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DEPT. CHIEF COUNSEL
MAR 28 2008
SOUTHEAST REGION

March 24, 2008

Lauren G. Rosen
Assistant Counsel
Commonwealth of Pennsylvania
Department of Environmental Protection
Office of Chief Counsel
2 East Main Street
Norristown, PA 19401

Re: Bishop Tube Site

Dear Ms. Rosen:

Thank you for the opportunity to discuss the question of the nexus of Marcegalia USA to the Bishop Tube Site. I believe the frank exchange of views was beneficial.

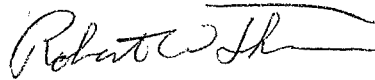
I appreciate your understanding of the frustration felt by Mr. Cornelius who works for a company that has tried to do everything the legal and right way and still finds itself entangled in the enforcement arms of the Department. As you rightly recognized during our call, the HSCA statute, like many similar laws, can lead to unfair outcomes. It is not fair to hold a company strictly liable for the clean up of contamination caused by the activities of others and from which activities the company did not benefit. This element of unfairness has been recognized in treatises, articles and case law. Yet the legislature in its wisdom has decided that some unfairness would be tolerated in order to accomplish the public good. Further, the Department has the duty to enforce the law despite some unfairness.

Yet it is precisely for that reason that I believe no court would allow the Department to interpret the statute to make it even more unfair. The agency should not be allowed to define the term "release" so broadly that liability is created by the mere occupancy of a building under which a third party's historic contamination remains unremediated. It is one thing to conscientiously enforce a statute with some intended unfair results; it is quite another thing to stretch the statute to defy common sense and justice.

Lauren Rosen
Pennsylvania DEP
March 24, 2008
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I am again asking the Department not to overreach and pursue Marcegaglia as a Responsible Party in this case where it merely leased a building underlain by contamination that had existed many years before its occupancy, and to which it in no way contributed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Thomson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Robert W. Thomson

RWT/dmt

cc: David Cornelius