SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0874-15T1

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, BUREAU OF HAZARDOUS WASTE ENFORCEMENT,

Petitioner-Respondent,

v.

YATES FOIL USA, INC., CRAIG YATES, JOSEPH FEATHER and THOMAS ASPINALL,

Respondents-Appellants.

Argued October 3, 2017 – Decided December 20, 2017

Before Judges Sumners and Moynihan.

On appeal from the Department of Environmental Protection.

Robert J. Hagerty argued the cause for appellants (Hagerty & Bland-Tull Law, LLC, attorneys; Robert J. Hagerty, on the brief).

Aaron A. Love, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Aaron A. Love, on the brief).

PER CURIAM

The New Jersey Department of Environmental Protection (DEP) issued a final agency decision imposing fines totaling $180,000 against Yates Foil USA Inc. for four hazardous waste violations at its former industrial plant in Bordentown. In reaching its decision, DEP adopted the initial decision of the Administrative Law Judge (ALJ), who granted the agency's summary decision motion in accordance with N.J.A.C. 1:1-12.5, to uphold the violations and fines.

Yates Foil contends the agency should have denied summary judgment because there were questions of fact and credibility concerning the affidavits and reports relied upon by DEP to establish that Yates Foil committed the violations. Yates Foil maintains that the plant's owner, Square D Company, which had complete control of the plant after Yates Foil vacated the plant and was also fined by DEP for its violations concerning the hazardous waste at the plant, caused the violations. Hence, Yates Foil contends the fines imposed against it were unjust and improper. We disagree and affirm.

For decades, Yates Foil manufactured electro-deposited copper foil, which it sold to makers of circuit boards. The company's manufacturing process involved the use, storage, and disposal of corrosive and heavy metals, such as arsenic, cadmium, chromium,

and lead. In 1980, Square D purchased Yates Foil and the plant, but sold Yates Foil ten years later.

After brothers Craig and Charles Yates re-purchased Yates Foil in 1996, they leased the plant back from Square D. Despite expiration of the lease four years later, Yates Foil continued operating at the plant while Square D pursued legal action to evict Yates Foil. Eventually, Yates Foil notified DEP that it would cease all of its operations at the plant by August 31, 2002. This triggered DEP's inspection on September 16, 2002, to determine whether Yates Foil had complied with state and federal requirements that it remove all hazardous waste from the plant. The inspection revealed that Yates Foil had failed to remove all of its hazardous waste and the company's hazardous waste inventory did not account for the amount of hazardous waste on site. Although Yates Foil represented to DEP that it disposed of the last remaining amount of hazardous waste in November 2002, Yates Foil's former environmental manager later admitted that hazardous waste had remained at the plant in unmarked containers after that date. Furthermore, another former Yates Foil employee, as well as a contractor hired by Square D to clean up the plant, confirmed that hazardous waste remained at the plant after Yates Foil had completed disassembling and selling the plant equipment in December 2003. A month later, Square D's contractors began

shipping out more than one million pounds of hazardous waste from the plant.

In September 2003, gas and electric service at the plant was discontinued because the bill was not paid, causing the rupture of pipes containing hazardous waste left behind by Yates Foil, and resulting in spills with the potential to contaminate the storm water outfall.

In the late summer of 2004, DEP inspectors discovered dozens of unlabeled containers holding hazardous waste at the plant. The agency consequently cited Yates Foil, and its officers, Craig Yates, Director, Thomas P. Aspinall, President, and Joseph Feather, Chief Financial Officer, with four violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 to -48, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, and N.J.A.C. 7:26G-1.1 to -16.12, for: failure to determine whether solid waste at the plant was hazardous; failure to mark containers as hazardous waste; failure to maintain or operate the facility so as to minimize the possibility of fire, explosion, or hazardous waste release; and failure to operate a hazardous waste facility without a permit. The agency imposed fines of $45,000 for each violation, for a total penalty of $180,000. See N.J.S.A. 13:1E-9(e) (authorizes DEP to assess a maximum civil administrative penalty of $50,000 for each violation). Square D was assessed a

fine of $4500 because its site contractors had not properly marked certain hazardous waste containers awaiting shipment.

Yates Foil and its officers contested the violations and fines, and the matter was transferred to an ALJ for a hearing. However, a hearing was not conducted because the ALJ issued an initial decision granting DEP's summary judgment motion to uphold the violations and fines as to Yates Foil and its officers. The agency's final decision adopted the entirety of the ALJ's factual findings and legal conclusions concerning the violations and fines against Yates Foil, but determined that there was no authority to impose corporate responsibly upon the officers. The appeal ensued.

In accordance with N.J.A.C. 1:1-12.5(b), the standard for a state agency's decision to grant a motion for summary decision is "substantially the same" as that governing a motion for summary judgment by a trial court under Rule 4:46-2. Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121 (App. Div. 1995). Similar to the trial court, an agency's findings of fact "are considered binding on appeal when supported by adequate, substantial and credible evidence." In re Taylor, 158 N.J. 644, 656 (1999) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). Therefore, "we will not upset a State agency's determination in the absence of a showing that it was arbitrary, capricious or unreasonable, or that it lacked fair

support in the evidence, or that it violated a legislative policy expressed or implicit in the governing statute." In re Camden Cty. Prosecutor, 394 N.J. Super. 15, 22-23 (App. Div. 2007) (internal quotations omitted) (quoting Cty. of Gloucester Bd. of Chosen Freeholders v. Pub. Emp't Relations Comm'n, 107 N.J. Super. 150, 156 (App. Div. 1969) aff'd, 55 N.J. 333 (1970)). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Adoption of Amendments to Ne., Upper Raritan, Sussex Cty., 435 N.J. Super. 571, 582 (App. Div. 2014) (alteration in original) (quoting In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006)).

While we review de novo the determinations by a trial court and an agency that no genuine issue of material fact existed when granting summary judgment, we treat their respective legal conclusions differently. We owe no deference to the trial court's conclusions of law. Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010) (citations omitted). In contrast, we "strive to give substantial deference to the interpretation [the] agency gives to a statute that the agency is charged with enforcing." In re Application of Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 423 (2008) (alteration in original) (internal quotation marks and citation omitted).

Guided by these principles, we affirm the grant of summary decision to DEP, substantially for the reasons stated in the agency's decision. R. 2:11-3(e)(1)(D). Extended discussion of Yates Foil's arguments is not warranted. R. 2:11-3(e)(1)(E). We add the following brief comments.

Essentially, Yates Foil does not challenge DEP's interpretation of the laws governing the storage, labeling and disposition of hazardous waste. Instead, Yates Foil argues the agency erroneously adopted the ALJ's summary judgment ruling because there were factual disputes, and thus, no factual support for the findings that it was responsible for the cited violations. We disagree.

DEP was correct in finding that there were no genuine dispute of facts as to Yates Foil's non-compliance with the cited hazardous waste laws. The agency pointed out that Yates Foil did not conduct any discovery, and the relevant facts were either stipulated or undisputed. Yates Foil presented no proofs to substantiate its contention that Square D or its contractors, which shipped out a significant amount of hazardous waste from the plant, were responsible for the waste being in the plant. The credible evidence established that Yates Foil abandoned the plant, leaving hazardous waste there without a permit and in unlabeled containers. And even though Yates Foil was embroiled in eviction proceedings

with Square D, it was Yates Foil's irresponsibility in allowing the plant's utilities to be shut-off, which resulted in the winter freeze to rupture pipes containing hazardous waste. The fact that DEP cited and fined Square D for violations does not exculpate Yates Foil from its own transgressions. Further, based upon the record before us, we see no abuse of DEP's discretion in imposing $180,000 in fines against Yates Foil.

Affirmed.