

# Clean & Green Bishop Tube Update

March 2018



## Background

The 13.7 acre Bishop Tube site (located on the east side of Malin Road, south of US Route 30) has been abused by industry for over 50 years. Industrial operations began in 1951; the plant closed in 1999. The site, formerly used to process precious metals and fabricate tubing and pipeline products, is heavily contaminated with chlorinated solvents, acids and heavy metals. This contamination has impacted neighboring communities and the environment. Although dangerously contaminated, there is also beautiful nature worthy of saving. Woodlands, wetlands and Little Valley Creek, part of the Valley Creek watershed, grace the location.

The Pennsylvania Department of Environmental Protection (PADEP) has failed our community in taking so long to take any action to secure meaningful cleanup of the site. To make matters worse, a proposed development, including approximately 200 new homes, would cut down trees, damage the creek and wetlands, and only partially address contamination at the site. Saturated soils and groundwater would remain highly contaminated. Contamination would continue to affect the surrounding environment and community, including ongoing discharges of contaminated groundwater to Little Valley Creek. When full remediation will take place and at whose expense continues to be unknown.

Clean & Green Bishop Tube wants the contamination fully cleaned up by the responsible parties and for the site to be protected as natural open space. This will benefit those who live around the site, those who live downstream, and all who appreciate, enjoy, the beauty and many values (environmental, economic, recreational, health and safety) of healthy nature.

## Have you been wondering what's going on with our efforts?

A community action group of residents has teamed up with the Delaware Riverkeeper Network and Valley Forge Trout Unlimited to form Clean & Green Bishop Tube. Together we have been working diligently toward our goals to:

- Secure full clean up of the site to the highest legal standards
- Preserve the site as natural open space to benefit our entire community.

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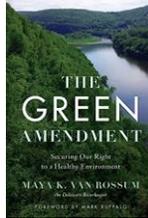
**For more than a year, we've taken action at the Federal, state, county and local levels, and achieved the following notable successes on the path toward a full, safe, and effective solution from the dangers of Bishop Tube and its proposed development:**

***Informing the public of the immense dangers from the Bishop Tube site and its proposed development, and providing solutions for safe/responsible cleanup outcomes.***

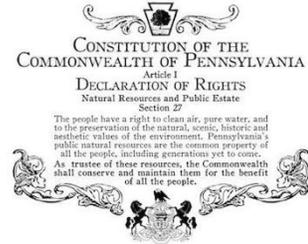


Our efforts include active participation in township meetings and holding our own well-attended public forums to elevate awareness of the history, toxicity, and health/environmental risks surrounding Bishop Tube as well as the current proposal for only partial clean up and massive residential development of the site. In addition, Clean & Green Bishop Tube has continuously informed the public through social media, meetings, a web page (<http://bit.ly/BishopTubeCleanGreen>) hosted on the Delaware Riverkeeper Network website, and through the media to expand knowledge and outreach.

Our battle against Bishop Tube is profiled in *The Green Amendment, Securing Our Rights to a Healthy Environment*, a book by Delaware Riverkeeper Maya van Rossum providing insights on the value of the battle we are waging. All proceeds from book sales go to support the good work of the Delaware Riverkeeper Network, including legal costs to secure a fully clean and green Bishop Tube. If you have not purchased a copy, we encourage you to do so at your local book store or by visiting <http://bit.ly/GreenAmendmentDRNshop>.



***Holding Pennsylvania environmental officials accountable for failing to take strong action to address the Bishop Tube dangers, as well as implement legally-mandated engagement and comment periods.***



Clean & Green Bishop Tube has worked diligently with the Delaware Riverkeeper Network and Valley Forge Trout Unlimited to hold government officials accountable to ensure the safe cleanup of the dangerous toxins saturating, and migrating from, the Bishop Tube site. Prior to actions taken by our groups, agreements between the developer and PADEP were largely being kept in the dark, and were not publicly noticed for legally required public comment. It also became clear that PADEP was prioritizing this deal, which would only require a partial clean up of the site prior to massive residential development – putting the health of local residents and the environment at further risk. Full information only surfaced after intense pressure by the community and legal requests filed by the Delaware Riverkeeper Network. Notably, we learned that PADEP voided a prior agreement not to sue the developer because of violations that “potentially exacerbated the existing contamination at the site.”

Importantly, the East Whiteland Township Board of Supervisors – which is responsible for approving or denying the proposed development plan – was never fully notified by DEP of these actions and outcomes, nor was the community fully apprised of the highly contaminated site conditions – either of which may have resulted in stopping the development proposal at an earlier phase.

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## Notable Successes

(continued)

***Demanded accurate and wider measurement of Bishop Tube contamination in Chester County and the Delaware River watershed.***



Prior to our actions, remediation required prior to the massive residential development primarily focused on relatively few “hot spots.” Groundwater contamination, other surface contamination, and ongoing contamination of Little Valley Creek would be allowed to remain in place for an undetermined amount of time into the future, allowing the plume of pollution, including known human carcinogens that already emanate more than a mile away from the site, to continue to spread. Our community action has helped inspire PADEP to advance needed testing for contamination levels throughout the site and beyond.

***Engaged elected officials and community leaders to focus on full clean up of Bishop Tube and to advocate for responsible use of taxpayer funds.***



Our Clean & Green Bishop Tube coalition convinced East Whiteland Township (EWT) officials and Pennsylvania Senator Andy Dinniman to withdraw support for a \$1 million taxpayer subsidy to a real estate developer that would use the funds to advance only *partial* clean up of the site prior to building a 200+ unit residential development, bringing new families to this highly toxic site for which a full cleanup plan is still unknown.

***Tracked ongoing contamination mishaps and evoked fast, corrective action.***



Last summer, a pipe leaking additional contamination into Little Valley Creek was reported to the PADEP. Because of our community activism, PADEP has been much more vigilant in addressing this ongoing concern and ordered the pipe be plugged to prevent continuing pollution discharges.

***Provided local leaders and officials with information to make better decisions.***



Our coalition research and advocacy highlighted the existence of a PADEP grant that would allow EWT to hire an independent expert to help the township evaluate any clean up proposals. As a result of our efforts, EWT is now seeking these funds.

***Convinced the Zoning Hearing Board to deny some of the variances being sought by the residential developer and, as a result, reduced the proposed development's footprint. (Our goal is a fully protected natural site, but this reduction in development is a strong testament to the quality of our facts, advocacy and work.)***

Because of community comment and opposition from our Clean & Green Bishop Tube coalition, including testimony from the Delaware Riverkeeper Network (specifically cited in the final decision) and Valley Forge Trout Unlimited, the Zoning Hearing Board denied in part (<http://bit.ly/ZHBopinion>) the developer's proposal for the site, significantly decreasing the number of homes that can be built there and increasing the level of environmental protection that will result. Following the decision, members of the Clean & Green Bishop Tube community group took a leadership role in challenging the portions of the decision that approved variances for the project. Although those legal challenges were not successful, they put important information on the record and ensured that the state and township understood our community was willing to stand up for our rights at all costs.

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## Notable Successes

(continued)

### ***Supporting litigation challenging the State's failure to clean up this site and to continue to support deal making with the developer.***



The Delaware Riverkeeper Network (DRN) has brought three legal actions that have helped champion our efforts. If you are not yet a member of the DRN, please consider joining. The more community members they have, the clearer it is to the court that the DRN is taking these legal actions for our direct benefit.

DRN submitted two Right to Know Requests to PADEP on February 23, 2017, but PADEP denied access to all responsive records, citing legal exemptions that in many cases simply did not apply. DRN appealed that decision and on July 5, 2017, received a favorable decision from Pennsylvania's Office of Open Records (OOR), which found that the PADEP improperly withheld public records regarding the Bishop Tube site. As a result, the documents were released.

On November 8, 2017, the Delaware Riverkeeper Network filed a legal challenge against the PADEP for its "manifest neglect and dilatory conduct, over a period of seventeen or more years to clean up or cause the cleanup of past and present hazardous releases at the Bishop Tube Hazardous Waste Site ("Site"), which have caused contamination to spread off-Site, and impacting the off-Site groundwater quality, and to impact the Little Valley Creek, an Exceptional Value stream. The main contaminants of concern are Trichloroethylene ("TCE") and other chlorinated Volatile Organic Compounds ("VOCs") and metals. These contaminants were released at this Hazardous Site and may continue to be released due to the malfeasance of the DEP and potentially responsible parties." The case is ongoing.

*(continued in next column)*

On February 21, 2018, DRN filed an appeal with the Environmental Hearing Board challenging the PADEP'S ratification of two amended Prospective Purchaser Agreements (which are settlement agreements) entered into with the proposed developer of the Bishop Tube site. The organization challenges the agency for being a rubber stamp on the deal that was not publicly noticed until 7 to 10 years after it was signed by the state. The challenge asserts that the state failed to acknowledge critical changing facts, including that the PADEP had voided key elements of the agreement, which it chose not to disclose in the notices for comment to the public, and that the anticipated development shifted from commercial to residential. The case is ongoing.

***Clean & Green Bishop Tube has helped change the narrative about Bishop Tube from misinformation to what it really is: a historically dangerous site with a dangerous proposal for development that needs to be stopped.***



Our goals for the site are full clean up to the highest legal standards, preservation of the site as natural open space for the benefit of our community and protecting one of the last remaining stands of nature our community has to experience and enjoy.

A website page (<http://bit.ly/BishopTubeCleanGreen>), Facebook page (<http://bit.ly/BishopTubeCleanOpenSpace>) and community Google group, on which we have shared information and advanced our work, have helped to bring our community together, empowering us to stay informed and get involved when and where we need to be.



## *Important Note About Developer's Tactics / SLAPP Lawsuits 'Against Community and Supporting Organizations*

In reaction to all of this success, the developer filed a "SLAPP" lawsuit designed to scare our community into silence! The suit named our partners Maya van Rossum, the Delaware Riverkeeper, and the DRN as its primary targets and threatened to include up to 10 residents, likely members of our Clean & Green Bishop Tube coalition.

DRN mounted a strong legal defense and, as a result, a judge dismissed the case in August, clearly stating about DRN and our efforts: "This is what we call constitutionally protected free speech under the First Amendment of the United States Constitution and the Pennsylvania Constitution." This case brought widespread attention to the dangers of SLAPP suit litigation and to our efforts to stop a housing development from being built atop a contaminated site.

When the developer appealed the dismissal of the case, the deciding judge issued a strong opinion, reiterating his concerns about the motives for the litigation. On October 23, 2017, the court responded to the appeal, issuing an opinion affirming the August decision and stating that complaints filed against DRN "lack merit." The opinion also said the developer had "commenced this action as a means of intimidation and harassment, not because Appellants believe in the success of their claims."

We are fortunate to have the active support of the Delaware Riverkeeper Network and Valley Forge Trout Unlimited, who have brought their experience and resources to help us take on these many challenges. If you are not yet a member of one or both of these organizations, please consider joining.

***THANK YOU FOR YOUR INTEREST IN THIS TRULY IMPORTANT SUBJECT. WE LOOK FORWARD TO SEEING AND WORKING WITH YOU TO STOP THIS DEVELOPMENT!***



## ***What's next for our Action Group and how can YOU get involved?***

### **Voice your opinions with the Chester County Planning Commission:**

Among the Chester County Planning Commission's 2018 draft goals are to preserve open space and natural features to realize ecological, and quality of life benefits, and to protect and restore critical natural resources to ensure an environment that supports healthy communities. These goals mesh nicely with ours so we are working to gain the Planning Commission's support in our quest to clean up and preserve the Bishop Tube site as clean, public, natural open space. Public input is critical to accomplishing this objective, so please **join us in speaking up**.

- Provide written comments to the Chester County Planning Commission on their draft plan for future development and land preservation in the County (<http://bit.ly/CCPCcomments>). Urge them to include preserving a Clean & Green Bishop Tube site as natural open space and to consider noting the following:
  - East Whiteland has very little public open space, and particularly little natural green public spaces where we can benefit from and enjoy the beauty of nature.
  - The Bishop Tube site is an important opportunity to protect an important piece of nature for the benefit of our whole Chester County community. East Whiteland and those who live downstream have suffered mightily as a result of the high levels of contamination at this site, including TCE and heavy metal contamination, and they deserve preservation of the site as open space.
  - The Bishop Tube site includes woodlands, wildlife, wetlands, and Little Valley Creek. We want the county to prioritize efforts to secure preservation of the Bishop Tube site as natural open space for the benefit of our community and for the protection of all who live downstream.

### **Voice your opinions with East Whiteland Township officials:**

Attend meetings of the East Whiteland Township Board of Supervisors\*, Planning Commission, and/or Environmental Advisory Council. You can sign up for notifications and agendas of upcoming meetings by following the link: <http://bit.ly/EWTnotifyme>. You can also find email addresses for each member of the Board of Supervisors by visiting <http://bit.ly/EWTsupervisors> and urge them to reject the proposal to develop on Bishop Tube.

*\*Upcoming Board of Supervisors meetings are scheduled on April 11<sup>th</sup>, May 9<sup>th</sup> and June 13<sup>th</sup>.*

### **Get Involved with our community group:**

- Join our Facebook page: <http://bit.ly/BishopTubeCleanOpenSpace>
- Join the Bishop Tube Opposition Google group! Send an email to Maya van Rossum ([keepermaya@delawareriverkeeper.org](mailto:keepermaya@delawareriverkeeper.org)) with your name, address and your interest in the issue, and we'll get you connected.
- Plan to attend our upcoming community information sessions. Dates are posted on Facebook and the website. Learn the basics of the Hazardous Sites Clean Up Act that is governing what is happening at Bishop Tube, and hear an expert describe what we know about the extent of the contamination at, and emanating from, the site.
- Members of our community have created "The Village Voice" (<http://www.generalwarrenvillage.com/>) a new platform to address a broader set of issues and to be a good information resource for our community. Whether you live in East Whiteland or beyond – check it out and help us make this a platform that works for our community.