

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

JANET L. COIT, in her capacity as
Director, RHODE ISLAND
DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
and PETER F. KILMARTIN, in his
capacity as Attorney General of the
STATE OF RHODE ISLAND
Plaintiffs,

v.

RHODE ISLAND RECYCLED
METALS LLC; EDWARD SCIABA;
and AARE, LLC
Defendants.

C.A. No. PC-2015-0890

DECISION

STERN, J. Before this Court is Plaintiffs’, Peter F. Neronha in his capacity as Attorney General of the State of Rhode Island and the Rhode Island Department of Environmental Management (“RIDEM”) (collectively, “Plaintiffs” or the “State”), Motion Emergency Injunctive Relief and to Modify the July 27, 2016 Order Appointing Special Master. Defendants, Rhode Island Recycled Metals LLC (“RIRM”), Edward Sciaba, and AARE, LLC (collectively, “Defendants”), assert that the current arrangement of a court appointed Special Master is sufficient.

I

Facts and Travel

In 2010, RIDEM inspected the RIRM site and found unpermitted discharges of stormwater associated with scrap metal recycling. (Pl.’s Mem. in Supp. of their Mot. to Modify at 2 (Pl.’s Mem.)) Further investigation revealed unauthorized vessel crushing and dismantling, which required approval by RIDEM because it provides greater risk of oil spills and other

contamination. *Id.* at 2-3. Despite a warning from inspectors that the activity was unlawful, RIRM continued to improperly dismantle vessels on the site. *Id.* at 3. RIDEM then issued a Notice of Violation (NOV), so RIRM sought permit revisions and relayed its plan to dismantle four vessels to RIDEM. *Id.*

In July of 2013, RIDEM and RIRM entered into a Consent Agreement to resolve the NOV, including obligations to complete the removal of the four vessels by September 30, 2014 and restore the shoreline by December 31, 2014. *Id.* However, by March of 2015, RIRM had not completed any of the work and the State filed a complaint requesting injunctive relief requiring RIRM to comply with RIDEM's Order. *Id.* A Temporary Restraining Order was granted by the Court on March 19, 2015. *Id.* On April 17, 2015, the Court entered an Interim Preliminary Injunction requiring RIRM to complete certain actions. *Id.* at 4. In January of 2016, after RIRM allegedly demonstrated its unwillingness to comply with lawful orders, Plaintiffs filed a Petition for the Appointment of a Receiver. *Id.* In July of 2016, the Court instead appointed Special Master, Richard J. Land, Esq. to oversee the remediation. *Id.*

The removal of vessels proceeded before the Special Master with a number of hurdles, including technical and bureaucratic obstacles. *Id.* at 4-5. In 2018, three vessels still remained, the ferry, the tugboat, and the submarine, but both the ferry and the submarine were removed in 2018. *Id.* at 5. Leaving only the tugboat remaining, which RIRM entered into a contract with Donjon Marine Company Inc., a marine salvage company, to remove. (Def.'s Mem. at 7.) The Tugboat was removed in September of 2024. (Pl.'s Supp. Mem. at 7.)

RIDEM has also worked, pursuant to this Court's July 27, 2016 Order, with RIRM over the last year attempting to complete the land remediation investigation and plan. (Pl.'s Mem. at 6.) However, RIDEM issued an NOV against RIRM in December of 2023 related to RIRM's late

submission of a public involvement plan. *Id.* The site investigation has now been delayed due to a large fire at the site in April of 2024, and RIDEM anticipates further delays resulting from the fire on July 10, 2024. *Id.* Four fires have occurred on the site since 2018. *Id.* at 6-7.

Plaintiffs now seeks injunctive and other relief for violations of compliance orders, violation of the prohibition on discharge of oil to state land and waters, violation of the prohibition on discharge of pollutants to state waters, and public nuisance. *Id.* at 7. Plaintiffs bring this motion seeking a modification of the July 27, 2016 Order appointing a Special Master. *Id.* at 14. Plaintiffs ask this Court to instead appoint Richard J. Land, Esq., now the Special Master, as the Receiver of Rhode Island Recycled Metals, LLC (RIRM or Defendant). *Id.* Plaintiffs also request an Order that Rhode Island Recycled Metals cease all operations until all investigatory reports of any state or municipal authorities have been completed and any remedial actions have been fully implemented. *Id.*

II

Standard of Review

The Court may appoint a Receiver, “[i]n an action against a person that is not an individual if: . . . (iv) The acts of the persons in control of the person are illegal, oppressive, or fraudulent.” Rhode Island General Laws, § 10-21-6(a)(3). The Court may also appoint a receiver “[i]n an action in which a receiver may be appointed on equitable grounds.” R.I. Gen. Laws §10-21-6(a)(4). However, “the appointment of an equitable receiver is an extraordinary remedy available only in exceptional situations.” *Epic Enterprises LLC v. 10 Brown & Howard Wharf Condo. Ass’n*, 253 A.3d 383, 387 (R.I. 2021). Finally, “the decision to appoint a receiver is left to the discretion of the trial justice depending on the circumstances of each case.” *Id.* at 387 (quoting *Levine v. Bess Eaton Donut Flour Co., Inc.*, 705 A.2d 980, 983 (R.I. 1998)).

Plaintiffs also seek a mandatory injunction ordering RIRM to cease all operations; so, the Court must review the preliminary injunction factors. *Peter F. Neronha v. Prospect Medical Holdings*, C.A. No. PC-2023-05832, 2024 WL 3058329 *8 (R.I. Super. June 12, 2024). The four-factor test is whether the plaintiff has made a prima facie case that it “(1) has a reasonable likelihood of success on the underlying merits”; “(2) will suffer irreparable harm” without the requested relief; “(3) has the balance of equities, which includes an analysis of the possible hardships to each party and the public interest; and (4) has demonstrated that a preliminary injunction will preserve the status quo.” *Griggs & Browne Pest Control Co., Inc. v. Walls*, 305 A.3d 1256, 1260 (R.I. 2024). If the requested relief does not ask to preserve the status quo, the moving party must additionally make “a showing of very clear right and great urgency.” *King v. Grand Chapter of Rhode Island Order of Eastern Star*, 919 A.2d 991, 995 (R.I. 2007).

III

Analysis

A. Appointment of an Equitable Receiver

Plaintiffs aver that the Special Master has been handcuffed without the full powers of a Receiver. (Pl.’s Opp’n. Mem. at 1.) And it seeks “conversion of the Special Master regime to a Receivership for one simple reason—despite the continued, intense, and good faith efforts, *for more than a decade*, of the Special Master, the State, and this Court to coax, hand-hold, and force RIRM toward compliance at every step, compliance is not on the horizon.” (Pl.’s Mem. at 12) (emphasis in original). The tugboat was just recently removed, the land remediation place was never developed or implemented, and RIRM has allowed two fires in rapid succession. *Id.* Plaintiff further states that the acts of RIRM are illegal because they include permitting unlawful discharges of pollutants from the property. *Id.* These longstanding issues that have still not been

resolved create the need for a receivership because they leave open the risk of health consequences to the surrounding community. *Id.* at 13-14. Plaintiffs conclude that the environmental concerns justify the appointment of a Receiver on equitable grounds because of the danger to public health. (Pl.'s Opp'n. Mem. at 18.) Asking this Court to grant a Receiver three powers: complete control over soil remediation, complete control over the stormwater pollution prevention system, and control over the business operations. Hr'g Tr. Part I 12:25-13:24, Oct. 21, 2024 (Part I Tr.).

Defendants state that they do not object to granting the Special Master complete control over soil remediation and the stormwater pollution prevention system, but contest granting control over the business operations. *Id.* at 14:11-13. Defendants explain that, under the aegis of the Court and with the assistance of the Special Master, the issues have been addressed and resolved to the Court's satisfaction. (Def.'s Mot. Mem. at 3.) Opining that significant progress has been made, that there is no stormwater going into the bay, no pollutants in the air, and the cap is under control. Part I Tr. At 14:16-18. Additionally, Defendants argue that Plaintiffs have been unable to assert why a Receiver is necessary in place of a Special Master. (Def.'s Mot. Mem. at 3.) Further countering that the fires were likely the result of unruly vagrants and a customer's dumping of unauthorized materials at the site. (Def.'s Mem. at 1.) And RIRM has already engaged a safety expert and initiated enhanced fire protection measures. (Def.'s Mot. Mem. at 4.) In sum, Defendant asserts that the State has not articulated the remaining issues on the site and their gravity, how a Receiver should address them, and why the Special Master cannot. *Id.* at 8.

The Court first turns to the law of the case in relation to appointing a Receiver. On July 27, 2016, Justice Silverstein declined Plaintiffs' petition to appoint a Receiver and instead

appointed a Special Master. (July 27, 2016 Order, at 1.) The present Motion concerns the same matter, but more than eight years have passed, and all of the ships have since been removed. However, the land remediation and stormwater controls remain at issue, with RIRM still lacking the proper permits. This Court now considers whether the current circumstance justify the extraordinary remedy of a Receiver, where a Special Master was previously appointed.

Plaintiffs have demonstrated that there is some threat of harm to the surrounding communities if additional actions are not taken. However, these same threats of harm existed when the Special Master was first appointed in 2016 and this Court declined to appoint a Receiver. The clear difference between the situation in 2016 and the present situation is the passage of time, it is undisputed that this process has been a long one. However, the process now appears to be approaching the finish line, and the delay does not justify the extraordinary remedy of a Receiver. Environmental concerns remain present, but these same concerns existed when the Special Master was first appointed, and the Plaintiffs have not shown that the current circumstances at RIRM require the appointment of a Receiver.

Further, Plaintiffs have not demonstrated that the Special Master is unable to adequately address these concerns. However, the Court appreciates Plaintiffs' environmental concerns and will grant the Special Master additional powers over the soil remediation and stormwater pollution prevention system. With the process approaching its completion, the Special Master, with additional powers, can adequately address the Plaintiffs' concerns and guide the Defendants through the remaining steps to reach compliance. Therefore, this Court cannot conclude that Plaintiffs have shown that the extraordinary remedy of a Receivership is necessary and the Court, in its discretion, declines to appoint a Receiver.

B. Mandatory Injunction Ordering RIRM to Temporarily Cease Operations

Next, Plaintiffs seek a mandatory injunction ordering RIRM to cease all operations; so, the Court will review the preliminary injunction factors.

1. Likelihood of Success on the Merits

Plaintiffs argue that they have produced ample evidence of the Defendants' statutory violations, including: 1. Noncompliance that has persisted for more than ten years; 2. Having not yet removed the tugboat (removed as of September 2024); 3. Defendants have not completed the land remediation; and 4. Defendants have not installed stormwater controls or secured a Municipal Stormwater General Permit. (Pl.'s Mem. at 8.) Plaintiffs also allege a likelihood of success on the pending public nuisance claim because RIRM has demonstrated it is incapable of operating a scrap metal business safely without harm or nuisance to the public, including four fires in the last six years and two within the last three months. *Id.* at 9. Stating that where, as here, "[a]ctivities [were] carried out in violation of state laws or local ordinances," they "generally have been considered unreasonable if they interfere with a public right. *Id.* (quoting *State v. Lead Indus., Ass'n Inc.*, 951 a.2d 428, 446 (R.I. 2008)). Further asserting that the fires have damaged nearby vulnerable populations and combined with other polluters has led to an area rife with asthma. *Id.* at 10.

Defendants maintain that the Special Master has addressed all concerns to the Court's satisfaction. (Def.'s Mem. at 3.) Stating that there are not air or water quality issues and concentration levels are rapidly descending to normal. *Id.* at 3-4. Defendants conclude that the danger has passed, and the Plaintiffs have not demonstrated a likelihood of success on the merits.

Through the violations of Rhode Island law and the exorbitant length of the process, the Plaintiffs have shown some likelihood of success on the merits. The Plaintiffs have demonstrated

that RIRM is operating without the proper permits and that, though the land remediation process and the process for stormwater controls are underway, they are not yet complete and mere temporary measures are currently in place.

2. Irreparable Harm

Plaintiff first states that “[w]hen the legislature provides for an injunctive remedy for a statutory violation, the State ‘need not prove that irreparable harm was caused by’ the violation. (Pl.’s Mem. at 10.) (quoting *Peter F. Neronha v. Prospect Medical Holdings*, C.A. No. PC-2023-05832 Slip Op. at 22 (June 12, 2024)). Further asserting that R.I Gen. Laws §§ 46-12-17 and 46-12.5.1-9, the relevant sections for Counts II and III, provide that “in any proceedings in which the... attorney general seeks injunctive relief, it shall not be necessary to show that without the relief, the injury that will result will be irreparable or that the remedy at law is inadequate. *Id.* at 11.

Despite its assertion that it is not required to prove irreparable harm, Plaintiff also states that violations of environmental statutes constitute irreparable harm. (Pl.’s Opp’n. Mem. at 24.) At hearing Plaintiffs opine that the cap, meant encapsulate the contaminates in the soil and prevent them from migrating, is no longer in place and without a cap the Defendants are operating in violation of Rhode Island law. Part I Tr. 9:1-6. In addition to the cap, Defendants have failed to install a stormwater pollution prevention plan, which would prevent contaminates at the site from being discharged into the Providence River through stormwater. *Id.* at 9:11-21. Further, Plaintiffs’ expert witnessed opined that RIRM operates in an asthma “hot spot” where there is a higher prevalence and severity of asthma in the surrounding communities. *Id.* at 30:13-31:1. Plaintiffs’ second experts explained that there are a number of contaminants in the soil at the RIRM facility that exceed acceptable levels set by RIDEM. *Id.* 86:6-88:3. Also addressing

the risk of fugitive dust spreading these contaminants outside the RIRM site. *Id.* 90:16-91:19. And concluding that the soil at the site is uncapped and has been mobilized by wind, stormwater, vehicle traffic, and other day-to-day activities. *Id.* at 101:14-17. Finally, Plaintiffs third expert explained that without a permit related to stormwater, RIRM was violating the law and normally facilities are not allowed to discharge stormwater until the permit is received. *Id.* at 101:14-17. Adding that the temporary measures in place would not stop the majority of pollutants. *Id.* at 139:21-24.

Defendant responds stating that significant progress has been made, that there is no stormwater going into the bay, no pollutants in the air, and the cap is under control. Part I Tr. at 14:16-18. Defendants' expert explains that the existing cap was never removed and that some parts of the site are capped with ground asphalt or concrete pads. Hr'g Tr. Part II 189:7-14, Oct. 22, 2024 (Part II Tr.). Elaborating that there are no known environmentally sensitive areas near the site and, based on the detected concentrations in site soil and groundwater, adverse impacts to environmentally sensitive receptors are unlikely. *Id.* at 190:13-18. Other mitigation efforts have also been taken, including measure to restrict stormwater from migrating from the site. *Id.* at 192:9-17. Future measures are also planned, including, reducing traffic, covering the area with fresh ground asphalt, and applying calcium chloride in areas that are prone to dust. *Id.* at 193:1-12. The expert concluded that there is no confirmed risk of any off-site acceptance from activity at RIRM. *Id.* at 197:10-11. Defendants argue further that there is no risk to irreparable harm requiring a receiver because the environmental risk has already passed, which leaves Plaintiff with no threat of irreparable harm. *Id.* at 137:13-22.

The Court finds that Plaintiffs have shown that some risk of irreparable harm exists through the violations of Rhode Island law and potential environmental harm to surrounding

communities. Plaintiffs brought forth significant evidence of contaminants at the RIRM site and possible harms to the environment, in particular the Providence River. Plaintiffs have shown some risk of potential irreparable harm.

3. Balance of the Equities and Public Interest

Plaintiffs argue that the public has an interest in seeing this business correct its noncompliance immediately which deals in potentially toxic and hazardous materials. (Pl.'s Mem. at 11.) Plaintiffs stress the environmental concerns and Defendants' history of noncompliance and how long the process has taken.

Defendant asserts that the equities weigh in its favor because it will suffer irreparably harm if the mandatory injunction is granted because it will harm the business's goodwill by interrupting operations. (Def.'s Mem. at 4.) Further, there is no risk to irreparable harm requiring a receiver because the environmental risk has already passed. *Id.*

The Court finds that the balance of equities and public interest weigh somewhat in favor of the Plaintiffs as well. Conduct at the RIRM site bears some risk of environmental harm, directly affecting public health and the public interest. However, there is also a strong risk of harm to RIRM's business, and the Court considers this harm in the relief it grants. If the Court enjoins RIRM operations the environmental issues will continue without a flow of funds to remediate them.

4. Status Quo

Plaintiff admits that it must assert urgency because it requires a change in the status quo. (Pl.'s Mem. at 11.) Defendant submits that rejecting the Plaintiffs' motion is the way to maintain the status quo, and RIRM's business would be irreparably harmed if it was forced to cease operations. (Def.'s Mem. at 6.) This includes oversight from the Special Master and keep him in

control of his tasks at hand. *Id.* at 7.

This factor clearly weighs in favor of the Defendants and, because an injunction would result in a change to the status quo, Plaintiffs must show a very clear right and great urgency. *See King*, 919 A.2d at 995.

5. Very Clear Right and Great Urgency

Plaintiff argues that RIRM's failure to submit a timely Public Involvement Plan, failure to comply with this Court's Order after multiple extensions, and mis-operation of site resulting in two fires in three months, combines to show that RIRM cannot be trusted to continue its operation. (Pl.'s Mem. at 11-12.) Further, there are particularly vulnerable communities nearby the RIRM facility which face potential harm if the Defendants are allowed to continue operations without a Receiver. *Id.* at 12.

Defendants counter that there is no urgency and Defendant has not been able to submit a Public Involvement Plan because no venue in the appropriate area is willing to accommodate the necessary meeting. (Def.'s Mem. at 7.) Further, all boats have been removed from the water and that matter is now moot. *Id.* Additionally, Defendants have already taken steps to remedy the situation, and more are planned in the near future.

Plaintiffs have not shown a very clear right and great urgency. Plaintiffs have not demonstrated that the current situation at RIRM justifies a mandatory injunction requiring RIRM to cease operations. Specifically, great urgency has not been shown requiring action from the Court because the process is nearing its end. The parties have been working together on a solution for over ten years and though the process is not complete, RIRM is finally on a path towards compliance. All of the ships are now out of the water and substantial measures have

been taken to reduce the risk of contamination. Though this Court recognizes that this has been a very long process, significant progress has been made, and the process is now nearing the finish line. Therefore, Plaintiffs have not shown a very clear right and great urgency.

Reviewing all factors, the Court determines that an expansion of the Special Master's powers is required but this Court declines to order RIRM to cease all business operations. Plaintiffs have demonstrated that there is some risk of harm and some likelihood of success on the merits, but again the process now appears to be approaching the finish line. Environmental concerns remain present, but Plaintiffs have not demonstrated that the Special Master, with additional powers, is unable to adequately address these concerns. Still, this Court appreciates the Plaintiffs' environmental concerns and will expand the Special Master's powers accordingly. Finally, the Court wishes to make clear that RIRM is operating on a short leash, and the Court expects that this path to compliance will be complete in the near future.

IV

Conclusion

The Court **GRANTS** the Motion to Modify the July 27, 2016 Order appointing the Special Master, the Special Master remains in place but the Order is modified to provide for the following duties and powers.

A. Process

1. The Special Master shall have complete control and management oversight of the Applicant's environmental and site development application permitting process with respect to the remediation and redevelopment of the site for all RIDEM and all other environmental regulatory permits required to operate a metals recycling facility at the Premises (including seeking a RIPDES permit). Control and management oversight shall

be broadly construed and shall include prosecuting, monitoring, evaluating, and guiding the Applicants through the site plan pre-application and application approval processes. The Special Master shall prosecute the site plan previously circulated in draft form for a metals recycling facility and submitted to RIDEM, as modified to remove “shipbreaking” on the Premises and to substitute therefore an engineered system at the waterfront to accommodate loading and off-loading of metals at the Premises (the “Plan”) and shall be authorized to make such modifications as the Special Master deems necessary or appropriate.

2. RIRM shall retain control over non-environmental permits and approvals necessary for the operation of the Property as a metals recycling facility, whether prior or subsequent to the implementation of the Plan.

3. The Special Master shall have direct contact with and the right to instruct and guide RIRM vendors, including environmental consultants and engineers. The Special Master may terminate the services of any RIRM vendor, hire and/or replace vendors and take such other actions the Special Master deems necessary and appropriate in furtherance of Plan approval (as the same may be amended).

4. RIRM shall timely pay all third-party fees and expenses incurred in connection with the Special Master’s prosecution of the Plan. The Special Master may, in his discretion, utilize funds in the Special Master’s possession to pay expenses associated with the prosecution of the Plan, including but not limited to, professional fees and other expenses.

5. The Special Master shall participate in the Public Involvement Plan (“PIP”) process and serve as moderator at the PIP public meetings.

6. Within thirty (30) days after final approval of the Plan by RIDEM and other required environmental regulatory agencies (including RIRM's application for a RIPDES permit), RIRM shall terminate operations at the Premises, and shall thereafter commence implementation of approved plans. Except as necessary for the construction of the approved Plan, the Interim Controls, as identified below, shall remain in place.

7. In the event RIDEM or any other necessary regulatory agency denies the application(s) submitted by RIRM in furtherance of the Plan, the Applicant shall have the right to pursue its rights under the Administrative Procedures Act. The Special Master shall not be obligated to appeal any adverse decision(s) relating to the Applicant's applications nor shall the Special Master be required to participate in any such appeal. In the event RIRM fails to timely appeal any adverse decision, operations at the Property shall cease immediately.

B. Operations

1. Within ten (10) days of entry of an order on the Motion to Modify, RIRM shall commence the following site improvements at the Premises which shall remain in place until the earlier of (i) redevelopment of the Premises in accordance with plans approved by RIDEM and any other necessary regulatory agencies, or (ii) capping of the Premises in accordance with RIDEM regulatory requirements (such period of time being the "Interim Use Period"):

a. Install a 4 inch +/- crushed stone riprap "construction entrance" at the entrance to the Premises on Allens Avenue;

b. Extend the existing asphalt berm surrounding the front of the shoreline trench from its existing endpoints to the north and south property lines immediately west of the covered

soil piles (the “Waterline Berm”);

c. Cover the middle 1/3 of the Premises, which shall be referred to as the “Operating Area,” with 4 inches +/- of recycled asphalt, and the remaining areas of the Property with 1 inch +/- of recycled asphalt; and

d. Place barriers on the east and west sides of the Operating Area to segregate the eastern and western portions of the site, which areas are not to be utilized by RIRM during the Interim Use Period.

The foregoing improvements shall be known as the “Interim Controls.” If the Interim Controls are not completed and in place to the satisfaction of the Special Master within thirty (30) days of the entry of and order on the Motion to Modify, RIRM shall cease operations at the Premises until the Interim Controls are completed to the Special Master’s satisfaction.

2. RIRM shall maintain, repair and restore (as necessary) the Interim Controls throughout the Interim Use Period. The Special Master shall have the authority to require RIRM to modify and/or improve the Interim Controls based upon observed conditions at the site. If the Special Master determines that RIRM fails or refuses to properly maintain the Interim Controls in a timely manner, the Special Master may file a motion with the Court seeking to enjoin further operations at the Premises.

3. RIRM shall implement and maintain dust control measures at the Premises to minimize the risk of particulate matter becoming airborne, which measures may include use of water and/or chemical additives (i.e., calcium chloride).

4. RIRM shall implement monthly air monitoring testing at the Premises. Such monitoring shall be conducted on the third (3rd) Tuesday of each month following the

entry of an order on the Motion to Modify, and RIRM shall provide air quality reports to RIDEM and the Special Master following each monthly test. RIDEM shall have the right to direct RIRM to test for particulate matter consistent with the hazardous materials identified as being present at the Premises.