

September 18, 2026

Bishop Tube HSCA Site
East Whiteland Township
Chester County

Proposed Consent Decree
Proposed Qualified Settlement Fund Agreement

RESPONSE TO PUBLIC COMMENTS

PART I - Comments

Contents

INTRODUCTION	3
Table 1: Summary Commentors and Comment Number	3
Table 2: Summary of Appendices.....	5
COMMENTS	5
Comment 1: Submitted by Mark Kelsay on March 15, 2026.	5
Comment 2: Submitted by the Delaware Riverkeeper Network and others March 27, 2026 (updated April 9, 2026).....	6
Comment 3: Submitted by Delaware Riverkeeper Network with 245 signatures on March 27, 2026 (updated April 9, 2026).....	6
Comment 4: Submitted by Paige Koziol on May 8, 2026.	6
Comment 5: Submitted by Joyce Hegarty on May 8, 2026.....	6
Comment 6: Submitted by John, Hegarty Jr. on May 8, 2026.....	7
Comment 7: Submitted by Maryellen D. Caldwell on May 8, 2026.	8
Comment 8: Submitted by W.E "Pete" Goodman III on May 11, 2026.....	9
Comment 9: Submitted by Bill Brock, Master Watershed Steward, Valley Creek Watershed on May 11, 2026.	13
Comment 10: Submitted by Paul Nelson on May 12, 2026.	13
Comment 11: Submitted by Heather Nelson on May 12, 2026.....	14
Comment 12: Submitted by Peter K. Lee on May 12, 2026.....	15
Comment 13: Submitted by Carol Armstrong on May 12, 2026.....	15
Comment 14: Submitted by Brian C Johnson on May 12, 2026.	17
Comment 15: Submitted by Bill Coneghen on May 12, 2026.....	17

Comment 16: Submitted by Peggy Miros on May 13, 2026.	18
Comment 17: Submitted by Megan Preston on May 13, 2026.....	18
Comment 18: Submitted by Rich Grosskettler on May 13, 2026.....	19
Comment 19: Submitted by Debra J and Nick J Mobile on May 13, 2026.....	19
Comment 20: Submitted by Kathleen Stauffer on May 13, 2026.....	19
Comment 21: Submitted by Barbara Arnold on May 14, 2026.....	21
Comment 22: Submitted by Michael Glessner on May 14, 2026.....	22
Comment 23: Submitted by Colleen Glessner on May 14, 2026.	22
Comment 24: Submitted by Joan Farb on May 14, 2026.	22
Comment 25: Submitted by State Senator Katie Muth on May 14, 2026.	23
Comment 26: Submitted by Chuck Hossack on May 14, 2026.....	23
Comment 27: Submitted by Maya K. van Rossum representing Green Amendments for the Generations on May 14, 2026.....	23
Comment 28: Submitted by Judith Ann Roggie on May 14, 2026.....	23
Comment 29: Submitted by Maya K. van Rossum representing the Delaware Riverkeeper Network on May 14, 2026.	24
Comment 30: Submitted by Steve Brown on behalf of East Whiteland Township on May 14, 2026.....	25
Comment 31: Submitted by Jennifer Tobin on May 14, 2026.	25
Comment 32: Submitted by Peter S. Huges on May 18, 2026.	25

INTRODUCTION

On March 6, 2026, Pennsylvania Department of Environmental Protection (“DEP”) entered into a proposed consent decree and a proposed qualified settlement fund agreement with Whittaker Corporation (“Whittaker”), Johnson Matthey Inc. (“JMI”), Marcegaglia USA, Inc. (“Marcegaglia”), and Constitution Drive Partners, L.P. (“CDP”) to fund remediation efforts of the Bishop Tube HSCA Site (“Site”). On March 14, 2026, DEP published notice of the proposed Consent Decree and proposed Qualified Settlement Fund Agreement in the *PA Bulletin* and the *Daily Local News*. The sixty day public comment period relating to the consent decree and the trust agreement (Appendix D) closed on May 14, 2026. DEP used its discretion and accepted a comment received by mail June 1, 2026.

For ease in review, DEP separated this Response to Comment document into two parts. Part I incorporates all comments, questions and/or criticisms, received during the comment period from the individuals or companies listed in Table 1, sorted alphabetically. Part II includes DEP’s responses to all significant comments.

Table 1: Summary Commentors and Comment Number

Commentor	Comment #	Date Received
Carol Armstrong Associate Professor (Adj.) Retired Department of Pediatrics University of Pennsylvania	13	5/12/2026
Barbara Arnold Malvern PA 19355	21	5/14/2026
Maryellen D. Caldwell Malvern, PA 19355	7	5/8/2026
Bill Coneghen Malvern, PA 19355	15	5/12/2026
Delaware Riverkeeper Network	29	5/14/2026
Delaware Riverkeeper Network et al	2	3/27/2026, 4/9/2026
Delaware Riverkeeper Network et al	3	3/27/2026, 4/9/2026
Steve Brown East Whiteland Township	30	5/14/2026
Joan Farb Newtown	24	5/14/2026
Michael Glessner	22	5/14/2026
Colleen Glessner	23	5/14/2026
W.E "Pete" Goodman III Malvern, PA 19355	8	5/11/2026

Commentor	Comment #	Date Received
Green Amendments for the Generations	27	5/14/2026
Rich Grosskettler	18	5/13/2026
John Hegarty Jr. Malvern, PA 19355	6	5/8/2026
Joyce Hegarty Malvern, PA 19355	5	5/8/2026
Chuck Hossack Chester Co PA	27	5/14/2026
Peter S. Hughes Chester Springs, PA 19425	32	6/1/2026*
Brian C. Johnson	14	5/12/2026
Mark Kelsay	1	3/15/2026
Paige Koziol	4	5/8/2026
Peter K. Lee Malvern PA 19355	12	5/12/2026
Peggy Miros Malvern PA 19355	16	5/13/2026
Debra J and Nick J Mobile Malvern PA 19355	19	5/13/2026
Heather Nelson Douglassville, PA	11	5/12/2026
Paul Nelson Douglassville, PA	10	5/12/2026
Megan Preston	17	5/13/2026
Judith Ann Roggie	28	5/14/2026
State Senator Katie Muth	25	5/14/2026
Kathleen Stauffer Malvern PA 19355	20	5/13/2026
Jennifer Torbin Philadelphia PA	31	5/14/2026
Valley Creek Watershed Bill Brock, Master Watershed Steward	9	5/11/2026

**The comment dated May 18, 2026 was submitted by mail.*

Table 2: Summary of Appendices

Lengthy comments were included in the Appendices.

Appendix	Date(s)	Comment #	Description
A	3/27/2026; 4/9/2026	2	Written Comments received from Delaware Riverkeeper Network and others, including, but not limited to, Pennsylvania State Senator Katie Muth, Kate & Larry Stauffer Elizabeth Stauffer, Nicholas Stauffer, Cayley Dittmer, Michael Stauffer and Jessica Stauffer, individually and on behalf of minor Holly Stauffer, Maureen Connolly, Eileen Ryan Romano, Joseph Romano, Barbara D. Arnold, Carol Rapp, Maya K. van Rossum, Delaware Riverkeeper Network, Green Amendments For The Generations, Debra Mobile, Nick Mobile, Peggy Miros, Ron Miros, Rhonda Funk, Deanna Fedor, Baily Funk, Pete Goodman, Judy Goodman, Sharon Connor, and Carol L. Armstrong.
B	3/27/2026; 4/9/2026	3	Written Comments received from Delaware Riverkeeper Network and others, 3/27 version included 190 signatures, 4/9 version included the original signatures plus an additional 55.
C	4/9/2026	N/A	DEP response letter regarding the 60-day public comment period.
D	5/13/2026	19	Comments received from Debra J. Mobile and Nick J. Mobile.
E	5/14/2026	25	Comments received from Pennsylvania State Senator Katie Muth.
F	5/14/2026	27	Comments received from Green Amendments for the Generations.
G	5/14/2026	29	Comments received from the Delaware Riverkeeper Network.
H	5/14/2026	30	Comments received from East Whiteland Township.

COMMENTS

Each comment and the individual who provided the comment are listed below:

Comment 1: Submitted by Mark Kelsay on March 15, 2026.

Greetings. I worked at this place from 1974 to 1983. I am now 71 years old. Health great thank you. Didn't do cut off and decreasing but did plenty of other jobs in there. Stuck my head in that tank looking in before. There was a barrier mist that kept fumes in. Of course safety was always an issue. I guess the EPA existed then. Us workers in the mill were United steel workers Union of America AFL CIO. Thought cleanup had begun in some way or at least measuring the degree of contaminants shortly after it closed. Heard some stories about what's to be done with the site after that. Looks like another push to do something is happening. Open land

would be fine. If these developers think they can remediate and build I say go for it. Thanks for asking for comments.

SEE PART II: General Comment

Comment 2: Submitted by the Delaware Riverkeeper Network and others March 27, 2026 (updated April 9, 2026).

See Appendix A

SEE PART II: Comment Period; Remediation Plan; Article I, Section 27; CDP Settlor Work Party; Benefits PRPs

Comment 3: Submitted by Delaware Riverkeeper Network with 245 signatures on March 27, 2026 (updated April 9, 2026).

See Appendix B

SEE PART II: Comment Period; Benefits PRPs

Comment 4: Submitted by Paige Koziol on May 8, 2026.

I am writing as a former resident of the area surrounding the former Bishop Tube site in East Whiteland Township. Although my family no longer lives in the immediate neighborhood, I remain deeply concerned about the long-term environmental and public health impacts associated with this property and the potential risks it may continue to pose to surrounding communities and future generations.

The history of contamination at the Bishop Tube site, including impacts to groundwater, soil, and surface water tied to decades of industrial activity and chemicals such as trichloroethylene (TCE), is deeply troubling. As someone who once lived nearby, it is difficult not to worry about the lasting effects this site may have had—and may continue to have—on local families, waterways, and the broader environment.

While I appreciate that cleanup efforts and settlements are now moving forward, I strongly believe remediation must be thorough, transparent, and held to the highest possible standards to ensure the long-term safety of the community. Decisions regarding the future use of the property should prioritize public health, environmental protection, and responsible stewardship over short-term development interests.

Even though I no longer reside in the neighborhood, I care deeply about the families who do, as well as the generations who will live there in the future. They deserve confidence that the land, groundwater, and surrounding ecosystem are truly safe.

Thank you for your time and consideration

SEE PART II: Community Involvement; Land Use, Redevelopment, and Cleanup Standards

Comment 5: Submitted by Joyce Hegarty on May 8, 2026.

Part I - Comments

As a resident of the General Warren Village in Malvern, Pennsylvania, neighboring the Bishop Tube toxic site, I have concerns after reading the Bishop Tube Consent Decree. I feel it is my right and my duty to bring these matters to your attention for the community and future generations.

As the result of the Statement of Decision dated September 12, 2022, that is mentioned in the Consent Decree, funds were placed in a trust from Johnson Matthey, Inc., Whittacker Corporation, Marcegaglia USA, Inc., and Constitution Drive Partners, LP USA Inc., for the remediation of the Bishop Tube site. The community and I personally do not feel that the amount reserved is enough to cover the remediation expenses. If these funds in the trust are totally exhausted, will Constitution Drive Partners, LP USA Inc. go back to the Pennsylvania Environmental Protection Department and the conclusion be that they made all reasonable efforts to remediate the site and deem it as completed? Or, will it be decided that the parties originally named in the Statement of Decision are not responsible to put additional monies into the trust to complete the and, in turn, the people of Pennsylvania bear the burden as taxpayers to fund the remediation of the site? This answer has not been clearly indicated.

We, the people, have a constitutional right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment, including future generations. The Commonwealth including all levels and branches of the government conserve and maintain them for the benefit of all people under , Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment. The Bishop Tube toxic site is impacting our waterways, wetlands and surrounding nature for all the people in the community and future generations. Why is there the persistence of the Commonwealth to let this right go to the wayside in favor of the builder, O'Neill, who would like to build homes on the Bishop Tube toxic site? Why hasn't the Commonwealth enforced the Environmental Rights Amendment in the past? What in the Consent Decree guarantees the people that the Environmental Rights Amendment will be exercised and enforced in the future?

Do you feel that you and the Pennsylvania Environmental Protection Department are doing your civic duty as government representatives to protect our rights? Why must we continue the fight to have the Bishop Tube toxic site remediated for the community and future generations? Why can't this toxic site be remediated by the perpetrators and benefit the community and future generations as open green space? There are no indications in the Consent Decree that the people can count on government representatives to answer these questions transparently.

Please make it a priority to protect this toxic site from turning into an emergency to the environment and, in the future, involve the community by giving us the opportunity to review or comment at each key juncture, or simply name an independent third party to oversee the project.

SEE PART II: Community Involvement; Article I, Section 27; CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Land Use, Redevelopment, and Cleanup Standards

Comment 6: Submitted by John, Hegarty Jr. on May 8, 2026.

I am writing to you with concerns after reading the Bishop Tube Consent Decree. The Commonwealth of Pennsylvania Environmental Department is the agency that has the duty

Part I - Comments

and authority to administer and enforce the Hazardous Sites Cleanup Act; the Solid Waste Management Act; the Clean Streams Law; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; and administer and implement the Land Recycling and Environmental Remediation Standard Act; and the rules and regulations promulgated thereunder. I feel it is my duty as a member of the community to address a couple of my concerns.

The money put into a trust for the cleanup of the Bishop Tube toxic site cannot nearly be adequate to do the remediation thoroughly. Will it then be put back into the Pennsylvania Environmental Protection Department's hands to decide what to do when the funds are depleted? Will you say that Constitution Drive Partners, LP remediated the property to their best efforts? Or pass the expense on to the local community and Pennsylvania taxpayers? Or, will you do your duty as a representative of the department and abide by the laws and regulations of the Pennsylvania Constitution, , Section 27 and have the best interests of the community in mind?

This site was tested by Baker Environmental, Inc. between 2000 and 2008 and the findings listed in the Introduction, Part Q of the Consent Decree are quite disturbing! After Baker Environmental's findings, the Pennsylvania Environmental Protection Department should have addressed with the perpetrators that funds were to be collected that were adequate to cleanup the site and require them to fund any additional costs over and above what was collected for the cleanup. The Pennsylvania Environmental Protection Department issued a Statement of Decision identifying the remediation plan it would require for cleanup of the toxins at the Bishop Tube site, as noted in the Consent Decree, but no one is being held accountable to satisfactorily clean up the toxic site. It's time for everyone to stand up and do what's right!

We, the people, have a constitutional right to clean water and a healthy environment under , Section 27 of the Pennsylvania Constitution, also known as the Environmental Rights Amendment. It is the duty of the Pennsylvania Environmental Protection Department to enforce this amendment for the people affected by the Bishop Tube toxic site and those who will live in the community in the future. There is nothing noted in the Consent Decree that indicates these rights would be protected. That is all the community is asking for.

SEE PART II: Article I, Section 27; Trust Fund Not Sufficient,

Comment 7: Submitted by Maryellen D. Caldwell on May 8, 2026.

I am writing to express my concern over the consent Decree which the PADEP is currently seeking to enter with partners wanting to develop the abandoned Bishop Tube factory in Malvern, PA. Public comment will be closed after May 14, 2026 which concerns me. While perusing the document I was concerned about method, materials, cost and accountability regarding the remediation. Is the remediation being done by the developer? Is there any independent public oversight to ascertain if the work is being performed using proper techniques.? I have received emails that the well testing has begun on the site. When results are concluded will the developer share this information with the public? I am grateful that Delaware Riverkeepers has taken on this technical and difficult task but it seems once this Consent Decree is adopted, the clarity of the cleanup and information will be out of the hands of interested parties who are residents and neighbors. I heard there will be a large trust fund

Part I - Comments

to help fund the cleanup but what if it is not enough and the developer decides that it is too expensive to continue and the taxpayers are left footing the bill? Sounds like a sweetheart deal which protects the developer and not the taxpayers or nearby residents. It will be an expensive cleanup which the developer may run out of funds and petition to put even more houses to increase profitability. What protections do the nearby residents have to assure that cost overruns are not passed on to the taxpayer while constitution partners can build and make a profit. Who is monitoring the cleanup and are they independent from the developer?

On another note -I lived in Malvern over 40 years. That site has been empty for over 20 years. I recognize that the developer has a legal right to develop the site but this is a unique site which had previously been used to make metal tubing and I believe there still are toxic chemicals in the soil and surrounding groundwater. Many people in the surrounding community have well water-what protections will be put in place to keep the contaminated groundwater from seeping into the nearby household water supply. There is also limited egress to the sight. There is a narrow railroad bridge overpass from route 30 on Malin Road. There is also a closed unpaved area off of Village Way which I was told would only be used for emergency access. Village way is a small residential street which will suffer greatly from construction vehicles and heavy traffic and equipment coming through if they won't fit under the railroad overpass. Contributing to traffic on an already small street, pollution from extra cars and trucks etc. Please keep the communication lines open with regards to the clean up. Unfortunately, I have lived long enough to feel that making sure contractors do the right thing is a full time job and we don't want to have problems in which the developer is protected by the consent decree and not the people who will be directly affected. I hope your response will answer questions and concerns I and the surrounding community have and you will keep the lines of communication open by allowing public comment past May 14, 2026.

SEE PART II: Community Involvement; CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Land Use, Redevelopment, and Cleanup Standards; Oversight; Off-Site Impacts

Comment 8: Submitted by W.E "Pete" Goodman III on May 11, 2026.

I have now completed reading the Consent Decree. It is an awful unfriendly piece of writing that obviously has taken many hours to negotiate and get down on paper. Inputs from both sides are obvious throughout the document. Intentions by the Department may be admirable however there seems to be insufficient money and safeguards written into the Consent Decree.

I have a vested interest in the pollution at the Bishop Tube site. After returning from serving in Viet Nam in 1970, I lived at 169 Morehall Road, East Whiteland Township, Chester County, PA for a few years. Little Valley Creek babbled through the property and we drank, bathed and cooked with water drawn from the springhouse. We played in the creek, we didn't know any better. We were a mile or so downstream from Bishop Tube. In 2007 I became aware of the pollution emanating from Bishop Tube through the articles which appeared in the Daily Local News by Anne Pickering. I have been following and advocating for the cleanup of Bishop Tube personally and through the Valley Forge Chapter of Trout Unlimited ever since then.

I would like to start by saying that this is a terribly difficult document to read and analyze with all of the abbreviations and acronyms and redundancies not to mention the legalese. To

provide the public only 60 days to review this consent decree and its associated material and comment is an insult and seems to me that the Department may be trying to ramrod this down the public's throat.

This consent decree is not in the public's interest. Since it is all about money and little about cleanup I'll start with that first. According to the Statement of Decision dated 9/22/2022 the remedies for OU1, OU2 and OU3 were going to cost a total of \$8,052,430 with \$24,000 being attributable to OU3. OU3 has been completed at a cost of not \$24,000 but at a cost which the Department has approved of \$106,651.49. The Trust Fund set up in the Consent Decree is in the amount of \$8,878,348.52 net for OU1 and OU2. The amount estimated for the work in the Statement of Decision for OU1 and OU2 was \$8,028,430. It seems the Trust fund is grossly underfunded. If it is used up the way I read the Consent Decree, CDP gets a chance to ask for a pass on any further obligations. It would also appear to the writer that this may create an incentive for CDP to expedite the spending of the Trust to get to that point. There are inadequate controls written into the document to preclude this from occurring.

The only completed "remedy" is OU3 which was the simplest to estimate and accomplish which was estimated in the Statement of Decision to cost \$24,000 and is noted in the Consent Decree to have cost \$106,651.49 an increase of 4.4 times. Logically we should be able to apply the 4.4 factor to the Statement of Decision estimates for OU1 and OU2 to get something closer to today's value for those remedies. Applying the 4.4 multiplier to the total for OU1 and OU2 to the Statement of Decision estimates yields \$35,325,092. This number is ridiculously above that in the Consent Decree's Trust. Even if I apply a very conservative inflation figure to the Statement of Decision estimates, I get \$9,058,736 which is still well above the Trust and not including the DEP expenditures from 2000 forward. The Trust is grossly underfunded. How is this in the public interest?

While we are still talking about money, I would also like to bring up the \$4,233,483. that DEP has acknowledged spending just in the period from 5/19/2000 through 4/30/2022 and says that it will be spending more. These are funds paid for by our taxes. For decades we have been told the reason the cleanup has not been accomplished is due to DEP wanting to get the funds from the responsible parties. It would now appear according to the consent decree that it is the tax payers of PA who will be paying a very large portion of the cleanup bill. How is this in the public interest? We have been forced to wait nearly three decades for this?

I cannot believe that CDP has been placed in the position of authority over the accomplishing the actions necessary to remediate the Bishop Tube site.

Is this not the same CDP that in 2011 failed to perform its obligations under the Prospective Purchaser Agreement? Is this not the same CDP that DEP withdrew its Covenant not to Sue? Is this not the same CDP who filed SLAPP suits against the Delaware Riverkeeper Network and several General Warren Village residents for using their constitutional rights to express their opinion on CDP's development?

CDP has a vested interest in the real estate and an accelerated time line. CDP has been pushing for years to do a staged development. A staged development of the property appears not to be precluded in the Consent Decree, yet the township has made it very clear in their criteria for the development to proceed there must be 100% cleanup certified by DEP. Yet, although DEP is aware of the township's conditions for development the Consent Decree seems to ignore their very real existence.

How can this be morally correct and in the public interest? It certainly appears to me to be arbitrary and capricious.

Are there enough words in our language to contain CDP and force them to do what DEP wants? Is there enough law behind this consent decree to force CDP to perform the tasks and account for the spending of funds judiciously and accurately. I have no confidence that DEP can cause CDP to act responsibly within the framework of the Consent Decree.

There are a lot of words in the Consent Decree, a lot of “shalls”, but I question if they are enough to keep CDP moving in the direction desired by the DEP. I question if DEP has an individual strong enough to stand up to the constant barrage of modifications and efforts to advance the development of the site that will certainly come with CDP’s work under the Consent Decree. I also question who at DEP will be doing the reviews and comments relating to the technical nature and the aggressive schedule in the Consent Decree and their qualifications to do so.

I have observed the CDP’s performance over the past two decades and have negotiated with them on a couple of projects. Negotiations never seem to end; there is always more that they are trying to squeeze out of you no matter what laws or regulations say.

This is all about the money. This Consent Decree provides CDP with the opportunity to make sweetheart deals with contractors/entities to perform the work and receive kickbacks for the contracts they provide. Once the Trust Fund is depleted CDP seems to have no further obligations under the Consent Decree.

On to the details of the Consent Decree and specific comments.

Paragraph # 27, page 21. This Paragraph seems to contain conflicting information and instructions. My confusion occurs due to there being two schedules referenced. Initially CDP starts work consistent with the approved schedule in the plan but then it goes on to say in the next sentence CDP is to complete the work within 45 calendar days. It appears that there are potentially two schedules: the one in the Work Plan and the 45 calendar days specified in the Consent Decree. In any event it seems 45 calendar days is a very short time frame to accomplish what we have been waiting decades for to be accomplished. Although back in 2007 Dustin Armstrong stated, “...the contamination in Building 5 could be cleaned up in a matter of months.”

Paragraph # 41, page 25 In this paragraph CDP is directed to use “best efforts” to achieve the remedial action objectives in the first sentence. This is a wide-open phrase that can be subject to multiple interpretations. What might be viewed as a “best effort” by CDP might be viewed as a marginal or even a lack of effort by DEP. There is an intent in this paragraph but “best effort” should be further described so that there is an equal expectation on both sides.

This paragraph goes on to tie CDP’s performance of any final 100% RD qualified by the financial limitations to the fact that CDP will have met their obligations to perform or implement remedial action objectives. I again express concern over having CDP in charge of doing the work and contracting it; having its fingers in the finances of making the remediation happen.

Paragraph # 43, page 25 This paragraph would seem to be straight forward. However, the last sentence causes me pause. If it were nearly anyone other than CDP, I would not question it. But, due to the construction of this Consent Decree, CDP has some considerable leeway in manipulating funds of the trust and controlling the “full costs for such work.”

Paragraph # 52, page 27 & 28 This paragraph seems to provide an out for CDP. If DEP determines that the Remedial Action has not been completed and all of the Trust Funds have been used then CDP cannot be required to do any further work. I restate my concern for CDP having the ability to contract for the work and has a financial interest the Trust Fund.

Paragraph # 56, page 29 “All cost and fees directly incurred by CDP... shall be paid by the Trust.” This is another opportunity for CDP to use Trust Funds to pay their friends and cohorts.

Paragraph # 63, page 30 Of all of the difficult language I have forced myself to read contained in this Consent Decree with its endless abbreviations this paragraph is the worst. The second sentence is incomprehensible, perhaps by design. I have reviewed the sentence and deconstructed it. I have reviewed it with a career English teacher and an editor. All of us came to the same conclusion. That is that it could have several meanings. This is my take away and deconstruction of the second sentence. The Department does not oppose development activities that occur after the Department approves the OU1 Soils Final Report, pursuant to Paragraph 23, above, and CDP or another party may undertake development activities at the Source Property provided that the development activities are performed only after receipt of such Department approval and CDP and/or other parties have obtained all required approvals, permits, and/or authorizations necessary for such activities, and, except for the installation of roadways and the installation of a single utility line in each of the two groundwater areas of concern, as described in the SOD, referenced in Paragraph GG, the development activities will not occur in the two areas of concern for groundwater (or until after approval of the Final Report for OU2), and will not interfere, obstruct, or impede any remedial response activities at the Site, as described in the Environmental Covenant and Paragraph 60, above.

The deconstruction left me/us with questions surround this portion of the sentence, “except for the installation of roadways and the installation of a single utility line in each of the two groundwater areas of concern, as described in the SOD, referenced in Paragraph GG,” Does this say or is the intent to say CDP cannot build roadways and install a single utility line until after all approvals and permits? Or does it say or intend to say CDP can build roadways and install a single utility line until after all approvals and permits?

Paragraph # 80, page 34 This paragraph is very concerning considering. We are talking emergency here and this section wanders through the DEP hierarchy to determine if anyone is available. The way the paragraph reads one would wonder if the DEP Project Coordinator or Alternate Project Coordinator will be available in the case of emergency? And if not which it seems is a good possibility or why else would it be written the way it is? Then the residents of General Warren Village are to rely on the answering service of the DEP to direct emergency response. In this day and age of constant communication there is no excuse for the Project Coordinators of each entity (DEP & CDP) not to have each other’s cell phone numbers 24/7s, just in case.

Further, CDP should not be able to “conclude” that there are not sufficient funds for them to respond to eliminate the need for an emergency response and “invoke” the request for a Statement of No Further Action. CDP is the one charged with doing the work, they must therefore correct the emergency situation which necessitated the emergency response for whatever that may take and for however long it takes.

Paragraph # 83, page 35 This paragraph is a give away to CDP for is allows them to charge the Trust specifically for “building demolition, site preparation...” This work would appear to the

Part I - Comments

writer to be necessary for CDP to do in any event and not just in regard to a Remedial Action and why is it even mentioned in the Consent Decree

I have heard that the Bishop Tube site should not even be a HSCA site due to how high the levels of contaminants found there are. Is there any truth to this assertion?

I believe that DEP has a duty to the people of Pennsylvania to protect them from contamination and pollution in the air, the soil and water. , Section 27 of the Pennsylvania Constitution says that we as citizens have a right to clean air, pure water, and a healthy environment and that the right is not only for us but for future generations. How does this Consent Decree protect us? This Consent Decree does not provide any place for public participation. For over two and a half decades we have been hearing how DEP is working for us. This is a terrible document filled with special interest clauses and escape routes and forces us, the public, to accept DEP who has failed us for all this time, as the ones that will assure that CDP cleans up Bishop Tube without any input during the process from the public.

Approval of this Consent Decree will set a dangerous precedent for future contaminated sites. The under funding by the responsible parties, the putting the developer in charge of the management of the design and the accomplishment of the remediation and the lack of strong language and severe penalties makes this an arbitrary and capricious document that can not be allowed to be approved.

SEE PART II: Comment Period; Community Involvement; Article I, Section 27; CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Land Use, Redevelopment, and Cleanup Standards; Consent Decree Terminology; Emergency Response; Building Demolition and Site Preparation; Refer to EPA; OU2 Groundwater Remedial Design Investigation Work Plan

Comment 9: Submitted by Bill Brock, Master Watershed Steward, Valley Creek Watershed on May 11, 2026.

I am a Watershed Steward for Valley Creek Watershed including its tributaries of which Little Valley Creek has been contaminated by the process of Bishop Tube, The Consent Decree for the remediation of this contamination lax oversight, and direction. My main concern is the party placed to oversee this project. Previous experience as a public servant, I found you do not place the party who has the most to gain from the project to direct and report current status. My experience has been, that party will manipulate the work process to gain an advantage when their development starts.

We are going to find that the contamination, already spreading downstream will continue to be found in private water wells, effecting aquatic life and the site will remain contaminated.

I will stop here, as this will land on deaf ears but please consider assigning an outside source to monitor and direct the remediation process, and do not allow in-kind services to be used by the developer for their portion of the project.

SEE PART II: CDP Settlor Work Party; Oversight

Comment 10: Submitted by Paul Nelson on May 12, 2026.

Part I - Comments

I anticipate that you will be receiving numerous letters regarding the Bishop Tube mess, so I will keep it brief.

The Consent Decree is not in the public interest, and it doesn't hold the responsible parties accountable for their pollution. There simply is not enough money in the Trust fund to accomplish the cleanup, as the DEP is using 2021 or 2022 estimates to justify the trust dollars.

There is no incentive for the developer to cleanup the site but rather spend the Trust funds as quickly as possible. This Consent Decree will set a terrible precedent for future contaminated sites.

SEE PART II: CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient,

Comment 11: Submitted by Heather Nelson on May 12, 2026.

I am writing to express my extreme frustration with the Bishop Tube Consent Decree, which in no way protects the public and fails to hold responsible parties accountable.

I'm invested in the outcome because my mom was pregnant with me when she and my dad lived at 169 Morehall Road in East Whiteland Township, PA after Dad returned from Viet Nam. My parents drank, bathed, and cooked with water drawn from the springhouse along Little Valley Creek. They didn't know they were a mile downstream from Bishop Tube. When news of the pollution broke, I began following the story and have continued to do so.

How can the Bishop Tube Consent Decree possibly be in the public interest if Constitution Drive Partners is in charge of the cleanup? What prevents the company from simply spending the Trust funds as quickly as possible so that development can begin? Appallingly, if Constitution Drive Partners uses all the funds in the Trust before remediation is complete, they can secure a Declaration of Inability to Complete the Remedial Action and be alleviated of any further responsibility for its implementation. We believe that the responsibility will then fall to the PADEP to finish doing the work, including covering the costs. How can that be when DEP has already acknowledged spending \$4,233,483 from 5/19/2000 through 4/30/2022? These are funds responsible parties were supposed to pay, but instead they have been paid by our taxes. For decades we have been told the cleanup has not been accomplished due to DEP wanting to get the funds from the responsible parties. It would now appear according to the consent decree that it is the tax payers of PA who will be paying a very large portion of the cleanup bill. This is clearly not in the public interest.

Not to mention the fact that there is nowhere close to enough money in the Trust fund to accomplish the cleanup. And why does the Consent Decree formalize the use of public funds to accomplish at least one third of the cleanup?

Additionally, the language in the Consent Decree seems to be willfully misleading and ambiguous, at times making it unclear who the responsible parties are and allowing for taxpayers to assume the burden of remediation. Additionally, important information is missing such as implementation steps, monitoring, and analyses. How can we comment on remedial action that has not yet been developed?

Should this Consent Decree be approved, it will set a dangerous precedent for future contaminated sites. The appointing of the developer as in charge of the remediation work, the underfunding of the Trust, and the lack of severe penalties makes this an unacceptable and

Part I - Comments

repugnant document that should absolutely not be approved. This is a gift to a corporation and an injustice to the public.

SEE PART II: Remediation Plan; CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Consent Decree Terminology

Comment 12: Submitted by Peter K. Lee on May 12, 2026.

Bishop Tube is in my neighborhood. About a mile “over the hill” from my home of 45 years, so I think am safe. My neighbors, friends and family members were employed there. Many living in the Village. At the time we were not aware of the dangers to the employees and surrounding residents. The incidence of cancers and illness is shocking to the folks that lived or still live in General Warren Village. Lives have been lost and changed forever.

The owners and operators were well aware of the dangers as technology progressed. We all did things that were not smart that we learned later were killing us. The mere thought of letting Constitution Drive Partners build family residences there is shameful. And letting them oversee the remediation themselves is just plain wrong. The previous owners and businesses would never want their families to live on that site nor anyone with knowledge of the hazards. The pollution plume is crawling underground as we speak and will be forever. I am no scientist, but from what I have seen of “the plan” it seems like a guess of improving it only. It will never be clean.

It is time we stop kicking the can down the road and everyone agree the best “plan” is to clean it to the best possible and designate it open space.

SEE PART II: CDP Settlor Work Party; Land Use, Redevelopment, and Cleanup Standards

Comment 13: Submitted by Carol Armstrong on May 12, 2026.

The Consent Decree components that allow Constitution Drive Partners, referred here going forward as CDP, to insert their own proprietary interests over the regulations of the PA DEP and Pennsylvania taxpayers, to affect the cleanup process, is a problem. CDP can quickly spend their funds that are identified in the consent decree, and not as efficiently or effectively as possible, be released from their responsibilities to Bishop Tube, and get on with their other projects, and then walk away from the site without having completed the necessary cleanup for human habitation as well as for natural remediation. The funds seem very inadequate especially for remediation actions that have not yet been specified, though I understand that PA DEP went through a negotiation process to arrive at those funds. The funds are also given in numbers that are at least five years old, and thus significant inflation that has occurred has made the monetary obligations of CDP out-of-date. This is really not fair, and puts the burden on taxpayers to pay the eventual final costs. The CDP fund obligations should be updated to take into account inflation until the cleanup is completed.

There is a bias to elevate the financial interests of the developers and responsible parties over the environmental cleanup by allowing them to walk away from the cleanup that they could then benefit from by developing the site before the full costs of the cleanup are calculated. Although they are not permitted to develop the site before the cleanup is complete, they are

Part I - Comments

already applying to the township to begin certain aspects of their development. This bias to spend out their money and then walk away before Bishop Tube is cleaned up makes the approval of the decree arbitrary, capricious, not consistent with public policy, and does not serve the public interest. Pennsylvania's Constitution, specifically, Section 27, does not only protect publicly held lands, but also creates the public trust that obligates the Commonwealth, and East Whiteland, to protect public natural resources from degradation even when in the context of private development. After all, the groundwater, surface water, and air have no boundaries limiting their contamination and need for cleanup to Bishop Tube, and any errors and damage that occurs will affect those even miles downstream of Bishop Tube. The PA DEP and township have the responsibility as trustees of our public lands to ensure the protection of the people's health (those who work on the site, those who live there, those who live proximally, and those who live distally) and the environment as required by the Environmental Rights Amendment.

The integrity of the cleanup, the potential impacts on construction workers, and the long-term chronic potential impact of contamination of bedrock, air, water, and soil reaching the residents of the developer's new housing, is very uncertain in a situation where the responsible parties' financial obligations are insufficient. It also raises the concern because the specific aspects of the work to be done, even though outlined by the PA DEP, *are not yet specified* by the developer CDP and responsible parties, and the language of the Consent Decree gives CDP ways of not complying with the specific actions when they are planned. CDP has already shown that they will sacrifice environmental obligations and use inadequate and even harmful actions to protect the environment. In 2011 CDP already damaged the site because their contractor damaged the 'liquid boot', and were asked by PA DEP to repair the equipment to continue the work, but CDP did not repair the damage from their actions, and said they were not required to. When PA DEP asked about it, PA DEP became so concerned that they removed the covenant not to sue from CDP's rights. CDP challenged it in court, PA DEP defended their position vigorously, and the legal decision makers sided with PA DEP. In 2016, soil from an unknown location was imported to Bishop Tube by a prior partner of CDP, and was not reported by CDP. This history of untrustworthy actions by the developer, and their efforts to transfer their liability, by whatever means, to the public taxpayer, is a breach of the Constitutional public trust and certainly a breach of trust of our state and local trustees in the common sense. CDP's actions are evidence 1) of their avoidance of liability for the environmental damage their contractor caused, 2) of failure to abide by local ordinances and township agreements in order to begin development before the cleanup is completed, and 3) of unethical development as also shown by their spurious SLAPP suit against community members and Delaware Riverkeeper Network because community residents and potential residents of the proposed housing needed to be informed of the risks of the plan to build housing on this Super Fund/PA Hazardous Sites Cleanup Act site. The Court ruled three times against the same SLAPP suit and found that CDP was using intimidation to silence the community's voices and concerns.

There is also concern that the language of the consent decree allows CDP as the Settlor Work Party will lead to CDP's failure to perform the Remedial Action in accordance with the SOD, even though they agreed to it. The Consent Decree allows CDP to make their "best efforts", but what are the best efforts of a developer who has a history of evidence of unethical and illegal actions? This is a setup by CDP for further failures in their obligations and unethical actions, and "best efforts" is not enforceable. In the Consent Decree, CDP has gotten the term "reasonable" to describe their efforts to access PA DEP regarding the remedial actions, which

Part I - Comments

gives CDP the opportunity to renege on a remediation action because they could not get PA DEP out to the site at their preferred time. If they could not “feasibly” get PA DEP’s agreement on a remedial action, the Consent Decree allows CDP to make substantial modifications to implementation of the Remedial Action without prior PA DEP approval. Why are we permitting CDP’s convenience to outweigh the seriousness of our rights for environmental protections? This again is against common sense and is very arbitrary and not consistent with public policy. The Consent Decree should permit no more ‘strikes’ to CDP, and in writing should require 100% compliance with PA DEP’s requirements for HSCA cleanups without exception. Who will oversee PA DEP because there is no opportunity for public comment on the cleanup in the Consent Decree? PA DEP has not proved that it can operate without oversight. There should be a way for the court to intervene and make sure that the responsible parties are held responsible for the defined remediation standards for human habitation.

SEE PART II: Changes to the Remedy; Article I, Section 27; CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Consent Decree Terminology; Access; Oversight

Comment 14: Submitted by Brian C Johnson on May 12, 2026.

I Brian C Johnson ME talked with you many years ago about the toxic chemicals at Bishop Tube. You and I both agreed that cleaning this site is impossible. How is it that the site can be cleaned now? The newest procedures have they changed that much! Just keep that in you're mind when you hear about all the people that have developed cancer. You won't hear about the results until you've gone home. wherever that may be!.

SEE PART II: Remediation Plan

Comment 15: Submitted by Bill Coneghen on May 12, 2026.

I have been a resident of General Warren Village, adjacent to the Bishop Tube site, for 31 years. Since 2016 I’ve been made aware of the toxic chemicals at Bishop Tube, and been uneasy about the effect of those toxins on my family.

When my neighbors voiced their concerns about homes being built on a toxic site, the developer CDP filed a SLAP suit against them. The suit was subsequently denied as frivolous. This action has made me suspect of CDP’s ethics and reliability especially in the cleanup of Bishop Tube.

In this consent decree I do not see where the community is informed of what chemicals will be used for remediation and what effect that can have on my neighbors and myself. What equipment will be rumbling down my street? Will we be alerted if toxins are released during remediation?

The companies who are responsible for cleaning up the toxins has given a specified amount for the cleanup. If this amount runs out during the cleanup, the developer can claim no more responsibility for cleaning up. The funds to continue cleaning up will fall to DEP, and us, the taxpayers. The developer sells homes for profit, and the taxpayer foots the bill.

Part I - Comments

I would urge that this decree between DEP and CDP be voided as the quality and thoroughness of cleanup cannot be assured. This developer, who has been given charge of the cleanup, has more motive for profit and shortcuts. This toxic site cleanup needs an independent overseer.

SEE PART II: Community Involvement; CDP Settlor Work Party; Trust Fund Not Sufficient; Oversight

Comment 16: Submitted by Peggy Miros on May 13, 2026.

My family moved into the General Warren Village in 1978. It has only been in the last 10 years that we have become aware of a plan to develop family housing on a site that we have long known as "Cancer Alley" aka Bishop Tube. I have attended many, many meetings and listened to hours and hours of highly informed experts explaining the estimated levels of toxicity, unknown cost from beginning to end of remediation, and no guarantee that clean up would eliminate any future health risks to families who purchase homes on such contaminated land.

The developer, CDP, used a Slap Suit, against residents who opposed plans to build housing on the Bishop Tube site. Had CDP won, single family homes would have been built years ago before there were any serious legal challenges from DRK to prevent development from proceeding. CDC has shown callous disregard for the health and welfare of families living on or near this extremely toxic property.

Now, we are learning that PADREP has entered into a Consent Decree with the CDC and did so without including our community into the negotiation. There are serious unanswered questions pertaining to how much work needs to be done and how much will it cost? Who will be responsible to pay for the cleanup once the monies in the Trust Fund are used up? We, the taxpayers?

Under the Pennsylvania State Constitution citizens are protected by a Constitutional Amendment guaranteeing us the right to Clean Air and Water. At this stage of our opposition to a housing development I am requesting that this Consent Decree be voided until all involved parties meet.

SEE PART II: Remediation Plan; Article I, Section 27; CDP Settlor Work Party; Trust Fund Not Sufficient

Comment 17: Submitted by Megan Preston on May 13, 2026.

The Consent Decree fails to fully hold original polluters accountable. Putting the developer in charge is a clear conflict of interest. The trust fund is underfunded based on outdated estimates. We need stronger federal oversight and real "polluter pays" enforcement!!!!

Clean water and holding polluters accountable shouldn't be left only to grassroots groups. Share this widely and comment today.

SEE PART II: CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Refer to EPA

Comment 18: Submitted by Rich Grosskettler on May 13, 2026.

The Consent Decree fails to fully hold the original polluters accountable. Putting the developer in charge is a clear conflict of interest. The trust fund is underfunded based on outdated estimates. We need stronger federal oversight and real “polluter pays” enforcement.

SEE PART II: CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Refer to EPA

Comment 19: Submitted by Debra J and Nick J Mobile on May 13, 2026.

See Appendix D

SEE PART II: Comment Period; Community Involvement; Remediation Plan; Article I, Section 27; CDP Settlor Work Party; Trust Fund Not Sufficient; Land Use, Redevelopment and Cleanup Standards; Building Demolition and Site Preparation; Legal Fees; Community Safety

Comment 20: Submitted by Kathleen Stauffer on May 13, 2026.

Note the following names signed on to the comment: Maureen Connolly, Malvern PA, Anthony and Elizabeth Connolly Falciano, East Atlantic Beach, NY, Joanne Connolly, Avondale, PA, Peter and Robbin Adams, Campton, NH, Lois Hillman, Blufton SC, Elizabeth Stauffer, Phoenixville, PA, Michael Stauffer, Malvern, PA, Jess Stauffer, Malvern, PA, Nick Stauffer, Malvern, PA, Brigid Maelia, Long Beach, NY, Ben Giese, Long Beach, NY, Kate Ryan, Stockbridge, MA, Barb and Brad Olsen, Tuckahoe, NJ

My beautiful, cozy home is in the General Warren Village adjacent to and up wind of the Bishop Tube site. We did not know when we moved into this house that there was a factory spewing toxins into our air and water. We did not know, when our children did their "stream study" in middle school that Little Valley Creek carried these toxins. We did not know that, because of what went on at Bishop Tube, our neighborhood is known as "cancer ally."

I'm a mother of a Brain Cancer Survivor. My daughter, Elizabeth who was born in 1990 has had 3 consecutive tumors as a teen and young adult. I watched some of my neighbors struggle with Parkinson's, lung cancer and other cancers known to be caused by the kinds of toxins emanating from the Bishop Tube site - and believed to be caused by the Bishop Tube contamination.

My family, neighbors and I have been advocating for a Clean and and Green Bishop Tube site ever since my husband Larry, in 2017, saw the Zoning sign stating the CDP and Brian O'Neill wanted to build houses on 13+ acres of toxic land.

Approval of this Consent Degree does not serve nor protect me and my community. It is arbitrary and capricious and does not uphold our Constitutional Right to clean air, pure water and a healthy environment (, Section 27 of the PA Constitution.)

I am extremely concerned by what this Consent Decree does not provide! It does not spell out Remedial Action! It gives no details; the whens the wheres, what equipment, what chemicals, and so much more? Without the substance, without the details of what the remediation plan actually is and the details of how it will be carried out, how are we, the citizens and the court, to make a meaningful and informed comment or grant approval?

Part I - Comments

My other big concern is the limited monies in the Trust Fund. The Decree states that CDP and Brian O'Neill will determine how to spend the limited money. Will he use that money, which is meant for clean-up, for demolition and site work - the Consent Decree says he can? That the Consent Decree says PADEP will have some level of review and oversight over expenditures gives me NO comfort. For over 40 years they have ignored the toxic contamination at this site, and for 20 of those years they have been trying to help CDP and Brian O'Neill develop this site without a remediation plan in place, underway and completed. Quite simply, the PADEP has no credibility because they have sought to help the developer not protect our community or our environment.

When the Trust money runs out will me, my community, PADEP and Pennsylvania taxpayers be left to foot the bill? We, the taxpayers and PADEP have already spent \$4,233,483 on this site - how will this money be paid back by those responsible for the site's toxic condition? It won't! How is that in the public interest?

The Decree also states that CDP will be overseeing and evaluating the cleanup. The Decree, at present, states that CDP can unilaterally make substantial modifications to the implementation of the remedial action without prior approval by the PADEP if the prior approval is "not feasible." In other words CDP can do whatever they want and has no one to answer to -- after the fact reaction from PADEP for something that is already done is of zero help when the wrong decision has already been made and implemented.

I do not trust that the proverbial fox won't eat the hens. There have already been incidents that show me that CDP and Brian O'Neil are an irresponsible choice for oversight of cleanup; the liquid boot damage, bad acts so severe that even the PADEP sought to remove the covenant not to sue, the SLAPP suits threatening me and my neighbors trying to scare us into keeping quiet.

In addition, I am confused and troubled by the fact that this Consent Decree puts in place a 4 to 5 year time frame for the implementation of this whole plan. The fact is, the last time PADEP held a meeting with the public over this site - just one of 2 public meetings and both of which the public had to fight to secure -- we were talking about implementation taking over 20 years. If nothing about that plan was changed by the PADEP, which is what they said when they rejected our request for an extension of the comment period, then how is it possible that only 4 to 5 years are now needed to fully implement it? It looks like PADEP has sold out our community -- yet again -- in order to give CDP a good deal at the expense of the public.

My deepest desire is that my beautiful neighborhood, the people today, and future generations, be safe from the toxins that saturate the Bishop Tube site. This Consent Decree does not assure us that safe future -- what it does do is assure the developer that the PADEP will continue to use their authority to support his development no matter how dangerous and unwise, and it assures CDP, Johnson Matthey, Whittaker Corporation who are very very very wealthy, that they are going to be let off the hook for a pittance and without providing my community and our environment any assurance of protection.

Your honor, please do not approve this Consent Decree. To do so would not serve our public interest, and from what I can see would be arbitrary, capricious and simply wrong and unfair. Hasn't my community suffered enough? Aren't we owed assurances that we will be protected?

SEE PART II: Remediation Plan; Changes to the Remedy; Remedy Implementation Timeline; Article I, Section 27; CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Building Demolition and Site Preparation,

Comment 21: Submitted by Barbara Arnold on May 14, 2026.

Co-signers included: Suzanne and Chuck Cutshall, Wayne, PA, Kathleen and Fred Dolengo, Phoenixville, PA, Jay Kellett, Phoenixville, PA, Steve and Sue O'Hanlon, Downingtown, PA, Cindy and Tim King, Audubon, PA, Rebecca Luzi, Havertown, PA

Thank you for the opportunity to comment on the Bishop Tube Consent Decree. It was challenging to review such a dense document within the 60-day timeframe, and the fact that data currently being gathered at the site won't be analyzed and available to the public before the comment period is over made it difficult to accurately assess some of the technical aspects of the Decree. However, I offer my thoughts below on the areas I found most compelling.

The specific remedial actions to be implemented to resolve the site's toxicity are not described in the Consent Decree, which only addresses the process, data collections, assessments and plans, and the timelines for each. The DEP is prepared to enter into this Decree without knowing crucial information, including the chemicals to be used and the equipment needed. As someone who lives within a mile of the site, this is extremely concerning to me.

I am also greatly alarmed that Constitution Drive Partners (CDP) is in charge of developing and implementing the remedial response action activities on the site. CDP plans to erect a townhouse development there (which has been stymied for a decade) and filed a SLAPP suit (which they lost 3 times) against community members who simply asked questions and expressed concerns. CDP has not been transparent and truthful in the past regarding their actions at the Bishop Tube site so I do not trust them to conduct a comprehensive, quality clean-up in a legally compliant manner. Putting the party with the most to gain in charge of this process seems suspect to me; a slipshod remediation would be disastrous.

I have financial concerns as well. The amounts each company is contributing to the trust fund were agreed upon several years ago. In the current economic climate, this figure likely will prove insufficient to cover full remediation of this very toxic site. The Decree states if CDP uses all the funds before remediation is completed, they can be absolved of finishing the job, at which point the DEP will have to do so at its own expense... or more accurately, at my expense as a taxpayer. Adding insult to injury, the Decree permits CDP to use the trust fund to demolish buildings and prepare the site for development, expenses they should shoulder as the developer. Draining the settlement monies for their own benefit is not an appropriate use of the trust fund.

In addition, nowhere in the Consent Decree is there any mention of oversight by a third party or opportunity for public review. CDP, and subsequently the DEP if placed in charge, could act unilaterally to substantially modify elements of the remedial actions without prior approval or follow up. Neither party should be given carte blanche on this project.

The Consent Decree contends that it is "fair, reasonable, equitable and consistent with public policy." As a member of a community action group that has been advocating since 2017 for remediation and preservation of the Bishop Tube site, I contend this Decree is none of these things. It is only fair and equitable to the wealthy companies that will save money contributing to an insufficient trust fund and building a residential development on toxic land. It is

Part I - Comments

unreasonable and inequitable in that it fails to spell out exactly what remedial actions will take place; to allow me to comment on the process nor to grant oversight abilities to an independent third party including a judge; and to protect my right to a clean, healthy environment as guaranteed by the Green Amendment in the PA Constitution.

My neighbors and I have been working together for almost a decade to achieve full, proper and safe remediation of the Bishop Tube site, and for it to then be preserved as natural open space for the enjoyment of our community. Developing this property is a dangerous enough proposition without doing so in a thorough, unrushed, expert manner in full compliance with all applicable legal standards, being led by parties that are profit driven to bypass these goals for their own benefit and to the detriment of the public. I fear for the lives of my family, my neighbors and the people who might unknowingly buy a house on top of life-threatening toxicity.

In closing, I ask that this Consent Decree be denied and the responsible parties be tasked with making the necessary revisions to resolve the concerns of my community in properly and safely remediating the Bishop Tube site.

SEE PART II: Comment Period; Community Involvement; Remediation Plan; Changes to the Remedy; Article I, Section 27; CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Land Use, Redevelopment, and Cleanup Standards; Building Demolition and Site Preparation; Oversight

Comment 22: Submitted by Michael Glessner on May 14, 2026.

The Consent Decree fails to fully hold original polluters accountable. Putting the developer in charge is a clear conflict of interest. The trust fund is underfunded based on outdated estimates. We need stronger federal oversight and real "polluter pays" enforcement.

SEE PART II: CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Refer to EPA

Comment 23: Submitted by Colleen Glessner on May 14, 2026.

The Consent Decree fails to fully hold original polluters accountable. Putting the developer in charge is a clear conflict of interest. The trust fund is underfunded based on outdated estimates. We need stronger federal oversight and real "polluter pays" enforcement.

SEE PART II: CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Refer to EPA

Comment 24: Submitted by Joan Farb on May 14, 2026.

I am writing to give my comment on the Bishop Tube Decree. Please do not approve the Bishop Tube Decree. It does not have specific remedial action that can be evaluated and assessed for the clean up at Bishop Tube which was designated as an extreme hazardous site, a brownfield.

Part I - Comments

In addition, Constitutional Drive Partners would not be responsible for any costs for the detamination that exceed the trust fund. From the Bishop Tube Consent Decree in paragraph 52, it states that

.....but in no

event shall CDP be required to perform any further Remedial Action activities unless there are sufficient funds actually on deposit in the Trust to cover the anticipated remaining cost of the specific Remedial Action activities required for performance by CDP, pursuant to the Consent Decree and/or approved work plans.

Since the funds were established five years ago, they do not reflect the rising costs of inflation exacerbated by the Iran war and tariffs. These additional costs would be a financial burden on the taxpayer.

Thus, do not approve the Bishop Tube Consent Decree.

SEE PART II: Remediation Plan; Trust Fund Not Sufficient

Comment 25: Submitted by State Senator Katie Muth on May 14, 2026.

See Appendix E

SEE PART II: Comment Period; Community Involvement; Remediation Plan; Article I, Section 27; CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Building Demolition and Site Preparation,

Comment 26: Submitted by Chuck Hossack on May 14, 2026.

The Consent Decree fails to fully hold original polluters accountable. Putting the developer in charge is a clear conflict of interest. The trust fund is underfunded based on outdated estimates. We need stronger federal oversight and real “polluter pays” enforcement.

SEE PART II: CDP Settlor Work Party; Benefits PRPs; Trust Fund Not Sufficient; Refer to EPA

Comment 27: Submitted by Maya K. van Rossum representing Green Amendments for the Generations on May 14, 2026.

See Appendix F

SEE PART II: Remediation Plan; Article I, Section 27; Benefits PRPs; CDP Settlor Work Party; Trust Fund Not Sufficient; Land Use, Redevelopment, and Cleanup Standards; Consent Decree Terminology; Building Demolition and Site Preparation;

Comment 28: Submitted by Judith Ann Roggie on May 14, 2026.

As a Pennsylvania Resident, I respectfully object to the Bishop Tube Consent Decree. There are many reasons that I am against acceptance of this Consent Decree, however in the interest of time I will only note those that are glaringly obvious.

First,

The citizens of Pennsylvania have a constitutionally guaranteed right to clean air, pure water, and environmental preservation. It is enshrined in **Article I, Section 27**, known as the [Environmental Rights Amendment](#).

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the **Decree does nothing to uphold and protect that right.**

Second,

The developer, Constitution Drive Partners (CDP), who is also a defendant, is given too much leeway and extraordinarily little restriction as to how to spend the Trust fund that responsible corporations will be required to contribute to upfront. For example, Constitution Drive Partners, the developer, is allowed to use these monies to do things like the demolition of existing buildings at the site and for site preparation. This expense should be borne solely by CDP as this work is something that is a cost of the development project, not site cleanup.

Trust funds should be used to address and remediate the toxic contamination at the site.

Third,

There is minimal Oversight of how the developer, CDP, will take action. We need to ensure that the remediation is done properly, not just swiftly. They want to develop this site so they, CDP, can sell homes there for profit. They have little incentive to do proper decontamination. CDP has a history of improper actions such as damaging a liquid boot that was only repaired after a third party reported it.

There must be a guarantee as to process and confirmation that this work is done correctly.

As presented the **Bishop Tube Consent Decree** is not in the Public Interest and needs many changes.

I ask that you reconsider and amend this decree to address the three issues that I note and provide a workable plan that is fully funded by the responsible parties.

SEE PART II: Article I, Section 27; CDP Settlor Work Party; Building Demolition and Site Preparation

Comment 29: Submitted by Maya K. van Rossum representing the Delaware Riverkeeper Network on May 14, 2026.

See Appendix G

SEE PART II: Comment Period; Community Involvement; Remediation Plan; Remedy Implementation Timeline; Article I, Section 27; CDP Settlor Work Party; Benefit to PRPs; Trust Fund Not Sufficient; Land Use, Redevelopment, and Cleanup Standards; Consent Decree Terminology; Penalty Provisions; Building Demolition and Site Preparation; Preliminary IC/EC & OU1 Remedial Design Investigation; Access; Legal Fees; PFAS contamination; Little Valley Creek; Oversight

Comment 30: Submitted by Steve Brown on behalf of East Whiteland Township on May 14, 2026.

See Appendix H

SEE PART II: Community Involvement; Benefits PRPs; Land Use, Redevelopment, and Cleanup Standards; Building Demolition and Site Preparation; Community Safety; PFAS Contamination; Post Remedial Care Plan; Off-Site Impacts

Comment 31: Submitted by Jennifer Tobin on May 14, 2026.

I have two primary concerns regarding the proposed Consent Decree. First the proposed Consent Decree limits the amount of money to be spent on the clean up. After that money runs out, what will happen? The clean up will stop? Will the tax payers have to pay for the remaining clean up? That certainly should not be the case.

Second, the proposed Consent Decree puts Constitution Drive Partners (CDP) in charge of supervising the clean up of the Bishop Tube site. On its face, this seems like it could be a conflict of interest, given that CDP bought this property decades ago with the intention of building town homes on it. It would seem that given the long delay, CDP would probably want the clean to be over with already, so that it can build the town homes and profit from their sale. To me, this situation does not seem like one that would ensure a thorough and complete clean up will be done.

SEE PART II: CDP Settlor Work Party; Trust Fund Not Sufficient,

Comment 32: Submitted by Peter S. Huges on May 18, 2026.

First off, my apologies for missing the May 14th cutoff for letters concerning the 2026 Consent Decree for the Bishop Tube site. I had not seen the date and was, frankly shocked at the lack of adequate time allotted citizens to comment. No doubt, you have received plenty of comments from the local citizens despite the short window.

I am not going to run through the multitude of issues with this decree. You are a professional and are more than aware of the extraordinary deal given O'Brien, disregarding the obvious problems. This does not pass the smell test, and you and your management know it. O'Brien has been working his way through political circles to get the clout needed to make this happen. If you have met him, you know the sort of person he is and I doubt you would trust him to take out your garbage let alone give him the keys to the clean-up using public funds.

I believe this project will end up back in court as O'Brien will undoubtedly try to get away with building practices that result in serious environmental degradation. You and your management can mitigate this future scenario by putting a leash on him now. Please do the job you were entrusted to do -protect our environment.

Thank you for your time and consideration.

SEE PART II: Comment Period; CDP Settlor Work Party

September 18, 2026

Bishop Tube HSCA Site
East Whiteland Township
Chester County

Proposed Consent Decree
Proposed Qualified Settlement Fund Agreement

RESPONSE TO PUBLIC COMMENTS

PART II – Response to Comments

Contents

LIST OF ABBREVIATIONS	3
RESPONSE TO COMMENTS.....	4
Comment Period.....	4
Response to comments regarding the Comment Period.	4
Community Involvement	4
Response to comments regarding Community Involvement.	5
Remediation Plan.....	6
Response to comments regarding the Remediation Plan.	6
Changes to the Remedy	8
Response to comments regarding Changes to the Remedy	8
Remedy Implementation Timeline	8
Response to comments regarding the remedy implementation timeline	8
Article I, Section 27	9
Response to comments regarding Article I, Section 27 of the Pennsylvania Constitution.....	9
CDP Settlor Work Party	10
Response to comments regarding CDP as the Settlor Work Party.	11
Benefits Potentially Responsible Persons (“PRPs”)	12
Response to comments regarding Benefits PRPs.	12
Trust Fund Not Sufficient	13
Response to comments regarding insufficient funding in the Trust Fund.	13

Land Use, Redevelopment, and Cleanup Standards.....	14
Response to comments regarding Land Use, Redevelopment, and Cleanup Standards.....	15
Consent Decree Terminology.....	16
Response to comments regarding Consent Decree Terminology	16
Penalty Provisions	16
Response to comments regarding Penalty Provisions.....	17
Emergency Response	17
Response to comments regarding Emergency Responses.	17
Building Demolition and Site Preparation	17
Response to comments regarding Building Demolition and Site Preparation	17
Refer to EPA	18
Response to comments regarding referring the Site to EPA.	18
Preliminary IC/EC & OU1 Remedial Design Investigation	18
Response to comments regarding the Preliminary IC/EC & OU1 Remedial Design Investigation	18
OU2 Groundwater Remedial Design Investigation Work Plan	19
Response to comments regarding OU2 Groundwater Remedial Design Investigation Work Plan	19
Access.....	19
Response to comments regarding Access.	19
Legal Fees.....	20
Response to comments regarding Legal Fees.....	20
Community Safety.....	20
Response to comments regarding Community Safety during Implementation.	21
PFAS Contamination	21
Response to comments regarding PFAS contamination.....	21
Little Valley Creek	21
Response to comments regarding Little Valley Creek.	22
Oversight	22
Response to comments regarding Oversight.....	22
Post Remedial Care Plan	22
Response to comments regarding the Post remedial Care Plan.	22
Off-Site Impacts.	22
Response to comments regarding Off-Site Impacts.	23

LIST OF ABBREVIATIONS

Act 2	Land Recycling and Environmental Remediation Standards Act
ARARs	applicable, or relevant and appropriate, requirements
BMPs	Best Management Practices
BOD	Basis of Design (“BOD”) (i.e., 30% design)
CCHD	Chester County Health Department
CDP	Constitution Drive Partners L.P.
Christiana	Christiana Metals Corporation
COC	contaminant of concern
DEP	Department of Environmental Protection
DCED	Pennsylvania Department of Community and Economic Development
GES	Groundwater & Environmental Services, Inc, DEP’s contractor
HSCA	Hazardous Sites Cleanup Act
ISCO	In Situ Chemical Oxidation
ISCR	In Situ Chemical Reduction
ISRP	Industrial Sites Reuse Program
JMI	Johnson Matthey, Inc
Marcegaglia	Marcegaglia USA Corporation
OU	operable unit
PAPL	Pennsylvania Priority List of Hazardous Sites for Remedial Response
PFAS	per- and polyfluoroalkyl substances
PPA	Prospective Purchaser Agreement
PRPs	Potentially Responsible Persons
QSF Agreement	Qualified Settlement Fund Agreement
SOD	Statement of Decision
Trust Fund	Qualified Settlement Fund
USEPA	United States Environmental Protection Agency
Whittaker	Whittaker Corporation

RESPONSE TO COMMENTS

DEP appreciates the 32 comment submissions received during the public comment period for our consideration. Most of the submissions contained multiple comments on a variety of issues. DEP consolidated and categorized each comment by subject below. Each category includes DEP's responses to those comments. In this document, DEP responds to all comments received. The public comments have not disclosed facts or considerations justifying a basis for DEP to withdraw from the proposed Consent Decree and proposed Qualified Settlement Fund Agreement.

Comment Period

Commentors expressed disappointment with the length and the format of the public comment period. They specifically requested that the comment period be extended to last a full 6 months, including at least two public meetings and two public hearings where the public could provide verbal testimony, captured by a reporter. They argued that 60-days was not enough time to review the detailed and complex elements of the proposed consent decree. They added that the proposed Consent Decree itself is both legally and scientifically detailed and confusing and that the public should have been afforded 6 months to review this proposal, including the time needed to seek out and secure legal, scientific, and economic experts. Commentors argue that the residents who live near this toxic site have already waited decades for meaningful cleanup and should not now be denied the time necessary to ensure that the proposed remediation actually protects their health, their water, and their community.

Comments 2, 3, 8, 19, 21, 28, 29, and 32.

Response to comments regarding the Comment Period.

On April 9, 2026, DEP responded by letter to Comments 2 and 3, indicating that the 60-day public comment period would not be extended, see Appendix C. DEP noted that the proposed Consent Decree did not change the selected remedial response action. The 60-day public comment period without a public meeting or hearing is consistent with the Section 1113 of the Hazardous Substance Cleanup Act ("HSCA") requirements for settlement agreements. Sixty days is adequate time to for the public to review the proposed Consent Decree, including to seek assistance from others to help with a review, if desired. In addition, it is longer than the 30-day to 45-day public comment periods typically allowed by DEP on many draft permits and by the United States Protection Agency ("USEPA") on similar agreements. Furthermore, the Court ordered a deadline for filing any motion to enter any proposed Consent Decree.

Community Involvement

Commentors observed that the proposed Consent Decree does not include provisions for continued public participation and oversight during every stage of the remediation process. They stated:

- Remediation must be transparent, and community members should be informed of what chemicals will be used, what equipment will be used, and if toxins are released during remediation.
- Community members should be given a formal opportunity to review and comment on every work plan, every remedial design, every assessment undertaken, every data set gathered, and every report generated.

East Whiteland Township indicated that DEP should provide direct notice to the Township in the event of, including but not limited to, a declaration of default, a determination that Trust Funds may be insufficient, and a proposed modification to the Statement of Decision, and requested that DEP continue maintaining an easily accessible public repository for key reports and approvals related to the Bishop Tube site, similar to the existing Administrative Record.

In addition, one commentor noted that they've received emails regarding testing being done at the Site and asked if those results will be shared with the public.

Comments 4, 5, 7, 8, 15, 21, 25, 29, and 30.

Response to comments regarding Community Involvement.

The proposed Consent Decree resolves litigation between DEP and potential responsible persons. It establishes a sequence for implementing the remedial response action. It is not intended to address all aspects of the Site's cleanup.

Opportunity for meaningful public participation will continue. The ongoing pre-design investigation will inform how the cleanup is designed, and design reports will inform how the cleanup is performed. The proposed Consent Decree does not contain such specific design or work plan information and is not the proper instrument for detailing those steps.

Due to the large number of people interested in the Site, DEP will continue to use the following methods for communication:

- DEP maintains a website for the Site: <https://www.pa.gov/agencies/dep/dep-regions/southeast-regional-office/bishop-tube> . DEP will continue to post investigation data, work plans, remedial design documentation, and additional relevant information on the website.
- The website includes contact information for DEP personnel working on the Site. We encourage anyone who has a question or concern to communicate directly with DEP, using this contact information.
- DEP maintains an email distribution list of people who have expressed interest to DEP in the Site. DEP uses this list to send Community Update emails to notify the public of significant events, website updates, and activities on the Source Property related to the response action. Individuals who have submitted public comments on the Analysis of Alternatives and Proposed Response, the proposed Consent Decree, and the proposed Qualified Settlement Fund Agreement ("QSF Agreement") were automatically added to the email distribution list. The website provides instructions on how to be added to the email distribution list.
- Public meetings will be scheduled as significant decision points and milestones are reached. These meetings will be an opportunity for DEP to describe the planned and/or completed activities and for the public to ask questions regarding those activities.

DEP recently completed the pre-design investigation. Upon completion of each volume of the report, DEP promptly updated its website and notified the public accordingly. The next public meeting is anticipated to take place this fall to discuss the results and

recommendations associated with the pre-design investigation and next steps for the response action.

DEP will continue to proactively communicate with East Whiteland Township municipal officials and acknowledges their comment regarding communication. Pursuant to Paragraph 64 of the proposed Consent Decree, Constitution Drive Partners L.P. (“CDP”) will be required to submit electronic copies of progress reports to East Whiteland Township on a monthly basis.

Remediation Plan

Commentors noted that the remedial action process laid out in the proposed Consent Decree is insufficient and deficient because it fails to include a fully developed remediation plan to ensure the full remediation of the Site that is driven by science, environmental protection, and the near-term and long-term safety of their community. Commentors believe that the proposed Consent Decree is arbitrary and capricious because it lacks the quality and quantity of information required to understand the true site conditions and lacks specific details related to the remedial actions, such as implementation steps, monitoring, analysis, and what equipment and chemicals would be used. They specifically noted:

- It should be taken into consideration that starting on page 18 of the proposed Consent Decree, the section titled “OU1 Soils Remedial Action,” the Operable Unit 1 Soils Body of Design “shall include, but not necessarily be limited to, a preliminary design submittal containing, as applicable.” These inclusions are approximately 17 additional items. One of these items in subsection (a) is “an in situ amendment alternatives analysis.” An alternatives analysis is a whole swath of information and factors the public MUST be able to see and provide comment on to PADEP and the courts. The results, analysis, and options proposed and created by the 2021 alternatives analysis could change the entirety of the remediation plan and will have implications for the final state of the Bishop Tube site.
- Comments submitted by the Delaware Riverkeeper Network, Valley Creek Trustee Coalition, and East Whiteland Township during the 2021 public comment period on the Analysis of Alternatives and Proposed Response are still applicable and demonstrate that the DEP “proposed remediation” – now housed in the proposed Consent Decree – is wholly inadequate, does not serve the public interest, and the whole cloth adoption of this proposal, without any modifications in response to the expert and public concern, submitted during the previous 2021 public comment period, further confirms that acceptance of the proposed Consent Decree is arbitrary and capricious.....

Comments 2, 11, 14, 16, 19, 20, 21, 24, 25, 27, and 29.

Response to comments regarding the Remediation Plan.

The proposed Consent Decree provides the funding, framework, and schedule for implementing the remedy that DEP chose four years ago. The proposed Consent Decree does not change the remedy that DEP selected in 2022 and is not an opportunity to revisit the remedy. DEP’s 2022 Statement of Decision (“SOD”) is incorporated in Appendix C of the proposed Consent Decree. DEP’s selected remedy includes

- Operable Unit 1 (“OU1”) - In Situ Chemical Oxidation and/or In Situ Chemical Reduction (“ISCO/ISCR”), coupled with soil mixing to address soils impacted by Site contaminants of concern (“COCs”);

- Operable Unit 2 (“OU2”) - In situ injection of ISCO, ISCR or bioremediation amendments in the two primary chlorinated solvent source areas to address contaminated groundwater with engineering, and/or institutional controls, and long-term monitoring; and
- Operable Unit 3 (“OU3”) connection of the residence with an impacted domestic well to the existing public water line.

DEP offered the public an extended comment period in 2021–2022 on that proposed remedy. During that public comment period, DEP received 102 comment submittals, raising many more issues in those submittals. DEP responded to comments related to the proposed remedy in the Response to Comments document, issued on September 8, 2022, which has been available for review on DEP’s website.

DEP notes that the USEPA has selected similar remedial responses at nearby Federal Superfund Sites. In Chester County, the USEPA selected and implemented soil mixing at the William Dick Lagoons Superfund Site and has performed in situ amendment injections at the AIW Frank/Mid-County Mustang and Malvern TCE Superfund Sites.

The purpose of DEP’s ongoing predesign investigation is to refine areas of concern and provide more information about specific contaminants, including per- and polyfluoroalkyl Substances (“PFAS”), in certain areas. The proposed Consent Decree provides for a phased approach to the design and implementation of the remedial actions. The planned 30%, 90%, and 100% Remedial Designs will provide the technical framework for the implementation of the remedy for each operable unit and are consistent with USEPA procedures and practice commonly utilized at Superfund Sites.

Paragraph 15 of the proposed Consent Decree describes the in situ amendment alternatives analysis that will be included as part of the OU1 Soils Basis of Design (“BOD”) (i.e., 30% design). The purpose of this analysis will be to evaluate which amendment(s) will be best suited to implement DEP’s selected remedy. The proposed Consent Decree does not change the previously selected remedy; it provides a framework for reaching the remedial action objectives.

Paragraph 42 of the proposed Consent Decree contemplates potential, future changes in the remedy and how DEP would address such changes, if needed. It states that:

In the event a reason exists to modify or replace the Response Action selected in the SOD, described in Paragraph GG, the Department may reopen the Administrative Record, pursuant to Section 506(g) of HSCA and Section 3.33 of the Administrative Regulations, 25 Pa. Code § 3.33,.....

DEP is not currently contemplating a change to the remedial response action.

Changes to the Remedy

Commentors expressed concern that CDP or DEP could unilaterally make substantial modifications to the implementation of the remedial action without prior approval.

Comments 13, 20, and 21.

Response to comments regarding Changes to the Remedy

The proposed Consent Decree does not allow CDP, DEP, or anyone to unilaterally change the selected remedial response action without public involvement. It does allow for “field modifications” during the implementation of the remedial design investigations for both OU1 and OU2. See Paragraphs 13 and 27 of the proposed Consent Decree. Field modifications, for instance, might include changes to a work plan, such as the number of samples collected, the location of sample collection, and/or the depth of sample collection, or a minor change to the depth or pressure of an amendment injection.

Paragraph 40 of the proposed Consent Decree states:

Upon Department approval, final 100% [remedial designs (“RDs”)] shall be enforceable under this Consent Decree, and CDP shall implement the activities as required under the RDs, subject to limitations stated, herein, including at Paragraphs 40 through 85. CDP shall not conduct the Remedial Action at the Site prior to written approval by the Department. Any revisions to the RDs shall be approved in writing by the Department.

Paragraph 66 of the proposed Consent Decree states: “Any modifications of approved work plans or schedules proposed by CDP, pursuant to Paragraph 64(g), shall be subject to Department review and approval....”

In the event a reason exists to modify or replace the selected remedial response action, DEP will reopen the Administrative Record for public comment for a minimum of 60 days and go through a formal process to alter the selected remedy in similar process to when it selected the remedial response action in 2022. See Paragraph 42 of the proposed Consent Decree.

Remedy Implementation Timeline

Commentors observed that the proposed Consent Decree places a timeframe for the remediation activities at 4 to 5 years. They noted that on previous occasions DEP had indicated that the remedial action could take over 20 years to complete.

Comments 20 and 29.

Response to comments regarding the remedy implementation timeline

While the implementation of remedial action is expected to take 4 to 5 years, consistent with what DEP estimated in its Analysis of Alternatives and Proposed Response, long-term monitoring after active remediation will need to be performed. DEP’s prior articulation of an approximate 20-year timeframe takes into account the additional long-term monitoring of the completed remediation. The proposed Consent Decree makes no change to DEP’s estimated

length of time to implement the Response Action. In addition, specific implementation schedules will be incorporated into each work plan and remedial design submitted.

Article I, Section 27

Commentors stated that the proposed Consent Decree is arbitrary and capricious because it fails to fulfill the legal obligations of state law and the Pennsylvania Environmental Rights Amendment, Article I Section 27, that protects their right to pure water, clean air, a quality environment and natural resources for present and future generations. They asked why the Commonwealth has not enforced those rights in the past, and what guarantees that the rights will be protected in the future.

Comments 2, 5, 6, 8, 13, 16, 19, 20, 21, 25, 27, 28, and 29.

Response to comments regarding Article I, Section 27 of the Pennsylvania Constitution.

The proposed Consent Decree does not violate Article I, Section 27 of the Pennsylvania Constitution. HSCA was passed by the Pennsylvania General Assembly after Article I, Section 27 and reflects the Legislature’s policy choices about how to fulfill those duties in the context of contaminated site remediation. DEP’s implementation of HSCA must be consistent with the statute and, therefore, its duties under Article I, Section 27. DEP upholds its function as a trustee, including by protecting the Commonwealth’s public natural resources from unreasonable environmental degradation, diminution, and depletion in its administration of HSCA. The proposed Consent Decree aids DEP in protecting natural resources of the Commonwealth now and for future generations. As discussed previously in DEP’s Response to comments regarding the Remediation Plan., the proposed Consent Decree does not select or change the response action, and it does not set forth detailed plans for the remedial action. The proposed Consent Decree provides a framework for developing the detailed designs and workplans to implement the remedial response action. DEP provided extensive public participation options during its 2021-2022 comment period on its Analysis of Alternatives and Proposed Response, and DEP has been transparent with the public through a public meeting after it selected its remedial response action and through other forms of communication about its administration of HSCA and about the Site. DEP will continue its public participation efforts on future steps of the remedial activities. The proposed Consent Decree provides a timeline to ensure that the remedy will be performed in a timely manner, consistent with the selected remedial response action. Implementation of DEP’s selected remedy will protect public health and the environment by addressing potential exposure pathways by using engineering controls and institutional controls, reducing the migration of COCs across the Source Property boundary, reducing migration and diffuse discharge of COCs to the Little Valley Creek, and hastening retraction of the groundwater contaminant plume by reducing source concentrations of COCs in soil and groundwater. DEP selected the remedy and will oversee the design to demonstrate attainment of residential Act 2 Standards¹, including background, Statewide health, and/or site-specific standards. The selected remedial response action will ultimately aid in meeting antidegradation requirements. Implementation of the selected remedy will be designed and implemented in a complimentary and coordinated manner to avoid potential negative interactions, comport with the protections afforded under Article I, Section 27 of the

¹ The Land Recycling and Environmental Remediation Standards Act (“Act 2”) medium-specific concentrations.

Pennsylvania Constitution, comply with Applicable, or Relevant and Appropriate Requirements, and avoid negative impacts to Little Valley Creek. Without the proposed Consent Decree, it would take DEP longer to clean up the Site and at a greater financial cost to citizens of the Commonwealth.

CDP Settlor Work Party

Community members disapproved of CDP serving as the Settlor Work Party, specifically stating that the proposed Consent Decree places the “fox in charge of the hen house.” They based their concerns on CDP’s interest in developing the property and its compliance history since purchasing the property, which they noted includes damages to the liquid boot, DEP voiding the covenant not to sue, and CDP failing to meet performance obligations under the Prospective Purchaser Agreement (“PPA”). They referenced a “SLAPP” suit filed by CDP against the Delaware Riverkeeper Network and other community members. They criticized that the proposed Consent Decree did not adequately describe CDP’s compliance history. Commentors observed that CDP has not demonstrated itself to be “a trustworthy actor that can be counted on to fully disclose the facts and information needed to assess its actions and activities, or those taking place by entities or on properties over which CDP has direct control and responsibility.” Commentors do not trust CDP to conduct a comprehensive, quality clean-up in a legally compliant manner. They expressed concern that there are inadequate controls in the proposed Consent Decree to prevent CDP from:

- circumventing or skimping on the cleanup;
- expediting the cleanup process and the spending of the Trust Fund;
- inserting their own proprietary and financial interests over the regulations of the DEP and Pennsylvania taxpayers to affect the cleanup process;
- sacrificing environmental obligations and using inadequate and even harmful actions to the environment;
- making “sweetheart deals” with contractors/entities to perform the work and receiving kickbacks for the contracts they provide;
- manipulating Trust Funds and controlling the “full costs for such work.”; and
- using Trust Funds to pay their friends and cohorts

Commentors concluded that putting the developer, CDP, in charge is a clear conflict of interest. They added that CDP has a demonstrated history of what appears to be financial mismanagement referencing CDP’s failure to honor financial commitments including failing to pay debts and workers. Commentors noted that is irresponsible for PADEP to agree to a Consent Decree that allows CDP to sell its property and walk away from its responsibilities under the proposed Consent Decree. Commentors also stated that there must be an independent auditor overseeing the expenditure of all funds, with quarterly reports released for public review. They asked:

- who at DEP will be doing the reviews and comments relating to the technical nature and the aggressive schedule in the proposed Consent Decree and their qualifications to do so?
- What prevents the company from simply spending Trust Funds as quickly as possible, so that development can begin?

Comments 2, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 28, 29, 31, and 32.

Response to comments regarding CDP as the Settlor Work Party.

CDP's compliance history with DEP related to the Site is referenced in Paragraph's R, S, T, V, and W of the proposed Consent Decree.

DEP staff will be responsible for overseeing remedy implementation and evaluating performance of the remedial response action regardless of who conducts the remediation. DEP staff reviewers will continue to include a project officer, an environmental chemist, and a Licensed Professional Geologist, who have experience overseeing similar projects. Prior to activities being performed on Site, DEP will continue to review, provide comments on and/or approve, work plans, cost estimates, sampling and analysis plans, health and safety plans, remedial designs, investigation reports, etc. During the implementation of remedial activities, DEP will be on site to observe the work, as it has done in the past. DEP approval of all invoices will also be required prior to payment by the Trustee. DEP may continue to use a contractor to assist with oversight, as necessary, during various stages of the project.

It is quite common for land developers to be directly involved with the remediation of contaminated sites in the Commonwealth. In accordance with HSCA and Act 2, they and their contractors must adhere to strict professional standards and ultimately demonstrate attainment of an Act 2 standard, which DEP will require at this site. In addition, pursuant to Paragraph 79 of the proposed Consent Decree, submissions "containing information or analysis that constitutes professional geologic or engineering work as defined by the Engineer, Land Surveyor and Geologist Registration Law must be sealed by a professional geologist or engineer who is in compliance with that statute."

CDP will not control the Qualified Settlement Trust Fund ("Trust Fund"). As Trustee, de maximis, inc., will be responsible for holding, managing, investing, and distributing the funds contributed by all Settlers with consultation and approval by DEP. The Trustee shall prepare quarterly financial reports. *See* Appendix D to the proposed Consent Decree (Paragraph 20.1 of the proposed QSF Agreement). The Trustee will also prepare Annual Statements, which DEP will review.

There is a concern that CDP could evade its obligations to implement the selected remedial response action; however, the proposed Consent Decree requires CDP to perform work in accordance with DEP-approved work plans, and those work plans must be prepared to accomplish the remedial response action set forth in the 2022 SOD or any Amended SOD. DEP will oversee the plans, designs, and the remedial work. Paragraph 108(b) of the proposed Consent Decree states that the covenant not to sue in Paragraph 106 and the release in Paragraph 114 shall be voidable by DEP, and DEP reserves the right to sue CDP for additional response costs relating to the Site or to issue an administrative order requiring settlers to perform additional remedial activities under certain circumstances. In addition, while the proposed Consent Decree includes provisions relating to the transfer of the Source Property, *see* Paragraphs 123 (a) through (c) of the proposed Consent Decree, CDP's obligations under the proposed Consent Decree, including its responsibilities as a Settlor Work Party, will not be affected by such transfer.

Paragraph 122(a) of the proposed Consent Decree states that in the event a Settlor fails to comply with any provision of this Consent Decree applicable to that Settlor, DEP may, in addition to the remedies prescribed herein, pursue any action in the United States District Court for the Eastern District of Pennsylvania available for a violation of an order of the Court, including an action to enforce this Consent Decree or to hold a Settlor in contempt.

Benefits Potentially Responsible Persons (“PRPs”)

Commentors referred to the proposed Consent Decree as a “sweetheart deal” that is inequitable, deficient, arbitrary, capricious, irresponsible and not in the public interest because it doesn’t hold the responsible parties accountable for their pollution. According to the Commentors, the proposed Consent Decree benefits the financial interests of “wealthy” corporations (Johnson Matthey Inc. (“JMI”) and Whittaker Corporation (“Whittaker”)) and the developer (CDP) responsible for the contamination by limiting their financial obligations, allowing them to walk away from the cleanup without providing their community and the environment any assurance of protection, and shifting great costs on Pennsylvanian taxpayers. They noted that the proposed Consent Decree provides tremendous legal protection and economic benefit to:

- o The perpetrators of the harm;
- o Those who have economically benefited from the site’s contamination and the slow-moving process to secure its cleanup at the lowest cost possible;
- o The developer (CDP) who will profit from the development and sale of proposed homes that will be built on the Site;
- o Those who have been legally responsible for its cleanup for many years but failed to act; and
- o Those who have every reason to circumvent the environmental cleanup process and expedite site development regardless of the ramifications for real people, real children, and the environment.

Comments 2, 3, 5, 6, 7, 8, 10, 11, 13, 17, 18, 20, 21, 22, 23, 25, 26, 27, 29, and 30.

Response to comments regarding Benefits PRPs.

DEP determined that the settlement was in the best interest of the Commonwealth and is consistent with the Department’s duties. A trial could be lengthy and costly to taxpayers, and there are inherent risks in litigating. While DEP could recover more money through litigation than through settlements, there are no guarantees of that outcome. Litigation would further delay implementation of the selected remedy. DEP has considered the comparable liability of each settling party, and the proposed Consent Decree fairly and equitably allocates the costs of the remedial response action among the settling parties. The proposed Consent Decree benefits the community because it establishes the framework for the implementation of DEP’s selected remedial response action and assures a more prompt commencement and performance of the cleanup. The proposed Consent Decree and the proposed QSF Agreement are enforceable agreements that give DEP oversight of the Settlor Work Party’s remedial action activities.

Trust Fund Not Sufficient

Commentors perceived that the Trust Fund was “grossly underfunded” because it was based on cost estimates that were included in DEP’s 2022 SOD, totaling \$8,052,430, which included \$24,000, attributed to OU3. They observed that OU3 had been completed at a cost of \$106,651.49, the cost estimates used in the 2022 SOD are at least five years old, and significant inflation has occurred which has made the monetary obligations out-of-date. Commentors added that there wasn’t enough information to evaluate the financial assurance provision of \$2,500,000 to address areas of contamination discovered during the Data Gap Pre-Design Investigation – an investigation that began in the Winter of 2025-2026. Many commentors were concerned that the financial burden of the remedial actions would shift to taxpayers.

Commentors specifically asked:

- If these monies in the Trust Fund are totally exhausted, will DEP accept a claim by CDP that they made all reasonable efforts to remediate the site and deem it as completed, or will DEP decide that the parties originally named in the SOD are not responsible to put additional monies into the Trust Fund to complete the remedial response action. If the potential responsible persons are not required to contribute more money into the trust, will DEP take over the cleanup efforts, and will Pennsylvanian taxpayers bear the burden to fund the remediation of the site?;
- What protections do the nearby residents have to assure that cost overruns are not passed on to the taxpayer while CDP can build and make a profit?; and
- DEP acknowledged spending \$4,233,483 from 5/19/2000 through 4/30/2022. Will the taxpayers be reimbursed for those past response costs?

Commentors added that the use by CDP of public monies from Industrial Sites Reuse Program (“ISRP”) grant funds does not make the proposed Consent Decree more “palatable.”

Comments 5, 6, 7, 8, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 29 and 31.

Response to comments regarding insufficient funding in the Trust Fund.

The companies have agreed to establish a Trust Fund to fund the remedial response action at the Site:

- JMI and Whittaker, jointly, have agreed to pay \$7,335,000;
- CDP has agreed to pay \$1,250,000; and
- Marcegaglia USA Corporation (“Marcegaglia”) has agreed to pay \$400,000.

In addition, JMI, Whittaker and Marcegaglia have agreed to establish a financial assurance bond of \$2,500,000 for any additional response activities which may be necessary based on the current Data Gap Pre-Design Investigation. On September 1, 2026, DEP sent a letter to representatives from JMI, Whittaker, and Marcegaglia, notifying them that it will be necessary to draw down from the \$2,500,000 Financial Assurances Fund, established in the proposed Consent Decree, to address the additional response activities recommended in the Data Gap Pre-Design Investigation Report. The total amount of funds from the Settling Defendants should be adequate to fund most of the costs of remedial response actions.

As described in Paragraph 100, DEP will continue to pursue its claims against Christiana Metals Corporation (“Christiana”), who operated between 1974 and 1989 and owned the property from 1974 to 1999, to recover any of its available assets, including, but not limited

to, insurance proceeds from known insurers of Christiana, who insured Christiana during its ownership and/or operation at the Site. On September 14, 2026, DEP filed suit against an insurer of Christiana to recover its response costs. The proposed Consent Decree requires that any monies recovered from assets of Christiana will be deposited into the Trust Fund for reimbursement of remedial response action costs.

In addition, pursuant to Paragraph 90 of the proposed Consent Decree, CDP shall make reasonable efforts to pursue grant monies through the ISRP, offered by the Pennsylvania Department of Community and Economic Development (“DCED”), to be contributed in their entirety to the cost of the remedial response action, if obtained. The ISRP is designed to foster the cleanup of environmental contamination at former industrial sites to benefit public health, safety, and the environment. ISRP grants are available only for remedial activities and to municipalities, counties, redevelopment authorities, municipal authorities, etc., with whom CDP could partner.

The purpose of the Trust is to obtain, hold, invest and disburse funds (and income earned thereon), contributed to the Trust from the mechanisms described above.

DEP determined that the settlement was in the best interest of the Commonwealth and is consistent with the Department’s duties. A trial could be lengthy and costly to taxpayers, and there are inherent risks in litigating. As described above, in DEP’s Response to comments regarding Benefits PRPs., while DEP might recover more money through litigation than through settlements, there are no guarantees of that outcome.

The settlement allows for CDP to submit a written Declaration of Inability to Complete the Remedial Action report if insufficient funds remain in the Trust Fund. If DEP agrees with CDP’s assertions about an inability to complete the remedial response action, and additional monies may not be added to the Trust Fund in eighteen months, DEP may take over the remaining remedial action activities without further contribution into the Trust Fund by the settling parties. The procedures that may be taken when there are insufficient funds to complete the remedial response action are described in Paragraphs 51 through 53 of the proposed Consent Decree.

Land Use, Redevelopment, and Cleanup Standards

Commentors remarked that:

- Remediation must be thorough, transparent, and of the highest possible standards to ensure the long-term safety of the community. Decisions regarding the future use of the property should prioritize public health, environmental protection, and responsible stewardship over short-term development interests;
- Residential development should not be permitted; instead it should be used as natural open space to benefit the community and future generations;
- No construction should be allowed until the Site is fully remediated.
- Village Way is a small residential street that will suffer greatly from construction vehicles and heavy traffic and equipment coming through, if they won’t fit under the railroad overpass; and
- The proposed Consent Decree allows certain development activity, following approval of the OU1 soils remedy and prior to completion of groundwater remediation, subject to specified conditions. In contrast, East Whiteland Township premised its Preliminary Land Development

Plan Approval Resolution for the Bishop Tube site (Resolution No. 20-2021) on a more conservative sequencing approach, emphasizing completion and DEP approval of key remedial actions prior to residential construction and occupancy. That Resolution reflects the municipality's longstanding concern with ensuring that redevelopment proceeds in a manner that is fully protective of future residents and does not shift environmental or public-health risk to the municipality.

They asked:

- Does the proposed Consent Decree say that CDP cannot build roadways and install a single utility line until after CDP receives all approvals and permits, or does it say that CDP can build roadways and install a single utility line until after all approvals and permits?
- DEP to confirm that nothing in the proposed Consent Decree is intended to supersede or limit East Whiteland Township's land development approval, zoning authority, building permitting, or occupancy determinations under local ordinances, including conditions imposed through the Township's Preliminary and Final Land Development Plan approvals.
- For clarification on how DEP anticipates coordinating with East Whiteland Township where redevelopment sequencing under the proposed Consent Decree may differ from, or evolve beyond, the sequencing assumptions reflected in prior Township approvals.

Comments 4, 5, 7, 8, 12, 19, 21, 27, 29, and 30.

Response to comments regarding Land Use, Redevelopment, and Cleanup Standards.

DEP acknowledges that it is the preference of many commentors that the Source Property be used as open space. However, zoning and land use decisions are under the purview of the local government and outside of DEP's authority. As such, DEP has no authority to dictate the use of the Source Property. In addition, this proposed agreement does not alter East Whiteland's Township's authority or any decisions on land use approvals it has made or will provide regarding the Source Property. As the Source Property is privately-owned, the owner may choose how to use the Source Property, as allowed by East Whiteland Township and in accordance with all applicable laws. DEP will continue to work with the municipality to assure that work related to remedial response action activities (including construction vehicle access) is performed in a safe manner which limits inconvenience to nearby residents.

DEP is required to ensure that CDP (or whomever is implementing the remedial response action) remediates the Source Property to the applicable Act 2 standard, based on the planned end-use of the Source Property, which in this case is residential. In the 2022 SOD, DEP provides further clarification that the Act 2 standard will be achieved based on the municipal zoned and proposed residential use of the Source Property.

The proposed Consent Decree acknowledges in Paragraph 63 the possibility of CDP commencing certain redevelopment activities after the OU1 Soils Final Report is approved, subject to CDP obtaining all required permits, approvals, and authorizations, including, but not limited to, those required by East Whiteland Township, the Chester County Conservation District, and DEP. DEP notes that there are only two areas of concern planned for in situ injections to address groundwater contamination identified in the 2022 SOD. Under the proposed Consent Decree, the only permissible redevelopment activities in those areas of

concern are the installation of roadways and utilities, which are not allowed to interfere with the implementation of any remedial activities on the Site.

DEP does not expect significant traffic in the Village Way Community during the implementation of the remedial action activities on the Source Property. There may be additional investigation work planned to address some of the recommendations listed in Volume 2 of the Pre-Design Investigation Report. These activities might include the installation of additional monitoring wells, monitoring well sampling, and other sampling activities. Any work would be performed during daylight hours and would be completed over a short duration. As was done prior to the March/April 2026 monitoring well installation, DEP will provide advance notice to residents in the immediate vicinity of where the work is planned. Concerns related to construction vehicles during the redevelopment activities should be directed to East Whiteland Township.

Consent Decree Terminology

Commentors expressed concern with terminology used in the proposed Consent Decree which they noted as vague, misleading, ambiguous, and ill defined. Specific concerns were related to the words/phrases: “shall,” “feasible,” “best effort,” and “reasonable effort.” They noted that the terminology was subjective and open to interpretation, thereby, impacting the overall enforceability of the proposed Consent Decree.

Comments 8, 11, 13, 19, 27, and 29

Response to comments regarding Consent Decree Terminology

The terms “Best Efforts,” “Feasible,” and “Reasonable Efforts” are qualifiers commonly used in legal agreements and have been incorporated into many other DEP settlement documents. Best efforts require a higher degree of action than reasonable efforts. Best efforts require a party to exert maximum energy towards the objective, while a party exerting reasonable efforts should expend a degree of action which may not be excessive but would be consistent with what a reasonable person would attempt given similar circumstances. Feasible is a term used to determine if a task can be realistically accomplished considering various technical, economic, legal and operational factors.

The term “Shall” imposes mandatory obligations.

If DEP determines that inadequate efforts have been made, DEP may require additional actions. Paragraphs 101-105 of the proposed Consent Decree provides a process for how disputes will be resolved, including, but limited, to seeking resolution of certain disputes by the federal court that retains jurisdiction over the proposed Consent Decree, once entered.

Penalty Provisions

Comment 29 stated that the penalty provisions for late payment of Trust Funds are arbitrary and capricious and not truly designed to ensure timely payment. The Commentor added that the penalty rates fall far below the industry standards and standard business practices.

Response to comments regarding Penalty Provisions.

The penalty provisions for late payment of settlement monies that capitalize the Trust Fund are set forth in Paragraphs 92-96. The amount of \$1,000 per day for failure to timely pay a settlement amount is a sizeable penalty. DEP does not anticipate that a settling party will be late in making its payment. However, the late penalty is greater than what is typically required in similar settlements. An extreme lateness could also be grounds for additional enforcement against that settling party for failure to comply with terms of the proposed Consent Decree, including, but not limited to civil contempt proceedings, an assessment of civil penalties, and a loss by that party of liability protections. Further, DEP has no evidence that this is not commensurate with “standard business practices.” In addition, pursuant to Paragraph 92 of the proposed Consent Decree, interest shall be paid by that Settlor to DEP on the unpaid balance, which is calculated according to Section 702(b) of HSCA.

Emergency Response

Comment 8 referenced Paragraph 80 and expressed concerns with the DEP hierarchy listed and whether or not they would be available in case of an emergency. The Commentor was concerned that the residents of General Warren Village are to rely on the answering service in the case of an emergency stating that DEP and CDP should have each other’s cell phone numbers in case of emergency. He added that CDP should not be able to “conclude” that there is insufficient funding, and DEP must correct the emergency situation.

Response to comments regarding Emergency Responses.

DEP notes the work will be occurring during business hours. If the Project Coordinators and Alternative Project Coordinators are unavailable in the event of an emergency, a call to the answering point will be directed to DEP Management who will be able to address the emergency and have additional means of reaching the project coordinators. In addition, during non-business hours, DEP’s emergency response team will be available to respond to any emergency and has the ability to contact HSCA personnel directly, if necessary.

If CDP invokes that there is insufficient funding in the Trust Fund to perform the emergency response, DEP will perform any necessary emergency response actions.

Building Demolition and Site Preparation

Commentors stated that money in the Trust Fund should not be utilized for building demolition and Site preparation activities because they are normal expenses associated with construction projects.

Comments 8, 19, 20, 21, 25, 27, 28, 29, and 30.

Response to comments regarding Building Demolition and Site Preparation

As stated on page 45 of the 2022 SOD, the selected remedy includes building demolition to facilitate access for the soil mixing equipment. During the recent data gap pre-design investigation activities, DEP and DEP’s contractor, Groundwater & Environmental Services, Inc. (“GES”), were unable to access Building 5 on the Source Property because it was deemed unsafe due to its structural integrity. Site preparation and building demolition activities will comply with Applicable or Relevant and Appropriate requirements

(“ARARS”) identified in the 2022 SOD. Any earth disturbance activities will include necessary stormwater erosion and sedimentation controls and storm water best management practices, designed to protect Little Valley Creek and to minimize accelerate erosion and stormwater runoff. The work is necessary for the safe and complete implementation of the remedial action.

Refer to EPA

Commentors noted that stronger federal oversight and real “polluter pays” enforcement are needed. Comment 8 mentioned that he had “heard that the Bishop Tube site should not even be a HSCA site due to how high the levels of contaminants found there are.” He asked if there is any truth to the assertion.

Comments 8, 17, 18, 22, 23, and 26.

Response to comments regarding referring the Site to EPA.

This comment does not pertain to the proposed Consent Decree. Nonetheless, USEPA has not listed the Site on the federal National Priorities List and plays no active role in the cleanup of the Site or in the administration of oversight over the Site. DEP has exercised its authority under federal and State statutes to bring action against former owners and operators in federal court. The Site is on the Pennsylvania Priority List of Hazardous Sites for Remedial Response (“PAPL”).

Preliminary IC/EC & OU1 Remedial Design Investigation

Comment 29 states that the Consent Decree includes multiple loopholes that allow CDP to change detailed components of the Response Action during implementation in potentially significant ways. For example, in provisions 8(b) and (d) on page 17 under PRELIMINARY IC/EC & OU1 REMEDIAL DESIGN INVESTIGATION, the Remedial Design Investigation Work Plan to address Institutional Controls and Engineering Controls opens the door to Engineering Controls and stormwater practices that “to the extent that the [Engineering Controls/Stormwater Best Management Practices] can be implemented without being damaged by subsequent remediation” or development, as is the case in 8(b), seemingly discharges CDP and others from responsibility for future damage.

Response to comments regarding the Preliminary IC/EC & OU1 Remedial Design Investigation

DEP will provide oversight over all aspects of the remedial response action to assure that approved designs and plans are implemented. The referenced paragraphs provide for implementation of stormwater best management practices (“BMPs”) in accordance with the ARARs identified in the 2022 SOD. If damage or compromise of a stormwater BMP is likely to result from future remediation or construction activities, that BMP may not be implemented until later stages of the remedial action. The cited provisions do not discharge CDP from future damage to the BMPs from remediation or development activities. Maintenance and protection of stormwater BMPs will be required by the Environmental Covenant that will be attached to the deed of the Source Property. The draft Environmental Covenant for the Source Property is provided in Appendix E of the proposed Consent Decree.

OU2 Groundwater Remedial Design Investigation Work Plan

Comment 8 commented on Paragraph 27 of the proposed Consent Decree noting “This Paragraph seems to contain conflicting information and instructions. My confusion occurs due to there being two schedules referenced. Initially CDP starts work consistent with the approved schedule in the plan but then it goes on to say in the next sentence CDP is to complete the work within 45 calendar days. It appears that there are potentially two schedules: the one in the Work Plan and the 45 calendar days specified in the Consent Decree. In any event it seems 45 calendar days is a very short time frame to accomplish what we have been waiting decades for to be accomplished.”

Response to comments regarding OU2 Groundwater Remedial Design Investigation Work Plan

The OU2 Groundwater Remedial Design Investigation Work Plan will include plans to address additional supplementary remedial design investigation activities recommended in the Data Gap Pre-Design Investigation Report, plans for necessary treatability and/or bench scale studies, and other evaluations needed prior to the implementation of the remedial action. In accordance with the proposed Consent Decree, this work will be accomplished within 45 days and in accordance with a schedule provided in the work plan. If the schedule provided exceeds the 45-days, it is subject to DEP approval. Any modifications of approved work plans or schedules proposed by CDP are subject to DEP’s approval.

Access

Commentors noted concern that the proposed Consent Decree does not provide DEP access in perpetuity. In addition, commenters expressed concern that necessary remedial actions would not be implemented if CDP was unable to secure access to offsite properties.

Comments 13 and 29.

Response to comments regarding Access.

The draft environmental covenant for the Source Property gives DEP access for the duration of the remedial action activities. See Appendix E to the proposed Consent Decree. CDP must record the executed environmental covenant after the Consent Decree becomes effective within thirty calendar days of CDP’s receipt, pursuant to Paragraphs 60-62. Once recorded, the environmental covenant includes access provisions for DEP and its contractors for the implementation of the Remedial Action.

Regarding the access needed for properties other than the Source Property for monitoring wells located off-site, DEP has recently obtained those necessary access agreements to those properties. Those agreements extend to CDP, as the Settlor Work Party and their contractors.

In addition, HSCA provides broad right of entry authority to DEP. Specifically

- Section 503(c)(3) of HSCA, authorizes the Department to enter at reasonable times a site or other place or property where entry is needed to determine the need for response to a hazardous substance or contaminant, or to effectuate a response action under HSCA.
- Section 503(d) of HSCA, authorizes the Department to perform various sampling and inspection activities at and in the vicinity of a site.

- Section 503(e) of HSCA imposes a duty upon owners of property where there is a release or threatened release of hazardous substances or contaminants, to allow the Department access or right of entry and inspection as may be reasonably necessary to determine the nature and extent of a release of a hazardous substance or contaminant. If access is needed, and property owners are unwilling to cooperate, DEP has authority to issue Administrative Orders or obtain Search Warrants to obtain needed access.

Legal Fees

Commentors do not support CDP's ability to use Trust Fund for legal fees.

Comments 19 and 29

Response to comments regarding Legal Fees

Paragraph OO of the proposed Consent Decree defines "Settlors' Response Costs." It states that the Settlor's Response Costs shall not include overhead costs, costs from communications by or to a Settlor attorney, costs to review any Settlor attorney work product, or any fees or costs of a Settlor attorney *except for attorneys' fees and costs directly incurred in connection with negotiating/drafting access agreements and addressing access disputes*, as set forth in Paragraph 56 (emphasis added). Paragraph 56 states that, only CDP's attorneys' fees and legal costs, incurred to obtain the necessary access agreements or easement(s), for properties "(other than the Source Property and other properties subject to Paragraph 54, above)" shall be paid by the Trust Fund. Had access through agreements been necessary, it might have been necessary for CDP to engage counsel and DEP felt reasonable for such costs to be reimbursed to advance implementation of the remedial response action. Even for those limited purposes, the Trust Fund agreement limits such reimbursement for those legal costs to a maximum of \$5,000 per year. See Paragraph 8 of the QSF Agreement. This relates primarily to access agreements needed for monitoring wells located off the Source Property. DEP has recently obtained those necessary access agreements, and those agreements extend to the Settlor Work Party. If any additional access agreements are deemed necessary, DEP plans to seek access itself to ensure that the Trust Fund money is focused on response activities and not used for legal fees.

Paragraph of 54 of the proposed Consent Decree provides for access to properties that are owned by CDP or its affiliates, and there would be no reimbursement of costs to CDP for work associated with providing access to those properties. Paragraph 56 of the proposed Consent Decree does not allow reimbursement of legal fees for access to other properties owned by CDP or its affiliates.

Community Safety

Commentors noted that there were no safeguards in place for the local community, and the proposed Consent Decree did not identify who is responsible to determine if residents were at risk. They requested air and water quality monitoring to be performed during and after the remedial work.

Comments 19 and 30

Response to comments regarding Community Safety during Implementation.

The Settlor Work Party will be obligated to develop a Remedial Action contingency plan; a plan for complying with all applicable or relevant and appropriate requirements, including regulations; and a Remedial Action Health and Safety Plan as part of the 90% remedial design phase of each operable unit. Adequate monitoring to provide for the safety of public health and to protect Little Valley Creek will be part of the Remedial Action contingency plan. The Health and Safety Plan will require air monitoring in the work zone during remediation activities. These plans will describe safeguards for the local community and monitoring that will be performed during the implementation of each stage of the remedial action.

PFAS Contamination

Commentors indicated that the proposed Consent Decree did not provide a discussion of PFAS and that the financial liability was capped following the Data Gap Pre-Design Investigation. They also expressed concern that the public lacked an opportunity to comment on the presence of PFAS since its disclosure to the public was after the close of the 2021-2022 comment period for the Analysis of Alternatives and Proposed Response. Comment 30 specifically mentioned that DEP should identify how it anticipates addressing long-term response obligations and consulting with the Township, if PFAS or other contaminants of concern are later identified.

Comments 29 and 30

Response to comments regarding PFAS contamination.

Paragraph Z of the proposed Consent Decree describes the results of PFAS sampling, conducted in March 2022, by Roux Associates on behalf of JMI and Whittaker. DEP's 2022 SOD (Appendix C of the proposed Consent Decree) incorporated certain PFAS as contaminants of concern. DEP has conducted additional sampling of soils, groundwater, and surface water for PFAS in 2026 as part of its Data Gap Pre-Design Investigation. On July 15, 2026, DEP accepted the Data Gap Pre-Design Investigation Report Volume 1: Soil, prepared by DEP's contractor, GES. PFAS were not detected in those soil samples at concentrations above the current or proposed PA Act 2 Residential Standard. The report was subsequently posted on DEP's website. Volume 2 reporting the results of the groundwater and surface water investigation was posted on its website on September 4, 2026. As described above, in DEP's Response to comments regarding insufficient funding in the Trust Fund., JMI, Whittaker and Marcegaglia have agreed to establish a financial assurance fund, which may be used for addressing PFAS contamination. On September 1, 2026, DEP sent a letter, notifying them that it will be necessary to draw down from the \$2,500,000 Financial Assurances Fund, established in the proposed Consent Decree, to address the additional response activities recommended in the Data Gap Pre-Design Investigation Report.

Little Valley Creek

Comment 29 noted that the proposed Consent Decree "fails to recognize that Little Valley Creek, a receiving stream from this site, is an exceptional value stream, entitled to higher levels of protection and special reviews with regards to proposed adjacent development. In addition, the wetlands associated with Little Valley Creek are also considered exceptional value, and entitled to a higher level of review and care. Nowhere in the Consent Decree does PADEP directly address the exceptional value status of

the creek or the wetlands or the need for additional review of site activities that may implicate and impact these public natural resources”.

Response to comments regarding Little Valley Creek.

DEP’s 2022 SOD (Appendix C of the proposed Consent Decree) discusses Little Valley Creek, its special protection water quality status, and remedial steps to protect that waterbody in accordance with ARARs. The purpose of the proposed Consent Decree is not to provide similar details that are contained in administrative or technical documents.

Oversight

Commentors requested that an independent third party be named to oversee the project. Comment 29 added that a judge should oversee every decision-making step to ensure full transparency and that a “non-interested expert should be placed in charge of the Remedial Action design and key decisions.”

Comments 5, 7, 9, 13, 15, 21, and 29.

Response to comments regarding Oversight

DEP’s Environmental Cleanup and Brownfield’s Program will continue to oversee the cleanup of the Site, pursuant to HSCA. As described above, in DEP’s Response to comments regarding Community Involvement., DEP will continue to post information on its website and plans to schedule public meetings as significant decision points and milestones are reached. As Trustee, de maximis, inc., will oversee the Trust Fund. DEP feels that it has the authority, experience, and is better suited to oversee the implementation of the remedial response action activities than the judiciary. The federal court retains jurisdiction over the litigation and, thus, the proposed Consent Decree, once entered.

Post Remedial Care Plan

Comment 30 indicated that there “should be clear monitoring requirements of post-remedial actions to determine the effectiveness of those measures. The Consent Decree provides for a Post Remedial Care Plan, but at a high level. From the Township's perspective, questions remain regarding long-term oversight once active remediation ends, particularly for residential use. The Township requests that long-term groundwater and vapor intrusion monitoring results be communicated to the Township after DEP issues a certification of completion. The Township also requests routine post-remedial monitoring summaries continue to be provided to us.”

Response to comments regarding the Post remedial Care Plan.

The proposed Consent Decree does not contain details of the Post Remedial Care Plan as that plan has not yet been created. Upon completion of a Final Report and Post Remedial Care Plan, the documents will be made available to the public on DEP’s website. DEP will continue to coordinate with the Township and share information.

Off-Site Impacts.

Comment 7 asked “what protections will be put in place to keep the contaminated groundwater from seeping into the nearby household water supply”.

Comment 30 noted that “Groundwater contamination has historically migrated off site. DEP should continue to evaluate and disclose any off-site groundwater impacts identified during OU2 activities, including potential implications for nearby private wells or surface waters, to the public and East Whiteland Township. The DEP should clarify what liability protection, if any, does the consent decree provide to the settling parties for off-site damages or future discovery of contamination that could affect future claims by private parties or the Township”.

Response to comments regarding Off-Site Impacts.

DEP notes that the only known impacted private drinking water well was connected to a public waterline in 2023 as part of the remedial action. The plume associated with the Site is well understood and documented within DEP’s administrative record. As described in the 2022 SOD, any potential new potable well within the area of the Site would need to comply with Chester County Health Department (“CCHD”) regulations that require a permit for any new supply wells prior to installation. CCHD considers known areas of groundwater contamination when issuing these permits. In addition, the CCHD regulations require that any new well installed in the vicinity of the Site be sampled to demonstrate that it meets the drinking water standards before permission from the CCHD is granted to use the new well for potable purposes.

The proposed Consent Decree provides no liability protection for future claims by private parties or the Township. In addition, pursuant to Paragraph 117, Settlers and DEP that DEP has no obligation to defend the Settlers, and DEP acknowledges that the Settlers have no obligation to defend the Department, in any suit, demand, or claim for contribution for any matters arising from the release and threatened release of hazardous substances and/or contamination at the Site, arising out of the Remedial Action at the Site, or arising out of the proposed Consent Decree.