

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION, et al.,

Defendants.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION OF NEW ENGLAND, INC.,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,

Defendant.

SCHEDULE SIX COMPLIANCE ORDER NUMBER 193

October 13, 2004

STEARNS, D.J.

This is the one hundred and ninety-third Compliance Order that has issued in this litigation. The Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report (Quarterly Report) on September 15, 2004. The Conservation Law Foundation (CLF) filed a response, while the United States has chosen to forgo comment. I have additionally reviewed the Advisory Board's Summary of the

MWRA's Board of Directors' Meetings for the last Quarter. I accept the MWRA's Quarterly Report and make the following findings.

1. Schedule Six

A. Activities Completed

There were no Schedule Six activities during the last quarter.

B. Quarterly Progress Report

1. Combined Sewer Overflow (CSO) Program

(a) North Dorchester Bay and Reserved Channel Consolidation Conduits and CSO Facility

The MWRA reports that on July 16, 2004, the Secretary of Environmental Affairs certified compliance of the MWRA's recently adopted plan for long term CSO control for North Dorchester Bay with MEPA policies and regulations. The Secretary authorized the MWRA to proceed to the final design and permitting stage, declaring the project "another major advancement" in the cleanup of Boston Harbor, offering "major benefits to the environment and people of Massachusetts." MEPA Certificate, at 2.

The Secretary nonetheless raised a number of concerns about the project, the most significant of which involves the discharge of stormwater run-off into Savin Hill Cove in the event of a storm at or greater than the one-year level. The Secretary urged the MWRA to include floatables control at the Savin Hill Cove discharge point, and directed the MWRA to submit Section 61 Findings relative to project-related impacts on Savin Hill Cove and South Dorchester Bay. The MWRA is also required to report on plans to monitor water quality in North Dorchester Bay and the Reserved Channel. According to the Quarterly

Report, the MWRA has begun the compilation of Section 61 Findings.

In response to a number of concerns raised with regard to the extended project schedule, the MWRA expedited the design process for the storage tunnel. Under the revised design schedule, the MWRA is to award the contract for tunnel construction in the spring of 2006, a full year earlier than the award date contemplated by the Supplemental Facilities Plan/Environmental Impact Report (SFP/EIR). In addition, the MWRA expects to complete the construction of the Pleasure Bay stormwater relocation improvements by May of 2006. Moreover, a Notice to Proceed on the design contract for the Conley Terminal pump station complex is to issue by May 2007. The date for breaking ground on the construction of the pump station, however, remains uncertain. If the site of the tunnel shaft can be shared with the contractor chosen to build the complex, construction of the Conley Terminal facilities will begin before the conclusion of the tunnel mining process. If such an accommodation is not feasible, construction will begin only after the tunnel is completed. Finally, the MWRA reports that it is developing plans to complete work with regard to the permitting process, but notes that regulatory and legislative oversight, as well as public concerns, may potentially impact the schedule.

(b) The Union Park Detention and Treatment Facility

The MWRA reports that as of the end of August 2004, construction of the Union Park facility is 43 percent complete. Contractor delays may require extension of the project completion date from September 29, 2005, to January 16, 2006.

(c) Cambridge Sewer Separation

According to the Quarterly Report, the City of Cambridge is continuing final design

work on the construction of the new storm drain outfall and stormwater wetland detention basin. Design work is now 75 percent complete, and the City has received an Order of Conditions from the Cambridge Conservation Commission. A citizens group, however, has filed an appeal with the Department of Environmental Protection (DEP) seeking a Superseding Order of Conditions.

The City of Cambridge has undertaken to submit the second supplemental preliminary design report for the revised Alewife Brook sewer separation plan in the not too distant future. The implementation of floatables control, however, has been delayed because of structural deficiencies and, consequently, Cambridge does not expect to complete construction at all outfall locations until December of 2006. As of this Report, only outfall CAM401A has floatables control.

(d) Alewife Brook/Upper Mystic River Basin Variances

The MWRA reports that DEP has issued a three year extension to the Alewife Brook/Upper Mystic River Basin variance after determining that no feasible means to eliminate CSO discharges has been identified. The MWRA will continue its water quality monitoring program and will review the assessment reports by the Cities of Somerville and Cambridge to determine if there are any feasible, cost effective alternatives for CSO control measures.

(e) Storage Conduit for BOS 019

The MWRA reports that the updated construction cost for this project is \$7.2 million, far greater than the \$2.3 million estimate set out in the 1997 Final CSO Facilities Plan and Environmental Impact Report. The increase in cost is attributable to the need for a larger

storage conduit, new security requirements, the higher costs of handling hazardous waste, and special excavation measures needed to protect the Tobin Bridge footings. The MWRA indicates that the more elaborate design requirements will necessitate a six month extension of the milestone set in Schedule Six, and states that it will shortly propose extensions to the schedule. The MWRA expects to open bidding on construction in November of 2004, with a view to commencing construction in March of 2005 in compliance with Schedule Six.

(f) The Quarterly CSO Progress Report

The MWRA has submitted a CSO Progress Report summarizing progress made in the design and construction of CSO projects during the previous quarter. In addition to the projects already mentioned, I note that the Boston Water and Sewer Commission continues to make progress on the sewer separation projects in South Dorchester Bay, Stony Brook, and the Fort Point Channel. In addition, in August of 2004, the MWRA met with EPA and DEP to seek a consensus on a plan to complete the East Boston Branch Sewer Relief project.

In its comments, CLF expresses support for the Secretary's encouragement of the MWRA's role in partial stormwater relief and floatables control. CLF, however, repeats its previously expressed concern over the lengthy construction schedule, while asking to be included in the MWRA's discussions on this topic with EPA, DOJ, and DEP. While the pace of construction raises legitimate concern, the parties recognize that the complexity of the end phase now being undertaken will require that matters proceed with deliberate speed to insure the integrity of the permitting process and the durability and cost-

effectiveness of the work that remains to be done. I would nonetheless encourage the MWRA to include the CLF in the discussions regarding the schedule, so that all parties will have an informed and realistic understanding of the challenges presented by the work that remains to be done. The parties and the general public have a compelling interest in seeing this project to completion in the shortest time possible.

2. Concluding Remarks

In reviewing the many Orders that have entered in this case, I note that it has been Judge Mazzone's practice to acknowledge those who, having for whatever reason relinquished their role, were nonetheless instrumental in achieving his goal of a "fishable and swimmable" Boston Harbor. It is now time to reciprocate his generosity. His request that I assume responsibility for this case, which is so dear to his heart, and to which he devoted so much of his long and distinguished judicial career, while a great personal compliment, is one that I accept with humility. Never has the metaphor of standing on the shoulders of a giant been more apt. In familiarizing myself with the rich archives that are a part of Judge Mazzone's legacy, I have come to understand how, through acumen and force of personality, he accomplished what cynics had said was impossible to achieve, a harbor environmentally worthy of a City as great as Boston. Judge Mazzone's approach was hands-on – whether the task required the insight of an engineer, a scientist, an environmentalist, a sandhog, a legislator, or a shop steward – Judge Mazzone was able to step into the role without ever compromising the legal principles to which he is devoted. No detail of this immense project was too small to escape his attention, nor was any challenge too large to frustrate his vision of what could be achieved. He was willing to use

his power as a judge if necessary, but he had little use for judicial fiat. His preference, as in all things, was for persuasion, conciliation, and cooperation, all with the ultimate goal of advancing the public interest. His respect for everyone involved in this project, and the reciprocal respect and affection that has been felt for him, is the reason why the goal of a healthy Boston Harbor is in reach. Few judges will ever wear a hard hat with the natural ease that Judge Mazzone displayed on his fabled visits to Deer Island and the other construction sites – he was after all a steelworker in his youth – and few could command the authority that he as a four star judicial general exudes, but I will do my best to see things done as I know he wishes them to be. I look forward to working with the parties to this case, who under Judge Mazzone’s guiding presence, by their collaborative effort have made the impossible an attainable reality.

ORDER

The parties are ordered to report to the Court on the schedule previously established by Judge Mazzone.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE