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Commonwealth Court of Pennsylvania Dismisses Preliminary Objections against Delaware Riverkeeper Network

Harrisburg & Chester County, PA – On Wednesday, July 25, 2018, the Commonwealth Court of Pennsylvania overruled preliminary objections made by the Pennsylvania Department of Environmental Protection (DEP) to a petition for review filed by the Delaware Riverkeeper Network (DRN) with regards to the Bishop Tube site located in East Whiteland Township, Chester County, PA.

DRN is seeking to compel DEP to take meaningful action to clean up the contaminated Bishop Tube site in Chester County, arguing that DEP has violated the Clean Streams Law, the Hazardous Sites Cleanup Act (HSCA), and the Environmental Rights Amendment to the Pennsylvania Constitution.

In August 2017, DRN filed a citizen suit notice, asking DEP to publish plans for remediation of the site, which is heavily contaminated with trichloroethylene (TCE), chlorinated solvents, acids and heavy metals. When DEP failed to publish plans or respond, DRN filed a Petition for Review in November 2017. DEP filed multiple objections to DRN's action and sought to have the case dismissed.

The Court overruled DEP's objections, which were filed in December 2017, finding them without merit. Among DEP's objections that the Court rejected were DEP's claims that DRN lacked standing, however the Court found that DRN did in fact establish standing under HSCA. The Court has also ordered that DEP must respond to DRN's Petition within 30 days.

"We believe DEP's actions in this case are outrageous and violate both the laws and constitution of Pennsylvania. We are pleased that we will have the opportunity to prove our claims that DEP has displayed manifest neglect and dilatory conduct for at least 17 years by failing to take action that will result in the legally and constitutionally mandated clean up of the Bishop Tube site, and protection of impacted environments and communities," **said Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.** "The judges clearly considered every aspect of the arguments made by the Delaware Riverkeeper Network and the DEP and refused to dismiss the case or preclude DRN from presenting its evidence. We intend to vigorously litigate and continue our strong efforts to secure full clean up of this site to the highest standards required by law and, we hope, will be part of a successful effort by the community to secure protection of this site as clean natural open space that will benefit the community for generations to come."

Deanna Tanner, senior staff attorney for the Delaware Riverkeeper Network, noted that it is sad when public interest organizations, such as DRN, have to advocate and work for the goals that our government agencies should be securing for the benefit of its citizens, the environment and future generations. “Governmental efforts seem to be directed toward business development and not protecting the health, safety and well-being of people,” said Tanner.

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 stream designated under state law as “Exceptional Value.” Groundwater, soil and surface water at the Site are contaminated with trichloroethylene (TCE), which is classified as a probable human carcinogen by the EPA and also as causing other significant health problems. TCE and other contaminants of significant concern known to be present at the site continue to migrate into the aquifer, stream and nearby residential area.

Read the Court’s opinion here:

<http://www.delawariverkeeper.org/sites/default/files/Memorandum%20Opinion%20-%20DRN%20v%20PADEP%20%282018-07-25%29.pdf>

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Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the four states of the Delaware River Watershed including Pennsylvania, New Jersey, Delaware and New York. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, public education, and legal enforcement of environmental protection laws.