

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 3:17-cv-38
v.)	
)	
THE CYRIL V. FRANCOIS ASSOCIATES, L.L.C.,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General and acting at the request of the Administrator of the Environmental Protection Agency (“EPA”), alleges:

NATURE OF THE ACTION

1. This is a civil action brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. § 9607(a). Plaintiff the United States seeks to recover costs which have been incurred and may be incurred in response to the release and threatened release of hazardous substances at or from the Tutu Wellfield Superfund Site (“Tutu Site” or “Site”) in Anna’s Retreat, St. Thomas, U.S. Virgin Islands.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 9613(b), because the claims arose in this district and the release or threatened release of hazardous substances that gave rise to these claims occurred in this district.

DEFENDANT

4. Cyril V. Francois Associates L.L.C. (“CVF LLC”) is a limited liability company and is organized in and under the laws of the U.S. Virgin Islands.

5. CVF LLC owns a parcel of improved real property located on the eastern side of Highway 38, described as parcel number 5B Estate Anna’s Retreat, No. 1 New Quarter, St. Thomas, U.S. Virgin Islands (“Anna’s Retreat Property”). The Anna’s Retreat Property is a part of the Site. CVF LLC leases the Anna’s Retreat Property to L’Henri, Inc. which operates a dry cleaning business there.

THE STATUTORY SCHEME

6. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as “response actions.” 42 U.S.C. §§ 9604(a), 9601(25).

7. Under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1):

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure

consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment . . .

8. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

9. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

. . . .

shall be liable for - -

- (A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan; The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D).

THE SITE AND RESPONSE ACTIONS

10. The Site is located in the eastern portion of St. Thomas, U.S. Virgin Islands. The Site includes a portion of the Tutu groundwater aquifer, the primary source of drinking water for the island. The Site, including the Tutu groundwater aquifer, is contaminated with volatile organic compounds (VOCs), tetrachloroethene (commonly known as PCE) and its related compounds, TCE, 1,2-DCE, and vinyl chloride, hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) ("hazardous substances"). The Site is roughly defined by the areas in which the Tutu groundwater aquifer is contaminated with

hazardous substances.

11. Prior to 1987, there were several major commercial wells located at the Site that supplied public drinking water. In 1987, EPA tested some of the drinking water wells at the Site and discovered that they were contaminated with hazardous substances. The Virgin Islands Department of Planning and Natural Resources immediately ordered that several of the drinking water wells be shut down.

12. Francois Realty Corporation, a corporation organized under the laws of the U.S. Virgin Islands, owned the Anna's Retreat Property from February 1965 to June 1984. Beginning in May 1981, Francois Realty Corporation leased the Anna's Retreat Property to L'Henri, Inc., which operated a dry cleaning business at the Anna's Retreat Property. On information and belief, L'Henri used PCE in its dry cleaning activities at the Site from 1982 until 2002, and continued to have PCE onsite until at least 2005. On information and belief, L'Henri, Inc. disposed of hazardous substances, including PCE, at the Anna's Retreat Property during the time Francois Realty Corporation owned the property.

13. Cyril V. Francois Associates ("CVF Associates") was a general partnership formed by the former shareholders of Francois Realty Corporation. In June 1984, Francois Realty Corporation dissolved and all of its assets were transferred to CVF Associates. CVF Associates and its general partners were the successors-in-interest to Francois Realty Corporation. CVF Associates owned the Anna's Retreat Property from June 1984 until January 1999. CVF Associates succeeded as lessor to the lease of the Anna's Retreat Property with L'Henri, Inc, who was the lessee of the property. On information and belief, L'Henri, Inc. disposed of hazardous substances, including PCE, at the Anna's Retreat Property during the time

CVF Associates owned the property.

14. In January 1999, CVF Associates filed articles of organization to convert into a limited liability company under the laws of the U.S. Virgin Islands. Upon conversion, ownership of the Anna's Retreat Property transferred from CVF Associates to CVF LLC. CVF LLC is the successor-in-interest to CVF Associates and Francois Realty Corporation.

15. CVF LLC has owned the Anna's Retreat Property since January 1999 and is the current owner of the property.

16. As a result of the disposals by L'Henri, Inc., the soils at and the groundwater beneath the Anna's Retreat Property became contaminated with hazardous substances. The groundwater also is contaminated due to a disposal of hazardous substances at other facilities located within the Site.

17. The Tutu Site was placed on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B, in September 1995. The NPL is a national list of hazardous waste sites potentially posing the greatest threat to health, welfare and the environment. The NPL is established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

18. In 1988, EPA implemented a response action at the Site that included cleaning contaminated cisterns, disconnecting the contaminated drinking water wells, and providing uncontaminated drinking water to the cisterns by tank truck.

19. On August 5, 1996, EPA issued a Record of Decision ("ROD") selecting the remedial action for the Site. The remedy included, among other things, *in situ* soil vapor extraction to address the contaminated soils at the Site, and construction and operation of pumping and treatment systems to address the contaminated groundwater.

20. EPA installed and operated groundwater pump-and-treat systems to address the contaminated groundwater at the Site.

21. The Virgin Islands Department of Planning and Natural Resources took over operation of the groundwater pump-and-treat systems in 2013.

23. Subsequent to the ROD and during the remedial design, EPA determined monitored natural attenuation (“MNA”) was a more appropriate remedy than a pump-and-treat system for the groundwater contamination at and down-gradient of the Anna’s Retreat Property. The use of MNA for this portion of the groundwater plume is subject to the possibility of further action remedial measures if MNA does not satisfactorily achieve the performance standards for the groundwater as provided in the ROD.

24. EPA has incurred more than \$8.2 million plus interest, in performing response actions at the Tutu Site. EPA continues to conduct response actions and incur response costs at the Tutu Site.

CLAIM FOR RELIEF: COST RECOVERY

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. CVF LLC is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

27. CVF LLC is an “owner” within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. §9601(20)(A).

28. The Site, including the Anna’s Retreat Property, is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

29. Hazardous substances, within the meaning of Section 101(14) of CERLCA, 42

U.S.C. § 9601(14), have been disposed of at the Tutu Site.

30. There have been and continue to be, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), releases and threatened releases of hazardous substances into the environment at and from the Tutu Site.

31. Defendant CVF LLC is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as a person who is the current owner of a facility within the Tutu Site, within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

32. Defendant CVF LLC is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2), because it is the successor-in-interest to CVF Associates and to Francois Realty Corporation, which were owners of the Anna's Retreat Property at the time hazardous substances were disposed of there.

33. The United States has incurred "response costs" of at least \$8.2 million plus interest, and will continue to incur "response costs" as defined in Section 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), to respond to the release or threatened release of hazardous substances at the Tutu Site.

34. The response costs incurred by the United States in response to the release or threatened release of hazardous substances at the Tutu Site are not inconsistent with the National Contingency Plan.

35. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defendant CVF LLC is liable to the United States for response costs incurred or to be incurred by the United States in connection with the Tutu Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding CVF LLC liable for unreimbursed costs incurred by the United States with respect to the Site, plus interest accrued thereon;
2. Award the United States its costs of this action; and
3. Grant the United States such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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