

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, :

vs. :

C. A. No.

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

**VERIFIED COMPLAINT AND  
PETITION FOR INJUNCTIVE RELIEF**

**Statement of the Case**

This matter arises as a result of the Defendants’ violations of the Rhode Island Water Pollution Control Act, R.I. Gen. Laws §46-12-1, *et seq.*, and the Rhode Island Department of Environmental Management’s (the “DEM”) *Water Quality Regulations and Rules and Regulations for the Rhode Island Pollutant Discharge Elimination System* (“RIPDES Regulations”). Specifically, the violations involve the Defendants’ failure to comply with the *Multi-Sector General Permit* (“MSGP”) for storm water discharge associated with industrial activity and unauthorized activities on the Providence River, including the dismantling of vessels that resulted in oil pollution and water pollution violations under Rhode Island law.

This matter seeks injunctive relief to enforce a final compliance order in accordance with R.I. Gen. Laws §42-17.1-2(21)(vi) and injunctive relief to enforce R.I. Gen. Laws §46-12.5.1-3, R.I. Gen. Laws §46-12.5.1-9 and R.I. Gen. Laws §46-12-17. The compliance order in question is comprised of a Consent Agreement entered into by Rhode Island Recycled Metals, LLC and ACR Realty LLC<sup>1</sup> on July 25, 2013 in response to a Notice of Violation and Order issued by the

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<sup>1</sup> AARE acquired the Property on April 16, 2014 from ACR Realty LLC (“ACR”). ACR was the

DEM pursuant to its authority under R.I. Gen. Laws §42-17.1-2(21)(i). Such Consent Agreement constitutes a final compliance order. Plaintiff seeks temporary, preliminary, and permanent injunctive relief enforcing the Consent Agreement as a final compliance order, remediation of the affected property, payment of all administrative penalties and enforcement of the additional terms and conditions as set forth herein.

Moreover, parallel relief is sought under the common law and statutory law of nuisance.

### **Parties**

(1) Plaintiff, Janet L. Coit, is the duly appointed Director (“Director”) of the DEM, a duly-authorized agency of the State of Rhode Island, having offices located at 235 Promenade Street, Providence, Rhode Island, 02908.

(2) Plaintiff, Peter F. Kilmartin, is the duly elected Attorney General (“Attorney General”) of the State of Rhode Island, having offices located at 150 South Main Street, Providence, Rhode Island, 02903.

(3) Defendant, Rhode Island Recycled Metals, LLC (“RIRM”), is a limited liability corporation, engaged in the business of recycling metal and operates a facility at 434 Allens Avenue, Assessor’s Plat 47, Lot 601 and 444 Allens Avenue, Assessor’s Plat 55, Lot 10, in the City of Providence, Rhode Island (the “Facility”).

(4) Defendant, Edward Sciaba, Sr. (“Defendant Sciaba”) is the on-site manager of and for RIRM. He is the responsible corporate officer with respect to all acts and omissions of RIRM in that he meets the following criteria:

(a) he is and has been in a position of responsibility which allows the person to influence corporate policies or activities;

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owner of the Property at all times relevant to this matter prior to the transfer of ownership to AARE.

(b) there is a nexus between his position and the violations in question such that he could have influenced the corporate actions which constituted the violations; and

(c) his actions or inactions facilitated the violations.

Moreover, all affirmative actions of RIRM alleged herein were directly committed and conducted by Defendant Sciaba.

(5) Defendant, AARE, LLC, (“AARE”) owns the land located at 434 Allens Avenue, Assessor’s Plat 47, Lot 601 and 444 Allens Avenue, Assessor’s Plat 55, Lot 10, in the City of Providence, Rhode Island (the “Property”).

(6) AARE acquired the Property on April 16, 2014 from ACR Realty, LLC (“ACR”). ACR was the owner of the Property at all times relevant to this matter prior to the transfer of ownership to AARE.

### **Jurisdiction & Venue**

(7) Subject matter jurisdiction in this case is properly conferred on this Court pursuant to R.I. Gen. Laws §42-17.1-2(21)(vi), R.I. Gen. Laws §46-12.5.1-9 and R.I. Gen. Laws §46-12-17 and due to this Court’s inherent authority as a Court of General Jurisdiction.

(8) Personal jurisdiction over the Defendants in this case is properly conferred in this Court based upon Defendants’ presence in, operation of, and ownership of real property located within the State of Rhode Island.

(9) Venue is properly placed in this Court pursuant to R.I. Gen. Laws §42-17.1-2(21)(v), R.I. Gen. Laws §46-12.5.1-9 and R.I. Gen. Laws §46-12-17 and R.I. Gen. Laws §9-4-3, as amended.

### **Facts**

(10) On May 24, 2010, the DEM Office of Compliance and Inspection (“OC&I”) inspected the Property and Facility. The inspection revealed a discharge of storm water associated with

industrial activity (in the form of scrap metal recycling) to the Providence River without a permit from the DEM.

(11) On June 28, 2010, RIRM and ACR submitted to the DEM Office of Water Resources (“OWR”) a Notice of Intent (“NOI”) to obtain coverage under the “MSGP” to discharge storm water to the Providence River associated with industrial activity at the Property. The Storm Water Pollution Prevention Plan (“SWPPP”) included with the NOI *failed* to describe the proposed industrial activities at the Property.

(12) On September 21, 2010, the OC&I inspected the Property. The inspection revealed that RIRM was dismantling vessels in the water adjacent to the Property (the “Vessel Dismantling Activity”).

(13) On February 22, 2011, the OC&I inspected the Property and spoke with Defendant Sciaba. The inspector observed an engine storage area with engines leaking oil. Defendant Sciaba informed the inspector that RIRM crushes vehicles and removes and stores engines.

(14) On or about June 21, 2011 and August 31, 2011, Garofalo & Associates, Inc. submitted a revised SWPPP (“Revised SWPPP”) to the OWR on behalf of RIRM and ACR. The Revised SWPPP stated that the following activities are conducted at the Property:

(a) Collect, trade, broker and process metals from industrial manufacturers, auto salvage facilities, metal dealers and individuals; and

(b) Accept decommissioned vessels, portions of which may be brought ashore for disassembly.

(15) The Revised SWPPP made no mention of the activity involving vehicle crushing or engine removal and storage.

(16) The Revised SWPPP was signed by a representative of RIRM, who certified that the

document was prepared under his direction or supervision, and that to the best of his knowledge and belief was true, accurate and complete. He also certified that he was aware that there were significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(17) On August 10, 2011, the OC&I inspected the Property and spoke with a representative of RIRM. The inspector observed an engine storage area with engines leaking oil. The representative informed the inspector that a car crusher is in operation on the Property.

(18) On September 14, 2011, RIRM and ACR obtained authorization from the DEM for coverage under the MSGP. The MSGP authorized the discharge of storm water for the activities identified in the Revised SWPPP and required the installation of storm water controls.

(19) On November 15, 2011, the OC&I inspected the Property. The inspection revealed oil staining on the land in the area of the vehicle engine storage as well as the following activities being conducted:

- (a) Vehicle crushing;
- (b) Vehicle engine removal; and
- (c) Vehicle engine storage.

(20) On December 13, 2011, the OC&I and the OWR inspected the Property. The inspection revealed that fill was placed in the Providence River to aide in the Vessel Dismantling Activity as well as the following activities being conducted:

- (a) Repair and maintenance of equipment;
- (b) Vehicle crushing;
- (c) Vehicle engine removal; and
- (d) Vehicle engine storage.

(21) On January 19, 2012, RIRM informed the DEM that four (4) vessels were undergoing Vessel Dismantling Activity. These vessels were identified as:

- (a) a sunken barge, the *Hunt*
- (b) a sunken tug boat, *Akron*
- (c) a sunken ferry, the *Boston Belle*, and
- (d) the submarine *Juliet*.

The *Hunt*, the *Akron*, the *Boston Belle* and the *Juliet* are collectively referred to herein as “the Vessels.”

(22) On February 15, 2012, the OC&I inspected the Property. The inspection revealed the following:

- (a) Oil/petroleum spilled onto the land at various locations throughout the Property, particularly at the engine storage area and in the vicinity of the car crusher; and
- (b) Improper/poorly maintained erosion and sediment controls.

(23) On May 7, 2012, the DEM issued an NOV to RIRM and ACR alleging certain violations of Rhode Island’s *Water Pollution Act*, Chapter 46-12, the DEM’s *Water Quality Regulations* and the DEM’s RIPDES Regulations. The violations involved failure to comply with the MSGP and unauthorized activities in the Providence River, including the dismantling of vessels.

(24) RIRM and ACR requested an administrative hearing to contest the NOV.

(25) On September 4, 2012, RIRM and ACR submitted to the DEM a revised NOI and SWPPP for authorization of storm water discharges associated with industrial activity on the Property (the “Storm Water Industrial Activity Application”).

(26) On September 4, 2012, RIRM and ACR submitted to the DEM a NOI, a SWPPP and associated engineering plans for authorization of storm water discharges associated with

construction activity from the Property (the “Storm Water Construction Activity Application”).

(27) On December 5, 2012, the DEM issued a letter to RIRM in response to the Storm Water Industrial Activity Application and the Storm Water Construction Activity Application (the “Comment Letter”).

(28) On January 10, 2013, RIRM and ACR submitted to the DEM revised SWPPPs, engineering plans and design calculations in response to the Comment Letter.

(29) On May 2, 2013, RIRM and ACR obtained authorization from the DEM for coverage under the 2008 General Permit for Construction Activity through the issuance of a Water Quality Certificate in accordance with Part I.C.2.a of the 2008 General Permit for Construction Activity (the “Water Quality Certificate”).

(30) On May 7, 2013, RIRM and ACR obtained an amended authorization from the DEM for coverage under the MSGP (the “Storm Water Discharge Approval”).

(31) On July 25, 2013, RIRM and ACR entered into a Consent Agreement (“Agreement”) in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV. The DEM, RIRM and ACR agreed that entering into the Agreement was in the best interest of the parties and in the public interest to resolve the issues identified in the NOV. Furthermore, pursuant to Section C(2), the Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, RIGL §42-35-1, *et seq.*, from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with RIGL §42-17.1(2)(21)(vi).

A true and correct copy of the Agreement is attached hereto as Exhibit A.

(32) Pursuant to Section C of the Agreement, subsection (5) entitled *Conditions*, RIRM and ACR agreed to:

(a) Maintain the short term mitigative actions described in Section B(8) of the Agreement (the “Short Term Mitigative Actions”) until such time that they have complied with Section C(5)(c) of the Agreement;

(b) Comply at all times with the Water Quality Certificate and the 2008 General Permit for Construction Activity;

(c) By September 30, 2014, complete all work required under the Water Quality Certificate as evidenced by the submission of a letter from RIRM and ACR to the OC&I certifying that all work is complete;

(d) Upon compliance with Section C(5)(c) of the Agreement, at all time comply with the MSGP in effect at the time except:

(i) Beginning on October 1, 2014 and continuing for 1 year, in lieu of the monitoring frequency specified in the MSGP, collect and analyze samples monthly rather than quarterly. For the metals samples must be analyzed for both total and dissolved fractions.

(ii) By January 15, 2016 submit a report to the OC&I.

The report shall include the following:

1. The results of the monthly sampling performed pursuant to Section C(5)(d)(i) of the Agreement and the average of all the monthly samples, including both the total and dissolved fractions for the metals. Pollutant concentrations reported as less than the minimum detection limit shall be replaced with zeros.
2. A detailed review of all storm water controls, best management practices, and maintenance schedules contained in the SWPPP and reasonable amendments to reduce the pollutant levels, if the average concentration for any one pollutant exceeds its applicable benchmark concentration. The review must also include the submission of the compliance evaluation report required in the MSGP. If the review includes changes to structural controls, the report must include a schedule for the implementation of the proposed structural controls.

3. The report shall be subject to DEM's review and approval. Upon review, the DEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, submit to the DEM a modified report or additional information necessary to correct the deficiencies.
4. Upon DEM's approval of the changes to structural controls, complete the work in accordance with the approved schedule.

To date, Defendants have failed to comply with the above provisions of the Agreement.

(33) Pursuant to the terms and conditions of the Agreement, RIRM and ACR agreed to complete the removal of the Vessels as follows:

- (a) Prior to commencing work on the *Akron*, install oil/petroleum containment boom surrounding all in water operations associated with the *Akron* removal.
- (b) During the work on the *Akron* maintain the containment boom and collect all oil/petroleum captured by the boom and dispose of the oil/petroleum in accordance with all applicable laws and regulations.
- (c) During work all ballast and bilge water must be contained so that there is no discharge of pollutants to the Providence River and properly disposed of in accordance with all applicable laws and regulations.
- (d) **By November 1, 2013**, commence the removal of the Vessels.
- (e) **By September 30, 2014**, complete the removal of the Vessels.
- (f) **By December 31, 2014**, restore the shoreline of the Providence River in the area that was regraded/filled to access the Vessels as shown on the 2012 aerial photograph (the "Regraded/Filled Area") to the condition that existed as shown on the 2009 aerial photograph.

To date, Defendants have failed to comply with the above provisions in the Agreement.

(34) Pursuant to the terms and conditions of the Agreement (subsection F, p.5), RIRM and ACR agreed to pay the DEM the sum of Twenty Five Thousand Dollars in administrative penalties. RIRM and ACR made said payment to the DEM in compliance with the Agreement.

(35) RIRM and ACR also agreed to complete a Supplemental Environmental Project (“SEP”) involving the installation of a SEDA vehicle decommissioning system at a cost of Seventy Eight Thousand Two Hundred Dollars. If RIRM and ACR completed said installation the DEM agreed to give RIRM and ACR a SEP credit in the amount of Eight Thousand Seven Hundred and Fifty Dollars. To date, Defendants have failed to comply with this provision of the Agreement.

(36) In accordance with the Agreement (subsection C.4, p.3), RIRM recorded the Agreement in the land evidence records of the City of Providence on August 6, 2013 at Book 10660 on pages 197 through 212.

(37) In accordance with the Agreement (subsection C.3, p.3), the provisions of the Agreement shall apply to and be binding upon the DEM, RIRM, ACR and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for RIRM and ACR in the performance of work relating to or impacting the requirements of the Agreement.

(38) On June 25, 2014, OC&I conducted an inspection of the Property and Facility to determine compliance with the Agreement. As a result of the inspection, DEM determined RIRM was in violation of the terms and conditions of the Agreement.

(39) On or about July 9, 2014, DEM legal counsel notified RIRM, through their legal counsel, that, as the result of the June 25, 2014 inspection, they were in violation of the terms and conditions of the Agreement. DEM required RIRM to submit a letter within 14 days outlining the steps necessary to return the Facility to compliance. DEM legal counsel also notified RIRM that DEM could not agree to any extension of the existing deadlines outlined in the Agreement.

(40) On or about July 23, 2014, new legal counsel for RIRM responded to DEM's July 9, 2014 correspondence.

(41) On or about September 15, 2014, legal counsel for RIRM requested that DEM defer the compliance dates set out in Section D(8) of the Agreement. RIRM's legal counsel indicated that the request for deferral was based on "economic impediments" experienced by RIRM delaying their ability to comply with the terms and conditions of the Agreement.

(42) On October 15, 2014, OC&I conducted an inspection of the Property and Facility to determine compliance with the Agreement. As a result of the inspection, the DEM concluded that RIRM failed to comply with the following terms and conditions of the Agreement:

(a) C(5)(a) Short Term Mitigative Actions: An additional vessel, the tug *Mark McAllister* was brought to the Facility to be dismantled and oil spillage was prevalent throughout the Property;

(b) C(5)(c) Construction of storm water system: No evidence that any effort was made to begin work on this system; and

(c) C(5)(e)(v) Removal of all vessels: All vessels remain [in the riparian area] off of the property.

(43) On October 21, 2014, the OC&I denied RIRM's request to extend deadlines set out in the Agreement. The denial stated that in accordance with Section D.2 of the Agreement, as of October 1, 2014 penalties of \$250 per day are accruing for each section of the Agreement that RIRM is violating (currently \$750 per day). The letter further stated that penalties of \$12,750 have accrued and that penalties will continue to accrue until RIRM complies with the Agreement (the "Stipulated Penalties").

(44) On January 12, 2015 and the DEM and the United States Coast Guard conducted an

inspection of the shoreline of the Providence River north of the Facility. The inspections revealed the following:

- (a) Oil/petroleum present within the *Juliet* and the *Mark McAlister*;
- (b) Oil/petroleum present in the water adjacent to and surrounding the *Juliet*, the *Mark McAlister* and the work barge closest to the shore; and
- (c) Samples of water collected from the Providence River and the *Mark McAlister* that were submitted for a fingerprint analysis and showed the oil/petroleum from the *Mark McAlister* matched the oil/petroleum in the water of the Providence River.

(45) On February 4, 2015 the DEM conducted an inspection of the shoreline of the Providence River north of the Facility. The DEM obtained a soil sample along the shoreline in the area of the Regraded/Filled Area and had the sample analyzed for total petroleum hydrocarbon (“TPH”). The results indicated TPH at a concentration of 2,700 milligrams per kilogram (ppm), which exceeds the DEM’s criteria of 2,500 ppm for industrial sites.

(46) As of the date of the filing of this pleading, Defendants have not complied with the Short Term Mitigative Actions.

(47) As of the date of the filing of this pleading, Defendants have not completed the removal of the Vessels and the *Mark McAlister*.

(48) As of the date of the filing of this pleading, Defendants have not completed the removal of the Regraded/Filled Area.

(49) As of the date of the filing of this pleading, Defendants have not installed the storm water controls required under the MSGP.

(50) As of the date of the filing of this pleading, Defendants have not paid the Stipulated Penalties.

**Facts Relating to Responsible Corporate Officer Status of Defendant Sciaba**

- (51) At all times pertinent, and in connection with all acts and omissions pertinent, Defendant Sciaba was and remains the responsible corporate officer.
- (52) Specifically, with respect to all allegations against RIRM:
- (a) Defendant Sciaba was and remains the individual who is in a position of responsibility which allows him to influence corporate policies or activities;
  - (b) There was and remains a nexus between Defendant Sciaba's position and the violation in question such that the Defendant Sciaba could have influenced the corporate actions which constituted the violations; and
  - (c) Defendant Sciaba's actions or inactions facilitated and continue to facilitate the violations.

**Facts Relating to Conduct of Defendant Sciaba**

- (53) All acts of RIRM alleged herein were directly conducted or supervised by Defendant Sciaba and, to the extent tortious or wrongful, are his torts and wrongs.

**COUNT I**

***(Violation of Final Compliance Orders)***

- (54) Plaintiff hereby restates and incorporates by reference the allegations contained in all paragraphs above.
- (55) The NOV issued on or about May 7, 2012 was issued pursuant to R.I. Gen. Laws §42-17.1-2(21).
- (56) In accordance with R.I. Gen. Laws §42-17.1-2(21), the aforementioned NOV notified RIRM and ACR of the facts giving rise to the alleged violations, of the statutes and/or regulations violated, and of their right to request an administrative hearing before the DEM's Administrative Adjudicatory Division by filing a request for hearing within 20 days of service of

the NOV.

(57) RIRM and ACR requested an administrative hearing to contest the NOV.

(58) On July 25, 2013, RIRM and ACR entered into the Agreement in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV. The DEM, on one hand, and RIRM and ACR, on the other hand, agreed that entering into the Agreement was in the best interest of the parties and in the public interest.

(59) RIRM and ACR, by entering into the Agreement are deemed to have waived their right to an adjudicatory hearing resulting in the Agreement automatically transforming to a Final Compliance Order.

(60) Pursuant to R.I. Gen. Laws §42-17.1-2(21)(vi), a Final Compliance Order that has become effective may be enforced through proceedings for injunctive relief.

(61) Defendant, AARE, as the successor in title to the Property, acquired the Property with full knowledge of the NOV and the Agreement and with the condition that the conveyance was subject to the NOV and Agreement.

(62) Defendants have failed or refused to comply with the requirements of the Agreement by performing the actions required therein.

## **COUNT II**

### ***(Violation of R.I. Gen. Laws §46-12.5.1-3 Prohibition Against Oil Pollution)***

(63) Plaintiffs hereby restate and incorporate by reference the allegations contained in all paragraphs above.

(64) On January 12, 2015, the DEM and the United States Coast Guard, after receiving notice of a sheen in the Providence River, conducted an inspection of the shoreline and waters of the Providence River north of the Facility.

(65) In accordance with R.I. Gen. Laws §46-12.5.1-3(a), no person shall discharge, cause to be

discharged, or permit the discharge of oil into or upon the waters or land of the state except by regulation or by permit from the director.

(66) In accordance with R.I. Gen. Laws §46-12.5.1-3(b), any person who violates any provision of that chapter or any rule or regulation or order of the director issued pursuant to that chapter shall be strictly liable to the state.

(67) Based on the aforementioned inspections conducted by the DEM and the United States Coast Guard, the following evidence was revealed:

- (a) Oil/petroleum was present within the vessels *Juliet* and the *Mark McAlister*;
- (b) Oil/petroleum was present in the water of the Providence River, adjacent to and surrounding the *Juliet*, the *Mark McAllister* and the work barge closest to the shore;
- (c) Spill samples were collected by the United States Coast Guard from the Providence River and the *Mark McAlister*. These samples were submitted to the United States Coast Guard Marine Safety Laboratory for so-called fingerprint analysis. The results of that analysis revealed the oil/petroleum collected from the *Mark McAlister* matched the sample taken from the waters of Providence River.
- (d) The soil sample obtained by the DEM from the shoreline of the Facility, in the area of the Regraded/Filled Area was analyzed for the presence of total petroleum hydrocarbons (“TPH”). The results of that analysis revealed a TPH concentration of 2,700 milligrams per kilogram (ppm), which exceeds the DEM’s criteria of 2,500 ppm for industrial sites.

(68) As a result of the above inspections, there is sufficient evidence that Defendants discharged, caused to be discharged or permitted the discharge of oil into, or upon the waters and land of the state of Rhode Island in violation of R.I. Gen. Laws §46-12.5.1-3(a).

(69) That Defendants discharged, caused to be discharged or permitted the discharge of oil

into or upon the waters and the land of the state of Rhode Island in violation of the DEM regulations, State law and without a permit from the Director of the DEM. Defendants are strictly liable to the state.

**COUNT III**

***(Violation of R.I. Gen. Laws §46-12-5 Water Pollution- Prohibition)***

(70) Plaintiff hereby restates and incorporates by reference the allegations contained in all paragraphs above.

(71) On January 12, 2015, the DEM and the United States Coast Guard, after receiving notice of a sheen in the Providence River, conducted an inspection of the shoreline and waters of the Providence River north of the Facility.

(72) In accordance with R.I. Gen. Laws §46-12-5(a), it shall be unlawful for any person to place any pollutant in a location where it is likely to enter the waters or to place or cause to be placed any solid waste materials, junk, or debris of any kind whatsoever, organic or non organic in any waters.

(73) In accordance with R.I. Gen. Laws §46-12-5(b), it shall be unlawful for any person to discharge any pollutant into the waters except as in compliance with the provisions of chapter 46-12 of the R.I. Gen. Laws and any rules and regulations promulgated thereunder and pursuant to the terms and conditions of a permit.

(74) In accordance with R.I. Gen. Laws §46-12-1(15), a Pollutant means any material or effluent which may alter the chemical, physical, biological, or radiological characteristics and/or integrity of water, including, but not limited to, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, cellar dirt or industrial, municipal, agricultural, or other *waste petroleum or petroleum products, including but not limited to oil.*

(75) Based on the aforementioned inspections conducted by the DEM and the United States Coast Guard, the following evidence was revealed:

(a) Oil/petroleum was present within the vessels *Juliet* and the *Mark McAlister*;

(b) Oil/petroleum was present in Providence River, adjacent to and surrounding the *Juliet*, the *Mark McAllister* and the work barge closest to the shore;

(c) Spill samples of Water collected by the United States Coast Guard from the Providence River and the *Mark McAlister*. These samples were submitted to the United State Coast Guard Marine Safety Laboratory for fingerprint analysis. The results of that analysis revealed the oil/petroleum collected from the *Mark McAlister* matched the sample taken from the waters of the Providence River.

(d) The soil sample obtained by the DEM from the shoreline of the Facility, in the area of the Regraded/Filled Area was analyzed for the presence of total petroleum hydrocarbons (“TPH”). The results of that analysis revealed a TPH concentration of 2,700 milligrams per kilogram (ppm), which exceeds the DEM’s criteria of 2,500 ppm for industrial sites.

(76) As a result of the above inspections, there is sufficient evidence that Defendants placed a pollutant in a location where it is likely to enter the waters of Rhode Island in violation of R.I. Gen. Laws §46-12-5(a).

(77) As a result of the above inspections, there is sufficient evidence that the Defendants discharged a pollutant into the waters of the Rhode Island in violation of R.I. Gen. Laws §46-12-5(b), in violation of the rules and regulations promulgated by the DEM and without a permit.

**COUNT IV**  
***(Public Nuisance)***

(78) Plaintiff repeats and re-alleges the allegations contained in all of the above paragraphs.

(79) The Defendants have contributed to an ongoing public nuisance through the operation and management of the facility owned, managed or controlled by said Defendants.

(80) By and through the conduct of the Defendants, 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.

(81) 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 facility.

(82) Defendants' control management and ownership of the facility is actionable by the Attorney General of Rhode Island under R.I. Gen. Laws §10-1-1 as well as the common law.

### **RELIEF REQUESTED**

WHEREFORE, the Plaintiffs, Janet L. Coit, in her capacity as Director of the DEM, and Peter F. Kilmartin, in his capacity as Attorney General for the State of Rhode Island, hereby request that this honorable Court enter judgment in the State's favor and grant the following relief:

#### **Temporary, Preliminary and Permanent Injunctive Relief, ordering Defendants to:**

- A. Immediately and permanently cease receiving any vessels for dismantling.
- B. Immediately and permanently cease mooring any operable vessels beyond the vessels currently moored off of the Property.
- C. Immediately cease removing vehicle engines and fluids on the Property. No removal of vehicle engines and fluids can occur on the Property until the Defendants complete all work required under the Water Quality Certificate as evidenced by the issuance of a letter from the DEM to the Defendants that all work is complete (the "Letter of Compliance").
- D. Immediately cease operation of the vehicle crusher on the Property. No crushing of vehicles can occur on the Property until the Defendants complete all work required under the Water Quality Certificate as evidenced by the issuance of the Letter of Compliance.

- E. Immediately retain a qualified contractor approved by the DEM and have the contractor complete the following actions:
- (1) Install and maintain oil/petroleum containment boom surrounding all in water operations;
  - (2) Properly collect and dispose of all oil/petroleum in vessels and dispose of the oil/petroleum in accordance with all applicable laws and regulations;
  - (3) Collect and dispose of all oil/petroleum captured by the containment boom and oil/petroleum contaminated absorbent materials and dispose of the oil/petroleum and oil/petroleum contaminated materials in accordance with all applicable laws and regulations;
  - (4) Maintain records that summarize the amount of oil/petroleum and associated oil/petroleum contaminated materials that are generated as part of the removal of the vessels and provide records to the DEM by the first day of each month showing proper disposal in accordance with all applicable laws and regulations.
- F. **Within 30 days of entry of such Order**, submit to the DEM an invoice showing that the equipment required to be installed pursuant to the Water Quality Certificate has been purchased (the “*Water Quality Treatment Equipment*”).
- G. **Within 60 days of entry of such Order**, submit to the DEM photographic evidence that the Water Quality Treatment Equipment has been delivered to the Property.
- H. **Within 90 days of entry of such Order**, complete all work required under the Water Quality Certificate as evidenced by the issuance of the Letter of Compliance.
- I. **Within 150 days of entry of such Order**, complete the removal of all vessels from the Providence River. The Defendants must follow the protocol described in paragraph C(5)(e) of the Agreement regarding the installation of oil/petroleum containment booms and the containment of all ballast and bilge water for the removal of all vessels.
- J. **Within 180 days of entry of such Order**, restore the shoreline of the Providence River as required by paragraph C(5)(e)(vi) of the Agreement except that all oil/petroleum contaminated soil shall be disposed in accordance with all applicable laws and regulations.
- K. Upon issuance of the Letter of Compliance, the Defendants must at all times comply with the MSGP in effect at that time except as noted below:
- (1) Beginning on the date the Letter of Compliance is issued and continuing for 1 year, in lieu of the monitoring frequency specified in the MSGP, collect and analyze samples monthly rather than quarterly. For the metals samples must be analyzed for both total and dissolved fractions.

- (2) Within 3 months of completion of the monitoring required in E(1) above, submit a report to the DEM. The report shall include the following:
- i. The results of the monthly sampling and the average of all the monthly samples, including both the total and dissolved fractions for the metals. Pollutant concentrations reported as less than the minimum detection limit shall be replaced with zeroes.
  - ii. A detailed review of all storm water controls, best management practices, and maintenance schedules contained in the Storm Water Pollution Prevention Plan and reasonable amendments to reduce the pollutant levels, if the average concentration for any one pollutant exceeds its applicable benchmark concentration. The review must also include the submission of the compliance evaluation report required in the MSGP. If the review includes changes to structural controls, the report must include a schedule for the implementation of the proposed structural controls.
  - iii. The report shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to either granting formal approval or stating the deficiencies therein. Within 14 days of receiving a notification of deficiencies, the Defendants must submit to the DEM a modified report or additional information necessary to correct the deficiencies.

L. Upon the DEM's approval of the changes to structural controls, complete the work in accordance with the approved schedule **Within 30 days of entry of such Order**, pay the Stipulated Penalties that have accrued to date.

PETER F. KILMARTIN,  
ATTORNEY GENERAL  
By his attorney:

JANET L. COIT, in her capacity as Director  
RHODE ISLAND DEPARTMENT OF  
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