



Thomas J. Sniscak
(717) 703-0800
tjsniscak@hmslegal.com

Whitney E. Snyder
(717) 703-0807
wesnyder@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

September 28, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

Re: Meghan Flynn, et al., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated)
Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated)
Rebecca Britton, Docket No. C-2019-3006898 (consolidated)
Laura Obenski, Docket No. C-2019-3006905 (consolidated)
Andover Homeowner's Association, Inc.; Docket No. C-2018-3003605 (consolidated)
v. Sunoco Pipeline L.P.

**SUNOCO PIPELINE L.P.'S ANSWER OPPOSING FLYNN COMPLAINANTS'
MOTION FOR LEAVE TO SUBMIT ADDITIONAL EVIDENCE**

Dear Secretary Chiavetta:

Enclosed you will find Sunoco Pipeline L.P.'s Answer Opposing Flynn Complainants' Motion for Leave to Submit Additional Evidence in the above-referenced proceeding. Because this document does not contain new averments of fact, it does not require a verification.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Whitney E. Snyder

Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Honorable Elizabeth Barnes (by email ebarnes@pa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons listed below in accordance with the requirements of § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

Michael S. Bomstein, Esquire
Pinnola & Bomstein
Suite 2126 Land Title Building
100 South Broad Street
Philadelphia, PA 19110
mbomstein@gmail.com

Counsel for Flynn et al. Complainants

Anthony D. Kanagy, Esquire
Garrett P. Lent, Esquire
Post & Schell PC
17 North Second Street, 12th Floor
akanagy@postschell.com
glent@postschell.com

*Counsel for Intervenor
Range Resources – Appalachia LLC*

Erin McDowell, Esquire
3000 Town Center Blvd.
Canonsburg, PA 15317
emcdowell@rangeresources.com

Counsel for Range Resources Appalachia

Mark L. Freed, Esquire
Curtin & Heefner LLP
2005 South Easton Road, Suite 100
Doylestown, PA 18901
mlf@curtinheefner.com

*Counsel for Intervenor
County of Chester*

Rich Raiders, Esquire
Raiders Law
606 North 5th Street
Reading, PA 19601
rich@raiderslaw.com

*Counsel for
Andover Homeowner's Association, Inc.*

Vincent M. Pompo
Guy A. Donatelli, Esq.
24 East Market St., Box 565
West Chester, PA 19382-0565
vpompo@lambmcerlane.com
gdonatelli@lambmcerlane.com

*Counsel for Intervenors
West Whiteland Township,
Downingtown Area School District,
Rose Tree Media School District*

Leah Rotenberg, Esquire
Mays, Connard & Rotenberg LLP
1235 Penn Avenue, Suite 202
Wyomissing, PA 19610
rotenberg@mcr-attorneys.com

*Counsel for Intervenor
Twin Valley School District
James R. Flandreau
Paul, Flandreau & Berger, LLP
320 W. Front Street
Media, PA 19063
jflandreau@pfblaw.com*

*Counsel for Intervenor
Middletown Township*

Mark L. Freed
Joanna Waldron
Curtin & Heefner LP
2005 S. Easton Road, Suite 100
Doylestown, PA 18901
mlf@curtinheefner.com
jaw@curtinheefner.com

*Counsel for Intervenor
Uwchlan Township*

Josh Maxwell
Mayor of Downingtown
4 W. Lancaster Avenue
Downingtown, PA 19335
jmaxwell@downingtwn.org

Pro se Intervenor

James C. Dalton, Esquire
Unruh Turner Burke & Frees
P.O. Box 515
West Chester, PA 19381-0515
jdalton@utbf.com

*Counsel for West Chester Area School District,
Chester County, Pennsylvania*

Virginia Marcille-Kerslake
103 Shoen Road
Exton, PA 19341
vkerslake@gmail.com

Pro Se Intervenor

Thomas Casey
1113 Windsor Dr.
West Chester, PA 19380
Tcaseylegal@gmail.com

Pro se Intervenor

Patricia Sons Biswanger, Esquire
217 North Monroe Street
Media, PA 19063
patbiswanger@gmail.com

Counsel for County of Delaware

Melissa DiBernardino
1602 Old Orchard Lane
West Chester, PA 19380
lissdibernardino@gmail.com

Pro se Complainant

Joseph Otis Minott, Esquire
Alexander G. Bomstein, Esquire
Ernest Logan Welde, Esquire
Kathryn L. Urbanowicz, Esquire
Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103
Joe_minott@cleanair.org
abomstein@cleanair.org
lwelde@cleanair.org
kurbanowicz@cleanair.org

James J. Byrne, Esquire
Kelly S. Sullivan, Esquire
McNichol, Byrne & Matlawski, P.C.
1223 N. Providence Road
Media, PA 19063
jjbyrne@mbmlawoffice.com
ksullivan@mbmlawoffice.com

Rebecca Britton
211 Andover Drive
Exton, PA 19341
rbrittonlegal@gmail.com

Pro se Complainant

*Counsel for Thornbury Township, Delaware
County*

Michael P. Pierce, Esquire
Pierce & Hughes, P.C.
17 Veterans Square
P.O. Box 604
Media, PA 19063
Mppierce@pierceandhughes.com

Laura Obenski
14 South Village Avenue
Exton PA 19341
ljobenski@gmail.com

Pro se Complainant

Counsel for Edgmont Township

Guy A. Donatelli, Esq.
24 East Market St., Box 565
West Chester, PA 19382-0565
gdonatelli@lambmcerlane.com

Counsel for Intervenor East Goshen Township

/s/ Whitney E. Snyder

Thomas J. Sniscak, Esquire
Whitney E. Snyder, Esquire

Dated: September 28, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN et al.	:	Docket Nos.	C-2018-3006116 (consolidated)
	:		P-2018-3006117
MELISSA DIBERNARDINO	:	Docket No.	C-2018-3005025 (consolidated)
REBECCA BRITTON	:	Docket No.	C-2019-3006898 (consolidated)
LAURA OBENSKI	:	Docket No.	C-2019-3006905 (consolidated)
ANDOVER HOMEOWNER’S ASSOCIATION, INC.	:	Docket No.	C-2018-3003605 (consolidated)
	:		
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

**SUNOCO PIPELINE L.P. ANSWER OPPOSING FLYNN COMPLAINANTS’
MOTION FOR LEAVE TO SUBMIT ADDITIONAL EVIDENCE**

Pursuant to 52 Pa. Code § 5.103(c), Sunoco Pipeline L.P. (SPLP) submits this Answer Opposing Flynn Complainants’ (Complainants) September 21, 2020 Motion for Leave to Submit Additional Evidence (Motion). SPLP will respond to the substantive arguments of the Motion but will not and is not required to¹ provide a paragraph by paragraph response to the Motion particularly as it contains unnecessarily lengthy, repetitive, and irrelevant allegations and arguments.

1. The Motion is at least the fourth time Complainants have attempted to sidestep the Omnibus Order and 52 Pa. Code § 5.243(e), which prohibit “the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies

¹ Compare 52 Pa. Code § 5.61(b) (requiring answers to complaints admit or deny specifically all material allegations), with 52 Pa. Code § 5.103(c) (containing no such requirement for answers to motions).

from the party's case-in-chief."² Your Honor properly denied each of Complainants other attempts and should deny this untimely Motion too.

2. Complainants' current Motion seeks to admit evidence that substantially varies from their case in chief and that is simply not allowed, particularly now, one day before the hearing begins. Moreover, Complainants are attempting to use these materials in an improper attempt to introduce evidence of reputation, which is not allowed under the Pennsylvania Rules of Evidence. Pa. R.E. 404(a), (b). The DEP Administrative Order regarding Marsh Creek was appealed on Friday, September 25, 2020³ and that is the forum for resolution of these issues, which provides for the public's participation, including Complainants here. These issues are not relevant to Complainants' Direct case. Admitting this evidence now without delaying the hearing to provide SPLP the time necessary to respond with written testimony will violate SPLP's due process rights.

3. The documents that the Motion seeks to admit consist of documents from DEP that all involve environmental permitting issues that have been or are being resolved with DEP and in a pending appeal before the Environmental Hearing Board. These issues have not been previously raised as part of Complainants' Direct case, as Your Honor has already found regarding materials Complainants attempted to use at the Deposition of Matt Gordon, which Your Honor denied twice at the deposition. *See* Attachment A (Excerpt of Deposition Transcript) at N.T. 120:3-8 (upholding SPLP's objection to introduction of DEP-related documents), N.T. 121:24-25 (declining to reconsider ruling). Complainants raised essentially the same arguments at the deposition that they raise here. Your Honor considered these arguments and rejected them:

They have not established in any of their direct testimony that any of this has any relationship to the only thing that's at issue before the PUC and the PUC regulations, which is safety. They cannot point

² Order Granting Sunoco Pipeline L.P.'s Omnibus Motion at Ordering ¶ 4.

³ EHB Docket No. 2020-085.

to a single thing that they put in their direct testimony that relates to that issue. He may want to argue this, that there's some pattern of conduct; but there's no direct testimony.

...

Your Honor, your omnibus order addresses this exact point and what the limitations are. And he has just conceded that it was not part of their direct testimony. That really ends the issue pursuant to the omnibus order.

...

JUDGE BARNES: I'm inclined to agree with Mr. Fox on this issue, that going into the permitting that was already resolved in the DEP consent orders is outside the scope of the direct testimony of the Flynn complainants' witnesses.

Attachment A at N.T. 117:12-21, 119:18; *see also Id.* at N.T. 120-2-8.

4. Your Honor likewise made the same ruling when Complainants again sought to introduce those same materials through a March 16, 2020 Motion to Admit Additional Evidence. Your Honor held in denying discovery on those issues and denying the motion to admit additional evidence that materials were “an attempt to introduce evidence after Complainants’ direct case and they expand the scope of the proceeding. The scope of discovery is limited to relevant issues in the case as narrowed by the scope of Complainants’ direct testimony.” May 28, 2020 Order at p. 2.

5. Your Honor’s prior rulings that DEP permitting issues are not within the scope of Complainants’ direct testimony and would substantially expand their case in chief were correct and apply equally here. Complainants’ arguments that this evidence is newly discovered is not supported with any evidence and is factually inaccurate. They could have put on evidence regarding DEP permitting and construction issues as part of their Direct case. Allowing admission of these documents significantly broadens the scope of issues Complainants presented on direct because Complainants presented no expert testimony or other evidence that SPLP’s construction

practices in Chester and Delaware Counties create a safety issue with respect to the operation of the pipelines or that they violate any law or regulation over which the Commission has jurisdiction. Simply put, Complainants had ample opportunity to raise and support construction issues as they relate to safety, but they neglected to do so. Just because they now want to raise a more recent DEP permitting issue does not mean they can expand the scope of their case. Moreover, Complainants do not even have a witness who can sponsor these materials into the record or testify about what they mean and whether they create a safety issue with respect to the operation of the pipelines. These materials are clearly not within the scope of their case, which could have included such issues, but did not.

6. Likewise, the documents are irrelevant as Your Honor already found. The Commission has jurisdiction over pipeline safety, and as SPLP argued at the deposition, these documents have no relation to safety and Complainants have shown none:

The third thing, and I think this is maybe the most important, is **they have no evidence whatsoever and have offered no evidence in their direct testimony, expert or otherwise, about how these prior violations which are related to construction permitting for things that have already been constructed are a safety issue now.**

Attachment A at 115:2-9 (emphasis added). Complainants admittedly failed to present any expert testimony on pipeline construction. Complainants' counsel previously stated on the record that the documents at issue would be a subject area of expert testimony. Attachment A at N.T. 118:5-9 ("The direct witnesses did not give testimony about this because it would not be within their competence."). Since Complainants' presented no expert testimony on pipeline construction, the documents necessarily substantially differ from their case-in-chief.

7. Complainants' attempt to manufacture a nexus via the unverified Motion fails because the evidence is not admissible for the purpose Complainants seek to use it - reputation. Complainants argue that because of alleged permitting and construction issues, that somehow equates to proof that SPLP "has a reckless and careless attitude of prizing expediency over safety and protection" and thus cannot be trusted to operate the Mariner East pipeline in high consequence areas. *See, e.g.*, Motion at pp. 5-7. Complainants attempt to make a case that SPLP is "wanton and reckless" and that therefore SPLP allegedly has a bad reputation. Such evidence is not admissible for this purpose. Pennsylvania Rule of Evidence 404 provides:

(a)Character Evidence.

(1)Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

....

(b)Crimes, Wrongs or Other Acts.

(1)Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

Pa.R.E. 404. Moreover, these allegations are not substantial evidence and cannot be used to show that SPLP has violated a law or regulation related to pipeline safety or over which the Commission has jurisdiction. Moreover, the assertions made are the subject of an appeal pending before the Environmental Hearing Board at EHB Docket No. 2020-085-L, and will properly be resolved in those pending proceedings, and that process provides for public participation. This proceeding is not the proper forum in which to litigate environmental issues present in DEP Orders.

8. The documents are irrelevant to Complainants' case-in-chief and if admitted will substantially vary from Complainants' case-in-chief and broaden the issues beyond what SPLP

had notice of and the opportunity to address in its testimony. The Motion is too late. It was filed only 6 working days before hearing is set to begin and will not be decided until the first day of hearing. The event that is the subject of the documents occurred on August 10, 2020, six weeks before Complainants belatedly filed their motion. The event was well publicized and one or more of the Complainants was aware of it when it occurred. Indeed, one of the Complainants, Michael Walsh, who has an active social media presence, posted on social media about the event on August 12, 2020. *See* Attachment B. Thus, Complainants cannot maintain that they only recently learned of this. In fact, one or more of the Complainants has been aware of it since it happened, yet Complainants improperly waited six week to file this Motion, denying SPLP its due process rights to contest the irrelevant evidence in these proceedings. Some of the documents Complainants now seek to admit were available beginning in mid-August, *see, e.g.*, Motion Ex. A (dated August 13, 2020), yet Complainants waited over a month to file the Motion. Complainants are attempting to add to their direct case after the deadline essentially at the hearing, which is not allowed, and the Motion should be denied.

9. Alternatively, if Your Honor does allow Complainants to supplement their direct testimony to admit these documents, SPLP must be given additional time from the date of that ruling for submission of SPLP's testimony as it will have to engage additional witnesses and prepare testimony on the issues raised. SPLP believes 60 days from the date of that ruling will be sufficient and that the entire schedule will have to be extended and reset.

WHEREFORE, SPLP respectfully requests the Motion be denied.

Respectfully submitted,

/s/ Whitney E. Snyder

Thomas J. Sniscak, Esq. (PA ID No. 33891)
Whitney E. Snyder, Esq. (PA ID No. 316625)
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Tel: (717) 236-1300
tjsniscak@hmslegal.com
wesnyder@hmslegal.com

/s/ Robert D. Fox

Robert D. Fox, Esq. (PA ID No. 44322)
Neil S. Witkes, Esq. (PA ID No. 37653)
Diana A. Silva, Esq. (PA ID No. 311083)
MANKO, GOLD, KATCHER & FOX, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Tel: (484) 430-5700
rfox@mankogold.com
nwitkes@mankogold.com
dsilva@mankogold.com

Attorneys for Respondent Sunoco Pipeline L.P.

Dated: September 28, 2020

Attachment A

1 MATTHEW GORDON

2 held off the record.)

3 - - -

4 MR. BOMSTEIN: Your Honor,
5 this is Mike Bomstein.

6 Can you hear me okay?

7 JUDGE BARNES: Yes.

8 MR. BOMSTEIN: Thank you for
9 taking our call. We've been getting along
10 just fine. We just have one very serious
11 disagreement and we're hoping you will assist
12 us.

13 JUDGE BARNES: Go ahead.

14 MR. BOMSTEIN: All right.
15 We've prepared, on behalf of the Flynn
16 complainants, a number of questions concerning
17 Sunoco's history of violating permits and
18 violating regulations in connection with
19 construction of Mariner East 2 and 2X.

20 And we believe that this is,
21 first, within the scope of the complaint
22 because we've alleged that Sunoco's practices
23 are reckless, that they're not safe, adequate
24 or reasonable; and that how they have
25 persistently violated DEP permits and violated

1 MATTHEW GORDON

2 regulations is something that's relevant to
3 that.

4 In addition, the scope of the
5 deposition notice identified two areas that we
6 believe cover this. The first is DEP orders
7 and enforcement and consent orders relative to
8 Mariner East pipelines from 2014 to present,
9 including but not limited to January 3, 2020
10 in reference to the Revolution pipeline.

11 We also identified substance
12 of matters at issue in DEP orders and
13 enforcement and consent orders relative to
14 Mariner East pipelines from 2014 to present,
15 including but not limited to January 3, 2020
16 in reference to the Revolution pipeline.

17 So the substance of the
18 matters at issue in these orders, including
19 consent orders, is violations. And basically
20 that's what the orders are about. For
21 example, the incident at Raystown --

22 JUDGE BARNES: Raystown.

23 MR. BOMSTEIN: Raystown, thank
24 you very much.

25 By way of example, the DEP

1 MATTHEW GORDON

2 made certain findings with respect to repeated
3 conversion to HDD drilling, as opposed to the
4 permitted kind of drilling, open trench, and
5 ultimately a consent order was entered.

6 We believe that each of those
7 instances demonstrates a willful disregard for
8 the law.

9 So, that's where we're coming
10 from, that's what we're interested in
11 inquiring about. Counsel has a different
12 notion both of what the scope of the
13 deposition is and whether or not these
14 questions are relevant.

15 I will leave it to Mr. Fox to
16 state their position.

17 MR. FOX: Good morning, Your
18 Honor.

19 JUDGE BARNES: Good morning.

20 MR. FOX: So I have a series
21 of objections to this. So first of all, this
22 is not a 30(b)(6) deposition, where a witness
23 is representing the company on all issues
24 relating to this matter or potentially
25 relating to this matter. As Your Honor said,

1 MATTHEW GORDON

2 it's supposed to be narrowly tailored. So
3 that's number one.

4 Number two, he is going into
5 alleged violation of DEP permits for things
6 that have happened historically. Those are
7 embodied in consent orders. Those are issues
8 that have been resolved with the Department of
9 Environmental Protection. This is not a
10 relitigation of DEP regulations. This is in
11 front of the PUC.

12 They had a full opportunity to
13 challenge any of those violations, to
14 challenge the consent orders which resolved
15 those violations. They did not. They are
16 administratively final. They are not within
17 the jurisdiction of the PUC.

18 In addition to that, the
19 issues that he is raising are not inside
20 Chester and Delaware County. He's asking
21 about the Revolution pipeline incident.

22 Again, not something that at
23 all relates to this particular matter, these
24 particular lines. It's not even the same
25 pipeline.

1 MATTHEW GORDON

2 The third thing, and I think
3 this is maybe the most important, is they have
4 no evidence whatsoever and have offered no
5 evidence in their direct testimony, expert or
6 otherwise, about how these prior violations
7 which are related to construction permitting
8 for things that have already been constructed
9 are a safety issue now.

10 To the extent that
11 Mr. Bomstein has asked about ongoing
12 construction issues, we have allowed any of
13 that questioning that he has asked. He's
14 asked about many incidents that are ongoing
15 that are still the subject of construction.
16 We have not objected.

17 But there is no direct
18 testimony that they've offered at all as to
19 how these prior incidents are safety related
20 for things that have already been constructed
21 and been resolved with the DEP. It's far
22 afield. This is supposed to be a narrowly
23 tailored deposition on specific topics, and we
24 are not relitigating issues with DEP and DEP
25 permits that have been resolved and

1 MATTHEW GORDON

2 administratively final.

3 MR. BOMSTEIN: Your Honor, may
4 I respond briefly?

5 JUDGE BARNES: Yes.

6 MR. BOMSTEIN: First of all,
7 the fact that Sunoco got caught in hundreds of
8 instances and managed to pay fines to DEP
9 doesn't at all eliminate the concern that we
10 have for their pattern historically of
11 recklessness.

12 They're not suddenly a safe
13 company if the people who are making these
14 decisions over and over and over got slapped
15 on the hand and then they're given permission
16 to proceed. For example, the recent
17 \$30 million fine is nothing to a company that
18 has billions and billions of dollars in
19 revenue.

20 So, it is very relevant. And
21 in fact, Your Honor ruled in a discovery
22 ruling concerning objections to questions
23 about the Revolution pipeline, that Sunoco was
24 to answer questions. And they did, after we
25 went back and forth several times. It's

1 MATTHEW GORDON

2 certainly relevant.

3 If they have a pattern going
4 back several years of unsafe practices in
5 hundreds of instances, the fact that those are
6 resolved at the DEP level doesn't mean there's
7 any less concern as to whether they should
8 continue to operate and whether they are a
9 safe, adequate and reasonable operator.

10 MR. FOX: All of those
11 discovery issues were prior to their direct
12 testimony submission. They have not
13 established in any of their direct testimony
14 that any of this has any relationship to the
15 only thing that's at issue before the PUC and
16 the PUC regulations, which is safety.

17 They cannot point to a single
18 thing that they put in their direct testimony
19 that relates to that issue. He may want to
20 argue this, that there's some pattern of
21 conduct; but there's no direct testimony.

22 This deposition is not for
23 purposes of direct testimony. That ship has
24 sailed and this is supposed to be for
25 cross-examination. They have not put that

1 MATTHEW GORDON
2 into evidence. They can't now start wanting
3 to put that into evidence, where they had the
4 opportunity and did not do so.

5 MR. BOMSTEIN: Your Honor, we
6 have not had our ship sail. The direct
7 witnesses did not give testimony about this
8 because it would not be within their
9 competence.

10 Mr. Gordon has been called as
11 a witness in accordance with the rules of
12 procedure. The scope is very clear. There's
13 no reason he, who is particularly in a
14 position to talk about permits and violation
15 of permits in many instances, should not be
16 allowed to testify.

17 MR. FOX: Honestly, Your
18 Honor, Mr. Bomstein just made my argument,
19 because he has admitted this this is not part
20 of their direct testimony. He could have
21 taken Mr. Gordon's deposition prior to the
22 deadline for direct testimony. He could have
23 submitted that on cross as part of his direct
24 testimony if he wanted to. They chose not to.

25 He's also admitted that it's

1 MATTHEW GORDON

2 not within their competence. He can't use a
3 deposition after the close of direct testimony
4 to establish direct testimony. That is a
5 violation of the PUC rules. He cannot do
6 that. It's outside the scope.

7 MR. BOMSTEIN: If Your Honor,
8 please, it is not outside the scope. It is
9 not outside the scope of what your procedural
10 order said. And we have no constraints on
11 general discovery rules up to this point.

12 They opposed his deposition.
13 Your Honor permitted it. There is nothing in
14 the rules or in your prior orders that limits
15 the scope, other than giving them fair notice
16 of the topics. And we gave them fair notice
17 of the topics.

18 MR. FOX: Your Honor, your
19 omnibus order addresses this exact point and
20 what the limitations are. And he has just
21 conceded that it was not part of their direct
22 testimony. That really ends the issue
23 pursuant to the omnibus order.

24 MR. BOMSTEIN: I believe, Your
25 Honor, the omnibus order does not direct

1 MATTHEW GORDON

2 itself to this at all.

3 JUDGE BARNES: I'm inclined to
4 agree with Mr. Fox on this issue, that going
5 into the permitting that was already resolved
6 in the DEP consent orders is outside the scope
7 of the direct testimony of the Flynn
8 complainants' witnesses.

9 MR. FOX: Thank you, Your
10 Honor.

11 MR. BOMSTEIN: Your Honor,
12 before you conclude, we are not contending
13 that it was improper for DEP to make its
14 rulings. We are not contending that there was
15 anything improper about the DEP decision. We
16 are not challenging it and it was not
17 challenged.

18 What we are saying is that a
19 matter that was not before the DEP, whether in
20 hundreds of instances they did these unsafe
21 things should not be part of our case, you've
22 ruled previously that matters involving
23 safety, including Revolution pipeline, are
24 relevant.

25 MR. FOX: Then you have to put

1 MATTHEW GORDON

2 on direct evidence of that, which you admit
3 that you have not. You could have taken his
4 deposition before the deadline for direct
5 testimony and put that on. You did not.

6 We're not relitigating DEP
7 consent orders or the underlying facts of DEP
8 consent orders. That's expanding the scope of
9 what you have identified as part of your
10 direct case. It's just simply too late to do
11 that.

12 MR. BOMSTEIN: Your Honor, we
13 disagree for obvious reasons. There are no
14 procedural orders, omnibus or otherwise, where
15 you stated that information obtained during
16 the course of routine discovery could not be
17 used -- obtained and used in the case.

18 You identified lay witnesses
19 who testified earlier, expert witnesses who
20 will testify later. We've already said this
21 in our motions. You did not, with all due
22 respect, preclude what we are doing today and
23 what we intend to do today.

24 JUDGE BARNES: All right. I'm
25 not convinced to reconsider my ruling.

1 MATTHEW GORDON

2 MR. BOMSTEIN: Very well.

3 MR. FOX: Thank you, Your
4 Honor.

5 MR. BOMSTEIN: We will proceed
6 with it. And thank you for your time.

7 JUDGE BARNES: All right,
8 thank you. Goodbye.

9 - - -

10 (Whereupon, a discussion was
11 held off the record.)

12 - - -

13 MR. FLANDREAU: Gentleman,
14 Exhibit 32, which is a letter from my client
15 posting for public information, Mr. Bomstein,
16 you correctly read into the record the date of
17 that letter; however, on its face, that's an
18 erroneous date and must be a typographical
19 error on the date.

20 The body of the letter makes
21 it clear that the events described were
22 January and February 2020 timeframe; whereas,
23 the dating of the letter itself is January 31,
24 2019. Clearly a mistake. I didn't want there
25 to be confusion in the record, so I'm offering

Attachment B



Home

Explore

Notifications

Messages

Bookmarks

Lists

Profile

More

Tweet



Mike Walsh 🦅🦅🦅

8,606 Tweets

Follow



1

10



Retweeted



Senator Andy Dinniman @SenatorDinniman · Aug 12

Some photos from the Community Paddle to Protect our Park at Marsh Creek this morning.

Yesterday, we learned 10k+ gallons of biproduct were spilled into the lake from Mariner East.

That's why we're calling to SHUT IT DOWN!



17

20



Retweeted



UwchlanSafetyCoaliti @UwchlanSafetyCo · Aug 12

They ruin everything they touch. Dumpster fire indeed.



EastGoshenDems @eastgoshendems · Aug 12

Upon seeing this headline we said "yes, that's what it is!" Only to find out