



**For Immediate Release**

July 7, 2017

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**PA Office of Open Records Determines PA DEP  
Improperly Withheld Information from  
In Response to Right To Know Request re Bishop Tube Site.**

***East Whiteland/Malvern, Chester County, PA:*** On July 5, 2017 the Delaware Riverkeeper Network received a favorable decision from Pennsylvania's Office of Open Records (OOR), who found that the Pennsylvania Department of Environmental Protection (PADEP) improperly withheld public records regarding the Bishop Tube site in East Whiteland/Malvern, PA.

The Delaware Riverkeeper Network submitted two Right to Know Requests to PADEP on February 23, 2017, and PADEP denied access to all responsive records, citing the internal predecisional deliberation exemption, the attorney-client privilege and the attorney work-product doctrine. In response to an appeal filed on April 20 by the Delaware Riverkeeper Network, the OOR found that PADEP failed to prove the relevant records were subject to the attorney-client privilege and the attorney work-product doctrine, stating: "the mere fact that an individual is a licensed attorney does not make communications with that individual subject to the attorney-client privilege."

Further, the OOR found that some of the records improperly withheld by PADEP under the internal predecisional deliberation exemption were not even internal documents. The OOR ordered the release of the nonexempt documents.

In additional news, in a letter dated June 25, 2017, Senator Andy Dinniman wrote the Pennsylvania Department of Community and Economic Development withdrawing his support for an Industrial Sites Reuse Program grant in the face of new information regarding the Bishop Tube site.

The Bishop Tube Site is a former metals processing plant located in East Whiteland Township, PA. The site is bordered by Little Valley Creek, a tributary to the exceptional value Valley

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Creek. Significant portions of the area proposed for development are wooded. As a result of the historic uses at the site it has been designated as a Brownfields site by the state of Pennsylvania. In addition, the US Environmental Protection Agency has included the Bishop Tube site on its website page of identified superfund sites, making note that the state is supposed to be taking the lead on securing site clean-up.

Brian O'Neill and Constitution Drive Partners are proposing a 228 unit residential development, including townhomes. The proposal includes securing a \$1 million grant from the state to help pay for a partial clean up of the site with additional clean up to come at some undetermined time in the future. It is this \$1 million grant referenced by Senator Dinniman's letter.

The Delaware Riverkeeper Network believes the known responsible parties for the site should be held fully accountable for full clean up of the site before it is placed into public use, and that the state, the county and the township should honor the goals of residents that the site be turned over to the community as public open space.

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# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

<b>IN THE MATTER OF</b>	:	
	:	
<b>MAYA VAN ROSSUM AND THE</b>	:	
<b>DELAWARE RIVERKEEPER NETWORK,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP: 2017-0760</b>
	:	
<b>PENNSYLVANIA DEPARTMENT OF</b>	:	
<b>ENVIRONMENTAL PROTECTION,</b>	:	
<b>Respondent</b>	:	

### INTRODUCTION

Maya van Rossum, on behalf of Delaware Riverkeeper Network, (collectively, the “Requester”) submitted two requests (“Requests”) to the Pennsylvania Department of Environmental Protection (“Department” or “DEP”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking communications related to the Bishop Tube site in Malvern, Pennsylvania—the former location of a stainless-steel tube manufacturer. The Department denied the Request, arguing, that the records are privileged and reflect internal, predecisional deliberations. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**, and the Department is required to take further action as directed.

## FACTUAL BACKGROUND

On February 23, 2017, the Requests were filed, seeking:

- [1. T]he following records related to the facility located at 1 Main Road, Malvern, PA (“Bishop Tube site”) limited from June 15, 2016 to present:

Any communications, emails, and/or notes of meetings, to, from, BCC’ing, and/or CC’ing, Dustin Armstrong, Ragesh Patel, and/or John Stefanko, regarding the site.

- [2. T]he following records related to the facility located at 1 Main Road, Malvern, PA (“Bishop Tube site”) limited from June 15, 2016 to present:

Any communications, emails, and/or notes of meetings, to, from, BCC’ing, and/or CC’ing, Andy Hartzell, George Hartenstein, and or Troy Conrad, regarding the site.

On March 30, 2017, after extending the response period, 65 P.S. § 67.902, the Department denied the Requests, claiming that the responsive records reflect its internal, predecisional deliberations, 65 P.S. § 67.708(b)(10), and are protected by the attorney-client privilege.<sup>1</sup>

On April 20, 2017, the Requester appealed to the OOR, challenging the Department’s denials and stating grounds for disclosure.<sup>2</sup> The Requester also claimed that the Department failed to release any public information contained in the withheld records; failed to provide a privilege log with its response; and that, by issuing separate responses from its Central Office and its Regional Office, the Department did not comply with RTKL. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c). The Department did not indicate that it notified any third parties of the pendency of this appeal, and the OOR has not received any requests to participate.

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<sup>1</sup> While the Department’s Central Office and one of its Regional Offices provided separate responses to the Requests, the Requester only provided the Central Office’s responses with its appeals.

<sup>2</sup> These appeals were docketed as separate appeals at OOR Dkts. AP 2017-0760 and AP 2017-0761. As the appeals involve the same records, or a subset of those records, they were consolidated into OOR Dkt. AP 2017-0760.

On May 2, 2017, the Department filed a position statement reiterating the grounds for denial cited in its response, as well as claiming that the responsive records were protected under the attorney-work product doctrine.<sup>3</sup> The Department also claimed that it is not required to release redacted records under Section 506 of the RTKL. In support of its position, the Department submitted the affidavits of George Harenstein, the Department's Acting Deputy Secretary of the Office of Waste, Air, Radiation and Remediation, and Dawn Schaefer, the Department's Open Records Officer.

On May 5, 2017, the Requester filed a supplemental position statement contesting the sufficiency of the affidavits relied upon by the Department to meet its burden of proof. Specifically, the Requester claimed that the records contain factual information subject to access and that the recipients identified in the supporting affidavits did not include a recipient acting in the capacity as an attorney—specifically, Anderson Hartzell, the Acting Regional Director.<sup>4</sup>

On June 6, 2017, the OOR ordered the Department to submit the withheld records for *in camera* review and to address the arguments raised by the Requester in its May 5, 2017 submission. On June 19, 2017, the Department submitted copies of the responsive records for *in camera* review, along with a corresponding Inspection Index. The Department also provided additional evidence in support of its previously raised grounds for denial, claiming that the factual portion of the withheld e-mails could not be separated from the deliberative portions of the withheld records and e-mails sent or received from Anderson Hartzell, the Acting Regional Director, are privileged

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<sup>3</sup> The Department is permitted to assert this new reason for denying access to records on appeal to the OOR. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

<sup>4</sup> On May 2, 2017, the Department objected to the OOR's consideration of the Requester's supplemental submission as it was received after the record had closed. If the Requester's supplemental submission was accepted into the record, the Department requested the opportunity to respond. On June 6, 2017, the OOR accepted the Requester's submission into the record and granted the Department's request to respond. *See* 65 P.S. § 1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

because the information conveyed included his mental impressions that were “received, known, and processed” during his time as Regional Counsel.

### LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the OOR conducted an *in camera* review of withheld records, and the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The Department is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial

order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

**1. The Department proved that certain Items are records of internal, predecisional deliberations**

The Department claims that certain records were withheld because they reflect the Department’s internal, predecisional deliberations. Section 708(b)(10)(i)(A) exempts from public disclosure a record that reflects:

[t]he internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, ... or course of action or any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 67.708(b)(10)(i)(A). In order for this exemption to apply, three elements must be satisfied: 1) “The records must ... be ‘internal’ to a governmental agency,” *Carey*, 61 A.3d at 379; 2) the deliberations reflected must be predecisional, *i.e.*, before a decision on an action; and 3) the

contents must be deliberative in character, *i.e.*, pertaining to proposed action. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011); *Martin v. Warren City Sch. Dist.*, OOR Dkt. AP 2010-0251, 2010 PA O.O.R.D. LEXIS 285; *Sansoni v. Pa. Hous. Fin. Auth.*, OOR Dkt. AP 2010-0405, 2010 PA O.O.R.D. LEXIS 375.

To establish that records are deliberative, an agency must show that the information relates to the deliberation of a particular decision. *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 378-88 (Pa. Commw. Ct. 2014). The term “deliberation” is generally defined as “[t]he act of carefully considering issues and options before making a decision or taking some action....” BLACK’S LAW DICTIONARY 492 (9th ed. 2009); *see also Heintzelman v. Pa. Dep't of Cmty. & Econ. Dev.*, OOR Dkt. AP 2014-0061, 2014 PA O.O.R.D. LEXIS 254, *aff'd* No. 512 C.D. 2014, 2014 Pa. Commw. Unpub. LEXIS 644 (Pa. Commw. Ct. 2014).

In his May 1, 2017 affidavit, Mr. Hartenstein attests, in pertinent part, that:

14. These records contain the internal, predecisional, deliberations of DEP employees and potential recommendations of future remediation for the Bishop Tube site.
15. DEP’s internal, predecisional, deliberative records pertaining to the Bishop Tube site include myself and the [seven other] DEP personnel[.]
16. Withheld records for this RTKL exception did not include any other individuals.<sup>5]</sup>
17. The issues being deliberated among DEP personnel in the records withheld include the following:
  - The history of the Bishop Tube site and its impact on recommendations for deliberation regarding future remediation of the site; The legal applicability of the Land Recycling and Environmental Standards Act (Act 2), 35 P.S. §§ 6026.101-6026.908, to the Bishop Tube site;

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<sup>5</sup> *In camera* review of the withheld records reveals that there were several additional Department employees included in the withheld e-mail discussions—Bonnie McClellan, Solid Waste Supervisor, Richard Slaron, a Department Geologist; and Dustin Armstrong, Environmental Specialist. In addition, some correspondence included senders and recipients that were not Department employees.



- The adequacy of Constitution Drive Partners, LLC's soil remediation work plan;
  - Recommendations for deliberation regarding the need for DEP executive staff involvement with the Bishop Tube site;
  - The potential impact of federal litigation updates on remediation of the Bishop Tube site.
18. Records of, or reflecting, DEP's deliberations were emails among the named individuals in paragraph 15 above.
19. The withheld records ... contain no final decisions of DEP or purely factual information.

Based on an *in camera* review, the records or parts of records set forth below may be withheld from disclosure pursuant to Section 708(b)(10)(i)(A) of the RTKL:

- E-mail dated January 25, 2017 at 6:23 PM (Bates No. 001-003): Bates No. 002, second paragraph, line 5 following the comma until the end of the paragraph; Bates No. 003, the first full sentence at the top of the page, the first full paragraph beginning with the second word of line 5 until the end of that paragraph, and the second sentence of the third full paragraph.
- E-mail dated January 25, 2017 at 4:49 PM (Bates No. 003-004): Bates No. 004, the last sentence of the third paragraph.
- E-mail dated January 25, 2017 at 4:27 PM (Bates No. 004): The entire body of the e-mail
- E-mail dated January 25, 2017 at 11:26 AM (Bates No. 005): The first two lines of the body of the e-mail.
- E-mail dated January 25, 2017 at 10:01 AM (Bates No. 007-008): The entire body of the e-mail.
- E-mail dated January 20, 2017 at 1:21 PM (Bates No. 008-009): The entire body of the e-mail.
- E-mail dated January 17, 2017 at 3:12 PM (Bates No. 010-011): The entire body of the e-mail.

These portions of the records consist of internal communications between Department employees and are predecisional as the records reflect the Department's decision-making process in relation

to the remediation process at the Bishop Tube Site—including soil remediation work plans and the need for Department executive staff involvement with the Bishop Tube Site. *See Pa. Dep't of Corr. v. Fiorillo*, No. 1043 C.D. 2016, 2017 Pa. Commw. Unpub. LEXIS 305 (Pa. Commw. Ct. May 1, 2017) (noting that the application of Section 708(b)(10) is fact-specific and an agency's approach to handling individual issues can be dependent on the overarching course of action related to larger policy decisions). Likewise, the communications are deliberative in nature as they reflect discussions and recommendations exchanged between Department employees and officials regarding the Department's involvement in various aspects of the Bishop Tube Site remediation efforts. Accordingly, the records or parts of records set forth above are exempt from disclosure under Section 708(b)(10)(i)(A). *See, e.g., Bongivengo v. Slippery Rock Univ. of Pa.*, OOR Dkt. AP 2012-1969, 2012 PA O.O.R.D. LEXIS 1472. Thus, those records may be withheld or redacted. *See* 65 P.S. § 67.706.

The remainder of the records claimed to be exempt under Section 708(b)(10)(i)(A) consist of records that are not internal to the Department—an E-mail dated January 16, 2017 at 10:41 PM (Bates No. 011-012) and the Letter dated January 28, 2014 (Bates No. 013-014)—or are not deliberative of any particular Department decision, strategy or course of action. Instead, these records consist of general e-mails transmitting or forwarding attachments to other Department personnel, factual information, or otherwise innocuous language unrelated to any particular decision, strategy or course of action of the Department. Therefore, regardless of whether these records are internal or predecisional, they are not exempt from disclosure under Section 708(b)(10)(i)(A) because they are not deliberative in nature. *See, e.g., Norris v. Pa. Dep't of Health*, OOR Dkt. AP 2014-1752, 2015 PA O.O.R.D. LEXIS 25. Therefore, these portions of the withheld records may not be withheld under the exemption.

**2. The Department has not proved that other withheld records are subject to the attorney-client privilege or the attorney-work product doctrine**

The Department argues that it withheld some records identified in the Inspection Index because they are protected by the attorney-client privilege and/or the attorney-work product doctrine. The RTKL excludes records subject to a privilege from the definition of “public record.” *See* 65 P.S. § 67.102. The RTKL defines “privilege” as “[t]he attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.” *Id.*

In order for the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. *See Nationwide Mut. Ins. Co. v. Fleming*, 924 A.2d 1259, 1263-64 (Pa. Super. Ct. 2007). An agency may not rely on a bald assertion that the attorney-client privilege applies. *See Clement v. Berks County*, OOR Dkt. AP 2011-0110, 2011 PA O.O.R.D. LEXIS 139 (“Simply invoking the phrase ‘attorney-client privilege’ or ‘legal advice’ does not excuse the agency from the burden it must meet to withhold records”). Instead, the agency must establish the first three prongs of the privilege for it to apply. *See Bagwell v. Pa. Dep’t of Educ.*, 103 A.3d 409, 420 (Pa. Commw. Ct. 2014); *see also Office of the Governor v. Davis*, 122 A.3d 1185 (Pa. Commw. Ct. 2015). However, once the agency has done so, the requester has the burden of proving that the agency waived the privilege. *Bagwell*, 103 A.3d at 420-21.

The attorney-work product doctrine, on the other hand, prohibits disclosure “of the mental impressions of a party’s attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.” Pa.R.C.P. 4003.3. The Pennsylvania Supreme Court has explained that the attorney-work product doctrine “manifests a particular concern with matters arising in anticipation of litigation.” *Gillard v. AIG Ins. Co.*, 15 A.3d 44, 59 n.16 (Pa. 2011) (citing *Nat’l R.R. Passenger Corp. v. Fowler*, 788 A.2d 1053, 1065 (Pa. Commw. Ct. 2001) and stating that “[t]he ‘work product rule’ is closely related to the attorney-client privilege but is broader because it protects any material, regardless of whether it is confidential, prepared by the attorney in anticipation of litigation”); *see also Heavens v. Pa. Dep’t of Env’tl. Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013) (“[U]nder the RTKL the work-product doctrine protects a record from the presumption that the record is accessible by the public if an agency sets forth facts demonstrating that the privilege has been properly invoked”).

Through the affidavits submitted, the Department demonstrated that it is the client of Mr. Schena.<sup>6</sup> However, the Department has not shown that it is the client of Mr. Hartzell,<sup>7</sup> the Acting Regional Director. The Department explains that:

At the time these records were created, Anderson “Andy” Hartzell was temporarily serving as Acting Regional Director of DEP’s Southeast Regional Office. Mr. Hartzell is Regional Counsel in DEP’s Office of Chief Counsel for the Southeastern Regional Office and has returned to that position. The email deliberations of remediation options for the Bishop Tube site was a recounting of legal advice from Mr. Hartzell that was provided while legal counsel for the Southeastern Regional Office.

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<sup>6</sup> The following e-mails included Mr. Schena as a sender or recipient: January 20, 2017 at 9:11 AM; January 20, 2017 at 9:10 AM; January 20, 2017 at 9:09 AM; January 19, 2017 at 5:22 PM; January 17, 2017 at 3:12 PM; and January 17, 2017 at 3:00 PM.

<sup>7</sup> The following e-mails included Mr. Hartzell as a sender or recipient: January 25, 2017 at 6:23 PM; January 25, 2017 at 4:49 PM; January 25, 2017 at 4:27 PM; January 25, 2017 at 11:26 AM; January 25, 2017 at 10:29 PM; January 20, 2017 at 1:21 PM; January 20, 2017 at 9:11 AM; January 20, 2017 at 9:10 AM; and January 20, 2017 at 9:09 AM; January 17, 2017 at 3:12 PM.

With respect to Mr. Hartzel, the mere fact that an individual is a licensed attorney does not make communications with that individual subject to the attorney-client privilege if the individual is not serving in the capacity of the agency's attorney. *See Bagwell v. Pa. Dep't of Education*, OOR Dkt. AP 2013-1753, 2013 PA O.O.R.D. LEXIS 1254 (holding that records sent or received by a university board member were not subject to the attorney-work product doctrine because the board member was not the attorney for the university).

However, even assuming that both Mr. Schena and Mr. Hartzell possessed an attorney-client relationship with the Department, the non-exempt portions of the e-mails do not consist of correspondence seeking legal advice or giving legal advice. Instead, they contain general or factual information through which no legal advice is sought, or do not reveal any information that is protected by the attorney-client privilege or attorney-work product doctrine. *See Scarcella v. City of Sunbury*, OOR Dkt. AP 2015-2895, 2016 P.A. O.O.R.D. LEXIS 450 (holding that the factual content of a report prepared for an attorney and withheld under the attorney-client privilege and attorney-work product doctrine was subject to public access); *see also Upjohn Co. v. United States*, 449 U.S. 383 (1981) (privilege extends only to communications and not to underlying facts); *Philadelphia v. Westinghouse Electric Corp.*, 205 F. Supp. 830, 831 (E.D.Pa. 1962) (the protection of the privilege only extends to communications and not to facts). Rather, the contents of these records contain purely factual information that relate to routine responsibilities associated with either providing legal services to the Department or general administrative matters, such as scheduling meetings.

In addition, two of the withheld records—an E-mail dated January 16, 2017 at 10:41 PM (Bates No. 011-012) and the Letter dated January 28, 2014 (Bates No. 013-014)—consist of correspondence sent to or received from outside parties; thus, the e-mails from outside parties are

not attorney-client communications subject to the privilege as they are not communications from a client or and do not contain information subject to the attorney-work product doctrine.

### CONCLUSION

For the foregoing reasons, Requester's appeal is **granted in part** and **denied in part**, and the Department is required to take further action as set forth above. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>8</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: July 5, 2017**

/s/ Benjamin Lorah, Esq.

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APPEALS OFFICER  
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Sent to: Corinne Bell, Esq. (via e-mail only);  
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<sup>8</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

**ANDREW E. DINNIMAN**

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**Senate of Pennsylvania**

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West Chester

June 25, 2017

Mr. Dennis M. Davin, Secretary  
PA Department of Community and Economic Development  
Commonwealth of Pennsylvania  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120-0225

Dear Secretary Davin,

On May 31, 2016, I sent your office a letter supporting the Chester County Economic Development Council and Constitution Drive L.P. for an application to be awarded funding through the Pennsylvania Department of Community Development Industrial Sites Reuse Program (ISRP). However, since then, information has come to light that raises serious questions that must be resolved prior to my being able to provide support for any application related to the former Bishop Tube property.

Recent community meetings and constituent inquiries regarding the scale and scope of this application have raised my level of concern regarding the community impacts of this project. Specifically, it has come to my attention that the developer has proposed to direct ISRP funding toward a partial environmental remediation of this highly contaminated HSCA site in East Whiteland Township (Chester County). Further, through numerous conversations with DEP, it is my understanding that responsible state agencies may not fully realize the degree and location of environmental contaminant at the proposed development site. In fact, it has come to my attention that DEP sent a letter dated June 20, 2017 concerning a corroded pipe on the property that is leaking dangerous liquids directly into Little Valley Creek. As State Senator representing constituents of East Whiteland Township, I am deeply concerned by this information and must immediately suspend my support for ISRP funding until such time that these questions are resolved.

As you may be aware, for many years I have worked with and encouraged department officials to remediate the former Bishop Tube property; both in my responsibilities as State Senator as well as Chester County Commissioner. With this in mind, I can only support utilizing DCED funding for remediation efforts in East Whiteland Township following a detailed investigation that ensures a comprehensive awareness of the location and degree of all contamination and provided that these plans include a full and complete cleanup of this site. It is my strong belief that any application for any developer that does not meet both requirements simply encourages development at the expense of current and future residents' health and safety. This is unacceptable.

I thank you in advance for your due diligence associated with this project and welcome the opportunity to discuss this matter further if you should have any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Andy E. Dinniman". The signature is written in a cursive style with a horizontal line at the end.

Andy Dinniman  
State Senator - 19<sup>th</sup> District