

# Rhode Island Department of Environmental Management

## TLA/Pond View Closure



### Commonly Asked Questions

The Department has become aware of the need for a centralized location to allow more regular communication regarding the closure of the TLA/Pond View facility in East Providence. This “Commonly Asked Questions” document is intended to enhance communications with interested parties about what is happening with the closure in a timely manner. Inquiries can be made by emailing them to [TLAPondViewClosure@dem.ri.gov](mailto:TLAPondViewClosure@dem.ri.gov). Interested parties are encouraged to periodically check the RIDEM TLA/Pond View Closure webpage for answers and updated information.

Similar questions have been grouped together. Questions and answers below are listed in reverse chronological order. For clarity, the Department's answers are in italics.

- In response to a recent Superior Court ruling regarding an East Providence Zoning Board of Review decision and associated press coverage of the ruling, RIDEM was asked if it was prepared to defend its earlier position (from June 2012) on the status of the transfer of the C&D license once the closure is complete.

*RIDEM's position has not changed. RIDEM maintains that the C&D processing facility license issued to TLA-Providence is non-transferable. Any new operator or manager of the facility is required to apply to RIDEM for approval. Under state law and regulations RIDEM is prohibited from simply acquiescing to a new operator; that new operator must comply with state law and regulations by submitting the appropriate application materials to RIDEM for approval.*

- Multiple questions were raised about the status of RIDEM's investigation into complaints about early morning closure activity at the site on the weekend of July 6<sup>th</sup> and 7<sup>th</sup>?

*After reviewing all relevant information available to us concerning the events of that weekend, RIDEM has determined that there is insufficient evidence to successfully pursue the case.*

- When will the closure of the facility be considered “complete”?

*Closure of the facility will be considered complete when RIDEM is satisfied that all conditions in the approved Closure Plan have been met (including, for example, environmental testing of soils, and washing of all impervious surfaces), and the site is found to be in compliance with all applicable laws and regulations.*

- Is the party performing the closure paid in full once all debris has been removed or before?

*The party performing the closure has been providing invoices to RIDEM for payment for numerous weeks and has already received payment for most of the material that has already left the site. As additional railcars and trucks full of material depart the facility, RIDEM is processing requests for reimbursement.*

- **Does the City of East Providence have the right to inspect the property with RIDEM and agree with RIDEM that the property is free and clear of debris before payment is made to the owner?**

*See above response. Payment is not withheld until the end of the cleanup. The City of East Providence has the right to inspect the property as it sees fit, in accordance with city ordinances.*

- **“Has R.I. D.E.M. agreed verbally or contractually to allow Kenneth Foley, or another party, to operate a recycling business at 1 Dexter Road, East Providence, R.I. either now or after the clean-up at this site?”**
  - *DEM is solely focused on the ongoing closure and clean up of the TLA/Pond View site. DEM has no position, and has made no commitments or agreements, concerning the future use of the property. The Department will only consider applications or other requests for regulatory determinations after the closure is certified complete. If the Department does receive any applications or regulatory submittals after the closure is completed, they will be reviewed and decided on consistent with the requirements of applicable law and regulation.*
- **Multiple inquiries have been made about how processed material is being transported from the site and how far from the property line stored material must be – the inquiries can be broken down as follows:**
  - 1) **Are trucks being used to haul debris from the site? If so, where is the debris going?**
    - *Yes, it is TLA/Pond View’s intention to haul some of the material from the site in trucks. Some of the material (which has a dirt like consistency) is scheduled to be shipped to the Cranston Sanitary Landfill for grading purposes as the cap for that closed landfill is upgraded. Other material (e.g. wood waste) is scheduled to be shipped to a facility in Stoughton, MA.*
  - 2) **The piles of debris have to be fifty (50) feet off of the property line under city laws, not encroaching someone else's property. Is it RIDEM's job to ensure piles of debris are in fact fifty (50) feet off the property line or is it the City of East Providence job to enforce the law during closure?**
    - *It is RIDEM’s responsibility to ensure compliance with Solid Waste Regulation No.7 – “Facilities that Process Construction and Demolition Debris” which states the following:*
      - *“A minimum separation of fifty (50) feet must also be maintained between stockpiles, and between stockpiles and buildings or other structures.” & “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.”*

- *If the City of East Providence has placed additional requirements on how far the stockpiled material must be from the property line, then it would be the city's responsibility to enforce that additional requirement.*

**3) Even if state laws permits haulers to store waste inside a container (such as a roll-off container) for up to 72 hours, how does RIDEM verify where this material is being dumped? Is there paper work to verify this?**

- *Haulers are not required to notify RIDEM where they dispose of material they may have temporarily stored on-site for 72 hours (as permitted by state law). RIDEM does not license haulers of solid waste (e.g. vehicles transporting trash) or C&D material. We would need new authority from the RI General Assembly to gather this information from haulers.*

➤ **A multi-part follow-up question about the closure activities at the site was emailed to RIDEM – it can be broken down as follows:**

- 4) Will Fuss & O'Neill, the company hired to supplement RIDEM's oversight of the cleanup, be on the site every day and all day?**
- 5) Now that cleanup activities are occurring on Saturdays too, why aren't Saturdays included in the 60-day cleanup time line?**
- 6) Has RIDEM issued a license for the hauling activities the property owner is conducting? Has RIDEM consulted with the City of East Providence that this is allowed?**

- *Fuss & O'Neill is not going to be at the TLA/Pond View property all day, every day. They will be making regular visits to the site as will inspectors from RIDEM.*
- *When the details of the agreement to allow the closure work to proceed under the approved closure plan were finalized, it specifically called for work to be completed within 60 business days. RIDEM feels it must abide by the 60 business day timeline even though the cleanup is allowed to proceed for a few hours each Saturday.*
- *RIDEM does not license haulers of solid waste (e.g. vehicles transporting trash) or C&D material. By law, C&D material can be stored temporarily in a vehicle or proper receptacle at a licensed place of business for a period not to exceed seventy-two (72) hours. We would need new authority from the RI General Assembly to license such haulers. We have not consulted with the City of East Providence over this matter because it is not an activity that is included as part of the closure.*

➤ **A lengthy, multi-part question about the closure activities at the site was emailed to RIDEM – it can be broken down as follows:**

- 1) What is the start/end date for the 60-day cleanup, and now that Saturdays have been added, do they count as business days?**
- 2) Who has been hired as an “overseer” of the cleanup? What are their qualifications, and what is their level of authority over the site? Will they be on site every day and all day?**
- 3) What is the contingency plan if the work is not performed properly?**
- 4) What plan is in place to ensure new material is not brought in and disposed of at the facility?**
- 5) How will neighbors be compensated for noise, dust and odors they may experience as part of the cleanup?**
- 6) What about air monitoring (type, location, monitoring results)?**

- *The clean-up is scheduled to commence Tuesday, May 28<sup>th</sup>, and conclude no later than Wednesday, August 21<sup>st</sup>. Saturdays, Sundays, and holidays (Memorial Day, July 4<sup>th</sup> and Victory Day) will not be counted as business days.*
  - *Fuss & O'Neill, a full service engineering consulting company with operations in the Northeast, will be supplementing RIDEM's oversight and providing daily reports to the Department. Only RIDEM will have the authority to halt the cleanup for specified reasons.*
  - *In the event the cleanup work is not performed properly, RIDEM would put out a Request for Proposals (RFP) to hire someone else to complete the cleanup. RIDEM could also bring the case to Superior Court, if needed, to enforce the terms of the contract.*
  - *RIDEM and Fuss & O'Neill will be closely monitoring the cleanup and activities at the facility to ensure no new waste is disposed of at the facility. RIDEM's primary concern is that no new waste is disposed of at the Pond View facility and not where the property owner is disposing of material which may be brought onto the site in trucks as part of his hauling business. By law, that material (e.g. in trucks or roll-offs) must remain in the original roll-off or truck and be taken off-site within 72 hours.*
  - *While RIDEM acknowledges the inconvenience the neighborhood may experience during the closure, RIDEM has no means or authority to provide compensation.*
  - *There will be continuous air monitoring performed by the Department at the Myron Francis School. In addition, RIDEM and Fuss & O'Neill will be utilizing hand held air monitors while on site during the entire cleanup. RIDEM, along with the Department of Health (RIDOH,) will be closely reviewing the results of that air monitoring. RIDEM will coordinate with RIDOH to interpret the results and make them available to the public. RIDEM will post additional information about the availability of air results in coming updates.*
- **Seeing that the solid waste has been leaning up against the berms on site for months now, I would like to know if the berms will be taken down as part off the closure? Where is this debris being hauled to? Will the rail cars be fully covered during transport? Will there be rail cars full on site left uncovered on weekends? Why can't they start at 7:00 AM as the city local laws do not allow them to start any earlier?**
- *No, the berms will not be removed as part of the closure.*
  - *The debris from the TLA/Pond View facility is being shipped to a landfill in Ohio.*
  - *RIDEM has no authority to regulate whether or not the rail cars will be covered.*
  - *It is a possibility that full rail cars will remain on the site during the weekend.*
  - *Pursuant to discussions with the party performing the closure, the hours they are allowed to operate on the site to undertake the closure have been slightly amended. Hours are now restricted to 7:00AM to 6:00PM Monday through Friday, and from 8:00AM to 1:00PM on Saturdays.*
- **A multi-part question about environmental testing was raised about the TLA/Pond View property:**
- 1) In accordance with the closure plan for the site, has water quality testing continued?**
  - 2) Has the leachate collection system been inspected since the closure?**
  - 3) Have potential issues with storm water run-off been investigated?**

- *Water quality monitoring was not performed while the facility was in receivership. RIDEM last received water quality testing reports in April of 2012. However, testing will be performed as part of the closure and results will be examined prior to the closure being completed.*
- *Pursuant to a separate Underground Injection Control (UIC) permit, a storm water collection system is in place at the facility. Semi-annual samples from the sub-surface discharge of the storm water pretreatment system have been deemed in compliance with the UIC approval. RIDEM's records show that the pretreatment system was cleaned out this past January.*
- *RIDEM recently investigated storm water complaints at the site. No evidence of storm water run-off from the site has been observed. Silt fences and hay bales are routinely inspected and replaced as needed, along the site perimeter to prevent loose materials and sediment from washing into the pond. Department inspections have not revealed erosion, runoff, or discharges into Omega Pond.*

➤ **Questions were raised from numerous residents about why trees were being removed from the TLA/Pond View property.**

*During a recent inspection, RIDEM inspectors observed trees being removed from the property. National Grid is performing the tree removal. The tree removal is not related to the receivership or the closure of the property. Any questions about the tree removal should be directed to National Grid.*

➤ **A question was raised about whether or not the property owner is currently allowed to receive up to 50 tons per day of C&D material.**

*No, the property owner is not allowed to receive up to 50 tons per day of C&D material on a daily basis. RIDEM has not approved nor made any decisions on a pending application to allow such activities at the site.*

*We have received multiple complaints about roll-offs being emptied at the facility (e.g. shingles). RIDEM is currently investigating these complaints and will review any video showing the alleged disposal of material at the site. DEM has yet to receive video from members of the public.*

*It is important to reiterate that the owner of the property, Kenlin Properties, can perform any activities on the site allowed under state or local laws/permits/ordinances, so long as those activities do not interfere with the closure of the facility. These activities may involve trucks entering/leaving the facility.*

➤ **A question was raised about whether or not the property owner is allowed to be working in the area of the piles of material slated to be cleaned up.**

*No, the property owner currently should not be performing any work in the area of the piles slated to be cleaned up.*

➤ **A question was raised about whether RIDEM takes measurements of the piles of debris during its inspections.**

*In the past, RIDEM has measured the piles of material on the site. However, RIDEM does not take measurements of the piles every time we visit the site. The piles are closely observed during each inspection. Any changes (in size, make-up, etc.) would be clearly noted in an inspection report.*

- **A question was raised about whether RIDEM takes pictures of the site during its inspections.**

*Yes, it is a common practice for RIDEM to take pictures during inspections. Pictures have not revealed any changes in the piles of material on the site. We usually take pictures to document violations. If the inspector does not observe violations at the site during his or her inspection, the inspector will often not take pictures.*

- **A question was raised about whether RIDEM observed any “trash bags” in the piles of material during its inspections and whether they were ever opened to reveal the contents?**

*RIDEM did observe a few trash bags. RIDEM opened several bags which revealed construction and demolition debris and a minimal amount of other solid waste items. It is common to find minimal amounts of solid waste within C&D debris stream.*

- **A question was raised about how RIDEM defines “hazardous waste” and “toxic waste.”**

*Hazardous waste is waste that is dangerous or potentially harmful to our health or the environment. Hazardous wastes can be liquids, solids, gases, or sludges. They can be discarded commercial products, like cleaning fluids or pesticides, or the by-products of manufacturing processes. (From US EPA Hazardous Waste Home Webpage)*

*RIDEM defines both of these terms in its Rules and Regulations for Hazardous Waste Management (June 2010 Version) found at <http://www.dem.ri.gov/pubs/regs/regs/waste/hwregs10.pdf> (Note: The definitions are quite lengthy.)*

*The definition of “Hazardous Waste” can be found on page 12 of the regulations.*

*Multiple sub-definitions of “Toxic Waste” can be found on pages 16 & 17 of the regulations under the larger definition of “Rhode Island Wastes.”*

- **A question was raised concerning whether Kenlin Properties is a “third party” under the Solid Waste Regulations’ requirement for establishment of a closure fund or closure bond.**

*Kenlin Properties is not a third party to these proceedings. Rule 7.1.06(h) of the Solid Waste Regulations requires that “The Closure Fund shall establish and maintain the amount necessary for a third party closure.” What this requirement means is that the amount which must be in the closure fund must be sufficient to fund closure activities in the event such activities must be undertaken by a third party; in other words, the amount of the fund may not take into consideration the potential capacity of the operator for conducting the closure activities itself (equipment, existing contracts, etc.). The requirement is not that a third party must conduct the closure activities, only that there*

*must be a sufficient amount in the closure fund to pay for a closure if a third party were to conduct the closure activities.*

*The property owner was required, at the time of TLA-Providence's application, to certify that it was the guarantor of the proper closure of the facility, and the property owner remains involved in discussions regarding the closure of the facility in that capacity.*

- **RIDEM received a complaint (with pictures) of dead fish in Omega Pond, which abuts the TLA/Pond View facility. The complaint linked the issue of storm water run-off and the impacts to the fish in Omega Pond. (April 17, 2013)**

*From the pictures provided to RIDEM, it looks like these fish are sunfish, a type of fish typically found in estuarine waters like Omega Pond. At this time of year, these types of fish often crowd into the shore and experience oxygen depletion which can kill some fish. Omega Pond has experienced similar events in the past at this same time of year when the water begins to warm up.*

*RIDEM performed an inspection of the TLA/Pond View facility on Wednesday, April 17th. No evidence of storm water run-off from the site was observed. The City of East Providence maintains a storm water outfall to Omega Pond next to the TLA/Pond View site and this outfall was also checked. No dead fish were observed near the outfall or in Omega Pond near the TLA/Pond View facility. RIDEM will continue to check the shore in future inspections.*

- **An inquiry into the DEM TLA/Pond View email inbox read: "DEM claims there is no toxic waste on the site. How did you prove that? What tests were performed on the piles of debris? What part or parts of the piles did you run test on?"**

*Site inspections are continuing. RIDEM inspectors have found no evidence of further disposal and no evidence of any wastes other than the construction & demolition debris the facility was permitted to handle when the facility was operational. What remains on the site is waste left when TLA/Pond View stopped operating as a processing facility. Without evidence of anything other than construction & demolition debris on the site, RIDEM has not performed tests on the piles of debris.*

- **What is the status of the bond?**

*The RIDEM Solid Waste Regulations require that any operator of a solid waste management facility provide financial assurance in an amount sufficient to cover the closure of the facility at maximum capacity. TLA-Providence did so in the form of an \$800,000 Performance Bond issued by Bond Safeguard Insurance Company, with RIDEM listed as the named obligee. When the facility ceased operations in September 2012, RIDEM filed a claim with the Bond Safeguard Insurance Company, seeking that it either perform the closure work in accordance with the RIDEM-approved closure plan, or place the closure amount into a trust fund to allow RIDEM to perform the closure work. After a claims investigation, Bond Safeguard solicited bids for the performance of the work, and as of February 2013 has notified RIDEM that it has elected to hire a contractor to perform the closure work. As of early March 2013, RIDEM and Bond Safeguard are negotiating an agreement to allow the closure work to proceed under the approved closure plan.*

➤ **What will the closure consist of?**

*The closure work that will be performed by a contractor hired by Bond Safeguard will encompass that which was outlined and approved as part of the TLA-Providence license package. In its most basic terms, the closure work will consist of the removal of all waste from the site for disposal at licensed facilities, the washing of all impervious surfaces, cleaning of the leachate collection system, and lab analysis of samples of all wash waters, collected leachate, potentially contaminated soils, and wastes prior to shipment off site. While the exact timing has yet to be determined, RIDEM currently expects closure work to begin in the next few weeks and to be completed within 60 business days of when it begins.*

➤ **Why hasn't the closure started?**

*TLA/Pond View was put into Receivership in March, 2012. Since then much of the financial and operational control of the facility has been the subject of many hearings in Rhode Island Superior Court, and that process continues to unfold under the jurisdiction of the courts. As part of that litigation, DEM continues to work with the receiver and bonding company on the scope and timetable for completing the removal of the construction and demolition debris left at the facility. As of the week of March 4, 2013, RIDEM is in the final stages of negotiations with the bonding company over the exact start date of the removal of the debris left at the facility and which contractor will be used to remove the debris.*

➤ **Who are the key parties involved in the closure?**

*The key parties involved in the closure of the TLA Pond View facility are as follows:*

- *The property owner - Kenlin Properties*
- *The court appointer receiver - Attorney John Mancini*
- *The bonding company - Bond Safeguard Insurance Company*
- *The contractor selected to perform the cleanup - TBD*
- *RIDEM*

➤ **What is the property being used for now?**

*The owner of the property, Kenlin Properties, can perform any activities on the site allowed under state or local laws/permits/ordinances, so long as those activities do not interfere with the closure of the facility. DEM has received many inquiries and complaints concerning general access, truck traffic, and moving equipment on the site which are outside of DEM's jurisdiction and not subject to the court order. Some of these issues may be subject to local ordinances, but DEM does not have jurisdiction to respond to these issues. The DEM continues to conduct frequent inspections of the site and has not seen any evidence that anything done on the site has interfered with the planned closure of the facility or created any environmental issues. Furthermore, current activities being conducted by the property owner at the site do not require a permit from the Department.*