

Department of Environmental Management  
Administrative Adjudication Division  
State of Rhode Island  
Re: Lincoln & Lorraine Lawrence  
Notice of Violation OC&I/SW 07-002  
AAD No. 07-009/WME  
September 2011

**DECISION AND ORDER**

This matter arose from a Notice of Violation issued on June 14, 2007 to Lincoln and Lorraine Lawrence by the Rhode Island Department of Environmental Management, Office of Compliance and Inspection, (OC&I). The Notice alleged that Lincoln and Lorraine Lawrence violated the provisions of Rhode Island General Laws 23-18.9-5 for the disposal of solid waste, other than at a licensed facility. The Respondent's filed an appeal of the Notice of Violation with the Administrative Adjudication Division.

The Hearing was held on June 13, 2011. The OC&I was represented by Susan Forcier, Esq. The Lawrence's were pro se. OC&I filed a Post-Hearing Memorandum, on July 19, 2011. The Respondents did not file a Post-Hearing Memorandum.

At the hearing, OC&I first presented Mr. Daniel Lawton, an environmental scientist with the Department of Environmental Management. He investigates complaints of disposal of solid waste and inspects places where solid waste had been disposed. (Transcript pg. 7) He visited the Lawrence property on Burchard Avenue in Little Compton more than three times since February, 2007 (Transcript pg. 8). He found all sorts of equipment and machines, such as lawn mowers, lawn tractors, snowmobiles, rototillers and various parts and things. According to Mr. Lawton, most of it was scattered about the property, in the woods, around the house and garage. "Most of it appeared that it was not usable in the condition it was in .... it looked like it had been there for some time. It was weathered, rusted from being exposed to the elements. Many of them looked like they were partially dismantled, had parts missing ... There was vegetation growing up and around it". (Transcript pg. 8, 9 & 10). Mr. Lawton testified that the material he observed met the definition of solid waste which includes garbage, refuse or discarded solid material. He also stated that these items, in his opinion, were discarded. (Transcript pg. 10). Mr. Lawton's report of his first visit was marked and entered as a full exhibit. (OC&I Exhibit 13- Full).

Mr. Lincoln Lawrence briefly cross examined Mr. Lawton. He asked Mr. Lawton if he had any experience with farm equipment. Mr. Lawton indicated that he did. He inspected farms as part of his responsibilities at DEM from 1985-2004. He had been on a number of farms during that time and observed equipment that is used on farms and noticed the condition of the equipment and how it is usually kept on a working farm. (Transcript pg. 13). On redirect examination, Mr. Lawton stated he did not observe any working farm equipment at the Respondents property on his initial visit of February 8, 2007. (Transcript pg. 14).

The next witness presented by OC&I was Ms. Tracey Tyrrell who has been a supervising environmental scientist for OC&I since 2004. She supervises Mr. Lawton and reviews his reports. (Transcript pg. 17) She determines whether enforcement action is necessary in each case she supervises and the corresponding level of action to be taken.

In this case, the Lawrences' were issued a letter of non-compliance on April 19, 2004 (OC&I Exhibit 4-Full) for the solid waste violations observed. (Transcript pg. 18).

After the letter of non-compliance was sent, a second letter dated October 10, 2006 was sent by OC&I to the Lawrences extending them thirty additional days to remove all solid waste from their property. (OC&I Exhibit 10-Full).

The Lawrences did not comply. OC&I then filed a Notice of Violation dated June 14, 2007. (OC&I Exhibit 15-Full). Ms. Tyrrell then testified about the calculation of the penalty assessed

and the factors considered. \*\*\* She stated that one of the main factors in determining the penalty, totaling six thousand two hundred fifty dollars, (\$6, 250.00), was the extent to which the Lawrences took reasonable and appropriate steps to prevent or mitigate the non-compliance. Also considered was the amount of solid waste, their failure to dispose of the solid waste at a licensed facility and the type of solid waste as affects public health, safety and welfare. (Transcript pg. 29).

No cross examination was conducted of Ms. Tyrrell by Mr. or Mrs. Lawrence. The Respondents also failed to present evidence that the Director (DEM) failed to assess the penalty and/or the economic benefit portion of the penalty in accordance with the Solid Waste Management Act (RIGL 23-18.9-5) and the Rules and Regulations stemming from it.

The OC&I then rested its case. The Lawrence's then offered five documents. Three were from Excel Recycling LLC., dated 5/23/11; 5/31/11 and 6/6/11. Two were from A & E Metals Recycling and Packaging dated 5/2/11 and 5/12/1. All of these documents were marked and entered as full exhibits (Respondents Exhibit 1-Full). Mrs. Lawrence argued that these receipts demonstrate that Mr. Lawrence disposed of waste. "When he does a load of waste, as you (OC&I) call it waste, he goes to the junk yard. He dumps the load, they weigh it, and they give him a slip. Those are all loads that he has taken in since he's got his truck fixed to the proper places" (Transcript pg. 34). Lastly, Mr. Lawrence offered a tax bill from the town of Little Compton for 2010. (Respondents Exhibit 3-Full). Mr. Lawrence argued that the items on his property cannot be considered discarded or solid waste as he is being taxed on them by the Town. The tax bill states "personal property", but in someone's handwriting it states "business: farm equipment, lawn mowers, misc tools, etc". No evidence was presented about this notation. Neither he nor Mrs. Lawrence offered any other evidence or witnesses.

Issues to be Decided: 1. Did Respondents violate RIGL 23-18.9-5? 2. Should the Administrative Penalty of six thousand two hundred fifty dollars (\$6, 250.00) be upheld?

## **Discussion**

The Notice of Violation in this matter dates back to June, 2007 but the Respondents property first came to the attention of the office of Compliance and Inspection in 2003. After various inspections, letters of non-compliance, and a Notice of Intent to Enforce in 2006, Respondents still continued to use the property for the disposal of solid waste. Some efforts were made by Respondents to properly remove and dispose of some of the solid waste.

The Respondents argued that they are operating a legal business as the Town of Little Compton imposes a tangible tax on these items as evidenced by the tax bill they submitted. The bill officially states "personal property". The more detailed handwritten note on the bill was not explained or authenticated by Respondents.

## **Law**

The Solid Waste Management Act ("SWMA" or the "Act") is codified in Chapter 23-18.9 of the Rhode Island General Laws. The SWMA specifically prohibits any person from disposing of solid waste at other than a licensed solid waste management facility. RIGL23-18.9. -5 (a). The SWMA defines "solid waste" in RIGL 23-18.9.-7 (12) to mean:

"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. The Act defines the phrase "dispose of solid waste" RIGL23-18.9. -5 (b) as follows:

The phrase “dispose of solid waste”, as prohibited in this section, refers to the depositing, casting, throwing, leaving or abandoning of a quantity greater than three (3) cubic yards of solid waste. Used asphalt, concrete, Portland concrete cement, and solid waste temporarily in a vehicle or proper receptacle at a licensed place of business of a licensed solid waste hauler for a period not to exceed seventy-two (72) hours shall not be considered solid waste for purpose of this chapter. I find that the SWMA is applicable to this case. I also find that OC&I inspections of the Lawrence's property revealed greater than three (3) cubic yards of solid waste disposed of on the Respondents' property. Photos attached to the inspection reports evidence this fact. (See OC&I Exhibit 13) The materials disposed of on Respondents' property, including abandoned lawn tractors, tractor parts and attachments, used tires, sinks, a snowmobile, snowmobile parts, rototillers, a wood stove, lawn tractor wheels and axels, scrap metal, small engines, electronic equipment, scrap generators and alternators, deteriorated motorcycles, trailer frames, carpets, and other mixed solid waste, were in such a condition as to clearly classify them as abandoned. Mr. Daniel Lawton stated that much of the waste was covered or nearly covered in overgrown vegetation, and much of it was unrecognizable or unidentified. (Transcript pgs.8 & 9). Much of the waste that was identifiable was rusted, dismantled and in pieces, with parts missing. Therefore, I further find that the material was clearly in a condition as to be classified as “left” or “abandoned” per the definition of “disposal of solid waste” set out in RIGL 23-18.9-5 (b). I find that despite the Lawrence's efforts to properly dispose of some of the solid waste at a licensed facility, it was “too little, too late” as the preponderance of the evidence demonstrates that more than three cubic yards of solid waste remained on the subject property since 2003. Lastly, the Lawrence's argument that this material cannot be considered solid waste because it is taxed by The Town of Little Compton is not persuasive. These materials were deemed to be “solid waste” per RIGL 23-18.9-7 (12) and improperly disposed of in violation of RIGL 23-18.9 (5) by the OC&I which is responsible for the enforcement of these statutes.

### **Stipulated Facts and Findings of Fact**

1. The subject property is located at 98 Burchard Avenue, otherwise known as Assessor's Plat 27 Lot 10-1, in the Town of Little Compton, Rhode Island (the “Property”).
2. The Property is owned by Lincoln A. and Lorraine Lawrence (the “Respondents”).
3. On October 21 2003, RIDEM inspected the Property in response to a complaint.
4. On November 4, 2003, RIDEM reinspected the Property.
5. On April 19, 2004, RIDEM issued Letter of Non-Compliance OC&I SW 04-022 and FWW C03-0306 (the “LNC”) to Lincoln Lawrence.
6. From May 4, 2004 to the present the Respondents have submitted receipts of disposal of materials from the property to DEM.
7. On May 18, 2006, RIDEM reinspected the Property.
8. On August 30, 2006, RIDEM reinspected the Property.
9. October 10, 2006, RIDEM issued a letter to Respondents informing Respondents of RIDEM's intent to issue a Notice of Violation and Administrative Penalty if all waste was not removed from the Property within Thirty (30) days of receipt of the letter.
10. On November 1, 2006, RIDEM reinspected the Property.
11. On February 8, 2007, RIDEM reinspected the property.
12. Respondents do not have a license or approval from the Director to dispose solid waste on the Property.
13. On June 14, 2007, RIDEM issued an NOV citing the Respondents with violations of RIGL § 23-18.9-5, relating to the disposal of solid waste other than at a licensed solid waste management facility, i.e. on their property in the Town of Little Compton, RI. The NOV ordered Respondents to cease such disposal, and to remove and properly dispose of all solid waste within sixty (60)

days of receipt of the NOV, and assessed an administrative penalty of six thousand two hundred and fifty dollars (\$6,250) against Respondents.

### **CONCLUSIONS OF LAW**

After due consideration of the documentary and testimonial evidence of record and based upon the above findings of fact, I conclude the following as a matter of law:

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Respondents.
2. The Rhode Island Department of Environmental Management has proved, by a preponderance of the evidence, the allegations in the Notice of Violation of June 14, 2007, against Respondents Lincoln and Lorraine Lawrence at the property owned by them at 98 Burchard Ave. Little Compton, Rhode Island.
3. The Respondents violated provisions of RIGL 23-18.9-5 relating to the disposal of solid waste at other than a licensed solid waste management facility.
4. The Rhode Island Department of Environmental Management met its burden of proving, by a preponderance of the evidence, the penalty in the amount of six thousand two hundred and fifty dollars (\$6,250) against the Respondents.
5. The Respondents failed to demonstrate, that the administrative penalty was not properly assessed in accordance with the penalty regulations.

Based on the foregoing, it is hereby:

### **ORDERED**

1. Respondent's appeal of The Notice of Violation dated June 14, 2007 is **DENIED and DISMISSED**.
2. The Notice of Violation issued June 14, 2007 to the Respondents is hereby upheld and the provisions therein sustained.

Entered as an Administrative Order this \_\_\_\_ day of September, 2011.

David M. Spinella  
Hearing Officer