

# MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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*Admitted in PA and NJ*

July 19, 2017

Mr. Dustin Armstrong  
Environmental Protection Specialist  
Environmental Cleanup and Brownfields  
Pennsylvania Department of  
Environmental Protection  
Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401

Dear Dustin:

This letter respond to your letter dated June 20, 2017 (the "Letter") addressed to Guy Wolfington of Constitution Drive Partners, L.P. ("CDP") relating to an observed discharge from a pipe crossing Little Valley Creek adjacent to the former Bishop Tube Site. A copy of the Letter is enclosed. In the Letter, the Pennsylvania Department of Environmental Protection ("Department") requests that CDP submit a plan to the Department to mitigate the observed discharge from the pipe. In addition, the Department alleges that the discharge from the pipe is an unpermitted discharge in violation of Sections 301 and 307 of the Pennsylvania Clean Streams Law ("CSL"), is unlawful conduct pursuant to Section 611 of the CSL, and is therefore subject to the enforcement provisions of Section 605 of the CSL.

As requested by the Department in the Letter, enclosed please find a plan to mitigate the observed discharge from the pipe, which was prepared by Environmental Standards, Inc.

Please note that, without admitting or denying the Department's legal conclusions that the observed discharge from the pipe is an unpermitted discharge in violation of Sections 301 and 307 of the CSL, or that such purported violations would constitute unlawful conduct pursuant to Section 311 of the CSL, CDP denies any liability or responsibility for any discharges from the pipe. Pursuant to the Consent Order and Agreement previously entered into between the Department and CDP dated March 17, 2005, as amended on January 22, 2007 and June 4, 2010 (collectively the "PPA" or "Prospective Purchaser Agreement"), the Department provided CDP with a broad covenant not to sue ("CNTS"), which includes an agreement to forego any administrative or judicial actions in connection with any "response costs, response actions, civil penalties, natural resource damages, or injunctive relief, including encumbering the Property (through lien or other use), arising from or relating to the release and/or threatened release of

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\*CHERRY HILL, NJ  
WILLIAMSPORT, PA  
*by appointment only*

*\*Partner responsible - Bruce S. Katcher*

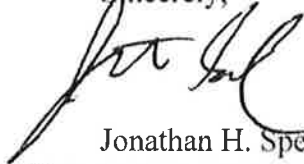


Mr. Dustin Armstrong  
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Page 2

hazardous substances defined as Existing Contamination at the Site.” See PPA Par. 7. The PPA, in turn, defines “Existing Contamination” as the environmental contamination identified in numerous reports referenced in the PPA (See PPA, Par. F), which would include any contaminants that may be migrating from the Site into the pipe, and subsequently discharged from the pipe into Little Valley Creek. As such, the Department’s CNTS in the PPA prohibits the Department from bringing any administrative or judicial action against CDP relating to the observed pipe discharge.<sup>1</sup>

Should you like to discuss the contents of the enclosed mitigation plan, or anything else contained in this letter, please do not hesitate to contact Guy Wolfington or me.

Sincerely,



Jonathan H. Spergel

For MANKO, GOLD, KATCHER & FOX, LLP

JHS/pa

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<sup>1</sup> Although in its letter dated January 28, 2014, the Department communicated its position to CDP that the PPA CNTS was void, CDP challenged this letter through an appeal to the Pennsylvania Environmental Hearing Board (“EHB”). Although the EHB ultimately dismissed the appeal based on a determination that the January 28, 2014 letter was not a final agency action, the EHB did not make a substantive determination on the merits. See *Constitution Drive Partners, L.P. v. Commw. of Pennsylvania, Dep’t. of Env. Prot.*, EHB Dkt. No. 2014-019-M, 2014 EHB 473 (July 17, 2014). As such, CDP still maintains that the CNTS is valid and in force, and in the event the Department seeks to bring enforcement against CDP in the future for a matter covered by the CNTS (such as the observed discharge from the pipe), CDP will strenuously defend any such action, and will seek a determination from the EHB that the CNTS remains valid and in force.

June 20, 2017

Mr. Guy Wolfington  
Constitution Drive Partners L.P.  
2701 Renaissance Boulevard, 4th Floor  
King of Prussia, PA 19406

Re: Bishop Tube Site  
Pipe Leak/Discharge to Little Valley Creek

Dear Mr. Wolfington:

On May 2, 2017, the Department of Environmental Protection (DEP) collected samples from a liquid dripping from a rusted pipe which crosses Little Valley Creek (LVC) on the former Bishop Tube HSCA Site and from the stream upstream and downstream from the pipe discharge. The samples were tested by DEP's Bureau of Laboratories for volatile organic compounds and metals. I have enclosed copies of the sample results for your reference.

The samples were collected after an area resident reported observing the pipe was leaking into the LVC. Historically, this pipe had not been leaking when observed by DEP personnel. This pipe has now rusted through. On June 5, we provided you with a copy of the analytical laboratory reports for the samples. As you know, the sample results reveal elevated concentrations of Total Chromium, Total Nickel, and Total Aluminum, among others. Please be advised that DEP considers this leak to be an unpermitted discharge of an industrial waste to waters of the Commonwealth in violation of Sections 301 and 307 of the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1 - 691.1001 (the Clean Streams Law). Such violations also constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and are subject to the enforcement provisions of Section 605 of the Clean Streams Law, 35 P.S. § 691.605 which includes the assessment of civil penalties.

Within 30 days of the date of this letter please submit a plan for mitigating the discharge described above.

Also, please note that soil analytical data contained in reports prepared by Baker Environmental and Roux Associates, indicates that the metals detected in the pipe discharge are also present in subsurface soils in areas of the site once used for acid waste processing or disposal. While subsurface soils (i.e., > 2 ft. below ground surface) containing inorganic contaminants may not be considered a direct contact exposure risk under nonresidential exposure scenarios, they may require additional characterization and/or remediation to meet a residential standard under Act 2.

In addition, DEP has reviewed the recent East Whiteland Township Zoning Hearing Board decision regarding CDP's request for a variance to Township's steep slopes requirements. Please advise, as to the effect of this decision upon plans, as outlined in the April 25, 2017 Scope of Work (SOW), for Targeted Soil Remediation, to utilize native soils from unaffected areas of the property to replace contaminated soils removed under the SOW.

This letter is neither an order nor any other final action of DEP. It neither imposes nor waives any final action or enforcement action available to DEP under any of its statutes.

If you have any questions, please feel free to contact me at [darmstrong@pa.gov](mailto:darmstrong@pa.gov) or by phone at 484.250.5723.

Sincerely,



Dustin Armstrong  
Environmental Protection Specialist  
Environmental Cleanup and Brownfields

cc: Mr. Nagle - East Whiteland Twp.  
East Whiteland Twp. EAC  
Ms. Baganski - CCEDC  
Mr. Brower, P.G -Environmental Standards, Inc.  
Mr. Spengel, Esq. - MGKF  
Mr. Patterson  
Mr. Patel  
Ms. Fields, P.E.  
Mr. Shankar, P.E.  
Mr. Staron, P.G.  
Ms. McClennen  
Mr. Hartzell, Esq.  
Mr. Schena, Esq.  
Re 30 (rc17ecb) 171.1



July 19, 2017

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

RE: Discharge Mitigation Plan  
Former Bishop Tube Facility  
1 South Malin Road  
Malvern, Pennsylvania

Dear Mr. Armstrong:

On behalf of Constitution Drive Partners, L.P., Environmental Standards, Inc. (Environmental Standards) has prepared this Discharge Mitigation Plan (Mitigation Plan) for the former Bishop Tube facility located at 1 South Malin Road in Malvern, Pennsylvania. This Mitigation Plan addresses the Pennsylvania Department of Environmental Protection's (PA DEP's) June 20, 2017 request to submit a plan for mitigating the discharge.

#### Background

On June 21, 2017, Dustin Armstrong of PA DEP notified Environmental Standards that PA DEP was scheduled to perform sediment sampling along Little Valley Creek (LVC) adjacent to the former Bishop Tube Site. The sediment sampling was being performed in the vicinity of rusted pipe that crosses LVC and was observed to be leaking liquid. During the phone conversation, Mr. Armstrong also advised Environmental Standards that PA DEP collected water samples from the rusted pipe on May 2, 2017. The results from those water samples exhibited elevated concentrations of total chromium, total nickel, and total aluminum. Based on these laboratory results, PA DEP requested a plan for mitigating the discharge from the pipe.

#### Work to Date

Environmental Standards and Constitution Drive Partners (CDP) personnel have visited the former Bishop Tube Site on three separate occasions in relation to the pipe leak. The first visit was on June 22, 2017, whereby Environmental Standards personnel collected co-located sediment samples during PA DEP's sediment sampling event.

On July 7, 2017, Environmental Standards and CDP personnel were on site to evaluate the leaking pipe and attempt to determine the source of the pipe. During the July 7 site visit, a manhole was observed approximately 15 feet west of the leaking pipe. The top of the manhole was open whereby an influent pipe and effluent pipe could be observed. Both pipes were open to the manhole interior. It appeared that the manhole served as a junction box where the pipe changes direction. The influent pipe appeared to be trending from the area of the former drum storage area. The bottom of the manhole was covered with leaf litter, and less than an inch of water was

observed in the bottom of the manhole. An open trough was observed connecting the two pipes and a small volume of water was observed trickling into the effluent pipe. It was not clear if the source of the water was from the influent pipe or groundwater seeping into the manhole.

On July 13, 2017, CDP subcontracted Master Locators in an attempt to determine the source and location of the influent pipe. Master Locators inserted a duct rodder into the influent pipe until the rodder met refusal (approximately 90 feet). A radio frequency was applied to the duct rodder and a hand-held detector was used to locate the pipe on the ground surface. Green paint was used to mark the location of the pipe on the ground surface. The pipe was documented to extend approximately 90 feet toward the former drum storage area, and approximately 20 feet south of the southern side of Building 8. The duct rodder met refusal approximately 10 feet short of the overhead door for Building 8, east of the drum storage area. See attached Figure 1.

Master Locators then used ground penetrating radar (GPR) to see if a different geophysical method could locate additional stretches of the pipe. GPR was unsuccessful at locating the pipe.

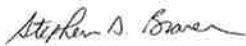
#### Discharge Mitigation Plan

Based on site reconnaissance and pipe tracing activities, Environmental Standards has developed the following approach to eliminate the discharge from the leaking pipe.

1. Enter the manhole as a confined space using confined space trained personnel.
2. Remove leaf litter and debris from the bottom of the manhole.
3. Insert 8-inch inflatable plugs in both the influent (upgradient) pipe and effluent (downgradient) pipe to seal off the flow.
4. Fill the base of the manhole with 4-cubic yards of flowable fill to a point above the top of the influent and effluent pipes.
5. Periodically check the pipe span that crosses the creek to verify that the flow has been stopped.

Should you have any questions regarding this submittal, please do not hesitate to contact me at 610-935-5577, extension 512.

Sincerely,

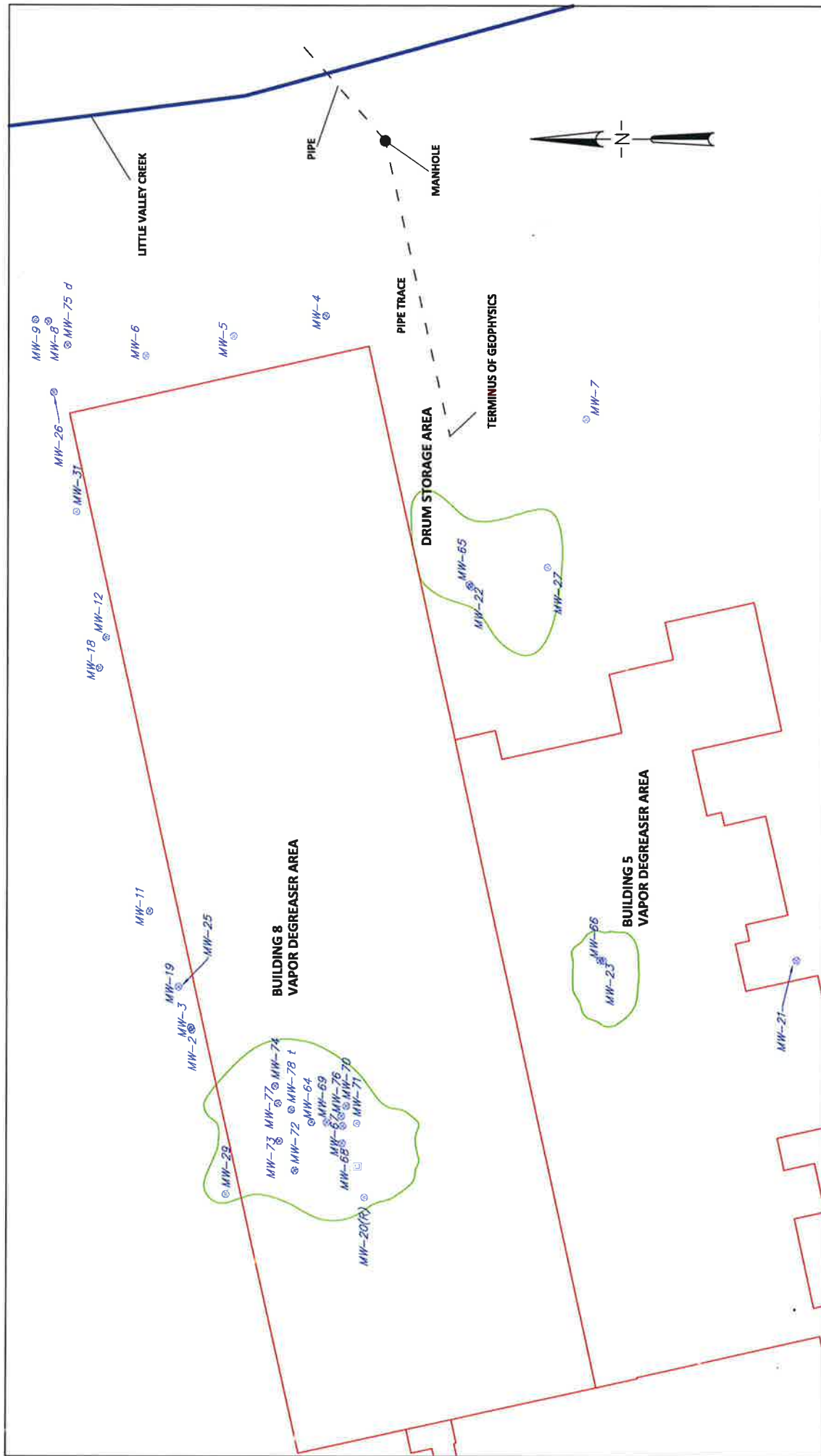


Stephen D. Brower, P.G.  
Director of Geosciences/Principal

Copy to: Mr. Guy Wolfington – CDP (electronic copy)  
Mr. Jerry O'Connor – CDP (electronic copy)  
Mr. Jonathan Spergel – MGKF (electronic copy)  
Ms. Kate Baganski – CCEDC  
East Whiteland Township – EAC



## FIGURE



|   |                             |                                |  |
|---|-----------------------------|--------------------------------|--|
| <b>LEGEND</b><br>MONITORING WELL<br>BUILDING FOOTPRINT<br>APPROXIMATE EXTENT OF IMPACTED SOIL | CREATION DATE:<br>7/17/2016 | PROJECT NO.:<br>20167459.A     | <b>FIGURE 1:</b><br>LOCATION OF SUSPECT PIPE |
|   | ENVIRONMENTAL STANDARDS     | DRAWN BY: APRVD BY:<br>AJS SDB | CHECK'D BY: REVISION:<br>KMF 0               |