

LIBERTY LITIGATION SETTLEMENT

The Liberty Industrial Site, located at 55 Motor Avenue, Farmingdale, New York (“Liberty Site”) was declared a Federal Superfund Site under CERCLA by the U.S. Environmental Protection Agency (“EPA”) in the 1980’s. The Massapequa Water District (“MWD”) and the South Farmingdale Water District (“SFWD”) are Commissioner Elected Water Districts (“Districts”) serving a combined population of approximately 70,000 consumers and both Districts draw their water supply from the same sole source aquifer. The problem arose in that both Districts are located south of the Liberty Site down gradient from the plume of pollution emanating from that site.

Since the mid 1990s, the Districts have consistently and repeatedly voiced their concerns regarding the potential impact of pollution from the Liberty Site on the Long Island aquifers in general and their own municipal well sites in particular and those concerns were expressed to the EPA, DEC and appropriate State and Federal officials. The Districts also received several reports from consultants as well as the County of Nassau advising that the Liberty plume could potentially impact their well fields. Eventually, the New York State Department of Health joined with the District’s consultants in recommending that the Liberty Plume be monitored with sentinel wells at the northern end of the South Farmingdale Water District and the Districts were able to convince the EPA that the “potentially responsible parties” charged with the creation of the Liberty Plume, including the U.S. Government, should install four monitoring wells at their cost and expense (two shallow and two intermediate).

The Districts were ultimately unable to persuade the EPA to compel the PRP’s to install deep monitoring wells in the Magothy aquifer therefore after due deliberation, the two Districts decided to form a cooperative agreement to install two deep monitoring wells and also agreed to cooperate in the periodic sampling of the deep monitoring wells as an early warning system to detect incursion of the Liberty Plume into their well fields.

The Districts resolved to pursue federal litigation against the PRP’s under CERCLA to recoup their construction costs as well as the costs for its consultants to participate in the EPA’s Technical Advisory Committee (“TAC”) which provided advice and expertise on the clean-up activities of the PRP’s.

After extended negotiations with the Potentially Responsible Parties (PRP’s) and federal government, the District, through the efforts of its legal counsel, has achieved an acceptable settlement with the PRP’s that most importantly includes requisite language in the settlement agreement which protects the District’s interests in the event of future contamination from the Liberty site contaminant plume .