

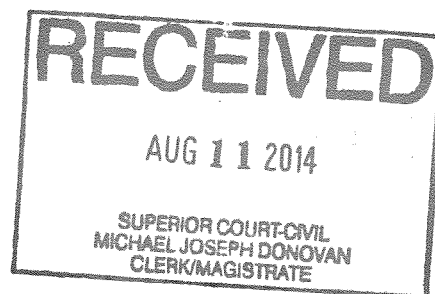
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPT.
CIVIL ACTION NO.

ISABEL KAIN, SHAMUS MILLER,)
 JAMES COAKLEY, OLIVIA GIEGER,)
 CONSERVATION LAW FOUNDATION, and)
 MASS ENERGY CONSUMERS ALLIANCE,)
)
 Plaintiffs,)
)
 v.)
)
 MASSACHUSETTS DEPARTMENT OF)
 ENVIRONMENTAL PROTECTION,)
)
 Defendant.)
)

14-2551



COMPLAINT

Introduction and Nature of the Action

Plaintiffs Isabel Kain, Shamus Miller, James Coakley, Olivia Gieger, Conservation Law Foundation, and the Energy Consumers Alliance of New England d/b/a Mass Energy Consumers Alliance (“Mass Energy”), (collectively, “Plaintiffs”), now bring this Complaint for Declaratory Relief pursuant to M.G.L. c. 231A, §§ 1 and 2, and, in the alternative, petition for a Writ of Mandamus under M.G.L. c. 249, § 5, against the Massachusetts Department of Environmental Protection (“DEP”) and allege as follows:

In the face of ongoing climate change caused by emissions of greenhouse gases, this action seeks to compel DEP to carry out its statutory obligations to develop and promulgate regulations that establish declining annual aggregate emissions limits for sources or categories of

sources of greenhouse gas emissions pursuant to M.G.L. c. 21N, § 3(d), the Massachusetts Global Warming Solutions Act. Plaintiffs seek a declaration that DEP is required to promulgate regulations in compliance with Section 3(d), and that the failure to promulgate regulations establishing declining annual aggregate emissions limits for sources or categories of sources of greenhouse gas emissions violated the Global Warming Solutions Act's requirement that DEP promulgate such regulations no later than January 1, 2012. Plaintiffs also seek a declaration that DEP is required to conduct a rulemaking process to establish these regulations to ensure that they will go into effect immediately upon promulgation, in light of the fact that the deadline set by St. 2008, c. 298, § 16, has passed. In the alternative, Plaintiffs request a Writ of Mandamus to require DEP to carry out its mandatory duty under c. 21N, § 3(d).

Plaintiffs have been harmed by DEP's failure to comply with its statutory duties and face further imminent harm if the relief requested herein is not granted.

Jurisdiction

1. The Court has jurisdiction over the Defendant pursuant to M.G.L. c. 231A, § 2, and jurisdiction over this action pursuant to M.G.L. c. 231A, § 1, *et seq.* and M.G.L. c. 249, § 5.

Parties

2. Plaintiffs Isabel Kain, Shamus Miller, James Coakley and Olivia Gieger are teenage residents of Massachusetts impacted by the effects of climate change, and concerned about the future impacts of climate change on their lives, and the lives of their children and grandchildren. Plaintiffs Isabel Kain and James Coakley are students at Boston Latin High School. Plaintiffs Olivia Gieger and Shamus Miller are students at Wellesley High School.

3. Plaintiff Isabel Kain is a resident of Boston, Massachusetts and an organizer of an annual summit to raise awareness about environmental issues at her school. Isabel's home and school will be negatively impacted by the increasing frequency and destructiveness of storm events and rising sea levels that are associated with climate change. To the extent required, Isabel Kain is proceeding by and through her parent and next friend, James Bradford Kain.
4. Plaintiff Shamus Miller is a resident of Wellesley, Massachusetts and a member of his school's Green Team. The rising sea levels associated with climate change will negatively impact the beaches of Nantucket, where Shamus's family vacations, and many of the cultural landmarks he enjoys in Massachusetts, including the Museum of Fine Arts and Fenway Park. To the extent required, Shamus Miller is proceeding by and through his parent and next friend, James Miller.
5. Plaintiff James Coakley is a resident of Roslindale, Massachusetts and a member of the Youth Climate Action Network. The ongoing effects of climate change, including rising sea levels and warming temperatures, will negatively impact James's ability to enjoy the beach and to ski, and will exacerbate his asthma and allergy to pollen. To the extent required, James Coakley is proceeding by and through his parent and next friend, Michael Coakley.
6. Plaintiff Olivia Gieger is a resident of Wellesley, Massachusetts and a founder of the Student Society for the Awareness of Climate Change. The warming temperatures, rising sea levels and increasing rainfall associated with climate change will negatively impact Olivia's ability to enjoy gardening, camping, swimming at the beach and skiing. To the extent required, Olivia Gieger is proceeding by and through her parent and next friend, Lisa Ikle Gieger.

7. Plaintiff Conservation Law Foundation (“CLF”) is a nonprofit, member-supported organization incorporated under the laws of Massachusetts with a principal place of business at 62 Summer Street, Boston, MA 02110. CLF is a regional organization with over 3,000 members, more than 1,500 of whom live in Massachusetts, and is dedicated to protecting New England’s environment. CLF has a long history of working on behalf of its members to reduce harmful air emissions, including greenhouse gas pollution, from all sectors of the economy.
8. Plaintiff Energy Consumers Alliance of New England d/b/a Mass Energy Consumers Alliance (“Mass Energy”) is a nonprofit, member-supported organization incorporated under the laws of Massachusetts with a principal place of business at 284 Amory Street, Boston, MA 02130. Mass Energy is a non-profit organization that has been working for more than 30 years to make energy more affordable and environmentally sustainable, serving approximately 14,000 members with a Discount Heating Oil Service and approximately 7,000 members with Green Power programs that provide clean electricity from local renewable sources. In addition, Mass Energy’s emergency fuel program serves low-income households and the general public. By and through its Executive Director, Larry Chretien, Mass Energy also has been involved for many years in working to maximize the benefits of the Commonwealth’s energy efficiency programs. The organization is committed to helping individual consumers and the general public cost-effectively reduce greenhouse gas emissions 80 percent by 2050.
9. Defendant DEP is the agency of the Commonwealth of Massachusetts responsible for administering and enforcing environmental laws for the protection of human health and natural resources. DEP is the agency specifically required by M.G.L. c. 21N, § 3(d), to

promulgate regulations establishing declining annual aggregate emissions limits for sources or categories of sources of greenhouse gas emissions by January 1, 2012. DEP's principal office is located at One Winter Street, Boston, MA 02108.

General Allegations

Legal Framework

10. In 2008, the Commonwealth recognized the continued need for Massachusetts to take action and provide leadership on climate change, and the Massachusetts legislature passed, and the Governor signed into law, the Global Warming Solutions Act ("GWSA" or "Act"). St. 2008, c. 298, codified as the Climate Protection and Green Economy Act at M.G.L. c. 21N.
11. The GWSA established mandates for greenhouse gas emissions reductions across all sectors, authorized action by, and imposed obligations upon, the Secretary of the Executive Office of Energy and Environmental Affairs ("Secretary") and multiple state agencies, including DEP, to ensure that its mandates are achieved. M.G.L. c. 21N.
12. Taken together, these requirements provide a comprehensive framework and detailed timeline for achieving stepwise reductions in greenhouse gas emissions to specified levels by 2020, 2030, 2040 and 2050.
13. The GWSA also provided that: "The department [of environmental protection] shall promulgate regulations establishing a desired level of declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions." M.G.L. c. 21N, § 3(d).
14. Article 97 of the Massachusetts Constitution ("Article 97") provides that: "The people shall have the right to clean air. . . ; and the protection of the people in their right to the conservation, development and utilization of the . . . air and other natural resources is hereby

declared to be a public purpose.” Pursuant to the public trust doctrine embodied in Article 97, the Commonwealth holds the air in trust for both present and future generations of its citizens.

15. The GWSA requires the reduction of greenhouse gas emissions in order to combat the impacts of climate change and protect the people’s fundamental right to clean air.
16. Climate change is linked to more frequent and more intense tropical storms, flooding, and extreme weather events such as heat waves and droughts. Massachusetts already has begun to experience the impacts of climate change, such as coastal erosion. *Massachusetts v. EPA*, 549 U.S. 497, 521, 127 S. Ct. 1438, 1455 (2007).

The 2020 Greenhouse Gas Emissions Limit

17. The GWSA required the DEP to “determine the statewide greenhouse gas emissions level in calendar year 1990 and reasonably project what the emissions level will be in calendar year 2020 if no measures are imposed to lower emissions other than those formally adopted and implemented as of January 1, 2009.” M.G.L. c. 21N, § 3(a).
18. The GWSA required the DEP to complete this analysis by July 1, 2009 so that it could be used to establish a baseline from which the Secretary could set emissions reductions. St. 2008, c. 298, § 14.
19. On July 1, 2009, the DEP and Secretary issued a report entitled Statewide Greenhouse Gas Emissions Level: 1990 Baseline and 2020 Business as Usual Projection. This report established the 1990 “baseline” at 94.4 million metric tons of carbon dioxide equivalent (MMTCO₂e). See July 1, 2009 Statewide Greenhouse Gas Emissions Level: 1990 Baseline & Business As Usual Projection, at p. 4. (Exhibit A).

20. The next statutory deadline for the DEP involved the completion of the first statewide greenhouse gas inventory pursuant to Section 2(c) of the statute by no later than December 31, 2010. St. 2008, c. 298, § 13.
21. The DEP issued its “Preliminary 2006-2008 Massachusetts Greenhouse Gas Emissions Inventory” on December 23, 2010 and explicitly tied the report to fulfillment of its obligations under GWSA Section 2(c).
22. The Secretary was then required to consult with “all state agencies and regional authorities with jurisdiction over sources of greenhouse gases,” including DEP, to adopt a 2020 statewide greenhouse gas emissions limit that would “be between 10 per cent and 25 per cent below the 1990 emissions level and a plan for achieving said reduction.” M.G.L. c. 21N, § 4(a).
23. The GWSA required the Secretary to meet this mandate by January 1, 2011. St. 2008, c. 298, § 17.
24. On December 29, 2010, the Secretary issued the Massachusetts Clean Energy and Climate Plan for 2020. The Plan was explicitly identified by the Secretary as the fulfillment of the statutory requirement established by M.G.L. c. 21N, § 4(a).
25. The Climate Plan is not a set of regulations “establishing a desired level of declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gas emissions,” which DEP is required to promulgate pursuant to M.G.L. c. 21N, § 3(d).
26. The Massachusetts Clean Energy and Climate Plan for 2020 (“Climate Plan”) does not establish any new regulations, nor was it subject to formal notice and comment rulemaking under M.G.L. c. 30A.

27. Concurrent with the release of the Plan, the Secretary also issued a determination establishing the emissions limit for 2020 at 25 percent below 1990 levels. *See* December 28, 2010 Determination of Greenhouse Gas Emission Limit for 2020. (Exhibit B).
28. As a result, the Secretary and the Commissioner of DEP are now responsible for implementing the provisions of the GWSA so as to achieve a total greenhouse gas emissions limit of 70.8 MMTCO₂e by 2020, a 25 percent reduction below the 1990 baseline of 94.4 MMTCO₂e.
29. Achieving this emissions level by 2020 will require reductions of approximately 24 MMTCO₂e below 1990 levels. *See* December 30, 2013 Commonwealth of Massachusetts Global Warming Solutions Act 5-Year Progress Report, at p. 4. (Exhibit C).
30. The non-discretionary duty under M.G.L. c. 21N, § 3(d), for DEP to promulgate regulations establishing declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gas emissions is directed toward achieving the GWSA's 2020 greenhouse gas emissions reduction mandate:

The department of environmental protection shall promulgate regulations pursuant to subsection (d) of said section 3 of said chapter 21N not later than January 1, 2012, which regulations shall take effect on January 1, 2013, and shall expire on December 31, 2020.

St. 2008, c. 298, §16.

31. In November 2012, a group of Massachusetts youth, including youth plaintiffs in this action, petitioned DEP to promulgate the regulations required by the GWSA and to meet its public trust obligations to them and to future generations. *See* November 1, 2012 Petition of Eshe Sherley *et al.* to Massachusetts Department of Environmental Protection. (Exhibit D). More than one dozen environmental, health, and business interests provided support for the petition. *See* June 13, 2013 Letter from Sue Reid,

CLF, *et. al.* to Commissioner Kenneth Kimmell, DEP. (Exhibit E). DEP held a hearing on the petition in June 2013, in which youth testified. DEP declined to take action on the petition and did not initiate the requested rulemaking proceedings. *See* The Massachusetts Department of Environmental Protection's Action on the *Kids vs. Global Warming* Petition. (Exhibit F). Plaintiffs have exhausted all other avenues short of this complaint.

32. As of the date of this Complaint, DEP has not promulgated regulations that establish a "desired level of declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gas emissions" as required by M.G.L. c. 21N, § 3(d).
33. DEP has not published a list of regulations it intends to promulgate to satisfy its GWSA obligations, as required by M.G.L. c. 30A § 6D, in the Massachusetts Register.
34. The timely promulgation of regulations establishing declining annual aggregate emissions limits for greenhouse gases is critical in order to avoid, or mitigate, the negative impacts of climate change per the mandates of the GWSA.

Count I

Request for Declaratory Judgment

35. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.
36. There exists an actual controversy between Plaintiffs and the DEP involving the proper interpretation of Section 3(d) of the GWSA.
37. Plaintiffs seek a declaration from the Court that DEP violated the GWSA by failing to issue regulations establishing desired declining annual aggregate emissions limits for sources or

categories of sources of greenhouse gas emissions by January 1, 2012, and is continuing to violate the GWSA by failing to issue such regulations.

Count II

Request for Injunctive Relief and/or Petition for Writ of Mandamus

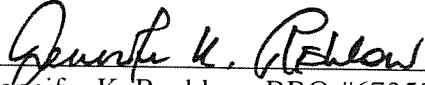
38. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.
39. Plaintiffs seek to compel DEP to perform a particular duty required by law.
40. Plaintiffs request that this Court, whether by Writ of Mandamus and/or permanent injunctive relief, order DEP to promulgate regulations establishing desired declining annual aggregate emission limits for sources or categories of sources of greenhouse gas emissions, with an effective date of January 1, 2015.

Prayer for Relief

WHEREFORE, Plaintiffs Isabel Kain, Shamus Miller, James Coakley, Olivia Gieger, Conservation Law Foundation, and Mass Energy Consumers Alliance respectfully request that this Court:

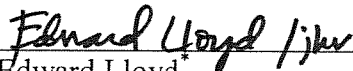
1. Enter a Judgment and Decree in accordance with the request for declaratory relief in Count I;
2. Enjoin DEP in accordance with the request for injunctive relief/petition for Writ of Mandamus in Count II; and
3. Grant such other and further relief as it deems just and equitable.

PLAINTIFFS,
CONSERVATION LAW FOUNDATION,
MASS ENERGY CONSUMERS ALLIANCE,
By their representatives,



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August 11, 2014

* Admitted in New Jersey. *Pro hac vice* motion to be filed in accordance with SJC Rule 3:15.

** Admitted in New York, New Jersey, and Pennsylvania. *Pro hac vice* motion to be filed in accordance with SJC Rule 3:15.