



For Immediate Release:

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**Court Affirms Decision Declaring State “Sweetheart Deal”
with Bishop Tube Site Developer Void**
Delaware Riverkeeper Network challenged the agreement in 2018

East Whiteland, Chester County, PA – The Commonwealth Court of Pennsylvania today affirmed an earlier decision made by the Environmental Hearing Board that amendments made to a Prospective Purchaser Agreement (PPA) issued pursuant to the Hazardous Substances Cleanup Act between the Pennsylvania Department of Environmental Protection and the developer of the contaminated Bishop Tube site are void.

Responding to a legal challenge filed by the Delaware Riverkeeper Network, the Pennsylvania Environmental Hearing Board (EHB), in a scathing opinion, ruled in 2019 that the Pennsylvania Department of Environmental Protection’s (PADEP) approval of amendments to a Prospective Purchaser Agreement that would allow development of the highly contaminated Bishop Tube site located in East Whiteland, PA is “arbitrary and capricious” and therefore the agreements were void. Today, the Commonwealth Court agreed with the EHB’s assessment, stating that “the essential requirements of section 1113 [of the Hazardous Sites Cleanup Act] were not satisfied in this case, and, in essence, the Amendments were unilaterally implemented on their own accord, in obvious contravention of the statute.”

“The Pennsylvania DEP has failed the East Whiteland community miserably. PADEP has failed to clean up the highly contaminated site for decades, despite recognizing the dangers it poses to the environment and community. Rather than clean up the site, PADEP prioritized negotiating a Sweetheart Deal with the developer that would allow residential development on the site despite ongoing contamination, and for all intents and purposes kept this backroom deal secret from the communities it would harm rather than give them their legally-entitled right to review and comment on it. We are also in court with PADEP challenging their failure to advance site cleanup in a meaningful time frame; in that case too, rather than admit they are wrong and resolve the litigation in order to prioritize securing cleanup, they are in court trying to defend their failure to act. It’s shocking that the courts are having to step in and ensure PADEP does the job of protecting our environment by honoring the law and its constitutional obligation to protect the environmental rights

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and natural resources at stake,” said **Maya van Rossum, the Delaware Riverkeeper, leader of the Delaware Riverkeeper Network, and intervenor in the case.**

Constitution Drive Partners (CDP) had entered into the agreements with the PADEP in order to secure protection from legal liability for environmental contamination to advance residential development on the Bishop Tube site despite its highly contaminated condition, most notably with Trichloroethene (TCE), which saturates site soils and groundwater and is discharged to the Exceptional Value Little Valley Creek.

PPAs are considered settlements under the Hazardous Substances Cleanup Act. DEP entered into its first PPA with CDP for cleanup and development of the Bishop Tube Site in 2005. The PPA was then amended twice, once in 2007 and once in 2010, but did not, as the law requires, publish notice of the amendments and seek public comment prior to finalizing the agreements. Public notice was issued only in 2017, in reaction to steps Delaware Riverkeeper Network had taken to reveal problems at the site and with the agreements. During the intervening years since 2005, there had been significant changes at the site and regarding the PPAs, such as the covenant not to sue element of the PPA had been voided by DEP in reaction to violations of a key element of the agreement. DEP approved the outdated 2007 and 2010 amendments years later, and after-the-fact, in 2018.

On February 21, 2018, the Delaware Riverkeeper Network (DRN) filed an appeal with the Environmental Hearing Board, challenging the DEP’s ratification of the two amended Prospective Purchaser Agreements (PPA). The EHB rendered its ruling declaring the 2007 and 2010 PPA amendments void on April 26, 2019. When CDP sought review of that decision to the Commonwealth Court on May 28, 2019, DRN intervened.

Read the Commonwealth Court’s March 2021 decision here:

<https://delawariverkeeper.org/sites/default/files/2021.03.05%20CDP%20v.%20DEP%20Affirmed.pdf>

Read DRN’s press release and the 2019 Environmental Hearing Board decision here:

<https://delawariverkeeper.org/sites/default/files/PR%20EHB%20victory%20PPAs%20void%20with%20decision%20%282019-04-29%29.pdf>

In addition to its challenge to the PPAs, Delaware Riverkeeper Network has another ongoing legal challenge in the Commonwealth Court of Pennsylvania. In that case, Delaware Riverkeeper Network is seeking to compel DEP to take meaningful action to clean up the contaminated Bishop Tube site in Chester County, arguing that the DEP has violated its duties under the Clean Streams Law, the Hazardous Sites Cleanup Act, and the Environmental Rights Amendment to the Pennsylvania Constitution.

Background on the Bishop Tube Site:

The Bishop Tube Site, listed on the Pennsylvania Priority List of Hazardous Sites for Remedial Response under the Pennsylvania Hazardous Sites Cleanup Act, 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 trichloroethene (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 areas. The Site remains heavily contaminated decades after DEP discovered the hazardous releases with no final or interim remediation plans forthcoming from DEP and responsible parties.

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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.