

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KEVIN YOUNG and MARLENE YOUNG)	Case No: 2:21-cv-4155-JAS-EPD
10861 Seneca Lane,)	
Byesville, Ohio 43723,)	Judge Edmund A. Sargus, Jr.
)	
Plaintiffs,)	Magistrate Judge Elizabeth P. Deavers
)	
v.)	
)	SECOND AMENDED COMPLAINT
GUERNSEY POWER STATION LLC)	
565 5th Avenue, 29th Floor)	JURY DEMAND ENDORSED HEREON
New York, NY 10017)	
)	
and)	
)	
GEMMA POWER SYSTEMS LLC)	
769 Hebron Avenue)	
Glastonbury, CT 06033,)	
)	
Defendants.)	

Plaintiffs Kevin and Marlene Young, by and through undersigned Counsel, hereby file this Second Amended Complaint against Guernsey Power Station LLC (hereinafter “GPS LLC”) and Gemma Power Systems LLC (hereinafter “Gemma LLC”), and aver as follows:

I.

NATURE OF THE ACTION, JURISDICTION, AND VENUE

1. This is a civil action containing common law claims, which seeks damages and injunctive relief from Defendants for their activities, related to the construction of the Guernsey Power Station (hereinafter “GPS”), that have caused and continue to cause injuries to the Plaintiffs, including, *inter alia*, health impacts, devaluation of their property, and loss of use and enjoyment of their Property.

2. Plaintiffs are individuals who have suffered personal injury, damage to real property, damage to personal property, economic damages, and non-economic damages from Defendants' negligent and reckless conduct related to the construction of the Guernsey Power Station (hereinafter "GPS").
3. This action was originally filed in the Court of Common Pleas of Guernsey County, Ohio, pursuant to R.C. § 2305.01, which confers upon the Court of Common Pleas original jurisdiction over those cases not within the exclusive original jurisdiction of county courts, *i.e.*, those cases having an amount in controversy exceeding fifteen thousand dollars (\$15,000.00).
4. Defendant GPS LLC subsequently removed this action to the United States District Court for the Southern District of Ohio, Eastern Division, pursuant to 28 U.S.C. § 1332.

II.

PARTIES

5. Plaintiffs Kevin Young and Marlene Young own property and reside at 10861 Seneca Lane, Byesville, Ohio 43723, in Guernsey County, Ohio. This address is located within an approximately twenty-one (21) acre property which includes parcels 110003287000, 110003438002, 110003438003, 110003438005, 110003438006, 380002623000, and 380002624000 (hereinafter "the Property"). At all times material to this Complaint, the Youngs have owned and resided at the Property.
6. Defendant GPS LLC is limited liability company organized under the laws of Delaware, having a principal place of business at 565 5th Avenue, 29th Floor, New York, NY 10017, and the owner and eventual operator of GPS, a 1.875 gigawatt gas-fired power station currently under construction, directly adjacent to the Property.

7. Defendant Gemma Power Systems LLC (hereinafter “Gemma”) is a limited liability company organized under the laws of Connecticut, with a principal place of business at 769 Hebron Avenue, Glastonbury, CT, 06033, and the “engineering, procurement, and construction” contractor for Defendant GPS LLC for the GPS project.
8. Defendant GPS LLC holds almost all the Ohio Environmental Protection Agency-issued permits related to the construction and operation of GPS, while Gemma holds a permit related to the underground storage tanks it installed for its temporary GPS worksite trailer.

III.

FACTUAL ALLEGATIONS

A. Background

9. Plaintiffs have owned the Property since 1978 and have lived on the property for approximately twenty years.
10. Plaintiffs have made extensive improvements to the property during the years they have owned it, including, but not limited to, constructing their 1700 square foot home, building and filling their nearly 6000 square foot antique store and restaurant, increasing their acreage to approximately 21 acres through the purchase of adjacent tracts, constructing their 1500 square foot horse barn to raise horses, cultivating hayfields to feed the horses, and constructing their racetrack for training their racehorses.
11. Plaintiff Kevin Young invested five years and significant financial resources into getting licensed to train drive racehorses, and he was beginning to win races prior to the beginning of GPS construction activities.

12. Defendant GPS LLC began acquiring permits from Ohio Environmental Protection Agency related to the construction and operation of the Guernsey Power Station, which will be one of the largest natural gas power plants of its kind ever built, on or about September 2016.
13. Around the summer of 2019, Defendants began activities associated with the construction of GPS.
14. Throughout construction, Defendants' activities have caused numerous ongoing injuries to Plaintiffs, including, *inter alia*, exposure to airborne contaminants, causing permanent damage to Plaintiffs' health and property; injury to Plaintiffs' horses, both from airborne contaminants and from sudden, excessively loud noises; destruction of Plaintiffs' primary drinking water source, and health impacts from its contamination; contamination of Plaintiffs' fields, which previously provided fodder for their horses; flooding of Plaintiffs' property caused by diversion of water; subsidence and structural damage to Plaintiffs' home and other buildings on their property; stress and lack of sleep generated by light pollution and extreme noise, including explosions; harassment by individuals working at the construction site, and immense emotional stress and suffering caused by all of the above.

B. Trespass by Airborne Contaminants

15. Prior to Defendants' activities, air quality at the Property had never been a problem.
16. Beginning in the fall of 2019, because of Defendants' activities, Plaintiffs have been exposed to fugitive dust and noxious odors on a near-daily basis, including extended periods of continuous exposure to massive quantities of silica dust, widely known to cause silicosis and cancer.

17. Airborne silica dust was particularly extreme during the lengthy period during which the wetland across the railroad tracks from Plaintiffs' property was filled and land at the GPS site was raised twenty feet.
18. Dust conditions have been so extreme during these extended time periods that visibility has been dramatically reduced and the entirety of the Youngs' property, including their cultivated fields and the interiors of structures and vehicles on the property, has been coated in layers of the dust.
19. PM_{2.5} is currently routinely measured in the USEPA standard "Unhealthy" (55.5-150.4 $\mu\text{g}/\text{m}^3$) and "Very Unhealthy" (150.5-250.4 $\mu\text{g}/\text{m}^3$) ranges, and for many months beginning in late 2019, PM_{2.5} was measured to be "Hazardous" (250.5 $\mu\text{g}/\text{m}^3$ and above).
20. Plaintiffs have been and continue to be exposed to these airborne pollutants when traveling to and from their home, when spending time outdoors on their property, and while inside their home.
21. Exposure to airborne contaminants entering the Youngs' property from the GPS site has caused and continues to cause Plaintiff Kevin Young and Plaintiff Marlene Young negative health impacts.
22. As a result of exposure to this dust generated by GPS construction activities, both Plaintiff Kevin Young and Plaintiff Marlene Young have developed interstitial lung disease, a progressive and irreversible scarring of their lung tissue, negatively affecting their ability to breathe and to get adequate oxygen into their bloodstreams.

23. Plaintiffs are being monitored and treated for their symptoms. However, interstitial lung disease is irreversible, and it will negatively impact their ability to do everyday tasks for the remainder of their lives.
24. Additionally, Plaintiff Marlene Young was recently diagnosed with stage IV lung cancer, and her doctors have indicated that her exposure, on her own property, to the airborne contaminants generated by GPS may have been the trigger that caused the cancer's rapid growth.
25. In addition to these impacts, air pollution caused by activities at GPS has caused Plaintiffs to experience severe headaches, respiratory and nasal congestion, fatigue, and general malaise.
26. Air pollution caused by activities at GPS has also sickened Plaintiffs' horses, requiring ongoing daily breathing treatments and medication.
27. Airborne contaminants entering Plaintiffs' property from GPS activities have rendered worthless tens of thousands of dollars' worth of hay grown as fodder and have ruined the fields on the Property.
28. The dust entering the Property from the GPS site has caused extensive damage to Plaintiffs' collection of work and show vehicles, and it has coated and impregnated Plaintiffs' indoor personal property, including all the antiques from their antique store, and their furniture, appliances, and clothing.
29. All of Plaintiffs' personal property damaged by the dust from GPS activities has either been rendered worthless or requiring extensive restoration.

C. Destruction of Water Supply and Structural Damage

30. GPS construction has included a massive grouting project for purposes of stabilizing the abandoned mines that underly the property, involving the widespread underground injection of a fly ash and cement slurry.
31. Depending on its source, fly ash contains any number of hazardous contaminants, including, among many others, arsenic, mercury, hexavalent chromium, and lead.
32. GPS injection activities and explosions caused by the buildup of pressure during injection have severely compromised Plaintiffs' water supply, rendering it hazardous for human consumption and contact, and all but completely unusable for any purpose.
33. Shortly after the commencement of the mine stabilization project, Plaintiffs' private drinking water supply significantly dropped in pressure, acquired a strong odor, developed a rainbow sheen, and turned a milky consistency.
34. Until this point, which coincided with several underground explosions beneath the GPS site, Plaintiffs' well had supplied them with a more than sufficient supply of high-quality drinking water, without ever any issue whatsoever with quantity or quality.
35. Since contamination caused by GPS mine stabilization activities, the water at the Property is undrinkable, having caused Plaintiffs headaches, nausea, vomiting, and rashes, and Plaintiffs have been forced to purchase and haul their own water for daily use from offsite.
36. To date, Plaintiffs' well water remains highly contaminated with methane and other toxic contaminants.

37. In addition to the destruction of Plaintiffs' primary drinking water source, the mine stabilization project has also caused subsidence on the property and harmed the structural integrity of the Youngs' home.
38. Sinkholes have formed on the Property, structures have shifted extremely, and contaminated water has bubbled out of airshafts on the Property that are connected to the abandoned mines
39. In addition to structural impacts to the Property caused by GPS mine stabilization injection activities, GPS construction activities have caused prolonged and extreme vibrations which have additionally damaged Plaintiffs' home.
40. Vibrations caused by Defendants' compaction activities at the GPS site have rattled dishes, cracked drywall on all three floors of Plaintiffs' house, pulled cabinets away from the walls, cracked the porch, vibrated boards of Plaintiffs' fence, and have caused the front door of Plaintiffs' home to be unusable.

D. Diversion of Surface Water, Flooding, and Surface Water Contamination

41. Prior to Defendants' construction activities, Plaintiffs' property, unlike many other properties in the local area, had never experienced flooding, even during the historic flood of 1998, the largest in Guernsey County history, which flooded the town of Byesville but left Plaintiffs' property dry.
42. Construction activities at GPS, including the filling of significant areas of wetlands on the site, and Defendants' berm construction and six foot raising and widening of the road running along the railroad tracks between the GPS site and the Property, have contributed to directing water from the GPS site towards the Property.

43. Defendants have diverted surface water flow under the train tracks separating the GPS site from Plaintiffs' property and replaced the existing 12" culvert with a 36" culvert, leading to regular and destructive flooding of the Property.
44. While flooding caused by Defendants' activities have, to date, only damaged the back of Plaintiffs' land, it is apparent that it is only a matter of time before structures on the Property are damaged by flooding caused by Defendants' mismanagement of surface water at the GPS site.
45. In addition to the damage caused by the water itself, surface water leaving the GPS site and entering the Property carries contaminants such as fuel and oil which are being transported towards and onto the Property
46. Contaminants from the GPS slurry pit, which is being used to hold countless truckloads of hazardous materials, such as fly ash, cement, and other pollutants, are migrating with surface water flow onto the Property.
47. Plaintiffs are presently witnessing an unprecedented mass die-off of cats on and around the Property. Prior to their deaths, these cats have been observed to suddenly lose motor control, stumbling and unable to walk.
48. Whether this die-off is being caused by contaminated surface waters or other contaminants entering the Property from the GPS site, it is apparent that Defendants' actions are the root cause.

E. Further Nuisance and Harassment

49. Plaintiffs live in constant fear for their health and safety, and activities at GPS have caused and continue to cause Plaintiffs' exposure to numerous known and unknown toxins and health hazards.

50. This exposure has already caused them injury and sickness, and continued exposure bears increased risks of further harm to their health.
51. In addition to the nuisance of fugitive dust, groundwater contamination, subsurface destabilization, extreme vibration, flooding, and surface water contamination, Plaintiffs have suffered, and continue to suffer, the effects of noise and light pollution caused by Defendants' activities.
52. Plaintiffs have lost countless nights of sleep because of the incessant noise and bright lights generated by Defendant, and trains and trucks associated with GPS construction activities emit noise and fumes for extended periods directly adjacent to Plaintiffs' home.
53. Plaintiffs and their friends and relatives have experienced regular harassment by workers and unknown individuals associated with Defendants' activities at the GPS site.

IV.

PLAINTIFFS' CLAIMS AGAINST DEFENDANTS

Count One – Private Nuisance

54. Plaintiffs repeat, re-allege, and incorporate by reference all above allegations.
55. The fugitive dust, fumes, contaminated groundwater, contaminated runoff, vibration, and light pollution generated by Defendants' activities at the GPS site cause, and will continue to cause, injury to Plaintiffs, in that their health and property have been, and continue to be, damaged.
56. The fugitive dust, fumes, contaminated groundwater, contaminated runoff, vibration, noise, and light pollution generated by Defendants' activities at the GPS site have impaired, and continue to impair, Plaintiffs' private right to use and enjoyment of their Property.

57. The fugitive dust, fumes, contaminated groundwater, contaminated runoff, vibration, and light pollution generated by Defendants' activities at the GPS site constitute a nuisance and an unreasonable interference with the rights of Plaintiffs.
58. Plaintiffs have repeatedly given notice to Defendants of the serious negative impacts of the GPS construction activities and requested that mitigating measures be instituted, but Defendants have continued and threaten to continue to maintain the nuisance.
59. The actions of the Defendants described above have caused Plaintiffs' health impacts, loss of use of and enjoyment of the Property, diminution in value of the Property, costs, annoyance, discomfort, and inconvenience resulting in damages in an amount in excess of \$15,000.

Count Two – Public Nuisance

60. Plaintiffs repeat, re-allege, and incorporate by reference all above allegations.
61. The fugitive dust, fumes, contaminated groundwater, contaminated runoff, vibration, and light pollution generated by Defendants' activities at the GPS site endanger the health, safety, and welfare of the public and cause unreasonable injury and damage to property, therefore constituting a public nuisance.
62. Defendants' release or emission into the open air of dust and fumes generated by Defendants' activities at the GPS site endanger the health, safety, and welfare of the public and cause unreasonable injury and damage to property, thereby violating Ohio Adm. Code 3745-15-07¹ and constituting a public nuisance *per se*.

¹ (A) The emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

63. Because of the proximity of the Property to the GPS site, the harms suffered by Plaintiffs from the public nuisance generated by Defendants' activities are of a different kind and severity than those suffered by the general public.
64. The fugitive dust, fumes, contaminated groundwater, contaminated runoff, vibration, noise, and light pollution generated by Defendants' activities at the GPS site have harmed, and continued to harm, Plaintiffs' health and property.
65. Plaintiffs have repeatedly given notice to Defendants of the serious negative impacts of the GPS construction activities and requested that mitigating measures be instituted, but Defendants have continued and threatens to continue to maintain the nuisance.
66. The actions of the Defendants described above have caused Plaintiffs' health impacts, loss of use of and enjoyment of the Property, diminution in value of the Property, costs, annoyance, discomfort, and inconvenience resulting in damages in an amount in excess of \$15,000.

Count Three – Trespass

67. Plaintiffs repeat, re-allege, and incorporate by reference all above allegations.
68. At all times relevant herein Plaintiffs had exclusive ownership and possession of the Property.
69. Defendants have conducted activities associated with GPS construction in such manner as to cause dust, fumes, contaminated groundwater, and contaminated runoff to enter onto Plaintiffs' Property, without Plaintiffs' consent and against Plaintiffs' will.

(B) The emission or escape into the open air from any source or sources of odors whatsoever that is subject to regulation under Chapter 3745-17, 3745-18, 3745-21, or 3745-31 of the Administrative Code and is operated in such a manner to emit such amounts of odor as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

Ohio Adm. Code 3745-15-07.

70. Such entry of dust, fumes, contaminated groundwater, and contaminated runoff constituted, and continues to constitute, a trespass on Plaintiffs' Property by Defendants.
71. By such entry Defendants interfered, and continue to interfere, with the rights of Plaintiffs.
72. The actions of the Defendants described above have proximately caused Plaintiffs damages in an amount in excess of \$15,000.

Count Four - Negligence

73. Plaintiffs repeat, re-allege, and incorporate by reference all above allegations.
74. Defendants owed and owe a duty of care to the Plaintiffs to construct, own, operate, control, and maintain the GPS site and GPS so as to not cause injury to the Plaintiffs and their Property.
75. Defendants negligently and recklessly conducted their operations and maintained abnormally dangerous conditions at the GPS site, and in so doing, caused excessive dust, fumes, contaminated groundwater, contaminated runoff, vibration, noise, and light pollution to enter Plaintiffs' Property.
76. Defendants' negligent and reckless activities additionally resulted in the destruction of Plaintiffs' drinking water source and the subsurface destabilization of the Property.
77. As a direct and proximate result of Defendants' negligence, recklessness, and maintenance of abnormally dangerous conditions, Plaintiffs, Plaintiffs' Property, and their use of the Property have been injured and damaged in an amount in excess of \$15,000.
78. Defendants have been aware, and continue to be aware, of the injuries they have caused, and continue to cause, to Plaintiffs.

79. Defendants' conduct constitutes a conscious disregard for the rights and safety of other persons which has a great probability of causing substantial harm, and has, in fact, caused substantial harm to Plaintiffs, thereby entitling Plaintiffs to an award of punitive damages.

Count Five – Negligent Infliction of Emotional Distress

80. Plaintiffs repeat, re-allege, and incorporate by reference all above allegations.

81. Impacts to Plaintiffs' health and property caused by Defendants' actions have caused and continue to cause Plaintiffs serious emotional injuries.

82. As a direct, proximate, natural, and reasonably foreseeable result of the acts set out above and of Defendants' negligence, Plaintiffs have suffered and continue to suffer severe emotional distress.

83. The actions of the Defendants described above have proximately caused Plaintiffs damages in an amount in excess of \$15,000.

Count Six – Loss of Consortium

84. Plaintiffs repeat, re-allege, and incorporate by reference all above allegations.

85. As a direct and proximate result of acts set out above and of Defendants' negligence, Plaintiff Kevin Young has suffered and will continue to suffer loss of the care, companionship, consortium, services, and society of his wife, Marlene Young.

86. The actions of the Defendants described above have proximately caused Plaintiffs damages in an amount in excess of \$15,000.

V.

PRAYER FOR RELIEF

WHEREFORE, based on the above allegations, the Plaintiffs seek the following relief:

- a. Injunctive and declaratory judgment that Defendants mitigate the dust, fumes, contaminated groundwater, contaminated surface runoff, vibrations, light pollution, and noise impacting Plaintiffs and their Property;
- b. Compensation for all harms suffered by Plaintiffs, in an amount to be determined at trial;
- c. The award of punitive damages for all harms suffered by Plaintiffs, in an amount to be determined at trial;
- d. Compensation for Plaintiffs' inconvenience and discomfort;
- e. Compensation for Plaintiffs' mental and emotional distress;
- f. Compensation for Plaintiffs' loss of consortium;
- g. Any further relief to which Plaintiffs are entitled;
- h. Any further relief that the Court may deem just and fair.

Respectfully submitted,

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