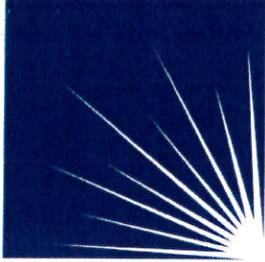


Clean Air Council



Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

February 2, 2015

Re: Clean Air Council's Motion to Compel Sunoco Pipeline, L.P.'s Response to Discovery Requests, Docket Nos. P-2014-2411941, et seq.

Dear Secretary Chiavetta,

Please find enclosed for filing the Clean Air Council's Motion to Compel Sunoco Pipeline, L.P.'s Response to Discovery Requests, as well as a Certificate of Service evidencing service on the parties of record.

If you have any questions or concerns please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Augusta Wilson, Esq." with a stylized flourish at the end.

Augusta Wilson, Esq.
PA Attorney #316969
Clean Air Council
135 S. 19th St., Ste. 300
Philadelphia, PA 19103
215-567-4004 ext. 106
awilson@cleanair.org

**BEFORE THE
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Sunoco Pipeline L.P. for a	:	Docket Nos. P-2014-2411941,
Finding That the Situation of Structures to	:	2411942, 2411943, 2411944,
Shelter Pump Stations and Valve Control	:	2411945, 2411946, 2411948,
Stations is Reasonably Necessary for the	:	2411950, 2411951, 2411952,
Convenience and Welfare of the Public	:	2411953, 2411954, 2411956,
		2411957, 2411958, 2411960,
		2411961, 2411963, 2411964,
		2411965, 2411966, 2411967,
		2411968, 2411971, 2411972,
		2411974, 2411975, 2411976,
		2411977, 2411979, 2411980.

**MOTION OF CLEAN AIR COUNCIL TO COMPEL SUNOCO PIPELINE L.P.’S
RESPONSE TO DISCOVERY REQUESTS**

Pursuant to 52 Pa. Code § 5.342(g) the Clean Air Council (“Council”) hereby moves to compel Sunoco Pipeline, L.P. (“SPLP”) to provide full responses to each and every one of the Council’s interrogatories and requests for production.

In support of its Motion, the Council states as follows:

1. On January 9, 2015 the Council served its First Set of Interrogatories and Requests for Document Production on SPLP in the above-captioned matters.
2. On January 22, 2015 SPLP filed Objections to the Council’s first set of discovery requests. SPLP made specific objections to 30 of the Council’s discovery requests. Moreover, SPLP refused to respond to numerous of the Council’s discovery requests.¹²
3. 52 Pa. Code § 5.321(c) dealing with scope of discovery states that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party It is not ground for

¹ Specifically, SPLP refused to answer the Council’s Requests Nos. 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 18, 30, 33, 34, 35, 36, and 38.

² SPLP’s Objections to the Council’s discovery requests do not address the Council’s requests Nos. 12, 13, 16, 20, 21, 28, 29, 31, 32, and 39-42. The Council assumes that SPLP does not have any specific objections to these requests and will respond to them in full. SPLP’s answer to these requests was due on January 29, 2015.

objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

4. For the reasons detailed below, each and every one of the Council’s discovery requests seeks information that would be relevant and admissible at a hearing on this matter, or is reasonably calculated to lead to the discovery of admissible evidence. The Council therefore respectfully asks the Commission to compel SPLP to provide complete responses to each and every one of the Council’s discovery requests.

I. The Portion of the Commission’s Order on which SPLP Relies as its Basis for Refusing to Answer the Council’s Discovery Requests was Wrongly Decided

5. A primary basis for SPLP’s refusal to respond to many of the Council’s discovery requests is SPLP’s erroneous assertion that any discovery requests relating to the valve control stations and pumping stations or to the Mariner East project as a whole are irrelevant and seek information beyond the scope of this proceeding. Where it makes this objection, SPLP quotes the Commission’s Opinion and Order of October 29, 2014, arguing that “[t]he relevant inquiry is ‘whether the present or proposed situation of the *building* in question is reasonably necessary for the convenience or welfare of the public.’” *See* Sunoco Pipeline L.P.’s Objections to the First Set of Interrogatories and Requests for Production of Document Production of the Clean Air Council, Jan. 22, 2015, SPLP Objections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 18, 30, 33, 34, 35, 36, 38 (quoting Commission October 29, 2014 Opinion and Order at 41). The Council respectfully submits that the Commission’s interpretation of this language, found in Section 619 of the Municipalities Planning Code, 53 P.S. § 10619 (hereinafter “MPC § 619”), is incorrect and unduly narrow.
6. This language from the Commission’s October 29 Opinion and Order appears to be SPLP’s only basis for its assertion that the Council’s Requests Nos. 1, 2, 3, 4, 5, 6, 7, 8, 8a, 9, 9a, 10, 10a-10-d, 11, 11a-b, 14, 14a-b, 15, 17, 18, 30, 33, 34, 35, 36, and 38 . For the reasons detailed below the Council respectfully submits that the Commissioners have improperly narrowed the scope of the issues to be decided in this proceeding and that the necessity of SPLP’s proposed Mariner East project as a whole for the public convenience and welfare, or at a minimum the necessity of the siting of the proposed pumping stations and valve control stations must be determined by the PUC in this proceeding.

7. The Commission stated that “the inquiry on remand should not address whether it is appropriate to place the valve and pump stations in certain areas, but, rather, should address whether the buildings proposed to shelter those facilities are reasonably necessary for the convenience or welfare of the public.” Commission October 29, 2014 Opinion and Order at 42. In other words, the Commission’s Order limited the issues regarding the public convenience and welfare prong of MPC § 619 to the choice of location for the walls and roof SPLP proposes to build around the pump stations and valve control stations. *See* Amended Petitions of Sunoco Pipeline, L.P, for a Finding Pursuant to 53 P.S. § 10619, Exhibit B (May 8, 2014)) for an image of the proposed walls and roof structure. The Commission has eliminated any consideration of whether the pumping stations and valve control stations are reasonably necessary for the convenience and welfare of the public, whether it is reasonably necessary for the convenience and welfare of the public to site the stations where SPLP proposes to site them, much less whether the Mariner East project as a whole is reasonably necessary for the convenience and welfare of the public.
8. As support for this extremely narrow interpretation of MPC § 619, both the Joint Motion of Vice Chairman John F. Coleman, Jr. and Commissioner Pamela A. Witmer (hereinafter “Joint Motion”) (October 2, 2014), and the Commission’s October 29 Opinion and Order rely exclusively on a previous order issued by the Commission in a previous matter relating to UGI Penn Natural Gas.³ *See* Commission October 29, 2014 Opinion and Order at 41 (“Rather, Sunoco requests a determination as to whether the structures the company proposed to build *around* and *over* the valve control and pump stations constitute “buildings” within the meaning of the MPC, and, if so, whether such “buildings” are reasonably necessary for the convenience or welfare of the public and, therefore exempt from local zoning ordinances) (citing *UGI Order*); Commissioners’ Joint Motion at 15 (citing *UGI Order* as support for the same proposition).
9. The Council respectfully submits that the Commissioners’ reliance on the *UGI Order* as a basis for its unduly narrow interpretation of MPC § 619 is incorrect for several

³ *Petition of UGI Penn Natural Gas Inc. for a Finding that Structures to Shelter Pipeline Facilities in the Borough of West Wyoming, Luzerne County, to the Extent Considered to be Buildings under Local Zoning Rules, are Reasonably Necessary for the Convenience or Welfare of the Public*, PUC Docket No. P-2013-2347105 (Opinion and Order entered Dec. 19, 2013) (hereinafter “UGI Order”).

reasons. First, the Order in *UGI* does not support the proposition that the scope of the consideration under the second prong of MPC § 619 is limited only to the reasonable necessity for the siting of the structures around the proposed stations for the public welfare and convenience. In making the determination in the *UGI* matter that “the location of the proposed structures are reasonably necessary for the convenience or welfare of the public” both ALJ Barnes and ultimately the Commission in its Order considered evidence about the public benefits, not just of the proposed structures around the station that was at issue in that case, but of the station itself.

10. For example, in the *UGI* Order, the Commission considered the following impacts of the proposed project *as a whole*:

The West Wyoming Gate Station (the project being proposed) will provide natural gas service that is open ‘to or for the public.’ Natural gas delivered by the Auburn II Line will be delivered through the West Wyoming Gate Station under service contracts fully subject to and governed by PNG’s Commission-approved gas service tariff, and the resulting revenues will be Commission-jurisdictional natural gas distribution revenues that will be available to meet PNG’s revenue requirements. The West Wyoming Gate Station also will be able to receive deliveries of gas from Transco which will be available to serve existing and future PNG service customers. Thus, *the proposed gate station* and related facilities will enhance reliability and availability of supply service directly to PNG’s existing thirteen small farm tap distribution customers, any future PNG Auburn line distribution customers, as well as the existing P&G industrial plant facilities as part of its certificated utility obligations by providing yet another source of supply in the event of a disruption in local production, or the disruption of supplies from PNG’s existing interconnect with Tennessee Gas Pipeline during any future emergency conditions.

UGI Order at 21-22.

11. Thus, even though the petition at issue in *UGI* was titled and framed in the same way the amended petitions in this matter are - as a petition for a finding that structures to shelter facilities are reasonably necessary for the convenience or welfare of the public - and even

though the same language from MPC § 619 was at issue, the Commission there clearly did *not* interpret the language of MPC § 619 as limiting the scope of its consideration to the impact on the public welfare of the structures around the station at issue in that case. Rather, both ALJ Barnes and the Commission considered evidence relating to the overall impact of the entire project on the public.

12. Moreover, even if *UGI* can be interpreted as limiting scope of the review of the necessity of the project for the public welfare and convenience, the *UGI Order* itself contains very limited support for the proposition that this is the correct interpretation of MPC § 619.
13. The only case law the Commission even arguably cites in *UGI* as support for this proposition is *Del-AWARE Unlimited, Inc. v. Pa. PUC*, 513 A.2d 593 (Pa. Cmwlth. 1986). SPLP has also relied on *Del-AWARE* in advocating the exceedingly narrow interpretation of MPC § 619 the Commission's October 29 Opinion and Order ultimately adopted.
14. While the Commonwealth Court's opinion in *Del-AWARE* certainly does seem to state that the PUC is only empowered to evaluate the reasonable necessity for the site of the particular building at issue, and not the entire project of which that building forms a part, *id.* at 596, the court does not cite to one single authority of any kind supporting this extraordinarily and unreasonably narrow interpretation of the language of § 619.
15. Indeed, the Commission itself argued against this narrow interpretation of § 619 at the time. In footnote 4 of the opinion the *Del-AWARE* court quotes language from the Commission's discussion on the matter. The Commission stated: "[I]t is difficult to envision a situation in which any exposition of the subject of the need for a building at a particular location, would not also result in the exposition of the underlying need for the building itself. PECO's position is that the need for the building must be assumed as a given; that it is not subject to inquiry, and that the Commission's inquiry is limited to the proposed location. We find that such a position is unreasonable, for it urges a position which could result in the Commission finding that although a building was not 'reasonably necessary for the convenience or welfare of the public', its proposed location or situation was 'reasonably necessary for the convenience or welfare of the public.'" *Id.*, n.4.

16. Moreover, the Commonwealth Court was explicit that an important basis for its holding in the *Del-AWARE* case was that the environmental impacts of the project had *already been carefully evaluated* by a separate agency. *Id.* at 596. The court explained that the environmental impacts of the project had been evaluated by the Department of Environmental Resources, the DER's findings had been upheld by the Environmental Hearing Board, and the Commonwealth Court had then in turn thoroughly scrutinized the EHB's review. *Id.* The court did not find it reasonable under those circumstances to require the PUC to undertake another environmental evaluation of the project. *Id.* at 595. Indeed the primary holding appears to be that the PUC was obligated to defer to another agency's previous environmental review. *Id.* at 596.
17. This reasoning that led the Commonwealth Court to the result it reached in *Del-AWARE* simply does not apply in this case. Here no comprehensive environmental review of the Mariner East project has been undertaken by any agency, state or federal.
18. The language of MPC § 619 calls on the Commission to consider the impact on the public welfare of the pumping stations and valve control stations and of the Mariner East project as a whole, particularly given that no other comprehensive environmental review has been or will likely otherwise be conducted with respect to this project.
19. To that end, the Council's Requests Nos. 1, 2, 3, 4, 5, 6, 7, 8, 8a, 9, 9a, 10, 10a-10-d, 11, 11a-b, 14, 14a-b, 15, 17, 18, 30, 33, 34, 35, 36, and 38 seek relevant information relating to the environmental, esthetic and other impacts of the proposed stations and the Mariner East project on the public welfare, and the necessity of the project and its siting for the public convenience and welfare. At a minimum the Council's requests are reasonably calculated to lead to the discovery of admissible evidence on these issues. SPLP must be compelled to provide complete responses to these and to each and every one of the Council's discovery requests.

II. The Pumping and Valve Control Stations Themselves are Buildings Within the Meaning of MPC 619 and therefore, Even Following the Commission's Reasoning, the Necessity for the Public Convenience and Welfare of the Siting of the Stations is Relevant

20. Even if the unduly narrow interpretation of MPC § 619 in the Commission's October 29 Opinion and Order is correct, each one of the pumping stations and valve control stations SPLP proposes to build as part of its Mariner East project is a building, and as such the

reasonable necessity of siting each one of the stations where SPLP proposes to for the convenience and welfare of the public is relevant to the proceedings, and all discovery requests reasonably calculated to lead to the discovery of admissible evidence on that point must be allowed.

21. The MPC itself does not define the term “building.” However, the Section 1903 of the Statutory Construction Act states in relevant part, “[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage.” 1 Pa.C.S. § 1903.
22. The Commonwealth Court has recently used the definition of “building” found in the Merriam Webster’s Collegiate Dictionary. *Latimore Twp. v. Singh*, No. 355 C.D. 2012, 2013 WL 3942493, at *4 (Pa. Commw. Ct. Jan. 14, 2013). Merriam Webster defines “building” as “a roofed and walled structure built for permanent use.” *Merriam Webster Collegiate Dictionary*, 162 (11th ed. 2004).
23. The pumping stations and valve control stations SPLP proposes to build surely are “buildings” within this definition. They will be roofed and walled structures intended for permanent use. The walls and roofs SPLP proposes to build around the stations cannot be disentangled from the equipment they will enclose, and indeed there would not be any necessity at all for those buildings without that equipment.
24. As such, the Council’s discovery requests relating to the stations, their functioning, and their environmental impacts as they are currently proposed to be sited and constructed, are designed to elicit information that is directly relevant to the issues before the Court in this matter, or at a minimum are reasonably calculated to lead to the discovery of admissible evidence. For this reason as well SPLP should be compelled to provide complete responses to these and to each and every one of the Council’s discovery requests.
25. SPLP’s objection to the Council’s discovery request No. 18 requires particular discussion because SPLP’s grounds for refusing to respond to this request appear to be slightly different from those it has put forward with respect to the other requests addressed above. The Council’s request No. 18 asked SPLP to “[d]escribe the reasons for SPLP’s decisions to site each of the proposed pumping stations and valve stations where they are currently proposed. Provide all studies, correspondence and other documents relating to such

siting decisions.” *First Set of Interrogatories and Requests for Production of Documents of the Clean Air Council*, Request No. 18 (Jan. 9, 2015). SPLP advances a relevance objection to this request, stating that “[i]n determining whether a site is reasonably necessary, a public utility does not need to show absolute necessity or that the site chosen is the best site; rather it need only show that the site chosen is ‘reasonably necessary . . . ‘ for the convenience and welfare of the public.” (citing *UGI Order*).

26. The Council reiterates the arguments it has previously advanced that, for the reasons set forth above, the impact of the stations as SPLP proposes to site them on the welfare of the public is a relevant inquiry in this matter. The Council’s interrogatory No. 18 is reasonably calculated to lead to the discovery of admissible evidence on that issue.

27. Moreover, SPLP’s apparent argument that because it is not required to show the absolute necessity of the sites or that they were the best sites it should not be required to produce any information about the siting of the stations is unavailing. The reasons why the stations – which are buildings – are sited where there are and the reasonable necessity for those sites for the convenience and welfare of the public are within the relevant inquiry under MPC § 619. SPLP should be compelled to provide a complete response to the Council’s request No. 18 as well as to each and every one of the Council’s discovery requests.

III. The Council’s Discovery Requests Are Relevant to the Council’s Claims Regarding Article I, Section 27 of the Pennsylvania Constitution

28. In addition to being relevant for all the reasons discussed above, the Council’s discovery requests are relevant to the Council’s claims regarding Article I, Section 27 of the Pennsylvania Constitution.

29. As the Council argued in its Preliminary Objections, “[g]ranted SPLP’s Amended Petitions would contradict the Pennsylvania Supreme Court’s recent decision in *Robinson Township, et al. v. Commonwealth of Pennsylvania, et al.*, and would violate Article I Section 27 of the Pennsylvania Constitution.” (Preliminary Objections of the Clean Air Council, May 28, 2014, ¶ 46) (quoting *Robinson*, 83 A.3d 901 (Pa. Dec. 19, 2013)).

30. The Supreme Court in *Robinson* explicitly recognized that the public has a concrete interest in the development and application of local zoning ordinances. *Id.* at 920-

921. The plurality based its decision in part on the Environmental Rights Amendment of Art. I, § 27, 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 and natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall preserve and maintain them for the benefit of all the people.

Id. at 949-950 (citing Pa. Const. Art. I, § 27).

31. This environmental rights issue under Art. I, § 27 continues to be live as this proceeding moves forward. Discovery requests relating to the environmental impacts of the proposed project, potential threats to human health and the environment that its construction or operation may cause, as well as esthetic impacts of the proposed project on local communities may all yield information relevant to this issue.
32. Therefore, in addition to the reasons set forth above, SPLP must be compelled to respond to the Council's Requests Nos. 1, 2, 3, 4, 5, 6, 7, 8, 8a, 9, 9a, 10, 10a-10-d, 11, 11a-b, 14, 14a-b, 15, 17, 18, 30, 33, 34, 35, 36, and 38, and to each and every one of the Council's discovery requests, because they are relevant to the environmental rights issue under Art. I, § 27, or are reasonably calculated to lead to admissible evidence on that issue.

IV. SPLP's Objections to Producing Responsive Information Based on Claims of Confidentiality or Proprietary Business Information are Without Merit and Should be Overruled

33. With respect to the Council's discovery requests Nos. 3, 19, 22, 23, 24, 25, 26, 27, 29, and 37, SPLP objects on the grounds that the requests "seek confidential and proprietary business information about SPLP." Several of those objections also make reference to the absence of a mutually agreeable protective order as a basis for objection.
34. The Commission's regulations state at 52 Pa. Code § 5.365(c)(4) that:

Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate."

35. The Council, its agents and employees agree to treat the information as if it were covered by a protective order until such time as a presiding officer or the Commission issues such an order or determines that the issuance of such an order would not be appropriate.
36. Moreover, the Council is currently reviewing a draft of a protective order for this matter that has been circulated by SPLP's counsel and will negotiate in good faith with SPLP and the other parties to arrive at mutually agreeable language for a proposed protective order to be submitted to the Court.
37. Therefore, all of SPLP's objections to the Council's discovery requests based on issues relating to confidentiality or proprietary information should be overruled. SPLP must provide complete responses to all the Council's discovery requests.

V. The Council's Discovery Requests are Not Overbroad or Unduly Burdensome

38. SPLP's objection that the Council's discovery requests Nos. 23, 24, 25(a), 26, 27, 29, 30 are overbroad and unduly burdensome are similarly without merit and should be overruled.
39. SPLP provides no basis whatsoever for its assertion that these requests are overbroad or unduly burdensome. The Council maintains that these requests each seek information or documents on narrowly tailored and specific questions or issues, which are relevant to the proceeding, which are in the possession and/or unique knowledge of SPLP, and which SPLP is in the best position to most easily obtain or locate. SPLP's objections on this ground should be overruled and SPLP should be compelled to provide complete responses to these and to each and every one of the Council's discovery requests.

WHEREFORE, the Clean Air Council respectfully requests the Court to compel SPLP to respond to each and every one of the Council's First Set of Interrogatories and Requests for the Production of Documents.

Respectfully submitted,



Joseph Otis Minott, Esq.
Executive Director and Chief Counsel
Clean Air Council
135 S. 19th St., Ste. 300
Philadelphia, PA 19103

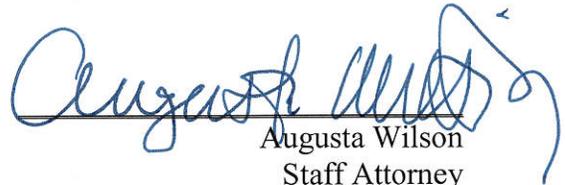


Augusta C. Wilson, Esq.
Staff Attorney
Clean Air Council
135 S. 19th St., Ste. 300
Philadelphia, PA 19103

VERIFICATION

I, Augusta Wilson, hereby state that the facts set forth above in the Motion of the Clean Air Council to Compel Sunoco Pipeline, L.P.'s Response to Discovery Requests are true and correct (or are true and correct to the best of my knowledge, information, and belief), and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are subject to the penalties of 18 Pa.C.S. § 4909 (relating to unsworn falsification to authorities).

Dated: February 2, 2015



Augusta Wilson
Staff Attorney
Clean Air Council
135 S. 19th St., Suite 300
Philadelphia, PA 19103
Tel: 215-567-4004
Fax: 215-567-5791

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2015, I caused a true copy of the Clean Air Council's Motion to Compel Sunoco Pipeline, L.P.'s Response to Discovery Requests to be served on the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54, relating to .

Tanya McCloskey, Esquire
Aron J. Beatty, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place- 5th Floor
Harrisburg, PA 17101

Johnnie Simms, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120

Aaron Stemplewicz, Esquire,
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007

John R. Evans, Esquire
Steven Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Margaret A. Morris, Esquire
Reger Rizzo & Darnall
2929 Arch Street
13th Floor
Philadelphia, PA 19104

Kenneth R. Myers, Esquire
David J. Brooman, Esquire
Sireen I. Tucker, Esquire
High Swartz LLP
40 East Airy Street
Norristown, PA 19401

Christopher A. Lewis, Esquire
Michael Krancer, Esquire
Frank Tamulonis, Esquire
Melanie Carter, Esquire
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103

Nick Kennedy, Esquire
Mountain Watershed Association
1414-B Indian Creek Valley Road
PO Box 408
Melcroft, PA 15462

Francis J. Catania, Esquire
J. Michael Sheridan, Esquire
Upper Chichester Township
230 N. Monroe Street
Media, PA 19063

Adam Kron, Esquire
Environmental Integrity Project
1000 Vermont Ave. NW
Suite 1100
Washington DC, 20005

Scott J. Rubin, Esquire
Concerned Citizens of West Goshen Township
333 Oak Lane
Bloomsburg, PA 17815

Thomas Whiteman, Esquire
Solicitor, Chester County
313 W. Market Street, Ste. 6702
P.O. Box 2748
West Chester, PA 19380

Dated: February 2, 2015



Augusta Wilson
Clean Air Council
135 S. 19th St., Ste. 300
Philadelphia, PA 19103
215-567-4004 ext. 106
awilson@cleanair.org

