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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3632-15T2

US MASTERS RESIDENTIAL
PROPERTY (USA) FUND,

Petitioner-Appellant,

v.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION —
FINANCIAL SERVICES ELEMENT,

Respondent-Respondent.

Argued October 30, 2017 — Decided April 3, 2018

Before Judges Messano and Vernoia.

On appeal from the New Jersey Department of
Environmental Protection, Agency Ref. No.
12-0046-0002.

Adam C. Ford argued the cause for appellant
(Ford O'Brien, LLP, attorneys; Adam C. Ford,
on the briefs).

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

PER CURIAM

Claimant US Masters Residential Property (USA) Fund appeals from an Administrative Law Judge's (ALJ) arbitration decision denying its claim for reimbursement from the New Jersey Spill Compensation Fund (Spill Fund), which was established pursuant to the New Jersey Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11 to -23.24. We affirm.

I.

Claimant owns five contiguous properties in Bayonne that slope downward toward the Upper New York Bay and Hudson River. The properties include 86, 88, 90 and 92 East 22nd Street, and 111 F Street. There is a two-unit residential building on each of the properties. As a result of Superstorm Sandy on October 29, 2012, the properties and the surrounding area were flooded and inaccessible for a few days.

One month later, claimant submitted a Spill Fund claim to the New Jersey Department of Environmental Protection (DEP) asserting that inspection of the properties following the storm revealed "staining from petroleum and/or hazardous substances" on the interiors and exteriors of its buildings and an "[a]n odor of petroleum and/or hazardous substances . . . throughout the buildings and upon the land/yards of each property." Claimant averred that a storm surge carried petroleum or other hazardous substances from "an offsite source onto" the properties. Claimant

sought compensation for loss of income, property value diminution and remediation costs.

In July 2013, the DEP issued a notice of intent to deny the claim, noting its inspections of the properties revealed floodwater damage, and claimant failed to present evidence showing the damage was caused by the discharge of a hazardous substance. The DEP also determined that constituents found in soil samples claimant took from the properties were indicative of historic fill, which is a pre-Spill Act discharge ineligible for Spill Fund compensation. The DEP based its rejection of the claim on the information in its files and reserved its right to provide other reasons for denying the claim should it receive additional information.¹

In response to the DEP's notice, claimant submitted a certification from Gregory A. Brown, a licensed site remediation professional. Brown described his inspections of the properties, explained the lab test results from six soil samples he took from the properties, and opined there was damage to the properties caused by the discharge of hazardous substances, including oil.

¹ The notice of intent to deny the claim included other reasons for the DEP's decision, including: claimant's alleged failure to mitigate damages and seek compensation from other available sources; and certain damages to the properties were caused by a fire.

The DEP subsequently issued an amended notice denying the claim, reiterating the reasons for its initial denial and again explaining claimant did not demonstrate the damages resulted from the discharge of hazardous substances. In response, claimant filed a request for arbitration.

Following a five-day hearing, the ALJ, serving as the arbitrator, issued a written decision rejecting the claim. The ALJ noted that a claimant seeking compensation from the Spill Act "has the burden to prove by a preponderance of the evidence the claim satisfies all requirements for eligibility under the Spill Act." The ALJ reviewed what he characterized as the four types of evidence the parties presented supporting their conflicting positions: analytical testing; visual and olfactory observations; information concerning surrounding properties; and scenarios envisioned by the expert witnesses.

The ALJ found most persuasive the evidence concerning the analytical testing of the six soil samples claimant's expert, Brown, obtained from the properties. Brown took two samples from the yard adjacent to the properties. The samples were designated as "Yard One" and "Yard Two". The Yard One sample was taken from the edge of a sidewalk where Brown anticipated oil would pool. The Yard Two sample was taken from the back of the property on slightly higher ground. Brown also took a sample from the dirt

floors in the crawl spaces underneath each of the buildings located at 86, 88, 90 and 92 East 22nd Street. Brown was unable to obtain a sample from the building at 111 F Street because the crawl space had a concrete floor.

Brown, who was qualified as an expert in environmental analysis and mitigation, construction forensics, and soil and groundwater remediation, testified the six samples were tested for extractable petroleum hydrocarbons (EPH), the presence of which at certain levels is indicative of petroleum products. Brown explained that testing of three soil samples, from Yard Two and 86 and 90 East 22nd Street, did not show EPH levels requiring further testing or remediation.

Brown also testified that the samples taken from Yard One and 88 and 92 East 22nd Street showed EPH levels requiring additional testing. According to Brown, the additional testing of the Yard One sample showed the presence of naphthalene and other constituents commonly found in oil in excess of acceptable levels. The samples from 88 and 92 East 22nd Street contained arsenic and lead, which are not commonly found in oil.

Brown testified that during his inspections of the properties he smelled oil within the buildings and observed a "bathtub ring" stain of what he believed was oil on the interior and exterior walls of the buildings. Brown disagreed with the DEP's contention

that the test results and staining on the walls did not establish a discharge of oil. He rejected the notion that the test results and staining revealed the presence of either historic fill or diffuse anthropogenic pollution (DAP).

Brown acknowledged the constituents found in the samples from Yard One and 88 and 92 East 22nd Street are not present only in fuel oils. Brown considered the report of Dennis M. Stainken, the DEP's expert in analytical chemistry, toxicology and site remediation, who conducted an analysis of the analytical data from the testing of the six soil samples. Brown had no opinion on Stainken's determination that the Yard One sample did not include a range of aliphatics that "would almost certainly be present in petroleum products, but [were not] present here." Brown also acknowledged the presence of the constituents found in the samples did not "necessarily prove[] that there was an oil discharge" on claimant's properties. In reaching his opinion there was a discharge of oil on claimant's property, Brown therefore relied on the lab test results, what he observed and smelled during his inspections of the property, and DEP, police and other reports that the storm's floodwaters carried oil onto neighboring properties.

The ALJ did not accept Brown's opinion that the storm's floodwaters carried oil onto claimant's properties. Instead, the

ALJ accepted and relied upon DEP expert Stainken's assessment of the analytical testing of the six soil samples. The ALJ first noted that Stainken was an analytical chemist with extensive experience in petrochemicals, and Brown was an engineer, who interpreted lab reports and disavowed being a lab chemist.

Stainken testified about data from the lab tests that Brown did not address. Stainken explained the lab also tested the samples from Yard One and 88 and 92 East 22nd Street to determine the polycyclic aromatic hydrocarbon (PAH) levels and, further, to determine the carbon ranges for aliphatic compounds and aromatic compounds. Stainken testified the lab results showed the Yard One sample did not have carbon ranges consistent with the presence of oil. Stainken explained the PAH levels found in the samples from under the buildings at 88 and 92 East 22nd Street were not indicative of oil. Stainken testified the lab test results upon which claimant relied did not demonstrate the existence of a discharge of oil on claimant's properties.

Stainken opined that claimant's lab test results were consistent with historic fill or DAP, and not oil. He described historic fill as any material that has been used to fill property, including coal or wood ash and dirt. He explained DAP consists of air pollution particles that fall onto the ground or water and accumulate over long periods of time. Stainken discounted

claimant's reliance on the EPH ranges for the various samples, stating that the carbon range test results are more typical of air pollution than oil.

Stainken also rejected claimant's reliance on the DEP, police and other reports of oil and oil discharge on the neighboring properties because the analytical data did not establish the presence of an oil discharge on claimant's properties. Stainken also inspected the properties and did not discern an odor of oil or observe any evidence of oil.

The ALJ found the analytical results, as interpreted by Stainken, were "the most reliable evidence" and did not demonstrate a discharge of oil. The ALJ further observed that Brown selected the sample sites for the purpose of finding oil, but the analytical results showed none present.

The ALJ also determined the conflicting testimony about the presence and smell of oil at the properties was strikingly different,² but did not establish the presence of an oil discharge on the properties. The ALJ found there was no reason to question

² Claimant's chief operating officer Alan Dixon, expert construction estimator Brian Sharrock, and Brown variously testified they inspected the properties and either saw or smelled oil. The DEP's witnesses, DEP Administrator of the Spill Fund Claims Program Frank Pinto and Stainken, testified they did not see or smell oil or any other hazardous substances during their inspections of the properties.

the veracity of the witnesses who offered the conflicting testimony, and concluded the conflict could "be attributed to the limitations" of establishing the presence of a hazardous substance by using utilizing such methods. The ALJ accepted Stainken's interpretation of the analytical data over the conflicting testimony about the various witnesses' subjective observations.

The ALJ was also not persuaded by the reports indicating the presence of oil during the storm in close proximity to claimant's properties. The evidence included DEP reports, police reports, and claims stating oil had been observed, smelled or otherwise detected on nearby properties, including properties across the street from claimant's properties. The ALJ determined the reports did not demonstrate a discharge of oil on claimant's properties because the analytical data did not show oil on claimant's properties.

The ALJ also considered the evidence concerning the scenarios presented by the parties' expert witnesses. The ALJ determined the analytical data undermined Brown's opinion that the floodwaters transported oil from an unknown location to claimant's properties. The ALJ found there was "little doubt" floodwaters inundated the area and carried substances onto claimant's properties. However, the ALJ determined that based on the analytical data, the substances consisted of DAP which had

otherwise accumulated in the nearby waters and was stirred up and transported to claimant's properties.

The ALJ determined that "[u]nder the circumstances, the most reliable evidence indicates that there was no oil on" claimant's properties, and concluded claimant "failed to prove by a preponderance of the evidence that the damage to its property was caused by a post-[Spill] Act discharge of hazardous substances." The ALJ found "claimant has failed to establish the validity of its claim," and denied claimant's request for Spill Fund compensation. This appeal followed.

Claimant presents the following arguments for our consideration:

POINT I

THE ALJ'S FINDING WAS ARBITRARY, CAPRICIOUS
AND NOT SUPPORTED BY SUFFICIENT CREDIBLE
EVIDENCE IN THE RECORD[.]

A. The ALJ'S Finding that "DAP" (as
Opposed to Oil) was Transported on
Floodwaters Was Based on a Complete
Misperception of the Facts Submitted in
the Record[.]

1. The ALJ correctly found that the
Hurricane Sandy flood waters had
deposited hazardous substances on
the Properties — and that the
presence of hazardous substances
was not the result of historic
fill[.]

2. The ALJ's finding that only pre-Spill Act "DAP" was transported on the flood waters was arbitrary and capricious[.]

3. The ALJ's discrediting of DEP and other records of the oil spill is clearly mistaken and based on a fundamental misunderstanding of the DEP's theory[.]

B. The ALJ's Findings are not Supported by Substantial Evidence and Reflect a Manifest Error in the Decision-making Process[.]

C. The DEP's Complete Denial of the Claim is Inconsistent with the Articulated Purpose of the Spill Act[.]

POINT II

TWO CRITICAL EVIDENTIARY ERRORS ARE EACH INDEPENDENT REASONS TO VACATE THE DECISION AND TAKEN TOGETHER AMOUNT TO A CLEAR ABUSE OF DISCRETION[.]

A. The ALJ's Admission of the DEP's Expert Report and "DAP" Theory Was Improper[.]

B. The ALJ's Subsequent Exclusion of the Results of Additional Testing that Rebutted Dr. Stainken's Late-Breaking Theory was an Abuse of Discretion[.]

C. Taken Together, These Rulings Constitute Harmful Error Warranting Reversal and Remand[.]

POINT III

THE DEP'S ALTERNATE THEORIES ON WHICH TO BASE A DENIAL ARE UNAVAILING AND/OR WERE REJECTED BY THE ALJ[.]

A. US Masters Had No Duty to Mitigate Damages in the Manner the DEP Asserts[.]

B. US Masters Did Not Need to Pay for Remediation Prior to Making its Claim[.]

C. The DEP Failed to Present Evidence to Show that Damage from the Storm and Flood Resulted in a Complete Loss[.]

II.

Where a party "contests the amount or validity" of a claim for reimbursement from the Spill Fund, "the dispute is referred to an arbitrator whose decision may be appealed" to this court. Lacey Mun. Utils. Auth. v. N.J. Dep't of Env'tl. Prot., Env'tl. Claims Admin., 369 N.J. Super. 261, 273 (App. Div. 2004); N.J.S.A. 58:10-23.11n; N.J.A.C. 7:1J-9.3. Our review of the decision of an ALJ serving as an arbitrator in accordance with N.J.S.A. 58:10-23.11n(b) and N.J.A.C. 7:1J-8.2 is limited. We will affirm the ALJ's decision "so long as it 'was not arbitrary, capricious or unreasonable; was supported by sufficient credible evidence in the record; and did not violate the legislative policies expressed or fairly implied in the statutory scheme administered by the Spill Act.'" Lacey Mun. Utils. Auth., 369 N.J. Super. at 273 (quoting Handy & Harman v. Borough of Park Ridge, 302 N.J. Super. 558, 563 (App. Div. 1997)).

A central purpose of the Spill Act "is 'to provide liability for damage sustained within this State as a result of any discharge of [petroleum products or other hazardous] substances, by requiring the prompt containment and removal of such pollution and substances.'" Morristown Assocs. v. Grant Oil Co., 220 N.J. 360, 380 (2015) (alternation in original) (quoting N.J.S.A. 58:10-23.11a). The Spill Act allows the DEP to "draw on" the Spill Fund to remove the discharge of a hazardous substance. Atlantic City Mun. Utils. Auth. v. Hunt, 210 N.J. Super. 76, 85 (App. Div. 1986). The Spill Act also "allows other parties to receive compensation for various damages they sustain as a result of the discharge of a hazardous substance." Ibid. The Spill Fund is "strictly liable . . . for all cleanup and removal costs and for all direct and indirect damages" resulting from a discharge of a hazardous substance. N.J.S.A. 58:10-23.11g(a).

N.J.S.A. 58:10-23.11b, defines a "discharge" as

any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State[.]

[N.J.S.A. 58:10-23.11b.]

"New Jersey courts have consistently interpreted the definition of 'discharge' to exclude migration of hazardous substances already present in the soil or in groundwaters." White Oak Funding Inc. v. Winning, 341 N.J. Super. 294, 299 (App. Div. 2001). "[T]he Legislature did not intend either that contamination be considered a discharge or that, if a discharge occurred before the [Spill] Act but the effects continued after, the effects were covered under the Act for all purposes." Atlantic City Mun. Utils. Auth. 210 N.J. Super. at 99-100; see also Twp. of S. Orange Vill. v. Hunt, 210 N.J. Super. 407, 417 (App. Div. 1986) ("The [Spill] Fund is not liable for damages caused by pre-Act discharges."). "'Pre-[Spill] Act discharge' means a discharge of a hazardous substance which occurred before April 1, 1977.'" Handy & Harman, 302 N.J. Super. at 564 (quoting N.J.A.C. 7:1J-1.4). "If it had been the [L]egislature's intent to include within the scope of the statute a continued flowing or issuing out of past discharges, then the statutory definition would so state." State, Dep't of Env'tl. Prot. v. J.T. Baker Co., 234 N.J. Super. 234, 245 (Ch. Div. 1989), aff'd, 246 N.J. Super. 224 (App. Div. 1991).

To obtain compensation under the Spill Act, a claimant has the burden of proving damages caused by a post-Spill Act discharge of a hazardous substance. N.J.A.C. 7:1J-2.3 provides that "[n]o claim shall be eligible for compensation from the [Spill] Fund

unless the claimant shows by a preponderance of the evidence that the claim satisfies all requirements for eligibility" N.J.A.C. 7:1J-1.4; see, e.g., Handy & Harman, 302 N.J. Super. at 568 (affirming an ALJ's dismissal of a Spill Fund claim where claimant failed to prove it suffered damages as the result of a post-Spill Act discharge). The DEP is required to deny a claim "which, on its face, appears to be ineligible for compensation from the [Spill] Fund." N.J.A.C. 7:1J-6.6(a).

Applying these standards, we are satisfied there was substantial credible evidence supporting the ALJ's denial of claimant's Spill Fund claim, and the decision was not arbitrary, capricious or unreasonable. See Lacey Mun. Utils. Auth., 369 N.J. Super. at 273. The ALJ found the DEP's expert's interpretation of the objective analytical data more credible and persuasive. The data and Stainken's testimony which the ALJ found credible, undermined claimant's contention there was oil on the property, and therefore, provided substantial credible evidence supporting the ALJ's determination that claimant failed to sustain its burden of showing there was an oil discharge on the properties during the storm.

We are not persuaded by claimant's argument the ALJ erred because there was no evidence supporting the determination DAP from nearby waterways was transported to claimant's properties

during the storm. The evidentiary record supports the ALJ's finding. Stainken testified about the manner in which DAP has fallen from the sky for more than a hundred years in the area of claimant's properties and nearby waterways, described the manner in which particles fall through the water, and explained that silt from a waterway can be stirred and transported during a storm. Thus, contrary to claimant's assertion, there was a basis in the evidence from which the ALJ could reasonably infer that DAP, which had collected over more than one hundred years, migrated from the nearby waterways to claimant's property in the storm's floodwaters.

Moreover, claimant's contention the ALJ erred in finding the presence of DAP accounted for elevated EPHs in three samples and arsenic and lead in two samples ignores that the DEP did not have the burden of proving the absence of post-Spill Act discharge of oil. Rather, it was claimant's burden to prove a post-Spill Act discharge. See N.J.A.C. 7:1J-2.3. Claimant alleged, and attempted to prove, there was a discharge of oil on its properties during the storm, but the analytical lab test results the ALJ found credible undermined that claim because the testing for PAH and carbon range test results did not show oil on the properties. Thus, even if the ALJ erred by determining the test results were indicative of DAP, claimant failed to sustain its burden of proving

a post-Spill Act discharge during the storm because the credible evidence did not establish a post-Spill Act discharge of oil onto claimant's properties during the storm.

As we held in Handy & Harmon, 302 N.J. Super. at 568, the claimant "was required to prove that it had suffered damages as a result of a post-[Spill] Act discharge." Where a claimant fails to sustain that burden, its claim is not valid and must be denied. Ibid. Where the substantial credible evidence supports an ALJ's determination the claimant failed to sustain the burden, we must affirm. See ibid.; Lacey Mun. Utils. Auth., 369 N.J. Super. at 273.

We also reject claimant's assertion that a reversal is warranted because the ALJ made purported erroneous discovery and evidentiary rulings. More particularly, claimant argues the ALJ erred by rejecting its request that the ALJ bar admission of portions of Stainken's report concerning the presence of DAP. Claimant contends the DEP's notices of intent to deny the claim referred only to historic fill, and Stainken's findings concerning DAP were set forth for the first time in his January 11, 2016 report, which was provided twenty days before the arbitration. Claimant also argues the ALJ erred by excluding a January 29, 2016 letter report from Brown and lab results provided to the DEP on

the second day of arbitration concerning the testing of the walls of buildings.

Generally, the "admission or exclusion of proffered evidence is within the discretion of the trial judge whose ruling is not disturbed unless there is a clear abuse of discretion." Dinter v. Sears, Roebuck & Co., 252 N.J. Super. 84, 92, (App. Div. 1991). In addition, "an appellate court should generally defer to a trial court's resolution of a discovery matter, provided its determination is not so wide of the mark or is not 'based on a mistaken understanding of the applicable law.'" State in Interest of A.B., 219 N.J. 542, 554 (2014) (citations omitted). An abuse of discretion "arises when a decision is made without rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (citation omitted).

Under the Spill Act, an arbitrator has broad discretion concerning the disposition of discovery disputes and the admission of evidence. N.J.A.C. 7:1J-9.7(a) expressly grants an arbitrator "complete discretion regarding discovery[,]" and N.J.A.C. 7:1J-9.11(b) provides, "[t]he [arbitrator] shall be the judge of the relevance and materiality of the evidence offered [and s]trict conformity to the legal rules of evidence shall not be necessary."

Measured against these standards, we discern no basis to reverse the ALJ's admission of Stainken's report or exclusion of Brown's supplemental report and the lab results. Claimant suggests Stainken's report was delivered late and should have been barred for that reason. However, there is no showing delivery of the report violated any discovery rules, orders or deadlines. To the contrary, it appears the report was delayed because there were difficulties making arrangements acceptable to claimant for Stainken to gain access to the properties to perform the necessary inspection.

We are not persuaded by claimant's argument that the portions of the report concerning DAP should have been barred because the DEP previously stated the lab test results indicated the presence of historic fill. Claimant reads the DEP's notices too narrowly. Although the initial and amended denial notices attributed the lab test results to the presence of historic fill, the DEP expressly reserved its right to provide additional reasons for the rejection of the claim as more information became available. In addition, the DEP did not rest its rejection of claimant's application on its preliminary determination there was historic fill on the site. Instead, at all times the DEP stated the claim was rejected because claimant failed to present sufficient evidence to sustain its burden of establishing a discharge of oil on the properties.

In sum, there is no basis in the record to conclude the ALJ's rejection of claimant's request to the portions of Stainken's report concerning DAP constituted an abuse of discretion. We further observe claimant fails to demonstrate any prejudice as a result of the admission of the report or Stainken's testimony concerning DAP. Claimant makes no showing it was unable to prepare to confront Stainken about his findings concerning DAP, and Brown's testimony concerning DAP and claimant's counsel's cross-examination of Stainken concerning DAP shows claimant was fully prepared to address Stainken's opinion concerning DAP.

Claimant also challenges the ALJ's decision barring introduction of Brown's supplemental expert report, which was first delivered late on the Friday immediately prior to commencement of the arbitration on the following Monday morning, and barring introduction of lab results delivered by claimant on the morning of the second day of the arbitration. Brown's report and the lab reports relate to testing conducted subsequent to claimant's receipt of Stainken's report.

The ALJ explained in detail his reasons for barring Brown's report and lab reports. The ALJ determined the two lab reports, a "G.C. Fingerprint Analysis" and an "Analytical Data Report," constituted hearsay and that he, therefore, would have no basis to assess the credibility of the reports' contents. The ALJ also

determined that because the reports were first produced on the second day of arbitration, the DEP and its expert had been deprived of an opportunity to prepare to address the reports. The ALJ found the DEP required a substantial period of time to address the reports, and expressed concern regarding the statutory time limit for completion of the arbitration. See N.J.S.A. 58:10-23.11n(f). The ALJ also found fault with claimant, noting claimant waited more than three years to perform the testing, and did not provide the data until after the arbitration began.

The ALJ's findings are supported by the record and we discern no abuse in the ALJ's decision barring admission of Brown's report or the lab reports concerning the testing. Claimant filed its claim on November 28, 2012, and offered no valid reason for its three-year delay in first testing the walls in January 2016, and providing the lab results from the tests after the arbitration commenced. We are mindful that a case should be decided on the merits based on all of the relevant evidence, but the ALJ's exclusion of the reports was well-reasoned, supported by the record and did not constitute an abuse of discretion. See Flagg, 171 N.J. at 571.

We reject claimant's contention the reports were belatedly provided because the additional testing was first necessitated by Stainken's January 11, 2016 report suggesting the soil sample test

results were indicative of DAP. The argument again ignores it was claimant's burden to establish it sustained damages from a discharge of oil during the storm, and that the DEP reserved its right to supplement its reasons for denying the claim based on its receipt of additional information. The DEP consistently stated claimaint failed to present sufficient evidence establishing an oil discharge, but claimant opted not to test the walls of the buildings until the eve of the arbitration, and did not provide the test results until after the arbitration began.

Moreover, claimant was advised the DEP attributed the elevated EPH results to the presence of historic fill. Therefore, long before Stainken's report first mentioned DAP, claimant had reason to perform the tests necessary to establish there was a discharge of oil on its properties. Claimant argues its late testing was necessitated by Stainken's reference to DAP, but does not explain why it failed to perform the same tests after it was first advised by the DEP that the test results were indicative of historic fill. Thus, Stainken's report referencing DAP did not provide a reason for additional testing that had not existed since the DEP first notified claimant in July 2013, of its intention to deny the claim.

Because we conclude there is no basis to reverse the ALJ's determination claimant failed to establish a post-Spill Act

discharge of hazardous substances on its properties, it is unnecessary to address claimant's contentions concerning its damages from the alleged discharge. In addition, any of claimant's arguments we have not expressly addressed are without merit sufficient to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION