



**For Immediate Release**

May 10, 2017

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**Legal Challenge Filed Against Sunoco Mariner East 2 Pipeline  
for Failure to Comply With Local Zoning  
Delaware Riverkeeper Network Seeks an Injunction for the Company's Failure to  
Comply with Municipal Zoning Law**

***West Goshen Township, Chester County, PA:*** Claiming that the proposed Sunoco Mariner East 2 pipeline project violates municipal zoning ordinances and is a hazardous industrial use with known detrimental impacts on health, safety, welfare, property values, and public natural resources being sited in residential districts, the Delaware Riverkeeper Network, joined by directly impacted land owners, filed a lawsuit in the Chester County Court of Common Pleas against Sunoco Pipeline today.

According to the complaint, Sunoco cannot construct the Mariner East 2 Pipeline, a hazardous, highly volatile liquids pipeline, in a manner that is inconsistent with West Goshen Township ordinances. Construction of this hazardous liquids pipeline through residential areas violates the township's zoning code, says the Delaware Riverkeeper Network. Even if allowed, the proposed placement of this pipeline would require a conditional use approval and be subject to minimum setback requirements. The lawsuit asks the court to enjoin the construction and operation of the pipeline.

"Sunoco is flouting the requirements of local zoning and inflicting incredible harm on the community and our environment. This blatant violation of law, and constitutional rights, cannot be allowed to stand. It is unfortunate that West Goshen Township has not sought to defend the rights of its own residents. I am pleased for the opportunity to join with the community to defend their rights, and the rights of all communities in the Commonwealth of Pennsylvania, from being run over roughshod by the Sunoco Pipeline company," said Maya van Rossum, the Delaware Riverkeeper,

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leader of the Delaware Riverkeeper Network, and a plaintiff in the case.

If constructed, Sunoco's Mariner East 2 pipeline would transport so-called "natural gas liquids" (NGLs) resulting from hydraulic fracturing activities from western Pennsylvania to the Marcus Hook Industrial Complex near Philadelphia. The project requires construction of one or more pipelines and above ground facilities in Delaware, Chester, and Berks counties, Pennsylvania. The hazardous liquids pipeline would carry highly volatile liquids, including propane, butane and ethane, through a number of residential communities, in close proximity to homes, schools and businesses. Sunoco has neither sought nor secured zoning approval from West Goshen Township for construction of the project, despite its clear conflict with existing ordinances in the municipality. West Goshen zoning ordinances prohibit construction of hazardous liquid and gas transmission pipelines as proposed by Mariner East 2. In addition to being prohibited where proposed, even where such construction is allowed, it must receive conditional use approval (with public participation) and provide for a setback that is equal to or greater than the Pipeline Impact Radius. (This term is specifically defined in West Goshen Township's ordinance for the purpose of avoiding "significant impact to people or property, including but not limited to noise, environmental, visual and other impacts which may be detrimental to health, safety and welfare of the community").

The lawsuit requests that the Court enjoin "Sunoco from maintaining, placing, or operating a "hazardous liquid and/or gas pipeline" or other prohibited use on the Property that is not permitted under Zoning Ordinance."

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THOMAS CASEY,  
1113 Windsor Drive  
West Chester, PA 19380

and

ERIC GROTE  
1243 Morstein Road  
West Chester, PA 19380,

Plaintiffs,

vs.

IN THE COURT OF COMMON PLEAS  
OF CHESTER COUNTY,  
PENNSYLVANIA

CIVIL ACTION

No.:

SUNOCO PIPELINE L.P.  
c/o Corporation Service Company  
2595 Interstate Drive, Suite 103  
Harrisburg, PA 17110

Defendant.

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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2595 Interstate Drive, Suite 103

IN THE COURT OF COMMON PLEAS  
OF CHESTER COUNTY,  
PENNSYLVANIA

CIVIL ACTION

No.:

Harrisburg, PA 17110 :  
 :  
 Defendant. :  
 \_\_\_\_\_ :

## **COMPLAINT**

PLAINTIFFS THE DELAWARE RIVERKEEPER NETWORK, MAYA van ROSSUM, The Delaware Riverkeeper, THOMAS CASEY, and ERIC GROTE (hereinafter, “Plaintiffs”), by and through their undersigned counsel, hereby requests that this Honorable Court enjoin Sunoco Pipeline L.P., (hereinafter, “Defendant” or “SPLP”) from constructing any portion of the Mariner East 2 Pipeline in West Goshen Township, Chester County (hereinafter “the Township”) in violation of a Section 84-56 of the West Goshen Township Zoning Ordinance, and in support hereof Plaintiffs state as follows:

1. Plaintiff the Delaware Riverkeeper Network (“DRN”) is a non-profit organization established in 1988 to protect and restore the Delaware River, its associated watershed, tributaries, and habitats. This area includes 13,539 square miles, draining parts of New Jersey, New York, Pennsylvania and Delaware, and it is within this region that a portion of the Project’s construction activity are proposed to take place. In its efforts to protect and restore the watershed, DRN organizes and implements stream, wetland, and habitat restorations; a volunteer monitoring program; educational programs; environmental advocacy initiatives; recreational activities; and environmental law enforcement efforts throughout the entire Delaware River Basin and the basin states. DRN is a membership organization headquartered in Bristol, Pennsylvania, with more than 19,000 members with interests in the health and welfare of the Delaware River and its watershed. DRN began its advocacy efforts to protect the Basin from the adverse impacts of natural gas and pipeline infrastructure development in March of 2008. DRN has actively worked since that time to bring the environmental impacts of natural gas and

pipeline infrastructure development to the public's attention through action alerts, press outreach, public appearances, public statements, and editorials. DRN has also advocated for and has funded expert scientific studies on the impact of natural gas and pipeline infrastructure development. DRN participates in this action on behalf of the organization as part of the pursuit of its organizational mission, and on behalf its impacted members, the board, and staff.

2. Plaintiff Maya van Rossum, the Delaware Riverkeeper , came to work for DRN as the organization's Executive Director in 1994. In 1996, she was appointed Delaware Riverkeeper and leader of DRN. Ms. van Rossum is also a member of DRN and supportive financial donor. Maya van Rossum as the Delaware Riverkeeper regularly visits the Delaware River and Delaware Estuary, including the areas affected by pipelines and has taken family, friends, DRN members, and other interested people onto the Delaware River and its tributaries to educate them and to share with them the aesthetic beauty of the river. DRN's members live, own property, recreate, and work throughout the watershed, which includes areas affected by Commission-jurisdiction pipeline projects, and have had their aesthetic, recreational, and property interests harmed as a result of construction and operational activity. DRN and its members value the aesthetic qualities of their property and public parks; enjoying the scenery, wildlife, recreation opportunities, and undeveloped nature.

3. Plaintiff Thomas Casey, owns certain real property at 1113 Windsor Drive, West Chester PA 19380 ("Casey Property"), which is located in the R 3 Zoning District, West Goshen Township, a Second Class Township located in Chester County. Mr. Casey is currently a member of DRN.

4. Plaintiff Eric Grote, owns certain real property at 1243 Morstein Road, West Chester PA 19380 ("Grote Property"), which is located in the R 3 Zoning District, West Goshen



Township, a Second Class Township located in Chester County. Mr. Grote is currently a member of DRN.

5. Defendant Sunoco Pipeline L.P., (“SPLP” or Defendant) is a Texas limited partnership, with a registered corporate address of c/o Corporation Service Company 2595 Interstate Drive, Suite 103 Harrisburg, PA 17110.

6. Defendant proposes to construct a Hazardous Liquid Pipeline for highly volatile liquids referred to as Mariner East 2 (“ME2”) Pipeline. *Application of Sunoco Pipeline L.P.*, A-2013-2371789 and P-2013-2371775, Order entered August 29, 2013 (request to suspend intrastate service along a portion of pipeline and abandon service on other portions); *Petition of Sunoco Pipeline, L.P. for Amendment of the Order Entered on August 29, 2013*, P-2014-2422583, Opinion and Order entered on July 24, 2014 at 7 (“Sunoco 2014 Petition”)(request to transport propane and ethane on expanded Mariner East Pipeline); *Amended Petition of Sunoco Pipeline, L.P. for finding that the Situation of Structures to Shelter Pump Stations and Valve Control Stations Is Reasonably necessary for the convenience or welfare of the public*, P-2014-2411966, at Exhibit A.

7. The proposed route through West Goshen Township follows an existing SPLP hazardous liquids pipeline, and generally follows Boot Road in the area of the Casey and Grote Properties.

8. Effective October 13, 2014, West Goshen Township enacted Ordinance No. 9-2014, an amendment to its zoning ordinance that deals with gas and liquid pipeline facilities and where those uses are permitted by conditional use (“Ordinance”). The relevant portions of the ordinance are attached hereto. (See Exhibit A hereto).

9. The ordinance creates categories of utilities, includes definitions of “community utility,” “governmental utility,” “gas and liquid pipeline facility,” “hazardous liquid and/or gas pipeline,” “hazardous liquid and/or gas,” and “pipeline impact radius.”

10. The Ordinance changed the definition of “public utility facility” to be “as that term is defined in the Pennsylvania Public Utility Code, 66 Pa.C.S.A. § 101 *et seq.*”

11. Under the Ordinance a public utility facility use is permitted by conditional use, and no longer permitted by right in residential districts.

12. Only “essential utilities” are permitted by right in all zoning districts.

13. The Ordinance provides that “gas and liquid pipeline facilities” are permitted by conditional use only in the I-1, I-2, I-2R, I-3 and I-C districts.

14. The conditional use standards include setback requirements for the Pipeline Impact Radius, in Section § 84-56, amending Utility Uses, (18) stating that:

A Public Utility Facility and Gas and Liquid Pipeline Facility that involves hazardous liquid and/or gas pipelines shall be setback from all occupied structures a minimum distance equal to the Pipeline Impact Radius.

(See Exhibit A) Ord. No. 9-2014, § 84-56 B(18).

15. The Pipeline Impact Radius is defined as:

The distance within which the potential failure of a hazardous liquid pipeline and/or gas pipeline could have significant impact to people or property, including but not limited to noise, environmental, visual and other impacts which may be detrimental to the health, safety and welfare of the community. The pipeline impact radius for a hazardous liquid and/or gas pipeline shall be calculated in the same manner as the potential impact radius defined by federal or state laws, including, but not limited to Title 49 of the Code of Federal Regulations, as the same may from time to time be amended.

Ord. No. 9-2014, § 84-8.

16. SPLP will transport propane, butane and ethane, all of which are highly volatile liquids (“HVLs”) by subjecting them to high pressure in the ME2 Pipeline.

17. ME2 Pipeline will be a 20 inch diameter pipeline “along much of the same route” as ME1, an existing 8 inch pipeline. *See Pa. P.U.C. Order, Application of Sunoco Pipeline L.P., for Approval of the Right to Offer, Render, Furnish or Supply Intrastate Petroleum and Refined Petroleum Products Pipeline Service to the Public in Washington County, Pennsylvania, Pa.* P.U.C. Docket No. A-2014-2425633, \*2 (August 21, 2104) (Hereinafter, “August 21, 2014 Washington County Order”)

18. Federal pipeline safety regulations classify propane, butane, and ethane as “highly volatile liquids,”<sup>1</sup> which, once outside the pipeline, are heavier-than-air gases that are colorless, odorless, flammable, and explosive.

19. The Pennsylvania Public Utility Commission (“Commission”) has no regulations on the siting of HVL pipelines.

20. In an attempt to exploit the Commission’s lack of regulation on siting and eminent domain authority, SPLP has changed its position about the ME2 Pipeline, arguing that ME2 is *intrastate* and that SPLP is a “public utility” to suit its needs.

21. Only after SPLP lost in condemnation proceeding in York County, did SPLP seek approval to provide *intrastate* service. *See Sunoco Pipeline, L.P., v. Loper*, No. 2013-SU-4518-05 (Ct. Com. Pleas (York) 2014).

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<sup>1</sup> Highly volatile liquids “are hazardous liquids which will form a vapor cloud when related to the atmosphere and which has a vapor pressure exceeding 276 kPa (40psia) at 37.8 which will form a vapor cloud when related to the atmosphere and which has a vapor pressure exceeding 276 kPa (40psia) at 37.8° C (100° F).” 49 C.F.R. 195.2. Hazardous liquids are defined as “petroleum, petroleum products, or anhydrous ammonia.” 49 C.F.R. §195.2.

22. SPLP has not sought zoning approval from West Goshen for construction of its ME2 Pipeline, relying on the contention that local ordinances are preempted by SPLP's alleged "public utility status" before the Pennsylvania Public Utility Commission. *See, e.g., In re Sunoco Pipeline, L.P.*, 143 A.3d 1000 (Pa. Commw. Ct. 2016) (hereinafter "*Martin*").

23. The Public Utility Code authorizes the Commission to issue Certificates of Public Convenience ("CPCs") upon application to a "public utility" to "offer, furnish, or supply service within this Commonwealth." 66 P.S. § 1101.

24. SPLP engaged in a "dizzying array of procedural moves and reversal of course as to its business plan in Pennsylvania in the aftermath of the *Loper* decision" *Martin*, 143 A.3d at 1029 (Dissent of J. McCollough).

25. In *Loper*, SPLP argued that the ME2 Pipeline was for the interstate shipments of HVLs and that it was regulated by FERC as a public utility. *Id.* at 1009.

26. Only after this loss in *Loper* did SPLP seek public utility status from the Commission in Pennsylvania for the ME2 as an *intrastate* HVL pipeline. *Id.*

27. SPLP manipulated its application, first seeking to suspend service and later seeking reconsideration and clarification of its proposed service, filing with the Commission on May 21, 2014 for "clarification" on a 2013 application for suspension of east to west shipment of petroleum products, suggesting that reconsideration of the suspension was due to increased demand for propane after a harsh winter in 2013-2014. *Id.* at 1010; August 21, 2104 Washington County Order.

28. SPLP applied in June 2014 for approval to construct a portion of ME2 in Washington County, Pennsylvania to extend its service into Washington County, Pennsylvania on the West Virginia border. August 21, 2104 Washington County Order.

29. The Commission ordered that a CPC “should issue authorizing” to SPLP to offer “petroleum products” “to the public in Washington County”. *Id.*

30. SPLP has relied on the Commission Order from 2014 in condemnation proceedings and certificates of public convenience issued decades ago with respect to other counties as proof that it is a “public utility corporation”. *Martin*, 143 A.3d at 1010; *see also*, Order, August 21, 2014 Washington County Order.

COUNT I  
VIOLATION OF MUNICIPAL ZONING ORDINANCE

31. Plaintiffs incorporate the above paragraphs as if set forth here at length.

32. Under the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101, *et.seq.* and Section 84-56 of the West Goshen Township Zoning Ordinance, Plaintiffs are authorized

[i]n case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of any ordinance enacted under this act or prior enabling laws, the governing body or, ...an aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation...When such action is instituted by a landowner or tenant, notice of that action shall be served upon the municipality at least 30 days prior to the time the action is begun by serving a copy of the complaint on the governing body of the municipality.

53 P.S. § 10617; West Goshen Township Zoning Ordinance, Section 84-56. (See Exhibit A).

33. Notice of this action was served upon the West Goshen Township on or about February 10, 2017 by serving a copy of the complaint on the governing body of the Township in accordance with 53. P.S. § 10617.

34. West Goshen Township has not sought to enforce the Ordinance against SPLP, and 30-day notice period has passed.

35. In accordance with the West Goshen Township Zoning Ordinance and the Municipalities Planning Code, “gas and liquid pipeline facilities” are permitted by conditional use only in the I-1, I-2, I-2R, I-3 and I-C districts.

36. SPLP has not sought or obtained the necessary approvals required under the Zoning Ordinance.

37. “[A] municipality need only prove a violation of its zoning ordinance to establish its entitlement to an injunction; irreparable harm need not be demonstrated.” Township of Upper St. Clair v. N.R. Porter and Associates, 127 Pa. Commw. 313, 316, 561 A.2d 851, 852 (1989).

38. The issuance of the requested relief will be in the public’s best interest as it will ensure the consistent, uniform, and valid administration of the Zoning Ordinance in West Goshen Township.

39. SPLP’s proposed ME2 is contrary to the Plaintiffs’ and the public’s interests and to the public health, safety, and welfare in West Goshen Township and represent a *per se* violation of the Zoning Ordinance, which must be enjoined.

40. First, the placement of the ME2 Pipeline is not permitted in the R3 district.

41. Second, even if the ME2 Pipeline use were permitted in the zoning district, it is subject to conditional use approval, and to the setback requirements of Section 84.56B(18) of the Ordinance.

42. SPLP’s ME2 Pipeline will be a “hazardous liquid and/or gas pipeline” under the Ordinance.

43. Under West Goshen Code §84-8, “essential utilities” are defined as follows:  
“[i]ncludes sewerage, water, gas and electric lines and related appurtenances used to serve development within the Township, but not including cross-county or cross-country transmission lines or other utilities not required to serve the Township.” West Goshen Township Zoning Ordinance, §84-8.

44. Essential utilities are permitted by right in all zoning districts, under § 84-56(A).

45. SPLP’s ME2 Pipeline will not qualify as an essential utility under the Ordinance because it is a “cross-county or cross country transmission line not required to serve the Township.”

46. SPLP has not made a conditional use application to the Township for the ME2 Pipeline.

47. The Pipeline Impact Radius (“PIR”) as defined by Section 54-8 contains both a calculable distance component, based on the federal formula the Code references, and an effects-based component not based on formula, for “significant impact to people or property, including but not limited to noise, environmental, visual and other impacts which may be detrimental to the health, safety and welfare of the community.” West Goshen Township Zoning Ordinance, § 54-8.

48. The federal formula involves diameter of the pipe, the pressure of the pipeline, as multiplied by a coefficient factor of 0.69, which presumes a immediate ignition of natural gas, and any formula calculated the PIR for the ME2 would adjust the coefficient upward to reflect the greater energy density of HVLs and delayed ignition. *See* 49 C.F.R. § 192.903.

49. Upon information and belief, the PIR for the ME2 pipeline is at least 125 feet, and likely greater than 1,000 feet.

50. Further, a leak or explosion of highly volatile liquids in ME2 would cause the Casey and Grote Properties to experience “noise, environmental, visual and other impacts” that are “detrimental to the health, safety and welfare of the community.”

51. The Casey and Grote Properties is within the PIR setback prescribed in the conditional use standards.

*The Public Utility Code Does Not Preempt West Goshen’s Ordinance*

52. The Public Utility Code does not preempt West Goshen’s Ordinance.

53. SPLP’s ME2 Pipeline is not a “building” subject to the MPC exception.

54. MPC provides in relevant part, as follows:

This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

53 P.S. § 10619.

55. SPLP’s ME2 Pipeline is not a building to be used by a public utility corporation, which could be subject to hearing Commission determination that it is “reasonably necessary for the public convenience or welfare” of the Township.

56. The Public Utility Code contains no affirmative express statutory language preempting local zoning.

57. The Municipalities Planning Code (“MPC”), contains only a repealer clause, that repeals all laws inconsistent with the MPC, but with a provision specifically saving the Public Utilities Code from repeal. 53 P.S. § 11202: “All other act and parts of acts are repealed in so far as they are inconsistent herewith, but this act shall not repeal or modify any of the provisions of 66 Pa.C.S. Pt. I (relating to the public utilities code)...”



58. As such, the Code’s preemption of local zoning is limited by statutory construction to those entities and services specifically regulated by the Commission.

59. The Commission can only preempt local zoning with respect to a “building” where it has made a determination, after a public hearing, that the building is a “reasonably necessary for the convenience or welfare of the public.”

60. The ME2 Pipeline is not a building, and therefore the limited PUC authority to preempt local zoning after conducting a hearing and making a finding that the building is reasonably necessary does not apply. *Commonwealth of Pa. v. Delaware & H. Ry. Co.*, 339 A.2d 155,157 (Pa. Commw. Ct. 1975) (holding that railroad tracks are not “buildings,” nor are transmission lines of power companies).

61. A municipality has the authority to zone public utility facilities that are not buildings, based on statutory construction principles and the existence of the MPC buildings exemption under the MPC. *Pennsylvania Power Co. v. Township of Pine*, 926 A.2d 1241,1251 (Pa. 2007) (prior public utility cases “simply reconciled two conflicting statutes and reaffirmed the long line of decisions in this Commonwealth establishing that a municipality may not, through ordinance or otherwise, compel the underground installation of electric facilities.”).

62. The West Goshen Township ordinance is not preempted by the Public Utility Commission regulating in the field of pipeline public utilities. *Hoffman Mining Co., Inc. v. Zoning Hg. Bd. Of Adams Tp.*, 32 A.3d 587, 610 (Pa 2011)(field preemption recognized only in three areas: mining, alcoholic beverages and banking).

63. Regulation of HVL pipelines as public utilities is not so pervasive as to preempt zoning.

64. West Goshen’s conditional use standards and Pipeline Impact Radius setback ordinance is not preempted by regulation of pipelines as public utilities.

65. Courts only recognize preemption of local ordinances for public utilities where the Commission has promulgated regulations concerning the specific act regulated by ordinance. *PPL Elec. Util. Corp. v. City of Lancaster*, 125 A.3d 837, 851 (Pa. Commw. Ct. 2015).

66. The West Goshen Township Ordinance zones the placement of “gas and liquids pipeline facilities” and, as part of a conditional use in an industrial area, requires a setback.

67. The West Goshen Township Ordinance is not preempted because the Commission does not already regulate the location of any HVL pipelines such as ME2.

68. The repealer clause in the MPC, repealing all laws inconsistent with the MPC except the Public Utility Code, has no effect on the MPC zoning authority because there is no inconsistency. Pennsylvania has no designated regulatory authority overseeing the siting of hazardous liquid pipelines, and no designated regulatory authority overseeing the siting of intrastate pipelines carrying highly volatile liquids.

69. A local ordinance is preempted only where it is inconsistent with a state statute. *Mars Emergency Med. Servs., Inc. v. Township of Adams*, 740 A.2d 193 195 (Pa. 1999); *see also Hoffman Min. Co. v. Zoning Hearing Bd. of Adams Tp., Cambria Cty.*, 32 A.3d 587, 602 (Pa. 2011)(holding that conflict preemption analysis is required regardless of the existence of any other preemption).

70. A local ordinance is only inconsistent with a state statute where it either: 1) irreconcilably conflicts with the statute; or 2) stands as an obstacle to the execution of the full purposes of the statute. *Hoffman*, 32 A.3d at 594.

71. The West Goshen Township Pipeline Impact Radius (“PIR”) setback does not irreconcilably conflict with the Commission certification provisions, or any other provisions, nor does the setback stand as an obstacle to the purpose of the Code.

72. An ordinance irreconcilably conflicts with a state statute where simultaneous compliance with both the ordinance and the state statute is impossible. *Id.* at 610.

73. Here, the West Goshen Township Ordinance addresses the local conditions in siting the pipeline, an area the Code does not address, so SPLP, can and should comply with West Goshen’s siting provisions required by the PIR setback, and the Commissions’ statutory certification and service requirements.

74. Where the General Assembly enacts a law that regulates a particular activity, a local municipality can make additional regulations “in aid and in furtherance of the purpose of the general law as may seem appropriate to the necessities of the particular locality and which are not in themselves unreasonable.” *Mars Emergency Medical Services, Inc. v. Township of Adams*, 740 A.2d 193, 195 (Pa. 1999).

75. West Goshen Township has enacted an ordinance in furtherance of public utility service, necessitated by the Commission’s failure to address siting of HVL lines.

76. Even assuming that SPLP’s CPCs authorizes its intended service on ME2 in West Goshen Township (which we contest), such authorization by the Commission does not conflict with zoning regulations “appropriate to the necessities of the particular locality” that are in furtherance of offering that public utility service. *Mars Emergency Medical Services, Inc.*, 740 A.2d at 195.

77. Because neither the Commission nor FERC regulate the siting of interstate or intrastate HVL pipelines, local zoning is the only regulation that considers placement of HVL pipelines in a particular locality.

78. The West Goshen Township setback requirement for HVL pipelines is in aid and furtherance of the Public Utility Code, and in no way preempted by it because it addresses the “necessities of the particular locality” through “reasonable” zoning, not addressed by any other statute.

79. Nothing in the Commission’s CPC requirements (or anywhere else in the Code) indicates that a certificate authorizing a public utility to supply different service or service in a different territory is exempt from local zoning.

80. Courts will not “disturb a reasonable expression of a municipal council’s discretionary power...unless there is an abuse of power detrimental to the citizenry.” *City Council of City of Bethlehem v. Marcincin*, 515 A.2d 1320, 1325–26 (Pa. 1986) (internal citations omitted).

81. The PIR setback requirement of West Goshen Township does not irreconcilably conflict with the Code.

82. Nothing impedes SPLP from complying with the HVL PIR setback while still providing the intrastate HVL pipeline service to customers it claims to serve.

83. In addition, the West Goshen Township setback provision is not an obstacle to the fulfillment of any purpose of the Code. *See, e.g., Holt’s Cigar Co. Inc. v. City of Philadelphia*, 10 AQ.3d 902, 913 (Pa. 2011).

84. Ensuring that occupied structures in non-industrial zones are set back from the PIR does not cause an irreconcilable conflict with the Code. *City Council of the City of*

*Bethlehem v. Marcincin*, 515 A.2d 1320, 1326 (Pa. 1986) (an ordinance limiting a mayor to two consecutive terms was not irreconcilable with a statute providing that a mayor shall be eligible for reelection).

*The Pipeline Act Does Not Preempt West Goshen Township's Ordinance*

85. The Pennsylvania Pipeline Act does not expressly preempt West Goshen Township's Ordinance. 58 P.S. § 801 *et seq.*

86. Like the Public Utility Code, nothing in the Pipeline Act expressly bars a local municipality from enacting a zoning ordinance providing reasonably necessary and locally appropriate zoning.

87. The Pipeline Act does not preempt the field of regulation, because courts have not recognized pipelines as an area of field preemption. *Hoffman*, 32 A.3d at 594.

88. In addition, the Pipeline Act does not preempt the Ordinance by conflicting with it: simultaneous compliance with the Pipeline Act and the West Goshen Township setback requirement is possible.

89. Therefore, the West Goshen Township Ordinance and the Pipeline Act do not irreconcilably conflict, and the Pipeline Act does not preempt the Ordinance.

90. Likewise, the West Goshen Township Ordinance setback requirements as applied to ME2 is not an obstacle to the fulfillment of the purpose of the Pipeline Act.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendant and that the Court grant all appropriate relief including enjoining Defendant from maintaining, placing, or operating a "hazardous liquid and/or gas pipeline" or other prohibited use on the Casey and Grote Properties that is not permitted under Zoning Ordinance Section 84-56 and for which no conditional use application has been filed or granted.

COUNT II  
VIOLATION OF SUBSTANTIVE DUE PROCESS

91. Plaintiffs incorporate the above paragraphs as if set forth here at length.

92. SPLP's non-compliance with the West Goshen Ordinance violates the Plaintiffs' substantive due process rights.

93. Ordinances that allow industrial development in non-industrial zoning districts violate residents' due process rights. *Robinson Township et al. v. Commonwealth of Pennsylvania*, 52 A.3d 463 (Pa. Commw. Ct. 2012), *aff'd in part and rev'd in part sub nom.*, 83 A.3d 901 (Pa. 2013)(hereinafter "*Robinson Twp. I*"); *Robinson Twp. et al. v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (hereinafter "*Robinson Twp. II*").

94. The Pennsylvania and United States Constitutions require that for any zoning to be constitutional it must promote the public health, safety, morals, or welfare, and be substantially related to protecting or furthering that interest. *In re Realen Valley Forge Greene Assocs.*, 838 A.2d 718, 729 (Pa. 2003); *C&M Developers, Inc. v. Bedminster Twp. Zoning Hearing Bd.*, 820 A.2d 143, 150 (Pa. 2002); *Boundary Drive Assocs. v. Shrewsbury Twp. Bd. of Supervisors*, 491 A.2d 86, 90 (Pa. 1985).

95. "[L]awful zoning must be directed toward the community as a whole, concerned with the public interest generally, and justified by a balancing of community costs and benefits." *In re Realen Valley Forge Greene Assocs.*, 838 A.2d 718, 729 (Pa. 2003).

96. A state law that permits industrial activity in every zoning district in every municipality violates substantive due process because it results in irrational zoning. *Robinson Twp. I*, 52 A.3d at 484–85. (Commonwealth Court holding Act 13 violated substantive due process under Article I, Section 1).

97. Any conclusion that the Public Utility Code preempts the West Goshen Township Ordinance would result in irrational and unconstitutional zoning.

98. Commission certification as a “public utility”<sup>2</sup> does not exempt SPLP from complying with a municipality’s comprehensive zoning plan.

99. SPLP is not exempt from West Goshen Township zoning ordinances.

100. SPLP proposes to engage in hazardous liquid and/or gas pipelines uses in district where such use is prohibited, and without application for conditional approval.

101. The West Goshen Township Zoning Ordinance, was enacted for the purpose:

A. To promote, protect and facilitate any or all of the following: the public health, safety, morals and the general welfare; coordinated and practical community development and proper density of population; emergency management preparedness and operations;...the provision of safe, reliable and adequate water supply for domestic, commercial, agricultural or industrial use and other public requirements; as well as preservation of the natural scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains.

B. To prevent one or more of the following: overcrowding of land; blight; danger and congestion in travel and transportation; and loss of health, life or property from fire, flood, panic or other dangers.

West Goshen Township Code at § 84-2.1.

102. SPLP’s ME2 Pipeline as proposed violates the West Goshen Township Zoning Ordinance, and creates irrational zoning in West Goshen, by allowing HVL pipelines in all zones, without any standards for approval.

103. West Goshen Township already determined what districts are appropriate for hazardous liquid and/or gas pipelines.

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<sup>2</sup> Plaintiff does not concede that SPLP has certification for West Goshen Township for the purposes of providing the proposed service ME2 Pipeline.

104. Plaintiffs Casey and Grote's Properties are located in the R3 District, where no hazardous liquid and/or gas pipelines are permitted.

105. Even in those districts where the ME2 Pipeline is permitted, failure to comply with West Goshen's conditional use approval process violates the reciprocal property rights of neighbors.

106. The Township has determined, through its Zoning Ordinance, that a project such as ME2 impedes on Plaintiffs because it is incompatible in residential areas.

107. SPLP's ME2 would violate the uses permitted in R3 district.

108. SPLP's ME2 would violate the setback for potential impact radius with respect to Plaintiffs Casey and Grote's Properties.

109. SPLP proposes a dangerous, industrial use with known detrimental impacts on health, safety, welfare, property values, and public natural resources in a residential areas.

110. SPLP's failure to comply with the Township's zoning ordinance, results in irrational and therefore, unconstitutional, zoning districts.

111. It is irrational to allow an incompatible land use in a zone that was established to achieve a non-industrial character and non-industrial development and conservation goals. *Robinson Twp. I*, 52 A.3d at 484–85; *Robinson Twp. II*, 83 A.3d at 1005, 1007–08 (Baer, J., concurring).

112. SPLP cannot construct ME2, a hazardous liquid and/or gas pipeline, in a manner inconsistent with the West Goshen Township ordinance because the use is incompatible with the purpose of the residential zone.

113. Plaintiffs Casey and Grote's residence falls within the PIR of the proposed ME2 pipeline and SPLP's construction of ME2 would violate existing setback requirements and



expose Plaintiffs' residence to dangers not compatible with residential uses.

114. Failure to enjoin SPLP's non-compliance with West Goshen's zoning requirements for ME2 allows arbitrary and irrational zoning classifications by irrationally allowing an HVL pipeline in the same district with Plaintiffs' residential use without any standards or setback protection for the residential use.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendant and that the Court grant all appropriate relief including enjoining Defendant from maintaining, constructing, placing, or operating a "hazardous liquid and/or gas pipeline" or other prohibited use that is not permitted under Zoning Ordinance Section 84-56, and for which no conditional use application has been filed or granted.

Respectfully submitted,

CURTIN & HEEFNER LLP



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# EXHIBIT A

**WEST GOSHEN TOWNSHIP**  
**CHESTER COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 1 - 2014**

AN ORDINANCE OF THE TOWNSHIP OF WEST GOSHEN, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 84 OF THE WEST GOSHEN TOWNSHIP CODE, TITLED "ZONING", SPECIFICALLY SECTION 84-8 TO ADD DEFINITIONS FOR "COMMUNITY UTILITY", "GAS AND LIQUID PIPELINE FACILITY", "GOVERNMENTAL UTILITY", "HAZARDOUS LIQUID AND/OR GAS PIPELINE", "HAZARDOUS LIQUID AND/OR GASES", AND "PIPELINE IMPACT RADIUS", AND TO DELETE THE EXISTING DEFINITION FOR "PUBLIC UTILITY FACILITY" AND REPLACE IT WITH A NEW DEFINITION FOR "PUBLIC UTILITY FACILITY"; TO AMEND THE USE REGULATIONS FOR THE R-2, R-3, R-3A AND R-4 DISTRICTS TO DELETE PUBLIC UTILITY FACILITY AS A USE WHICH IS PERMITTED BY SPECIAL EXCEPTION; TO AMEND THE USE REGULATIONS FOR THE I-1, I-2, I-3, I-2R AND I-C DISTRICTS TO DELETE PUBLIC UTILITY USES AS USES PERMITTED BY RIGHT AND TO ADD PUBLIC UTILITY FACILITY AND GAS AND LIQUID PIPELINE FACILITY AS USES PERMITTED BY CONDITIONAL USE; AND TO ADD A NEW SECTION 84-56 TO ALLOW ESSENTIAL UTILITIES, GOVERNMENTAL UTILITIES AND COMMUNITY UTILITIES BY RIGHT IN ALL ZONING DISTRICTS AND PUBLIC UTILITY FACILITIES AND GAS AND LIQUID PIPELINE FACILITIES BY CONDITIONAL USE IN ALL INDUSTRIAL ZONING DISTRICTS SUBJECT TO STANDARDS SPECIFIED THEREIN.

**BE IT ENACTED AND ORDAINED** by the Board of Supervisors of West Goshen Township that Chapter 84 of the West Goshen Code, titled, "Zoning", shall be amended as follows:

**SECTION 1.** Section 84-8 shall be amended to add the following definitions in alphabetical order:

**COMMUNITY UTILITY** - A utility which is owned, operated or maintained by a homeowners association or community association for the purpose of providing sanitary sewage disposal, stormwater control, water supply, energy, telephone or

other utility services within a defined service area solely within the Township or adjacent municipality.

**GAS AND LIQUID PIPELINE FACILITY-** Includes a pipeline and all associated equipment and buildings used or intended to be used for the transportation or distribution of gases and liquids, including but not limited to, anhydrous ammonia, petroleum, or petroleum products such as propane, butane, ethane, natural gas, natural gas liquids, benzene, gasoline, jet fuel, diesel fuel, fuel oil and kerosene, and any hazardous liquids under pressure in a gaseous state or any and all liquids or gases that are defined as hazardous liquids or gases by federal or state environmental or safety statutes and implementing regulations, including but not limited to the Hazardous Liquid Pipeline Safety Act, 49 U.S.C. § 60101 et seq., as the same may be amended from time to time."

**GOVERNMENTAL UTILITY** - A utility which is owned, operated or maintained by the Township, Municipal Authority or other agency or authority of the Township or Municipal Authority for the purpose of providing sanitary sewage disposal, stormwater control, water supply, energy, telephone or other utility services within a defined service area solely within the Township or adjacent municipality.

**HAZARDOUS LIQUID AND/OR GAS PIPELINE** - Any transmission pipeline for liquids and/or gases including within a storage field and any pipeline used for the transmission of materials such as, but not limited to, anhydrous ammonia, petroleum or petroleum products such as propane, ethane, butane, natural gas, natural gas liquids, benzene, gasoline, jet fuel, diesel fuel, fuel oil and kerosene, and any hazardous liquids under pressure in a gaseous state or any and all liquids or gases that are defined as hazardous liquids or gases by federal or state environmental or safety statutes and implementing regulations, including but not limited to the Hazardous Liquid Pipeline Safety Act, 49 U.S.C. § 60101 et seq., as the same may be amended from time to time.

**HAZARDOUS LIQUID AND/OR GASES** - Any liquid or gas of any kind, including but not limited to anhydrous ammonia, petroleum, or petroleum products such as propane, ethane, butane, natural gas, natural gas liquids, benzene, gasoline, jet fuel, diesel fuel, fuel oil and kerosene, any hazardous liquid under pressure in a gaseous state and any and all hazardous liquids that are defined as hazardous by federal or state environmental or safety statutes and implementing regulations, including but not limited to the Hazardous Liquid Pipeline Safety Act, 49 U.S.C. § 60101 et seq., as the same may be amended from time to time.

**PIPELINE IMPACT RADIUS** - The distance within which the potential failure of a hazardous liquid pipeline and/or gas pipeline could have significant impact to people or property, including but not limited to noise, environmental, visual and other impacts which may be detrimental to the health, safety and welfare of the community. The pipeline impact radius for a hazardous liquid and/or gas pipeline shall be calculated in the same manner as the potential impact radius defined by

federal or state laws, including, but not limited to Title 49 of the Code of Federal Regulations, as the same may from time to time be amended.

**SECTION 2.** The definition of "Public Utility Facility" in Section 84-8 shall be deleted in its entirety and replaced with the following new definition:

**"PUBLIC UTILITY FACILITY-** A facility owned and operated by a public utility as defined in this Ordinance."

**SECTION 3.** Section 84-9.E(2) shall be deleted and the section number reserved for future use.

**SECTION 4.** Section 84-12.E(3) shall be deleted and the section number reserved for future use.

**SECTION 5.** Section 84-14.1.E(2) shall be deleted and the section number reserved for future use.

**SECTION 6.** Section 84-15.E(4) shall be deleted and the section number reserved for future use.

**SECTION 7.** Section 84-37.A(3) shall be deleted in its entirety and the section number reserved for future use.

**SECTION 8.** Section 84-37.A(15) shall be amended by adding a new subparagraph (c) which shall provide as follows:

"(c) Public Utility Facility and Gas and Liquid Pipeline Facility subject to the standards in Section 84-56."

**SECTION 9.** Section 84-38.A(3) shall be deleted in its entirety and replaced with the following section:

"(3) Municipal, county, state and federal uses including fire, police and ambulance facilities."

**SECTION 10.** Section 84-38.A(17) shall be amended by adding a new subparagraph (b) which shall provide as follows:

"(b) Public Utility Facility and Gas and Liquid Pipeline Facility subject to the standards in Section 84-56."

**SECTION 11.** Section 84-39.A(3) shall be deleted in its entirety and replaced with the following section:

“(3) Municipal, county, state and federal uses including fire, police and ambulance facilities.”

**SECTION 12.** Section 84-39.A(18) shall be amended by adding a new subparagraph (b) which shall provide as follows:

“(b) Public Utility Facility and Gas and Liquid Pipeline Facility subject to the standards in Section 84-56.”

**SECTION 13.** Section 84-40.A(3) shall be deleted in its entirety and replaced with the following section:

“(3) Municipal, county, state and federal uses including fire, police and ambulance facilities.”

**SECTION 14.** Section 84-40.A(17) shall be amended by adding a new subparagraph (d) which shall provide as follows:

“(d) Public Utility Facility and Gas and Liquid Pipeline Facility subject to the standards in Section 84-56.”

**SECTION 15.** Section 84-41.A(4) shall be deleted and the section number reserved for future use.

**SECTION 16.** Section 84-41.A(14) shall be amended by adding a new subparagraph (k) which shall provide as follows:

“(k) Public Utility Facility and Gas and Liquid Pipeline Facility subject to the standards in Section 84-56.”

**SECTION 17.** A new Section 84-56 shall be added which shall provide as follows:

**“§84-56. Utility Uses.**

A. Essential Utilities, Community Utilities and Governmental Utilities, as defined in Section 84-8, shall be uses permitted by right in all zoning districts, subject to the following regulations:

- (1) No such use shall include an office open to the general public, trucking or repair facilities or housing of work crews.

(2) The portion of any such use not located within a building shall be enclosed or adequately screened in such a manner as to not be visible across property lines.

(3) No advertising shall be affixed to any structure.

B. A Public Utility Facility and a Gas and Liquid Pipeline Facility, as defined in Section 84-8, shall be permitted by conditional use of the Board of Supervisors in the I-1, I-2, I-2R, I-3 and I-C Districts subject to the performance standards in this section. Gas and Liquid Pipeline Facilities and Hazardous Liquid and/or Gas Pipelines are only permitted in the I-1, I-2, I-2R, I-3 and I-C districts by conditional use and subject to compliance with the following standards:

(1) No obnoxious, toxic or corrosive fumes or gases shall be emitted as a result of the use.

(2) No use shall emit offensive odors which are perceptible at lot lines.

(3) No use shall discharge into the air dust or other particulate matter in a manner or quantity which does not conform to all applicable federal and state laws and implementing regulations.

(4) No use shall emit smoke from operations.

(5) No use shall produce any heat perceptible at or beyond the lot boundaries.

(6) No use shall utilize lighting in a manner which does not conform with the lighting standards in this Chapter.

(7) No use shall permit physical vibrations perceptible at or beyond the lot boundaries.

(8) No use shall emit potentially harmful radiation.

(9) No use shall engage in the production or storage of any material designed for use as an explosive.

(10) No use shall engage in the storage of waste materials on the lot for any period beyond 5 days. Such waste material storage shall be located behind the front building line of the primary building and no closer than 50 feet to any rear or side lot line and shall be completely screened from the view of any street or adjoining property.

(11) No use shall discharge any objectionable and/or potentially dangerous effluent from plant operations.



- (12) No industrial lagoons for chemicals or other liquid waste shall be permitted.
- (13) The portion of any such use not located within a building shall be enclosed or adequately screened in such a manner as to not be visible across property lines.
- (14) All uses shall be conducted in compliance with applicable governmental regulations, including the noise and lighting regulations in this Chapter.
- (15) No retail activity shall be permitted.
- (16) The owner of the Public Utility Facility and Gas and Liquid Pipeline Facility shall provide the Township with an emergency liaison that may be reached 24 hours a day, 7 days a week in the event of an emergency.
- (17) The Public Utility Facility and Gas and Liquid Pipeline Facility shall prepare and file with the Township an emergency response plan which shall be followed in the event of an emergency at the facility.
- (18) A Public Utility Facility and Gas and Liquid Pipeline Facility that involve hazardous liquid and/or gas pipelines shall be set back from all occupied structures a minimum distance equal to the Pipeline Impact Radius."


**SECTION 18. Severability.** If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**SECTION 19. Repealer.** Ordinance No. 3-2014 adopted by the Board of Supervisors of West Goshen Township on September 2, 2014 shall be repealed and replaced in its entirety with this Ordinance. All Ordinances or parts of Ordinances conflicting with any provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

**SECTION 20. Effective Date.** This Ordinance shall be effective five days following enactment as by law provided.

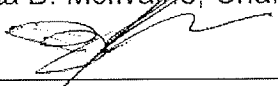
ENACTED AND ORDAINED this 8<sup>th</sup> day of October, 2014.


ATTEST:

  
\_\_\_\_\_  
Casey LaLonde, Secretary

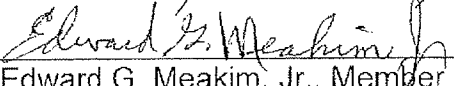
**BOARD OF SUPERVISORS  
WEST GOSHEN TOWNSHIP**

BY:   
\_\_\_\_\_  
Patricia B. Melvaine, Chairman

  
\_\_\_\_\_  
Phillip J. Corvo, Jr., Vice Chairman

  
\_\_\_\_\_  
Raymond H. Halvorsen, Member

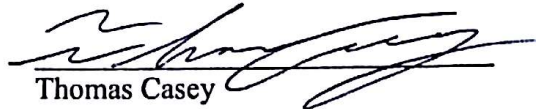
  
\_\_\_\_\_  
Theodore J. Murphy, Esquire, Member

  
\_\_\_\_\_  
Edward G. Meakim, Jr., Member

**VERIFICATION**

I, Thomas Casey, hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief; and that this statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

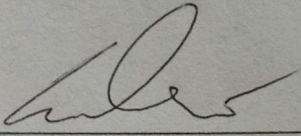
5/5/17  
Date

  
Thomas Casey

**VERIFICATION**

I, Eric Grote, hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief; and that this statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

5/5/2017  
Date

  
\_\_\_\_\_  
Eric Grote

VERIFICATION

I, Maya van Rossum, on behalf of myself and the Delaware Riverkeeper Network as its Executive Director, hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief; and that this statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

May 9, 2017

\_\_\_\_\_  
Date



\_\_\_\_\_  
Maya van Rossum