

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION**

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MEDRECYCLER-RI, INC., :
 :
Appellant :
 :
v. :
 :
RHODE ISLAND DEPARTMENT OF :
ENVIRONMENTAL MANAGEMENT, :
 :
Appellee. :
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**ADMINISTRATIVE APPEAL OF PERMIT DECISION DENIAL
FOR A MEDICAL WASTE TREATMENT FACILITY**

Parties

1. Medrecycler-RI, Inc. (“MRI”), is a Rhode Island for-profit corporation, that has proposed to build a medical waste treatment facility (the “Facility”) at 1600 Division Road in West Warwick, Rhode Island.

2. The State of Rhode Island Department of Environmental Management’s Office of Land Revitalization and Sustainable Materials Management (“RIDEM”) is the permitting authority that issued a denial of MRI’s Application for a Medical Waste Treatment Facility Permit and/or License (the “Permit Denial”)

Jurisdiction

3. The RIDEM Administrative Adjudication Division (“AAD”) has jurisdiction to consider this appeal pursuant to R.I. Gen. Laws § 42-17.7-2; R.I. Gen. Laws § 23-18.9-9; 250 R.I. Code R. 10-00-1.3 and 250 R.I. Code R. 10-00-1.19

Facts

4. In order to lawfully operate the Facility, MRI required two (2) permits from the RIDEM.

5. The first permit, a minor source air permit (“Minor Source Air Permit”) was applied for and was issued to MRI by RIDEM on May 7, 2020.

6. With respect to the other required permit, a medical waste treatment facility permit (the “Medical Waste Treatment Permit”), MRI filed its original application on February 12, 2019.

7. As a result of additional requests for information made by RIDEM, MRI revised its application on November 6, 2020; November 24, 2020; November 30, 2020 and a final revised application (the “Final Application”) on December 2, 2020.

8. As a result of the Final Application, RIDEM, in accordance with Rhode Island General Laws, issued its Notice of Intent to Approve, which is attached hereto as **Exhibit A**.

9. The Notice of Intent to Approve expressly stated “[t]he purpose of this letter is to communicate the Department’s intent to approve the license pursuant to R.I.G.L § 23-18.9-9 and this letter is not the issuance of the facility license at this time. Rather, it is **the result of a final review of your application . . .**”

10. The Notice of Intent to Approve also expressly stated that “[t]his tentative approval is, and the proposed license, if issued, will be subject to the following conditions” The Notice of Intent to Approve then goes on to list fourteen (14) specific conditions to licensure.

11. The Notice of Intent to Approve also expressly stated that “[a] final approval may involve additional or amended conditions on the license, and substantive changes to these proposed conditions may require additional public notice.”

12. After the issuance of the Notice of Intent to Approve, MRI asked RIDEM whether any additional information was required prior to public hearing. RIDEM, by and through its authorized representatives, responded that no further information was required.

13. After the public hearing, which took place on March 15, 2021 (the “Public Hearing”), RIDEM never made any request to MRI of any nature whatsoever for any additional information, documents and/or materials.

14. After the Public Hearing, MRI inquired of RIDEM whether they needed any additional information, documents and/or materials prior to making RIDEM’s Final Determination regarding the issuance of the Medical Waste Treatment Permit and RIDEM responded in the negative.

15. Despite the fact that RIDEM never requested any additional information, documents and/or materials from MRI, MRI provided additional information, documents and/or materials, as well as responses to any and all material public comments, by way of a correspondence to RIDEM, dated April 30, 2021 (the “Post-Hearing Response to Public Comment”), which is attached hereto as **Exhibit B**. The Post-Hearing Response to Public Comment included approximately ninety (90) pages of both narrative and exhibits—the exhibits included a comprehensive analysis of the Medical Waste Pyrolysis Facility Proposed by MRI by University of Rhode Island Professor, Bahram Nassersharif, Ph. D, opining as to the safety of the process and the Proposed Facility.

16. Thereafter, in early July 2021 prior to July 13, 2021, the Rhode Island General Assembly enacted 2021-H 5923 (the “Legislation”), which is attached hereto as **Exhibit C**.

17. Subsequently, on July 13, 2021, RIDEM issued the Permit Denial, which is attached hereto as **Exhibit D**, only days after the Legislation was signed by the Governor.

18. Despite the fact that RIDEM deemed the Final Application Complete; issued its Notice of Intent to Approve; held the requisite Public Hearing and at no time requested any additional information from MRI and had the application under its review for two and a half years, it has taken the position in the Permit Denial that “the application contained insufficient detail.” The specific items that RIDEM claims were insufficient were either provided or were not required, pursuant to Rhode Island General Laws and RIDEM’s regulations.

19. Despite the fact that RIDEM deemed the Final Application Complete; issued its Notice of Intent to Approve; held the requisite Public Hearing and at no time requested any additional information from MRI, it has taken the position in the Permit Denial had other “[i]nconsistencies and [d]eficiencies,” without any specifications as to same, said inconsistencies do not exist and said deficiencies were not required of MRI in its Final Application, pursuant to Rhode Island General Laws and RIDEM’s regulations.

20. In addition, in the Permit Denial, despite no retroactive language and various constitutional infirmities that are beyond the jurisdiction of RIDEM or AAD to determine and they have taken the position that the Legislation applies to its review of MRI’s Final Application. RIDEM has taken this legally untenable position, despite the fact that it deemed the Final Application Complete; issued its Notice of Intent to Approve; held the requisite Public Hearing and at no time requested any additional information from MRI.

21. The purported insufficiencies, inconsistencies and deficiencies are arbitrary and capricious and can only be described as subterfuge and artifice—concocted by RIDEM due to substantial public and political pressure and to avoid the specter of litigation against the State of Rhode Island for monetary damages and injunctive relief. The actual basis and sole basis for the Permit Denial was the enactment by the General Assembly of the Legislation, which again, has

no retroactive language and is unconstitutional for a myriad of reasons that are beyond the jurisdiction of the AAD.

22. To be sure, in the Permit Denial, RIDEM states: “In addition to the above, the Rhode Island General Assembly recently enacted H 5923, which was signed into law by Governor McKee on Friday, July 9, 2021. This new law creates a prohibition against new high-heat medical waste processing facilities only such as this proposed facility (see RIGL 23-19.17-2). The Department took the position that regardless of the deficiencies in the application outlined above, this law would prohibit the Department from issuing or granting a permit or license for this proposed facility.”

23. The Legislation, however, contains no retroactive language and, thus, it is MRI’s contention that the Legislation should not have been considered by RIDEM during their review of the Final Application and that it was an abuse of discretion, arbitrary and capricious and based upon unlawful procedure to consider the Legislation as the law in effect at the time the Final Application was submitted; the law in effect at the time when RIDEM issued its Notice of Intent to Approve the Final Application and the law in effect at the time of the Public hearing was the operative law that should have been applied to RIDEM’s review of the Final Application. In sum, any and consideration of the Legislation by RIDEM, which *purportedly* effectuated a prohibition on MRI’s Proposed Facility, was unlawful and constitutes a violation of due process of law and completely outside the jurisdiction of the DEM

COUNT I

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24. MRI repeats and reasserts any and all allegations as set forth above as if set forth fully herein.

25. Based on the above-described factual allegations, MRI asserts that that RIDEM's Permit Denial was based upon an abuse of discretion, arbitrary and capricious, based upon an unlawful procedure; based upon error of law, clearly erroneous in view of reliable, probative, and substantial evidence and is tantamount to a violation of MRI's due process rights, as well as other constitutional deprivations.

WHEREFORE, MRI respectfully requests that this Honorable Tribunal reverse RIDEM'S Permit Denial and order RIDEM to issue an approval of the subject permit forthwith. Alternatively, MRI respectfully requests that this Honorable Tribunal remand to RIDEM for further review of the Final Application with an express order that the Legislation is not to be considered and that the Final Application must be reviewed under the law in effect at the time that the Final Application was filed.

Dated: August 2, 2021

Respectfully submitted,

MEDRECYCLER-RI, INC.,

By and through their attorneys,

/s/ Michael A. Kelly

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