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July 7, 2017

**SENT VIA EMAIL: darmstrong@pa.gov**  
**AND HAND DELIVERY**

Mr. Dustin Armstrong  
Pennsylvania Department of  
Environmental Protection  
2 East Main Street  
Norristown, PA 19401

**Re: Bishop Tube/Comments to Prospective Purchaser Agreement**

**OF COUNSEL:**  
J. Scott Maxwell  
Edward Rubin

Dear Mr. Armstrong:

Please accept the following comments on behalf of East Whiteland Township ("Township") regarding the Prospective Purchaser Agreement ("PPA") between the Pennsylvania Department of Environmental Protection ("DEP") and Constitution Drive Partners ("CDP"), for the Bishop Tube property ("Site") located in East Whiteland Township.

Notice of the aforementioned PPA and its amendments was published in the April 1, 2017 *Pennsylvania Bulletin*, which notice provided for a sixty (60) day public comment period. The public comment period was subsequently extended to July 7, 2017. The DEP's website indicates that comments in this matter are "on the 2010 amended PPA between DEP and CDP;" however, the *Pennsylvania Bulletin* notice specifically permits comments "regarding this PPA and its amendments."

The Township understands that Trichloroethene ("TCE") and certain breakdown products have been detected in soil, surface water, groundwater and indoor air at the Site. According to DEP, there are three main sources of TCE in the soil: two former vapor degreasers and a drum storage area. (DEP Information Sheet for Bishop Tube HSCA Site, June 2017).

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**LIMERICK**  
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In 2005, DEP entered into a PPA with CDP, under the Hazardous Sites Cleanup Act (“HSCA”), pursuant to which CDP agreed to develop the Site for commercial purposes. In so doing, CDP agreed to remediate the soils at the Site “in order to demonstrate attainment of a remediation standard for soils established pursuant to Act 2” (non-residential statewide health standard or site-specific standard for soils). (PPA, Paragraph K). In exchange for this remedial undertaking, CDP received both a Covenant Not To Sue and Contribution Protection from DEP. Significantly, the remediation of soils was directed solely at “soils located within the unsaturated zone between the ground surface and the groundwater.” (PPA, Paragraph K).

In 2007, DEP amended the 2005 PPA with CDP to require the design, installation and operation of a physical treatment technology known as an air sparging/soil vapor extraction (“AS/SVE”) system. However, due to operational difficulties resulting from the shallow water table and system flooding, DEP entered into a second amendment to the PPA in 2010, wherein DEP assumed operational control of the system in exchange for a monetary settlement.

The Township has reviewed the various documents associated with the PPA and offers the following comments:

1. DEP notes on its website that “DEP’s responsibility under the Hazardous Sites Cleanup Act, is to select and assure a remedy that is protective of human health and the environment . . .”. The 2007 amendment to the PPA addressed the design, installation and operation of the AS/SVE system. Under the 2010 amendment to the PPA, DEP assumed operational control of the system, which system has not been in use since 2010 because of operational deficiencies and the planned use of in-situ Bioremediation technology to address the three main sources of TCE at the Site (commonly referred to in this matter as the three “hot spot” areas). Has DEP decided to permanently forego the use of the AS/SVE system? Who is responsible for the implementation of the in-situ Bioremediation technology, and will this technology be included within the remediation scope of work for the Site?

2. The 2005 PPA and its amendments are predicated on a non-residential remediation of the Site. As DEP is aware, the proposed use of the Site is now residential. How will DEP address this change of use at the Site within the context of the existing PPA, which was based upon a non-residential use of the Site? Will DEP require another amendment to the PPA or other agreement to address residential-related issues, specifically the more stringent remediation standards required for residential use purposes?

3. Although the PPA was entered into under HSCA, does DEP have any plans to now require attainment with Act 2 and its remediation standards, given the proposed residential use of the Site? Does DEP have any plans to negotiate additional amendments to the PPA to include, among other things, the more stringent statewide health standards for soil under Act 2?

4. At the June 7, 2017 Bishop Tube Site Information Session, DEP noted that DEP's Soil Investigation in the 2000-2003 time frame revealed three (3) "hot spots." (Page 10 of DEP's Slide Presentation). During the meeting, there were references made to other possible contaminants at the Site, including metals, which contaminants are not addressed in the PPA. Has DEP identified any other contaminants of concern at the Site, other than those specifically identified in connection with the aforementioned "hot spots?"

5. The 2005 PPA discussed the attainment of a remediation standard for soils established pursuant to Act 2, but limited the remediation of such soils to those located between the unsaturated zone, between the ground surface and the ground water. (PPA, Paragraph K). Has DEP considered or will DEP consider the remediation of soil to include soils within the saturated zone at the Site?

6. Has DEP or any other party identified any additional source areas of contamination or contaminants of concern at the Site, subsequent to the identification of the three (3) soil hot spot areas (referred to in comment #4) or the genesis of the PPA process?

7. The full slide presentation posted on DEP's website regarding the Bishop Tube Site notes that "[a]fter review and approval of JM/W's RI and FS: DEP will propose a comprehensive response action to fully address the contamination (soil, ground and surface water)." (Page 28 of Slide Presentation). Since the aforementioned RI and FS are being undertaken post-PPA, will DEP consider any amendments to the PPA, or will DEP consider another path forward for the remediation of the Site, based on the RI and FS?

8. The PPA and its amendments refer to the remediation of the Site. When does DEP expect to receive/approve a final remediation plan for the Site?

9. During the June 7, 2017 Bishop Tube Site Information Session, there was some discussion relating to possible impacts to the environment in the general area of the Bishop Tube Site from sources other than Bishop Tube. Has DEP made any determination as to possible source areas of contamination other than the Bishop Tube Site and, if so, was this determination considered in the PPA negotiation or amendment process?

10. During the June 7, 2017 Bishop Tube Site Information Session there was specific input from ATSDR regarding the prospective use of the Site. Was DEP in contact with ATSDR during the PPA negotiation or amendment process?

11. The 2005 PPA provides CDP with both a Covenant Not To Sue and Contribution Protection under HSCA for any "Existing Contamination" determined to be present at the Site. In 2014, DEP advised CDP that the Covenant Not To Sue provision is void. Please confirm that DEP's present position is that the Covenant Not To Sue provision is indeed void. If DEP does not consider the Covenant Not To Sue provision to be void, then please explain any change in position since DEP's 2014 determination. Furthermore, do the Contribution Protection provisions in the PPA still apply to CDP? (PPA, Paragraph K).

Dustin Armstrong  
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Thank you for the opportunity to submit the above comments. If you have any questions, please contact the undersigned.

Very truly yours,

HAMBURG, RUBIN, MULLIN,  
MAXWELL & LUPIN

By: 

STEVEN A. HANN

SAH:clp