Circuit Court for Washington County
Case No. C-21-CV-20-000454

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1640

September Term, 2022

IN THE MATTER OF CLEARVIEW ACRES, LLC

Nazarian,
Zic,
Maloney, John M.
(Specially Assigned),

JJ.

Opinion by Maloney, J.

Filed: June 18, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises from the Maryland Department of the Environment's ("Department"), appellee, complaint, order, and penalty ("Complaint") against Clearview Acres ("Clearview"), appellant. Clearview challenged the Complaint before the Maryland Office of Administrative Hearings ("OAH"). Following a three-day hearing, the presiding Administrative Law Judge ("ALJ") upheld the Complaint. Clearview filed a petition for judicial review in the Circuit Court for Washington County. Following a full briefing and a hearing, the circuit court issued an opinion and order affirming the ALJ's decision.

Clearview now appeals and presents three questions for our review, which we have rephrased slightly for clarity:[1]

1. Did Clearview have adequate notice of the allegation of illegal sediment discharges to groundwater and did Clearview preserve its challenge regarding the Department's expert witness?
2. Did the ALJ err in finding substantial evidence to support her conclusion that Clearview polluted groundwater?

[1] Clearview phrased the questions as follows:

1. Was [Clearview's] right to due process violated where (a) the Complaint failed to provide adequate notice of the issues the agency intended to pursue at the adjudicatory hearing and (b) the agency (i) failed to timely identify its expert witness, and (ii) completely failed to disclose any information on the subject of the expert's testimony or provide the expert's opinions as required by the procedural regulations and the scheduling order?
2. Did the [Department] err in basing its Final Decision on findings of fact that are not supported by substantial evidence in the Record?
3. Did the [OAH] incorrectly interpret and apply State law in determining that violations occurred which support assessment of a substantial administrative penalty?

3. Did the ALJ apply the proper legal standard in concluding that Clearview discharged sediment pollution to groundwater?

For the following reasons, we answer the first two questions in the negative, the third question in the positive, and affirm.

BACKGROUND

Factual Background

Clearview operates a 128-acre farm ("Farm") with approximately 180 dairy cows. Located in Clear Spring, Maryland, the Farm borders residential properties, and its eastern border is approximately 1,100 feet from Little Conococheague Creek.

In late 2015, after obtaining approval from Washington County to proceed without a stormwater management plan ("SMP"), an erosion and sediment control plan ("ESCP"), or a general permit for construction activity ("Permit"), Clearview began construction of a robotic milking parlor and barn. The construction consisted of site clearing and grading of more than three acres of the Farm. In summer 2016, the Department informed Clearview that Washington County had erroneously allowed Clearview to proceed with construction. Washington County subsequently assisted Clearview in developing a SMP and ESCP.

Between July and October 2016, both the Department and Washington County inspected the Farm's construction site. During this period, the Department found non-stabilized soil caused by the ongoing construction at the Farm and determined that Clearview had made insufficient soil stabilization efforts. In November 2016, the

Department instructed Clearview to stop all construction until obtaining a Permit. Clearview resumed construction in February 2017 without obtaining a Permit.

The same month Clearview resumed construction, the Department investigated whether the construction had damaged the well water of one of the Farm's immediately adjacent, downhill neighbors. The investigation revealed that uncontrolled runoff from Clearview's construction site was the likely cause of damage to the neighbor's well water. The continued construction by Clearview also triggered revisions to the SMP and ESCP, which were approved in July 2017.

The Department granted Clearview a Permit in September 2017. Based on an inspection conducted in November 2017, the Department found that Clearview did not fully implement clean-up and mitigation efforts it was instructed to take as a result of a manure spill discovered during a prior inspection. The November 2017 inspection revealed inadequate stabilized soil disturbance and observable sileage leachate, both of which had also been identified in prior inspections, as well as that Clearview had not implemented controls required in the revised SMP and ESCP.[2]

Procedural Background

On October 28, 2019, the Department brought an administrative complaint against Clearview for (1) failing to obtain a SMP before beginning construction under § 4-105 of

[2] Silage is fermented fodder used to feed livestock. Silage leachate is water that enters silage and washes through it. The leachate is high in nutrients and bacteria that quickly consume oxygen when it enters groundwater. Chuck Ross, Marli Rupe, *Agricultural Sources of Water Pollution: How Our History Informs Current Debate*, 17 VT. J. ENV'T L. 811, 831-832 (2016).

the Environment ("EN") Article of the Maryland Code, (1987, 2013 Repl. Vol., 2019 Supp.) ("Count I"); (2) causing and placing sediment to be washed into waters of the State under EN § 4-413 ("Count II"); and (3) beginning construction without obtaining a discharge permit under EN §§ 9-322 and 9-323 (Repl. Vol. 2014, 2019 Supp.) ("Count III"). The Department sustained the Complaint, ordered Clearview to take remedial action, and assessed a $50,000 penalty to Clearview.

On November 23, 2019, Clearview challenged the Department's determination and, pursuant to § 10-205(c) of the State Government ("SG") Article of the Maryland Code (1984, 2014 Repl. Vol., 2019 Supp.), requested a hearing before an ALJ. The Department referred Clearview's hearing request to the OAH.[3] An ALJ presided over a three-day hearing from August 10-12, 2020, and issued a decision on November 10, 2020. The ALJ determined that Clearview did not violate Count I of the complaint,[4] but did find evidence supporting Counts II and III. The ALJ affirmed the Complaint upon those grounds and assessed a $33,000 penalty to Clearview.

Clearview petitioned for judicial review of the ALJ's decision in the Circuit Court for Washington County. The circuit court affirmed the ALJ's decision, and Clearview timely noted the instant appeal. We supplement with additional facts as necessary.

STANDARD OF REVIEW

[3] The OAH has authority to hold contested case hearings and to order final decisions. SG 10-205(a)(1)(ii), COMAR 26.01.07.02(10).

[4] The Department did not file a cross-appeal challenging that determination.

Maryland appellate courts review administrative appeals by looking "through the circuit court's decision and evaluat[ing] the decision of the agency." *Maryland Dep't of the Env't v. Assateague Coastal Tr.*, 484 Md. 399, 446 (2023) (citing *Maryland Dep't of the Env't v. Cnty. Comm'rs of Carroll Cnty.*, 465 Md. 169, 201 (2019)). In other words, we directly review the agency's final decision by considering the issues raised on appeal.

This Court's review is limited to considering whether an agency's decision prejudices a party because the agency committed legal error, lacked substantial evidence in the record to support the agency's decision, or rendered a decision that is arbitrary and capricious. SG § 10-222(h). Agencies delegate contested cases to OAH**,** which "becomes an extension of the agency" for purposes of appellate review. *Maryland Bd. of Physicians v. Elliott*, 170 Md. App. 369, 381-82 (2006) (cleaned up) (quoting *Bragunier Masonry Contractors, Inc. v. Maryland Comm'r of Lab. & Indus.*, 111 Md. App. 698, 707 (1996)).

We review the OAH's factual findings under the substantial evidence test by "determining if there is substantial evidence in the record as a whole to support the agency's findings." *Motor Vehicle Admin. v. McMillan*, 428 Md. 560, 565 (2012) (internal quotation marks omitted) (quoting *Motor Vehicle Admin. v. Weller*, 390 Md. 115, 141 (2005)). This Court's role is to affirm an agency's decision "if, after reviewing the evidence in a light most favorable to the agency, we find a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Miller v. City of Annapolis Historic Pres. Comm'n*, 200 Md. App. 612, 632 (2011) (quotation omitted). When applying the substantial evidence test, this Court "may not substitute its judgment on the question whether the inference drawn is the right one or whether a different

inference would be better supported. The test is reasonableness, not rightness." *Alviani v. Dixon*, 365 Md. 95, 108 (2001) (quotation omitted). Our review of factual findings is highly deferential. *Cnty. Comm'rs of Carroll Cnty*, 465 Md. at 202.

The OAH's interpretation and application of state law is reviewed with "less deference than with respect to fact findings or discretionary decisions." *Cnty. Comm'rs of Carroll Cnty*, 465 Md. at 203 (citation omitted). The Appellate Court will discern the legislative intent of the statute beginning with the "plain meaning of the text" and the "court will not uphold an agency action that is based on an erroneous legal conclusion", but "in construing a law that the agency has been charged to administer, the reviewing court is to give careful consideration to the agency's interpretation." *Id.* (citation omitted).

DISCUSSION

I. CLEARVIEW HAD ADEQUATE NOTICE AND DID NOT PRESERVE ITS CHALLENGE REGARDING THE EXPERT WITNESS.

A. Adequate Notice

A pleading in Maryland "shall contain only such statements of fact as may be necessary to show the pleader's entitlement to relief or ground of defense." Md. Rule 2-303(b). A pleading will contain the subject matter of the claim, "with such reasonable accuracy as will show what is at issue between the parties, so that, among other things, the defendant may be apprised of the nature of the complaint he is required to answer and defend." *Richard F. Kline, Inc. v. Shook Excavating & Hauling, Inc.*, 165 Md. App. 262, 275 (2005) (quoting *Fletcher v. Havre de Grace Fireworks Co.*, 229 Md. 196, 200 (1962)). Clearview contends that it "was not given adequate notice that groundwater was

an issue in this case or that it was required to defend against groundwater pollution allegations." The Complaint filed by the Department had three counts. Count I involves Clearview's failure to implement a Sediment Control Plan before starting construction. Count II is titled "Discharge of Sediment Pollution Into Waters Of The State[.]" Count III involves Clearview's failure to obtain a discharge permit before starting construction.

Count II is relevant to the adequate notice issue. Clearview's argument is that it was not given adequate notice by the Department because the Department planned to pursue a theory that Clearview was polluting groundwater with sediment from its construction site and the titling of Count II is not specific enough for Clearview to have notice of sediment discharge into groundwater being an issue. Clearview points to the Complaint where the Department used the word "groundwater" a total of two times, once in the definition of "waters of the [S]tate" and the second time when noting that Clearview was told to contact the Department's groundwater division.

As we understand the record, this argument misinterprets what occurred. The definition of "waters of the State" in EN § 9-101(l)(1), includes "[b]oth surface and underground waters[.]" The Complaint states that Clearview's construction occurred on ground sloping towards neighboring properties and that a neighbor complained of his well pumping muddy water. The Complaint also alleges that Clearview was instructed by the Department to contact the Department to assess the impact of its sediment runoff on neighboring wells, and the specific well of the neighbor who complained of muddy water. Therefore, the Complaint contained the subject matter of groundwater pollution

with such reasonable accuracy that Clearview was apprised of the nature of the complaint.

Furthermore, the factual history is relevant. The Department provided a pre-hearing statement seven months before the administrative hearing, which noted the possible impacts of Clearview's sediment discharges to the neighbor's well water. The Department conducted a joint field inspection with the Maryland Geological Survey ("Survey") on February 22, 2017, and provided the investigation report to Clearview on March 7, 2017. The report notified Clearview that groundwater pollution caused by Clearview's sediment discharge was one basis for the enforcement action.

The purpose of the report was to help the Department to advise Clearview as to whether a "relationship between the sediment impacting the neighbors residential well and site conditions and geology on the Clearview [] milk parlor project" existed. During that inspection, a geologist with the Survey observed that "turbidity and sediment in the [neighbor's] well is a result of soil disturbance from construction at Clearview[.]" Moreover, two weeks before the hearing, the Department notified Clearview's counsel by email that the Department's case would include groundwater pollution.

Based on both the Complaint and the facts detailed above, we conclude that Clearview was provided adequate notice that sediment discharge into groundwater was at issue.

B. Clearview Did Not Preserve Any Challenge To The Department's Expert Testimony

Clearview also contends that the Department failed to timely disclose a geologist as an expert witness prior to the hearing. Clearview cites to *Cicala v. Disability Review Board for Prince George's Cnty.*, 288 Md. 254 (1980), in support of this argument. The relevant portion of *Cicala* states:

> A party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceeding, may not raise an objection for the first time in a judicial review proceeding.

Id. at 261-62. Importantly, however, Clearview does not include the entire sentence in its brief, stating instead: "*Cicala* supports the proposition that a party to an administrative adjudication can raise its objections to any type of error 'in any way, at any time during the course of the administrative proceeding.'" *Id*. at 261-62.

In *Cicala*, the issue raised by the appellant had never been raised before, or decided by, the administrative agency. 288 Md. at 263. The Supreme Court of Maryland held that "[b]ecause the issue of the alleged error was not raised during the administrative proceeding, it was not properly raised in the judicial review proceeding, and therefore [was] not properly before [the Court]." *Id.* Similarly, here, the issue raised by Clearview was never raised before, or decided by, the administrative agency. The rational for the preservation requirement "is to give the administrative agency the opportunity to decide the issue first; when an appellate court is the first to decide an issue, it deprives the agency of that opportunity." *Meadowridge Indus. Ctr. Ltd. P'ship v. Howard Cnty*., 109 Md. App. 410, 421 (1996); *see Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 518-19 (1978) (noting that "[a] reviewing court usurps the agency's function when it sets

aside the administrative determination upon a ground not theretofore presented and deprives the [agency] of an opportunity to consider the matter, make its ruling, and state the reasons for its action") (internal quotation marks and citation omitted). Clearview does not provide any legal authority for its assertion that by making an objection on one ground, another ground not objected to is properly preserved on appeal.

Clearview never objected to the Department's use of a geologist as an expert witness during the hearing. Clearview did not object prior to the hearing or at the commencement of the hearing during the introduction of all the Department's witnesses. Clearview did not object to the geologist testifying during or after the Department's opening statement. When the Department called the geologist to testify, Clearview only objected to the expert's professional qualifications, not on the grounds of undue surprise. Clearview never raised this issue to the ALJ.

Additionally, when Clearview presented its own case, it never referred to the use of the geologist as an expert witness by the Department. Although we understand that the Department should have complied with the pre-hearing order,[5] which required Clearview and the Department to notify the other side of any additional witnesses they planned to call no later than five days prior to the hearing, this issue is not before us because it was

[5] In administrative proceedings, an ALJ "may hold a prehearing conference to resolve matters preliminary to the hearing." COMAR 28.02.01.17(A). After a prehearing conference has been held, "a prehearing order shall be issued by the ALJ [and] . . . shall set forth the actions taken or to be taken regarding any matter addressed at the prehearing conference." *Id.* at 28.02.01.17(e)(1)-(2).

never raised before the ALJ. Therefore, this issue is not properly before us because Clearview did not preserve it for appellate review.

II. THE ALJ DID NOT ERR IN FINDING SUBSTANTIAL EVIDENCE TO SUPPORT ITS CONCLUSION THAT CLEARVIEW POLLUTED GROUNDWATER.

Next, Clearview argues that (1) the record lacks the substantial evidence necessary to support the ALJ's factual findings that Clearview discharged sediment into waters of the State and even if there is substantial evidence; and (2) sediment runoff from Clearview's construction site to the neighbor's yard did not constitute a discharge to groundwater.

A. Substantial Evidence

We first consider whether there is substantial evidence to support the ALJ's factual finding that Clearview's "failure to adequately stabilize the disturbed soil at the Site resulted in the placement of sediment into waters of the State."

The term "waters of the State" is defined as:

> (1) Both surface and **underground waters** within the boundaries of this State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within this State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and
>
> (2) The flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency.

EN § 9-101(l) (emphasis added).

The term "ground water" means "underground water in a zone of saturation." COMAR 26.04.02.01(B)(21). The term "underground water" means "a supply of water

that may be developed by any type of well or spring from beneath the surface of the ground whether the water flows from the well or spring by natural force or is withdrawn by pumping, other mechanical device, or artificial process." EN § 9-1301(e).

The ALJ determined that the phrase "waters of the State" includes groundwater of neighboring properties. The ALJ determined that Clearview placed sediment into waters of the State through four factual findings: (1) Clearview's construction created non-stabilized soil; (2) the Department received a complaint from a neighbor that his well water contained sediment; (3) the Department inspected the site with a geologist and concluded that the sediment in the well matched the disturbed soil from Clearview's construction; and (4) after heavy rain, the sediment-laden rainwater from Clearview's construction site ran off into neighboring properties, including the well water. The "waters of the State" in this case that the ALJ refers to is the neighbor's well water, which became polluted by runoff from Clearview's construction site after heavy rain that carried non-stabilized sediment from its construction site into the well. The ALJ specifically stated:

> There is ample evidence demonstrating that during and after periods of heavy rainfall, there was significant, sediment-filled runoff to at least one of [Clearview's] neighboring properties. . . . The runoff water is the same color as the disturbed earth at the Site and it ran onto the [] [neighboring] property to the point that it was still visibly standing in the yard a day or two after the rain event.

A well is defined, in relevant part, as a "hole made in the ground: (1) To explore for groundwater; (2) To obtain or monitor groundwater[.]" EN § 9-1301(f). Thus, well

water is groundwater which constitutes "waters of the State." We agree with the ALJ's legal determination that "waters of the State" includes a neighbor's well water.

"The hearing judge is in the best position to . . . pick and choose which evidence to rely upon." *Att'y Grievance Comm'n v. Monfried*, 368 Md. 373, 390 (2002). The ALJ may make factual findings and draw inferences, and those findings were supported by substantial evidence. It is not the role of this court to determine whether we would have drawn a different inference. As we previously stated the "test is reasonableness, not rightness." *Alviani*, 365 Md. at 108 (quotation omitted).

Based on the four factual findings that the ALJ made along with the evidence that the ALJ used in supporting her findings, the record contains substantial evidence to support the ALJ's factual findings that Clearview discharged sediment into waters of the State.

B. Discharge To Groundwater Finding

Clearview further argues that sediment runoff from Clearview's construction site to the neighbor's yard does not constitute a discharge to groundwater. Clearview specifically contends that the ALJ's finding that water ran *onto* the neighboring property's "land surface" does not substantiate its determination that there was a discharge "*into* surface waters." According to Clearview, standing rainwater that is puddled on the surface of a neighboring yard cannot be groundwater for purposes of "waters of the State" and therefore, even if that water and sediment came from its construction site, this fact would not support the discharge finding made by the ALJ.

We disagree. The ALJ does not singularly focus on the rainwater puddling in the neighbor's yard. As stated above, the ALJ found that "there was significant, sediment-filled runoff to at least one of the [Clearview's] neighboring properties." This runoff occurred during and after heavy periods of rainfall, when the water runoff was so acute that it was still standing in the neighboring property for a day or two after the rain ended. Within the findings of fact, the ALJ noted that during February 2017, the Department conducted an investigation following a neighbor's complaint and, during the inspection, determined that it was likely that the soil disturbance due to construction at Clearview's site caused the sediment to be placed into the neighboring property's well water.

In May 2018—more than a year after the Department initially investigated runoff from Clearview to the neighboring property—the owner of a neighboring property also provided photographs and videos showing that during a heavy rainfall on May 26, 2018, water had runoff from Clearview into his yard, along his driveaway and across the neighboring road as well. In August 2018, after another heavy rainfall, the same incident occurred where the same neighboring property experienced immense runoff from Clearview's construction site. This problem repeatedly arose and impacted the neighboring property and its well water, which was determined in the factual findings made by the ALJ. Clearview's insistence on focusing on a singular sentence, in which the ALJ mentioned puddled rainwater, without considering the pages of factual findings prior, distorts the record and ignores the reality of what occurred.

For these reasons, we agree with the ALJ's determination that sediment runoff from Clearview's construction site to the neighbor's yard and into the neighbor's well water constituted a discharge to groundwater.

III. THE ALJ APPLIED THE PROPER LEGAL STANDARD IN CONCLUDING THAT CLEARVIEW DISCHARGED SEDIMENT POLLUTION TO GROUNDWATER.

Finally, Clearview argues that the ALJ applied the wrong legal standard by using the phrase "more likely than not" when it found that Clearview discharged sediment into a neighbor's well water in violation of EN § 4-413. This contention, again, disregards the whole of what the ALJ stated in her findings:

> Based on the evidence before me, I find the MDE has satisfied [its] burden of persuasion under Count II of the Complaint that [] [Clearview] violated the provisions of Environment Article Section 4-413. As noted above, there is no evidence demonstrating [] [Clearview] obtained the required, approved water quality plan from WCSCD. Even if, for the sake of argument, I were to treat the ESCP and SMP as though they are interchangeable for the required plan under the statute, the evidence demonstrates the [Clearview] began construction at the Site without the required plan in place. [] [Clearview] did not obtain the required plan until on or about October 5, 2016 and, even after obtaining the plan, did not implement soil stabilization measures in a manner consistent with the plan. Peter Resh and Brad Metzger conducted multiple inspections at the Site between June 10, 2016 and September 11, 2019. They frequently noted in their inspection reports that there were areas of the Site with large quantities of non-stabilized, disturbed soil. When stabilization measures were utilized, they were often inadequate in either quantity, size, or distribution throughout the areas of construction. The photographs depict quite clearly the inadequacy of the measures often used by [] [Clearview] relative to the sheer size of the Site.
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> [] [Clearview's] failure to adequately stabilize the disturbed soil at the Site resulted in the placement of sediment into the waters of the State. A significant amount of time at the hearing was spent on whether stormwater runoff from the Site, after periods of heavy rainfall, could, in fact, reach the Creek, which was located almost 2,000 feet from the area of the Barn. I note, however, that the phrase "waters of the State" includes not only bodies of water such as the Creek, but the groundwater of neighboring properties.

> There is ample evidence demonstrating that during and after periods of heavy rainfall, there was significant, sediment-filled runoff to at least one of [] [Clearview's] neighboring properties[.] [] The runoff water is the same color as the disturbed earth at the Site and it ran onto the [] [neighboring] property to the point that it was still visibly standing in the yard a day or two after the rain event. **[Clearview's] failure to adequately stabilize the disturbed soil at the Site after the commencement of construction activity more likely than not introduced sediment into the waters of the State in violation of Environment Article Section 4-413.**

(Emphasis added).

The phrase "more likely than not" refers to the sufficiency of the evidence in the record to support the violation. The relevant legal standard states:

> [I]t is unlawful for any person to add, introduce, leak, spill, or otherwise emit soil or sediment into waters of the State or to place soil or sediment in a condition or location where it is likely to be washed into waters of the State by runoff of precipitation or by any other flowing waters.

EN § 4-413(a). The legal standard requires the Department to produce evidence that Clearview placed sediment into waters of the State or placed sediment in a "location where it is likely to be washed into waters of the State by runoff[.]" *Id.* Contrary to Clearview's argument, the ALJ cited evidence produced by the Department that Clearview placed sediment into waters of the State, and applied the correct legal standard, noting: "ample evidence" of "significant sediment-filled runoff" to the neighboring property; "areas of the site with large quantities of non-stabilized, disturbed soil"; and the "photographs [that] depict quite clearly the inadequacy of the measures often used by the Appellant relative to the sheer size of the Site[.]" The ALJ found that Clearview placed sediment-filled runoff into a neighboring property owner's well water

and used the correct legal standard in determining that the Department produced evidence supporting that Clearview placed sediment into waters of the State.

Even if we were to agree that the ALJ used the phrase "more likely than not" in reference to the legal standard in EN § 4-413, the position Clearview advances still comes up short. The standard of proof normally applicable in civil and administrative proceedings is preponderance of the evidence. *Calvert Cnty. Planning Comm'n v. Howlin Realty Mgmt., Inc.*, 364 Md. 301, 328 (2001) (citations omitted). This standard is reiterated by statute within the Maryland Administrative Procedure Act: "The standard of proof in a contested case shall be the preponderance of evidence unless the standard of clear and convincing evidence is imposed on the agency by regulation, statute, or constitution." SG § 10-217.[6] Preponderance of the evidence means to show that it is "more likely so than not so" when the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (internal quotation marks and citation omitted).

We see no reason why the general standard would not apply in this case even if we agreed with Clearview's incorrect conclusion that the ALJ was referencing more likely than not as the legal standard.

[6] Other instances where the general standard did not apply and required more than preponderance of the evidence impinged directly and significantly on fundamental rights. *See Addington v. Texas*, 441 U.S. 418, 425-27 (1979) (civil commitment of person to mental institution); *Santosky v. Kramer*, 455 U.S. 745, 765-68 (1982) (termination of parental rights); *Woodby v. Immigration Serv.*, 385 U.S. 276, 284-86 (1966) (deportation proceeding).

CONCLUSION

We hold that Clearview had adequate notice and did not preserve its challenge regarding the expert witness; the ALJ did not err in finding substantial evidence to support their conclusion that Clearview polluted groundwater; and the ALJ applied the proper legal standard in concluding that Clearview discharged sediment pollution to groundwater. We, therefore, affirm.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1640s22cn.pdf