



April 19, 2017

Anderson Hartzell, Acting Regional Director
Pennsylvania Department of Environmental Protection
2 E. Main St.
Norristown, PA 19401

Re: Bishop Tube Site, East Whiteland Township, Chester County, PA

Dear Acting Director Hartzell,

I write with a number of concerns about the Pennsylvania Department of Environmental Protection's (PADEP) approach to the proposed development of the Bishop Tube Site in East Whiteland Township, Chester County, PA. The Delaware Riverkeeper Network has been meeting with a growing number of residents who are increasingly concerned about the project and the failure of decisionmakers to hear their concerns and their goals for the site.

Community Goals – Full Cleanup and Public Open Space

Those with whom we have been meeting would like to see the entire site – including saturated soils, unsaturated soils, groundwater, releases to air – fully cleaned up to the highest standards that will protect direct contact and turned into public open space for the community.

There is not community support for the granting of up to \$1 million of state grant funds to a private developer only to accomplish a partial remediation that supports maximum development of the site for residential development, which will bring more families to an area of known and dangerous contamination and will result in the loss of wooded open space that is valued by the surrounding community. This is particularly so given the lack of a plan for ensuring full cleanup of the site by a date and time certain for the protection and benefit of the community.

Holding the Responsible Parties Fully, Including Financially, Accountable, Rather Than Supporting a Private Developer with Public Funds. If DEP Can't Do It, EPA Should

The Delaware Riverkeeper Network and the community with whom we are working cannot understand why PADEP has spent so much time and resources on trying to advance development of this site with a private developer who will only be undertaking partial remediation if, and only if (as we understand it), they get a significant (we understand \$1 million) grant of state funds to carry out this work, knowing the developer will be securing a likely significant profit from the site's sale. Why has DEP not spent the past ten years investing its time and resources, just as firmly, diligently, and passionately pursuing the responsible

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parties, thereby ensuring full cleanup of the site at their expense, not at the public's expense. The identified responsible parties have significant financial resources to undertake this work.

According to documents on the record, the PRPs for this site include Johnson Matthey and the Whitaker Corporation. Johnson Matthey on its own is financially equipped to address the contamination at this site.

If DEP is unable to accomplish the job of securing full cleanup of the site, it should reach out to the EPA and urge that the site be placed on the National Priority List of the Superfund Program.

PPA – Full Public Comment Period Should be Provided

The PADEP published a 60 day public comment period on the prospective purchaser agreement for the site in the PA Bulletin on April 1, providing two phone numbers to contact in order to secure the ability to review the document at issue. Three members of the Delaware Riverkeeper Network staff repeatedly reached out over the course of the week after publication to secure access to a copy of the document for review. We placed phone calls, emails and even had a staff member at the PADEP Southeast Regional office who was willing and able to pick up the document had there been any responsive communication. Unfortunately, as documented in our letter of April 6, our outreach was ignored by PADEP staff. It was only on April 7, after my placing a number of firm phone calls and documenting this failing for the record that the Delaware Riverkeeper Network finally secured a copy of the document.

Given that our inability to secure a copy of the PPA document for review was the result of PADEP ignoring our multiple efforts, we request that the public comment period be extended by a full 7 days to ensure we have been provided a full 60 day period to review and comment on the document.

Assertions by Constitution Drive Partners to the Community That Need Information or Clarification.

Brian O'Neill sent a letter to many in the community making a number of assertions which PADEP needs to address, deny or confirm.

Investment in the site?

Mr. O'Neill asserts that he intends to "spend millions of dollars" to clean up contamination from the site. Yet, from a communication between Mr. O'Neill's legal counsel and DEP dated June 24, 2016, it is asserted that the limit of CDP's commitment to remediate the site is \$1.5 million, with \$1 million of that being in the form of a grant from the State and only \$500,000 being from CDP itself. Anything above the \$500k commitment from CDP would have to be provided by other parties (their emails suggests perhaps the "PRPs?")...

It is my understanding that Mr. O'Neill is supposed to be documenting with the PADEP the amount of investment he is making in the site. Given that Mr. O'Neill asserts to the public he is spending "millions" on the site, while he is telling PADEP he will spend no more than \$500,000, it is important to understand the truth of the matter. Can you please provide the information that fully documents any and all investment Mr. O'Neill has made or intends to make in this site.

Mr. O'Neill's letter tries to blunt the community concern that he is seeking \$1 million of public monies to fund the remediation portion of his private development venture by asserting that if

the state had to clean up the site with HSCA funds that they too would be using public dollars. Of course, that ignores the fact that a state cleanup could result in a healthy, safe and beautiful community park, while Mr. O'Neill's proposal would result in a site still plagued by significant contamination in the saturated zone and groundwater, would take from the community the natural woodlands it enjoys, and would result in a high level of impervious surfaces that would have serious adverse stormwater consequences for the creek.

At this point I would like to inquire about – and confirm – the outcome of the conversations about the developer's desire to include demolition of the buildings at the site as part of the scope of work covered by the state ISRP grant being sought. According to an email exchange from the developer's attorney, Jonathan Spergel, to PADEP officials:

“As you know, we are trying to see if we can include building demo within the approved PADEP scope; DCED would approve this, but as Dustin communicated to Guy today, PADEP would not want this included if it meant that the rest of the planned remedial activities could not be funded. “

I would like to inquire about the additional testing done by Roux to:

- “Further characterize soil conditions in the northeast corner of the Property; and
- Respond to DEP's comments regarding an undiscovered residual source area associated with the northeast corner of the Property.”

What was the outcome of this testing? Did it include the unsaturated soils that are proposed for development but not remediation in the current development proposal?

DEP unable to enforce against PRPs?

Mr. O'Neill's letter asserts that PADEP is ill equipped to hold the PRPs accountable for addressing contamination at this site.

- “The companies responsible for this contamination have been ‘ducking’ East Whiteland ... and the DEP for over 40 years.”
- “DEP has been unable to force these companies to take remedial action.”

If this is in fact the case, it undermines assertions that the proposed partial cleanup and development is part of an effort that will ultimately result in a safe environment for present and new residents....

- If, as Mr. O'Neill suggests, PADEP is in fact unable to secure full remediation of the saturated zone and highly contaminated groundwater, then how can the community (including the new residents from the new development) have confidence that they will not continue to be exposed to contamination coming off of this site in either the near term or the long term?
- And doesn't this also mean that with only a partial remediation and construction of 228 homes on the site, PADEP and Mr. O'Neill would knowingly be bringing new residents, families and children to a site that is underlain, and bordered (in the form of a Little Valley creek that is receiving ongoing contamination from the site's groundwater) by serious contamination, including toxins as dangerous as TCE, that

they do not expect to be cleaned up in full any time soon, and also would be knowingly supporting a situation of ongoing contamination to exceptional value streams?

PADEP must either make the commitment necessary to hold the responsible parties fully accountable and secure full cleanup at their expense, or acknowledge its inability to do so and seek assistance from the EPA Superfund program. To map out a plan for only partial cleanup in order to accommodate a development project that will expose new families to an ongoing hazard for which you are unable to confirm how, when or to what degree the contamination will ultimately be addressed in full is inexcusable.

If PADEP is going to take the position that Mr. O'Neill is wrong and that it has been diligently and effectively pursuing the responsible parties and can identify how, when and to what degree it will secure full cleanup of the site, then a full report of your efforts is needed. If in fact, Mr. O'Neill's assertions are correct and PADEP is unable to bring the responsible parties to the cleanup table then, also, a full accounting of your efforts is warranted as well as an effort to secure National Priority List status for the project under the federal superfund program.

In his attack on a local resident, as well as myself, Mr. O'Neill asserts that this project has not been identified by the federal Superfund program as a site of concern. In fact, documents on EPA's website belie that assertion. See attached.

Development is necessary to ensure proper cleanup of the site?

In many ominous ways, Mr. O'Neill suggests that without his development project the Bishop Tube site will not be properly cleaned up, near term or long term, and as a result the community will continue to be exposed to the hazards found at the site. But this is simply not the case.

Mr. O'Neill's letter asserts:

- "Unless CDP redevelops the Site, these dilapidated structures will remain at the property for the foreseeable future. Any future remediation by PADEP or the PRPs under HSCA would likely not result in the demolition of these dilapidated structures."
- "...the proposed soil remediation through excavation and off-site disposal may NEVER take place if the redevelopment does not occur."
- "...it is inaccurate and counterproductive to argue that waiting for PADEP or the PRPs to remediate the site under the HSCA process will be better for the environment, Little Valley Creek and East Whiteland Township. To the contrary, not only will this path result in significant delay (likely additional years) in the remediation of contaminated soil at the site, this path will likely result in a HSCA remedy that will call for contaminated soils to REMAIN at the site forever."

And while failing to acknowledge that he is himself seeking state funds to provide only a partial cleanup that will knowingly leave contamination at the site, including in groundwater and the saturated zone with pathways for ongoing contamination to enter Little Valley Creek and the environment, Mr. O'Neill asserts:

- “During this delay, these contaminated soils will continue to contribute to the contamination of groundwater at the site, as well as the contamination of Little Valley Creek ...”

The assertions that without Mr. O’Neill’s development project the community cannot expect the government to ensure full cleanup of this highly contaminated site is patently false. It would only be through an abject failure of the agencies to fulfill their legal obligations to the community and the environment that this would be the case. In fact, assuming PADEP and/or EPA do their jobs properly; the community can and should expect a clean and safe site within their community.

Importantly, if the agencies were to hold the responsible parties fully accountable, not only would the site be fully cleaned up, but it would be done at the expense of the responsible parties, not through government grant.

And, as stated in an email exchange from PADEP representative Ragesh Patel:
“The site has to meet Act 2 standards at the end of the remediation, regardless of who performs the work including the responsible party, developer or the HSCA Program. “

Strictly Voluntary?

In his letter to residents Mr. O’Neill repeatedly states that his remediation efforts at the site are purely voluntary, and that he has no obligation to undertake them. Mr. O’Neill asserts that “CDP has already satisfied ALL of its remedial obligations under a consent order and agreement that CDP entered into with the PADEP prior to purchasing the site in 2005, CDP has NO LEGAL OBLIGATION at all to clean up any remaining contamination at the site.”

Of course, he neglects to recognize that if he wants to build on the site, he does in fact have to undertake remedial action. And he certainly has to undertake remediation work if he expects to receive the \$1 million grant he is seeking. The question is—how much? And it appears that, until recently, PADEP continued to express significant concerns and voice the need for greater intervention. More recently, however, the Department seems to be taking a much lighter stance with regards to the proposed project.

With regards to fulfilling his obligations under the PPA ... that is yet to be determined. The Delaware Riverkeeper Network will be carefully reviewing the PPA document, the requirements it does (or does not) contain, and CDP’s compliance therewith.

It is irrelevant that Mr. O’Neill is not legally responsible for the contamination as he continually complains. The fact is he bought the site knowing it was highly contaminated and that if he wanted to build there it would require significant action, activity and investment. He also knew that there was always the risk that, at the end of the day, he may not be allowed to undertake the work he desires in the manner and to the limited degree with the limited investment that he was willing to undertake. This was a business decision and a business risk.

Stormwater Management and Tree Cutting

While Mr. O’Neill recognizes that he will need a stormwater management permit to build on the site, we are unaware of any permit application being placed before PADEP that would give the community a full understanding of what is being proposed. At a public meeting Mr. O’Neill talked about a discharge to the Little Valley Creek. The increased volume of discharge that could be

dumped into Little Valley Creek, as proposed by Mr. O'Neill in his public statements, and the downstream ramifications, are significant given the density of development, the level of tree removal and the level of impervious surfaces being proposed. There is also a request in writing from Mr. O'Neill to PADEP that he be allowed relief from stream buffer mandates.

Can you please confirm whether or not PADEP is engaged in review of a stormwater permit application for this site and to what degree it has agreed to provide relief from stream buffer mandates?

Mr. O'Neill's assertion that this is not a "greenfield", fails to recognize the ecological and community value of the woodland located at the site, and of the pollution prevention, stormwater management, ecological habitat, property value enhancement, and noise and light buffering those trees provide. That portion of the property is very green, and loss of the woodlands would have a profound impact on the community and the environment – an impact they are not willing or wanting to bear.

Attacking Residents - a Concern

I conclude by observing that not only does Mr. O'Neill's letter provide misleading information, and at times make some oddly extreme representations with red lettering, capital letter callouts and a harsh tone, but the letter also makes a point of attacking an East Whiteland Township resident for sharing with her neighbors her concerns. His attacks on me are silly but not surprising. His attacks on Carla Zambelli are inappropriate, harsh, and frankly his underlying premise for the attacks on either of us is flat out wrong. I do not think that PADEP should continue to ally itself with such abusive tactics represented in this letter and in harsh public statements blasted out at the community when they try to communicate their concerns and opposition to his plans.

Respectfully for the Record,



Maya K. van Rossum
the Delaware Riverkeeper

Cc:

Secretary Patrick McDonnell, PADEP
Senator Andy Dinniman
Senator Daylin Leach
Representative Duane Milne
EPA Region III
Secretary Dennis Davin, DCED

Superfund Site Information

BISHOP TUBE CO (EPA ID: PAD081868309)

Site Information

[Site Info](#) | [Aliases](#) | [Operable Units](#) | [Contaminants](#) | [Contacts](#)
[Administrative Records](#) | [Special Collection Documents](#)

Site Name: BISHOP TUBE CO
Street: RTE 30 & MALIN RD
City / State / ZIP: FRAZER, PA 19355
NPL Status: Not on the NPL
Non-NPL Status: Other Cleanup Activity: State-Lead Cleanup
EPA ID: PAD081868309
EPA Region: 03
County: CHESTER
Latitude: +40.116667
Longitude: -075.541667
Federal Facility Flag: Not a Federal Facility

[Return to Search Results](#)

[Return to Search Superfund Site Information](#)

Superfund Site Search Results

Disclaimer:

The CERCLIS Public Access Database, which contained a selected set of publicly releasable Superfund program data, has been retired. The EPA is transitioning to the Superfund Enterprise Management System, or SEMS. SEMS includes the same data and content as CERCLIS. As SEMS is made operational, nightly data refresh routines will be reestablished. This webpage will be updated to reflect the status of data updates.

Search Results

Search Criteria:

Active vs. Archived: *Active* [What are active and archived sites?](#)
 Site Name: *BISHOP TUBE*
 State(s): *Pennsylvania*
 Region(s): *03*

Found **1** site(s) that match your search criteria listed above.
 To conduct another search, return to the **[Search Superfund Site Information](#)** page.
[Save results in Excel format](#)

Displaying sites 1 through 1

EPA ID	Site Name	City	County	ST	Non-NPL Status	Non-NPL Status Date	NPL Status
PAD081868309	<u>BISHOP TUBE CO</u>	FRAZER	CHESTER	PA	OS	07/18/2002	Not NPL

Displaying sites 1 through 1