

February 1, 2012

Daniel P. Delaney
D 717.231.4516
F 717.231.4501
dan.delaney@klgates.com

Via Hand Delivery

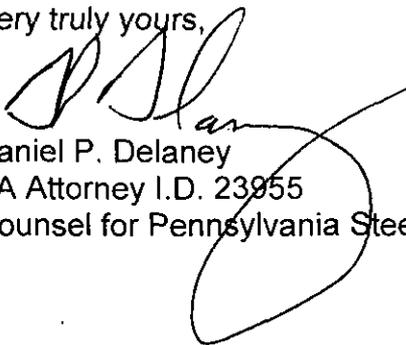
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg., 2nd Floor
400 North Street
Harrisburg, PA 17120

Re: Act 127 of 2011 - The Gas and Hazardous Liquids Pipeline Act;
Assessment of Pipeline Operators
Docket No. M-2012-2282031
Pennsylvania Steel Alliance Comments to Tentative Implementation Order

Dear Secretary Chiavetta:

Enclosed please find the original and three copies of the Comments of the Pennsylvania Steel Alliance to the Commission's Tentative Implementation Order in the above-referenced matter. A CD copy of these comments is also enclosed.

Very truly yours,


Daniel P. Delaney
PA Attorney I.D. 23955
Counsel for Pennsylvania Steel Alliance

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Act 127 of 2011 - The Gas and Hazardous Liquids Pipeline Act; Assessment of Pipeline Operators. : : Docket No. M-2012-2282031

**COMMENTS OF THE PENNSYLVANIA STEEL ALLIANCE
TO THE COMMISSION'S TENTATIVE IMPLEMENTATION ORDER.**

The Pennsylvania Steel Alliance ("Alliance") submits these comments to the Public Utility Commission ("Commission") pursuant to ordering paragraph 5 of the Tentative Implementation Order ("Implementation Order") entered January 12, 2012 at this docket. These comments address the Commission's responsibilities under Section 301(D) of the Gas and Hazardous Liquids Pipeline Act ("Act" or "Act 127") requiring pipeline operators to disclose the country of manufacture for all tubular steel products used in the exploration, gathering or transportation of natural gas or hazardous liquids. These comments also address the discussion of the Section 301(D) reporting requirements contained in pages 3-4 of the Commission's Implementation Order.

I. INTRODUCTION

The Alliance is a nonprofit corporation organized under the provisions of the Pennsylvania Nonprofit Corporation Law and is registered as a tax exempt organization pursuant to Section 501(c)(4) of the Internal Revenue Code. The Alliance is a labor/management cooperative effort to educate the public and policymakers regarding the impact of the Pennsylvania Steel Industry and related policy issues. Its members include companies that manufacture steel tubular products used in the exploration,

gathering or transportation of natural gas or hazardous liquids. The Alliance office is located at Suite 140 Rivertech Building, 3700 South Water Street, Pittsburgh, Allegheny County, Pennsylvania 15203. The Alliance and its members have an interest in the Commission's implementation of Act 127 of 2011, particularly the reporting requirements of Section 301(D) of the Act. The Alliance commends the Commission on its prompt action in adopting the Implementation Order at the Commission's first Public Meeting after the enactment of Act 127. Prompt implementation of the Act is important to public safety in Pennsylvania.

The Alliance submits that the Commission should implement Act 127 in a manner that emphasizes pipeline safety and integrity without unduly burdening the pipeline operators that are subject to the Act's requirements. The Commonwealth Court has held that the interpretation of a statute by the agency charged with its administration should be accorded great weight and not overturned unless the agency's construction is clearly erroneous. *See Cherry v. Pennsylvania High Education Assistance Agency*, 620 A.2d 687, 691 (Pa. Cmwlth Ct. 1993). In cases involving the Commission, the Court has paid great deference to the Commission's construction and implementation of provisions that expanded its regulatory jurisdiction. *See, e.g., Barsch v. Pennsylvania Public Utility Commission*, 521 A.2d 482, 486-91 (Pa. Cmwlth Ct. 1987) (Public Utility Code amendment expanding Commission jurisdiction over utility construction of nuclear power plants). The Commission should interpret and implement Act 127 in a manner that emphasizes pipeline safety and integrity in Pennsylvania by ensuring that pipelines used for exploration, gathering or transportation of natural gas or hazardous liquids are constructed with quality tubular steel products that meet the technical requirements of

industry standard product specifications. The Commission should also limit the burden of compliance on pipeline operators by permitting them to rely on information contained in standard transaction documents.

II. COMMENTS

The Implementation Order describes the proposed Section 301(D) reporting requirements on pages 3-4. The Alliance supports several determinations contained in this portion of the Order. The Alliance agrees that the reporting period should be limited to the prior calendar year for all tubular steel products installed by the pipeline operator for the exploration, gathering or transportation of natural gas or hazardous liquids and that "tubular steel products" refers to the actual pipe to be used in the exploration, gathering or transportation of gas or hazardous liquids and excludes valves as well as other facilities or equipment. The Alliance, however, has the following comments on how the country of manufacture of the tubular steel product should be defined and the documents the pipeline operator should be permitted to rely on in reporting this information.

A. Defining Country of Origin

Section 301(D) requires each pipeline operator to disclose the country of manufacture for all tubular steel products used in the exploration, gathering or transportation of natural gas or hazardous liquids. It is possible, however, that the tubular steel products could be manufactured in more than one country. The Alliance submits that compliance with Section 301(D) requires a pipeline operator to report each country involved in the manufacture of the tubular steel products to the extent that such information is available to the operator. With the production of tubular steel products

being an international business, it is possible that a tubular steel product could be considered manufactured in two countries.

Statutes that require a determination of the country of manufacture of steel products have been recently enacted by Congress which provide guidance on how the county of manufacture for steel products can be determined for purposes of Act 127. The American Recovery and Reinvestment Act of 2009 ("ARRA"), P.L. 111-5, § 1605(a), provides that:

[n]one of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work *unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.*"¹

Consistent with prior "Buy America" legislation, this provision has been subsequently interpreted by regulations that specify that construction materials that are wholly or predominately iron or steel – e.g., tubular products – must have all steel-making processes occur in the United States to comply with the Buy America provision, absent one of the enumerated exceptions.² This is commonly referred to as the "melted and poured" standard. Under this standard, tubular products must as a general matter

¹ The American Recovery and Reinvestment Act of 2009, P.L. 111-5, § 1605(a) (emphasis added).

² *Federal Acquisition Regulation; American Recovery and Reinvestment Act of 2009 – Buy American Requirements for Construction Material*, 75 Fed. Reg. 53153; 53159 (Aug. 30, 2010) ("*FAR Regulations*"); *see also id.* at 53158 ("iron or steel, . . . , must be produced at all stages in the United States."). The regulations further clarify that the Buy America provision "does not restrict the origin of the elements of the iron or steel, but requires that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives." FAR 25.602-(a)1(1)(ii)(A) (2010).

be produced in the United States from U.S.-made substrate (back to the melted and poured stage) to qualify for use in ARRA-funded works.³

Using these provisions as a model for the implementation of Act 127, the definition of country of manufacture for tubular steel products would be:

Country of Manufacture for tubular steel products: Tubular steel products shall be considered to be manufactured in the country where all manufacturing processes (except metallurgical processes involving refinement of steel additives) of the steel take place.

It is possible that the steel that is used in the product could be melted and poured in one country and the tube formed in another. If this occurs, both countries should be reported by the pipeline operator as countries of manufacture. The Alliance submits that for purposes of guidance for the pipeline operators, the Commission should issue regulations or provide a definition in its final order which define the country of manufacture as suggested above.

B. Identification of Country of Manufacture of Tubular Steel Products.

The Implementation Order states that "[r]egistrants may rely upon the indication of the country of manufacture on purchase invoices or upon the stamp of the product itself." (Order at p. 3). The country of manufacture, however, may not always be identified on purchase invoices or stamped upon the product itself. Relying on purchase invoices to obtain this information may not be adequate. The invoices issued by manufacturers or other suppliers are not uniform and may not be a reliable source of information for the pipeline operator. Likewise the country of manufacture may not

³ In fact, the *FAR Regulations* discussed whether welded steel pipe rolled from foreign slab would be compliant with the Buy America provision. *Id.* at 53157-58. The *FAR Regulations* stated that such pipe would not comply. *Id.* According to the *FAR Regulations*, allowing the use of foreign slab in welded steel pipe for ARRA-funded projects "would not meet the objectives of the law." *Id.* at 53158.

always be stamped upon the product itself. Not all technical standards applicable to tubular steel products require the country of manufacture to be stamped on the product itself. Compliance with some technical requirements of industry standard product specifications, such as American Petroleum Institute ("API") standards 5L, 5CT and 5DP, will be indicated by an API monogram stamped on the pipe which will include the country of manufacture. Not all tubular steel products, however, will be manufactured to these technical standards, and the product may not have an identification of the country of manufacture stamped on it. A Material Test Report ("MTR") is a standard document produced in the purchase of tubular steel products that would provide this information.

An MTR is a document issued by the manufacturer of tubular steel products stating that the material has been manufactured, sampled, tested and inspected in accordance with the purchaser's technical requirements and has been found to conform to those requirements. In addition, the MTR should document the country of manufacture for the Melting and Pouring of the steel material and the country of manufacture for the conversion of the steel material into tubular form. In cases where these processes occur in different countries, both countries of manufacture will be documented.

The pipeline operator should be permitted to rely on this information since the MTR includes information regarding the pipe specifications, whether the pipe meets API standards, identifies the location of the manufacture of the pipe and confirms that the supplied tubular steel product conforms with the purchase contract requirements. The MTR should accompany every order of tubular steel products purchased by the pipeline operator or its distributor. The MTR is the preferred document because it identifies the

country of manufacture and assures that the tubular steel product meets industry standards for integrity and safety.

The Alliance submits that the Commission should issue regulations or state in its final order that pipeline operators must receive MTRs from suppliers of tubular steel products used in the exploration, gathering or transportation of natural gas or hazardous liquids. The regulations or order should specify that the MTR must identify the country or countries of manufacture for the purchased product. The regulations or order should also state that the registrants may rely upon the identification of the country of manufacture identified in the MTRs supplied by steel companies or distributors.

For purposes of confirming compliance by later audit by the Commission, the registrants should be directed to keep copies of the MTRs for each purchase of tubular steel products used in the exploration, gathering or transportation of natural gas or hazardous liquid for the reporting period in their records for at least five years. So that the Commission can monitor whether the operators are using tubular steel products that meet the technical requirements of industry standard product specifications such as those issued by API or the International Organization for Standardization (ISO) standards, an additional column should be added to the proposed country of manufacture form which indicates whether the tubular steel products meet industry standard product specifications in their manufacture and which industry standard product specification applied.

The Alliance appreciates the opportunity to provide these comments to the Commission.

Respectfully submitted,



Daniel P. Delaney
PA Attorney I.D. 23955

Counsel for Pennsylvania Steel Alliance

K&L Gates LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
(717) 231-4500
(717) 231-4501 (Fax)
dan.delaney@klgates.com

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