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Independent Regulatory Review Commission

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

May 12, 2022

RE: Joint Reply 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, PennEnvironment, and PennFuture (collectively, "Advocates") submit the following reply comments in response to previously filed comments regarding the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Proposed Rulemaking Order docketed at L-2019-3010267 concerning hazardous liquid public utility safety standards.

Advocates support the voices of Pennsylvanians who have been living with the consequences of under-regulated pipelines for too long and now urge the Commission to make effective, adaptable safety rules for hazardous liquid pipeline utilities. The Commonwealth's history teaches why this rulemaking is vital, and the arguments of industry naysayers are substantially misguided. The Commission has full authority under federal and state law for the proposed regulations, and enacting them is necessary to fulfilling the Commission's purpose under 66 Pa. C.S. §1501 ("Section 1501"). Advocate's suggested additions and alterations will enable the Commission to more robustly support that purpose. Advocates also support comments that seek enhanced clarity in the forthcoming regulations and believe such clarity will benefit both the public and the regulated community.

I. COMMENTS

A. The Commission has full Jurisdiction and Authority to enact safety rules governing hazardous liquid public utility pipelines above the federal floor.

1. Section 1501 provides full authority for the proposed rulemaking, and the federal government explicitly provides for more stringent state regulations.

Several commenters strenuously deny the Commission's authority to regulate public utility pipelines beyond the federal minimum safety regulations. In doing so, they misapprehend the law and ignore the Commission's own judgment regarding its duty to public safety. Federal regulators acknowledge that state and local agencies have the expertise to identify any additional measures required to protect the health and safety of their communities in the context of local circumstances (such as Pennsylvania's unique karst geology). This is reflected in authority delegated to the Commission by the Pennsylvania General Assembly.

The Pipeline and Hazardous Materials Safety Administration ("PHMSA") explicitly provides a regulatory floor for regulating pipelines, as set forth in 49 U.S.C.A. §§ 60101–60503 and implemented at 49 C.F.R. Parts 191–193 and 195. PHMSA sets the minimum federal safety standards for the pipeline industry.[1] A certified state pursuant to 49 U.S.C. § 60105(a), such as Pennsylvania, "may adopt more stringent standards so long as they are compatible" with federal minimum requirements.[2]

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

[1] 49 U.S.C. 60102(a)(2).
[2] 49 C.F.R. Part 195, Appendix A to Part 195 - Delineation Between Federal and State Jurisdiction - Statement of Agency Policy and Interpretation.

perform its duties.[3] The Commission must adopt regulations that ensure that every public utility, including each hazardous liquid public utility,

> ...shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 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.[4]

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."[5] 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 . . . .'"[6]

Therefore Advocates strongly refute the notion that the Commission lacks the authority to enact stricter regulation than the minimum federal standard. The Commission clearly does have such authority, and must use it to protect the public interest and safety.

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[3] 66 Pa. C.S. § 501(b).
[4] *Id.* § 1501.
[5] *Commonwealth v. Beam*, 788 A.2d 357, 360 (Pa. 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 (Pa. 1933).
[6] *Paradise v. Pa. Pub. Util. Com.*, 132 A.2d 754, 758–59 (Pa. 1957).

2. **Act 127 is irrelevant since it does not apply to public utilities which are the exclusive subjects of this rulemaking.**

Several commenters erroneously claim that Act 127 (58 PS § 801.101 *et. seq.*) limits the Commission's authority to regulate hazardous liquid pipeline public utilities. These confused objections fall into two camps. Some, such as Earl Baker and Range Resources, seem to believe that Act 127 directly limits the Commission's authority in regulating any hazardous liquid pipelines. Others, including Marcellus Shale Coalition, Local 66, and Sunoco, claim that the proposed regulations here somehow run counter to the "sentiment" behind the Act 127 restrictions.

The reality is quite the opposite. Act 127 granted *extra* authority to the Commission beyond its normal realm of regulating public utilities, charging the Commission with also regulating non-utility pipelines that would otherwise fall outside its jurisdiction.[7] Expressly within the scope of that extra authority, the legislature limited the Commission to implementing the federal minimum safety requirements.

In doing so, the legislature was well aware that the Commission already had separate authority to regulate public utility pipelines pursuant to 66 Pa. C.S. § 1501 and 52 Pa. Code § 52.33. That the legislature chose to leave that authority untouched underscores that Act 127 was a grant of additional authority with limited reach. The two-tiered regulatory system for hazardous liquid pipelines would not generate confusion or any burdens for industry, as Sunoco claims without relevant support.

Instead, the tiered system affirmatively creates options for industry. They may be governed by only the federal minimum regulations under Act 127 if they simply do not operate as a public utility. However, if they *choose* to avail themselves of the additional rights and privileges granted by the Commonwealth to public utilities, then they must also accept the corresponding increase in responsibility. The advantages to the utility are clear, including the substantial power of eminent domain. A company should have no trouble understanding that such a privilege for their company comes at a cost to the citizens of the Commonwealth, nor should a company have trouble understanding that the privilege triggers enhanced responsibilities. Public utilities must safeguard the health and safety of the Commonwealth by complying with the additional regulations promulgated by the Commission under its mandate to ensure that public utilities are safe and efficient.[8]

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[7] 58 P.S. § 801.509(a)(8)(ii).
[8] 66 Pa. C.S. § 1501.

One of the Commenters, Sunoco, proved that it was eager for the extra privileges that come with public utility status when it successfully fought for that status before the Commonwealth Court.[9] Now it wants to avoid any additional responsibilities by trying to prevent the Commission from doing its duty and using its expertise to regulate public utilities as needed for the health and safety of the Commonwealth's residents. The scope of the Commission's duty and authority to regulate public utility pipelines—the subject of this proposed rulemaking—is set forth in § 1501, completely untouched by Act 127.

3. Federal law would not preempt any of the proposed regulations.

Multiple industry commenters raise the specter of preemption without merit. Federal law preempts, meaning displaces, conflicting state law under the Supremacy Clause of Article VI of the United States Constitution. There are three forms of preemption. Express preemption applies when Congress passes a statute that expressly states that it preempts state law within a defined scope.[10] Field preemption occurs "when the federal regulatory scheme is so pervasive or the federal interest so dominant that it may be inferred that Congress intended to occupy the entire legislative field."[11] Lastly, conflict preemption "arises when state law conflicts with federal law to the extent that 'compliance with both federal and state regulations is a physical impossibility,' or the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"[12] A federal agency's regulations have the same preemptive effect over state and local laws as do Congressional statutes.[13] Importantly, any preemption analysis "begin[s] with the presumption that Congress did not intend to displace state law."[14]

The Federal Pipeline Safety Act, which confers regulatory authority upon PHMSA, contains a preemption clause that expressly allows certified states, including Pennsylvania, to "adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with" the minimum federal standards.[15] In other words, the language of the statute plainly provides that there is no express preemption of non-conflicting regulations of intrastate pipelines by a certified state. As stated, Pennsylvania is a certified state, and the proposed rulemaking covers only intrastate pipelines. Thus, there is no express preemption of any of the proposed regulations. Likewise, there is no field preemption because the same statutory language makes it clear that Congress did not intend the federal government to fully occupy the applicable regulatory field. The Pipeline Safety Act creates a federal floor, and certified states may create more stringent nonconflicting standards.

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[9] *See In re Martin*, 143 A.3d 1000 (Pa. Cmwlth. 2017)
[10] *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992).
[11] *Planned Parenthood of Indiana, Inc. v. Commissioner of Indiana State Dept. of Health*, 699 F.3d 962, 984 (7th Cir. 2012).
[12] *Id.* (citing *Arizona v. United States*, 567 U.S. 387, 399 (2012)).
[13] *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 369 (1986).
[14] *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 116 (1992).
[15] 49 U.S.C. § 60104(c).

What remains is whether any of the proposed regulatory provisions conflict with PHMSA's regulations, either making it impossible for the regulated entities to abide by both the state and the federal laws or by creating obstacles to "the accomplishment and execution of the full purposes and objectives of Congress." The proposed regulations are written to avoid any such conflicts. The proposed § 59.33 explicitly states that the minimum federal safety standards for hazardous liquid public utilities control, and that any future federal amendments "shall have the effect of amending or modifying the Commission's regulations with regard to minimum safety standards." Thus, conflict preemption is not an issue.

With that context, Marcellus Shale Coalition's ("MSC") expressed concern that the new regulations might "run afoul of the Pipeline Safety Act's preemption provision," even considering the proposed modifications to the federal regulations, seems disingenuous.[16] They do not point to a single concrete instance of potential preemption.

Sunoco, on the other hand, argues that a laundry list of proposed regulations are somehow "inconsistent" with federal regulations.[17] Yet each regulation Sunoco lists is an example of the Commission's regulations permissibly exceeding the federal floor. For example, Sunoco asserts that retroactive application of standards is not permitted under the federal statute. However, the statute only restricts the *federal* government from enacting such regulations. States are free to do so as described by Advocates direct comments filed in this docket on April 12, 2022. Another example Sunoco raises is that the proposed regulations do not permit the degree of misalignment of miter joints that is allowed under federal regulations. That is a classic example, however, of a state accepting Congress's explicit invitation to promulgate regulations that are more stringent than federal minimum standards, as are the remainder of Sunoco's examples.

Sunoco's invocation of the notion that one purpose of federal preemption is to avoid a "patchwork of regulations" that vary by state is another instance of misdirection. Although that is often a reason why the federal government chooses to preempt state regulations in an area, Congress expressly chose to allow certified states to enact more stringent regulations than the federal minimums.[18] Presumably, Congress understands the need for states to be able to: (1) elect to be more protective? of its citizenry and enact regulations in response to pipeline operators acting in ways that have harmed its citizens in the past; and (2) enact regulations that account for unique local circumstances, such as Pennsylvania's unique geological karst formations. That is what these proposed regulations accomplish.

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[16] MSC Comments at 4.
[17] Sunoco Comments at 13–14.
[18] 49 U.S.C. § 60104(c) (A certified state "may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation…compatible with the minimum standards prescribed under this chapter.")

In conclusion, there are no grounds for concern regarding federal preemption because the federal Pipeline Safety Act expressly permits states to enact more stringent regulations as long as they do not conflict with federal minimum standards, and because no commenter points to a single proposed rule that so conflicts. The Commission is acting as Congress intended by using its knowledge of the needs of the Commonwealth's citizens to appropriately craft regulations that exceed the federal minimum standards where necessary.

B. The proposed rulemaking is necessary and required to fulfill the Commission's duties under § 1501.

1. "Safety" of Hazardous Liquid Pipelines

The regulations are necessary to safe and efficient operation of hazardous liquid pipelines. Some commenters conflate the notion of pipelines being the least dangerous method of transporting hazardous liquids with the false idea that the pipelines are safe as currently operated. PHMSA publishes data tracking the still considerable number of significant pipeline incidents. PHMSA defines a serious incident as one which results in fatality or hospitalization; at least $50,000 in costs; HVL releases of 5 barrels or more or other liquid releases of 50 barrels or more; or liquid releases causing an unintentional fire or explosion.[19] In 2020 alone, 134 hazardous liquid pipeline incidents caused 5 fatalities, 12 injuries, and $137,465,994 in damages. Since 2002, they have caused 33 fatalities and over $4.7 billion in damages.[20] Expanding to all significant pipeline incidents, there have been over 5,792 since 2002, resulting in 260 fatalities and over $11 billion in damages.[21] Thus, "safest" does not equal "safe."

2. Insufficient Existing Regulations

Pennsylvania's experience with pipelines amply demonstrates that existing regulations are insufficient. Several commenters insist that the federal regulations are sufficient, ignoring Pennsylvania's history with pipelines in which the public and environment have not been protected, either due to inadequate regulation, or an inability or unwillingness of agencies to enforce existing regulation.

Sunoco's Mariner East provides a quintessential reference point for how insufficient regulation has led to public and environmental harm, going back to 2014 when, against federal

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[19] https://www.phmsa.dot.gov/data-and-statistics/pipeline/pipeline-incident-20-year-trends.

[20] https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&PortalPath=%2Fshared%2FPDM%20Public%20Website%2F_portal%2FSC%20Incident%20Trend&Page=Significant

[21] https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&PortalPath=%2Fshared%2FPDM%20Public%20Website%2F_portal%2FSC%20Incident%20Trend&Page=Significant

recommendations. Sunoco reversed the flow and changed the material on an old 1930s oil line. That line, which previously carried refined petroleum products from Marcus Hook west to Pittsburgh, already had a history of leaks. Yet current regulations allowed for even more highly volatile hazardous materials at high pressure to be transported within 600 feet of kindergarten classrooms, and within 10 feet of neighboring homes. Sunoco began using the line to transport ethane, propane, and butane from the Marcellus Shale east to Marcus Hook where they are put on ships and exported to Europe as feedstock for overseas plastics manufacturing.

In other words, current regulation allowed Sunoco, a Texas-based company developing a for-profit export pipeline project, to assume the 1930s Certificates of Public Convenience that went along with the old pipeline and become a Pennsylvania "public utility." This allowed Sunoco to claim the right of eminent domain, which is how so many hardworking private home and business owners in Pennsylvania were forced, under pressure of land agents, and in many cases under the threat of legal action, to give up their Constitutional private property rights and their land to an out of state corporation.

One of the most astonishing aspects of the Mariner East project is that no agency in the state has exercised siting authority. Sunoco transports industrial quantities of highly volatile hazardous liquids in close proximity to schools, homes, senior living centers, daycares, and many other vulnerable sites. Despite the enormous risks to health and public safety posed by this project, no regulatory body at the federal or state level reviewed Sunoco's route plan with respect to public safety, or questioned the logic of running a highly volatile hazardous liquids line though dense population centers.

In Middletown Township, Delaware County, Mariner East 2 and 2X were constructed through the center of an apartment complex where, at points, the pipes run within meters of the residential dwellings. Construction of the pipes through this densely populated residential complex resulted in a massive "frack out" that expanded to the size of a swimming pool between the two buildings. The leak of drilling fluid into the complex went on for the better part of a year causing a myriad of issues for hundreds of low and fixed income renters, including 24 hour flood lights, generators, suction trucks, barriers that prevented parking access, and fumes. In West Whiteland Township, Chester County, the construction of Mariner East 2 and 2X through a residential neighborhood resulted in sinkholes so extensive that an entire street of homeowners were forced to permanently abandon their homes. These are two of dozens of examples from across the state where the lack of siting resulted in catastrophic property losses and immeasurable psychological harm to residents.

As a result of inadequate regulation, many residents across the state are still without access to clean drinking water due to Sunoco's disastrous spills of drilling fluid and other contaminants during its construction of the Mariner East pipelines. In Indiana, Cumberland,

Berks, Chester, and Delaware Counties, residents cannot drink from threatened and contaminated private water wells. This is in large part due to the fact that federal regulations did not require consideration of local geology. Despite the fact that residents across the state raised the issues of karst geology, even submitting privately commissioned hydrogeological reports to the DEP, no regulatory body required geophysical testing as part of any regulatory or permitting process. Existing regulation and enforcement mechanisms are clearly inadequate at both the state and federal level, as operators such as Sunoco continue to rack up violations, and pay fines as part of the cost of doing business.

Contrary to the assertion that 49 C.F.R. § 195.440 is adequate, specifically assessing the plausibility and credibility of operator-provided "public awareness programs," Advocates again point out there is still no credible plan for residents to be notified or evacuated in the event of a leak. Sunoco's plan to run uphill, upwind to a distance of half a mile is neither credible nor realistic. The current regulatory schema asks communities to assume all the risk for the benefit of a private for-profit corporation.

C. Cost-Benefit Analysis and General Economic Claims

1. Cost-Benefit Analysis

Extensive cost-benefit analysis is not required, would be misleading, and would ignore unquantifiable factors vital to the Commission's mission. In response to a few commenters who raise the Regulatory Review Act's cost-benefit analysis requirement,[22] Advocates note that the Commonwealth Court has found that such an analysis need only include a general analysis of the potential costs of compliance and that cost-benefit analyses of environmental regulations typically omit significant unquantifiable benefits. The Commission submitted the required Regulatory Analysis Form ("RAF") to the Independent Regulatory Review Commission ("IRCC").[23] Although the Commission states that it has not yet quantified all potential costs to the state and to regulated entities, it says that it will "address any cost issues raised in comments and reply comments," and "anticipates that the costs to the regulated community would be outweighed by the benefits to the public interest."

In *Marcellus Shale Coal. v. Dep't of Envtl. Prot. of Pa.*, the Commonwealth Court found that the Regulatory Review Act does not require more than a general analysis of potential costs for proposed regulations.[24] There, the Marcellus Shale Coalition challenged regulations proposed by the Department of Environmental Protection ("DEP") concerning unconventional oil and gas well operations, arguing that the agency did not provide "any estimates for the cost of

[22] 71 P.S. § 745.5(a)(4).
[23] Regulatory Analysis Form, IRRC Number 3330 (received Jan. 25, 2022).
[24] 193 A.3d 447 (Pa. Cmwlth. 2018).

compliance."[25] The Court found it sufficient for DEP to provide a very "general estimate of the cost of compliance," which was to explain that the costs would vary "from 'zero' to substantial' depending on the situation."[26] Thus, such a general estimate from the Commission when it responds to the comments with a fuller cost-benefit analysis should be sufficient if the Commission finds it impractical to provide more detailed figures.

Advocates also want to emphasize that the federal Office of Management and Budget has found that when there are important benefits and costs that cannot be readily quantified, cost-benefit analysis is of limited use, and may even be misleading.[27] Cost-benefit analysis of environmental regulations in particular commonly fails to account for substantial unquantifiable benefits. In fact, in Amy Sinden's 2019 study of forty-five such analyses conducted by EPA, an agency "that is usually held up as the gold standard for agency conduct of [cost-benefit analysis]," she found that 80% of the time it excluded as unquantifiable benefits that EPA classified as "important," "significant," or "substantial."[28] Advocates urge that any review of the Commission's final cost-benefit analysis here keep such unquantifiable benefits in mind.

2. General Economic Claims

Various industry-affiliated commenters claim that this rulemaking, or indeed, any additional oversight for pipelines, would damage Pennsylvania's economy. These claims are strikingly consistent in two respects. First, they are exceedingly general, and second, they appear to be entirely unsupported by citing studies or other evidence. For the most part, the commenters who make these claims also fail to acknowledge and often even deny any need to address the glaring public safety incidents that have threatened Pennsylvania residents.

It is unclear why industry affiliates would not take full advantage of the opportunity to support their economic arguments with compelling evidence if it exists. Range Resources goes so far as to claim that the proposed rulemaking "potentially has significant economic impact on the oil and gas industry – with some industry estimates approaching a multi-billion-dollar cost imposition" without giving any indication of what estimates it is referring to or how they were arrived at. Sunoco does cite a specific example with respect to a financial benefit it claims to provide, but nothing that supports the notion that this rulemaking would result in economic harm. Specifically, it touts the purported benefits of the Mariner East system, including a "one-time economic impact of approximately $11 billion in the Commonwealth, alone." This is a curious choice of example and the reliability of the figure is suspect at best. Sunoco's own website, which it provides as a citation for the $11 billion one-time benefit, lists the one-time benefit as

[25] *Id.*, at 454, 461.
[26] *Id.*, at 468.
[27] Amy Sinden, *Article: The Problem of Unquantified Benefits*, 49 Envtl. L. 73, 75 (2019) (citing Office of Mgmt. & Budget, Circular A-4, To the Heads of Executive Agencies and Establishments: Regulatory Analysis 10 (2003)).
[28] *Id.*, at 79.

$9.1 billion, not $11 billion. And that number was whittled down by Sunoco's own economist, Peter Angelides, to $6.14 billion because the $9.1 billion figure did not reflect just projections for the Mariner East project, but also facilities for the Revolution Pipeline, which has since exploded.[29] To be sure, these are all sizeable sums, but for Sunoco's estimates to jump around by billions of dollars each time they are referenced is yet another example of Sunoco's obfuscation and misdirection, if not outright falsehood.

D. Best Practices Framework

The Best Practices Framework Advocates proposed in our April 12, 2022 comments would address several issues raised by other commenters and allow these regulations to remain robust over time, enabling the Commission to better fulfill its duties to protect public safety pursuant to § 1501. As AMPP emphasized in its comments, best practices may represent "the culmination of decades of consensus standards development," and having operators follow best practices as they evolve is the most effective way to promote the safe operation of inherently dangerous hazardous liquid pipelines.[30]

Advocates are therefore taking this opportunity to point to a few of the ways the framework is responsive to concerns raised in public comments and to clarify the mechanism it uses to regularly update recommended and required best practices while remaining in harmony with the non-delegation doctrine.

Advocates explained the purpose of a best practices framework in its April 12 comments as follows:

> 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.[31]

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[29] Compare, *Flynn, et al. v. Sunoco Pipeline L.P.*, Docket Nos. C-2018-3006116, et al., SPLP Statement No. 12: Rebuttal Testimony of Peter Angelides, Ph.D., AICP on Behalf of Sunoco Pipeline L.P. (Jun. 15, 2020); with *Flynn, et al. v. Sunoco Pipeline L.P.*, Docket Nos. C-2018-3006116, et al., Tr. for October 6, 2020 hearing, at p. 3086.
[30] *See* AMPP Comments at 2.
[31] Advocates' April 12, 2022 Comments at 14.

The mechanism to be employed is simple. The Commission would maintain a library of Commission-Recognized Best Practices and a list of which best practices are mandatory under this rulemaking. The Commission would draw on the expertise of a wide range of standards-making organizations, technical guidance from other agencies, etc. To avoid the pitfalls of mandating best practices after they are outdated, which is a significant danger in a field where the scientific knowledge is constantly evolving, the regulations would require the Commission to update the best practices list at least every five years. That is different from the manner in which the PHMSA regulations incorporate best practices. The extensive list of best practices that PHMSA mandates in 49 CFR § 195.3 is stagnant, still requiring the regulated community to adhere to best practices which are, in some cases, decades out of date.

AMPP's comments implicitly identified this problem by pointing out that 49 CFR § 195.191 incorporates into federal law the NACE SP0102 standard for in line inspection of pipelines. However, the federal regulations incorporate only the March 10, 2013 revision of the standard—it is frozen in time. AMPP recommends the Commission improve upon the federal requirement by instead incorporating the "latest revision" of NACE SP0102 into § 59.139. Advocates agree that doing so would be an improvement. However, it does not address the root problem. The standard would again be frozen in time in the state regulation, and would no longer reflect true best practices whenever NACE SP0102 is again revised or replaced. That is why it is crucial for the rulemaking to require that recommended and mandated best practices instead be regularly updated. Advocates understand that, depending on the update, this may require periodic notice and comment or some other mechanism to satisfy due process.

E. Comments to Specific Sections

1. Section 59.132 Definitions

Advocates mention definitions where applicable in comments to other sections.

2. Section 59.133 General

a) Section 59.133(a) Minimum Safety Standards

Advocates disagree with the American Petroleum Institute and their affiliated associations (collectively "API") that the language regarding PHMSA minimum standards in this section is entirely redundant with similar language in § 59.33. To the contrary, this proposed section emphasizes that if PHMSA promulgates revised regulations that are stricter than those contained within the proposed rulemaking, PHMSA's stricter regulation will control. Although

that sentiment may be implied in other language, making it more explicit here increases clarity for industry and the public alike. Thus, the Commission should retain the language.

b) Section 59.133(b)

Advocates reiterate their position that, in light of the extreme recidivism demonstrated by Sunoco during the Mariner East projects, the Commission must create a robust enforcement mechanism beyond largely ineffective fines in order to fulfill its § 1501 mandate. In their April 12 Comment, Advocates detailed the Commission's relevant authority, suggested enforcement mechanisms, and provided potential factors for choosing which enforcement mechanisms apply to a given violation. Advocates expect that other commenters will be responding to their suggestions, and would welcome the opportunity to assist the Commission by continuing the dialogue at a later date.

c) Section 59.133(c)

In addition to the comments regarding reporting in our original comment, Advocates support Chester County's request that the Commission add the term "mapping" to Sections 133(b) and 133(c).

d) Section 59.133(d)

Advocates agree with the industry associations that the reference to the conversion of pipelines "from a service not previously covered by this part" in § 59.133(d)(1) should be clarified. Industry associations believe "this part" refers to 49 C.F.R. Part 195, whereas Advocates read it to mean services not otherwise included in the definition of hazardous liquid pipelines under the proposed rulemaking. The Commission should thus replace the words "this part" with an explicit reference to avoid potential confusion.

Advocates likewise agree that the Commission should remove the reference to bi-directional flow. As industry associations note, "bi-directional flow" is irrelevant to PHMSA's pipeline conversion regulations, and it does not make sense for it to be inserted here.

The Commission should not credit the misdirection that API employs in its argument against the Commission requiring operators to adhere to PHMSA's Advisory Bulletin, *Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service.*[32] API objects to the Commission making conversion-to-service requirements more stringent by requiring operators to implement recommendations in the PHMSA guidance document.[33] Despite

[32] PHMSA Advisory Bulletin ADB-2014-04, 79 Fed. Reg. 56121 (Sept. 18, 2014)
[33] Proposed § 59.133(d)

API's protestations, it is irrelevant that PHMSA did not have to follow notice-and-comment requirements in issuing guidance that it would have needed to make it into a rule; PHMSA did not, in fact, make it into rules. The Commission, in incorporating that guidance into its proposed rulemaking, is the body that must provide the opportunity to comment, which is precisely what the Commission has done. API is, in fact, bemoaning the lack of an opportunity to comment on the guidance before it becomes a rule in the very document that exists for that purpose. This suggests API has no valid grounds on which to object to the Commission incorporating the PHMSA guidance into the proposed rules.

Advocates commend the Commission for incorporating the PHMSA guidance insofar as it represents current best practices. Advocates particularly appreciate that the Commission, in adding that the regulations include not just static guidance, but "any updates thereto," seeks to avoid the pitfall of creating regulations requiring adherence to stale, outdated best practices. Advocates suggest that if the Commission decides against automatically incorporating updates to PHMSA's guidance, it then incorporates any updates as provided for in Advocates' broader best practices framework discussed above. As explained, within that framework, the PHMSA guidance would be included in the Commission's library of best practices which it would update at least every five years.

Lastly, Advocates echo East Goshen Township's concerns that sixty days may be insufficient notice for converting a previously uncovered pipeline to carry a more volatile product. Advocates urge the Commission to use its siting authority to approve or disapprove the conversion because it is equivalent to newly siting a more dangerous project. As such, advocates agree with the township that it would be appropriate for the Commission to require a detailed risk assessment, perhaps by a third-party expert, that evaluates "factors such as age of pipeline; commercial/residential development of surrounding areas; initial use of pipeline, history of leaks; and proposed operating pressure."[34] Sixty days is likely insufficient for such an assessment.

3. Section 59.134 Accident Reporting

API, Sunoco, and other industry affiliates seem determined to avoid any regulatory improvements that would help reveal why their accidents and failures happen. They comment that current failure analysis and root cause analysis requirements are adequate. They complain that having a neutral third party evaluate the cause of accidents is unnecessary. Advocates, residents, and the Commission itself know from experience this is not the case. The Commission rightfully proposes updating the failure and root cause analysis reporting processes to make them more reliable tools for protecting the public. Advocates strongly support the Commission in this effort.

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[34] East Goshen Comments at 1.

Root cause analysis investigations are necessary for operators complying with the Commission's Section 1501 general duty requirements, EPA's Section 112(r) General Duty Clause at 42 U.S.C. 7412(r)(1), and OSHA's general duty clause at 29 U.S.C. 654.5(a)(1). On an even more fundamental level, having a thorough understanding of the cause of accidents and failures is crucial to preventing repeated problems. Honest and complete failure analysis and root cause analysis reports are an investment not just in public safety, but in the utility infrastructure itself. Understanding the cause of what an operator may consider a relatively small accident can prevent a more costly accident in the future. The Commission correctly proposes to require that all operators conduct a root cause analysis of each release event, consistent with existing requirements. Limiting the scope and applicability of these reports directly undercuts their preventative function.

The Commission is also correct to require that a third party, with Commision oversight, conduct these reviews. API complains the Commission has not justified the use of third parties. To Advocates and countless residents, the need for third party involvement is apparent: after years of safety incidents, lies, and obfuscation, the public's trust in this industry has been broken. Accident analysis is only as useful as it is reliable, and that requires transparency. In requiring third-party analysis, the Commission has proposed a meaningful step not only toward restoring the public's sense of safety, but also toward ensuring the Commission has the information it needs to do its job in protecting the public.

The purported difficulty raised by some commenters in finding third-party consultants is a weak rationale for avoiding these needed improvements. Most accidents can and should be avoided with proper construction and maintenance – operators can avoid much of the need for third-party failure and root cause analysis by improving their own practices. As for when accidents do happen, whether as a result of operator-controlled variables or otherwise, operators can build relationships with process safety consultants or expand on those they likely already have to consultants reviewed by the Commission.

Consistent with the need for added transparency, Advocates support the recommendation of the Chester County Board of Supervisors to make appropriately redacted summaries of failure and root cause analysis reports available to the public. This information would be particularly valuable to first responders and emergency management officials.

Finally, the Commission should not be swayed by Sunoco's exaggerated concerns about notifying multiple agencies of an emergency diverting resources needed to respond to an accident. Undoubtedly, a company large enough to operate a pipeline has enough employees to both make phone calls and respond on scene, and if they do not, they certainly should. Advocates also point out that nothing in the proposed rule requires all necessary notice to be given

simultaneously. It may be appropriate for some agencies to be notified in quick succession, by the same employee.

4. Section 59.135 Construction, Maintenance, and Other Reports

In addition to the requirements proposed in § 59.135(b), Advocates agree with East Goshen Township that a pipeline operator should provide 90 days advance notice for major construction activities, involving 1 mile of pipe or more. The thirty day or forty five day notice proposed might be inadequate for large projects that can expect to cause increased disruption for the public and require greater coordination.

Advocates support Chester County's request that the Commission require immediate reporting of any time a pipeline operator observes any regulated pipeline operating above 110% of maximum allowable operating pressure (MAOP). Commenters join Chester County in this request because a MAOP exceedance reporting system will provide the Commission with better operating history with regard to potentially damaging pressure transients experienced on specific pipeline segments. MAOP limits exist to manage internal and external stresses experienced by pipelines, valves, pumps, and ancillary equipment. While operators are to not exceed MAOP as a matter of current regulation, operators should be required to notify the Commission if a pipeline experiences significant pressure exceedances. The 10% threshold is appropriate to avoid reporting of insignificant transient readings which may not constitute significant equipment or pipeline risk and avoid potential nuisance reporting.

Sunoco suggested that the Commission further clarify the definition of "variations" with regard to adjustments to operating parameters. Advocates agree that additional clarification is needed. Specific issues which should be included in the definition of "variations" include, but may not be limited to, replacement of pipe, replacement of valves or pumps, loss or compromise of cathodic protection, loss of cover depth, emergence of a geological hazard exposing a pipe segment, increase in MAOP, change in commodity carried, delamination of coating on a pipe segment, and other observed deviations from normal operating conditions or procedures. Clarification will help operators and the Commission develop appropriate best practices for ongoing use.

5. Section 59.136 Design Requirements

As an initial matter, Advocates generally agree with other commenters that urge the Commission to rely heavily on best practices with regard to design requirements. Beyond that, Advocates will respond to concerns regarding regulating obsolete equipment and geohazards.

Sunoco and other industry commenters are concerned that by applying the proposed regulations whenever "hazardous liquid pipeline utilities [are] constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines," the Commission may broadly require operators to excavate existing pipelines to bring them into compliance with proposed design requirements.[35] Sunoco also asks the Commission to add a grandfather clause allowing existing pipelines to remain underneath private dwellings and in other locations prohibited by the proposed provisions in § 59.137(b).[36] Advocates understand industry's desire for more clarity and urge the Commission to define "changing" in the context of existing pipelines. But industry's concerns about removing existing pipelines must be balanced against the danger of allowing obsolete pipelines to operate indefinitely under people's homes, while presenting a greater risk to public safety than newer designs.

Advocates consider it acceptable for the Commission's definition of "changing" to be partially informed by the old PHMSA guidance referenced by Sunoco.[37] Advocates point out, however, that in some contexts it is appropriate for the Commission to go beyond federal guidance, particularly when promulgating regulations that are more stringent than federal regulations, when issues unique to Pennsylvania are implicated, or when the guidance is outdated. Although the referenced PHMSA guidance is over forty years old, the basic interpretation of change still makes sense.[38]

Specifically, the guidance provides that "otherwise changing" existing pipeline requires "some physical alteration to an existing pipeline."[39] Activities "involving only grading and improving the property, adding additional ground cover, and erecting building improvements" fall outside its scope.[40] Advocates further suggest that the Commission require operators to bring any pipeline segment that has been abandoned or inactive for more than five years into compliance with current regulations before reactivating it. Additionally, any segment that fails to meet the standards of performance during pressure or other testing, as determined by current best practices, should be decommissioned or replaced in accordance with the new regulations. Lastly, any operator upgrading any pump station, valve site, manifold system or other ancillary equipment should be required to upgrade to current standards.

Regarding pipeline replacements, if the Commission decides to set a minimum length of pipeline that must be replaced before triggering compliance with the new regulations, Advocates urge the Commission to keep the threshold reasonably low. Considering that East Goshen

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[35] *See e.g.* Sunoco's Comment at 26.
[36] Sunoco's Comments at 50.
[37] Sunoco Comments at 26–27.
[38] *See* PHMSA Interpretation to B. Smiley from C. De Leon (Mar. 12, 1980) (interpreting "otherwise changing" in 49 C.F.R. § 195.200) (available at https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretation%20Files/Pipeline/1980/PI80007.pdf).
[39] *Id.*, at 3.
[40] *Id.* at 2–3.

Township urges that replacement of any section over a mile be treated as major construction, the threshold replacement length should certainly be less than that. Moreover, the regulations should state that reasonably small gaps—areas that are not replaced between areas that are replaced—will be counted as part of a continuous segment that is being replaced. The Commission should define the length of covered gaps. For instance, if an operator replaces two one-half mile sections of pipeline separated by a 100-foot gap, that should be counted as replacing a continuous section over a mile long.

The above recommendations properly balance the economic concerns of the operators with the Commonwealth citizens' need for safety.

Regarding the extensive comments submitted concerning geohazards and specifically landslides, Advocates urge the Commission to apply the recommendations in DEP's recent trenchless technology guidance to geohazards wherever possible, including adapting it to cover landslides. Since the Commission participated in drafting that guidance, it should be well situated to expand its principles to cover landslides. Applying the trenchless technology guidance is advantageous for two reasons. First, it represents best practices identified and developed by Pennsylvania Professional Engineers and Professional Geologists, covering how to evaluate hazards, decide whether to proceed with a project, and develop proper plans. Second, it provides greater consistency for industry actors rather than addressing landslide potential separately.

6. Section 59.137 Construction

a. Siting

Advocates first urge the Commission to provide clarity for industry concerning when compliance with the proposed construction requirements would be triggered. Specifically, API reasonably reads the scope of proposed § 59.137 to require conversion-to-service to trigger compliance with new construction requirements.[41] But federal regulations state that conversion should not immediately require compliance with construction standards applicable to new pipelines.[42] Of course, when appropriately sized sections of converted pipelines are replaced or otherwise changed, as discussed in comments to proposed § 59.136, then those pipelines must come into compliance with construction requirements under this section. The Commission should clarify this within the body of the rulemaking. It is important to note, however, that PHMSA guidance expressly stresses the importance of other requirements, such as testing, apply

[41] API Comments at 8–9.
[42] Transportation of Liquids by Pipeline, Conversion of Existing Pipelines to Liquid Service, 43 Fed. Reg. 6786 (Feb. 16, 1978).

to pipelines that are being converted because pipelines such pipelines are at risk for failure.[43] This rulemaking should clarify that all such requirements still apply to conversion.

Advocates are heartened to see a broad range of other commenters, recognizing that it is crucial for the Commission to use its full siting authority, the sources of which Advocates detailed in our April 12, 2022 comments. Chester County, Uwchlan Township, Rosemary Fuller, and Representative Kristine Howard, and Senator Carolyn Comitta all strongly urge the Commission to "fill the regulatory void." That void has persistently harmed Pennsylvania residents by allowing pipelines to be constructed where harm was virtually inevitable and where residents now must tolerate ongoing unnecessary risks.

The Commission's proposal to ban pipelines under private dwellings, industrial buildings, and in places of public assembly is an urgent step. Accordingly, the Commission should firmly reject Sunoco's request to limit the ban on pipelines to under "enclosed buildings." Many of the problems Sunoco inflicted on Pennsylvania communities stemmed from installing pipelines in athletic fields, in assembly areas for schools, in egress paths for institutions such as nursing homes, and apartment complex parking lots. In Middletown Township, Delaware County, Sunoco installed the Mariner East 2 and 2X pipelines along a children's soccer field and public park – and they created multiple sinkholes in an area frequented by families and children. In a video taken by residents, a school bus full of elementary school children can be seen driving over sinkholes that had opened up under the road adjacent to the pipes. In East Goshen Township in Chester County, all three Mariner pipelines (Mariner East 1, 2, and 2X) run the full length of Boot Road and are situated mere feet from the entrance to the Wellington Senior Living Center. In the event of a pipeline emergency, the pipes collectively block egress from the Senior Center and potentially prevent road access to emergency responders. Many of the residents of the Wellington are non-ambulatory, so such an emergency, which elsewhere would be merely a serious environmental hazard, could here cause extreme and possibly fatal catastrophe. Pipeline operators should no longer be permitted to site pipelines settings such as these, where they pose unneeded, and serious, risks to the public. Sunoco exaggerates the inconvenience to operators, and, regardless, permitting pipelines in such areas is not compatible with providing safe and efficient public utility service as mandated by § 1501.

b. Depth of Cover—Construction and Maintenance Issues

Advocates also encourage the Commission to strongly consider further enhancing depth of cover requirements in accordance with the informed requests of local governmental entities. Specifically, East Goshen Township asks the Commission to mandate a 4' depth of cover over HVL lines, and Chester County recognizes the need for increased cover where needed to

[43] PHMSA, *Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service*, 79 Fed. Reg. 56121 (Sept. 18, 2014).

compensate for stream erosion impacts. Advocates' comments here apply to both construction and maintenance depth of cover requirements.

The Commission should not be swayed by overblown claims and misdirection from commenters objecting to enhanced depth of cover requirements. Objectors almost uniformly write as if the only way to increase the depth of cover over existing pipelines is to excavate them, dig deeper, and move them further underground. In reality, it often merely requires adding additional topsoil – especially easy and helpful on farms. Doing so would likely be cheaper, create less disturbance, and benefit many farms where topsoil erosion is often a challenge. Operators could coordinate with farmers in the timing of adding the topsoil to avoid interfering with the growing season. Some commenters make bald assertions as to prohibitive costs without grounding their claims in any evidence or calculations.

Others want the Commission to believe that the requirements would be so onerous as to drive operators from the Commonwealth. However, Advocates believe that to be unlikely considering that Sunoco treats millions of dollars in fines for noncompliance as an acceptable part of the cost of doing business rather than complying with reasonable regulations. Moreover, this industry cannot merely route around Pennsylvania because of reasonable regulations – many pipelines are moving products removed from Pennsylvania, and the additional cost of hundreds of extra miles of pipelines and dealing with the regulations of even more different States would be astronomical. These operators are unable to simply bypass our Commonwealth because we want them to perform their duties to offer safe and efficient service instead of offering substandard service. With that context, the idea that the cost of adding to the depth of cover would force them to abandon operations in one of the few states with plentiful methane resources lacks credibility.

Equally lacking in merit are the claims by some commenters that the depth of cover over pipelines does not need to be monitored or maintained. Again, such assertions are offered without evidence. Erosion is a well-known problem in many areas crossed by pipelines. Sunoco argues that requiring maintenance conflicts with federal requirements because "PHMSA's depth of cover requirements apply only at the time of pipeline construction," and "there are no ongoing depth of cover maintenance requirements, unless the pipeline is unsafe."[44] Advocates trust that the Commission recognizes Sunoco's attempt at misdirection since (1) this rulemaking is premised on states being permitted to enact requirements more stringent than that of the federal government; (2) requiring maintenance in no way conflicts with the federal requirements, but rather enhances them by ensuring that the intended benefits and protections are ongoing; and (3) a pipeline over which the cover has eroded (or that does not meet updated depth requirements) is, in fact, unsafe, which is why regulations establish initial depth of cover requirements.

[44] Sunoco Comments at 52 (citing 49 C.F.R. §§ 195.248, 195.401(b)(1)).

Advocates also note that it makes no sense for farmers and other landowners to bear the risk of puncturing a shallow pipeline or the ongoing cost of maintaining a proper depth of cover year after year while operators continually profit from using those pipelines to export petroleum products to overseas markets. The Commission is serving the Commonwealth by properly placing the cost of pipeline maintenance on the operators.

Finally, Advocates encourage the Commission to consider requiring operators to employ any existing best practices for maintaining cover over existing pipelines.

c. Miter Joints and Weld Testing

API and Sunoco object to the proposed § 59.137(c), which states that "[m]iter joints of any deflection are not permitted." They instead demand that the Commission cling to allowing at least 3 degrees of deflection—the measure of the misalignment of welded pipeline sections—based on 20-year-old former best practices that were based on outdated technologies. Advocates instead encourage the Commission to implement the rule against deflection, as grounded in current best practices.

Advocates also support Chester County's request that the Commission require full x-ray inspection of each field weld and generally base inspections on emerging best practices, as suggested by AMPP.

d. Emergency Flow Restriction Devices ("EFRDs")

As the compilation of comments illuminates, proper regulation of Emergency Flow Restriction Devices requires balancing risks, and the surrounding science is evolving. As such, EFRD regulation is emblematic of the need for the Commission's regulations to require operators to employ current, regularly updated best practices as part of the general best practices framework proposed in Advocates' April 12 comment. ERFDs are important for minimizing both the volume of and damage from potential leaks, and they must be used properly to avoid potentially damaging pressure surges in HVL lines.

First, Advocates strongly urge the Commission to take API's caution regarding the "water hammer" effect risk seriously while still moving forward with requiring increased use of EFRDs.[45] As API notes, "[i]f valves on a hazardous liquid pipeline are incorrectly placed or improperly closed, it may cause a water hammer effect, or a pressure wave that may damage or destroy the pipeline."[46] If a high-pressure line is suddenly closed with no way to relieve pressure

[45] API Comments at 10.
[46] *Id.*

(unlike traditional liquids that may be shunted into a nearby storage tank), then a shock wave may result.

API further explains that PHMSA has recently promulgated a rule governing the placement and use of automatic or remote shut-off valves that API asserts was well vetted by experts and through a notice and comment period.[47] Accordingly, API suggests that the Commission defer to the federal rule rather than instituting its own spacing requirements.

Advocates partially agree but instead suggest that the Commission use the new PHMSA rule as potentially indicative of current best practices and draw from it to determine (1) criteria for EFRD spacing, and (2) additional associated regulations to promote safety. However, as Advocates have pointed out repeatedly here and in our April 12 comment, PHMSA rules do not continually evolve with best practices. The Commission's regulation needs to ensure that current best practices are used as they evolve.

In a worst-case scenario, if a sudden pressure shift from employing an EFRD causes a release from a typical 5-mile segment, thousands of gallons may be released with great force. Emergency response and public awareness plans should account for that possibility, including in identifying the potential impact radius and the LFL. Any EFRD plan should also include guidelines for inventorying the product. Such inventories need to be incorporated into DEP air permits, as well.

Advocates stress that this danger arises only when EFRDs are planned and used improperly. With appropriate precautions, including using best practices to design the system and shut-down mechanisms, they remain invaluable tools for limiting a hazardous release in the event of a leak. Although some commenters ask that the Commission require EFDRs to be installed at 5-mile intervals, Advocates agree with Chester County that EFRD's should be placed in consultation with engineers, adding, again, that current best practices must inform their locations. That the EFRD placement results from the implementation of best practices provides the justification Sunoco seeks for the effort required in installing them. Sunoco's Comments at 57. Further, Advocates support Chester County's request that the Commission require operators to install the EFRDs on existing lines in High Consequence Areas within 2 years from this rule being final. Chester County Technical Comments at 3.

e. Vehicle Barriers

In agreement with Rosemary Fuller's and Virginia Marcielle-Kerslake's requests, Advocates emphasize the importance of the Commission protecting above-ground pipeline facilities from vehicle hazards. Since Sunoco and API find the proposed § 59.137(h) ambiguous, in particular asking for clarification of what the Commission means by the "largest types of

[47] *Id.* (*citing* PHMSA, Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards, 87 Fed. Reg. 20940.)

vehicles," Advocates suggest the Commission expand the subsection to help industry actors understand the requirements. In doing so, the Commission may find it helpful to refer to PennDOT's vehicle guidelines at 75 Pa. C.S. 4941(c).

f. Pipeline Spacing

Advocates share Chester County's appreciation for the importance of the Commission requiring new pipelines to be separated by at least 12 inches from any other pipeline without exception. In no circumstance should an operator be permitted to emulate Sunoco's problematic decision to encase the 20-inch Mariner East 2 and the 16-inch Mariner East 2X pipelines together in a 42-inch casing, allowing at most 6 inches of space between them. Contrary to Sunoco's protestation, cathodic protection cannot compensate for the unnecessary risk generated by such minimal spacing. Convenience cannot be allowed to outweigh public safety.

g. Weatherization

East Goshen Township suggests that operators be required to implement weatherization best practices for exposed infrastructure, and both East Goshen and Chester County ask the Commission to require coating on exposed components that provide protection from ultraviolet light. Advocates agree and suggest that the Commission require weatherization best practices in the final regulation.

h. Performance Surety Bonds

Advocates support East Goshen Township's suggestion that the Commission require operators to post a performance bond when engaging in a construction project that falls within the scope of § 59.137. The bond could swiftly compensate governmental or private entities harmed by an operator's lack of compliance during construction, or pay associated penalties.

i. Requiring a Seal from Pennsylvania Professionals

Advocates agree that the plans for any project within the scope of this section must be approved and sealed by a professional engineer or a professional geologist licensed within the Commonwealth of Pennsylvania. As demonstrated during the construction of the Mariner East projects, out-of-state professionals may lack sufficient knowledge of local conditions, in particular local geology, to competently evaluate such plans. Moreover, in-state professionals and professional organizations are more locally accountable.

7. Section 59.138 HDD

Advocates agree with many of the DEP's comments about HDD (Horizontal Directional Drilling) and trenchless technology, and some of Sunoco's comments. Below, Advocates first briefly address some comments that apply to multiple subsections of § 59.138 and then provide responses to specific comments by subsection.

Interagency cooperation, and cooperation between the Commission and DEP in particular, are crucial to achieving the protections for the public that this rulemaking proposes. Advocates were especially encouraged by DEP's recommendations regarding DEP being given access to plans, analysis, and other documents prepared for the Commission that are relevant to DEP's responsibilities. Providing DEP with access to this information is common sense. It does not present an additional burden on operators and allows for more effective and efficient interagency cooperation.

DEP's Trenchless Technology Guidance, Document No. 310-2100-003 reflects an extensive cooperative effort between both agencies, industry, and public interest representatives. DEP, the Commission, and Advocates all appear to agree that this guidance is a significant resource that will strengthen this rulemaking without having to reinvent the wheel. Sunoco's opposition to using this guidance is striking given its clear practical value and Sunoco's role in creating it.

With respect to subsection (b), relating to Notification, Advocates support DEP's comments, which provide helpful detail and considerations. Advocates agree that the rule should clearly specify the required form of notice. Notice via certified mail in addition to posting in the PA Bulletin, as in DEP regulations, would be beneficial to the public. It is also reasonable for the Commission to receive electronic notice prior to the start of HDD or trenchless construction and for that notice to include the details identified by DEP.

With respect to subsection (c), relating to geological and environmental impacts, Advocates echo DEP's concern that the subsection's thresholds – pipeline diameter, etc. – might be underinclusive. DEP rightly points out that pipeline operators are responsible for diligently evaluating all risks associated with a project and that pipelines that do not meet the size thresholds in the proposed rule have nonetheless presented issues. The Commission should ensure that risks are not overlooked because of these thresholds and should consider eliminating these thresholds entirely, consistent with DEP's approach. Advocates also agree with DEP's recommendation regarding the development of a written preparedness, prevention, and contingency plan that addresses: (1) potential impacts from drilling fluid discharges, (2) potential impacts to public and private water supplies and (3) underground mining and karst terrain.

Sunoco makes a valid point about accurately distinguishing between "geotechnical" and "geophysical" testing in subsection (c)(2). It appears the terms were inadvertently switched, as the methods listed in that section are geophysical methods, not geotechnical methods. Advocates partially agree with Sunoco that requiring geophysics testing every 250 feet is not the ideal framing of this subsection, but disagree with Sunoco's suggested replacement language, which would make it too easy to avoid performing geophysical studies. Regarding the 250 foot requirement, geophysical methods, by their nature, cover a study area, not a single point, and that study area should be based on the risk that needs to be evaluated, not a preset interval of pipeline. In this case, the appropriate study area is the area being evaluated for HDD or trenchless construction, as that is the area for which underground structures must be understood and will be a risk. It is preferable for the rule to require geophysics for the full area where HDD is being considered because leaving it entirely up to an operator's contractors – regardless of their certification – to decide where and to what extent geophysics is performed will result in operators avoiding geophysics altogether or performing geophysical studies that are too limited in scope. Advocates acknowledge that it is not possible to perform geophysics in every location and would thus support the Commission allowing a limited exception where a Professional Geologist could provide a detailed scientific explanation of why geophysics cannot be performed at a particular site or for the full area of an HDD in lieu of the study itself.

Advocates support DEP's comments regarding subsection (d), protection of water wells and supplies. It is noteworthy that Sunoco argues that the Commission should forgo these protections and instead defer to DEP when DEP itself does not make that suggestion. On the contrary, DEP's comments on this subsection are consistent with the need for interagency cooperation.

With respect to DEP's comments on subsection (e), regarding adverse impacts to water wells and supplies, unfortunately, Advocates cannot agree with DEP that the rules and regulations DEP implements to protect water wells and water supplies are adequate. This was made painfully clear during the construction of the Mariner East pipelines. It took litigation led by public interest organizations and multiple emergency filings to secure adequate protections for water supplies from Sunoco's reckless conduct.[48] Even then, Sunoco continued to put water supplies at risk. The Commission played a vital role in protecting the public when it imposed its own stays of Mariner East construction. As the Commission rightly explained in its Order of June 15, 2018, which affirmed emergency relief for the public from Sunoco:

> Safe water implicates public safety. *See Popowski v. Pa. PUC*, 589 Pa. 605, 910 A.2d 38 (2006), citing Pa. Const. Art. 1, § 27 ("The people have a right to clean air, pure water . . . "); 35 P.S. § 721.2(a)(1) ("An adequate supply of safe, pure, drinking water is essential to the public health, safety and welfare . . ."); *also*

[48] See, *Corrected Stipulated Order of August 10, 2017*, Pennsylvania Environmental Hearing Board Docket 2017-009-L, available at: https://ehb.courtapps.com/efile/documentViewer.php?documentID=38633.

> *Hatfield Township v. Lansdale Mun. Auth.*, 403 Pa. 113, 168 A.2d 333 (Pa. 1961) (recognizing direct connection between adequate supply of safe water and public health, safety and general welfare). We also are statutorily empowered to cooperate with the DEP to insure the purity of water supplied to the public." *See* Section 318(b) of the Code.

Pa. State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P., PUC Docket C-2018-3001451, at 41. Thus, Advocates support the affirmative step the Commission has taken in this rulemaking to embrace its own duty to protect water supplies and strongly encourage the Commission and DEP to cooperate in implementing these protections going forward.

8. Section 59.139 Pressure Testing

As an initial matter, Advocates agree with AMPP that entitling this section "Pressure Testing" is inaccurate and potentially confusing. This section already discusses both pressure testing and in-line inspection ("ILI") extensively. AMPP also suggests that External Corrosion Direct Assessment ("ECDA") may be appropriately included here.[49] Thus, Advocates suggest that this section be renamed "Integrity Testing," or another similarly inclusive option, with subsections addressing the requirements for when and how an operator should perform each type of test. The Commission should consider whether ECDA should be added to the available options.

The Commission correctly identifies this area as an emerging and changing area of pipeline management practice. Perhaps that is why so many commenters identify it as an area in which relying on best practices is particularly important. West Whiteland Township explicitly asks the Commission to adopt a best practices approach, echoed to some extent by IBEW, API, AMPP, and Sunoco. Advocates stress that the Commission should judge which best practices it approves as part of the Commission Recommended Best Practices library that Advocates asked the Commission to create in Advocates' April 12 comment.

Advocate's best practices framework would allow the flexibility needed by standard setters and industry actors to develop new best practices by requesting approval to employ newer technologies or methodologies as they evolve. Regardless of how the Commission approaches best practices here, it needs to add details to its regulations sufficient to instruct operators on "what constitutes a proper in-line inspection, whether the tool selection is appropriate, how an inspection should be conducted, and how the data should be maintained, analyzed and used," as requested by AMPP.

[49] The federal government addresses ECDA at 49 CFR § 195.416.

Advocates strongly disagree with Sunoco's claim that the Commission lacks authority to require increased pressure testing in HCAs. To the contrary, it is the Commission's duty to do so in the interest of public safety as mandated by § 1501. Setting standards and requiring testing at specified intervals generally falls under that duty and does not, contrary to Sunoco's misrepresentation, invade the realm of valid managerial discretion.

Lastly, Advocates want to amplify East Goshen Township Board of Supervisors' concern that the Commission did not justify hydrostatically testing older pipelines less frequently. If that aligns with a best practice, the Commission needs to state that explicitly. At present, the rule is concerning because common sense seems to dictate that older pipelines would be more prone to corrosion and degradation, and thus would require additional pressure testing.

9. Section 59.140 Operation and Maintenance

In their comments, industry affiliates express a number of concerns over the Commission's proposed rule 59.140 Public Awareness and Emergency Response. For example, API argues that the requirement (59.140b) for operators to establish and maintain liaison with emergency responders and consult with them in developing and updating emergency response procedures should be removed altogether, as it creates an onerous burden for operators. API goes on to argue that the PUC should more narrowly define emergency responders in 59.132.63 so that any rules and regulations around meetings or trainings apply to a smaller group of officials. API also objects to meetings twice a year, and only wants operators to meet with emergency responders "as necessary." API suggests that the Commission remove its proposal requiring operators to meet with the affected public and public officials at prescribed intervals, and also more narrowly define "affected public".

Similarly, Sunoco argues that the newly proposed rulemaking places an undue burden on pipeline operators, and that the federal requirements are enough. Like API, Sunoco argues that expanding the definition of emergency responder is highly burdensome to pipeline operators, and that notifications to local authorities- emergency responders, counties, and municipalities- is unnecessary because in the event of an emergency the operator would call the National Response Center, which would then notify local authorities. Sunoco also argues that pipeline routes and emergency preparedness plans should remain confidential security information and not be disclosed to emergency responders or the affected public. At the same time, it argues that emergency response plans are not the responsibility of the operator, but rather that of the county and township emergency management coordinators.

As Advocates pointed out in their previous comments, the current public awareness and emergency response protocols are grossly inadequate and leave both emergency responders and the public at risk of real harm. Industry representatives repeatedly focus on the burden to the pipeline operator, but blatantly disregard the burden placed on the public and emergency responders. The affected public bear all of the risk associated with pipeline infrastructure- from sinkholes, landslides, and leaks to accidents and explosions. The public is not aware of how to

respond in the event of an emergency, as evidenced by circumstances that have occurred in recent memory. When a Sunoco pipeline leaked at a valve station in Middletown Township, Delaware County, residents in the immediate vicinity could smell the fumes and were experiencing symptoms such as nausea, dizziness, and headaches, yet it was unclear to residents if they should shelter in place, evacuate on foot, or leave by motor vehicle. In this instance, emergency responders were *not* informed of the incident in a timely fashion, and were frustrated to learn of the threat only after maintenance crews arrived to investigate the leak.

Relying on the National Response Center to properly inform counties and municipalities is also fraught with complications that put public safety at risk. The time it takes to notify the NRC and for the NRC to reach the appropriate emergency officials can take critical minutes, if not hours. The affected public does not have the luxury of this time in the event of a worst case scenario leak or explosion. As noted previously, the industry's claim that it lacks the resources to make multiple phone calls is erroneous. If residents and small nonprofits have the capacity to make calls to multiple agencies around a singular incident, surely a multi-billion dollar company does as well. Perhaps the true concern here is that NRC reports are redacted and subject to FOIA requests from members of the press, whereby calls to local counties or emergency response personnel may be more transparent.

Finally, industry representatives can not simultaneously claim that pipeline routes and emergency preparedness plans should remain confidential security information and not disclosed to emergency responders or the affected public, and also put the onus of developing emergency response plans on local emergency management coordinators. Emergency responders and the public *must* be made aware of the risks associated with hazardous liquids pipelines, and how to respond in the event of an emergency. It is impossible to do so without accurate information as to the location of a pipeline, the hazards associated with a leak, accident or explosion, and the appropriate emergency preparedness plan.

10. Section 59.141 Qualification of pipeline personnel

Advocates appreciate the Commission's efforts to clarify and expand the operator qualification (OQ) regulations applicable in Pennsylvania. The Commission is right to clarify what is a covered task as PHMSA does not seem to have a consistent definition. As API notes in its comments: "[o]perators and PHMSA continuously differ on how or whether an activity is a covered task." PHMSA itself admits that operators are not required to have a written OQ program.[50]

The Commission also properly exercises its authority in setting forth minimum standards for operators to follow to ensure that anyone performing a covered task, employee or contractor,

[50] *See* PHMSA, *Operator Qualifications Frequently Asked Questions*, https://www.phmsa.dot.gov/pipeline/operator-qualifications/oq-frequently-asked-questions (last visited May 5, 2022).

is qualified. Currently, 49 CFR 195.505 and 507 leave it exclusively to the operators to set and enforce such qualifications. Given that PHMSA doesn't consistently regulate what is a covered task, there is a significant regulatory gap, which the Commission rightfully seeks to fill in this rulemaking. With codified regulations, Pennsylvania operators will have the appropriate basis required to comply with PHMSA's existing and future OQ regulations. In the event that PHMSA updates their decades-old OQ regulations, the Commission may need to, as other states that regulate OQ may need to, revisit this issue and either update its best practices framework or adjust regulations to conform to PHMSA minimum standards.

11. Section 59.142 Land Agents

In their comments, industry players and individual land owners alike express great concern over the Commission's proposed land agents rule (§ 59.142). Land owners including Rosemary Fuller, Judith McClintock, Virginia Marcille-Kerslake, and Catherine Moran call attention to the Mariner East pipeline project's "history of false information from land agents," the "record of deception and intimidation by unregulated agents seeking easements for Mariner East," eminent domain abuse, and general bullying tactics. Furthermore, landowner Rosemary Fuller specifically calls out Sunoco's land agents for acting in a threatening manner and failing to produce basic information with regard to project specifics and potential danger involved.

The concerns of Fuller, McClintock, Kerslake, and Moran are echoed by residents from across the commonwealth who have reported bullying tactics and threats by land agents in an effort to secure easements from landowners. Residents report phone calls and door knocks at all hours of the day and late into the night. Frequently residents report being told they have no choice but to sign, the land will be taken by signed easement or by eminent domain. Residents report being pressured and coerced into signing documents they do not understand, and often do not have resources to obtain legal counsel to intervene on their behalf. Residents also report being told the project will be completed in several weeks and "you won't even know we are here." Landowners then go on to suffer construction impacts to their property for years on end, including loss of access to yards and driveways, sinkholes, damaged wells, dust in the air that leads to asthma exacerbation, and coatings of dust on homes, outdoor furniture, and swimming pools rendering the use of private property untenable for extended periods of time.

Land agents' negotiations with landowners regarding pipeline proposals involve topics ranging from land use to hazardous liquids safety. Seeing as they are typically employed or contracted by large oil companies such as Sunoco, land agents come to the table wielding great power relative to the general public with whom they interact. The stakes are high and it is clearly in the best interest of the general public to create new rules for land agents and bolster standards for qualification/accountability. Land agents must be regulated, held accountable to professional standards, and must possess competency to answer landowners questions. Further, landowners should be presented at first contact with a "landowners bill of rights" so that residents clearly understand their rights in negotiation, including the right to legal counsel.

Industry affiliates including Sunoco, the Marcellus Shale Coalition, Shepstone Management Co., Inc. and API push back against the Commission's proposed land agents rule in a number of different ways. They claim that the Commission lacks statutory authority and jurisdiction to indirectly regulate land agents. Somewhat conversely, API argues that the "PAPUC should regulate the process through which agent[s] interact with landowners" directly itself, or the "PAPUC could also consider a state certification process." Advocates agree that a state certification process would likely be effective.

The Marcellus Shale Coalition argues that the proposed land agents rule (§ 59.142) falls outside the scope of the proposed rulemaking. Shepstone Management Co., Inc. echoes this sentiment, stating that the proposed rule "puts the PUC in the business of regulating matters far beyond its expertise and having nothing to do with safety." Various industry comments also touch on the different license classes listed in the proposed land agents rule, arguing that they are arbitrary.

As the aforementioned landowners aptly point out in their comments, real harm was caused by Sunoco's land agents' coercive tactics and unprofessional behavior. Again, land agents are not just in the business of acquiring simple easements. The integrity of the entire pipeline installation process can be compromised by their performance. Their failure has led not only to the spread of misinformation and abuse of trust, but also tangible harm that could have been avoided had landowners been provided sufficient information during negotiations. Rules for land agents fall squarely within the domain of pipeline safety regulation.

12. Section 59.143 Corrosion Control

A common thread among comments on the proposed corrosion control regulations is that the Commission must adopt and update best practices as they evolve in the emerging field of corrosion protection. The Commission and commenters are aware of recurrent failures in corrosion control that must be addressed to protect public safety. Furthermore, to contextualize the importance of robust corrosion control regulations, nationally corrosion alone caused nearly a quarter of all significant pipeline incidents in 2021, amounting to over $35 million in quantified damages. [51]

Comments from AMPP illuminate the need for the Commission to require operators to follow best practices as they evolve and as the drafters of the best practices advise. For example, AMPP recognizes some of the language from proposed § 59.143 as tracking the best practices standard SP0169, which was developed by its predecessor organization, NACE. However, varying from SP0169 and omitting some of its language resulted in an inferior regulation. AMPP explains that in evaluating cathodic potential, the proposed rule considers only certain voltage drops. [52] That leaves open the possibility of ignoring other voltage drops that could skew the test

[51] PHMSA, GDLNGALL Incident Trend Drill to Cause w subtotal (dot.gov) (last updated May 9, 2022).
[52] AMPP at 3.

results, potentially allowing some measurements to falsely appear to satisfy the criterion. AMPP further notes that the regulation must define "negative polarized potential" and explain how to measure it, which might be accomplished by reference to the full SP0169 standard. Advocates urge that the Commission require compliance with the most current iteration of the full standard, including future updates. If the Commission chooses to vary from this standard, it must provide reasons.

Advocates also urge the Commission to heed AMPP's caution and verify whether the proposed § 59.143(c), as written, is less stringent than the federal standards in 49 CFR § 195. If that is the case, the Commission needs to evaluate whether it would remain less stringent if it were to apply the full SP0169 standard. If the full standard is more protective than the federal minimum regulations, then the Commission should require operators to follow it. If it remains weaker than the federal standard, then the Commission should check whether there is another more robust source of best practices, and, if not, revert to the federal standard.

Advocates also want to amplify other concerns raised by AMPP. Specifically, AMPP notes that hydrogen embrittlement may sometimes cause pipe coating disbondment and pipeline metal embrittlement, a potential effect that the Commission must consider. Next, AMPP emphasizes that the Commission must require operators to measure and otherwise account for electronic shielding; and to evaluate alternating current ("AC")-related corrosion in pipeline service. Advocates request that the Commission require operators to evaluate the potential for each underground pipeline system to suffer AC-related corrosion and to implement mitigation measures wherever observations indicate that it could impact a buried pipeline. Additionally, AMPP properly raises concerns about microbiologically induced corrosion ("MIC"). Advocates urge the Commission to ensure that operators properly evaluate the potential for MIC, carefully considering temperature, moisture levels, soil type, and other influential factors. For each of these issues, the Commission can likely turn to established or emerging best practices (AMPP mentions that SP0169 includes best practices for where MIC is a significant concern). Accordingly, the Commission should require that operators develop comprehensive corrosion-control plans rooted in best practices plans to fully evaluate all known and reasonably suspected causes of corrosion in pipelines. These plans should go beyond periodic ILI and pressure testing to prevent pipeline failures, leaks, and excursions when more extensive measures would be in line with best practices.

Advocates also support AMPP's suggestion that the Commission rework § 59.143(c)(3), which currently prohibits shutting off current sources for long enough to expose an area to corrosion. However, as AMPP notes, an area with current discontinued is technically instantly exposed to corrosion, so the Commission must choose other criteria that are sufficiently protective while being achievable.

Additionally, Advocates strongly urge the Commission to recognize and account for the linkages between AMPP's comments, corrosion, and climate change. AMPP points out that at higher temperatures cathodic protection may require more negative potentials, and that electrodes must be corrected for temperature. The regulations need to account for this and for other impacts of increased temperature, such as a potentially higher risk of MIC, and for the fact that temperatures will be continuing to rise for the foreseeable future because of the effects of climate change.

Advocates disagree, however, with AMPP's suggestion that twice-yearly cathodic protection testing does not increase safety. Unfortunately, the Commission's experiences with the Sunoco Mariner East Morgantown investigation suggest that at least some operators are not devoting enough resources to fully understand and test their cathodic protection systems. With respect to the leak on ME1 in Morgantown, PA on April 1, 2017, Sunoco's own Senior Maintenance Supervisor, Mark Martin, testified in West Cornwall Township on June 13, 2017 that inline inspection had occurred in 2013, hydrostatic testing was performed in 2014, and additional smart pig tests were run in October or November of 2016.[53] However, the inspector also went on to testify that, "The test is good the day that you do it. The next day based on operations anything can change. This is no different than, we're talking pipeline here, but you take your car to the mechanic and get it inspected, that's no guarantee that car is never going to have a mechanical issue or something else happen."

Martin further testified that the leak in Berks county was reported by a landowner because Sunoco's monitoring equipment was located at the pump station several miles away, and they do not have the capability to detect a "small" leak. In reality, this "small" leak, on ME1 in Morgantown, Pennsylvania, undetectable by Sunoco, released a dangerous quantity of approximately 1,000 gallons of highly volatile ethane in the two and a half hours from the time the leak was reported to the time the line was shut down. To Advocates' knowledge, no one knows how long the line was leaking before the homeowner reported it, nor the quantity of hazardous material released.

To best allocate resources, instead of always requiring semi-annual testing, Advocates suggest that certain events trigger it for a period of three years, unless best practices indicate that baseline testing should remain every 6 months. The triggering events could include: (1) new system installation; (2) substantial system modification; (3) a cathodic system being found inadequate by the operator, by a third-party inspector, or by the Commission; or (2) corrosion requiring repair or other anomalies impacting more than a minimum number of sections of a pipeline segment per year. Advocates suggest that the Commission be guided by lessons from the Morgantown incident in setting a threshold for the minimum number and severity of issues

[53] Rcording of testimony last accessed on May 12, 2022, available at: https://www.youtube.com/watch?v=zFyfNjNi3qc

that could arise before more frequent cathodic protection system testing is required. Problems of the magnitude observed in Morgantown should require additional testing.

Regarding § 59.143(b), Advocates are surprised that some industry commenters, including Sunoco and API, need the Commission to explain why it asks operators to "determine and document the average and the worst-case corrosion rate experienced for each pipeline segment." API bemoans the apparent lack of justification, and Sunoco, despite failing to properly monitor corrosion in the past, insists that such efforts would be "costly, labor intensive, and unnecessary." Sunoco admits that it collects such data for high consequence areas but seems to believe that predictive corrosion data is otherwise unnecessary.

Advocates, on the other hand, recognize that the current outdated PHMSA regulations are reactive, seeking for operators to only respond to loss of pipeline integrity by fixing anomalies retroactively. Regularly collecting data on average and worst-case corrosion scenarios throughout the pipeline system would instead allow operators and the Commission to be proactive, predicting where problems are likely to arise and acting to prevent them before they create dangerous and costly problems for the citizens of the Commonwealth. Such a regulation is entirely aligned with the Commission's § 1501 duties.

Sunoco also complains that it is onerous to "track extensive corrosion information and any changes thereto in subsequent inspections across its entire pipeline." It should be noted that if an operator is not sophisticated enough to handle basic data management, there is little reason to trust their ability to manage a complex, potentially dangerous pipeline system. Advocates are frankly skeptical that a large company with much more involved data tracking needs would find this degree of data management cumbersome. To Sunoco and API's complaint that such corrosion data is unnecessary, Advocates would like to remind them that nearly 20% of significant pipeline incidents in 2021 were caused by corrosion. Furthermore, the availability of this data should better enable the evolution of more effective best practices for corrosion control by illuminating which practices make worst-case corrosion more or less likely to occur.

Advocates appreciate the Commission's requirements for close interval surveys as a best practice in managing pipeline corrosion. Close interval surveys, when performed as part of a program including ILI, pressure testing, and other corrosion monitoring methods, help assure public safety. Advocates also agree close interval surveys are necessary particularly when ILI is irregular, and are pleased that Sunoco gave a nod to the importance of operators following best practice. Advocates note that the proposed rules requires hazardous liquid public utilities to "comply with NACE International Standard Practice 0207-2007," and would ask that the Commission append "and any updates thereto" to the reference to the best practice.

Advocates believe that coordination with the Pennsylvania Department of Transportation ("PennDOT") could minimize the expense and potential disruption around roadways noted by

some commenters. The Commission should coordinate with PennDOT to establish road construction standards above pipelines. The Commission should also require pipeline operators to coordinate with owners of road surfaces crossing pipelines to minimize roadway disruption. Additionally, the Commission should require that operators fund efforts to provide access points, such as covered manholes, to more easily facilitate close interval surveys while minimizing public impacts, including traffic disruption and the expense of periodically repairing roadways. Further, pipeline operators should be required to make similar arrangements for owners of private roads, parking lots, and the like that cross pipeline easements and are not regulated by PennDOT. Proper coordination with PennDOT and relevant owners would allow structural changes to be phased in with minimal disruption, for instance when road maintenance or reconstruction is already planned.

Regarding remote monitoring of rectifiers and physical inspections under proposed § 59.143(d), Advocates acknowledge AMPP's expertise and thus believe that inspection frequency can likely be decreased where remote monitoring indicates proper rectifier function. Advocates believe, however, that dropping to annual inspections or less is too extreme because the inspector is likely to be the only individual setting foot on the easement for long stretches of time. There is no substitute for physical inspection.

* * *

Advocates thank the Commission for considering these comments and look forward to the finalization and implementation of this rule.

Respectfully submitted,

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