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THE GREEN AMENDMENT

THE PEOPLE'S FIGHT FOR A CLEAN, SAFE, AND HEALTHY ENVIRONMENT

SECOND EDITION

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FOUNDER, GREEN AMENDMENTS FOR THE GENERATIONS

CHAPTER SIX

THE PAVING OF AMERICA

In 1987, a young couple—Kate and Larry Stauffer—were looking to buy a starter house. When they drove through General Warren Village, located in East Whiteland Township, Chester County, Pennsylvania, they knew they had found their new home. The village was a quiet neighborhood on a dead-end street with mature trees, where they could afford a nice-sized piece of land along with a quaint little house. Kate and Larry were planning to start a family, so the presence of other young couples with kids sealed the deal. What Kate and Larry didn't know was that they were moving in next to a toxic site, one that state officials had already flagged as a source of oozing and ongoing pollution.[1]

In 1972, government officials found elevated levels of fluoride in Little Valley Creek, the gentle stream that flows along the border of General Warren Village. Agency regulators, looking for the source of the contamination, traced it back to the Bishop Tube Company, a manufacturer of stainless-steel pipes located on a thirteen-acre parcel through which the creek flowed—a parcel that neighbored the home that would later become the Stauffers's.[2] Elevated fluoride was only the first hint that the Bishop Tube plant was spewing harmful contaminants into the environment and neighboring communities. In time, nearby residents

would come to learn that the creek and their community were being infused with an industrial solvent called TCE and other contaminants oozing from Bishop Tube.

The federal EPA began studying TCE in the 1990s, querying its possible effects on people. According to journalist Ralph Vartabedian, who broke a two-part exposé on the chemical for the *Los Angeles Times*, EPA officials determined that "trichloroethylene, or TCE, was as much as 40 times more likely to cause cancer than the EPA had previously believed."[3] As the EPA planned to alert the public and control the substance, the US Department of Defense intervened. Apparently, over a thousand military bases were contaminated with TCE, and the EPA's actions would prove onerous from a financial and public relations standpoint. The EPA, under the stewardship of President George W. Bush administration officials supportive of the Defense Department, was powerless to continue its work. "As a result," notes Vartabedian, "any conclusion about whether millions of Americans were being contaminated by TCE was delayed indefinitely."[4]

But ignoring TCE didn't make it go away. According to TCE expert and Boston University epidemiologist David Ozonoff, it just meant more unexplained birth defects and cancer in the country. "It is a World Trade Center in slow motion," noted Ozonoff. "You would never notice it."[5]

University of California San Francisco environmental medicine expert and Natural Resources Defense Council scientist Dr. Gina Solomon concurred. "The evidence on TCE is overwhelming," she said. "We have 80 epidemiological studies and hundreds of toxicology studies. They are fairly consistent in finding cancer risks that cover a range of tumors."[6] The White House provided a large grant to the National Academy of Sciences to study the substance in 2004. In 2007, it linked the chemical to many human diseases, and in 2011, the EPA belatedly classified TCE as a "human carcinogen."[7]

Unbeknownst to Chester County residents, including those in General Warren Village, Bishop Tube was using TCE all along—lots of it. During the manufacturing process, the company "pickled" its

pipes, bathing the stainless steel in an acidic chemical bath laced with TCE. The toxin also figured prominently in the final part of the pipe preparation, known as degreasing, when the finished products soaked in a giant vat of TCE.[8] Keith Hartman, a longtime company employee, angrily describes TCE's ubiquity on company grounds and notes that people interfaced with the substance without covering their skin, utterly unaware of any danger. David Worst, a seventeen-year Bishop Tube veteran (1972 to 1989), likewise describes seeing open-waste pits, spills, and other "hot spots" of TCE contamination.[9] He and his coworkers were shocked to learn that while the company was purchasing clean water for communities nearby to use (concerned that water in these communities had been contaminated), it failed to take similar protective steps for its own workers.

Other residents of East Whiteland Township interfaced with the site, too. Paula Warren lived nearby since she was born in 1951—the same year that Bishop Tube began its operations.[10] She still vividly remembers the day in 1972 when she and her cousin Dale swam in Little Valley Creek, located approximately ten thousand feet from her home. As they wound their way down the stream, they gazed in disbelief at the fluorescent blue-green water issuing from a nearby culvert. They traced the water to its source—a place called Bishop Tube. They excitedly told their family about it, and no one even considered that it could be deadly. "If only," Paula says, shaking her head in regret.

In 1990, Paula received notice that her family's well water, which they had been innocently consuming since 1953, was contaminated with dangerous levels of TCE and many other carcinogens. The Philadelphia Suburban Water Company told her family to thereafter "minimize consumption." Paula's small family of two parents and three children, who had no predisposition for cancer, developed five different types. Her brother and mother ultimately died of the disease. Twenty-seven years after Paula's initial contamination notice arrived, the groundwater still tests positive for high levels of TCE.

Besides rendering her family's beautiful 1.1 acres practically

worthless, the toxic groundwater has taken a physical toll. Memory loss, chronic vertigo, headaches, decreased mental function, brain fog, and liver failure—her family has experienced them all. These are precisely the kinds of illnesses that the scientific literature has associated with TCE exposure.[11]

Living approximately a hundred yards from the plant over years of its operation, Kate and Larry Stauffer noticed intermittent chlorine-like smells around their property, but thought little of it.[12] "We were busy raising a family and didn't pay too much attention to what was going on," Larry remembers.

The plant closed in 1999, when the couple's oldest son, Nicholas, was in high school. He often joined his friends to hang out in the facility's abandoned buildings. The Stauffers's daughter, Liz, who was born in 1990, played in nearby Little Valley Creek—the same creek that was later found to be heavily contaminated from the site. All three Stauffer children collected rocks from the creek for a geology unit in their middle-school science classes. On his daily walk with the dogs, Larry sometimes noticed overwhelming chemical smells coming from the buildings. He and Kate discouraged their children from playing in these areas, but as they later learned, people didn't have to enter the buildings to be exposed to toxins from Bishop Tube's operations.

Since 2006, Liz has been diagnosed with three brain tumors. Kate and Larry aren't positive whether they can blame Bishop Tube for their daughter's cancer. Because of the many toxins and contaminants in our environment, medical and legal professionals often can't conclusively link individual toxins and specific health outcomes. The Stauffers nonetheless find it eerie that so many in nearby neighborhoods have suffered serious illnesses, including other children. Five neighborhood children received cancer diagnoses within a year of each other, including Liz's friend from down the road. After conducting their own research, the Stauffers found TCE exposure has been linked to central nervous system defects. Although Liz is thankfully in remission now, many others in the small community continue to suffer from life-threatening illnesses.

David Worst is one of those individuals. He suffers from an incurable cancer, and many of his former coworkers have died from cancer or other neurological diseases. After retiring from Bishop Tube, Keith Hartman, like his father who also worked at the plant, experienced increasingly debilitating symptoms similar to those of Parkinson's disease. Research has shown strong evidence linking TCE with a group of nervous system disorders called parkinsonism, which have symptoms like Parkinson's. Although he often struggled to walk and even breathe, Keith would come to community meetings to talk about the Bishop Tube site—until he died at the early age of sixty-two. Keith made it clear until his last days that he believed his crippling illness, and his ultimate death, were related to his years working at the site.

Desperately Seeking a Clean, Green Oasis

Given its toxic history, what should become of the Bishop Tube site?

In 2005, developer J. Brian O'Neill began surveying the property, hoping to entice another commercial operation to move in.[13] When that didn't materialize, he flirted with the idea of converting the site into an athletic complex.[14] O'Neill eventually discarded those plans, applying to rezone the site as residential space, where his firm envisioned building over two hundred townhomes. Lacking a full appreciation for the level of contamination at the site, and without help from the state Department of Environmental Protection to understand either the site's supersaturated toxic condition or how incredibly difficult it would be to secure a meaningful and safe level of cleanup, the township was persuaded by O'Neill to rezone the site for residential development. O'Neill was quick to act on the change in zoning and pursue his residential development plans, including applying for a variance from the township needed to accommodate elements of his building proposal. According to the proposed plan, O'Neill's firm would cut trees and excavate the natural areas that cover much of the site to accommodate homes, roads, driveways, and lawns.

As contaminated as the land may be, the Bishop Tube site and its surrounding woodlands and wetlands are the only open space available to this segment of the East Whiteland community. It's the only place where residents can hear the birds, see the trees, and enjoy nature's serenity. Residents weren't happy about the prospect of losing their oasis of natural green space to a development project. Community members became increasingly alarmed as they learned about the site's toxic condition, a situation that started to emerge only as the development proposal advanced through the township approval process. Alarm turned to anger as they discovered the inadequate cleanup measures that O'Neill planned to undertake before breaking ground. But the community was positively outraged when it became clear that both township officials and the Pennsylvania DEP were going along with O'Neill's development plan.

The site's contamination extends through saturated soils, down to bedrock, and infuses toxins into groundwater supplies and the Little Valley Creek. TCE compounds have been found at fifty, two hundred, and even more than three hundred feet below the ground's surface. O'Neill planned to remediate contamination from only a portion of the site, and these efforts would extend only to soils approximately seven to twenty-five feet below the Earth's surface.[15] At one community meeting, Larry Stauffer asked O'Neill's lawyer if the company had tested the whole site for contaminants. As community members recall, the lawyer said the company was testing only what the state DEP required—not the entire site. O'Neill remained adamant that he would only address identified hotspots. There was also talk of vapor barriers to prevent potentially harmful fumes from entering the new town houses to be built. But the actual plan remained unclear.

O'Neill continually referenced other wealthy corporate entities responsible for cleaning up the site contamination, including the deep layers that—if left unaddressed—would continue to endure and release contamination over time. But there was no clarity on who these folks were and no recognition that, up until that point, the Pennsylvania DEP

had done little to advance their cleanup responsibilities. O'Neill would reference these other unknown entities and characterize their obligations and his own as he saw fit, all in an effort to secure township approval of his development regardless of the ongoing site contamination.

Missing from the township meetings were Pennsylvania DEP staffers to help fact-check what was being said, and to explain the mandates of the law for ensuring site cleanup. Johnson Matthey and Whitaker Corporation were among the former owners of the site that, under state law, shouldered obligations for cleanup. But their obligation did not require them to clean the site up to what is known as a "residential standard" to ensure its safety for homes and families. Rather than secure plans from all responsible parties to clean up the toxic contamination, Pennsylvania DEP had spent its time negotiating an agreement that opened the door for the site's development by O'Neill regardless of its contaminated condition. This meant that if O'Neill's development was approved, it would be for a site plagued by contaminated groundwater and tainted soils, including areas of contamination so deep that even the fractures in underground bedrock were saturated. It would mean that government had approved the construction of homes for families on a site known to be highly contaminated and for which no remediation plan yet existed. To David Worst, the Stauffers, and the other residents of East Whiteland, this outcome was a betrayal of trust in their government.

It was clear to the community that the site would remain dangerously contaminated, and not fully cleaned up, as part of O'Neill's development plans. They also realized that no one could answer the question of when they might expect full remediation, or anything close to it. It seemed that Pennsylvania DEP was helping O'Neill advance his development, and allowing responsible parties—including O'Neill, Johnson Matthey, and Whittaker Corporation—to evade the full cleanup the community was legally and morally entitled to. For those at the decision-making table, protection of the neighboring residents seemed like an afterthought (if it was a thought at all).

Further questions arose about how O'Neill's development plan would impact future attempts to remediate groundwater, Little Valley Creek, and other contaminated areas associated with the site. At public meeting after meeting, residents expressed fear that limited remediation efforts would further expose the community, including children, to toxins. What would happen when children were playing in a nearby backyard and the company started digging into the contaminated ground? Would more toxins be released into the air or the creek as the site was developed? What about the health of the children in new families buying homes built on a still-contaminated site? Could O'Neill, his representatives, and the various government officials imagine (community members would ask) raising their families in that kind of environment?

When residents raised their questions, fears, and concerns, O'Neill and his spokespeople were defiant, telling the community that no one would be willing to do a better job than he would.

When the residents of East Whiteland contacted me in early 2017 about the contamination and proposed development of the Bishop Tube site, they felt besieged. It's hard to understand the state and federal laws that deal with toxic contaminated sites—even environmental advocates and attorneys like me who work 24/7 on environmental protection issues have difficulty. In this case, layered on top was another rigmarole of land development regulations. The community had little experience organizing itself, and it couldn't secure the expensive scientific and legal expertise necessary to pursue its interest in a healthy environment. Further, residents felt as if government officials charged with serving the community either weren't listening or weren't prioritizing the community's best interests. They weren't wrong.

I and my Delaware Riverkeeper Network joined forces with the community to fight for site cleanup and its preservation as natural open space. Brian O'Neill was not happy about my intervention or the community's increasingly organized and effective response to his plans. O'Neill went so far as to file a legal action to try to silence me, my organization, and other "to be named" members of the community, asserting

we were spreading misinformation that was causing him harm. At each round of this litigation, however, the judges sided with us, protecting our rights to free speech and confirming that our assertions were true and accurate. Still, the filing of the suit was scary for the residents. Had the Delaware Riverkeeper Network not been there to defend their rights, O'Neill may very well have gotten his wish: that they sit down and shut up. But I had faced these strategic lawsuits in the past and would face them in the future, and I was not going to allow our efforts with the community to be silenced.

In the spring of 2017, when the zoning hearing board granted portions of O'Neill's variance request with limitations, he scaled down his proposed footprint but still crammed in dense development of residential homes. From there, the question of whether or not to approve the development went to the township's Board of Supervisors. The Stauffers and Peggy Miros, a close neighbor, along with a dedicated band of residents, urged the township to hold off on offering approval, at least until the full plan for site remediation by all responsible parties was developed and known. But the township solicitor told the community that the law allows the developer to press for a decision, and O'Neill was doing just that. They had to vote.

"What does it say about the developer's intentions that they are not willing to wait for all the information to be in?" Peggy asked township officials. Just minutes later, they approved the proposal, albeit with conditions.

And so the battle continues for full cleanup of the Bishop Tube site and the preservation of this little patch of nature. The communities around and downstream from Bishop Tube have suffered tremendous harm because of this site's toxic history. As Bill Coneghan, another longtime resident of the neighboring village, recounted at a public hearing in 2021: "My son was three when we moved here, and since then my son and any other children who moved into, [have] grown up [in], or were born in [our] village have had that aura of danger, knowing that in some way—either through the water in the area or vapors

coming down the street—they could be affected by these hazardous chemicals." Bill concluded his remarks by expressing that his "frustration and resentment toward DEP stems personally from that" and from the regulatory agency's failure to put forth a plan that will make this site less hazardous.

The East Whiteland community deserves to keep their trees, creek, critters, and ecosystems, and to enjoy these valued natural treasures for the beauty, health, and healing they provide. This is their little piece of natural paradise. But instead, as is so often the case, the developer and the state are using the site's contaminated condition as an excuse to try to force development. They fail to recognize that protection and restoration of this pocket of nature will bring far more value to a community that has suffered irreparable harm from both the site's toxic condition and the failure of local and state government to act.