



without further delay remove all solid waste, including all fines, from the Property.

**B. PARTIES**

2. Plaintiff, Janet L. Coit, is the duly appointed Director of the Rhode Island Department of Environmental Management (the “Department”), whose offices are located at 235 Promenade Street, Providence, Rhode Island.

3. Defendant, Kenlin Properties, LLC (“Kenlin” or “Defendant”) is a limited liability company organized under the laws of the State of Rhode Island, having a principal place of business located at One Dexter Road in the City of East Providence, State of Rhode Island.

**C. JURISDICTION & VENUE**

4. Subject matter jurisdiction in this case is properly conferred in the Court pursuant to R.I. Gen. Laws §§ 8-2-13, and 42-17.1-2.

5. Personal jurisdiction over the Defendant in this case is properly conferred in this Court based on Defendant’s presence within the State of Rhode Island and Defendant’s entry into the Consent Order at issue here.

6. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

**D. FACTS**

7. The Defendant is the owner of the property located at One Dexter Road, East Providence, Rhode Island, on which was located a construction and demolition debris (“C&D”) processing facility (the “Facility”).

8. The Facility that was located at the Property was operated by Railside Environmental Services, LLC (hereinafter “RES”), and was duly registered with the Department to accept not more than fifty tons per day of construction and demolition debris on October 29,

2013. (*See Registration*, attached hereto as Exhibit 1.)

9. Both Defendant Kenlin and RES are limited liability companies owned and operated by the same principal, Mr. Kenneth Foley.

10. In July of 2014, the State of Rhode Island passed amendments to the Refuse Disposal Act under R.I. Gen. Laws § 23-18.9-8. (*See Public Laws 2014, Chapter 387*, attached hereto as Exhibit 2.) Those amendments removed the distinction between C&D facilities which process more or less than fifty tons per day; prior to the amendments, a facility processing greater than 50 tons per day required a license while one processing less required only a registration.

11. Section a(1) of the Amendments states 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)*.

12. Based on these amendments, the Department issued a Notice of Revocation of Registration to RES on February 5, 2015.

13. On January 7, 2016, the Superior Court, Judge Richard A. Licht presiding, upheld the revocation of RES’s Registration. (*See Order and Final Judgment*, attached hereto as Exhibit 3.)

14. While RES was still operating the Facility, on August 22, 2014, the Department issued a Notice of Violation to both Kenlin and RES alleging various operational violations at the Facility operated by RES on the property owned by Kenlin.

15. Only Kenlin requested an administrative hearing on the NOV.

16. As part of settlement negotiations on the NOV, Kenlin entered into a Consent

Order with the Department on November 23, 2015. (*See Consent Order*, attached hereto as Exhibit 4.)

17. The terms of the Consent Order were such that Kenlin was to remove all solid waste, including wood piles, from the Property by December 10, 2015, and was to remove all C&D “fines,” or screenings, from the property by February 1, 2016. (*See Exhibit 4, Paragraphs 2 & 3*)

18. Paragraph 3.a. of the Consent Order provides that the Department may defer the compliance date for the removal of the fines for good cause shown, and upon request submitted at least 15 days prior to the prescribed deadline. (*See Exhibit 4, Paragraph 3.a.*)

19. The Consent Order has the full force and effect of a final compliance order issued after a full hearing on the merits, pursuant to the Administrative Procedures Act, R.I. Gen. Laws §42-35-1 *et seq.*, from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws §42-17.1-2(21)(vi). (*See Exhibit 4, Paragraph 5.*)

20. On February 1, 2016, counsel for the Defendant sent an email to Department counsel requesting an additional sixty days to comply with that day’s deadline. (*See electronic mail dated February 1, 2016*, attached hereto as Exhibit 5.)

21. On February 4, 2016, the Department conducted an inspection of the Property, and found that “the pile [of fines] appeared to be relatively unchanged since the previous inspection [on December 11, 2015], except that some material had been removed from the front edge.” (*See Inspection Report dated 2/4/2016*, attached hereto as Exhibit 6.)

22. As of the date of this filing, the Defendant has failed to comply with the Consent Order in that it has failed to remove all solid waste, including all fines, from the Property in accordance therewith.

**COUNT I**

***Injunctive Relief under R.I. Gen. Laws § 8-2-13***

***(Violation of R.I. Gen. Laws § 42-17.1-2, non-compliance with final compliance order)***

23. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 22 above.

24. Defendant, by failing to remove the fines from the Property by February 1, 2016 in accordance with the Consent Order, is in violation of a final compliance order of the Department.

25. Whereas the Defendant is in violation of a final compliance order of the Department, the Defendant should be ordered to remove all solid waste, including all fines from the Property immediately.

**WHEREFORE**, Plaintiff, Janet L. Coit, in her capacity as Director of the Rhode Island Department of Environmental Management, hereby requests that Judgment be entered in favor of the Plaintiff and that Plaintiff be granted the following relief:

- (a) Preliminary and Permanent Injunctive Relief, ordering Defendant to immediately remove all solid waste, including all fines from the Property, and to complete said removal within fourteen (14) days of entry of an order to that effect;
- (b) Preliminary and Permanent Injunctive Relief, ordering Defendant to immediately cease the acceptance and/or processing of all construction and demolition debris at the Property;
- (c) Preliminary and Permanent Injunctive Relief, ordering Defendant to provide receipts demonstrating proper removal and disposal of all solid waste to the Department within ten (10) days of completion;
- (d) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

**VERIFICATION**

I, David E. Chopy, Chief of the Rhode Island Department of Environmental Management's Office of Compliance and Inspection and an authorized representative of the Director, first being duly sworn upon oath, hereby state that the facts contained in this Complaint and the exhibits attached hereto are, to the best of my knowledge and belief, true and accurate.

For the Director,

By: \_\_\_\_\_  
David E. Chopy, P.E.  
Chief  
RIDEM Office of Compliance & Inspection  
Dated: March 11, 2016

**STATE OF RHODE ISLAND  
PROVIDENCE COUNTY**

Subscribed and sworn to before me this 11<sup>th</sup> day of March, 2016.

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NOTARY PUBLIC  
My commission expires:

Submitted by:  
JANET L. COIT,  
in her capacity as Director,  
RHODE ISLAND DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By her attorney,

Dated: March 11, 2016

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