Connecticut Department of
ENERGY &
ENVIRONMENTAL
PROTECTION

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IN THE MATTER OF	***:***	***APPLICATION NO. 200801014*** ***REGISTRATION NO.084-285***
RECYCLING, INC.	***:***	***FEBRUARY 5, 2014***

FINAL DECISION

I

SUMMARY

Recycling, Inc. (RCI) has applied for a permit to construct and operate a volume reduction facility in Milford. In addition, RCI is also registered under the DEEP General Permit to Construct and Operate Certain Recycling Facilities (General Permit). DEEP tentatively denied this application and issued notice of its intent to revoke RCI's registration under the General Permit. RCI requested a hearing; parties at this hearing were RCI, DEEP Staff (represented by the Office of the Attorney General) and the City of Milford, which was granted status as an intervenor.

The Proposed Final Decision (PFD) that recommends that I deny the application and revoke RCI's registration. RCI filed exceptions in response to the PFD and requested oral argument. In briefs filed on those exceptions, DEEP Staff joined RCI on two exceptions and raised one exception of its own.[1] Oral argument was held on November 12, 2014 before me as the final decision-maker. I have reviewed a transcript of the November 12 arguments as part of my review of the record.

I adopt the recommendations of the PFD. I agree with the finding of the PFD that RCI submitted false, incomplete and incorrect information in its permit application and in its application to register under the General Permit. I also concur with the conclusion of the PFD

[1] The City of Milford filed a brief in which it adopted Staff's brief in full.

that RCI failed to submit correct and complete quarterly reports. This pattern or practice of non-compliance demonstrates RCI's unwillingness or inability to achieve and maintain compliance with the terms and conditions of a permit that might be issued and with the terms of the existing general permit. I deny RCI's permit application and revoke its general permit registration.

II
EXCEPTIONS
A
EVIDENTIARY RULINGS

RCI takes exception to the hearing officer's exclusion of three groups of documents relating to other DEEP enforcement and permit proceedings.[2] The hearing officer properly excluded these exhibits as irrelevant. Selective enforcement was not an issue in the proceeding. Where evidence irrelevant, it is not error to exclude it. *See* Regs. Conn. State Agencies § 22a-3a-6(s)(1) ("the hearing officer shall not admit any evidence which is irrelevant....").

RCI also takes exception to the admission of exhibits pertaining to prior charges against Gus Curcio, Sr. and his actions during that trial[3] and objects to the hearing officer's asserted "reliance" on these exhibits. It appears that the hearing officer admitted this evidence to provide context to testimony regarding Curcio Sr.'s desire to keep his name off the permit application. Although this evidence was properly admitted as it speaks to the credibility of Curcio, Sr. it appears that these exhibits were not critical and can be struck from the record without impacting the reasoning of the hearing officer in the PFD. Accordingly, I have neither relied on nor looked to these exhibits in making my final decision.

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[2] Labelled APP-A, APP-B and APP-C.

[3] DEEP-49 through 52.

B

STANDARD OF REVIEW

RCI and DEEP Staff take exception to the hearing officer's "failure to undertake *de novo* review," which they characterize as an unweighted review of the evidence. They argue the hearing officer's statement in the PFD that "[t]he question before me is not whether I would have reached the same conclusions as Staff, but whether the facts and evidence in the record support Staff's decision" appears to defer to Staff's actions.

I do not believe that this statement implies that the hearing officer deferred to Staff or that Staff is entitled to deference. Rather, the statement appears to be an attempt to define the limited scope of the proceeding, which was to determine whether or not there was cause to revoke RCI's general permit and deny the application for the individual permit. In any event, my review of the PFD shows that the hearing officer did conduct a balanced and unbiased review of all the evidence before her and did not presume the validity of Staff's actions.

The function of the hearing officer in a contested case is, among other things, to "conduct a fair and impartial proceeding." Regs. Conn. State Agencies § 22a-3a-6(d)(1). A hearing officer is reviewing evidence and testimony presented for the first time, rather than performing an inter-agency review of a closed administrative record. Hearing officers undertake an unweighted review of all the evidence before him or her. It is clear to me that the hearing officer in this case undertook an impartial and unweighted review of the evidence before her, as evidenced by the detailed level of analysis set forth in the PFD.

C

BURDEN OF PROOF

RCI takes exception to the hearing officer's determination that "Staff does not bear the burden of proof with respect to certain of its allegations in the proceeding on the [individual] permit application."[4] This argument ignores the plain language of §22a-3a-(6) f of the Regulations of Connecticut State Agencies. With regard to RCI's application for an individual permit, §22a-3a-6(f) places on the applicant "the burden of going forward with evidence and the burden of persuasion with respect to each issue which the Commissioner is required by law to consider in deciding whether to grant or deny the application." "[T]he burden of going forward with evidence and the burden of persuasion" is on Staff only where DEEP seeks to revoke, suspend or modify a permit, as in the case of RCI's general permit. The hearing officer found that Staff had met its burden in showing that RCI submitted false, misleading or incomplete information upon which DEEP relied on in approving RCI's registration under that general permit. RCI argues that the hearing officer erred in not requiring Staff to demonstrate that these acts were intentional. However, RCI's argument ignores applicable law, as the Department's regulations do not require such a showing and RCI has not cited to any applicable provision of law that would require such a showing. Accordingly, these exceptions are unfounded in law.

RCI also asserts in its exceptions that a heightened standard of proof should apply with regard to the revocation of the RCI's general permit. Specifically, RCI argues that Staff should be required to establish the elements of common law fraud with respect to RCI's application. This exception is unfounded, however, given the plain language of the §22a-3a-6(f) of the Department's Regulations which provides that "[e]ach factual issue in controversy shall be determined upon a preponderance of the evidence." This proceeding is distinguishable from a civil action for damages as a result of common law fraud because it involves the revocation of a permit issued by an administrative agency pursuant to regulations passed by the Department, rather than a civil suit to recover damages resulting

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[4] In its filed exceptions, RCI takes exception to the hearing officer's determinations as to the extent of Staff's burden of proof with respect to the revocation of the general permit. In its brief on its exceptions, RCI did not address this exception and therefore it does not need to be specifically addressed in this final decision.

from actionable fraud. Further, the Department's regulations specifically provide that the Commissioner may revoke a permit "[i]f the permit was issued in reliance upon incorrect information supplied by the applicant or his or her agent." Regs. Conn. State Agencies § 22a-209-4(h)(1)(B). Additionally, none of the cases cited by RCI in its post-hearing briefs point to any statutes, regulations or case law that would warrant applying the standard of proof in civil actions for common law fraud to an administrative proceeding on the revocation of a permit. RCI's assertion that the elements of common law fraud apply is therefore misplaced and unsupported by law. The hearing officer correctly determined that the appropriate standard of proof in this proceeding is the preponderance of the evidence.

D

EXCEPTIONS TO CONCLUSIONS OF LAW

RCI generally objects to the hearing officer's failure to make the conclusions of law set forth in its proposed conclusions of law in its post-hearing brief. The hearing officer is under no duty to make the conclusions of law proposed by RCI.

RCI takes exception to the hearing officer's "conclusion that RCI's actions rise to the level of misrepresentations; her conclusion that mistakes are equivalent to misrepresentations; and to her conclusion that mistakes support denial and revocation." Although RCI finds the language of the hearing officer problematic, the hearing officer's determinations are supported in the Regulations of Connecticut State Agencies. Section 22a-209-4(h)(1)(B) specifically provides that the Commissioner may revoke a permit "[i]f the permit was issued in reliance upon incorrect information supplied by the applicant or his or her agent." Thus, regardless of whether RCI's submissions were mistakes, misrepresentations, or simply incorrect, §22a-209-4(h)(1)(B) permits the revocation of a permit on the grounds that incorrect information was supplied by the applicant or an agent. For these same reasons, RCI's exception to "the Hearing Officer's conclusion that evidence of misrepresentations supports denial of the application and revocation of the registration" is also baseless.

In a related argument, RCI takes exception to the hearing officer's conclusion that DEEP staff was not required to show that RCI's submission of incorrect information was intentional. RCI is mistaken as to what the law requires. The plain language of §22a-209-4(h)(1)(B) of the Department's regulations requires only that "the permit was issued in reliance upon incorrect information supplied by the applicant or his or her agent." No showing of intent is required by the General Statutes or the Department's regulations, and the applicant cannot read in a requirement of intent where the statute does not require it.

RCI takes exception to "the Hearing Officer's conclusion that testimony cannot be corrected or amended." However, the hearing officer never asserted that testimony could not be corrected or amended in the PFD. In the PFD the hearing officer reiterated the inconsistency between Curcio, Sr.'s accounts of ownership and determined that Curcio, Sr.'s testimony was simply not credible given his prior statements. It is Curcio, Sr. who impeached his own credibility, not the hearing officer.

RCI takes exception to "the Hearing Officer's failure, in considering Curcio's testimony in another matter to properly take into account the differences in the issues being adjudicated in that court proceeding, and, also, the fact that the court matter settled without adjudication." This testimony was introduced by Staff to impeach Curcio Sr.'s assertions that he was only the "beneficial owner" of RCI. The hearing officer considered this testimony and determined that Curcio Sr. was not a credible witness, a determination that is well within her discretion. Further, the fact that the matter was disposed of in settlement is of no consequence. Disposition through settlement does not negate the prior sworn statements of Curcio, Sr. in that proceeding.

RCI also takes exception to "the Hearing Officer's conclusion that the evidence on compliance history supports denial of the application and revocation of the registration." The Commissioner is permitted to evaluate an applicant's compliance history pursuant to General Statutes § 22a-6m, and can deny an application for a permit or revoke a previously issued permit where he or she determines that the applicant's compliance history "evidences a pattern or practice of noncompliance which demonstrates the applicant's unwillingness or inability to achieve and maintain compliance with the terms and conditions of the permit." The hearing

officer made no error when she determined that, based on the record evidence, RCI's history of noncompliance rose to this level.

RCI takes exception to "the Hearing Officer's conclusion that she may rely on the definition of shareholder set forth in § 33-645(d)." It was reasonable for the hearing officer to look to the definition of "shareholder" in the Connecticut Business Corporation Act as instructive in defining the term. Moreover, it is clear that the hearing office did not rely solely on this definition in determining what information was required to be disclosed on the application.

RCI takes exception to "the Hearing Officer's conclusion that nominee status was established." In the PFD, the hearing officer asserts that proof of a nominee certification was not necessary "to prove that Curcio Sr. was a beneficial owner and should have been disclosed on RCI's application." Curcio Sr. testified, and RCI continuously has asserted, that Curcio Sr. was the beneficial owner of RCI stock. The production of a nominee certificate, although relevant, was not necessary or integral to the hearing officer's findings.

RCI also takes exception to the hearing officer's determination that certain items were required in submitting the individual permit application at issue. With regard to the hearing officer's discussion regarding the disclosure of beneficial owners, I agree that the regulations and the requisite application forms for solid waste permits are not clear as to what is meant by "owner" and that the Department may be wise to consider revising its application or instructions to note that beneficial owners are included in the requirement to identify all holders of more than twenty percent of a corporation's stock. As a consequence, there appears to be at least some merit to RCI's exception to the hearing officer's conclusions that disclosure of beneficial ownership was required. Therefore, any argument that RCI had an established duty to disclose Curcio Sr.'s involvement in RCI purely because of his status as beneficial owner is not relied upon in this final decision. Rather, I find there was no need to reach the technicality of whether disclosure of beneficial ownership is explicitly required by the DEEP's applications in this case because regardless of his business title, Curcio Sr. was, as demonstrated by overwhelming evidence, a key player in RCI and should have been identified based on this status.

The record also establishes that Curcio, Sr. was the sole financier of RCI, he possessed some ownership interest in the business, and that he was significantly involved in the day-to-day operation and management of RCI. The Department's Attachment J to be filed with an application for a solid waste permit requires disclosure of "all contracts and agreements" between parties, as well as "an organization chart which illustrates the relationship between all parties involved in the ownership and management of the facility." Curcio Sr.'s participation in RCI was such that a reasonable person would have disclosed his involvement in the normal course of responding to Attachment J. Regardless of whether Curcio Sr. considered himself a beneficial owner or assumed some other title, his involvement in RCI was so significant that it should have been disclosed by RCI in the business information required by Attachment J of the application. Failure to disclose this information where it was required is equivalent to the submission of incorrect information, and is grounds to revoke the permit.

RCI also raises an exception to "the Hearing Officer's conclusions that, at relevant times: Chapdelaine did not own RCI, Chapdelaine did not control RCI operations, Curcio has 'total control' over RCI, and that Curcio played a 'role' in RCI that exceeded his position as a beneficial owner and financier." (*Emphasis in original).* These determinations are well within the province of the finder of fact. *See Windels v. Environmental Protection Commission of the Town of Darien*, 284 Conn. 268, 291 (2007) (citing *Melilo v. New Haven*, 249 Conn. 138, 151 (1999) ("[T]he determination of the credibility of . . . witnesses and the weight to be accorded their testimony is within the province of the trier of facts, who is privileged to adopt whatever testimony he reasonably believes to be credible.") (internal citations omitted).

RCI also takes exception to the hearing officer's reference to the *BEC* test and to each of her conclusions with respect to the elements of that test. In the PFD, the hearing officer refers to the *BEC* test to illustrate the extent of corporate officers' liability as set forth in *BEC Corporation vs. Department of Envt'l Protection*, 256 Conn. 602 (2001). However, the *BEC* court restricted the use of its three-part test solely to violations of the Water Pollution Control Act. I have considered the hearing officer's use of the *BEC* test as instructive as to whether

Curcio, Sr. exercised control over RCI to the degree that he could be held responsible for environmental violations but have not considered it as binding law applicable to this decision.

RCI raises an exception to "the Hearing Officer's conclusion that 'RCI did not provide complete or accurate information about its finances, including its funding sources[,'] and specifically to the underlying conclusions concerning the nature of the information an applicant is required to disclose." With regard to the determination that RCI did not provide complete information about its finances, the hearing officer is permitted to adopt the version of events she finds most credible. Further, with respect to the underlying conclusions concerning the nature of information an applicant is required to disclose, the General Statutes, the Department's regulations, the Department's application forms, and the record clearly support the determination that an applicant for a solid waste permit is required to disclose the proposed method of financing the project's costs as well as financial stability information. The hearing officer's determinations are therefore well-founded.

RCI takes exception to "the Hearing Officer's conclusion that certain signatures violated RCSA 22a-3a-5(a)(2), and to the conclusion that the certification violated CGS § 22a-3a-5(a)(2)." "CGS § 22a-3a-5(a)(2)" is not an accurate citation to any statute under Title 22a of the Connecticut statues. I can only assume RCI meant to take exception to the conclusion that the certification violated §22a-3a-5(a)(2) of the *Regulations of Connecticut State Agencies*. The hearing officer determined, on the basis of the record, that the signatures in question were forged. Just as a phony signature would void a contract, a forged signature voids the certification. Section 22a-3a-5 notwithstanding, the terms of the general permit allow the Commissioner to revoke the registration if information in the application "proves to be false or incomplete." *See* General Permit §6(a). This exception is not grounded in the law.

RCI also takes exception to "the Hearing Officer's treatment of the Compliance History Policy as if it were a regulation duly adopted pursuant to the UAPA [Uniform Administrative Procedure Act]." The hearing officer's reference to the Department's Environmental Compliance History Policy in the PFD appears to be intended to provide guidance on how the Department typically deals with compliance history in a permit application review, not to set

forth a particular standard adhered to in all cases. To the extent RCI's exception implies otherwise, I affirm that the Department's compliance policy is not a regulation adopted pursuant to the UAPA.

RCI takes exception to "the Hearing Officer's conclusion that a permit may be revoked based on violations that are unintentional and insignificant." Similarly, RCI takes exception to "the Hearing Officer's conclusion that RCI's reporting issues or compliance history rise to the level of unwillingness or inability to comply with a permit," and "the Hearing Officer's conclusion that RCI's reporting issues rise to the level of unwillingness or inability to comply with a permit." In evaluating the past compliance of the applicant, General Statutes § 22a-6m permits the

> Commissioner of Energy and Environmental Protection [to] consider the record of the applicant for, or holder of, such permit, registration, certificate or other license, the principals, and any parent company or subsidiary, of the applicant or holder, regarding compliance with environmental protection laws of this state, all other states and the federal government. If the commissioner finds that such record evidences a pattern or practice of noncompliance which demonstrates *the applicant's unwillingness or inability to achieve and maintain compliance with the terms and conditions of the permit, registration, certificate or other license for which application is being made, or which is held, the commissioner*, in accordance with the procedures for exercising any such authority under this title, may (1) include such conditions as he deems necessary in any such permit, registration, certificate or other license, (2) deny any application for the issuance, renewal, modification or transfer of any such permit, registration, certificate or other license, or (3) revoke any such permit, registration, certificate or other license.

(*Emphasis added*). The plain language of the statute does not require a showing that past violations were intentional. Section 22a-6m permits the Commissioner to deny a permit where he determines that the compliance history of the applicant demonstrate "the applicant's unwillingness or ***inability*** to achieve and maintain compliance with the terms and conditions of the permit…" Further, the determination as to whether these violations are significant or not, and whether or not they rise to a level that demonstrates unwillingness or inability to comply with a permit lies with the discretion of the Commissioner, in determining whether or not past compliance issues warrant denial or revocation of a permit. RCI has simply utilized the

exceptions process to state its disagreement with the hearing officer's findings as to these matters.

RCI similarly takes exception to "the Hearing Officer's conclusion that the 'record contains no reasons to conclude that RCI would be willing or able to comply with the terms and conditions of any permit it is issued or under which it would continue to be registered' and to the underlying burden shifting inherent in this conclusion." There is no evidence that the hearing officer shifted the burden in making this determination. As discussed above, the burden of proof with respect to the application is on the applicant, and the burden of proof with respect to the revocation of the general permit is on Staff. Although the hearing officer's statement asserts that there is no evidence in the record upon which to conclude that RCI would comply with any permits it held, the findings of the PFD show that Staff demonstrated that RCI could not or was unwilling to comply with its general permit, and thus that permit was justifiably revoked, and that RCI did not meet its burden of proof with regard to demonstrating that it could or would comply with an individual permit if granted.

RCI also takes exception to "the Hearing Officer's conclusion that DEEP's reporting forms are adequate or appropriate for a facility of the specific type operated by RCI under the General Permit." The requirement that RCI use these standard reporting forms is statutory. These standard forms are universally required from solid waste facilities similar to RCI, and RCI did not justify why it is special or unique and should be exempted from using the same forms required of all other facilities.

E

EXCEPTIONS TO FINDINGS OF FACT

RCI takes issue with the hearing officer's failure to adopt certain of RCI's proposed findings of fact. To support its disagreement, RCI generally argues that record evidence supports its findings. "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence...." *Sams v. Dept. of Environmental Protection*, 308 Conn. 359, 374 (2013) (quoting *Shanahan v. Dept. of Environmental Protection*, 305 Conn. 681, 700 (2012). Further,

the hearing officer "is privileged to adopt whatever testimony he reasonably believes to be credible." *Windels v. Environmental Protection Commission of the Town of Darien*, 284 Conn. 268, 291 (2007) (citing Melilo v. New Haven, 249 Conn. 138, 151 (1999) (internal quotation marks omitted).

RCI also takes exception to any fact that "the Hearing Officer sets out and relies on in her Summary, Conclusions of Law and Conclusion sections which do not also appear with record citations in her Findings of Fact section." (*Emphasis in original*). However, this exception does not clearly identify specific instances to be corrected. Accordingly, this exception should be rejected as not particular enough to meet the standard set forth in the Department's Rules of Practice. *See* Regs. Conn. State Agencies § 22a-3a-6(y)(3)(A) ("Exceptions shall state with particularity the party's or intervenor's objections to the proposed final decision.")

RCI takes exception to the hearing officer's findings in paragraphs 3 and 4 of the Findings of Fact section of the PFD, and states that "it appears the Hearing Officer is setting out Staff's claims or positions." The findings of fact set forth the background of the case, and are supported by record citations.

RCI also takes exception to "the Hearing Officer's finding that DEEP 'expects' an applicant to list shareholders holding only a beneficial interest in the stock." On page 10 of the PFD, paragraph 10, the hearing officer states, "[t]he DEEP expects an applicant to list all shareholders, including stockholders holding stock only as a nominee for another person or entity or someone holding a beneficial interest in the stock." This statement does not set forth a conclusion of law; in any event, I have not relied on this statement in my decision to avoid any confusion with regard to the requirements of the application.

RCI also takes exception to the hearing officer's quotation of certain testimony without "including the context, time frame and related clarifying testimony." The hearing officer appears to have included that quotation to provide information regarding the probable perspective of that witness as to a particular fact. She was under no obligation to include any additional information RCI may have wanted in her decision that RCI believes would have clarified that statement or placed it in a particular context. Moreover, the hearing officer did not rely on that quotation to support her recommendations.

RCI takes issue with that statement in the PFD that "Chapdelaine asserted several times that she did not include some information because 'you [DEEP] didn't ask' or 'it was not asked.' This fallacy of distraction was an unsuccessful attempt to place the blame for her mistakes on the DEEP." Notwithstanding RCI's claims that it did not submit certain information because "DEEP didn't ask," the record contains overwhelming evidence that RCI failed to submit information expressly required by the DEEP application forms and regulations, and that RCI submitted certain incorrect information. As a consequence, RCI's claims that certain information was left out because DEEP didn't specifically request it are not enough to overcome the conclusion that RCI submitted incorrect information upon which the DEEP relied in making its permitting decision.

Similarly, RCI takes exception to "the Hearing Officer's findings concerning the information and documentation on types of owners and stockholder, and on control and use of the property, that is sought by the relevant application forms, guidance and regulations, including, without limitation, her findings that RCI failed to submit certain required information and documentation." However, the record is replete with evidence that RCI failed to submit certain required information regarding ownership, control and financing.

RCI also takes exception to "the Hearing Officer's findings concerning the nature and extent of finance information sought by the relevant application forms, guidance and regulations, including, without limitation, her findings that RCI failed to submit certain required information and documentation." Again, RCI's failure to submit certain required information is well documented in the record. Further, the requirement that RCI submit information related to ownership, control and financing is explicitly listed in the permit application, as noted by the hearing officer in the PFD.

RCI also raises specific exceptions to an additional two dozen of the hearing officer's findings of fact.[5] These findings are supported by the record as a whole and included in the PFD with appropriate citations to the record. RCI has not provided any context to its objections, and the bare allegations set out in RCI's filed exceptions do nothing more than reiterate RCI's position and voice RCI's disagreement with the hearing officer's findings. An administrative agency is not required to believe any witness, even an expert. *See Feinson v. Conservation Commission*, 180 Conn. 421, 427-28

[5] RCI Exceptions at 5 (#4), 6(#s7-12, #14-16, 19-21), 8 (#23-26, 28-31), 10 (#39, 40).

(1980) (explaining that the hearing officer can adopt the opinion of the expert he or she finds more credible). "[T]he determination of the credibility of . . . witnesses and the weight to be accorded their testimony is within the province of the trier of facts, who is privileged to adopt whatever testimony he reasonably believes to be credible." *Windels v. Environmental Protection Commission of the Town of Darien*, 284 Conn. 268, 291 (2007) (citing *Melilo v. New Haven*, 249 Conn. 138, 151 (1999) (internal quotation marks omitted) (bracket in original). The hearing officer acted properly in accepting those witnesses and accounts she found most credible.

F
MISCELLANEOUS EXCEPTIONS

RCI and DEEP staff take exception to a statement in the PFD that the Commissioner has "unlimited" authority and discretion to determine what constitutes a pattern or practice of noncompliance and to determine an appropriate course of action pursuant to General Statutes §22a-6m. The hearing officer used the terms "broad" and "wide" elsewhere in the PFD to describe the Commissioner's authority when making a permitting decision and the PFD stays within the parameters of §22a-6m when applying the requirements of the law to the Commissioner's authority. It is clear that the hearing officer understands the extent of the Commissioner's authority and the use of the word "unlimited" in that one statement was probably inadvertent. However, for the record, I confirm that the use of the word "unlimited" to define the Commissioner's authority under §22a-6m is not accurate.

RCI also takes exception to "the Hearing Officer's omission of 'in accordance with law' in paraphrasing § 6 of the General Permit." The hearing officer's use of ellipses to paraphrase a section of the general permit was reasonable and did not distort the meaning conveyed by the quoted language.

Finally, DEEP Staff objects to the hearing officer's statement in her conclusion that DEEP Staff believes may implicate its professionalism. The hearing officer noted that "[t]he revelations of RCI's misrepresentations and its continuing non-compliance with the General Permit seem to have been the proverbial "last straw" in a protracted and problematic application process and enduring

reporting failures that apparently depleted the last vestiges of [DEEP] Staff's patience and professionalism."

I note first that this statement was not a finding of fact. Second, taken in the context of the hearing officer's additional statements in the PFD, which described DEEP Staff's efforts with this application and RCI's compliance issues, it seems clear to me that there was no intent on the part of the hearing officer to suggest here that DEEP Staff was unprofessional or disrespectful towards RCI. Rather, the hearing officer's statement appears to be her characterization of the level of frustration that the hearing officer believed DEEP Staff could have been feeling at the point in the application process when it realized its years-long efforts and forbearance with RCI were unlikely to be productive. Staff appears to have misunderstood a statement that was not intended to imply that its actions were less than professional in this matter.

III
CONCLUSION AND DECISION

RCI submitted false, incomplete and inaccurate information in its application for a permit to construct and operate a solid waste volume reduction facility and in its application for registration under the Recycling General Permit. Gus Curcio Sr., the beneficial owner of 100% of RCI stock, the person who controlled RCI, and the sole source of RCI's funding, was not identified in the applications or in any supporting documents. Curcio was also part of the non-compliance exhibited by RCI in its continuing failure to submit compliant quarterly reports pursuant to the requirements of the General Permit.

RCI's myriad misrepresentations, falsehoods and inaccuracies, the histories of non-compliance of Curcio and RCI, including RCI's failure to submit correct and complete quarterly reports, evince a pattern or practice of non-compliance which demonstrates RCI's unwillingness or inability to achieve and maintain compliance with the terms of a permit that might be issued and with the terms of the existing General Permit. The record contains no reasons to conclude that RCI would be willing or able to comply with the terms and conditions of any permit it is issued or under which it would continue to be registered.

The hearing gave RCI the opportunity to introduce evidence to refute Staff's conclusions and show that it had provided accurate, truthful and complete information on its permit application. It did not do so. In addition to its inability to rebut evidence of inaccuracies, falsehoods and incomplete information on the application, RCI failed to provide any credible and convincing justification for its failure to include required information that would have revealed that Gus Curcio Sr. was involved in RCI. The Commissioner has broad discretion to deny a permit application or revoke a general permit registration. As his designee, I exercise this discretion to adopt the recommendations of the hearing officer and deny RCI's permit application and revoke its General Permit registration effective as of the date of this decision.

In denying RCI's application and revoking its registration under the General Permit, I am not foreclosing the possibility that RCI may choose to reapply for a permit to construct and operate a volume reduction facility at some point in the future or apply for a registration under the Recycling General Permit.

Susan K. Whalen

Susan K. Whalen, Deputy Commissioner

February 5, 2015

Date