COMMENTS OF CONCERNED CITIZENS REGARDING THE FOOTE MINERAL CO. SITE ("Site") Soils Management Plan and Environmental Health and Safety Plan

These comments reflect the concerns of several citizens of East Whiteland Township, Charlestown Township, East Goshen Township and Willistown Township, all of whom live in the vicinity of the Foote Minerals CERCLA Site located in East Whiteland Township PA.[1] (collectively "Commenters").[2]

As EPA Region 3 is aware, the current Site owner, Sentinel Green Fig, LLC ("Developer") has proposed to construct a hyperscale Artificial Intelligence Data Center primarily located on the middle of three tax parcels that comprise the Site. Although the Developer has modified its plans several times during the local planning commission and zoning approval process, the Developer's present stated intention calls for a 1.5 Million Square Foot facility. This plan purportedly will require excavation of a 15 foot below grade basement level. (See, e.g., the Developer's website and East Whiteland Township's website.)

https://projectforgepa.com/

https://www.eastwhiteland.org/government/departments/planning_development/sentinel,_green_fig_data_center_on_swedesford_road.php

1. DOCUMENTS SUBJECT TO THESE COMMENTS. Soils Management Plan-Portion of Foote Mineral Co. Superfund Site 15 South Bacton Hill Road Universal Parcel ID (UPI) #s 42-3-130.1 & 42-3-130.2, East Whiteland Township and 215 Valley Creek Boulevard UPI 3 41-3-4, West Whiteland Township Chester County , Pennsylvania Prepared by EcolSciences, Inc., dated April 2026 (hereinafter, "**SMP**"); and the accompanying **Environmental Health & Safety Plan** for the same properties dated April 2026 (hereinafter "**EHASP**"). (These plans may be referred to collectively herein as the "**Subject Plans**").[3]

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[1] The Commenters and principal author are identified in Attachment "A"

[2] A Google Map of the area can be found <iframe src="https://www.google.com/maps/embed?pb=!1m14!1m12!1m3!1d10499.211012806642!2d-75.58535651019423!3d40.04604999738272!2m3!1f0!2f0!3f0!3m2!1i1024!2i768!4f13.1!5e1!3m2!1sen!2sus!4v1780507259423!5m2!1sen!2sus" width="600" height="450" style="border:0;" allowfullscreen="" loading="lazy" referrerpolicy="no-referrer-when-downgrade"></iframe>

[3] The author notes that not all information pertinent to consideration of the SMP has been made available to the public by EPA as of the date of filing these comments. Remedial Action post excavation confirmation sampling results and reports were not included in the administrative record for the Site nor are they available on the EPA website. At the time of filing these comments, EPA had not yet provided these results and reports in response to the author's request. Accordingly, the Commenters reserve the right to supplement these comments if and when those reports are provided.

2. SUMMARY

The principal focus of these comments are on the concerns of the Commenters regarding exposure to airborne contaminants during earthmoving and construction activity. So the comments address the SMP primarily. In summary, it is a generic, off the shelf template document that does not appear to address the Site with any particularity. More importantly, the evaluation of the Site conducted by EPA Region 3 in fiscal year 2024, ***Third Five-Year Review Report for Foote Mineral Co. Superfund Site Chester County, Pennsylvania, USEPA Region 3, September 2024*** **("3rd FYR")** states unequivocally that the characterization of soil contamination at the Site has not been completed, and additional investigation is necessary. EPA's determination is directly applicable to the SMP, and suggests, if not mandates that the SMP cannot be approved, and earth-moving activities cannot be initiated prior to completion of this additional sampling and characterization work. EPA states as much in the 3rd FYR:

> Soil cleanup goals for the Site (Table 3) were intended to support residential land use for uncapped areas outside the quarry area. *However, this FYR performed a screening-level risk review and found that the cleanup goals used are not protective of either residential (specifically, a child resident) or commercial/industrial use in which a composite worker is present (Appendix J, Tables J-3 through J-5)*. **Additional assessment, such as soil sampling, of the potential risk posed by residual soil contamination is needed *prior to approval of any on-Site development supporting commercial/industrial use* in which composite workers are present or residential use.**

3rd FYR page 15. (emphasis added).

Related to soil contamination, EPA has placed a similar restriction on the construction of buildings at the Site, due to the lack of data on groundwater contamination:

> During the RI, all Site-related wells were sampled for VOCs and MW-2 and MW-22 were the only wells with VOC exceedances. MW-22, located in a central area of the Site, is the only well that has been consistently sampled for VOCs since the long-term monitoring plan has been implemented at the Site. Since no other wells besides MW-22 have been sampled for VOCs since the RI, *the extent of VOC contamination is currently unknown.* Because of this, the

potential for vapor intrusion cannot be ruled out, and **VOC sampling of all Site-related wells should be performed prior to any construction of enclosed buildings. At a minimum, the 2008 GMP should be updated to include additional VOC sampling in groundwater to delineate the extent of VOC contamination**. Alternatively, or in addition, an IC requiring a vapor barrier in any new on-Site buildings could be evaluated.

3rd FYR page 15. (emphasis added).

Neither of the Subject Plans acknowledge the EPA requirement for additional soil and groundwater contamination assessment, or adequately propose a method to address any unknown contamination that is present at the Site.

Accordingly, as neither the EPA nor the Developer has completed the investigation that EPA has determined is required for the Site, approval of the SMP and the EHASP is premature, and it will remain so until the characterization of the Site contamination is completed.

In addition, specific shortcomings of the SMP and the EHASP are presented herein.

3. UNRESOLVED ISSUE 1: COMPLETE CHARACTERIZATION OF SOIL CONTAMINATION HAS NOT BEEN ACHIEVED.

According to the 3rd FYR, there are several problems associated with the soils on the parcel which is slated to be excavated and built upon by the Developer. First, EPA has determined that the soil cleanup goals for five metals, as selected in the 2006 Record of Decision ("ROD") and modified by the 2008 Explanation of Significant Differences ("ESD") are no longer protective for the most likely human exposure scenario, a composite site worker.

> Soil cleanup goals selected in the 2006 ROD remain valid, except for **arsenic, hexavalent chromium, manganese, thallium, and lithium** (Appendix J, Table J-3). The cleanup goals selected in the 2006 ROD, modified by the 2008 ESD, were found to exceed the acceptable risk range for a child residential receptor as well as a **composite worker exposure scenario** (Appendix J, Tables J-3 through J-5). In both cases, the current soil cleanup standard for manganese was a major driver of excess risk.

3rd FYR, Page 30**.** (emphasis added).

What is not addressed by EPA in the 3rd FYR is the consequence of the now obsolete cleanup goals for these five metals. Similarly, what is not addressed by EPA is whether an analysis has been conducted of the post excavation sampling results for these contaminants. That is, are these five metals present in the Site soils at concentrations in excess of the new cleanup goals? In addition, does the change in the cleanup goals require EPA to issue another Explanation of Significant Differences? What is clear however is that EPA has determined that no development of the Site is appropriate until further characterization is completed. See **Summary** above, p. 3.

EPA so advised the Developer in the "Superfund Status/Comfort Letter" issued to the Developer dated March 26, 2026, ("**Comfort Letter**"):

> Please note that, to ensure the Selected Remedy remains protective of human health and the environment, any reuse must be compatible with any investigation and cleanup actions and required land use restrictions designed to protect the Selected Remedy and *prevent unacceptable exposure to residual contamination.* **Sentinel II should not conduct any activities or construct any structures that would interfere with the EPA's cleanup or any future investigations.**

Comfort Letter, page 4. (emphasis added). The excavation of soils for the basement (or indeed, even a concrete slab should the Developer's current plan change) prior to soil sampling could potentially eliminate the opportunity to gain this data. Moreover, unless the Developer or EPA conducts sampling post excavation and pre-construction, EPA will never know the concentrations of the soil contaminants in the area of construction.

4. UNRESOLVED ISSUE 2: COMPLETE CHARACTERIZATION OF GROUNDWATER CONTAMINATION HAS NOT BEEN ACHIEVED.

Somewhat surprisingly, and most unusual in CERCLA remediation projects, twenty years after the ROD was issued for the Site, groundwater contamination associated with the historical industrial operations at the Site has not been delineated and fully characterized. Based on the text of the 3d FYR, there also appears to be a lack of complete comprehension of the connection between historic soil contamination in the operations area and quarry/waste disposal area and the regional groundwater. That being the case, it seems premature for the EPA to be approving the Site for reuse, until such data and characterization is better understood.

As EPA stated in the 3rd FYR:

> Groundwater COCs, lithium in particular, continue to exceed the 2006 ROD cleanup levels on-Property and downgradient from the source area. Elevated Site-related COCs are also detected in surface water in East Valley Creek, downstream from the Property. *The extent of Site-related contamination is currently unknown, both laterally and vertically,* therefore *it is unknown if Site-related contamination has extended into areas where private wells may be present and in-use.* **A review of private wells in use for potable water in the vicinity of the Site should be conducted**. Additionally, one of the RAOs in the 2006 ROD is to "minimize the potential human and ecological exposure to unacceptably contaminated groundwater." *Without knowing the extent of groundwater contamination, the potential for human exposure cannot be determined.* **Additional monitoring wells in all three groundwater zones, shallow, intermediate, and deep, are recommended in order to delineate the extent of Site-related contamination.**

3rd FYR, page 29. (emphasis added).

Continuing its analysis, the 3rd FYR notes:

> The current Property owner intends to redevelop the Property by building a data farm facility. *However, the full extent of groundwater contamination with VOCs is not known.* MW-2, which was found to be contaminated with unacceptable levels of VOCs during the RI, *has not been subsequently sampled or monitored for VOCs or other COCs*. MW-22, located in the central area of the Property, is the only well that has been sampled for VOCs since the long-term monitoring began in 2010. During the RI, VOCs were not detected in other wells on or beyond Property boundaries, *however, as it has been nearly twenty years since VOCs have been delineated in groundwater, the extent of VOC contamination in groundwater is unknown*. **Sampling the full monitoring well network for both organics and inorganics is recommended during the next sampling event to verify the extent of VOC contamination and determine if additional monitoring points are needed to delineate the extent of Site-related contamination**.

3rd FYR, page 29-30. (emphasis added). Not only does EPA recognize the lack of Site related groundwater data, EPA has determined that additional monitoring wells may be necessary. Regarding the potential for VOC contamination creating a vapor intrusion issue for the building, EPA has found:

> Additionally, based on currently available data, **the potential for vapor intrusion cannot be ruled out and sampling should be performed prior to any construction of enclosed buildings.** If VI related risks are identified, institutional controls to prevent potential exposure to COCs via VI ***should be incorporated into an appropriate decision document***. The potential for vapor intrusion could be addressed by incorporating a vapor barrier in any new on-Site buildings. Based on the recent analytical results for MW-22, PCE concentrations have increased within the past few years, and therefore may continue to increase to unacceptable risk levels at some point in the future. In March 2024, the EPA RPM corresponded with the current property owner and recommended the installation of vapor barriers as a precaution in their planned data warehouses based on the unknowns regarding the extent of VOC contamination. *Further discussions resulted in the decision to reevaluate vapor intrusion mitigation if the Site-use were to change from commercial/industrial to residential or if VOC levels increased to an unacceptable commercial risk range.*

3rd FYR, page 30. (emphasis added). While this paragraph may suggest that EPA has treatment options available going forward, those options do not eliminate the need for additional groundwater monitoring data to determine the extent of VOC contamination.

On a related note, it appears from the Developer's plans that the most contaminated well at the Site may be relocated during construction. If EPA should approve closure of either of those wells, we trust that EPA will direct the Developer to locate replacement monitoring wells in areas and water bearing zones of similar levels of contamination. As EPA stated in its Comfort Letter:

> There are currently two (2) monitoring wells located at the Property, which are a necessary component of the Selected Remedy. **Any modification, alteration, or relocation of those wells must be conducted under the supervision and with the prior-written approval of the EPA.** As Sentinel II's plans develop further, please continue to discuss the proposed reuse with the EPA.

Comfort Letter, page 4. (emphasis added).

5. UNRESOLVED ISSUE 3: COMPLETE CHARACTERIZATION OF SURFACE WATER CONTAMINATION HAS NOT BEEN ACHIEVED.

A further manifestation of the consequences that flow from a lack of complete characterization of groundwater contamination is the connection between Site related groundwater and surface water discharges which contain Site related contamination.

> As shown in Table J-6, concentrations of chromium and lithium at SW-01 exceed surface water screening criteria for human health and *may present unacceptable risk to human health*. Lithium concentrations in surface water at all surface water sampling locations currently exceed ecological risk screening levels, raising the concern for potential impacts to aquatic life exposed to lithium. Furthermore, lithium concentrations in surface water at SW1, SW-05, and SW-06 exceed the BTAG literature-based lithium toxicity value established to determine whether groundwater discharges are reaching levels that would pose an unacceptable risk. **Continued monitoring is warranted for all areas with exceedances.** Given that some of the highest lithium concentrations are observed at SW-05, one of the furthest downstream monitoring locations, **an additional surface water sampling location further downstream is warranted.** Monitoring must continue to demonstrate a downward trend in contaminant concentrations. **Additional groundwater contamination delineation should include sampling locations** *to verify that contaminants are not discharging to the surface water at levels exceeding risk thresholds.*

3rd FYR, page 30-31. (emphasis added).

Combined with the incomplete status of soil characterization and groundwater plume delineation, the potential downstream discharges of Site related groundwater contamination into surface water resources reinforces the point that the Site is not yet ready for redevelopment. In fact the administrative record for the Site does not appear to include any assessment by EPA of the potential impact site redevelopment activities could have on the existing, and as yet, undefined remaining residual contamination at the site. The absence of such an analysis, given the findings of the 3rd FYR suggests that it is premature for the EPA to grant approval of the SMP at this time.

6. UNRESOLVED ISSUE 4: SITEWIDE OPERATIONS AND MAINTENANCE AND ENGINEERING CONTROLS REQUIREMENTS HAVE NOT BEEN CONDUCTED IN ACCORDANCE WITH THE ROD AND THE SITE LACKS SUFFICIENT INSTITUTIONAL CONTROLS.

The 3rd FYR identifies the failure of the prior owner(s) to comply with the ROD-mandated Operations and Maintenance obligations and Engineering Controls at the Site. Most significantly for the residents of the surrounding area, there has been no

documented maintenance of the landfill cap over the quarry area, groundwater wells or any other Site feature. There has also been incomplete sampling and analysis of the groundwater at the Site. See, generally, 3rd FYR, pages 18-19; 22; Section VI, pages 31-36; Appendix G, page G-11.

EPA has determined that additional institutional controls in the form of Environmental Covenants are necessary for the two parcels that are located adjacent to the capped area. Until such time as those are recorded, approval of redevelopment and the SMP is premature.

> The 2017 Environmental Covenant on parcel 40-3-130 restricts residential land use and any activity that could compromise the integrity of the cap, which prevents direct human contact with waste. After subdivision of the Property in 2019, the 2017 Environmental Covenant does not cover the other uncapped parcels on the Property, t**herefore, additional ICs are needed in order to restrict land-use and ensure protectiveness of the Selected Remedy for the entirety of the Property, not just the parcel that contains the capped soil**.

3rd FYR, page 29. (emphasis added).

Given the significant lack of completion and compliance with the long term remedial obligations at the Site, the prudent course of action would appear to be for EPA to implement measures to make sure such obligations are brought up to speed. Until that is accomplished however, the consideration of the SMP is premature. [4]

7. THE SITE NO LONGER SATISFIES EPA'S CRITERIA FOR THE DESIGNATION OF "SITEWIDE READY FOR ANTICIPATED USE PERFORMANCE MEASURE".

The 3d FYR notes in the Site Chronology that the Site achieved Sitewide Ready for Anticipated Use Performance Measure on January 5, 2018. Based on the findings of the 3d FYR it appears that the Site should no longer be so designated.

According to EPA Guidance:

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[4] It is noteworthy that the significant lack of compliance with ROD mandated Operations and Maintenance and Institutional Control obligations are violations of the remedial action Consent Decree executed by Frazier Exton Development, LP with EPA in 2008. It is unclear how and why Whiteland Holdings, LP, the primary mortgage holder, avoided liability for completing these obligations when it foreclosed on the Site. Moreover, it is unclear how the next owner Green Fig Land LLC/Green Fig 11.33 LLC, which purchased the property, similarly avoided liability for compliance with the ROD.

The SWRAU performance measure counts CC Final and Deleted NPL or SAA sites for which, f***or the entire site***, it is ***currently and accurately*** documented that:

1. The site has an HE status of current human exposures under control and all protective remedy(ies) in place (HEPR) or l***ong-term human health protection achieved (HHPA).***

2. For media that impact current and future land uses, ***all cleanup goals in the RODs or other remedy decision document(s) must be met*** so that there are no unacceptable risks.

3. ***All controls*** required for achieving protectiveness (engineered as well as institutional) are identified as part of the selected remedy in the ROD(s) or other remedy decision document(s), such as an ESD or ROD Amendment, and ***are in place***

Superfund Guidance on the Sitewide Ready for Anticipated Use (SWRAU) Performance Measure (Office of Superfund Remediation and Technology Innovation September 2023), U.S.Environmental Protection Agency Washington, D.C. ("SWARU Guidance"), page 5.

In short order, the 3d FYR states unequivocally that these three criteria are not presently being met.

1. The HE scenario for a composite site worker has been deemed to be unacceptable (non-carcinogenic risk of 2.1 instead of 1.0).

2. As stated above in Section 3, Soil cleanup goals selected in the 2006 ROD are no longer valid for **arsenic, hexavalent chromium, manganese, thallium, and lithium**. Further site characterization and data collection is necessary. As stated in Section 4 above, Groundwater Contaminants of Concern continue to exceed the 2006 ROD cleanup levels on-Property and downgradient from the source area. EPA has determined that significant additional groundwater monitoring is required for groundwater and surface water.

3. As stated in Section 6 above, Engineering Controls have not been maintained and Institutional Controls are inadequate.

Accordingly, as the Site would not satisfy the criteria of the SWARU Guidance today (or in September 2024 at the time of the 3rd FYR), EPA should retract its determination made in 2018, and withhold it until such time as the Site fully satisfies these criteria.

8. THE SMP IS GENERIC AND DOES NOT SPECIFICALLY ADDRESS ANY ASPECTS OF THE SITE.

While the SMP recites or paraphrases some of the findings of the ROD and ESD, it does not mention or include the findings of the 3rd FYR. Consequently, it does not address the determinations made by EPA that the soil, groundwater and surface water contamination assessment and characterization work is incomplete. Therefore, with respect to soils, it does not anticipate encountering suspected contamination. (SMP. Section 4, Par. 1). Given EPA's determination that soil characterization is incomplete, and there are revised SSLs for five metals, it would appear prudent to require the SMP and contractor to specifically address this data gap, prior to conducting earthwork at the Site.

As a result of the lack of acknowledgment of the findings of the 3rd FYR, the SMP contains several statements that have to be clarified or put in more accurate context.

1. "On January 5, 2018, the Site achieved the 'Sitewide Ready for Anticipated Use Performance Measure". SMP, page 6. As stated above, EPA should retract this determination following the 3rd FYR.

2. "The capped area is outside of the redevelopment area". SMP, page 6. This is not entirely correct. It is our understanding that the Developer's plan could directly impact the edges of the cap. We request that EPA look into this issue in greater detail, and require additional provisions to the SMP, as necessary.

3. "No engineering or institutional controls for soil were required on parcels 42-3-130.1, 42-3-130.2, or 41-3-4". SMP, page 6. EPA has concluded the opposite is true in the 3rd FYR.

4. ***Section 3.3 Applicable Remediation Standards***. This section does not refer to EPA's determination as rendered in the 3rd FYR that the SSL for Arsenic, Chromium (VI), Manganese, Thallium and Lithium have changed. The reference to the PADEP Act 2 Standards is also not relevant, as EPA has set the SSLs for the individual contaminants.

Beyond the foregoing incompleteness of the SMP, from the perspective of the residents in the areas surrounding the Site, with regard to excavation and soil movement activities at the Site, the principal concern is the possibility for airborne transportation of soil and contaminated soil during earth disturbance and construction work. Hence, how will the Developer and its contractors handle the identification of contaminated soils is a critical issue. So that issue is addressed first.

Section 4.4.6 Suspected Contamination/ Unknown Conditions Contingency. Section 4.4.6, only addresses those soils which are obviously stained, oily or emitting noticeable vapors. This section however makes no mention of how the contractor is to discern whether the soils encountered contain concentrations of the five metals (or any other metal that might be present) that are in excess of the EPA SSLs. Given the relatively low concentrations that were set by EPA for these SSLs, this is a deficiency in the SMP.

There is no reference in the SMP that indicates its author, EcolSciences, Inc. reviewed the Remedial Investigation/Feasibility Study Reports or equally important, the post excavation sampling reports approved by EPA during the Remedial Action. In addition, there is no discussion of which areas were determined to be "clean" by way of post excavation sampling.[5] It is difficult to imagine that any soil excavation contractor who reviews this SMP will be alerted or attuned to the fact that there may be contaminated soils encountered, that are not oily, visibly stained or malodorous. The SMP should be modified to include some ***additional protocol*** for identifying lower levels of contaminated soils during earthmoving activities.

The SMP should be modified to address the event of discovery or detection of contaminated soils, to include ***notification*** to EPA, the Township, the Township Environmental Advisory Committee, and local citizens.

Comments on other sections of the SMP follows.

Section 4.1 Permits & Approvals Required. *Focus:* **Erosion and Sedimentation Control Permit.** Perhaps the generic nature of the SMP is best exemplified by the statement that the necessary approvals or permits "may include… the following: Soil Erosion and Sediment Control Permits…". It is unclear if EcolSciences was fully apprised of the status of the Site. Given the size of this project, and the fact that it is

[5] As referenced in Footnote 3, EPA was asked to provide copies of all post excavation confirmatory sampling results and reports, as these were not publicly available in the Administrative Record on the EPA website. As of the date of these comments, they were not provided. The Commenters therefore reserve the right to supplement these Comments as appropriate if and when such documents are provided.

being conducted on a Superfund Site, the SMP should be far more specific about this issue. Digging into the issue, we have discovered several problems.

Apparently, in November 2024, the Developer was issued a *National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Stormwater Associated with Construction Activities –PADEP General Permit, PAG-02 for Stormwater Associated with Construction Activities* (54 Pa. Bull. 7575, November 13, 2024). Respectfully, the Developer should have applied and obtained an Individual NPDEP Permit for the Site, due to its status as a Superfund Site. *National Pollutant Discharge Elimination System (NPDES) Individual Permit for Discharges of Stormwater Associated with Construction Activities.* PADEP permit regulations and instructions make this clear. We request that EPA evaluate this issue in the context of the non-detailed SMP, and require the more complete evaluation of a contaminated site that is required for an Individual Permit application.

Under the PAG-02 General Permit Instructions, contaminated sites are generally not eligible for PAG-02.

Eligibility Criteria. *DEP will deny coverage* under the General Permit when one or more of the following conditions exist:

1. Stormwater discharges that, individually or in combination with other similar discharges, ***are or have the potential to be a contributor of pollution,*** as defined in the Pennsylvania Clean Streams Law, which are more appropriately controlled under an individual permit. (25 Pa. Code § 92a.54(e)(1)) …

4. Stormwater ***discharges that contain pollutants*** for which a change has occurred in the availability of demonstrated technology or practices for the control or abatement of the pollutants. (25 Pa. Code § 92a.54(e)(4))...

10. Stormwater ***discharges containing toxic or hazardous pollutants*** as defined in Sections 307 and 311 of the Clean Water Act (33 U.S.C. §§ 1317 and 1321), or any other substance which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or contribute to an increase in mortality or morbidity in either an individual or the total population, or pose a substantial present or future hazard to human health or the environment when discharged into surface waters of this Commonwealth. (25 Pa. Code § 92a.54(a)(5))

Note 1 – If a project site is ***known to have on-site soils that are contaminated,*** and the contamination is not site-wide (i.e., hot spots), earth disturbance activities under the

PAG-02 General Permit may be authorized for areas that are not contaminated. *If on-site contaminated soils will be disturbed, the applicant must apply for an individual permit for the entire project site.* For the purpose of the PAG-02 General Permit, soils are contaminated if concentrations (i.e., mg/kg) of any regulated substance exceed residential or non-residential Medium-Specific Concentrations (MSCs) for soil in 25 Pa. Code Chapter 250 (Appendix A, Tables 3 and 4) for residential and non-residential sites, respectively, unless a site-specific standard has been met under a state or federal cleanup program or the applicant provides documentation of naturally occurring contamination. The more stringent Direct Contact and Soil to Groundwater MSCs for each pollutant should be used for this evaluation. The non-residential Direct Contact MSC used in this evaluation should be the Surface Soil (0'-2') MSC. The Soil to Groundwater Numeric Standard MSC used in this evaluation should be the Used Aquifer MSC with naturally occurring Total Dissolved Solids (TDS) ≤ 2,500 milligrams per liter (mg/L), unless site-specific conditions allow for the use of other Soil to Groundwater MSCs.

https://greenport.pa.gov/elibrary/GetDocument?docId=1561448&DocName=01%20-%20PAG-02%20NOTICE%20OF%20INTENT%20INSTRUCTIONS.PDF%20%20%3Cspan%20style%3D%22color%3Agreen%3B%22%3E%3C%2Fspan%3E%20%3Cspan%20style%3D%22color%3Ablue%3B%22%3E%3C%2Fspan%3E

EPA's 3RD FYR was issued in September 2024. The PAG-02 for the Site was issued in November 2024. Therefore, the Developer was aware, or should have been aware that EPA determined that there was additional contamination present at the Site, and associated with the Site groundwater that, at a minimum, mandated further investigation if not remediation. Thus, there is the potential for contamination to be disturbed during earth moving activities. In the context of the SMP, EPA should further evaluate the appropriateness of the Site having obtained a General Permit, without going through the more rigorous evaluation attendant with an Individual Permit.

The Individual Permit Application and Instructions solidify this point clearly.

The Individual Permit Application is available from PADEP's website.

https://greenport.pa.gov/elibrary/GetDocument?docId=1561050&DocName=02%20-%20NATIONAL%20POLLUTANT%20DISCHARGE%20ELIMINATION%20SYSTEM%20(NPDES)%20INDIVIDUAL%20PERMIT%20FOR%20DISCHARGES%20OF%20STORMWATER%20ASSOCIATED%20WITH%20CONSTRUCTION%20ACTIVITIES%20APPLICATION.PDF%20%20%3Cspan%20style%3D%22color%3Agreen%3B%22%3E%3C%

2Fspan%3E%20%3Cspan%20style%3D%22color%3Ablue%3B%22%3E%3C%2Fspan%3E

The Individual Permit Instructions are found:

https://greenport.pa.gov/elibrary/GetDocument?docId=1561061&DocName=01%20-%20NATIONAL%20POLLUTANT%20DISCHARGE%20ELIMINATION%20SYSTEM%20(NPDES)%20INDIVIDUAL%20PERMIT%20FOR%20DISCHARGES%20OF%20STORMWATER%20ASSOCIATED%20WITH%20CONSTRUCTION%20ACTIVITIES%20APPLICATION%20INSTRUCTIONS.PDF%20%20%3Cspan%20style%3D%22color%3Agreen%3B%22%3E%3C%2Fspan%3E%20%3Cspan%20style%3D%22color%3Ablue%3B%22%3E%3C%2Fspan%3E

Of particular significance to this project are the following Individual Permit Instructions:

> **Pre-Application Meeting.** A pre-application meeting or call with the appropriate DEP/CCD office is encouraged ***prior to submission of the application package and is required for sites with known contamination seeking an Individual NPDES Permit for the first time.***
>
> **Deadline for Application Submission**. Persons seeking a new Individual NPDES Permit ***must submit a complete application package at least 120 calendar days prior to the planned date for commencing construction.*** Submission of an application 120 calendar days prior to the planned date for commencing construction does not imply or guarantee that DEP/CCD will be able to issue an Individual NPDES Permit on or before the end of that 120-day period.
>
> **Preparedness, Prevention and Contingency Plan**. In accordance with 25 Pa. Code § 102.5(l), a person shall prepare and implement a site-specific Preparedness, Prevention, and Contingency (PPC) Plan when storing, using or transporting materials including: fuels, chemicals, solvents, pesticides, fertilizers, lime, petrochemicals, wastewater, wash water, core drilling wastewater, cement, sanitary wastes, solid wastes or hazardous materials onto, on or from the project site during earth disturbance activities.
>
> **Note 13**…

Site Contamination. Sites *may not be eligible* for General NPDES Permit coverage due to on-site contaminated groundwater or soils. ***Contaminated groundwater*** is groundwater containing concentrations of pollutants in excess of the medium-specific concentrations (MSCs) contained in Chapter 250, Appendix A, Tables 1 and 2 for residential and non-residential sites, as applicable. ***Contaminated soils*** are soils containing concentrations of pollutants in excess of the MSCs contained in Chapter 250, Appendix A, Tables 3 and 4 (Soil to Groundwater Numeric Values) for residential and non-residential sites, as applicable. The MSC values for Used Aquifers and TDS ≤ 2500 mg/L are used unless evidence is available to the contrary.

Applicants must take the following steps to facilitate review of an individual permit application for a site with contaminated groundwater or soils: 1. Utilize DEP's PACT tool and schedule a meeting through the Assistant Regional Director of the appropriate DEP regional office if a project will involve more than one DEP program. 2. Schedule a pre-application meeting for the individual permit application with DEP/CCD. 3. For sites with contaminated soils: a. Utilize E&S BMPs that are identified in DEP's E&S Manual or Alternative BMPs list as Antidegradation Best Combination of Available Technologies (ABACT) BMPs, at a minimum. b. Identify soil sample locations (including depth of soil samples) and soil pollutant concentrations on E&S Plan Drawings. A narrative explanation of how disturbance on the site will be minimized and areas with elevated soil pollutant concentrations will be avoided to the extent practicable should be provided. Areas subject to covenants and restrictions should also be identified on Plan Drawings. c. Evaluate soils to determine 1) whether additional E&S BMPs should be implemented during construction activities to minimize the discharge of pollutants, and 2) the feasibility of infiltration-based PCSM SCMs. The evaluation should be completed by a licensed Professional Geologist (PG), certified Soils Scientist, or other licensed professional with experience and training in the fate and transport of pollutants in soils.

Note 14 – If soil pollutant concentrations at the soil horizon where infiltration is planned exceed soil to groundwater MSCs, the applicant will need to demonstrate through modeling or use of a synthetic precipitation leaching procedure (SPLP) test that infiltrated stormwater will not increase groundwater pollutant concentrations. d. Prepare a health and safety plan for on-site workers and inspectors that is made available to DEP/CCD upon request.

Note 15 – The presence of contaminated soils on a site does not provide automatic justification for omission of pre-development site characterization

testing for PCSM considerations and use of Managed Release Concept (MRC) SCMs unless it can be demonstrated that there are no feasible areas for infiltration-based SCMs or other SCMs on a site due to sitewide contamination at soil horizons that could be used for infiltration or other volume management functions. 3800-PM-BCW0408a Rev. 3/2026 Application Instructions - 10 - 4. For sites with contaminated groundwater, evaluate whether infiltration-based PCSM SCMs will promote off-site migration of a contaminant plume through the use of modeling software, if applicable. The evaluation should be completed by a PG or other licensed professional with training and experience in hydrogeology. 5. Include notes on E&S and PCSM Plan Drawings to instruct operators on special measures that must be taken during construction (e.g., see Chapter 17 of DEP's E&S Manual). 6. If the site is undergoing remediation in DEP's Environmental Cleanup and Brownfields (ECB) Program, coordinate with appropriate DEP staff on the proposed earth disturbance activities. The activities and evaluations described above should be completed prior to scheduling a pre-application meeting.

These details were included in these comments to alert EPA to the extent that it is not aware of the information that the Developer must include in the NPDES permit application concerning the issue of soil and groundwater contamination. This is not an easy task, nor is it a routine permit application as the generic SMP might suggest. In addition, given the findings of the 3rd FYR, communication between EPA, PADEP and Chester County Conservation District would appear to be most beneficial to the residents, and indeed the project. Furthermore, the complex issues regarding the undefined contamination that remains at the Site, and the "standard" timeline associated with an NPDES suggests that whatever attempts the Developer might take to expedite review of the SMP with EPA, review should be slowed down until the SMP incorporates some meaningful level of detail such as that which is required by the NPDES Individual Permit Application, and PADEP has rendered a decision on a new permit application..

Concluding this section, ***we recommend and request*** that the SMP be revised to include a much greater level of detail to specifically include the PADEP NPDES Individual Permit application requirements. Moreover, we request that the Developer submit a new application to PDEP, so that PDEP is fully informed of the current status of EPA's evaluation of contamination at the Site. In addition, EPA should meet with PADEP, Chester County Conservation District and the Developer to review the permit application. Appropriate conditions that satisfy EPA's concerns regarding site contamination should be added to the NPDES Permit.

Section 4.3.1 Traffic Control and Decontamination Procedures*.* Significant vehicular traffic will undoubtedly dominate the surrounding area for the duration of the construction period. In addition to airborne soil, traffic in and out of the Site creates another vector for transport of potentially contaminated soils into residential areas via truck tires on the road, and dust floating off the body of the truck. EPA can require ***mandatory***: ***brushing and washing*** of truck bodies, undercarriages and tires to supplement the stone tracking pads called for in the plan; ***regular street sweeping*** (e.g.,every day or every other day) and documentation of compliance with these protocols.

Section 4.3.2 Erosion and Runoff Controls. This section should be corrected along with Section 4.1, by stating that a PADEP Individual NPDES Permit for disturbance of over 25 acres is required for this project. Due to the potential for contamination, ***silt socks should be added*** in the appropriate areas to provide additional protection to the silt fences. ***Wetting soils should be mandatory*** on all days when precipitation is not falling. EPA should mandate that any soils/particles that accumulate in temporary/permanent stormwater detention basins be sampled for Site related contamination. Any soils containing contaminants in excess of SSLs, should be excavated and removed for offsite disposal.

Section 4.3.3 Dust Control and Monitoring*.* Given the proximity of residential neighborhoods the SMP should be amended, and EPA should **mandate** that the Developer implement for the duration of site development activity, a perimeter/community air monitoring program which accounts for local wind patterns, and is biased towards the most likely elevation for prevailing winds leaving the site. As this Section is connected to Section 5.2 of the EHASP, see additional comments below. **EPA should mandate the location of Windscreens around the perimeter of the Site** for the duration of the project. As noted above, wetting of soils should be continuous with the exception of precipitation events.

Section 4.3.4 Vapor and Odor Controls. This Section should be revised to include further analysis of air and soil by species or compound when PIDs are triggered by the presence of VOCs in the air. As this Section is connected to Section 5.2 of the EHASP, see additional comments below.

Section 4.4.1 Disturbance Procedures. As noted above, we request continuous dust monitoring be implemented at the Site.

Section 4.4.2 Soil Stockpile Management. The Erosion and Sedimentation Control plans should include rigorous protections to eliminate soil movement into the air or drainageways off of the soil stockpile.

Section 4.4.7 Groundwater Monitoring Wells. The SMP reports that three wells located within future footprints of the building were recently sealed, presumably at the direction of the Developer. While we assume that EPA approved this action, we also trust that EPA will select the replacement location for these wells, based on the direction of groundwater and contaminant flow, rather than to accommodate the Developer.

9. THE EHASP SHOULD PROVIDE FOR CONTINUOUS MONITORING OF FUGITIVE DUST EMISSIONS AND VOC VAPORS DURING EARTHMOVING ACTIVITIES.

Section 5.2 of the EHASP states that air monitoring will be performed *as appropriate* during redevelopment activities involving the disturbance of Site soils. EHASP, page 12. We request that EPA require continuous monitoring of both fugitive dust emissions and VOC for the duration of the site development activities and construction period. In addition, the Developer should be required to post the results of these monitoring activities on a weekly basis on a publicly accessible website.

10. CONCLUSION

EPA should not consider the Subject Plans for approval until such time as EPA or the Developer complete the sampling, characterization and assessment of the soils and groundwater at the Site and flowing from the Site as required by the 3rd FYR. Thereafter, the EPA should require the Developer to submit revised Subject Plans that incorporate the information from the additional characterization activities and to the extent appropriate, provide an additional level of protection to the residents of the communities surrounding the Site.

ATTACHMENT A

1. **Commenters.** The names attached to this document are residents of East Whiteland Township, Charlestown Township, East Goshen Township and Willistown Township. Several reside in the Wyckefield, Malvern Hunt and Piper Lane housing developments, in close proximity to the Foote Mineral Co. Site. Many of the concerns raised in this set of Comments have been expressed previously by these residents and others in public meetings of the East Whiteland Township Board of Supervisors and the East Whiteland Township Environmental Advisory Committee.

2. Principal Author. John P. Judge (JD Indiana University; MS Environmental Science Indiana University; BS Botany University of Massachusetts) has been a full time practicing environmental lawyer since September 1985. Over the past 40 years his practice has included representing PRPs and redevelopment companies at numerous CERCLA Sites and Brownfield redevelopment projects. Within EPA Region 3, John represented PRPs at the Tyson's Lagoon, Henderson Road, Old Forge Landfill, Dorney Road Landfill, Novak Sanitary Landfill, Jack's Creek/ Sitkin Smelting Site, and the Boarhead Farms Site. In other Regions, he represented PRPs at Bourdeauhui and Kapinos (Region 1), PROTECO Landfill (Region 2), 68th Street Landfill (Region 4), Ward Transformer (Region 5), Hartley and Hartley Landfill (Region 6). He served on the Technical Steering Committee at Tyson's Lagoons, Henderson Road, Novak Sanitary Landfill and Boarhead Farms.

With respect to brownfield redevelopment, John has been counsel to Majestic Realty and its redevelopment of 450 acres of the former Bethlehem Steel Company East Lehigh Area, a combined RCRA Corrective Action and Pennsylvania Act 2 Site that was addressed pursuant to the One Cleanup Program memorandum executed between EPA Region 3 and PADEP. In that matter, the Soil Management Plan approved by EPA Region 3 and PADEP was several hundred pages in length. Other brownfield redevelopment projects include former West Pharmaceutical Services Inc.'s two facilities in Phoenixville PA (under PA Act 2) and its manufacturing sites in Millville NJ, Newton NJ and Wayne NJ (under NJ ISRA). In the course of these representations, John has become familiar and experienced in groundwater plume migration, soil cleanup levels, goals and standards under state and federal law and the drafting of soil management plans, and engineering and institutional controls.