

In The Matter Of:
Conservation Law Foundation, Inc., et al. v.
Deval Patrick, et al.

May 11, 2010
Conference

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action
No. 06-11295-WGY

* * * * *
CONSERVATION LAW FOUNDATION, INC., *
et al., *

Plaintiffs, *

v. *

DEVAL PATRICK, et al. *

Defendants. *
* * * * *

CONFERENCE

BEFORE: The Honorable William G. Young,
District Judge

APPEARANCES:

CONSERVATION LAW FOUNDATION, INC. (By
Cynthia E. Liebman, Staff Attorney), 62 Summer
Street, Boston, Massachusetts 02110

- and

CONSERVATION LAW FOUNDATION, INC. (By
Christopher M. Kilian, Esq.), 15 East State
Street, Suite 4, Montpelier, Vermont 05602, on
behalf of the Plaintiffs

MASSACHUSETTS ATTORNEY GENERAL (By Tori T.
Kim, Assistant Attorney General), One Ashburton
Place, Room 2019, Boston, Massachusetts 02108, on
behalf of the Defendants

1 Courthouse Way
Boston, Massachusetts

May 11, 2010

Conference

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1 THE CLERK: Calling Civil Action 06-11295, CLF
2 versus the Commonwealth of Massachusetts.

3 THE COURT: Good afternoon, and if counsel could
4 identify themselves.

5 MR. KILIAN: Good afternoon, your Honor. Chris
6 Kilian and Cynthia Liebman for Conservation Law Foundation.

7 MR. KIM: Good afternoon, your Honor. Tori Kim
8 from the Attorney General's office.

9 THE COURT: All right. I've called this in for
10 status, and various submissions have been made. I have
11 carefully reviewed these submissions, and what I'm going to
12 use this conference for is a way to inform you of the
13 Court's position. It may be that further hearings are
14 required, but you're going to have to reflect once you've
15 heard the Court's position.

16 Now, after careful review of the entire record, I
17 must tell the Commonwealth that at least in respect to the
18 three designated areas as to which the Court ordered a
19 remediation process and set a date for the first of the
20 year, that the Commonwealth has, I won't say ignored the
21 order, but in essence has done nothing other than plan.

22 The time for planning should have taken place
23 months ago. We held a trial on this matter. At the end of
24 that not short trial, the Court, satisfied with the bona
25 fides of the Commonwealth, satisfied with its promptitude

1 and its willingness to address the required environmental
2 issues, accepted, entered an order, but in large measure
3 accepted the Commonwealth's recommendations, and,
4 notwithstanding that there had been a complete trial, denied
5 the plaintiffs' attorneys' fees.

6 To say I'm disappointed is mild. We're not having
7 another trial. This is where we're going to start, within
8 three weeks from today. That will take us to the 1st of
9 June. The Commonwealth, with respect to the three areas,
10 will submit their detailed engineering plans to the Court.
11 This is not some sort of future plan. This is how you're
12 going to get out there and how you're going to remediate the
13 matter as required. Three weeks.

14 By the 8th of June there will be equipment on all
15 three sites engaged in such remediation. And without any
16 further hearing, I know where the sites are, I'll drive
17 around and check. I want to see the equipment there. I
18 want to see action.

19 Now, that's just for starters. Second, the
20 injunction as previously decreed by the Court is modified,
21 in light of the dilatory record of the Commonwealth, to
22 include the three requirements set forth in the letter of
23 the United States Environmental Protection Agency dated
24 April 22nd, 2010. One of those requirements set forth on
25 page 4 of that letter says beginning immediately identify

1 control measures and BMPs, et cetera.

2 One month from today's date, that's the 8th of
3 June, the Commonwealth will submit a detailed report to this
4 Court setting forth its compliance with requirement number
5 1, and requirements 1, 2 and 3 are now an injunctive order
6 of this Court. Failure of the Commonwealth to comply with
7 any of these requirements will result in sanctions. I mean,
8 make no mistake, I'm not going back here. I'm going
9 forward. I've tried -- I've bent over backwards to give the
10 Commonwealth the time and the flexibility.

11 Now, at least these things are ordered, without
12 prejudice to the Conservation Law Foundation seeking more,
13 these things are ordered, and if my orders are not carried
14 out, I've got to explore sanctions.

15 Now, I know the Commonwealth's doing a lot. I know
16 we've had flooding. I know we've got bridge problems. I
17 understand that. But at least those three there better be
18 equipment out there in a month's time. And I want these
19 reports. Because I will ride herd on this now monthly to
20 get compliance.

21 Now, now, given this Court's orders, it's
22 unmistakable that the Conservation Law Foundation is a
23 prevailing party in this, in this proceeding and it may
24 within 60 days of today's date submit its full application
25 for attorneys' fees. Not, not to complete, because there

1 may be more litigation, but what was necessary to bring us
2 to this point. The order that I enter today is because of
3 the work, the groundwork that you did. I hoped for, I
4 expected compliance. There has not been compliance. You
5 prevail. You should be -- I was going to say reward.
6 That's wrong. -- compensated for the time.

7 Now, you may not be satisfied with this. In my
8 mind I've acted only so far as is necessary to effectuate
9 what seems to me clear failures to comply with the earlier
10 injunctive relief of the Court. I urge you, but I do not
11 require, hold off a month and see what they do, at least at
12 the three sites where we're going to get those sites
13 remediated if nothing else happens. All I've ordered beyond
14 that is that they now comply -- and it's now an order of
15 this Court. It's not just some letter from, I mean no
16 disrespect, but it's not just some letter from the
17 Environmental Protection Agency. You seem to want more
18 relief than that. Wait a month. Make appropriate
19 application to the Court. Talk to the defendants here.

20 MR. KILIAN: Yes.

21 THE COURT: Talk to them. My mind is open as to
22 other things. But at least as I tried to explain, at least
23 as to that, I've read this record, I expect my orders to be
24 carried out.

25 All right. Any questions? It's not the time for

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1 argument, but any questions?

2 MR. KIM: Well, I did have a couple of points if
3 your Honor --

4 THE COURT: Respectfully, it's all on the record.
5 I've read everything. It's not the time for argument.

6 MR. KIM: Certainly, your Honor.

7 THE COURT: To the extent I've made orders those
8 are orders.

9 My mind is open as to other things. I'm not
10 saying --

11 MR. KIM: Certainly, your Honor.

12 THE COURT: -- now they're going to win on
13 everything they want. I don't know about that. On this I
14 do know.

15 MR. KIM: I just have one comment and maybe a
16 question --

17 THE COURT: Right.

18 MR. KIM: -- as to the three sites. Obviously your
19 Honor has reviewed the record. The Commonwealth does
20 believe, your Honor, that remediation already is existing at
21 those three sites because there are detention basins there
22 so --

23 THE COURT: Not in compliance with the Court's
24 order.

25 MR. KIM: So it's a bit unclear as to what

1 additional remediation is necessary. But we understand the
2 Court's order and we'll take it back.

3 The only question I would have, your Honor, I did
4 notice from the judge's findings that the prior order had
5 not been entered as a final order. My question would be is
6 whether the Court now contemplates entering this as a final
7 order --

8 THE COURT: No.

9 MR. KIM: -- so that an appeal can be taken.

10 THE COURT: Oh, I think you -- I don't want to
11 prevent you from appealing. I mean, you can appeal an
12 injunctive order at any time. But that's a good procedural
13 question, and my answer is no. But it would seem to me that
14 you can take an interlocutory appeal of an injunction. I
15 mean, I'm now, and I'm very serious, and you know I am, I'm
16 now requiring the Commonwealth to spend money. And those
17 basins are insufficient.

18 MR. KIM: Right.

19 THE COURT: They were clear from the order. And
20 I'm expecting crews to be deployed and I want it all done
21 virtually forthwith. So, if the Commonwealth wants to
22 appeal from that that makes -- I was going to say good
23 sense, but I should stand on my orders. The Commonwealth
24 has that right. I am satisfied on the extensive trial
25 record and the careful submissions thereafter that this, if

1 anything, is a conservative order. But that's my answer.

2 MR. KIM: Thank you, your Honor.

3 THE COURT: Thank you.

4 MR. KIM: And the other just small point I would
5 raise, and I raised this with the plaintiffs this morning,
6 is DOT has already met with the EPA on the specific points
7 that your Honor has raised. And specifically with respect
8 to item number 1 there was a discussion at the prior meeting
9 as to a specific measure that DOT could take, and I'm
10 wondering if your Honor would be amenable to waiting to see
11 what this --

12 THE COURT: No.

13 MR. KIM: -- proposal is.

14 THE COURT: No. I'm not waiting.

15 MR. KIM: Or we can submit it simultaneously to the
16 Court as well with --

17 THE COURT: Yes. I now have my orders.

18 MR. KIM: Certainly, your Honor.

19 THE COURT: And of course what the DOT says and
20 what the EPA says can be given to me. I act independently
21 of them, though the language that they used seemed to me
22 modest and fully consonant with the trial record that was
23 before the Court. Now, if we want to do something else you
24 let, you let me know.

25 MR. KIM: Thank you, your Honor.

Conference

1 THE COURT: But it will have to be modified.

2 (Whereupon the Court and the Clerk conferred.)

3 THE COURT: Ms. Smith makes -- she says am I going
4 to enter a separate order. No, I am not because I want
5 action immediately. But to make my orders clear, I've made
6 specific reference to the EPA's letter of April 22nd, 2010,
7 paragraphs 1, 2 and 3 which in haec verba are now an
8 injunctive order of the Court. And you're right to raise
9 what do I really mean by that. I could modify it, but this
10 is as good language as I have before me.

11 Thank you.

12 MR. KIM: Thank you, your Honor.

13 MR. KILIAN: Thank you.

14 (Whereupon the matter concluded.)

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C E R T I F I C A T E

I, Donald E. Womack, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

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