

January 15, 2019

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Room
Harrisburg, PA 17120

RE: Meghan Flynn, et al. v. Sunoco Pipeline L.P.
FLYNN FORMAL COMPLAINT AND PETITION
Complaint No. C-2018-3006116
Docket No. P-2018-3006117

Secretary Chiavetta,

In reference to Complaint No. C-2018-3006116 Meghan Flynn, et al. v. Sunoco Pipeline L.P., I respectfully submit the following comments as a resident of an affected community: East Goshen Township, Chester County, Pennsylvania.

I have lived in the East Goshen community for 18 years. I would like to express my opinion about how this community has been progressively transformed since Sunoco's Mariner East pipeline project expanded here; how this project has created numerous serious safety concerns where none previously existed; and how it continues to be the source of growing concern. Further, it appears from my own personal review of Pennsylvania's Emergency Planning resources, correspondence with officials, and attendance at multiple community meetings that there appears to be no single repository of information for residents to go to for comprehensive safety information on this pipeline. Simply stated, what exists is a patchwork of "resources" which are clearly outdated, provide conflicting information, or simply do not address the Mariner East pipeline project at all. What certainly does NOT exist is a comprehensive, single-source, consistent protocol that has been developed by experts and tested in the community which residents can rely upon to ensure that we will be safely evacuated in the event of a failure of this pipeline.

Since the permits were approved for Mariner East, neither Sunoco, State, County, nor Local Municipal/School officials have been able to formulate and communicate an adequate and legally compliant emergency response or evacuation plan to meet the needs of residents nor the people who work or travel in our communities. As I address each of these points in further detail, I remind the Pennsylvania PUC of the lessons learned from San Bruno, and how the California PUC moved from a system of mere compliance to an entire culture based safety and proactive risk assessment. Further, I encourage the staff at the PUC to consider these comments in light of recent federal court rulings such as CALIF vs. City of Los Angeles and other legal settlements that have set precedents surrounding the legal responsibilities that state and local entities have surrounding emergency preparedness, the "Right to be Rescued" as discussed in the Yale Law Journal, and the fundamental rights of the disabled which are protected under the federal Americans with Disabilities Act and the Rehabilitation Act.

Opening Comments

It is critical to explain that these Public Safety concerns are not unfounded. Numerous documents on the PEMA and ChesCo Emergency Management websites state essentially the same message:

“The potential for a hazardous materials incident is tremendous considering the growing number of hazardous materials sites in Chester County. Increasing vulnerability to hazardous materials, whether raw, or waste, cannot be avoided. However, measures can be taken to keep risk at a minimum. Regulation and monitoring of hazardous material/waste facilities should reduce the probability of hazardous materials incidents. In addition, planning and preparation of response measures for hazardous materials incidents should minimize the effect of incidents that do occur.” - Chester County Multi-Jurisdictional Hazard Mitigation Plan (December 2015)

This community has been left in the dark since Mariner East 1 was repurposed and the flow was reversed in 2014. It is the general sentiment that Sunoco did not properly inform residents, local officials, or school officials and certainly did not adequately engage or educate the public about what should be done in the event of a release of the dangerous materials they were transporting. In fact, it was at a public community meeting at JR Fugett Middle School on June 27, 2017 when Mr. Joe McGinn, a Sunoco public relations representative, stated that Mariner 1 had been repurposed back in 2014 to convey liquified natural gas that there were audible gasps throughout the auditorium as the horrified public learned that the antiquated Mariner East 1 pipeline, dating back to the 1930s was not, in fact, transporting petroleum westward any longer. It was at this time that we realized our schools had been operating for three (3) years without a safety and evacuation plan that took into account emergencies related to a release of hazardous materials originating from the aging Mariner East 1 pipeline.

When I attended the Pipeline Safety Meeting at JR Fugett Middle School, as a parent, I expected officials to unveil a comprehensive plan for accounting for students before, during, and after an evacuation as well as a plan for reunification with parents. Nothing of the like was offered. Instead parents were told simply not to come to the school but to wait for information to be transmitted to us. We were not even provided with information about a proposed evacuation route, or a proposed shelter location where children might be taken. We were just told the children might be evacuated.

Excerpt From the East Goshen Supervisors Final Minutes of the June 27, 2017 Meeting at JR Fugett Middle School: [A parent] asks how children at [a school] would be evacuated. ChesCo County DES representative responded that “all schools have evacuation plans, but if it wasn’t possible to evacuate by car, children would be evacuated on foot.”

However, it has been repeatedly stated that in the event of a leak of Mariner East, vehicles can be a source of ignition. Why were cars even suggested as a possible solution considering this? Coupled with the fact that parents were told during the same meeting NOT to come to the schools and that the Police Commissioner had previously stated during the same meeting that a perimeter would have been established to keep people away from any leak site? This conflicting information is pervasive throughout the public presentations.

There was no plan for identifying students or staff who may have been transported to medical facilities for treatment. To be fair, there was a list offered of local hospitals which might be used in the event of an emergency (e.g. Chester County Hospital, Paoli Hospital, etc), but **not a single facility mentioned that evening is certified as a Level 1 Trauma facility**, which certainly would be needed in the case of a catastrophic failure of Mariner East. When I asked about how Level 1 trauma cases would be handled, the answer was “those surgeons and doctors would come to us.” Except I don’t believe you can transport enough trauma operating rooms with you to handle a situation where ME has taken out an entire school. I wanted to hear about what our County’s Medivac capabilities were. **If this Commonwealth and this PUC are going to allow Mariner East to operate so close to 40 public schools then you better have a solid plan in place to handle mass pediatric trauma cases.** And if a mom is stumping your emergency expert with a few simple questions then your emergency response plan is not sufficient.

To say the “plan” presented that evening was inadequate and unacceptable is an understatement. My middle-schooler could have put together a more comprehensive plan compared to what was presented that evening. This is not to say that First Responders are not doing their jobs - I truly believe (1) the Commonwealth does not have sufficient information on this pipeline and (2) there is no credible plan for evacuating people in the event of a failure on this pipeline. Further, the fact that Sunoco disregarded the PHMSA Safety Advisory that was issued just prior to the time that ME1 began transporting materials only reinforces the argument that this pipeline should not be in service. Reference: <https://www.phmsa.dot.gov/regulations-fr/notices/2014-22201>, which specifically advises operators of hazardous liquid and gas transmission pipelines of the potential significant impact flow reversals, product changes, and conversion to service may have on the integrity of a pipeline and specifically states that “failures on natural gas transmission and hazardous liquid pipelines have occurred after these operational changes.” Unbelievable.

Emergency *UnPreparedness* at the State and County Level

Since that initial community pipeline meeting at JR Fugett Middle School in June 2017, the community has attempted to organize several public meetings in an effort to understand exactly what actions should be taken in the event of an emergency involving Mariner East. To my knowledge, Sunoco has not attended any of these additional meetings beyond the June 2017 meeting. These subsequent meetings have been organized by local township officials, elected officials, and community resident groups who have invited panels of First Responders and HazMat officials to answer questions from the general public. Unfortunately, in many cases, people leave these meetings with few answers and far more questions. Additionally, it appears there is conflicting guidance on how certain scenarios would or should be handled (e.g. shelter in place) and in some cases there is no credible plan for evacuation where a building’s only point of entry or exit is blocked by the pipeline (e.g. the Wellington Retirement Community Center on Boot Road in East Goshen Township).

To understand how extensive this state of unpreparedness is, the PUC needs only to look as far as the ***Commonwealth of Pennsylvania Emergency Management Handbook for Elected Officials*** (2010)

<https://www.pema.pa.gov/planningandpreparedness/communityandstateplanning/Documents/Single%20Files/Emergency%20Management%20Handbook%20for%20Elected%20Officials.pdf>

This document is described as “a handbook to provide elected officials with a basic understanding of the fundamental legal requirements to ensure an effective emergency management program in each county and/or municipal government in the Commonwealth.” Chapter 5 of the document is dedicated to explaining which Federal laws and Presidential Directives affect Emergency Management and impact local government. There is a list of six (6) bulleted items:

- The Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707)
- Title 44, Code of Federal Regulations, Emergency Management and Assistance
- The Superfund Amendments and Reauthorization Act of 1986 (SARA)
- The National Homeland Security and Combating Terrorism Act of 2002 (S. 2452)
- The National Incident Management System
- The National Response Framework

But compare this to additional information that is provided by FEMA related to state and local government emergency response planning and its quickly very obvious that Pennsylvania has either (1) omitted taking into account any type of emergency planning for its most vulnerable residents or (2) simply not updated its Handbook which guides all aspects of emergency planning across the state. *The Commonwealth does not appear to be aware of the obligations and prohibitions of discrimination on the basis of disability.*

- Americans with Disabilities Act of 1990
- Stafford Act of 1988
- Rehabilitation Act of 1973
- Fair Housing Act Amendments of 1988
- Architectural Barriers Act of 1968
- Individuals with Disabilities Education Act (EHA) of 1975
- Telecommunications Act of 1996
- 21st Century Communications and Video Accessibility Act of 2010
- Pets Evacuation and Transportation Standards (PETS) Act

No State or local government, or its contractors, in providing services may, by law, policy, or contract, provide services below those standards without violating federal law. - FEMA

WHY IS ALL OF THIS SO IMPORTANT?

According to recent data from the Centers for Disease Control and Prevention (CDC) 61 million U.S. adults – about 1 in 4 Americans – have a disability that impacts a major part of their life. The most common disability type, mobility, affects 1 in 7 adults. With age, disability becomes more common, affecting approximately 2 in 5 adults age 65 and older. Therefore, it is reasonable to assume that Sunoco’s “PLAN” for evacuation in case their pipeline leaks, doesn’t work for at least 1 in 4 adults in my East Goshen community and likely fails for an even greater percentage of this

community considering the advanced age of the residents living in close proximity to the pipeline at locations such as Hershey Mill Retirement Community and Wellington Retirement Community in East Goshen.

In all of the community meetings I have attended, no one has been able to adequately address the question of how residents with disabilities, limited mobility, impaired eyesight, deafness, blindness, or any other physical impairment would be able to **self-evacuate upwind a half mile in the event of a hazardous materials release, which is Sunoco's recommended course of action.** Everytime I hear this recommended course of action or see it in print, I am reminded of an eloquent legal document on this topic published by the Yale Law Review which stated:

"Few people would argue directly that Persons with Disabilities (PWDs) deserve less assistance during times of disaster. But the systemic exclusion of PWDs from disaster plans, coupled with arguments that it may be impossible to meet the needs of all people during times of disaster, suggests a widespread, if tacit, endorsement of the notion that it is fine to value lives differently when push comes to shove. Due to widespread prejudice, "[h]istorically, even those with moderately limiting disabilities have been viewed with pity and discomfort rather than as fully functioning human beings worth 'saving.'"

As Per Title II, Section 7 of the Americans with Disabilities Act, emergency response plans are supposed to be developed *in coordination with and tested by PWDs*. To my knowledge, this has not been done in my County with any group of PWDs or in conjunction with representatives from Sunoco.

It is my understanding that the Mobile Alert System (in our case Ready ChesCo) must include a specific requirement that the alert signal be a distinctive vibration for people who are deaf, hard of hearing and deaf/blind to recognize it as a cellular alert message, and a distinctive audible alert so that persons who are blind or have low vision also recognize it as an alert message. I have never heard any explanation of such functionality at any community education meeting. In fact, I have never seen a person providing Sign Language services at any pipeline meeting.

It is my understanding that designated shelters must be ADA accessible and equipped to handle service animals. I have never seen any presentation at any community meeting that identifies specific designated area shelters or recommended evacuation routes, nevermind assurances that they are ADA compliant. Over the past two years I have attended countless community meetings and Township meetings, combed through state and county emergency preparedness websites yet to this day, I have never been seen a recommended evacuation route for my neighborhood and I literally have no idea where the closest emergency shelter is that I should go to. That is a failed public outreach effort. **Exactly where does Sunoco and the Commonwealth expect people to go if this pipeline leaks? How are we supposed to know this information? When and how will this information be distributed? The pipeline is transporting product. It should be shut down until the safety plans are made and the community is properly informed and educated.**

It is my understanding that websites must be ADA-compliant. Recent multi-million dollar legal settlements with large retailers such as Winn-Dixie and Target have occurred because their

public-facing websites were inaccessible or present barriers to persons with disabilities who may use screen-reading technology or require other alternative formats (such as audio) to access the content of the sites. More significantly, in August 2018, a judge in the Western District of Pennsylvania held that the ADA covers websites and allowed a case to move forward. **If retailers must provide ADA-compliant websites to the general public then shouldn't public utilities and state governments be held to the same or higher standards, especially when Public Safety is concerned?** How accessible are the websites that we residents rely upon for critical information about the infrastructure in our communities? Just a cursory look at some of the websites mentioned in this letter suggest that each one likely has some degree of usability, functionality, compatibility, or accessibility issues that create barriers for persons with disabilities.

Why is all of this important? Because it all leads to one central question - what website would the PUC or the Commonwealth or Sunoco direct a resident to for comprehensive safety information on the Mariner East pipeline? Is it Sunoco's website? Is it PEMAs website? Who actually owns the responsibility for providing safety information about the Mariner East pipeline to the general public? And once you determine who that is, then what is that website address? Next, can you certify that this site is ADA compliant? If not, then this pipeline should not be operational.

Finally, in light of the fact that postal mailings were sent out from Sunoco to residents who live within a certain proximity to the pipeline, I trust that the PUC, in its public utility oversight capacity, has confirmed that the same information was also made available in alternative formats such as large-print and in Braille, primarily so as not to violate federal anti-discrimination laws, but also as a common-sense public service since so many elderly and retired citizens reside in such close proximity to the pipeline.

Evidence That Emergency Responders and the Community Do Not Have Sufficient Information on Mariner East

In spite of the fact that Sunoco often boasts about a large number of First Responders they have "trained", it is absolutely clear, from the Commonwealth's publicly available documentation, that this pipeline:

- (1) has not been adequately evaluated and assessed by Emergency Response officials
- (2) that the Commonwealth has not formulated a response/evacuation plan that is compliant with state and federal laws
- (3) that the Commonwealth, Counties, and local Municipalities are either unable or unwilling to respond to basic Citizen requests for information pertaining to this pipeline and how to respond in an emergency, which conflicts with the directives set forth by the Commonwealth
- (4) that conflicting information is being disseminated throughout the community on critical components of how a coordinated emergency response would be delivered because no entity in the Commonwealth appears to have any experience responding to a large-scale leak of NGLS in a densely populated area.

Public Outreach and Education

Looking at the Pennsylvania Emergency Management (PEMA) website, the most recent Hazardous Emergency Planning & Response Act Annual Report is dated **2011**. In it, there is a section titled

Outreach & Public Education that says County, Local and Emergency Planning Committees use opportunities to train and education the public through displays, lectures, discussions, press releases, and Requests for Information. This requirement for public education is echoed in the Chester County *Multi-Jurisdictional Hazard Mitigation Plan* as well. It is my understanding that this document is reviewed each March however the most recent publicly available published version is dated **2015**.

On November 2, 2018 I emailed the Chester County Department of Emergency Services and specifically requested information on upcoming public education presentations, discussions, workshops, or anything of the sort related to the Mariner East pipeline. The response I received was that they would check and get back to me. It is now January and I have not received a follow-up reply. To be honest, I don't expect to ever receive a reply to my inquiry because there is no substantive Public Outreach surrounding this pipeline.

Mariner East Pipeline Not Accounted for in Existing Response Plans

It does not appear that this pipeline project has been included in the **2015 Chester County Multi-Jurisdictional Hazard Mitigation Plan** even though Mariner East 1 began transporting highly volatile NGLs in 2014. I read the full document and assumed the pipeline would have been referenced in pages 80-82 which covers *Hazardous Materials Releases*. Although hazardous materials releases are addressed, the discussion appears limited to incidents that occur onsite and which are relatively contained to one specific geographic location, for example an industrial complex that may use hazardous materials on the premises. (Excerpt: "The majority of hazardous materials incidents within this county have a limited impact to a small geographic area, sometimes a single building.")

If a leak occurred involving the Mariner East pipeline it could potentially affect a very large area of the community, up to a half mile, with multiple buildings destroyed and/or requiring massive evacuation response and this scenario is not addressed at all, in any capacity, in the County's Multi-Jurisdictional Hazard Mitigation Plan. In fact, this document makes no reference whatsoever to the massive 350-mile pipeline that is traversing the state, transporting volatile, explosive products at high pressure within feet of schools, retirement communities, shopping centers, and residences. Even a cursory review of the "Municipal Assessment" of my own township (East Goshen) on page 175 of the Multi-Jurisdictional HM document, only PECO and AQUA are identified as utility providers in the Township but I know for a fact know that Verizon operates as a utility here and it is my understanding that Sunoco holds a Certificate of Public Convenience as well. In fact there are a number of other pipelines operating within East Goshen township that are also not listed in this Plan document.

Similarly, on the PEMA website, there is information titled "**Hazardous Material Preparedness**" under which there is a "**All-Hazards School Planning Toolkit**." Chapter VI deals with "**Response**" and provides a "**Sample Checklist for Hazardous Materials/Chemical Spills**". One of the first actions identified is to determine whether to initiate evacuation procedures or to shelter in place. This topic has come up numerous times at presentations and it has been explained that if shelter in place is determined to be the course of action then any persons who are outdoors will be brought indoors immediately. I continue to raise the concern that in the event of a leak involving Mariner

East, the liquified materials being transported under pressure within the pipeline will revert to their gaseous state and in a delayed ignition scenario a vapor cloud will be present. Depending on the wind speed this toxic, explosive vapor cloud could cover a large area. Due to the nature of the gases, which are heavier than air, they will not rise and dissipate in the atmosphere, but instead will seek low lying areas and travel with the wind. They will permeate cracks in doors, windows, and walls.

I am concerned that anyone who is sheltered in place inside a building where these gases have permeated the walls and windows will be trapped inside a structure where the gases could later ignite, causing severe structural damage and fire, trapping large numbers of people who otherwise could have been evacuated. It is also unclear who, at each location, (and specifically at the schools), is going to make this critical initial determination. At one community safety presentation it was stated that the principals would be the incident commanders until First Responder staff arrived on scene. I do not have any confidence that individual principals have the skills or engineering knowledge about the behaviors of these volatile gases and weather conditions on each particular day to be in a position to make such life and death decisions in a matter of minutes.

The Commonwealth must engage independent engineering experts to study the scientific behaviors of these gases under various conditions and develop a standardized decision tree of protocols for each school given their proximity and specific location in relation to the pipeline. Although an All-Hazards approach may be a suitable response for most disaster response scenarios, I believe this pipeline requires specially designed response plans for the unique facilities it impacts due to the complexities involved with its co-location in such a densely populated area.

In closing, it does not matter how many times or how many ways Sunoco claims that they have provided adequate information to the public and to First Responders to ensure that a proper safety evacuation plan is in place. These efforts have so far failed to result in any meaningful plans. I hope that the PUC will consider the examples provided of the gaps and voids that exist in the Commonwealth's emergency response system that demonstrate there is not an adequate plan in place to ensure the safety of residents, or anyone else who may be in proximity to this pipeline. I also trust that the PUC recognizes the immense responsibility it has to use every measure within its operating parameters to ensure that no public utility is operating any type of infrastructure before the necessary safeguards are in place to support it. As indicated in the ChesCo Hazard Mitigation Plan... "the potential for a hazardous materials incident is tremendous." It is only through planning and preparation of response that we have a chance to mitigate the effects of that incident. Right now, our "response plan" can be described as poor, at best. In my opinion, the Commonwealth does not appear to be equipped, on multiple fronts, for projects such as Mariner East.

Thank you for considering these comments.

Christina Morley