
JANET L. COIT, in her capacity as	:	
Director, RHODE ISLAND DEPARTMENT	:	
OF ENVIRONMENTAL MANAGEMENT,	:	
<i>Plaintiff,</i>	:	
	:	
	:	
	:	
	:	
v.	:	
	:	
	:	
PAUL A. SILVER, as executor of the Estate of	:	
Gisele Elkin,	:	
DOROTHY ELKIN, as executor of the Estate of	:	
Gisele Elkin, and	:	
ESTATE of GISELE ELKIN	:	
	:	
	:	
<i>Defendants</i>	:	

PC16-4296

**AMENDED VERIFIED AMENDED COMPLAINT AND
PETITION TO ENFORCE FINAL COMPLIANCE ORDER AND ADMINISTRATIVE
PENALTY OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

Introduction

This matter arises as a result of Defendant, Gisele Elkin’s, (hereinafter, the “Defendant”), failure to comply with a Notice of Violation, (hereinafter, “NOV”) issued by the Director of the Department of Environmental Management, (hereinafter, “RIDEM”) for violations of the Rhode Island General Laws, Section 23-19.1-10 and Rhode Island Department of Environmental Management regulations relating to hazardous waste management occurring at 21 Sabin Street, Pawtucket, Rhode Island and more formally described as Assessor’s Map 8, Lot 329, (hereinafter, the “Property”).

The RIDEM seeks injunctive relief to enforce two final compliance orders in accordance with the Rhode Island General Laws, Sections 42-17.1-2(21)(vi) and 42-17.6-4(c) arising out of a failure to respond to an NOV. The compliance orders in questions became final and effective

as a result of Defendant's failure to timely request an administrative hearing in response to an NOV issued by the RIDEM. The Plaintiff seeks permanent injunctive relief enforcing the NOV as a final compliance order, including, but not limited to, the remediation of the Property and payment of all administrative penalties as set forth therein.

Parties

1. Plaintiff, Janet L. Coit, is the duly appointed Director of RIDEM, whose offices are located at 235 Promenade Street, Providence, Rhode Island.
2. Defendant, Gisele Elkin, was, at the time of the Notice of Violation, the president of Elkin Investments, Inc., formerly Plastic Development Corp., an inactive Rhode Island corporation.
3. Upon information and belief, Gisele Elkin is deceased but her estate remains open.
4. Upon information and belief, Paul A. Silver has been named as executor of the estate of Gisele Elkin and is being sued in that capacity.
5. Upon information and belief, Dorothy Elkin has also been named as executor of the Estate of Gisele Elkin and is being sued in that capacity.
6. At all times pertinent, and in connection with all acts and omissions pertinent, Defendant Elkin was the responsible corporate officer of Elkin Investments, Inc.
7. Specifically, with respect to all allegations against Defendant, Gisele Elkin:
 - a. Defendant was the individual who was in a position of responsibility which allows her to influence corporate policies or activities;
 - b. There was and remains a nexus between Defendant's position and the violation in question such that the Defendant could have influenced the corporate actions which constituted the violations; and
 - c. Defendant's actions or inactions facilitated and continue to facilitate the violations.

Jurisdiction and Venue

8. Subject matter jurisdiction in this case is properly conferred in the Court pursuant to R.I. Gen. Laws §§ 42-17.1-2(21), 42-17.6-4(c), and 8-2-13.
9. Personal jurisdiction over the Defendant in this case is properly conferred in this Court based on Defendant's presence within the State of Rhode Island.
10. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

Factual Background

11. The subject property is located at 21 Sabin Street, Pawtucket, Rhode Island and more formally described as Assessor's map 8, Lot 329, (hereinafter, the "Property").
12. On August 28, 2013, the RIDEM issued a Notice of Violation, (hereinafter, "NOV") to Defendant for violations of the Rhode Island General Laws, Section 23-19.1-10 and Rhode Island Department of Environmental Management regulations relating to hazardous waste management occurring at the Property. *See Exhibit 1*, attached hereto.
13. At the time of the NOV, the Property was owned by Elkin Investments, Inc.
14. At the time of the NOV, Gisele Elkin was the president of Elkin Investments, Inc.
15. At the time of the NOV, Thurston Hartford d/b/a E-lifecycle Management, LLC was a tenant at the Property.
16. The NOV alleges the following violations:
 - a. Rhode Island General Laws, Section 23-19.1-10 and RIDEM Hazardous Waste Management Regulation 7.0B1, relating to the storage and disposal of hazardous waste without a permit;
 - b. RIDEM hazardous Waste Regulation 13.5 relating to the prohibition of large quantity handlers of hazardous waste from storing the same onsite for greater than one year.
17. The NOV was served on the Defendant on August 28, 2013 *via* certified mail. *See*

Exhibit 1, attached hereto.

18. Defendant failed to comply with the NOV and did not file a written request for an administrative hearing within twenty (20) days following the service of the NOV as required by the Rhode Island General Laws, Sections 42-17.1-2(21) and 42-17.7-9.
19. Pursuant to the Rhode Island General Laws, Sections 42-17.1-2(21)(v) and 42-17.6-4(c), the NOV has become a final compliance order fully enforceable against the Defendant upon the institution of injunction proceedings in the Superior Court.
20. On October 17, 2014, the RIDEM performed an inspection at the Property. The inspection identified 29 large containers holding hazardous waste (CRT glass) and 48 containers labeled “universal waste” that had been stored on-site for greater than one year. *See Exhibit 2*, the October 17, 2014 Inspection Report.
21. On or about December 2, 2015, the Office of the Attorney General submitted correspondence to Defendant notifying her of its intent to enforce the Final Compliance Order. The correspondence was returned without notification of receipt.

COUNT I
(Violation of Final Compliance Order)

22. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 21 above.
23. The NOV issued to the Defendant by RIDEM on August 28, 2013, was issued pursuant to R.I. Gen. Laws §§ 42-17.1-2 (21) and 42-17.6-2.
24. In accordance with R.I. Gen. Laws §§ 42-17.1-2 (21) and 42-17.7-9, the NOV issued on August 28, 2013, notified Defendant of the facts that gave RIDEM reasonable grounds to believe that a violation of law had occurred; of the statutes and/or regulation(s) violated; and of the Defendant’s right to request an administrative hearing before RIDEM’s

Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.

25. In accordance with the R.I. Gen. Laws, § 42-17.6-3(a), the NOV included the following:

- a. A concise statement of the alleged act or omission for which the administrative penalty was sought to be assessed;
- b. Each law, rule, regulation, order, permit, license, or approval which was not complied with as a result of the alleged act or omission;
- c. The amount which the director sought to assess as an administrative penalty for each alleged act or omission;
- d. A statement of the person's right to an adjudicatory hearing on the proposed assessment;
- e. The requirements the person must comply with to avoid being deemed to have waived the right to an adjudicatory hearing; and
- f. The manner of payment thereof if the person elects to pay the penalty and waive the adjudicatory hearing.

26. Pursuant to R.I. Gen. Laws, §§ 42-17.1-2(21)(vi) and 42-17.6-4(c), Defendant, by failing to appeal the issuance of the NOV, is deemed to have waived her right to an adjudicatory hearing resulting in the NOV automatically transforming into two final compliance orders; one for the injunctive relief identified therein and one requiring payment of the administrative penalty assessed therein.

27. Pursuant to R.I. Gen. Laws § 42-17.1-2 (21), a final compliance order for injunctive relief that has become effective may be enforced through proceedings for injunctive relief wherein the correctness of the compliance order shall be presumed and the party attacking the compliance order shall bear the burden of proof.

28. Pursuant to R.I. Gen. Laws, §42-17.6-4(c), if a person waives his right to an adjudicatory hearing on the proposed administrative penalty, the proposed administrative penalty shall

be final immediately upon the waiver.

29. As of the date of filing this Complaint, Plaintiff asserts:

- a. Defendant has not complied with the provisions of the Final Compliance Order in hazardous waste continues to be stored at the Property;
- b. Defendant has not submitted a written plan and schedule for hazardous waste removal;
- c. Defendant has not implemented a plan for hazardous waste removal, nor completed and disposed of said waste at a licensed hazardous waste management facility;
- d. The Twenty-nine Thousand One Hundred Seventy-four (\$29,174.00) Dollar administrative penalty has not been paid.

WHEREFORE, Plaintiff, Janet L. Coit, in her capacity as Director of the Rhode Island Department of Environmental Management, by and through her attorney, Peter F. Kilmartin, in his capacity as Attorney General for the State of Rhode Island, hereby requests that Judgment be entered in favor of the Plaintiff and that Plaintiff be granted the following relief:

- (a) Temporary, Preliminary and Permanent Injunctive Relief, enjoining Defendant from storing hazardous waste on the Property;
- (b) Temporary, Preliminary and Permanent Injunctive Relief, enjoining Defendant from disposing of hazardous waste on the Property;
- (c) Temporary, Preliminary and Permanent Injunctive Relief ordering the Defendant to immediately begin the removal and proper disposal of all hazardous waste from the Property to a licensed solid waste management facility;
- (d) Temporary, Preliminary and Permanent Injunctive Relief, ordering the Defendant, within thirty (30) days of this order, to transport all of the CRT Waste using a permitted hazardous waste transporter to a licensed Treatment, Storage and Disposal Facility and submit a copy of the manifest to the RIDEM Office of Compliance and Inspection, 235 Promenade Street, Room 220, Providence, RI 02908-5767, Attn: David Chopy;
- (e) Temporary, Preliminary and Permanent Injunctive Relief, ordering the Defendant, within thirty (30) days of this order transport all of the Universal Waste that has been stored for greater than one (1) year to either another

universal waste handler or a licensed Destination Facility and submit a copy of the bill of lading or manifest to the RIDEM Office of Compliance and Inspection, 235 Promenade Street, Room 220, Providence, RI 02908-5767, Attn: David Chopy;

- (f) Temporary, Preliminary and Permanent Injunctive Relief ordering the Defendant to immediately pay Twenty-nine Thousand One Hundred Seventy-four (\$29,174.00) Dollars to the Plaintiff, which is the amount of the administrative penalty assessed in the NOV dated August 28, 2013;
- (g) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

COUNT II
(Enforcement of Final Administrative Penalty)

30. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 29 above.

31. The NOV issued to the Defendant by RIDEM on August 28, 2013, was issued pursuant to R.I. Gen. Laws §§ 42-17.1-2 (21) and 42-17.6-2.

32. In accordance with R.I. Gen. Laws §§ 42-17.1-2 (21) and 42-17.7-9, the NOV issued on August 28, 2013, notified Defendant of the facts that gave RIDEM reasonable grounds to believe that a violation of law had occurred; of the statutes and/or regulation(s) violated; and of the Defendant's right to request an administrative hearing before RIDEM's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.

33. In accordance with the R.I. Gen. Laws, § 42-17.6-3(a), the NOV included the following:

- a. A concise statement of the alleged act or omission for which the administrative penalty was sought to be assessed;
- b. Each law, rule, regulation, order, permit, license, or approval which was not complied with as a result of the alleged act or omission;

- c. The amount which the director sought to assess as an administrative penalty for each alleged act or omission;
- d. A statement of the person's right to an adjudicatory hearing on the proposed assessment;
- e. The requirements the person must comply with to avoid being deemed to have waived the right to an adjudicatory hearing; and
- f. The manner of payment thereof if the person elects to pay the penalty and waive the adjudicatory hearing.

34. Defendant failed to file with the director or the clerk of the administrative adjudication division of the RIDEM a written statement denying the occurrence of any of the acts or omissions alleged by the director in the notice, or asserting that the money amount of the proposed administrative penalty is excessive as required pursuant to R.I. Gen. Laws, § 42-17.6-4.

35. Pursuant to R.I. Gen. Laws, § 42-17.6-4(c), Defendant, by failing to appeal the issuance of the NOV, is deemed to have waived his right to an adjudicatory hearing resulting in the NOV automatically transforming into two final compliance orders; one for the injunctive relief identified therein and one requiring payment of the administrative penalty assessed therein.

36. Pursuant to R.I. Gen. Laws, §42-17.6-4(c), if a person waives his right to an adjudicatory hearing on the proposed administrative penalty, the proposed administrative penalty shall be final immediately upon the waiver.

37. As of the date of filing this Complaint, Plaintiff asserts Defendant has not paid the \$29,174.00 administrative penalty assessed in the NOV.

WHEREFORE, Plaintiff, Janet L. Coit, in her capacity as Director of the Rhode Island Department of Environmental Management, by and through her attorney, Peter F. Kilmartin, in his capacity as Attorney General for the State of Rhode Island, hereby demands judgment in the amount of \$29,174.00, which amount represents the Administrative Penalty as assessed in the

NOV.

COUNT III
(Public Nuisance)

38. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 37 above.

39. The Defendant has contributed to an ongoing public nuisance in the ownership of the Property described above and the storage of hazardous waste thereon.

40. By and through the conduct of the Defendant, the public, on behalf of whom the State files this complaint, has suffered substantial harms including, among other things, adverse impacts on public health and welfare, and a diminution in the overall quality of life.

41. Serious pollution and risk of potential pollution unreasonably interferes with the public health, safety, comfort, convenience, and property use of the general community surrounding the Property.

42. Defendant's ownership of the Property is actionable by the Attorney General of Rhode Island under R.I. Gen. Laws §10-1-1 as well as the common law.

WHEREFORE, Plaintiff, Janet L. Coit, in her capacity as Director of the Rhode Island Department of Environmental Management, by and through her attorney, Peter F. Kilmartin, in his capacity as Attorney General for the State of Rhode Island, hereby requests that Judgment be entered in favor of the Plaintiff and that Plaintiff be granted the following relief:

- (a) Temporary, Preliminary and Permanent Injunctive Relief, enjoining Defendant from storing hazardous waste on the Property;
- (b) Temporary, Preliminary and Permanent Injunctive Relief, enjoining Defendant from disposing of hazardous waste on the Property;
- (c) Temporary, Preliminary and Permanent Injunctive Relief ordering the Defendant to immediately begin the removal and proper disposal of all

hazardous waste from the Property to a licensed solid waste management facility;

- (d) Temporary, Preliminary and Permanent Injunctive Relief, ordering the Defendant, within thirty (30) days of this order, to transport all of the CRT Waste using a permitted hazardous waste transporter to a licensed Treatment, Storage and Disposal Facility and submit a copy of the manifest to the RIDEM Office of Compliance and Inspection, 235 Promenade Street, Room 220, Providence, RI 02908-5767, Attn: David Chopy;
- (e) Temporary, Preliminary and Permanent Injunctive Relief, ordering the Defendant, within thirty (30) days of this order transport all of the Universal Waste that has been stored for greater than one (1) year to either another universal waste handler or a licensed Destination Facility and submit a copy of the bill of lading or manifest to the RIDEM Office of Compliance and Inspection, 235 Promenade Street, Room 220, Providence, RI 02908-5767, Attn: David Chopy;
- (f) Temporary, Preliminary and Permanent Injunctive Relief ordering the Defendant to immediately pay Twenty-nine Thousand One Hundred Seventy-four (\$29,174.00) Dollars to the Plaintiff, which is the amount of the administrative penalty assessed in the NOV dated August 28, 2013;
- (g) Such other and further relief as this Court deems just and equitable.

VERIFICATION

I, Tracey Tyrrell, Supervising Environmental Scientist for the Rhode Island Department of Environmental Management's Office of Compliance and Inspection and an authorized representative of the Director, first being duly sworn upon oath, hereby state that the facts contained in this Complaint and the exhibits attached hereto are, to the best of my knowledge and belief, true and accurate.

Tracey Tyrrell
Supervising Environmental Scientist
Office of Compliance and Inspection
Dated: September ____, 2016.

**STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE**

Subscribed and sworn to before me this ____ day of September, 2016.

NOTARY PUBLIC
My commission expires:

Respectfully Submitted,

**JANET L. COIT, in her capacity as Director of
THE RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,**

By her attorney,

**PETER F. KILMARTIN
ATTORNEY GENERAL FOR
THE STATE OF RHODE ISLAND**

By his Attorney,

/s/Sean Lyness

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