**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn : C-2018-3006116

Rosemary Fuller : P-208-3006117

Michael Walsh :

Nancy Harkins :

Gerald McMullen :

Caroline Hughes and :

Melissa Haines :

Andover Homeowners Association : C-2018-3003605

Melissa DiBernardino :  C-2018-3005025

Rebecca Britton : C-2019-3006898

Laura Obenski : C-2019-3006905

 :

 v. :

 :

 :

Sunoco Pipeline, L.P. :

**ORDER GRANTING IN PART AND DENYING IN PART FLYNN COMPLAINANTS’ AMENDED MOTION TO COMPEL RESPONSES TO COMPLAINANTS’ INTERROGATORIES AND DOCUMENT REQUEST (SET 2)**

On December 9, 2019, Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines (collectively “Flynn Complainants”) filed a Motion to Dismiss Objections and Compel Answers to Interrogatories and Document Request at Docket Nos. C-2018-3006116 and P-2018-3006117. On December 10, 2019, Flynn Complainants filed an Amended Motion to Dismiss Objections and Compel Answers to Interrogatories and Document Request. On December 16, 2019, Sunoco Pipeline, L.P. (Sunoco, SPLP, or Respondent) filed an Answer. The Amended Motion is ripe for a decision.

Legal Standard

The standard for permissible discovery is set forth in Section 5.321 of the Commission’s regulations:

**§ 5.321. Scope.**

(c)  *Scope*. Subject to this subchapter, 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, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for 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.

52 Pa. Code § 5.321(c). Section 5.361 of the Commission’s regulations, however, provides various limitations on the scope of discovery:

**§ 5.361. Limitation of scope of discovery and deposition.**

 (a)  Discovery or deposition is not permitted which:

  (1)  Is sought in bad faith.

   (2)  Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.

   (3)  Relates to matter which is privileged.

   (4)  Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa. Code § 5.361(a).

Definitions

 Sunoco objects to certain definitions and instructions in Set 2 Interrogatories. Flynn Complainants argue the objections are frivolous. The parties agree to address definitions through objections to individual requests and not in the abstract. Motion at 12, Answer at 1.

Complainants Set 2, Nos. 1-7

Flynn Complainants Set 2, Nos. 1-7 state:

1. Identify all records in your possession, custody or control that relate in part or in whole to the Subsidence Events[[1]](#footnote-1) as defined above in Definition P.

2. Identify the specific location of each such Subsidence Event listed in response to No. 1above.

3. Identify when and how Sunoco first learned of each Subsidence Event identified in the answer to No. 1 above.

4. Identify who, if anyone, Sunoco notified about each Subsidence Event identified in the answer to No. 1 above.

5. With respect to your answer to No. 1 above, state when such notice of a Subsidence Event was given.

6. Identify what testing or studies were done to determine the cause(s) of each of the Subsidence Events identified in your answer to No. 1 above.

7. Identify any mitigating action taken in relation to the Subsidence Events identified in your answer to No. 1 above.

Sunoco Pipeline L.P.’s Position

SPLP objected to these requests on the grounds that they are overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. SPLP argues the request for “all records” is overly broad and unduly burdensome, unrestricted in time frame and inquires into matters beyond the scope of issues presently before the Commission in this proceeding. Questions pertaining to the existence of subsidence events within Chester and Delaware County are too broad and result in a fishing expedition not reasonably tailored to discover admissible evidence. *See, e.g.*, *City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Commw. Ct. 1971). Sunoco is willing to provide Flynn Complainants with a list of construction locations where subsidence has occurred in Chester and Delaware Counties in proximity to the Mariner East 1, 12-inch pipeline, Mariner East 2 and Mariner East 2X pipelines from the time construction of ME2 and ME2X commenced to the present.

Flynn Complainants’ Position

Flynn Complainants argue their definitions of “subsidence” and “subsidence events” are not overly broad or inconsistent with Commission regulations. The Order issued October 21, 2019 permitted them to re-ask questions regarding sink holes and refer to subsidence and subsidence events instead. Flynn Complainants request full and complete answers regarding subsidence events as defined as occurrences in Chester and Delaware Counties that have taken place up until the date of SPLP’s answers to these interrogatories.

Disposition

Sunoco will be compelled to provide Flynn Complainants with a list of construction and right-of-way locations where subsidence events have occurred in Chester and Delaware Counties in proximity to the Mariner East 1, 12-inch pipeline, Mariner East 2 and Mariner East 2X pipelines from the time construction of the Mariner East Project commenced to the present. These time and proximity parameters on the Questions Nos. 1-7 and the definition of “subsidence event” are reasonably calculated to lead to admissible evidence while not being overly broad or unduly burdensome to the pipeline operator. Flynn Complainants can research and obtain information regarding subsidence events occurring outside construction areas and the operator’s easements pertaining the ME1, ME2, ME2X and the 12-inch workaround pipeline as well as subsidence events occurring prior to the starting date of construction on the Mariner East Project. It is unduly burdensome to require SPLP to research and provide such additional information.

## Complainant Set 2, Nos. 16-17

Flynn Complainants Set 2, Nos. 16 and 17 state:

16. Identify all writings, drawings, graphs, charts, photographs, computer records, emails, other electronically stored information and other compilations of data that reflect planning at the administrative and executive levels for the siting of the Mariner East 2 and 2X pipelines in Chester and Delaware counties.

17. Identify all writings, drawings, graphs, charts, photographs, computer records, emails, other electronically stored information and other compilations of data that reflect planning at the administrative and executive levels for the transportation of HVLs via the 8-inch Mariner East 1 pipeline through Chester and Delaware Counties.

Sunoco Pipeline L.P.’s position

Sunoco objected to these requests on various grounds, including that they are duplicative of prior discovery requests, which were already deemed to be overbroad and unduly burdensome. SPLP argues that these interrogatories seek the same information as was previously requested in the Flynn Complainants’ Interrogatories Set 1, Nos. 165-166, which are as follows:

165. Identify all records reflecting planning for the location of the ME pipelines in Chester and Delaware Counties

166. Identify all records reflecting planning for transportation of HVLs through Chester and Delaware Counties

The June 6, 2019 Order directed SPLP “produce a detailed explanation of its Mariner East Project planning process from its inception in siting locations for the pipelines, valves, compressor stations, and pumping stations in Chester and Delaware Counties.” June 6, 2019 Order at 34 and Ordering Paragraphs 18-19. In accordance with the directive of the June 6, 2019 Order, SPLP responded by producing documents Bates Nos. SPLP00005786-5891 and SPLP00006922-7000, which comprised of transcripts of previous testimony before the Commission that included detailed explanations of the planning process for the Mariner East pipelines.

The Flynn Complainants took issue with SPLP’s response and production of the documents and filed a Motion for Sanctions. On October 21, 2019, an Order Granting in Part and Denying in Part Flynn Complainant’s Motion for Sanctions was issued that recognized SPLP had produced documents responsive to the interrogatories and ordering SPLP to ensure that the electronic link to the Share File for the document production remained accessible. SPLP complied and has ensured the link for electronic access of the documents, remains live and active.

SPLP argues it has already provided a detailed explanation of the planning process, including testimony from the person who was in charge of the siting and planning process – Mr. Matthew Gordon. SPLP00005794-5795 in Attachment B to Answer.

Flynn Complainants’ Position

Flynn Complainants want documents that “reflect planning at the highest levels of the company for siting of the Mariner East pipelines and HVL operations in Chester and Delaware Counties.” Motion at 16. They contend that the production of records dating back twelve years should not be considered overly burdensome.

Disposition

I agree with Sunoco that the request is overly broad and unduly burdensome. Sunoco produced an explanation of its Mariner East Project planning process from its inception in siting locations for the pipelines, valves, compressor stations, and pumping stations in Chester and Delaware Counties. The explanation is from Sunoco Pipeline L.P.’s project manager who testified he was responsible for the siting of the pipelines in question. Mr. Gordon is at a high level in management. Additionally, SPLP has provided a link for electronic access to documents in response to this question that will remain active during the pendency of this proceeding. SPLP’s objection will be sustained.

## Complainant Set 2, Nos. 20 and 22

Flynn Complainants Set 2, No. 20 states:

20. Identify all leak, puncture and rupture incidents for the 8-inch and 12-inch Mariner lines that were related to corrosion.

Flynn Complainants Set 2, No. 22 states:

22. Identify all procedures, inspections, data collection processes and reports that are specified in Sunoco’s integrity management manual.

Sunoco Pipeline L.P.’s position

SPLP objected to these requests as they are duplicative of prior requests and SPLP already answered these requests. Regarding Question No. 20, Flynn Complainants’ Set 1, Interrogatories Nos. 113-115, sought:

113. Identify all leaks, punctures and ruptures that have occurred.

114. Identify all leaks, punctures and ruptures that have occurred on the 12 inch line.

115. Identify all leaks, punctures and ruptures that have occurred on the workaround pipeline.

SPLP objected to the Flynn Complainants’ Interrogatories Set 1, Nos. 113-115 on the basis that they were overbroad and unduly burdensome, and those objections were sustained. SPLP was directed to produce PHMSA incident reports dating back to 1986. *See* June 6, 2019 Order at 30 and Ordering Paragraph 13.

Pursuant to the June 6, 2019 Order, SPLP produced responsive documents that consisted of available PHMSA incident reports for the Mariner East 1 and 12-inch pipelines, Bates Nos. SPLP00005715-5785, and which identify the apparent cause of the reported incident, which include whether the apparent cause was corrosion. *See e.g.*, SPLP00005715-5720 (including Section H-Apparent Cause, and subset H1-Corrosion, sub-subsets external corrosion or internal corrosion). Thus, SPLP has already provided information that indicates which leaks, punctures and ruptures were due to corrosion, with the detailed information the PHMSA requires in the report forms that SPLP provided. SPLP provided a sample in Attachment C to its Answer.

SPLP objected to Flynn Complaints Interrogatories Set 2, No. 22 on the basis that it seeks the same information as was previously requested in the Flynn Complainants’ Set 1, Interrogatories Nos. 11-12, 163-164, which are as follows:

11. You state that your pipeline integrity management program ("PIMP") "continues to function in compliance with the law." Identify each statute and regulation of which you are aware that sets out PIMP requirements.

12. With reference to your answer to No. 11 above, explain how you are in compliance with each such statute and regulation.

163. What is your understanding of the term "pipeline integrity management program" ("PIMP") in relation to pipelines?

164. Identify all documents in which your PIMP is found.

SPLP objected to the Flynn Complainants’ Interrogatories Set 1, Nos. 11-12 and 163-164 on the basis that they were overbroad and unduly burdensome, and similar objections were sustained in the June 6, 2019 Order that SPLP produce its integrity management plans. *See* June 6, 2019 Order at 11 and 32, and Ordering Paragraphs 9 and 16. Pursuant to the June 6, 2019 Order, SPLP produced its Integrity Management Plan, Bates Nos. SPLP00007034-7161, which was designated as “Extremely Sensitive Materials” in accordance with the terms of the Amended Protective Order. Counsel for Flynn Complainants and their designated expert witness have already accessed and reviewed the Integrity Management Plan which contains the information sought in this Interrogatory. Flynn Complaints Interrogatories Set 2, No. 22 is therefore improper, duplicative, and unduly burdensome, as it seeks information and documents that SPLP has already responded to and produced.

SPLP argues that Flynn Complainants have access to review SPLP’s pipeline integrity management plan and the appendices. Flynn Complainants’ expert has only chosen to review the integrity management plan once. Complainants have not sought to review the appendices yet. Flynn Complainants can review these materials themselves to identify any “procedures, inspections, data collection processes and reports that are specified” in these materials. If Flynn Complainants want access to specific materials therein, they can request that instead of this overbroad and unduly burdensome fishing expedition.

Flynn Complainants’ Position

Flynn Complainants admit they asked for documents reflecting leaks on the 8-inch and 12-inch pipelines and that the ALJ directed that documents dating back to 1986 be produced. In the Set 2, Flynn Complainants seek the identification and production of a much smaller subset: leaks, puncture and rupture incidents related to corrosion. They contend SPLP produced only a portion of its integrity management plan in an “eyes only” review session on August 9, 2019. Flynn Complainants argue there are hundreds of pages of material missing from the document production, which are relevant to the issues in the case, and necessary for Dr. Zee’s team to complete their work.

Disposition

An Order Admitting Stipulation Into the Record was issued January 2, 2020. The Order approves and admits into evidence a Stipulation between SPLP and Flynn Complainants, which provides for an additional opportunity for Flynn Complainants’ expert witness(es) (Dr. Zee’s team) to examine CSI/ESM materials and take notes this time, subject to review and possible redaction of SPLP’s counsel and review proctors. Counsel for Flynn Complainants and their designated expert witness will be afforded an additional opportunity to access, review, and take notes regarding the Integrity Management Plan (including missing pages as specified by Flynn Complainants and missing appendices, which contains the information sought in this Interrogatory). Flynn Complaints Interrogatories Set 2, No. 22 are proper as their experts were not afforded an opportunity to take notes before and the Plan was not fully provided. SPLP’s objection is overruled. Sunoco will be directed to contact counsel for Flynn Complainants within five (5) days for the purpose of scheduling a further in-person review session.

## Complainant Set 2, Nos. 23-43

Flynn Complainants Interrogatories Set 2, Nos. 23-43 state:

23. Identify each and every well contamination event of which you are aware in connection with drilling for the Mariner East pipelines. For each such event, furnish the following information: date, location, and a brief description of what happened.

24. For each event identified in your answer to No. 23 above, identify all documents in your possession, custody or control that you furnished to state or federal authorities that describe the event.

25. For each event identified in your answer to No. 23 above, identify all documents (including laboratory reports) in your possession, custody or control that set forth the results of your investigation, or anyone else's investigation, of the event.

26. Identify each and every communication between Sunoco and residential property owners who were affected by well contamination events.

27. Prior to commencement of drilling for the Mariner East lines in Chester and Delaware Counties, was Sunoco aware that there was a risk of negative impacts to private water wells from the drilling activities?

28. Identify all documents in your possession, custody or control reflecting your knowledge that that there was a risk of negative impacts to private water wells from the Mariner East drilling activities.

29. Identify all written communications from Sunoco to owners of private water wells in Chester and Delaware Counties in which you notified owners, prior to commencement of drilling, that there was a risk of negative impacts to private water wells from the Mariner East drilling activities.

30. Identify all written communications from Sunoco to owners of private water wells in Chester and Delaware Counties in which you notified owners, prior to execution of easements, that there was a risk of negative impacts to private water wells from the Mariner East drilling activities.

31. Identify all easement agreements with owners of private water wells in Chester and Delaware Counties in which you identified a risk of negative impacts to private water wells from the Mariner East drilling activities.

32. With respect to Fuller Exhibit 8, revised February 6, 2017 and admitted into evidence at the hearing on October 24, 2019, the document states in part in Section 5.0 that "Unanticipated encounters with contaminated soil may also threaten water resources and supplies." Was that statement true at the time?

33. With respect to Fuller Exhibit 8, revised February 6, 2017 and admitted into evidence at the hearing on October 24, 2019, the document states in part in Section 5.0 that "Private and public water supplies may be impacted by hazardous material spills during any of the project activities ..." Was that statement true at the time?

34. With respect to Fuller Exhibit 8, revised February 6, 2017 and admitted into evidence at the hearing on October 24, 2019, the document states in part in Section 5.2.1 that during the course of HDD drilling, pipeline fluid may enter "an existing fracture, fissure, or formation opening in the soil or rock substrate. When this happens... drilling fluid could enter the groundwater table that could be used by private groundwater wells." Was the information in Section 5.2.1 true at the time?

35. Explain why the information set out in Fuller Exhibit 8, noted in Interrogatories 32, 33 and 34 above, was not furnished to private well owners prior to their signing easement agreements.

36. Prior to execution of easement agreements, what information was given by Sunoco to property owners being asked to sign the agreements regarding (a) the characteristics of HVL's and (b) the fact the HVLs would be transported in Mariner East pipelines across their properties?

37. Identify any and all written communications from Sunoco to Rosemary and Gordon Fuller in which Sunoco unconditionally offered the Fullers public water connection at Sunoco's expense.

38. With respect to Fuller Exhibit 6, and admitted into evidence at the hearing on October 24, 2019, Sunoco employee on April 18, 2018 stated in a letter to the Department of Environmental Protection that "the best method to prevent impacts to private water supplies continues to be non­use of private wells within the 450 ft buffer surrounding the HDD profile during HDD activities." Was that statement true at the time?

39. Identify any and all written communications from Sunoco to private well owners in Chester and Delaware Counties advising them not to use private wells within the 450 ft buffer surrounding the HDD profile during HDD activities.

40. Identify all fracture lines known or believed by Sunoco to exist on the properties of private well owners in Chester and Delaware Counties on whose property there have been HDD activities.

41. Do you agree that Fuller Exhibit 7, admitted into evidence at the hearing on October 24, 2019, depicts a fracture trace line passing through the Fullers' property and past their well?

42. Sunoco's Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan (February 6, 2018) provides in Section 6.6 in pertinent part that, "If any impact to a private water supply attributable to pipeline construction is identified after post construction sampling, SPLP will restore or replace the impacted water supply to the satisfaction of the private water supply owner.

Sunoco's Pennsylvania Pipeline Project Operations Plan (January 2018) provides in Section 4.3 in pertinent part that, "If any impact to a private water supply attributable to pipeline construction is identified after post construction sampling, SPLP will restore or replace the impacted water supply to the satisfaction of the private water supply owner."

Identify all written communications and other documents in your possession, custody or control that reflect your efforts to restore or replace Gordon and Rosemary Fuller's water supply to their satisfaction

43. Laboratory analyses of the Fullers' water indicate the existence of a contaminant identified as "undetermined". Identify each such contaminant.

Sunoco Pipeline, L.P.’s position

SPLP objects to Flynn Complaints Interrogatories Set 2, Nos. 23-43 on the basis that they do not seek information relevant to this proceeding or that could lead to the discovery of relevant and admissible evidence. Under 52 Pa. Code § 5.341(c), a party may propound interrogatories that relate to matters that can be inquired into under Section 5.321. Section 5.321(c), in turn, provides that a party is entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding and reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

SPLP argues the requests are also unduly burdensome and overbroad because they request “all records,” which interpreted literally could pertain to hundreds of thousands of documents. It is a fishing expedition and is not reasonably tailored to discover admissible evidence relevant to the Second Amended Complaint. *See, e.g.*, *City of York. v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Cmwlth. 1971).

SPLP argues that Flynn Complainants Interrogatories Set 2, Nos. 23-43 seek information regarding alleged contamination to private water wells during the construction of the Mariner East 2 and Mariner East 2X pipelines in general, and Complainant Rosemary Fuller’s individual complaints regarding alleged impacts to her private water supply in particular. Alleged impacts to private water wells during the construction of Mariner East 2 and Mariner East 2X are not issues that were raised in the Flynn Complainant’s Second Amended Complaint, nor are they a matter for which Flynn Complainants seek any form of relief through this action. Discovery requests on matters beyond the scope of the issues raised in a complaint before the Commission are irrelevant, improper, and beyond the scope of discovery allowed under the Commission’s procedural rules. *See* 52 Pa. Code § 5.321(c) and § 5.361(a).

SPLP also further objects to Interrogatories Set 2, Nos. 23-43 because they seek information outside of the Commission’s jurisdiction and that is irrelevant to this proceeding. Issues related to alleged impacts to private water wells fall squarely within the jurisdiction of the Pennsylvania Department of Environmental Protection (PaDEP), SPLP’s permits for the Mariner East 2 and Mariner East 2X construction have detailed and robust requirements and special conditions regarding private and public water supplies, and PaDEP has been actively monitoring and enforcing SPLP’s permit conditions and requirements related to water supply issues. Lastly, any alleged issues with Complainant Rosemary Fuller’s individual complaints are a matter to be addressed by PaDEP or pertain to a private party legal claim, either of which is beyond the scope of the Commission’s jurisdiction. In support of its position, SPLP cites as authority [*Rovin, D.D.S. v. Pennsylvania Public Utility Commission,* 94 Pa.Cmwlth. 71, 502 A.2d 785 (1986)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986101497&pubNum=162&originatingDoc=I690c5e9bb77111df952a80d2993fba83&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)). Precedent makes clear the distinction between water *service,* which the Commission may regulate, and water quality, which may only be regulated by the DEP. [*Rovin,* 502 A.2d at 787](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986101497&pubNum=162&originatingDoc=I690c5e9bb77111df952a80d2993fba83&refType=RP&fi=co_pp_sp_162_787&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_sp_162_787).

SPLP also argues that these requests are unduly burdensome. For example, Complainant’s interrogatory No. 29, 30, and 39 seek SPLP to identify and produce written communications with private well owners in Chester and Delaware Counties.  In accordance with SPLP’s PaDEP permits for the Mariner East 2 and Mariner East 2X pipelines, SPLP is obligated to make certain notifications to all landowners with a private water supply located within 450 feet of an HDD construction location.  In Chester and Delaware Counties, this includes approximately 2700 individual parcels of property, often with four or more notices and written communications to each property, depending on the circumstances.  Likewise, Complainants’ interrogatory No. 30 seeks copies of easement agreements of properties that have private wells in Chester and Delaware Counties, which encompasses over 700 individual parcels, and potentially multiple agreements and related amendments per parcel.

These requests are overbroad and unduly burdensome, particularly when taking into account Complainants cannot litigate this case on behalf of others because they do not have standing to do so. Issues with well or drinking water with no direct effect on Complainants are not issues Complainants can pursue, even if the Commission did have jurisdiction over these issues, which it does not.

Flynn Complainants’ position

Flynn Complainants argue that because testimony was allowed on water quality issues, discovery too should be allowed. Motion at 25. The suggestion by SPLP that this could require the production of “hundreds of thousands of documents” is troublesome. Information relative to Respondent’s contamination of wells in Chester and Delaware Counties is relevant to claims under Section 1501 that the operator is operating/constructing its pipelines in an unsafe manner.

Disposition

I agree with Flynn Complainants that the questions are reasonably calculated to lead to admissible evidence. Information relative to engineering practices in the construction of pipelines and appurtenances, which may have resulted in the contamination of wells in Chester and Delaware Counties, is relevant to claims pursuant to Section 1501, 66 Pa. C.S. §1501.

If the instant dispute involved a complaint regarding the water quality of a water service utility, then the Commission could certify to the Department of Environmental Protection any question of fact regarding the purity of water supplied to the public by any public utility over which it has jurisdiction, and upon the determination of such a question by the department incorporate the department’s findings in its decision. 66 Pa. C.S. § 318(b). *Polites v. Pa. Pub. Util. Comm’n,* 928 A.2d 388 (2007), (Pa.Cmwlth. 2007).

Water quality in Pennsylvania is statutorily regulated by the provisions of the Pennsylvania Safe Drinking Water Act and the Federal Safe Drinking Water Act and enforcement of those statutes is specifically vested in the PaDEP and the Federal Environmental Protection Agency. However, unlike the *Rovin* case, the respondent in the instant proceeding is not a public utility providing water service to the public. The Flynn Complainants are not purchasing water from Sunoco Pipeline, L.P. Information sought is relevant to whether SPLP is operating the Mariner East Project in Pennsylvania safely within the meaning of 66 Pa. C.S. § 1501. SPLP’s objections shall be overruled.

## Complainant Set 2, No. 44

Flynn Complainants Interrogatories Set 2, No 44 states:

44. With respect to the event(s) involving the release of gasoline or other petroleum product(s) in the vicinity of the Tunbridge Apartment complex on or about Monday, November 11, 2019,

1. Identify each and every product and the quantity of each such product that was released;
2. Explain in detail the methods by which you determined the quantities of product that were released;
3. Explain the cause(s) of the release(s);
4. State how long the release(s) continued before it or they were stopped;
5. Identify the area in which an odor was noticeable;
6. Explain in detail the efforts you or your agents made to inform government officials of the existence of the leak(s), including without limitation officials from Delaware County Emergency Services, the Pennsylvania Public Utility Commission, the Pennsylvania Department of Environmental Protection, Middletown Township, Pennsylvania Fish & Boat Commission, and the U.S. Coast Guard;
7. Explain in detail the efforts you or your agents made to inform the public contemporaneously what steps if any the public should take by way of precautions; and
8. Explain in detail the efforts you or your agents made after the event was over to inform the public via written notice or public media as to what had occurred and what concerns the public should have under the circumstances.
9. Identify all persons, including emergency responders, who experienced any health effects in connection with the release(s) and its or their sequelae;
10. For each person identified in response to (h) above, explain how that person came to experience health effects.
11. For each person identified in response to (h) above, set forth the extent of that person's health effects and the treatment that person received.
12. Set forth a detailed timeline of the entire release event, for each event, including but not limited to time the release commenced, when Sunoco became aware of it, how Sunoco became aware of it, when Sunoco personnel were dispatched to the scene, when Sunoco personnel arrived at the scene, the time when Sunoco first spoke with Delaware County Emergency Services, when Delaware County first responders first arrived, when the release was contained.

Sunoco Pipeline, L.P.’s Position

SPLP objected to Flynn Complainants Interrogatories Set 2, No. 44 on the grounds it seeks irrelevant information. The incident described seeks information regarding an incident that occurred on November 11, 2019, regarding a valve component for a pipeline that is not at issue in this litigation, and that carries gasoline and other refined petroleum products, such as diesel fuel, home heating oil, kerosene, and jet fuel – rather than HVLs such as the Mariner East pipelines that are at issue in this proceeding. The incident that occurred on November 11, 2019 is not relevant to this proceeding, and therefore discovery regarding such matters is beyond the scope of discovery allowed under the Commission’s procedural rules. *See* 52 Pa. Code § 5.321(c) and § 5.361(a).

## Flynn Complainants’ Position

Flynn Complainants argue that SPLP’s witness Gregory Noll has already testified as an emergency services expert as to how well SPLP handles pipeline emergencies. Complainants contend SPLP does not handle pipeline emergencies properly and the information sought in these interrogatories regarding emergency protocol followed in connection with a local event at the Tunbridge Apartments in Middletown, Delaware County, when gasoline leaked, is relevant.

Disposition

Although the pipeline/valve in question is not an HVL valve/line in Middletown Township, Delaware County, the operator is SPLP, and the event occurred in November 2019, after the Second Amended Complaint was filed on June 18, 2019. The information sought regarding emergency protocol the same operator took in Delaware County is reasonably calculated to lead to admissible evidence regarding emergency preparedness and whether the operator is in compliance with 66 Pa. C.S. § 1501 regarding the Mariner East Project. SPLP’s objections will be overruled.

## Complainants Set 2 Document Requests

Flynn Complainant Set 2, Requests for Production of Documents state as follows:

1. All documents identified in your answers to Complainants’ Second Interrogatories Addressed to Sunoco Pipeline, L.P.
2. All documents known or believed by you to contain information related in whole or in part to your answers to Complainants’ Second Interrogatories Addressed to Sunoco Pipeline, L.P.
3. All documents you have relied upon in whole or in part in furnishing answers to Complainants’ Second Set of Interrogatories Addressed to Sunoco Pipeline L.P.

Sunoco Pipeline L.P.’s Position

SPLP objects to documents by incorporating objections to each of the related interrogatories.

Flynn Complainants’ Position

Flynn Complainants incorporate by reference their responses to Sunoco’s objections corresponding to the document requests.

Disposition

Where Sunoco is compelled to provide a response to questions in Set 1, and the response references a document within Sunoco’s possession, then Sunoco should also provide a copy of the corresponding document to which it refers as a full and complete answer to Complainants’ request for documentation.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines’ Motion to Dismiss Objections and Compel Answers to Discovery Requests (Set 2) is granted in part and denied in part.
2. That the objections of Sunoco Pipeline, L.P. to interrogatories Set 2, Nos. 1-7 are sustained in part and overruled in part.
3. That Sunoco Pipeline, L.P. is hereby directed to respond within ten (10) days of the date of issuance of this Order to Interrogatories Set 2, Nos. 1-7 as modified such that the definition of “subsidence events” shall be amended to include subsidence occurrences in Chester County and Delaware County that have taken place on or within a construction site controlled by Sunoco Pipeline, L.P. or one of its easements regarding the Mariner East Project since the initiation of construction in these Counties began regarding the Mariner East Project to the present time.
4. That the objections of Sunoco Pipeline, L.P. to interrogatories Set 2, Nos. 16 and 14 are sustained.
5. That the objections of Sunoco Pipeline, L.P. to Interrogatories Set 2, Nos. 20 and 22 are overruled.
6. That Sunoco Pipeline, L.P. is directed to contact counsel for Flynn Complainants within five (5) days of the date of issuance of this Order to schedule a further in-person review and note taking session regarding extremely sensitive materials related to the operator’s Integrity Management Plans, including identified missing pages and appendices that are reasonably calculated to contain answers to Interrogatories Set 2, Nos. 20 and 22 in accordance with the procedure outlined in the Stipulation of Record to Amended Protective Order and Procedural Schedule admitted into the record in this proceeding on January 2, 2020.
7. That Sunoco Pipeline, L.P.’s objections to Set 2, Nos. 23-43 are overruled.
8. That Sunoco Pipeline, L.P. is directed to respond to Interrogatories Set 2, Nos. 23-43 within ten (10) days of the date of issuance of this Order.
9. That the objections of Sunoco Pipeline, L.P. to Interrogatories Set 2, No. 44 are overruled.
10. That Sunoco Pipeline L.P. is directed to respond to Interrogatories Set 2, No. 44 within ten (10) days of the date of issuance of this Order.
11. That to the extent Sunoco Pipeline L.P.’s objections to interrogatories have been overruled and the question involved and identification of document as if it were a request for production of document, Sunoco Pipeline LP is required to also furnish true copies of the requested referenced documents to the Flynn Complainants.

Date: January 3, 2020 /s/

 Elizabeth Barnes

 Administrative Law Judge

**C-2018-3006116 et. al.- MEGHAN FLYNN et. al. v. SUNOCO PIPELINE LP**

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1. “Subsidence events” refers to subsidence occurrences in Chester and Delaware Counties that have taken place up until the date of answers to interrogatories. Definition, P – Interrogatories Set 2. [↑](#footnote-ref-1)