

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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Northern Metals LLC,

Case Type: Mandamus  
File No.: 62-CV-15-3827  
Judge: John H. Guthmann

Plaintiff,

vs.

Laura Bishop, in her official capacity as  
Commissioner of the Minnesota Pollution Control  
Agency and the Minnesota Pollution Control  
Agency,

Defendants,

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR REVIEW OF  
AGENCY ORDER**

and

State of Minnesota, acting by and through the  
Minnesota Pollution Control Agency, the City of  
Minneapolis, and Minnesota Center for  
Environmental Advocacy,

Intervenors.

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The above-entitled matter came before the Honorable John H. Guthmann, Judge of District Court, on February 28, 2020, at the Ramsey County Courthouse, St. Paul, Minnesota. At issue was defendants' motion for an order enforcing the Consent Decree and a motion to intervene by the Minnesota Center for Environmental Advocacy. Thaddeus R. Lightfoot, Esq., appeared on behalf of plaintiff. Christina M. Brown, Esq., and Oliver J. Larson, Esq., appeared on behalf of defendants. Evan Mulholland, Esq., appeared on behalf of moving intervenor Minnesota Center for Environmental Advocacy. There was no appearance by the City of Minneapolis. Based upon all of the files, records, submissions, and arguments of counsel herein, the court issues the following:

## ORDER

1. With regard to Northern Metals LLC's Becker facility, the February 21, 2020 administrative order issued by the Minnesota Pollution Control Agency ("MPCA") falls outside the scope of the March 15, 2017 Consent Decree as amended. Therefore, for all issues related to the Becker facility, this court lacks jurisdiction and Northern Metals LLC's motion is **DENIED**. If Northern Metals LLC feels aggrieved by the administrative order, its sole remedy is to file an appeal in accordance with Minnesota Statutes Chapter 14. Minn. Stat. § 116.11 (2018).

2. Northern Metals LLC's ongoing Minneapolis scrap metal storage operation falls within the scope of the March 15, 2017 Consent Decree as amended.

3. As it relates to Northern Metals LLC's Minneapolis scrap metal storage operation, the MPCA issued its February 21, 2020 administrative order in violation of the March 15, 2017 Consent Decree as amended.

4. If the court considers the MPCA's motion opposition to be a motion for a temporary restraining order under Minn. Stat. § 116.11 (2018), the court concludes that the MPCA failed to make the threshold showing of irreparable harm so its motion is **DENIED**.<sup>1</sup>

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<sup>1</sup> The purpose of an injunction is to preserve the rights of the parties pending determination of the litigation. *Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 220 (Minn. Ct. App.), *rev. denied* (Minn. 2002). Because an injunction is an equitable remedy, the party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. *Cherne Indus., Inc., v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979).

Once there is a finding of irreparable harm, the court must weigh five factors to determine the propriety of granting a motion for injunctive relief. *E.g., Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965). These factors are known as the "Dahlberg Factors." *State by Ulland v. Int'l Ass'n. of Entrepreneurs of Am.*, 527 N.W.2d 133, 136 (Minn. Ct. App.), *rev. denied* (Minn. 1995). The applicant for injunctive relief has the burden of proving all five Dahlberg factors. *N. Cent. Pub. Serv. Co. v. Vill. of Circle Pines*, 302 Minn. 53, 60, 224 N.W.2d 741, 746 (1974). "Injunctive relief should be awarded only in clear cases, reasonably free from doubt." *Sunny Fresh Foods Inc. v. MicroFresh Foods Corp.*, 424 N.W.2d 309, 310 (Minn. Ct. App. 1988) (quoting *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 260 Minn. 499, 110 N.W.2d 348, 351 (Minn. 1961)).

As the court stated during the hearing, the MPCA failed to demonstrate that bringing scrap metal to the Minneapolis facility creates an "imminent and substantial danger to the health and welfare of the people of the state . . . as a result of the pollution of air, land, or water." Minn. Stat. § 116.11 (2018). Further, the MPCA failed to demonstrate any nexus between bringing scrap metal to the Minneapolis site and the only remaining dangerous condition or fire code

5. Northern Metals LLC may accept scrap metal at its facility located at 2800 Pacific Street, Minneapolis, Minnesota subject to the terms and conditions of all permits governing its operation and the March 15, 2017 Consent Decree as amended.

6. Nothing in this order prevents or limits the MPCA's right to take future action in connection with Northern Metals LLC's Minneapolis scrap metal storage operation as may be appropriate based on the facts, the law, any applicable permits, and the limitations it agreed to when entering into March 15, 2017 Consent Decree as amended.

7. With regard to any ongoing dispute regarding the meaning of the Consent Decree as applied to the Minneapolis facility, the parties may engage in the Section VIII dispute resolution process and if necessary, bring any issues needing resolution to the court as provided in the March 15, 2017 Consent Decree as amended.

8. The rationale, factual basis, and legal basis for the Court's ruling was stated in the record of the February 28, 2020 hearing, which record is incorporated herein by reference.

Dated: February 28, 2020

BY THE COURT:

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John H. Guthmann  
Chief Judge, Second Judicial District

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violation—the stacking of scrap over twenty feet in height. Thus, even assuming the potential for irreparable harm, the remedy sought by the MPCA is unrelated to the potential harm.