

**KEITH HANNON and others¹ v. MIG CORPORATION and TOWN OF CONCORD- No.
2681CV00391**

DECISION AND ORDER ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
(Paper 4)

Upon consideration of the submissions of the parties, including the affidavits offered in support thereof, the plaintiffs' motion for preliminary injunction is **ALLOWED**.

The plaintiffs are correct that the statutory and regulatory scheme set forth in in G.L. c. 131, § 40 and 310 CMR 10.02(a)-(b) require the defendants to file a Notice of Intent ("NOI") and obtain an Order of Conditions ("OOC") rather than proceeding by way of Enforcement Order from the Town's Natural Resource Commission ("NRC").

Here the plaintiffs' submissions, including the affidavit of the plaintiff, Keith Hannon², clearly establish that the staging, dumping and stockpiling activities of MIG on land owned by the Town of Concord at 1175 Elm Street, occurred in a location containing Wetland Resource Areas protected under the Massachusetts Wetlands Act and the Town of Concord Wetlands Bylaw. This includes bordering vegetated wetlands, an intermittent stream connected to downstream waters, as well as the associated 0–100 foot Buffer Zone. Where the foregoing activities of MIG occurred within protected areas as defined in 310 CMR 10.02 (a) and (b), the defendants are required to file a Notice of Intent ("NOI") and await the issuance of an enforceable Order of Conditions ("OOC") in connection with undertaking remediation efforts.

The defendants reliance on 310 CMR 10.02 (d) as support for their argument that the NRC may proceed here by way of Enforcement Order rather than the NOI process is misplaced. The foregoing provision, by its express terms, applies to "Activities Outside the Areas Subject to Protection under M.G.L. c. 131, § 40 and the Buffer Zone." Here the

¹ Diane Hannon; Miguel Echavarri; Stephanie Echavarri; Amanda Echavarri; Eric Jansen; Brooks Read; Susannah Kay; Paul Macone; and Enid Boasberg

² Hannon is a Certified Wetland Scientist employed by the Army Corps of Engineers who was previously employed as a restoration ecologist by BSC Group, Inc. where he acted as a lead wetland delineator, technical manager and environmental manager and monitor for projects involving wetland permitting and restoration.

staging, dumping and stockpiling activities of MIG clearly occurred in areas subject to protection and/or the Buffer Zone. The Town's NRC acknowledged as much in its December 8, 2025 WPA Form 2 Determination of Applicability Finding wherein it concluded that MIG's activities, including placing dirt piles within the Buffer Zone and dirt and rocks into bordering vegetated wetland should have required filing of an NOI at the outset. Accordingly I find that the plaintiffs have established a likelihood of success on the merits, where the NOI and OOC process required by 310 CMR 10.02(a)-(b) was not followed by the defendants.

I further find that the plaintiffs have established the likelihood of irreparable harm. In this context, they need not establish plaintiff-specific injury. Rather, G.L. c. 214, § 7A authorizes injunctive relief to restrain persons causing or about to cause "damage to the environment" in violation of statutory or regulatory provisions designed to prevent such harm.³ Here the risk of irreparable harm is inherent where the NRC's Enforcement Order proceeding sidesteps the strict regulatory scheme set forth in 310 CMR 10.02 (a) and (b) for remediating the risk of harm associated with MIG's activities on the subject property in an orderly and transparent way.

The balancing of the harms also favors the plaintiffs. Here, MIG has already agreed to and is actively conducting remediation efforts under the terms of the NRC Enforcement Order. Halting those efforts temporarily to submit a NOI and to complete the remediation efforts pursuant to a properly vetted OOC will not be overly burdensome. It is actually in the interest of all parties in the long run to ensure that the remediation efforts are conducted in accordance with the applicable regulatory scheme, so as to minimize the risk of any future harm and resulting litigation.

³ In the exercise of my discretion I waive the 21 day notice requirement for seeking relief under § 7A given the exigencies of this case, as MIG is actively engaged in removal and remediation efforts under the Enforcement Order from the NRC.

ORDER

1. The defendants are collectively enjoined from conducting further activities at the subject site at 1175 Elm Street, Concord, Massachusetts that involve removing, filling, dredging, relocating, grading, excavating, stockpiling, hauling or otherwise disturbing material in or affecting Wetland resource Areas and/or the 100-foot Buffer Zone pending filing of a Notice of Intent and receipt of a Valid Order of Conditions.
2. The defendants are further ordered to preserve all documentation and communications regarding MIG's activities on the subject site, including but not limited to any remediation efforts conducted to date on the subject site.

A handwritten signature in black ink, appearing to read 'Brent A. Tingle', is written over a horizontal line.

Brent A. Tingle / Associate Justice

Dated: February 12, 2026