



For Immediate Release:

July 26, 2017

Contacts:

Maya van Rossum, The Delaware Riverkeeper, Delaware Riverkeeper Network, 215-801-3043 (cell)
Adam Cirucci, Director of Communications and Media, State Senator Andy Dinniman, 610-692-2112
Steve Hoenstine, Spokesperson, Office of Senator Daylin Leach, 717-683-3110
John Preston, impacted resident, 484-410-6793

Senator Andy Dinniman Joins Residents as They Stand Up Against Lawsuit Threatened by Developer to Silence Opposition

East Whiteland, Chester County, PA: Responding to a lawsuit intended to silence opposition to proposed development at a highly contaminated brownfields site, the Delaware Riverkeeper Network and members of the East Whiteland community were joined by Senator Andy Dinniman¹ and a representative from Senator Daylin Leach's office at a press conference on Wednesday morning, July 26. The Senator and representative, residents, and the environmental organization asserted and defended their First Amendment rights to speak in opposition to the development proposal and the woefully inadequate response they were receiving from the Pennsylvania Department of Environmental Protection (PADEP) with regards to the high level of toxins at the site. In strong statements they also outed developer Brian O'Neill for his lawsuit threat.

"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.

¹ Senator Dinniman was called back to Harrisburg just before this event and was unable to attend.

“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). “Free speech is a right held by all Americans – wealthy or not—and it’s our job to protect it.”

Residents and the Delaware Riverkeeper Network 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 in order to accommodate construction of a more than 200 unit housing development.

Developer O’Neill, along with his corporate counter parts O’Neill Developers and Constitution Drive Partners, filed a lawsuit on June 27 in the Chester County Court of Common Pleas against the Delaware Riverkeeper Network; Maya van Rossum, the Delaware Riverkeeper; and one named resident. It also threatens to target up to ten additional residents, naming them as defendants to the suit.

“The lawsuit is what is known as a SLAPP suit, a strategic lawsuit against public participation,” explains **Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network**. “The suit is clearly designed to silence our opposition to this proposed partial clean up and associated development plan and is obviously meant to send a chilling effect to all the residents who are opposed to this project. While I think it is fundamentally wrong to be misusing the law to target and seek to silence me and my organization, I think it is horrifically abusive to target private individuals who are simply exercising their First Amendment rights to try to protect themselves, their families, friends, homes and communities from a project and proposal they oppose.”

“For decades, our institutions and officials have failed to address the extreme public health and environmental dangers emanating from the Bishop Tube landsite. Since the 1950s, the public has been endangered by toxic chemicals from the Bishop Tube landsite while PADEP has sat by and allowed the contamination to spread. The people of East Whiteland and Chester County emphatically say no, and demand a safe and full cleanup of the landsite and its full return to a natural open space,” said **John Preston, an impacted resident**.

“We thank Sen. Dinniman for supporting our community’s grave concerns regarding the contaminated Bishop Tube site, which should have been remediated years ago. We ask the DEP to make this site its highest and most immediate priority – we’ve been waiting over 18 years for its clean-up, and further delay cannot be tolerated,” said **Barbara D. Arnold, a concerned community member**.

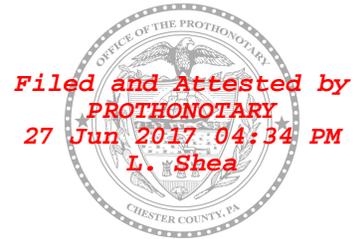
“Throughout this process, it has been clear that our local politicians had been making decisions without all of the necessary information, including environmental data and input from the residents. Although we have made great strides in opening the lines of communication with our township supervisors and even our state senator, it is unfortunate that Representative Milne is continuing to make recommendations that directly affect our neighborhoods before all environmental testing is complete, and without meeting to discuss our concerns,” said **Debra J. Mobile, a resident of General Warren Village.**

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.”

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.

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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.



LAMB McERLANE PC

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Counsel for Plaintiffs

J. BRIAN O'NEILL, O'NEILL	:	IN THE COURT OF COMMON PLEAS
PROPERTIES GROUP, L.P. AND	:	
CONSTITUTION DRIVE PARTNERS, LP	:	OF CHESTER COUNTY, PA
	:	
Plaintiff,	:	
	:	CIVIL ACTION LAW
v.	:	
	:	
MAYA van ROSSUM, CARLA	:	
ZAMBELLI and DELAWARE	:	NO. 2017-03836-MJ
RIVERKEEPER NETWORK and	:	
JOHN DOES 1 THROUGH 10	:	
	:	
Defendants.	:	

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

CHESTER COUNTY BAR ASSOCIATION
Lawyer Referral Services
15 West Gay Street, 2nd Floor
P.O. Box 3191
West Chester, PA 19381-3191
(610) 429-1500

/s/ James C. Sargent, Jr.
JAMES C. SARGENT, JR

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RIVERKEEPER NETWORK and	:	
JOHN DOES 1 THROUGH 10	:	
	:	
Defendants.	:	

COMPLAINT

Plaintiffs, J. Brian O’Neill, O’Neill Properties Group, L.P., and Constitution Drive Partners, LP (hereinafter “O’Neill”), by and through their undersigned counsel, Lamb McErlane PC, hereby file this Complaint against Defendants, Maya van Rossum, Carla Zambelli, and the Delaware Riverkeeper Network seeking recovery for patently false and intentionally misleading information Defendants have published regarding Plaintiffs, and Plaintiffs’ efforts to assist in the remediation and clean-up of a brownfield site known as the former “Bishop Tube Site.” Defendants’ statements and corresponding conduct has been designed to misinform, frighten and influence improperly the community surrounding the Bishop Tube Site regarding Plaintiffs’ proposed 228 unit townhouse project and to cause Plaintiffs to suffer tens of millions of dollars in

lost opportunity, suffer delays of the project and to cause Plaintiff repeated scheduling interruptions. In support hereof, Plaintiffs aver the following:

PARTIES

1. Plaintiff, J. Brian O'Neill, is a citizen of the Commonwealth of Pennsylvania, with a business address of O'Neill Properties Group, 2701 Renaissance Blvd. - 4th Floor, King of Prussia, PA 19406.

2. Plaintiff, O'Neill Properties Group, L.P., is a limited partnership organized under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 2701 Renaissance Blvd. - 4th Floor, King of Prussia, PA 19406.

3. Plaintiff, Constitution Drive Partners, L.P. (hereinafter "CDP"), is a limited partnership organized under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 2701 Renaissance Blvd. - 4th Floor, King of Prussia, PA 19406.

4. Defendant, Maya van Rossum, is a citizen of the Commonwealth of Pennsylvania, who resides at 716 South Roberts Road Bryn Mawr, PA 19010.

5. Defendant, Carla Zambelli, is a citizen of the Commonwealth of Pennsylvania, who resides at 9 Toms Circle, Malvern, PA 19335.

6. Defendant, Delaware Riverkeeper Network, is a non-profit corporation organized under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 925 Canal Street, Suite 3701, Bristol, Pennsylvania 19007.

7. Defendants John Does 1 through 10 are those unknown defendants who acted in concert with the other named Defendants to commit the acts set forth below. Plaintiffs reserve the right to add these specific individuals by name upon their identification.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter and parties pursuant to 42 Pa.C.S. §5301 as the cause of action arose in the Commonwealth of Pennsylvania and the Defendants are citizens of and reside or do business in Pennsylvania.

9. The venue is proper pursuant to Pennsylvania Rules of Civil Procedure 1006 and 2179, as the cause of action arose in Chester County and transactions or events out of which the cause of action arose took place in Chester County.

FACTUAL BACKGROUND

10. Plaintiff J. Brian O’Neill founded O’Neill Properties Group, L.P. in 1988; he is a limited partner of both Plaintiffs O’Neill Properties Group, L.P. and CDP.

11. Plaintiff O’Neill Properties Group, L.P. is a leading real estate development company specializing in identifying and acquiring abandoned or underutilized industrial sites, remediating and transforming them into high-quality, Class A commercial space or luxury multifamily live, work, and play communities.

12. Plaintiff CDP is an affiliate of O’Neill Properties Group, L.P. which undertakes the mission to remediate and re-develop abandoned or underutilized industrial sites.

13. Plaintiff CDP purchased a property known as the “Bishop Tube” site in 2005, which is a 13.7 acre parcel located at 1 Malin Road in East Whiteland Township, Chester County, Pennsylvania (“the Bishop Tube Site” or “Site”).

14. The Bishop Tube Site is a former industrial site upon which industrial buildings and other vacant and dilapidated improvements remain standing. Stainless steel tubes were manufactured on the Bishop Tube Site from the 1950’s through 1999 by a variety of owners and operators, and these industrial operations resulted in the release of significant amounts of chlorinated solvents, principally

TCE, to soil and ground water at the Site; this contamination in groundwater has migrated off-Site to the surrounding community.

15. The chlorinated solvent contamination that occurred at the Site during industrial operations from the 1950's to 1999 still remains today in Site soils and groundwater. In addition, the chlorinated solvent contamination in groundwater has migrated significant distances beyond the boundaries of the Site, generally in a Northeasterly direction.

16. Except for limited remedial activities implemented by CDP, no meaningful remediation of chlorinated solvent contamination has occurred since the identification of chlorinated solvent contamination at the Site. In addition, since the cessation of operations, the shuttered industrial buildings present at the Site have been a target for vandalism.

17. To date, the Pennsylvania Department of Environmental Protection ("PADEP"), has identified two potentially responsible parties, Johnson Matthey, Inc. and Whittaker Corporation (collectively the "PRPs"), who PADEP believes have liability to investigate and remediate the contamination identified at and beyond the Bishop Tube Site because these entities succeeded to the liabilities of former operators at the Site. Although the PRPs have conducted investigation activities at and beyond the boundaries of the Site, these PRPs have never conducted any remediation of contamination, and the PRPs have explicitly denied that they have any liability or responsibility to remediate any contamination at or beyond the boundaries of the Bishop Tube Site. In fact, to date, other than CDP's proposed plan for remediating unsaturated soils at the Site, no party has offered a plan to remediate chlorinated solvent impacts to unsaturated soils at the Site.

18. CDP acquired the Site in 2005. At the time CDP acquired the Site, CDP entered into a Consent Order and Agreement with PADEP dated March 17, 2005 pursuant to the Hazardous Sites Cleanup Act, commonly referred to as a "Prospective Purchaser Agreement" or "PPA". Pursuant to the

PPA, PADEP provided CDP with a covenant not to sue CDP in connection with the contamination at the Site, and also afforded CDP contribution protection against third party claims relating to such contamination. In exchange for these legal benefits, CDP agreed to certain commitments under the PPA, including an obligation to perform certain remedial activities of Site soils and to cooperate with PADEP. Through two amendments to the PPA, one dated January 22, 2007 and the other dated June 4, 2010, CDP was able to satisfy its remedial obligations under the PPA by installing an air sparging/soil vapor extraction (“AS/SVE”) remediation system, operating the system for a period of time, and paying PADEP \$10,000. PADEP confirmed by letter dated December 22, 2010 that CDP has already satisfied all of its remedial obligations under the PPA, as amended.

19. CDP has fully cooperated with PADEP since the execution of the PPA in 2005. However, by letter dated January 28, 2014, PADEP expressed its position that the covenant not to sue under the PPA was void because of damage caused by a salvage contractor to the no-longer-used AS/SVE system in 2011. CDP appealed PADEP’s issuance of this letter to the Pennsylvania Environmental Hearing Board (“EHB”); the EHB ultimately dismissed CDP’s appeal because the EHB determined that PADEP’s letter was not a final agency action, and therefore not appealable to the EHB. It is still CDP’s position that PADEP’s covenant not to sue remains in full force and effect, pursuant to the PPA. In addition, the contribution protections contained pursuant to the PPA also still remain in full force and effect.

20. In 2014, the Township of East Whiteland rezoned the Bishop Tube Site from industrial use to residential use, and specifically rezoned the property to a Residential Revitalization District (“RRD”).

21. The purpose of this zoning change to RRD was to promote revitalization and remediation of the Site. Prior to the zoning change, despite extensive efforts to market and redevelop

the Site for commercial purposes, CDP was unable to successfully redevelop the Site given certain non-environmental Site constraints. The Township's determination to rezone the Site to residential purposes was also based on the need for additional residential housing within the community, and the recognition that CDP would construct such housing with all safe and reasonable state of the art methods to prevent exposure to any chlorinated solvent impacts present at the Site, both during construction and after the completion of the residential townhouse community.

22. In anticipation of the remediation of the Bishop Tube site and returning it to a beneficial and much needed use, Plaintiff CDP (and a non-party to this action) sought municipal approvals from the Township of East Whiteland, through its Board of Supervisors and Township Zoning Hearing Board, to approve plans to construct a 228 residential townhome community on a portion of the Bishop Tube Site.

23. Without a rational basis or foundation, using a contrived narrative, and without proposing an alternative, better plan for remediation of the extensive soil contamination at the Site – much less funding for such a plan – Defendants have resisted Plaintiffs' proposed soil clean up, remediation and repurposing of the Bishop Tube Site, in a thinly-veiled attempt to coerce the Township and the Commonwealth to impede Plaintiff's efforts and spend many millions of dollars of public revenue to remediate the site and create a park.

24. To accomplish this purpose, Defendants have engaged in, and have conspired to engage in a campaign of misinformation that is designed to mislead, and have misled, the residents of East Whiteland Township and other surrounding townships, the officials of East Whiteland Township, and the officials of the PADEP into believing that any improvements that are proposed by Plaintiffs will be dangerous because of the contaminants currently present at the site, and that improvement of the Bishop

Tube Site pursuant to the RRD Zoning puts the surrounding residents in a greater risk of exposure to said contaminants.

25. Defendants' statements have made assertions of fact regarding the risk of the improvements proposed by Plaintiffs that are not true. Such statements by Defendants have been made in public meetings, writings and social media.

26. Shortly before April 6, 2017, the Defendants agreed to publish and distribute, and did publish and distribute, a flier to the community that stated as fact that redevelopment of the site will "expose us to more of the toxins and put 200+ homes on the contaminated land!!!," and that "if this development happens your community could be on the receiving end of more contamination as the toxins make their way through our local waterways and water table," all of which are materially false. Through the flyer and continuing public misstatements, Defendants are attempting to mislead and frighten the residents and officials of East Whiteland Township by falsely claiming that cleanup and remediation of the site will expose the residents to more toxins, while at the same time stating that they desire the site to be "fully cleaned up." A copy of this flier is attached hereto as Exhibit "A".

27. Defendants' purpose in publishing this false and misleading information has one goal – to prevent the legitimate and lawful business interests of Plaintiff to improve the Bishop Tube Site through their clean-up efforts and the development of their 228 townhouse community.

28. Further, the abovementioned flier was intentionally misleading by representing as fact that CDP planned to use "a \$1million grant from the DEP (Our tax money) to perform a '**PARTIAL**' **CLEAN-UP**" of the Bishop Tube site", and that the developer is refusing "to take responsibility for full removal of the toxins at the site" which by necessary implication caused the public to infer that CDP has responsibility for remediating the contaminants that are in the groundwater at the site and downstream, and that CDP is refusing to fulfill those responsibilities. In fact, CDP plans to clean up the

soils above the water table at the site to PADEP's residential statewide health standard; one of the highest cleanup standards, and the parties that caused the contamination of the groundwater continue to bear the responsibility for cleaning the contaminated groundwater under the site and downstream, not CDP.

29. Moreover, any chlorinated solvent impact that will remain in groundwater at the Site after Plaintiffs' remediation and development of the Site will be appropriately and safely shielded from the new residents of the townhouses, will not pose any new or different risk to the residents of the surrounding area, and in fact will likely pose less risk because CDP's soil remediation will also have a benefit on groundwater quality that is migrating off-site. Further, any groundwater remediation required at or beyond the Site is not, and has never been the legal responsibility of CDP, and will occur at some point in the future, as determined by PADEP pursuant to HSCA; and such determinations by PADEP are completely independent of CDP's planned redevelopment of the Site, and are not Plaintiff's legal responsibility or obligation to remediate.

30. Additionally, remediation of the surface contaminants and redevelopment of the property can occur separate and apart from remediation of the ground water at the Site and downstream. The development of the Site will not impair the later ability for the PRP's to fulfill their responsibility to clean up the contaminated ground water at a later date. If, in fact, the Defendants have a bona fide environmental concern to clean up the groundwater at and around the Site, they should be pursuing the PRP's to perform this clean up instead of wrongfully attacking the Plaintiffs, who bear no responsibility for the cleanup of the contaminated groundwater.

31. Defendant Delaware Riverkeeper Network has also published documents on its website containing deceitful information in an attempt to scare the residents and public officials of East Whiteland Township into opposing the development of the Bishop Tube Site by saying that

development of the property will increase potential pollution of the nearby streams and wetlands and that contamination would continue to affect the surrounding environment and community because of the development.

32. The statements on the Defendant Delaware Riverkeeper Network's website are false.

33. Defendant Carla Zambelli runs a website, chestercountyrablings.com, where she supports and republishes the above-referenced document and the contents of the Defendant Delaware Riverkeeper Network's website and aids in the further dissemination of false and misleading information aimed at Plaintiffs.

34. The conduct of Defendants set forth also jeopardizes grants to be used for further remediation of the soils at the site.

35. In addition to the written language above, on June 7, 2017, Defendant van Rossum declared to a room of 200 people that Brian O'Neill brushed up against her inappropriately, when no such event occurred. Defendant made this statement after Mr. O'Neill had left the building.

36. Defendant van Rossum's statement was false, slanderous and designed to impugn Mr. O'Neill's character and reputation for the sole reason of discrediting Plaintiffs' efforts to improve the Property.

COUNT I
ALL PLAINTIFFS v. ALL DEFENDANTS
DEFAMATION/COMMERCIAL DISPARAGEMENT

37. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if set forth fully herein.

38. Upon information and belief, Defendants knowingly published (in social media and letters) the false statements set forth above regarding O'Neill, O'Neill Properties Group, L.P, and

CDP, intending to cause pecuniary loss, or reasonably should have recognized that such publication would cause pecuniary loss and potentially millions of dollars to CDP.

39. Upon information and belief, Defendants published false and defamatory statements about O'Neill, O'Neil Properties Group, L.P., and CDP to residents and officials of East Whiteland Township, and to officials of the PADEP, in order to cause the public to look disfavorably upon the Plaintiffs and to interfere with the Plaintiffs' legal right to full use and/or development of its property.

40. Upon information and belief, Defendants' statements left the public with a false impression of O'Neill, O'Neill Properties Group, L.P., and CDP, and Plaintiffs have suffered actual pecuniary loss as a direct result of the disparaging statements made by Defendants including, but not limited to: (a) increased development costs on the Project; (b) delays in the approval, construction, marketing and sale of the Project; (c) the loss of goodwill, particularly goodwill established by Plaintiffs based on past brownfield site cleanups; (d) loss of future business opportunities; and (e) potential failure of the Project due to unfounded negative public perception of the Plaintiffs and the Project.

41. Persons receiving these false and malicious statements made by Defendants understood them to refer to Plaintiffs.

42. At all times material hereto, Defendants' statements were false, disparaging and/or malicious and made with intentional and/or reckless disregard for the truth of the statements and without privilege of any nature.

43. Defendants' conduct was intentional, malicious, and wanton and deliberately intended to cause pecuniary harm or loss to Plaintiffs, thereby entitling Plaintiffs to an award of punitive damages.

WHEREFORE, Plaintiffs respectfully request preliminary and permanent injunctive relief and judgment in its favor and against Defendants in an amount in excess of \$50,000.00, plus attorneys' fees, costs, punitive damages, interest and such other relief as the Court deems equitable, just and proper.

COUNT II
CONSTITUTION DRIVE PARTNERS, L.P. v. ALL DEFENDANTS
TORTIOUS INTERFERENCE WITH A CONTRACTUAL OR BUSINESS RELATION

44. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if set forth fully herein.

45. At all relevant times, a contractual relationship existed between CDP and the PADEP, by virtue of the Prospective Purchaser Agreement and its various amendments.

46. Upon information and belief, Defendants have repeatedly and maliciously supplied false or misleading information to the PADEP in an attempt to entice the PADEP into taking inappropriate and unnecessary action against Plaintiffs and to delay development of the Bishop Tube Site.

47. By their acts, Defendants purposefully and tortiously interfered with the contractual and business relationship with PADEP with intent to harm the existing relationship.

48. Defendants have no reasonable basis or privilege to actively interfere with the existing contractual relationship by spreading false or misleading information about the Plaintiff and/or the existing agreement between the CDP and the PADEP.

49. Defendants have failed to correct their false or misleading statements and continue to spread lies about Plaintiff and their intentions to do so to anybody that will listen.

50. Plaintiff has suffered significant monetary harm in an amount in the tens of millions of dollars as a result of Defendants' actions.

WHEREFORE, Plaintiff CDP respectfully requests preliminary and permanent injunctive relief in the form of a retraction of the defamatory and false statements, and judgment in its favor and against Defendants in an amount in excess of \$50,000.00 attorneys' fees, costs, punitive damages, interest and such other relief as the Court deems equitable, just and proper.

COUNT III
ALL PLAINTIFFS v. ALL DEFENDANTS
CIVIL CONSPIRACY

51. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if set forth fully herein.

52. Through a series of overt acts, including false and fraudulent statements, representations, and information submitted, Defendants collectively entered into an agreement and conspiracy whereby Defendants intended to knowingly publish false and defamatory statements about O'Neill, O'Neil Properties Group, L.P., and CDP to residents and officials of East Whiteland Township in order to cause the public to look unfavorably upon the Plaintiffs and to interfere with the Plaintiffs' legal right to full use and/or development of its property and to interfere with the Plaintiff's contractual relationship with PADEP.

53. The conspiracy was entered into willfully and maliciously by all Defendants.

54. The civil conspiracy has caused damage to the Plaintiffs.

55. The actions of all Defendants were so outrageous and intolerable such that Plaintiffs are entitled to punitive damages against Defendants.

WHEREFORE, Plaintiffs O'Neill, O'Neill Properties Group, L.P. and CDP respectfully request judgment in its favor and against Defendants in an amount in excess of \$50,000.00, plus

attorneys' fees, costs, punitive damages, interest and such other relief as the Court deems equitable, just and proper.

Respectfully submitted,

LAMB McERLANE PC

BY: /s/ James C. Sargent, Jr.
James C. Sargent, Jr.
Guy A. Donatelli

EXHIBIT “A”

URGENT CALL TO STOP DEVELOPMENT ON TOXIC LAND

Bishop Tube Site, South Malin Road, Frazer PA, is a **Super Fund Site** and East Whiteland Township might allow Brian O'Neill and John Benson (Constitution Drive Partners) to disturb the land, expose us to more of the toxins and put 200+ homes on the **contaminated land!!!**

- During its operation (1951- 1990) Bishop Tube contaminated the ground with TCEs and heavy metals. These toxins are still present on the site and continue to **poison** the ground water of Little Valley Creek; a tributary to Valley Creek, the Schuylkill and Delaware Rivers.
- If this development happens your community could be on the receiving end of more **contamination** as the toxins make their way through our local waterways and water table.
- East Whiteland Township is in the process of approving a high density residential community on this **toxic Super Fund Site**.
- The developer, Constitution Drive Partners (O'Neill and Benson), have agreed to only **PARTIAL clean-up** of the site prior to development. Constitution Drive Partners is going after a \$1million grant from the DEP (Our tax money) to perform a "**PARTIAL**" clean-up of the site no doubt for their financial benefit.
- A change in leadership at the PADEP is accepting the developer's refusal to take responsibility for full removal of the toxins at this site!

Environmental Experts highly recommend that this site be fully cleaned up and left as OPEN SPACE!

Urgent action is needed

There is a Community Meeting regarding this project:

Thursday, April 6, 2017 at 6:30pm

The Center for Spiritual Living,

16 Industrial Blvd, Suite 112, Paoli PA 19301

For more information:

Chestercountyrablings.com,

Delawareriverkeeper.org

VERIFICATION

I, Brian O'Neill, state that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Date: 6.27.17



J. BRIAN O'NEILL

To: PLAINTIFFS

You are hereby notified to file a written response to the enclosed PRELIMINARY OBJECTIONS within twenty (20) days from service hereof or a judgment may be entered against you.



Jordan B. Yeager

CURTIN & HEEFNER LLP
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*Counsel for Defendants, Maya van Rossum
and Delaware Riverkeeper Network*

BRIAN O'NEILL, O'NEILL
PROPERTIES AND CONSTITUTION
DRIVE PARTNERS, LP,
Plaintiffs,

v.

MAYA VON ROSSUM, CARLA
ZAMBELLI and DELAWARE
RIVERKEEPER NETWORK,
Defendants.

: IN THE COURT OF COMMON PLEAS
: OF CHESTER COUNTY, PA
:
:
: CIVIL ACTION LAW
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: No. 2017-03836-MJ
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**PRELIMINARY OBJECTIONS OF DEFENDANTS MAYA VAN ROSSUM AND
DELAWARE RIVERKEEPER NETWORK TO PLAINTIFFS' COMPLAINT**

Defendants MAYA VAN ROSSUM and DELAWARE RIVERKEEPER NETWORK, by and through their undersigned counsel, hereby file the instant Preliminary Objections to Plaintiffs' Complaint, stating as follows:

INTRODUCTION:

By this action, Plaintiffs seek to chill the valid exercise by citizens of their constitutional rights to freedom of speech and to petition the State and local governments for the cleanup of a

13.7 acre property that is contaminated with significant amounts of chlorinated solvents that have migrated offsite to the surrounding community. Plaintiffs seek to intimidate and retaliate against the citizens for their constitutionally protected activities and thereby discourage and close down the lines of communication to government bodies clothed with the authority to correct or enforce the environmental laws and regulations. It is in the public interest for this Court to bring a swift end to Plaintiffs' retaliatory lawsuit, which seeks to undermine Defendants' participation in the establishment of State and local environmental policy and in the implementation and enforcement of environmental law and regulations.

PRELIMINARY OBJECTIONS:

1. The present matter arises from Plaintiffs' ownership and development of a 13.7 acre contaminated property located at 1 Malin Road in East Whiteland Township, Chester County ("the Bishop Tube Site" or "Site"). Complaint ¶ 13 (A true and correct copy of the Complaint is attached hereto as Exhibit "A").

2. Plaintiff Constitution Drive Partners, LP ("CDP") has owned the Site since 2005. Complaint, ¶ 13. CDP is an affiliate of Plaintiff, O'Neill Properties Group, L.P. Complaint, ¶ 12. Plaintiff J. Brian O'Neill ("O'Neill") is a limited partner of both CDP and O'Neill Properties Group, L.P. Complaint ¶ 10.

3. Defendants in this matter are Maya van Rossum, Carla Zambelli, the Delaware Riverkeeper Network and ten (10) John Does. (Defendants Maya van Rossum and the Delaware Riverkeeper Network WILL be referred to hereinafter collectively as "DRN").

4. According to the Complaint, industrial operations at the Site resulted in the release of significant amounts of chlorinated solvents, principally TCE, to soil and groundwater at the site. This contamination in groundwater has migrated significant distances offsite to the surrounding

community. Complaint ¶¶ 15, 14. The chlorinated solvent contamination also remains in Site soils and groundwater. ¶ 15.

5. CDP intends to remediate only soils above the water table at the Site, but not the groundwater that is on or migrating from the Site. Complaint ¶ 28. Plaintiffs allege that “any groundwater remediation required at or beyond the Site is not, and has never been, the legal responsibility of CDP.” Complaint ¶ 29.

6. However, under the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. § 6020.101, *et seq.*, (“HSCA”), any person in the chain of title is subject to liability, even in the absence of evidence that it contributed to the current environmental problem. *See* 35 P.S. § 6020.701; *Degussa Constr. Chem. Operations, Inc. v. Berwind Corp.*, 280 F.Supp.2d 393, 406 (E.D. Pa. 2003).

7. As reflected in the Pennsylvania Bulletin, the site is listed on the Pennsylvania Priority List of Hazardous Sites for Remedial Response (“PAPL”) under the HSCA. 40 Pa.B. 5250. Sites are placed on the list when PADEP has determined that there are releases or threatened releases of hazardous substances, or releases or substantial threatened releases of contaminants, which present a substantial threat to the public health, safety and environment. *Id.* HSCA allows the Commonwealth to participate fully in the cleanup of Pennsylvania sites under the Federal Superfund program.

8. In or around March 17, 2005, CDP and the Pennsylvania Department of Environmental Protection (“PADEP”) entered into a Consent Order and Agreement under HSCA, known as a “Prospective Purchaser Agreement” or “PPA”. Complaint ¶ 18. The PPA was amended in or around January 22, 2007 and June 4, 2010. Complaint ¶ 18. In the PPA, PADEP

provided CDP with a covenant not to sue. *Id.* The PPA was further amended by letter from the PADEP dated January 28, 2014. Complaint ¶ 19.

9. By its letter dated January 28, 2014, PADEP advised CDP that, because of actions taken at the Site, the covenant not to sue between PADEP and CDP contained in the PPA was void. Complaint ¶ 19.

10. Despite the fact that Plaintiffs base their claims against Defendants on the PPA, *See, e.g.*, Complaint ¶ 45 (A contractual relationship, upon which Plaintiffs' claim for tortious interference with a contractual or business relationship is based, "existed between CDP and the PADEP, but virtue of the Prospective Purchaser Agreement and its various amendments"), Plaintiffs failed to attached a copy of the PPA, its amendments, or the January 28, 2014 letter to their Complaint. *See* Pa. R.C.P. 1019(i).

11. In 2014, the Township of East Whiteland rezoned the Bishop Tube Site from industrial use to residential use. Complaint ¶ 20. Thereafter, CDP sought municipal approvals from the Township to approve plans to construct a 228 unit residential townhome community. Complaint ¶23.

12. Plaintiffs allege three counts against "All Defendants": Count I - Defamation/Commercial Disparagement; Count II – Tortious Interference with A Contractual or Business Relation; and Count III – Civil Conspiracy.

13. In support of these counts, Plaintiffs allege that the disparate group of "Defendants" have made statements regarding Plaintiffs' proposed remediation of the Site that are "[w]ithout a rational basis or foundation, using a contrived narrative" and "engaged in, and have conspired to engage in a campaign of misinformation that is designed to mislead." Complaint ¶¶ 23, 24. *See also* Complaint ¶¶ 38 – 43.

14. Primarily, Plaintiffs claim that Defendants published and distributed a flyer allegedly containing false information. Complaint ¶ 26. Among the allegedly false information is the claim that CDP plans only to “perform a ‘**PARTIAL CLEAN-UP**’ of the Bishop Tube site”, and that CDP is refusing to “take responsibility for full removal of the toxins at the site.” Complaint, ¶ 28 (emphasis in original).

15. Plaintiffs have conceded in the Complaint that Defendants’ alleged actions are for the purpose of petitioning their State and local governments to remediate the Site. *See* Complaint ¶¶ 23, 24, 26.

16. Plaintiffs allege that Defendants actions have interfered with their “contractual and business relationship” with PADEP resulting in harm “in the amount of tens of millions of dollars.” Complaint, ¶ 50.

I. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNTS I, II AND III OF PLAINTIFFS’ COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(4) [Legal Insufficiency of Pleading – *Noerr-Pennington* Doctrine]

17. DRN incorporates the averments contained in the above paragraphs as if fully set forth herein.

18. Pennsylvania Rule of Civil Procedure 1028(a)(4) provides that a party may file preliminary objections based upon the “legal insufficiency of a pleading (demurrer).” Pa. R.C.P. 1028(a)(4).

19. Under the well-established *Noerr-Pennington* Doctrine, an individual is shielded from liability for exercising his or her First Amendment right to petition the government. *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137-38 (1961) (“*Noerr*”); *United Mine Workers v. Pennington*, 381 U.S.657 (1965) (“*Pennington*”). Since the doctrine is

rooted in the U.S. Constitution, it applies in Pennsylvania. *See, e.g., Penllyn Greene Associates, L.P., v. Clouser*, 890 A.2d 424, 429 n.5 (Pa. Cmwlth. 2005).

20. The protection exists “regardless of the defendants’ motivations” in waging their campaigns, as it is recognized that the right of individuals to petition the government “cannot properly be made to depend on their intent in doing so.” *Noerr*, 365 U.S. at 139; *Accord City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365, 380 (1991); *Professional Real Estate Investors, Inc. v. Columbia Pictures, Industries, Inc.*, 508 U.S. 49, 58-59 (1993); *Firetree, Ltd v. Fairchild*, 920 A.2d 913, 919 (Pa. Cmwlth. 2007).

21. *Noerr-Pennington* protection “extends to persons who petition all types of government entities – legislatures, administrative agencies and courts.” *Trustees of University of Pennsylvania v St. Jude Children’s Research Hospital*, 940 F. Supp. 2d 233, 240-41 (E.D. Pa. 2013), *citing California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972).

22. “[P]arties may petition the government for official action favorable to their interest without fear of suit, even if the result of the petition, if granted, might harm the interests of others.” *Tarpley v. Keistler*, 188 F.3d 788, 794 (7th Cir. 1999) (*citations omitted*).

23. The sole exception to the *Noerr-Pennington* Doctrine is the “sham exception,” under which a defendant will not be protected if he or she is simply using the petition process as a means of harassment. *Omni Outdoor Advertising*, 499 U.S. at 380 (*citations omitted*); *Penllyn Greene Assoc.*, 890 A.2d at 429 n.5.

24. However, under well-settled U.S. Supreme Court precedent, in order for the challenged activities to constitute a “sham”, they must be *objectively baseless* in the sense that no reasonable litigant could realistically expect success on the merits. *Trustees of the University of*

Pennsylvania, 940 F.Supp.2d at 244 (quoting *Omni Outdoor Advertising*, 499 U.S. at 381) (emphasis added).

25. Indeed, a court cannot even consider a person's subjective motivation unless the court first determines that the activity is objectively without merit. *Professional Real Estate Investors, Inc. v. Columbia Pictures Indus.*, 508 U.S. 49, 60-61 (1993); *Firetree, Ltd. v. Fairchild*, 920 A.2d 913, 919 (Pa. Commw. Ct. 2007) (the doctrine provides "an absolute right that does not depend on whether the speaker has a proper motive or intent.").

26. The *Noerr-Pennington* Doctrine has been applied in both Pennsylvania federal and state courts, and has been relied upon by courts as a basis for dismissal of complaints. *See, e.g., VIM, Inc. v. Somerset Hotel Ass'n*, 19 F.Supp.2d 422, 426-28 (W.D. Pa. 1998) (motion to dismiss claims for civil conspiracy, tortious interference and malicious use of process granted pursuant to *Noerr-Pennington* Doctrine); *Bethany Bldg., Inc. v. Dungan Civic Ass'n*, March Term 2001, No. 2043, 2003 WL 1847603 (Phila. C.C.P. Mar. 13, 2003) (preliminary objections sustained as to claims asserted by developers against individuals who opposed development plans, based upon *Noerr-Pennington* Doctrine).

27. Plaintiffs cannot credibly argue here that the Defendants' actions were "objectively baseless," given that Plaintiffs themselves concede that: 1) chlorinated solvent contamination remains in Site soils and groundwater contamination has migrated significant distances offsite to the surrounding community (Complaint ¶¶ 15, 14); and 2) CDP intends to conduct only a partial cleanup of the site based on its erroneous belief that "any groundwater remediation required at or beyond the Site is not, and has never been the legal responsibility of CDP." (Complaint ¶ 29).

28. It is apparent from the face of the Complaint that Plaintiffs' claims against Defendants are precluded by the *Noerr-Pennington* Doctrine, as the alleged conduct of the

Defendants constitutes protected free speech and petitioning under the First Amendment of the United States Constitution, U.S. Const. amend. I, and Article I, Section 7 of the Pennsylvania Constitution, Pa. Const. Art. I, § 7. Many of the activities and comments alleged in the complaint relate to a legislatively mandated public comment period regarding the PPA. *See*, HSCA Section 1113, 35 P.S. § 6020.1113.

29. In addition, any actions undertaken by Defendants would necessarily have been in furtherance of their constitutionally-protected interests as property owners, as parents, and as advocates for public health, safety and a clean and healthy environment. Pa. Const. art. I, §§1, 27.

30. Accordingly, DRN respectfully requests that this Honorable Court strike and dismiss Counts I, II and III of the Complaint pursuant to Pa. R. Civ. P. 1028(a)(4).

II. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNTS I, II AND III OF PLAINTIFFS' COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(4) [Legal Insufficiency of Pleading – Environmental Immunity Act]

31. DRN incorporates the averments contained in the above paragraphs as if fully set forth herein.

32. Plaintiffs' claims against Defendants are barred by the Environmental Immunity Act, 27 Pa.C.S. § 8301, *et seq.*

33. The Environmental Immunity Act provides that:

Except as provided in subsection (b), a person that, pursuant to Federal or State law, files an action in the courts of this Commonwealth to enforce an environmental law or regulation or that makes an oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation shall be immune from civil liability in any resulting legal proceeding for damages where the action or communication is aimed at procuring favorable governmental action.

27 Pa.C.S. § 8302(a).

34. The Environmental Immunity Act's preamble states that "[i]t is contrary to the public interest to allow lawsuits, known as Strategic Lawsuits Against Public Participation (SLAPP), to be brought primarily to chill the valid exercise by citizens of their constitutional right to freedom of speech and to petition the government for the redress of grievances." *Pennsbury Village Associates, LLC v. Aaron McIntyre*, 11 A.3d 906, 912-13 (Pa. 2011) (*quoting* Preamble to the Act of December 20, 2000, P.L. 980, No. 138).

35. The preamble further provides that "[i]t is in the public interest to empower citizens to bring a swift end to retaliatory lawsuits seeking to undermine their participation in the establishment of State and local environmental policy and in the implementation and enforcement of environmental law and regulations." *Id.* at 913.

36. The Act's purpose is to "protect those persons targeted by frivolous lawsuits based on their constitutionally protected government petitioning activities[.]" and "encourage and open the lines of communication to those government bodies clothed with the authority to correct or enforce our environmental laws and regulations." *Id.* (*quoting Penllyn Greene Associates, L.P. v. Clouser*, 890 A.2d 424, 433 - 34 (Pa. Cmwlth. 2005)).

37. Plaintiffs' Complaint is nothing more than a SLAPP suit brought primarily to chill the valid exercise by citizens of their constitutional rights to freedom of speech and to petition the government for the redress of grievances.

38. It is in the public interest for this Court to bring a swift end to Plaintiffs' retaliatory lawsuit, which seeks to undermine Defendants' participation in the establishment of State and local environmental policy and in the implementation and enforcement of environmental law and regulations.

39. Accordingly, DRN respectfully requests that this Honorable Court strike and dismiss Counts I, II and III of the Complaint pursuant to Pa. R. Civ. P. 1028(a)(4).

III. PRELIMINARY OBJECTION IN THE FORM OF A MOTION TO STRIKE COUNTS I, II AND III OF PLAINTIFFS' COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(2) [Failure of Pleading to Conform to Rule of Court – Failure to Attach Copies of Writings]

40. DRN incorporates the averments contained in the above paragraphs as if fully set forth herein.

41. Pennsylvania Rule of Civil Procedure 1028(a)(2) provides that a party may file preliminary objections to a pleading that fails to “conform to a law or rules of court.” Pa. R.C.P. 1028(a)(2).

42. Pennsylvania Rule of Civil Procedure 1019(i) provides that “[w]hen any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof.” Pa. R.C.P. 1019(i).

43. Plaintiffs’ claims against Defendants are based in large part on the PPA, as amended and the subsequent January 28, 2014 letter from PADEP. *See* Complaint ¶¶ 18, 19, 45, 47.

44. Among other claims, Plaintiffs allege its count for tortious interference with a contractual or business relationship is based upon a contractual relationship that “existed between CDP and the PADEP, by virtue of the Prospective Purchaser Agreement and its various amendments.” Complaint ¶ 45.

45. Plaintiffs failed to attach to the Complaint copies of the PPA, as amended, or the subsequent January 28, 2014 letter.

46. This failure is significant as, had Plaintiffs complied with the rules and appended the PPA and the January 28, 2014 letter to the Complaint, it would have been clear from the face of the Complaint that:

- a. The PADEP has in its files over thirty (30) “studies, inspection reports, sample results, and general files relating to releases or threats of releases at the Site,” March 17, 2005 PPA ¶ E and A;
- b. “[T]he Department has determined that [CDP] is or could become a potentially responsible person within the meaning of Section 701(a) of HSCA for the releases or threatened releases of hazardous substances or contaminants at the Site, March 17, 2005 PPA ¶ J;
- c. CDP agreed to “not contribute or otherwise exacerbate . . . any Existing Contamination attributable to the Site,” March 17, 2005 PPA ¶ 5;
- d. A contractor for CDP destroyed a liquid boot while performing metal recovery activities at the Site which potentially exacerbated the Existing Contamination at the Site, in violation of the PPA and its amendments, January 28, 2014 PADEP Letter p. 1;
- e. PADEP requested that CDP repair the liquid boot, but this was never done, in continued violation of the PPA and its Amendments, January 28, 2014 PADEP Letter p. 1;
- f. At CDP’s request, PADEP agreed to allow CDP to demolish buildings at the Site in lieu of repair of the liquid boot, January 28, 2014 PADEP Letter p.1;

- g. During a meeting in mid-December, 2013, the PADEP Regional Director was assured by Plaintiff J. Brian O'Neill that the demolition was going forward immediately, January 28, 2014 PADEP Letter p. 2;
- h. "Notwithstanding the assurance, nothing has occurred at the Bishop Tube site, and CDP continues to be in violation of the PPA and its Amendments," January 28, 2014 PADEP Letter p 2.
- i. PADEP "considers the CDP's violation of the PPA to void the Covenant Not to Sue" set forth in the PPA, January 28, 2014 PADEP Letter p. 2.

47. A copy of the March 17, 2005 PPA and the January 22, 2007 and June 4, 2010 amendments thereto are attached hereto as Exhibits "A", "B" and "C", respectively. A copy of the PADEP January 28, 2014 letter is attached hereto as Exhibit "D". By failing to attach copies of the PPA, as amended, and the January 28, 2014 letter, Plaintiffs failed to conform their pleading to Rule 1019(i).

48. In addition, Plaintiffs allege that on June 7, 2017, Maya van Rossum falsely stated at a meeting that Brian O'Neill "brushed up against her inappropriately." Complaint ¶¶ 35, 36.

49. Although CDP engaged a stenographer to document statements made at the meeting, Plaintiffs failed to attach a copy of the transcript of Ms. van Rossum's statements to the Complaint. Fortunately, a video recording of the meeting was created and can be found at <https://www.youtube.com/watch?v=xTtfPT6y8g8>.

50. Had Plaintiffs appended a copy of the meeting transcript to their Complaint, it would have been clear that:

- a. The meeting at which the statements were made was an informational meeting held by PADEP, local officials and East Whiteland Township residents to discuss the proposed Bishop Tube development plan;
- b. Ms. van Rossum stated not only that Mr. O'Neill had inappropriately brushed up against her, but that he asked her "did you get my love note?" Plaintiffs suit does not challenge the veracity of Ms. van Rossum's statement regarding Mr. O'Neill's comment;
- c. The "love note" was presumably the Writ of Summons in this litigation, which was filed prior to the meeting (summons was filed on May 7, 2017) and served on Ms. van Rossum on Sunday, May 14, 2017 (Mother's Day); and
- d. Mr. O'Neill encouraged Ms. van Rossum to make public the statement regarding his actions at the meeting (another fact that Plaintiffs' suit does not challenge).

51. Plaintiffs' failure to append to the Complaint a document they created and that evidences material statements on which their claims are based is a violation of Rule 1019(i).

52. It is clear that the allegedly defamatory statements are not defamatory at all but rather evidence a pattern of behavior by Plaintiffs intended to intimidate and chill the valid exercise by citizens of their constitutional right to freedom of speech and to petition the government for the redress of grievances.

53. Furthermore, it is clear that these statements occurred after Plaintiffs determined to, and did in fact, institute the above-captioned litigation. The allegations are nothing more than a pretext for intimidation and retaliation against Defendants for exercising their constitutionally protected rights.

54. It is in the public interest that this Court bring a swift end to the retaliatory lawsuit seeking to undermine the citizens' participation in the establishment of State and local environmental policy and in the implementation and enforcement of environmental law and regulations. *Pennsbury Village Associates*, 11 A.3d at 913.

55. Accordingly, DRN respectfully requests that this Honorable Court strike and dismiss Counts I, II and III of the Complaint pursuant to Pa. R. Civ. P. 1028(a)(2).

IV. PRELIMINARY OBJECTION IN THE FORM OF A MOTION TO STRIKE COUNTS I, II and III OF PLAINTIFFS' COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(2) [Failure of Pleading to Conform to Rule of Court -- Failure to Assert Separate Counts for Separate Claims Against Separate Defendants]

56. DRN incorporates the averments contained in the above paragraphs as if fully set forth herein.

57. Pennsylvania Rule of Civil Procedure 1020(a) permits a plaintiff to state more than one cause of action cognizable in a civil action against the same defendant, but requires that each cause of action and any special damage related thereto be stated in a separate count containing a demand for relief.

58. In addition, under Pennsylvania Rule of Civil Procedure 1020(a) it is mandatory that "plaintiff set forth each cause of action against each defendant in a separate count under a separate heading" and "a complaint may be stricken for failure to comply with this requirement". See *Goodrich Amram* 2d § 1020(a):5 citing *General State Authority v. Lawrie and Green*, 356 A.2d 851 (Pa. Commw. 1976).

59. In Count I of the Complaint, Plaintiffs assert claims for "Defamation/Commercial Disparagement" against Defendants.

60. Defamation and Commercial Disparagement are separate and distinct torts. *Zerpol Corp. v. DMP Corp.*, 561 F. Supp. 404, 408 (E.D. Pa. 1983) (citing *Developments in the Law—Competitive Torts*, 77 Harv.L.Rev. 888, 892–905 (1964)).

61. A cause of action for Defamation arises under 42 Pa. C.S. § 8343. To establish a *prima facie* case of defamation, a plaintiff must establish the following elements:

- (1) The defamatory character of the communication;
- (2) Its publication by the defendant;
- (3) Its application to the plaintiff;
- (4) The understanding by the recipient of its defamatory meaning;
- (5) The understanding by the recipient as intended to be applied to the plaintiff;
- (6) Special harm resulting to the plaintiff from its publication; and
- (7) Abuse of a conditionally privileged occasion.

42 Pa.C.S. § 8343(a); *Joseph v. Scranton Times L.P.*, 129 A.3d 404, 424 (Pa. 2015).

62. In addition, if the plaintiff is a public official or public figure, and the statement relates to a matter of public concern, then to satisfy First Amendment strictures, the plaintiff must establish that the defendant made a false and defamatory statement with “actual malice”. *American Future Systems, Inc. v. Better Business Bureau of Eastern Pennsylvania*, 923 A.2d 389, 400 (Pa. 2007).

63. A person may become a limited purpose public figure if:

he “thrust[s] himself into the vortex of the discussion of pressing public concerns.” *Rosenblatt v. Baer*, 383 U.S. 75, 86 S.Ct. 669, 15 L.Ed.2d 597 (1966). Such a person uses “purposeful activity” to thrust “his personality” into a “public controversy.” *Curtis Publishing Co. v. Butts*, 388 U.S. [388 U.S. 130, 155, 87 S.Ct. 1975 (1967).] He becomes a limited purpose public figure because he invites and merits “attention and comment.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 346, 94 S.Ct. 2997 (1974).] A person may

become a limited purpose public figure if he attempts to have, or realistically can be expected to have, a major impact on the resolution of a specific public dispute that has foreseeable and substantial ramifications for persons beyond its immediate participants.

Weber v. Lancaster Newspapers, Inc., 878 A.2d 63 (Pa. Super 2005).

64. Even where a plaintiff establishes these elements, the defendant may justify its actions by showing:

- (1) The truth of the defamatory communication.
- (2) The privileged character of the occasion on which it was published.
- (3) The character of the subject matter of defamatory comment as of public concern.

42 Pa.C.S. § 8343(b); *Joseph*, 129 A.3d at 424-425.

65. A cause of action for Commercial Disparagement requires a plaintiff to show:

- (1) That the disparaging statement of fact is untrue or that the disparaging statement of opinion is incorrect;
- (2) That no privilege attaches to the statement; and
- (3) That the plaintiff suffered a direct pecuniary loss as the result of the disparagement.

U.S. Healthcare v. Blue Cross of Greater Phila., 898 F.2d 914, 924 (3d Cir.1990); *SNA, Inc. v. Array*, 51 F.Supp.2d 554, 565 (E.D. Pa. 1999).

66. The purpose of a Commercial Disparagement action is to compensate a vendor for pecuniary loss suffered because statements attacking the quality of his goods have reduced their marketability. It is not to vindicate the plaintiff's business reputation and good name. *Array*, 51 F.Supp.2d at 565 (quoting *U.S. Healthcare*, 898 F.2d at 924).

67. "Unlike a defamation action, a plaintiff claiming commercial disparagement must prove actual pecuniary loss." *Array*, 51 F.Supp.2d at 566.

68. In Count I, Plaintiffs have combined multiple causes of action into a single count, in violation of Pa. R.C.P. 1020(a).

69. In addition, in each count, Plaintiffs have set forth claims against a disparate group of “Defendants,” including various unnamed “John Does,” without distinguishing between the parties. *See, e.g.*, Complaint ¶¶ 24 – 26, 38, 46, 52.

70. Plaintiffs have also, under a single count, alleged various claims against various Defendants arising out of distinct alleged acts. *See, e.g.*, Complaint ¶¶ 31, 33.

71. Plaintiffs’ Complaint violates Pa. R.C.P. 1020(a) by failing to separate the claims against Defendants into separate counts under separate headings.

72. Accordingly, DRN respectfully requests that this Honorable Court strike and dismiss Counts I, II and III of the Complaint pursuant to Pa. R. Civ. P. Pa. R. Civ. P. 1028(a)(2).

V. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNT I OF PLAINTIFFS’ COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(2), (3) and (4) [Failure of Pleading to Conform to Rule of Court, Insufficient Specificity of Pleading and Legal Insufficiency of Pleading – Failure of Indispensable Element of Claim]

73. DRN incorporates the averments contained in the above paragraphs as if fully set forth herein.

74. Pennsylvania Rule of Civil Procedure 1019(a) mandates that the material facts on which a cause of action is based be stated in concise summary form.

75. The purpose of Rule 1019(a) is to require the pleader to sufficiently disclose material facts to enable the adverse party to prepare his case, and “Rule 1019(a) is satisfied if allegations in a pleading (1) contain averments of all facts the plaintiff will eventually have to prove in order to recover, and (2) [t]hey are sufficiently specific so as to enable the party served to prepare a defense thereto.” *Landau v. Western Pennsylvania Nat’l Bank*, 282 A.2d 335, 339 (Pa.

1971); *Dep't of Transp. v. Shipley Humble Oil Co.*, 370 A.2d 438, 439-40 (Pa. Commw. 1977) (citations omitted).

76. To support a claim for defamation, the complained of statements must be of a defamatory character. 42 Pa.C.S. § 8343(a).

77. Similarly, to support a claim for Commercial Disparagement, the complained of statement must be untrue or incorrect. *U.S. Healthcare v. Blue Cross of Greater Phila.*, 898 F.2d 914, 924 (3d Cir.1990); *SNA, Inc. v. Array*, 51 F.Supp.2d 554, 565 (E.D. Pa. 1999).

78. Primarily, Plaintiffs' Complaint focuses on the April 2017 flyer, attached to the Complaint as Exhibit "A". Plaintiffs allege that the statements in the flyer are untrue. *See* Complaint ¶¶ 26-28.

79. The statements that Plaintiffs allege are untrue are:

- a. The Township "might allow [Plaintiffs] to disturb the land, expose us to more of the toxins and put 200+ homes on contaminated land!!!";
- b. If this development happens your community could be on the receiving end of more contamination as toxins make their way through your local waterways and water table;
- c. CDP planned to use "a \$1million grant from the DEP (our tax money) to perform a '**PARTIAL**' CLEAN-UP" of the Bishop Tube Site; and
- d. The developer is refusing "to take responsibility for full removal of the toxins at the site".

Complaint, ¶ 26, 28 (emphasis in original).

80. Based on Plaintiffs' admissions in the Complaint, however, it is clear that the objected to statements in the flyer are true.

81. Averments in the Complaint that support and justify the statements in the flyer include:

- a. Industrial operations at the Site “resulted in the release of significant amount of chlorinated solvents, principally TCE, to soil and groundwater at the Site; *the contamination of groundwater has migrated off-Site to the surrounding community.*” Complaint ¶ 14 (emphasis added).
- b. Chlorinated solvent contamination “still remains today in Site soils and groundwater. In addition, *the chlorinated solvent contamination in groundwater has migrated significant distances beyond the boundaries of the Site*” Complaint ¶ 15 (emphasis added).
- c. Plaintiffs propose to cleanup the soils above the water table at the site *but not the contamination of the groundwater that is on and migrated significant distances beyond the boundaries of the Site* and into the surrounding community (i.e. a partial clean-up). Complaint ¶ 28 (emphasis added).
- d. Any groundwater remediation required at or beyond the Site will not be addressed by CDP. Complaint ¶ 29.
- e. In 2014, the Township of East Whiteland rezoned the Bishop Tube Site from industrial use to residential use. Complaint ¶ 20.
- f. Plaintiff CDP has sought municipal approvals of plans for a 228 unit residential townhome community on a portion of the Bishop Tube Site. Complaint ¶ 22.

82. It is clear on the face of the Complaint, therefore, that the statements in the flyer are neither defamatory, untrue nor incorrect.

83. Moreover, an essential element of a claim for defamation is that a defendant published a defamatory statement. *See* 42 Pa. C.S. § 8343(a).

84. In their Complaint, Plaintiffs allege generally that “Defendants” agreed to publish and distribute and did publish and distribute an allegedly defamatory flyer to the community.

85. Primarily, Plaintiffs’ Complaint focuses on the April 2017 flyer, attached to the Complaint as Exhibit “A”.

86. Plaintiffs fail to allege any material facts that would support a claim that either Maya van Rossum or the Delaware Riverkeeper Network participated in publication or distribution of the flyer.

87. In addition, based on the face of the Complaint, Brian O’Neill and the other Plaintiffs are, at the very least, limited purpose public figures, that have used purposeful activity to thrust their personalities into a public controversy. By involving themselves in the development of this contaminated site which Plaintiffs concede contains chlorinated solvents in groundwater that has “migrated off-Site to the surrounding community,” Complaint ¶ 14, they have invited and merit attention and comment. They realistically can be expected to have a major impact on the resolution of this specific public dispute that has foreseeable and substantial ramifications for the entire community. In addition, there can be no question that the development of the Bishop Tube site is a matter of public concern. *See American Future Systems*, 923 A.2d at 400; *Weber*, 878 A.2d 63 (Pa. Super. 2005).

88. Accordingly, Plaintiffs are required to allege “actual malice” on the part of Defendants.

89. Actual malice in a defamation action requires a showing that that the defendant knew that the statement was false or acted with reckless disregard as to whether it was false or not.

DeMary v. Latrobe Printing and Pub. Co., 762 A.2d 758, 764 (Pa. Super. 2000). The defendant must have made the false publication with a high degree of awareness of probable falsity, or must have entertained serious doubts as to the truth of his publication. *Joseph*, 129 A.3d at 424 (quoting *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 667, 109 S.Ct. 2678, 2686 (1989)).

90. Plaintiffs have failed to set forth any allegations that would support a finding of actual malice on the part of Defendants.

91. Finally, for both the claims of Defamation and Commercial Disparagement, a lack of privilege is required. *See* 42 Pa.C.S. § 8343(b); *U.S. Healthcare*, 898 F.2d at 924.

92. As set forth in Preliminary Objections I and II, above, the alleged statements by Defendants are subject to privilege under *Noerr-Pennington* Doctrine and Environmental Immunity Act, 27 Pa.C.S. § 8301, *et seq.*

93. Plaintiffs have failed to sufficiently and specifically allege material facts needed to support an indispensable element of their claim in Count I of the Complaint. Moreover, the facts that are alleged in the Complaint undermine Plaintiffs' claims of Defamation and Commercial Disparagement.

94. Accordingly, DRN respectfully requests that this Honorable Court strike and dismiss Count I of the Complaint pursuant to Pa. R. Civ. P. 1028(a)(2), (3) and (4).

VI. PRELIMINARY OBJECTION IN THE FORM OF A MOTION TO STRIKE COUNT I OF PLAINTIFFS' COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(3) [Insufficiency Specificity of Pleading].

95. DRN incorporates the averments contained in the above paragraphs as if fully set forth herein.

96. Pennsylvania Rule of Civil Procedure 1028(a)(3) permits the filing of preliminary objections to a pleading for “insufficient specificity.”

97. In reviewing the objection under Rule 1028(a)(3), the pertinent inquiry is “whether the plaintiffs Complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that [it] may know without question upon what grounds to make [its] defense.” *Rambo v. Greene*, 2006 PA Super 231, 242, 906 A.2d 1232, 1236 (Pa. Super. 2006).

98. Notably, the Pennsylvania Supreme Court has ruled that a trial court “may strike any such vague language from the complaint in order to prevent a defendant from being prejudiced in preparing a defense.” *Liquori v. Wind Gap Chiropractic Ctr.*, 75 Pa. D. & C.4th 106, 111-12 (Northampton Cty. 2005) (citing *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600 (Pa. 1983)).

99. In addition to the flyer, noted above, Plaintiffs allege generally that Delaware Riverkeeper Network has published unspecified false statements and documents on its website. Complaint ¶¶ 31 and 32.

100. Plaintiffs fail to allege any facts identifying the documents or the allegedly defamatory content thereof.

101. Plaintiffs’ Complaint fails to inform the defendant with accuracy and completeness of the specific basis on which recovery is sought.

102. The vagueness of Plaintiffs’ allegations prejudices DRN in preparing a defense to Plaintiffs’ claims and should, therefore, be stricken by the Court.

103. Accordingly, DRN respectfully requests that this Honorable Court strike and dismiss Count I of the Complaint pursuant to Pa. R. Civ. P. 1028(a)(3).

VII. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNT II OF PLAINTIFFS' COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(2), (3) and (4) [Failure of Pleading to Conform to Rule of Court, Insufficient Specificity of Pleading and Legal Insufficiency of Pleading – Failure of Indispensable Element of Claim]

104. DRN incorporates the averments contained in the above paragraphs as if fully set forth herein.

105. In Count II of the Complaint Plaintiffs claim that the Defendants as a collective group should be found liable for tortiously interfering with Plaintiffs' contractual or business relationship "with PADEP." Complaint ¶ 47.

106. Plaintiffs' claims for tortious interference are based solely the Consent Order known as the PPA, and its amendments. Complaint ¶ 45.

107. Under Pennsylvania law, the requisite elements of a cause of action for tortious interference with contracts are: (1) an existing or prospective contractual relationship between complainant and third party; (2) purposeful action intended to harm existing contractual relation; (3) absence of privilege or justification; and (4) actual occurrence of harm or damage. *Accumed LLC v. Advanced Surgical Servs., Inc.*, 561 F.3d 199, 212 (3d Cir. 2009) (quoting *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 530 (3d Cir. 1998)).

108. Plaintiffs have failed to sufficiently allege a claim for tortious interference.

109. First, as a matter of law, there is no basis for finding that Plaintiffs and PADEP are engaged in a contractual or business relationship by virtue of the PPA.

110. There is no "existing contractual relationship" between the parties. Rather, the PPA is an Order of the Department authorized and issued pursuant to Section 1102 of HSCA, 35 P.S. § 6020.1102.

111. Nor is there any “business” relationship between Plaintiffs and PADEP. Rather, Plaintiffs are merely regulated entities subject to the permitting and enforcement authority of the agency.

112. Secondly, Plaintiffs fail to sufficiently aver how allegedly defamatory statements - - the only specifically identified statements being made in **2017** -- could have undermined the PPA, key provisions of which PADEP determined were void on or about January 28, **2014**.

113. Third, Plaintiffs fail to sufficiently aver the absence of privilege or justification. On the contrary, as Plaintiffs concede, the claims in this matter involve Defendants activities in petitioning the government to remediate the Site. *See* Complaint ¶¶ 23, 24, 26. Many of Defendants’ alleged activities and comments relate to a legislatively mandated public comment period regarding the PPA. *See*, HSCA Section 1113, 35 P.S. § 6020.1113. As set forth more fully in Preliminary Objections I and II, Defendants’ alleged activities are protected under both the Federal and State Constitutions and State law.

114. Plaintiffs have failed to sufficiently allege indispensable elements for a claim for tortious interference with contractual or business relations.

115. Accordingly, DRN respectfully requests that this Honorable Court strike and dismiss Counts II of the Complaint pursuant to Pa. R. Civ. P. 1028(a)(2), (3) and (4).

VIII. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNT III OF PLAINTIFFS’ COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(2), (3) and (4) [Failure of Pleading to Conform to Rule of Court, Insufficient Specificity of Pleading and Legal Insufficiency of Pleading – Failure of Indispensable Element of Claim]

116. DRN incorporates the averments contained in the above paragraphs as if fully set forth herein.

117. In Count III of their Complaint, Plaintiffs allege a claim for civil conspiracy.

118. “Proof of malice, i.e., an intent to injure, is essential in proof of a conspiracy.” *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466, 472 (Pa. 1979).

119. The element of malice requires a showing that “the sole purpose of the conspiracy is to cause harm to the party who has been injured.” *Id.*; *Becker v. Chicago Title Ins. Co.*, No. 03-2292, 2004 WL 228672 at *13 (E.D. Pa. 2004).

120. Where it is clear on the face of the Complaint that a person acted to advance his or her own interests, those interests constitute justification and negate any alleged intent to injure. *Thompson Coal Co., supra*, 412 A.2d at 472; *WM High Yield Fund v. O’Hanlon*, No. 04-3423, 2005 WL 6788446 (E.D. Pa. 2005) (granting motion to dismiss civil conspiracy claim).

121. Here, any actions allegedly undertaken by Defendants would necessarily have been undertaken in furtherance of Defendants’ own constitutionally-protected interests as property owners, as parents, and as advocates for public health, safety and a clean and healthy environment. Pa. Const. art. I, §§1, 27.

122. Plaintiffs have failed to establish the requisite elements of a conspiracy -- that the Defendants acted *solely* with the intention of harming the Plaintiffs, rather than to advance Defendants’ own interests.

123. Accordingly, DRN respectfully requests that this Honorable Court strike and dismiss Count III of the Complaint pursuant to Pa. R. Civ. P. 1028(a)(2), (3) and (4).

IX. PRELIMINARY OBJECTION IN THE FORM OF A DEMURRER AND MOTION TO STRIKE COUNT I, II AND III OF PLAINTIFFS’ COMPLAINT AGAINST THE DEFENDANTS PURSUANT TO PA. R. CIV. P. 1028(a)(4) [Legal Insufficiency of Pleading – Punitive Damages]

124. DRN incorporates the averments contained in the above paragraphs as if fully set forth herein.

125. In the WHEREFORE clause of each of the three counts asserted by Plaintiffs, Plaintiffs seek “punitive damages” from Defendants.

126. In Pennsylvania, “[p]unitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others.” *Hutchison v. Luddy*, 870 A.2d 766, 770 (Pa. 2005), quoting *Feld v. Merriam*, 485 A.2d 742, 747 (Pa.1984), quoting Restatement (Second) of Torts § 908(2) (1979). “As the name suggests, punitive damages are penal in nature and are proper only in cases where the defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct.” *Hutchison*, 870 A.2d at 770. The purpose of punitive damages is twofold. *Id.* The first purpose is to punish a tortfeasor for outrageous conduct. *Id.* The second is to deter the tortfeasor or others like him or her from similar conduct in the future. *Id.*

127. Despite Plaintiffs’ hyperbole to the contrary, Plaintiffs have failed to allege any outrageous conduct or conduct motivated by an evil motive or reckless indifference to the rights of others.

128. On the contrary, the facts as plead merely set forth a scenario of Defendants exercising their constitutional privilege by petitioning their governments with true and accurate information as advocates on behalf of their families and communities for a safe, clean and healthy environment.

129. Accordingly, DRN respectfully requests that this Honorable Court strike and dismiss Plaintiffs’ claims for punitive damages pursuant to Pa. R. Civ. P. 1028(a)(4).

WHEREFORE, Defendants Maya van Rossum and the Delaware Riverkeeper Network, respectfully request that the Court grant the instant Preliminary Objections and enter an Order

dismissing the Plaintiffs' Complaint, together with such other and further relief as this Court may deem appropriate.

Respectfully submitted,

CURTIN & HEEFNER LLP



Date: July 26, 2017

By: _____
JORDAN B. YEAGER, ESQUIRE
Attorney I.D. 72947
MARK L. FREED, ESQUIRE
Attorney I.D. 63860
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2005 S. Easton Road, Suite 100
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Tel.: 267-898-0570

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter Of: :
: :
Bishop Tube Site :
East Whiteland Township, :
Chester County, Pennsylvania :
Constitution Drive Partners, L.P. : Prospective Purchase Agreement
700 South Henderson Road, Suite 225 :
King of Prussia, PA 19406 :

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("CO&A") is entered into and effective this 17th day of March, 2005, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") or ("DEP") and Constitution Drive Partners, L.P., 700 South Henderson Road, Suite 225, King of Prussia, PA 19406 ("Developer").

FINDINGS

The Department made and determined the following findings, which Developer agrees are true and correct:

A. The Department is the agency of the Commonwealth of Pennsylvania ("Commonwealth") vested with the duty and authority to administer and enforce the provisions of the Clean Streams Laws ("CSL") 35 P.S. § 691.1 et seq., the Solid Waste Management Act ("SWMA"), 35 P.S. §6018.101 et seq., the Hazardous Sites Cleanup Act ("HSCA"), 35 P.S. § 6020.101 et seq., the Storage Tank and Spill Prevention Act ("STSPA"), 35 P.S. § 6021.101 et seq., the Land Recycling and Remediation Standards Act ("Act 2"), 35 P.S. § 6026.101 et seq., Section 1917-A of the Administrative Code, 71 P.S. § 510-17, and rules and regulations duly promulgated thereunder. The Department is also the agency of the Commonwealth vested with the duty and responsibility to work with the United States Environmental Protection Agency

("EPA") to implement and enforce the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.

B. Developer is a Pennsylvania Limited Partnership with a business address of 700 South Henderson Road, Suite 225, King of Prussia, PA 19406.

C. The Bishop Tube HSCA Site ("Site") is a site within the meaning of HSCA. The Site is located approximately a quarter of a mile south of U.S. Route 30, East Whiteland Township, Chester County, Pennsylvania. The Site consists of land totaling approximately 13.7 acres in size. The Site is identified as Chester County Tax Parcel Number UPI 42-04-0321.020.

D. The Site was formerly used as a precious metals processing and stainless steel fabricating facility between the early 1950s and the late 1990s. Prior environmental investigations, conducted on behalf of Site owner Christiana Metals Corporation ("Christiana") in the 1980s and 1990s, and later on behalf of the Department, have identified environmental impacts from the prior manufacturing operations at the Site. Specifically, soils at the Site, groundwater at and potentially migrating from the Site, and surface water and sediments in Little Valley Creek, which runs through the eastern portion of the Site, have been found to be impacted primarily by chlorinated solvents, including trichloroethylene ("TCE"), as well as other hazardous substances. The results of the investigations performed for Christiana and the Department are summarized in two recent reports prepared for the Department by Baker Environmental, Inc. ("Baker"), including a "Final Supplemental Soil Characterization Report," dated June 30, 2003, and a "Final Phase III Supplemental Groundwater Investigation Report," dated July 2, 2004.

E. In addition to the two reports referenced in Paragraph D above, the Department

has in its files other studies, inspection reports, sample results, and general files relating to releases or threats of releases at the Site, including but not limited to the documents listed in Exhibit A attached hereto and incorporated herein by reference.

F. The environmental contamination identified in the reports described in Paragraph D above and in the other studies, reports, analytical data and files described in Paragraph E above shall constitute "Existing Contamination" for purposes of this CO&A. The Existing Contamination constitutes a release or threat of release of hazardous substances and/or contaminants within the meaning of HSCA.

G. Developer has represented to the Department that Developer has neither caused, contributed to, nor is otherwise responsible for any releases or threat of releases of hazardous substances or contaminants at or from the Bishop Tube HSCA Site. The Department is not aware of any information to the contrary which would indicate such responsibility.

H. As part of its responsibility under HSCA, the Department has incurred and/or will continue to incur response costs as that term is defined under HSCA, relating to the Bishop Tube HSCA Site.

I. Developer has entered into an agreement to purchase the Site, and Developer plans to develop the Site for commercial purposes.

J. Section 701(a) of HSCA provides that owners and operators of Sites during the time of release or threatened release of hazardous substances shall be liable for response costs incurred by the Department. As a result, the Department has determined that Developer is or could become a potentially responsible person within the meaning of Section 701(a) of HSCA

for the releases or threatened releases of hazardous substances or contaminants at the Site.

K. In connection with its intended purchase and redevelopment of the Site, Developer desires to enter into this CO&A for the purpose of resolving any potential environmental liability to the Commonwealth associated therewith by receiving a covenant not to sue from the Commonwealth and contribution protection under HSCA relating to Existing Contamination as set forth in this Consent Order and Agreement. In exchange for this covenant from the Department, and as compensation for response costs incurred and to be incurred by the Department in connection with the Site, Developer commits to complete the necessary and appropriate investigation and/or remediation of soils at the Site in order to demonstrate attainment of a remediation standard for soils established pursuant to Act 2. For purposes of this Consent Order and Agreement, remediation of soils shall mean remediation of soils located within the unsaturated zone between the ground surface and the groundwater.

L. It is Developer's intent that Developer's performance of investigation and due diligence activities prior to acquisition of the Site and Developer's investigatory and remedial activities relating to Site soils as contemplated to be performed by Developer hereunder shall satisfy Developer's obligation to undertake all appropriate inquiry and exercise appropriate care with respect to hazardous substances at the Site as required to qualify as a "bona fide prospective purchaser" pursuant to Section 101(40) of CERCLA, 42 U.S.C § 9601(40).

M. While the Department makes no commitment to funding any remediation of the contaminated groundwater at the Site, the Department recognizes that the HSCA program may, at some point, provide a source of funds towards addressing the releases or threatened releases of hazardous substances or contaminants in groundwater at the Site.

ORDER

After full and complete negotiation of all matters set forth in this CO&A and upon the mutual exchange of covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Developer, as follows:

1. **Authority:** This CO&A is an Order of the Department authorized and issued pursuant to Section 1102 of HSCA, 35 P.S. § 6020.1102.

2. **Findings:**

(a) Developer agrees that the findings set forth in Paragraphs A through L above, which are incorporated herein by reference, are true and correct, and, in any matter or proceeding concerning the Site involving Developer and the Department, Developer shall not challenge the accuracy or validity of these findings.

(b) The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. **Work To Be Performed:** In exchange for the benefits conferred by the Department to Developer under this CO&A, and as compensation for response costs incurred and to be incurred by the Department in connection with the Site, Developer hereby agrees that, by March 1, 2009, Developer shall undertake investigation and/or remediation of soils at the Site necessary to demonstrate attainment with a non-residential statewide health standard or site-specific standard under Act 2 for soils at the Site in accordance with the Remedial Action Work Plan ("Plan") attached hereto as Exhibit B and incorporated herein by reference. In this regard, Developer shall follow all required procedures and notices under Act 2 within the time frame set

forth in this paragraph.

4. **Access and Right of Entry:** Developer hereby grants to the Department, its employees, agents, contractors and subcontractors, access and right of entry to the Site for the performance of any response actions the Department may deem necessary or appropriate for the Site. The Department will use best efforts, and shall cooperate with Developer, to avoid any unreasonable interference with Developer's business activities at the Site during any access or entry by the Department or its contractors; provided however, that Developer recognizes that remediation of contaminated groundwater at the Site may involve certain technical activities which are necessarily intrusive by nature. The Department agrees to provide reasonable advance notice to Developer or its attorney prior to entry upon the Site by the Department, its employees, authorized representatives, contractors and others under the direction of the Department.

Nothing in this paragraph is intended, nor shall it be construed, to limit any right of access or entry that the Department may otherwise have by operation of law.

5. **Non-Exacerbation:** Developer shall not contribute to or otherwise exacerbate, by act or failure to perform a legal duty, any Existing Contamination attributable to the Site. In the event that Developer discovers or is otherwise placed on notice that it has contributed to or otherwise exacerbated the Existing Contamination, Developer shall immediately take steps to abate any such exacerbation in a manner approved by the Department. The Parties agree that the Developer's performance of the soil remediation activities in accordance with the requirements of Paragraph 3 and Act 2 above shall not be deemed to contribute to or otherwise exacerbate Existing Contamination at the Site.

6. **Non-Interference:** Developer shall not interfere with or impair any response

actions taken by the Department, or any other person or entity under the auspices of the Department with regard to the Existing Contamination or any other contamination identified at the Site. The parties agree that the Developer's performance of the soil remediation activities in accordance with the requirements of Paragraph 3 above and Act 2 shall not be deemed to interfere with or impair any response actions taken by the Department.

7. **Department's Covenant Not to Sue:** Subject to the Reservation of Rights provided in Paragraph 8 below, the Department covenants not to sue or take any administrative or judicial action against Developer for response costs, response actions, civil penalties, natural resource damages, or injunctive relief, including encumbering the Property (through lien or otherwise), arising from or relating to the release and/or threatened release of hazardous substances defined as Existing Contamination at the Site. These covenants extend only to Developer, except as they may be transferable as stated below and may terminate at the Department's sole discretion upon Developer's failure to meet any of the requirements of the CO&A. These covenants shall take effect upon the effective date of this CO&A.

8. **Reservation of Rights:**

(a) Notwithstanding any other provision of this CO&A, the Department reserves the right to take any action, administrative or otherwise, against Developer with regard to response costs or response actions at the Site if:

(1) The Department receives previously unknown information that indicates that Developer, prior to the execution date of this CO&A, caused, contributed to, or is otherwise liable (other than for the reasons described in Paragraph J, supra) for any releases of hazardous substances or contaminants at or from the Site; or

(2) Developer has made in any material respect a false or inaccurate representation or statement in a record, report or document relating to the release or threatened release of hazardous substances or contaminants at the Site.

For purposes of this paragraph, the information known to the Department includes the information set forth in this CO&A, contained in the Department's files at the time of execution of this CO&A, or in the documentation identified as describing Existing Contamination at the Site.

(b) The Department's Covenant Not to Sue set forth herein shall not apply to the following claims by the Department against Developer for:

(1) Failure to meet the requirements of this CO&A;

(2) Future releases of hazardous substances or contaminants outside the boundaries of the Site, except to the extent of Existing Contamination;

(3) Future releases or threatened releases of hazardous substances or contaminants at the Site, except to the extent of Existing Contamination, provided that passive migration of Existing Contamination shall not be deemed to constitute a future release or threatened release of hazardous substances or contaminants at the Site; or

(4) Past, present, or future violations of federal or state criminal law.

9. **Contribution Protection.** The Department agrees that, by entering into this CO&A, Developer is a person who has resolved any potential liability to the Commonwealth for the releases or threatened releases of hazardous substances or contaminants at the Site and therefore shall be afforded any existing legal protection provided in Section 705 of HSCA, 35 P.S. § 6020.705, or Section 113(f)(2) of CERCLA, 42, U.S.C. §9613(f)(2) against any claims for contribution that may be asserted against Developer, regarding matters addressed in this CO&A.

Developer acknowledges that the Department has no obligation to defend it in any suit, demand or claim for contribution for any matters arising from the release or threatened release of hazardous substances or contaminants at the Site, arising out of response actions at the Site, or arising out of this CO&A. The contribution protection afforded by this Paragraph shall be in addition to the exclusions from or defenses to liability that may be available to Developer, its successors and assigns, under statutory or common law.

10. Transferability.

(a) This Consent Order and Agreement, excluding Developer's obligations pursuant to Paragraph 3 above, shall be transferable to any lessees or subsequent purchaser of any portion of the Site provided that: (1) such lessee or subsequent purchaser did not cause or contribute to, or is otherwise not liable for, any of the Existing Contamination; (2) such lessee or subsequent purchaser agrees in writing to all terms and conditions set forth in this Consent Order and Agreement, excluding those found in Paragraph 3, with respect to its portion of the Site; and (3) the Department is notified within fourteen (14) days of execution of such lease or purchase. For purposes of condition (2) above, the lessee or subsequent purchaser may satisfy this condition by submitting to the Department a copy of this CO&A, which has been endorsed by lessee or subsequent purchaser with a statement indicating its agreement to all terms and conditions set forth herein, excluding Paragraph 3. In the event of such transfer, the lessee or subsequent purchaser shall be entitled to the full benefits of this CO&A, including but not limited to the Covenant Not to Sue set forth in Paragraph 8 above and the contribution protection provided by this CO&A and discussed in Paragraph 9 above.

(b) In the event that Developer or a subsequent transferee desires to lease or

transfer all or a portion of the Site to a lessee or subsequent purchaser, and to transfer to the lessee or subsequent purchaser Developer's (or transferee's as the case may be) obligations pursuant to Paragraph 3 above with respect to the portion of the Site to be leased or transferred, then Developer may request the Department to amend this CO&A to specify that the lessee or subsequent purchaser shall be solely responsible for any remaining obligations of Paragraph 3 relating to the lessee's or subsequent purchaser's portion of the Site. The Department, in its discretion, may agree to such amendment provided that all of the following conditions have been satisfied: (a) the Department determines that the lessee or subsequent purchaser is financially capable of completing the remaining obligations of Paragraph 3 at the lessee's or subsequent purchaser's portion of the Site; (b) the lessee or subsequent purchaser did not cause or contribute to any contamination at the Site; and (c) the lessee or subsequent purchaser agrees that, with respect to its portion of the Site, it shall be solely responsible for such remaining obligations of Paragraph 3, shall comply with all other terms and conditions set forth in this CO&A and shall agree to become a signatory to this CO&A under these conditions. In the event of such transfer, the lessee or subsequent purchaser shall be entitled to the full benefits of this CO&A, including but not limited to the Covenant Not to Sue set forth in Paragraph 8 above and the contribution protection described in Paragraph 9 above.

(c) Notwithstanding anything to the contrary, any transfer by Developer or a subsequent transferee pursuant to this paragraph 10 shall not terminate the full benefits of the CO&A with respect to said Developer or subsequent transferee.

11. **Correspondence with the Department.** All correspondence with the Department concerning this CO&A shall be addressed to:

Mr. Stephan Sinding
Environmental Cleanup Program Manager
Pennsylvania Department of Environmental Protection
Southeast Regional Office
2 East Main Street
Norristown, PA 19401

12. **Correspondence with Developer.** All correspondence with Developer concerning this CO&A shall be addressed to:

Constitution Drive Partners, L.P.
700 South Henderson Road, Suite 225
King of Prussia, PA 19406
Attn: Kevin Silverang, President, Constitution Drive Acquisition Corporation,
General Partner of Constitution Drive Partners, L.P.

With a copy to:

Attorney for Developer:

Jonathan H. Spergel, Esquire
Manko, Gold, Katcher & Fox, LLP
401 City Avenue - Suite 500
Bala Cynwyd, PA 19004

13. **Severability:** The paragraphs of this CO&A shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the Parties.

14. **Entire Agreement:** This CO&A shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

15. **Attorney's Fees:** The Parties shall bear their respective attorney's fees, expenses, and other costs in prosecution or defense of this matter, or any related matters, arising

prior to the execution of this CO&A.

16. **Modifications:** No changes, additions, modifications or amendments to this CO&A shall be effective unless they are set forth in writing and designed by the Parties hereto.

17. **Titles:** A title used at the beginning of any paragraph of this CO&A may be used to aid in the construction of that paragraph but shall not be treated as controlling.

18. **Existing Obligations Unaffected.** Except as provided above, and subject to the terms and conditions contained herein, nothing in this CO&A is intended, nor shall it be construed, to relieve or limit any obligation on the part of Developer to comply with any applicable existing or subsequent statute, regulation, permit or order of the Department. In addition, nothing in this CO&A is intended, nor shall it be construed, to authorize any violation of any statute, regulation, order or permit issued by the Department.

19. **Relation to Other Parties:** Except as specifically provided herein, nothing in this CO&A is intended, nor shall it be construed, to diminish or modify in any way the obligations of any other person or entity with respect to the Site.

20. **Responsibility of Developer:** Developer shall be liable for any violations of this CO&A by Developer, including those violations caused by, contributed to, or allowed by its agents, servant or privies, to the extent that they are acting as such, and any persons, contractors and consultants acting for or under Developer.

21. **Remedies for Breach:** Developer's substantial failure to comply with any material provision of this CO&A shall be deemed a breach, and in the event of such breach, the Department may, in addition to the remedies prescribed herein, institute any equitable,

administrative, civil or criminal action, including an action to enforce this CO&A, against Developer. These remedies are cumulative, and the exercise of one shall not preclude the exercise of another. The determination by the Department not to pursue a remedy shall not be construed as waiver of that remedy.

22. **Service of Process:** Service of any notice for any purpose under this Consent Order and Agreement shall be made by mailing a copy of the notice by U. S. Mail First Class, registered mail, certified mail, or a nationally recognized overnight delivery service to the addresses set forth in Paragraphs 11 and 12.

23. **Decisions Under Consent Order:** Any decision that the Department makes under the provisions of this CO&A shall not be deemed to be a final action of the Department and shall not be appealable to the Environmental Hearing Board or to any Court until such time as the Department enforces this CO&A or pursues equitable, administrative, civil or criminal action based on the belief that Developer has failed to comply with any material provision of this CO&A. At no time, however, may the parties challenge the content or validity of this CO&A or challenge the Findings agreed to in this CO&A.

24. **Publication and Comment:**

(a) Notice of this CO&A shall be published in the Pennsylvania Bulletin and in a newspaper of general circulation in the area of the Site pursuant to Section 1113 of HSCA, 35 P.S. §6020.1113, and the Department shall receive and consider comments relating to his CO&A for a period of sixty (60) days from the date of publication. The Department reserves the right to withdraw its consent to this CO&A if, during the public comment period, the comments disclose facts or considerations previously unknown to the Department which indicate to the Department,

in its reasonable discretion, that this CO&A is inappropriate, improper, or not in the public interest. Said publication and public comment period shall not affect the effective date of this CO&A.

(b) This CO&A shall be final upon the date that the Department files a response to any significant comments received during the public comment period, if described in Paragraph 23(a) above or notifies Developer that no comments were received. If the Department notifies Developer that it is withdrawing its consent to this CO&A in response to public comment received pursuant to Paragraph 24(a) above, the terms of this CO&A shall be void and of no effect and shall not be used as evidence in any litigation or other proceeding.

25. **Effective Date:** This Consent Order and Agreement shall become effective upon the date first entered above, provided that Developer takes title to the Site within forty five (45) days of the effective date.

26. **Counterparts:** This Consent Order and Agreement may be executed in counterparts, each of which counterparts shall constitute an original, but which counterparts together shall constitute the same Consent Order and Agreement. The delivery by any party hereto of a telecopy or facsimile signature shall have the same legally binding effect as the delivery of an original signature.

IN WITNESS HEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representations of Developer certify, under penalty of law, as provided in 18 Pa. C.S.A. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Developer, that Developer consents to the entry of this Consent Order and Agreement as a final ORDER of the Department, and that Developer hereby knowingly waives their right to appeal this Consent Order and Agreement and to challenge its contents or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, the Administrative Agency Law, 2 Pa C.S. § 103(a) and Chapters 5A and 7A, or any other provision of law. Signature by Developer's attorney certifies only that the agreement has been signed after consulting with counsel.

Date: 3/17/05

FOR CONSTITUTION DRIVE PARTNERS, L.P.:



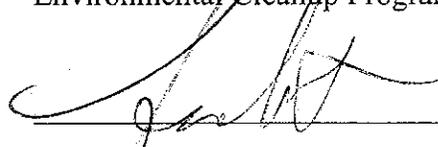
Kevin Silverang, President
Constitution Drive Acquisition Corporation,
its General Partner

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Date: KENNEDY STAMP

Stephan Sinding
Environmental Program Manager,
Environmental Cleanup Program

Date: 3/17/05



Anderson Lee Hartzell,
Regional Supervising Counsel

EXHIBIT A

INDEX OF ENVIRONMENTAL DOCUMENTS IN PADEP FILES

"Bishop Tube Company, Closure Plan for Change of Status from Storage Facility to Generator," Bishop Tube Co., July 1, 1986.

"Ground Water Quality Investigation Report for Bishop Tube Co., Frazer, Pennsylvania," BCM, May 1988.

"Results of the Soil Vapor Survey, Bishop Tube Corporation, Frazer, Pennsylvania," BCM Engineers, May 15, 1989.

"Groundwater Remediation Work Plan for Christiana Metals Corporation, Frazer, Pennsylvania," BCM Engineers, June 1989.

"Results of Implementation of Groundwater Remediation Work Plan, Phase I," BCM Engineers, January 1990.

"Fourth Quarter 1989 NPDES Groundwater Monitoring Results," BCM Engineers, April 4, 1990.

"First Quarter 1990 NPDES Groundwater Monitoring Results," BCM Engineers, April 27, 1990.

"Registration of Storage Tanks Form," Alloy Steel Corp./Bishop Tube Facility, June 11, 1990.

"Results of Well Search for Christiana Metals Corporation, Bishop Tube Facility, Frazer, Pennsylvania," BCM Engineers, August 1990.

"Results of Soil Vapor Survey in the Degreaser Area at the Bishop Tube Facility, Frazer, Pennsylvania," BCM Engineers, August 1990.

"Scope of Work For Ground Water Investigation and Remediation for Christiana Metals Corporation, Frazer, Pennsylvania," BCM Engineers, November 1990.

"Summary of Quarterly Groundwater Monitoring Results for Christiana Metals Corporation, Bishop Tube Facility, Frazer, Pennsylvania," BCM Engineers, December 1991.

"Underground Storage Tank Closure Report," Brandywine Environmental Compliance, Inc., May 1993.

Correspondence from PADEP to Christiana Metals Corp, No Further Action for Removal of Two 5,000-Gallon Fuel Oil USTs, September 8, 1993.

"Preparedness, Prevention, and Contingency Plan for Damascus-Bishop Tube Company, Inc., Frazer, Pennsylvania," BCM Engineers, June 1994.

"Site Characterization and Interim Remedial Action Plan," O'Brien and Gere, September 1998.

"Ground Water Interim Remedial Action Work Plan," O'Brien and Gere, May 1999.

"HSCA Response Justification Document - Bishop Tube Site," PADEP, March 13, 2000.

"Analytical Sampling Results from Bishop Tube Project, June through August 2001," PADEP, September 25, 2001.

"Bishop Tube Site - 2001 Soil Vapor Survey," PADEP, December 14, 2001.

"Bishop Tube Site - Discreet Interval Sampling MW-5, MW-17 and MW-19," PADEP, December 18, 2001.

"Phase I - Site Characterization Report, Soils, Sediment, Surface Water, and Shallow Groundwater, Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania," Baker Environmental, Inc., January 11, 2002.

"Phase II - Ground Water Investigation Report, Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania," Baker Environmental, Inc., June 2002.

"Phase III Supplemental Soil Characterization Report," Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania", Baker Environmental, Inc., June 30, 2003.

"Bishop Tube Site, Little Valley Creek Surface Water and Spring Monitoring, Sampling Event Report," PADEP, August 2003.

Correspondence from PADEP to Mr. Robert Gerlach, Sampling Results 30 Conestoga Road, September 2, 2003.

"Phase III Supplemental Groundwater Characterization Report", Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania," Baker Environmental, Inc., July 2, 2004.

"Soil Gas and Shallow Groundwater Sampling Report, Bishop Tube Site, East Whiteland Township, Chester County, Pennsylvania," Baker Environmental, Inc., August 27, 2004.

Correspondence from PADEP regarding Indoor Air Sampling Results, January 28, 2005.

EXHIBIT B

PRELIMINARY REMEDIAL ACTION WORK PLAN

EXHIBIT B



Pennsylvania Department of Environmental Protection

2 East Main Street
Norristown, PA 19401

January 22, 2007

Southeast Regional Counsel

Telephone: (484) 250 - 5871
Facsimile: (484) 250 - 5931

Jonathan Spergel, Esquire
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004

RE: Bishop Tube HSCA Site
First Amendment to Consent Order and Agreement

Dear Jonathan:

Enclosed please find one (1) fully executed original of the First Amendment to Consent Order and Agreement for the Bishop Tube HSCA Site. Thank you for all your time and effort in resolving this matter. Please contact me if you have any additional questions or concerns.

Sincerely,

Lauren G. Rosen
Assistant Counsel

Enclosure

Cc: D. Armstrong, ECP w/out enclosure
A. Hartzell, OCC w/out enclosure



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Bishop Tube Site : Amendment to
East Whiteland Township : Prospective Purchase Agreement
Chester County, Pennsylvania :
Constitution Drive Partners, L.P. :
2701 Renaissance Boulevard, 4th Floor :
King of Prussia, PA 19406 :

**FIRST AMENDMENT TO
CONSENT ORDER AND AGREEMENT**

This First Amendment to Consent Order and Agreement ("Amendment") is entered into this 22nd day of January, 2007, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Constitution Drive Partners, L.P. ("Developer," and Developer and the Department shall collectively be referred to herein as the "Parties").

WHEREAS, Developer and the Department entered into a Consent Order and Agreement dated March 17, 2005 (the "CO&A") relating to the former Bishop Tube HSCA site located approximately a quarter of a mile south of U.S. Route 30, East Whiteland Township, Chester County, Pennsylvania, and consisting of land approximately 13.7 acres in size, and identified as Chester County Tax Parcel Number UPI 42-04-0321.020 (the "Site");

WHEREAS, under the CO&A, in exchange for, inter alia, Developer's commitment to remediate unsaturated soils at the Site in order to demonstrate attainment with one or a combination of remediation standards for soils under the Pennsylvania Land Recycling and Environmental Remediation Standards Act, 35 P.S. §§ 6026.101 to 6026.908 ("Act 2"), the Department has provided Developer with a covenant not to sue pursuant to Section 7 of the CO&A, and contribution protection pursuant to Section 9 of the CO&A;

WHEREAS, the Department desires to address the releases or threatened releases of hazardous substances or contaminants in groundwater at the Site;

WHEREAS, Developer and the Department have been engaged in discussions pursuant to which the Developer would satisfy all of its remedial obligations under the CO&A by (1) purchasing and installing certain portions of a soil vapor extraction/air sparging remedial system (the "AS/SVE System") as further described in the Remediation Design Report prepared by Brownfields Associates, Inc. dated November 20, 2006 (the "Remediation Design Report") and attached hereto as Attachment A, and (2) operating the AS/SVE System until it is deemed "Operational" by the Parties;

WHEREAS, Developer and the Department believe that the installation, implementation and operation of the AS/SVE System will assist in the remediation of hazardous substances in soil and groundwater at the Site;

WHEREAS, Developer and the Department desire to amend the CO&A to, inter alia, modify the Developer's remedial obligations thereunder;

WHEREAS, the Parties hereto believe that by entering into this First Amendment, hazardous substances present in soil and groundwater at the Site will be remediated in a more expeditious fashion, to the benefit of the Commonwealth of Pennsylvania;

NOW, THEREFORE, upon the mutual exchange of the covenants contained herein, the Parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED TO by Developer as follows:

1. Paragraph 3 of the CO&A shall be amended and restated as follows:

"WORK TO BE PERFORMED: In exchange for the mutual benefits conferred by the Parties under this CO&A, and as compensation for response costs incurred and to be incurred by the Parties in connection with the Site, the Parties hereby agree to the following:

(a) System Installation.

(1) Developer agrees to perform the tasks identified as the responsibility of Developer on the Task Allocation Memo attached hereto as Attachment B and incorporated herein by reference, in accordance with the deadlines contained therein, at no cost, expense, or liability to the Department.

(2) The Department agrees to perform the tasks identified as the responsibility of the Department on the Task Allocation Memo attached hereto as Attachment B, in accordance with the deadlines contained therein, at no cost, expense, or liability to Developer.

(3) During performance of any tasks by either Party pursuant to the Task Allocation Memo, an agent or representative of the non-performing Party shall be present as an "Oversight Party" to observe the performance of work relating to the task, and upon completion of such task, the agent or representative of the Oversight Party shall: (i) when the Oversight Party is Developer, provide a Professional Engineer's Certification in writing that the task was performed correctly and as specified in the Developer's Remediation Design Report; and (ii) when the Oversight Party is the Department, provide written certification that the task was performed correctly, and as specified in the Developer's Remediation Design Report.

(b) System Startup. After completion by the Parties of the tasks identified on the Task Allocation Memo, Developer shall commence, and be solely responsible for the start up of, the AS/SVE System, which start up period shall last for thirty (30) days ("System Start Up"). Developer shall perform System Start

Up at no cost, expense, or liability to the Department, although the Department may have an agent or representative present to monitor System Start Up, with the cost of such monitoring to be the sole liability and responsibility of the Department.

(c) System Operation/Performance Standards.

(1) After completion of the System Start Up, Developer shall operate the AS/SVE System for a period of sixty (60) days (the "First Operation Period") and provide training to Department-specified operators, with each Party bearing their respective costs and expenses. The AS/SVE System shall be deemed "Operational" if (a) the AS/SVE System meets the specifications for system design flow rate, vacuum, and pressure, as identified in the Remedial System Performance Criteria, attached hereto as Attachment C, which are incorporated herein by reference, on at least fifty-four (54) days of the First Operation Period and (b) the AS/ SVE System removes, on average during the First Operation Period, ten (10) pounds of volatile organic compounds ("VOCs") per day; provided that, if a Force Majeure event occurs during the First Operation Period that directly prevents the AS/SVE System from meeting the system design flow rate, vacuum, and pressure specifications on one or more days, the First Operation Period shall be extended by the same number of days as the Force Majeure event. In the event the AS/SVE System is not deemed Operational after the First Operation Period, Developer and the Department shall operate the AS/SVE System for an additional

sixty (60) days (the "Second Operation Period), after which the AS/SVE System would be deemed Operational if (a) the AS/SVE System meets the specifications for system design flow rate, vacuum, and pressure, as identified in the Remedial System Performance Criteria on at least fifty-four (54) days of the Second Operation Period and (b) the AS/ SVE System removes, on average during the Second Operation Period, ten (10) pounds of volatile organic compounds ("VOCs") per day; provided that, if a Force Majeure event occurs during the Second Operation Period that directly prevents the AS/SVE System from meeting the system design flow rate, vacuum, and pressure specifications on one or more days, the Second Operation Period shall be extended by the same number of days as the Force Majeure event. In the event the AS/SVE System is not deemed Operational at the end of the Second Operation Period, the Parties agree to meet to discuss identifying alternative AS/SVE System performance standards, with the objective of identifying a strategy for concluding that the AS/SVE System is Operational.

(2) Completion of Developer's Remedial Obligations. Upon a determination that the AS/SVE System is Operational in accordance with Paragraph 3(c) above, except as otherwise specified herein, Developer shall have no further remedial obligations to the Department relating to the Site pursuant to the CO&A, and the Department shall be solely responsible, with no cost or liability to Developer, to operate the

AS/SVE System at the Site, with the objective of demonstrating attainment with one or a combination of remediation standards pursuant to Act 2 for unsaturated soils at the Site.

(3) AS System Credit. If the air sparging system portion of the AS/SVE System to be located in the Building 8 Vapor Degreaser area of concern (the "AS System") is determined to be "Inoperable," as defined below, notwithstanding the Task Allocation Memo, Developer agrees to pay for the six (6) months of utility bills associated with the AS/SVE System immediately following the Inoperable determination. The AS System will be deemed Inoperable if, during the First Operation Period, or if necessary, the Second Operation Period, the AS System does not: (a) meet the specifications for system design flow rate, vacuum, and pressure, as identified in the Remedial System Performance Criteria on at least fifty-four (54) of sixty (60) days; and (b) recover, on average, ten (10) pounds of volatile organic compounds ("VOCs") per day.

(4) Future Remedial Activities. The Department agrees to operate the AS/SVE System at the Site, and to expeditiously perform (or require responsible parties other than Developer to perform) other necessary remedial actions at the Site in order to demonstrate attainment with one or a combination of remediation standards under Act 2 for soils and groundwater at the Site that are consistent with Developer's intended redevelopment activities. If, upon completion of

AS/SVE system operation, the Department deems it necessary to implement engineering and/or institutional controls in the vicinity of the Drum Storage Area, as identified on Attachment D, to meet an Act 2 standard, Developer will be responsible for implementation of such controls; provided that, Developer shall only be financially responsible for implementing engineering controls in the Drum Storage Area, consisting of Site capping through a combination of asphalt paving, building foundations, and/or landscaped areas; provided further that, such engineering and institutional controls shall not unreasonably interfere with Developer's intended future redevelopment or reuse of the Site. Notwithstanding anything to the contrary contained herein, Developer and subsequent Site owners shall be solely responsible for evaluating, and implementing any necessary engineering and institutional controls, to ensure that vapor intrusion into Site buildings will not pose an unacceptable level of risk to current or future Site occupants.

2. The Developer's address under Paragraph 12 of the CO&A shall be amended and restated as follows:

"Constitution Drive Partners, L.P.
2701 Renaissance Boulevard, 4th Floor
King of Prussia, PA 19406
Attention: Kevin Silverang, President, Constitution Drive
Acquisition Corporation, General Partner of Constitution Drive
Partners, L.P."

3. A new Paragraph 27 of the CO&A shall be added as follows:

"27. **Force Majeure.**

- a. In the event that Developer is prevented from complying in a timely manner with any time limit imposed in this CO&A solely because of a strike, fire, flood, act of God, or other circumstances beyond Developer's control and which Developer, by exercise of all reasonable diligence, is unable to prevent, then Developer may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Agreement shall not constitute circumstances beyond Developer's control. Developer's economic inability to comply with any of the obligations of this Agreement shall not be grounds for any extension of time.

- b. Developer shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date Developer becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Developer to mitigate the effects of the event and to

minimize the length of the delay. The initial written submission may be supplemented within 10 working days of its submission. Developer's failure to comply with the requirements of this paragraph specifically and in a timely fashion may render this paragraph null and of no effect as to the particular incident involved, as determined in the Department's sole discretion.

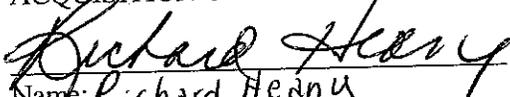
- c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Developer and other information available to the Department. In any subsequent litigation, Developer shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.
4. This Amendment shall modify and is made a part of the CO&A. Otherwise, except as amended hereby, the CO&A shall remain unmodified and in full force and effect.
5. This Amendment may be executed in counterparts, each of which counterparts shall constitute an original, but which counterparts together shall constitute the same Amendment. The delivery by any Party hereto of a telecopy or facsimile signature shall have the same legally binding effect as the delivery of an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives. The undersigned representative of the Buyer

certifies under penalty of law, as provided by 18 Pa. C.S. Section 4904, that he is authorized to execute this Amendment on behalf of the Developer; that the Developer consents to the entry of this Amendment as a final Order of the Department; and that the Developer hereby knowingly waives any rights to appeal this Amendment and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. Sect. 7514; the Administrative Agency Law, 2 Pa. C.S. Sect. 103(a) and Chapters 5A and 7A thereof; or any other provision of law. (Signature by attorney for Buyer certifies only that the agreement has been signed after consulting with counsel.)

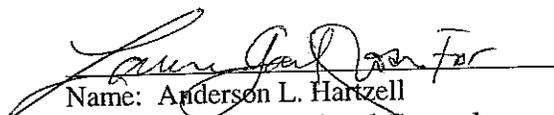
FOR THE BUYER:

CONSTITUTION DRIVE PARTNERS, L.P.
By its General Partner
CONSTITUTION DRIVE
ACQUISITION CORPORATION


Name: Richard Heaney
Title: President

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION

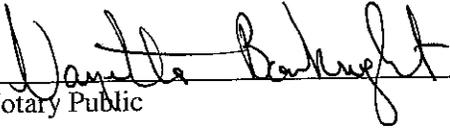

Name: Stephan Sinding
Title: Environmental Program Manager
Environmental Cleanup Program


Name: Anderson L. Hartzell
Title: Assistant Regional Counsel

COMMONWEALTH OF PENNSYLVANIA :
:
: SS.
COUNTY OF (COUNTY) ::

On this 22nd day of January, 2007, before me, a Notary Public, the undersigned officer personally appeared, Stephan Sinding, who acknowledged himself to be the Environmental Cleanup Program Manager for the Southeast Regional Office of the Pennsylvania Department of Environmental Protection, and that he as such Manager, being authorized to do so, executed the Consent Order and Agreement for the purpose therein contained by signing his name as Cleanup Program Manager.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Vanetta Bouknight, Notary Public
Norristown Boro, Montgomery County
My Commission Expires Dec. 1, 2009
Member, Pennsylvania Association of Notaries

EXHIBIT C



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SOUTHEAST REGIONAL COUNSEL

June 7, 2010

Jonathan H. Spergel, Esquire
Manko, Gold, Katcher & Fox LLP
401 City Avenue
Suite 500
Bala-Cynwyd, PA 19004

Re: Bishop Tube Second Amendment

Dear Jonathan,

Enclosed please find a fully executed Second Amendment to Consent Order and Agreement for the Bishop Tube matter. Please note that this was signed on June 4, 2010 for purposes of the various deadlines.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Anderson Lee Hartzell", written over a horizontal line.

Anderson Lee Hartzell
Regional Supervising Counsel

cc: Steve Sinding
Ragesh Patel
Dustin Armstrong

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Bishop Tube Site : Second Amendment to
East Whiteland Township : Prospective Purchase Agreement
Chester County, Pennsylvania :
Constitution Drive Partners, L.P. :
2701 Renaissance Boulevard, 4th Floor :
King of Prussia, PA 19406 :

**SECOND AMENDMENT TO
CONSENT ORDER AND AGREEMENT**

This Second Amendment to Consent Order and Agreement ("Second Amendment") is entered into this 4th day of June 2010, 2010, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and Constitution Drive Partners, L.P. ("Developer," and Developer and the Department shall collectively be referred to herein as the "Parties").

WHEREAS, Developer and the Department entered into a Consent Order and Agreement dated March 17, 2005, (the "CO&A") relating to the former Bishop Tube HSCA site located approximately a quarter of a mile south of U.S. Route 30, East Whiteland Township, Chester County, Pennsylvania, and consisting of land approximately 13.7 acres in size, and identified as Chester County Tax Parcel Number UPI 42-04-0321.020 (the "Site");

WHEREAS, Developer and the Department entered into a First Amendment to Consent Order and Agreement dated January 22, 2007, (the "First Amendment")

amending the CO&A;

WHEREAS, under the CO&A and First Amendment, in exchange for, inter alia, the Developer's covenants and commitment to remediate unsaturated soils at the Site in order to demonstrate attainment with one or a combination of remediation standards for soils under the Pennsylvania Land Recycling and Environmental Remediation Standards Act, 35 P.S. §§ 6026.101 to 6026.908 ("Act 2"), the Department provided Developer with a covenant not to sue pursuant to Section 7 of the CO&A, and contribution protection pursuant to Section 9 of the CO&A;

WHEREAS, Developer and the Department agreed pursuant to the First Amendment that the Developer would satisfy all of its remaining remedial obligations under the CO&A by: (1) purchasing and installing certain portions of a soil vapor extraction/air sparging remedial system (the "AS/SVE System"); and, (2) operating the AS/SVE System until certain criteria were met;

WHEREAS, Developer has installed and commenced operation of the AS/SVE System and has made significant progress towards meeting the system operational criteria established in the First Amendment, and Developer and the Department believe that future operation of the AS/SVE System will assist in the remediation of hazardous substances in soil and groundwater at the Site;

WHEREAS, Developer and the Department desire to further amend the CO&A to allow the Department to assume operational control of the AS/SVE System;

NOW, THEREFORE, upon the mutual exchange of the covenants contained herein, the Parties intending to be legally bound, it is hereby ORDERED by the Department pursuant to Section 1102 of HSCA and AGREED TO by Developer as

follows:

1. Paragraph 3 of the CO&A shall be amended and restated as follows:

“(a) **WORK TO BE PERFORMED/MONETARY COMPENSATION:** In exchange for the benefits conferred by the Department to Developer under this CO&A, and as compensation for response costs incurred and to be incurred by the Department in connection with the Site, Developer shall undertake the following:

- (1) AS/SVE System Repair. Developer shall make any necessary repairs, including but not limited to the repair or replacement of any manifold equipment that is broken, damaged or otherwise not functioning, to the AS/SVE System such that the AS/SVE System is fully operational for a seventy-two (72) hour period (the “AS/SVE System Repairs”). Developer shall complete the AS/SVE System Repairs within sixty (60) days of execution of this Second Amendment..

- (2) AS/SVE System Startup. After completion by the Developer of the AS/SVE System Repairs, Developer shall commence, and be solely responsible for the start up of, the AS/SVE System, which start up period shall be satisfied once Developer has demonstrated to the reasonable satisfaction of the Department that the AS/SVE

System has operated continuously without incident for a seventy-two (72) hour period (“AS/SVE System Startup”).

(3) AS/SVE System Manuals and Drawings.

Within thirty (30) days of execution of this Second Amendment, Developer shall provide the Department with a copy of all operational manuals and as-built drawings, stamped by a Licensed Professional Engineer, for the AS/SVE System in the possession of Developer or its consultants.

(4) Monetary Compensation. Developer shall

make the following monetary payments to the Department:

(a) Developer shall pay the Department \$10,000 within thirty (30) days of execution of this Second Amendment; and (b) Developer shall pay the Department an additional \$20,000 within one (1) year of the date of execution of this Second Amendment. Both payments shall be made payable to the Hazardous Sites Cleanup Fund , and mailed to Mr. Ragesh Patel, HSCA Manager, PA Department of Environmental Protection, 2 East Main Street, Norristown, PA 19401

(5) Road Repair. Within 60 days of the date of

execution of this Second Amendment, Developer shall repair the road along the north side of the main building

(the "Building") at the Site, as depicted on Exhibit B attached hereto, and incorporated herein by reference, so that it is passable for standard passenger vehicles and so that stormwater discharged from roof drains to the road as depicted on Exhibit B are directed away from the AS/SVE System.

(6) Security. Developer shall, within sixty (60) days of the date of this Second Amendment, install fencing with a minimum height of seven (7) feet, around all manifold enclosures. The fencing shall include an enclosure over the manifold, in addition to the vertical fencing.

(b) Upon satisfaction of Developer's obligations pursuant to Paragraph 3(a) above, the Department shall provide Developer with a letter within fourteen (14) days of satisfaction of Developer's obligations confirming that Developer has satisfied its obligations pursuant to Paragraph 3(a), and Developer shall have no further remedial obligations at all to the Department relating to the Site pursuant to the CO&A and First Amendment (including, but not limited to any obligation to remediate soil, groundwater, or surface water at or beyond the Site, or

for the operation and maintenance of the AS/SVE System at the Site).

(c) If the Department deems it necessary to implement Engineering or Institutional Controls as part of Remedial Action for the Site, Developer shall only be financially responsible for implementing the following Engineering Controls: (1) Site capping in the Drum Storage Area through a combination of asphalt paving, building foundations and/or landscaping; and/or (2) other Engineering Controls determined to be necessary to address vapor intrusion risks for on-site structures.

2. The Developer's address under Paragraph 12 of the CO&A shall be amended and restated as follows:

"Constitution Drive Partners, L.P.
2701 Renaissance Boulevard, 4th Floor
King of Prussia, PA 19406
Attention: Richard Heany, President, Constitution Drive Acquisition Corporation, General Partner of Constitution Drive Partners, L.P."

3. This Second Amendment shall modify and is made a part of the CO&A. Otherwise, except as amended hereby, the CO&A shall remain unmodified and in full force and effect.

4. This Second Amendment may be executed in counterparts, each of which

counterparts shall constitute an original, but which counterparts together shall constitute the same Second Amendment. The delivery by any Party hereto of a telecopy or facsimile signature shall have the same legally binding effect as the delivery of an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by their duly authorized representatives. The undersigned representative of the Developer certifies under penalty of law, as provided by 18 Pa. C.S. Section 4904, that he is authorized to execute this Second Amendment on behalf of the Developer; that the Developer consents to the entry of this Second Amendment as a final Order of the Department; and that the Developer hereby knowingly waives any rights to appeal this Amendment and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. Sect. 7514; the Administrative Agency Law, 2 Pa. C.S. Sect. 103(a) and Chapters 5A and 7A thereof; or any other provision of law.

FOR THE DEVELOPER:

CONSTITUTION DRIVE PARTNERS,
L.P.

By its General Partner
CONSTITUTION DRIVE
ACQUISITION CORPORATION


Name: RICHARD HEANY
Title: PRESIDENT

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION


Name: Stephan Sinding
Title: Environmental Program Manager
Environmental Cleanup Program


Name: Anderson L. Hartzell
Title: Assistant Regional Counsel

JURAT Page

COMMONWEALTH OF PENNSYLVANIA :
:
: SS.
COUNTY OF (COUNTY) ::

On this 7th day of June, 2010, before me, a Notary Public, the undersigned officer personally appeared, Stephan Sinding, who acknowledged himself to be the Environmental Cleanup Program Manager for the Southeast Regional Office of the Pennsylvania Department of Environmental Protection, and that he as such Manager, being authorized to do so, executed the Consent Order and Agreement for the purpose therein contained by signing his name as Cleanup Program Manager.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Vanetta Bouknight Ross
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Vanetta Bouknight Ross, Notary Public
Norristown Boro, Montgomery County
My Commission Expires Dec. 1, 2013
Member, Pennsylvania Association of Notaries

JURAT Page

COMMONWEALTH OF PENNSYLVANIA :
:
:
COUNTY OF (COUNTY) ::

SS.

On this 4th day of June, 2010, before me, a Notary Public, the undersigned officer personally appeared, Richard Heany, who acknowledged himself to be the President (Title) of Constitution Drive Acquisition Corporation, a Pennsylvania corporation and General Partner of Constitution Drive Partners, L.P., and that (s)he as such (Title), being authorized to do so, executed the Consent Order and Agreement for the purpose therein contained by signing the name of the corporation by (him)(her)self as (Title).

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
HARRY A. REICHNER, Notary Public
Whitpain Twp., Montgomery County
My Commission Expires November 13, 2010

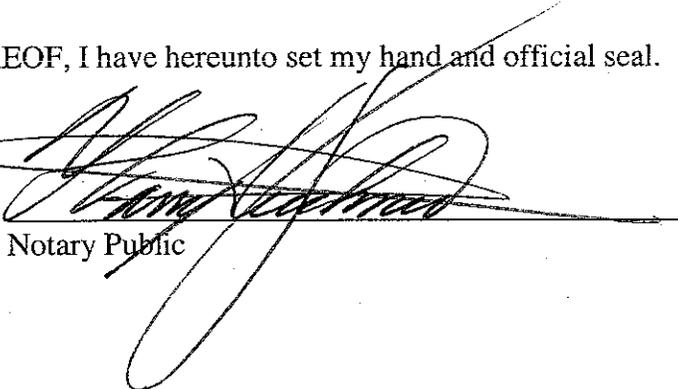

Notary Public

EXHIBIT D



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SOUTHEAST REGIONAL OFFICE

January 28, 2014

Mr. Brian M. Kroker
Vice President, Asset Management & Operations
O'Neill Properties Group
OPG Property Management Corporation
2701 Renaissance Boulevard, 4th Floor
King of Prussia, PA 19406

Dear Mr. Kroker:

As you know, the Department of Environmental Protection (DEP) has been working with Roux Associates, as contractor to Johnson Matthey and Whitaker Corporation, under a federal Consent Decree, to address the release or threatened release of hazardous substances associated with the former Bishop Tube facility now owned by Constitution Drive Partners, LLC (CDP). This work has entailed both remedial investigatory work and implementation of in situ interim response actions within the building areas. As you also know, DEP formally authorized Roux Associates to implement a field study last winter for an anaerobic remediation process within Building 8 in the location of the Soil Vapor Extraction/Air Sparging (SVE/AS) system that was previously installed at the site and capped with a liquid boot. The SVE/AS system was installed in the context of an original Prospective Purchaser Agreement (PPA) with CDP and two Amendments thereto. The last Amendment to the PPA allowed CDP to cash-out of its potential liability to DEP for releases associated with Bishop Tube under certain conditions. One of those conditions, applicable to both the original PPA and the subsequent Amendments, states that CDP "shall not contribute to or otherwise exacerbate . . . any Existing Contamination attributable to the Site". Another condition states that CDP "shall not interfere with or impair any response actions taken by the Department or any other person or entity under the auspices of the Department."

In the early summer of 2011, a contractor for CDP destroyed the liquid boot while performing metals recovery activities within Building 8. Needless to say, this action interfered with or impaired the SVE/AS system that DEP had implemented and potentially exacerbated the Existing Contamination at the site, in violation of the PPA and its two Amendments. DEP requested that CDP repair the liquid boot to allow for the continued operation of the SVE/AS system. This was never done, in continued violation of the PPA and its two Amendments. Last spring, in the context of other discussions relating to potential redevelopment of the site, CDP informed DEP that it was looking into demolishing the buildings on the site in order to enhance the potential for redevelopment. Because demolition of the buildings would simplify implementation of Roux Associates' proposed field study, DEP indicated its support for demolition of the buildings in lieu of repair to the liquid boot, even so far as sending a letter to East Whiteland Township in support of CDP's application for a demolition permit.

Handwritten initials: C.M.A.

Mr. Brian M. Kroker

- 2 -

January 28, 2014

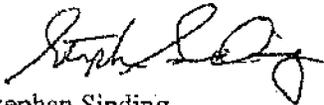
DEP also met with representatives of VIST Bank back in September in order to encourage them to concur with CDP's demolition of the buildings, something that later became moot once a new investor was secured by CDP. Lastly, during a meeting in mid-December, Regional Director Cosmo Servidio was assured by Mr. O'Neill that the demolition was going forward immediately. Notwithstanding that assurance, nothing has occurred at the Bishop Tube site, and CDP continues to be in violation of the PPA and its Amendments.

This is to advise you that DEP now considers the CDP's violation of the PPA to void the Covenant Not To Sue set forth in Paragraph 7, which states: "These covenants . . . may terminate at the sole discretion of the Department upon [CDP's] failure to meet any of the requirements of the CO&A." Please be advised that this determination is not intended as an appealable action, and DEP will consider whether to exercise its enforcement options related to this determination as matters progress at the site. Immediate demolition of the buildings as CDP has repeatedly proffered will directly impact DEP's consideration of such enforcement options. In this regard, please be advised that DEP has instructed Roux Associates to schedule drilling activities in Building 8 for implementation of the field study identified above by the fourth week in February.

Please notify us by February 7, 2014, of your intention and schedule for the demolition of the building. Depending on your response, we may schedule a meeting to coordinate the remedial activities at the site.

If you have any questions, please feel free to contact Mr. Dustin Armstrong at 484.250.5723.

Sincerely,



Stephan Sinding
Regional Manager
Environmental Cleanup and Brownfields

cc: Mr. Servidio
Andy Hartzell, Esq.
Mr. R. Patel
Mr. Armstrong
Re 30 (eh14ecb)023-5

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BRIAN O'NEILL, O'NEILL
PROPERTIES AND CONSTITUTION
DRIVE PARTNERS, LP,
Plaintiffs,

v.

MAYA VON ROSSUM, CARLA
ZAMBELLI and DELAWARE
RIVERKEEPER NETWORK,
Defendants.

: IN THE COURT OF COMMON PLEAS
: OF CHESTER COUNTY, PA
:
:
: CIVIL ACTION LAW
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: No. 2017-03836-MJ
:
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ORDER

AND NOW, this this _____ day of _____, 2017, upon Defendants Maya van Rossum and the Delaware Riverkeeper Network's Preliminary Objections, and any responses thereto, it is hereby ORDERED and DECREED that said Preliminary Objections are SUSTAINED, and the Complaint in the captioned action is DISMISSED with prejudice.

It is so ordered.

BY THE COURT:

, J.

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CERTIFICATE OF SERVICE

I, the undersigned, certify that true and correct copies of forgoing documents were served on this date via the Court's Electronic Filing System on the following:

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Date: July 26, 2017

By: _____
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