

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

RE: **TLA-PROVIDENCE, LLC
LICENSE**

AAD NO. 11-001/WMA

DECISION AND ORDER

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R. I. General Laws §42-17.7-1 et. seq.); the *Administrative Procedures Act* (R. I. General Laws §42-35-1 et. seq.); and the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* (“AAD Rules”).

The Rhode Island Department of Environmental Management’s (“RIDEM”) Motion to Dismiss and Memorandum in Support of its’ Motion to Dismiss were filed on June 26, 2015. No Objections were filed in response thereto pursuant to Rule 8.00 of the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters*. The RIDEM’s Motion was filed pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil procedure.

The RIDEM states that it approved a Construction and Demolition Debris Processing Facility License for TLA – Providence, LLC (“TLA”) with specific stipulations on May 2, 2011. On June 1, 2011 TLA appealed the RIDEM’s decision to issue specific stipulations with the license. Other parties, such as the City of East Providence, appealed the decision as well. Sometime in 2012, TLA was petitioned into receivership by the Superior Court which also issued a stay of all proceedings involving TLA. Since then, the RIDEM argues this matter has resolved

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itself because the license all parties were appealing has expired and the facility has been closed since 2013. A new operator has since received a registration to process construction and demolition debris at this location.

The RIDEM argues that TLA's license appeal cannot be granted nor denied because the license has expired and the TLA-operated facility has been closed since 2013. Additionally, a new operator has since received a registration to process C&D at this location. The RIDEM argues that a Motion to Dismiss should be granted when there exists no legal claim for which relief can be granted. Superior Court Rules of Civil Procedure ("R.C.P.") Rule 12(b)(6). (Hendrick v. Hendrick, 755 A.2d 784, 793 (R.I. 2000). "[A motion to dismiss] will only be granted when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim". The RIDEM avers that TLA is not even an incorporated entity anymore and is no longer operating as a C&D facility because it went into receivership amidst the litigation.

The RIDEM therefore moves to dismiss this TLA-Providence, LLC license appeal. There is no relief that TLA, or other parties can obtain by pursuing this appeal according to the RIDEM. I agree with the RIDEM's argument and therefore will grant the RIDEM's Motion to Dismiss.

Findings of Fact

1. The RIDEM approved a Construction and Demolition Debris Processing Facility License for TLA on May 2, 2011, with an expiration date three years from the date of approval.
2. The License was approved for TLA to operate a 1500 ton per day facility, along with specific stipulations for operations.

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3. On June 1, 2011 TLA appealed the RIDEM's decision to issue specific stipulations with the license.
4. A Motion for Stay pending the appeal of the RIDEM's decision was denied by the Administrative Adjudication Division on July 13, 2011.
5. TLA was petitioned into receivership in the Rhode Island Superior Court and all action was stayed on all proceedings involving TLA.
6. The License issued to TLA that all parties were appealing/ arguing has expired.
7. The TLA Facility has been closed since 2013.
8. A new operator has taken over the subject facility.

Conclusions of Law

1. The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R. I. General Laws §42-17.7-1 et. seq.); the *Administrative Procedures Act* (R. I. General Laws §42-35-1 et. seq.); and the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters* ("AAD Rules").
2. Based on the within facts, it is clear beyond a reasonable doubt that TLA would not be entitled to relief under any set of facts that could be proved if it pursued the instant Appeal and therefore the RIDEM's Motion to Dismiss pursuant to RCP 12(b)(6) should be granted.

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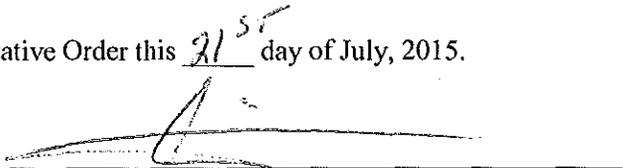
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Wherefore it is hereby **ORDERED, ADJUDGED, and DECREED** that

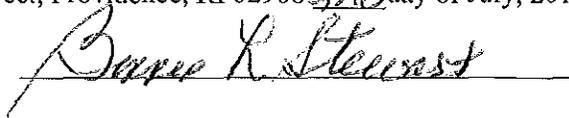
1. The Rhode Island Department of Environmental Management's Motion to Dismiss pursuant to R.C.P. 12(b)(6) is hereby **GRANTED**.
2. The Appeal filed by TLA-Providence, LLC is hereby **DENIED** and **DISMISSED**.

Entered as an Administrative Order this 21st day of July, 2015.


David M. Spinella
Hearing Officer
Administrative Adjudication Division
One Capitol Hill, 2nd 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: Brian Wagner, Esquire, Tower Hill Law Center, 4879 Tower Hill Road, Wakefield, RI 02879; Robin L. Main, Esq., Matthew H. Parker, Esq., Hinckley, Allen & Snyder LLP, 50 Kennedy Plaza, Suite 1500, Providence, RI 02903; Gina DiCenso, Esq., City Solicitor, East Providence City Hall, Room 102, 145 Taunton Avenue, East Providence, RI 02914-4505; Melody Alger, Esquire, Alger Parker, 95 Chestnut Street, Suite 401, Providence, RI 02903; Michael Rubin, Esquire and Christian Capizzo, Esquire, Office of the Attorney General, 150 South Main Street, Providence, RI, 02903; Alexandra K. Callam, Hinckley, Allen & Snyder LLP, 50 Kennedy Plaza, Suite 1500, Providence, RI 02903; Peter M. Willey, 146 King Philip Road, Rumford, RI 02916 and via interoffice mail to Susan B. Forcier, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 21st day of July, 2015.



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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.