



For Immediate Release:

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SLAPP Suit Regarding Bishop Tube Site Dismissed by Chester County Court

East Whiteland, Chester County, PA: In response to a motion filed by attorneys for the Delaware Riverkeeper Network and Maya van Rossum, the Delaware Riverkeeper, the Chester County Court of Common Pleas dismissed the lawsuit filed by Developer Brian O'Neill, along with his corporate counter parts O'Neill Developers and Constitution Drive Partners, seeking to silence the organization and their opposition to development of a highly contaminated brownfields site located in Chester County, PA. Stating "***This is what we call constitutionally protected free speech under the First Amendment of the United States Constitution and the Pennsylvania Constitution***" and that "***...DRN is immune from Plaintiff's tort claims***", the court dismissed the case.

The Delaware Riverkeeper Network organization, led by van Rossum, have been actively challenging a proposal by O'Neill, O'Neill Developers and Constitution Drive Partners to initiate partial clean up of the highly contaminated Bishop Tube site located in East Whiteland Township in order to accommodate construction of a more than 200 unit housing development. O'Neill sought a judgement that would both silence the organization and mandate they pay over \$50,000 in damages. The suit also threatened to target up to ten additional residents, naming them as defendants to the suit, in addition to the resident already included as a named defendant.

Said **Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network**, both targeted by the lawsuit: "Mr. O'Neill should be ashamed of himself for misusing the law to threaten people into silence and seeking a judgment that would strip them of their First Amendment rights to free speech and to petition their government for appropriate action.

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The Delaware Riverkeeper Network and the residents we are working with in East Whiteland, PA are standing up for protection of our environment, our families and our communities. Mr. O’Neill filed this lawsuit because he believes his rights to make a profit should reign supreme, regardless of the harm it inflicts on the environment, on peoples’ health, on public safety, peoples’ property rights and the First Amendment right to free speech. I am gratified that the court so quickly recognized the abuse of law that was being perpetrated by Mr. O’Neill and that it sought to render a strong decision quickly in order to assuage the fears of residents being so directly threatened by the developer and his multiple corporate entities.”

Ms. van Rossum and the Delaware Riverkeeper Network were represented by attorneys **Mark L. Freed** and **Jordan B. Yeager** of **Curtin & Heefner LLP**. “We’re pleased that the Court has vindicated the constitutional rights of residents to speak up and advocate for a healthy environment without fear of retribution,” **said Freed**.

The original action was filed by O’Neill and his counterparts on June 27 and claimed the advocacy activities of van Rossum and her organization resulted in defamation/commercial disparagement, interference with contractual or business relations and amounted to a civil conspiracy.

In dismissing the case, Judge J. Sommers wrote:

- ⇒ “DRN has the right to petition its local and state governments as advocates for environmental safety and public health. This is true even if it means that DRN’s efforts are adverse to Plaintiff. ***This is what we call constitutionally protected free speech under the First Amendment of the United States Constitution and the Pennsylvania Constitution.***” (emphasis added)
- ⇒ “...we conclude that DRN’s concern for the proposed remediation plan and soil clean up is not an objectively baseless concern. Plaintiff has conceded that ‘chlorinated solvent contamination ... remains today in Site soils and groundwater’ and that ‘contamination in groundwater has migrated significant distances beyond the boundaries of the Site’ to the surrounding community. ... Moreover, ***Plaintiff has made clear it does not intend to conduct full clean up of the site, but only a partial one, based upon its belief that it has no legal obligation to do more.***” (emphasis added)

⇒ “...we have, therefore, determined that the conducted described in the Complaint is protected ... and ***DRN is immune from Plaintiff's tort claims.***”
(emphasis added)

The Delaware Riverkeeper Network and members of the East Whiteland community were joined by Senator Andy Dinniman and a representative from Senator Daylin Leach's office at a press conference on Wednesday, July 26, expressing opposition to the originally filed lawsuit.

“Pennsylvanians have a Constitutionally protected right to clean air, pure water, and the preservation of the natural environment. Citizens also have a right to voice their opinions, views, and concerns on decisions regarding our public natural resources and to be involved in the processes be they at the local, state or federal levels. The bottom line is Chester County has a long history of standing up for our environmental resources and to stand up, we need to speak out,” said state **Senator Andy Dinniman** in a statement released as part of the July press event.

“Lawsuits have an important purpose, but when they are wielded as a bludgeon by wealthy interests to silence advocates and communities, they harm the principles that form the foundation of our country,” said State **Senator Daylin Leach** (D-Delaware/Montgomery) in a statement also issued for the July press event. “Free speech is a right held by all Americans – wealthy or not—and it's our job to protect it.”

“The lawsuit is what is known as a SLAPP suit, a strategic lawsuit against public participation,” explained **van Rossum**. “The suit was clearly designed to silence our opposition to this proposed partial clean up and associated development plan and was obviously meant to send a chilling effect to all the residents who are opposed to Mr. O'Neill's project. I am so grateful to the court for seeing through Mr. O'Neill's false claims and bluster.”

Adds van Rossum, “the Bishop Tube site is severely contaminated. We have serious, significant and growing concerns about the impacts of this site on community health and on the environment. And we have very significant concerns with how the Pennsylvania Department of Environmental Protection has been handling this site. Their failure to take fast action to remediate the site has allowed the plume of pollution to go deeper into the ground and to balloon offsite to a still unknown degree. It is wholly inappropriate to be advancing a heavy development project at this site; the community deserves it protected as natural open space once full remediation is accomplished by responsible parties. That is why on August 7 we filed a notice of intent to sue with the DEP, because we are concerned that they are evading their obligations under the law.”

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 Creek. Portions of the site proposed for development are wooded. The site is listed on the Pennsylvania Priority List of Hazardous Sites for Remedial Response under the Pennsylvania Hazardous Sites Cleanup Act (HSCA). 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. Other contaminants of significant concern are also known to be present at the site.

A copy of the court's decision can be found at: <http://bit.ly/DRN-SLAPPSuitCourtDecision8-22-17>

A copy of the notice of intent to sue can be found at: <http://bit.ly/DRN-BTNoticeIntenttoSue8-4-17>

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[Delaware Riverkeeper Network \(DRN\)](#) is a nonprofit membership organization working throughout the 4 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.