

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

RE: COASTAL RECYCLING, INC.  
NOTICE OF VIOLATION OC&I/SW 06-001

AAD NO. 07-014/WME

**DECISION AND ORDER**

This is an appeal filed by Coastal Recycling, Inc. ("Coastal" or "Respondent") from a Notice of Violation ("NOV") issued by the Rhode Island Department of Environmental Management ("RIDEM" or "OC&I") on August 31, 2007. The Respondent was represented by Thomas M. Dickenson, Esquire and RIDEM was represented by Joseph J. LoBianco, Esquire. The parties filed Pre-hearing Memoranda as required by Rule. An Administrative Hearing was held on March 7, 13, 14, and 16 of 2012.

The NOV from which Respondent took its appeal alleges the following violations:

- **Solid Waste Regulation 7.7.01 (c) General Information:** relating to Facilities that are registered as a construction and demolition debris processing facility that receive other than construction and demolition debris are not exempt from obtaining a solid waste management facility license.
- **Solid Waste Regulation 1.7.13,** relating to the requirement that a Facility shall be operated in conformity with its approved operating and engineering plans.
- **Coastal Recycling Registration Condition No. 3:** relating to the requirement that the maximum amount of processed or unprocessed construction and demolition debris allowed to be stored is Three Hundred (300) tons.
- **Solid Waste Regulation 7.1.05 Operating Plan:** relating to the correction of drainage issues in the processing area; relating to approved fire control and prevention provisions; and identification of provisions and methods of solid waste and leachate containment.

- **Operating Plan Amendment Approval Letter-March 8, 2002, Condition No. 2**, which requires the as-built plans for the current leachate collection system to be forwarded to RIDEM within thirty (30) days. Modifications to upgrade the existing leachate system should be submitted within 90 days.
- **R.I.G.L. Section 23-18.9-8(e) and Solid Waste Regulation 7.2.06**, relating to the requirement to submit a fire protection plan that has been approved by the local fire chief or his or her designee.
- **Solid Waste Regulation 7.2.05**, relating to the requirement that a buffer zone, or approved equally protective alternative measure(s) must be identified and maintained between all processed and unprocessed construction and demolition debris stockpiles, processing activities and the property line of the facility.

#### **STIPULATED FACTS**

The parties agreed at the Prehearing Conference to the following stipulations of fact:

1. Respondent Coastal Recycling Inc. is registered with the Rhode Island Secretary of State's Corporation Division, ID #115221, as a business for the purpose of recycling construction and demolition debris. Respondent operates a facility located at 431 Allens Avenue, otherwise known as Assessor's Plat 55 lots 427 and 430, in the City of Providence, Rhode Island (the "Facility").
2. Respondent's Facility was registered as a solid waste management facility pursuant to the Rhode Island Rules and Regulations for Solid Waste Management Facilities, and Regulation No. 7, entitled "Facilities that Process Construction and Demolition Debris." Registration was issued to Respondent on March 1, 2001. This Registration entitles the Facility to manage and process construction and demolition debris (C & D) only. The Respondent's registration expired on March 1, 2004. On 19 October 2006, DEM's Office of Waste Management (OWM) issued a denial letter in answer to the Respondent's

renewal application. Final closure of the Facility was ordered within thirty (30) days. Respondent filed an appeal of OWM's denial of registration renewal with DEM's Administrative Adjudication Division ("AAD").

3. On 8 March 2002, the OWM approved a request by the Facility to increase the maximum amount of processed C & D debris allowed to be stored to Three Hundred (300) tons. The increased allowed storage capacity was approved with the condition that it be incorporated into the Facility's existing fire protection and prevention plan and be approved by the Fire Chief of the City of Providence within 30 days.

#### HEARING SUMMARY

RIDEM presented its case at the Administrative Hearing through testimony of three witnesses: Robert P. Schmidt, Jr., Walid Ali, and Tracy Tyrrell. The Respondent presented its case through the testimony of Anthony Davidson.

Mr. Robert P. Schmidt, Jr. testified that he is an employee in the Office of Waste Management ("OWM") of the Rhode Island Department of Environmental Management ("RIDEM"). He is a sanitary engineer and responsible for inspecting licensed solid waste facilities. He said he had a degree in Chemical Engineering and had conducted hundreds of solid waste inspections as a part of his duties with RIDEM. He was acknowledged as an expert in solid waste over Respondent's objection.

Mr. Schmidt testified regarding a Letter of Non Compliance ("LNC") issued to Respondent on July 24, 2003 which later was admitted as Office of Compliance and Inspection ("OC&I") Exhibit 5 Full. The letter advised Respondent that it was not operating its facility in accordance with its approved Operating Plan.

Mr. Schmidt next testified in detail about the ten (10) inspections which he conducted on

the Respondent's property ("Property" or "site") from May 26, 2005 through October 4, 2006. These inspections were evidenced by written Field Inspection Reports ("Reports") which included photographs. The reports were entered into evidence as Full Exhibits as follows:

Report of May 26, 2005	OC&I Exhibit 8 Full
Report of July 1, 2005	OC&I Exhibit 9 Full
Report of July 13, 2005	OC&I Exhibit 10 Full
Report of August 15, 2005	OC&I Exhibit 11 Full
Report of October 7, 2005	OC&I Exhibit 12 Full
Report of October 28, 2005	OC&I Exhibit 13 Full
Report of April 20, 2006	OC&I Exhibit 14 Full
Report of July 29, 2006	OC&I Exhibit 15 Full
Report of October 4, 2006	OC&I Exhibit 16 Full.

Mr. Schmidt's Field Inspection Reports consistently cited violations of general operating standards and construction and demolition ("C & D") operating standards. The violations included waste stored in buffer zone, storage of mixed solid waste, excessive amounts of stored C & D, lack of fire plan and waste water/ leachate issues. OC&I had submitted black and white photographs during the hearing and requested to substitute color photographs post hearing. The Field Inspection Report of July 25, 2006 (OC&I Exhibit 27 Full) provides pictures of mixed solid waste consisting of household waste, roll off containers in the buffer zone, piles of wood chips in the buffer zone, and putrescible waste mixed with C & D.

OC&I presented witness Walid Ali before completing Mr. Schmidt's direct examination due to witness availability. Mr. Ali said that he is a principal sanitary engineer employed by RIDEM. His principal duties involved review of applications for solid waste facilities and inspections. He said that he has conducted over one thousand (1000) inspections. Mr. Ali's resume was admitted, without objection, as OC&I Exhibit 20 Full. Mr. Ali was recognized by the Hearing Officer as an expert in solid waste.

Mr. Ali was shown OC&I Exhibit 24 which he identified as the registration application of Coastal Recycling. He testified that Section 7.1.05 constituted Coastal's Operational Plan. Mr. Ali went through various parts of the Operational Plan, including daily removal of nonrecyclable materials, prohibition against wood grinding, maintenance of records, and prohibition from accepting mixed solid waste. OC&I Exhibit 24 was admitted as a Full Exhibit without objection.

Mr. Ali was next shown OC&I Exhibit 24 B which he identified as Coastal's Fire Protection Plan. He testified that the Fire Protection Plan puts a limitation on the size of piles in the facility at 15 feet high, 20 feet wide and 40 feet long. The Fire Protection Plan also requires 40 feet between piles. OC&I Exhibit 24 B was admitted as a Full Exhibit without objection.

Mr. Ali was next shown OC&I Exhibit 25 which he recognized as an approval letter from the Assistant State Fire Marshall. It approved Coastal's modified Fire Protection Plan (OC&I Exhibit 24 B Full). The Fire Marshall approval was entered into evidence as OC&I Exhibit 25 Full.

Mr. Ali was next shown OC&I Exhibit 3 which he identified as Coastal's registration. He had reviewed and signed the document. The second page contains the conditions of operations including; a 50 tons limit, no stockpiling of unprocessed C & D and adoption of the Operational Plan. The registration also required compliance with its approved Fire Protection Plan. OC&I Exhibit 3 was entered as a Full Exhibit without objection.

Mr. Ali next testified that he had been present with Mr. Schmidt at the inspections reflected in OC&I Exhibits 8, 9, 10, 11, 12, 13, 14, and 16 Full. He said that he personally observed the violations of law and operational plan listed in the Field Inspection Reports by Mr. Schmidt. He testified that the reports were accurate and his signature appeared on the reports. He

is depicted in many of the photographs taken in which he is being used to establish a prospective as to height of material. He said that the photograph presented a fair and accurate depiction of the scene. He testified specifically that he observed storage of non-C & D materials, like propane tanks and mixed solid waste. He also observed storage of woodchips and encroachment on the buffer zone and violation of the Fire Protection Plan.

Mr. Ali was cross examined by Coastal's counsel on his involvement in the inspections. He stated that he had not been present with Mr. Schmidt at the inspection conducted on July 29, 2006 which is reflected in OC&I Exhibit 15 Full. Mr. Schmidt had gone to the site at 5:45am to check on compliance with the 6:00am opening condition. Mr. Ali was asked about ownership of the site and how he determined that activities were taking place on or off the site and by whom. He answered that he had a familiarity with the boundaries of the facility and that the dumpsters in which prohibited material was found were marked "Coastal Recycling".

Mr. Ali testified in answer to questioning that nonwood materials were to be removed with regular frequency, not daily, but within 72 hours. He said that the operating plan anticipated some occasional non C & D waste which can be accumulated over time. It does not allow dumpsters full of solid waste to be brought into the facility. He said that they saw the same dumpsters over and over again.

Mr. Ali testified on redirect examination that the operating plan provides that outdoor stock piled material shall not exceed 50 feet in height and 40 feet in width. It calls for a minimum of 50 feet separation.

Mr. Schmidt was recalled to continue his direct examination. He testified that the OC&I received a fax, followed later by a letter, from the Providence Fire Prevention Division regarding

findings from a May 6, 2005 inspection. He had requested advice from them as to whether Coastal was in compliance. The notice from the Providence Fire Prevention Division was entered into evidence as OC&I Exhibit 26 Full (five pages including fax cover sheet). OC&I Exhibit 26 Full advised that the Providence Fire Prevention Division found that Coastal was in violation of the original plan. It said piles are located in the "Buffer Zone". The Providence Fire inspection revealed that piles of material were 100 feet long and one pile was 300 feet long. There were numerous other issues including the lack of fire extinguishers, narrow passage ways (10 feet) and an absence of a manual standpipe system. In summary, Providence Fire Prevention Division determined that Coastal was not in compliance with the approved plan and shall immediately cease operation.

Mr. Schmidt testified that he recognized OC&I Exhibit 6 Full as a Notice of Intent to Enforce ("NOIE"). He said that he drafted the document which was later entered as a Full exhibit without objection. He said that one or more of the remedial actions required in the NOIE were not satisfied. Mr. Schmidt was next shown a second NOIE which was later entered as OC&I Exhibit 7 Full. He said one or more of the remedial steps to be taken by Coastal in the NOIE were unsatisfied.

Coastal conducted a cross-examination of Mr. Schmidt. He was questioned about his familiarity with Mr. Anthony Davidson, a principal in Coastal. Mr. Davidson asked him if he would rewrite his operating plan. He told Mr. Davidson that it would be inappropriate to help him. He played a role in approving Coastal's Operating Plan. There was a line of questioning relative to the requesting or offering of improper compensation to Mr. Schmidt by Coastal. Mr. Schmidt said that he reported this activity to Mr. Ali and perhaps his Supervisor, Laurie

Grandchamp. He didn't report this to the RI State Police or RI Attorney General's Office.

Mr. Schmidt was questioned on the specifics of his inspections. He said that although a roll away was marked as asbestos, he is not certain that it was asbestos. No testing was performed and no action was taken. Mr. Schmidt read at length from the Operating Plan on how hazardous materials should be handled. Mr. Schmidt acknowledged that he did not immediately notify DEM about the presence of asbestos on Coastal property. Once the material is received it could not be shipped out until released by DEM.

Tracey Tyrrell was called as OC&I's next witness. She identified herself as a supervising environmental scientist and has held that position since September of 2001. After questioning she was qualified, without objection, as an expert in the calculation of administrative penalties as they relate to solid waste. Ms. Tyrrell's resume was entered into evidence as OC&I's Exhibit 17 Full without objection.

Ms. Tyrrell testified that she prepared the portion of the NOV (OC&I Exhibit 1 Full) that relates to the Administrative Penalty. She went through the process of calculating the administrative penalty in this matter. Ms. Tyrrell in answer to a question by the Hearing Officer stated that the administrative penalty was calculated in accordance with the rules and regulations for calculating administrative penalties. The NOV was admitted into evidence as OC&I Exhibit 1 Full over the objection of the Respondent.

Coastal conducted a cross-examination of Ms. Tyrrell about how she arrived at her conclusions. Upon the conclusion of Ms. Tyrrell's testimony OC&I rested.

Mr. Anthony Davidson was called as a witness for Coastal. He identified himself as the Vice-President for Coastal and had been involved with the company for 10 years. The facility on



Allens Avenue in Providence has not been in operation for over one year.

Mr. Davidson described Coastal's operations and layout. A site plan dated December 2000 drawn by J.S.B. was entered into evidence as Joint Exhibit 1 Full, described the boundaries of the Coastal facility and its neighbors. He described and marked with a pencil the areas of his facility that are dedicated to scrap metal as opposed to C & D. He placed an "A" in a circle as the entrance to the facility. He placed two arrows to the right of the circled "A" to show the start of the C & D facility.

Mr. Davidson testified that Coastal owns more than 300 roll offs, some of which were at the C & D facility. They do municipal waste collection, residential trash collection, and contractor trash collection. They kept municipal trash collection in roll offs on the property. Mr. Davidson identified on Joint Exhibit 1 Full where scrap metal was kept and put an "S" within a circle to indicate the location.

Mr. Davidson testified that he disagreed with the estimate of height of his C & D piles. His estimate was 15 feet. When shown another picture Mr. Davidson said they were roll offs just outside his gate. He said he put the "Danger contains asbestos" sign on a roll off. He said he posted the sign because it possibly contained hazardous material. He said it tested negative and was actually slate roofing. He pointed out another picture which was actually from a Waste Management facility. He went on to testify that many of the pictures which were included in the inspection reports were not on the C & D facility.

Mr. Davidson testified that Coastal was allowed to process wood. They were not originally allowed but they sent a letter modifying their operational plan. He said they ground wood and created chips which would remain on their property for no more than a week. Mr.

Davidson testified that many of the pictures presented by OC&I were from off the C & D facility.

He also testified that much of what has been identified by OC&I as solid waste is C & D material.

Mr. Davidson testified that his problems started when Mr. Schmidt asked about getting work with Mr. Davidson's companies. The testimony in summary described how Mr. Schmidt allegedly attempted to use his position at DEM to pressure Coastal to give him a job. Davidson said that Schmidt offered to help him with his operating plan. He said he rejected Mr. Schmidt's offer and that's where the trouble started.

Mr. Davidson was shown OC&I Exhibit 24 Full and he said that it was not Coastal's Operating Plan. He said that the operating plan had been modified. They made changes to the facility; wood grinding, fire protection, lighting and security. He said that they resubmitted the plan to DEM but couldn't recall if it was ever approved. He said that Coastal was inspected 10 times a year between 2002 and 2005 and that DEM was very reasonable. He said things started deteriorating when Bob Schmidt became involved. Upon the completion of Mr. Davidson's testimony the Respondent rested.

OC&I called Walid Ali for rebuttal testimony. Mr. Ali was shown OC&I Exhibit 24-C Full which he identified as Coastal's Fire Protection Plan dated January 8, 2001. It was submitted as part of Coastal's Registration and marked "A-8". He was asked to compare OC&I Exhibit 24-C Full to OC&I Exhibit 24-B Full, a prior Fire Protection Plan. He said that the only difference was the dry manual standpipe system.

On cross-examination Mr. Ali was asked if Mr. Schmidt had ever reported to him that he had been offered a bribe. He said that Mr. Schmidt had told him about a job offer from Mr. Davidson and that he, Mr. Ali, had been offered work by Mr. Davidson earlier in the process. He

recalled reporting to his supervisors that Mr. Davidson had offered him work which would have constituted a conflict of interest. He did not report it to the RI State Police or RI Attorney General's Office and continued to visit Coastal.

OC&I called Robert Schmidt as a rebuttal witness. He was shown Joint 1 Full, the Coastal's Locus Plan. He said that the plan was incomplete. He said that Coastal was supposed to submit a Site plan showing more details of its operations but never did. Mr. Schmidt was asked questions by the use of color photographs in place of previously used black and white. Respondent objected to this as improper rebuttal. The Hearing Officer ruled that the color photograph could not be used for rebuttal but that OC&I could substitute color photographs for black and white as part of already entered exhibits.

Mr. Schmidt identified a document as a Field Inspection Report dated July 25, 2006 which was marked as OC&I Exhibit 27 for identification. He identified an oil boom and hay bales in a picture taken on July 25, 2006 as the same oil boom and hay bales that were photographed on the premises on October 4, 2006 and contained in OC&I Exhibit 16 Full. He said that this was one of the containers kept on the premises for more than 72 hours.

Mr. Schmidt on cross-examination was questioned about the oil boom. He admitted not having it tested for oil but said he could smell oil. He was also asked about the gates or entries to the C & D facility as distinguished from gates to all adjoining facilities. OC&I moved and OC&I Exhibit 27 as a Full Exhibit which was entered without objection.

Upon completion of the Administrative Hearing the parties waived final arguments and agreed to submit Post Hearing Memoranda within 30 days.

ANALYSIS

The Department of Environmental Management bears the burden of proof in this matter and must prove the allegations in the NOV by a preponderance of the evidence. "The burden of showing something by a preponderance of the evidence... simply requires the trier to believe that the existence of a fact is more probable than its nonexistence before he may find in favor of the party who has the burden to persuade the judge of the facts existence" Metropolitan Stevedore Co. V. Rambo, 521 U.S. 121.

The Respondent raises for the first time in its Post Hearing Memorandum that the Notice of Violation ("NOV") OC&I Exhibit 1 Full was statutorily defective. It avers that the NOV was issued on August 31, 2007 purportedly based upon R.I.G.L. §42-17.1-2(u) and that said statute had been renumbered and reconfigured by Public Law 2007, ch. 340 which became law on July 7, 2007. Respondent argues that DEM has not, therefore, complied with R.I.G.L. §42-17.6-3 which requires precise notice of the statute, rule or regulation to which the violation applies.

R.I.G.L. §42-17.1-2 relates to the "Powers and Duties" of DEM. It delineates the areas in which DEM has authority to act. This section of the general laws does not relate to the specific violations alleged to have been committed by Respondent. There is no requirement that a reference to this enabling legislation even be present in the NOV. The NOV does properly state, on page 4, the law, rule, regulation or license which has not been complied with as a result of the alleged act or omission. DEM has provided notice to Respondent as required by §42-17.6-3 and, therefore, the NOV is not defective.

The NOV alleges seven (7) violations of statute, regulations or registration conditions.

1. The first violation alleges that Respondent violated Section 7.1.01(c) General Information which prohibits C & D facilities from acting as a solid waste management facility. OC&I presented numerous color photographs which clearly show the presence of household and municipal waste in roll off containers within the boundaries of Coastal's licensed premises.

The testimony of Robert Schmidt and Walid Ali confirms what appears in the photographs, that Respondent was receiving and storing for extended periods of time, "white goods", solid waste, and municipal waste. OC&I presented by Exhibits 16 and 27 evidence that a roll off containing hay bales, silt fencing and an oil boom had been present on the facility for nearly three months.

Respondent's response to OC&I's allegations was that the solid waste was only received as part of the C & D material and that it was separated and removed within seventy-two (72) hours as required by law. This was clearly not the case with regard to the hay bales and oil boom. The evidence as presented through the numerous reports with photographs shows that solid waste and "white goods" were received in great volume and remained at the facility for much longer than seventy-two (72) hours in violation of Section 7.1.01(c) of the Solid Waste Regulations.

2. The next allegation in the NOV is that the Respondent did not operate in conformity with its operating and engineering plan as required by Solid Waste Regulation 1.7.13. Coastal's operating plan is contained with its Registration Application. See OC&I Exhibit 24 Full. The operating plan states in pertinent part as follows:

The facility will reject any and all solid waste that is not C & D debris as defined by the Solid Waste Regulations # 7 and its Material Acceptance Policy. As compliance to Regulation # 7, all incoming loads will be visually inspected prior to dumping at the facility. Those loads found to contain non C & D debris, as defined, will be prohibited from dumping at the facility. In the event that significant non C & D debris is found upon tipping, the entire load will be reloaded into its vehicle of transport for removal from the

facility. Further, in the event that hazardous waste is detected in any of these rejected dumped loads, the facility manger will, prior to reloading, contact RI DEM and Clean Harbors immediately for proper disposal. (Emphasis in original).

The Respondent had been notified of the violations of its operational plans by Letter of Non Compliance ("LNC") issued on July 24, 2003 (OC&I Exhibit 5 Full). The LNC specifically listed prohibited activities including wood grinding, heating oil and propane tanks and drainage issues. Subsequent inspections by OC&I identified wood chips, "white goods", with mixed solid waste in roll offs as well as stored on the ground.

Anthony Davidson, Vice President for Coastal, testified that the company did engage in wood chipping but that activity had been included in a modification to its original operating procedure. At page 50 of Volume 4 Mr. Davidson's testimony is found relating to wood grinding and wood chips. He said that they did not have a grinding machine when they first opened but acquired it about a year later. When asked his understanding that Coastal had the right to do grinding or permission to do grinding from DEM he responded "We notified DEM, yes" (V. 4 p. 50, 10) when asked if Coastal had received a modification of their operating plan he responded "I don't know if I ever received a formal approval." (V. 4, p. 50, 17). The Respondent did not introduce any evidence to prove that the original operating plan (OC&I Exhibit 24 Full) had ever been amended or modified.

3. Violation of Registration Condition No 3 which limits storage of unprocessed C & D material to Three Hundred (300) tons. Condition No. 3 of Coastal's approved Registration states:

Coastal Recycling, Inc. shall not stockpile processed or unprocessed C & D debris in amounts exceeding that allowed by statute, regulation, the approved operating plan, or the closure letter of credit. Violation of this requirement may result in issuance of a notice of violation and penalty, or revocation of the facility registration. (OC&I Exhibit 3 Full, pl p. 2).

OC&I refers in its memorandum to an Exhibit 4 which does not appear to have been admitted into evidence. Coastal's Registration (OC&I Exhibit 24 Full p. 4) and its Registration Conditions (OC&I Exhibit 3 Full p. 2) state that the facility is limited to 50 tons per day. Stipulated fact Number 3 indicates that on March 8, 2002 Coastal was given authority to store Three Hundred (300) tons of unprocessed C & D material.

The testimony of Robert Schmidt and Walid Ali, as evidenced in the numerous Field Inspection Reports, shows that the Three Hundred (300) tons limitations were continuously exceeded. The Field Inspection Reports OC&I Exhibits 8, 9, 10, 11, and 12 Full document the height, width, and length of piles of unprocessed C & D materials. One pile was 153 feet in length. The testimony of the DEM inspectors was that Coastal had exceeded the Three Hundred (300) tons limit on each of the above reference Field Inspection Reports.

The Respondent through testimony of Mr. Davidson challenged the estimates of the inspector by questioning the height of the storage piles shown in the photographs which were part of the Exhibits. Mr. Davidson never testified as to the amount of tons of unprocessed materials. There was no probative evidence presented by the Respondent as to the actual amount of unprocessed material at the facility at any given time.

4. Violation of Solid Waste Regulations 7.1.05 Operating Plan in that Respondent failed to correct drainage issues, obtaining an approved fire control and prevention plan and leachate containment. DEM witness Mr. Ali testified he was the person responsible for reviewing and processing the documents and plans submitted by Coastal in satisfying its registration. He testified that Coastal never submitted an approval for modifications to its Fire Protection Plan

from the City of Providence (V. 2, p. 45, 8). It did not submit a storm water management plan (V. 2, p. 45, 12) or a leachate collection system plan (V. 2, p. 45, 15).

Mr. Walid Ali testified that the Respondent was sent a Letter of Noncompliance ("LNC") and two Notices of Intent to Enforce ("NOIE") addressing these same violations. The July 24, 2003 LNC, marked for identification as OC&I Exhibit 5 Full, states in pertinent part as follows:

To bring this facility into compliance with the Solid Waste Regulations, Coastal Recycling, Inc. shall take the following steps:

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1. As built plans for the current leachate collection system showing all modifications and upgrades shall be submitted to the OWM within ten (10) days. Receipts and any test results for the collection and disposal of leachate from the leachate tanks for the most recent collection event by Coastal's contractor shall also be submitted within ten (10) days.
2. A storm water management plan to address the runoff problem on site shall be submitted within thirty (30) days.
3. Coastal Recycling shall submit for approval to the City of Providence Fire Department, any modifications of your operating plan that refer to materials storage, new equipment, and other valuable changes to the previously Modified Fire Protection Plan dated January 30, 2001. Coastal Recycling shall also notify the OWM upon receipt of said approval.

OC&I Exhibit 5 Full at p. 4. Similarly, the NOIE issued to the Respondent on December 9, 2003 and admitted into evidence as OC&I Exhibit 6 Full sets forth in pertinent part as follows:

1. To date, detailed, as-built plans for the leachate collection system have not been submitted.
2. To date, a storm water management plan has not been submitted.
3. To date, the City of Providence Fire Department approval of operating plan modifications has not been received.

OC&I Exhibit 6 Full at p. 2. The second NOIE issued to the Respondent on May 6, 2005 and admitted into evidence as OC&I Exhibit 7 Full sets forth in pertinent part as follows:

1. To date detailed, as-built plans for the leachate collection system have not been submitted.
2. To date a storm water management plan has not been submitted.



3. To date, the City of Providence Fire Department approval of operating plan modifications has not been received.

OC&I witness Schmidt testified that he received a notice from the Providence Fire Protection Division by fax dated May 9, 2005. OC&I offered the five (5) page document and Respondent objected that it constituted hearsay evidence. The Hearing Officer ruled that evidence which might otherwise be considered hearsay evidence was admissible under the Rules of Administrative Procedures Act ("APA") and entered the exhibit into evidences as OC&I Exhibit 26 Full.

The document stated that:

"Coastal Recycling, Inc. is operating a demolition debris processing facility at 431 Allens Avenue, Providence, RI in a manner that is entirely inconsistent with the plans approved by the Providence Fire Department on November 3, 2000. The present volume and configuration of stored combustible materials at this facility pose a severe fire hazard. Due to the absence of an adequate water supply, the volume and configuration of pile sizes, and the inadequacy of pile access aisles, the Providence Fire Department probably could not control a pile fire at this location. This facility is presently being operated in a manner that demonstrates a reckless disregard of the approved Fire Protection Plan and, therefore, is operating in violation of Rhode Island General Laws §23-18.9-8."

The Providence Fire Prevention Division went on to list eight (8) specific areas of concern, which confirm observations reported in DEM's Field Inspection Reports. These areas of concern include:

1. Storage pile size exceeded the approved limit and is 15 feet in height, 50 feet wide, and 300 feet long.
2. Encroachment on the "Buffer Zone" and piles of wood chips approximately 100 feet long. There is no aisle space around the piles where a 40 foot aisle was required by plan;
3. Welding was prohibited at the facility but approved;
4. A fence with a minimum 22 foot wide gate was required to prevent unauthorized access. No fence along the west side of Allens Avenue was observed;
5. The Fire Protection Plan required the installation of a "Dry Manual Standpipe System" to provide water in the event of fire. No "standpipe system" was observed on the facility;

6. Fire extinguishers were required to be acquired and stationed throughout the facility. Not a single fire extinguisher was at the facility;
7. Lack of signage at facility indicating the location and size of each pile;
8. A minimum of 40 feet wide aisle was required to allow access for fire fighting purposes. Separation between piles narrows down to approximately 10 feet in certain areas.

The conclusion of the Fire Protection Division was:

“Based on the clear language of the law, this facility shall cease operation until it has come into compliance with the approved Fire Protection Plan. No additional materials shall be permitted to be brought into this facility until such time as it is in compliance with the approved Fire Protection Plan.

My recommendation is that the Department of Environmental Management issues a cease and desist order or take any and all actions it deems appropriate to bring this facility into compliance.”

5. Operation Plan Condition 2 was violated due to Respondent's failure to file with DEM “as-built” plans for the current leachate collection system within 30 days of approval letter of March 8, 2002. This issue dealt with and is the same subject matter as discussed previously in Subsection 4.

6. Violation of R.I.G.L. Section 23-18.9-8(e) and Solid Waste Regulation 7.2.06, relating to the requirement to submit a fire protection plan that has been approved by the local fire chief or his or her designee. This issue dealt with and is the same subject matter as discussed previously in Subsection 4.

7. Violation of Solid Waste Regulation 7.2.05, relating to the requirements of a Buffer Zone. Solid Waste Regulation 7.2.05 provides as follows:

Buffer: A buffer zone, or approved equally protective alternative measure(s) must be identified and maintained between all processed and unprocessed construction and demolition debris stockpiles, processing activities and the property line of the facility. Said buffer zone must be of sufficient distance to address dust, odors, litter, or any other concern or condition identified by the Department. Alternative measures may include, but are not

limited to enclosing operations and/ or storage within the confines of a protective structure, fencing, screening, vegetation or approved equal.

OC&I has presented through the testimony and photographic evidence that the Respondent has not allowed sufficient space between its piles of C & D materials and the property line. Examples of violations of the buffer requirement are presented in OC&I Exhibit 9 Full at pages 4 and 5 as well as OC&I Exhibit 27 Full photo #17. The photographs in OC&I Exhibit 9 Full show a series of roll offs against the trees and vegetation which constitutes the border of Respondent's property. In OC&I Exhibit 27 Full in photo #17 there is depicted a long pile of chipped wood in the buffer zone. In addition in OC&I Exhibit 26 Full the Providence Fire Protection Divisions refers to piles located in the designated "buffer zone". This is described as a violation of the regulations and operating plan which creates a safety risk for firefighters and surrounding property owners.

The Respondent's primary defense as expressed by Mr. Davidson is that because he rebuffed the inappropriate requests of Mr. Schmidt, Coastal was targeted with numerous inspections which resulted in inaccurate and exaggerated Field Inspection Reports. He said that Mr. Schmidt had asked him for work with Coastal or other companies with which Mr. Davidson was associated (V. 4 p. 89-92). He said that he did not take Mr. Schmidt up on his request and that's when "... things just started deteriorating" (V. 4 p. 95).

Mr. Schmidt in his cross examination denied that he ever approached Mr. Davidson with a proposition for employment (V. 2 p. 12). He said that it was Mr. Davidson who approached him with offers of liquor and trips (V. 2 p. 12, 6-10). He said that he reported this fact to his co-worker Mr. Ali but not to the RI State Police or the RI Attorney General's Office.

Counsel for Respondent in his cross examination of Mr. Ali asked if Mr. Schmidt had, in

fact, reported Mr. Davidson's offers of employment. Mr. Ali testified that Mr. Schmidt had informed him that Mr. Davidson had offered him work at a medical waste job (V. 4, p. 106, 4-6). He went on to say that when he started reviewing Respondent's registration application Mr. Davidson had offered him employment "in some engineering work especially the design, the tanks (V. 4, p.106, 9-10). Mr. Ali said that although he did not report this to the RI State Police or RI Attorney General's Office, he did report it to his supervisors at DEM.

The Respondent through the testimony of Mr. Davidson presents a case that the DEM inspectors targeted Coastal with excessive inspections. These inspections resulted in Field Inspection Reports which were exaggerated, misleading and false. I expressly reject this argument as incredible and self-serving. I find that the DEM inspectors are credible professionals who have prepared detailed reports in an attempt to bring the Respondent into compliance with the Solid Waste Regulations and the Operating Plan. Every inspection revealed continued violations. The color photographs clearly show a tremendous volume of solid waste and household waste on the facility. They show wood chips, excessive volume of unprocessed and processed materials as well as violations of the buffer zone requirements. If there was a doubt of the inspectors' credibility, it would be satisfied by the report of the Providence Fire Protection Division which confirms most of what is contained in the Field Inspection Reports.

I find as a fact that Mr. Davidson's testimony is not credible. Coastal was using its C & D facility as a part of its solid waste and scrap metal businesses. It mixed these business operations together in blatant disregard of the Solid Waste Regulations and its Operating Plan. Coastal used its C & D facility contrary to law, endangering the health safety and welfare of the public. This activity continued in spite of DEM's admonitions as presented in the LNC and 2

NOIEs.

ADMINISTRATIVE PENALTY

The authority to impose an Administrative Penalty is established by R.I.G.L. §42-17.6-1 et seq. The Director of the Department of Environmental Management is authorized to establish regulations for the calculation of Administrative Penalties by Chapters 42-17.1, 42-17.6, and 42-35 of the General Laws of Rhode Island. Section 12 (c) of the Penalty Regulations states:

In an enforcement hearing the Director must prove the alleged violation by a preponderance of the evidence. Once a violation is established, the violator bears the burden of proving by a preponderance of the evidence that the Director failed to assess the penalty and/ or the economic benefit portion of the penalty in accordance with these regulations.

The Director, through her agents imposed an administrative penalty in the amount of Sixty-Eight Thousand, Seven Hundred and fifty Dollars (\$68,750.00) against Coastal. OC&I presented Tracy Tyrrell as its witness relating to the calculation of the administrative penalty. Mrs. Tyrrell was qualified as an expert in the area of calculations of administrative penalties. She testified at length and in detail about the methodology she employed in calculating the administrative penalty imposed in this matter. She testified that the administrative penalty in this matter was calculated in accordance with the Rules and Regulations for the Calculation of Administrative Penalties. The NOV (OC&I Exhibit 1 Full) was admitted into evidence over Respondent's objection.

The Respondent did not present any witnesses or evidence to contradict Ms. Tyrrell's testimony. Respondent argues in its memorandum that the penalty is excessive in that it exceeds One Thousand Dollars (\$1,000.00) per violation. The violations in this matter flow from R.I.G.L.

§23-18.9 "Refuse Disposal" and the Solid Waste Regulations. Under Chapter 23-18.9-10

Penalties Subsection (6) it states:

"Civil penalty for violations. Any person who violates the provisions of this chapter, or of any rule, regulation, or order issued pursuant to this chapter, shall be subject to a civil penalty, of not more than Twenty-Five Thousand Dollars (\$25,000). In the case of a continuing violation, each day's continuance of the violation is deemed to be a separate and distinct offense."

I find that the Administrative Penalty imposed by the Director, through her agents, is appropriate and properly calculated in accordance with the Rules and Regulations for the calculation of Administrative Penalties.

#### CONCLUSION

DEM has sustained its burden of proof by a preponderance of the evidence that the Respondent committed violations alleged in the NOV (OC&I Exhibit 1 Full) issued on August 31, 2007. I find that the evidence presented establish that the Respondent consistently violated the Solid Waste Laws, Regulations and the Conditions of its license. I find the testimony of DEM witnesses to be credible. I find the testimony of Anthony Davidson to be self-serving and incredible.

FINDINGS OF FACT

After consideration of the documentary and testimonial evidence of record I find as fact the following:

1. Respondent Coastal Recycling Inc. was registered with the Rhode Island Secretary of State's Corporation Division, ID #115221, as a business for the purpose of recycling construction and demolition debris. Respondent operated a facility located at 431 Allens Avenue, otherwise known as Assessor's Plat 55 lots 427 and 430, in the City of Providence, Rhode Island (the "Facility").
2. Respondent's Facility was registered as a solid waste management facility pursuant to the Rhode Island *Rules and Regulations for Solid Waste Management Facilities*, and Regulation No. 7, entitled "Facilities that Process Construction and Demolition Debris." Registration was issued to Respondent on March 1, 2001. This Registration entitled the Facility to manage and process construction and demolition debris (C&D) only. The Respondent's registration expired on March 1, 2004.
3. On 8 March 2002, the OWM approved a request by the Facility to increase the maximum amount of processed C&D debris allowed to be stored to three hundred (300) tons. The increased allowed storage capacity was approved with the condition that it be incorporated into the Facility's existing fire protection and prevention plan and be approved by the Fire Chief of the City of Providence within 30 days.
4. On 24 July 2003, OWM issued Letter of Non-Compliance OWM-WFM LNC #2003-17 ("the LNC") to Respondent. The LNC required Respondent, among other requirements, to submit for approval to the City of Providence Fire Department, any modifications of the Facility's operating plan that refer to materials storage, new equipment and other applicable changes to the previously Modified Fire Protection Plan dated January 30, 2001. The Respondent was required to notify the OWM upon receipt of said approval.
5. On 9 December 2003, OWM issued Notice of Intent to Enforce No. OWM-WFM - 2003-05 ("NOIE 1") to Respondent. The NOIE, among other things, notified the respondent that:  
Respondent was storing materials in excess of the dimensions specified in its approved Operating Plan;

- a. Respondent had not provided a storm water management plan to address runoff problems at the Facility;
  - b. Respondent had not submitted detailed leachate collection plans;
  - c. Respondent had not obtained approval of its operating plan modification from the City of Providence Fire Department.  
NOIE 1 required the Respondent to resolve the above noted instances of noncompliance.
6. On 6 May 2005, OWM issued Notice of Intent to Enforce OWM-WFM-2005-04 ("NOIE 2") to Respondent. The NOIE 2, among other things, notified Respondent that:
- a. Respondent had not submitted detailed, as built plans for its leachate collection system;
  - b. Respondent had not submitted its storm water management plan;
  - c. Respondent had not obtained approval of its Operating Plan modifications from the City of Providence Fire Department.
  - d. Respondent continued to store materials on site in excess of the dimensions specified in their approved Operating Plan.  
NOIE 2 required the Respondent to resolve the above noted instances of noncompliance no later than May 25, 2005.
7. On 26 May 2005, OWM conducted an inspection of the Facility. The inspection revealed wood stored in a buffer zone.
8. On 1 July 2005, OWM conducted an inspection of the Facility. The inspection revealed approximately 1,560 tons of material on the Property, consisting of screenings, unprocessed wood, chipped wood and C&D. The inspection also revealed roll-off containers containing tires, cardboard, white goods, metals, and asbestos.
9. On 13 July 2005, OWM conducted an inspection of the Facility. The inspection revealed wood chips piled on the ground and solid waste stored at the Facility other than construction and demolition debris, including fluorescent light fixtures, scrap metal, carpeting, propane cylinders, and auto parts.
10. On 15 August 2005, OWM conducted an inspection of the Facility. The inspection revealed roll off containers holding tires, white goods and solid waste, clean wood on the ground, and a fire hazard due to a wood chip pile stored within a buffer zone that was not being maintained.
11. On 7 October 2005, OWM conducted an inspection of the Facility. The inspection revealed white goods being received by the Facility.
12. On 28 October 2005, OWM conducted an inspection of the Facility. The inspection revealed roll-off containers containing tires, air conditioners, and other mixed solid waste.



CONCLUSIONS OF LAW

Based upon all of the documentary and testimonial evidence of record, I conclude as a matter of law:

1. Respondent violated Solid Waste Regulation 7.1.01(c), relating to Facilities that are registered as a construction and demolition debris processing facility that receive other than construction and demolition debris are not exempt from obtaining a solid waste management facility license.
2. Respondent violated Solid Waste Regulation 1.7.13, relating to the requirement that a Facility shall be operated in conformity with its approved operating and engineering plans.
3. Respondent violated Condition No. 3 of its Registration, relating to the requirement that the maximum amount of processed or unprocessed construction and demolition debris allowed to be stored is Three Hundred (300) tons.
4. Respondent violated Solid Waste Regulation 7.1.05 and its Operating Plan, relating to the correction of drainage issues in the processing area; relating to approved fire control and prevention provisions; and identification of provisions and methods of solid waste and leachate containment.
5. Respondent violated Condition No. 2 of its Operating Plan Amendment Approval Letter, dated March 8, 2002, which requires the as-built plans for the current leachate collection system to be forwarded to RIDEM within thirty (30) days. Modifications to upgrade the existing leachate system should be submitted within 90 days.
6. Respondent violated R.I. Gen. Laws § 23-18.9-8(e) and Solid Waste Regulation 7.2.06, relating to the requirement to submit a fire protection plan that has been approved by the local fire chief or his or her designee.
7. Respondent violated Solid Waste Regulation 7.2.05, relating to the requirement that a buffer zone, or approved equally protective alternative measure(s) must be identified and maintained between all processed and unprocessed construction and demolition debris stockpiles, processing activities and the property line of the facility.
8. The Administrative Penalty was calculated in accordance with the Rules and Regulations for the Assessment of Administrative Penalties.
9. The Respondent is liable for the violations alleged in the NOV (OC&I 1 Full) issued on August 31, 2007.

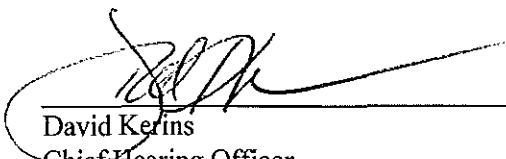
13. On 20 April 2006, OWM conducted an inspection of the Facility. The inspection revealed a roll off container containing crushed white goods at the Facility.
14. On 29 July 2006, OWM conducted an inspection of the Facility. The inspection revealed solid waste other than construction and demolition debris stored on the ground.
15. On 4 October 2006, OWM conducted an inspection of the Facility. The inspection revealed oil contaminated soil, a roll-off container with buried oil booms, twenty-three (23) roll-off containers containing C&D, carpeting and other mixed solid waste, litter on the ground, mixed solid waste stored in the buffer zone, and a pile of C&D woodchips.
16. The Respondent has not received approval from the City of Providence Fire Department for the operating plan modifications, as required by the 24 July 2003 LNC, the 9 December 2004 NOIE (NOIE 1) and the 6 May 2005 NOIE (NOIE 2).
17. The Respondent did not submit a storm water management plan, as required by the 24 July 2003 LNC, the 9 December 2004 NOIE (NOIE 1) and the 6 May 2005 NOIE (NOIE 2).
18. The Respondent did not submit as-built plans for the leachate collection system, as required by the 24 July 2003 LNC, the 9 December 2004 NOIE (NOIE 1) and the 6 May 2005 NOIE (NOIE 2).
19. The testimony of DEM witnesses was credible.
20. The testimony of Anthony Davidson was not credible.
21. DEM has sustained its burden of proof by a preponderance of the evidence that Respondent committed the violations as alleged in the NOV (OC&I Exhibit 1 Full).
22. The Administrative Penalty is fair and accurate.

Based on the forgoing Findings of Fact and Conclusions of Law it is hereby:

**ORDERED**

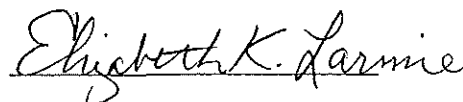
1. The Respondent's Appeal is **DENIED**.
2. The Respondent shall comply with all requirements enumerated in the NOV dated August 31, 2007.
3. The Respondent shall pay the Administrative Penalty in the amount of Sixty-eight Thousand, Seven Hundred and Fifty Dollars (\$68,750.00) to the Director within 20 days of the receipt of this Decision and Order. Payment shall be in the form of a certified check or money order payable to the "General Treasury – Environmental Response Fund".

Entered as an Administrative Order this 17<sup>th</sup> day of August, 2012.

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

**CERTIFICATION**

I hereby certify that I caused a true copy of the within Order to be forwarded via regular mail, postage prepaid to: Thomas More Dickinson, Esquire, 1312 Atwood Avenue, Johnston, RI 02919-4902; Frank Sciacca, Esquire, Medici & Sciacca, 1312 Atwood Avenue, Johnston, RI 02919-4902; and via interoffice mail to Joseph J. LoBianco, Esq., DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 17<sup>th</sup> day of August, 2012.



Appendix

The following is the list of Full Exhibits:

Joint Exhibits

JT. Exhibit 1 Full Site Plan Coastal Recycling Facility Permit dated December 2000

OC&I Exhibits

OC&I Exhibit 1 Full Notice of Violation ("NOV") dated August 31, 2007 from Rhode Island Department of Environmental Management ("RIDEM") to Coastal Recycling, Inc. ("Coastal");

OC&I Exhibit 2 Full Printout from Rhode Island Office of Secretary of State;

OC&I Exhibit 3 Full Copy of RIDEM Registration issued to Coastal to operate a Construction and Demolition ("C&D") facility issued March 1, 2001;

OC&I Exhibit 5 Full Letter of Non-Compliance issued by RIDEM to Coastal on July 24, 2003;

OC&I Exhibit 6 Full Notice of Intent to Enforce ("NOIE") issued by RIDEM to Coastal on December 10, 2003;

OC&I Exhibit 7 Full NOIE issued by RIDEM to Coastal on May 6, 2005;

OC&I Exhibit 8 Full Field Inspection Report issued on May 26, 2005;

OC&I Exhibit 9 Full Field Inspection Report issued on July 1, 2005;

OC&I Exhibit 10 Full Field Inspection Report issued on July 13, 2005;

OC&I Exhibit 11 Full Field Inspection Report issued on August 15, 2005;

OC&I Exhibit 12 Full Field Inspection Report issued on October 7, 2005;

OC&I Exhibit 13 Full Field Inspection Report issued on October 28, 2005;

- OC&I Exhibit 14 Full Field Inspection Report issued on April 20, 2006;
- OC&I Exhibit 15 Full Field Inspection Report issued on July 29, 2006;
- OC&I Exhibit 16 Full Field Inspection Report October 4, 2006;
- OC&I Exhibit 17 Full Resume of Tracey D'Amadio Tyrrell;
- OC&I Exhibit 19 Full Resume of Robert P. Schmidt
- OC&I Exhibit 20 Full Resume of Walid M. Ali;
- OC&I Exhibit 24 Full Registration Application of Coastal dated February 5, 2001;
- OC&I Exhibit 24 B Full A Formal Fire Protection Plan of a Construction and Demolition Debris Processing Facility filed by Coastal on November 14, 2000;
- OC&I Exhibit 24 C Full Coastal's Fire Protection Plan dated January 30, 2001;
- OC&I Exhibit 25 Full Letter from the Providence Fire Prevention Division dated February 11, 2001;
- OC&I Exhibit 26 Full Fax from Providence Fire Protection Division to Robert Schmidt with attached letter dated May 9, 2005;
- OC&I Exhibit 27 Full Field Inspection Report dated July 25, 2006;

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.