

June 30, 2014

To:

The Joint Legislative Air and Water Pollution Control and Conservation Committee:

Chairman/Senator Scott Hutchinson  
Senator Andrew E. Dinniman  
Senator John R. Rafferty  
Senator David G. Argall  
Senator Mike Brubaker  
Representative Matthew D. Bradford  
Representative Eli Evankovich  
Representative Stephen Bloom

From:

Lynda Farrell, Executive Director, Pipeline Safety Coalition  
Theodosia Price, Senior Planner, Brandywine Conservancy  
Oliver Bass, Vice President, Natural Lands Trust  
Andy Pitz, Executive Director, French and Pickering Creeks Conservation Trust  
Victoria Laubach, Executive Director, Green Valleys Watershed Association

Dear Senators Dinniman, Rafferty, Hutchinson, Argall, Brubaker and Representatives Bradford, Evankovich and Bloom,

We thank the Joint Legislative Air and Water Pollution Control Committee (JCC) for holding the April 10, 2014 Public Hearing on Interstate Pipeline Construction in Southeastern Pennsylvania and for affording us the opportunity to provide additional comments. We are grateful for the Committee's focus on issues relating to interstate pipeline siting and construction and more specifically the notification process for landowners, governmental entities, easement holders, etc., and the impact of pipeline construction on the citizenry and natural and cultural resources of Pennsylvania.

After review of the transcript of the April 10 hearing and of Senate Bills 504 & 506, we respectfully submit the following observations and recommendations to the JCC.

Pipeline notification process: deficiencies and recommendations:

Testimony was overwhelmingly in favor of establishing uniform pipeline notification requirements for the Commonwealth, based on the need to enable all affected parties to participate in an informed manner in the pipeline planning process. Testimony provided by Mr. Bailey, Mr. Ciarrocchi, Ms. Farrell (Pipeline Safety Coalition ("PSC")), Ms. Price, and Ms. Juico noted the fundamental need for both Senate Bill 504 and the JCC to create legislative requirements for making pipeline infrastructure planning and construction information available early in the operator planning process to county, state and local officials, landowners, and those responsible for enforcing conservation easements and similar restrictions. Incon-

sistencies in the currently varied planning notification methods were noted to be unclear to Operators; state, county, and local officials; landowners; and, conservation interests.

#### Centralized Information Repository

Mr. Ciarrocchi recommended that information about pipeline siting processes should be consolidated into one location, "...a central repository of information and rules that afford public input so that no one is ever surprised, whether you are a resident, the local government, or business that you suddenly find out this is happening or that there is an added step that you didn't know about." Senator Dinniman agreed that a central point of contact was a needed addition to the Bills under review.

#### Chester County Pipeline Notification Protocol

Mr. Bailey and PSC further testified that Chester County has created a malleable Pipeline Notification Protocol ("PNP") and Pipeline Information Center ("PIC") functionally ready for adaption and adoption throughout the Commonwealth. The PNP and PIC were described as having been constructed by implementing recommendations and goals of the US DOT PHMSA initiative "Pipelines and Informed Planning Alliance", or PIPA, which involved 130 diverse stakeholders, including the gas and oil industries, and seeks to foster early communication in the land development process and improve pipeline safety. The PIC emulated PIPA and was created in Chester County in order to make information regarding pipeline infrastructure planning and construction activities readily available to county, state, local officials, and landowners early in the planning process in a centralized venue.

#### Notification Area

Further, the PNP established use of Consultation Zones (CZ) in the notification process. The definition of a Chester County CZ is: "an area extending 1,000 ft from each side of a transmission pipeline or a proposed transmission pipeline to describe when an operator or property developer/owner, who is planning land use activity should initiate a dialogue with the County through PNP."

#### Timing of Notification

Testimony by several parties, including Ms. Farrell and Ms. Price, stressed the need for early public notification at the initial planning stages of pipeline route planning in order to achieve effective public participation in the route identification and selection process. The PNP recommends that initial notification of the public take place during the first stages of an Operator's "General Route Evaluation and Project Feasibility Analysis" when, as stated in PIPA, Operators "connect point 'A' to point 'B' (and) evaluate potential routes from 'A' to 'B'..." Notification in a pre-application, before the FERC pre-filing period, affords regional input in the route planning process, enabling the incorporation of local land use planning, the avoidance of special natural and cultural resources, and promotion of pipeline safety. This PNP-recommended process may also provide Operators the opportunity to contribute technical assistance

to planning commissions in land use planning proposed in proximity to pipelines. Early public participation in the pipeline planning process can save operators both time and money in the long run by reducing the potential for opposition to the final selected route.

*Recommendation: We encourage committee review of the PNP and welcome JCC recommendations for broader adoption of this model in order to encourage better planning for pipelines and to ensure that communities, land trusts holding conservation easements, and local governments have equal access to accurate and timely information, allowing them an opportunity for meaningful participation in the pipeline planning process. We encourage the JCC to lead the Commonwealth in the support of PHMSA's efforts to nationally address this pressing issue by leveraging the work products of PHMSA, the Chester County Commissioners and Planning Commission, and Pipeline Safety Coalition in creating a state repository based upon PNP & PIC.*

An additional concern regarding the pipeline notification process is the experiential fact that landowners are often first notified of a potential pipeline project on their land by a knock on the door and the presence of a land agent or "landman." These agents of the Operator are often the negotiator of land easements, threaten use of eminent domain and yet are not certified or registered realtors.

*Recommendation: We support Mr. Piersol's recommendation that the Commonwealth create requirements for training, community outreach, licensing or certification for land agents.*

Pipeline siting regulations: lack of consistency, deficiencies and recommendations:

Ms. Farrell testified that Pennsylvania is one of only two states that does not have oversight in *intrastate* pipeline siting (pipelines that do not cross state boundaries). It bears noting, however, that even for interstate pipelines granted conditional certificates by FERC, a state's review of and decision to grant or not grant a required state permit is critical, and can ultimately effect where, how, and even whether a pipeline is built.

Ms. Farrell reported that while *interstate* gas pipelines (pipelines that cross state and/or country boundaries) require federal siting approval, there are no standards for notification to landowners, counties, or municipalities until an operator has pre-filed with the FERC and that at this juncture the operator has invested substantial time and expense in a preferred plan, thus supporting a federal approval of the preferred plan. She further testified to an absence of federal or state siting requirements or standard notifications for hazardous liquids products, both interstate and intrastate. Ms. Farrell and Ms. Price urged the legislators to consider regulation of intrastate pipelines and other non-FERC-regulated pipelines.

*Recommendation: Seek opportunities to improve oversight of siting and notification related to intrastate pipelines (natural gas and hazardous liquids) in order to protect the Commonwealth's natural, agricultural, and cultural resources, and ensure public safety.*

Pipeline segmentation, cumulative impacts and recommendations:

Senator Dinniman spoke to the cumulative social and environmental impacts experienced in Chester County during the Williams Transco Sentinel Project. During this project County officials and citizens learned of the Operator's ability to file segmented permit applications. Segmenting the overall project into smaller projects reduces or eliminates permit requirements in both state and federal levels.

The recent June 6, 2014 ruling by the US District Court of Appeals for the District of Columbia (USCA Case #13-1015) addresses this issue. The Court found FERC was deficient in its failure to include any meaningful analysis of the cumulative impacts of Tennessee Gas's projects and found FERC impermissibly segmented the environmental review in violation of NEPA.

Environmental impacts, mitigation:

Ms. Price testified that the FERC review of cumulative impacts is inadequate, and that mitigation required for removal of and impacts to woodlands is deficient. She recommended a mitigation protocol for woodlands similar to that for wetlands, and only the narrowest necessary right-of-way for clearing of trees on riparian corridors and steep slopes.

*Recommendations: We encourage the Commonwealth state encourage the use of cumulative impacts in FERC review per the US District Court of Appeals for the District of Columbia (USCA Case #13-1015) by requiring DEP to disallow segmentation and consider cumulative impacts of each segment of a pipeline project during the permitting process. We further recommend that DEP be required to consider the cumulative impacts of other current pipeline projects in the vicinity, within the same watershed, county or abutting counties. We additionally recommend that woodlands, wildlife habitat, water crossings, steep slopes, agricultural soils and agricultural and conservation easements be highlighted for avoidance in impact reviews. We further recommend that the Commonwealth require mitigation of woodland impacts similar to that required for wetland impacts.*

**SB 504:**

Recommendations:

- 1) Include a definitions section: a short list of terms used in the bill.
- 2) Definition of "Landowner" should include anyone with real interest in land including holders of Conservation and Agricultural Easements and similar restrictions.
- 3) Section 1905 - A:
  - 1) (line 4-6): The term project is non-specific and does not specify the range of pipeline infrastructure such as pipe, compressor stations, pump stations, valves, pig launchers, etc.
  - 2) (line 14) - A timeframe is not indicated: Recommendation: *Extend timeframe to 90 - 120 days*
- 4) (1.1)(line 18-22) ...to give written notice... Recommendation: *Encourage earlier notification by requiring notice "within 10 days of DEP receipt of Operator request"*

- 5) (1.1)(i)(c)(line 23) ...provided within thirty (30) days... Recommendation: *Encourage earlier notification by requiring notice within 10 days*
- 6) (1.1)(ii)(line 26) ... The date of publication...in the PA Bulletin... Recommendation: *Encourage earlier notification by requiring notice “ to be made within 10 days of Operator permit application”*
- 7) (1.1)(iii)(line 30) The date, location and time of any hearing scheduled by DEP... Recommendation: *to be provided at least (20) days prior* (2)(line 7) ...landowner at least 30 days... Recommendation: *Extend timeframe to 90-120 days*
- 8) (2)(line 5)(c) ... The notice to landowners...
  - 1) Recommendation: *residents; holders of Agricultural and Conservation Easements, and similar restrictions, and municipalities*
  - 2) Recommendation: *copies of all correspondence to landowners/residents be copied to:*
    - 1) *Municipality*
    - 2) *County Point of Contact in counties that have established a Pipeline Notification Protocol*
- 10) (2)(line 5)(2) A brief description ... Recommendation: *a detailed description to include mapping, engineering, and technical submissions for pipeline infrastructure development as made to DEP by the operator of the activity planned for the project under the permit application.*
- 11) (line 14)(2)(4): A brief description...Recommendation: *a detailed description...*
- 12) (line 16-21)(d): ... shall post ... each application ... Recommendation: *posting within 10 days of receipt of application, followed by a 60-day period for public review and comment.*

**SB 506:**

- 1) “Public Land” and “Recreational use” – Conservation and agricultural easements don’t always have public access nor are required to have public access. Recommendation: *use of term such as: Land for Public Benefit. Also, if a municipality contributed public open space funds to the purchase of the easement, it should (must) be involved in the selection the replacement project.*
- 2) (lines 14-20)(a): Duty of pipeline operators. Recommendation: *language requiring DEP to issue fines for violations rather than waving fines for operators who clean up quickly and in “good faith.”*

Addendum

The following items pertain to the overall intent of the JCC hearing and Senator Dinniman and Senator Rafferty’s focus on issues relating to interstate pipeline siting and construction and more specifically the notification process for landowners, governmental entities, easement holders, etc., and the impact of pipeline construction on the citizenry and natural and cultural resources of Pennsylvania.

*Recommend: Establish a Task Force to develop state standards for the restoration of construction areas and maintenance of permanent ROW's in order to minimize negative impacts on water quality, forest health and integrity, wildlife habitat, etc.*

- 3) *Regarding water notification:* Chester County has the benefit of a Water Resources department but not all counties do. When does the Conservation District first learn about and have review capabilities regarding water, and should a recommendation for county conservation district correspondence to affected conservation easement agencies and local government entities regarding water resources impacts be initiated?
- 5) Even though the Integrated Interagency Pre-Application Process gives lip service to coordinating with state and local governments, this still has not gotten to where it could and should be. This is understandable since it is primarily a federal interagency agreement, but CEQ opened the door by indicating they would also be attentive to non-federal entities, so they should be held to that standard. Bottom line is, our state legislators should know that this is a problem and it isn't getting solved. FERC representatives may be well-meaning but do not have authority to change administrative requirements, and in the case of a hazardous liquid line, FERC has no jurisdiction. Is there a role that state officials could play in improving these federal processes.

We thank the Joint Legislative Air and Water Pollution Control Committee (JCC), and especially Senator Dinniman and Senator Rafferty for this opportunity to submit comments. Please contact any of us below with questions. We look forward to the Committee's report on this proceeding.

Best Regards,



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Theodosia Price, Senior Planner, Brandywine Conservancy



Oliver Bass, Vice President, Natural Lands Trust



Andy Pitz, Executive Director, French and Pickering Creeks Conservation Trust



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