from Berry-Somerset on July 17, 2007 and became 59 Berry Street, LLC. The Department was not notified of the groundwater sampling or the transfer of property until October 11, 2011, when 59 Berry Street filed a landlord-tenant petition³ under N.J.S.A. 13:1K-11.9, requesting the Department to make a determination as to whether Hood was responsible for ISRA compliance under the terms of its lease with Berry-Somerset during its 1998-2003 tenancy. On October 19, 2011, the Department responded, advising that Hood's lease of the Berry Street property⁴ required Hood to comply with the Environmental Cleanup Responsibility

² The Initial Decision erroneously cites January 1, 2006 as the date of sampling. See P-5.

³ The petition was dated September 30, 2011.

⁴ The lease agreement between Hood and Berry-Somerset is not part of the record in this matter but is referred to in the Department's October 19, 2011 determination.

Act (ECRA), the predecessor to ISRA, for any discharges that occurred during Hood's operations at the Berry Street site. The Department further advised that Hood and Berry-Somerset have joint responsibility to remediate the Berry Street site, with Hood primarily liable and Berry-Somerset secondarily liable. Finally, the Department advised that Hood, Berry-Somerset, and 59 Berry Street, LLC were obligated to retain an LSRP pursuant to SRRA, enacted on May 7, 2009, and to conduct and complete remediation of the site. The Department also advised Hood, Berry-Somerset, and 59 Berry Street of the annual remediation and oversight fees that would be due starting in June 2012.

On February 24, 2012, Hood submitted a revised PAR and soil and groundwater sampling results from an unidentified location on the Berry Street site. On April 20, 2012, the Department advised Hood that the documents submitted were inadequate to support a request for a no further action approval for the site,⁵ did not conform to the minimum requirements of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and a comprehensive report would be needed that evaluates all data gathered. The Department further reminded Hood and Berry-Somerset to hire an LSRP to assist in their obligation to remediate the site. On April 20, 2012, the Department sent Hood an invoice in the amount of \$1,850, representing the annual remediation fee due on June 20, 2012. Receiving no further response from Hood regarding the remediation requirements on the site and Hood's refusal to pay the fees, the Department issued an AONOCAPA on September 21, 2012,

⁵ "No further action letter" means a written determination by the department that, based upon an evaluation of the historical use of the industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which discharged hazardous substances or hazardous wastes originating at the industrial establishment have migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations. N.J.S.A. 13:1K-8.

citing Hood for (1) failure to remediate the site in accordance with N.J.A.C. 7:26B-3.3; (2) failure to hire [an LSRP] and to notify the Department within 45 days in accordance with N.J.A.C. 7:26C-2.3(a)1 and 2; and (3) failure to pay fees and oversight costs pursuant to N.J.A.C. 7:26C-2.3(a)4. The Department assessed a penalty of \$35,000 for the first two referenced violations but declined to assess a penalty for Hood's failure to pay fees and oversight costs.⁶

During the course of this contested case, Hood retained an LSRP, but not until May 7, 2013, and attained compliance with the Department's remediation requirements on January 28, 2014.

In her Initial Decision, the ALJ found that the Department was entitled to judgment as a matter of law because Hood failed to (1) remediate the property, (2) hire an LSRP and notify the Department as required by ISRA, and (3) pay remediation and oversight fees. The ALJ rejected Hood's argument that current compliance should obviate penalties and noted that Hood was in violation of the applicable laws and rules for nearly a decade. The ALJ further rejected Hood's argument that the landlord, Berry-Somerset, should be liable and not Hood, as tenant. Noting that the landlord and tenant are jointly and severally liable, the ALJ found that Hood was primarily liable under its lease with Berry-Somerset. Further, the ALJ found that although Hood claimed that a settlement agreement in litigation between itself and the landlord placed ISRA responsibility for remediation on the landlord, the agreement did not address the issue of ISRA responsibility.

⁶ While this matter was pending in OAL, the Department sent invoices to Hood again in April 2013 and April 2014 in the amount of \$1,850 each year. The total fees due and owing are \$5,500 for the three years billed.

The ALJ noted that there were several facts in dispute, but that none of them was material to the violations for which Hood was cited. For example, Hood's claim that it filed a GIN on September 13, 2003 is not material to the ultimate issues because Hood was not cited with failure to file a GIN. Further, Dr. Kasner's claim that his consultant had a conversation with Gradwohl on May 6, 2009 in which Gradwohl represented that Hood's paperwork was in order for ISRA compliance, and Gradwohl's denial that such a conversation took place, do not address the fact that Hood failed to comply with ISRA when it ceased operations in July 2003. Finally, Hood's claim that the NAICS⁷ number governing its operations does not make it an industrial establishment subject to ISRA is not a fact requiring a hearing. The question of whether Hood was an industrial establishment and, if so, which NAICS number applies to Hood was the subject of a petition filed by 59 Berry in the Superior Court, upon its purchase of the property. In that matter,⁸ the court found that Hood was in fact an industrial establishment subject to ISRA.

The ALJ also rejected Hood's equitable defenses of estoppel and laches. With respect to estoppel, the ALJ found that even assuming that Hood filed a GIN in September 2003, which the Department disputes, such filing would not have allowed Hood to conclude that it was not responsible to remediate, hire an LSRP, and pay oversight costs. Further, even if the Department had made the representation to Hood's consultant in 2009 that Hood's paperwork was in order, the Department's enforcement action under review remains sound because Hood failed to comply with ISRA in 2003; thus, there was no

⁷ The North American Industry Classification System identifies operations and places of business that are "industrial establishments" subject to ISRA. See N.J.S.A. 13:1K-15.

⁸ See 59 Berry Street, LLC v. Hood Finishing Products, Inc., Docket No. SOM-L-75-08, oral decision dated September 7, 2011; P-16.

detrimental reliance. With respect to laches, the ALJ found that the Department's delay in issuing an AONOCAPA to Hood was explained and excusable. The Department had been working with Berry-Somerset to obtain ISRA compliance, but Berry-Somerset sold the property to 59 Berry Street without notifying the Department. The Department was not informed of sampling results and contamination on the property until 2011 and Berry-Somerset was by then a defunct corporation. Thus, the ALJ concluded that holding Hood liable for compliance with ISRA and SRRA is consistent with and authorized by those statutes. Finally, the ALJ rejected Hood's assertion that the Department's action is barred by the federal statute of limitations found in 28 U.S.C.A. § 2462 as that statute is inapplicable to a matter raised under New Jersey law.

Regarding Hood's motion to depose Gradwohl, the ALJ found that the purpose for the deposition, to determine whether Gradwohl intentionally destroyed or misplaced Hood's GIN, had no relevance to the issues in this contested case and denied the motion. The ALJ further found that the annual remediation fees the Department assessed for 2012, 2013, and 2014 were based on its regulations and the formulas set forth therein, N.J.A.C. 7:26C-2.3(a)4; -4.2(b)3; -4.3. She therefore denied Hood's motion to dismiss fees. Finally, the ALJ found the penalties, which the Department assessed for only one day each for failure to remediate and failure to hire an LSRP notwithstanding that Hood was in violation for nearly a decade, to be expressly authorized by N.J.A.C. 7:26C-9.5 and reasonable.

Hood's exceptions filed on September 29, 2014, itemized numerous factual statements made in the Initial Decision with which it disagreed and argued that the failure to issue a notice of violation to Hood prior to imposition of penalties and the retroactive assessment of penalties were unconstitutional, and that the landowners and subsequent

tenant are the responsible parties, not Hood. The Department responded to Hood's exceptions on October 6, 2014, arguing that the Initial Decision should be adopted in full.

DISCUSSION

Summary decision is appropriate in cases in which “the pleadings, discovery and affidavits ‘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.’” E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 350 (App. Div. 2010) (quoting N.J.A.C. 1:1-12.5(b)). A genuine issue of material fact exists only “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.’” Ibid. (alterations in original) (quoting Piccone v. Stiles, 329 N.J. Super. 191, 194 (App. Div. 2000)). “Further, ‘[a]n issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.’” Ibid. (quoting Piccone, supra, 329 N.J. Super. at 195). I find that the parties raise no genuine issues of disputed fact and ADOPT the ALJ's conclusion that the Department is entitled to summary decision as a matter of law. I further ADOPT the ALJ's decision to deny Hood's motions to depose DEP staff and to dismiss fees.

The Legislature enacted the ECRA in 1983 to address the handling and disposal of hazardous wastes upon the closure or transfer of industrial establishments, thus preventing abandonment of contaminated sites and placing the financial responsibility for remediation

with owners and operators rather than with taxpayers and government.⁹ ECRA was substantially amended and replaced by ISRA in March 1993 to both streamline the process of effectuating remediation of contaminated sites and to promote certainty in the regulatory process.

The remediation obligations imposed by ISRA are intended to secure the cleanup of industrial sites at the earliest possible date “even if the current owner or operator is not responsible for the contamination.” In re Adoption of N.J.A.C. 7:26B, 128 N.J. 442, 447-448 (1992). ISRA’s plain language states that an owner or operator of an industrial site is “strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages resulting from the failure to implement the remedial action workplan.” N.J.S.A. 13:1K-13(a). Obligations imposed by ISRA “shall constitute continuing regulatory obligations imposed by the State.” N.J.S.A. 13:1K-12. See N.J.S.A. 13:1K-11.9(c) (Where the responsibility of the owner or operator is unclear, or upon failure to comply, the Department may compel compliance by all persons subject to the Act); N.J.A.C. 7:26B-1.10 (“[B]oth the owner and operator are strictly liable without regard to fault, for compliance with ISRA[.]”). The plain language of ISRA and the legislative intent to ensure swift remediation without regard to fault establish that owners and operators are responsible parties, notwithstanding the use of the disjunctive word “or” in ISRA. The words “or” and “and” are often used interchangeably, and the determination of whether the

⁹ “Industrial establishment” means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classification Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. N.J.S.A. 13:1K-8. N.J.A.C. 7:26B-1.4 provides, further, that an industrial establishment is one having a specified North American Industry Classification System (NAICS) number.

words are used conjunctively or disjunctively depends on the legislative intent. Pine Belt Chevrolet, Inc., et al. v. Jersey Central Power and Light Company, et al. 132 N.J. 564, 578-579 (1993)

Under ISRA, owners or operators of an industrial establishment, as defined at N.J.S.A. 13:1K-8, who plan to close, sell, or transfer operations must give notice to the Department. N.J.S.A. 13:1K-9(a); -9(b)(1). An operator is defined as “any person, including users, tenants, or occupants, having and exercising direct actual control of the operations of an industrial establishment.” N.J.S.A. 13:1K-8; N.J.A.C. 7:26B-1.4. After triggering ISRA, the owner or operator must “remediate the industrial establishment ... in accordance with criteria, procedures, and time schedules established by the department.” N.J.S.A. 13:1K-9. The term “remediation” or “remediate” encompasses “all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of hazardous substances or hazardous wastes” N.J.S.A. 13:1K-8. Owners or operators of industrial establishments are required to follow a Department-approved remediation plan. N.J.S.A. 13:1K-6 to -13.1.

ISRA, further, sets forth a procedure by which an operator who is a tenant can petition the Department to compel the ISRA-liable owner to remediate, in the event the lease places such a requirement on the owner. N.J.S.A. 13:1K-11.9. If the lease is unclear or the responsible party under the lease fails to comply with ISRA, the Department may compel compliance by all persons subject to ISRA. Ibid.

SRRA, enacted in May 2009 to both further streamline and quicken the pace of remediation, among other things, authorizes LSRPs to oversee and conduct remediation of contaminated sites and delineates the Department’s remedial action permitting requirements

to regulate the operation, maintenance and inspection of engineering or institutional controls and related systems installed as part of a remedial action of a contaminated site. SRRA is the mechanism by which remediation under ISRA (and other statutes addressing contaminated sites) is implemented. As of May 7, 2012, all remediation in New Jersey must proceed under the supervision of an LSRP. N.J.S.A. 58:10B-1.3(b)(1)¹⁰; -1.3(c)(3). The LSRP oversees the remediation and certifies that the work was performed in a manner consistent with all applicable remediation requirements, N.J.S.A. 58:10C-14(a), and, at the completion of the remediation, issues a response action outcome. N.J.S.A. 58:10C-2¹¹; -14(d).

Quite simply, Hood's operations at the Berry Street site involving the manufacture and distribution of woodworking materials, wood finishes, stains and finish removers, rendered Hood an industrial establishment subject to ISRA. Hood, operating as a tenant at the Berry Street site, ceased operations in July 2003, thus triggering notice and remediation requirements under ISRA. N.J.S.A. 13:1K-9. For nearly a decade, Hood failed to undertake remediation at the Berry Street site in compliance with ISRA. Hood failed to submit a negative declaration, remedial action work plan, and remediation agreement or remediation certification as required by ISRA. N.J.S.A. 13:1K-9. The GINs submitted by Hood and Berry-Somerset and the PAR later completed by Berry-Somerset do not fulfill the ISRA requirements. While Hood claimed that a settlement agreement in a landlord-

¹⁰ L. 2009, c. 60, enacting SRRA, also amended the Brownfield and Contaminated Sites Remediation Act, N.J.S.A. 58:10B-1, et seq., to require use of an LSRP to perform the remediation, to provide notice to the Department, and to pay fees and oversight costs, among other requirements. N.J.S.A. 58:10B-1.3(b)1-9.

¹¹ A response action outcome is a written determination by an LSRP that the contaminated site was remediated in accordance with all applicable laws and regulations and "[b]ased upon an evaluation of the historical use of the site, or of any area of concern at that site ... there are no contaminants present at the site ... or that contaminants present at the site ... have been remediated in accordance with applicable remediation regulations, and all applicable permits and authorizations have been obtained."

tenant matter with Berry-Somerset placed liability on the landlord, the four corners of the settlement (R-15) do not support Hood's claim. Hood never petitioned the Department for a determination of liability under N.J.S.A. 13:1K-11.9; however, the successor-owner, 59 Berry Street, did submit such a petition on September 30, 2011. The Department's October 19, 2011 response to the petition concluded that Hood's lease with Berry-Somerset made Hood primarily liable for remediation for conditions occurring during its operations. That response further advised of the liability of all the parties, including Berry-Somerset and 59 Berry Street. In 2009, the Department's case files for the Berry Street site and Hood remained open and ISRA compliance had not been attained. At that time, Hood was therefore required to proceed under SRRA and ISRA, and hire an LSRP and conduct remediation under the LSRP's supervision. Hood failed to hire an LSRP until May 7, 2013, after issuance of the AONOCAPA and referral of this matter to OAL. Hood's submissions in this OAL matter acknowledged the failure to hire an LSRP and to pay the assessed fees. Based on these undisputed facts, I find that Hood failed to comply with ISRA and SRRA as set forth in the Department's AONOCAPA.

N.J.A.C. 7:26C-2.3(a)(4) directs that the person responsible for remediation must pay all applicable fees and oversight costs as required by N.J.A.C. 7:26C-4 upon the occurrence of, among other events, the close of operations under ISRA. See N.J.A.C. 7:26C-2.2(a); -2.2(a)3; N.J.A.C. 7:26B-3.2(a)1. Hood's cessation of operations triggered the requirement that it pay fees and oversight costs. Notably, Hood was not assessed fees for any time accruing prior to 2012. In April 2012, Hood was billed for the first time based on the formula set forth in N.J.A.C. 7:26C-4.2, and then billed again in 2013 and 2014. Although, as the ALJ correctly notes, the Department did not provide a breakdown or

explanation of the fees, the amounts assessed by the Department are derived directly from the regulations.

For the year 2012, and for each subsequent year, the Department calculated an annual remediation fee based on the “contaminated area of concern category fee” plus “the contaminated media additive fee” as set forth in N.J.A.C. 7:26C-4.3(a)1-3. Calculating Hood’s fees based on one category 1 contaminated area of concern, the fee for which is \$450, plus one contaminated media, i.e., groundwater, the fee for which is \$1,400, renders a total annual remediation fee of \$1,850. N.J.A.C. 7:26C-4.3(a)2. Three annual assessments at \$1,850 is a total of \$5,550. I find that the ALJ’s decision upholding the Department’s fee assessments for the years 2012, 2013, and 2014 was sound.

Having reviewed Hood’s exceptions, I find that they do not merit detailed discussion. Hood takes issue with numerous statements of fact made by the ALJ which are not material to the ultimate findings and conclusions resulting in summary decision in the Department’s favor. I find that there is no requirement for the Department to issue a Notice of Violation for non-minor violations prior to issuing an AONOCAPA. See N.J.S.A. 13:1K-13 (authorizing numerous forms of enforcement action); N.J.A.C. 7:26C-9.4 (procedures for minor violations). Hood was aware of its obligations under ISRA and was required to execute those obligations without any notification from the Department. I also reject Hood’s assertion that a hearing is required to determine the source of methylene chloride contamination uncovered during the sampling undertaken in 2005 and 2006. Because ISRA imposes a “self-executing duty to remediate without the necessity and delay of a determination as to liability for the contamination,” Navillus Group v. Accuthern Inc., 422 N.J. Super. 169, 181-82 (App. Div. 2011), citing Superior Air Products Co. v. N.L.

Industries, Inc., 216 N.J.Super. 46, 63 (App. Div. 1987), it is not necessary to reach a conclusion on this issue.¹²

The facts and rationale above supporting a finding of violation of ISRA and SRRA also support the Department's penalty assessment as set forth in the AONOCAPA. N.J.A.C. 7:26C-9.5 directs the Department to determine the seriousness of the violation and for all non-minor violations, such as those here, to assess the base penalty set forth in the tables that follow the rule. The base penalty for a violation of N.J.A.C. 7:26B-3.3(a) – failure to remediate the industrial establishment – is \$20,000. The base penalty for violation of N.J.A.C. 7:26B-2.3(a)1 and 2 – failure to hire an LSRP and submit the required notification – is \$15,000. The Department could have, but did not, adjust these penalties upward based on the length of time of violation, as allowed under N.J.A.C. 7:26C-9.6. Further, the Department did not assess a penalty for Hood's failure to pay fees, which would have added a penalty of 100% of the amount of the fee in arrears. See N.J.A.C. 7:26C-9.5(b) (enumerating base penalties for violations of site remediation regulations by citation, here N.J.A.C. 7:26C-2.3(a)4). Thus, the penalties are sound and reasonable under the facts of this case.

Finally, concerning Dr. Kasner's motion to depose Gradwohl, I agree with the ALJ that the asserted line of inquiry for the proposed deposition, that Mr. Gradwohl intentionally destroyed or misplaced the initial GIN submitted by Hood in 2003, is not relevant to the ultimate issue in this case, specifically that Hood was at all times obligated to demonstrate compliance with ISRA. Hood was not cited with a violation related to the

¹² See Factual and Procedural Background, supra, p. 4, however, outlining the findings of groundwater sampling undertaken by NBSF.

GIN and the high bar required to be met for extraordinary discovery in the form of a deposition has not been met.

CONCLUSION

For the reasons stated there and herein, I ADOPT the Initial Decision granting summary decision on the Department's motion and denying Hood's motions for summary decision, deposition, and to eliminate or mitigate fees. Hood is ORDERED to pay total penalties of \$35,000 within twenty (20) days of this Final Decision, by directing payment to the Treasurer, State of New Jersey, as set forth in the AONOCAPA and the enclosed Enforcement-Site Remediation and Waste Management Invoice. Hood is further directed to pay the Site Remediation LSRP Annual Fee for 2012, 2013, and 2014, totaling \$5,500, within twenty (20) days of this Final Decision.

IT IS SO ORDERED.

DATE: February 2, 2015

A handwritten signature in blue ink, appearing to read "Bob Martin", is written over a horizontal line.

Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
SITE REMEDIATION COMPLIANCE AND ENFORCEMENT

v.

HOOD FINISHING PRODUCTS (KASNER)
OAL DKT. NO. ESR-3310-13
AGENCY REF. NO. PEA 120005-G000039686

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