

ORIGINAL
IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FILED
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U.S. COURT OF
FEDERAL CLAIMS

FRANK PENNA
LISA PENNA
410 Norristown Road
Horsham, PA 19044,

Plaintiffs,

Case No.: 16-1545 L

v.

THE UNITED STATES
DEPARTMENT OF THE NAVY
1000 Navy Pentagon
Washington, DC 20301-1000

and

THE UNITED STATES
OF AMERICA,

Defendants.

COMPLAINT

Plaintiffs Frank Penna and Lisa Penna (“Plaintiffs” or the “Pennas”) bring this action for inverse condemnation to recover just compensation as authorized under the Fifth Amendment of the United States Constitution as a result of defendants The United States Department of the Navy (the “Navy”) and the United States of America (the “United States”) (collectively, “Defendants”) unlawful taking of Plaintiffs’ property through the improper and unlawful disposal of solid waste and/or hazardous waste from Defendants’ facilities in Willow Grove, Pennsylvania. The improper and unlawful disposal of solid and hazardous waste by Defendants has contaminated Plaintiffs’ property, including the soil and drinking water, rendering Plaintiffs’ property valueless. In support of their Complaint, Plaintiffs aver as follows:

PARTIES

1. Plaintiffs are adult individuals owning and residing at real property located at 410 Norristown Road, Horsham, Pennsylvania 19044.

2. The Navy is an agency and instrumentality of the United States of America headquartered at 1000 Navy Pentagon, Washington, D.C. 20350. At all relevant times, the Navy was the current and/or past owner and operator of the Naval Air Station Joint Reserve Base (NASJRB) Willow Grove (“Willow Grove” or the “Facility”). Willow Grove also includes the Horsham Air Guard facility.

3. The United States is a republic formed pursuant to the United States Constitution exercising the powers enumerated therein subject to certain limitations including (i) the Fifth Amendment to the United States Constitution, which prohibits the taking of private property without just compensation, (ii) statutes such as the Tucker Act, 28 U.S.C. 1491 *et seq.*, which provides for limited waivers of the United States’ sovereign immunity and (iii) regulations prescribing its authority.

JURISDICTION

4. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1491 as a “claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department or upon any express or implied contract with the United States ...” seeking damages in excess of the minimum threshold of \$10,000.00.

NATURE OF THE CASE

5. Defendants are the current and/or past owners and operators of Naval facilities located at Willow Grove.

6. Defendants improperly disposed of contaminants and hazardous substances at the Facility for decades. These contaminants and substances have invaded and contaminated Plaintiffs' property.

7. Upon information and belief, the hazardous substances included perfluorochemical compounds ("PFCs") such as perfluorooctanoic acid ("PFOA") and perfluorooctanesulfonic acid ("PFOS"), among other known and suspected toxic compounds.

8. These toxic chemicals were used extensively at Willow Grove in fire-fighting foam materials for decades up until 2010.

9. There are numerous health risks associated with chronic exposure to, for example, PFOA. These risks are present even where PFOA is ingested at very low levels such as less than 1.0 part per billion (ppb).

10. The health risks associated with PFOA are exacerbated by the fact that it can stay in the environment and in the human body for extended periods of time.

11. Studies show that PFOA is readily absorbed after oral exposure and accumulates primarily in the serum, kidneys and liver. The half-life of PFOA in the human body is two to nine years.

12. In studies involving laboratory animals, PFOA exposure led to an increased risk of tumors in the liver, testicles, mammary glands and pancreas.

13. PFOA exposure over 0.5 ppb is associated with increased risks of testicular cancer, kidney cancer, thyroid cancer, high cholesterol, ulcerative colitis and pregnancy-induced hypertension.

14. These diseases and health problems can manifest themselves months or years after an individual is exposed to PFOA.

15. These toxic PFCs have entered the groundwater of Warminster, Warrington and Horsham Townships contaminating and polluting public and private drinking wells, including Plaintiffs' water supply.

16. According to the Environmental Protection Agency (the "EPA"), PFOA and PFOS pose potential adverse effects for the environment and human health. Such adverse health effects include, but are not limited to, kidney cancer, testicular cancer, thyroid disease, ulcerative colitis, pregnancy-induced hypertension, high cholesterol and other diseases.

17. Notwithstanding the Facility's presence on the EPA's National Priorities List (the "NPL") for over two decades, direct EPA oversight has:

- a. failed to prevent ongoing PFC use and disposal at the Facility;
- b. failed to prevent and abate contamination and migration of these toxic contaminants to local public and private drinking water sources;
- c. failed to prevent and abate drinking water contamination by PFCs; and
- d. failed to prevent ingestion and bioaccumulation of PFCs by the local population, including sensitive sub-populations of infants and children.

18. These decades-long failures have left Plaintiffs exposed to the toxic hazards from these contaminants and hazardous substances and their property virtually valueless.

Contamination of Plaintiffs' Property and Private Water Supply by Defendants

19. Plaintiffs began residing at their present address, which is virtually across the street from Willow Grove, in 1994.

20. Plaintiffs' water supply came entirely from a private well located on their property.

21. Plaintiffs used their well for all domestic water purposes until late 2014, at which time they learned that the levels of PFOA and PFOS in their water far exceeded the EPA's then provisional Health Advisory Level ("HAL") of 0.2 ug/l for PFOS and 0.4 ug/l for PFOA.

22. The EPA recently reassessed the health advisory for PFCs and set a combined HAL of 0.07 ug/l for PFOA and PFOS, which equals approximately one-sixth of the previous HAL.

23. The combined PFOA/PFOS level in Plaintiffs' well – 1.07 ug/l – was *more than fifteen times* the new HAL.

24. Defendants deliberately channeled surface water runoff coming from its contaminated Fire Training Area (Site 5) into a swale running across Plaintiffs' property. This runoff is contaminated with PFCs and carries the PFC onto Plaintiffs' property.

25. As the Record of Decision for Site 5 (groundwater) states: The swales "typically contains standing surface water throughout the spring and after a heavy rainfall ... runoff from surface areas is primarily channeled through open drainage swales and enclosed storm sewers."

26. This drainage has been and continues to be discharged directly onto Plaintiffs' property and has caused severe and continuing contamination of their soil with PFCs.

27. The contamination of Plaintiffs' property and water supply has caused permanent and irreparable damage to Plaintiffs' property to the point where their property is virtually valueless and, therefore, amounts to a taking without just compensation.

28. Plaintiffs have asked Defendant to address the severe and continuing contamination of their property and their pleas have been ignored.

COUNT I

(Inverse Condemnation)

29. Plaintiffs incorporate the allegations from paragraph 1 through 27 above by reference as if fully set forth at length herein.

30. The actions of Defendants described above amount to an inverse condemnation in violation of the Fifth Amendment to the United States Constitution, which prohibits the taking of private property by the federal government without payment of just compensation.

31. As a direct and proximate result of Defendants' aforementioned conduct, Plaintiffs are entitled to just compensation.

32. Defendants, however, have failed and/or refused to offer or tender such just compensation to Plaintiffs.

33. Given that the contamination emanating from Willow Grove was latent in nature, that is, the contaminants and hazardous substances were disposed of without lawful authority, Plaintiffs did not know and could not have known of the damage to their property until less than two years before the filing of this action.

WHEREFORE, Plaintiffs respectfully request that judgment on Count I of their Complaint be entered in their favor and against Defendants as follows:

- a. Compensation in an amount greater than \$1,000,000.00 be awarded to Plaintiffs for the taking of their property from the date of the taking;
- b. Appropriate interest thereon;
- c. Attorneys' fees and costs; and
- d. Such other relief as the Court deems just and proper.



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Dated: