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

RE: SUPREME ASSET MANAGEMENT RECOVERY, INC. **AAD NO. 13-005/WME**
NOTICE OF VIOLATION 2011-48-HW

DECISION AND ORDER

This matter came on before Hearing Officer David Kerins on Respondent's Motion for Summary Judgment and Rhode Island Department of Environmental Management's ("DEM" or "OC&I") Objection thereto. The Respondent filed a Notice of Appeal on September 16, 2013 from a Notice of Violation ("NOV") dated August 28, 2013. Respondent filed its Motion for Summary Judgment together with supporting Memorandum of Law on February 16, 2014. RIDEM filed its Objection to Motion for Summary Judgment with supporting Memorandum of Law on April 14, 2014 and Respondent filed a Supplemental Memorandum on April 17, 2014.

Standard of Review

Rule 8.00(a)(1) of the *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters* permits a party to file a motion that would otherwise be permissible under the Rhode Island Rules of Civil Procedure. Under R.I. Civ. P. 56(c), a party may file a motion for Summary Judgment and Summary Judgment shall be rendered forthwith if the pleadings together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Super. Ct. R. Civ. P. 56(c); *Pamisciano v. Burrillville Racing Ass'n*, 603 A.2d 317, 320 (R.I. 1992). Summary judgment is an extreme and drastic remedy, and should be applied cautiously and judiciously and only when there is clearly no genuine issues of material fact. *See McPhillips*

v. Zarye Corp., 582 A.2d 747 (R.I. 1990) and *Golderese v. Suburban Land Co.*, 590 A.2d 395 (R.I. 1991). "The party opposing the motion for summary judgment carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." *Taylor v. Mass. Flora Realty, Inc.*, 840 A.2d 1126, 1129 (R.I. 2004) (quoting *United Lending Corp. v. Providence*, 827 A.2d 626, 631 (R.I. 2003)). A party opposing summary judgment must affirmatively assert facts that raise a genuine issue to be resolved at trial. *Volino v. General Dynamics*, 539 A.2d 531, 533 (R.I. 1988). When the non-moving party fails to carry its affirmative burden to set forth specific facts to demonstrate there is a genuine material issue of fact to be resolved at trial, summary judgment is properly entered. *Grande v. Almac's, Inc.*, 623 A.2d 971, 972 (R.I. 1993).

Statement of Facts

These facts are taken from the uncontradicted information contained in the affidavit and exhibits submitted by the parties. Respondent SAMR is a corporation duly organized and registered to do business under the laws of the State of New Jersey and located at 1950 Rutgers University Boulevard in Lakewood, New Jersey, which engages in recycling. As part of the recycling process, SAMR takes in and dismantles used electronics such as televisions and computers. In the process, SAMR removes cathode ray tubes ("CRT"), which are vacuum tubes, made primarily of glass, that constitute the video display components of electronics such as TVs, computer monitors and other electronic devices. During the recycling process, SAMR breaks the glass on the CRTs and removes the metal components from the interior. The glass that remains is

referred to as CRT glass or "cullet." The glass cullet contains lead and other materials that largely remain encapsulated in the glass.

On or about August 17, 2010, SAMR entered a contract with User-Friendly Recycling, L.L.C. ("User Friendly") located at 250 Cape Highway in Taunton, Massachusetts. Pursuant to the contract, User-Friendly directed SAMR to send two loads of cullet directly to e-Life Cycle Management, LLC ("e-Life Cycle Management") at 21 Sabin Street in Pawtucket, Rhode Island (the "Site"). In August of 2010, in accordance with the contract with User-Friendly, SAMR sent two shipments of CRT cullet to e-LifeCycle Management at the Site.

On March 11, 2011, DEM inspected the Property. The inspection revealed that waste, in the form of broken glass from cathode ray tubes ("CRTs") (the "CRT Waste"). They observed five (5) open cardboard containers and twenty-four (24) sealed cardboard containers marked with the words "universal waste CRT glass" or "SAMR Inc. leaded glass tubes from televisions and computers" dated either 8/3/10 or 8/3010. The labels on the containers identified the weight of each container, which averaged 2,700 pounds for each container. They observed broken CRT glass in the open cardboard containers. During discussions with Thurston Hartford, who identified himself as the owner of e-LifeCycle Management, LLC, he advised the DEM inspector that his company entered into a contract with the Respondent to receive broken CRT glass from the NJ Facility. His company received two (2) shipments of broken CRT glass from the Respondent comprising a total of about forty (40) tons; and the first shipment was received on August 3, 2010 and the second shipment was received on August 10, 2010.

On March 14, 2012 DEM inspected the Site and determined that the CRT Waste was still present. On October 12, 2013 DEM inspected the Site and completed a detailed inventory of the CRT Waste. DEM documented twenty-nine (29) cardboard containers holding broken glass, twenty-eight (28) of which were marked with the words "SAMR, Inc. leaded glass/tubes from televisions or computers" and dated 7/23/10 or 8/30/10. During the inspection DEM collected samples from five (5) of the containers and transported the samples to a laboratory for analysis. On October 24, 2012 DEM received a copy of a report containing the results from the samples collected on October 12, 2012. DEM reviewed the report and determined that four (4) of the samples contained concentrations of lead exceeding the regulatory threshold of 5 parts per million making the material in the containers hazardous waste. DEM has not issued a permit to the owner of the Site to treat, store and/ or dispose of hazardous waste on the Site.

On August 28, 2013, DEM issued Notice of Violation No. 2011-48-HW ("NOV") to "Supreme Asset Management Recovery, Inc." alleging violation of §23-19.1-1 *et seq,* ("HWMA") and RIDEM's *Rules and Regulations for Hazardous Waste Management ("Hazardous Waste Regulations").* The NOV contained the following two claims: (1) failure to ship the cullet to a facility that is licensed to receive hazardous waste under R.I. Gen. L. §23-19.1-10 and Rule 5.3 and (2) failure to complete a hazardous waste manifest for the shipments of cullet under R.I. Gen. L. §23-19.1-9 and 40 C.F.R. §262.20(a)(1). The NOV was timely appealed on September 16, 2013.

Analysis

The Respondent in presenting its Motion for Summary Judgment with supporting Memorandum argues that there is no material issue of fact on two (2) issues:

1. RIDEM is not entitled to recover under the NOV because the CRT cullet was exempt from regulation as a hazardous waste under both Federal and State Law bases on the recycling exemption in 40 C.F.R. §261.2(e)(1)(ii); and

2. Even if the CRT cullet constituted hazardous waste, RIDEM cannot obtain and enforce a Judgment against Supreme Asset Management Recovery, Inc.

DEM in its Objection to Respondent's Motion for Summary Judgment with supporting Memorandum asserts that:

1. The material at issue is hazardous waste in Rhode Island, and is not subject to any exemptions under RCRA or the Rhode Island Hazardous Waste Regulations;

2. Respondent has failed to present any credible factual evidence demonstrating that the recycling alleged was ever the actual destination of this material in the first place; and

3. Supreme Asset Management and Recovery, Inc. is the same as SAMR, Inc. and Supreme Asset Management, Inc.

The Department of Environmental Management adopted Rules and Regulations for Hazardous Waste Management on 18 July 1984 which were most recently amended on June 7, 2010 ("Hazardous Waste Regs"). Section 5.3 of the Hazardous Waste Regs States:

Waste Shipment: The generator shall send hazardous waste only to a designated facility. The generator must not send hazardous waste from the property on which it is generated, on site, without preparing a Manifest to accompany the waste, except where 40 CFR 262.20(f) applies, nor shall he offer hazardous waste to a facility which does not have and EPA I.D. number, or to a hazardous waste transporter that does not have an EPA I.D. number and a valid RI Hazardous Waste Transporter Permit as indicated by an official sticker on each transportation unit. Use of a permitted hazardous waste transporter and use of a transporter with an EPA I.D. number are not required for the transportation situations where 40 CFR 262.20(f) applies. The following requirements also apply:

40 CFR 262.20 (f) states:

" The requirements of this subpart and §262.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Not-withstanding 40 CFR 263.10(a), the generator or transporter must comply with the requirements for transporters set forth in CFR 263.30 and 263.31 in the event of a discharge of hazardous waste on a public or private right-of-way."

Section 5.3 (B) of the Hazardous Waste Regs.

"The generator, except for those shipments of exclusively used oil shall complete the generator section of the Manifest prior to sending any hazardous waste from the property on which it is generated... The generator shall complete this section in accordance with the requirements of 40 CFR 262.20 and the related appendix to 40 CFR (instructions for the uniform hazardous waste Manifest) and the requirements of these rules and regulations."

The Respondent argues that the shipment of cullet to e-Life Cycle Management at the direction of User-Friendly. is exempt from the Requirements of 40 C.F.R.§ 262.2. It alleges that

because the cullet was being recycled Respondent did not and was not required to prepare a hazardous waste manifest or send it to a licensed hazardous waste facility as alleged in the NOV. The cullet was destined to be used and or re-used for its silica as an effective substitute for a commercial product (i.e. in place of sand or pea gravel as a fluxing agent). Therefore, the cullet fell within the exemption in 40 C.F.R. §261.2(e)(1)(ii), which was adopted in Rhode Island, such that it was not solid waste, let alone hazardous waste, under federal and state law.

DEM asserts that the material was not reused or recycled without processing, was never destined for recycling, and even if the final destination was as Respondent alleges in its memorandum, the treatment and processing involved in the alleged reuse would disqualify the material from the recycling exclusion. Further, even if this material might have qualified for the recycling exclusion at some point in its history, the passage of time since the material was stored in Pawtucket for a period of time renders it "speculatively accumulated" as that term is defined under RCRA, also disqualifying it from the recycling exclusion.

40 C.F.R. §261.1(c)(7) states that a material is "recycled" if it is "used, reused, or reclaimed." Paragraph (5) of Section 261.1(c) defines the terms "used or reused" as follows:

(5) A material is used or reused if it is either:

(i) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(ii) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

40 C.F.R. §261.2(e)(2) states:

"(e) *Materials that are not solid waste when recycled.*

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs (e)(1) (i) through (iii) of this section):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively, or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section."

(Emphasis added)

Accumulated Speculation is defined by RCRA as:

"(8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material as potentially recyclable; and that ---during the calendar year (commencing on January 1) ---the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period.." 40 C.F.R. §261.1(c)(8) (emphasis added).)

DEM argues that the subject material is "accumulated speculatively" because it accumulated prior to recycling and at least 75% of the material accumulated is not turned over with one calendar year. As described in the Notice of Violation, the 80,000 pounds of cullet at issue here was shipped by the Respondent to Rhode Island in August 2010, and remains on site today. None of the material has been recycled or moved off site, for recycling or otherwise, in almost four years. This inactivity more closely resembles abandonment or a use constituting disposal, but even if Respondent's recycling argument were to be accepted, the period for which this material has been left unrecycled renders it no longer eligible for the recycling exception, by virtue of 40 C.F.R. §261.2(e)(2)(iii).

The exception to treating material as hazardous waste is based on the idea of giving a waste recycling company the opportunity to transport the material to a recycling or processing facility. It limits the time that the generator or transporter can hold the material at one location while en route. It clearly states that you cannot hold more than seventy five percent at one location for more than one calendar year. In the instant case it appears that one hundred percent of the material was held at the site for almost four years.

The Respondent asserts that it is not subject to State and Federal Regulations because the cullet is not hazardous waste based on the exemption in 40 C.F.R. §261.2(e)(1)(ii). In a review of the evidence, as presented through the Memoranda with supporting affidavits and exhibits, I find that there is a material issue of fact that the waste was "accumulated speculatively" as defined in 40 C.F.R. §261.1(c)(8). Respondent alleges in its Reply Memorandum that it "was not the person accumulating it". (Page 7 Respondent"s Reply

Memorandum). Respondent states that it was the act of the transportation company E-Lifecycle Management over whom it had no control. I believe that this is an issue which is not clear based on the evidence as presented. It does not appear that the Respondent ever relinquished ownership or title to the subject material. The Federal and State Regulations place the onus on the generator for material which is not properly transported or which is "accumulated speculatively".

Respondent alleges that the material was being transported for recycling but does not indicate in the manifest the ultimate destination. Respondent, through the Affidavit of Mr. Boufarah and by means of Exhibit A attached thereto, gives an example of a recycling company in the Doe Run Company ("Doe Run"). It does not, however, indicate that Doe Run was the ultimate destination for the cullet.

I cannot determine, based on the evidence that the material was "used or reused" as defined in 40 C.R.F. §261.1(c). The evidence presented leaves questions of this fact and therefore should not be disposed of by means of a Motion for Summary Judgment.

The last issue is the allegation by Respondent that it is entitled to a judgment as a matter of law due to the fact that DEM named as a Respondent a corporation that doesn't exist. Respondent, through its supporting Affidavit that its corporate name is SAMR, Inc. and not Supreme Asset Management Recovery, Inc. as cited in the NOV. DEM responds with an argument that the Respondent has held itself out as "Supreme Asset Management and Recovery SAMR". It includes as an Exhibit, a copy of the Business Record Service of the State of New Jersey Department of Treasury which identifies both SAMR, Inc. and Supreme Asset

Management, Inc. as existing business entities relating to principal Boufarah. (DEM Exhibit D). It points out that the contract with User-Friendly Recycling, L.L.C. refers to the Respondent as "Supreme Asset Management and Recovery".

CONCLUSION

I find that issues of material fact exist that prevent the entry of Summary Judgment. I find that there are issues of material fact which do not allow the conclusion at this time that the subject material is exempt from regulation as a hazardous waste. There are material facts which leave open the question of whether or not the material was reused or recycled without processing. There is significant factual evidence that the material was "accumulated speculatively" as defined in 40 C.F.R. §261(c)(8) and therefore not exempt as hazardous waste.

I find that there are facts which support the argument that SAMR also identified and held itself out as "Supreme Asset and Management". It should be noted that the standard of proof in this review is significantly different than that in a decision on the merits. For the purposes of this Motion I find that there are material facts which prevent the entry of judgment on the issue of improper identification of the owner or generator of the subject material.

FINDINGS OF FACT

1. The Administrative Adjudication Division ("AAD") has jurisdiction over this Action and personal jurisdiction over the Respondent.

2. Respondent SAMR is a corporation duly organized and registered to do business under the laws of the State of New Jersey and located at 1950 Rutgers University Boulevard in Lakewood, New Jersey, which engages in recycling.

3. Respondent takes in and dismantles used electronics such as televisions and computers.

4. Respondent removes cathode ray tubes ("CRT"), which are vacuum tubes, made primarily of glass, that constitute the video display components of electronics such as TVs, computer monitors and other electronic devices.

5. Respondent breaks the glass on the CRTs and removes the metal components from the interior.

6. The glass that remains is referred to as CRT glass or "cullet."

7. The glass cullet contains lead and other materials that largely remain encapsulated in the glass.

8. On or about August 17, 2010, Respondent entered a contract with User-Friendly Recycling, L.L.C. ("User Friendly") located at 250 Cape Highway in Taunton, Massachusetts.

9. User-Friendly directed Respondent to send two loads of cullet directly to e-Life Cycle Management, LLC ("e-Life Cycle Management") at 21 Sabin Street in Pawtucket, Rhode Island ("Site").

10. In August of 2010, in accordance with the contract with User-Friendly, Respondent sent two shipments of CRT cullet to e-LifeCycle Management at the Site.

11. On March 11, 2011, DEM inspected the Site.

12. DEM's inspection revealed that waste, in the form of broken glass from cathode ray tubes ("CRTs") (the "CRT Waste").

13. DEM observed five (5) open cardboard containers and twenty-four (24) sealed cardboard containers marked with the words "universal waste CRT glass" or "SAMR Inc. leaded glass tubes from televisions and computers" dated either 8/3/10 or 8/3010.

14. The labels on the containers identified the weight of each container, which averaged 2,700 pounds for each container.

15. DEM observed broken CRT glass in the open cardboard containers.

16. During discussions with Thurston Hartford, who identified himself as the owner of e-LifeCycle Management, LLC, he advised the DEM inspector that his company entered into a contract with the Respondent to receive broken CRT glass from the NJ Facility.

17. Mr. Hartford advised that his company received two (2) shipments of broken CRT glass from the Respondent comprising a total of about forty (40) tons; and the first shipment was received on August 3, 2010 and the second shipment was received on August 10, 2010.

18. On March 14, 2012 DEM inspected the Site and determined that the CRT Waste was still present.

19. On October 12, 2013 DEM inspected the Site and completed a detailed inventory of the CRT Waste.

20. DEM documented twenty-nine (29) cardboard containers holding broken glass, twenty-eight (28) of which were marked with the words "SAMR, Inc. leaded glass/tubes from televisions or computers" and dated 7/23/10 or 8/30/10.

21. During the inspection DEM collected samples from five (5) of the containers and transported the samples to a laboratory for analysis.

22. On October 24, 2012 DEM received a copy of a report containing the results from the samples collected on October 12, 2012.

23. DEM reviewed the report and determined that four (4) of the samples contained concentrations of lead exceeding the regulatory threshold of 5 parts per million making the material in the containers hazardous waste.

24. DEM has not issued a permit to the owner of the Site to treat, store and/ or dispose of hazardous waste on the Site.

25. On August 28, 2013, DEM issued Notice of Violation No. 2011-48-HW ("NOV") to "Supreme Asset Management Recovery, Inc" alleging violation of the §23-19.1-1 *et seq,* ("HWMA") and RIDEM's *Rules and Regulations for Hazardous Waste Management ("Hazardous Waste Regulations").*

26. Respondent took a timely appeal on September 6, 2013.

CONCLUSIONS OF LAW

After due consideration of the documentary evidence and based upon the Findings of Fact as set forth herein, I conclude the following as a matter of law:

1. There are facts which support the legal conclusion that Respondent is subject to the provisions of 40 C.F.R. §261 as adopted in the Rhode Island Hazardous Waste Regulations;

2. There are facts which support the legal conclusion that the Respondent is not exempt from the provisions of 40 C.F.R. §261;

3. There are facts which support the legal conclusion that Respondent is not exempt under the "use/ reuse" exclusion as set out in 40 C.F.R. §261.2(e)(1)(ii);

4. There are facts which support the legal conclusion that the Respondent engaged in "speculative accumulation" as defined in RCRA 40 C.F.R. §261.1(c)(8);

5. There are facts which support the legal conclusion that Respondent held itself out to the public under different corporate or trade names including Supreme Asset Management Recovery, Inc.;

6. Respondent has not met its burden of proof that there is no material issue of fact in dispute and that it is entitled to a Judgment as a matter of law;

7. Respondent is not entitled to a Summary Judgment.

Based on the foregoing Findings of Facts and Conclusions of Law it is hereby

ORDERED

1. Respondent's Motion for Summary Judgment is **DENIED**.

Entered as an Administrative Order this 8th day of July, 2014.

David Kerins
Chief Hearing Officer
Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02908
(401) 574-8600

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid to Andrew C. Spacone, Esquire, Adler Pollock & Sheehan, P.C., One Citizens Plaza, 8th Floor, Providence, RI 02903; and via interoffice mail to Susan Forcier., Esquire, DEM Office of Legal Services, and David E. Chopy, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this 8th day of July, 2014.