

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NEXT MILLENNIUM REALTY LLC and 101 FROST
STREET ASSOCIATES, L.P.,

Plaintiffs,

-against-

UTILITY MANUFACTURING CO., INC. and NEST
EQUITIES, INC.,

Defendants.

**COMPLAINT AND
DEMAND FOR
JURY TRIAL**

Civil Action No.: 22-CV-2529

Plaintiffs Next Millennium Realty LLC (“Next Millennium”) and 101 Frost Street Associates, L.P. (“101 Frost Street”) (together, “Plaintiffs”), complaining of Defendants Utility Manufacturing Co., Inc. (“Utility”) and Nest Equities, Inc. (“Nest”) (together, “Defendants”), allege as follows:

INTRODUCTION

1. This is an action under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (“CERCLA”) for contribution and indemnification for past and future response costs under Sections 107 and 113(f) of CERCLA; and declaratory judgment under Section 107 of CERCLA and the Declaratory Judgment Act, 28 U.S.C. Section 2201, holding Defendants jointly and severally liable for past and future response costs incurred by Plaintiffs at the Site (defined below).

PARTIES

2. Plaintiff Next Millennium is a New York Limited Liability Company formed under the laws of the State of New York with a principal place of business in Nassau County, New York.

3. Plaintiff Next Millennium is the current owner of the property located at 89 Frost Street, Westbury, New York.

4. Plaintiff 101 Frost Street is a New York Limited Partnership formed under the laws of the State of New York with a principal place of business in Nassau County, New York.

5. Plaintiff 101 Frost Street is the current owner of the property located at 101 Frost Street, Westbury, New York.

6. Upon information and belief, Defendant Utility is a New York Corporation incorporated under the laws of New York State with a principal place of business in Nassau County, New York.

7. Upon information and belief, Defendant Utility is the current, or former, owner of the property located at 700 Main Street, Westbury, New York.

8. Upon information and belief, Defendant Nest is a corporation organized under the laws of the State of New York, with a principal place of business in Nassau County, New York.

9. Upon information and belief, Defendant Nest is the current, or former, owner of a facility located at 700 Main Street, Westbury, New York.

10. Plaintiffs and Defendants are collectively referred to as the “Parties.”

JURISDICTION AND VENUE

11. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C §§ 1331, 1337, and 1343; and 42 U.S.C. §§ 9607(a) and 9613(b).

12. The Court has the authority to issue a declaratory judgment concerning the rights and liabilities of the parties pursuant to 42 U.S.C. § 9613(b).

13. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 9613(b) because the facts giving rise to the claims in this action occurred in the

County of Nassau and State of New York, and within the jurisdiction of the Eastern District of New York. The Parties reside and conduct, or have conducted, business within the jurisdiction of the United States District Court for the Eastern District of New York.

BACKGROUND

14. In September of 2011, the United States Environmental Protection Agency (the “EPA”) listed an area of contamination located, in part, in the Town of Hempstead, New York, as the New Cassel/Hicksville Groundwater Contamination Superfund Site (the “Site”).

15. The Site comprises an area of groundwater that is contaminated with chemicals and chemical compounds listed, identified or regulated under law as “Hazardous Substances” under CERCLA within the Towns of North Hempstead, Hempstead, and Oyster Bay, Nassau County, New York, and associated source areas (the “Contamination”). The Site is estimated to include 6.5 square miles.

16. Within the Site is the New Cassel Industrial Area (“NCIA”), an approximately 170-acre area of land, bounded by the Long Island Railroad to the north, Frost Street to the east, Old Country Road to the south, and Grand Boulevard to the southwest.

17. The investigation and remediation of the Site is divided into several operable units, including Operable Unit-1 (“OU-1”).

18. OU-1 addresses an area of shallow and deep groundwater Contamination, approximately 211 acres in size, within and downgradient of the NCIA, within the Towns of North Hempstead and Hempstead.

19. In September of 2013, based on the results of the Supplemental Remedial Investigation and Feasibility Study for OU-1, dated July of 2013, EPA issued the Record of Decision (“ROD”) for OU-1, in which it selected a remedy for OU-1. The OU-1 remedy, includes,

but is not limited to: (1) a combination of in-situ treatment of groundwater via in-well vapor stripping and extraction of groundwater via pumping and ex-situ treatment of extracted groundwater prior to the discharge to a POTW or reinjection to the groundwater (to be determined during design); (2) in-situ chemical treatment of high concentration contaminant areas, as appropriate; (3) implementation of long-term monitoring of groundwater in OU-1 to ensure the Remedial Action Objectives are achieved; (4) development of a Site Management Plan to ensure the proper management of the remedy post-construction; and (5) institutional controls consisting of maintaining any existing local requirements to prevent installation of drinking water wells and issuing informational devices to limit exposure to contaminated groundwater.

20. EPA divided OU-1 into three distinct shallow plumes, identified as the “Eastern Plume,” the “Central Plume,” and the “Western Plume,” together with a deeper plume flowing under the Eastern Plume (the “OU-1 Deep Plume”).

21. EPA noticed the Parties in this action (Next Millennium, 101 Frost Street, Utility, and Nest) that they are responsible parties under CERCLA for the Eastern Plume and OU-1 Deep Plume, and demanded the Parties investigate and remediate the Eastern Plume, consisting primarily of Tetrachloroethylene (“PCE”), a Hazardous Substance, and the OU-1 Deep Plume, consisting primarily of Trichloroethylene, a Hazardous Substance.

22. On March 22, 2018, EPA issued a Unilateral Administrative Order (“UAO”) directing the Parties to implement an additional Remedial Investigation and Remedial Design (“RI/RD”) for the Eastern Plume and the OU-1 Deep Plume.

23. The UAO states that Defendant Nest is the “current owner of a facility located at 700 Main Street, Westbury, New York, at which, among other things, PCE was disposed, and thus

it is a responsible party within the meaning of Section 107(a)(1) of CERCLA” for the Contamination in the Eastern Plume and OU-1 Deep Plume.

24. The UAO also states that Defendant Utility “disposed of, among other things, PCE while operating a facility located at 700 Main Street, Westbury, New York, and thus it is a responsible party within the meaning of Section 107 of CERCLA” for the Contamination in the Eastern Plume and OU-1 Deep Plume.

25. On June 15, 2019, EPA issued an amended UAO directing the Parties to implement an additional RI/RD for the Eastern Plume and the OU-1 Deep Plume. The 2018 UAO and 2019 Amended UAO are together referred to, hereinafter, as the “UAO.”

26. The UAO identified the Parties in this action (Next Millennium, 101 Frost Street, Utility, and Nest”) as the “Eastern Plume Group Respondents.”

27. The UAO orders the Eastern Plume Group Respondents jointly and severally liable for response costs at the Site including the “Common Work Elements” and the “OU-1 Statement of Work” as these terms are defined in the UAO.

28. Plaintiffs have complied with the amended UAO and Plaintiffs are incurring response costs in implementing the RI/RD as defined in the ROD and UAO, including but not limited to engineering fees, attorneys’ fees, and other expenses and costs relating to mitigating environmental conditions for the benefit of and/or closely tied to the cleanup effort and/or serving a statutory purpose apart from reallocation of costs.

29. Plaintiffs have incurred response costs, as defined under CERCLA, and continue to incur response costs in implementing the UAO, including but not limited to engineering fees, attorneys’ fees, and other expenses and costs relating to mitigating environmental conditions for

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