

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Gisele Elkin

FILE NO.: 2011-48-HW

**Thurston Hartford
d/b/a E-Lifecycle Management LLC**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

The DEM issued informal written notices to the Respondents on July 14, 2011 and March 20, 2012 for the violations. The notices required that specific actions be taken to correct the violations. The DEM spoke with Mr. Hartford on July 18, 2012 and an agent for Ms. Elkin on July 18, 2012 and July 30, 2012 regarding the notices. The Respondents have failed to comply with the notices.

C. Facts

- (1) The subject property is located at 21 Sabin Street, Assessor’s Map 8, Lot 329 in the city of Pawtucket, Rhode Island (the “Property”).
- (2) Elkin Investments, Inc. owns the Property.
- (3) The Rhode Island Secretary of State’s corporations database lists Elkin Investments, Inc. as an inactive corporation, having its principal place of business at 21 Sabin Street in the city of Pawtucket, Rhode Island. The date of the Revocation Certificate was November 26, 2007. The record lists Gisele Elkin as the president of the corporation.
- (4) E-Lifecycle Management, LLC was a former tenant at the Property.
- (5) The Rhode Island Secretary of State’s corporations database has no listing for E-Lifecycle Management, LLC.

- (6) E-Lifecycle Management LLC registered with the DEM as a small quantity hazardous waste generator and a large quantity handler of universal waste at the Property pursuant to the DEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations") and pursuant to Title 40 of the Code of Federal Regulations ("40 CFR") under the name of "E Lifecycle Management LLC" with the U. S. Environmental Protection Agency identification number RIR000509257. The registration lists Thurston Hartford as the contact for the corporation.
- (7) On March 11, 2011, DEM inspected the Property. The inspection revealed the following:
 - (a) 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 8/30/10;
 - (b) The labels on the containers identified the weight of each container, which averaged 2,700 pounds for each container;
 - (c) Observations of broken cathode ray tube ("CRT") glass in the open cardboard containers; and
 - (d) Discussions with Thurston Hartford, who identified himself as the owner of E-Lifecycle Management, LLC, who provided the DEM inspector with the following information:
 - (i) His company entered into a contract with SAMR, Inc. to receive broken CRT glass;
 - (ii) His company received two (2) shipments of broken CRT glass from SAMR, Inc. comprising a total of about forty (40) tons;
 - (iii) The first shipment was received on August 3, 2010 and the second shipment was received on August 10, 2010;
 - (iv) SAMR, Inc. paid his company several thousand dollars to take the broken CRT glass; and
 - (v) His company was unable to find an economically viable market for the broken CRT glass.
- (8) On March 14, 2012 DEM inspected the Property and determined that the containers were still present.

- (9) On October 12, 2012 DEM inspected the Property. The inspection revealed the following:
- (a) Twenty nine (29) cardboard containers holding broken CRT glass (the “CRT Waste”) of which:
 - (i) Twenty eight (28) containers were marked with the words “SAMR, Inc. leaded glass/tubes from televisions or computers” and dated July 23, 2010 or August 30, 2010; and
 - (ii) One (1) container was unlabeled.
 - (b) Thirty (30) cardboard containers holding CRTs and sixteen (16) cardboard containers holding projection lamps (collectively, the “Universal Waste”) of which:
 - (i) Twenty one (21) containers holding CRTs were labeled with the words “Universal Waste, Used Electronics, TV Tubes, E-Lifecycle Management, LLC” and dated March 10, 2011. One (1) of these containers was also labeled with the words “TVs Worcester, 8/1/10, Universal Waste” and three (3) of these containers were labeled “8/3/10, CRTs, New Hampshire, Universal Waste”;
 - (ii) Seven (7) containers holding projection lamps were labeled with the words “Universal Waste, Used Electronics, TV Tubes” and dated March 10, 2011; and
 - (iii) Nine (9) containers holding CRTs and nine (9) containers holding projection lamps were unlabeled.

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

- (10) 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.
- (11) DEM has not issued a permit to store or dispose of hazardous waste on the Property.
- (12) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to ship the hazardous waste to a properly licensed treatment, storage and disposal facility.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 23-19.1-10 and DEM's Rules and Regulations for Hazardous Waste Management ("Hazardous Waste Regulations"), Regulation 7.0B1 and 40 CFR 270.1(b)** – requiring a person to obtain a permit from the DEM prior to storing or disposing of hazardous waste.
- (2) **DEM's Hazardous Waste Regulation, Regulation 13.5 and 40 CFR 273.35(a)** – prohibiting large quantity handlers of universal waste from storing universal waste onsite for greater than one year.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), the Respondents are hereby ORDERED to:

- (1) **Within thirty (30) days of receipt of the NOV** 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 DEM.
- (2) **Within thirty (30) days of receipt of the NOV** 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 DEM.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Twenty Nine Thousand One Hundred Seventy Four Dollars (\$29,174.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within thirty (30) days of your receipt of this NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through F above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Susan Forcier, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the

above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).

- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the city of Pawtucket wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 23-19.1-33, as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Susan Forcier at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Gisele Elkin
21 Sabin Street
Pawtucket, RI, 02860

Gisele Elkin
c/o Dorothy Elkin
15 Keene Street
Stoneham, MA 02180

Thurston Hartford
68 Haig Avenue
Seekonk, MA 02771

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE SECTION
 File No.: 2011-48-HW
 Respondent:: Gisele Elkin

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and (2) – Unauthorized storage and disposal of hazardous waste	Type I (\$ <u>25,000</u> Max. Penalty)*	Major	\$25,000	1 violation	\$25,000.00
SUB-TOTAL					\$25,000.00

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

COST RECOVERY		
ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.		
DESCRIPTION OF COST	CALCULATION OF ACTUAL COST INCURRED	AMOUNT
TCLP Extraction – Solid	5 samples x \$35.00 per sample	\$175.00
TCLP RCRA 8 Metals – Solid	5 samples x \$70.00 per sample	\$350.00
SUB-TOTAL		\$525.00

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
<p>Economic benefit of noncompliance identified by DEM for storing hazardous waste without obtaining a permit to operate a Treatment, Storage and Disposal Facility (TSDF) from DEM. The one-time non-depreciable expense associated with the failure to obtain TSDF permit was the application fee of \$25,000.00. The expenses associated with the development of the permit application were \$20,727.00 and were derived from the EPA "Estimating Costs for the Economic Benefits of RCRA Noncompliance", updated December 1997.</p> <p>The Economic benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<ul style="list-style-type: none"> • Profit Status C-Corporation • Filing Status C-Corporation • Initial Capital Investment \$0 • One-time Non-depreciable Expense \$45,727.00 • Annual Expense \$0 • First Month of Non-Compliance March 2011 • Compliance Date September 30, 2013 • Penalty Due Date May 31,2013 • Useful Life of Pollution Control N/A • Equipment Annual Inflation Rate N/A • Discount/Compound Rate 7.8% 	<p>\$3,649</p>
<i>SUB-TOTAL</i>		\$3,649.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$29,174.00

PENALTY MATRIX WORKSHEET

CITATION: Unauthorized storage and disposal of hazardous waste
 VIOLATION NO.: D (1) and (2)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents stored and disposed of hazardous waste onsite without first obtaining a permit. The requirement to obtain a permit to store and dispose of hazardous waste is an integral part of the DEM's Hazardous Waste Regulations because the approval is conditioned upon the requirement to install safety and monitoring equipment, train personnel, track shipments of waste and develop a contingency plan to minimize the potential of a release of hazardous waste to the environment. The requirement to apply for and obtain a permit prior to storing and disposing of hazardous waste onsite is of major importance to the federal and state hazardous waste management program.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Approximately 80,000 pounds of crushed CRT glass in twenty nine (29) containers and thirty six (36) containers holding universal waste.</p> <p>(D) Toxicity or nature of the pollutant: DEM collected samples of the broken CRT glass which was determined to contain concentrations of lead exceeding regulatory thresholds making it hazardous waste. Lead is a heavy metal that is known to be toxic to humans causing behavioral problems, learning disabilities, seizures and mortality.</p> <p>(E) Duration of the violation: DEM observed the hazardous waste during inspections on March 11, 2011, March 14, 2012 and October 12, 2012. Upon information and belief, the hazardous waste remains on site as of the date of this Notice.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to mitigate the noncompliance by transporting the waste to licensed facilities. DEM issued informal written notices to the Respondents on July 14, 2011 and a second notice to the property owner on March 20, 2012 and spoke with Mr. Thurston Hartford and an agent for the property owner on July 18, 2012 regarding the notices. The notices required the Respondents to take specific actions to mitigate the noncompliance; however, the Respondents failed to comply with the notices.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized in this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents had complete control over the occurrence of the violations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

<u> X </u> MAJOR	___ MODERATE	___ MINOR
--------------------	--------------	-----------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250