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Senate of Pennsylvania

April 16, 2014

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

CHAIRMAN'S OFFICE

14 APR 16 PM 4:23

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The Honorable Rob Powelson  
Chairman  
Public Utility Commission  
400 North Street  
Commonwealth Keystone Building, 3<sup>rd</sup> Floor  
Harrisburg, PA 17120

Re: Sunoco Pipeline, L.P. - Petition for Exemption

Dear Chairman Powelson:

I am writing today to express my opposition to the Petitions for Exemption filed with the Pennsylvania Public Utility Commission (PUC) by Sunoco Pipeline, L.P. ("Sunoco") which, if granted, would exempt Sunoco's Mariner East Pipeline from the Pennsylvania Municipalities Planning Code and local zoning ordinances.

The development of the Marcellus Shale has created enormous economic opportunity for Pennsylvania, including in communities in my District located along the Delaware River which have seen an industrial resurgence in part as a port of call for shale gas. However, the economic benefits of the Marcellus Shale industry must be carefully balanced with the potential burdens to our communities and the environment. Requiring Sunoco to respect local ordinances related to pipeline construction will help to achieve this balance.

Over the past several weeks, I have had the opportunity to hear from many constituents who are concerned about how the proposed pipeline will affect their communities. Of particular concern are the pump stations proposed in West Goshen and Upper Uwchlan Townships in Chester County and Upper Chichester Township in Delaware County as well as a valve control station proposed for Wallace Township in Chester County. Sunoco has specifically requested that the PUC grant it an exception from the requirements of the Municipalities Planning Code and local ordinances for each of these pump and valve control stations. Granting this application would unnecessarily and inappropriately circumvent local control and public input in each of these municipalities.

I believe that a robust public dialogue is essential on Sunoco's Petition. This was evident at a hearing of the Joint Legislative Air and Pollution Control and Conservation Committee, held in Chester County on April 10, 2014. I have included copies of the testimony provided at this hearing for the PUC's consideration. I would request that the PUC also hold public hearings to allow full local participation and input on the matter.

Thank you for your consideration and please do not hesitate to contact me if you have any questions regarding this letter.

Sincerely,

DOMINIC PILEGGI  
SENATOR

DP/ds/kjh  
Enclosure

Testimony of Ronald T. Bailey, AICP, Executive Director,  
Chester County Planning Commission

Before the:  
Joint Legislative Air and Water Pollution Control and Conservation Committee  
General Assembly of the Commonwealth of Pennsylvania  
Thursday, April 10, 2014

I thank you for the opportunity to speak to you about pipeline development in the Commonwealth of Pennsylvania and in particular the impacts of such development in Chester County.

A frequently occurring issue is the perception that pipeline operators do not sufficiently inform the public of proposed projects. Most pipeline operators do not want to formally announce a new project until initial surveys have been completed, an alignment has been selected, and affected property owners have been contacted.

As a result, other than the generalized information that the land agent may be able to impart, property owners have no recourse to find additional information. While pipeline operators insist that extensive training is provided to third-party land agents who perform property surveys on behalf of the operators, many landowners and municipal officials do not believe that the companies adequately notify landowners when staff will be walking on their property. Further, municipalities typically find out about proposed pipeline projects through calls from residents. In the absence of a formal notification system, all parties discover information in a haphazard fashion.

Residents in those communities where a large number of pipelines exist often express frustration that they already have many pipelines in their neighborhoods. Many of these residents feel that their communities are disproportionately "saturated," and that any new pipelines should cross communities that contain fewer existing pipelines. Areas of the County that are "less saturated," however, may contain valuable natural and historic resources that are the reason that the land is in an open or relatively undeveloped state. Often these lands form natural preserves, historic landscapes, or have been preserved through public and private investment to protect critical scenic, historical, environmental or agricultural values. Over 25% of Chester County has been either protected as open space or as preserved farm land through the acquisition of land in fee simple or the purchase of conservation easements. These public expenditures were not for the purpose of creating "targets" for pipeline alignments.

Where pipelines cross agricultural lands there are impacts on crop productivity and soil conservation. In addition to preserving farmlands for agricultural use by the acquisition of conservation easements at substantial public expense, Chester County and the Commonwealth have also invested substantially in conservation practices including enhanced drainage, contoured farming, stripcropping, gully/grade stabilization, terracing, invasive species management, riparian buffers, and other measures. Pipeline corridors often obliterate such

measures and cross farm lands at diagonals that impair local drainage of runoff from adjacent crop lands.

Regardless of alignment, pipelines engender environmental impacts. Common environmental concerns include potential impacts to water quality, impacts to stream crossings, changes in wildlife habitat, fragmentation of habitat, the loss of open space, and the removal of woodlands, not to mention the destruction of yard landscaping and backyard improvements such as decks, swimming pools, and other improvements.

Given the cumulative impacts of a multitude of pipelines crossing a single county, the question has to be asked, "What agency regulates this?"

Interstate pipelines are regulated by the Federal Energy Regulatory Commission, and the procedures of the National Environmental Protection Act apply to FERC decisions. Other federal agencies including the Environmental Protection Agency, the Corps of Army Engineers, the National Park Service, and the U.S. Fish and Wildlife Service may become involved through the environmental impact review process, but none of these agencies have a direct permitting authority over the siting of pipelines. The record of decision on a pipeline alignment is made solely by FERC.

The siting of intrastate pipelines (beginning and ending in Pennsylvania), however, are not regulated by FERC and, consequently, are not directly subject to procedures established under NEPA. Jurisdiction of federal agencies may be invoked when a pipeline proposal impacts a federally protected resource such as wetlands or listed historic properties.

Likewise, encroachments in wetlands or stream crossings are regulated by the Pennsylvania Department of Environmental Protection. Other than waterway permits, however, the Commonwealth of Pennsylvania provides no regulation of the siting of transmission pipelines. Pennsylvania is one of only two states in the Nation that does not regulate the design and location of intrastate pipelines. Unfortunately, the lack of a regulatory agency in Pennsylvania with overall permitting authority over the alignment of new intrastate pipelines fragments the process for complying with applicable environmental laws and frustrates the ability of citizens and land owners to obtain comprehensive information on such proposals.

Another major problem with prevalent communication practices and with the notification of landowners of pipeline proposals is the proclivity of pipeline operators and land agents to use technical terminology that the public does not understand. Moreover, operators tend to focus on coordination with land owners (which may or may not be the resident) whose property either contains an existing pipeline right-of-way or over which the operators need to acquire an easement. Operators often do not inform renters, relying on the landowner to communicate with their tenants. Moreover, pipeline operators and land agents often obtain permission to access a property from the landowner, but no notice is given to the tenant who may suddenly, without prior communication, find staff from the pipeline companies entering and working in "their" backyard.

Transmission pipelines generally are not subject to any local land use regulation. In most instances, the width, configuration, and control of pipeline rights-of-way are established without local input. Decisions concerning the appropriate widths of rights-of-way are often established for laying and inspecting the pipeline rather than for public safety or prevention of environmental damage. For example, a catastrophic failure of a high-pressure natural gas transmission pipeline could cause injury to people 100 feet or more away. For the largest and highest-pressure natural gas pipelines, injury is possible out to 1,000 feet, but pipeline rights-of-way for a single pipeline are often only 50 feet wide.

There is no database of land use regulatory practices in the vicinity of pipelines. In a few instances where land use measures are in effect, local governments use setbacks to protect the public from pipeline incidents.

Although authority for land use regulation is granted by the General Assembly to cities, boroughs and townships, the Commonwealth has not been active in encouraging local governments to take transmission pipelines and utility corridors into account in their planning and regulation of land use and development.

As a consequence, since most municipalities have no land use protections in place relative to transmission pipelines, developments have often been permitted to encroach on existing transmission pipelines. Further, when local land use measures have been enacted by municipal governments that involve transmission pipelines, such ordinances are frequently inadequate.

The few local governments that have developed restrictions on the siting and alignment of pipeline right-of-ways have generally done so in reaction to a significant incident, such as a proposal to route a transmission pipeline through part of a developed area, or a plan to reactivate an inactive pipeline or convert it to carry a different commodity.

Moreover, when local governments attempt to regulate pipelines they often do so through "conditional use" or "special exception" procedures, which involve discretionary hearings rather than well-crafted prescriptive standards. The use of discretionary hearing procedures can take months and months of time as hearings have to be scheduled and proceedings can be continued over multiple meetings. Not only are the delays that are associated with such permitting processes often exceedingly costly, but the process can result in pipeline company staff being confronted by hostile and sometimes misinformed landowners and neighbors.

As a consequence operators often seek to exempt pipeline-related facilities from local government regulation by obtaining a "certificate of convenience" from the Pennsylvania Public Utilities Commission that exempts the project from all forms of municipal zoning, subdivision or land development review.

In fact, the basic informational tools needed by local governments to adopt effective local land use measures with regard to pipeline safety and optimum location, however, are generally lacking. Moreover, even if such information were available, many municipalities lack a professional staff -that is capable of understanding and interpreting the appropriate facts and technology. As a consequence, municipal regulations are sometimes promulgated that have little

relationship to the degree of hazard inherent in a specific pipeline proposal or to the nature of the impact that is sought to be mitigated. Demands that are frequently placed on pipeline operators for "more information" and still "more information" are often a screen for a basic inability of some municipalities to craft reasonable regulations that balance environmental impacts with the public need for infrastructure.

For example, municipal officials often lack accurate and complete maps showing the location and dimensions of pipeline rights-of-way or where pipelines are located within such corridors. They do not have access to any reliable scientific literature that evaluates the various risk factors, such as product transported, operating pressure, age, and depth of cover that could affect their land use decisions.

Residents often are scared of the potential safety hazards associated with pipelines, even though the record of the pipeline industry constitutes the safest form of hazardous material transportation. Moreover, generalizations of the relative degree of risk represented by a specific new pipeline or conversion of an existing pipeline that are based on dissimilar pipelines are often inaccurate—in short, not all pipelines are equal. The probability of failure of any transmission pipeline involves a combination of many factors including the safety protocols applied, materials used in the construction, fabrication of the pipeline, exposure to corrosion, the degree of pressurization, and the depth of cover over the pipe. Data and models are lacking for making precise predictions about specific lines, and pipeline operators are not inclined to share design parameters with non-safety authorities.

In response to all of this, the Board of County Commissioners for Chester County has started an initiative for notification of County residents, municipal officials and pipeline operators. The first phase of this initiative involves the creation of a web-based "Pipeline Information Center." The purpose of this Center is to inform residents about the regulatory processes that apply to pipelines, where they find information on easements affecting their property and how they can become appropriately involved in the review of pipeline proposals. The Center is also intended to help inform pipeline operators of concerns in the County, of the location of resources that should be avoided by new alignments, and where they can obtain County-specific information and data that will improve their preliminary design and location processes. Finally, the Center is being designed to make information available to municipal officials that will help them appropriately review pipeline proposals and to ensure that new development in their jurisdictions does not encroach on existing pipeline corridors. The Center contains links to regulatory agencies, pipeline operators, municipalities, and other organizations that can serve as resources. The Center includes model ordinances and will provide information on the characteristics of pipeline proposals. It may also serve as an objective, non-adversarial platform for posting of information, plans and reviews about project applications that might be voluntarily shared by pipeline operators or permitting agencies such as FERC or DEP.

The success of this Pipeline Information Center will necessitate cooperation by pipeline operators, municipalities, and regulatory agencies. It is potentially a massive work obligation to the County to maintain accurate and up-to-date information. County staff will have to create collegial relationships with operators and regulators, build a relationship of trust and impartiality, and maintain frequent contact with multiple parties to obtain information. The County has no

authority to coercively demand information. We can only seek cooperation from all parties. This means that the Pipeline Information Center has to function--and be viewed by all parties--as an impartial source of reliable facts and data. The County would be happy to post on the Pipeline Information Center any information that the state agencies could make available about application submission materials, applicable review standards, and permitting processes.

To fully implement future phases of the County Commissioner's Pipeline Notification Initiative a staff member will have to be employed as the point of contact for coordinating pipeline notification processes. This will involve a substantial financial investment on the part of the County. The Commonwealth of Pennsylvania could financially assist Chester County and other counties with the costs of providing accurate information on pipeline matters. At present there is no financial partnership between the Commonwealth and its counties to encourage better planning for pipelines and utility corridors and to ensure that citizens and businesses have access to accurate and useful information.

In summary, the long-standing disassociation of the Commonwealth of Pennsylvania with the development of intrastate pipelines can no longer serve as an effective model for the 21<sup>st</sup> Century. We have a great number of pipelines existing in Pennsylvania and we are likely to have a great many more built. This is good for our economy, but it has tremendous potential environmental impacts, and should not occur in a vacuum of information and ignorance of legitimate local concerns.

## Testimony of Theodosia Price, Brandywine Conservancy

Pennsylvania Joint Legislative Air and Water Pollution Control and Conservation Committee

West Pikeland Township, April 10, 2014

### Introduction

Good Morning. My name is Theodosia Price. I am the Senior Planner for Land Stewardship at the Brandywine Conservancy, where my primary role is to acquire and defend conservation easements. Thank you for the invitation and opportunity to testify this morning on behalf of the Brandywine Conservancy and as a representative of the land trust and conservation community in Chester County.

Founded in 1967 with a headquarters in Chadds Ford, the Conservancy's mission is to conserve the natural and cultural resources of the Brandywine River watershed and other selected areas with a primary emphasis on conservation of water quantity and quality. The mission is founded on a belief that a healthy and secure natural environment is essential to meet the needs and aspirations of present and future generations. To accomplish its mission the Conservancy works with individuals, municipal governments, county and state government agencies, and private organizations to:

- Permanently protect and conserve land and water, including natural, cultural and scenic resources;
- Create and strengthen municipal and county plans and regulations that support resource conservation; and
- Enhance awareness and knowledge of conservation approaches within the Brandywine River watershed and beyond.

The Conservancy holds over 440 conservation easements on more than 35,000 acres and owns over 2,000 acres of preserved land. We have also worked directly with hundreds of farmers to facilitate placing agricultural conservation easements on over 16,000 acres. In total, the

Conservancy has been instrumental in protecting over 59,000 acres of land in Chester County and New Castle County, Delaware. [slides]

Landowners who place a conservation easement on their property have given up value in order to ensure that these lands and their natural resources are permanently protected. Public investment in preserving these lands has been made directly, through easement purchases using public funds, such as the County agricultural easement purchase program, and also, in the case of easements donated in whole or which are sold at a bargain price, through federal tax deductions for the charitable donation of the easement's value.

### **Pipeline Experiences**

In the last few years, the Brandywine Conservancy has been faced with threats posed by several proposed pipeline projects to the land and water in which we have invested so much to preserve. One such project, the AES/Mid-Atlantic Express pipeline, was slated to cut through the heart of our core area of 20,000 acres of preserved land in the Brandywine watershed. Another, the Williams Transco replacement project, threatened to cross the Brandywine Creek in an environmentally harmful manner. In both cases, we mustered resources and dedicated considerable amounts of time to stave off these projects to the extent possible. [map] We created this map showing the existing and proposed pipelines overlaid on the extensive protected lands and other natural and cultural resources of Chester County. We have learned valuable lessons and have become aware of deficiencies in the pipeline approval processes in the areas of transparency and of opportunities for effective public participation.

### **AES/Mid-Atlantic Express**

The foremost project that demanded our attention was the AES/Mid-Atlantic pipeline, proposed to run from an LNG import terminal at Sparrows Point, Maryland, to Eagle, PA. The pipeline would have crossed roughly seven linear miles transecting 2,500 acres of property protected by conservation easements granted by individual landowners to the Brandywine Conservancy, and contiguous to over 20,000 additional acres of Conservancy easements. Almost ninety acres of our eased land would have been directly impacted by the construction

of this proposed pipeline. We appealed the Federal Energy Regulatory Commission (FERC) approval certificates for this project in federal court. Fortunately, the company ultimately abandoned the project due to lack of required permits.

### Gleaning Information

We found it challenging to cull information for each affected eased parcel in order to be able to analyze the potential effects to the conservation values our easements protect. The 700-plus page Draft FERC Environmental Impact Statement (EIS) with several hundred pages of supporting documents for this project was written to allow the FERC to evaluate the overall impact of the proposed pipeline to various environmental resources, so the document is organized by type of resource affected, and cross-referenced to other documents filed with FERC.

In order for landowners to determine the proposed pipeline's effects on their property, they must discern initially which pipeline mileposts will cross their property. Since this is difficult to determine accurately from the relatively large-scale maps included with the Draft EIS, landowners must review more detailed maps at a (somewhat) local public library. The most current versions are not always available at the library.

To determine the specific impacts to various resources on their property, landowners must read through the entire Draft EIS and cull the pertinent information from each section. For supplemental information requested by FERC, the landowner must keep track of each new filing by the applicant. This is a very time-consuming process. Many landowners commented at public meetings that they were not made aware of the impacts the pipeline would have on their property. Landowners should be made aware early and often of the proposed pipeline's specific effects on their property. Ideally, site-specific maps and plans with all supporting documents should be sent to each affected landowner and made available on line early in the process and with each revision to the plans. 

In general, affected landowners face challenges to get complete information from regulators and pipeline companies regarding the impacts to their property.

We were ultimately able to get more a detailed data layer of the pipeline's planned route directly from the company and its environmental consultant. Our GIS staff was able to overlay the data onto aerial photograph maps and show each affected landowner the new permanent and temporary pipeline right of ways and staging areas. [slide] This information should be made readily available to all affected landowners. Using this data, we were able to quantify the impacts to each protected resource, including soils, woodlands, wetlands, streams, and steep slopes. [slide] With this information, we were able to comment, for example, that placing staging areas in woodlands was not appropriate.

#### Lack of Meaningful Consultation

FERC recommended that Mid-Atlantic consult the Conservancy regarding the stream crossings in the Brandywine Creek stem. However, when we met with company representatives, we were told that the stream crossing methods had already been determined.

It is important to note the ever-mounting watershed challenges here in the Brandywine and the rapidly increasing competition for watershed uses. The Brandywine is notable for both the abundance of Special Protection Waters and its impaired waters. Our GIS analysis in 2012 showed 1,047 crossings of USGS perennial streams by existing and proposed pipelines in Chester County. In balancing the Brandywine watershed opportunities and watershed problems, it is critical that utmost care be taken when DEP considers new permits that lead to more impacts. [slide]

#### Williams Transco

With the Williams replacement project, the company originally planned to cross the East Branch of the Brandywine through horizontal direct drilling, which would likely have had the least potential impact on water quality. The decision to change to a coffer dam crossing seemed simply an expedient measure. The public was unable to get information from PA DEP about why the decision was made to change the method of crossing, the permit application or comparative analyses and engineering studies supporting the choice. These items should be made available online for public review. We support Senate Bill 504, the Public Information

and Access to Information Act introduced by Senator Dinniman, which would require PA DEP to post on its website permit applications related to pipeline projects and supporting public documents such as engineering studies.

### Commonwealth Pipeline

In light of these experiences with proposed pipelines, when the Commonwealth Pipeline project was proposed to run through the Hopewell Big Woods, the largest contiguous forest in southeastern Pennsylvania, Natural Lands Trust, local townships, and other land trusts and conservation organizations joined forces to compile a compelling comprehensive report in 2013 documenting the outstanding natural and cultural resources and the millions of dollars in public investment that would be jeopardized by this project. [http://www.natlands.org/wp-content/uploads/downloads/2013/05/HBW\\_PipelineReport5\\_13LowResFINAL.pdf](http://www.natlands.org/wp-content/uploads/downloads/2013/05/HBW_PipelineReport5_13LowResFINAL.pdf)

This is exactly the kind of special place that should be avoided as a pipeline path. The project's fate is presently unclear.

Clear-cutting through forest can have a long-term negative effect on the forest ecology. [slide] Forests provide numerous ecological functions. They host a diversity of plant species, provide habitat for insects, birds and terrestrial animals, absorb stormwater and sequester carbon dioxide. A number of areas of Chester County have been designated as Audubon Important Bird Areas.

A large gap in the standard recommended FERC remediation plan is that no replanting of trees is required except possibly for riparian buffers. Woodland trees cleared for construction should be replanted except for the minimum width necessary to maintain the pipeline (perhaps a maximum 20 feet). Except for this limited area, the remainder of the cleared construction right-of way should be replaced with native trees in accordance with a reforestation plan including a species list, protection from deer, size, quantities, and spacing of trees, and a five-year maintenance program. When trees cannot be planted, we believe that offsite mitigation should be required within the same watershed, similar to the mitigation protocol for wetlands.

We recommend that forested riparian buffers in Pennsylvania should be treated similarly to Maryland's Forest Conservation Act, which prioritizes areas adjacent to streams or wetlands, on steep or erodible soils, and within or adjacent to large contiguous blocks of forest or wildlife corridors. Particularly because the riparian buffers along the waterways in southeastern Pennsylvania are so critical to the health of the Chesapeake Bay, similar protection, avoidance and mitigation measures should be required for Maryland Critical Forest Areas, with offsite mitigation requirements within the same watershed as the affected riparian buffer.

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### **Impacts to Chester County**

Hundreds of miles of pipelines already exist in Chester County. At the same time, millions of public dollars have been invested in protecting land, water, and natural and cultural resources in PA and in Chester County in particular. Almost a quarter of the land in Chester County is preserved as open space, through agricultural conservation easements held by the County, easements held by land trusts or governmental units, or public parks and preserves.

I was interviewed recently by a freelance journalist who is writing an article for *Saving Land*, the magazine of the national Land Trust Alliance. I mentioned easement purchases funded by municipal open space funds through open space tax referenda in Chester County. She said, "You mean people vote to raise their own taxes to preserve land?" I explained "yes", and referred her to various websites, including the Pennsylvania Land Trust Association (PALTA) ([conserveland.org](http://conserveland.org)), to help provide some background. Our community is a special place, and we hold special values. The pipeline operators that are planning to bring their products to market through pipelines here need to approach our landscape and natural resources with the respect these lands have been awarded and deserve.

*Return on Environment - The Economic Value of Protected Open Space in Chester County* – a 2011 report by the Green Space Alliance, illustrates the tremendous value of open space to the local economy. <http://www.greenspacealliance.org/home/whatsnew.asp>

The Chester County Planning Commission has won numerous awards for its innovative planning work. With the planning department's guidance, and with assistance from other planners including the Brandywine Conservancy, land is being preserved, development occurs in the context of county and municipal comprehensive plans, and developers usually follow the rules.

The county's latest effort, in coordination with Lynda Farrell, is the Pipeline Notification Protocol initiative. We applaud this effort and sincerely hope that all pipeline companies will make the County their first place to post contemplated route information as early in the process as possible, so that this information can be posted online. We believe that the information would be most helpful if it as detailed as possible, and shows tax parcels on maps and/or lists, so that all potentially affected parties to a new project can proceed and participate with this knowledge.

Early in the process of laying out the proposed route for a new pipeline, affected local stakeholders should participate and local resource data should be used to choose in the best route location to avoid and protect natural resources to the greatest extent possible. In order to facilitate this dialogue, landowners and local officials need to be involved as early in the process as possible. Requesting that pipeline companies notify the County and municipalities when the route is initially being planned—or even considered-- would be very helpful to achieving this goal.

Testimony of Lynda K. Farrell

Landowner

Executive Director, Pipeline Safety Coalition

Before the:

Joint Legislative Air and Water Pollution Control and Conservation Committee

General Assembly of the Commonwealth of Pennsylvania

Thursday, April 10, 2014

Thank you for convening this public meeting and for the opportunity to address the Joint Legislative Air and Water Pollution Control and Conservation Committee.

My name is Lynda Farrell, I reside at 331 Norwood Road, Downingtown, PA and have been a Chester County resident over 40 years. I come to this hearing as a landowner and farmer directly impacted by pipeline infrastructure, but also as the Executive Director of Pipeline Safety Coalition, a Pennsylvania non profit. Metamorphosis from farmer to safety advocate was initiated by landowner disenfranchisement and driven by a need for knowledge as a former school teacher. As one of 167 Chester County citizens whose land was involved in a 2008 Williams Transco pipeline construction, I learned how hard it was to find information about my rights as a landowner, the pipeline siting and regulatory process, and who to turn to for answers. Senator Dinniman was a leader in trying to help citizens and he too found that systems created by Industry for Industry are not Public User friendly.

As a result of my experiences, I was unable to continue farming my land and ultimately initiated the 2011 formation of *Pipeline Safety Coalition*. A Pennsylvania non-profit, *Pipeline Safety Coalition* is dedicated to pipeline safety. We believe safety includes the control of recognized hazards in order to achieve acceptable levels of risk in the protection of people, possessions and the environment. Our relationships focus on improving public, personal and environmental safety in pipeline issues by providing a high level of equal access to information, providing community mentoring and by facilitating respectful and productive conversations between citizens, environmental organizations, federal/state/local governments and pipeline operators. Our mission is: *"To gather and serve as a clearinghouse for factual, unbiased information; to increase public awareness and participation through education; to build partnerships with residents, safety advocates, government and industry; and to improve public, personal and environmental safety in pipeline issues."*

During the 2008 Williams pipeline construction projects, I witnessed first hand what happens without public participation. I witnessed environmental degradation and encroachments on a landowners right to use their land due to expanded right of ways; deforestation in areas defined as temporary right of ways that in fact resulted in the very permanent removal of mature tree stands which had provided soil and

erosion control on steep slopes where any other land use construction with potential for sediment loading to waterways would have been prohibited by the PADEP; I learned that right of ways dissuade prospective environmental and agricultural preservations and that land values fall; I learned that without public, county and state participation, the potential for the loss of quality of life as we know it in Chester County may be exponential to the numbers of pipelines and pipeline infrastructure that span communities, waterways and environmentally sensitive or preserved lands.

*Pipeline Safety Coalition* started our work specific to Chester County and now works with safety advocacy groups nationally. Concerns voiced today reverberate across the country and Pennsylvania initiatives have the potential to cross state boundaries and form partnerships efforts for national regulatory reforms that provide unencumbered community access to information and that enhance public participation in a process that affects lives, property values, quality of life and the environmental/social integrity of landowners and our communities. The testimony I bring today is focused on potentials for reducing pipeline construction impacts in Chester County through needed regulatory review and reform, and through state, county and community initiatives.

In regard to the existing hodgepodge of notification and siting protocols, one must consider that pipeline siting systems were created by the industry for the industry. In brief, the siting of pipelines is determined by where the product is going and what product is being transported. An *interstate* pipeline crosses state or national boundaries while an *intrastate* pipeline does not cross state boundaries and remains solely within a state. Pipelines are also categorized by what they carry (natural gas [NG], liquid natural gas [LNG], liquid natural gas products [LNGP], oil, petroleum, etc).

An interstate pipeline that transports *natural gas*, is regulated for siting by the Federal Energy Commission (FERC) and the operator is required to submit siting plans for needs assessment and environmental review. An intrastate *natural gas* pipeline is not regulated for siting. Both interstate and intrastate pipeline that transports oil petroleum or hazardous liquids are *not* regulated for siting by the Federal Energy Commission (FERC) or any other agency. In order to know who regulates what, one must know the product being transported, yet pipelines are generically dubbed - pipelines.

The complexity of the regulatory process is further illustrated in the current Sunoco Logistics application to the PA PUC for public utility status (March 2014). Sunoco Mariner East pipelines transport liquids such as petroleum, propane and liquified natural gas. While FERC does not regulate siting of oil lines, FERC does regulate oil line tariffs. FERC considers ethane and propane lines as oil lines. Under Pennsylvania law, Sunoco is therefore considered to be federally regulated, albeit for tariffs and not siting. Sunoco therefore qualifies to apply for consideration as a public utility. With public utility status comes private business power of eminent domain and exemption from municipal zoning.

There is no federal, state or local zoning standard for pipeline density to prevent over population of pipelines and pipeline infrastructure. Pipeline infrastructure includes out of sight pipes below the ground as well as the compressor stations, pump stations, valves, smart pig launchers, city gates and other above ground facilities necessary to move fuel through pipelines from well head to consumer.

Regarding notification, while interstate gas pipelines require federal siting approval there are no standards for notification to landowner, county or municipalities until an operator has pre-filed with the FERC. At this juncture, the operator has invested substantial time and money in their proposed route. Landowners who's domicile is in excess of 500 feet from a proposed gas pipeline right of way are not require to be notified of intent to construct. There are no standards for notification to county or municipalities in intrastate pipeline siting and there are no requirements or standards for notification to county or municipalities for hazardous product operators.

In confluence of this hodgepodge of regulations for siting and notification, Pennsylvania houses the highest number of new gas and oil wells in the nation and ranks 4<sup>th</sup> for existing wells. Over 75% of Pennsylvania sits above Marcellus Shale. Utica Shale lies below Marcellus with an even broader footprint. Chester County per se is home to the most developed infrastructure in Pennsylvania, is a nexus of interstate gas transmission lines spanning from the Gulf to the Eastern seaboard and is poised to continue to transport gas, oil and other fuels to export markets through expanded pipeline infrastructure.

As illustration, the partnership of Dominion and Williams in the Keystone Connector project (2009) sited Southeast Pennsylvania as an "integral part of its 240 mile pipeline needed to transport Marcellus Shale fuel to the East Coast" (FERC Docket # CP09-68). Williams Transco described its *Northeast Supply* transportation service as "an expansion of Transco's existing system *Northeast Connector*...(and that)... Chester County infrastructure provides existing and direct connection...to New York..."

Grassroots concerns of social impacts and environmental degradations resulting from a system that deprives the public of equal participation in a process that facilitates for profit entities through a hodgepodge of regulations for siting and notification should be addressed through regulatory reform and landowner rights initiatives that circumvent protracted legislative processes. In Chester County, Senator Dinniman led an effort toward transparent communications and voluntary participation between landowners, Williams Transco, county and local officials. The effort was noted by Williams Transco to be a "culture change" that would require time.

Subsequently, *Pipeline Safety Coalition* began research which verified that, apart from the US Department of Transportation Pipeline and Hazardous Materials Administration (PHMSA) Pipelines and

Informed Planning Alliance (PIPA)<sup>1</sup> recommendations, there are no national standardized notification protocols. *Pipeline Safety Coalition* initiated a collaborative effort between the Chester County Commissioners, East Brandywine Township and *Pipeline Safety Coalition* and applied for funding through a PHMSA Technical Assistance Grant (TAG) for the purpose of research and development of an established notification protocol for informing Chester County officials of projected or planned pipeline projects.

Chester County was selected for its status as an area that exemplifies a region in which a pipeline incident could pose significant risk to people and environmentally sensitive areas (as defined in the Federal Code of Federal Regulations 49 C.F.R. 195.6) Additionally, the first railroads of 1828 traversed Chester County, as did the first coast to coast roadways in the early 1900s. Known as Lincoln Highway, the still active U.S. Route 30 spans the East to West coasts. Gas pipeline infrastructure constructed in the 1950's followed much the same paths, burying pipelines below sparsely populated and often remote areas of Chester County that are now intertwined with urban and suburban populations.

As reported by PHMSA 2012 data,<sup>2</sup> Chester County represented 1% of Pennsylvania's total square miles and ranked 3rd highest of Pennsylvania's 67 counties for percent of miles<sup>3</sup>. In 2009<sup>4</sup>, Chester County's 750.51 square miles contained 560 linear miles of pipeline infrastructure which included 336 gas miles and 224 liquid miles. In the two year period of 2010-2012, the density of Chester County pipeline infrastructure increased by 6.07% while population slowed from the 2009 US Census rate of 15.1% to 1.278%. While population growth as slowed to 1.278% the 6.07% pipeline infrastructure increase may contribute to increased High Consequence Areas (HCA). Additionally, the Chester County Planning Commission (CCPC) identified 59 of 73 municipalities as impacted by pipeline infrastructure.

Chester County's sensitive environmental areas<sup>5</sup> include 16 Exceptional Value Waters (EV) and 33 High Quality Waters (HQ); cold water and warm water fish migratory and trout stocking waters; wetlands, abundant farmland and steep slopes abutting community water intakes which affect Community Water Systems (CWS) and/or Non-transient Non-community Water Systems (NTNCWS)<sup>6</sup>. Many of these sole source aquifer recharge areas are karst aquifers, a soluble carbonate geology sensitive to activities such as land development which impacts groundwater filtration and groundwater flow.

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<sup>1</sup> Pipelines and Informed Planning Alliance

<sup>2</sup> PHMSA

<sup>3</sup> The two counties ranking above Chester County, Washington 6.2%, Greene 5.5%, Chester 4.5%, are located in Marcellus Shale drilling regional

<sup>4</sup> Source: PHMSA

<sup>5</sup> as defined in 49 CFR 195.6

<sup>6</sup> as defined in 49 CFR 195.6

Under the auspices of the County Commissioners, the project produced a Pipeline Notification Protocol (PNP) that shares the PIPA goal of fostering early communication in the land development process among all stakeholders and establishes a standardized notification process for Operators and local stakeholders to use early on in land use planning. Research and definition of the notification protocol seek to fill the gaps of currently varied planning notifications that, based on study survey results<sup>7</sup>, are unclear to both Operators, county and local officials and the community and to address a confluence of pipeline related risk management factors in Chester County which include:

1. the observed absence of a standard notification process when Operators planned pipeline projects
2. the observed absence of an identified point of contact (POC) for communications for both Operators and the County to use in pipeline matters
3. an increasing density of pipelines
4. an increasing number of High Consequence Areas (HCAs)
5. the function of Chester County as a nexus of existing Northeast/Gulf supply and demand infrastructure in relation to an imminent expansion of Pennsylvania's existing pipeline infrastructure for transport of vast Marcellus Shale resources
6. concerns of the integrity of an aging pipeline infrastructure
7. increased public awareness and participation in pipeline matters

Key to a PNP is the study recommendation for adaption and adoption of PIPA Consultation Zones (CZs). For Chester County, density of existing pipeline infrastructure prompted adaption of CZs to include new pipeline infrastructure projects, expansions and maintenance. A risk management approach to pipeline and land use planning, PIPA CZs are generically defined as: *"an area extending from each side of a transmission pipeline, the distance of which should be defined by local governments, to describe when a property developer/owner, who is planning new property development in the vicinity of an existing transmission pipeline, should initiate a dialogue with a transmission pipeline operator."*

The PNP definition for Chester County CZs was determined to be: *"an area extending 1,000 ft from each side of a transmission pipeline or a proposed transmission pipeline to describe when an operator or property developer/owner, who is planning land use activity should initiate a dialogue with the County through PNP."*

The recommended PNP is for Operator initial notification in the first stages of their "General Route Evaluation and Project Feasibility Analysis,<sup>8</sup>" when, as stated in PIPA, Operators "connect point 'A' to point 'B' (and) evaluate potential routes from 'A' to 'B'..."<sup>9</sup> Notification in a pre-application period of the

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<sup>7</sup> See Appendix A: Survey Response Report: Page 37

<sup>8</sup> PIPA, Appendix G, Page 5

<sup>9</sup> PIPA: Appendix G, page 1-2

proposed route, when Operators are conducting their general route evaluation and feasibility analysis, affords regional input in the route planning process, land use planning and promotes pipeline safety in the County. PNP and CZs may also provide Operators the opportunity to contribute technical assistance to the CCPC in land use planning in proximity to pipelines. Through use of the PNP recommended practices, Operators, developers, community and federal agencies may reduce time, cost and the need for dispute resolution.

The Chester County Pipeline Notification Procedure (PNP) is a recommended notification protocol and not mandated by any public or private entity. PNP is intended to facilitate collaborative risk assessment and is a transferable prototype. A PHMSA TAG is currently facilitating the *Pipeline Safety Coalition* introduction of PNP to all Pennsylvania counties for their review, adaption and adoption. We welcome the opportunity for further review of the PNP by the Committee and appreciate Committee recommendations and/or support of this effort to encourage better planning for pipelines and to ensure that communities and local governments have equal access to accurate and timely information in the pipeline planning process.

As background, the TAG program was first authorized in the Pipeline Safety Improvement Act of 2002<sup>10</sup> and offers technical assistance funding opportunities to communities for projects that result in promoting and strengthening the quality of public participation in official proceedings in pipeline issues. These grant opportunities offer fiscal partnering opportunities for counties to adapt and adopt the PNP recommendations.

Finally, in the words of Margaret Mead, "*Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.*" As a landowner and as Executive Director of Pipeline Safety Coalition, my greatest honor has been in working with a Chester County community willing to learn, share knowledge and fight fiercely for the preservation of the quality of life Chester County affords us all. As reflection of a dedication to being members of a Collective Community of Chester County, *Pipeline Safety Coalition* and citizens impacted by pipeline projects throughout the county are in the infancy of producing a Community Advocacy Network (CAN) that will draw from boots on the ground experiences of citizens who will mentor communities new to pipeline projects. CAN is a "Pay it Forward" endeavor and will facilitate organized, proactive groups ready to address personal, public and environmental impacts of proposed infrastructure, to connect communities in a holistic approach to cumulative impacts and to provide proactive advisory capabilities throughout the County.

A confluence of societal growth and expanding gas exploration in Pennsylvania necessitates proactive support of review and modernization of regulations, support of the Pipeline Notification Protocol and landowner to operator collective community efforts such as Community Advocacy Networks. As a

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<sup>10</sup> Pub. L. 107-355, codified at 49 U.S.C. 60130

landowner and on behalf of *Pipeline Safety Coalition*, we appreciate your interest and efforts in upholding Section 27 of the Pennsylvania Constitution which states; "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 benefit of all the people."

April 10, 2014 Hearing on Interstate Pipeline Construction in Southeastern, PA

Testimony of Eileen Juico

Good morning, I am Eileen Juico, a resident of West Pikeland Township. My husband, Jose, and I live at 1439 Yellow Springs Road, in Chester Springs and have a pipeline on our property, the Pottstown Lateral. I practiced law for a number of years in Montgomery County. I am now a federal mediator in the area of Alternate Dispute Resolution. Currently, I am a consultant developing the program for the West Pikeland Technical Assistance Grant (TAG) awarded by PHMSA.

I am pleased that the Joint Legislative Conservation Committee is having this hearing today in Chester County on interstate pipeline construction in Southeastern, PA.

My comments will be brief. I would like to focus on the importance of increasing communication and planning between pipeline companies and local governments, planning officials and landowners including conservation organizations that hold easements on land in Chester County.

I first became aware of how little I knew about pipelines and pipeline procedures in 2008 when I heard of a meeting that had occurred in Chester County about the proposed

Dominion Keystone pipeline project. In talking with other residents of West Pikeland, I then found out that areas in West Pikeland, and very possibly my property, would be impacted by this proposed pipeline. I quickly realized that I needed to find out how to get more information about this project, and what opportunities there were for public participation in pipeline proceedings.

I learned that the proposed route for this pipeline was going to cross highly sensitive wetlands, Exceptional Value Streams, and lands preserved from development. I also learned that municipalities which would be impacted by this pipeline, such as West Vincent and West Pikeland, were finding it extremely difficult to communicate with the pipeline company.

Landowners were being contacted by land agents who were representing the pipeline companies and receiving different and often conflicting information as to the pipeline company's plans. The landowners would then contact their local officials, who themselves were not being provided with accurate and current information. This lack of communication and transparency created a lack of trust between communities and the pipeline company and often a hostile atmosphere.

West Vincent with West Pikeland Township and the West Pikeland Land Trust as partners applied for a TAG to receive funding in order to develop programs for meetings

to inform the public about the pipeline regulatory process and to try to gain greater access to information about pipeline projects. As a consultant, I assisted West Vincent in carrying out its TAG program. Between the time that West Vincent submitted its application for a grant and the time of the award, Dominion put the project on hold. However, the AES pipeline project was moving forward, and this project was to terminate at the Columbia Gas compressor station located in West Vincent. The public meetings developed under the TAG helped to raise the awareness of communities about pipelines and pipeline procedures. However, comments from the audience at the meetings, again and again raised the issue of lack of early notification about pipeline projects and lack of communication with pipeline companies.

Lack of communication and notification on pipeline construction continues to be a major issue on pipeline projects in Chester County. In 2012 communities became aware of the application of Williams/Transco to DEP for a permit to cross the Brandywine Creek to replace 2,167 feet of a 30" natural gas pipeline with a 42" pipeline using the open-cut/coffer-dam method of construction. In 2009, DEP had denied the company's proposal for this replacement project due to the proposed method of construction. State representatives, County Commissioners, and the township in which the steam crossing was to occur as well as four local environment groups, a public water company and a local business requested a public meeting with the pipeline company to discuss the company's plans, but that request was denied.

Notice of the company's application to DEP for a permit was published in the April 28, 2012 Pennsylvania Bulletin, with the public comment period set to expire on June 04. There was no notice of a public meeting or hearing.

Senator Dinniman invited representatives from Williams/Transco to a meeting on May 15, 2012 hosted by Brandywine Conservancy to give the company an opportunity to present its plan for the pipeline replacement project to a panel of local elected and environmental leaders. This was the first opportunity for the public to hear from the pipeline company. The pipeline company was asked to provide supporting data for its statement that the proposed method of crossing the Brandywine as the "most practical" method. The company responded that it would present information to DEP, should the Department seek it.

In late 2012 and early 2013, communities in Chester County became aware of a proposed Commonwealth Pipeline project that could impact the Hopewell Big Woods. Again, efforts to communicate with the pipeline company proved dissatisfactory with very little exchange of information.

In March, 2013 on behalf of West Pikeland Township, I submitted a grant application to PHMSA to continue the efforts to gain information about pipeline projects and to receive early notification of such projects including maintenance, repair and replacement of existing pipelines. Accompanying the application was a letter of support from the Federation of Northern Chester County.

Notification and access to information applies not only to the construction of new pipelines, but also to the aging infrastructure of pipelines that exists in Chester County. The pipeline on my property is more than 50 years old. In the Spring of 2012, I noticed stakes in the pipeline area on my property indicating that work was to be done on the pipeline. The letters "anom" on one of the stakes was the first notice that I received of repair work that would be done.

Notification about these pipeline construction projects and access to information about what work is to be done, how it is to be done, and what reports are generated to describe the work performed is another important aspect of pipeline construction projects.

As part of the West Pikeland TAG, we have conducted two workshops in which panels of local officials, representatives from pipeline companies, FERC and PHMSA as well as the Chester County Planning Commission and the Chester County Conservation District have begun to discuss increasing communication about pipeline construction prior to a pipeline company filing with FERC. At a third workshop, Land Planning and Pipelines was discussed with model ordinances introduced.

However, it has become clear from the work begun in 2008 and continuing through today that a structured framework is necessary in Pennsylvania that addresses early notification of pipeline projects, access to information, and increased communication with pipeline operators. Such a framework needs to include legislation and the active participation of County and municipal officials. An important first step in establishing this framework is to enact the Bills that have been introduced by Senators Dinniman and Rafferty, SB 504, 506 and 507. I hope that testimony provided at this hearing will facilitate the enactment of these Bills.

I thank you for the opportunity to provide comments to you today.

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**HAND CARRY**