



Pennsylvania Public Utility Commission
Attn: Secretary Rosemary Chiavetta
400 North Street
Harrisburg, PA 17120

April 12, 2022

RE: Joint Comments on Docket No. L-2019-3010267

Dear Secretary Chiavetta:

Clean Air Council (the "Council"), Delaware Riverkeeper Network, Del-Chesco United for Pipeline Safety, Environmental Integrity Project ("EIP"), Food and Water Watch, Mountain Watershed Association, PennFuture, Pipeline Safety Coalition (collectively, "Advocates") timely submit the following comments on the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Proposed Rulemaking Order docketed at L-2019-3010267, concerning hazardous liquid public utility safety standards.

The Council is a member-supported non-profit environmental and health organization headquartered at 135 South 19th Street, Suite 300, Philadelphia, Pennsylvania 19103. For more

than 50 years, the Council has worked across Pennsylvania and surrounding states to protect everyone's right to a healthy environment. The Council has taken an active role in PUC pipeline regulation since April 21, 2014, when it filed its Petition to Intervene in the consolidated dockets Nos. P-2014-2411941 et seq. for petitions of Sunoco Pipeline L.P. ("Sunoco") regarding pump stations for the Mariner East pipeline system. Since that time, the Council has been a leader in advocating for protections for communities devastated by the construction of the Mariner East project, and in working to prevent similar threats in the future.

Del-Chesco United for Pipeline Safety is a nonpartisan, fact-based, grassroots coalition of locally-based safety groups, made up of concerned Pennsylvanians from across our Commonwealth. Our mission is to unite people through education and to encourage our elected officials to make informed policy decisions for the safety and well-being of our communities.

The Delaware Riverkeeper Network, a 501(c)(3) non-profit environmental organization, has been working since 1988 to protect and restore the Delaware River and all its tributaries. We help citizens address threats in their own communities; restore damaged streams, wetlands and ecosystems; collect water quality data needed to secure sound decision-making; and when necessary enforce the environmental protection laws that keep us all safe.

EIP is a non-profit organization dedicated to ensuring the effective enforcement of state and federal environmental laws in order to protect public health and the environment. EIP has three goals: (1) to provide objective analyses of how the failure to enforce or implement environmental laws increases pollution and affects public health; (2) to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) to help local communities obtain the protection of environmental laws. EIP was founded by former U.S. Environmental Protection Agency (EPA) enforcement attorneys, and has staff and members residing in Pennsylvania working to reduce pollution from oil and gas operations in the Commonwealth.

Food & Water Watch is a 501(c)3 non-profit organization which mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. We work to protect people's health, communities, and democracy from the growing destructive power of the most powerful economic interests. Food & Water Watch has been actively involved in the Mariner East pipeline project which has jeopardized the health, safety and well-being of Pennsylvanians, polluted water resources and puts communities at unacceptable, unnecessary and unmitigated risk.

PennFuture is a Pennsylvania membership-based public interest, environmental organization whose activities include advocating and advancing legislative action on a state and federal level; providing education for the public; and assisting citizens in public advocacy. PennFuture is

concerned with the protection of Pennsylvania’s waters and the conservation of its resources for future generations.

Pipeline Safety Coalition is a 501(c)(3) non-profit, national pipeline safety advocacy organization working in the public interest. Our vision is a citizenry that is aware, informed, and engaged regarding fossil fuel pipeline safety throughout its entire life cycle: from wellhead to consumer and from planning, siting, and construction to abandonment and decommissioning. We have been proactive in all aspects of the Mariner East project; from direct discussions with Sunoco in their planning stage, participation in Advocate filings, individual filings by Pipeline Safety Coalition, and educational interaction with communities. Pipeline Safety Coalition considers the community to be all members living in the same place and therefore has provided mentoring and educational resources to the public, officials, emergency response teams, NGOs, and pipeline operators. As indication of concerns for the unique safety risks posed by the Mariner East pipeline in Chester County, especially in high consequence areas (“HCA”) and environmentally sensitive areas (“ESA”), Pipeline Safety Coalition was granted federal funds in a Pipeline Hazardous Material Safety Administration (“PHMSA”) Technical Assistance Grant to create a Chester County Pipeline Preparedness and Emergency Response Guidebook.¹

Mountain Watershed Association (MWA) is home to the Youghiogeny Riverkeeper. MWA is a Pennsylvania tax-exempt non-profit organization whose mission includes protecting, preserving, and restoring the Indian Creek and Greater Youghiogeny River Watersheds. MWA pursues on-the-ground restoration of past damage while also advocating on local issues as well as regional and national issues that have a local impact.

Rich Raiders, Esq., contributed his substantial technical and legal expertise to these comments, relying on both his experience as a petroleum engineer generally, and his extensive background with pipeline safety in Pennsylvania in particular. He also served as a technical expert on the Pennsylvania Department of Environmental Protection’s workgroup to draft technical guidance for trenchless technology.

I. Introduction

The Commission has, for many years, recognized that when a utility company operates public utility service in the Commonwealth, it accepts an affirmative duty to uphold public safety. “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.” 52 Pa. Code

¹ Available at :

<https://pipelinesafetycoalition.org/engagement-advocacy-programs/community-awareness-networks/chestercountygidebook/>

59.33. The spate of dangerous and destructive pipeline incidents in recent years, especially those caused by Sunoco Pipeline, LP in constructing and operating the Mariner East hazardous liquids pipelines, has laid bare the reality that this duty is often neglected. From the loss of drinking water supplies, to sinkholes exposing active pipelines in residents' backyards, to critical safety information being withheld from schools and first responders, the public deserves better. The law demands better. This rulemaking is an appropriate and desperately-needed response to years of advocacy calling for the Commission to step up to protect the public it exists to serve. Advocates commend the Commission for taking its responsibility seriously and for listening to the concerns of residents. At the same time, it is important that the significance of this rulemaking not be diminished by lack of detail or failing to address key issues.

In this comment, Advocates highlight opportunities for the Commission to identify, implement, and enforce reasonable standards to enhance public safety, pipeline safety, and utility operations. Examples are drawn from Advocates' experience with projects throughout Pennsylvania, technologies which are reasonably available, programs that have worked in other states or within the federal framework, and best practices to enhance public safety and operator performance. In addition, these comments build upon the Commission's three years of participation in the Department of Environmental Protection's ("DEP") Trenchless Technology and Alternatives Analysis technical guidance workgroups.² These multi-stakeholder workgroups included representatives of industry, Pennsylvania government, Federal government, and public advocacy groups collaborating to develop best practices for trenchless technology implementation and alternatives to routing pipeline projects through environmentally sensitive areas.

The recurrent themes in these comments flow from a central lesson: we must learn from history. Accordingly, Advocates emphasize best practices, siting approval, enforcement mechanisms, and enhanced communication with affected communities.

II. Commission Authority Overview

The Commission has both the authority and the responsibility to promulgate and enforce the proposed regulations along with the additional measures Advocates suggest.

As the Commission notes, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") provides a regulatory floor for regulating pipelines, as set forth in 49 U.S.C.A. §§ 60101–60503 and implemented at 49 CFR Parts 191–193 and 195. PHMSA sets the minimum federal safety standards for the pipeline industry. 49 U.S.C. 60102(a)(2). Because the Commonwealth participates as a certified state pursuant to 49 U.S.C. § 60105(a), it is charged

² Both draft technical guidance documents are available through DEP's eComment page at: <https://www.ahs.dep.pa.gov/eComment/>.

with, at minimum, implementing and enforcing those base federal regulations. Participating states, however, “may adopt more stringent standards so long as they are compatible” with federal minimum requirements. 49 C.F.R. Part 195, *Appendix A to Part 195 - Delineation Between Federal and State Jurisdiction - Statement of Agency Policy and Interpretation*. As Advocates point out throughout these comments, many states have done just that.

In Pennsylvania, the General Assembly has delegated these duties to the Commission. The Public Utility Code grants the Commission the authority to regulate and supervise all public utilities operating within the Commonwealth, including promulgating regulations necessary to perform its duties. 66 Pa.C.S. § 501(b). Any entity operating pipelines transporting petroleum products falls under the Commission’s auspices as a public utility. 66 Pa.C.S. § 102. The Public Utility Code further provides that every public utility, which includes the subject hazardous liquid pipelines,

...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. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

66 Pa.C.S. § 1501.

Although the Commission’s authority is broadly circumscribed by legislative delegation, “the rule requiring express legislative delegation is tempered by the recognition that an administrative agency is invested with the implied authority necessary to the effectuation of its express mandates.” *Commonwealth v. Beam*, 788 A.2d 357, 360 (2002) (citing *Commonwealth v. Butler County Mushroom Farm*, 454 A.2d 1, 4 (Pa. 1982)); *Day v. Public Service Comm'n*, 167 A. 565, 566 (1933). Moreover, “[i]t is expressly provided in Section 902 (66 P.S. 1342) that, in addition to its enumerated powers, ‘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 act, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders.” *Paradise v. Pa. Pub. Util. Com.*, 132 A.2d 754, 758–59 (1957).

In promulgating regulations and other actions with potential environmental ramifications, the Commission must remain cognizant of its duties under the Environmental Rights Amendment of the Pennsylvania Constitution. Pa. Const., Art I, §27; see *City of Lancaster v. Pa. PUC*, 224 A.3d 460 n.8 (Pa. Cmwlth. 2020) (“the PUC and its adjudicatory decisions and regulations are subject to the ERA”); *Energy Conservation Council of Pennsylvania v. Public Utility Commission*, 25 A.3d 440, 446–47 (Pa. Cmwlth. 2011) (“Any decision by the PUC as to the environmental impact of [high-voltage] lines must be set against the backdrop of Article I, Section 27, of the Pennsylvania Constitution.”). Unquestionably the siting, construction, operation, and maintenance of hazardous liquids utilities has impacted and will continue to impact Pennsylvanian’s air, water, and natural environments, which the Commission is Constitutionally bound to protect.

Against this backdrop, Advocates encourage the Commission to use the full extent of its legal authority to protect the public and operators.

III. Comments

Comments to § 59.131 Purpose

The Commission’s proposed statement of purpose clearly explains that this rulemaking is intended to promulgate safety standards for hazardous liquid public utilities, states the authority for regulations which exceed federal standards, and identifies the topic of the rules in the following sections.

Advocates encourage the Commission to also root the purpose in public policy by additionally stating that the regulations are intended to protect the public and the natural environment. Advocates also ask that part of the stated purpose be to ensure that the design, construction, operation, and maintenance of hazardous liquid pipelines be grounded in best practices.

Comments to § 59.132 Definitions

Advocates support the Commission's efforts to develop a robust definitions section to help ensure that the rulemaking is readily understandable and accessible to the stakeholders. Thoughtful definitions additionally help establish the appropriate scope and reach of associated rules.

In that spirit, Advocates propose the following comments to specific definitions:

1. *Affected public*—Advocates think that the proposed definition is effective since it includes individuals within the Lower Flammability Limit. Advocates suggest that the Commission take steps to ensure that operators accurately report the LDL.
2. *Conversion*—Advocates suggest adding a definition to clarify that conversion includes inactive pipelines being brought back into service, not just pipelines being converted from one form of service to another.
3. *Covered Task*—Advocates suggest that the definition is expanded as discussed in comments to § 59.141.
4. *Emergency*—For reasons discussed in comments to § 59.133, Advocates note that the definition of “emergency” in the context of hazardous liquid pipeline safety needs to cover circumstances beyond those covered by the general definition of “emergency” in the Public Utility Code.
5. *Emergency responders*—Advocates recommend explicitly adding “school” officials or representatives to the definition of emergency responders as it is unclear whether they are included as local, city, county, or state officials and representatives.
6. *Geotechnical hazard*—Advocates think that a geotechnical hazard should not be required to be both geological *and* environmental. Being geological alone should be sufficient, but it is not under this definition.
7. *Hazardous liquid*—Advocates urge the Commission to expand this definition to include liquid carbon dioxide because carbon capture and storage projects continue to be proposed and the potentially vast network of new CO₂ pipelines could pose a serious risk of potentially extreme harm to public safety and the environment.

Comments to § 59.133 General

The proposed § 59.133 sets forth general provisions covering minimum safety standards, enforcement, records, and pipeline conversion. Advocates address each in turn and then suggest an additional subsection to establish a regulatory best practices framework.

Comments to Subsection (a) Minimum Safety Standards

The Commission's proposed language regarding more stringent federal requirements which may be passed in the future provides helpful clarity on how these regulations will be kept up to date. Advocates urge the Commission to commit to providing its own notice to stakeholders when relevant updates are made to PHMSA rules that would affect this rulemaking and to include a sentence in this rule notifying the stakeholders where to check for the Commission's list of any updates.

Comments to Subsection (b) Enforcement

Advocates agree with the Commission's inclusion of a subsection on enforcement which provides for the Pipeline Safety Section to conduct inspections and access utility records as needed to determine compliance. Ensuring compliance requires both vigilant oversight to determine compliance and setting an expectation of meaningful consequences for noncompliance. The proposed rulemaking handles the first part well by providing for oversight, and Advocates address the substance of the required reports in the appropriate sections below.

That, however, is only a start. This rulemaking is an opportunity to identify effective strategies for ensuring compliance and to clarify for the regulated community the stakes when they fail to abide by the rules. Experience teaches the importance of more robust enforcement mechanisms for hazardous liquid pipeline utilities in Pennsylvania.

The Commission has the authority to create enforcement mechanisms necessary to fulfill its statutory duty to ensure that public utilities provide "efficient, safe, and reasonable service." 66 Pa.C.S. § 1501. That authority goes well beyond the limited fines expressly authorized by 66 Pa.C.S. § 3301(c). Yet the Commission too often defaults to merely issuing fines which experience proves do not deter operators from repeated violations. The chronic recidivism of operators indicates that they consider the fines merely part of the cost of doing business, while the public repeatedly pays the true cost of their violations.

For example, between 2018 and 2021, millions of dollars in fines were levied against Sunoco Pipeline, LP, including fines from the Commission. Yet their violations persisted, undeterred.

Thus, for this rulemaking to be effective the Commission must update enforcement mechanisms by spelling out meaningful consequences for noncompliance. Doing so is necessary to fulfilling its obligation to protect the public by ensuring that public utilities, particularly dangerous utilities like hazardous liquids pipelines, comply with its regulations.

Accordingly, Advocates strongly urge the Commission to set forth additional specific enforcement options in a separate section of the rulemaking rather than nesting it under general provisions. The regulation should state that the listed enforcement mechanisms are nonexclusive because it is important for the Commissions to be able to continue to flexibly respond to violations with any sanctions or other measures necessary to fulfill its statutory duty to ensure that public utilities provide “efficient, safe, and reasonable service.” 66 Pa.C.S. § 1501.

The enforcement regulations should require the Commission to base its choice of enforcement measures on a number of factors, including:

1. Whether a particular enforcement action is necessary for public safety;
2. Severity of the violation;
3. Duration of the violation;
4. Gravity of the violation;
5. Number of times the same party has committed the same or similar offense, tallied across projects;
6. Good faith of the company in attempting to achieve compliance;
7. Degree of control the company has over the circumstances leading to the violation (including whether they were warned that there was a risk of such circumstances arising);
8. Recalcitrance in remedying the violation; and
9. Whether the violation triggers a “threatened emergency” (as defined in §50.132).

Advocates briefly address existing and suggested enforcement mechanisms as follows:

1. Fines

As stated above, one lesson from the Mariner East pipelines is that fines are of limited value, but they are still appropriate for some violations. Currently, violators are subject to “a civil penalty of not to exceed \$200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater.” 66 Pa.C.S. § 3301(c).

Advocates urge the Commission to define a “related series of violations” in its regulations, keeping the definition as narrow as statutorily permissible. Leaving the interpretation open-ended undermines the deterrent value and leaves too much room for discretionary inconsistency. Potential violators are less likely to attempt to avoid or correct violations if they believe they could successfully argue that a tenuous relationship between separate violations makes them related enough to fall under a single cap. For example, are violations related when they have same or similar root causes? When a

single ineffective policy leads to several violations? When an operator consistently fails to conduct proper inspections, leading to multiple potentially dangerous violations? Operators and the public alike would benefit from increased clarity, and the narrower the definition, the more it supports public safety and lends weight to this rulemaking.

2. Injunctions/Temporary Shutdowns of Construction or Operation

Injunctions are vital to public safety. As the Commission has recognized,

Injunctive relief is crucial to protecting the public interest. Relief is sought on behalf of the public for safety and the convenience of the public within the meaning of 66 Pa. C.S. § 1501. The public needs protection from sinkholes, water contamination, damage to public and private property, degradation of natural resources, physical injury and death... Sunoco has made deliberate managerial decisions to proceed in what appears to be a rushed manner in an apparent prioritization of profit over the best engineering practices available in our time that might best ensure public safety.

Interim Emergency Order and Certification of Material Question, p. 21 Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P. P-2018-3001453, C-2018-3001451 (May 21, 2018).

An emergency which may trigger an injunction is defined in the Public Utility Code as “a situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1. However, in the context of a hazardous liquid pipeline, there are circumstances which, if allowed to persist, could trigger catastrophic events, yet might not fall within the general understanding of a “clear and present danger.” For example, if an operator persistently ignores a structural anomaly, or does not investigate a minor leak which could indicate compromised structural integrity, they are choosing to be willfully blind to potential impending disasters. In such a case, the operator is refusing to take a required action—such as running a test, performing an inspection, or submitting a report—that is needed to definitively determine whether there is, in fact, a “clear and present danger.” At some point, the mounting chance of disaster from that neglect creates an emergency, and so an injunction until the operator performs the required task is needed to protect public safety.

Accordingly, Advocates urge that the Commission include in § 59.132 a definition of emergency specific to hazardous safety pipelines which is broad enough to cover, *inter*

alia, threats to pipeline integrity caused by sustained noncompliance with rules designed to ensure pipeline integrity. The enforcement section should then require BIE to seek an injunction for a temporary shutdown whenever it becomes aware of a qualifying situation. Anything less fails to adequately protect public safety.

3. Suspension or Revocation of the Certificate of Public Necessity (“CPC”)

Suspension or revocation of the CPC is a necessary and appropriate consequence for egregious violations, particularly if they significantly threaten or have already harmed public safety. It may also be appropriate when a violator is insurmountably recalcitrant.

For nearly 90 years, Pennsylvania courts have clearly instructed that “[t]he certificate is a privilege granted by the Commonwealth,” not “a contract nor a property interest under which its holder acquires vested rights.” *W. Pa. Water Co. v. Commonwealth Pub. Util. Commission*, 311 A.2d 370, 375–76 (Pa. Commw. 1973); *see also Day v. Public Service Commission*, 167 A. 565 (Pa. 1933); *Snyder v. Pennsylvania Public Utility Commission*, 144 A. 2d 468 (Pa. Superior Ct. 1958); *Paradise v. Pennsylvania Public Utility Commission*, 132 A. 2d 754 (Pa. Superior Ct. 1957). As the Commission has recognized, “[t]o hold otherwise would elevate to a protected right the ‘disposition [of public utilities] to serve where it is profitable and to neglect where it is not’ which administrative agencies, like the PUC, with broad regulatory powers, were created to prevent.” 2012 Pa. PUC LEXIS 896, *161–62 (Pa. P.U.C. May 3, 2012) (citing *New York & Queens Gas Co. v. McCall*, 245 U.S. 345, 351 (1917)); *Western PA Water Co.*, 311 A.2d at 371.

The Commission's authority to revoke a CPC is beyond question. The Commission has the “general power to rescind or modify its orders and to impose ‘such conditions as it may deem to be just and reasonable.’” *Western PA Water Co.*, 311 A.2d at 374 (internal citation omitted). The Pennsylvania Supreme Court instructs that, even absent conditions in a CPC, the “conclusion is inevitable that the power to rescind an order entails the authority to revoke a certificate.” *Day*, 167 A. at 566.

Although not necessary to enforcement, Advocates suggest that the Commission explicitly condition future CPCs upon compliance with applicable regulations. Doing so would highlight the potential stakes of violations and increase the deterrent effect. Additionally, Advocates urge that the Commission also consider the enforcement factors when deciding whether to grant a new CPC for a utility.

The suggested enforcement system allows the Commission flexibility in how to respond to violations and the more weighty penalties are vital to obtaining compliance from recalcitrant operators.

Comments to Subsection (c) Records

Advocates fully support all efforts to provide BIE with the full authority to inspect, at any time, any public utility records which may implicate public safety. Such records should include siting plans; preconstruction designs; construction documents; worker credentials and qualifications; best practices for each part of pipeline operations; any contents of the Section 195 manual used for each public utility service; all maintenance records; all incident reports, including those made to local, state, or federal government agencies or to professional associations; and all supporting documents for each of these types of documents. BIE has the appropriate expertise to manage, review, and audit the entire universe of pipeline operating, construction, planning, and management systems in use by each pipeline operator.

Advocates include more specific comments regarding records in the applicable sections below.

Comments to Subsection (d) Pipeline conversion

The proposed § 59.133(d) takes the important step of ensuring that a hazardous liquid pipeline utility alerts the Commission when converting a pipeline “from service not previously covered by this part.” The Commission should expand the notification requirement to include any inactive pipeline being brought into service to transport hazardous liquids. “Conversion” should be defined in § 59.132 to clarify that it includes inactive pipelines being brought back into service, not just pipelines being converted from one form of service to another.

Additionally, the paragraph should not be limited to “pipelines already designed for bi-directional flow.” Although that mirrors some language in PHMSA guidance and bidirectional pipelines might be subjected to some additional stressors, the consequences of any potential pipeline failure warrant heightened attention, particularly in light of the aging pipeline infrastructure.

The proposed section also requires utilities “engaged in conversion, flow reversal or commodity change of pipelines subject to 49 CFR 195.5” to “adhere to” related PHMSA guidance. Advocates commend the Commission for taking this step toward requiring best practices. However, more clarity is needed because the guidance is written in terms of suggestions rather than as providing mandatory directives. For example, it urges operators to “consider performing ILI and hydrostatic pressure with a spike test.” Thus, strictly speaking, an operator who “considers” such a test is “adhering to” the guidance. *Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service*, Docket No. PHMSA–2014–0040. The language in this subsection should thus explicitly state that operators are required to actually implement the measures recommended in the guidance.

Additionally, instead of simply directing the utility to follow the guidance, Advocates urge the Commission to require that for each type of test recommended in the guidance, operators must follow the more stringent of the protocols from either the most current iteration of the guidance or from other parts of these regulations. For example, if the pressure testing described in § 59.139 of this rulemaking is more rigorous, that is what this rule should require.

Since converted pipelines may be inactive pipelines being brought back into service, the Commission should expand this section to include regulations for inactive pipelines more generally. Pipeline service life should also be addressed either here or in the maintenance section. Accordingly, Advocates will address both, as well as suggestions for more broadly evaluating aging pipeline infrastructure, here.

Pennsylvania has numerous pipelines which have been in service for several decades. For example, pipelines placed in service in the 1930s were converted into the Mariner East 1 pipeline, transporting HVLs since 2014. In the interest of safety and to help the Commission better understand how pipelines age, the Commission should require a study, at least as rigorous as that in PHMSA's guidance, for *any* change of service proposed by any operator, including a change of products transported, flow reversal, instituting bi-directional flow, increase in maximum allowable operating pressure, or other issues which the Commission or BIE find appropriate. BIE should also have the authority to order such a study before any operator institutes such a change or replacement of a "significant" amount of pipe. For this purpose, Advocates suggest that replacing approximately five percent of the length of pipeline between two valve sites is "significant."

Regarding the aging pipeline infrastructure more broadly, although Advocates understand that there is no single determinant of service life of a buried pipeline, they urge the Commission to expand such reviews. As part of this rulemaking, the Commission should require each operator of each hazardous liquids pipeline to conduct a periodic "end-of-life" or "remaining life" review, perhaps every ten years, and to, where possible, incorporate then-current best practices. The Commission has already ordered a remaining life study for the ME1 pipeline, and the Advocates commend that decision.

The Commission should also require studies for pipelines over 30 years old (or another evidence-based age), and for pipelines constructed with materials other than epoxy coated steel pipe, which is the current industry best practice. Many older pipelines may be coated with tar, asbestos, or nothing at all. *Flynn, et. al., v. Sunoco Pipeline L.P.*, PUC Docket C-2018-3006116, at 33 (April 12, 2021) ("The majority of the coatings on the ME1 and 12-inch pipelines are coal tar enamel, which does not shield cathodic protection even when it is disbanded.").

The Commission also needs to consider whether additional testing should be required for CO₂ pipelines because they add another layer of hazards and potential issues related to the caustic acidic nature of CO₂. Dr. Sandra Steingraber, *Examining Carbon Sequestration with an eye on environmental justice and public health concerns*, Physicians for Social Responsibility Webinar, 4/8/2022.

The Commission should then aggregate the data from all pipelines, including in-line testing results, to assist BIE in evaluating how pipelines age. Operators should be required to submit reports of every in-line instrument (“ILI”) run performed by every public utility operator and evaluate critical performance and corrosion data. Over time, the Commission, working with sister agencies, will develop a clearer understanding of pipeline integrity which can in turn inform updated regulations, including the periodical evaluation of minimum wall thickness requirements, cathodic protection plans and technologies, and other measures used to ensure the integrity of aging infrastructure.

Lastly, the Commission should consider regulating inactive pipelines, as is done in several other states. For example, the Commission may require an inactive pipeline to be surveyed for leaks and/or disconnected after a specified time frame of 2–5 years. Advocates encourage the Commission to review a few examples of how other states address some inactive pipeline. *See, e.g.* Alabama (AL PSC Order D#17545 Rule 13); Maine (65-407 C.M.R. ch. 420, § 6(C)(1-2)); Rhode Island (815-RICR-20-00-1.10(A)).

Proposed New Section: § 59.133(e) Best Practices Framework

Advocates also strongly urge the Commission to add a subsection establishing a best practices framework which would support much of the other functionality needed from this rulemaking.

This rulemaking provides a vital opportunity for the Commission to enhance public safety and benefit all stakeholders by establishing a best practices framework. Such a framework would allow the regulations to evolve with the knowledge and experience of a broad base of experts. Advocates suggest a framework that provides tools for industry and the public. The Commission would educate operators about best practices, require adherence to select best practices, and establish best practices as the expected norm. The Commission would publish Commission-Recognized Best Practices and create a more select list of mandatory best practices.

Commission-Recognized Best Practices

First, subsection (e) should provide that the Commission shall maintain a library of “Commission-Recognized Best Practices” covering a comprehensive list of tasks, procedures, and practices. Since there are numerous sources of potential best practices, such a library would

provide clarity for operators, increase consistency, and facilitate increased safety and efficiency. To be effective, the library must be regularly updated as best practices evolve. At minimum, the Commission should commit to reviewing and updating it at least every five years. The library should be publicly available, and the Commission should notify operators whenever it is updated.

This would be a similar model to The International Standards Organization, which periodically updates its standards based on evolving standards—such as those in the International Building Code, which is routinely updated as members of trades learn from experience.

The Commission should consider establishing a balanced workgroup which includes representatives of advocacy groups and industry associations to develop the initial best practices library. Regardless, the Commission should rely on BIE to assist in developing, vetting, and reviewing best practices for pipeline construction, upgrade, change of service and maintenance projects.

Mandatory Best Practices

Additionally, the Commission should provide utilities with a curated list of mandatory best practices with which it requires operators to comply. Several other states require pipelines to follow select best practices, and the Commission has the expertise to determine which best practices are most impactful, perhaps with advice from the workgroup, if it chooses to create one.

If an operator wants to try a new, emerging best practice or an innovative approach which could evolve into a new best practice instead of implementing a mandated best practice, the operator should be required to first submit a proposal for the Commission's thorough review and approval. The Commission may approve the use of an innovation as a potential new best practice or it may not. Vendors with innovative techniques and products may even choose to use the Commission's approval as a marketing tool. Then, if the novel approach becomes an established best practice, the Commission shall update the Commission-Recommended Best Practices library and the list of mandatory best practices.

Advocates note that this approach of requiring select mandated best practices unless the Commission approves alternatives is less burdensome on operators and on the Commission than programs such as California's mandatory permitting system for natural gas operators. CA PUC § 961, <https://codes.findlaw.com/ca/public-utilities-code/puc-sect-961.html>.

Potential Sources of Best Practices

Advocates suggest several potential sources for best practices. In evaluating which specific practices to include in Commission-Recommended Best Practices, the Commission should consider whether the practice may be out of date and any biases of the group that developed the practice. Advocates are not endorsing any specific sources mentioned in the following list.

1. Consensus standards should be a primary source. They are standards from recognized standards-producing organizations generated through a process that ensures that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption and which afforded an opportunity for diverse views to be considered. This definition of “consensus standards” is adapted from OSHA's definition of “National consensus standard.” 29 CFR 1910.2(g). Some consensus standards for consideration have been generated by, *inter alia*, National Fire Protection Association, National Institute for Standards and Technology, and Common Ground Alliance.
2. Technical guidance from other Commonwealth agencies is a valuable source of best practices. In particular, DEP formed workgroups on trenchless technologies and alternatives analysis which recently released groundbreaking guidance including current best practices for geological and alternatives reviews for linear utility projects. The Commission and some of the Advocates were members of the workgroups, which also received input from PHMSA and the Fish and Boat Commission. Advocates strongly urge the Commission to require compliance with such best practices. Since the Commission, unlike DEP, is not limited to regulating only areas subject to §§ 102 or 105 permits, it should also adapt the guidance to be more broadly applicable. Advocates further urge the Commission to take advantage of any similar future work by sister agencies.
3. Industry and trade associations sometimes publish best practices. They may be updated as operators and vendors use new technologies and procedures to better meet goals, work more efficiently, save money, comply with regulations, and solve problems.
4. PHMSA provides a list of documents containing standards from several organizations, although the list includes only documents in publication at the time the regulations containing the list was finalized. 49 CFR § 195.3.
5. As Advocates note throughout these comments, several states have implemented improvements to the baseline PHMSA requirements from the 1990s, some of which might be best practices.

6. The breadth of BIE's investigations and reviews enable it to see which practices are best on the ground. The Commission should leverage that experience in generating its recommended and mandatory best practices. The Commission should provide BIE with full audit authority concerning best practices and their implementation within the scope of the Commission's jurisdiction. The Commission and BIE should use these audits to identify and study uses, problems, gaps, and solutions to problems regarding best practices in a periodic (annual) report from BIE to the Commissioners.
7. As discussed elsewhere, Advocates suggest that operators be permitted to seek Commission approval to try new innovative practices in place of mandatory best practices. When such a practice is approved, operators should report on its effectiveness, and the Commission can then review the new practice as a potential update to the best practices lists.

Comments to § 59.134 Accident Reporting

While preventing accidents from happening is ideal and much of this rulemaking is appropriately aimed at prevention, Advocates understand the risk of accidents can never be zero.

Comprehensive, transparent, and timely reporting when accidents do happen is key to preventing repeat incidents and escalation of safety threats. To that end, Advocates fully support the Commission's proposed requirements to submit failure analysis reports and root cause analysis reports. Advocates also agree that for such analysis to be meaningful, it must be done by an independent third party.

With both types of analysis, the draft language calls for a status update every 14 days if the reporting deadlines cannot be met. Advocates are concerned an unrestricted option to submit status updates instead of complying with the submission deadline is invitation for delay and abuse. This risk could be mitigated somewhat by the Commission clarifying what must be included in status updates. It is important that status updates be detailed, provide an explanation for the delay, and a timeline for completion so the Commission can ensure the analysis is proceeding appropriately. The Commission should also identify circumstances in which a status update must include draft findings and analysis. Finally, the Commission should establish a timeline under which failure to produce the final reports will trigger enforcement mechanisms from § 59.133(b).

Immediate notice of certain accidents

Advocates strongly support the proposed requirement to immediately alert the Commission to certain incidents and have a number of recommendations to strengthen this section. The cited PHMSA regulations, 49 CFR 195.50 and 49 CFR 195.52, are a reasonable starting place for

identifying which incidents warrant immediate reporting. They should, however, be expanded, and certain loopholes should be closed.

49 CFR 195.52 provides in part:

(a) Notice requirements. At the earliest practicable moment following discovery, of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in § 195.50, but no later than one hour after confirmed discovery, the operator of the system must give notice, in accordance with paragraph (b) of this section of any failure that:

- (1) Caused a death or a personal injury requiring hospitalization;
- (2) Resulted in either a fire or explosion not intentionally set by the operator;
- (3) Caused estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000;
- (4) Resulted in pollution of any stream, river, lake, reservoir, or other similar body of water that violated applicable water quality standards, caused a discoloration of the surface of the water or adjoining shoreline, or deposited a sludge or emulsion beneath the surface of the water or upon adjoining shorelines; or
- (5) In the judgment of the operator was significant even though it did not meet the criteria of any other paragraph of this section.

First, the Commission should expand the proposed rule to include incidents that may threaten public safety even absent a release of a hazardous liquid. This Commission should require immediate notice, for example, of sinkholes, landslides, and other hazardous geological conditions that may be caused or encountered during construction, operation, or maintenance. It is especially important that geohazards be immediately reported to the Commission if they occur near other utilities, such as power lines or pipelines, buildings and structures, roads, or train tracks.

Second, the Commission should require immediate reporting of releases that occur in high consequence or ecologically sensitive areas, regardless of whether any of the other listed triggers apply. Accidents that occur where there is increased population or ecological sensitivity have an increased risk of resulting in harm by the very nature of their location, and it is prudent that the Commission be informed early so it can assist in any response that may be needed.

Third, Advocates recommend lowering the property damage threshold for reporting to better reflect the significance of the damage to residents. While \$50,000 worth of damage may seem negligible to an operator, many residents would be devastated by that level of unexpected loss, even if they are eventually made whole. According to the 2020 census, the median annual income for Pennsylvanians between the years of 2016 and 2020 was \$35,518.³ To properly focus these regulations on protecting the public as opposed to operator losses, the Commission should set a threshold that is no more than half the median income. This is especially important given how little oversight there is when it comes to ensuring residents are properly compensated for the damage to their property and the tendency of operators to force residents into confidentiality agreements before providing compensation.

Consistent with the recommendations for expanded accident reporting, it is also important that the Commission close a problematic loophole in the PHMSA rules. 49 CFR 195.50 works in conjunction with 49 CFR 195.52 and has many overlapping incident categories but also creates an exception. 49 CFR 195.50 provides in pertinent part:

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following . . .

(b) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if the release is:

- (1) Not otherwise reportable under this section;
- (2) Not one described in § 195.52(a)(4);
- (3) Confined to company property or pipeline right-of-way; and
- (4) Cleaned up promptly;

An exception based on hazardous liquids spills being confined to a company's property or right of way does not reflect that reality of the threat posed by such spills. In particular, air emissions due to evaporative losses from spills of hazardous liquids are necessarily not confined to property lines or rights of way and could trigger health and environmental impacts even in relatively small quantities. Likewise, spills that initially appear to be confined to a company's property can also migrate through water and soil. It is preferable that they be reported before the threat expands, not after. Prompt cleanup of a spill is also too subjective of a factor to justify an exception to accident reporting. Advocates thus recommend the Commission take a more protective stance than PHMSA here and eliminate the PHMSA reporting exception from its own rule.

³ Available at: <https://www.census.gov/quickfacts/fact/table/PA/BZA010219>

Accidents implicating drinking water supplies

The construction and operation of hazardous liquids utilities can and has destroyed drinking water supplies of Pennsylvania residents. Advocates strongly recommend this rule provide for direct and immediate notice to owners of drinking water supplies when there is an accident or release that has the potential to impact drinking water supplies. The Commission should rely on DEP technical guidance as a starting point to determine the appropriate radius within which to notify drinking water supply owners of an accident. Consistent with that guidance, and in light of Pennsylvania's varying geological conditions which include both karst and extensive fracturing, Advocates recommend owners of any drinking water supply within 1000 feet of an accident receive notice of accidents.

Additional Parties to Receive Notice of Certain Accidents

In addition to the Commission receiving immediate notice of certain accidents, operators should also give immediate notice to emergency responders, including appropriate school officials or representatives, as they may be in the best position to take action to protect or assist the public.

Comments to § 59.135 Construction, Operation and Maintenance, and Other Reports

In this section, the Commission sets forth reporting requirements triggered by select construction, operation, maintenance, and other activities. It provides timeframes and identifies the types of information a utility must provide either automatically or upon request.

Advocates support the increased accountability for operators and the clarity the Commission provides to operators by detailing the required types of information. Advocates also commend the Commission for requiring operators to provide it with information in time for it to identify and perhaps prevent potential problems, violations, or other inadequacies. That improves upon the current system wherein the Commission usually learns about issues after the fact, impeding its ability to safeguard public safety.

Best Practice Reporting

As described in the comments to § 59.131, Advocates suggest that the Commission develops a list of mandated best practices. For construction, operation, or maintenance activities to which those best practices apply, an operator should be required to report to the Commission to either (1) confirm their use of the best practices, or (2) explain any failures to do so. The Commission may use the reports in determining what enforcement actions are most appropriate. If the operator instead wants to use an alternative practice which it believes will become a new best practice, it must first submit a proposal for the Commission's approval.

Triggers for Reporting and Notice

Advocates suggest that reporting requirements be triggered by potential impacts in addition to (not instead of) projected expenditures.

Subsection (b) should require operators to notify the Commission at least ten days before pigging or any maintenance activity which exposes the pipeline and 30 days before any activity involving the removal of a pipeline segment. Additionally, operators should notify the Commission within 14 days from the day the operator receives a Notice of Violation from DEP associated with activities covered by Section 102 or 105. Furthermore, operators must, under Subsection (d), provide copies of requested documents associated with the NOVs, including operator responses and subsequent related correspondence with DEP.

Interagency Cooperation and Information Sharing

Advocates recommend that the Commission expand this section to promote interagency cooperation and information sharing. In some instances, the Commission has parallel or overlapping authority with other agencies. As a result, the agencies may generate or require an operator to produce mutually beneficial reports.

With federal agencies, one example of such parallel authority is that the Environmental Protection Agency (“EPA”) Region III has the duty pursuant to the Risk Management Plan General Duty Clause to regulate offsite safety from hazardous materials operations. *See* 42 U.S.C. 7412(r)(1). It must act to “prevent the accidental release and to minimize the consequences of any such release” of any “extremely hazardous substance.” *Id.* The General Duty Clause also provides that “owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty . . . to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent release, and to minimize the consequences of accidental releases which do occur.” *Id.* Another example is that the Occupational Safety and Health Administration (“OSHA”) statute creates Process Safety Management requirements regulating hazardous materials impacts within workplaces. *See* 29 U.S.C. 654.5(a)(1). Furthermore, certain pipeline facilities, such as valve sites, tank farms, pipeline stations, and other service operations, are also fixed facilities subject to Clean Air Act and Risk Management Plan General Duty requirements. Many products carried in such pipelines and handled in such facilities, including propane and butane, are regulated under both programs. Both programs thus require operators to produce information relevant to the Commission’s duties.

The Commonwealth agency with the most substantial overlapping authority is DEP. In particular, DEP regulates pipeline-related activities involving water crossing or water discharges. 25 Pa. Code §§ 102, 105.

Advocates, in the spirit of interagency cooperation and efficiency, encourage the Commission to include a provision requiring itself to automatically share with EPA, OSHA, and DEP any reports touching upon mutually regulated activities. Additionally, the Commission should require any pipeline operator providing any audit response to EPA or OSHA to notify the Commission of the audit and provide BIE, upon request, with copies of any related documents the operator files with or receives from those agencies. Operators should also be required to automatically furnish BIE with copies of all pipeline-related Risk Management Plans or Process Safety Management plans. The Commission should further require operators to provide the Commission, upon request, with copies of any documents related to Chapter 102 or 105 permits, including permit applications, approvals, notices of violation, and other related correspondence with DEP.

Lastly, Advocates encourage the Commission to consult with EPA Region III, OSHA and DEP to explore ways this rulemaking could interact synergistically with regulations of those agencies.

Comments to § 59.136 Design Requirements

Advocates commend the Commission for requiring hazardous liquid pipeline utilities to account for anticipated external loads from potential geotechnical hazards beyond those listed in 49 CFR 195.110(a) when designing construction projects.

In determining the anticipated external loads, operators should be required to account for the impacts of climate change, changes in development of the area around the construction site, and changes in cover. For example, landslides become more likely as flooding and other extreme weather events increase in frequency and severity, and changes in cover could make a pipeline more vulnerable to geotechnical hazards. Nearby developments could also impact local geological features. Accordingly, designs should be reviewed at appropriate intervals, perhaps every ten years, to verify that the associated product can still withstand updated projections of external loads.

DEP's trenchless technology workgroup's proposed guidance provides a robust framework of best practices to minimize risks from various geotechnical and geological hazards. Advocates encourage the Commission to require operators to implement the procedures recommended in that guidance. Advocates further urge the Commission to confer with DEP so that any related regulations in areas where the agencies share jurisdiction operate synergistically.

Also, operators planning projects in areas in which a specific hazardous event occurs, such as the landslide that damaged the Revolution pipeline in Beaver County, should account for any

potentially relevant impacts from that event, including whether it is a warning of increasing geophysical instability.

The Commission should also mandate that operators evaluate and report any risks to property that may be caused by the geological, geotechnical, and geophysical aspects of their work, and classify such damages as reportable property damages. These evaluations should be conducted by an OQ-certified professional geologist who is licensed in Pennsylvania, registered with the Commission, and hired by the operator. Additionally, the Commission should grant BIE the discretion to oversee and audit the evaluations. The Commission has authority to promulgate such regulations under its general duty clause at 66 Pa. C.S. § 1501.

In addition, the process of conducting the studies will generate vibrations which could negatively impact land features and nearby properties. The Commission should thus consider appropriate regulations to minimize those impacts and require the operators to compensate property owners as necessary.

The Commission should also require operators to account for the impacts of realistic climate change projections over the anticipated operational lifetime of each project. For example, as the average ambient temperature and sustained temperature spikes increase, the thermal expansion of materials will be altered. Designs must address that and other potential related impacts.

Lastly, Advocates encourage the Commission to review design regulations implemented in other states to see whether similar ones would enhance the proposed regulations here.

Comments to § 59.137 Construction

Advocates support the construction regulations the Commission proposes, including the requirement for a minimum of 12 inches of clearance between any covered pipeline and other underground structures, the prohibition against miter joints of any deflection, and some modest location restrictions. As detailed below, Advocates urge the Commission to see the listed regulations as a starting point, in particular asking that the Commission more fully embrace its siting authority, more closely regulate construction methods and materials, and protect the rights of nearby landowners during construction.

Pipeline Siting

The Commission must exercise its siting authority in this rulemaking because the dangers of improper siting of a hazardous liquids pipeline could be catastrophic. The Commission has observed poor siting decisions by operators causing massive sinkholes, and such mistakes could lead to a pipeline destabilizing and result in large releases of flammable, suffocating gasses, explosions, and loss of life. This rulemaking must wisely use the lessons from prior operator

missteps, not allow incidents such as that at Lisa Drive in Chester County to portend more catastrophic events. There, an operator's pipeline siting choice caused sinkholes that cost five families their homes and caused a sinkhole which endangered the AMTRAK and SEPTA "Main Line." Sunoco also installed the Mariner East pipelines within ten feet of people's homes, under sports fields, through apartment complexes, and through many neighborhoods. Only by requiring approval of proposed siting choices can the Commission avert similar or worse incidents in the future.

For the Commission to exercise siting authority is nothing new. Since 1978, the Commission has required utilities seeking to construct a high-voltage transmission line to apply for siting approval from the Commission. 52 Pa. Code § 57.71. The statutory authority the Commission cited for that regulation is 66 Pa.C.S. § 501, which sets forth the general powers of the Commission and is equally applicable to siting of pipelines. Moreover, although some alterations would be necessary, the Commission could use substantially the same regulatory framework that it already created for high-voltage power line siting applications and approval. Public Utility Code, Subchapter G. The statutory authority for the majority of the subsection rests on generally applicable statutory provisions which also apply here, namely 66 Pa.C.S. §§ 331, 501, 504 and 1501. 52 Pa. Code Part I, Subpt C, Ch 57, Subch G. Regardless of the framework the Commission chooses, siting approval must be completed before a utility may invoke eminent domain for a location.

The Commonwealth Court has found that the Commission may review a pipeline utility's decisions to ensure that its facilities are not "unreasonable, unsafe, inadequate, insufficient, or unreasonable discriminatory, or otherwise in violation of the Public Utility Code . . .," going on to explicitly state that the siting of public utility facilities is well within the Commission's authority. *Del. Riverkeeper v. Sunoco Pipeline L.P.*, 179 A.3d 670, 693–94 (Pa. Cmwlth 2018). In *Riverkeeper*, the Commonwealth Court noted that the Commission has a number of means to regulate pipeline siting. Regarding the siting of a specific pipeline, Mariner East, the court explained that "Sunoco's decision as to the location of its facilities are within the jurisdiction of the PUC." *Id.* at 693 (citing *Cnty. of Chester v. Phila. Elec. Co.*, 420 Pa. 422, 281 A.3d 331, 333 (Pa. 1966)). The Pennsylvania Supreme Court also instructs that the Commission has "**exclusive authority over** the complex and technical service and engineering questions arising in the **location**, construction and maintenance of all public utilities facilities." *Chester Cty. v. Philadelphia Elec. Co.*, 218 A.2d 331, 333 (Pa. 1966) (emphasis added).

Although the Commission has previously hesitated to regulate pipelines in that manner, this rulemaking presents the perfect opportunity for the Commission to accept the Commonwealth Court's invitation to exercise its recognized siting authority. See Prepared Testimony of Gladys Brown Dutrieuille before the Penn. House Veterans Affairs & Emergency Preparedness Committee, May 30, 2019 at *8

https://www.puc.pa.gov/General/pdf/Testimony/BrownDutrieuille-HouseVAEP_053019.pdf (last viewed April 3, 2022).

As with high-voltage power line siting, setting forth requirements for pipeline siting approval is an example of the “reasonable rules and regulations” the Commission is empowered to create, and the experiences of the Commonwealth’s citizens underscore that such rules are vital if hazardous liquid pipeline utilities are to “maintain adequate, efficient, safe, and reasonable service and facilities.” *See* 52 Pa. Code § 1501.

Advocates encourage the Commission to maximize the value of its contributions as a participant in the DEP trenchless technology and alternatives analysis workgroups by applying those protocols in its own rules for approving pipeline locations. By doing so, the Commission will fill a regulatory gap currently caused by DEP being limited to regulating only locations where a pipeline operator disturbs or interacts with a water obstruction or watercourse. *See* 25 Pa. Code §§ 102 and 105. By invoking its inherent and judicially approved siting authority, the Commission can thus allow for consistent application of environmental and safety best practices across all locations where a pipeline operator conducts projects.

Advocates support the siting restrictions the Commission includes in its proposed §59.137(b). Advocates ask the Commission to base additional siting regulations on, *inter alia*, the mandates of 15 Pa. C.S. 1511(b), which restricts the use of eminent domain for transportation of petroleum products within “any part of the reasonable curtilage of a dwelling house within 100 meters therefrom.” *In re: Condemnation by Sunoco Pipeline L.P. (Katz)*, 165 A.3d 1044, 1047 fn. 5 (Pa. Cmwlth. 2017) (*quoting* 15 Pa. C.S. 1511(b)). The Commission should not allow new pipeline installations under residential buildings, parking areas, or immediate yards which would endanger the public in the event of an incident next to someone’s home. Overall, the regulations should direct pipeline locations be selected which prevent unnecessary impacts on residential land uses, minimize public harms, and otherwise provide for public safety.

Additionally, the Commission should follow California’s lead and require best practices in environmentally and ecologically sensitive areas. Cal. Gov’t. Code 51013.3(a) (requiring the more stringent standard of best available technology in ecologically sensitive areas). https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB864. Siting criteria should require that impacts to ecologically sensitive areas are avoided whenever possible.

Construction Materials and Methods

Advocates urge the Commission to mandate that operators use best practices for pipeline infrastructure construction. When providing notice of such activities to the Commission, the operators should be required to demonstrate which best practices it will utilize and report any

relevant emerging best practices, which the Commission may then consider for updates to the Commission-Recommended Best Practices library.

Advocates are concerned that operators are currently using inferior practices during construction, including when choosing gasketing materials, valve construction methods, and other facets of new projects. The Commission should require double mechanical seal pumps as a best practice to avoid problems with product lubricated pumps and the required maintenance and emissions from this obsolete technology. Advocates also request that the Commission investigate requiring double wall pipelines for high consequence and ecologically sensitive areas as an additional protective measure.

Advocates also want to stress the importance of the Commission thoroughly considering what requirements are needed specific to CO₂ pipelines in light of the multiple proposed carbon capture and sequestration projects. At minimum, because of the caustic nature of CO₂, the pipelines must be lined with chrome. Dr. Sandra Steingraber, *Examining Carbon Sequestration with an eye on environmental justice and public health concerns*, Physicians for Social Responsibility Webinar, 4/8/2022.

More generally, the Commission should add any regulations necessary to best ensure that operators construct projects that will withstand the normal stresses and forces of intended operations.

Impacts to the Quiet Enjoyment of Neighboring Properties

The Commission should also add regulations to force operators to account for the full impact of their construction operations upon land owners. Operators have previously imposed untenable conditions upon land owners trying to quietly enjoy their property during nearby construction. Currently, operators are not required to reasonably accommodate their hosts during activities which generate noise, vibrations, dust, and emissions on the landowner's property. For example, the Commission should enforce "quiet time" when construction noise is likely to exceed 65 decibels during any time when a resident is expected to sleep.

The Commission should also require noise abatement plans whenever anticipated noise levels Commission-defined limits for a sustained period. Advocates suggest that the requirement be triggered when levels would exceed 60 decibels during "normal sleep times" or 70 decibels—sustained noise above 70 decibels is associated with hearing loss.⁴

⁴ EPA Office of Noise Abatement and Control, *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety*, (March 1974), <https://nepis.epa.gov/Exe/ZyPDF.cgi/2000L3LN.PDF?Dockey=2000L3LN.PDF>.

The plans should require approval by local governments and the Commission before any construction begins, including a demonstration that the noise abatement plan will be effective, not cause indirect harm, and accommodate local needs. The local governments should be invited to define “normal sleep times” for the impacted community since typical sleep timing is influenced by local demographics and culture.

Additional Considerations

Construction activities should accommodate vulnerable citizens, allowing for continued access of emergency vehicles across established secondary emergency response access ways.

Separately, the Commission proposes requiring the operator to “specify the intervals at which to verify and maintain the depth of cover for all pipe.” Proposed § 59.137(e)(2). Advocates urge that, instead, the Commission is the appropriate entity to dictate such intervals. Alternatively, the operator could propose intervals for the Commission’s approval.

Advocates encourage the Commission to review additional construction-related regulations from other states for possible inclusion in this proposed rulemaking.

Comments to § 59.138. Horizontal directional drilling and trenchless technology, or direct buried methodologies

Advocates urge the Commission to require the applicable best practices from the guidance generated by DEP’s trenchless technology and alternatives analysis workgroups to the HDD regulations in this section. The Commission should assert its full siting and regulatory authority to require that operators adhere to the guidance for all HDD operations.

Maine, as well as New Jersey when its new rule goes into effect, requires operators to review their trenchless technology procedures annually and modify “as necessary to be consistent with industry best practices.” *See* 65-407 C.M.R. ch. 420, § D(6). The Commission should do likewise.

The Commission should also consider implementing other regulatory measures instituted by its counterparts in other jurisdictions where such measures could complement the best practices approach. For example, New Jersey requires that a pipeline operator prepare HDD guidelines as part of its operating and maintenance standards and submit them to the Commission for review. *See* N.J.A.C. 14:7-1.25(a). It also requires operators to (1) locate all underground facilities using test-hole excavation, (2) utilize “window” excavations—or an equally-effective and Commission-approved alternative—to ensure the integrity of HDD-installed piping, and (3) keep an inspector on site at all times when pipelines are being crossed by HDD. *See* N.J.A.C. 14:7-1.25(d), (f), (h).

Additionally, the Commission should expand the obligations under its “Protection of water wells and supplies” in proposed subsection 52 Pa. Code § 59.138(d) to include more categories of underground facilities. The Code of Maine Rules covers more than just public and private water wells. It identifies general duties and specific technical requirements for trenchless technology detection and installation where “underground electric facilities,” “sewer facilities,” and “other underground facilities,” may exist. *See* 65-407 C.M.R. ch. 420, § D(1)-(3). The Maine Code also ensures that third-party excavators are trained properly and held accountable for their work with HDD and trenchless technology. *See* 65-407 C.M.R. ch. 420, § D(4). The Commission should follow suit with its new Pennsylvania rules.

The Commission should further require operators to notify all landowners within a reasonable radius (the trenchless technology guidance suggests 1,000 feet) of a subsurface project when there will be an earth disturbance. The Commission should also require operators to provide a clear mechanism for landowners to report impacts, and then to inform the Commission of responses. The Commission should then review those and other known impacts to determine if a larger impact radius is appropriate based on actual operator experience. Such data may also be more broadly useful in further development of best practices and generally increase the Commission’s understanding of the effects of such work.

Further, while the trenchless technology group concentrated on water supply issues, the Commission should be cognizant of potential impacts of utility construction projects on on-lot sanitary disposal facilities. Pennsylvania does not keep a registry of private on-lot water treatment facilities such as residential septic tanks and similar private wastewater disposal facilities. For private sanitary or water disposal systems within a reasonable impact radius of the project, the Commission should require operators to identify and monitor the facilities, test them for any impacts from the utility project, and mitigate any damages.

As for the alternatives analysis guidance, the Commission should apply its framework to whether to approve siting of HDD projects, or, alternatively, to evaluate proposed siting before issuing a CPC for new pipeline services. The Commission, as fully described elsewhere in this comment, has full siting authority and should use it to protect the public and sensitive environments from unnecessary harm.

Comments to § 59.139 Pressure Testing

The proposed rulemaking establishes separate pressure testing requirements based on the age and condition of the pipeline. Advocates appreciate that the Commission explicitly addresses hydrostatic testing in HCAs and requires the utility to notify the Commission’s Pipeline Safety Section and public officials before testing. Advocates also agree with the Commission’s decision to require pipelines that have suffered a leak be reassessed with ILI at least annually for six years.

In addition to the following comments, Advocates ask the Commission to ensure that operators implement current best practices for pressure testing. For clarity, Advocates also recommend renaming this section, “Pressure Testing and In-Line Inspection.”

Testing Frequency

The proposed regulation specifies that lines installed before 1970 must be hydrostatically tested every ten years and assessed through in-line inspection every two. By contrast, pipelines installed after 1970 are required to be tested at least every three years.

Advocates suggest that it makes more sense to use the age of the pipeline as the criteria rather than a static installation date. It is a truism that as time passes, the pipelines will continue to age, and it is impractical to structure the regulations so that they will have to be revised through another notice-and-comment rulemaking to deal with aging infrastructure. However, if the Commission chooses to keep 1970 as a temporal line of demarcation, it must edit the regulations so that the rule covers any pipelines installed *in* 1970, not just before (§ 59.139(b)(1)) and after (§ 59.139(b)(2)).

Age is a key criterion because metal in the ground for decades may have lost any protective coating which may have been applied at installation, may have corroded to questionable wall thicknesses, and may otherwise have been compromised over time. Other states also use age as a primary determinant of hydrostatic testing frequency. For example, California requires testing pipelines over 10 years of age every five years (with effective cathodic protection) or three years (without effective cathodic protection). Cal. Gov’t Code 51013.5.

Advocates suggest a baseline of pressure testing every five years for the first 20–30 years after installation and more frequently thereafter. Other factors, such as placing a repaired line back in service, should trigger more frequent pressure tests.

The proposed regulation requires notice to the Pipeline Safety Section and to local public officials at least five business days before a scheduled test. However, it vaguely states that “shorter notice is permissible” to facilitate continued service during emergencies. Although Advocates agree that shorter notice during emergencies may make sense, *some* notice must still be required because, as the Commission implicitly recognizes, pressure testing can be dangerous to the public, and communities need time to prepare. A minimum period of notice needs to be defined, even during emergencies. If not, then the Commission must establish additional safety protocols to compensate for the lack of notice.

Testing Against Live Valves

Advocates suggest that the Commission include a provision prohibiting pressure testing against live valves. Indiana contains a provision with express language to this effect for its gas lines. *See*

170 IAC 5-3-2 (5)(e) (“No testing, by a medium other than natural gas under this subpart, may be done against a valve on a jurisdictional part of the system that is connected by the valve to a source of gas, unless a positive suitable means has been provided to prevent the leakage or admission of the testing medium into a jurisdictional part of the system.”). The Commission should direct BIE to assist in developing best practices that facilitate pressure testing without potentially impacting live operating service lines. The Commission should also require operators to block in adjacent segments during pressure testing to better isolate the pressure test from live operations in the event that an isolation valve on one or more service ends of a segment were to fail during a pressure test.

Additional Safety Measures

Utilities conducting repairs should be required to conduct non-destructive testing on repairs before a pressure test of the line, and then to conduct a pressure test before resuming service. The testing pressure should be determined by the maximal allowable operating pressure (“MAOP”) for the repaired pipeline segment.

Pressure testing with natural gas liquids may present safety hazards from which the public should be protected. The Commission should evaluate the use of hydrotesting when the product in the line would, if released, not be readily contained or confined and could cause a potential inhalation, explosion, fire, or other public hazards.

Advocates advise that the Commission update testing regulations to require a testing pressure that provides a substantial margin of safety over the proposed or current MAOP for the line being tested. A safety margin between 150 and 200 percent of MAOP is appropriate to better protect the public, especially in older lines or lines experiencing noticeable corrosion (more than 20% wall thickness loss).

Testing Water Disposal

The Commission should coordinate with DEP regarding the disposal of water from pressure tests because DEP is the lead agency regulating water discharges. However, the Commission should also require best practices in handling and disposing of pressure testing fluids. The operator should be required to provide the Commission with copies of any report or other document the operator files with DEP or any other competent agency (i.e., wastewater treatment authority) concerning the fate of such waters. The Commission should encourage recycling and treatment and discourage direct disposal to ground, even for new construction. Construction contaminants could enter the pressure testing waters during testing and handling, making ground disposal inappropriate.

Comments to § 59.140 Operation and maintenance

Advocates support that the Commission set standards for emergency responder manuals and for coordination with emergency responders in this proposed section. Advocates are also pleased that the Commission will require operators to hold annual open houses for the affected public, meet with emergency responders quarterly, and with public officials annually. Requiring emergency flow restricting devices in HCAs is also crucial for public safety.

Public Awareness and Emergency Response Plans

Advocates here specifically request the Commission further regulate the operators' emergency response and public awareness plans. The current lack of meaningful oversight jeopardizes public safety and leaves the public unsure how to act in a crisis. The experience from the Mariner East pipeline shows that absent proper oversight, communities may essentially be left to fend for themselves, hoping that their untrained 911 call center can muster a sufficient response.

The Commission has been under scrutiny for the secrecy surrounding often inadequate emergency response plans offered by operators, including in Sunoco's Mariner East project. In reality, right now a resident within the impact radius is not even guaranteed to receive a vague notice in the mail every other year. Workers in workplaces within these impact radii may have no idea that they are potentially at risk from a pipeline incident. Social media and traditional media outreach is too dispersed and generalized to effectively target communities potentially at risk.

In *Flynn*, several local governmental and school district intervenors complained that Sunoco refused to assist governmental entities in developing effective emergency response plans. Complainants also noted ways in which the information provided to the public was confusing and inadequate. For example, people were unsure where to go during an emergency, and school officials were not told whether they could use cell phones if they needed to coordinate the evacuation of hundreds of children.

The Commission referred several issues raised by the Flynn plaintiffs and intervenors to this rulemaking docket, where the Commission's November 18, 2021 Order and Opinion is hereby incorporated by reference in its entirety into this comment. *Flynn, et. al., v. Sunoco Pipeline L.P.*, PUC Docket C-2018-3006116, at 33 (November 18, 2021). The Advocates request that the Commission address each issue raised by the Flynn plaintiffs and intervenors in this rulemaking, which is the remedy the Commission provided.

The Commission should follow the evolving trend among states to require operators to submit plans for Commission approval and should mirror or exceed the more robust regulations from other states. For example, in Massachusetts and Minnesota, emergency response plans must be filed with *and* approved by the state public utility commission before operations may begin. *See* 220 CMR 19.04, 19.07 ("[A] company's ERP shall go into effect when filed with the

Department, pending Department review and approval, and shall remain in effect until a new ERP is filed or the Department directs otherwise.”), MS 299F §§ 59, 62. In Washington, emergency response plans must be filed with the public utility commission, which may, in turn, “after notice and opportunity for hearing, require that a manual be revised or amended.” WAC 480-93-180(2). In Indiana, Wisconsin, Maine, and Missouri, emergency response plans must be filed with the state public utility commission. *See* 170 IAC 5-3-2(1)-(2) (“This plan, when filed, becomes a regulation for the particular operator who filed it”), PSC 135.019(4), 65-407 C.M.R. ch. 420, § 7(D)(1)(c), 20 CSR 4240-40.030(1)(J)(1). Maine, Missouri, and New Hampshire, require that pipeline operators file public awareness plans with the state public utility commission. *See* 65-407 C.M.R. ch. 420, § 7(D)(1)(f), 20 CSR 4240-40.030(1)(J)(1), N.H. Code Admin R. Puc 506.02(t)(2).

The Commission should at minimum require operators to (1) submit emergency response and public awareness plans to the Commission for approval; (2) set appropriate criteria for approval; (3) establish required intervals for updates to plans (Advocates recommend annual updates); (4) authorize BIE to audit public awareness programs; and (5) require operators to provide written draft plans to local public officials, solicit feedback, and then implement recommended changes whenever possible because the local officials best know how to get the word out to their communities, whether there are additional key individuals who the operator should inform directly, and any community-specific details for which the plans need to account. When deciding whether to approve a plan, the Commission should also seek the involvement of municipal, institutional, educational, and citizen groups. Such a process would facilitate effective cooperation between operators, local officials, and citizens.

Additionally, learning from Sunoco’s failure to provide requested emergency response information in Delaware and Chester Counties, the Commission must establish minimum required content for mailers and meetings with the affected public, public officials, and emergency responders, as well as detailing minimum training which operators must provide to emergency responders and affected school districts. Among the necessary information is when and how to evacuate an area, including clear instructions regarding a minimum safe distance; whether cell phones may be safely used in coordinating evacuations or if the risk of a spark is too great; and if they can’t, what to do instead. The Commission must also generally require that awareness and response plans be tailored to the character and needs of the local area and not accept generic “one size fits all” plans. That the Commission explicitly requires operators to respond to first responders, public officials, and school districts to answer questions and provide reasonably requested supplemental information within a reasonable time, as defined by the Commission, is likewise crucial for public safety. Also, the Commission should follow the example of Texas which requires operators to provide specific information to the school districts and to appear at school board meetings upon request. 16 TAC 8.315.

To truly protect the public, however, the Commissions should also charge the utility with the responsibility of generating a comprehensive evacuation plan for the community. The plan should be approved by the Commission and the municipality.

By taking an active role in reviewing and monitoring emergency response plans, the Commission can play a critical role in coordinating between operators, municipal governments, school districts, local emergency responders, state emergency responders, and institutional stakeholders who must build and update their own emergency response plans.

Advocates also note that the commission should require that the affected public and emergency responders be given notice of flaring and venting events five business days in advance.

Monitoring and Alert Systems

The Commission needs to require hydrocarbon and thermal monitoring by operators on remote valve sites, pump stations, and pipeline stations. Operators should also install a SCADA silent alarm system wired to their control rooms to facilitate a rapid response to any release.

Operators should not rely on the public to report, although the Commission also should review current mechanisms for community reporting of suspected releases, including the currently required timing and methods of response.

Advocates also urge the Commission to require operators to install audible mass warning devices which will not create a spark along pipeline right-of-ways, which is one of the issues referred to this rulemaking procedure from *Flynn*.

Drills

The Commission should also require emergency response drills on a periodic schedule, including both table top drills and live exercises in the field. For example, New Jersey requires that certain lines must be subject to emergency drills on a fixed schedule. “An emergency closure drill that simulates shutting down a selected section of transmission line shall be performed at least once in a calendar year, but within an interval not to exceed 15 months. The operator may conduct a table-top emergency closure drill to meet this requirement for no more than two out of each three calendar years. The operator shall conduct a site-specific emergency closure drill at a field site at least once in every three calendar years.” N.J.A.C. 14:7-1.10(f).

Cybersecurity

Advocates also request that the Commission include regulations requiring utilities to build cybersecurity best practices into their operation and maintenance procedures. As an example of the dangers posed by lax cybersecurity, the Colonial Pipeline was hacked in 2021. Colonial Pipeline, a small portion of which is regulated by the Commission, was subject to a foreign

cyberattack where, once hackers obtained one single password, those hackers were able to disable Colonial's control center and extract a payment of millions of dollars before allowing Colonial to resume operations.

<https://www.reuters.com/business/colonial-pipeline-ceo-tells-senate-cyber-defenses-were-compromised-ahead-hack-2021-06-08/>. The Advocates are concerned that, without additional regulatory supports, other operators could be subject to a similar disruption and potential substantial harms to the operator and the public. Moreover, insofar as operators hold some information that implicates national security, they need to be responsible for implementing appropriate cybersecurity measures. Potential foreign cyberattacks are the real potential national security threat, as opposed to the controlled releases of specific information the public needs to protect itself from potential adverse pipeline events.

The Commission should require that all operators use best cybersecurity practices to protect from internet-based risk which could disrupt utility operations and cause public harm. The Advocates suggest that SCADA and electronic control, and control room operations and maintenance, be added to the list of "operator qualification" ("OQ") covered tasks and require training in cybersecurity for relevant personnel. By adding tasks associated with maintenance of far-flung control operations, equipment, sensors, and other support operations to the OQ program, and requiring updates and best practices, the Commission can strengthen Pennsylvania's pipeline infrastructure with the authority for BIE to audit and review how operators utilize best practices to avoid outside interference in pipeline operations.

Just this month, the Railroad Commission of Texas issued a notice to gas pipeline facility operators, among others, providing sources for information on current cyber threats.⁵ Advocates suggest the Commission refer to that notice and to the U.S. Department of Homeland Security's new cybersecurity requirements for critical pipeline owners and operators for guidance in developing any appropriate regulations.⁶ Additionally, the Commission should make it clear that utilities that violate such regulations are liable for any consequences.

Other Safety Measures

Regarding odorant, Advocates are pleased that the Commission will require it if other required leak detection mechanisms are not installed. However, given the potentially devastating consequences of leaks, the Commission should allow only one year until odorant would be required.

⁵ Available at:

https://www.rrc.texas.gov/media/ruaokooe/nto-its_cybersecurity_best_practices_pipelines_4-1-2022.pdf.

⁶ Available at:

<https://www.dhs.gov/news/2021/07/20/dhs-announces-new-cybersecurity-requirementscritical-pipeline-owners-and-operators>,

The Commission should also require operators to verify both line markers and depth of pipeline cover at least annually, promptly replacing any missing markers and restoring any reduced cover to required levels.

Lastly, Advocates encourage the Commission to review additional operations and maintenance regulations implemented in other states to see whether any would enhance the proposed regulations here.

In the next section of this comment, Advocates discuss potential enhancements to operator qualifications. Many of Advocates' other suggestions for Operations and Maintenance are included in comments to other sections, including cathodic protection and pressure testing.

Comments to § 59.141 Qualification of pipeline personnel

Federal regulations require hazardous liquid pipeline operators to certify individuals qualified to perform “covered tasks.” 49 CFR § 195.501 *et. seq.* In this section, the Commission expands the “covered tasks” to include construction tasks. Advocates are glad that the Commission recognizes that safe hazardous liquid pipelines depend on qualified construction workers who are properly trained, as well as on certified workers being requalified at appropriate intervals. To best support pipeline integrity, however, the Commission must further expand the definition of “covered tasks” and Commission oversight of the operator qualification (“OQ”) program.

Advocates strongly urge the Commission to define “covered tasks” as any task that impacts operation, construction, maintenance, or the integrity of a regulated pipeline, including necessary tasks involving control centers, SCADA equipment and infrastructure, and other critical control systems directly impacting pipeline operations. New Hampshire has done similarly, requiring that OQ programs include all tasks covering “operations, maintenance or new construction” that impact “the operation or integrity of the pipeline” for natural gas service. N.H. Rule 506.01(c)(2). The Commission should also consider requiring OQ certifications for on-site security workers during construction projects. The Commission has the authority to regulate the qualifications, training, and tactics for site security personnel for utility projects under its Section 1501 general duty clause. By doing so, the Commission would ensure that the public will not be subject to abusive or questionable security practices such as occurred on some parts of the Mariner East project, particularly in Chester County.

The federal regulations and the currently proposed section here leave it within the discretion of individual operators to determine necessary worker qualifications, as well as the specific tasks covered by their individual OQ programs. 49 CFR 195.509(a, b). There is no explicit oversight by PHMSA or any state agency enforcing PHMSA regulations. The Commission needs to provide supplemental regulations to avoid a patchwork of inconsistent OQ programs across the Commonwealth and to ensure that operators update the required qualifications as the skill sets

needed to adequately perform covered tasks evolve in step with new technologies and best practices.

Accordingly, the Commission should consider providing a list of the minimum required standards for OQ certification for each covered task. Any such list should be generated in consultation with industry and advocacy groups. At minimum, Advocates request that independent testing be required before a worker is OQ certified. Each operator needs to be required to supplement the training with local and project-specific information that would be unavailable through standardized training. Also, as is the case in North Carolina, OQ programs should integrate safe work practices. N.C.R. R6-39(a).

Consistent OQ standards provide the additional benefit of allowing service vendors and third-party OQ trainers to more readily provide services to multiple operators without having to tailor OQ training for each operator. This would promote efficiency and cost-saving for the operators and for vendors.

Regarding OQ requalification, Advocates recommend that OQ requalification intervals be determined by the Commission instead of by operators as currently proposed. Additionally, qualifications for a covered task should expire if a worker has not performed the task for at least six months or another appropriate interval determined by the Commission. Workers should not be able to rely on fading or obsolete skills to continue to conduct OQ certified work. The Commission should require that such a worker become recertified in that task before returning its performance.

The Commission should also consider setting up a database of approved OQ training vendors and workers qualified to perform various tasks. The Commission could then require that approved training providers apply best practices based on consensus standards and require trainers and other workers to demonstrate proficiency with the current state of technology and the relevant best practices for covered tasks.

When a project needs to be designed by an OQ certified Professional Engineer or Professional Geologist, it should be designed and overseen by ones who are licensed in Pennsylvania because project integrity and safety could be compromised by out-of-state professionals who are less familiar with Pennsylvania's unique geology.

Operators should also be required to provide the Commission with OQ qualification documentation for any OQ worker within one business day upon request by the Commission.

Comments to § 59.142 Land Agents

The proposed rulemaking recognizes the importance of ensuring that land agents associated with hazardous liquid pipelines are qualified and competent. It requires them to hold an appropriate

Pennsylvania professional license in good standing. Advocates are pleased to see the Commission taking this step to protect the rights of landowners and the public.

By further increasing scrutiny over land agents who work with regulated public utilities and the easements they negotiate, the Commission would minimize the potential harms to landowners and communities throughout the Commonwealth. To protect the public and prevent a repeat of the prevalent problems reported by landowners during the Mariner East project, including a lack of accountability for land agents and others interacting with landowners, the Commission must require more stringent qualifications; maintain a registry of qualified land agents; create a system for of accountability; and ensure transparency regarding the easements negotiated by land agents.

Land Agents

A land agent for a utility should be a licensed professional in a relevant field such as an attorney, real estate broker, professional engineer, professional geologist, or professional surveyor. To facilitate accountability, they need to be working under the auspices of a Pennsylvania professional licensing body. So, if an out-of-state professional engineer, for example, seeks to provide land agent services in Pennsylvania, they should be required to cross-register their Professional Engineer license with Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists.

The Commission should then use this rulemaking to set minimum standards for the professional qualifications and conduct of land agents, likely within the proposed OQ framework detailed above. It should also create and maintain a registry of land agents who are acting on behalf of public utilities, similar to the home improvement contractor registry maintained by the Pennsylvania Attorney General. That would enable landowners and others to review the qualifications of the land agents before negotiating with them.

To foster accountability, the Commission should establish a complaint system whereby a member of the public could inquire or complain about the conduct of land agents. The Commission must then investigate allegations of improper or prohibited conduct. If the Commission, using its ALJ system, finds that the land agent violated the public trust of their role, the Commission could both strip that agent of OQ qualification and report them to their professional oversight body within Pennsylvania for appropriate discipline. If, in reverse, the Commission becomes aware that the professional governing body disciplined the land agent for conduct related to their land agent duties, particularly if for fraud or misrepresentation, then the Commission should revoke their OQ qualifications.

Moreover, if a land agent engages in misconduct in the course of representing a company, that company should also be sanctioned.

Notice

To reduce the knowledge and power disparity between land agents and landowners, the Commission should require each land agent to provide any owner with whom they are negotiating a contract on behalf of a pipeline operator with a detailed written disclosure of the landowner's rights before commencing substantive negotiations. The handout should educate the landowner about the land agent registry, inform them that any oral representations not in a final written agreement may not be enforceable, state their right to seek counsel, and provide instructions on properly documenting the negotiations and agreements.

Easements and Other Agreements

To further provide accountability, the Commission needs to require that all agreements entered into by an operator through a land agent be publicly recorded in the County Recorder of Deeds office, as would normally be expected with a lease, deed, or easement. By contrast, easements and right-of-ways for pipelines currently need only be recorded in a simple memorandum which is too often lost. Landowners need access to both the contracts to which they are a party, which enables them to know and enforce their contractual rights, and to contracts previously negotiated by others, knowledge about which could significantly improve their bargaining position when entering into negotiations with a land agent. Welcoming and facilitating public scrutiny would also deter bad faith conduct by operators and land agents, such as intentionally omitting contract provisions that an experienced negotiator, unlike most landowners, would know to be standard.

Further, the Commission should require land agents to disclose important information to landowners before commencing negotiations, including local site conditions, such as buildings and other structures; water and wastewater features; additional nearby underground utilities; landscaping; and other features which may be subject to damage from pipeline construction. This would allow the landowner to properly assess the relative cost and value of a potential agreement. Additionally, disclosures should alert the landowners to the utility's planned hours of construction or operation, the anticipated noise levels, any known or reasonably ascertainable disruptions the land owner may experience during construction; any foreseeable risks to their property or health; and any relevant emergency response plan. The land agent should also provide the landowner with their name, address and contact information for the agent, as well as the contact information for the company employing the land agent and the operator on whose behalf the agent is employed. The Commission should also require land agents or their employers to immediately notify landowners in writing if a land agent is reassigned.

Such regulations would prevent repetition of some problems that occurred during the construction of the Mariner East pipeline, when many residents complained that land agents downplayed or ignored health risks the project posed to local residents. In Judge Barnes' April 13, 2021 decision, she notes that Sunoco failed to disclose health hazards in public pamphlets, even though they *did* make those same disclosures to excavators. In that case, Sunoco claimed

that several of the health risks they omitted were “common knowledge” and thus unnecessary to include in public pamphlets. However, they explicitly warned about several of those same health risks in a different pamphlet sent to emergency responders. Judge Barnes says this discrepancy is unjust, stating that “the public in the instant cases should be made aware of consequences just as an excavator or emergency responder is informed.” *Flynn, et. al., v. Sunoco Pipeline L.P.*, PUC Docket C-2018-3006116, at 37 (April 12, 2021) .

By implementing the above additional rule for land agent qualifications, conduct, and handling of easement documents and negotiations, the Commission would provide landowners with the opportunity for fair, informed negotiations and safeguard the interests of the public.

Comments to § 59.143 Corrosion Control

Here the Commission promulgates heightened standards for the design, installation, operation, and maintenance of cathodic protection systems. Advocates commend the Commission in particular for requiring utilities to provide written procedures which must account for worst case corrosion scenarios.

Best Practices

Advocates urge the Commission to tie corrosion control requirements to evolving best practices, even if doing so requires BIE to engage in additional rulemakings. The Commission should also authorize BIE to audit operators’ compliance with best practices to safeguard public safety.

Additional Reporting and Testing

The Commission should also require additional corrosion-related reporting and testing as follows:

First, operators should immediately notify the Commission when a pipeline requires leak or corrosion repair so that a BIE representative may, at its discretion, oversee the process or conduct an immediate inspection.

Second, operators should collect data and conduct studies necessary to ensure that corrosion protection will be effective when they initially plan construction or make major changes in construction plans, including evaluating potential interference with any cathodic protection systems of crossing utilities. They should report their findings to BIE.

Third, operators should preserve pipe segments exhibiting signs of significant corrosion until a BIE inspector reviews the involved pipe or a reasonable period of time, not less than thirty (30) days, passes. This would not only allow BIE to investigate the root cause(s) of a failure, but also to collect data to assist in updating best practices for preventing or managing future incidents.

For any removed pipe segment, BIE should set a minimum coupon (pipe sample) interval and require the operator to preserve the coupons until BIE examines them or a year passes.

Fourth, operators should report all instances of significant pipe loss, cathodic protection failure or interference, coating loss or disbonding events, surface equipment failures, and other events with the potential to cause property damage or a release. Such “near miss” reporting has been a valuable tool for the airline industry, and it could similarly improve oversight and enforcement of pipeline infrastructure.

Fifth, operators should conduct a cathodic protection study if a pipeline’s wall thickness drops below the required minimum or if there is a release. The operator should then report the results to the Commission unless there is a definitive root cause other than inadequate corrosion control.

Sixth, operators should report any pipe exposure within seven days of the exposure commencing. The report should include data on corrosion, loss of wall thickness, bare pipe, or disbondment.

Potential Electrical Interference

Advocates are concerned about potential electrical interference from competing impressed current systems compromising cathodic protection in intersecting utility systems. The Commission should require pipeline operators to coordinate with each operator of a crossing line, regardless of whether the other line is within the Commission's jurisdiction, and share information necessary to validate their corrosion protection programs. Each operator must file a report with the Pipeline Safety Section (1) describing each instance of potential electrical interference from another line, utility, land use, or structure; (2) the efforts the operator has taken to coordinate with the operator the potentially interfering structure; (3) a summary of information shared with the other operator; (4) a description of how their corrosion control program addresses any interference; and (5) any other related information the operator believes the Commission might find useful.

BIE should keep a registry of all crossing points to guide oversight and auditing programs. It should also assist operators in addressing other potential sources of interference by maintaining a list of known or reasonably suspected soils or other subsurface conditions which are known or suspected to interfere with impressed-current corrosion control systems. Such a list would help operators implement best corrosion control practices.

Aging and High-Risk Pipelines

The Commission should require periodic corrosion protection reviews of pipelines or pipeline segments that are at least thirty years old, including in-line tool inspections of such lines at least every three years. For high-risk segments, the Commission should require annual ILI inspections.

BIE should set criteria for classifying a pipeline or segment as high risk based on experience factors, including age, coating type, wall thickness loss, pressure, prior issues, cover, damage events, changes in local environment.

Transparency

To the extent possible without compromising safety, corrosion control plans should be available for public review.

Additional Comments

Advocates suggest adding standards for when the Commission would grant CPCs to new pipeline projects and establish a system for reviewing existing CPCs when a project is being substantially extended or modified. As discussed in the comments to § 59.133(b), the Commission has the authority to issue, modify, set conditions upon, and revoke CPCs. CPCs are a privilege which must be earned by providing public utility service as safely as possible.

IV. Conclusion

This rulemaking represents a significant and much-needed step toward increasing public safety and safety to the environment. The suggestions provided herein reflect the concerns of numerous stakeholders with experience with the historic consequences of hazardous liquid pipelines in Pennsylvania. Implementing the suggestions would strengthen the proposed protections by filling in gaps, avoiding potential pitfalls, and incorporating lessons from other states and from Pennsylvania's history. Advocates appreciate the Commission's consideration of these comments and look forward to further engaging in this rulemaking process, and, ultimately, to the finalization of this rule.

Respectfully submitted,



Joseph Otis Minott
Executive Director and Chief Counsel
Clean Air Council
135 S. 19th St., Suite 300
Philadelphia, PA 19103
215-567-4004 x116
joe_minott@cleanair.org

Maya K. van Rossum
The Delaware Riverkeeper
Delaware Riverkeeper Network
925 Canal St. Suite 3701
Bristol, PA 19007
keepermaya@delawareriverkeeper.org

Melissa Marshall, Esq.
Community Advocate
Mountain Watershed Association
1414 Indian Creek Valley Rd,
Melcroft, PA 15462
melissa@mtwatershed.com

Lynda Farrell
President
Pipeline Safety Coalition
lynda@pscoalition.org

Ginny Marcille-Kerslake
Eastern Pennsylvania Organizer
Food and Water Watch
gmarcillekerslake@fwwatch.org

Angela M. Kilbert
Staff Attorney
PennFuture
200 First Avenue, Suite 200
Pittsburgh, PA 15222
kilbert@pennfuture.org

Lora Synder
Leadership Team Member
Del-Chesco United for Pipeline Safety
lorasny@gmail.com

Lisa Widawsky Hallowell
Senior Attorney
Environmental Integrity Project
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005
lhallowell@environmentalintegrity.org