Connecticut Department of
ENERGY &
ENVIRONMENTAL
PROTECTION

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Office of Adjudications

IN THE MATTER OF	***:***	***APPLICATION NO. 200801014*** ***REGISTRATION NO.084-285***
RECYCLING, INC.	***:***	***AUGUST 25, 2014***

PROPOSED FINAL DECISION

I
SUMMARY

Recycling, Inc. (RCI) has applied to the Department of Energy and Environmental Protection (DEEP) for a permit to construct and operate a volume reduction facility at 990 Naugatuck Avenue in Milford. RCI currently holds the above-captioned registration under the DEEP General Permit to Construct and Operate Certain Recycling Facilities.

DEEP issued a Notice of Tentative Determination to approve this application on February 10, 2012. DEEP subsequently became aware that RCI had submitted false, misleading and incomplete information in its application concerning the ownership and control of RCI; this information also revealed that a known violator had an ownership interest in RCI. DEEP determined that this demonstrated a pattern or practice of non-compliance that showed RCI's unwillingness or inability to comply with the terms and conditions of the permit and, on November 16, 2012, issued a Notice of Tentative Determination to deny the application. At the same time, the DEEP also noticed its intent to revoke RCI's General Permit registration following its determination that, in addition to the reasons for the denial of the permit application, RCI had violated conditions of the General Permit by providing false and misleading information on its registration application; by failing to timely correct inaccurate information; and by filing an application and supporting documentation with false signatures.

RCI requested hearings on both actions, which were consolidated in this proceeding. The parties are RCI and DEEP Staff; the City of Milford was granted intervenor status.

RCI submitted an incomplete and misleading application that omitted certain required information and provided inaccurate and false information regarding its ownership, financial stability, and corporate structure and operations. The application also did not reveal that Gus Curcio Sr., who has a history of noncompliance, had an ownership interest in RCI at the time of its application and was also involved in its financing and operations. These misrepresentations and Curcio's history of noncompliance demonstrate a pattern or practice of noncompliance that shows RCI's unwillingness or inability to achieve and maintain compliance with the terms and conditions of the pending permit.

This 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 failed to 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.

Staff produced abundant evidence to support the revocation of RCI's General Permit registration. In addition to the reasons for the denial of RCI's permit application, the evidence shows that RCI violated Section 6 of the General Permit by providing false and misleading information related to its ownership in its application for registration, a relevant and material fact upon which the DEEP relied when it renewed this registration. RCI also violated Section 6 by failing to provide timely notice to DEEP regarding changes to its ownership and by submitting the initial registration application and supporting documentation with false signatures. The extensive and ample evidence presented during this proceeding of RCI's failure to submit timely and/or sufficient quarterly reports as required pursuant to the General Permit provides additional support to revoke RCI's registration.

The Commissioner has broad discretion to deny a permit application or revoke a general permit registration. For the reasons detailed below, I recommend that the Commissioner exercise this discretion to deny RCI's permit application and revoke its General Permit registration.

II

PRELIMINARY ISSUES

A
SCOPE AND REVIEW OF THE RECORD

As the hearing officer, I have the responsibility to ensure all relevant facts within the scope of a hearing are fully elicited and the discretion to determine which facts are within that scope. Regs., Conn. State Agencies §§ 22a-3a-6(d)(1) and (2)(A). The record includes evidence received or considered, the transcript of testimony offered during the hearing, and the briefs filed before this decision was issued. General Statutes §4-177(d), §22a-3a-6(v)(1).

The evidence available to Staff at the time of its tentative determination and notice of revocation is an essential part of the record. However, the record may also include evidence or facts that were discovered after notice was provided to RCI because such evidence is material and relevant to the reasons stated for DEEP's actions and because this information is necessary to ensure that I and the final decision-maker are fully informed about the denial of the permit application and revocation of the general permit registration.

In order to render my proposed final decision, I must review the record that has been compiled and developed during this proceeding to determine whether the record supports Staff's tentative determination to deny RCI's permit application and revoke its general permit registration. My role is to evaluate the evidence in the record, find facts based on this record, and make conclusions of law based on these facts. The 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.

B
STANDARD OF PROOF

The standard of proof in an administrative proceeding is the fair preponderance of the evidence. *Goldstar Medical Services, Inc. v. Department of Social Services*, 288 Conn. 790 (2008); *Vigorito v. Allard,* 143 Conn. 70 (1955). Where the legislature has not established a

higher standard, the preponderance of evidence is the default standard of proof for administrative proceedings. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727 (2013). The Rules of Practice that govern this proceeding, Regs., Conn. State Agencies §§ 22a-3a-2 through 22a-3a-6, also provide that unless otherwise provided by law, "[e]ach factual issue in controversy shall be determined upon a preponderance of the evidence." § 22a-3a-6(f).

A claim of common law fraud must be proven by a higher standard of proof. *Rego v. Connecticut Insurance Placement Facility*, 219 Conn. 339, 343 (1991). However, this is not an action seeking damages for injury as a result of common law fraud. This administrative action is primarily based on RCI's alleged failure to disclose all relevant and material facts in its applications. Staff does not need to establish the elements of common law fraud in connection with those misrepresentations;[1] proof that RCI submitted incomplete and inaccurate information is sufficient.

There is no state law or regulation requiring a specific standard of proof in this matter. RCI argues there is a "significant amount of case law which supports a heightened standard of proof." However, the cases RCI relies on involve actions for damages for common law fraud. E.g. *Weisman v. Kaspar*, 233 Conn. 531 (1995); *Kilduff v. Adams, Inc.*, 219 Conn. 314 (1991); *Alaimo v. Royer,* 188 Conn. 36 (1982); *Metropolitan District v. Connecticut Resources Recovery Authority*, 2011 Conn. Super. LEXIS 2183 (Conn. Superior Court August 18, 2011).

A lesser standard of proof such as preponderance of the evidence may be applied when a significant governmental interest outweighs an applicant's property interest in a particular permit or license. *Jones v. Connecticut Medical Examining Board*, supra, 309 Conn. 739. The State's interest in protecting the environment through its permitting process by ensuring an applicant's ability to comply with the law and the terms and conditions of a permit is a significant

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[1] A plaintiff seeking damages for common law fraud must establish: (1) a false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon that false representation to his injury. *Weisman v. Kaspar*, 233 Conn. 531, 539 (1995); *Billington v. Billington*, 220 Conn. 212, 217 (1991). These elements are not relevant to an administrative licensing proceeding.

government interest. Not only is protecting its citizens "one of the fundamental reasons for a government's existence...it is superior to the privilege of any individual to practice his or her profession." Id., 742.

C
BURDENS OF PROOF

1
Individual Permit Application

In any proceeding on an application, the applicant bears the burden of proof with respect to each issue which the Commissioner is required by law to consider in deciding whether to grant or deny an application. Regs., Conn. State Agencies § 22a-3a-6(f). See also *Town of Newtown v. Keeney*, 234 Conn. 312, 322 (1995) (Applicant for solid waste permit has burden of proof per § 22a-3a-6 (f).) In evaluating an application, the DEEP is required to consider whether the applicant will be able to comply with applicable statutes and regulations based on the information provided by the applicant in its application. §§ 22a-209-4 (b) and (d).[2] RCI has the burden of proving that it provided accurate, factual and satisfactory information.[3] It also bears the burden to show that its history of non-compliance does not demonstrate an unwillingness or inability to achieve and maintain compliance with the terms of the permit.

To substantiate its actions, Staff may submit certain evidence that RCI omitted certain facts, provided incorrect and misleading information in its applications and quarterly reports, and that Gus Curcio Sr. has a record of non-compliance to dispute RCI's ability to satisfy its burden of proof. However, the submission of evidence at a hearing is not to be confused with the burden of proof. RCI may rebut Staff's claims through its own evidence and argument, but it

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[2]Section 22a-209-4(b) requires that "the information in the application [for a permit to construct] must be sufficient to demonstrate the ability of the facility to comply with the requirements of these regulations." Subdivision (1) of this subsection requires that the application contain certain information and "any other information the Commissioner deems necessary." Subdivision (d) provides that the Commissioner shall issue a permit to construct upon receipt of satisfactory evidence from the applicant that "(A) the solid waste facility will be constructed and operated in compliance with applicable statutes and regulations."

[3]RCI's argument that Staff has the burden of proving its allegations would directly contradict the clear mandate of § 22a-3a-6(f). The cases cited by RCI are not persuasive as they are matters where the burden is clearly on DEEP to substantiate its allegations, e.g., as the plaintiff in an enforcement order, *Carothers v. Capozziello*, 215 Conn. 82 (1990), and as the prosecutor in a criminal prosecution, *State v. Hinckley*, 1992 Conn. Super. LEXIS (Conn. Superior Court, May 28, 1992).

bears the burden as the applicant to show that the information it provided in its application was correct and truthful and that its non-compliance does not demonstrate a pattern or practice of unwillingness or inability to comply with the permits.

2
General Permit Registration

Staff has the burden of proof regarding its decision to revoke RCI's general permit registration. "[I]n a proceeding on a notice to revoke…a license, the Staff and other proponents of the…notice shall have the burden of going forward with evidence and the burden of persuasion." Regs., Conn. State Agencies § 22a-3a-6(f). Staff may satisfy its burden by showing that RCI provided false or misleading information as prohibited in Section 6 of the General Permit, thereby failing to disclose all relevant and material facts as to the ownership of RCI. Staff's burden may also be satisfied by demonstrating that RCI's history of non-compliance supports the revocation of RCI's registration.

D
EXCLUSION OF IRRELEVANT EVIDENCE

To support its claim that the "revocation of its permit was unprecedented in relation to DEEP's settled past practices," RCI argues that evidence of "factually analogous DEEP administrative proceedings offered to demonstrate that those proceedings did not result in Staff attempts to revoke permits" was erroneously excluded from this proceeding. Selective enforcement is not a legal issue in this proceeding;[4] evidence of how other applicants were treated by DEEP is therefore irrelevant. The evidence offered by RCI was properly excluded. General Statutes §4-178; Regs., Conn. State Agencies § 22a-3a-6(s)(1).

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[4] RCI removed selective enforcement as a legal issue in this proceeding in its pre-hearing materials and confirmed it was not making the claim during the hearing. (Tr. 11/14/13, p.39.)

III

DECISION

A
FINDINGS OF FACT
1
Background/Procedural History

The evidentiary record in this matter is extensive and contains duplicate exhibits and repetitive testimony. More than one source may therefore support a finding of fact. Citations to the record in this decision may cite only some of the documents or pages of testimony that support a finding. As the finder of fact, I have broad discretion to give weight to the evidence I find most complete and credible. See, e.g., *Windels v. Environmental Protection Commission*, 284 Conn. 268, 291 (2007) (trier of facts privileged to adopt whatever testimony he reasonably believes to be credible). My reliance on certain sources does not imply that other sources in the record do not also support that finding, but rather that the sources cited are sufficient.

1. On February 10, 2012, DEEP issued a Notice of Tentative Determination to approve a permit application submitted by Recycling, Inc. (RCI) to construct and operate a solid waste volume reduction plant at 990 Naugatuck Avenue in Milford. A petition for hearing was filed and a hearing process was initiated.[5] (Exs. APP-32, DEEP-11, 100 (p. 16).)

2. In a Complaint dated April 20, 2012, Gus Curcio, Sr. (hereinafter Curcio)[6] brought a civil action against Darlene Chapdelaine (Chapdelaine) to affirm his ownership and control of RCI; Chapdelaine also filed an action against Curcio and others. An October 23, 2012 Stipulation to Judgment was executed by the parties and issued by the Superior Court to resolve these actions in accordance with its terms, including the declaration that "Gus Curcio, Sr. is the beneficial owner of 100 percent of the issued and outstanding shares of common stock in Recycling, Inc." (Exs. DEEP- 29, 99.)

3. DEEP became aware of the allegations in Curcio's Complaint and the declarations of the Stipulation and determined that the issue of ownership of RCI as revealed by these legal documents conflicted with information provided to DEEP by RCI in its permit application. Accordingly, on November 16, 2012, DEEP issued a Notice of Tentative Determination to deny

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[5] The administrative record of this proceeding is on file with the Office of Adjudications.

[6] If Gus Curcio, Jr. is the intended reference, his entire name will be provided.

RCI's permit application on the grounds that RCI had submitted false, misleading and incomplete information to the DEEP in its permit application upon which the Department relied. Curcio's compliance history included a January 2010 court judgment against his company Success, Inc. and a Notice of Violation issued to RCI on June 11, 2012 that remained open with unsatisfied obligations. Considering RCI's misrepresentations and Curcio's history of noncompliance, the DEEP found a pattern or practice of noncompliance which demonstrates RCI's unwillingness or inability to achieve and maintain compliance with the terms and conditions of the pending permit. (Exs. APP- 7 through 11, DEEP-29 (incl. Exhibits A through E), 30, 53, 99, 100 (pp. 17-18); test. Frigon, G., 11/12/13, pp. 72-77.)

4. RCI currently holds Registration No. 084-285 under the DEEP General Permit to Construct and Operate Certain Recycling Facilities (Recycling General Permit or General Permit). This Registration, which renewed Registration No. 084-264,[7] was approved on December 1, 2010 and will expire on August 15, 2015. DEEP noticed its intent to revoke this Registration on November 16, 2012, after determining that the original registration application submitted by RCI had provided false or misleading information as prohibited by Section 6 of the General Permit. Further, because the misrepresentations concerned ownership of RCI which is a material fact, Staff concluded that RCI had failed to disclose all relevant and material facts upon which Staff had relied in renewing RCI's registration. On January 24, 2013, DEEP issued a revised notice of its intent to revoke, which included the reasons set out in the Notice of Tentative Determination to deny RCI's permit application, and added other violations of Section 6 including false signatures in RCI's initial application and its failure to timely notify DEEP regarding information changes as reasons to revoke RCI's registration. (Exs. APP- 4, DEEP- 1, 2, 9, 10, 31, 32, 100 (pp. 6-8, 18, 19).)

5. A previous proceeding on the tentative determination to approve was terminated and removed from the docket of this office on November 19, 2012. RCI filed a petition for a hearing on the tentative determination to deny and requested a hearing on the intent to revoke. These were consolidated into this single proceeding.[8]

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[7] Approved on December 15, 2008. (Exs. APP-3, DEEP-1, 3, 7.)

[8] Background materials related to procedural history not submitted into evidence are in the docket file for this proceeding maintained by the Office of Adjudications.

6. The parties held a Compliance Conference on February 27, 2013, pursuant to General Statutes § 4-182(c). This Conference did not eliminate the need to conduct a hearing.[9]

7. The parties to this proceeding are RCI and DEEP staff. The City of Milford filed a motion to intervene under the provisions of Regs., Conn. State Agencies § 22a-3a-6(k).[10] The Caswell Cove Condominium Association, Inc. sought to intervene according to the provisions of General Statutes § 22a-19.[11] Because this proceeding did not concern environmental issues, Caswell Cove was denied status under the limited standing accorded § 22a-19 intervenors. The City of Milford was denied status as an intervening party pursuant to § 22a-3a-6(k)(1)(B), but was granted status as an intervenor under the provisions of § 22a-3a-6(k)(2).[12]

8. An evidentiary hearing was held on November 12, 13, 14, 15 and 19, 2013. RCI, DEEP Staff and the City of Milford filed post-hearing legal submissions.

2
Individual Permit Application: Required Information

9. The individual permit for which RCI has applied would allow it to construct and operate a volume reduction plant to handle various types of solid waste including construction and demolition debris; processed and unprocessed wood waste; land clearing debris and yard waste; antifreeze; used oil and oil filters; whole scrap tires; electronic devices and appliances; batteries; municipal solid waste such as furniture, mattresses, carpets and rugs; and asphalt shingles and vinyl siding. (Exs. DEEP - 11, 18, 25, 27.)

10. An application from a corporation must identify its owners, operator, officers and directors and certain shareholders[13] and must include agreements between all parties involved in the project for the ownership and control of the facility. In order to facilitate DEEP's review of

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[9] Background materials related to the Compliance Conference not submitted into evidence are in the docket file.

[10] A person shall be granted status as an intervening party if the request states facts that show that "(i) his legal rights, duties or privileges will or may reasonably be expected to be affected by the decision in the proceeding, (ii) he will or may reasonably be expected to be significantly affected by the decision in the proceeding, or (iii) his participation is necessary to the proper disposition of the proceeding." § 22a-3a-6(k)(1)(B).

[11] Any person may intervene upon the filing of a verified pleading asserting that the proceeding involves "conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." §22a-19(a).

[12] A person may be granted status as an intervenor if a written request states facts "which demonstrate that his participation is in the interests of justice and will not impair the orderly conduct of the proceeding." §22a-3a-6(k)(2).

[13] At the time the application was filed, this attachment was lettered as Attachment D; it is currently Attachment H. The relevant information sought in the attachments did not change. (Exs. DEEP- 12, 15, 19; test. Isner, R. 11/14/13, p. 234; Frigon, G., 11/19/14, p. 33.)

the corporate compliance history, the application must include information that illustrates the relationship between all parties involved in the ownership and operation of the facility. All stockholders holding twenty percent or more of a corporation's stock must be identified. The DEEP expects an applicant to list all shareholders,[14] including stockholders holding stock only as a nominee for another person or entity or someone holding a beneficial interest in the stock. (Exs. DEEP- 11, 12, 19, 21, 53; test. Isner, R. 11/14/13, pp. 233-248, 250-251, 254, 260-261.)

11. The application also requires the applicant to attach information about its financial stability, including sources of financing and expenses an applicant could incur.[15] Funding sources must be identified, and include mortgages on the property. This information is critical to know in order for the DEEP to evaluate the feasibility of the project since a financially unstable permittee may not be able to operate in accordance with permit conditions. (Exs. DEEP-11, 21; test. Isner, R. 11/14/13, pp. 248-249, 252-253.)

3

General Permit: Registration and Quarterly Reports

12. RCI's current registration under the DEEP General Permit to Construct and Operate Certain Recycling Facilities allows it to function as a limited processing recycling facility. RCI is authorized to receive, separate, and process limited quantities of materials such as paper, glass, plastic and metal food or drink containers; textiles, leaves and brush; batteries, used oil, anti-freeze and used oil filters; scrap metal; and used electronics. (Exs. DEEP- 2 (pp. 35-37), 9, 10, 100(pp. 2, 8); test. Frigon, G. 11/12/13, pp. 38-39.)

13. To register for the General Permit, an application must identify the owner and operator of the facility. Section 6 of the General Permit states that the DEEP relies on the information provided by the registrant/permittee and if such information proves to be false or incomplete, the authorization under the General Permit may be revoked. This Section also indicates that any document that is submitted to the DEEP must be signed by both the registrant and by the person(s) who actually prepared the document certifying that the information in that document is

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[14] "Stockholder" and "shareholder" both refer to the owner of shares in a company and either one may be used when referring to company ownership. *Merriam-Webster.com.* http://www.merriam-webster.com/dictionary/shareholder; accessed 10 June 2014. The terms are used interchangeably herein.

[15] This lettering of this attachment has changed over time; it began it began as Attachment G, became I in November 2004, and J in January 2009. Attachment I and J are identical except for the lettering. These changes were primarily just the labeling of the forms, not their relevant content. (Exs. DEEP-21, 106; test. Frigon, G. 11/19/13 pp. 34, 35.)

"true, accurate and complete." The registrant/permittee is also required to report any changes in information or correct any inaccurate, misleading or omitted information submitted pursuant to the General Permit within fifteen days of becoming aware of such changed or inaccurate information. (Exs. DEEP-1, 2, 3, 9, 101 (p.8.)

14. The General Permit requires all permitted facilities to submit quarterly reports, even if the facility is not operating. Quarterly reports ensure that recycling facilities are complying with permit requirements (i.e., actually recycling the materials they are taking in), provide data regarding the amount of recycling taking place in the state, and prevent illegal transfers of waste. They are also a tool DEEP uses to monitor and assess recycling goals. DEEP relies on honest reporting from facilities since it is not feasible for DEEP to inspect every site. (Exs. DEEP- 1, 2, 101 (pp. 8, 15); test. Sage, D., 11/14/13, pp. 94-95, Isner, R. 11/14/13, pp. 255-257.)

15. The first of the two parts of the reports is a list of the recyclable materials that have arrived at a facility, including information, broken down month to month, detailing the kinds of materials received, their origin, and the number of tons received. The second part of these reports is a list of recyclable materials leaving the facility and includes information about the type of materials, the destination, and the amount of materials. DEEP reviews all submitted reports. If a report is not complete or accurate, it is not accepted and the facility is notified. DEEP will assist a facility to help them complete or amend their reports, and typically the reports are corrected after one or two attempts. The failure to submit complete and accurate reports may be the basis for the DEEP to issue a notice of violation (NOV) and, if necessary, take further enforcement actions. (Exs. DEEP- 101 (pp. 8-10); test. Sage, D. 11/14/13, pp. 27 – 30; Isner, R. 11/14/13, pp. 256-257.)

4

The Applicant Recycling, Inc.

a

Incorporation/Stock Ownership

16. RCI, which was formed on or about February 6, 2008 at Curcio's direction, was incorporated as a Connecticut corporation on March 27, 2008; its principal place of business is 990 Naugatuck Avenue in Milford. RCI purchased the property in October 2009 from the Barrett family, which took back a mortgage for the full purchase price of $1.7 million. A $2 million dollar mortgage, which included interest owed the Barretts, later replaced this mortgage.

(Exs. APP – 1(pp. 4-6, 9), 14, 17, DEEP- 4, 8, 11, 29¶3, 36 (pp. 52-53, 169), 38, 39, 100 (p.7); test. Barrett, J. 11/12/13, pp. 126-129, Curcio, G.[16] 11/12/13, pp. 151, 177- 181.)

17. In its certificate of incorporation, RCI authorized the issuance of 5000 shares of stock, but issued only 100. No shares or stock certificates were placed into evidence at this proceeding. Curcio gave sworn testimony during his civil action against Chapdelaine that he had become a shareholder of RCI when it was incorporated and had "voting stock" in the corporation; he denied that this prior sworn statement was true during this proceeding.[17] James Barrett (Barrett), nominated by Curcio as RCI's first president, testified that he owned all of RCI's stock and was listed with the Secretary of State as the sole stockholder at the time of RCI's initial 2008 permit application. Barrett could not remember if he received any stock certificates when he acquired that stock, whether he signed any agreements in blank to transfer that stock or whether he paid anything for the stock. He could also not recall signing any shareholder or stock transfer agreements. When Chapdelaine replaced Barrett as president of RCI in October 2009, she revised RCI's 2008 permit application to list herself as the holder of 100% of RCI's stock. Chapdelaine never claimed she received any stock certificates.[18] (Exs. APP-6, DEEP-4, 12, 15, 19, 29 (Exhibit E), 36 (p. 113); test. Barrett, J. 11/12/13 pp. 92 - 96, 107-108, 112 – 113, Curcio, G., 11/12/13, pp. 161-162, Chapdelaine, D., 11/13/13, pp. 50-51, 172, 11/15/13, p. 30.)

18. Chapdelaine's claim that she was is the owner of RCI and the exclusive holder of 100% of RCI's stock is not supported by the record and the logical conclusions that can be drawn from it. There is no evidence that RCI's shares are registered in her name in its corporate records. Chapdelaine executed a document shortly after she was nominated as president of RCI by Curcio that provides that she is the owner of record of RCI "in name only" and references other documents that show that she could be dispossessed of this ownership at any time by Curcio. Other documents implicate the existence of additional shareholders. A shareholder's agreement she signed in 2011 explicitly states that Chapdelaine owns ten percent or ten shares of RCI's stock and is required to offer her shares to RCI and the other stockholders before selling them to a third party. The existence of the shareholder's agreement establishes that there was another

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[16] All testimony cited as "Curcio, G." is by Gus Curcio, Sr.

[17] "I'm not saying I lied, but I might have made some mistakes." (Test. Curcio, G., 11/12/13, p. 162.)

[18] Chapdelaine claimed she could not find any stock certificates during the civil action with Curcio; during this proceeding, Curcio said he did not remember whether there were stock certificates that were retired. (Test. Curcio, G., 11/15/13, pp. 190-191.)

owner or owners of the remaining shares of RCI; by its terms, it would have terminated and had no legal effect if Chapdelaine were the only shareholder when she signed it.[19] Curcio's testimony during his civil action against Chapdelaine also implies that there were other stockholders. Telling her that she was terminated during a meeting of the stockholders, he told her that "You weren't sole stockholder. The 90 percent outvoted the 10 and you were gone." (Exs. APP- 7 to 12, DEEP- 19, 29 (Exhibits A through E), 36 (pp. 113-114), 37; test. Chapdelaine, D. 11/13/13, pp. 41, 46-51.)

b
Ownership and Control

(1)
James Barrett

19. Curcio nominated Barrett to be sole officer (president and secretary) and director when RCI was incorporated in 2008. Curcio considered himself to be the owner of RCI and controlled RCI through Barrett. Barrett was not aware that Curcio considered him his nominee, but understood he had been appointed as president of RCI. Barrett could not recall signing any agreements with Curcio[20] and was not sure he signed any paperwork when he relinquished his role to Chapdelaine. Bank statements for the business account were mailed to Barrett's home address in Bethel, but he did not know where the books and records for RCI were kept and maintained. Barrett could not recall filling out more than one check on behalf of RCI; checks were signed with a rubber stamp of his signature that he thought was kept by Chapdelaine. Barrett did not know whether RCI paid any taxes while he was president of RCI. Barrett explained that Chapdelaine had been hired to manage the application process[21] and to "take care of the affairs" of RCI. He knew Curcio was financing the application process, but did not know if he was the sole source of money. Barrett knew the RCI property was being leased to Associated Carting, Inc. during the time he was president, but did not know if operations were going on at the site. When Barrett filed for bankruptcy protection in December 2008, he did not list RCI as a business in which he was an officer or director or in which he owned five percent or

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[19] The agreement states that it terminates "[w]henever there is only one surviving Stockholder bound by the terms thereof." (Ex. DEEP-29, Exhibit E, Art. 7E.3.)

[20] Curcio was not able to locate any paperwork. (Ex. APP-1, p. 10.)

[21] According to Barrett, Chapdelaine was hired "because of her ability with the State to more or less ramrod the whole application through." (Test. Barrett, J. 11/12/13, p. 84.)

more of the voting securities within the past six years. He claimed this was an "oversight" and, alternatively, that he did not list RCI stock because he felt RCI had no value. (Exs. APP-1 (p.10), DEEP- 4, 5, 11, 12, 15, 33, 34, 35, 36 (pp. 120-121, 175); test. Barrett, J. 11/12/13, pp. 84 – 108, 112 – 125, 129 - 130, 135, Curcio, G., 11/12/13, pp. 151 – 158, 165.)

(2)
Darlene Chapdelaine

20. Curcio nominated Chapdelaine to replace Barrett on June 16, 2009. Initially vice president, secretary and director, Chapdelaine also became president on October 15, 2009.[22] Curcio considered Chapdelaine to be the owner of RCI during her tenure. Chapdelaine remained sole officer and director of RCI until April 17, 2012, when papers were filed with the Secretary of State replacing Chapdelaine with Joseph Regensburger, one of Curcio's business associates, as RCI's sole officer and director. On April 19, 2012, Chapdelaine reinstated herself as sole officer and director by filing paperwork with the Secretary of State. Later that same day, papers were filed that listed Regensburger replacing Chapdelaine as sole officer and director. On April 24, 2012, Chapdelaine again reinstated herself in Regensburger's place and again, later that same day, papers were filed replacing Chapdelaine with Regensburger as sole offer and director. Curcio, who officially replaced Regensburger as sole officer and director on February 19, 2013, considers himself to have been president and sole officer since April 2012, when he exercised his right to replace Chapdelaine pursuant to "beneficial paperwork" he had her sign. (Exs. APP- 1 (p. 1), 2 (p. 4), DEEP- 4, 29 (Exhibits A though D), 36 (p. 120); test. Curcio. G., 11/12/13, pp. 144 - 146, 152, 155 - 157, 196, 250, 265 – 268.)

21. As set out in his sworn April 2012 Complaint initiating his civil action against her, Curcio nominated Chapdelaine to be the sole officer and director of RCI for the purpose of facilitating the filing of RCI's permit application. She has, at all times, been required and directed to operate the business of the corporation at his direction and with his express approval. "In order to effectuate [h]is control" over Chapdelaine's actions, Curcio had her sign the following in his office on October 26, 2009: an affidavit that she is "the owner of record in name

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[22] Chapdelaine claims she informed DEEP verbally that she had become president several weeks later. A revised application showing RCI had replaced the Barretts as the property owner and Chapdelaine was now the sole officer and stockholder was filed on December 30, 2009. (Exs. APP-2 (p. 7), 5,6, DEEP-11,12, 18, 19, 100 (pp. 11-12).)

only of Recycling, Inc."; a letter of resignation; a statement of beneficial ownership in which she acknowledges that someone else, whose name would be filled in on the blank line, is the beneficial owner of her RCI shares; and a stock transfer power, in which she sells, assigns and transfers her RCI shares to an unnamed entity in Stratford.[23] Curcio believed he could fill in this "beneficial paperwork" whenever he decided to do so. On December 5, 2011, Curcio had Chapdelaine sign a stockholder's agreement that provided that she owned ten percent of RCI's stock. Chapdelaine continued to believe she owned 100% of RCI's stock even after she signed this document. Curcio kept these documents in his attorney's safe; Chapdelaine had no access to them.[24] (Exs. APP-7 to 11, DEEP-29 (¶¶ 6, 7, 8, Exhibits A through E), 36 (pp. 23, 44, 62-64, 150 - 152), 37; test. Curcio, G. 11/12/13, pp. 159 - 161, 166-170, 174-177, 216-217, 293-294, Chapdelaine, D. 11/13/13, pp. 46 - 52, 168 – 172.)

22. Chapdelaine was listed as president and director of RCI in documents filed with the Secretary of State from October 2009 to April 2012. She submitted RCI's permit application, submitted attachments and additional information, and filed the application for the General Permit registration and renewal. She was listed as the president and holder of all of RCI's stock in a December 2009 revised application; RCI's General Permit registration was not changed to show her status as president until the February 12, 2010 renewal application. She submitted quarterly reports for RCI and communicated with DEEP regarding insufficiencies in those reports. She was arguably the face of the corporation in communications with DEEP and other state agencies with whom she interacted as RCI's representative.[25] However, she was not able to independently operate RCI. She did not decide how RCI would spend its money. She even lacked the power to maintain her own position with RCI; the "beneficial paperwork" she signed

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[23] Curcio recollected that he had Barrett execute similar documents, but could not locate them. Barrett first denied signing any similar agreements and later claimed he could not recall any agreements. (Ex. APP-1 (p.10); test. 11/12/13, Barrett, J. pp. 107-108, 112-114, Curcio, G. 11/12/13, p. 170.)

[24] Chapdelaine claimed she had not read at least some of these documents and did not understand their meaning. Curcio tried to deny his prior testimony that these documents gave him control over Chapdelaine. Chapdelaine's claimed misunderstanding and Curcio's attempt to deny his prior testimony have no impact on the issue of whether the documents needed to be included with RCI's application. (Ex. APP-2 (p. 8); test. 11/13/13 Chapdelaine, D., pp. 169-172, 11/15/13, Curcio, G. pp. 124-134.)

[25] Chapdelaine communicated with the Connecticut Department of Economic and Community Development and the Connecticut Development Authority regarding financing. There is no evidence of a commitment by either entity regarding the financing of RCI. (Exs. City -1, 2, DEEP-75; test. Chapdelaine, D., 11/13/13, pp. 211-212, Curcio, G. 11/15/13, p. 182.)

could cause her to be removed from RCI at any time. (Exs. DEEP- 3, 4, 9, 11 to 13, 18 to 20, 22, 25 to 27, 29 (Exs. A through E), 42-43, 64, 75, 104, 105, City-1, 2.)

(3)
Gus Curcio Sr.

23. Curcio directed that RCI be formed and the incorporation paperwork was drafted in his office.[26] Curcio negotiated the purchase of the business' property and the $1.7 million mortgage given to the sellers for the purchase price. He decided to open a recycling facility at the property. He nominated RCI's presidents Barrett and Chapdelaine, who were the sole officers of RCI, and controlled RCI with and through them. He had Chapdelaine execute "beneficial paperwork" that gave him the power to replace her at any time. Curcio arranged the financing for RCI through mortgages that he negotiated with affiliated companies, friends, family and associates. He was the sole source of funds, using his personal funds for RCI when Barrett was president. Curcio was funding RCI during the permitting stage, but acknowledged that this financing could continue after a permit was issued. Curio approved all expenses and maintained RCI's general ledger and checkbook at his office, where those records were maintained by his bookkeeper. RCI maintained a "satellite office" at Curcio's office building. Curcio was the source of other personnel and services for RCI, including one of his employees through whom Chapdelaine and Curcio often communicated. Curcio controlled the "major decisions" of RCI. Curio was kept aware of the application process and worked with RCI's engineers and lawyers in connection with the application, reviewing at least one of RCI's responses to DEEP's request for details about financing. (Exs. APP-1 (pp. 1, 5-9), 7 to 12, DEEP – 23, 24, 29 (¶¶3, 4, 6, 7, 8, Exs. A through E, G), 34, 36 (pp. 22, 26, 44, 52 – 55, 66, 86, 88-94, 102-103, 120-121, 148-151, 155, 172-173, 175), 38, 39, 42, 43 to 45, 47, 84 to 94; test. Barrett, J., 11/12/13, p. 121, Curcio, G. 11/12/13, pp. 148-161, 178-211, 215-218, 245, 247, 265-279, 283 – 288, 11/15/13, pp. 128 -

[26] Curcio denied and then admitted that he had directed that RCI be formed as a corporation. This illustrates his often equivocal and conflicting testimony throughout this hearing on even fairly simple questions, particularly when he was confronted with evidence of his prior sworn contrary statements made during the civil actions. After assuring his questioner that "I don't want to dance around, so I'm just going to tell you," Curcio first claimed that he had directed an attorney to form RCI as a corporation because Barrett had asked him to do so. His prior testimony that it was his direction was presented to him. Asked whether it was still his testimony that he did not direct RCI be formed as a corporation, Curcio then admitted that he had given that direction. These kinds of distractions made this hearing process more difficult than was necessary. I may also draw a negative inference from a noncompliant party. Regs., Conn. State Agencies § 22a-3a-6(e). (Exs. DEEP-29 ¶3, 36 (p.52); test. Curcio, G., 11/12/13, pp. 146-151.)

129, 188-189, 193, 199, Chapdelaine, D. 11/13/13, pp. 66-67, 71-82, 87, 91- 93, 98-99, 114-134, 208-228.)

24. Curcio sought to prove his ownership and control of RCI in his civil action against Chapdelaine. Curcio believed that the "beneficial documents" gave him an interest in and "total control" over RCI since they were signed in blank for him to "fill out when I so chose." He expressly stated that he was the owner of RCI during this action, explaining that "[Chapdelaine's] got a company in her name that's really mine" and telling Chapdelaine "you know I'm the owner." In response to her questioning during this action as to proof that he directed her, he told Chapdelaine "there's about 150 emails." He also testified that although he was not listed on the corporate documents submitted with the application, he was "part of the corporation." Curcio said he was a shareholder of RCI and had been since the corporation was formed. He also offered testimony to prove that he provided more than just financing for RCI and that he was in control of RCI's operations, particularly though Chapdelaine, stating that he "directed everything from day one" and there were "tons of emails that support I was the boss." (Exs. DEEP-29 (Exs. A through E), 36(pp.36-37, 42-44, 54, 62,113,121,150-151,155, 173).)

25. Curcio claims he has always been the beneficial owner of RCI. When he made Barrett and then Chapdelaine his "nominees," he understood that to mean that they were the owners and he was the beneficial owner of RCI. He claims he meant to testify that he was the beneficial owner throughout the civil action against Chapdelaine. Curcio tried to repudiate his prior sworn statements that he owned or was the owner of RCI, even when they were read to him during this proceeding, through evasive or vague answers to questions or outright denials of his prior statements. Curcio denied that he controlled or was involved with RCI and argued that his contrary testimony during the civil action was colored by his anger at Ms. Chapdelaine and that he "was trying to beat her" and establish his ownership and control and he "may have made mistakes." He asserted he did not lie, but that he "may have embellished" and "may have said things in anger." Curcio understands he was under oath during that action and that he was warned against perjuring himself, but explained that his anger was the reason he made mistakes. Curcio said he was correcting his prior inconsistent statements now and was providing "reasons" and not "excuses" for them. Curcio failed to explain how a "mistake" in prior sworn testimony can render it invalid. (Exs. DEEP-29¶3, 36 (pp. 44, 54, 62,169,173), 48; test. Curcio, G.

11/12/13, pp. 152-157, 162-166, 178-180, 196, 209, 214, 217-219, 241-245, 249-250, 258-259, 261-266, 276, 280, 285-287.)

26. Curcio directed RCI's operations. Chapdelaine operated RCI's business at his direction and he was involved in decisions about day-to-day activities at RCI. He "directed everything from day one" and "he was the boss." Chapdelaine communicated with Curcio "virtually every day" and emails to Curcio indicated he often met her "at the yard." Emails between Chapdelaine and Curcio also show that she kept him informed of operational matters at RCI and that he made big and small decisions that impacted those operations on a routine basis, such as whether employees should be paid for their time to take a training class and if he could provide Chapdelaine with a person to work in the "yard."[27] Curcio decided what security system to purchase for RCI and was the person Chapdelaine turned to for permission to use a certain "scale ticket" system at the site. Chapdelaine consulted with Curcio regarding unacceptable waste received from a customer he had referred to the facility and other matters that could impact compliance with environmental regulations. She also sought Curcio's input regarding RCI's broader plan of operations under the General Permit. Chapdelaine reported regularly to Curcio on the progress of the application, provided him with at least one set of copies of the application[28] and asked him to review the draft of a letter prepared by RCI's accountant for the DEEP in response to questions about RCI's finances.[29] Curcio admitted that he worked with engineers and lawyers "in furtherance [of] it [the application]." (Exs. APP-1(p.1), DEEP-23, 24, 26, 28, 29 (¶¶4, 6, 8), 36 (pp. 22, 44, 121, 155), 42, 43, 44, 47; test. 11/12/13, Curcio, G., pp. 159, 167-170, 209-211,215-217, 244-247, 269-270; Chapdelaine, D. 11/13/13, pp. 45-47, 91-94, 117-119, 122-123, 125-126, 133-134, 208-210, 214-216.)

27. Curcio was in control of RCI's money. Chapdelaine opened a checking account for RCI at his direction, but essentially had no access to it. Curcio had a stamp made with her signature, which he maintained at his office, and wrote out and stamped most, if not all, of the checks associated with RCI's expenses, which he approved. He determined when deposits would be

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[27] These emails, which Curcio offered during the civil actions, were not produced by RCI in this matter in response to requests for the production of documents. (Exs. DEEP – 42, 43, 45, 46; test. Curcio, G., 11/12/13, pp. 203 – 209.)

[28] Chapdelaine denied she gave a set of copies to Curcio; an email indicates she did. (Ex. DEEP-42, (12/17/09 email); test. Chapdelaine, D., 11/13/13, pp. 118- 119.)

[29] Although Chapdelaine tried to deny that she asked Curcio to review the letter, her request in an August 3, 2011 email to Curcio would indicate that she did. Later, she testified "...if I did, it wouldn't be abnormal...." (Exs. DEEP – 28, 43 (8/3/11 email); test. Chapdelaine, D., 11/13/13, pp. 91-95.)

made to that account and maintained the general ledger, checkbook and all financial records for RCI at his office at Success Avenue in Bridgeport. His bookkeeper maintained the financial records for RCI and handled the checkbook.[30] Chapdelaine provided invoices to Curcio on a regular basis.[31] Curcio decided what expenses of RCI would be paid, would deposit money on his schedule[32] and would not deposit money if he did not want to. Although Chapdelaine was RCI's president, she had no authority to spend RCI's money; she had to come to Curcio for his approval and to receive reimbursement for expenses she incurred. She had to ask him for money to fund every aspect of RCI's business,[33] including roof repairs, equipment servicing, safety equipment and other items needed by employees, and all kinds of office supplies, even paper clips. Chapdelaine asked for money to cover the fee for the general permit renewal, filing fees, and copying costs for submissions to DEEP. Chapdelaine had to ask to receive her weekly compensation of $2000,[34] which Curcio often paid on his schedule. Curcio controlled the timing and the amount of Chapdelaine's compensation; by the end of 2011, he told Chapdelaine she would only receive $500 per week. (Exs. DEEP – 36 (pp. 28, 54-55, 76, 86, 88- 94, 106, 164), 42, 43, 44, 47, 95; test. 11/12/13, Curcio, G. pp. 183-211, 273-278, 283- 285, 11/15/13, pp. 198-199, Chapdelaine, D. 11/13/13, pp. 72-73, 98-100, 115-134, 210-213, 216-226.)

28. Curcio controlled RCI's finances by burdening the property with eighteen mortgages totaling over $4.6 million, excluding the $1.7 million dollar mortgage to the Barretts, which were placed on the property between October 26, 2009 and February 12, 2012. Curcio negotiated all these mortgages with friends, family or affiliated companies. Eight mortgages totaling $40,000 were given to companies owned either by Curcio's wife, friends or associates for consulting fees or consulting services. Curcio could not recall what services were paid for by some of the

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[30] Even though she testified that she worked regularly with Curcio's bookkeeper on RCI's books, Chapdelaine did not recognize RCI's general ledger and could not explain how RCI handled certain expenses. (Ex. DEEP-44; test. Chapdelaine, D., 11/15/13, pp. 77- 83.)

[31] Chapdelaine denied she was bringing any receipts for RCI expenses to Curcio; in one of her emails seeking reimbursement for copies, Chapdelaine tells Curcio "I will bring receipts." (Ex. DEEP-42, 11/2/09 email; test. Chapdelaine, D., 11/13/13 pp. 116-117.)

[32] Chapdelaine insisted she determined the dates on which deposits would be made, but Curcio changed them; it appears Curcio made the ultimate decision as to when deposits would be made. (Ex. 42, 2/25/12, 3/22/12 emails; test. Chapdelaine, D. 11/13/13, pp. 129-130.)

[33] Chapdelaine tried to evade questions about receiving deposits from Curcio by saying she was not asking him personally; it is clear she asked Curcio for deposits. (Ex. DEEP-42, 4/13/11 email; test. Chapdelaine, D., 11/13/13, pp. 120-122.)

[34] Chapdelaine denied she had an agreement with Curcio to compensate her $2000 a week; an email she sent to him clearly indicates otherwise. (Ex. DEEP-42,10/26/11 email; test. Chapdelaine, D., 11/13/13 pp. 127-128.)

mortgages. Curcio arranged for any proceeds from these mortgages that were to benefit RCI to be deposited in fairly small amounts in the RCI checking account. (Exs. APP-1 (pp. 5-9), 14 to 29, DEEP-36 (pp. 26-28, 33-35, 157-160), 38 to 41, 44, 76 to 95; test. Curcio, G., 11/12/13, pp. 180-183, 247-248, 272-274, 11/15/13, pp. 139, 147-180, 198-199, Chapdelaine, D., 11/13/14, pp. 66-83.)

29. Many of these mortgages had unreasonably high interest rates and difficult repayment schedules. Although Chapdelaine could, in principle, seek other sources of financing, Curcio testified that this debt would not be subordinated.[35] These mortgages were a burden on the property that would make it difficult for anyone else to provide financing. (Exs. APP - 14 to 29, DEEP – 38 to 40, 76 to 94; test. Curcio, G. 11/13/13, pp. 9-14, 11/15/13, pp. 180-182, Chapdelaine, D. 11/13/13, pp. 58-62, 66-71.)

30. Curcio's compliance history reveals that he allowed his son Gus Curcio Jr. to illegally store at least twelve uncovered roll-off containers containing construction and demolition debris and municipal solid waste at his property at 520 Success Avenue in Bridgeport after his son was ordered to remove all waste at an unpermitted waste facility he was operating at 990 Naugatuck Avenue in Milford. Gus Curcio Jr. operated this illegal solid waste facility through his companies Associated Carting Inc. and D.C. Waste Management Inc. DEEP successfully sued these companies in 2007 for violating Connecticut environmental statutes by operating without a permit and for polluting the waters of the state.[36] DEEP obtained a 2010 judgment that ordered the companies to cease operations and remove all waste from the site and assessed a penalty of $348,500.[37] Curcio funded his son's operations and was funding clean-up operations at the site. Curcio violated an injunction and state statutes regarding the transfer of solid waste by allowing his son to illegally store these containers.[38] DEEP sued Curcio's company Success, Inc., which owned 520 Success Avenue, and Associated Carting and D.C. Waste Management for operating an unpermitted solid waste facility and polluting the waters of the state. The Court assessed a

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[35] Even though he was purportedly not a mortgage holder and could not make this decision.

[36] In August 2007, DEEP discovered approximately 60 uncovered roll-off containers of construction and demolition waste and approximately 1500 cubic yards of other solid waste. (Exs. DEEP- 54, 101.)

[37] The record has no evidence that this penalty has been paid. (Exs. DEEP-62, cf. 61.)

[38] Staff discovered the roll-off containers during an August 2007 inspection of 520 Success Ave. after DEP received a complaint that containers were being stored there. A second inspection in September 2007 found that the roll-off containers appeared to have been removed. (Exs. APP-31, 33, 101 p. 3, DEEP-56, 57, 58, 59; test. Curcio, G., 11/12/13, pp. 253 – 255, Sage, D., 11/14/13 pp. 47-58, 207-208.)

civil penalty of $5000 against Associated Carting and D.C. Waste Management and a $2000 penalty against Success Inc. Success Inc. did not pay its penalty until February 28, 2013, right after the February 27 Compliance Conference, three years after the judgment. (Exs. DEEP- 54 to 62,101 (pp.2-8); test. Curcio, G., 11/12/13, pp. 229-237, 11/15/13, pp. 136-145, Sage, D. 11/14/13, pp. 47-49.)

31. Curcio wanted RCI to be a successful recycling operation that his son Gus Curcio Jr. had been unable to establish. Chapdelaine was concerned Curcio would allow his son to be involved in RCIs operations. About five weeks after RCI's general permit registration was renewed, she acknowledged that Curcio "did [the site] to help [his] son," but advised him that they would be under the "'X-Ray' eyes" of the DEEP and "the locals" (i.e., the City of Milford) and his son "should be out of the operations at this time." She also advised Curcio not to allow containers on the site with the names of companies associated with his son. (Exs. DEEP-9, 10, 43 (10/24/11 email), 47; test. Curcio, G. 11/12/13, p. 217, Chapdelaine, D., 11/13/13, pp. 101-109, 132-133.)

5
RCI's Permit Application

32. Chapdelaine prepared RCI's application and submitted it on April 8, 2008. James R. Barrett is listed as the applicant and the application is signed by "James R. Barrett." In an attachment, Barrett is listed as RCI's stockholder and sole corporate officer; no directors are listed. The signatures "James R. Barrett" on the application and a December 2008 bankruptcy filing by Barrett match each other and match the signature "James Richard Barrett" on RCI's incorporation filing. Curcio "chose to stay a beneficial owner" and did not want his name associated with the permit application. He was concerned that RCI would not get the permit if his name was on the application because of "negative publicity" arising from his previous convictions for extortion and obstruction of justice[39] and because of the prior activities of his son Gus Curcio Jr. at the site. (Exs. APP – 1 (pp. 2-3), 2 (pp. 5-6), 5, DEEP – 4, 5, 11, 12, 29(¶4), 36 (p. 21), 49 to 52, 54-55, 100 (pp. 4-5); test. Barrett, J., 11/12/13, pp. 90 – 91, Curcio, G., 11/12/13, pp. 218 – 226, 229-230, 288-291, tr, pp. 226-229.)

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[39] During his extortion trial in the 1980s, Curcio pretended to have a heart attack in front of the jury to bring on a mistrial and avoid going to jail. He subsequently wrote a letter of apology to the federal judge. (Exs. DEEP- 49 to 52; test. Curcio, G., 11/12/13, pp. 222-226, 255-257, tr. 11/12/13, pp. 226-229.)

33. RCI's application submissions were repeatedly deficient. DEEP issued three notices of insufficiency in December 2008, October 2009 and February 2010. These notices specifically identified what was missing or insufficient and defined what the DEEP needed to receive for its review of the application. Many issues cited in the notices of insufficiency were not adequately addressed and continued to be problematic throughout many months of communications between Chapdelaine and DEEP Staff. Chapdelaine argued that she had responded to the requests for information as she perceived them, said that some information had not been asked for by the DEEP,[40] could not recall much of what had or had not been submitted to DEEP, and did not appear to understand much of what had been asked for in the application or attachments, even when those forms were shown to her during her testimony.[41] Throughout this process, the DEEP interacted with Chapdelaine on a regular basis to address her questions and concerns about these insufficiencies and she had adequate opportunities to ensure she was responding fully to DEEP's requests for information. Eventually, given the nature of the remaining outstanding issues known at that time, DEEP determined that these issues could be addressed during the technical review phase. DEEP deemed the application complete and issued a December 15, 2010 letter of sufficiency that noted that although the application had been deemed complete and had reached the technical review phase, there were still unresolved issues that needed to be resolved.[42] (Exs. DEEP – 14 to 28, 100 (pp. 10-16); test. Frigon, G., 11/12/13, p. 78, Chapdelaine, D. 11/13/13, pp. 30-44, 52-58, 82-95, 163-168, 178-179, 229-231, 11/15/13, pp. 30-44.)

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[40] 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.

[41] Because the letter labels of certain attachments had changed over the years, Chapdelaine appeared to believe that attachments she submitted at various times would be different. However lettered, attachments sought the same information. In addition, instructions for completing a permit application were also available to Chapdelaine; these included information as to what lettered attachments needed to be filed. Finally, through various notices of insufficiency and other communications with RCI, DEEP staff clearly indicated what information was required, including information to be listed in that attachment. Chapdelaine had the responsibility for providing the DEEP with all the information required regardless of the label of the attachment corresponding to that information. (Exs. DEEP-11, 12, 14, 15, 17 to 20, 27, 109, 110; test. Chapdelaine, D., 11/13/13, pp. 38, 53-54.)

[42] What Staff did not and could not know was that certain information had been misrepresented on the application and that some required documents had not been included with the application.

a

Misrepresentations Regarding Stockholders

34. An application seeks the identity of all stockholders holding more than twenty percent of the issued corporate stock. RCI submitted an attachment with this information on three occasions: with the initial April 2008 application; in response to the first notice of insufficiency; and in response to the second notice of insufficiency. In none of these submittals did RCI disclose that Curcio was the beneficial owner of RCI stock. RCI also did not disclose any of the documents Chapdelaine executed in blank for Curcio's benefit that were relevant to this information, notably, her affidavit that she owned RCI stock in name only, her assignment of stock to an unnamed beneficial owner, and the stock transfer agreement. RCI also did not disclose the stockholder's agreement that Chapdelaine signed that clearly implicated the existence of additional stockholders. These documents would have shown that there were others with an interest in RCI stock, including Curcio. During the entire protracted application process, despite the multitude of communications between RCI and DEEP with respect to that application and in particular the information that was needed in that application, Curcio's name was never disclosed to DEEP in any manner to connect him with RCI stock. (Exs. DEEP- 11, 12, 14, 15, 17, 19, 29 (Exhibits A through E), 37, 100 (pp. 8-18); test. Frigon, G., 11/12/13, pp. 70-71, Curcio, G., 11/12/13, pp. 169, 293-294, Chapdelaine, D., 11/13/13, pp. 41, 45-58, Isner, R. 11/14/13, pp. 233 - 248, 259-261.)

b

Misrepresentations Regarding Ownership and Control and Organization

35. An applicant must attach to its application copies of agreements regarding "the ownership, control and use of the facility by the applicant" and an organizational chart "which illustrates the relationship between all parties involved in the ownership and management of the facility."[43] The beneficial documents executed by Chapdelaine are such agreements and were not disclosed during the application process. Curcio was not listed on any organizational chart although he had an ownership interest in RCI, was closely involved with its operations, and was its sole source of funds. Staff testified that if it had been aware that Curcio was a beneficial owner of RCI, it would have considered him to be involved in the control or operation of the

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[43] Originally Attachment G, this was Attachment I when RCI filed its original application in 2008 and is currently Attachment J. RCI never submitted Attachment I. (Exs. DEEP-11, 21, 106; test. Frigon, G. 11/19/13, pp. 33-36, 40.)

business. (Exs. DEEP- 11, 15, 19, 21, 25, 27, 29 (Exhibits A through E); 106; test. Chapdelaine, D., 11/13/13, pp. 32- 40, 47-51, 53-58, Isner, R., 11/14/13, pp. 250-251, 253-254, 266, Frigon, G., 11/19/13, pp. 39-41.)

c

Misrepresentations Regarding Financial Information and Funding Sources

36. Attachment G,[44] which was available to RCI when it filed its application, details the "Financial Stability Information" it seeks, which includes: a detailed statement from a CPA which demonstrates "the financial capacity of the applicant to develop and operate the project in a manner consistent with Connecticut environmental laws and standards;" the estimated cost and identification of the source of funds for the design, construction and start-up of the facility; identification and discussion of the proposed method of financing costs that will not be paid from the applicant's own resources; an estimate of the cost of operating and maintaining the facility and a discussion of the source of revenues to pay such costs; and a discussion of the applicant's financial capability to operate the facility and how the applicant would address unexpected costs associated with environmental compliance. Land ownership documents, which include copies of any lease, deed or agreements regarding the ownership, control or use of the facility by the applicant are also required and would include mortgages where, as here, the applicant obtains financing through mortgages. (Exs. DEEP – 11, 18, 21, 100 (pp.13-14), 106; test. Chapdelaine, D., 11/13/13, pp. 31-34, 52-58, 82-87, Isner, R. 11/14/13 pp. 248-249, 252-253, 266, Frigon, G., 11/19/13, pp. 37-40.)

37. Chapdelaine prepared and submitted a document she labeled "Attachment G" with the initial application. This was patently inadequate and RCI was so informed in the first notice of insufficiency sent by the DEEP on December 19, 2008. In response, RCI's CPA sent a February 12, 2009 letter; however, the letter lacked any details as to RCI's funding sources, including Curcio's involvement in that financing. If Curcio had been so identified, the DEEP would have considered him to be involved in the operation and control of RCI. (Exs. DEEP-13, 14, 16, 100 (p. 10), 106; test. Frigon, G., 11/ 19/13, pp. 36-40, 42, Isner, R. 11/19/13, p. 266.)

38. During the technical review of the application, questions regarding RCI's financing remained to be resolved. In its first technical review report dated April 18, 2011, DEEP asked

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[44] Now Attachment J. (Ex. DEEP-21; test. Frigon, G., p. 40.)

RCI for a CPA letter that would "evaluate in detail the existing and estimated future financial status of [RCI]…in relation with the potential costs to construct and operate the [facility]." In response, Chapdelaine submitted an August 8, 2011 letter from RCI's CPA that had attached to it some May 2011 emails between her and the Department of Economic and Community Development (DECD) and the Connecticut Development Authority (CDA) that were not funding commitments. This letter was drafted by Chapdelaine, most of it was copied verbatim from an email she sent to state officials, and she sent it to Curcio for his review before it was sent to the DEEP. By this time, RCI's property was encumbered with millions in mortgages Curcio had arranged. The letter fails to mention Curcio or the mortgages. (Exs. DEEP-23, 24, 43 (8/3/11 email), 75, 100 (pp. 11, 15), 107; test. Frigon, G., 11/19/13, pp. 43 - 46, Chapdelaine, D., 11/13/13, pp. 92-93.)

39. This August letter did not resolve the issue. On October 26, 2011, DEEP sent a second technical review report to RCI that again noted that the financial status information was not adequate. RCI responded with a December 14, 2011 letter from its CPA, which listed RCI's source of funding as the DECD, CDA and the Small Business Association. RCI did not have financing from any of these sources. Most significantly, even though the business was financed through the mortgages arranged by Curcio, neither he nor any of the companies or individuals holding those $4.6 million in mortgages on RCI's property was identified as a source of financing for RCI. (Exs. City – 1, 2, DEEP- 26, 28, 75, 100 (p. 15-16); test. Chapdelaine, D., 11/13/13, pp. 93-95, Frigon, G., 11/12/13, p. 78, 11/19/13, pp. 46-48.)

40. The only mortgages of which DEEP was aware before it issued the February 2012 Notice of Tentative Determination to approve were four warranty deeds for $5000, each given to companies owned by Curcio's wife.[45] DEEP learned about these mortgages when Staff researched City records on the property and learned that the four companies holding the mortgages were also listed as owners. DEEP sent out a third notice of insufficiency on March 17, 2010, which included specific questions about the undisclosed ownership by these four companies and which asked for copies of the deeds. In response, RCI submitted corrective releases and affidavits, along with mortgages, that essentially changed the four statutory warranty deeds into four mortgages of $5000 each. RCI did not submit the original four deeds

[45] City Streets, Outlaw Boxing Kats, Millionair Club and Cell Phone Club. (Exs. APP- 25 to 28, DEEP- 77 to 83.)

that gave rise to the inquiry and did not submit any of the other mortgages on the property. The applicant would be expected to submit any additional mortgages to the DEEP as it is responsible for the submission of a complete application, regardless of whether specific requests for such information are made. (Exs. APP-1 (pp. 7-8), 25 to 28, DEEP- 20, 77 to 83, 105; test. Curcio, G., 11/15/13, pp. 152-159, Frigon, G., 11/19/13, pp. 11-29, 61-62, 66.)

6
RCI's General Permit Registration

a
Application/Information Changes

41. Chapdelaine prepared RCI's application for a registration under the general permit on October 14, 2008. She is listed as RCI's contact and Barrett is identified as its president. The name "James Barret" is signed in the Registrant Certification section of the application, in handwriting that is different from the signature "James R. Barrett" on RCI's individual permit application. Barrett, who spells his name with two "t"s, testified that he did not sign this registration application and was not able to identify the handwriting.[46] Accompanying this application was a letter signed by "James Barrett" concerning RCI's use of its property for recycling operations. Barrett again claims he did not compose or sign this letter and was unable to identify the handwriting, which appears to be different from that on the registration application. The signature on the letter also does not match the signatures on Barrett's bankruptcy filing and the filings with the Secretary of State. The letter was faxed from Chapdelaine's office. (Exs. DEEP- 3 to 6, 11, 100 (pp. 4-6); test. 11/12/13, Barrett, J. pp. 81-84.)

42. When the DEEP approved RCI's original application for its general permit registration on December 15, 2008, it did not know that Barrett's signature was not his. When RCI submitted its application to renew its registration on February 12, 2010, Chapdelaine, who had replaced Barrett, signed the application as president and registrant. DEEP approved this renewal, still

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[46] RCI tried to imply during its questioning of DEEP Staff that Barrett may have authorized someone else to sign, but provided no proof that he did and no argument that this would have been an acceptable signature. The DEEP instructions for completing the registration provide that the Registrant Certification "must be reviewed and signed by both the registrant and the individual(s) who actually prepared the registration" and have no provision for signatures by proxy. (Ex. DEEP-108; test. Frigon, G., 11/12/13, pp. 54-60.)

unaware that the original application had included a false signature. (Exs. DEEP- 3, 4, 7, 9, 10, 100 (pp. 6-7).)

43. The General Permit requirement that the DEEP be informed as directed of any changes or inaccuracies in information applies both while a request for registration is pending and after such a request has been approved. Chapdelaine replaced Barrett as president and owner of RCI in October 2009; the registration information was not corrected as required until Chapdelaine signed the February 2010 renewal application as president. The Barretts conveyed 990 Naugatuck Avenue to RCI in October 2009; the DEEP was not informed of this change in ownership of the facility site until RCI applied for the renewal in February 2010. (Exs. DEEP-1 §5(s), 4, 8, 9, 100 (pp.6-7).)

b
Quarterly Reports

44. Despite receiving its general permit registration in 2008, RCI did not submit any quarterly reports until January 6, 2012, when Chapdelaine, who did not use DEEP's forms but instead created her own forms, submitted an email to DEEP with attachments that were intended to be quarterly reports for the third and fourth quarters of 2011. [47] This first set of reports was deficient. They did not identify the origin of wastes leaving the facility,[48] did not identify the content of materials labeled "co-mingled," and did not break down materials into residential, nonresidential or mixed. DEEP could not ascertain what materials had come into the facility and what had left it. DEEP notified Chapdelaine of the deficiencies and asked her to submit corrected documents as soon as possible; none were submitted. A Notice of Violation (NOV) was issued on June 11, 2012 for RCI's failure to submit required quarterly reports.[49] RCI did not submit any more quarterly reports until February 14, 2013, just days before the February 27,

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[47] There is a discrepancy between two documents admitted as the January 12, 2012 email from Chapdelaine to the DEEP. DEEP-104 does not include certain pages of reports that were attached to APP-38. Chapdelaine acknowledged the discrepancy, but could not explain it. (Exs. APP-38, DEEP-104; test. 11/14/13, Guerrera, P., pp. 86-101, Chapdelaine D., 11/15/13, pp. 102-103.)

[48] All entities that bring waste to recycling facilities are required by state law to identify the origin of the materials they are transporting. General Statutes § 22a-220a(k). According to Sage, an experienced member of DEEP Staff, RCI is the only company she's ever heard of that does not know "where their loads are coming from." (Ex. APP-2 (p.5); test. Sage, D., 11/14/13, pp. 111-112.)

[49] The second basis for this NOV was DEEP's observation of untreated wood intermingled with treated wood at the site during a May 2012 site visit. DEEP also noted a large amount of mixed household goods at the site. RCI subsequently cleaned up the wood and removed the waste. (Exs. DEEP-63, 65, 66, 74, 101(pp.10-11.)

2013 Compliance Conference. This was more than four years after RCI received its General Permit registration. All these reports were insufficient, failed to identity the origin of wastes, were submitted without signatures, used vague definitions such as "co-mingled" and "textiles," and used yards instead of tons to measure quantities. At the Compliance Conference, DEEP provided RCI with a copy of the quarterly reports with the deficiencies marked and provided a detailed account of the identified problems.[50] Thereafter, RCI submitted a third set of reports in March and a fourth set in April of 2013. Some were sufficient, but others lacked a signature certifying that the information was "true, accurate and complete" and others did not identify the origin of wastes, failed to identify "textiles," and listed amounts of waste in cubic yards and not tons. A fifth and final set of reports was submitted in May 2013.[51] Some of these reports were duplicate copies of reports that were previously submitted in March 2013 and, despite the efforts of DEEP, had many insufficiencies. Some reports showed different amounts of recyclables than other reports filed for the same quarters. Some reports failed to explain why recyclables were being sent to a burn facility. Others showed significant discrepancies, such as the receipt or release of materials during periods that RCI had previously reported that it had not been operating or materials leaving the facility in lower quantities than had been previously reported. (Exs. APP- 31, 38, 39, 40, DEEP- 3, 7, 64 to 73, 101 (pp. 7-18), 104; test. Sage, D. 11/14/13, pp. 93-122, 140-205, 209-215, Chapdelaine, D., 11/15/13, pp. 26-30, 45-46, 102-105, Guerrera, P. 11/15/13 pp. 86-101.)

45. After five attempts to comply and scores of communications with DEEP, RCI has failed to file or file sufficient quarterly reports for seven quarters.[52] Careless errors, including late-filing, failure to sign, or the omission of certain pages show that, at the least, RCI does not make accurate reporting a priority. Discrepancies or inaccurate or vague reports imply that RCI might not know its operations or is not keeping adequate records. These errors make it impossible for DEEP to know which, if any, reports are accurate. DEEP depends on the submittal of accurate and timely reports to supplement its efforts to monitor recycling facilities. (Exs. DEEP- 67 to 73, 101 (pp.12-16); test. Isner, R. 11/14/13, pp. 256-257, Sage, D., 11/14/13, pp 119, 211-215.)

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[50] DEEP Staff described it as "101 Forms" for recycling. (Test. 11/14/13, Sage, D., p. 122.)

[51] Notably, the third, fourth and fifth sets of reports were submitted after Curcio became the sole officer and director of RCI on February 19, 2013. (Ex. DEEP-4.).

[52] Of the seven quarters, five quarters remain as insufficient reports; reports for another two quarters have not been submitted. (Test. Sage, D., 11/14/13, p. 215.)

B

CONCLUSIONS OF LAW

The Commissioner has the duty to carry out the environmental policies of the State and has been given "all powers necessary and convenient" to do so. General Statutes § 22a-5. With respect to solid waste permits, "The Commissioner... *may* issue [or] deny...a permit, under such conditions as he may prescribe and upon submission of such information as he may require...." (Emphasis added.) § 22a-208a(a). The Commissioner has broad discretion when making a permitting decision. *Carothers v. Frank Perrotti & Sons, Inc.,* 1991 Conn. Super. LEXIS 550 * 8 (Conn. Superior Ct., March 11, 1991.) See *Beacon Point Marine, Inc. v. McCarthy*, 2007 Conn. Super. LEXIS 1029 * 12 (Conn. Superior Court April 16, 2007.) (Word "may" generally imports conferral of discretion.)

The statutes and regulations give the Commissioner broad authority to request and consider any information he deems relevant to a permitting decision. The Commissioner may act "upon such information as he may require...." § 22a-208a(a). An application for a volume reduction plant must include "any other information which the Commissioner deems necessary." Regs., Conn. State Agencies § 22a-209-4(b)(2)(B)(v). The regulations also provide that when making a permitting decision, the Commissioner shall consider "all relevant facts and circumstances," § 22-209-4(b)(4), and "all factors which he or she deems relevant," § 22a-209-4(d)(2). The Rules of Practice provide that an application must include "any other information which the Commissioner may require for the purpose of reviewing the application in accordance with applicable statutory and regulatory criteria." § 22a-3a-5(a)(1)(E). See *Town of Newtown v. Keeney*, 234 Conn. 213 (1995); *Town of Preston v. Department of Environmental Protection*, 218 Conn. 821 (1991) (acknowledging Commissioner's discretion.)

The evidence of misrepresentations alone is more than sufficient to support the denial of RCI's permit application and the revocation of its general permit registration. It is out of an abundance of caution and not a lack of confidence in the sufficiency of this reason to stand on its own that this decision also cites the history of noncompliance by Gus Curcio Sr. and RCI as well as additional evidence to support the conclusions and actions of DEEP.

1
Misrepresentations

Section 22a-209-4(h)(1)(B) 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." Section 22a-209-4(h)(3) declares that the Commissioner may also revoke a permit in accordance with the Department's Rules of Practice. Section 22a-3a-5(d)(2)(C) provides that a decision to revoke may be made if "[t]he licensee or a person on his behalf misrepresented a relevant and material fact at any time, including...in the application...or in a report...submitted to the Department." Where misrepresentations are discovered before a permit is granted that would support its revocation, those same misrepresentations would support a decision to deny an application for that permit.

a
The Permit Application

A central focus of RCI's argument is that any errors, inaccuracies, omissions or incomplete submissions it may have made were unintentional. For example, RCI claims that Chapdelaine never knowingly made false statements regarding the ownership of RCI and that Curcio had a good faith belief that he was only a beneficial owner of RCI and therefore did not have to disclose his involvement with the corporation. RCI argues that in order for DEEP to prevail, Staff must prove that: (1) Chapdelaine and Curcio made false representations; (2) that the representations were untrue and known to be untrue by Chapdelaine and Curcio; (3) that Chapdelaine and Curcio made their statements to induce the DEEP to act; and (4) that DEEP did act upon these false representations to its injury.

This argument is wrong as a matter of law. In addition to its error regarding the burden of proof in the matter (see Section II, Part C, *infra*), RCI erroneously sets forth the four factors a plaintiff must prove to establish an action for common law fraud. *Weisman v. Kaspar*, 233 Conn. 531, 539 (1995); *Billington v. Billington*, 220 Conn. 212, 217 (1991). Although this record does include evidence to support a finding of intentional conduct, the relevant question in this administrative licensing proceeding is whether RCI misrepresented relevant and material facts in

its applications, not whether such actions were intentional. General Statutes § 22a-208a(a); Regs. Conn. State Agencies § 22 a-3a-5(d)(2)(C).

RCI argues that it cannot be culpable for any misrepresentations it may have made because they were not intentional. This is irrelevant to a finding that such misrepresentations support denial of the permit application and revocation of its general permit registration. Even if RCI's misrepresentations were due to ignorance, misinterpretation or misunderstanding, this made it impossible for DEEP Staff to accurately evaluate RCI's application for a permit to construct and operate a solid waste facility, particularly in regard to its review of the compliance history of a known violator, thereby posing a substantial risk of serious environmental harm or harm to human health or safety.

As the extensive record in this matter makes clear, RCI's permit application misrepresented material and relevant information. These misrepresentations took many forms, including omitted, inaccurate and false information about the corporation's ownership and control and its financial stability, including the primary basis of its financial support. The Commissioner must consider "all relevant facts and circumstances" in the context of a solid waste permit application. Regs., Conn. State Agencies § 22-209-4(b)(4). The facts upon which he bases his decision must be true. If they are not, an application may and should be denied.

(1)
Stockholders/Beneficial Ownership

The permit application seeks the identity of all shareholders holding twenty percent or more of a corporation's stock. RCI claims it did not misrepresent the stockholder information on its application because it was not legally required to identify beneficial holders of stock. The provisions of the Connecticut Business Corporation Act apply to all corporations in Connecticut, including RCI.[53] § 33-645(d). Beneficial owners of stock are included in the definition of "shareholder" § 33-602(30) of the Act. This inclusion recognizes that one person may hold legal title to stock while another holds the beneficial ownership of the stock. *Gray v. Graham*, 87 Conn. 601 (1914). A corporation may recognize the beneficial owner as the holder of shares

[53] With certain exceptions not applicable here.

registered in the name of a nominee. §33-707(a). Under this arrangement, the beneficial owner would have all the powers of a shareholder, including the power to elect the corporation's directors, who exercise the powers of the corporation. §§ 33-712(a), 33-735, 33-373(c). Knowing the identity of beneficial owners of stock can therefore provide DEEP with essential information regarding the control of a corporation.

Section § 33-602(30) defines "shareholder" as "the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation." In its brief, RCI argues that because DEEP has not produced a nominee certificate, it has not proven that Curcio was a shareholder who needed to be identified in RCI's application. To the extent a certificate was not produced, it is because RCI did not prepare one or did not disclose one during discovery. RCI cannot use its possible failure to file a nominee certificate, its continued misinterpretation of the burdens of proof in this matter, or its interpretation of this statute to hide Curcio who not only admitted he was the beneficial owner of RCI stock, but who went to court to vindicate that status. Proof of this certificate establishing the extent of Curcio's rights as a beneficial owner was not a prerequisite to prove that Curcio was a beneficial owner and should have been disclosed on RCI's application.[54]

The application seeks the identification of all stockholders holding more than twenty percent of a corporation's stock on the permit application. Curcio represented that he was, at all times, the 100% beneficial owner of RCI stock. RCI therefore knew that Curcio was the beneficial owner of more than twenty percent of RCI stock and was obliged to identify Curcio as a shareholder in its application. RCI argues that the application should specifically require the identification of beneficial owners of stock, either by defining shareholder to include beneficial owners on its application form or in its instructions, or by expressly incorporating the definition set out in Connecticut corporate law. Although it might be useful for the DEEP to revise its

[54]I also note that there is no evidence in the record that shares were registered in either Barrett's or Chapdelaine's name in RCI's records to support its representation on its application that they were shareholders of RCI stock in the 2008 and 2009 applications, respectively. No shares or stock certificates were placed into evidence to support RCI's representations of their stock ownership and the question of ownership and percentages of stock holdings by Chapdelaine and others is unresolved.

application form or instructions to specifically note that beneficial owners are included in the requirement to identify all holders of more than twenty percent of a corporation's stock, it is the responsibility of an applicant to know what the law requires.[55] RCI, like any other applicant, could have also asked the extent to which shareholders must be identified in one of its many communications with DEEP Staff.

RCI also misrepresented its stock ownership interests by not including the "beneficial paperwork" that Chapdelaine executed on Curcio's behalf and at his behest in 2010 and 2011 that impact her stock ownership and his beneficial interests in response to the request for agreements regarding "the ownership, control or use of the facility." Three of the four agreements executed by Chapdelaine in 2010 concerned ownership of RCI stock: Chapdelaine's affidavit that she owned RCI stock in name only; her assignment of her stock to an unnamed beneficial owner; and her signed stock transfer agreement. RCI also did not disclose the 2011 stockholder's agreement that clearly implicated the existence of additional stockholders.[56] These agreements would have informed DEEP that Chapdelaine was not the holder of 100% of RCI's stock as was represented in the application and that others held an ownership interest in RCI stock, including Curcio. During this lengthy application process, despite the multitude of communications between RCI and DEEP regarding information needed in that application, Curcio's name was never disclosed in any way as a beneficial owner of RCI stock.

(2)
Corporate Ownership and Control

Information as to who owns and controls an applicant is vital for the DEEP to assess whether that applicant can and will be able to comply with the terms and conditions of an issued permit. In addition to questions about stock ownership, the application seeks the identity of a corporation's owners, officers and directors to ascertain who is in control of an applicant. The record in this matter is clear: Chapdelaine was not the owner of RCI as was represented on the

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[55]As the venerable maxim provides, ignorance is no excuse. See e.g. *Usher v. Waddingham*, 62 Conn. 412, 429 (1892). (A person cannot use ignorance of the law to avoid the application of that law to known facts.)

[56] The fact that these documents were kept in a safe at the office of Curcio's attorney and not accessible by Chapdelaine is not an excuse. She signed them and knew they existed. As the person who prepared the application, it was her responsibility to acquire all required documents.

application and she was clearly not in control of RCI's operations.[57] The misrepresentations in RCI's application prevented the DEEP from learning the truth about who was truly involved in the ownership and control of RCI and that a known violator could be in charge of RCI's future compliance with its permit. Despite his 100% beneficial ownership of RCI stock and his control of RCI's operations through Chapdelaine, Curcio's name was carefully excluded from the application and its various attachments and from any correspondence or additional information sent to the DEEP during the application process that would have revealed his ownership interest and control of RCI.

RCI relies heavily on Curcio's assertion that his "only participation" in RCI was as its "beneficial owner." This assertion is wrong as a matter of fact and law. As a matter of fact, the emphasis on Curcio's beneficial ownership was a "red herring" in this proceeding as it distracted from the relevant or important issue which is the reality of Curcio's role and involvement in RCI. Curcio's participation in RCI was extensive and his status as a beneficial owner is not the shield Curcio and RCI would like it to be. As a matter of law, given Curcio's control of RCI's operations and involvement in RCI and its finances, his name should have appeared in at least several documents that should have been attached to the application and were not. He cannot play the role he did in RCI and then hide from view behind his status as beneficial owner.[58]

As this record makes abundantly clear, Curcio had total control over RCI and Chapdelaine and her decisions regarding the business. Although RCI would like the DEEP to "pay no attention to the man behind the curtain,"[59] Curcio had an ownership interest in RCI, was in control of its operations and expenses and was its sole source of financing, which he had arranged. Despite this, Curcio intentionally kept his name out of the application submitted by RCI, even when doing so meant ignoring legal requirements regarding the definition of

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[57] Chapdelaine certainly did not have an ownership interest in the property on which RCI operated. She lacked any of the incidents of such ownership. See generally 63C Am. Jur. 2d 104, Property § 27 (2009) ("[t]he primary incidents of [property] ownership include the right to possession, the use and enjoyment of the property, the right to change or improve the property, and the right to alienate the property at will").

[58] Given Curcio's extensive role in RCI, it is hard to imagine that his name would not have naturally appeared in the application materials unless there was an active attempt to conceal his identity.

[59] The Wonderful Wizard of Oz, L. Frank Baum, available at http://www.literature.org/authors/baum-l-frank/the-wonderful-wizard-of-oz/.

shareholders, omitting agreements that should have been included with the application, and failing to reveal that RCI's property was encumbered with millions of dollars in mortgages that he arranged.

In determining that Curcio should have been disclosed, it is instructive to examine analogous case law regarding who may be held personally liable for violations of environmental statutes by corporations. In *BEC Corporation v. Department of Environmental Protection*, 256 Conn. 602 (2001), the Connecticut Supreme Court found that corporate officials can be held personally liable for violations of the Water Pollution Control Act. The *BEC* Court adopted a three-part test for determining personal liability:

> (1)The individual must be in a position of responsibility which allows the person to influence corporate policies or activities; (2) there is a nexus between the officer's actions or inactions in that position and the violation…such that the corporate officer influenced the corporate actions that constituted the violation; and (3) the corporate officer's actions or inactions facilitated the violations.

Id., 618. "The mere fact that a 'person' who is [the violator] is a corporate officer does not automatically shield that officer from liability for his own acts or omissions." Id., 617. The utility of the *BEC* test to identify responsible corporate officers is enhanced by the fact that environmental violations are linked to violators and not the site of the violation. See Connecticut Department of Environmental Protection, Environmental Compliance History Policy, rev. August 1, 2002.[60]

Applying that test in this context, it is first clear that Curcio's control of RCI placed him in a position to influence corporate policies or activities. Second, there is a connection between Curcio's actions and RCI's misrepresentations such that Curcio influenced the submission of incomplete and inaccurate applications. Third, it is reasonable to conclude that Curcio's actions facilitated RCI's failure to provide complete and accurate information to the DEEP.

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[60] www.ct.gov/deep.

Curcio admitted that he worked with others "in furtherance of" RCI's permit application and there is evidence that he reviewed the letter from RCI's CPA to the DEEP regarding the corporation's financial information. Even without this proof, the overwhelming evidence of Curcio's influence over Chapdelaine and RCI satisfies the *BEC* test as characterized by the Connecticut Supreme Court in *Venires v. Goodspeed Airport, LLC,* 275 Conn. 105 (2005). The Court stated that the responsible corporate officer doctrine adopted in *BEC* did not require a finding that the officer had committed, directly participated in or directed the conduct that resulted in a violation before he could be held personally liable, but required only that the officer have a position of responsibility and influence from which he could have prevented the corporation from engaging in the conduct. Id.,144.

Given the abundant evidence of his control of Chapdelaine and RCI, Curcio's authority influenced RCI's misrepresentations. Curcio could have prevented RCI from submitting applications that contained misrepresentations, including information as to corporate ownership and control. In any event, it is not unreasonable to conclude that those who exert a degree of control over a corporation great enough to potentially be held personally liable for potential violations of environmental statutes must be disclosed to the DEEP on permit applications.

(3)
Financial Stability and Funding Sources

The financial health of an applicant is crucial to its ability to operate in compliance with the terms and conditions of a permit and is material information the DEEP must evaluate when reviewing an application. A financially unstable applicant may not be able to construct or operate its facility in compliance with the terms and conditions of its permit. RCI did not provide complete or accurate information about its finances, including its funding sources. As a result, DEEP did not have valid information on which to base its assessment of RCI's financial stability.

The application seeks a detailed evaluation of the applicant's existing and estimated future financial status in relation to the potential costs to construct and operate the facility. After an initial inadequate submission from RCI's CPA, he sent a second letter, which he had not drafted and which Curcio had reviewed, that misrepresented information that included the source

of RCI's financing. The letter did not mention the sole source of funds to date and a source that would impact any future financing - the $4.6 million in mortgages on the property that were arranged by Curcio. This second letter also incorrectly asserted that several state agencies were funding sources when in fact RCI had not adequately applied or received a commitment from any of them for funding. Four mortgages were provided to DEEP when it found out about them. The remaining million of dollars in mortgages were not revealed.

Curcio was the sole source of RCI's finances to that point in its existence and could very well have been the source of future funding. Curcio unilaterally arranged millions of dollars in mortgages to finance RCI. It is impossible to believe that RCI or its CPA did not understand the import of Curcio's role and would not have understood that Curcio should have been included in information about RCI's financial stability. It is inexcusable that RCI attempted to mislead the DEEP by attaching correspondence from state agencies to show it had financial support, when none of those documents evidenced a financial commitment, while failing to disclose the fact that Curcio was its sole source of funds.

RCI was funded solely through mortgages arranged by Curcio. No information about, or copies of, any of these mortgages was included in any information sent to DEEP even though the permit application specifically requests copies of documents related to land ownership and agreements between all parties involved in the project for the ownership, control, and use of the facility.[61] After DEEP discovered four mortgages and requested copies, RCI was on notice of the requirement that it provide copies of mortgages but still did not provide copies of any additional mortgages. This was a clear failure to provide information required by this application.

b
The General Permit Registration

RCI is registered under the General Permit to Construct and Operate Certain Recycling Facilities. Section 6 of this General Permit provides that if the Commissioner has relied on information provided by the registrant/permittee in its application for registration that proves to

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[61] A mortgage is an agreement encumbering property, which is intended as security for the repayment of a loan. Black's Law Dictionary (7th Ed. 1999).

be false or incomplete, the Commissioner may revoke the registration. Section 22a-3a-5(d)(2)(C) of the Regulations of Connecticut State Agencies also provides that misrepresentation of a relevant and material fact in an application is grounds for revocation of a permit.

As outlined above, RCI provided false and misleading information regarding its ownership. This failure to disclose who owns and controls the company is a failure to disclose all relevant and material facts in violation of Section 6 of the General Permit. DEEP relied on these facts when evaluating RCI's application for registration. This misrepresentation is sufficient reason to revoke RCI's registration.

RCI's original application to register contains additional misrepresentations that also support revocation. Barrett's signature in the certification section of the application and a letter supporting the application was false, violating Regs., Conn. State Agencies § 22a-3a-5(a)(2). Also impacting the validity of the application is that whoever signed this application certified that all the information submitted in the application was "true, accurate and complete." A false certification also violates § 22-3a-5(a)(2).

2
Noncompliance

Section 22a-6m(a) of the General Statutes provides that the Commissioner "may consider the record of the applicant for, or holder of, such...registration...regarding compliance" with state and federal environmental laws. If the Commissioner finds that the record shows "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 commissioner may...deny any application...or ...revoke any...permit...."[62] § 22a-6m(a).

[62]Even before the enactment of § 22a-6m, the Commissioner and the Connecticut courts recognized that an applicant's history of non-compliance was a proper basis for denial of an application or revocation of a permit or license. See e.g. *Yarworski, Inc. V. Department of Envtl. Protection*, 1996 Conn. Super. 1575 (Conn. Super. Ct. June 21, 1996.) (Before § 22a-6m, §22a-208a(h) required review of compliance history.)

The Commissioner has the unlimited authority and discretion to determine what constitutes a pattern or practice of noncompliance and to determine an appropriate course of action pursuant to § 22a-6m. This supplements his broad discretion to revoke and deny permits generally and solid waste permits specifically in § 22a-208a(a), authorizing him to consider the record of not only the State's environmental laws, but other state and environmental laws and directs him to consider not only the violations of all of the principals in the applicant's business, but also those of its corporate parent and subsidiaries.

The legislative history of § 22a-6m shows that it was intended to provide the Commissioner with discretion to act on a case-by-case basis, given the extent of variations possible in environmental compliance histories. 37 H.R. Proc., Pt. 3, 1994 Sess. pp. 976-977. Some of the factors the DEEP may consider in any case in determining the severity of the violations are enumerated in its Environmental Compliance History Policy and include impact on the integrity of regulatory programs, the duration of noncompliance, and whether any or all of the violations were willful or grossly negligent. The Policy also lists types of violations that warrant denial of a permit application, and include "filing false reports or inaccurate, conflicting or misleading information" and "repeatedly failing to file required reports of regulated activity."

The Department's Environmental Compliance History Policy reflects the wide range of the Commissioner's authority under § 22a-6m. The Policy instructs Staff to investigate a corporate applicant's relationships with its affiliates, directors, officers and stockholders and, if there has been a merger, to research the history of the prior business that may be attributable to the applicant. Staff is directed to assemble all reasonably available evidence of all state and federal violations, even beyond what might be provided by the applicant and including formal and informal judgments, orders and notices.

RCI argues that issuance of a permit with conditions is the DEEP "default" action pursuant to its Compliance History Policy and should be the action taken in this case. However, this discounts the clear guidance of the Policy which provides that Staff will recommend denial when this demonstrated pattern or practice indicates an unwillingness or inability to comply with the terms and conditions of a permit, including, but not limited to: "(a) indifference to or

obvious disregard for legal requirements; (b) an unwillingness or inability to devote the resources necessary to comply; or (c) instances of noncompliance that have led to serious environmental harm or harm to human health or safety, or a substantial risk of such harm." All three factors are demonstrated here.

RCI argues that denial and revocation are not warranted because there must be "significant willful noncompliance" before the Commissioner may deny or revoke its permits under § 22a-6m. Section 22a-6m has no requirement that noncompliance must be willful, just that there be a "pattern or practice of noncompliance which demonstrates an applicant's unwillingness or inability to achieve and maintain compliance...." Requiring willful conduct would also limit the denial of permits to willful violators and exclude applicants whose actions are due to negligence, incompetence or actions that are inadvertent.[63] This was clearly not the intent of §22a-6m. Although a finding of willfulness alone may be sufficient to warrant denial or revocation, it is only one factor among many to be considered by the DEEP when analyzing whether an applicant's compliance history warrants denial or revocation. Similarly, the qualifier "significant" is not included in § 22a-6m and is only one factor to guide Staff's recommendation.[64] The legislature, in drafting 22a-6m, did not specify a number of violations that would rise to the level of a pattern or practice. The focus of § 22a-6m is not the significance or number of violations, but whether the noncompliance indicates an applicant's unwillingness or inability to meet the conditions of a permit.

(a)
Quarterly Reports

RCI consistently failed to submit required quarterly reports on time or at all and, if and when filed, these reports were consistently inaccurate and/or incomplete, even after the DEEP provided assistance that included explicit instructions concerning the completion of these reports. RCI argues that problems with its application and reports were just oversights or errors due to its

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[63] This would also require a finding that a noncompliant applicant was "willfully" unable to do something.

[64] The two DEEP proposed final decisions RCI relies on do cite "willful noncompliance" and "significant willful noncompliance," but these decisions use these terms only in the context of being a factor for determining the severity of noncompliance under the Department's Compliance History Policy. *In the Matter of Circle of Life, LLC*, 2003 WL 25579586 (Conn. Dep't Envtl. Pro. Jan. 21, 2003); *In the Matter of Connecticut Resources Recovery Authority*, 2001 WL 36034515 (Conn. Dep't Envtl. Pro. March 23, 2001).

own ignorance, inexperience or naiveté. Even if this were true, it does not excuse RCI's failure to meet its responsibilities as a registrant under the General Permit, particularly in light of the extensive assistance of DEEP Staff.

RCI has not complied with the quarterly report filing requirements of the Recycling General Permit since it received its registration under the permit. [65] Although it first received its registration in December 2008, it did not submit any quarterly reports until January 2012. Missing and insufficient reports were part of an NOV issued by the DEEP in June 2012; no additional or corrected reports were submitted by RCI until days before the February 2013 compliance conference. Despite the explicit and scrupulous assistance of DEEP Staff, RCI has never timely submitted any reports that have been initially sufficient; some reports have never been sufficient. The record in this matter shows that quarterly reports are rampant with vague descriptions, omissions, missing signatures and pages, and other inaccuracies. A significant problem with the reports is RCI's failure to identify the place of origin of the materials coming to its facility. Another notable concern is that RCI has filed more than one report for the same quarters that show different amounts of waste coming to and leaving the facility.

RCI argues that its repeated and continuing failure to submit sufficient reports was not its fault. RCI claims that DEEP does not have an official form tailored to its business model and that it cannot identify the origin of the materials it receives because its waste haulers do not provide that information. These claims are totally without merit. The evidence in the record shows that the DEEP does have an official form, including a form that was in effect and should have been used by RCI at the time it made its first reports in January 2012 and a form that was used by RCI when it filed reports in February 2013. Even though the form Chapdelaine submitted in 2012 was not an official form, the evidence shows that DEEP Staff worked closely with her to obtain the information sought, regardless of the format used. Similarly implausible is RCI's attempt to blame its vendors for its failure to identify the origin of recyclables RCI

[65] When DEEP issued the Notice of Tentative Determination to approve RCI's permit application in 2012, it knew that RCI had not filed sufficient quarterly reports, but was continuing to work with RCI to resolve this problem. However, this situation has since become more serious since RCI has continued to file insufficient reports following the issuance of the first Notice of Tentative Determination.

received at its facility. Waste haulers are legally required to identify to the receiving facility the origin of what they are hauling. General Statutes § 22a-220a(k). RCI's claim that it could not collect the data that the quarterly reports require is, frankly, indefensible.

The Recycling General Permit requires all permitted facilities to submit quarterly reports, regardless of whether the facility is operating. The purpose of quarterly reports is to ensure that recycling facilities are actually recycling the materials they are taking in, to provide data regarding the amount of recycling taking place in the state, and to prevent illegal transfers of waste. They are also a tool DEEP uses to monitor and assess recycling goals. DEEP relies on honest reporting from facilities since it is not feasible for DEEP to inspect every site. RCI's continued noncompliance with this requirement of the General Permit shows that RCI is unwilling or not able to comply with its terms and conditions. Revocation of RCI's registration under the General Permit is therefore warranted. § 22a-6m(a).

(b)
Compliance History

In addition to its inability or unwillingness to comply with the reporting requirements of the General Permit, RCI's history of noncompliance includes the misrepresentations in its permit application (discussed in Section B, 1, *supra*) and its submittal of false, incomplete and inaccurate information in its application for a general permit registration, including the most fundamental requirement that an application include a true signature. The General Permit requires that information submitted by an applicant for registration is correct and current. RCI failed to submit accurate information about its ownership in its application and then failed to provide timely notification to DEEP when that material information changed.

RCI claims that DEEP's past practices, reflected in its prior decisions, demonstrate that the DEEP was not justified in finding that RCI's noncompliance demonstrates a pattern or practice that implicates its unwillingness or inability to comply with a permit. Claiming that Curcio's noncompliance was not as significant as other cases, RCI argues that courts have upheld denials of permit applications only where there were serious and continuous violations over a significant period of time.

Not only is comparison to other cases unavailing, but a finding of noncompliance need not reveal serious violations to impact the question of future compliance. The Connecticut Superior Court has upheld the Commissioner's decision to deny a permit for past noncompliance that did not harm the environment, finding that the denial protected against the potential for harm and therefore no showing of actual harm was required. Denial has been upheld even though noncompliance has not yet been formally adjudicated by a court. *Yaworski, Inc. v. Department of Envtl. Protection*, 1996 Conn. Super. LEXIS 1575 (Conn. Superior Ct. June 21, 1996.) Denial or revocation of a permit for noncompliance is also protective of the environment because it acts as a deterrent to others in the regulated community. *Acme Electro-Plating, Inc.v. Kenney*, 1993 Conn. Super. LEXIS 1629 (Conn. Super. Ct., June 23, 1993).

Curcio has a history of his own violations and has helped others to do the same. Curcio disregarded an injunction in order to enable his son's continued operation of an unpermitted waste facility. Curcio did not pay penalties his company owed to the DEEP until it impacted RCI's permit denial and revocation. Curcio has a history of noncompliance with the requirements of the General Permit under which RCI is registered. RCI's failure to comply with the reporting requirements of the General Permit has continued unabated since Curcio became president and sole officer of RCI in April 2012; therefore, this noncompliance is attributable to him. Clearly, his disregard of environmental regulations substantiates DEEP's finding of a pattern or practice of noncompliance which demonstrate an unwillingness or inability of his company RCI to achieve and maintain compliance with the permits.

IV

CONCLUSION

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 has his own history of non-compliance and was 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, evidence 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 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 record of this proceeding shows that DEEP Staff worked extensively with this applicant in an attempt to correct the problems with its application and its quarterly reports. What Staff did not and could not know was that certain information in the application was wrong, had been misrepresented, or was not disclosed, impacting its ability to adequately review that application. The insufficient quarterly reports prevented DEEP from being able to understand and monitor RCI's performance under the General Permit. If any reproach of Staff is appropriate, Staff may be faulted for giving RCI such an abundance of time and chances to correct continuously insufficient submissions in connection with its permit application and for granting RCI more time than it deserved to file and correct its errors with its quarterly reports. However, when Staff learned of new information about RCI's ownership and control, including Curcio's involvement, and concluded that RCI had misrepresented information in its applications, DEEP acted swiftly to tentatively deny RCI's permit application and notice its intent to revoke RCI's registration.

The revelations of RCI's misrepresentations and its continuing noncompliance 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 Staff's patience and professionalism. This record provides plentiful evidence to support Staff's tentative denial of RCI's permit application and its intent to revoke its registration.

V

RECOMMENDATION

I recommend that the Commissioner deny the application filed by the applicant Recycling, Inc. for a permit to construct and operate a volume reduction facility and revoke its registration under the DEEP General Permit to Construct and Operate Certain Recycling Facilities.

J. B. D.

Janice B. Deshais, Hearing Officer

8/25/14

Date

SERVICE LIST

In the Matter of Recycling, Inc. APP. # 200801014/General Permit Registration 084-264

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