

1
2
3
4
5
6

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

7 PETER J. VOGGENTHALER, *et al.*,)

8 Plaintiffs,)

9 vs.)

10 MARYLAND SQUARE, LLC., *et al.*,)

11 Defendants)

Case No. 2:08-cv-01618-RCJ-GWF

ORDER

Motion to Substitute Party (#1016)

12
13 This matter is before the Court on the Defendants' Motion to Substitute Party (#1016), filed
14 on January 13, 2014. Defendants filed a Notice of Non-Opposition (#1022) on January 30, 2014.
15 No Opposition was filed in this matter.

16
17
18
19
20
21
22
23
24
25

BACKGROUND

16 Plaintiffs brought this action against Defendants under the Federal Resource Conservation
17 and Recovery Act ("RCRA") 42 U.S.C. § 6972(a)(1)(B) on November 19, 2008. On October 15,
18 2013, Defendants filed a Notice of Suggestion of the Death of Defendant Melvin Shapiro (#1009),
19 indicating Defendant passed away on August 26, 2013. On December 27, 2013, the Probate Court
20 of the Eighth Judicial District Court, Clark County, Nevada entered an Order appointing Patricia
21 Leibovici as Special Administrator of the Estate of Melvin Shapiro. *See Doc. #1016*. Defense
22 Counsel submitted Letters of Administration for Patricia Leibovici, and moves this Court for an
23 Order substituting Ms. Leibovici, solely in her capacity as Special Administrator for the Estate of
24 Melvin Shapiro, as a party to this action. *Id.*

26
27
28

DISCUSSION

26 Fed. R. Civ. P. Rule 25(a)(1), allows the court to order substitution of a party if a party dies
27 and the claim is not extinguished. Whether a federal action survives the death of a party is governed
28 by federal law and is determined by "whether the statute under which the plaintiff is claiming is

1 penal or remedial in character.” *Cook v. Hairston*, 948 F.2d 1288 (6th Cir. 1991). Claims pursuant
2 to remedial statutes survive the death of a party while an action for a penalty does not. *Id.* To
3 establish whether a statute is penal or remedial in nature a court looks to: 1) whether the purpose of
4 the statute was to redress individual wrongs or more general wrongs to the public; 2) whether
5 recovery under the statute runs to the harmed individual or the public; and 3) whether the recovery
6 authorized by the statute is wholly disproportionate to the harm suffered. *See Murphy v. Household*
7 *Finance Corp.*, 560 F.2d 206 (6th Cir. 1977). The RCRA was designed to protect human health and
8 the environment by regulating “the generation, transport, and disposal of hazardous wastes.” *See* 42
9 U.S.C. § 6902(a). Additionally, relief under the RCRA is limited to a mandatory or prohibitory
10 injunction. *See Meghrig v. KFC Western, Inc.*, 516 U.S. 479 (1996). Therefore, the RCRA is a
11 remedial statute and Plaintiff’s claim survives Defendant’s death.

12 Furthermore, no opposition has been filed to this motion. Pursuant to Local Rule 7-2(d),
13 failure of an opposing party to respond to a filed motion “constitute[s] a consent to the granting of
14 the motion.” Accordingly,

15 **IT IS ORDERED** that the Motion for Substitution of Party (#1016) is GRANTED.
16 DATED this 14th day of March, 2014.

17
18 
19 GEORGE FOLEY, JR.
20 United States Magistrate Judge
21
22
23
24
25
26
27
28