

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

PETER M. WILLEY (RAILSIDE ENVIRONMENTAL SERVICES)
REGISTRATION APPEAL

AAD NO. 13-001/WMA

DECISION AND ORDER

This matter is before Hearing Officer David M. Spinella on the Rhode Island Department of Environmental Management's (RIDEM) Office of Waste Management's ("OWM") Objection to the Appeal of Mr. Peter Willey and Motion to Dismiss and Mr. Peter Willey's Objection thereto.

Mr. Willey filed an Appeal of the issuance of a Registration to process 50 tons per day or less of construction and demolition debris for Railside Environmental Services of 1 Dexter Road, East Providence, R.I. (Registration #72).

The request for Appeal was filed on November 21, 2013 but apparently never served properly on OWM by Mr. Willey. It was eventually received by the OWM after being forwarded as a courtesy by the clerk of the Administrative Adjudication Division weeks after its filing.

Notwithstanding this procedural error by Mr. Willey, the OWM filed its Objection to Request for Appeal and Motion to Dismiss on December 5, 2013. Mr. Willey filed an Objection thereto on December 27, 2013.

I. INTRODUCTION

This matter stems from OWM's approval of Railside Environmental Services, LLC's application for a **registration** to process fifty tons per day or less of construction and demolition debris. The application for a registration was submitted by Railside Environmental Services, LLC on or about September 10, 2013, seeking approval to operate a fifty ton per day or less facility at One Dexter Road in East Providence RI. R.I.G.L. § 23-18.9-7 (5) defines a Construction and

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Demolition and Debris Processing Facility as: "a solid waste management facility that receives and processes construction and demolition debris of more than fifty (50) tons per day". The application was reviewed in the ordinary course of the OWM's business in accordance with the Refuse Disposal Act and the *Rules and Regulations for Composting Facilities and Solid Waste Management Facilities* (hereinafter the "Solid Waste Regulations"). Comments were then returned to the Applicant on October 3, 2013. The Applicant adequately addressed OWM's concerns raised in those comments, and the application for a registration to process fifty tons per day or less of construction and demolition debris was approved with conditions on October 29, 2013 by the OWM.

Mr. Willey, in his appeal, argues that OWM did not follow RIDEM's Solid Waste Regulations in granting an exemption and should have required a license. Therefore, if the RIDEM Solid Waste Regulations had been followed and the RIDEM required a license (which would have included a public comment period), a right to appeal would exist. Mr. Willey notes that this facility is approximately 1500 feet from his home and he is already a party to an existing appeal in this Tribunal involving the former owner of this exact site.

The OWM argues there is no provision in statute or regulation for an appeal of the issuance by the OWM of a **registration** to process 50 tons per day or less of construction and demolition debris. The 50 ton per day threshold represents the distinction between the requirement that an applicant obtain a license and the requirement that an applicant register its operation with the Department.¹ OWM argues that a facility which processes fifty tons per day or less of construction and demolition debris has been deemed by the legislature to pose so minor a threat to the public health, welfare and the environment that all of the statutory and regulatory licensing requirements are waived for such a facility if the facility only provides certain

¹ The Solid Waste Regulations require that "[p]rocessing facilities that accept 50 tons per day or less of construction and demolition debris...are exempt from the requirement of obtaining as solid waste management facility license."

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information to the Department in the form of a registration application and license exemption form.

The OWM states that the applicable statutes and regulations (the Refuse Disposal Act R.I.G.L. Chapter 23-18.9, The Solid Waste Regulations, and the *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters (hereinafter the "AAD Regulations")* provide for administrative appeals of certain decisions by the Department with regard to Solid Waste licenses and registrations, but there is simply no provision for an appeal of the issuance of a registration and therefore no jurisdiction for an appeal such as the one sought by Mr. Willey. The OWM submits that the Administrative Adjudication Division is without jurisdiction to hear this proposed appeal, and should deny the request.

Specifically, The OWM cites R.I.G.L. §23-18.9-9 (a) (6) which provides for appeal by "an applicant and/or any person who provided substantive comment at any time during the public comment period" Thus, the OWM argues that Mr. Willey is excluded from appealing since he is not the Applicant. The only person other than the applicant who may appeal the issuance or denial of a solid waste facility license or registration is someone who provided substantive comment during a public comment period. The registration process does not include a public comment period, so the only person who may appeal the issuance or denial of a registration is the applicant according to the OWM.

The Administrative Adjudication Division's (AAD) Regulations similarly only contemplate the appeal of the issuance or denial of a Solid Waste Management Facility license, and not a registration according to the OWM. AAD Regulations, Rule 19 (b) (1) states:

Appeals of issuance of a license or final denial of a solid waste Management facility license must be filed in writing within thirty (30) days of issuance with the AAD for Environmental Matters.

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Additionally, Rule 19 (b) (2) of the AAD Regulations follows the same language as the Refuse Disposal Act in this regard, and the same interpretation applied above also applies here; because the legislature did not deem it necessary to provide for a public comment period when an operation of only fifty tons per day or less is proposed, the only person who may appeal the issuance or denial of a registration is the applicant. There simply is no right of appeal for any other party where an operation of just fifty tons per day or less is proposed according to the OWM.

I agree with the arguments made by the OWM. The cited Statutes and Regulations do not provide Mr. Willey the right to appeal RIDEM's decision to issue a **registration** to Railside Environmental Services, LLC to process 50 tons per day or less of construction and demolition debris.

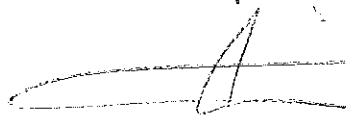
FINDINGS OF FACT

1. Railside Environmental Services, LLC filed an application for registration on or about September 10, 2013 to RIDEM seeking approval to operate a fifty ton per day or less facility at One Dexter Road in East Providence, Rhode Island.
2. The application was reviewed and comments were returned to the Applicant on October 3, 2013.
3. The Applicant addressed the OWM's concerns adequately enough such that the OWM approved, with conditions, the Applicants registration to process fifty tons per day or less of construction and demolition debris on October 29, 2013.
4. Mr. Peter Willey lives approximately 1500 feet from this facility.
5. Mr. Peter Willey filed an appeal of the OWM's Issuance of a Registration to process 50 tons per day or less of Construction and Demolition Debris for Railside Environmental Services, LLC. on November 21, 2013.
6. The RIDEM filed an Objection to Mr. Willey's Request for Appeal and Motion to Dismiss on December 5, 2013.
7. Mr. Peter Willey filed an Objection on December 27, 2013 to RIDEM's Motion to Dismiss.

CONCLUSIONS OF LAW

1. Mr. Willey's Appeal is hereby **DENIED AND DISMISSED.**
2. The Rhode Island Refuse Disposal Act, R.I.G.L. Chapter 23-18.9-9; The RIDEM Solid Waste Regulations and the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters do not provide Mr. Willey the right to appeal the issuance of a **registration** of a facility to process fifty tons per day or less of construction and demolition debris.

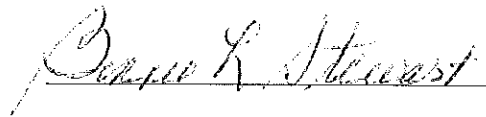
Entered as an Administrative Order this 14th day of February, 2014.



David M. Spinella
Hearing Officer
Department of Environmental Management
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 Final Decision and Order to be forwarded by first class mail, postage paid to be forwarded to Peter M. Willey, 146 King Philip Road, Rumford, RI 02916; Railside Environmental Services, LLC, 1 Dexter Road, East Providence, RI 02916; via interoffice mail to Susan B. Forcier, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 14th day of February, 2014



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.