IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NORTH PENN WATER AUTHORITY	:	CIVIL ACTION
	:	
v.	:	
	:	
BAE SYSTEMS, et al.	:	NO. 04-4446
	:	

MEMORANDUM

Baylson, J. **September 16, 2005**

I. Introduction

On July 19, 2005, the Court issued a Memorandum and Order denying Defendants' Motion to Dismiss as to Counts I, III, and VII-XV, and granting the motion as to Counts II, IV, V, and VI. North Penn Water Authority v. BAE Systems, et al., 2005 WL 1715718 (E.D. Pa. 2005)("the July Order"). Presently before the Court is a Motion for Reconsideration of that decision, filed by Plaintiff North Penn Water Authority ("NPWA") on August 4, 2005. On August 22, 2005, Defendants filed a response brief, and Plaintiff filed a reply brief on September 1, 2005.

The procedural history of this case, and the factual allegations and legal claims set forth in the complaint (the "Federal Complaint"), as well as those of the consolidated action, which was removed from state court (the "State Action"), are described in detail in the July Order and in the May 25, 2005 Memorandum and Order denying Plaintiff's Motion to Remand.

II. Legal Standard

When deciding a motion for reconsideration, a court may alter or amend a judgment "if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when

the court granted the motion . . . ; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 676 (3d Cir. 1999).

III. Discussion

Plaintiff argues that the Court's decision to dismiss Counts V and VI in their entirety constitutes an error of law. In Count V, under the Pennsylvania Storage Tank Act and Spill Prevention Act, 35 P.S. § 6021.101, et seq. ("Storage Tank Act"), Plaintiff

> demands judgment of liability against Defendants, costs to compel compliance with the Storage Tank Act; costs for corrective action including, but not limited to, the costs for the use of alternative sources of water; recovery of response costs; and an order directing Defendant to abate the contamination and provide an acceptable and appropriate treatment system on Well NP-21, which will put the well back into service as a source of public water supply, including the operation and maintenance of such system; diminution of property value; together with costs of litigation (including, but not limited to attorneys' fees, expert fees and engineering fees) and such other relief which this Court deems just and proper.

Federal Complaint, p. 36. In Count VI, under the Clean Streams Law, 35 P.S. § 691.601(c)("CSL"), Plaintiff

> demands a judgment of liability against Defendants, an injunction ordering them to abate the violation, and provide an acceptable and appropriate treatment system on Well NP-21, which will put the well back into service as a source of public water supply, including the operation and maintenance of such system; diminution of property value; the recovery of response costs, together with costs of litigation (including, but not limited to attorneys' fees, expert fees and engineering fees) interest and any other relief which this Court deems just and proper.

Federal Complaint, p. 38. In the July Order, the Court dismissed these Counts because Plaintiff's request for injunctive relief involving the provision, operation, and maintenance of a treatment system on Well NP-21 was found to constitute a "challenge" to a CERCLA cleanup and therefore the Court lacked subject matter jurisdiction over these claims under CERCLA §113(h).

2005 WL 1715718 at *10.

Plaintiff argues that the claims for recovery of response costs and diminution of property value within Counts V and VI are unrelated to the "challenge" to a CERCLA cleanup found by the Court and that the Court should therefore retain jurisdiction over those claims. Specifically, Plaintiff contends that the same reasoning by which the Court retained jurisdiction over Count III, requesting recovery of response costs under the Pennsylvania Hazardous Sites Cleanup Act ("HSCA"), applies to Plaintiff's request for response costs and diminution of property value in Counts V and VI. Defendants contend that Plaintiff is not entitled to these forms of relief, because private parties cannot recover such relief under these statutes.

As to Plaintiff's claims under the Storage Tank Act, Plaintiff is correct that the Pennsylvania Supreme Court, in interpreting the Act's provision for private actions "to compel compliance," has held that "under Section 6021.1305, a private cause of action may be brought to collect costs for cleanup and diminution in property value." Centolanza v. Lehigh Valley Dairies, Inc., 540 Pa. 398, 407 (Pa. 1995)(interpreting 35 P.S. §6021.1305(c)); F.P. Woll & Co. v. Fifth and Mitchell Street, Corp., et al., 2005 WL 1592948 *4 (E.D. Pa. July 1, 2005)(citing Centolanza, 540 Pa. at 407). The Court's Order of dismissal of Count V will therefore be amended, and the Court shall retain jurisdiction over Plaintiff's claims under the Storage Tank Act, but only to the extent that those claims seek "to collect costs for cleanup and diminution in property value." Id.

As set forth in the July Order in relation to Plaintiff's claims for recovery of response costs under the HSCA, Defendants' other arguments regarding Plaintiff's claims under the Storage Tank Act, including those regarding any limitation to recovery created by the statute of

limitations, will be addressed at a later stage of the proceedings, along with the issue of what litigation costs, if any, are recoverable under the Storage Tank Act. North Penn Water Authority, 2005 WL 1715718 at *10.

As to Plaintiff's claims under the Clean Streams Law in Count VI, Defendants note that several judges of this Court interpreted the statute's provision for private actions "to compel compliance" as "permitt[ing] private persons to pursue enforcement actions under the CSL, while denying them the right to pursue damage claims or civil penalties." Pennsylvania Real Estate Investment Trust v. SPS Technologies, Inc., 1995 WL 687003 *10 (E.D. Pa. 1995)(listing cases). Plaintiff, however, suggests that the Court should apply the Pennsylvania Supreme Court's reasoning in Centolanza to the Clean Streams Law, as the Clean Streams Law's private action provision contains the same language – "to compel compliance" – that the Pennsylvania Supreme Court found to create a private cause of action for recovery of response costs and diminution in property value under the Storage Tank Act. 35 P.S. §691.601(c); Centolanza. 540 Pa. at 407.

The Pennsylvania Supreme Court has not yet had an opportunity to address this issue, and the Court is not persuaded that the state Supreme Court's interpretation of the Clean Streams Law would parallel its interpretation of the Storage Tank Act in Centolanza. See Andritz Sprout-Bauer, Inc. v. Beazer East, Inc., 12 F.Supp.2d 391, 412 (M.D. Pa. 1998)(finding that "the Pennsylvania Supreme Court's recognition of a private cause of action in Centolanza II is not necessarily indicative of its intent to recognize a like cause of action under the [Clean Streams Law] if the issue were to come before it"). The Court's dismissal of Count VI was therefore proper, because Plaintiff's request for injunctive relief in Count VI constitutes a "challenge" to a CERCLA cleanup, and because the remaining claims for relief in Count VI are not available to

private parties under the Clean Streams Law.

Plaintiff's Motion for Reconsideration also argues that the Court's decision to dismiss several state law claims from the Federal Complaint indicates that the entire state court action, previously removed and consolidated with this action, should be remanded to state court. The Court will not address this argument, as the dismissal of Count V has been amended by this Memorandum and Order, and more generally, because the basis for the Court's denial of Plaintiff's Motion to Remand the state court action, set forth in the Memorandum and Order of May 25, 2005, has not been altered by the July Order.

VI. Conclusion

For the foregoing reasons, Plaintiff's Motion for Reconsideration will be granted as to Counts V and will be otherwise denied.

An appropriate Order follows.

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ORDER

AND NOW this 16th day of September, 2005, upon consideration of Plaintiff's Motion for Reconsideration (Docket No. 13), and the responses thereto, it is ORDERED that the motion is GRANTED in part and DENIED in part. The Court's Order of July 19, 2005, will be amended as to Count V, and the Court shall retain jurisdiction over the claims in Count V that seek recovery costs and diminution in property value. Plaintiff shall file an Amended Count V limited in accordance with the foregoing Memorandum within ten days, and Defendants shall file their Answer within ten days thereafter.

BY THE COURT:

/s/ Michael M. Baylson
Michael M. Baylson, U.S.D.J.

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