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REPLY TO:
Center City

November 8, 2019

Electronic Filing

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

Re: Flynn, et al. v. Sunoco Pipeline L.P.,
Docket No. C-2018-3006116 and P-2018-3006117
**FLYNN COMPLAINANTS' MOTION TO RECLASSIFY
PUTATIVE CONFIDENTIAL DOCUMENTS**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Flynn Complainants' Motion to Reclassify Putative Confidential Documents in the above referenced case.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,


MICHAEL S. BOMSTEIN, ESQ.

MSB:mik

cc: ALJ Barnes (Electronic Mail and U.S.P.S. First Class)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn
Rosemary Fuller
Michael Walsh
Nancy Harkins
Gerald McMullen
Caroline Hughes and
Melissa Haines

v.

Sunoco Pipeline, L.P.

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C-2018-3006116
P-2018-3006117

NOTICE TO PLEAD

To: Parties of Record

Complainants have filed a Motion to Reclassify Putative Confidential Documents in the above-captioned matter. Pursuant to regulations of the Pennsylvania Public Utility at 52 Pa. Code § 5.103, you are notified that a responsive pleading shall be filed within 20 days of the date of service of this motion.



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Attorney for Complainants

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:	
ROSEMARY FULLER	:	
MICHAEL WALSH	:	
NANCY HARKINS	:	
GERALD MCMULLEN	:	DOCKET NO. C-2018-3006116
CAROLINE HUGHES and	:	
MELISSA HAINES	:	DOCKET NO. P-2018-3006117
Complainants	:	
v.	:	
SUNOCO PIPELINE L.P.,	:	
Respondent	:	

MOTION TO RECLASSIFY PUTATIVE CONFIDENTIAL DOCUMENTS

Flynn Complainants, by their attorney, Michael S. Bomstein, hereby move to reclassify all documents previously marked by Sunoco as confidential/highly confidential and confidential security information (“CSI”) and in support hereof aver as follows:

A. Background

1. ALJ Barnes entered an Amended Protective Order (“the Order”) in this proceeding on June 6, 2019. The Order identified three categories of protected materials: “Confidential,” “Highly Confidential Protected Material,” and “Extremely Sensitive Materials.”

2. Only 3,390 pages of Sunoco’s documents were identified as “public.” The balance of the 31,521 pages – 28,131 pages – is marked “Confidential/Highly Confidential” or “CSI.”

3. While the ALJ’s Order distinguishes between confidential and highly confidential documents, Sunoco has violated the Order by failing to draw that distinction throughout the 28,131 pages. As shown below, a selective review of the non-public pages discloses no

information that might reasonably be deemed confidential or highly confidential as defined in the Order.

4. With respect to the CSI documents, *in camera* review has shown that the materials consisted of a pipeline integrity management (“IM”) manual and three revisions of a risk assessment. Complainants’ experts have determined that the IM CSI material is needed in order to prepare expert witness testimony in support of their claims.

5. As regards the CSI risk assessments, Complainants’ experts have determined that Sunoco’s reports could have been generated solely from publicly available records, leading to the conclusion that Sunoco has only concealed these assessments in order to prevent the citizens of the Commonwealth from knowing how dangerous the Mariner East pipelines really are.

B. Sunoco’s Risk Assessments

6. The first of the Sunoco risk assessments marked “CSI” was created in 2013, prior to the company’s application to the Commission to build a 45 mile segment of Mariner East 2 in western Pennsylvania. The second risk assessment was created in 2017, after construction of the entire Mariner project was well underway. Sunoco also has a third risk assessment that contains even less detail than the first two.

7. All of Sunoco’s risk assessments quantify distances from an HVL rupture event within which Commonwealth residents may expect to be burned or to die, consistent with publicly available risk assessments that yield similar results using no Sunoco confidential information whatsoever.

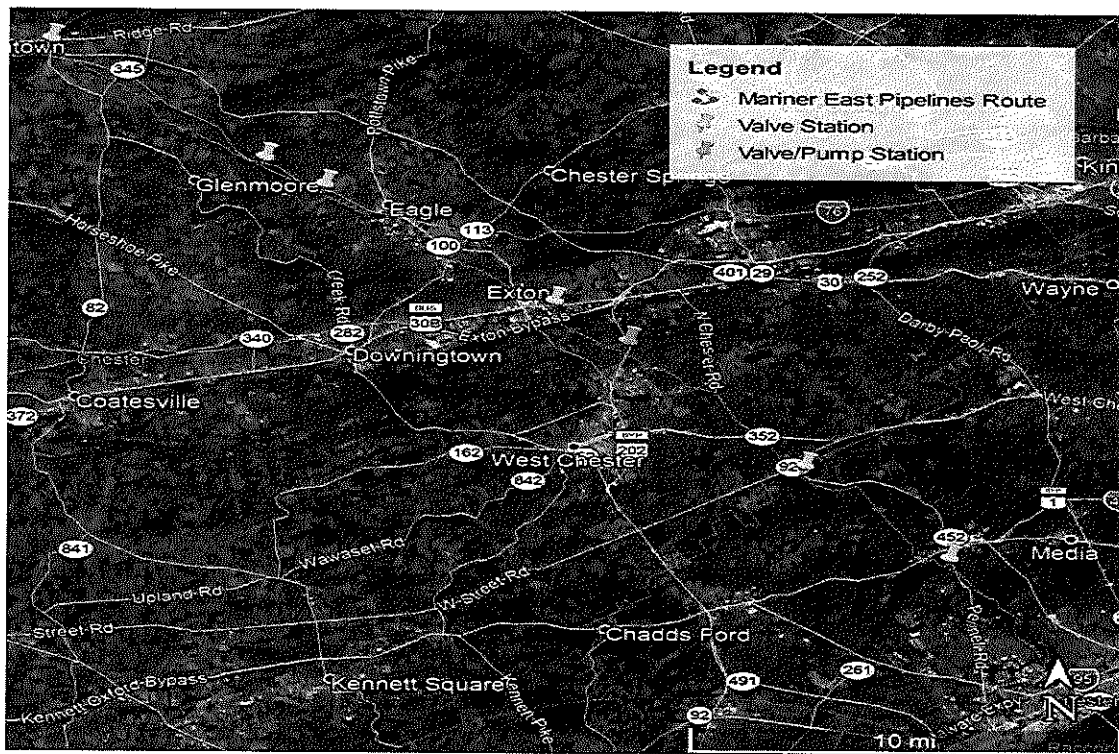
8. The possibility of burns or death within a specific distance from a Mariner pipeline rupture event is nowhere mentioned in Sunoco’s public awareness flyers.

9. Even the Public Utility Commission has been kept in the dark. As shown in Friedman Exhibit 09 during the lay witness hearing in this case, in February 2018, Paul Metro of the BI&E sent correspondence to Sunoco asking for its risk assessments. Sunoco's response to that correspondence has not been produced to date.

C. Sunoco's own risk assessments rely upon publicly available materials.

10. Sunoco's supposedly confidential risk assessments utilize publicly available materials to generate reports depicting the geographic scope and consequences of a pipeline catastrophe. Complainants already have in hand publicly available risk assessments that convey the same kinds of information as the risk assessments created by Stantech for Sunoco.

11. Quest Consultants has generated a model risk assessment based solely upon publicly available information. (Exhibit "A"). The model risk assessment shows six valve stations and one pumping station along the proposed Mariner East route in Chester and Delaware counties:



12. Sunoco claims it is concerned over putting information into the hands of terrorists. Respondent, however, already has put all relevant information on location of its equipment and facilities into the hands of the public. As noted in Quest's model risk assessment, DEP filings, public pronouncements, and Google maps let this horse out of the barn a long time ago.

a. Further, the locations of the Sunoco's current and proposed pipelines, each pump station, each valve site, and intersections with other critical infrastructure are commonly available to the public from multiple sources, including but not limited to on-ground actual notice, Google Maps, the Chester County Pipeline Information Center (www.chescoplanning.org.pic/mapping.cfm, last visited November 3, 2019), Sunoco's PUC tariff filings, publicly published risk assessments, and PHMSA required line-of-sight markers per 49 CFR 195.410. All pipeline location information is very much publicly available.

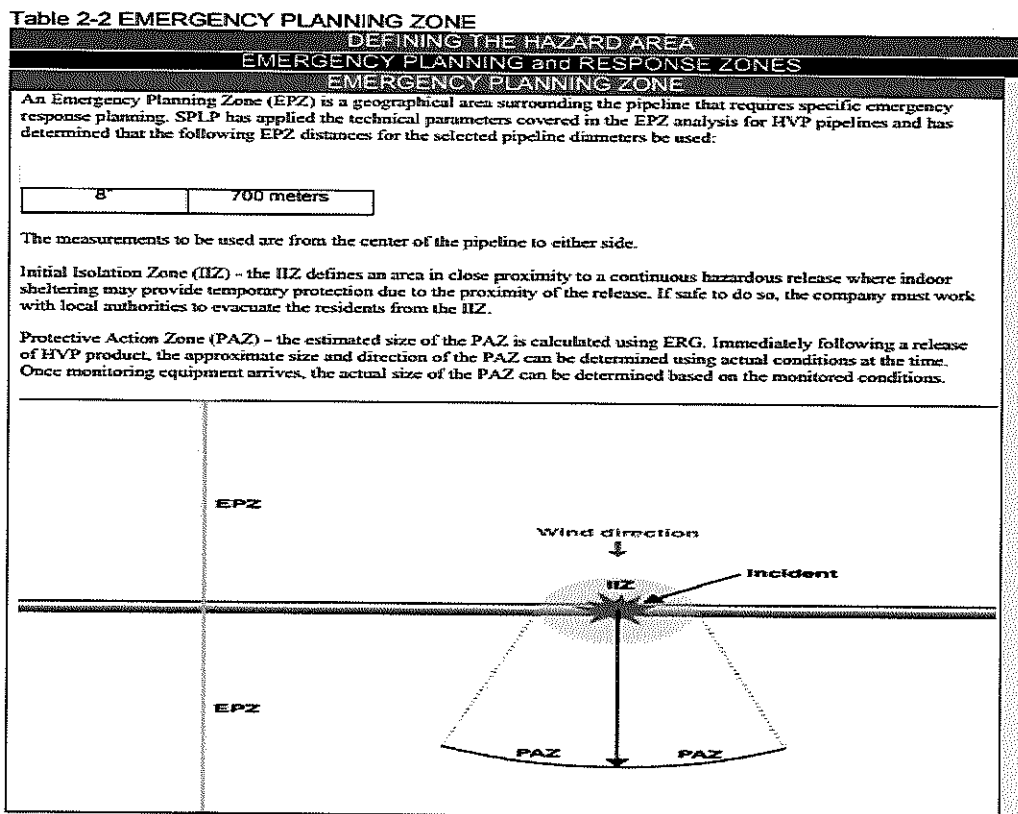
b. Further, operating pressures are public and are well reported in the media and in filings with the Commission itself.

c. The contents of the pipeline are reported by the Commission in tariff filings and by Sunoco's ample media pronouncements and extensive media coverage.

d. Critical infrastructure locations and population densities are published by governmental and private entities, including the U.S. Census, numerous local government development plans, and physical notice of roadways, schools, gathering places and residences.

D. Sunoco already has disseminated risk assessments to a select public.

13. At the hearing on October 23rd, Complainants introduced into evidence a Sunoco emergency response procedure manual for an 8-inch Canadian ethane pipeline. (Friedman 13). Page 20 of the manual (Flynn Page 258) shows an expected impact zone of 700 meters from the site of an ethane pipeline explosion.



14. Besides having disclosed that impact zone in Canada, Sunoco in an October 28, 2019 PHMSA enforcement proceeding submitted a pre-hearing brief that stated the company had increased the coverage of its PAP flyers to include persons along its NGL pipelines in Pennsylvania “to the extent of the maximum lower flammable limit (LFL) distance as identified by hazard analysis reports.” (Brief at 10).

15. What is the “maximum lower flammable limit distance” that aligns with the PAP flyer distribution range?

16. That distance, or a close approximation thereof, was previously disclosed by Sunoco witness John Zurcher at the hearing in the *Dinniman* case on Thursday, May 10, 2018. At that time, Mr. Zurcher stated under oath that the flyers were mailed to residents within a quarter of a mile (1320 feet) of the Mariner East pipelines. (N.T. May 10, 2018 at 420, ll. 6 – 8). Obviously, Sunoco must have believed that residents within 1320 feet of a leak or rupture event needed to be notified.

17. It is obvious that the only reason Sunoco has marked its own risk assessment as CSI is to conceal from the public its knowledge of the dangers posed by its Mariner East project.

E. No good reason exists not to disclose Sunoco’s risk assessments to the general public.

18. Because Sunoco concealed its risk assessments, public safety advocates, including five Chester County municipalities (East Goshen Township, West Whiteland Township, Willistown Township, Westtown Township and Uwchlan Township), spent large sums to obtain professional risk assessments. Sunoco dismissed these assessments as fear-mongering, when in fact the company already had its own assessments showing devastating consequences of pipeline mishaps. Notably, Sunoco never rebutted these publicly-available risk assessments by providing one of its own. Complainants believe this is because Sunoco’s analyses show impact zones that are the same as or larger than those in the public risk assessments.

19. Sunoco has not even furnished its risk assessments to the Director of Emergency Services for Delaware County. Out of an apparent abundance of frustration, Delaware County Council in February 2018 directed the procurement of its own risk assessment, which was made public in its entirety upon completion in December of that year.

20. Complainants' concerns over the inadequacy of Sunoco's so-called "public awareness program," required by 49 CFR 195.440, is already well-documented in the record of this matter. However, without copies of Sunoco's "confidential" risk assessments, Complainants will be unable to conduct any meaningful evaluation of Sunoco's process to assess the veracity its emergency response procedures as required by 49 CFR 195.402 and 403.

21. Complainants' experts need copies of Sunoco's risk assessment in order to evaluate differences between publicly available risk assessments and the Respondent's risk assessments, specifically to determine which populations Sunoco believes would be harmed if accidents continue to occur on one or more of Sunoco's hazardous, highly volatile liquids pipelines, and what injuries, fatalities and property damage would occur within the impact zones of such accidents.

22. No good reason exists not to allow the risk assessments to be copied for use of Complainants' experts.

23. No good reason exists not to make those assessments available to persons who already have signed non-disclosures in this proceeding.

24. No good reason exists not to make Sunoco's risk assessments fully available to the public so that the citizens of this Commonwealth may be properly informed of the dangers of the Mariner East project, as required by 49 CFR 195.440 and by Section 1501 of the Public Utility Code.

F. Integrity Management Documents

25. As regards the Integrity Management ("IM") Manuals, for the most part, the manuals simply mimic federal regulatory language contained in 49 CFR § 195.

26. Complainants' expert, Dr. Zee, and his team, however, have reviewed the documents and identified 137 pages that contain information that is important for them to have in order to perform an analysis of Sunoco's IM manuals for this case.

27. To date, they have only been permitted to review these pages briefly and not take notes on the contents of the materials.

28. The integrity management programs not only include the actual manuals, but thousands of pages of additional reference materials, operating procedures, inspection reports, change logs and other information not disclosed to Complainants.

29. Complainants believe that many or even most of these supplemental documents, required to make the actual IM Manual usable, are nothing more than standard industry procedures used by industry to implement Part 195. Complainants suggest that nothing in these procedures is proprietary or confidential.

30. Without the opportunity to inspect and copy pertinent integrity management reports for Chester and Delaware Counties, Complainants will be unable to know if the library of inspection reports available to Sunoco actually does contain any confidential information or discoverable evidence or other information useful to Complainant' experts.

31. No good reason exists not to permit these materials to be reviewed by persons who have signed non-disclosures in this proceeding. There are no national security concerns or other issues that would not be protected by reduction in classification to confidential or highly confidential.

32. Dr. Zee and his colleagues absolutely require these documents in order to perform their pipeline integrity analysis.

33. Attached hereto as Exhibit “B” is a verified statement by Dr. Zee, confirming the importance to his team of having unfettered access to this material.

G. Reclassification of Remaining Documents

34. While the ALJ’s Order distinguishes between confidential and highly confidential documents, Sunoco has violated the Order by failing to draw that distinction throughout 28,131 pages.

35. A random sample of the confidential/highly confidential pages was done by counsel for Complainants on September 10, 2019. Every 500th page was photocopied and printed out. The pages were then transmitted to Dr. Zee and his team for review. Because Sunoco has marked the pages as “confidential/highly confidential” they are not attached hereto.

36. As noted in Dr. Zee’s verified statement attached hereto as Ex. “B,” the randomly selected pages contained no information that might reasonably be deemed confidential or highly confidential as defined in the Order.

H. ALJ Review

37. Paragraph 17 of the Order guarantees parties “the right to question or challenge the confidential or proprietary nature of Proprietary Information... If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating the designation is appropriate.”

38. Prior to filing the instant motion, counsel for Complainants gave notice to counsel for Respondent of concerns regarding the over-classification of its documents. By letter dated October 1, 2019, Sunoco was notified that Complainants believed the company had massively over-classified most of the documents furnished to date. (Copy of letter attached as Ex. “C”). The letter invited Sunoco to respond and seek to resolve the matter.

39. Counsel thereafter had a conference call in which they were unable to resolve their differences.

40. Sunoco has had more than the 5-day expedited opportunity to comment contemplated by paragraph 8(b) of the Order.

41. Paragraph 8(b) of the Order (relating to extremely sensitive materials) provides that the presiding office may hold an *in camera* review of the discovery materials in question.

42. The allegedly CSI materials do not qualify as protected under the Public Utility Confidential Security Information Disclosure Protection Act or its implementing regulations. Sunoco cannot prove that re-classification of the records is likely to jeopardize public safety or or likely to threaten public infrastructure or that the records contain confidential proprietary information or are trademarked.

43. Complainants believe and aver that, under the circumstances, it is incumbent upon Sunoco to demonstrate that its designations of the subject documents are compliant with the Order.

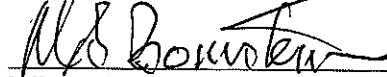
44. Complainants believe and aver that the ALJ has the duty and the authority to direct Sunoco to demonstrate that its designations have been appropriate.

I. Relief

WHEREFORE, Complainants request that Your Honor enter an Order (a) setting forth how Sunoco shall meet its burden to justify its designations; (b) setting the matter down for a

closed hearing to take evidence; and (c) granting such other and further relief as may be appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael S. Bomstein", written over a horizontal line.

Michael S. Bomstein, Esq.

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Dated: November 8, 2019

EX. "A"

Development of a Hazards Analysis for a Pipeline

Introduction

This report outlines the methodology used by Quest Consultants Inc. in conducting a hazards and consequence analysis for Mariner East pipeline failure events. This analysis relies on publically-available data as input into consequence modeling software.

Locations

Obtaining general pipeline location information is relatively straightforward. The National Pipeline Mapping System (NPMS) provides information about pipelines and their locations. Figure 1 provides a screen shot¹ from the viewer shows part of the Mariner East pipeline in Delaware County.

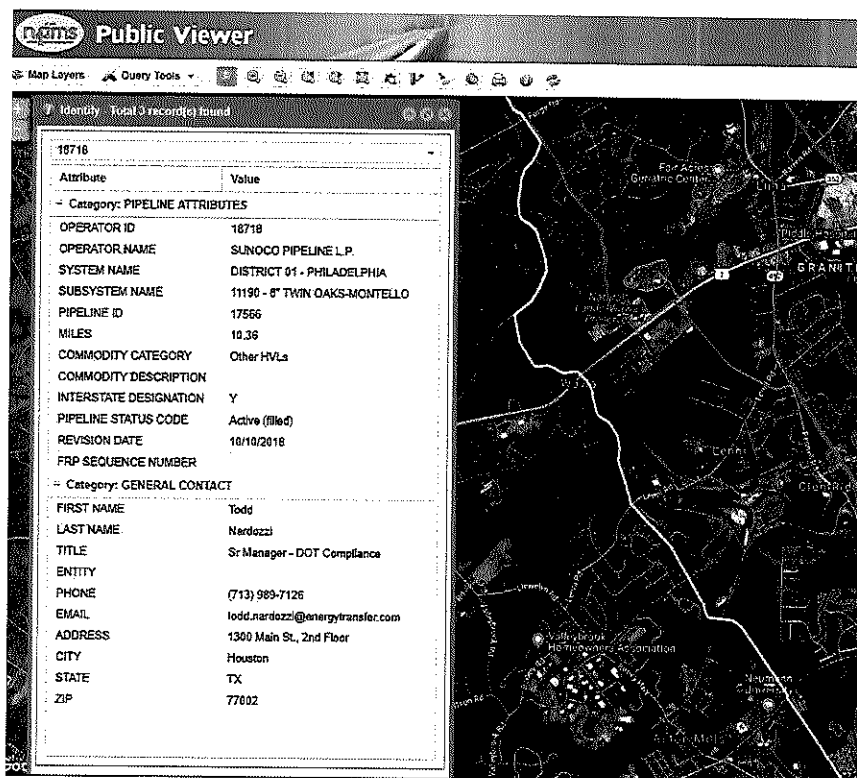


Figure 1 – NPMS Pipeline Routing

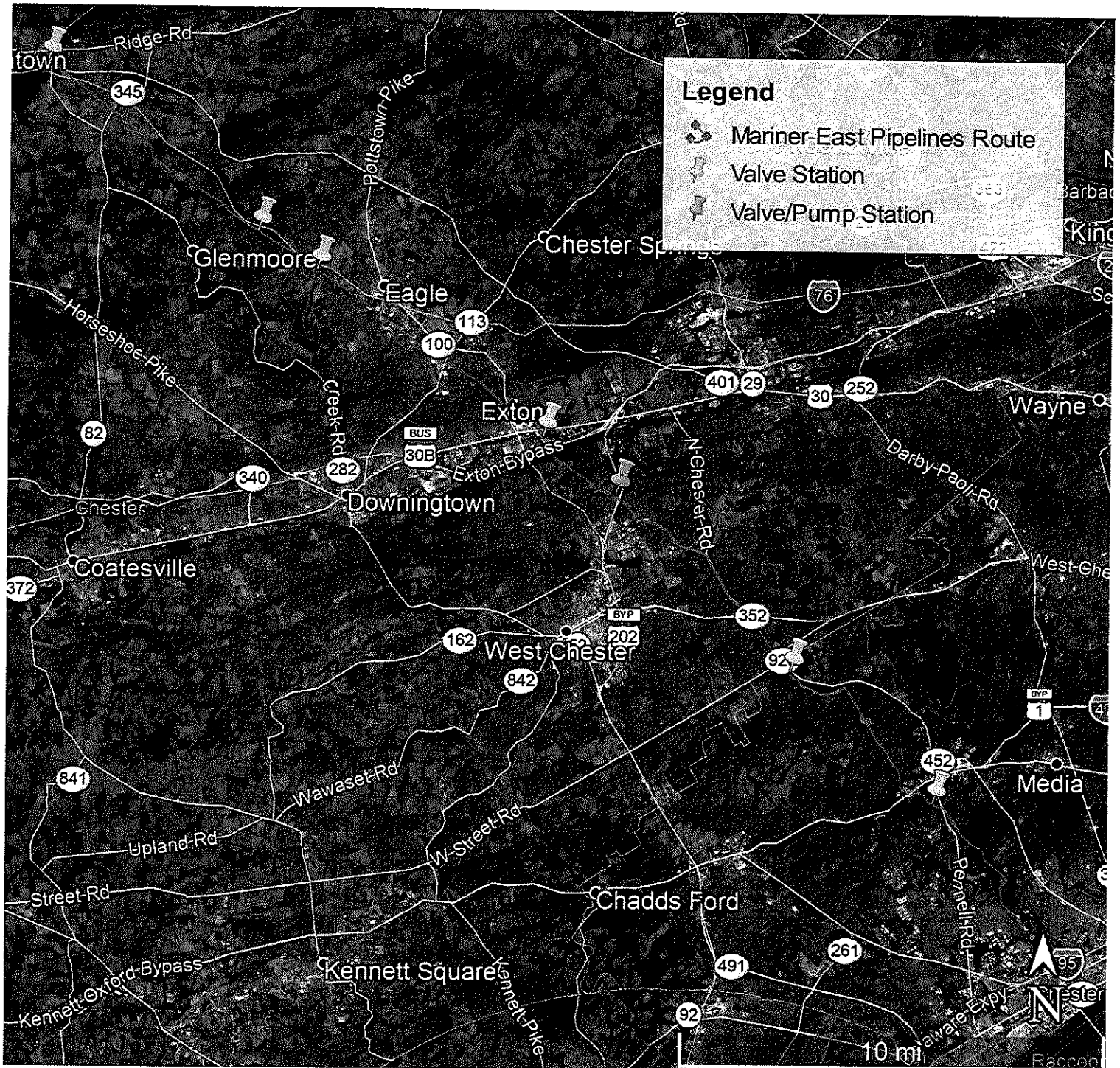
Other sources provide additional pipeline details. For example, as part of the regulatory filings with the Pennsylvania Department of Environmental Protection (DEP), specific pipeline information², routing³ or HDD boring information⁴, as shown in Figures 2 and 3, are provided as public record.

¹ <https://pvnpm.phmsa.dot.gov/PublicViewer/>

² <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Delaware/09%20-%20Project%20Descr/PPP-Project%20Description%20for%20105%20APP%20120216%20FINAL.pdf>

³ http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Delaware/07%20-%20Site%20Plans/Tab%207A%20Aerial%20Site%20Plans/DelawareCountySitePlan_Rev5_11302016.pdf

⁴ http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Reports/ExtonBy-passCrossing/Exton%20Bypass%20Crossing%20-%20053-0400%20-%20PA-CH-0256.0000-RR%20-%20E15-862.pdf



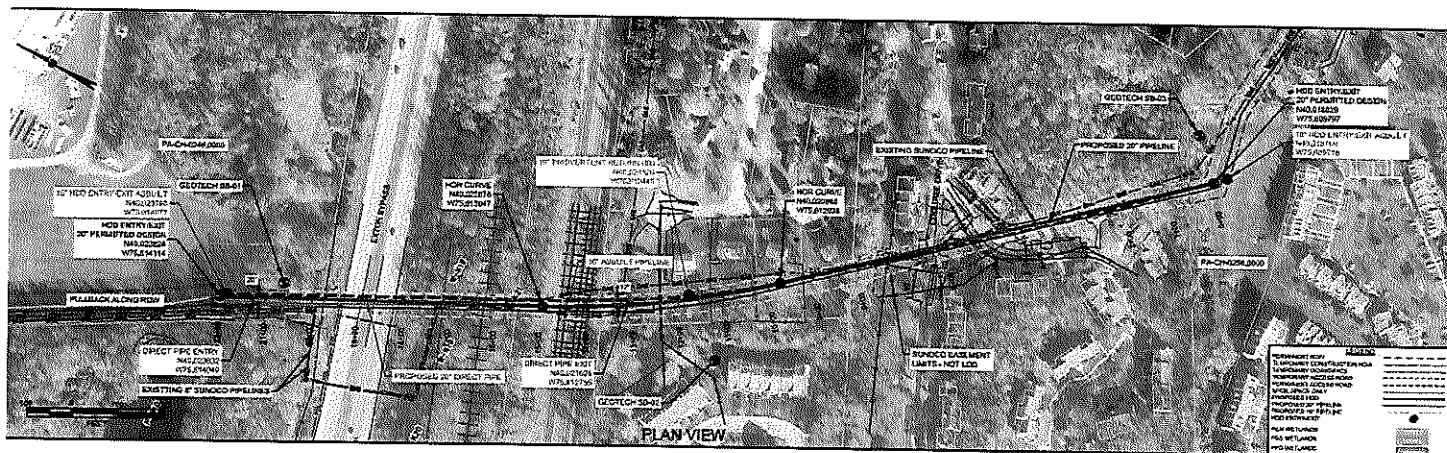


Figure 3 – HDD Location and Specification Details

Operating Parameters

Parameters used in modeling pipeline accidental release scenarios are also available from publicly available sources. Some of the basic pipeline information can be found on the Energy Transfer Partners Website concerning the Mariner East pipelines⁵. Included here are piping diameters, reports⁶ about the 12-inch line “re-purpose” project with associated pipeline parameters.

The DEP website also has permit applications for pump stations. For example, the Mariner East pump station in Berks County application⁷ lists several pieces of information:

- The material: “*Light Hydrocarbon – NGL Mix of Ethane and Propane @ 100F (Max)*”
- The intended operating pressures: “*Suction Pressure = 579 PSIG, Discharge = 1435 PSIG, Product Vapor Pressure of 531 PSIA*”
- Maximum operating pressure of 1,480 psig

Consequence Modeling

Once all of these parameters are put together, consequence modeling for the pipeline can be done. Quest uses our proprietary software CANARY by Quest® to calculate vapor dispersion, fire radiation, and explosion overpressure hazard impacts following loss of containment events. The results of such analyses are demonstrated with Table 1.

Table 1
Maximum Hazard Distances: Propane Releases from the Mariner East Pipelines

Pipeline	Maximum Hazard Zone Distance [feet] for	
	Flammable Vapor Cloud (LFL)	Jet Fire
ME1 (8")	1,035	420
ME2 (20")	2,135	1,055

⁵ <https://marinerpipelinefacts.com/about/overview/>

⁶ <https://marinerpipelinefacts.com/wp-content/uploads/Accufacts-Final-Report-on-12-inch-1.pdf>

⁷ <http://files.dep.state.pa.us/RegionalResources/SCRO/SCROPortalFiles/Community%20Info/AQ/Sunoco%20Pipeline%20LP/Sunoco%20Pipeline%20LP%20-%20Beckersville%20Pump%20Station%20-%20201-12-15%20Air%20Quality%20State-Only%20Operating%20Permit%20Application%2006-03164.pdf>

EX. "B"

VERIFIED STATEMENT OF MEHROOZ ZAMANZADEH, PH.D

I, Mehrooz Zamanzadeh, Ph.D., also known as Dr. Zee, do hereby verify the following:

1. I am a principal in the firm Matergenics LLC.
 2. On or about August 9, 2019, my office hosted an *in camera* review of Sunoco materials that may generally be described as integrity manual and risk assessment documents.
 3. I have also reviewed the Flynn Motion to Reclassify at paragraphs 27 through 32.
- I concur completely with the statements made therein.
4. During the document review we were not permitted to make copies or take substantive notes on content.
 5. How an engineer can analyze data without the data and draw inferences with no factual foundation is beyond my understanding.
 6. Both the CIS documents, coatings surveys and related materials are essential to my preparing an expert report in this proceeding.
 7. In addition, along with other employees of Matergenics LLC I have prepared and reviewed the 56 pages of randomly selected discovery material furnished by attorney Bomstein on or about September 18, 2019.
 8. From our review of the 56 pages we have found no information that we believe could be characterized as confidential or highly confidential.
 9. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Mehrooz Zamanzadeh, Ph.D.

Dated: November 6, 2019

EX. "C"

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REPLY TO:
Center City

October 15, 2019

Whitney E. Snyder, Esq.
Hawke, McKeon & Sniscak,, LLP
100 North Tenth Street
Harrisburg, PA 17101

Re: Flynn, et al. v. Sunoco Pipeline LP

Dear Whitney:

Pursuant to the terms of the Amended Protective Order in this case, disputes over the designation of extremely sensitive materials or withholding copies of extremely sensitive materials must be presented to the ALJ for resolution following an expedited opportunity (5-day period) for the parties to comment.

In this case, fewer than 3,000 pages out of more than 32,000 pages of materials have been stamped "public" by Sunoco. The rest has been marked confidential/highly confidential or confidential security information ("CSI").

Counsel having reviewed the CSI materials in Pittsburgh and Bala Cynwyd, Complainants believe that Sunoco has massively misclassified most of the documents furnished to date. The hazard assessments are based entirely or almost entirely upon publicly available information. The integrity management materials contain either none or almost none that is proprietary or otherwise implicating security issues. Moreover, a random sampling of the remaining non-public documents discloses nothing proprietary.

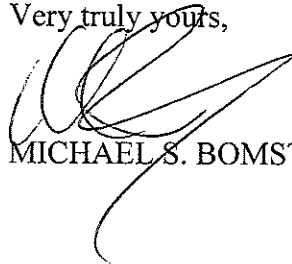
Apart from the above, Complainants have three experts who need full access to the CSI material: Dr. Zee of Matergenics; Jeffrey Marx of Quest Consultants; and Timothy Boyce of Delaware County Emergency Services. Their ability to give evidence in this case will be substantially impaired by Sunoco's refusal to turn over to them copies of the CSI materials.

Whitney E. Snyder, Esq.
October 15, 2019
Page Two

Unless these issues are resolved, it is my intention pursuant to the judge's Order to file a motion seeking re-classification of all non-public documents supplied by Sunoco to date. By this letter I am giving you an opportunity to respond prior to our filing of a motion.

Thank you.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long, sweeping tail that extends downwards and to the right.

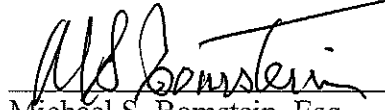
MICHAEL S. BOMSTEIN

MSB:mik

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the persons listed below as per the requirements of § 1.54 (relating to service by a party). The document also has been filed electronically on the Commission's electronic filing system.

See attached service list.


Michael S. Bomstein, Esq.

Dated: November 8, 2019

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