

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION**

**RE: RAILSIDE ENVIRONMENTAL SERVICES, LLC. AAD NO. 15-003/WME
 NOTICE OF REVOCATION REGISTRATION NO. 72**

DECISION AND ORDER

This matter came on before Hearing Officer David Kerins on Motion for Summary Judgment filed by Rhode Island Department of Environmental Management (“DEM”, the “Department”, or “OC&I”) and Respondent’s Objection thereto. The Respondent, Railside Environmental Services (“RES” or “Respondent”) filed a Notice of Appeal on March 2, 2015 from a Notice of Revocation dated February 5, 2015. OC&I filed its Motion for Summary Judgment together with supporting Memorandum of Law on April 15, 2015. Respondent filed its Objection to Motion for Summary Judgment with supporting Memorandum of Law on May 5, 2015. Oral Arguments were presented on June 3, 2015. OC&I filed a Supplemental Memorandum on June 11, 2015.

Jurisdiction

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R. I. General Laws §42-17.7-1 et. seq.); the *Administrative Procedures Act* (R. I. General Laws §42-35-1 et. seq.); and the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* (“AAD Rules”) and the *Refuse Disposal Act* (R. I. General Laws §23-18.9-1 et. seq.).

Page 2

Standard of Review

Rule 8.00(a)(1) of the *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters* permits a party to file a motion that would otherwise be permissible under the Rhode Island Rules of Civil Procedure. Under R.I. Civ. P. 56(c), a party may file a motion for Summary Judgment and Summary Judgment shall be rendered forthwith if the pleadings together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Super. Ct. R. Civ. P. 56(c); *Palmisciano v. Burrillville Racing Ass'n*, 603 A.2d 317, 320 (R.I. 1992). Summary judgment is an extreme and drastic remedy, and should be applied cautiously and judiciously and only when there is clearly no genuine issue of material fact. See *McPhillips v. Zarye Corp.*, 582 A.2d 747 (R.I. 1990) and *Golderese v. Suburban Land Co.*, 590 A.2d 395 (R.I. 1991). "The party opposing the motion for summary judgment carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." *Taylor v. Mass. Flora Realty, Inc.*, 840 A.2d 1126, 1129 (R.I. 2004) (quoting *United Lending Corp. v. Providence*, 827 A.2d 626, 631 (R.I. 2003)). A party opposing summary judgment must affirmatively assert facts that raise a genuine issue to be resolved at trial. *Volino v. General Dynamics*, 539 A.2d 531, 533 (R.I. 1988). When the non-moving party fails to carry its affirmative burden to set forth specific facts to demonstrate there is a genuine material issue of fact to be resolved at trial, Summary Judgment is properly entered. *Grande v. Almac's, Inc.*, 623 A.2d 971, 972 (R.I. 1993).

Page 3

Statement of Facts

The facts in this matter are not in dispute. DEM and the Respondent agreed that the following facts are accurate: On October 29, 2013, Railside Environmental Service, LLC (hereinafter "RES" or the "Respondent") was issued a registration by the Department which permitted them to process fifty (50) tons per day or less of construction and demolition debris at One Dexter Road in East Providence, RI (the "Registration"). *See Registration dated October 29, 2013* (attached hereto as DEM Exhibit A – Full). Under the Refuse Disposal Act as it was written at that time, there was a distinction between a "license" and a "registration" for construction and demolition debris processing facilities. Facilities which processed more than fifty tons per day were required to apply for and obtain a license from the department, a relatively expensive, lengthy, and rigorous review process, while facilities which accepted and processed fifty tons per day or less were exempt from the licensing law and instead were required by regulation to register their operations with the Department.

In July of 2014, the Refuse Disposal Act was amended to require that all facilities that receive and process construction and demolition debris ("C&D") obtain a license from the Department, regardless of the volume of C&D received or processed. *See Public Laws 2014, Ch. 387* (attached hereto as DEM Exhibit B – Full). The amendments specifically state that "no person shall operate any solid waste management facility or construction and demolition debris processing facility...unless a license is obtained from the Director except as authorized by 23-18.9-8." R.I.G.L. §23-18.9-8(a)(1). The statute goes on to require that "no [C&D] processing facility shall be issued a license or be able to operate unless it has...received a letter of compliance from the host municipality that all applicable zoning requirements and local

Page 4

ordinances of the host municipality have been complied with.” R.I.G.L. §23-18.9-8(c). The amendments also changed the definition of a “Construction and Demolition Debris Processing Facility to remove the 50 ton per day distinction.

In response to the amendments to the Refuse Disposal Act, the Department sent RES a letter on September 3, 2014, requiring the facility to submit a license application within ninety (90) days. *See Letter dated September 3, 2014* (attached hereto as DEM Exhibit C – Full). RES submitted a license application on December 8, 2014 which was deemed incomplete and returned to the Respondent because it lacked the statutorily required letter of compliance from the host municipality. No further applications have been submitted by the Respondent, and none are currently pending before the Department.

The Department issued the Notice of Revocation of Registration (the “Revocation”) on February 5, 2015 based on the statutory requirements that all C & D processing facilities, regardless of volume, must be licensed by the Department and must have received a letter of compliance from the host municipality in which the facility is located. *See Revocation* (attached hereto as DEM Exhibit D – Full). The Respondent’s facility has neither a license from the Department nor a letter of compliance from the City of East Providence, and therefore is currently operating an illegal solid waste management facility.

The Respondent has requested that the Hearing Officer consider additional facts in his consideration which DEM argue are not relevant. These include the fact that the Rhode Island Supreme Court is currently deciding the fate of an ongoing zoning dispute between the Town of East Providence, Rhode Island and the Respondent which dates back to the 1990’s. In 1998 the Zoning Board of the Town of East Providence issued a decision allowing certain activities at the subject premises. The Town subsequently appealed to the Superior Court and Judge Taft-Carter

**RE: RAILSIDE ENVIRONMENTAL SERVICES, LLC.
NOTICE OF REVOCATION REGISTRATION NO. 72**

AAD NO. 15-003/WME

Page 5

issued a decision upholding the Zoning Board's decision. The Taft-Carter Superior Court decision is the matter currently under review by the Rhode Island Supreme Court.

Analysis

The Respondent argues that the facts relating to the decision of the Town Zoning Board and subsequently the Superior Court represent a genuine issue of material fact which is in dispute and therefore the granting of a Motion for Summary Judgement is not permitted. The Department argues, on the other hand, that the zoning issues do not have a place in this appeal and therefore do not represent a genuine issue of material fact. Black's Legal Dictionary (10th ed. 2014) 17c) defines a "Material Issue of Fact" as "an issue that must be decided in order to resolve a controversy. The existence of a material issue of disputed fact precludes a Summary Judgement."

The controversy which is the subject of this appeal is whether or not the Department acted properly and within the law when it revoked the Respondent's registration. The revocation of the Respondent's Registration was a result of the enactment of legislation known as the Refuse Disposal Act. Prior to the passage of the Act there was a distinction in the law between C & D facilities which handled less than 50 tons of material per day and those facilities that handled more than 50 tons of material per day. The smaller facilities had the right to operate under a "registration" and those larger facilities were required to have a "license". Upon the passage of Public Law 355 in 2014 (R. I. General Law §23-18.9-1 et. seq.) this distinction was eliminated. Under the Refuse Disposal Act, all facilities, regardless of the

**RE: RAILSIDE ENVIRONMENTAL SERVICES, LLC.
NOTICE OF REVOCATION REGISTRATION NO. 72**

AAD NO. 15-003/WME

Page 6

amount of their daily activity, are required to have a “license” and operation under the authority of a “registration” was no longer allowed. The Act took effect upon passage on July 2, 2014.

The Department, as a result of the Refuse Disposal Act was without authority to issue a renewal or extension of RES’s Registration certificate. The Department advised RES of the necessity to obtain a license by letter dated September 3, 2014 (DEM Exhibit C - Full). It is a fact that RES has not obtained a license to operate a C & D facility. The Department issued a Notice of Revocation of Registration on February 5, 2015 (DEM Exhibit D - Full).

Counsel for RES argues that the fact that the subject premises has been engaged in a long zoning dispute is “a substantial fact and in all respects prevents this hearing division from exercising its authority”.

I have considered all legal arguments in a light most favorable to the non-moving party, RES. Is the ongoing zoning dispute, initiated more than 15 years ago, a “genuine issue of material fact” which precludes the entry of Summary Judgement? Are the facts of the zoning dispute such that must be decided in order to resolve the pending Appeal? Are the zoning issues relevant to whether DEM acted properly in the revocation of RES’s Registration? After careful consideration of all the facts presented, in a light most favorable to the non-moving party, I must conclude that the answer to the above questions is No.

**RE: RAILSIDE ENVIRONMENTAL SERVICES, LLC.
NOTICE OF REVOCATION REGISTRATION NO. 72**

AAD NO. 15-003/WME

Page 7

CONCLUSION

The issue of the revocation of RES's Registration is simple. The enactment of the Refuse Disposal Act eliminated the option of registration to RES as well as all other former Registration holders. The effect of the legislation is to restrict DEM's authority to issue only licenses for C & D operators and not registrations. There is no room in this analysis for consideration of the individual zoning status of former registration holders. Registration is no longer allowed for parties wishing to operate a C & D facility and DEM is entitled to the entry of a Summary Judgment as a matter of Law.

FINDINGS OF FACT

1. The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. General Laws §43-17.7-1 et. seq.); the *Administrative Procedures Act* (R.I. General Laws §42-35-1 et. seq.); the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* (AAD Rules); and R.I. General Laws §4-19-1 et. seq.
2. On October 29, 2013, Railside Environmental Service, LLC (hereinafter “RES” or the “Respondent”) was issued a registration by the Department which permitted them to process fifty (50) tons per day or less of construction and demolition debris at One Dexter Road in East Providence, RI (the “Registration”). *See Registration dated October 29, 2013* (attached hereto as DEM Exhibit A – Full).
3. Under the Refuse Disposal Act as it was written at that time, there was a distinction between a “license” and a “registration” for construction and demolition debris processing facilities.
4. Facilities which processed more than fifty tons per day were required to apply for and obtain a license from the department, a relatively expensive, lengthy, and rigorous review process.
5. Facilities which accepted and processed fifty tons per day or less were exempt from the licensing law and instead were required by regulation to register their operations with the Department.

Page 9

6. On July 2, 2014, the Refuse Disposal Act was amended to require that all facilities that receive and process construction and demolition debris (“C&D”) obtain a license from the Department, regardless of the volume of C&D received or processed. *See Public Laws 2014, Ch. 387* (attached hereto as DEM Exhibit B – Full).
7. The amendments specifically state that “no person shall operate any solid waste management facility or construction and demolition debris processing facility...unless a license is obtained from the Director except as authorized by 23-18.9-8.” R.I.G.L. §23-18.9-8(a)(1).
8. The statute goes on to require that “no [C&D] processing facility shall be issued a license or be able to operate unless it has...received a letter of compliance from the host municipality that all applicable zoning requirements and local ordinances of the host municipality have been complied with.” R.I.G.L. §23-18.9-8(c).
9. The amendments also changed the definition of a “Construction and Demolition Debris Processing Facility” to remove the 50 ton per day distinction.
10. In response to the amendments to the Refuse Disposal Act, the Department sent RES a letter on September 3, 2014, requiring the facility to submit a license application within ninety (90) days. *See Letter dated September 3, 2014* (attached hereto as DEM Exhibit C – Full).
11. RES submitted a license application on December 8, 2014 which was deemed incomplete and returned to the Respondent because it lacked the statutorily required letter of compliance from the host municipality.
12. No further applications have been submitted by the Respondent, and none are currently pending before the Department.

Page 10

13. The Department issued the Notice of Revocation of Registration (the "Revocation") on February 5, 2015 based on the statutory requirements that all C&D processing facilities, regardless of volume, must be licensed by the Department and must have received a letter of compliance from the host municipality in which the facility is located. *See Revocation* (attached hereto as DEM Exhibit D – Full).
14. The Respondent's facility has neither a license from the Department nor a letter of compliance from the City of East Providence, and therefore is currently operating an illegal solid waste management facility.
15. The Respondent has requested that the Hearing Officer consider additional facts in his consideration which DEM argue are not relevant. These include the fact that the Rhode Island Supreme Court is currently deciding the fate of an ongoing zoning dispute between the Town of East Providence, Rhode Island and the Respondent which dates back to the 1990's.
16. In 1998 the Zoning Board of the Town of East Providence issued a decision allowing certain activities at the subject premises.
17. The Town subsequently appealed to the Superior Court and Judge Taft-Carter issued a decision upholding the Zoning Board's decision.
18. The Taft-Carter Superior Court decision is the matter currently under review with the Rhode Island Supreme Court.

CONCLUSIONS OF LAW

After due consideration of the documentary evidence and based upon the Findings of Fact as set forth herein, I conclude the following as a matter of law:

1. The AAD has personal and subject matter jurisdiction over the Respondent and this matter pursuant to the statutes governing the Administrative Adjudication Division for Environmental Matters (R. I. General Laws §42-17.7-1 et. seq.); the *Administrative Procedures Act* (R. I. General Laws §42-35-1 et. seq.); and the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* ("AAD Rules") and the *Refuse Disposal Act* (R. I. General Laws §23-18.9-1 et. seq.);
2. Prior to July 2, 2014 the Respondent was the lawful holder of a registration to process C & D material in an amount of less than 50 tons per day;
3. On July 2, 2014 the Rhode Island State Legislature enacted the *Refuse Disposal Act* (R. I. General Laws §23-18.9-1 et. seq.);
4. The Refuse Disposal Act eliminated the ability of the Respondent to operate under a registration and a license is now required;
5. DEM, pursuant to the dictates of the Refuse Disposal Act, revoked Respondent's Registration on February 5, 2015;
6. Respondent filed a timely appeal on March 2, 2015;
7. DEM has the burden of proof that there is no material issue of fact in dispute and that it is entitled to a judgement as a matter of Law;
8. The zoning issues raised by the Respondent do not constitute a material issue of fact in this appeal;
9. DEM has met its burden of proof and is entitled to a judgement as a matter of Law.

RE: RAILSIDE ENVIRONMENTAL SERVICES, LLC.
NOTICE OF REVOCATION REGISTRATION NO. 72

AAD NO. 15-003/WME

Page 12

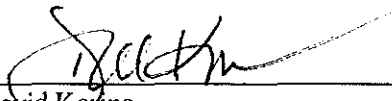
Based on the foregoing Findings of Facts and Conclusions of Law it is hereby

ORDERED

Wherefore it is hereby **ORDERED** that:

1. The Applicant's Appeal dated March 2, 2015 is hereby **DENIED** and **DISMISSED**.
2. The Division's letter dated February 5, 2015 revoking Respondent's Registration is **SUSTAINED** and **UPHELD**.


Entered as an Administrative Order this 9th day of July, 2015.



David Kerins
Chief Hearing Officer
Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02908
(401) 574-8600

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail to: James P. Howe, Esquire, Tower Hill Center, 4879 Tower Hill Road, Wakefield, RI 02879; and via interoffice mail to Susan Forcier, Esquire, DEM Office of Legal Services and David Chopy, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this 9th day of July, 2015.



Barack L. Stewart

**RE: RAILSIDE ENVIRONMENTAL SERVICES, LLC.
NOTICE OF REVOCATION REGISTRATION NO. 72**

AAD NO. 15-003/WME

Page 13

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI General Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

EXHIBIT A



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

CERTIFIED MAIL

October 29, 2013

Mr. Kenneth J. Foley
Railside Environmental Services, LLC
One Dexter Road
East Providence, R.I. 02914

Re: Registration for Railside Environmental Services, LLC

Dear Mr. Foley:

The Office of Waste Management (OWM) has completed its review of the information submitted in support of your application for a Registration to Process Fifty (50) tons per day or Less of Construction and Demolition Debris.

As a result of our review, we have determined that the revised application materials submitted substantially comply with the requirements of the Solid Waste Regulations. Therefore, the Department hereby approves and issues a Registration to Railside Environmental Services, LLC (RES) to Process Fifty (50) tons per day or Less of Construction and Demolition Debris. The Department is imposing the attached conditions as part of the Registration.

The Department is currently holding the thirty-seven thousand dollar (\$37,000.00) bank cashiers check submitted by RES to satisfy the financial assurance requirements. It is our understanding that RES will be securing a bond in the same amount as a permanent financial assurance mechanism. Please submit the bond to the Department by December 2, 2013. The Department will return the bank cashiers check to RES once the bond is received.

Please feel free to call me at 401-222-4700 extension 7143 if you have any questions regarding this letter.

Sincerely,

Laurie Grandchamp, P.E.
Supervising Engineer

cc: Terrence Gray, Assistant Director
Leo Hellested, Chief, OWM
Susan Forcier, Esq., OLS
Orlando Andreoni, Solicitor, East Providence City Hall
Edward Pimentel, Zoning Official, East Providence City Hall
Joseph Klicznik, Fire chief, East Providence

Attachment A

Registration Conditions for Railside Environmental Services, LLC (RES) One Dexter Road, East Providence, RI

1. Rail Side Environmental Services, LLC (RES) shall be operated in accordance with the "Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997 and amended October 25, 2005, in particular, Solid Waste Regulation No.7 for Construction and demolition Debris Processing Facilities, January 1997 and amended April 2001.
2. The RES shall be operated in accordance with the approved October 7, 2013 operating plan, and in accordance with any subsequent amendments to said operating plan approved by the DEM. Any modifications to the Facility's operation, and/or addition of equipment, must be approved by DEM prior to installation or implementation.
3. RES shall not receive more than fifty (50) tons per day of construction and demolition debris (C&D).
4. RES shall not grind more than one hundred fifty (150) tons per day of wood.
5. RES shall maintain a thirty-seven thousand dollar (\$ 37,000) closure bond to satisfy financial requirements per Rules 1.5.10, 7.1.06 and 7.2.08 of the Solid Waste Regulations.
6. It shall be the RES's responsibility to ensure compliance with all applicable zoning requirements and local ordinances of the City of East Providence. The granting of this license shall in no way restrict the City's right or ability to enforce all applicable ordinances and zoning requirements.
7. RES shall maintain a fifty (50) foot buffer zone between the facility operations and the adjacent Omega pond. No storage stockpiles and processing of materials shall occur within this buffer, and no vehicle traffic except for emergency and maintenance vehicles will be permitted. RES shall prohibit C&D materials from encroaching into this buffer zone.
8. In accordance with R.I.G.L. 23-19-13.1(a), no waste generated from outside the State of Rhode Island shall be deposited in the Central Landfill.
9. RES shall only receive C&D classified solid waste in accordance with its approved operating plan. Any co-mingled MSW inadvertently received in a C&D load shall immediately be removed and segregated in a secure roll-off. The roll-off shall be removed within seventy-two (72) hours and shipped to a licensed disposal facility.
10. RES shall comply with all requirements and conditions set forth in its approved fire protection plan dated September 10, 2013.

EXHIBIT B

Chapter 387
2014 -- H 8117 SUBSTITUTE A
Enacted 07/02/14

A N A C T

RELATING TO HEALTH AND SAFETY -- REFUSE DISPOSAL

Introduced By: Representatives Kazarian, Amore, Melo, and Hearn

Date Introduced: May 01, 2014

It is enacted by the General Assembly as follows:

SECTION 1. Sections 23-18.9-7 and 23-18.9-8 of the General Laws in Chapter 23-18.9 entitled "Refuse Disposal" are hereby amended to read as follows:

23-18.9-7. Definitions. -- As used in this chapter, the following terms shall, where the context permits, be construed as follows:

(1) "Beneficial reuse material" means a processed, nonhazardous, solid waste not already defined as recyclable material by this chapter and by regulations of the Rhode Island department of environmental management that the director has determined can be reused in an environmentally beneficial manner without creating potential threats to public health, safety, welfare, or the environment or creating potential nuisance conditions.

(2) "Beneficial use determination" (BUD) means the case-by-case process by which the director evaluates a proposal to use a specific solid waste as a beneficial reuse material for a specific purpose at a specific location within the host municipality.

(3) "Cocktailing" means the adding, combining, or mixing of hazardous waste as defined in section §23-19.1-4 with construction debris and demolition debris.

(4) "Construction and demolition (C&D) debris" means non-hazardous solid waste resulting from the construction, remodeling, repair, and demolition of utilities and structures; and uncontaminated solid waste resulting from land clearing. This waste includes, but is not limited to, wood (including painted, treated, and coated wood, and wood products); land-clearing debris; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; glass; plastics that are not sealed in a manner that conceals other wastes; empty buckets ten (10) gallons or less in size and having no more than one inch of residue remaining on the bottom; electrical wiring and components containing no hazardous liquids; and pipe and metals that are incidental to any of the previously described waste. Solid waste that is not C&D debris (even if resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, and land clearing) includes, but is not limited to, asbestos; waste; garbage; corrugated container board; electrical fixtures containing hazardous liquids, such as fluorescent light ballasts or transformers, fluorescent lights; carpeting; furniture; appliances; tires; drums; containers greater than ten (10) gallons in size; any containers having more than one inch of residue remaining on the bottom; and fuel tanks. Specifically excluded from the definition of construction and demolition debris is solid waste (including what otherwise would be construction and demolition debris) resulting from any processing technique, other than that employed at a department-approved C&D debris processing facility, that renders individual waste components unrecognizable, such as pulverizing or shredding.

(5) "Construction and demolition debris processing facility" means a solid waste management facility that receives and processes construction and demolition debris of more than fifty (50) tons per day. These facilities must demonstrate, through records maintained at the facility and provided to the department, that seventy-five percent (75%) of all material received by the facility is processed and removed from the site within six (6) weeks of receipt on a continuous basis, and that in no case stores material on site for over three (3) months;

provided, however, these facilities do not include municipal compost facilities.

(6) "Construction and demolition debris separation facility" means a facility that receives, separates, and or screens construction and demolition debris into its components for subsequent resale or processing which that includes, but is not limited to, grinding, shredding, crushing, or landfilling at another location separate and apart from the location on which the separation occurs.

(7) "Director" means the director of the department of environmental management or any subordinate or subordinates to whom the director has delegated the powers and duties vested in him or her by this chapter.

(8) "Expansion" means any increase in volume, size, or scope, either vertically, horizontally, or otherwise; provided, however, that this section does not apply to the vertical expansion of the Charlestown Municipal landfill until the closure date of July 1, 2000.

(9) "Person" includes an individual, firm, partnership, association, and private or municipal corporation.

(10) "Recyclable materials" means those materials separated from solid waste for reuse. The director of the department of environmental management through regulations shall specify those materials that are to be included within the definition of recyclables. The materials to be included may change from time to time depending upon new technologies, economic conditions, waste stream characteristics, environmental effects, or other factors.

(11) "Segregated solid waste" means material separated from other solid waste for reuse.

(12) "Solid waste" means garbage, refuse, tree waste as defined by subsection 14 of this section, and other discarded solid materials generated by residential, institutional, commercial, industrial, and agricultural sources, but does not include solids or dissolved material in domestic sewage or sewage sludge or dredge material as defined in chapter 6.1 of title 46, nor does it include hazardous waste as defined in chapter 19.1 of this title, nor does it include used asphalt, concrete, or Portland concrete cement.

(13) "Solid waste management facility" means any plant, structure, equipment, real and personal property, except mobile equipment or incinerators with a capacity of less than one thousand pounds (1,000 lbs.) per hour, operated for the purpose of processing, treating, or disposing of solid waste but not segregated solid waste. Any solid waste management facility that stores waste materials containing gypsum on site over three (3) months must install and maintain an active gas collection system approved by the department of environment management.

(14) (a) "Tree Waste" means all parts of a tree, including stumps, branches, and logs which that shall be considered solid waste for purposes of this chapter unless the tree waste meets the following criteria:

(1) The tree waste remains on the property where it was generated; or

(2) The tree waste remains in the possession of the person who generated it and is stored above the ground surface, on property that the same person controls, for purposes of recycling and reuse; or

(3) The tree waste, whether generated on or off-site, is being actively managed as a usable wood product such as landscape mulch, wood chips, firewood, or mulch.

(b) The application of the criteria set forth in this section shall not be deemed to abrogate, diminish, or impair the enforcement of the requirements established pursuant to chapter 28.1 of this title or the authority of the state and/or a city or town to protect the public health, safety or welfare from a public nuisance resulting from the storage and handling of tree waste.

23-18.9-8. Licenses. -- (a) (1) No person shall operate any solid waste management facility or construction and demolition (C&D) debris processing facility or expand an existing facility unless a license is obtained from the director except as authorized by section §23-18.9-8. The director shall have full power to make all rules and regulations establishing standards to be met for the issuance of the licenses.

(2) The director shall promulgate rules and regulations governing the uses and content of materials accepted and generated by a construction and demolition debris processing facility. Any costs associated with testing these materials by the facility or by the department to verify the results of the facility's tests shall be borne by the facility. Each facility shall be required to establish a fund with the department to cover the cost of these tests.

(b) Any person who desires to construct a solid waste management facility or install any equipment in a solid waste management facility must first submit to the director for approval plans and specifications and other related data required by the director.

~~(c) Processing facilities that accept less than one hundred and fifty (150) tons per day of construction and demolition debris (C&D) are exempt from the requirement of obtaining a solid waste management facility license;~~

~~however, they are not exempt from complying with all other applicable requirements for the construction and operation of a construction and demolition debris processing facility and are subject to the rules and regulations for these facilities promulgated in accordance with this section.~~

~~(d)~~(c) No construction and demolition debris processing facility shall be issued a license or be able to operate unless it has:

(1) Received a letter of compliance from the host municipality that all applicable zoning requirements and local ordinances of the host municipality have been complied with.

(2) Submitted a fire protection plan which that has been approved by the local fire chief, or his or her designee in which the facility is located; and

(3) For the purposes of this subsection, the letter of compliance from the host municipality shall issue from either:

(i) The town or city manager with town or city council approval in a municipality with a managerial form of government; or

(ii) The elected mayor with town or city council approval in a municipal with a non- managerial from of government.

(4) If, after thirty (30) days of receipt of a written request to the city or town by the applicant for a license requesting a letter of compliance, the letter of compliance is not issued because the host municipality finds that the requirements of the applicable zoning requirements or other ordinances have not been met, a letter of non-compliance must be issued setting forth the particular requirements that have not been met. If after a license is issued, the host community finds that all applicable zoning or other applicable ordinances are no longer complied with they are authorized to issue a non-compliance letter.

(5) Upon issuance of a letter of non-compliance, the applicant for a license shall have all rights of appeal under the provisions of chapter 24 of title 45 as to zoning issues and any other rights to appeal that may be applicable as to the determination of non-compliance with other ordinances.

(i) In the case of an application or renewal of an existing license for an increase in the acceptance and processing of the amount of (C&D) debris per day the letter of non-compliance shall stay the issuance of the license allowing said increase until the appeal process provided for herein is final.

(ii) In the case of an application or renewal of an existing license that does not request an increase in the acceptance and/or processing of the amount of (C&D) debris per day where the applicant for renewal has timely filed an appeal as contained herein, the letter of non-compliance shall not be used as grounds for denial of the approval of the renewable license; however, if upon final determination by a zoning board or court of competent jurisdiction upon appeal, it is found that the facility is in non-compliance, said the license shall be revoked by the director.

~~(e)~~(d) The local fire chief, or his or her designee, is authorized to conduct random, unannounced inspections of facilities licensed under this section to ~~insure~~ ensure continued compliance with the approved fire protection plan. If any facility at the time of inspection is found not to be in compliance with the approved plan, that facility shall immediately cease operation until the time that ~~they~~ it corrects any deficiency and the local fire chief or his or her designee finds the facility is in compliance with the approved fire protection plan.

~~(f)~~(e) Any facility that is found to be in violation of the fire protection plan under this section on three (3) separate inspections, within any three-~~(3)~~ year (3) time period, shall have its license to operate under this section revoked.

~~(g)~~(f) A municipality that desires to evaluate available technologies, equipment, or methodologies for managing solid waste, may request approval from the director to perform a limited demonstration pilot project prior to submission of an application for a license. Demonstration projects shall not exceed fifty (50) tons per day maximum capacity. The municipality must first submit to the director, for approval, plans and specifications, including fire protection plans and other related data as required by the director. The municipality shall also give public notice of the request and allow a thirty-~~(30)~~-day (30) period for the director to receive public comment on the proposed project. After the close of the public comment period, the director is authorized to approve or deny the request. Approval for a demonstration pilot project shall be granted for a period not exceeding six (6) months.

~~(h)~~(g) Any facility that is licensed or registered by the department under this chapter as of July 1, 2006, that accepts greater than three (3) cubic yards of tree waste as defined by ~~subsection~~ §23-18.9-7(14) shall be considered an existing tree waste management facility. Existing tree waste management facilities shall notify the department and the local fire chief of the existence and scope of their tree waste management activities in writing

no later than August 30, 2006, and shall incorporate their tree waste management activities in a revised operating plan as part of the next renewal of their license or registration.

~~(h)~~ Any construction and demolition (C&D) debris processing facility under this section that is within a one thousand feet (1000') radius of a residential zone district shall ~~not be~~ conduct all operations covered under the license inside a structure completely enclosed by four solid walls the confines of an enclosed, permanent building allowed to accept and/or process in excess of one hundred fifty (150) tons per day of construction and demolition (C&D) debris where the owner or owners of the greater part of the land within a one thousand foot (1,000') radius of the property boundary lines of the facility files an objection to the granting of a license permitting the acceptance and/or processing in excess of one hundred fifty (150) tons per day of construction and demolition debris.

(i) Granting of a license, license renewal, or permission for an equipment addition under this section shall in no way affect the applicant's responsibility to comply with all zoning and other local ordinances, nor the applicant's responsibility to obtain any local permits, except as specifically provided by Rhode Island General Law. When multiple uses are in place on a site with a licensed solid waste facility, the terms and conditions of the license are only applicable to the activities and operations subject to the license and not the other uses of the property.

SECTION 2. This act shall take effect upon passage.

=====
LC005552/SUB A
=====

EXHIBIT C



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

CERTIFIED MAIL

September 3, 2014

Mr. Ken Foley
Railside Environmental Services, LLC
1 Dexter Road
East Providence, Rhode Island 02914

RE: Newly Enacted Legislation for Construction and Demolition Debris Facilities

Dear Mr. Foley,

As you may be aware, new legislation has recently been enacted concerning the licensing and operation of Solid Waste Management Facilities.

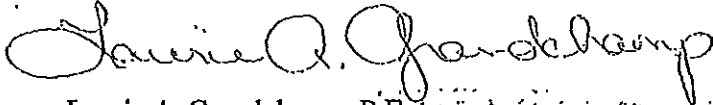
The new legislation (a copy of which is enclosed for your review) amends Sections 23-18.9-7 and 23-18.9-8 of the Rhode Island General laws concerning the licensing and operation of Construction and Demolition (C&D) Debris Processing Facilities. All facilities that receive and process construction and demolition debris are now required to apply for and obtain a solid waste facility license from the Department in order to operate, regardless of volume. The amended law no longer allows for an exemption from the requirement of obtaining a solid waste management facility license based on the volume received by a facility.

In addition, in accordance with Section 23-18.9-8(h), any construction and demolition debris processing facility that is within one thousand feet (1000') radius of a residential zone district is required to conduct all operations covered under the license inside the confines of an enclosed, permanent building.

Please submit a letter to the Department within thirty (30) days of the receipt of this letter notifying the Department as to how your facility intends to comply with the amended law. Furthermore, if your facility is required to submit a license application to the Department in order to continue receiving C&D, the license application shall be submitted within ninety (90) days of the receipt of this letter. While the Department is conducting its review of the application, the applicant may continue to operate until the Department makes a final decision.

Please find enclosed a copy of the new legislation for your review. If you have any questions, please do not hesitate to call me at (401) 222-4700 ext. 7143, or have your attorney call Susan Forcier of the DEM Office of Legal Services at (401) 222-6607, ext. 2305.

Sincerely,



Laurie A. Grandchamp, P.E.
Supervising Engineer
Office of Waste Management

Cc: Leo Hellested, Chief, DEM OWM
✓ Susan Forcier, Esq. DEM Office of Legal Services
Mayor James Briden, City of East Providence

EXHIBIT D



Rhode Island Department of Environmental Management

Office of the Director
235 Promenade Street
Providence, Rhode Island 02908-5767
401.222.6800
Rhode Island Relay 711

CERTIFIED MAIL

February 5, 2015

Railside Environmental Services, LLC
c/o Steven J. Hirsch, Esq., Registered Agent
100 Jefferson Boulevard, Suite 315
Warwick, Rhode Island 02888

**RE: Notice of Revocation of Registration
Registration No. 72**

Dear Mr. Hirsch:

Enclosed please find a Notice of Revocation of Registration relating to the registration number identified above.

As is more fully set forth in the Notice of Revocation of Registration, if you wish to request a formal hearing concerning this Notice, that request must be made in writing and received by the following within thirty (30) days of your receipt of this letter:

Administrative Clerk
DEM – Administrative Adjudication Division (“AAD”)
One Capitol Hill, 2nd Floor
Providence, RI 02903

A copy of the request for an administrative hearing must also be forwarded to:

Joseph LoBianco, Esquire
DEM – Office of Legal Services
235 Promenade Street, 4th Floor
Providence, Rhode Island 02908

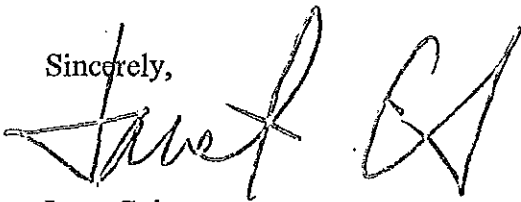
Correspondence other than a request for a hearing on the Notice of Revocation of Registration should be sent to the following:

Laurie Grandchamp, P.E., Supervising Engineer
Department of Environmental Management
Office of Waste Management
235 Promenade Street
Providence, RI 02908

Page 2
Registration No. 72

PLEASE BE ADVISED that correspondence with the Department including requests to arrange an informal meeting to discuss this Notice of Revocation of Registration, will not be deemed a request for a formal hearing and will not protect your right to request a formal hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet Coit", followed by a large, stylized initial "EC".

Janet Coit,
Director

Enclosure

cc: Terrence Gray, DEM Associate Director of Environmental Protection
Joseph LoBianco, DEM-Legal Services
Leo Hellested, DEM Chief of Waste Management

CERTIFIED MAIL

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In Re: Railside Environmental Services, LLC

Registration No. 72

NOTICE OF REVOCATION OF REGISTRATION

A. Introduction

Pursuant to *Sections 23-18.9-1 et seq., 42-17.1-1 et seq., and 42-35-1 et seq. of the Rhode Island General Laws*, as amended, you are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM" or the "Department") has reasonable grounds to believe that the above-named party ("Respondent") has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

1. The property is located at 1 Dexter Road, Assessors' Map 304, Block 1, Lot 1, Unit 10 in the City of East Providence, Rhode Island (the "Property"). The Property includes a facility engaged in the processing of 50 tons per day or less of construction and demolition ("C&D") debris (the "Facility").
2. Railside Environmental Services, LLC ("RES") operates the Facility.
3. On or about October 7, 2013 RES submitted to the DEM an operating plan for the Facility entitled "Railside Environmental Services, LLC Fifty Tons per Day Registration Application" that was dated September 3, 2013 and revised October 7, 2013 ("the Operating Plan").
4. On October 29, 2013 the DEM approved the Operating Plan for RES and issued a registration to RES. RES is "Registered to Process Fifty (50) Tons Per Day or Less of Construction and Demolition Debris" by the DEM (Registration No. 72).
5. In July 2014, newly amended legislation was enacted (RIGL 23-18.9-7 and 23-18.9-8) requiring all facilities that receive and process construction and demolition debris to apply for and obtain a solid waste facility license from the DEM in order to operate, regardless of volume.
6. On August 22, 2014 the DEM issued a Notice of Violation ("NOV") to RES relating to solid waste violations at the facility/property.
7. The DEM sent a letter to RES dated September 3, 2014 notifying the facility of the amended law and requiring RES to submit a license application to the DEM within ninety (90) days of receipt of the letter.

8. RES hand-delivered a seven hundred-fifty (750) tons per day license application to the DEM on December 8, 2014.
9. On January 29, 2015 the DEM returned the license application and fee to RES citing the application was determined to be administratively incomplete and lacked the statutorily mandated letter of compliance from the City of East Providence.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that the Respondent violated the following statutes and/or regulations:

- (1) *RIGL 23-18.9-8(c)* prohibits a construction and demolition debris facility from operating unless it has received a letter of compliance from the host municipality that all applicable zoning requirements and local ordinances of the host municipality have been complied with.
- (2) *Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, SW 7.1.01(d)* relating to the requirements that the Department is authorized to deny, suspend, or revoke a license or registration where it finds there has been a failure to comply with regulations established by the Department, or where the applicant, licensee, or registrant is not in compliance with any approved operating plan or engineering plans adopted pursuant to these Rules and Regulations.
- (3) *RIGL 23-18.9-7* was amended to remove the license exemption for facilities that process less than fifty (50) tons per day of construction and demolition debris. RES was required to submit a license application by December 8, 2014 and was allowed to continue to operate while the DEM was conducting its review of the application. Since the license application was determined to be administratively incomplete and returned to the applicant, RES does not have a complete, valid license application under review with the Department.

D. Order

- (1) Based on the forgoing violations and pursuant to the applicable statutes and regulations, it is hereby ordered that Registration No. 72 issued to Railside Environmental Services, LLC is revoked. The revocation of Registration No. 72 shall be effective after a hearing at which the Respondent is given an opportunity to show compliance with all lawful requirements or, if no hearing is requested, thirty (30) days after this Notice of Revocation of Registration is received by the Respondent.

E. Right to Administrative Hearing

- (1) Pursuant to *R.I. Gen. Laws § 42-17.1-2* and Chapter 42-35, the Respondent is entitled to request a hearing before the Director or his designee regarding the allegations and orders set forth in Paragraphs B through D above. **All requests for hearing MUST:**
 - (a) Be in writing. See *R.I. Gen. Laws §§ 42-17.1-2 and 42-17.7-9;*
 - (b) Be **RECEIVED** by the DEM's, Administrative Adjudication Division within thirty (30) days of your receipt of this NOV. See *R.I. Gen. Laws § 42-17.7-9;*

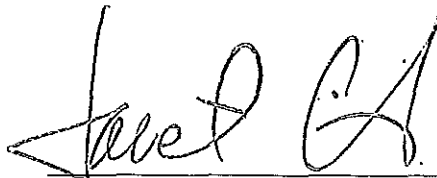
- (c) Indicate whether you deny the alleged violations; **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved; if any. See Rule 7.00(b) of the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

(2) All written requests for hearing must be forwarded to:

Administrative Clerk
DEM – Administrative Adjudication Division (“AAD”)
One Capitol Hill, 2nd Floor
Providence, RI 02903

- (3) Respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) If Respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this Notice of Revocation of Registration shall automatically become a Final Compliance Order enforceable in Superior Court as to that Respondent and/or violation. See R.I. Gen. Laws Sections 42-17.1-2.
- (5) Failure to comply with this Notice of Revocation of Registration may subject each Respondent to additional civil and/or criminal penalties.
- (6) This Notice of Revocation of Registration does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, please contact DEM’s Office of Legal Services at (401) 222-6607. Technical questions should be directed to Laurie Grandchamp of DEM’s Office of Office of Waste Management at (401) 222-4700 extension 7143.



Janet Coit
Director, Department of Environmental Management

Date: 2/6, 2015

CERTIFICATION

I hereby certify that on the 06th day of February 2015, a copy of the within Notice of Revocation of Registration was forwarded by certified mail, return receipt requested, to:

Railside Environmental Services, LLC,
c/o Steven J. Hirsch, Esq., Registered Agent
100 Jefferson Boulevard, Suite 315
Warwick, Rhode Island 02888;

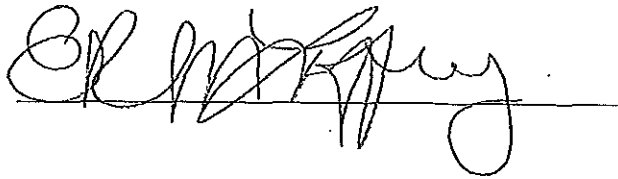
and

Kenlin Properties, LLC,
c/o Steven J. Hirsch, Esq., Registered Agent
100 Jefferson Boulevard, Suite 315
Warwick, Rhode Island 02888;

and

Mr. Ken Foley
Railside Environmental Services, LLC
1 Dexter Road
East Providence, RI 02941

by certified mail.

A handwritten signature in black ink, appearing to read "Ken Foley", is written over a horizontal line. The signature is stylized and cursive.