

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

C.A. NO. PC-2015-0890

v.

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

ORDER APPOINTING SPECIAL MASTER

This matter having come before the Court, the Honorable Justice Michael A. Silverstein presiding, on June 29, 2016, and, at the invitation of the Court and by agreement of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED

1. That Richard J. Land, Esq. is hereby appointed Special Master of the Defendants, Rhode Island Recycled Metals, LLC and AARE, LLC, and is vested with the powers, duties, and authority as hereinafter set forth.

2. The Special Master shall have access to, and upon request of the Special Master shall be provided copies of, such information and documentation of the Defendants and the Plaintiffs as the Special Master requires relating to the environmental conditions on the property located at 434 Allens Avenue, Providence, Rhode Island and the adjacent waterfront/riparian area within which are presently located several floating and sunken vessels (collectively, the “Premises”), including, without limitation, records of waste disposal arrangements, plans and proposals for or relating to remediation and/or removal of vessels, and records of historical and current operational activities upon the Premises.

3. Upon entry of this Order, the Special Master shall identify and implement the following initial remedial measures to prevent further contamination of and/or risk of loss to the Premises or the surrounding water and land:

a. Completely, and securely, cover the sand, gravel, dirt and other materials excavated from the pit/ramp by the Defendants and presently stored in two (2) piles on the Premises (the “Piles”);

b. Install new hay bales, with regular maintenance as needed, along the waterfront to prevent water run-off into the Providence River from the Defendants’ business operations;

c. Remove orange foam located on the Premises, including in areas adjacent or near the pit/ramp on the Premises; and

d. Properly securing the hopper barges.

4. The Special Master shall investigate the conditions prevailing at the Premises, including, in the Special Master’s judgment, through site visits, review of environmental reports and other documentation provided to the Special Master by the parties and others, and any other

documentation the Special Master deems appropriate, consultation with such experts/professionals and other third parties as the Special Master deems appropriate, and interviews and meetings with representatives of the Defendants, representatives of the Rhode Island Department of Environmental Management (“RIDEM”), representatives the Rhode Island Attorney General’s office (“RIAG”), representatives of the Rhode Island Coastal Resources Management Council (“CRMC”), representatives of the United States Coast Guard (“USCG”), and such other individuals or entities deemed necessary or appropriate by the Special Master.

5. Based upon such investigation, the Special Master shall develop a plan for addressing conditions at the Premises (the “Plan”). Preliminarily, but without limiting the scope of the Special Master’s investigation and recommendations to the Court, the Plan shall address the following known concerns at the Premises:

- a. Removal of the sunken tugboat;
- b. Removal of the partially sunken ferry, Boston Belle;
- c. Removal of the barge, 704 (presently floating offshore);
- d. Removal of two (2) hopper barges and proper disposal of all waste presently contained within the hopper barges;
- e. Removal of the partially submerged vessel, Fishhawk;
- f. Removal of the barge, Apache (presently floating adjacent to the shoreline);
- g. Removal of the submarine hull;
- h. Restoration of the shoreline, including filling-in of the pit/ramp constructed by the Defendants;

i. Testing and proper disposal of the Piles (such disposal may include reuse on the Premises if environmentally appropriate); and

j. Identification of impairment of the environmental cap on the Premises previously approved as part of a consent decree by the United States Environmental Protection Agency, and restoration of such cap as necessary

6. In developing the Plan, the Special Master may consider the following (without limiting the Special Master's scope of investigation or recommendations):

a. Any impending threat(s) to the environment;

b. Transcript of hearing before this Court on Wednesday June 29, 2016;

c. Court and administrative orders presently outstanding or hereafter issued;

d. The current use of the land portion of the Premises as a scrap metal yard, subject to compliance by such operation with required operating and environmental permits;

e. The sequencing, timing and costs of any remediation efforts;

f. The nature and extent of potential liability of third parties;

g. The potential acquisition of this subject land by the State and the future development and use of the site by Prov Port, Inc.;

h. The 2003 Environmental Land Use Restriction ("ELUR") and the 2013 Consent Agreement ("Consent Agreement");

i. The United States EPA Consent Decree and Certificate of Completion for the 1998-99 site remediation;

7. In developing the Plan, the Special Master shall reasonably attempt to collaborate with the Plaintiffs, Defendants and other interested parties (collectively, the "Parties") to establish an agreeable priority, timing, and sequencing for implementation of action items

required under the Plan; provided however, nothing herein shall preclude the Special Master from presenting to the Court a Plan that the Special Master deems appropriate.

8. The Parties shall, in a timely manner, cooperate with the Special Master and facilitate the efforts of the Special Master in connection with the performance of his duties hereunder, including by timely providing the Special Master with documents and other records, making themselves available at mutually agreeable times and making their professionals available as reasonably requested by the Special Master.

9. The Special Master shall report to the Court, in writing or in conference, at such times and intervals as he deems necessary or convenient, and at the direction of the Court. In addition to the foregoing, the Special Master shall schedule a status conference with the Court on or about thirty (30) days from the date of entry of this Order (the "First Formal Status Conference"). The Special Master may submit such formal, written reports to the Court at such times and with such frequency as the Special Master deems appropriate.

10. At the First Formal Status Conference, the Court shall consider the time frame by which the Special Master shall be required to file with the Court a Motion to Approve the Plan which Motion shall be set down for hearing and approval on an expedited basis.

11. Pending further order of this Court, the Defendants shall operate in the ordinary course of business, in compliance with prior orders of this Court and applicable law. Defendants shall not take any action or otherwise cause any occurrence that is intended or is likely to result in a material adverse change in the operational or financial condition of the Defendants or their respective assets.

12. Except for emergency actions, Rhode Island Department of Environmental Management shall not commence or cause to be commenced any environmental administrative

or enforcement actions against the Defendants or their assets without first having notified the Special Master of Plaintiffs' intentions and the basis therefor, and affording the Special Master an opportunity to bring such matter(s) before this Court with such reasonable notice as the Special Master deems necessary or appropriate under the circumstances.

13. All costs, fees and expenses associated with the Special Master and any professional engaged by the Special Master with Court approval, including any fees and expenses incurred on or subsequent to June 29, 2016 ("Special Master Fees"), shall be paid by the Defendants immediately upon approval of such fees by the Court. As security for payment of such fees, the Defendants shall, within five (5) business days of the entry of this Order, deposit with the Special Master the sum of \$50,000 ("Escrow Amount") to be held pending Court approval of Special Master Fees from time to time. At such times as the Court approves Special Master Fees, the Defendants shall replenish the Escrow Amount to \$50,000. In addition, in the event the Special Master's Fees as approved by the Court at any time exceed the Escrow Amount, the Defendants shall immediately remit the deficiency to the Special Master.

14. In the absence of an agreement among the Parties, the Special Master may request that the Court order the Defendants to advance such additional funds as the Special Master deems necessary in connection with work to be performed on the Premises and/or in connection with the Court-approved engagement of professionals.

15. At any time upon reasonable advance notice to all other parties, any party (including for purposes of this paragraph, Rockland Trust), including the Special Master, for good cause shown, may request that the Court grant such other and further relief as the Court deems necessary and appropriate under the circumstances.

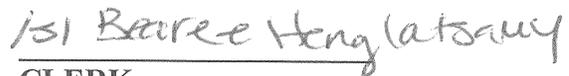
16. This order is entered by virtue and pursuant to this Court's equity powers and pursuant to its powers as authorized by the laws of the State of Rhode Island.

ENTER:



Michael A. Silverstein
Associate Justice

BY ORDER:



CLERK 7/27/2016

DATE: 7/27/2016

Assented to as to form and content:

PLAINTIFFS,
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
By their attorneys,

/s/ Michael Rubin, Esq.
Michael Rubin, Esq.
Assistant Attorney General
150 South Main Street
Providence, RI 02903
Email: mrubin@riag.ri.gov

/s/ Susan Forcier, Esq.
Susan Forcier, Esq.
Department of Environmental Management
Office of Legal Services
235 Promenade Street, Fourth Floor
Providence RI 02908
Email: susan.forcier@dem.ri.gov

**DEFENDANTS,
RHODE ISLAND RECYCLED
METALS, LLC
and AARE, LLC**
By their attorney,

/s/ Gerard M. DeCelles, Esq.
Gerard M. DeCelles, #1394
1536 Westminster Street
Providence, RI 02909
Tel (401) 272-8998
E-mail: GMDLAW1@aol.com