

**PENNSYLVANIA**  
PUBLIC UTILITY COMMISSION

CONSUMERINFO UTILITY&INDUSTRY FILING&RESOURCES ABOUTPUC CONTACTUS

[Log Off eFiling](#) | [Contact Us](#) | [Search](#)

- [My Filings](#)
- [New Filing](#)
- [Modify Account](#)
- [POR Search](#)
- [eService Directory](#)
- [Subscriptions](#)
- [Technical Assistance](#)
- [eFiling FAQs](#)
- [Log Off](#)

## eFiling Successfully Transmitted

Your filing has been electronically received. Upon review of the filing for conformity with the Commission's filing requirements, a notice will be issued acknowledging acceptance or rejection (with reason) of the filing. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

The date filed on will be the current day if the filing occurs on a business day before or at 4:30 p.m. (EST). It will be the next business day if the filing occurs after 4:30 p.m. (EST) or on weekends or holidays.

**Print this page for your records.**



eFiling Confirmation	
Representing:	Senator Andrew E. Dinniman
Description:	
Transmission Date:	4/25/2018 1:35:39 PM
Filed On:	4/25/2018 1:35:39 PM
eFiling Confirmation Number:	1718603

### Uploaded File List

File Name	Document Class	Document Type
Senator Dinniman Complaint.pdf	Formal Complaint	Formal Complaint

For filings exceeding 250 pages, the PUC is requiring that filers submit one paper copy to the Secretary's Bureau within three business days of submitting the electronic filing online. Please mail the paper copy along with copy of this confirmation page to Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA a copy of the filing confirmation page or reference the filing confirmation number on the first page of the paper copy.

**No paper submission is necessary for filings under 250 pages.**

*You can view a record of this filing and previous filings you have submitted to the PUC  
by clicking the My Filings link in the left navigation menu.*

**Customer Hotline** 1-800-692-7380 | [PUC Webmaster](#) | [Privacy Policy](#)

© PUC All Rights Reserved

[Logout](#)

  
**Curtin & Heefner** LLP  
ATTORNEYS AT LAW

2005 S. EASTON ROAD • SUITE 100 • DOYLESTOWN, PA 18901

(267) 898.0570 • (800) 773.0680 • FAX (215) 340.3929

WWW.CURTINHEEFNER.COM

CELEBRATING OVER 80 YEARS

MARK L. FREED  
MLF@curtinheefner.com

April 25, 2018

Via Electronic Filing

Rosemary Chiavetta, Esquire  
Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.**

Dear Secretary Chiavetta:

Attached for filing is a Formal Complaint to be filed in the above-referenced matter.

A copy of the attached has been forwarded in the manner indicated on the attached Certificate of Service.

Thank you.

Very truly yours,



Mark L. Freed  
For CURTIN & HEEFNER LLP

MLF:jmd  
Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

PENNSYLVANIA STATE SENATOR	:	
ANDREW E. DINNIMAN,	:	
	:	
Complainant,	:	
	:	Docket No.: _____
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
	:	
Respondent.	:	

---

**NOTICE TO DEFEND**

Pursuant to 52 Pa. Code §§5.63(a) and (b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Formal Complaint within twenty (20) days from service of this notice, a decision may be rendered against you. All pleadings, such as an Answer, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel for Complainant, and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With a copy to:

Mark L. Freed, Esquire  
Curtin & Heefner LLP  
2005 S. Easton Road, Suite 100  
Doylestown, PA 18901

Dated: April 25, 2018

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

PENNSYLVANIA STATE SENATOR	:	
ANDREW E. DINNIMAN,	:	
	:	
Complainant,	:	
	:	Docket No.: _____
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
	:	
Respondent.	:	

---

**FORMAL COMPLAINT**

COMES NOW, Complainant, Senator Andrew E. Dinniman (hereinafter “Complainant” or “Senator Dinniman”), by and through his attorneys, Curtin & Heefner LLP, and respectfully files this Formal Complaint pursuant to 52 Pa. Code §5.21, and in support thereof avers the following:

**I. PARTIES**

1. Complainant is a Pennsylvania State Senator with offices located in Harrisburg and at One North Church Street West Chester, PA 19380, (610) 692-2112. Senator Dinniman’s district, District 19, includes West Whiteland Township, Chester County.

2. Respondent Sunoco Pipeline, L.P. owns and operates a highly volatile liquids pipeline known as Mariner East 1 (hereinafter “ME1”). It is also the proponent of two pipelines known as Mariner East 2 (hereinafter “ME2”) and Mariner East 2X (hereinafter “ME2X”).

3. Complainant is represented in this action by Mark L. Freed, PA Attorney ID No. 63860, Curtin & Heefner LLP, with offices at Three Westlakes, 1055 Westlakes Drive, 3rd Floor, Berwyn, PA 19312 and 2005 S. Easton Road, Suite 100, Doylestown, PA 18901, (267) 898-0570,

[mlf@curtinheefner.com](mailto:mlf@curtinheefner.com). Counsel for Senator Dinniman consents to electronic mail at the address listed in this paragraph, as provided by 52 Pa. Code §154(b)(3).

## II. JURISDICTION

4. Section 1501 of the Public Utility Code, 66 Pa. C.S. §1501, provides that:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

5. Section 1505(a) of the Public Utility Code, 66 Pa. C.S. §1505(a) provides that:

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

6. Section 59.33(a) of the PUC regulations, 52 Pa. Code §59.33(a), provides that:

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

7. Issues related to the hazardous nature of the petroleum products involved in the pipeline transportation services, protection of public natural resources generally, and damage to drinking water supplies in particular, and detrimental impacts on health, safety, welfare and property values implicate “the reasonableness and safety of the pipeline transportation services or

facilities, matters committed to the expertise of the PUC by express statutory language.” *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 682 (Pa. Cmwlth. 2018) (citing 66 Pa. C.S. § 1505).

8. “Sunoco’s decisions are subject to review by the PUC to determine whether Sunoco’s service and facilities ‘are unreasonable, unsafe, inadequate, insufficient, or unreasonable discriminatory, or otherwise in violation of the Public Utility Code ....’” *Id.* at 693 (citing 66 Pa. C.S. § 1505(a)).

9. “The Public Utility Code’s provisions afford Plaintiffs a forum for their rights, and reasonable notice and hearing, on complaint that the location of Sunoco’s utility facilities are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of the Public Utility Code.” *Id.* at 693-94 (citing 66 Pa. C.S. §§ 701, 1505(a)).

### **III. STANDING**

10. Senator Dinniman has a substantial, direct, and immediate interest in this matter.

11. Senator Dinniman resides approximately two miles from ME1, ME2 and ME2X.

12. Senator Dinniman is a member of the General Assembly as a Senator and represents the 19th Senatorial District. West Whiteland Township is part of the 19<sup>th</sup> Senatorial District.

13. Senator Dinniman is a member of the standing Senate Environmental Resources and Energy Committee; a member of the Joint Legislative Air and Water Pollution Control and Conservation Committee; a member of the General Assembly with the authority to receive, review and comment upon the Governor’s annual expenditure plan for the Environmental Stewardship Fund under 27 Pa.C.S. § 6104, which funds in part the Chester County Conservation District and its oversight of the watersheds and water supply of West Whiteland Township; served as a member of the Pennsylvania Pipeline Infrastructure Task Force, a group of experts and stakeholders that

recommended policies, guidelines and best practices to guide expansion of pipeline infrastructure in the Commonwealth; and is the representative of the individuals in the 19<sup>th</sup> District which includes the area of West Whiteland Township affected by the Project and on which he possesses knowledge of a local perspective and the potential effects essential to a determination. Senator Dinniman receives annual, mandatory reports from the Commission under the Pennsylvania Public Utility Code. 66 Pa.C.S. §§ 320, 1327.

14. Senator Dinniman has previously been found to have standing and granted party status before the Commission. *See Application of Artesian Water Pennsylvania, Inc.*, Docket No. A-2014-2451241.

#### **IV. FACTS**

##### **A. Geological Setting**

15. The geology of West Whiteland Township is complex in terms of rock type and geologic history, as well as in current setting.

16. Major geologic formations in West Whiteland Township include the Conestoga Limestone and Ledger Dolomite formations.

17. Limestone is a sedimentary rock consisting chiefly of calcium carbonate, primarily in the form of the mineral calcite. Because of the high solubility of this mineral, the rock is particularly susceptible to karst features such as sinkholes and other openings.

18. Dolomite consists of calcium magnesium carbonate. It is also susceptible to karst development.

19. The limestone and dolomite portions of West Whiteland Township are characterized by karst features.



20. There are hundreds of closed depressions and sinkholes in the limestone and dolomite areas of West Whiteland Township. Voids and even caves have been described in the same rock units within Chester County. Sinkholes and collapses are an inherent danger in most karst areas, and have been documented to result in property loss and death, particularly when exacerbated by construction or other activities.

21. The northern portion of West Whiteland Township is also characterized by at least four (4) mapped fault lines. These fault lines increase the susceptibility of the area in West Whiteland Township to geologic problems.

22. Construction activities, wet weather conditions and the removal of groundwater are known triggers that exacerbate instabilities inherent with calcium carbonate formations such as limestone and dolomite, particularly at and around fault lines and at contacts with non-soluble lithologies.

23. The area in and around West Whiteland Township includes surface mining quarries with groundwater water withdrawals, public water supplies, public rail (Amtrak and SEPTA), highway infrastructure, and schools.

**B. ME1, ME2 and ME2X**

24. ME1 is an eight inch (8") pipeline that was constructed in or around the 1930s. Since 2014, the pipeline has been used to transport highly volatile liquids as that term is defined in 49 CFR §195.2, including propane, ethane, butane and other natural gas liquids. Respondent is also in the process of constructing two pipelines located along the ME1 route. ME2 is a proposed twenty (20") pipeline. ME2X is a proposed sixteen inch (16") pipeline. Both ME2 and ME2X are proposed to transport highly volatile liquids as that term is defined in 49 CFR §195.2, including

propane, ethane, butane and other natural gas liquids. ME2 and ME2X will run along the route of ME1.

25. ME1, ME2 and ME2X traverse or are proposed to traverse West Whiteland Township, from North to South, and cross the limestone, dolomite and fault lines in the Township, as well as the contact with the less-soluble Octoraro Phyllite.

26. Sunoco's construction of ME2/ME2X in West Whiteland Township has been plagued by issues from the start.

27. Sunoco has employed horizontal directional drilling ("HDD") (i.e. boring an underground path) to construct ME2/ME2X.

28. The HDD undertaken by Sunoco for the installation in ME2/ME2X between April 25, 2017 and June 17, 2017 resulted in at least 61 spills of bentonite "drilling mud" in twelve (12) counties. These spills are referred to as "frack-outs" or Inadvertent Returns (hereinafter "IRs").

29. The Pennsylvania Department of Environmental Protection ("DEP") identified Sunoco's drilling in and around West Whiteland "as the most concerning" because of carbonate rocks, karst surface depressions, and the identification of public water supplies (groundwater or surface water) within one mile of the pipeline. There are three (3) public wells owned by Aqua within 1500 feet of the HDD activities

30. On or about June 14, 2017, Sunoco commenced HDD activities at and around Shoen Road in West Whiteland Township.

31. From July 6, 2017 through July 10, 2017, DEP received 14 water supply complaints from homeowners at and around Shoen Road. Homeowners complained of, *inter alia*, cloudy water, turbid water, discolored water, loss of water pressure, and diminution of water.

32. At least five (5) families were forced to leave their homes.

33. To notify homeowners with private water supplies of drilling activities, Sunoco relied on a list that contained the names of only 22 homeowners statewide along the path of ME2/ME2X. Of the 22 identified homeowners, only 3 were in Chester County.

34. There are at least 739 private and public wells in West Whiteland Township. Many of these residents were not notified of Sunoco's drilling activities.

35. DEP determined that Sunoco's drilling activities in and around Shoen Road adversely impacted the well water of at least 14 homeowners. Only 1 of these homes was identified on the list of homeowners used by Sunoco. On information and belief, Sunoco failed to identify this private well in its permit applications to DEP.

36. DEP also determined that Sunoco failed to immediately notify the DEP of adverse impacts to private water supplies in the Shoen Road area as required by its permit. Sunoco's failure to notify DEP is a consistent and ongoing issue.

37. DEP determined that Sunoco's water impacts and its failure to notify DEP constituted violations of State environmental laws and regulations.

38. On or about July 24, 2017, DEP and Sunoco entered into a Consent Order and Agreement related to these violations.

39. On or about February 13, 2017, various environmental non-profit organizations filed an appeal with the Pennsylvania Environmental Hearing Board ("EHB") challenging DEP's issuance of twenty (20) permits under 25 Pa. Code Chapters 102 and 105 for the construction of ME2. The appeal was docketed at EHB Docket No. 2017-009-L. As part of the appeal, the non-profit organizations also filed applications for a temporary partial supersedeas and petitions for a partial supersedeas.

40. On or about August 9, 2017, the non-profit organizations, DEP and Sunoco entered into a Stipulated Order to resolve the applications for temporary partial supersedeas and petitions for partial supersedeas. The Stipulated Order was corrected on or about August 10, 2017. In Paragraph 15 of the Corrected Stipulated Order, the parties agreed to revisions to, *inter alia*, the HDD Inadvertent Assessment, Preparedness, Prevention and Contingency Plan (hereinafter the “IR PPC Plan”). The revised IR PPC Plan required, among other things, that Sunoco provide DEP with “immediate” notification of an IR. The revised IR PPC also required that Sunoco submit a written initial report of an IR within one working day of the IR.

41. Since August 10, 2017, DEP has issued *thirty-seven (37)* Notices of Violation to Sunoco for violations of state laws and regulations related to activities on ME2/ME2X.

42. Sunoco has requested modifications to its construction methods for ME2/ME2X, including two permit modification requests submitted in or around October 2017 to change the construction method in a portion of West Whiteland Township from HDD to open trenching or open cut and auger bores.

43. On November 11, 2017, the DEP received notice of an IR from “a third party”, not Sunoco, near 479 Lisa Drive in West Whiteland Township.

44. On or about November 16, 2016, DEP issued an NOV for this IR. In the NOV, DEP stated:

- a. The discharge of drilling solution “appears to have caused ground subsidence and the potential to pollute the groundwater, a water of the Commonwealth. Drilling solution is an ‘industrial waste’ under Section 30 of the Clean Streams Law, 35 P.S. § 691.301.
- b. There is a history of incidents with this Drill. First, on August 18, 2017, Sunoco contacted DEP and stated that, due

to several losses of circulation, the original pilot hole was going to be abandoned and grouted in and a new pilot hole was going to be drilled. Next, on August 24, 2017, Sunoco reported a loss of circulation at the site. Third, on September 21, 2017, DEP received a complaint about a potential "void" under the SEPTA lines in the area of HDD 400. The complainant reported that they had spoken to workers walking the Right-of-Way. The Department performed a field investigation on September 27, 2017. Sunoco was reminded, once again, of the requirement to immediately notify the Department of losses of circulation. Sunoco was also advised to contact Amtrak about the possibility of voids under their tracks and to keep the Department apprised of any ongoing coordination with Amtrak. To date, no notice of any loss of circulation has been received from Sunoco, and Sunoco has not provided the Department with information about any contacts they may have made with Amtrak on this issue, despite an explicit Department request for such information. Additionally, on October 5, 2017, Sunoco reported a release of drilling solution in uplands. Finally, on November 11, 2017, as indicated above, a second inadvertent return (IR) occurred from the Drill.

- c. The Department has no record of receiving the required "immediate" notification from Sunoco after the November 11, 2017 IR.
- d. "Sunoco has, to date, failed to provide the required initial IR report for the November 11, 2017, IR to the Department."

45. On or about January 3, 2018, DEP issued an order immediately suspending all work authorized by the permits issued under 25 Pa. Code Chapters 102 and 105 because Sunoco 1) conducted unpermitted activities; 2) failed to comply with the permits that were issued; 3) failed to notify DEP before the start of drilling operations; 4) allowed IRs; and 5) failed to "immediately" report IRs.

46. DEP's January 3, 2018 order concluded that "Sunoco's unlawful conduct . . . demonstrates a lack of ability or intention on the part of Sunoco to comply with the Clean Streams

Law, the Dam Safety and Encroachment Act, and the permits issued thereunder.” January 3, 2018 Order, ¶ WWW.

47. Notwithstanding the findings in its January 3, 2018 Order, 36 days later, on February 8, 2018, DEP and Sunoco entered into a Consent Order and Agreement in which Sunoco agreed to pay DEP a penalty in the amount of \$12,599,326.00, and DEP terminated its suspension order.

48. In or around November or December 2017, a sinkhole was discovered in West Whiteland Township just south of railroad tracks used by Amtrak (identified in the BIE’s Petition for an *Ex Parte* Emergency Order as “Sinkhole No. 1”). The size of the sinkhole was approximately 8 feet wide and 3 feet deep.

49. On or about March 1, 2018, Sunoco workers noticed another sinkhole measuring 8 feet wide and 15 feet deep about 300 feet from Amtrak’s facilities (identified in the BIE’s Petition for an *Ex Parte* Emergency Order as “Sinkhole No. 2”).

50. On Saturday, March 3, 2018, at approximately 8:30 am, another sinkhole measuring approximately 15 feet wide and 20 feet deep was discovered at 491 Lisa Drive, West Whiteland Township, approximately 10 feet from the house’s foundation wall (identified in the BIE’s Petition for an *Ex Parte* Emergency Order as “Sinkhole No. 3”).

51. One or more of these sinkholes caused ME1 to become exposed from the surface and undermined the underground support for the pipeline.

52. Sunoco did not provide any notification to the Commission or PHMSA of these sinkholes.

53. On or about March 5, 2018, PUC Safety Engineers visited Lisa Drive, at which time they discovered that additional sinkholes were developing south of 491 Lisa Drive, in the path of ME1 and/or ME2X.

54. On or about March 7, 2018, the PUC BEI filed a petition for issuance of an Emergency *Ex Parte* Emergency Order, seeking to have Sunoco “immediately suspend operations of its Mariner East 1 pipeline . . . .”

55. BEI was compelled to bring its petition:

Due to, *inter alia*, the concern for the safety of the public given the unknown effects on the nature of the geological instability of the area and the sinkhole events referenced herein which correspond to the construction of the ME2X pipeline, the close proximity of the ME2X construction to the existing and active ME1 pipeline as well as the close proximity of residential single-family dwellings, apartment buildings, Route 100 and Amtrak lines to the site of ME1 and ME2X . . . .

BIE’s Petition for an *Ex Parte* Emergency Order, ¶ 11.

56. BIE determined that “[t]he construction of ME2 and ME2X at or near the location of the active ME1 pipeline, and the resulting sinkhole events that are occurring concomitant to the boring of the ME2X pipeline compromise the safety of the public.” BIE’s Petition for an *Ex Parte* Emergency Order, ¶ 26.

57. On March 7, 2018, the Commission Chair Gladys M. Brown granted BIE’s petition and issued the emergency order, finding that “permitting the continued flow of hazardous liquids through ME1 pipeline without proper steps to ensure the integrity of the pipeline could have catastrophic results impacting the public.” The Chair’s order was unanimously ratified by the Commission on or about March 15, 2018.

**COUNT I**  
**ME2 AND ME2X IS UNREASONABLE, UNSAFE, INADEQUATE AND**  
**INSUFFICIENT**

58. Complainant hereby incorporates by reference the forgoing paragraphs of this Formal Complaint as though set forth herein at length.

59. Section 1501 of the Public Utility Code, 66 Pa. C.S. 1501, requires Sunoco to furnish and maintain adequate, efficient, safe and reasonable service and facilities.

60. Section 1501 of the Public Utility Code, 66 Pa. C.S. 1505(a) provides that whenever the commission, upon complaint, finds that any public facility is unreasonable, unsafe, inadequate, or insufficient, it shall prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service to be observed, furnished, enforced or employed.

61. The route of ME2 and ME2X through West Whiteland Township is unreasonable, unsafe, inadequate, and insufficient.

62. The route of ME2 and ME2X through West Whiteland Township traverses the township and passes through the highly sensitive and potentially unstable geologies of Conestoga Limestone and Ledger Dolomite. The instability of this region is exacerbated by at least four mapped fault lines running along the northern portion of West Whiteland Township, as well as contacts with the less soluble lithologies such as the Octoraro Phyllite to the southeast.

63. The construction of ME2 and ME2X through West Whiteland Township has resulted in and will continue to risk IRs and otherwise endanger private and public drinking water supplies.

64. The construction of ME2 and ME2X through West Whiteland Township has resulted in and will continue to risk sinkholes and other subsidence's endangering homes, other occupied dwellings, the residents of West Whiteland Township and other individuals.



65. The construction of ME2 and ME2X through West Whiteland Township has impacted and will continue to risk the adequacy, efficiency, safety and reasonableness of ME1 in West Whiteland Township.

66. The requested modifications in construction methods in a portion of West Whiteland Township will not resolve these issues.

67. The route of ME2 and ME2X through the complex, soluble, fractured and potentially unstable geology of West Whiteland Township, and its proximity of ME1 risks a catastrophe to residents and other individuals, homes, schools, water supplies, Amtrak and SEPTA rail lines and other infrastructure.

WHEREFORE, Complainant respectfully requests that the Commission issue an Order prohibiting the construction of ME2 and ME2X in West Whiteland Township, and grant such other relief as the Commission finds to be just and appropriate.

**COUNT II**  
**SUNOCO HAS FAILED TO TAKE REASONABLE EFFORTS TO WARN AND**  
**PROTECT THE PUBLIC FROM DANGER**

68. Complainant hereby incorporates by reference the forgoing paragraphs of this Formal Complaint as though set forth herein at length.

69. Section 59.33(a) of the PUC regulations, 52 Pa. Code §59.33(a) requires that Sunoco “at all times use every reasonable effort to properly warn and protect the public from danger and shall take reasonable care to reduce the hazards to which employees, customers and others may be subjected by reason of its equipment and facilities.”

70. 49 CFR §195.452(b) of the PHMSA regulations, incorporated by reference into the PUC regulations, provides that the operator of a hazardous liquid pipeline located in a “high consequence area” must develop a written integrity management program that addresses the risks

on each segment of pipeline. Such a program must include a baseline assessment plan. 49 CFR §195.452(c).

71. In addition, the operator must take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. These measures include:

conducting a risk analysis of the pipeline segment to identify additional actions to enhance public safety or environmental protection. Such actions may include, but are not limited to, implementing damage prevention best practices, better monitoring of cathodic protection where corrosion is a concern, establishing shorter inspection intervals, installing EFRDs on the pipeline segment, modifying the systems that monitor pressure and detect leaks, providing additional training to personnel on response procedures, conducting drills with local emergency responders and adopting other management controls.

49 CFR 195.452(i).

72. After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area. 49 CFR 195.452(j).

73. A “high consequence area” is defined as:

- (1) A commercially navigable waterway, which means a waterway where a substantial likelihood of commercial navigation exists;
- (2) A high population area, which means an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile;
- (3) An other populated area, which means a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area;
- (4) An unusually sensitive area, as defined in [49 CFR] § 195.6.

49 CFR §195.450.

74. Sunoco claims to have an integrity management program and to have prepared a risk analysis. Despite numerous requests from the public, Sunoco has refused to share its written integrity management program or risk analysis, or relevant portions thereof, with the public. As a result, there is much confusion on how the public should respond in the event of release or other emergency.

75. As recently as March 29, 2018, West Chester Area School District advised Governor Wolf that to safeguard its students, it requires a risk assessment regarding construction of ME2 that includes “worse case evacuation routes.” Although the school district has been working with Chester County Emergency Management First Responders to develop a safety protocol in the event of a pipeline breach, “it is difficult to measure our plan against potential risks if we don’t know what they are.”

76. In refusing and failing to provide the public with this information, Sunoco has failed to warn and protect the public from danger, or reduce the hazards to the public by reason of its equipment and facilities, and has left the public, including the public schools, municipalities and Complainant, which are tasked with safeguarding the health, safety and welfare of area children, teachers, staff and residents, unable to protect themselves and their wards from such danger.

WHEREFORE, Complainant respectfully requests that the Commission issue an Order requiring Sunoco to fully conduct and release to the public a written integrity management program, risk analysis and any other information required to warn and protect the public from danger and to reduce the hazards to which the public may be subjected by reason of ME2 and ME2X, and grant such other relief as the Commission finds to be just and appropriate.

**COUNT III**  
**SUNOCO HAS FAILED TO SELECT A PIPELINE RIGHT-OF-WAY SO AS TO AVOID**  
**AREAS CONTAINING PRIVATE DWELLINGS AND PLACES OF PUBLIC**  
**ASSEMBLY**

77. Complainant hereby incorporates by reference the forgoing paragraphs of this Formal Complaint as though set forth herein at length.

78. 49 CFR §195.210(a) of the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations, incorporated by reference into the PUC regulations at 52 Pa. Code 59.33(b), provides that:

Pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly.

79. Sunoco has made no effort to avoid areas in and around West Whiteland Township containing private dwellings and places of public assembly. On the contrary, the ME2 and ME2X right of way goes directly through the yards and curtilage of private dwellings. The result has been to impact, and will continue to risk impact to, private water supplies, houses and other buildings, their foundations, and their occupants.

80. The close proximity of the pipelines to areas containing private dwellings and places of public assembly also increases the risk to these structures, and the people who occupy them, resulting from a failure or other catastrophic event related to the pipeline.

WHEREFORE, Complainant respectfully requests that the Commission issue an Order prohibiting the construction of ME2 and ME2X in areas of West Whiteland Township containing private dwellings industrial buildings, and places of public assembly, and grant such other relief as the Commission finds to be just and appropriate.

**COUNT IV**  
**ME1 IS LOCATED WITHIN 50 FEET OF PRIVATE DWELLINGS DESPITE BEING  
LESS THAN 48 INCHES UNDERGROUND**

81. Complainant hereby incorporates by reference the forgoing paragraphs of this Formal Complaint as though set forth herein at length.

82. 49 CFR § 195.248 of the PHMSA regulations, incorporated by reference into the PUC regulations, provides that a pipe installed in an industrial, commercial, or residential area must be installed so that the cover between the top of the pipe and the ground level, road bed, river bottom, or underwater natural bottom is at least thirty-six (36) inches.

83. In addition, 49 CFR §195.210(a) of the PHMSA regulations, incorporated by reference into the PUC regulations, provides that:

No pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248.

84. ME1 is located within 50 feet of private dwellings within West Whiteland Township.

85. Upon information and belief, ME1 is located at or around 24 inches or less, not 48 inches or more, within West Whiteland Township.

86. The shallowness of ME1 increases the risk of damage to the pipeline resulting from the construction activities associated with ME2 and ME2X.

87. The shallowness of ME1 increases the risk of harm of residents and homes within West Whiteland Township in the event of a catastrophic event.

WHEREFORE, Complainant respectfully requests that the Commission issue an Order prohibiting the construction of ME2 and ME2X in areas of West Whiteland Township where ME1

is located within 50 feet of a private dwelling, industrial building or place of public assembly, and grant such other relief as the Commission finds to be just and appropriate.

Respectfully submitted,

CURTIN & HEEFNER LLP

By: 

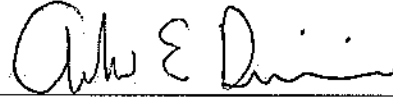
Date: April 25, 2018

---

Mark L. Freed  
PA ID No. 63860  
Doylestown Commerce Center  
2005 South Easton Road, Suite 100  
Doylestown, PA 18901  
Tel.: 267-898-0570  
mlf@curtinheefner.com

**VERIFICATION**

I, Andrew E. Dinniman, hereby state that the facts set forth in the foregoing Formal Complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



---

Andrew E. Dinniman  
State Senator  
19<sup>th</sup> District

Date: April 24, 2018

