

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Railside Environmental Services, LLC
Kenlin Properties, LLC**

FILE NO.: SW 14-15

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The property is located at 1 Dexter Road, Assessor's Map 304, Block 1, Lot 1, Unit 10 in the city of East Providence, Rhode Island (the “Property”). The Property includes a facility engaged in the processing of 50 tons per day or less of construction and demolition (“C&D”) debris (the “Facility”).
- (2) Kenlin Properties, LLC (“Kenlin”) owns the Property.
- (3) Railside Environmental Services, LLC (“RES”) operates the Facility.
- (4) On or about 7 October 2013 RES submitted to the DEM an operating plan for the Facility entitled “Railside Environmental Services, LLC Fifty Tons per Day – Registration Application” that was dated 3 September 2013 and revised 7 October 2013 (the “Operating Plan”). The Operating Plan includes a Closure Plan dated 3 September 2013 (the “Closure Plan”).
- (5) On 29 October 2013 the DEM approved the Operating Plan for RES and issued RES its registration (the “Registration”).
- (6) The Registration requires RES to:
 - (a) Operate in accordance with the Operating Plan;
 - (b) Receive no more than 50 tons per day of C&D;
 - (c) Receive only C&D; and
 - (d) Immediately remove and segregate any co-mingled non C&D waste inadvertently received in a C&D load (the “Non C&D Waste”) in a secure roll-off.

- (7) The Operating Plan requires RES to maintain a maximum of 4 separate piles of C&D on the Property (collectively, the “C&D Piles”) at all times. The C&D Piles are described as follows:
- (a) A pile identified as Pile 1 located east-northeast of the screener (“Pile 1”). Pile 1 shall not be more than 10 feet high, 20 feet wide at its base and 25 feet long at its base. Pile 1 shall not exceed 93 cubic yards (“CY”). Pile 1 shall consist of unprocessed C&D and crushed concrete;
 - (b) A pile identified as Pile 2 located in the southeast portion of the Property, further identified as the rail loading area (“Pile 2”). Pile 2 shall not be more than 20 feet high, 18 feet wide at its base and 60 feet long at its base. Pile 2 shall not exceed 400 CY. Pile 2 shall consist of unprocessed C&D and crushed concrete;
 - (c) A pile identified as Pile 3 located east of the RES building (“Pile 3”). Pile 3 shall not be more than 8 feet high, 20 feet wide at its base and 25 feet long at its base. Pile 3 shall not exceed 74 CY. Pile 3 shall consist of woodchips for fuel; and
 - (d) A pile identified as Pile 4 located west of the screener (“Pile 4”). Pile 4 shall not be more than 8 feet high, 10 feet wide at its base and 20 feet long at its base. Pile 4 shall not exceed 30 CY. Pile 4 shall consist of fines for disposal (the “Fines”).
- (8) The Closure Plan requires RES to limit in size the storage of unprocessed and/or processed C&D debris stockpiles to the financial assurance posted for closure costs. The Closure Plan identifies the closure costs for Pile 1, Pile 2, and Pile 4 as \$2,646.41, \$11,432.50 and \$1,142.75, respectively (the “Closure Costs”).
- (9) On or about 2 December 2013 RES submitted to the DEM a bond for \$37,000 for the Closure Costs.
- (10) On 3 April 2014 the DEM inspected the Facility. The inspection revealed the following:
- (a) Pile 1 consisted of about 5120 CY of Non C&D Waste and unprocessed C&D that was stored on the ground and against the soil berm adjacent to Omega Pond. The pile was 12 feet high, 60 feet wide at its base and 192 feet long at its base. The pile was located within 50 feet of other piles, buildings and other structures;
 - (b) Pile 2 consisted of about 422 CY of Non C&D Waste and Fines that was stored on the ground in 2 separate piles. The Non C&D Waste was about 300 CY and was 6 feet high, 45 feet wide at its base and 30 feet long at its base. The Fines was about 122 CY and was 3 feet high, 20 feet wide at its base and 55 feet long at its base;

- (c) Pile 3 consisted of about 5333 CY of processed wood chips that were stored on the ground. The pile was 16 feet high, 90 feet wide at its base and 100 feet long at its base. The pile was located within 50 feet of other piles, buildings and other structures;
 - (d) Pile 4 consisted of about 1422 CY of Fines that was stored on the ground. The pile was 8 feet high, 40 feet wide at its base and 120 feet long at its base;
 - (e) A pile of sorted wood located next to the picking line that was stored on the ground. The pile was about 88 CY and was 4 feet high, 50 feet wide at its base and 12 feet long at its base. The pile was located within 50 feet of Pile 1. The pile is not identified in the Operating Plan;
 - (f) A second pile of sorted wood located next to the wood chip loading area that was stored on the ground. The pile was about 388 CY and was 10 feet high, 42 feet wide at its base and 25 feet long at its base. The pile is not identified in the Operating Plan;
 - (g) A pile of Non C&D Waste located at the end of the picking line that was stored on the ground. The pile was about 2888 CY and was 12 feet high, 100 feet wide at its base and 65 feet long at its base. The pile is not identified in the Operating Plan;
 - (h) A pile of solid waste located near the tipping area that was stored on the ground (the "Tipping Area Waste"). The pile consisted mostly of clean out debris, such as a child's car seat, furniture, a porcelain sink and bagged trash. It also included 3 1-gallon containers labeled Baquacil Oxidizer, at least 2 of which contained liquid. A section of wood fence was on top of the pile.; and
 - (i) The location of Pile 1 and Pile 3 and the Fines for Pile 2 was inconsistent with the Operating Plan.
- (11) On 3 April 2014, during the inspection, the DEM inspector asked the Facility inspector about the Tipping Area Waste. The Facility inspector provided the following information:
- (a) He thought the load was C&D as all he could see was the fence on the top;
 - (b) He did not reject the load after it was dumped because he said he could still process it;
 - (c) He only rejects loads that contain asbestos or paint cans; and
 - (d) He was unfamiliar with what Baquacil was and that he would remove the containers.

- (12) On 7 April 2014 and 15 April 2014 the DEM inspected records at the Facility. The records revealed the following:
- (a) From 1 November 2013 through 31 March 2014 (121 operating days) 2660 tons of Non C&D Waste, Fines and metal were shipped from the Facility;
 - (b) On 14 February 2014 the Facility accepted a load of waste from Complete Waste and Recycling. The weight slip stated that the load was 1.72 tons and identified the load as “non recy trash”; and
 - (c) On 15 February 2014 the Facility accepted a load of waste from Graham Waste. The weight slip stated that the load was 7.26 tons and identified the load as “40 yd 6 mattresses 3 couches”.
- (13) On 18 April 2014 and 22 April 2014 the DEM returned to the Facility and spoke with Clyde Ames and Ken Foley. Mr. Ames and Mr. Foley provided the following information:
- (a) Mr. Ames stated that he would not accept a full load of Non C&D Waste because RES is not a transfer station and RES makes no money from accepting this type of waste;
 - (b) Mr. Ames stated that the only way RES accepts Non C&D Waste is if it is mixed in a load of C&D; and
 - (c) Mr. Foley stated that if he is close to the limit of 50 tons per day and more trucks come in he has the containers off-loaded behind the building and the containers are processed the following day.
- (14) RES received on average 58.47 tons per day of C&D as evidenced by the following:
- (a) 2660 tons of Non C&D Waste, Fines and metal were shipped from the Facility from 1 November 2013 through 31 March 2014 (“C&D Shipped”);
 - (b) 4416 tons of unprocessed C&D, Non C&D Waste and Fines were present on the Property as of 3 April 2014 (“C&D On Site”);
 - (c) 7076 tons of C&D was received by the Facility from 1 November 2013 through 31 March 2014; and
 - (d) The Facility received C&D for 121 days from 1 November 2013 through 31 March 2014.
- (15) DEM determined that the closure costs for Pile 1, Pile 2, Pile 4 and Non C&D Waste are about \$244,454, \$13,284, \$54,891 and \$82,543, respectively.

- (16) RES failed to comply with its Registration and Operating Plan by:
 - (a) Receiving more than 50 tons per day of C&D;
 - (b) Receiving solid waste that is not inadvertently received with C&D;
 - (c) Stockpiling Non C&D Waste on the ground;
 - (d) Stockpiling unprocessed C&D, Fines and woodchips in amounts that are inconsistent with the Operating Plan;
 - (e) Stockpiling unprocessed C&D and woodchips within 50 feet of piles, buildings or other structures; and
 - (f) Stockpiling unprocessed C&D, sorted wood, Fines and woodchips in locations that are inconsistent with the Operating Plan.
- (17) RES does not have a license from the DEM to operate a C&D debris processing facility (greater than 50 tons per day of C&D).
- (18) The Respondents do not have a license or registration from the DEM to operate a solid waste management facility for solid waste other than C&D.
- (19) As of the date of this Notice of Violation (“NOV”), RES continues to operate in noncompliance with its Registration and Operating Plan.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 23-18.9-5(a)** – prohibiting the disposal of solid waste (Non C&D Waste) at other than a solid waste management facility.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste (Non C&D Waste) management facility without a license from the DEM.
- (3) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a C&D debris processing facility (receives and processes greater than 50 tons per day) without a license from the DEM.
- (4) **DEM’s Solid Waste Regulation 1.4.01** – prohibiting any person from constructing, developing, establishing, managing, owning or maintaining a solid waste management facility (non C&D Waste) without a license from the DEM.
- (5) **DEM’s Solid Waste Regulation 7.1.01(a)** – prohibiting any person from constructing, developing, establishing, managing, owning or maintaining a C&D debris processing facility (receives and processes greater than 50 tons per day) without a license from the DEM.

- (6) **DEM's Solid Waste Regulation 7.2.02(a)** – for processing registrations of 50 tons per day or less of C&D debris, the storage of unprocessed and/or processed C&D debris stockpiles shall be limited in size to the financial assurance posted for closure costs.
- (7) **DEM's Solid Waste Regulation 7.2.02(c)** – for processing registrations of 50 tons per day or less of C&D debris, the storage of unprocessed and/or processed C&D debris must be in designated areas, stockpiles must not exceed 50 feet in width and a minimum separation of 50 feet must be maintained between stockpiles, buildings or other structures.
- (8) **DEM's Solid Waste Regulation 7.2.08(c)** – requiring on deposit sufficient funds to fully finance closure of the facility at capacity.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), the Respondents are hereby ORDERED to:

- (1) **IMMEDIATELY** cease receiving solid waste other than C&D debris at the Facility.
- (2) **IMMEDIATELY** cease receiving greater than 50 tons per day of C&D debris at the Facility.
- (3) **Within 90 days of receipt of the NOV** come into full compliance with the Registration and the Operating Plan.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED against each named respondent:
 - (a) **RES and Kenlin for Eighteen Thousand Seven Hundred and Fifty Dollars (\$18,750) for violations C(1), C(6) and C(8)**
 - (b) **RES for Sixty Six Thousand Eight Hundred and Seventy Seven Dollars (\$66,877) for violations C(1) through C(8) and economic benefit**
- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against the Respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing **MUST**:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903
 - (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

Susan Forcier, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the city of East Providence wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 23-18.9-13, as is or as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Susan Forcier at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Railside Environmental Services, LLC
c/o Steven J. Hirsch, Esq., Registered Agent
100 Jefferson Boulevard, Suite 315
Warwick, Rhode Island 02888

Kenlin Properties, LLC
c/o Steven J. Hirsch, Esq., Registered Agent
100 Jefferson Boulevard, Suite 315
Warwick, Rhode Island 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE

File No.: SW 2014 – 15

Respondents: Railside Environmental Services, LLC and Kenlin Properties, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) – Disposal of non C&D waste at other than a licensed solid waste management facility	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$6,250	1 violation	\$6,250
C (2) and C (4) – Operating a solid waste management facility (non C&D waste) without a license from the DEM	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$25,000	1 violation	\$25,000
C (3) and C(5) – Processing greater than 50 tons per day of C&D	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$25,000	1 violation	\$25,000
C (6) and C (8) – Failure to limit the size of the stockpiles to the amount of financial assurance posted for closure costs	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$12,500	1 violation	\$12,500
C (7) – Failure to comply with registration and operating plan	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$2,500	4 violations	\$10,000
SUB-TOTAL					\$78,750

***Maximum Penalties represent the maximum penalty amounts per day, per violation.**

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:		
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	AMOUNT
<p>Economic benefit of noncompliance identified by the DEM against RES for storage of unprocessed C&D and processed C&D over the amounts allowed under its operating plan. The one-time non-depreciable expense was obtained from Fact 15 of the NOV. The economic benefit was calculated using an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<ul style="list-style-type: none"> • Profit Status Limited Liability Corporation • Filing Status Limited Liability Corporation • Initial Capital Investment \$0 • One-time Non-depreciable Expense \$395,172 • Annual Expense \$0 • First Month of Non-Compliance 1 March 2014 • Compliance Date 1 November 2014 • Penalty Due Date 1 October 2014 • Useful Life of Pollution Control N/A • Equipment Annual Inflation Rate N/A • Discount/Compound Rate 6.7% 	<p>\$6,877</p>
<i>SUB-TOTAL</i>		\$6,877

COST RECOVERY
ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.
<p>A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$85,627

PENALTY MATRIX WORKSHEET

CITATION: Disposal of non C&D waste at other than a licensed solid waste management facility
 VIOLATION NO.: C (1)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** RES and Kenlin disposed of or allowed for the disposal of non C&D waste (waste inadvertently received with a C&D load) at the facility. RES and Kenlin also disposed of or allowed for the disposal of unauthorized mixed solid waste at the facility. RES and Kenlin stored or allowed for the storage of the non C&D waste and the mixed solid waste on the ground. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of importance to the regulatory program.
- (B) **Environmental conditions:** The property and facility are located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facility. The facility is located in a developed area with potential vapor receptors including commercial and residential structures and underground utilities. The facility is located in the Ten Mile/Seekonk Rivers watershed.
- (C) **Amount of the pollutant:** 2888 cubic yards of non C&D waste was observed on the ground on 3 April 2014 in the area of the picking line, 300 cubic yards of non C&D waste was observed on the ground on 3 April 2014 in the area of the rail loading area, and an undetermined volume of mixed solid waste was observed on the ground on 3 April 2014 near the tipping area.
- (D) **Toxicity or nature of the pollutant:** The solid waste was comprised of non C&D waste and other mixed solid waste (including a child’s car seat, furniture, a porcelain sink, bagged trash and three 1-gallon containers labeled Baquacil Oxidizer, at least 2 of which contained liquid). Other piles contained C&D mixed with carpet, furniture, snow shovels, umbrellas, clothing, black plastic trash bags and mattresses. The solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors.
- (E) **Duration of the violation:** Full duration unknown. The DEM observed the solid waste disposed on 3 April 2014, 7 April 2014, 15 April 2014, 18 April 2014 and 22 April 2014.
- (F) **Areal extent of the violation:** The solid waste observed on 3 April 2014 consisted of three piles, one measuring 100 feet by 65 feet by 12 feet, the second measuring 30 feet by 45 feet by 6 feet, and the third one not measured.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** RES failed to prevent or mitigate the non-compliance. Kenlin failed to properly oversee the activities of RES to prevent the disposal of solid waste on the property.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to RES and Kenlin for their failure to comply with the registration and operating plan and State law and the DEM's solid waste regulations. RES and Kenlin, as owners and operators of the property and facility, had complete control over the occurrence of the violation. RES has a registration and operating plan that was approved by the DEM that prohibits the disposal of solid waste on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating a solid waste management facility (non C&D waste) without a license from the DEM

VIOLATION NO.: C (2) and C (4)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** RES operated a solid waste management facility without a license by the DEM. Prohibiting the operation of a solid waste management facility without an approval from the DEM is of major importance to the regulatory program.
- (B) **Environmental conditions:** The property and facility are located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facility. The facility is located in a developed area with potential vapor receptors including commercial and residential structures and underground utilities. The facility is located in the Ten Mile/Seekonk Rivers watershed.
- (C) **Amount of the pollutant:** 2888 cubic yards of non C&D waste was observed on the ground on 3 April 2014 in the area of the picking line, 300 cubic yards of non C&D waste was observed on the ground on 3 April 2014 in the area of the rail loading area, and an undetermined volume of mixed solid waste was observed on the ground on 3 April 2014 near the tipping area.
- (D) **Toxicity or nature of the pollutant:** The solid waste was comprised of non C&D waste and other mixed solid waste (including a child’s car seat, furniture, a porcelain sink, bagged trash and three 1-gallon containers labeled Baquacil Oxidizer, at least 2 of which contained liquid). Other piles contained C&D mixed with carpet, furniture, snow shovels, umbrellas, clothing, black plastic trash bags and mattresses. The solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors.
- (E) **Duration of the violation:** Full duration unknown. The DEM observed the solid waste on 3 April 2014, 7 April 2014, 15 April 2014, 18 April 2014 and 22 April 2014.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** RES failed to prevent the non-compliance by first obtaining a license from the DEM to operate a solid waste management facility on the property and has failed to mitigate the violation.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to RES for its failure to comply with the registration and operating plan and State law and the DEM's solid waste regulations. RES, as operator of the facility, had complete control over the occurrence of the violation. RES has a registration and operating plan that was approved by the DEM that prohibits the acceptance and processing of non C&D (except as inadvertently received in a C&D load).
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Processing greater than 50 tons per day of C&D

VIOLATION NO.: C (3) and C (5)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** RES operated a C&D debris processing facility without a license from the DEM. RES has a registration approval to process 50 tons per day or less of C&D. The acceptance of more than 50 tons of C&D per day requires a license from the DEM to provide further safeguards to the public health and the environment. Prohibiting the operation of a C&D debris processing facility without a license from the DEM is of major importance to the regulatory program.
- (B) **Environmental conditions:** The property and facility are located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facility. The facility is located in a developed area with potential vapor receptors including commercial and residential structures and underground utilities. The facility is located in the Ten Mile/Seekonk Rivers watershed.
- (C) **Amount of the pollutant:** The DEM inspected records of loads of materials accepted into the facility from 1 November 2013 through 31 March 2014. The records revealed that the facility received on average 58.47 tons per day of C&D over 121 days during that period.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** 121 days.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** RES failed to obtain a license from the DEM to operate a C&D debris processing facility on the property.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** RES has a registration approval from the DEM that limits the amount of C&D that can be received at the facility to no more than 50 tons per day. RES is aware of the requirements for compliance, but failed to comply. RES, as operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to limit the size of the stockpiles to the amount of financial assurance posted for closure costs

VIOLATION NO.: C (6) and C (8)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

DEVIATION FROM THE STANDARD
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** RES and Kenlin failed to limit the size of the stockpiles to the amount of financial assurance posted for closure costs for the facility. Based on the facility closure plan, the facility is required to have no more than 521 cubic yards of waste stockpiled at the facility. The closure bond estimated the cost of the removal of this amount of waste to be \$15,221.66. This bond is required to ensure that sufficient funds are available to close the facility in the event of a planned or unplanned closure to prevent adverse impacts to human health or the environment or both.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** The DEM determined that on 3 April 2014 the facility had about 9852 cubic yards of waste stockpiled at the facility.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Considered, but not utilized for this calculation.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** RES failed to periodically review the closure fund to determine if the closure fund contained a sufficient amount to provide for the closure of the facility in the event of a planned or unplanned closure. Kenlin failed to properly oversee the activities of RES to ensure that size of the stockpiles complied with the closure plan.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** RES has an approval from the DEM which states that the facility is required to have a bond in an amount sufficient to fully finance closure of the facility at capacity and limit the amount of waste stockpiled to the amount of financial assurance posted for closure costs. RES and Kenlin, as owners and operators of the property and facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Using the estimate in the closure plan, the cost for the removal of the stockpiles of waste observed on 3 April 2014 is about \$395,172.

<u> </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$12,500	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with registration and operating plan

VIOLATION NO.: C (7)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** RES failed to maintain a 50 foot buffer zone between the waste stockpiles, buildings and other structures in accordance with the registration and operating plan.
- (B) **Environmental conditions:** The property and facility are located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facility. The facility is located in a developed area with potential vapor receptors including commercial and residential structures and underground utilities. The facility is located in the Ten Mile/Seekonk Rivers watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown. The DEM first observed the violation during an inspection on 3 April 2014.
- (F) **Areal extent of the violation:** Four buffer zone violations were observed. One pile of comingled solid waste and unprocessed C&D was stockpiled against the soil berm adjacent to Omega Pond. A second pile of processed wood chips was stockpiled within 38 feet of a building. There was 22 feet of space between a second wood chip pile and a non C&D pile. Lastly, there was 38 feet of space between a sorted wood pile and an unprocessed C&D pile.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** RES failed to maintain adequate space as required by the registration and operating plan.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to RES for its failure to comply with the registration and operating plan. RES, as the operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250