

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David J. Brooman, Esquire  
Attorney I.D. No. 36571  
Douglas Wayne, Esquire  
Attorney I.D. No. 69410  
HIGH SWARTZ, LLP  
40 East Airy Street  
Norristown, PA 19404  
610-275-0700 [phone]  
610-275-5290 [facsimile]  
[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)  
[dwayne@highswartz.com](mailto:dwayne@highswartz.com)

*Attorneys for West Goshen Township*

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<b>WEST GOSHEN TOWNSHIP,</b>	:	
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<i>Complainant</i>	:	Docket No. C-2017-2589346
	:	
v.	:	
	:	
<b>SUNOCO PIPELINE, L.P.,</b>	:	
<i>Respondent</i>	:	
	:	

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**COMPLAINANT, WEST GOSHEN TOWNSHIP’S, ANSWER TO  
NEW MATTER OF SUNOCO PIPELINE L.P. TO FIRST AMENDED COMPLAINT  
TO ENFORCE SETTLEMENT AGREEMENT**

Complainant, West Goshen Township (“Township”), by and through its counsel, High Swartz, LLP., hereby answers the New Matter raised by Respondent, Sunoco Pipeline, L.P. (“SPLP”), as follows:

1. Admitted.
2. Paragraph Two of the New Matter is a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Two contains allegations of fact, same are denied. It is specifically denied that the only enforceable promises, covenants, and agreements made by SPLP in the Settlement Agreement are the provisions set forth in Paragraph IV.A of the Settlement Agreement. The Settlement Agreement was based on factors including but not

limited to the “Pertinent Information Provided by SPLP” in Paragraph II of the Settlement Agreement. SPLP should not be allowed to deny the Township’s foreseeable reliance on the accuracy of information and actions to be taken by SPLP that was specifically provided by SPLP and incorporated into the Settlement Agreement.

3. Paragraph Three of the New Matter is a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Three contains allegations of fact, same are denied.

It is specifically denied that Count One of the First Amended Complaint to Enforce Settlement Agreement fails to state a claim upon which relief can be granted. In accepting the Settlement Agreement, the Township acted in foreseeable reliance on the representations made by SPLP throughout the Settlement Agreement and not just in Paragraph IV.A. The Township agrees with language used by SPLP in its Answer to Paragraph Ten of the First Amended Complaint, specifically that “. . . the Settlement Agreement must be read as a whole and that particular provisions cannot be read in a vacuum and must be construed harmoniously with the remaining provisions of the Settlement Agreement.”

4. Denied. The Township is without personal knowledge as to SPLP’s plans for siting Valve 344 on Parcel No. 52-3-60, otherwise known as the Janiec Tract, prior to execution of the Settlement Agreement. The Township demands full and complete proof of the factual allegations contained in New Matter Paragraph Four.

5. Denied. The Township is without personal knowledge as to SPLP’s plans to site Valve 344 prior to the Settlement Agreement or why SPLP allegedly changed its plans to agree to site Valve 344 in the SPLP Use Area as part of the Settlement Agreement. The Township demands full and complete proof of the factual allegations contained in New Matter Paragraph

Five. Moreover, the Settlement Agreement speaks for itself.

6. Denied. The Township is without personal knowledge as to SPLP's allegation that, "at the time of the Settlement Agreement, SPLP intended to site Valve 344 on the SPLP Use Area, subject to engineering constraints." SPLP's intentions are unknown to the Township. The Township demands full and complete proof of the factual allegations contained in New Matter Paragraph Six. Moreover, the Settlement Agreement speaks for itself.

7. Denied. The Township is without personal knowledge of when, why or how SPLP's project team and engineering group allegedly worked to determine the feasibility of siting Valve 344 on the SPLP Use Area. SPLP's internal workings are unknown to the Township. The Township demands full and complete proof of the factual allegations contained in New Matter Paragraph Seven.

8. Denied. The Township is without personal knowledge of the workings of or conclusions reached by SPLP's project team and engineering group, or of the alleged "engineering constraints" that SPLP is asserting as a basis to attempt to site Valve 344 outside the SPLP Use Area as set forth in the Settlement Agreement. The Township demands full and complete proof of the factual allegations contained in New Matter Paragraph Eight. To the extent that New Matter Paragraph Eight contains conclusions of law, no responsive pleading is required.

9. Denied in part, admitted in part. The Township is without personal knowledge of the workings of SPLP's project team and engineering group or the basis of SPLP's self-serving determination that siting Valve 344 on within the SPLP Use Area as set forth in the Settlement Agreement was allegedly not feasible. The Township demands full and complete proof of the factual allegations underlying the basis for SPLP's opinion that siting Valve 344 on within the

SPLP Use Area as set forth in the Settlement Agreement was not feasible. To the extent that New Matter Paragraph Nine contains conclusions of law, no responsive pleading is required. It is admitted that SPLP currently seeks to discard the requirements of the Settlement Agreement regarding the siting of Valve 344 and that SPLP now wants to site Valve 344 on the Janiec Tract. It is denied that SPLP has a legitimate basis to discard the siting requirements of the Settlement Agreement and to site Valve 344 on the Janiec Tract.

10. Admitted in part, denied in part. Admitted that Paragraph II.A.2 of the Settlement Agreement contains the cited language. Denied that any emphasis such as contained in Paragraph Ten of the New Matter appears in the Settlement Agreement itself.

11. Admitted that Paragraph II.A.3 of the Settlement Agreement contains the cited language.

12. Admitted in part, denied in part. Admitted that Paragraph II.A.2 of the Settlement Agreement refers to a remotely operated valve station located in West Goshen Township. However, as Paragraph II.A.2 of the Settlement Agreement expressly states that “Nothing in this Settlement Agreement constitutes an authorization or agreement for SPLP to construct the valve station in any location on the SPLP Additional Acreage other than in the SPLP Use Area.” It is denied that the Township agreed to siting Valve 344 in any area of West Goshen Township other than in the SPLP Use Area. The Township demands full and complete proof of any allegation by Respondent that Township gave its consent in the Settlement Agreement for siting Valve 344 in any location other than the SPLP Use Area. By way of further response, the language of Paragraph II.A.2 speaks for itself.

13. Admitted in part, denied in part. Admitted that Paragraph II.A.2 of the Settlement Agreement indicates that Valve 344 will be sited within the SPLP Use Area. Denied

that Paragraph II.A.2 set forth a plan as opposed to a commitment to site Valve 344 in the SPLP Use Area. The Township demands full and complete proof of any contention by SPLP that the Settlement Agreement did not commit SPLP to siting Valve 344 within the SPLP Use Area.

14. Admitted that Paragraph II.A.2 of the Settlement Agreement contains the cited language.

15. Admitted in part, denied in part. Admitted that Paragraph II.A.2 of the Settlement Agreement contains the quoted language. Denied that any emphasis such as contained in Paragraph Fifteen of the New Matter appears in the Settlement Agreement itself.

16. Admitted in part, denied in part. Admitted that Paragraph IV.A.1.a of the Settlement Agreement contains the quoted language. Denied that any emphasis such as contained in Paragraph Sixteen of the New Matter appears in the Settlement Agreement itself.

17. Paragraph Seventeen of the New Matter are conclusions of law to which no responsive pleading is required. The Settlement Agreement speaks for itself.

By way of further Answer, as a result of the Settlement Agreement, the Township had the reasonable expectation that SPLP would site Valve 344 within the SPLP Use Area. To state that the Settlement Agreement somehow gave SPLP a free hand to site Valve 344 or any other above-ground permanent public utility facilities in West Goshen Township outside of the SPLP use Area or Additional Acreage runs completely contrary to the prior litigation between the parties, prior dealings of the parties, the extensive settlement negotiations, and the plain language of the Settlement Agreement. SPLP's contention that the Settlement Agreement allows it a free hand to site Valve 344 or any other above-ground permanent public utility facilities in West Goshen Township outside of the SPLP Use Area would render moot a significant portion of the protections sought by the Township in entering into the Settlement Agreement. The Township

demands full and complete proof of any contention by SPLP that the Settlement Agreement did not commit SPLP to siting Valve 344 within the SPLP Use Area.

18. Paragraph Eighteen is a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Eighteen contains allegations of fact, same are denied and strict proof thereof is demanded.

19. Denied as stated. SPLP unilaterally decided to site Valve 344 on the Janiec Tract. Denied that the Settlement Agreement affords SPLP the option to site Valve 344 on the Janiec Tract without the express agreement of West Goshen Township.

20. Admitted that the Janiec Tract is not on the SPLP Additional Acreage.

21. Paragraph Twenty-One is a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Twenty-One contains allegations of fact, same are denied and strict proof thereof is demanded. To the extent that SPLP invites the Commission to view Paragraph IV.A.1 of the Settlement Agreement in isolation, the Township once again notes its agreement with language used in SPLP's Answer to Paragraph Ten of the First Amended Complaint, specifically that ". . . the Settlement Agreement must be read as a whole and that particular provisions cannot be read in a vacuum and must be construed harmoniously with the remaining provisions of the Settlement Agreement." It follows that SPLP should not be heard to extol reading the Settlement Agreement as a whole when this approach serves SPLP's desired conclusions, and to overlook this principle when it does not suit SPLP's goals.

22. Admitted in part, denied in part. Admitted that the Janiec Tract is not on the SPLP Additional Acreage. Denied that siting Valve 344 on the Janiec Tract is not a breach of the Settlement Agreement. To the extent that Paragraph Twenty-Two contains allegations of fact that siting Valve 344 on the Janiec Tract is not a breach of the Settlement Agreement, same are

denied and strict proof thereof is demanded.

23. Denied. Strict proof is demanded of the time, place and manner in which SPLP allegedly notified the Township of its plans to disregard the Settlement Agreement and unilaterally site Valve 344 on the Janiec Tract. By way of further response, any action by SPLP notifying the Township that SPLP intended to violate the Settlement Agreement does not excuse SPLP's violation of the Settlement Agreement.

24. Admitted in part, denied in part. Admitted that, as of the date the original Complaint was filed, the Township had received actual notice that SPLP unilaterally decided to violate the Settlement Agreement by siting Valve 344 on the Janiec Tract. Denied that the Township ever received formal notice or proof of the alleged engineering hardship, and strict proof thereof is demanded.

25. Paragraph Twenty-Five is a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Twenty-Five contains allegations of fact, same are denied and strict proof thereof is demanded.

26. Paragraph Twenty-Six is a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Twenty-Six contains allegations of fact, same are denied and strict proof thereof is demanded. By way of further Answer, it is denied that any "plans" that SPLP might have submitted to the Township at any time are sufficient to establish the engineering hardship that might justify re-siting Valve 344 in a location in West Goshen Township other than the SPLP Use Area.

27. Paragraph Twenty-Seven is a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Twenty-Seven contains allegations of fact, same are denied and strict proof thereof is demanded. By way of further Answer, it is denied that SPLP

has established an engineering hardship that might justify re-siting Valve 344 in a location in West Goshen Township other than the SPLP Use Area.

28. Admitted in part, denied in part. Admitted that Paragraph IV.A.2.d of the Settlement Agreement contains the cited language. Otherwise, Paragraph Twenty-Eight is a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Twenty-Eight contains allegations of fact, same are denied and strict proof thereof is demanded.

29. Denied. The Township only agreed to limit its remedies to the filing of a safety complaint should SPLP construct and operate its facilities in the Township within the parameters set forth in Section II of the Settlement Agreement. By way of further Answer, as SPLP has not complied with Section II of the Settlement Agreement, the Township has available to it all the rights and remedies of applicable Pennsylvania law. Moreover, Paragraph Twenty-Nine is a conclusion of law to which no responsive pleading is required.

30. Paragraph Thirty is a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Thirty contains allegations of fact, same are denied and strict proof thereof is demanded. By way of further Answer, the Township denies that it cannot allege that siting Valve 344 on the Janiec Tract in violation of the Settlement Agreement does not threaten public safety.

31. Admitted in part, denied in part. Admitted that Accufacts and Mr. Kuprewicz have now been advised of the proposed siting of Valve 344 on the Janiec Tract. Denied that Accufacts and/or Mr. Kuprewicz have no safety or other concerns with the unilateral re-siting of Valve 344 from the agreed placement in the SPLP Use Area to the unauthorized proposed placement on the Janiec Tract.



32. Paragraph Thirty-Two amounts to a conclusion of law to which no responsive pleading is required. To the extent that Paragraph Thirty-Two contains allegations of fact, same are denied and strict proof thereof demanded. By way of further Answer, the first Amended Complaint to Enforce Settlement Agreement specifically alleges that SPLP has not complied with Section II of the Settlement Agreement. As SPLP has not complied with the terms of Section II of the Settlement Agreement, the Township is free to file whatever types of actions are appropriate under Pennsylvania and/or Federal law.

**WHEREFORE**, Complainant, West Goshen Township, respectfully requests that the Commission deny Respondent's New Matter and grant the full relief sought in Complainant's First Amended Complaint.

HIGH SWARTZ, LLP



By: David Brooman, Esquire  
Douglas Wayne, Esquire  
Attorneys for Complainant,  
Township of West Goshen


Dated: May 4, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of May, 2017, I caused a true and correct copy of West Goshen Township's Answer to New Matter of Sunoco Pipeline L.P. To First Amended Complaint to Enforce Settlement Agreement, to be served upon the party listed below by electronic mail and U.S. Mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

Michael Montalbano, Esquire  
Christopher A. Lewis, Esquire  
Blank Rome, LLP  
One Logan Square  
130 North 18<sup>th</sup> Street  
Philadelphia, PA 19103-6998  
Attorney for Sunoco Logistics, L.P.

High Swartz, LLP



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David J. Brooman, Esquire  
Attorney for West Goshen Township