



December 14, 2020

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

*Via PUC Electronic Filing*

RE: *Flynn et. al. v. Sunoco Pipeline L.P., C-2018-3006116*

Dear Secretary Chiavetta,

Please find the attached Brief of Andover Homeowners' Association, Inc. in the above referenced matter filed with the Commission today. I directly served, via email, Administrative Law Judge, Hon. Elizabeth Barnes, with PDF and Word copies of this brief.

Please let me know if you have any questions. Thank you.

Sincerely,

/s/ Rich Raiders

Rich Raiders, Esq.

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines	:	P-2018-3006117 C-2018-3006116
	:	
Andover Homeowners' Association, Inc.	:	C-2018-3003605
	:	
Melissa DiBernardino	:	C-2018-3005025
	:	
Rebecca Britton	:	C-2019-3006898
	:	
Laura Obenski	:	C-2019-3006905
	:	
v.	:	
	:	
Sunoco Pipeline, L.P.	:	

**DIRECT BRIEF OF ANDOVER HOMEOWNERS' ASSOCIATION INC.**

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## INTRODUCTION

Complainant/Intervenor, Andover Homeowners' Association, Inc. ("Association") files this direct brief in the above-captioned consolidated docket. The Association requests the Pennsylvania Public Utility Commission ("Commission") to "terminate a controversy" that has persisted throughout these proceedings, yet which has not, so far, been answered; that is, whether Sunoco can meet the prescriptive regulatory requirements of Title 49 of the Code of Federal Regulations ("49 CFR") § 195.440 and its authorizing statute, 49 U.S.C. § 60116(a), (specifically, its obligation to inform the public of what to do "for safety" in the event of an accident) by providing implausible, non-credible instructions.

Congress mandated that every pipeline operator must tell the affected public how to be safe in the event of a pipeline release. 49 U.S.C. § 60116(a). Sunoco Pipeline L.P. ("Sunoco") utterly fails to provide any real information how to protect the public safety if there is a release event on the Mariner East highly volatile liquids ("HVL") pipeline system ("Mariner East") in Delaware and Chester Counties. Unless Sunoco can show that it can provide a credible public awareness plan, the Commission cannot allow Sunoco to continue to construct or operate the Mariner East system in Delaware and Chester Counties. The Association adopts the brief of the Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines ("Flynn Complainants") as if fully recited herein.

## QUESTION PRESENTED

Q: *Can Sunoco meet the prescriptive public awareness program requirements of section 195.440 by providing implausible instructions that most or all of Petitioner's residents will be unable to implement?*

***Suggested Answer: NO.***

### **STATEMENT OF THE CASE**

Sunoco operates the Mariner East pipeline system, transporting HVLs, including ethane, propane, butane, and mixes of those compounds, from Ohio, through West Virginia, and across Pennsylvania, terminating in Delaware County. The Mariner East I pipeline is a repurposed 8-inch diameter pipeline constructed in the 1930s by a predecessor company to Sunoco. The Mariner East 2 pipeline is a 20-inch diameter pipeline constructed in the last five years. The Mariner East 2X pipeline is expected to become a 16-inch pipeline, partially completed. The “12-inch” or “workaround” pipeline is a temporary combination of an existing 12-inch pipeline, known as the “Point Breeze to Montello” pipeline in Delaware and Chester Counties, and the Mariner East 2X where it is completed.

The Pennsylvania Commonwealth Court held that this project falls under the Commission’s jurisdiction, even with no final ruling by the Commission establishing any jurisdiction. *In re Martin*, 143 A.3d 1000, 1006 (Pa. Cmwlth. 2006) (*en banc*); *alloc. denied*, 164 A.3d 485 (Pa. 2016). Once the Commonwealth Court granted the Commission public utility jurisdiction over Mariner East, the Commission became the regulator over this system under the Commission’s public utility regulations. *Id.* This opinion and order meant that the default jurisdiction over the pipeline in the Gas and Hazardous Liquids Pipeline Act (“Pipeline Act”), Act 127 of 2011, 58 P.S. § 801.101 *et. seq.*, no longer applied, if it ever applied.

The Federal Pipelines and Hazardous Material Administration (“PHMSA”) regulates hazardous liquids pipelines under Title 49 of the Code of Federal Regulations, specifically Chapter 195 of Title 49. 49 C.F.R. § 1 *et. seq.* PHMSA obtains its regulatory authority under the

Pipeline Safety Improvement Act of 2002, 49 U.S.C. § 60101 et. seq. The Commission has authority and the duty to enforce PHMSA authorities as well as authority granted by the General Assembly. 66 Pa. C.S. § 501; 66 Pa. C.S. § 1501; 52 Pa. Code § 59.33(a).

The Association argues here that Sunoco is utterly incapable of meeting its obligations to operate Mariner East on the Association's property safely, properly, and efficiently in Thornbury Township, Delaware County, under the statute and applicable regulations to protect the public in the event of a pipeline release. The Association argues that there is no way that the pipeline operator can provide useful and tangible information to protect public safety in the event of a release, as is directly required in the enabling federal statutory language.

#### **PROPOSED FINDINGS OF FACT**

1. The Association adopts and incorporates by reference the Flynn Complaints' Proposed Findings of Fact.
2. The Andover Homeowners' Association is a community of thirty-nine residential homes and the Association's common area in Thornbury Township, Delaware County, Pennsylvania. Exhibit Seagraves-1.
3. The Association's property borders Pennsylvania Routes 926 to the north and 352 to the east. *Id.*
4. Sunoco operates four (4) pipelines on Association property. *Id.*
5. Sunoco operate a valve site for four (4) pipelines on Association property. *Id.*
6. The four (4) pipelines include the Mariner East 1, Mariner East 2, the Mariner East 2X, and the 12" Point Breeze to Montello ("12 inch") pipelines. *Id.*

7. The 12-inch pipeline currently operates as the Mariner East 2X “work around” pipeline.
8. The Delaware County Council commissioned a Mariner East Risk Assessment to evaluate consequences of the Mariner East pipelines within the Delaware County vicinity. Exhibit Friedman-7.
9. A group of citizens commissioned a “Citizens’ Risk Assessment” of the consequences of the Mariner East pipelines within the Delaware and Chester County vicinity. Exhibit Friedman-6.
10. Sunoco Canada commissioned a risk assessment of the consequences of an 8-inch diameter Ontario highly volatile liquids (“HVL”) pipeline. Exhibit Friedman-13.
11. The Sunoco Canada risk assessment reported the impact radius of a Mariner East release at distances of 700 meters. Exhibit Friedman-13.
12. The Quest Consultants assessment calculated an impact radius of
13. Sunoco mails flyers it claims are public awareness documents to residents it identifies within 1000 feet of its Mariner East pipelines.
14. The entire Andover community is within this radius from the Mariner East system. Exhibit Seagraves-1.
15. The Director of the Delaware County Department of Emergency Services testified that Sunoco’s instructions to evacuate an incident scene is implausible and unrealistic. Boyce Statement 1 at \*40.

16. A Sunoco hazardous liquids pipeline suffered a large release of hydrocarbons in November 2019 at Sunoco's Middletown Township, Delaware County valve site. Boyce Statement 1 at \*21-23.
17. The Director of the Delaware County Department of Emergency Services testified that, during this release, no person in the incident area evacuated the area on foot. *Id.*
18. The Director explained that, in his expert opinion, the public discounted Sunoco's public awareness plan as implausible, contributing to the public not evacuating the area of the release event. *Id.*
19. Further, the Director opined that the public does not appreciate the "distance to which hazardous or fatal consequences may be experienced suddenly in the event of ignition." *Id.*
20. The Director also, in his expert capacity, observed that there is no feasible way to evacuate the areas near the Mariner East pipeline in Delaware County without suffering loss of life or injuries. *Id.*
21. Further, the Director testified that first responders will likely not reach impacted communities in time to aid those inside the impact zone. *Id.*
22. The Director further testified that self-evacuation is not feasible "in the case of a large unignited vapor cloud." *Id.*
23. The Director also noted that evacuation of a "senior living facility or hospital" would cause fatalities or injuries, with or without the hazards stemming from a pipeline incident. *Id.*



24. Sunoco offered a witness who stated that Sunoco counsel informed him that the Commission may not regulate pipeline statement “in excess of the federal law and the PHMSA regulations”. Exhibit Garrity Statement -1 at \*9.

25. This statement is false, as the statute being referenced, the Pipeline Safety Act, does not regulate public utilities per 58 P.S. § 801.102. *Id.*

### **SUMMARY OF THE ARGUMENT**

Sunoco has failed to provide a credible public awareness program to the citizens of Delaware and Chester County. In practice, the public ignores or otherwise disregards Sunoco’s arguments to the extent that the public understands the public awareness documents. Sunoco has the burden to provide information to the public concerning “what steps should be taken for public safety in the event of a pipeline release” without regard to the probability of any such release. However, Sunoco’s public awareness program utterly fails to provide any credible information “for the public safety” because any such information would be limited to the fatality or mortal injury of those within the impact radius of such an incident. Sunoco’s utterly inadequate public awareness plan blatantly disregards and violates PHMSA and Commission requirements. If Sunoco cannot show credible compliance with appropriate public awareness requirements, the Commission has no choice but to enjoin Sunoco from transporting HVLs on the Mariner East system in Delaware and Chester Counties, Pennsylvania.

### **ARGUMENT**

Sunoco cannot operate the Mariner East System in Delaware and Chester Counties in HVL service in compliance with its regulatory obligations. Sunoco’s utter inability to meet its general and specific statutory obligations precludes any further operation of this pipeline in HVL

service. The Commission should immediately and permanently enjoin Sunoco from any further Mariner East HVL service for any reason whatsoever within Delaware and Chester Counties.

I. **STATUTORY AUTHORITIES REQUIRE SUNOCO TO PROVIDE FOR THE PUBLIC SAFETY DURING PIPELINE RELEASES.**

Sunoco cannot possibly meet the statutory requirements to protect adjacent property owners from potential pipeline releases of the highly volatile liquids (“HVL”), including ethane, propane and butane and mixes thereof, transported in the Mariner East system.<sup>1</sup>

A. STATUTORY AUTHORITIES. All pipeline operators are subject to certain over-arching statutory authority. These mandates guide any and all regulatory processes authorized by each statute.

*Each owner or operator of a gas or hazardous liquid pipeline facility shall carry out a continuing education program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.*

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<sup>1</sup> The federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”) classifies these materials as “hazardous, highly volatile liquids.” See 49 C.F.R. § 195.2. These materials have properties which make them much more hazardous than either methane (“natural gas”) or non-highly volatile hazardous liquids such as gasoline. Specifically, these materials are pressurized to be transported through pipelines as liquids, but upon pressure reduction, accidental or otherwise, tend to vaporize or boil into the vapor state, expanding hundreds of times in the process. In this vapor state, ethane, propane and butane are colorless, odorless, heavier than air, and extremely flammable or explosive. They tend to concentrate in low-lying areas and can move downwind or downhill for long distances while remaining in combustible concentrations. In a densely populated area, there are many ordinary objects that might serve as ignition sources, including cell phones, motor vehicles, garage door openers, light switches, and doorbells. The Association is in a densely populated, high-consequence area, with a population density on average of thousands of people per square mile.

49 U.S.C. § 60116(a).

*The Secretary may issue standards prescribing the elements of an effective public education program. The Secretary may also develop material for use in the program.*

49 U.S.C. § 60116(c).

*In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.*

66 Pa. C.S. 501(a).

*The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.*

66 Pa. C.S. 501(b).

*Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.*

66 Pa. C.S. 501(c).

*Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. <sup>2</sup>*

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<sup>2</sup> The Public Utility Code does not define the adjective “safe.” Merriam-Webster, however, defines “safe” as “free from harm or risk; unhurt; secure from threat of danger, harm, or loss; affording safety or security from danger, risk, or difficulty; not threatening danger; harmless.”

66 Pa. C.S. § 1501.

*Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.*

66 Pa. C.S. 1505(a).

B. REGULATORY AUTHORITIES. All pipeline operators are required to follow regulatory authorities authorized under the above statutes.

*Each pipeline operator must develop and implement a written continuing education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see 195.3).*

49 C.F.R. § 195.440(a).<sup>3</sup>

*The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on: . . . Steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide release.*

49 C.F.R. § 195.440(d)(4).

*Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.*

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See [www.merriam-webster.com/dictionary/safe](http://www.merriam-webster.com/dictionary/safe). For the reasons described in more detail in this petition, Petitioner does not believe that Sunoco's current and proposed hazardous, highly volatile liquids pipelines can be considered "safe."

<sup>3</sup> See also, *Baker v. Sunoco Pipeline L.P.*, PUC Docket C-2018-3004294, Document 1648342 at \*23 (Dec. 18, 2019) (holding that Part 195 applies to Mariner East I).

52 Pa. Code § 59.33(a).

*The minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. § § 60101—60503 and as implemented at 49 CFR Parts 191—193, 195 and 199, including all subsequent amendments thereto. Future Federal amendments to 49 CFR Parts 191—193, 195 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission’s regulations with regard to the minimum safety standards for all natural gas and hazardous liquid public utilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the Pennsylvania Bulletin stating that the amendment or modification may not take effect.*

52 Pa. Code § 59.33(b).

Combined, these authorities require that any pipeline operator is required to meet appropriate standards to operate public utility services that do not unduly burden the public, create a public safety hazard, and force the public to suffer imposition of undue risks of life, risk of safety and other harms. Specifically, each operator must fully inform the public of what steps must be taken “for public safety” if a release were to occur. 49 U.S.C. § 60116(a). The Association notes that there is no provision for qualifying the public safety in the event of a release for any reason, excuse, justification or guidance from any regulations, operations, or risk considerations whatsoever. The statutory mandate requires that the operator protect the public safety in the event of any release, regardless of how probable it may or not be. The Commission has the duty to enforce upon Sunoco that it must provide a credible and actionable public awareness program, and not just hide behind proscriptive half-measures described below.

**II. THE COMMISSION SHOULD DECLINE THE ANTICIPATED SUNOCO INVITATION TO DO NOTHING ABOUT THIS FIRST IMPRESSION ISSUE THAT PUBLIC AWARENESS PROGRAMS MUST BE CREDIBLE AND REQUIRE USEFUL PUBLIC AWARENESS PROGRAMS BE FULLY IMPLEMENTED BEFORE HVL PIPELINES ARE ALLOWED TO OPERATE IN DENSELY POUPLATED AREAS.**

The Association presents what it believes is a question of first impression that public awareness programs must be credible and useful to the affected stakeholders. The Association anticipates that Sunoco will brief that the Mariner East system meets the appropriate standards of safety for a HVL pipeline in a densely populated high consequence area. The Association also anticipates that Sunoco will argue that technical compliance with API RP 1162 is adequate to meet the requirements to act in the public safety interest in the event of a very unlikely large release of product from the Mariner East system. The Commission “does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Baker v. Sunoco Pipeline L.P.*, PUC Docket C-2018-3004294, Document 1648342 at \*21 (Order entered Dec. 18, 2019); *citing, Anal. Lab. Svcs. Inc. v. Met. Edison Co.*, Docket No. C-2006608 (Order entered Dec. 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C000015494 (Order entered Jun. 14, 2002); *Re: Met. Edison Co.*, 80 Pa. PUC 662 (Pa. Pub. Util. Comm’n 1993). But, the Commission has both the authority and the responsibility to enforce all provisions of the Federal Pipeline Safety Laws as to Sunoco’s current and proposed transport of hazardous liquids, including the hazardous, highly volatile liquids it is transporting and proposing to transport across Delaware and Chester Counties. The Association believes

that Sunoco has failed, and will continue to fail, to comply with its duty to protect the public safety of those who must live with this pipeline system.

The Association also anticipates that the operator will argue that meeting industry standards, if it does, is adequate to ensure safe and efficient operation, even though this seems to be the case of first impression questioning if standard industry practices, applied to this pipeline, meet appropriate statutory and regulatory requirements. In addition to the briefing by the Flynn Complainants incorporated by reference herein, the Association suggests that the Commission decline the opportunity to do nothing and regulate Mariner East to protect the public from this unwanted imposed risk.

A. THE PIPELINES ACT SIMPLY DOES NOT APPLY. The Association anticipates that Sunoco will argue that Section 501(a) of Act 127 of 2011 constrains the Commission from adopting regulations “not inconsistent with or greater or more stringent than the minimum standards and regulations adopted under the Federal pipeline safety law.” 58 P.S. § 801.501(a). Sunoco has falsely introduced evidence that this statute applies in this proceeding: “Counsel has also informed me that Pennsylvania’s Pipeline Safety Statute, Act 11 of 2012, prohibits the Commission from regulating pipeline safety in excess of the federal law and PHMSA regulations.” Exhibit Garrity Statement -1 at \*9, l. 15-17. However, this argument is simply nonsense. Counsel and Garrity cite to the wrong statute. Counsel ignores or hides the fact that Act 127 only applies to pipelines not operated by public utilities. 58 P.S. § 801.102. Sunoco agrees, in that Thomas Sniscak, counsel of record for Sunoco, filed a disclaimer with the Commission arguing that Act 127 does not apply to any Sunoco operations in Pennsylvania. *PA PUC Act 127 Registration Clarification, Docket No. A-2012-2294765*, Thomas Sniscak, Esq. to

Rosemary Chiavetta, Secretary, Dec. 1, 2020 <https://www.puc.pa.gov/pcdocs/1686293.pdf>.<sup>4</sup>

Mr. Snisack and his client correctly explain that the pipeline facilities within the former Philadelphia Energy Solutions facility in the City of Philadelphia, Philadelphia County, as not regulated as a public utility, were subject to Act 127. However, Sunoco Pipeline, as a public utility regulated service after *Martin*, are not subject to Act 127. Mr. Garrity's statement Counsel's statement of law was incorrect. As Sunoco has now, on record with the Commission, abandoned this legal theory, the Association suggests that Sunoco cannot hide behind Act 127 to not fully meet all requirements to operate pipeline service safely and efficiently in Delaware and Chester Counties.

B. SUNOCO SUFFERS MANY RELEASES IN PIPELINES IT OPERATES. Sunoco has experienced numerous pipeline accidents across its system over the last fifteen (15) years, including incidents in Delaware and Chester Counties as Sunoco self-reported to the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). Exhibit Friedman- 26. These incidents have released over 1.8 million gallons of hazardous liquids and caused more than \$74 million in property damage. *Id.* The Flynn Complainants brief the issue of Sunoco's operational failures adopted by the Association here.

The Association anticipates that the operator will argue that past results may not be an indicator of future performance. However, the Association argues that the Commission should take no solace in this operator's track record as recorded by PHMSA. The Commission must ensure that all operators provide safe and efficient service. The Association argues, that given

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<sup>4</sup> The Association, the Flynn Complainants and Clean Air Council filed a December 14, 2020 joint motion to supplement the record for leave to supplement record to include this document in the record.



this operator's track record, both across the country and with respect to the myriad problems with Mariner East, this operator is not to be trusted for any reason to provide any service that protects public safety under any circumstances. Especially an operation where, as readily notable in this docket, the members of the Association will likely suffer dire consequences in the event of a release from this pipeline or valve site upon Association lands.

C. SUNOCO MUST TELL THE PUBLIC HOW TO CREDIBLY RESPOND TO A RELEASE. The clear federal statutory authority in Section 60116(a) clearly requires that the pipeline operator to educate the public about what to do in the event of a release. Nothing in the statute discusses the risk of a release, the probability of a release, or anything that the Association anticipates Sunoco will brief about the alleged insignificant or minimal risk from HVL operations. The federal statute clearly requires that Sunoco educate the public on what to do WHEN a release happens.

This requirement clearly requires two elements – identify the potential harms that could be suffered by the public and tell the public *“what steps should be taken for public safety”* after the release, regardless of what the operator thinks is the probability of such an event. Sunoco's risk calculations are utterly irrelevant in this discussion. The Association, through its President, presented an exhibit showing Sunoco as the worst operator in the industry (Exhibit Friedman-26). The Commission need not consider probability of release to evaluate if Sunoco can possibly comply with the public awareness program.

Pursuant to 49 C.F.R. § 195.440 of the Federal Pipeline Safety Laws (“section 195.440”), Sunoco, as a hazardous liquids pipeline operator, is required to provide a written continuing public education program (the “Public Awareness Program”) that “assess[es] the unique

attributes and characteristics of the operator's pipeline and facilities.” See 49 C.F.R. § 195.440(b); see also American Petroleum Institute (“API”) Recommended Practice 1162 (“RP 1162”) § 2.3.1, *Public Awareness Programs for Pipeline Operators*, 1st ed., Dec. 2003, IBR [Incorporated by Reference] approved for section 195.440 (a), (b) and (c).<sup>5</sup> While RP 1162 is incorporated by reference into section 195.440, nothing in it supersedes or replaces the plain language of that section or the authorizing statutory authority.

Further pursuant to section 195.440, a Public Awareness Program must include, *inter alia*, “provisions to educate the public” on the “steps that should be taken for public safety in the event of a hazardous liquid” pipeline release.<sup>6</sup> See 49 C.F.R. § 195.440(d), underline added. By specifying a “continuing public education program,” section 195.440 makes it clear that Sunoco’s obligations are not a one-shot deal, one-and-done. Sunoco is required to continually educate the public. See Ex. Friedman-11 (API RP 1162 at p.9 fig. 2-1 (showing that Sunoco must “evaluate the program and implement continuous improvement”)). The “unique attributes and characteristics” include the extremely hazardous nature of highly volatile liquids as well as the density and immobility of vulnerable populations in harm’s way.<sup>7</sup>

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<sup>5</sup> “Pipeline operators must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute’s (API) Recommended Practice (RP) 1162, which has been incorporated by reference into the Code of Federal Regulations (CFR).” <https://marinerpipelinefacts.com/safety/public-awareness/>.

<sup>6</sup> Part 195 does not define the word “safety.” However, Merriam-Webster defines it as “the condition of being safe from undergoing or causing hurt, injury, or loss. [www.merriam-webster.com/dictionary/safety](http://www.merriam-webster.com/dictionary/safety).”

<sup>7</sup> See, Exhibit Friedman-11 (API RP 1162 § 2.6) (“this RP recognizes that there are differences in pipeline conditions, release consequences, affected populations, increased development and excavation activities and other factors associated with pipeline systems...For example, some geographic areas have a low population, low turnover in residents, and little development or excavation activity; whereas other areas have very high population, high tum over, and extensive development and excavation activity.”)

By instructing residents to “leave the area immediately, on foot” the Public Awareness Program assumes the ability to “immediately” run or walk an unspecified, yet presumably considerable, distance. It also assumes that the resident won’t have any disabilities that might make such walking difficult or even impossible, or won’t have children to carry, or won’t have responsibility for other less able-bodied persons in the household. It also directs residents who may be indoors to, in all cases, go outside. “Equipment” isn’t defined, but presumably it includes cars and other motorized vehicles given that these have a history of igniting fatal HVL accidents. A school bus driver that “suspect[s] a leak” of HVLs while driving on a busy area roadway should apparently, according to Sunoco’s utterly implausible guidance, abandon the bus and self-evacuate the area on foot, in the correct direction, with all of the children on the bus. Finally, avoiding “sources of ignition” is simply impossible in a densely populated area, and telling people to do so is absurd as telling people to hold their breath until their self-evacuation is complete.

The Delco Risk Assessment finds the probability of ignition is 100 percent above a certain size release. Exhibit Friedman-7. Thus, residents are faced with response times between release and ignition that may be better measured in seconds than minutes. On-foot self-evacuation of facilities such as schools, senior living facilities, and residential subdivisions simply cannot be rapidly carried out even under the best circumstances, let alone at night or during inclement weather. Telling the public that that is what they must do is the functional equivalent of suggest they should leave the area by flapping their arms.

Nowhere in Sunoco’s public awareness program does the company address what happens to the public if evacuation is not possible. Exhibit Friedman-3. Nowhere does Sunoco

represent in its public awareness program that there are specific steps for the public to take with respect to variations in emergency response systems. *Id.*

D. THE IMPACTED PUBLIC MUST INCLUDE ALL WITHIN 1,000 FEET OR MORE OF THE PIPELINE. The public domain includes several risk assessments that identify the potential impact radius from the Mariner East system. This Honorable Judge has already found that Sunoco's public awareness program should fully operate at least within 1,000 feet of any Mariner East pipeline. *Baker*, Document 1648432 at \*37. Her Honor already opined that further coverage beyond 1,000 feet may be appropriate. *Id.* at \*36-37. The Sunoco Canada risk assessment calculated an impact radius from an 8" line transporting HVLs of 700 meters.<sup>88</sup> Exhibit Friedman-13; Boyce Statement 1 at \*10. Sunoco did not present any evidence to dispute that its Canadian impact assessment would apply pipelines transporting the same materials in the United States. The Quest report indicated that fatalities would be "limited to a range of 2,135 feet from the pipeline" in a rupture scenario. Marx Statement 1 at \*36. Depending upon the operating pressure and the starting distance of a potential evacuee from a Mariner East release site, fatalities may occur for a person evacuating at a 5.6 mile per hour walking speed for anyone less than 500 feet away from the incident location if the affected pipeline is operating at a 1480 pounds per square inch ("psi") operating pressure. *Id.* at \*41-42. These distances increase to those within 700 feet if the operating pressure is increased to 2100 psi. *Id.* Likewise, an evacuee would suffer burns at this 5.6 mile per hour walking speed if the evacuee were to start walking at a distance of 700 feet from the incident at 1480 psi, or 1100 feet away from a HVL pipeline operating at 2100 psi. *Id.* Slower walkers further away from the

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<sup>88</sup> 700 meters is 2,297 feet or 0.43 miles.

incident would suffer similar fates. *Id.* Of note, Sunoco has not refuted this analysis in their testimony nor has Sunoco discussed any of this information in its public awareness program.

Though the Commission currently only requires notifications within 1,000 feet of the pipeline, the publicly available assessments do not show that the Commission's estimate is too large. Rather, the publicly available information shows that the Commission's estimate, which Sunoco seems to rely upon for deciding to whom to mail its brochures, may be too small to protect the public. The Association believes that any impact radius, and thus notification, distance less than 2,297 feet is inappropriate for any public awareness program. Sunoco should utilize either the publicly available distances or its own proprietary distances to set the distance from the pipeline it includes in its public awareness program.

The Association is aware of Sunoco's own studies that are not within the public domain. However, to maximize transparency, the Association relies upon publicly available evaluations, which may not precisely replicate Sunoco's estimates, are within a reasonable margin of safety of the distance to which Sunoco mails public awareness materials. Any counterargument from Sunoco that the public within the radius from the pipeline to where it mails public awareness pamphlets is utterly irrelevant.

E. THE CONSEQUENCES WITHIN THIS RADIUS COULD BE CATASTROPHIC. The record includes extensive examples of the potentially fatal consequences of a potential release from the Mariner East system. The Marx report indicates that a rupture release, however unlikely Sunoco may claim such a release may be, would likely cause burns or fatalities to anyone within at least 2,000 feet of the pipeline who may not be able to evacuate within enough time to receive aid from first responders. Marx Statement 1 at 44.

Tim Boyce, Director of Emergency Services for Delaware Petitioner, testified that no emergency response could evacuate a densely populated area in time to save them from a leak:

Q: Based on your training, education and experience, can you say that is there any emergency response you are aware of that could possibly evacuate a densely populated area or facility in Delaware Petitioner in time to save them from a delayed HVL ignition scenario?

A: No. The only possible way to prevent injuries and death is to have people well outside of the danger zone before the event. First responders simply cannot affect rapid evacuation of large urban and suburban areas. And successful self-evacuation simply isn't going to happen in the case of a large unignited vapor cloud. It's hard to imagine a scenario where someone was exposed to these materials at a level that could asphyxiate them, or [at] a level that could explode [if it found] an ignition source, that emergency responders could take an affirmative action to prevent.

With respect to evacuation of a senior living facility or hospital, such an evacuation, even under the best conditions, is likely to result in fatalities and injuries, even without the hazard of a pipeline accident. These facilities are simply not designed for rapid evacuation.

See Ex. Boyce Statement 1 at \*18. Obviously, any injuries or fatalities would be “irreparable.” People could only be safe<sup>9</sup> if they were “well outside of the danger zone before the event,” yet the Public Awareness Program fails to address this reality, substituting instead the farcical notion that people could self-evacuate from a heavier-than-air combustible vapor cloud by accelerating to maximum speed with zero response time—on foot, in the correct direction, and ahead of an ignition event that will occur without warning.

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<sup>9</sup> That is, “free from harm or risk: UNHURT.” See [www.merriam-webster.com/dictionary/safe](http://www.merriam-webster.com/dictionary/safe).

F. SUNOCO'S PUBLIC AWARENESS MATERIALS DO NOT ALL HELP THOSE WITHIN ANY EXCLUSION ZONE. The current public awareness materials do not provide any useable information to guide the impacted public how to safely respond to a pipeline release. However, it simply does not.

As the threshold, the Public Awareness Program is a soft sell, in that it does not convey to residents to sheer danger of a leak, or the urgency of evacuation. Instead, the Public Awareness Program paints a rosy “marketing” picture devoid of any mention of the extreme hazard associated with an HVL vapor cloud that may ignite, explode, or asphyxiate with deadly effect over a very large area without notice:

Underground pipelines provide a safe and efficient method of transporting a variety of products, including crude oil, gasoline, diesel fuel, kerosene, heating oil, jet fuel, butane, ethane, propane, and natural gas.

There are almost 200,000 miles of petroleum pipelines in the United States. According to U.S. Department of Transportation, pipelines are the most reliable and safest way to transport the large volume of natural gas and petroleum used in the United States. Pipelines transport two-thirds of all the crude oil and refined products in the United States. Pipelines are made of steel, covered with a protective coating and buried underground. They are tested and maintained through the use of cleaning devices, diagnostic tools, and cathodic protection. Since Americans consume over 700 million gallons of petroleum products per day, pipelines are an essential component of our nation's infrastructure.

See Ex. Friedman-22 at 1 (Public Awareness Program brochure). At no point does the Public Awareness Program brochure mention the potentially horrific consequences of a leak—unless and until one reads the chart on the last page entitled “Products That May Be Transported in Your Area”:

**PRODUCTS THAT MAY BE TRANSPORTED IN YOUR AREA**

<b>PRODUCT</b>	<b>LEAK TYPE</b>	<b>VAPORS</b>
HIGHLY VOLATILE LIQUIDS [SUCH AS: BUTANE, PROPANE, ETHANE, E/P MIX]. ONLY IN GLOUCESTER COUNTY, NJ: NATURAL GAS	Gas	Initially heavier than air, spread along ground and may travel to source of ignition and flash back. Product is colorless, tasteless and odorless.
<b>HEALTH HAZARDS</b>	May be ignited by heat, sparks, or flames and may form combustible mixture with air. Vapors may cause dizziness or asphyxiation and be toxic if inhaled at high concentrations. Contact with	
HAZARDOUS LIQUIDS [SUCH AS: CRUDE OIL, DIESEL FUEL, JET FUEL, GASOLINE, AND OTHER REFINED PRODUCTS]	Liquid	Initially heavier than air and spread along ground and collect in low or confined areas. Vapors may travel to source of ignition and flash back. Explosion hazards indoors, outdoors or in sewers.
<b>HEALTH HAZARDS</b>	Inhalation or contact with material may irritate or burn skin and eyes. Fire may produce irritating, corrosive and/or toxic gases. Vapors may cause dizziness or suffocation. Runoff from fire control or dilution water may cause pollution.	

*Id.*

Compounding this deficiency, that Sunoco’s Public Awareness Program doesn’t adequately or effectively convey the gravity of the risk, the program then offers the equivalent of instructing the public to flap their arms and fly away:

**What should I do if I suspect a leak?**

- Leave the area immediately, on foot, if possible, in an uphill, upwind direction. Follow direction of local emergency response agencies.
- Abandon any equipment being used in or near the area.
- Avoid any open flame or other sources of ignition.
- From a safe location, call 911 or local response agencies, and notify the pipeline company.

*Id.* at p.2. By instructing residents to “leave the area immediately, on foot” the Public Awareness Program assumes the ability to “immediately” run or walk an unspecified, yet presumably considerable, distance. It also assumes that the resident won’t have any disabilities that might make such walking difficult or even impossible, or won’t have children to carry, or



won't have responsibility for other less able-bodied persons in the household. It also directs residents who may be indoors to, in all cases, go outside. "Equipment" isn't defined, but presumably it includes cars and other motorized vehicles given that these have a history of igniting fatal HVL accidents. A school bus driver that "suspect[s] a leak" of HVLs while driving on a busy area roadway should apparently, according to Sunoco's utterly implausible guidance, abandon the bus and self-evacuate the area on foot, in the correct direction, with all of the children on the bus. Finally, avoiding "sources of ignition" is simply impossible in a densely populated area, and telling people to do so is absurd as telling people to hold their breath until their self-evacuation is complete. The Delco Risk Assessment finds the probability of ignition is 100 percent above a certain size release. Thus, residents are faced with response times between release and ignition that may be better measured in seconds than minutes. On-foot self-evacuation of facilities such as schools, senior living facilities, and residential subdivisions simply cannot be rapidly carried out even under the best circumstances, let alone at night or during inclement weather. Telling the public that that is what they must do is the functional equivalent of suggest they should leave the area by flapping their arms.

This guidance provided by Sunoco (immediate on-foot self-evacuation in the correct upwind or uphill direction) simply is not credibly possible for many or most residents and visitors to [Petitioner's political subdivision] while they are in unsafe proximity to the Mariner East pipelines, particularly at night or in inclement weather.

Delaware County's Director of Emergency Services, Tim Boyce, confirmed the inadequacy of Sunoco's Public Awareness Program:

Sunoco's public awareness program does not explain the extreme hazard associated with a combustible vapor cloud, nor the

distance to which hazardous or fatal consequences may be experienced suddenly in the event of ignition.

As Boyce further testified:

Q: Do you see the instructions to the public are to “leave the area immediately on foot” if they “suspect a leak.” Do you think this is a plausible plan for school children, elderly people, or those with physical or cognitive disabilities?

A: Not at all.

Q: Is it a plausible plan for HVL accidents that occur at night or during inclement weather?

A: No, I don’t think it’s a realistic instruction for anyone, at any time.

See, Boyce Statement 1 at 21. Mr. Boyce also testified regarding the public’s response to a Sunoco pipeline accident that occurred November 11, 2019 in a densely populated, high consequence area, whose populations were presumably targeted by Sunoco’s Public Awareness Program:

Q. Are you familiar with the large leak of hazardous liquids that occurred in November 2019 at Sunoco’s valve site in Middletown Township, Delaware Petitioner, near the Tunbridge Apartments?

A. Yes, I am.

Q. Did any of the local residents call to report the strong odor of flammable vapor?

A. Yes, they did.

Q. Well, did you ever find out if anyone in that incident ever implemented the guidance in Sunoco’s flyer to “leave the area immediately on foot” if they “suspect a leak”?

A. As far as I know, no one left the area on foot. I would be surprised if they did.

Q. Why would you be surprised?

A. I don't believe that most members of the general public view on-foot self-evacuation in the correct direction as a plausible instruction. Part of the problem may be that Sunoco's public awareness program does not explain the extreme hazard associated with a combustible vapor cloud, nor the distance to which hazardous or fatal consequences may be experienced suddenly in the event of ignition.

See Ex. Boyce Statement 2 at \* .<sup>10</sup>

This dialog demonstrates that the public rejects Sunoco's public awareness program as useless. Jeff Marx confirms this analysis in his timeline of events that might happen in the event of a release. Marx Statement 1 at \*42-50, Boyce Statement 1 at \*15. The Commission should not allow a public awareness plan, which could possibly meet the industry's standards, that the public and the those responsible for emergency response, believe is unimplementable.

G. SUNOCO'S ANTICIPATED LEGAL ARGUMENT THAT THE COMMISSION MAY NOT PROMULGATE REGULATIONS BEYOND FEDERAL MINIMUMS DICTATES THAT SUNOCO SIMPLY CANNOT TRANSPORT HIGHLY VOLATILE LIQUIDS WITHIN DELAWARE AND CHESTER COUNTIES.

As stated above, the Association believes that Sunoco will argue that it has no obligation than to strictly apply API RP 1162 to meet its requirements under 49 CFR § 195.440. Sunoco takes false comfort in such a theory. Instead, Sunoco must concede that, if the federal minimum regulations cannot allow Sunoco to comply with its statutory obligations, it must immediately and permanently cease all HVL transportation in Delaware and Chester Counties.

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<sup>10</sup> The fact that evidently not a single person attempted to implement Sunoco's absurd instruction to "Leave the area immediately, on foot" confirms that its Public Awareness Program is in violation of section 195.440(d).

The Congressional authority under which the United States Department of Transportation (“DOT”) promulgated Part 440 clearly requires all pipeline operators to advise the public “what steps should be taken for public safety in the event of a pipeline release.” 49 U.S.C. § 60116(a). As described above, for those who live within 1,000 feet of the Mariner East system, if there is a rupture release, the public cannot take any steps “for public safety”, as it is very likely that evacuation or sheltering in place will, for too many, become impossible.

The Association’s entire membership resides within the impact radius. Exhibit Seagraves-1. The Association’s immediate neighbors include a restaurant operation within feet of the valve site located on Association property. *Id.* The valve site upon Association property is immediately adjacent to the busy Pennsylvania State Route 352. *Id.* As the Sunoco guidance tells impacted communities to proceed uphill to an undefined “safe distance” without causing electrical sparks, there is literally no way to evacuate any mobility impacted person. As the current guidance does not advise the general public how to evaluate wind direction, how to determine a clear path in all appropriate directions, and how to contact emergency responders without causing an electrical spark, there is no way for those inside the impact zone to receive communications about any changing instructions from first responders.

The Association is not aware of any efforts by Sunoco to correlate public awareness communications with emergency response plans. It is unknown if the variety of emergency response plans by various local, county, school district and other governmental sources can be “taken for public safety” or if such measures would be effective or not. There is no evidence in the record that anyone has audited the public awareness program to show if it can be implemented in communities such as Andover. The Association suggests that no such audit

occurs because the obvious answer is that, in the event of a rupture release, the only emergency response is for first responders to create an exclusion zone around the rupture site and only enter the exclusion zone once the energy from the pipeline has dissipated.

Depending on the location, population of that area, commercial or education nearby land uses, and the number of visitors in the area of a release, the body count could be zero or dozens, hundreds, or thousands of people within the impact radius. The Association believes that this fact disqualifies any public awareness program for HVL pipelines within a densely populated area like Delaware and Chester Counties.

Any counter argument must fail. To accept Sunoco's failed public awareness program, the Commission must hold that a public awareness plan that asks the public to spin three times and touch their nose or flap their arms until becoming airborne meets the appropriate requirements. Sunoco's public awareness program is the functional equivalent of these two obviously farcical examples.

The Association anticipates that Sunoco will argue that the Commission cannot compel Sunoco to implement any program, procedure, process, or other mechanism to provide real and implementable safety information that the community believes are realistic. Sunoco should, but likely will not, admit that the variety and number of complainants and complainant-aligned intervenors in this matter indicates that the public does not believe Sunoco's public awareness program is viable or implementable on the ground. The Association also believes that Sunoco will attempt to hide behind API RP 1162, attempting to justify that strict compliance with RP 1162 is enough to communicate real and meaningful safety information to

a public that has viable information that, in the event of a rupture release, they will not survive or will be badly burned.

PHMSA clearly showed that pipeline operators should not hide behind compliance with baseline RP 1162 to comply with § 195.440. When proposing Section 440, PHMSA noted the following:

*The requirements [of API RP 1162] include baseline program requirements, which apply throughout the operator's pipeline system, and supplemental requirements, which apply to specific locations along the pipeline system where relevant location-specific factors make additional education activities necessary. Operators are required to consider the following factors when deciding where supplemental program enhancements should be added to the program, and which audience groups should be the target of the enhancements:*

- *Potential Hazards.*
- *High Consequence Areas (as defined in 49 CFR parts 192 and 195).*
- *Population density.*
- *Land development activity.*
- *Land farming activity.*
- *Third party damage incidents.*
- *Environmental considerations.*
- *Pipeline history in the area.*
- *Specific local situations.*
- *Regulatory requirements.*
- *Results from previous public education program evaluations.*
- *Other relevant needs.*

*Pipeline Safety: Public Education Programs for Hazardous Liquid and Gas Pipeline Operations, Notice of Proposed Rulemaking, 60 Fed. Reg. 35279, 35282/2 (Jun. 24, 2004).*

In the final rulemaking, PHMSA noted that

*[T]he PSIA demonstrates Congressional intent and provides that DOT may issue standards prescribing elements of effective public education programs for pipeline operators. This rulemaking will assist operators in complying with Congressional mandates. PHMSA considers development and implementation of public education programs consistent with the guidance provided in API RP 1162 as enabling pipeline operator programs for compliance and effectiveness. We*

*believe the guidance will enable operators to determine where and how public awareness programs need to be modified to ensure their effectiveness.*

*Pipeline Safety: Pipeline Operator Public Awareness Program*, Final Rule, 70 Fed. Reg. 28833, 28837/1 (May 19, 2005). Clearly, PHMSA indicated in its rulemaking docket preamble that it intended that RP 1162 guide pipeline operators to improve public communications, not restrain pipeline operators from enhancing public awareness programs to uselessness. In *Baker*, Her Honor held that operators must enhance their RP 1162 plans to meet local conditions. *Baker*, Document 1648432 at \*37, \*57 (Conclusion of Law #13). Nowhere in the Section 440 rulemaking docket does PHMSA claim that RP 1162 is the maximum extent of any public awareness program. PHMSA only holds that RP 1162 is the baseline, and that the operator must evaluate and determine enhancements which may be required on a case-base basis.

PHMSA has clearly stated its intent that § 195.440 and API RP-1162 requires the pipeline operator to exceed the baseline RP 1162 standards for pipeline operations based on specific local situations. The most critical local situation in this complaint is the fact that Sunoco cannot safely evacuate or protect the lives of the Association membership in the event of a catastrophic release of one or more Mariner East pipelines on Association property. The Association finds no assurance in the current brochures that do not provide any meaningful guidance for a homeowner suffering a potential large release within tens or hundreds of feet of their home. Nor does the Association take any comfort in Sunoco's lack of detailed localized consideration of hazards and consequences from commercial restaurant operations mere feet from a Mariner East valve site.

Sunoco must also evaluate supplemental public awareness program needs based on "results from previous public education program evaluations." The Association asks that the

Commission consider this entire proceeding as an evaluation of Sunoco's program, finding that the public has utterly rejected the public awareness program as useless. For this finding, the "public" should include all pro se complainants and all complainant aligned intervenors as expressing concerns about, *inter alia*, Sunoco's existing public awareness program.

The Association believes that Sunoco will try to hide behind the argument that it follows industry standards. However, industry standards are seen by the community, including both counties, several school districts, a number of municipalities and many individuals, as wholly inadequate. Otherwise, the roster of complainants and complainant aligned intervenors would not be briefing this matter. The practices of other pipeline operators transporting HVLs are likewise irrelevant to the hazards Sunoco imposes upon an unwilling public in the Mariner East system. The adequacy of other operators' public awareness programs is not at issue here. That discussion is for another day.

The Commission has a few options. One, compel Sunoco, within the metes and bounds of § 195.440, to craft a credible and implementable public awareness plan and require a comprehensive audit that allows municipal governments, school districts, homeowners associations and interested public to evaluate, and reject, any inadequate public awareness plan under the supervision of the Commission (likely by the ALJ hearing this matter on behalf of the Commission). If the operator is unable to show the public that it has actually crafted an implementable public awareness plan within a reasonable period of time (less than one year), Sunoco loses its rights to transport HVLs in the Mariner East system in Delaware and Chester Counties. Second, the Commission can hold that a useless public awareness plan that hides behind API RP-1162 meets all requirements and allows the courts to test this illogical



determination. Third, the Commission can use its omnibus authority under Section 1501 and permanently enjoin Sunoco from transporting HVLs in the Mariner East system in Delaware and Chester Counties.

H. THE ASSOCIATION'S PROPOSED RELIEF IS WELL WITHIN THE PUBLIC INTEREST.

The Association respectfully requests that the Commission immediately enjoin Sunoco from continuing construction on and operations of the Sunoco Mariner East Pipeline until and unless Sunoco provides a comprehensive and credible notification and Public Awareness Program that includes an evacuation plan that the Commission certifies meets the requirements of section 195.440, as well as such other relief the Commission deems necessary and appropriate in the interest of securing the safety of the Association's Members, guests, visitors and invitees, including vulnerable populations in the densely populated area in and around the Association's Thornbury Township location.

The relief sought here—that Sunoco discontinue construction and operations on the Mariner East pipeline until and unless it provides a regulatorily compliant Public Awareness Program—is certainly not injurious to the public interest. To the contrary, it will be injurious to the public interest if the relief requested is not granted. Further, *failure* to grant the requested relief will be injurious to the public interest.

The Association believes that Sunoco will argue that the Association's requests for a viable and actionable public awareness plan that has meaning to the neighbors and stakeholders, the Flynn Complainants' requests for actual and implementable evacuation plans and a real corrosion protection plans, the pro se complainants' requests for actual emergency response coordination, and the various intervenor's requests for early warning systems, better

integration and effective training are all beyond the Commission’s authority. In the alternative, that requiring real and actionable public awareness plans would exceed the normal standard of “reasonable and adequate service” as anticipated in *Analytical Laboratory Services*. The Association requests that the Commission decline this opportunity. The Association argues here that Sunoco’s public awareness plan cannot meet the statutory requirement to advise the community what to do in the event of a release. Because there is simply nothing that the Association’s members can possibly do if there was a significant pipeline release from the Mariner East system on or near Association property.

#### **PROPOSED CONCLUSIONS OF LAW**

1. The applicable public awareness regulations at 49 CFR § 195.440 expressly requires an enhancement of a baseline public awareness program to account for local conditions.
2. A pipeline operator must inform the public of “what steps should be taken for public safety in the event of a pipeline release.” 49 U.S.C. § 60116(a).
3. The potential consequences of a pipeline release from the Mariner East pipeline system in Delaware or Chester Counties, Pennsylvania include death or severe injury for those within at least 2,297 feet of the pipeline.
4. The Mariner East public awareness program is also inadequate in that Sunoco does not include all addresses within at least the 2,297 feet impact radius that Sunoco Canada published for an 8” HVL pipeline, or a further distance as may be determined by Sunoco’s own calculations or use of the publicly available risk assessments published by Delaware County or the Citizens’ Risk Assessment or others.

5. There is no credible public awareness information that Sunoco could provide “for public safety” in the event of a significant pipeline release in the densely populated area such as Thornbury Township, Delaware County.
6. The burden is upon Sunoco, as the pipeline operator, to provide credible and useful public awareness information to nearby stakeholders within the Part 195 notification radius.
7. Sunoco has failed to provide any useful public awareness information concerning the public safety in its periodically mailed pamphlets or other media.
8. Sunoco’s generic advice to proceed by foot upwind to a safe distance is inoperable by the general public.
9. Sunoco’s public awareness program was shown to have failed as, in the Middletown Township incident and the West Goshen Township incident, no evidence exists to show that any public evacuation or other precautions were taken by anyone.
10. Sunoco’s public awareness program for the Mariner East pipeline system is simply not credible.
11. A pipeline operator must enhance their public awareness program such that the program is viewed as credible to the appropriate stakeholder community.
12. The applicable stakeholder community must include various local municipalities, residents, operators of institutional facilities, and excavators.
13. The Commission has no authority to authorize a farcical or not credible public awareness program as compliant with Section 195.440.

14. In the absence of a credible public awareness plan, Sunoco may not operate the Mariner East highly volatile liquids pipeline in Delaware and Chester Counties, Pennsylvania.
15. The Pipeline Act, Act 127 of 2011, 58 P.S. § 801.101 *et. seq.*, does not apply to public utility pipelines, including Mariner East 1, Mariner East 2, Mariner East 2X, and the “12-inch work around pipeline” when transporting HVLs in public utility service in Delaware and Chester Counties.

### **CONCLUSIONS AND REQUESTED RELIEF**

The Andover Homeowners’ Association, Inc. respectfully requests that the Pennsylvania Public Utility Commission find that Sunoco Pipeline L.P. violated and continues to violate its duty to provide appropriate and useful information to advise the affected public how to respond to a release from one or more of the hazardous highly volatile liquids pipelines that comprise the Mariner East system. Specifically, the Association requests that the Commission find that Sunoco’s inadequate public awareness program offered by the operator violates 49 C.F.R. § 195.440, 52 Pa. Code § 59.33(a), 66 Pa. C.S. § 1501, and 49 U.S.C. § 60116(a). The Commission has the duty and authority to grant the Association’s requested relief under 66 Pa. C.S. §§ 501 and 1505. The Association requests that the Commission specifically find that Sunoco failed to provide a credible and usable public awareness plan to guide the public, the first responders and other stakeholders with useful and actionable information indicating how to respond to a pipeline release of Mariner East HVLs in the Delaware and Chester County communities.

The Association understands that, to a certain extent, this is a case of first impression. The Association asks the Commission to rule, seemingly for the first time, that it has the

authority to rule that a pipeline operator has no right to hide behind cookie-cutter alleged compliance with Section 440 and act like it complies with the appropriate law.

The conduct of other operators in the industry is irrelevant here. This matter simply concerns Sunoco's lack of a credible public awareness program in Delaware and Chester Counties. The Association also understands that the pipeline industry may consider strict compliance with 49 U.S.C. § 60116(a)'s requirement to protect the public safety regardless of a pipeline operator's allegations of probability of such an event as a radical departure. However, the Association asserts the Commission must hold Sunoco's plan inadequate based simply on the plain black letter law authorizing all pipeline regulation in the United States. Otherwise, the Commission leaves the communities adjoining HVL pipelines without recourse to address the imposed risks of dangerous industrial operations upon local property without recourse to at least provide some level of public safety that the community members will not be grievously harmed or killed in the event of a certain pipeline release. The Commission has the duty to place the burden on the operator to prove that its public awareness plan is actionable to the satisfaction of the Commission, county emergency responders, municipalities, homeowners' associations, institutional operators and other stakeholders in densely populated urban Delaware and Chester Counties or deny the operator the right to operate HVL service in urbanized communities in Delaware and Chester Counties

### **PROPOSED ORDERING PARAGRAPHS**

The Association proposes the following ordering paragraphs:

- (1) Sunoco Pipeline L.P. is in violation of 49 C.F.R. §195.440 for failure to comply with the requirement to provide a credible public awareness program in Delaware and Chester Counties, Pennsylvania.
- (2) The Commission hereby suspends the Certificate of Public Convenience of Sunoco Pipeline L.P. within Delaware and Chester Counties, enjoying this operator from providing highly volatile natural gas liquid transportation services on the Mariner East 1, Mariner East 2, Mariner East 2X or the 12" Point Breeze to Montello pipelines within Delaware and Chester Counties, Pennsylvania.
- (3) Sunoco Pipeline L.P. shall, before transporting highly volatile liquids in Delaware and Chester Counties, submit to the Commission for the Commission's approval, a plan to draft and implement a public awareness program that meets all applicable requirements for all identified stakeholders living, working, operating facilities, excavating or responding to emergencies within Delaware and Chester Counties:
  - a. That includes all consequences of pipeline releases in Delaware and Chester Counties, including death, burns, evacuation injuries, and other harms foreseeable to the general public and vulnerable populations.
  - b. That has been reviewed and approved by the Delaware County and Chester County Directors of Emergency Services.

- c. That has been reviewed and approved by a third party reviewer, compensated by Sunoco and chosen by the complainants and complainant-aligned intervenors and approved by the Commission, on behalf of the public.
  - d. That fully describes, on a neighborhood or facility level, how to safely evacuate or otherwise respond to a pipeline release in a manner that facility operator certify as reasonable and is approved by each fire department, police department and ambulance service providing services within the impact radius of the Mariner East pipeline system.
  - e. That fully describes how to safely contact authorities in the event of a pipeline release, and how the general public would determine what a “safe” distance may be from a pipeline release.
  - f. That fully describes a periodic third party audit system, to be funded by Sunoco and conducted by a third party approved by the Commission, that audits all elements of a public awareness program.
- (4) Sunoco Pipeline L.P. shall expand its coverage of its public awareness program to the greater of 2,297 feet from any Mariner East pipeline or the distance that Sunoco Pipeline L.P. determines as the impact radius of a Mariner East pipeline release from consequence modeling conducted by or on behalf of Sunoco Pipeline L.P. and submitted to the Commission in the Proprietary record.

Respectfully Submitted,

Date: December 14, 2020

/s/ Rich Raiders

Rich Raiders, Esq.

Attorney 314857

Raiders Law PC

1150 Chestnut Street

Lebanon, PA 17042

484 509 2715 voice

610 898 4623 fax

[rich@raiderslaw.com](mailto:rich@raiderslaw.com)

*Attorney for Complainant/Intervenor, Andover  
Homeowners' Association, Inc.*



**CERTIFICATE OF SERVICE**

I hereby certify that I have served the Brief of Andover Homeowners' Association, Inc. upon those listed on the attached service list.

Date: December 14, 2020

/s/ Rich Raiders

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*

Rich Raiders, Esquire  
Raiders Law PC  
606 North 5<sup>th</sup> Street  
Reading, PA 19601  
rich@raiderslaw.com  
*Counsel for Andover Homeowners' Association,  
Inc.*

Anthony D. Kanagy, Esquire  
Garrett P. Lent, Esquire  
Post & Schell PC  
17 North Second Street, 12<sup>th</sup> Floor  
akanagy@postschell.com  
glent@postschell.com  
*Counsel for Intervenor  
Range Resources – Appalachia LLC*

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, East Goshen  
Township, Downingtown Area School District,  
Rose Tree Media School District*

Erin McDowell, Esquire  
3000 Town Center Blvd.  
Canonsburg, PA 15317  
emcdowell@rangeresources.com  
*Counsel for Range Resources Appalachia*

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 Intervenors Uwchlan Township  
and the County of Chester*

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*

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*

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

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

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  
*Counsel for Clean Air Council*

Rebecca Britton  
211 Andover Drive  
Exton, PA 19341  
rbrittonlegal@gmail.com  
*Pro se Complainant*

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  
*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  
*Counsel for Edgmont Township*

Laura Obenski  
14 South Village Avenue  
Exton PA 19341  
ljobenski@gmail.com  
*Pro se Complainant*

Thomas J. Sniscak, Esq.  
Whitney E. Snyder, Esq.  
Hawke, McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
Tel: (717) 236-1300  
tjsniscak@hmslegal.com  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

Robert D. Fox, Esq.  
Neil S. Witkes, Esq.  
Diana A. Silva, Esq.  
MANKO, GOLD, KATCHER & FOX, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004  
Tel: (484) 430-5700  
rfox@mankogold.com  
nwickes@mankogold.com  
dsilva@mankogold.com  
*Counsel for Sunoco Pipeline L.P.*