

ARTICLE X, SECTION 10.01: FINAL REPORT GRANT AGREEMENT: DTPH56-11-G-PHPT12

GRANTEE: Safety, Agriculture, Villages, & Environment (S.A.V.E.) Inc.

ADDRESS: 101 East Street Road, Kennett Square, Pennsylvania, 19348

DUNS: 830667312

EIN/TIN: 23-2686744

Primary Contact: Julia Gardner director@savepa.org, (610) 925-0041

Funding Opportunity Title: “Technical Assistance Grants (TAG) to Communities Program”

Funding Opportunity Number: DTPH56-11-SN-000002

CFDA Number: 20.710

Award Type: Grant Agreement

Award Number: DTPH56-11-G-PHPT12

Project Title: “Promote (in the context of Pennsylvania law) the U.S. DOT Pipeline and Hazardous Materials Safety Administration (PHMSA) informed land use planning safety guidelines, developed by the Pipelines and Informed Planning Alliance (PIPA).”

Project Period: Twelve (12) months from the effective date of award.

Grant Amount: \$50,000.00

Submitted to:

Agreement Officer (AO)

Mr. Warren D. Osterberg and/or Cynthia Barzey

U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration

Office of Contracts and Procurement, PHA-30

1200 New Jersey Avenue, SE, E22-317

Washington, D.C. 20590

E-mail: Warren.Osterberg@dot.gov and/or Cynthia.barzey@dot.gov

Agreement Administrator (AA)

Ms. Maria Munoz

U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration

Office of Contracts and Procurement, PHA-30

1200 New Jersey Avenue, SE, E22-305

Washington, D.C. 20590

E-mail: maria.munoz@dot.gov

Grant Officer’s Technical Representative (GOTR)

Mr. Sam Hall

U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration

Office of Pipeline Safety, PHP-20

2180 Adventure Lane

Maidens, VA 23102

E-mail: Sam.Hall@dot.gov

Article IV: Deliverables:

Final Report

Federal Financial Report

Federal Financial Form 425 – attached separately

FINAL REPORT

The Grantee, S.A.V.E., has fulfilled expected program outputs under Article III by providing continued technical assistance, informational resources and direct outreach to stakeholders in communities containing the existing Columbia gas line and the proposed AES Mid-Atlantic pipeline; evaluating, educating and communicating the requirements and implications of Act 13 (Amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes); and informing the broader public in Chester County and Pennsylvania regarding the safety and reliability of pipeline operations as described more fully herein. S.A.V.E. has done so through completion of stated project components. In accordance with Article X, Section 10.01, the Grantee herein submits this Final Report.

Informed communities play a vital role in the safety and reliability of pipeline operations. The Technical Assistance Grants (TAG) program, first authorized in the Pipeline Safety Improvement Act of 2002 (Pub. L. 107-355, codified at 49 U.S.C. 60130), enabled this project to strengthen the depth and quality of public participation in pipeline safety matters in southeastern Pennsylvania and on a statewide level.

With the funding assistance provided from this grant, S.A.V.E. continued promoting pipeline safety initiatives to municipalities, Pennsylvania counties, and at opportunities with statewide impact regarding the institution of proactive land use ordinances regarding pipeline safety, and to educate the public on pipeline issues. Furthermore, with the adoption of Act 13 and its subsequent challenge in Pennsylvania Commonwealth Court (and appeals beyond), S.A.V.E. took the lead in educating stakeholders on the implications of the Act for municipal government land use planning and regulation. The models developed under the first TAG grant project in 2010 were refined and adapted to address the implications of Act 13, as well as reflect new information and feedback received at a Pipeline Safety Trust (PST) roundtable attended in San Francisco in June 2012. The revised models address new development in proximity to pipelines, surface uses affiliated with pipeline activity, street openings, and comprehensive planning. While the fate of Act 13 with regard to municipal planning is currently unknown (litigation is still pending), additional efforts during this grant period allowed S.A.V.E. to evaluate whether the model ordinances are consistent with Act 13, and if not, how they should be modified if the Act is upheld (see Appendix – PowerPoint Presentation for “Pipeline Planning and You” presentation). This work is especially timely given the continued implications of the Marcellus Shale play in Pennsylvania.

Although dramatic shifts in the liquefied natural gas (LNG) industry, as well as continuing legal challenges, may keep the proposed AES Sparrows Point LNG facility in Baltimore and the concomitant Mid-Atlantic Express pipeline expansion through Chester County on hold (potentially to be revised), Marcellus Shale drilling now appears likely to cause greater expansion of pipeline infrastructure throughout Pennsylvania than previously expected. The proposed AES Sparrows Point project initially led to S.A.V.E.’s involvement in pipeline issues, but even as it has stalled and potentially will change, the Marcellus Shale play heightened the need for involvement in pipeline related safety initiatives.

In fulfillment of the terms of this agreement, S.A.V.E. hereby demonstrates completion of the project through the achievements described on pages 3-5.

Gather and serve as a clearinghouse for factual and unbiased information and education to communities, thereby increasing public participation and improving safety over time. Update, enhance and manage a website dedicated to pipeline safety issues

Through our initial TAG grant, S.A.V.E. developed a dedicated web site regarding pipeline safety, www.papipelinesafety.net. The site was launched in March 2011 and was enhanced through the TAG III project period. Its goal is to better inform the public about safety and environmental issues related to pipelines, and offer unique resources from a citizen’s perspective. With S.A.V.E.’s efforts on pipeline safety winding down, the website was transferred to Pipeline Safety Coalition, an organization established and launched with TAG II funds. Now bolstered with the revised pipeline safety website, this new,

dedicated 501(c)(3) nonprofit organization provides another source of information and technical assistance to the public and elected officials as well as acts as a liaison to public agencies and pipeline companies. Its mission statement is: “To gather and serve as a clearinghouse for factual, unbiased information; to increase public awareness and participation through education; to build partnerships with residents, safety advocates, government and industry; and to improve public, personal and environmental safety in pipeline issues.” Ms. Lynda Farrell is the designated administrator and will oversee the maintenance of the web site in the future. Additionally, an overhauled S.A.V.E. organizational web site, www.savepa.org, provides a link directly to the newly launched dedicated pipeline web site.

Develop and maintain media contacts and respond to inquiries with equitable research

Our consultant John Gaadt of Gaadt Perspectives continued to be a resource for reporters researching the Marcellus Shale play and Act 13. Numerous reporters from diverse media organizations such as, Daily Local News, The Philadelphia Inquirer and WCHE 1520 AM, called to discuss Act 13, as well as the implications of the Act on municipal land use planning in Pennsylvania. Pipeline seminars, such as the PowerPoint and newspaper article attached as an appendix, reflect the type of media coverage received.

Act as a liaison to local government officials and the public to further promote the availability of the model ordinances and educate them on the issues involved so that Pennsylvania municipalities might be better prepared for the prospect of an increased number of proposed pipelines driven by the need to transport Marcellus Shale gas to market, thereby enhancing safety in the face of increased demand. Work collaboratively to promote the multi-prong municipal regulatory approach developed as part of our original TAG grant by providing the technical assistance necessary for municipalities to customize as needed and adopt the model ordinances. Evaluate, educate and communicate the requirements and implications of Act 13 (Amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes)

With assistance from John Gaadt of Gaadt Perspectives, this TAG project focused on the continuation of technical assistance and outreach to Pennsylvania municipalities and counties to promote model ordinances designed to enhance safety and lessen environmental impact of new and expanding gas pipelines, evaluation of and impacts to the model ordinances pursuant to the adoption of Act 13, and participation in related forums and seminars to gather additional outreach materials and convey state-of-the-art thinking to Pennsylvania municipalities and counties.

It was during this grant period that Pennsylvania adopted its controversial Act 13, which resulted in a class action lawsuit challenging the validity of several of the law’s provisions, most notably Chapter 33 which supersedes municipal regulations for “oil and gas operations”. Predictably, the initial reaction to Act 13 was that the work performed on this and prior TAG grants was in jeopardy; therefore, some efforts at municipal and county outreach were shifted to allow a thorough evaluation of the implications of the Act on the model ordinances. S.A.V.E., Gaadt Perspectives and Mr. Vince Pompo, Esq., an attorney specializing in Pennsylvania municipal law (all of which worked together on past TAG grant projects) undertook an assessment of Act 13, including a legal analysis of the preemption/supersession issues in the Act, and options for MPC vs. non-MPC municipal ordinance language. In addition, an evaluation was performed of the Robinson Township Litigation that resulted in the Commonwealth Court Stay on the provisions and timelines of Act 13; finally, the project team has been monitoring the State’s appeal to the Supreme Court (which is currently undecided). During this period the project team continued to inform municipal and county governments and the public of the Act’s components and the implications of the pending court challenge. As recently as September, Mr. Gaadt spoke about Act 13 at the “Pipeline Planning and You” seminar held in East Whiteland Township, Chester County (see attached appendix for a copy of the PowerPoint).

With regard to the model ordinances, Mr. Gaadt confirmed that three of the four revised and updated ordinances are consistent with Act 13. These are: “Standards for new development in proximity to

pipelines”, “Street opening standards”, and “Revisions to municipal comprehensive plans” (providing the rational nexus between comprehensive planning and codes of ordinances). The fourth ordinance, “Surface land uses affiliated with pipelines” (providing for pipeline uses not otherwise permitted in most municipal ordinances), is not considered to be consistent with the zoning provisions of Act 13. Should Act 13 be upheld, municipalities will need to revise ordinances of this type to be consistent with Section 3304 of the Act (uniformity of local ordinances including use and setback requirements for siting oil and gas operations in zoning districts).

As a result of the evaluation of Act 13 and its possible ramifications, the following municipalities and counties (each of which had adopted all or portions of the model ordinances) were contacted and informed of these efforts: West Marlborough, Londonderry and Willistown Townships (adopted or are in the process of adopting the models), West Bradford and Newlin Townships (plan to adopt and are proceeding), Wyoming County (which used the ordinances as the basis for countywide regulations, Sullivan County (considering a tailored approach of a similar nature), and East Fallowfield Township, Upper and Lower Oxford Townships (which are still considering the ordinances). While additional outreach throughout the state occurred, Act 13 dampened the team’s efforts to achieve further municipal adoption of the ordinances at this time. The general consensus is to “wait and see” how the State Supreme Court rules on the challenge.

Nevertheless, S.A.V.E., Gaadt Perspectives and Vince Pompo continued to work together to consider refinements and improvements to the model ordinances first drafted under the initial TAG project in 2010 [current versions available [HERE](#) on the www.papipelinesafety.net web site]. Consideration was given to developing and offering alternatives for modified setbacks within the model ordinances to reflect the Potential Impact Radius Concept for natural gas pipelines (see revised ordinances attached).

In addition to direct contact with the municipalities listed above, project staff attended the PST roundtable in San Francisco to initiate the New Voices Project (a collaborative effort to expand the “voices” on pipeline safety issues). Furthermore, project staff were given the opportunity (through a different grant) to attend the PST annual conference in New Orleans. This attendance allowed staff to network with other professionals, seek out those who spoke to engage in further dialogue, and coordinate directly with industry and government representatives.

During this grant period, public workshops were pursued in partnership with Chester County, the Charlestown Township TAG recipient group, and with the Pennsylvania State Association of Township Supervisors. Again, while the Act 13 “wait and see” perspective made such planning difficult, we were successful in co-sponsoring and presenting at a Charlestown Township TAG sponsored event in September 2012 (see program agenda and PowerPoint presentation attached).

S.A.V.E. communicated with the Chester County Planning Commission and County Commissioners regarding the County’s position on pipeline safety and its willingness to co-sponsor a pipeline forum for all of the County’s 73 municipalities. Initially, county officials were reluctant to formulate a policy position on pipeline safety given a presumption of preemption by the Federal Energy Regulatory Commission (FERC) and the State of Pennsylvania (Oil and Gas Act). Conversations with John Gaadt and Vince Pompo, our consultants on this project, alleviated much of this initial concern; however, the adoption of Act 13 and its subsequent challenge led the County to withhold endorsement of a countywide forum until the court case is settled.

We continued to monitor state activity relating to Act 13, including the Robinson Township Litigation and the Commonwealth Court’s Stay and impact on timelines, as well as the state’s appeal of the Act to the Pennsylvania Supreme Court. This work is reflected in the in depth discussion of Act 13, its resultant challenge and appeal, and the description of revised ordinances included as Appendices to this report and also found at www.papipelinesafety.net.

Federal Financial Report

Grant Agreement: DTPH56-10-G-PHPT10

Development & implementation of a dedicated Chester County Coalition to generate informed communities who will play a vital role in safety and reliability of pipeline operations

PROVIDE BREAK DOWN OF ACTUAL COSTS FOR EACH OBJECT CLASS CATEGORY – THE FOLLOWING PROVIDED FOR THE FEDERAL GRANT FUND COMPONENT ONLY (\$50,000):

Project Components:	Budgeted – Federal Grant	Actual – Other Grants	Actual – All Grants
INCOME			
PHMSA TAG GRANT	\$50,000		\$50,000
PA DCED GRANT (Sen. Andy Dinniman)		10,000	\$10,000
GreenWatch Institute Grant		1,000	\$1,000
TOTAL INCOME	\$50,000	11,000	\$61,000
EXPENSES			
Consultant – Gaadt Perspectives	\$ 25,000		\$ 25,000
Consultant – Vince Pompo, Esq.	3,945		3,945
SAVE Direct Project Costs	11,100		
Salaries			5,840
Employment taxes, benefits			474
Consultants (Executive Director, Accountant, Admin Asst)			4,746
Workshop expenses			78
Website expenses			279
SAVE Indirect Project Costs	9,955		
Consultant (Executive Director, Accountant, Admin Asst)			2,765
Insurance			280
Occupancy expenses			2,750
Office supplies, printing			235
Salaries (administrative)			3,390
Employment taxes, benefits			218
Non-federal grant expenses			
Salaries		7,650	7,650
Consultants – program management, accounting		2,000	2,000
Office supplies, printing		350	350
Indirect expenses (occupancy, benefits)		1,000	1,000
TOTAL PROJECT BUDGET including additional non-federal matching funds	\$50,000	\$11,000	\$61,000

APPENDICES

- A. **Powerpoint Presentation, *Pipeline Planning and You***, Presented Attached separately
on September 4, 2012, 6:30pm-8:30pm, Chester County Library.
Co-Sponsored through Technical Assistance Grants Awarded to
Charlestown Township and S.A.V.E. by US Dept. of Transportation
Pipeline Hazardous Materials Safety Administration.
- B. **Agenda: Pipeline Planning and You**, September 4, 2012, 6:30pm- Attached separately
8:30pm, Chester County Library. Co-Sponsored through Technical
Assistance Grants Awarded to Charlestown Township and S.A.V.E.
by US Dept. of Transportation Pipeline Hazardous Materials Safety
Administration. (*Note: Mention of S.A.V.E. as co-sponsor was
inadvertently omitted on agenda.*)
- C. **Article:** Sara Mosqueda-Fernandez. "Pipeline safety seminar raises Attached separately
awareness issues." Daily Local News September 5, 2012.
<<http://www.dailylocal.com>>.
- D. **Revised Model Ordinance:** Pages 7-12
Surface Land Uses Affiliated with Transmission Pipelines
- E. **Revised Model Ordinance:** Pages 13-23
Street Opening Model Ordinance
- F. **Revised Model Ordinance:** Pages 24-28
New Development Standards: Plan Submission, Buffering and
Setback from Transmission Pipelines
- G. Recommended Comprehensive Plan Language to reflect Existing Page 29
and Proposed Transmission Pipelines
- H. Assessment of Act 13 of 2012 for Chester County Municipalities Pages 30-35

Appendix D

SURFACE LAND USES AFFILIATED WITH TRANSMISSION PIPELINES

Note: This ordinance is intended to be enacted as part of a Township's Zoning Ordinance, preferably within a "Supplementary Regulations" section.

AN ORDINANCE PURSUANT TO ARTICLE VI OF THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE, AMENDING CHAPTER ___ OF THE CODE OF ORDINANCES OF _____ TOWNSHIP, BEING THE ZONING ORDINANCE BY PROVIDING FOR THE REGULATION OF SURFACE LAND USES AFFILIATED WITH TRANSMISSION PIPELINES. EFFECTIVE FIVE DAYS FROM ENACTMENT.

Section 1. The Code of the Township of _____, Chapter ___ thereof, being the _____ Township Zoning Ordinance, as amended (the "Zoning Chapter"), Article ___, Supplementary Regulations, Section ___, is amended by adding a new section ___, to read as follows:

- A. Purposes. The purpose of surface land uses affiliated with transmission pipelines shall be to:
- (1) Accommodate the need for surface land uses affiliated with transmission pipelines consistent with the desire to protect the health and welfare of the citizens of the Township.
 - (2) Minimize aesthetic, nuisance and visual impacts of surface land uses affiliated with transmission pipelines through proper design, siting and vegetative screening.
 - (3) Ensure the location of surface land uses affiliated with transmission pipelines in compliance with applicable industry standards and requirements, among them the Federal Energy Regulatory Commission (FERC), and the Pennsylvania Oil and Gas Act.
 - (4) Preserve the rural, suburban and urban character of neighborhoods adjacent to surface land uses affiliated with transmission pipelines.

B. Use provisions.

- (1) Surface land uses affiliated with transmission pipelines shall be permitted as a principal use by right in the *Industrial District* where underground pipelines exist or are proposed. Such uses shall meet the dimensional requirements, including but not limited to area and bulk standards, of the *Industrial District*. Applicants are required to demonstrate to the satisfaction of the Township that the requirements of Section C, Standards for surface land uses affiliated with transmission pipelines, can be met.

Note: Municipalities may wish to designate other areas where surface uses are permitted by right, such as zoning districts within which existing pipeline corridors already exist, or other special use districts appropriate for such uses. Should Act 13 be upheld, municipalities will be obligated to reflect the use standards contained therein.

- (2) Except as otherwise designated in Subsection (3) below, surface land uses affiliated with transmission pipelines shall be permitted as a principal use in all other zoning districts where underground pipelines exist when authorized as a conditional use pursuant to Section C, Standards for surface land uses affiliated with transmission pipelines and (*insert reference to municipal Conditional Use Approval Standards*). In addition, such uses shall meet the dimensional requirements, including but not limited to area and bulk standards, of the underlying district.
- (3) Surface land uses affiliated with transmission pipelines shall be prohibited in the *Historic Preservation Overlay District*.

Note: Municipalities may also wish to prohibit such uses in other special districts such as scenic corridor overlay districts, etc.

- (4) All other uses ancillary to surface land uses affiliated with transmission pipelines are prohibited unless otherwise permitted in the zoning district in which the use is located.

C. Standards for surface land uses affiliated with transmission pipelines. The following standards will be considered by the Township prior to permitting surface land uses affiliated with transmission pipelines:

- (1) Setbacks. Unless otherwise approved by the Board of Supervisors upon recommendation of the Township Planning Commission, the applicant shall demonstrate that the setbacks for surface land uses affiliated with transmission pipelines and all supporting equipment and structures to any property line or right-of-way shall be consistent with the minimum setback in the underlying zoning district. In addition, surface land uses affiliated with transmission pipelines and all supporting equipment and structures shall be setback a minimum of 750 feet from residential buildings and all commercial, industrial and institutional uses or 300 feet from the nearest lot line, whichever is greater, unless waived by the owner of the adjoining property (in which case a 300 foot minimum setback from the nearest lot line shall be required).

Setbacks may be modified by the Township pursuant to the type of material being managed at the surface land use affiliated with transmission pipelines and whether the use is adjacent to areas of high on-site population. The Township shall, on a case-by-case basis determine if increased setbacks are warranted consistent with the “Potential Impact Radius” (PIR), defined by the relationship between the diameter of the adjacent pipeline (and appurtenances) and its maximum operating pressure (see Exhibit 1), whether high on-site populations are located in close proximity, and whether more than one transmission pipeline (such as coupled lines) will be managed at the surface land use affiliated thereto. The PIR approach is applicable only to surface land uses affiliated with “gas” or “petroleum gas” transmission pipelines as defined by Title 49, Code of Federal Regulations, Section 192.3. Surface land uses affiliated with transmission pipelines carrying "hazardous liquids", as defined by Title 49, Code of Federal Regulations, Section 195.2, shall adhere to the setback standards contained in this subsection.

Note: Municipalities that wish to consider larger setbacks for petroleum or other hazardous liquid pipelines should only do so if they believe they can justify the need for larger pipelines to protect High Consequence Areas (areas with high on-site populations) or Unusually Sensitive Areas (areas with unique natural resource constraints); any increase in setbacks should be reviewed by the municipal solicitor.

- (2) Landscaping. The applicant shall provide a plan prepared by a landscape architect licensed in Pennsylvania showing landscaping proposed to be installed to screen and buffer surface land uses affiliated with transmission pipelines. The landscape plan shall incorporate the use of an eight-foot decorative fence surrounded by a mix of native vegetation, including evergreens, shrubbery and trees, which shall not be less than the height of the fence and shall be of sufficient density to screen the facility. Existing vegetation in proximity to surface land uses affiliated with transmission pipelines shall be preserved to the greatest extent possible. All proposed landscaping shall comply with the requirements of the Township's Subdivision and Land Development Ordinance (*or substitute the location of any landscaping provisions of the Township Code*). Applicants

shall submit a visual survey from mutually agreed upon vantage points in order to support the proposed landscaping plan's mitigation of visual impacts.

- (3) Noise. Sound produced by the surface land use affiliated with transmission pipelines shall not result in noise or vibration clearly exceeding the average intensity of noise or vibration occurring from other causes at the property line; in no case shall the sound pressure level exceed 55 dB(A) (according to the American National Standards Institute (ANSI) “a” weighted scale) at the property line closest to the land use.

Note: Act 13 has a different standard [60 dB(A)] which may need to be substituted for the above standard if Act 13 is upheld.

- (4) Odors. Odor, vapors or particulate matter produced by the surface land use affiliated with transmission pipelines shall not exceed the average emission of such substances occurring from other causes at the property line. Specific contaminants shall be regulated by PA Code, Title 25, Environmental Protection, Part 1, Subpart C, Article III, Air Resources.
- (5) Signage. All signs, other than utility identification signs, appropriate warning signs, or owner identification signs, shall be prohibited. There shall be no antennae, advertising, or other items or material affixed to or otherwise placed on surface land uses affiliated with transmission pipelines, except as permitted by the Township.
- (6) Parking. If the surface land use affiliated with transmission pipelines is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, the number of parking spaces shall be equal to the number of people on the largest shift. Parking spaces shall be located within the decorative fence and landscape buffer area so they are substantially concealed when viewed from surrounding properties.
- (7) Lighting. No surface land use affiliated with pipeline utilities shall be artificially lighted except as required for emergency night time access. Any such lights shall be shielded so as to prevent intrusion upon nearby properties.
- (8) Engineered drawing submission. Applications for a land use affiliated with pipeline utilities shall be accompanied by engineering drawings prepared by an engineer licensed

in Pennsylvania. The applicant shall show that all applicable Commonwealth of Pennsylvania and U.S. standards for the construction, operation, and maintenance of the proposed facility have been met.

- (9) Design. The applicant proposing a surface land use affiliated with transmission pipelines must demonstrate that the structure has been designed to blend in with or mimic existing structures in the landscape such as residential outbuildings, farm structures, or other uses permitted in the underlying districts.
- (10) Visual impact. Any surface land use affiliated with transmission pipelines shall be designed and constructed so as to mitigate the visual impact from public roads and nearby uses. In addition, the color and other visual features of the land use affiliated with pipeline utilities shall be designed and installed in such a manner so as to create the least visual impact practicable. The applicant shall demonstrate compliance with this section, by among other things, providing photographic perspectives of the proposed site from all sides of the property, adjacent road ways and neighboring properties (with permission of the owners).
- (11) Need. The applicant for a surface land use affiliated with transmission pipelines is required to demonstrate, using scientific and technological evidence, that the facility must be located where it is proposed in order to satisfy its function in the company's pipeline system and demonstrate that there is a need for this facility at the location where it will be located.
- (12) Licensing. If the applicant is a commercial pipeline company, it must demonstrate that it is licensed by the Federal Energy Regulatory Commission (FERC) and the Pennsylvania Department of Environmental Protection (PADEP).
- (13) Removal of surface land uses affiliated with transmission pipelines. Any surface land uses affiliated with transmission pipelines that are no longer licensed and active shall be removed and the site restored to its original condition at the owner's expense within 60 days of the last date that the facility was licensed by the PADEP and FERC. A bond or escrow account shall be posted with the Township in an amount sufficient to ensure such removal and site restoration prior to the construction of the facility. The applicant shall have prepared and submit to the Township to accompany the bond or escrow account, an estimate of the cost necessary to remove the surface land use facility associated with the pipeline and restore the site to its preconstruction condition.

Section 2. The Code of the Township of _____, Chapter ____ thereof, being the _____ Township Zoning Ordinance, as amended (the “Zoning Ordinance”), Article __, Section ____, Definitions, is amended by adding the following terms and definitions therefore in the correct alphabetical sequence:

Pipeline – As defined by Title 49, Code of Federal Regulations, Sections 195.2 and 192.3.

Surface land uses affiliated with transmission pipelines – Above-ground transmission pipeline facilities including, but not limited to, compressor stations, pumping stations, regulator stations, launcher/receiver stations, and other surface pipeline appurtenances.

Transmission Pipelines – Transmission pipelines include, but are not limited to, pipelines designed for the transmission of a "gas" or "petroleum gas", except a "service line", as those terms are defined by Title 49, Code of Federal Regulations, Section 192.3; also included pipelines designed for the transmission of a "hazardous liquid", as defined by Title 49, Code of Federal Regulations, Section 195.2.

Appendix E

STREET OPENING MODEL ORDINANCE

Note: This free-standing ordinance is intended to be enacted as part of a township's Code of Ordinances. It could also be incorporated into a Township's Subdivision/ Land Development Ordinance.

AN ORDINANCE PURSUANT TO SECTION 2322 OF THE SECOND CLASS TOWNSHIP CODE, AS AMENDED, PROVIDING FOR THE REGULATION OF STREET OPENINGS AND INSTALLATIONS AND PROVIDING FOR THE REGULATION OF DRIVEWAYS WITHIN _____ TOWNSHIP. EFFECTIVE FIVE DAYS FROM ENACTMENT.

Section 1. **Title.** This ordinance shall be cited to as the “_____ Township Street Opening Ordinance”.

Section 2. **Permit Required.** No opening, cutting, excavating, grading, boring, crossing, installation or disturbance of any kind shall be allowed upon, in, under, or across any portion of a Township road or any Township road right of way without a Road Occupancy permit granted by the Township for each separate undertaking. A permit shall not be immediately required for emergencies provided the applicant adheres to the requirements of Section 36. Permit applications are not required for accessing utility facilities through a manhole.

Section 3. **Application for Permit; Fee.** The application for a permit shall be on a form provided by the Township and submitted to the Township in triplicate. The Township Public Works Director or his designee shall be responsible for review and administration of the permit. The application shall be accompanied by a fee for processing the application in accordance with the Township Schedule of Fees adopted from time to time by the Board of Supervisors for street occupancy permits and restoration charges, and another fee for review by the Township Engineer and for making inspections, if needed. In addition, the applicant shall submit three copies of a sketch showing the location of the intended work, width of the traveled roadway (cartway), right-of-way lines, an address, and a dimension to the nearest intersecting road or other nearby landmark, so as to ascertain the location of the work.

Permits will only be issued to public utility companies or contractors registered to do business in the Township.

Applicants shall be responsible for all costs and expenses incident to or arising from the permitted work, including the prescribed fees for the same, the cost of making and maintaining temporary restoration of the disturbed areas and making permanent restoration.

Section 4. **Decision on the Permit.** The permit application shall be approved or denied within 30 calendar days of submission of a complete application to the Township. If the application and required documents do not conform to the requirements of this Ordinance and applicable ordinances, rules, and regulations, the Township Engineer shall either issue a correction notice listing the deficiencies that must be corrected, or deny the application in writing, stating the reasons. If the Township Engineer is satisfied that the proposed work conforms to the aforesaid requirements, the Township Engineer shall issue a permit.

Section 5. **PA One-Call.** At least 3 working days prior to the proposed start of work, the applicant or his representative shall contact the PA One-Call system at 1-800-242-1776, report the proposed work, and obtain a serial number, and provide such serial number to the Township. No work shall begin until such date and time as authorized by PA One-Call.

Section 6. **Maintenance of Traffic.** At least one lane of traffic shall be maintained at all times. The applicant shall comply with the provisions of PennDOT Publication 203, “Work Zone Traffic Control”.

Section 7. **Detours.** Under extremely unusual circumstances, the Township may allow a road to be closed and traffic to be detoured. No road shall be closed without giving the Township at least 72 hours prior notice, to allow time to notify 911, police, fire departments, emergency services and school districts. No road shall be closed without the applicant submitting a detour plan to the Township and having it approved by the Township. No road shall be closed without proper detour signs, as approved by the Township, having been provided and installed by the applicant. All detour signs shall be maintained for the entire work period.

Section 8. **Erosion Control.** All proper erosion control measures shall be taken to ensure compliance with applicable laws. If necessary, the applicant shall obtain erosion and sedimentation control plan approval from the County Conservation District prior to starting work.

Unless specifically authorized by the permit, applicants shall not alter the existing drainage pattern or the existing flow of drainage water. In addition, applicants are not permitted to direct, divert or otherwise drain surface waters onto any property without the consent, permission or other authorization from the property owners. Applicants are responsible for any damage caused to public or private property as a result of the work undertaken by the permit.

Unless specifically authorized by the permit, applicants shall not cut, remove or destroy trees or shrubbery within the right-of-way.

Section 9. Trenching. In situations where drilling, dry boring, driving or tunneling are not feasible, applicants may be authorized under their permit to trench across improved areas.

Trenching may be authorized across improved areas under the following conditions:

1. Subsurface material is solid rock;
2. Other facilities are located longitudinally under the improved area and the location of such precludes methods other than trenching;
3. Adjacent development in very congested urban settings makes tunneling or boring impracticable;
4. The Public Works Director or his designee determines that the disruption to traffic and length of exposure will be minimal.

When utility facilities are to be placed across a street in on piece, the following method shall be used:

1. Traffic shall be routed over one-half (1/2) the pavement width;
2. The closed half of the pavement shall be opened to the required depth and bridged with steel plates;

3. Traffic shall be shifted to the bridged half of the pavement;
4. The remaining half of the pavement shall be opened to the required depth;
5. The facility shall be placed full width;
6. The open trench shall be backfilled and restored half-width in accordance with this chapter;
7. Traffic shall be shifted to the restored half of the pavement;
8. The bridging shall be removed and the remaining half of the trench shall be restored in accordance with this chapter.

Section 10. OSHA Requirements. The applicant shall comply with all OSHA safety requirements and procedures, including without limitation all enclosed space requirements. All excavation or trenching shall comply with the most recent Federal, State and local regulations regarding safety at a construction site.

Section 11. Notification. The applicant shall notify the Township 24 hours in advance of starting work and upon completion of temporary restoration and permanent restoration for a field inspection of the work.

Section 12. Backfill. All backfill within the Township right-of-way shall be 2A Modified crushed stone of optimum moisture content. There shall be a minimum two (2) inches of bedding under the pipe or utility line. Crushed stone backfill shall be mechanically compacted in maximum six (6) inch lifts. Where work is done outside the paved cartway or shoulder, the last six (6) inches of backfill shall be topsoil.

Section 13. Overnight Requirements. If the work cannot be completed in one work- day, proper barricades, flashing lights, steel plates or other methods shall be used to secure the site and insure the safety of travelers on the roads in the Township until the next workday. The applicant shall comply with the provisions of PennDOT Publication 203, "Work Zone Traffic Control".

Section 14. **Clean-up.** The work area shall be swept clean, cleaned of debris and otherwise policed at the end of each workday and at the end of the project. Mud shall not be tracked onto the streets at any time. All mud shall be cleaned up within one (1) hour of verbal or written notice from the Township or its agents. All loads shall be tarped.

Section 15. **Installation.** Conduits and pipes shall be installed with a minimum of eighteen (18”) inches of cover. In no case shall conduits or pipes be allowed to be placed within six (6) inches of the bottom of the roadway or driveway paving cross-section, which includes all courses of screenings, base stone, binder and bituminous or concrete wearing surface. Separation shall be obtained by at least six (6) inches of screenings, to allow paving to be milled in the future without damage to utilities.

Section 16. **Temporary Restoration.** The last two (2) inches of the excavation shall be backfilled with compacted “cold patch” or similar asphalt material to prevent dust and stone chip nuisances. All excavations shall be temporarily restored prior to allowing traffic on them. All settlement shall be brought back to grade within twenty-four (24) hours of verbal or written notice from the Township or its agents. The temporary restoration shall remain in place for a minimum of two (2) months to allow for final settlement to occur through the actions of rain and traffic, but in no case shall it remain in place more than four (4) months. The person issued the permit shall send a postcard to the Township indicating the date of completion of the temporary restoration.

Section 17. **Permanent Restoration.** All ragged or broken edges and undermined areas shall be saw-cut straight; the minimum cutback shall be one (1) foot and the minimum depth shall be six and one half (6½) inches. Permanent restoration shall match existing thicknesses and materials, except in the case of asphalt paving where the minimum requirements shall be five (5) inches of 25-mil Superpave and two (2) inches of 9.5-mil Superpave. All edges shall be sealed a minimum of six (6) inches wide with PG64-22 liquid asphalt. All non-paved areas shall be restored with six (6) inches of topsoil, seed and straw mulch cover, but with curlex blanket applied to all disturbed roadside swale areas in accordance with Chester County Conservation District practices. Permanent restoration shall be scheduled to occur during the spring, summer or fall seasons when proper bituminous paving can be completed. The person issued the permit shall send a postcard to the Township indicating the date of completion of the permanent restoration.

Section 18. **Additional Restoration.**

1. All disturbed portions of a street, including all appurtenances and structures, such as but not limited to guardrail or drain pipes, shall be restored to a condition equal to or better than that which existed before the start of any work authorized by the permit.
2. When both longitudinal and traverse trench openings are made in the street pavement, regardless of the age of the wearing course, the Township may require the applicant to overlay all traffic lanes in which such openings were made, for the entire length of the street that was opened, if the Public Works Director or his designee determines that the serviceability of the street has been impaired by the openings.
3. Any lawn area disturbed as part of the work shall be restored to the condition that existed prior to the start of work. At a minimum, the following standards shall be met:
 - a. A minimum of six (6) inches of screened topsoil shall be placed at all locations of lawn restoration.
 - b. Disturbed areas shall be permanently stabilized with a quality seed mixture and straw mulch. The seed mixture used shall match the existing grass type.
 - c. Erosion control blanket shall be placed on all slopes that are 3:1 or greater. Blankets must be placed on all areas where erosion occurs or as specified by the Public Works Director or his designee.
 - d. All wheel ruts or other construction damage created by the applicant shall be restored to a condition equal to or better than that which existed before the start of any work authorized by the permit.

Section 19. Identification. All excavations shall be marked after both temporary and permanent restoration. Where a pipeline crosses a public road, the location of the pipeline shall be marked by appropriate posts over the center of each pipeline. The posts shall be placed on both sides of the roadway on or one-foot inside the right-of-way line and shall contain all information required by federal regulations with, as a minimum, the name and local address of the pipeline company offices and a phone number to call that will provide immediate response in the event of an emergency.

Section 20. **Guarantee.** All work shall be guaranteed for a period of one (1) year from the date of final inspection and certification by the Township Engineer that the work has been completed in accordance with the permit. All defects shall be corrected by the applicant within twenty-four (24) hours of verbal or written notice from the Township or its agents.

Section 21. **Security Deposit and/or Bonding.** Except for public utility corporations operating under a franchise covering an area in whole or in part within the Township, projects in excess of \$25,000 shall deposit with the Township financial security in an amount equal to 110% of the cost of completion of the work required to comply with this chapter, estimated as of 90 days following the date scheduled for completion, provided the cost exceeds \$25,000. The form, amount and administration of the financial security shall be in accordance with Section 509 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10509. The financial security shall be held by the Township until the end of a 1-year guarantee period and shall be used by the Township as liquidated damages in case of default or non-performance by the applicant.

Public utility corporations operating under a franchise covering an area in whole or in part within the Township shall have on file with the Township a bond in the amount of \$5,000 or as may be established by resolution of the Board of Supervisors with a surety that is licensed to transact such business in the Commonwealth of Pennsylvania, which bond shall be renewed annually, covering the cost of all inspections made by the Public Works Director or his designee pertaining to all openings or excavations made or to be made in a calendar year or shall furnish a bond in the amount determined by the Public Works Director or his designee covering the aforesaid costs pertaining to proposed openings or excavations set out in the application. The aforesaid bonds shall have either corporate surety or other surety approved by the Township Solicitor and shall be conditioned to indemnify the Township in the event of any loss, liability or damage that may result or accrue from or be due to the making, existence or manner of guarding or constructing any opening or excavation during the term of said bond.

Section 22. **Prohibited Locations.** No utilities, except for transverse laterals, shall be placed in the planting area between the face of curb and the sidewalk, or within five (5) feet of the edge of cartway or paved shoulders. This area is reserved for Township use for storm sewers, traffic signs, streetlights, etc.

Section 23. **Recently-Paved Streets.** Except for emergencies, excavations will not be permitted in streets that have been built or overlaid within the previous three (3) years, unless the applicant agrees to overlay the full width of the street with one and one half (1½) inches of 9.5 mm Superpave for a distance of ten (10) feet on either side of the extreme edges of the disturbed paving measured along the length of the road. Overlays shall be placed within one (1) week of permanent restoration of the excavation.

Section 24. **Driveway Permits.** Permits shall be required for all new or widened driveways within the Township. Driveway permits for Township roads shall be obtained from the Township. The application shall be accompanied by a fee in accordance with the Township Schedule of Fees adopted from time to time by the Board of Supervisors. Driveway permits for State roads shall be obtained from PennDOT. The provisions of Section 19, security deposit, and Section 33, insurance, shall not apply to an applicant for a driveway permit serving an existing single family residence.

Section 25. **Driveway Dimensions.** The minimum width of a driveway shall be nine (9) feet. In areas where a driveway is approved for access to multiple lots or uses, the minimum width of the driveway shall be sixteen (16) feet; where it can be shown to the satisfaction of the Township that sufficient pull-offs are provided for access to multiple lots or uses, the minimum width may be reduced to nine (9) feet. The maximum width of residential driveways shall be twenty (20) feet. The maximum width of commercial and industrial driveways shall be determined by engineering analysis. Driveways shall provide four (4) foot paved radius tapers (turning widths) where the driveway meets the cartway edge of a Township road; regardless of width, should turning movements onto or off of driveways result in damage to the cartway edge of a Township road, property owners shall be liable for repairs to the Township road.

Section 26. **Driveway Locations.** The centerline of driveways shall be located at least fifty (50) feet from the continuation of the right-of-way line of the closest intersection, or directly across from 3-way intersections.

Section 27. **Number of Driveways.** Not more than two (2) driveways shall be permitted to any single property, tract or business establishment. Residential lots and lots with frontages of one hundred (100) feet or less shall be limited to one driveway.

Section 28. **Visibility.** All driveways shall meet the visibility requirements of PennDOT Chapter 201. The clear-sight triangle shall be maintained clear of all obstructions at all times.

Section 29. **Drainage.** Driveways shall be depressed to match the existing roadside swale or shoulder so as to allow above-ground drainage over the driveway and to direct driveway runoff into said swale or shoulder. Pipes shall not be installed under driveways, except under unusual circumstances and with prior Township approval.

Section 30. **Grades.** The portion of a driveway within the street right-of-way shall not exceed four (4) percent grade. The remainder of the driveway shall not exceed fifteen (15) percent grade. Driveways shall be paved from the cartway to a minimum of twenty-five (25) feet back from the right-of-way line. Paving shall consist of six (6) inches of 2A crushed stone and two (2) inches of ID-2 per PennDOT Publication 408, latest edition. The remainder of the driveway may be constructed of any suitable stone, paver or paved surface.

Section 31. **Erosion.** Driveways shall be designed to avoid erosion and excessive runoff by grading, interception swales and/or drainage systems. If erosion products are deposited on the cartway, shoulders or swales, the property owner shall remove them within four (4) hours of verbal or written notice from the Township or its agents. In addition, the property owner shall take necessary measures to avoid reoccurrence of the problem.

Section 32. **Private Streets.** Driveways serving as private streets shall not be dedicated to the Township nor does the Township assume any responsibility for their maintenance.

Section 33. **Flag Lots.** When flag lots abut each other at a common street line, or in other situations considered appropriate by the Board of Supervisors, a common driveway shall be utilized for access to the lots.

Section 34. **Unnatural Water Sources.** Discharge from any roof drains, downspouts, sump pumps, foundation drains, disposal fields, etc., shall not be permitted onto a right-of-way or onto a driveway or driveway drainage system that directs runoff toward a street. Such discharge may be connected to underground drainage systems in the street if available, preferably into an inlet for accessibility.

Section 35. **Insurance.** As part of the permit application, the applicant shall provide the Township with insurance certificates for the following policies of insurance in full force and effect with an insurance company(ies) admitted by the Pennsylvania Insurance Commissioner to do business in the Commonwealth of Pennsylvania and rated not less than A in Best Insurance Key rating Guide:

1. Commercial general liability insurance, including property damage liability and personal injury liability of not less than \$1,000,000 for each occurrence and a \$2,000,000 minimum aggregate amount.

2. Automobile bodily injury liability insurance of not less than \$500,000 each person; \$500,000 each occurrence.

3. Statutory Workman's Compensation and employer's liability insurance.

All policies of commercial general liability insurance required hereunder shall name the Township, its supervisors, engineer and employees as additional insureds. Specifically, commercial general liability insurance policy shall name the Township, its officers, agents, supervisors, elected officials and employees as an additional insured under ISO endorsement CG 20 26 07 04 or non ISO equivalent. Any policy or policies of insurance shall be primary and non-contributory to insurance coverage maintained by the Township. Certificates of insurance shall state that coverage shall not be cancelled by either party except after thirty (30) days' prior to written notice by U.S. certified mail, return receipt requested, has been given to the Township. In addition, the applicant shall indemnify and hold harmless the Township and shall assume the defense and all costs of lawsuits and awards.

Section 36. Emergencies. In the case of emergencies threatening property or lives, the applicant may proceed with the work after notifying the Township and 911. The applicant shall still be responsible for applying and obtaining the permit and satisfying all requirements. The application shall be made within twenty-four (24) hours of the verbal or written notice to the Township and 911. If the Township Administrative Office is closed, the applicant shall notify the Township Police Department. Information communicated shall include: 1. the date and time the emergency work is started; 2. the location of the emergency work site; and 3. a description of the emergency work.

Section 37. Equipment Damage to Streets or Sidewalks. All equipment shall have rubber wheels or runners and shall have rubber, wood, or similar protective pads between the outriggers and the surface unless otherwise authorized by the permit. Where other than rubber-equipped machinery is authorized, pavement, sidewalks and shoulders shall be protected by the use of matting wood, or other suitable protective material having a thickness of four (4) inches (unless the permit indicates that the applicant plans to repave the full width of the roadway). Should damages occur, pavement, shoulders and sidewalks shall be restored to their formal condition at the applicant's expense.

Section 38. Other Regulations. In addition to the requirements of this Ordinance, all work is subject to all applicable federal, state and local laws, ordinances and regulations.

Section 39. Violations and Penalties. Any person or utility which shall violate or permit the violation of the provisions of this ordinance shall, upon being found liable therefore in a criminal enforcement proceeding, pay a fine of not more than \$1,000 nor less than \$25, together with court costs and reasonable attorney fees, and may be incarcerated for a period not exceeding 90 days. Such fines,

costs, attorney fees and incarceration, after being reduced to a final, unappealed judgment, shall be enforced by the Township pursuant to the applicable rules of criminal procedure. Each day of violation shall constitute a separate violation.

Section 40. **Definitions.** As used in this ordinance, the following terms shall have the meanings indicated:

CARTWAY -- The portion of a street or alley, right-of-way, paved or unpaved, customarily used by vehicles in the regular course of travel over the street.

PERSON -- Any natural person, municipal authority, corporation, partnership, joint venture, sole proprietorship, firm, association and any other entity of whatever type.

RIGHT-OF-WAY -- The total width of any land reserved or dedicated as a street, alley or crosswalk, or for any other public or private purpose.

Section 41. **Severability.** If any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.

Section 42. **Effective date.** This ordinance shall be effective five (5) days from the date of enactment.

Appendix F

NEW DEVELOPMENT STANDARDS: PLAN SUBMISSION, BUFFERING AND SETBACK FROM TRANSMISSION PIPELINES

Note: The sections of this ordinance are intended to be enacted as part of a Township's Subdivision and Land Development Ordinance.

AN ORDINANCE PURSUANT TO ARTICLE V OF THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE, AMENDING CHAPTER ___ OF THE CODE OF ORDINANCES OF _____ TOWNSHIP, BEING THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE BY PROVIDING FOR PLAN SUBMISSION, BUFFER, SETBACK, SIGNAGE AND LANDSCAPING PROVISIONS FOR NEW DEVELOPMENT ADJACENT TO TRANSMISSION PIPELINES. EFFECTIVE FIVE DAYS FROM ENACTMENT.

Section 1. The Code of the Township of _____, Chapter ___ thereof, being the _____ Township Subdivision and Land Development Ordinance, as amended (the "Subdivision Chapter"), Article ___, Plan Requirements and Procedures, Sections ___, Plan Content for Preliminary and Final Plan Submissions, is amended by adding a new subsection ___, to read as follows:

(__) The location, center line right-of-way, and limits of easements for all transmission pipelines on the tract or on any abutting property.

Section 2. The Code of the Township of _____, Chapter ___ thereof, being the _____ Township Subdivision and Land Development Ordinance, as amended (the "Subdivision Chapter"), Article ___, Design Standards, Section ___, is amended by adding a new section ___, to read as follows:

Section ___. Buffer Standards and Setbacks from Transmission Pipelines

A. Purpose

The purpose of this section is to help prevent and minimize unnecessary risk to the public health and welfare due to transmission pipelines and ensure consistency with the intent of the Township's Comprehensive Plan. Recognizing it is impossible to eliminate risk entirely, this section is intended to:

- (1) Minimize the likelihood of accidental damage to transmission pipelines due to external forces, such as construction activity and equipment.
- (2) Avoid exposing land uses with high on-site populations that are difficult to evacuate.
- (3) Help reduce adverse impacts in the event of a pipeline failure.
- (4) Ensure compliance with and supplement existing federal and state regulations related to transmission pipeline corridor management, among them the Federal Energy Regulatory Commission (FERC) and the Pennsylvania Oil and Gas Act.

B. Applicability

- (1) Setbacks. New residential buildings and all commercial, industrial and institutional uses other than those surface uses affiliated with transmission pipelines shall be set back a minimum of three hundred (300) feet from any existing or proposed transmission pipeline right-of-way; such uses shall be set back from natural gas compressor stations or other surface land uses affiliated with transmission pipelines a minimum of 750 feet or 300 feet from the nearest lot line of natural gas compressor stations or other surface land uses affiliated with transmission pipelines, whichever is greater, unless waived by the new development applicant (in which case such uses shall be set back a minimum of 300 feet from the nearest lot line of natural gas compressor stations or other surface land uses affiliated with transmission pipelines). Other unoccupied residential or non-residential accessory uses such as but not limited to detached garages, parking areas, storage facilities or garden sheds shall not be located within one hundred (100) feet of any pipeline right-of-way.

Setbacks may be modified by the Township pursuant to the type of material being transported in the pipeline and whether the applicant proposes high on-site populations. The Township shall, on a case-by-case basis determine if increased setbacks are warranted consistent with the "Potential Impact Radius" (PIR), defined by the relationship between the diameter of the adjacent pipeline and its maximum operating pressure (see Exhibit 1), whether high on-site populations are proposed, and whether more than one transmission pipeline (such as coupled lines) exist (or are proposed). The PIR approach is applicable only to "gas" or "petroleum gas" transmission pipelines as defined by Title 49, Code of Federal Regulations, Section 192.3. Transmission pipelines carrying "hazardous liquids", as defined by Title 49, Code of Federal Regulations, Section 195.2 shall adhere to the setback standards contained in this subsection.

Note: Municipalities that wish to consider larger setbacks for petroleum or other hazardous liquid pipelines should only do so if they believe they can justify the need for larger pipelines to protect High Consequence Areas (areas with high on-site populations) or Unusually Sensitive Areas (areas with unique natural resource constraints); any increase in setbacks should be reviewed by the municipal solicitor.

No activity or grading within the pipeline setback shall create depressions or areas in which flammable or explosive materials may collect or accumulate; examples include but are not limited to grading for structures, stormwater management facilities or landscape beds. Furthermore, pipeline rights-of way shall be identified and protected during construction by erecting suitable temporary barricades (non disturbance fencing or silt fencing) and posting notices on-site.

- (2) Consultation zone. Any application, other than those surface uses affiliated with transmission pipelines, for new residential structures and all commercial, industrial and institutional uses (whether Class 1, 2, 3 or 4 locations pursuant to Exhibit 1), proposed within six hundred sixty (660) feet of any existing or proposed transmission pipeline right-of-way shall include written verification from the applicant that:
- (a) The applicant has contacted the pipeline operator(s) and has provided the pipeline operator(s) with documentation detailing the proposed development activity and where the activity is to take place;
 - (b) The applicant has made sufficient access to the pipeline available to the pipeline operator(s) for routine maintenance and emergency operations; and
 - (c) The pipeline operator(s) has reviewed the documents for compatibility with continued or proposed safe operation of the transmission pipeline(s).

It shall be clear in the written notification submitted with the application that the pipeline operator(s) has received and acknowledged documentation showing the proposed activity and its location.

- (3) Land uses with high on-site populations. Applicants for land uses with high on-site populations within six hundred sixty (660) feet of a transmission pipeline shall develop appropriate mitigation measures to help reduce adverse impacts in the event of a pipeline failure. Such measures and/or corresponding plans shall be submitted to the Township for review. Land uses with high on-site populations include schools (through grade 12), hospitals, clinics, multi-family housing, retirement and/or life care facilities, stadiums or arenas, day care centers, or large scale commercial, industrial or institutional uses of fifty (50) or more persons.

Mitigation measures intended to reduce risk and minimize impact in the event of a pipeline failure include but are not limited to: emergency procedures such as emergency plans and guides,

employee training and drills, and education programs for occupants and employees concerning pipeline safety, such as what to be aware of and how to respond in the event of a problem. Applicants shall consult with the local Fire Marshal regarding the level of emergency planning and procedures appropriate for the proposed development; the Fire Marshal may also require submission of plans for review and approval where deemed appropriate.

- C. Land Development Design, Buffering and Screening. Applicants shall consider existing or proposed pipelines in their design and placement of lots, structures and roads. Specifically, consideration shall be given to incorporating the linear appearance of the pipeline right-of-way into the overall development design or landscaping in a manner that works with or minimizes the linear appearance of the pipeline right-of-way. Attempts shall be made to avoid creating a bisecting and unnatural linear space that does not relate to the land development.

The applicant shall provide a plan prepared by a landscape architect showing landscaping proposed to be installed to minimize the linear appearance of the pipeline right-of-way and screen and buffer new development from transmission pipelines in the event of an accident or failure. Landscaping can be used both to minimize the linear appearance of the pipeline right-of-way and buffer structures from those remedial activities associated with pipeline failure and clean-up.

The landscape plan shall incorporate a mix of native vegetation, including evergreens, shrubbery and trees, which shall be of sufficient density to meet the objectives outlined herein while permitting suitable points of access for pipeline personnel providing routine maintenance. Existing vegetation in proximity to transmission pipelines shall be preserved to the greatest extent possible. All proposed landscaping shall comply with the requirements of this Ordinance.

- D. Signage. Applicants shall consult with transmission pipeline operators to determine the need for, number of, and placement of utility identification signs, appropriate warning signs and owner identification signs. The number and placement of signs and their content shall be shown on plan submissions.

Section 3. The Code of the Township of _____, Chapter ____ thereof, being the _____ Township Subdivision and Land Development Ordinance, as amended (the “Subdivision Chapter”), Article ___, Section ___, Definitions, is amended by adding the following terms and definitions therefore in the correct alphabetical sequence:

Pipeline – As defined by Title 49, Code of Federal Regulations, Sections 195.2 and 192.3.

Surface land uses affiliated with transmission pipelines – Above-ground transmission pipeline facilities including, but not limited to, compressor stations, pumping stations, regulator stations, launcher/receiver stations, and other surface pipeline appurtenances.

Transmission Pipelines – Transmission pipelines include, but are not limited to, pipelines designed for the transmission of a "gas" or "petroleum gas", except a "service line", as those terms are defined by Title 49, Code of Federal Regulations, Section 192.3; also included pipelines designed for the transmission of a "hazardous liquid", as defined by Title 49, Code of Federal Regulations, Section 195.2.

Appendix G

Recommended Comprehensive Plan Language to Reflect Existing and Proposed Transmission Pipelines

Amend chapters/sections dealing with Community Facilities and Services to reflect the following:

The Township recognizes the existence of the *[Columbia Gas Pipeline, or as applicable whatever pipelines currently exist]* running through portions of the Township and acknowledges a proposal to run an *[AES Mid-Atlantic Express Liquid Natural Gas (LNG) pipeline concurrently with the Columbia line, originating from Sparrows Point Maryland, where such new proposed lines are being planned]*. Such transmission pipelines provide opportunities to meet the energy demands of the Atlantic seaboard but also pose tremendous risk for those communities potentially affected should a pipeline failure occur. Under normal circumstances, underground pipelines are relatively benign; however, where emergencies such as failures do occur, varied threats to public health and welfare can be significant, from direct impacts such as resident injury or death, severe property damage, contaminated soils and groundwater pollution to indirect impacts associated with cleanup (expanded access points, groundwater recovery and remediation facilities, expanded soil disturbance, etc.). As such, the Township should monitor existing and future pipeline activity and enact, where feasible, regulations complimentary to the Pennsylvania Oil and Gas Act (as amended by Act 13 of 2012) and the Federal Energy Regulatory Commission designed to protect the public health and welfare and regulate land uses in conformance with the Pennsylvania Municipalities Planning Code, Act 247, as amended. Among the needs to address are those surface land uses affiliated with transmission pipelines, appropriate access provisions for pipeline rights-of-way, and buffering and setback standards appropriate to reduce adverse impacts to residents of new development should a pipeline failure occur. In addition to buffers and setbacks, the Township should examine the feasibility of increased communication with pipeline operators, particularly as related to new development proposals within proximity of transmission pipelines, and investigate measures to protect new land uses with high on-site populations. Regulations should also comply with other applicable policies of this plan, Chester County's Landscapes 2, and applicable statewide planning goals designed to meet the needs of the citizen's of the Commonwealth. The Township should also continue to coordinate its activities with those of the County and State as the *[AES pipeline, or other applicable pipeline if one is planned]* proceeds through the permit review and construction phases.

Note: revisions may be needed to reflect Act 13, specifically the provisions of Chapter 33, should the Act be upheld.

Appendix H

Assessment of Act 13 of 2012 for Chester County Municipalities

Prepared by: John M. Gaadt, AICP & Vincent Pompo, Esquire

OVERVIEW

Amending Title 58 (Oil and Gas) to consolidate the Oil and Gas Act (Act 223 of 1984) with modifications and additions, among those: providing for environmental protections for the development of unconventional natural gas resources, authorizing an unconventional gas well impact fee, providing for local ordinances relating to oil and gas operations. While Chester County does not contain the Marcellus Shale formation, and therefore will not be involved in extraction issues, the county nonetheless contains more than 25 transmission pipelines defined as “oil and gas operations” under the Act.

SYNOPSIS OF REVISIONS

Section 1, Part I (reserved)

Section 1, Part II (Oversight and Development)

Chapter 23 - Unconventional Gas Well Fee (Drilling Impact Fee). This chapter defines the process by which fees are determined (based upon the year of the well and the average price of natural gas) (§2302), levels of government assessing fees (§2303), role of the PUC in calculating and assessing fees (§2303), fee distribution (§2314 & §2316), and enforcement (§2308). Among other things, funds obtained may be used for local and regional planning initiatives under Act 247.

Chapter 25 – Oil and Gas Lease Fund. Provides that a portion of funds are distributed through the Marcellus Legacy Fund to the Environmental Stewardship Fund and the Hazardous Sites Cleanup Fund (§2505).

Chapter 27 – Natural Gas Energy Development Program. Establishes a competitive grant program for the conversion of vehicles to dedicated compressed natural gas, dedicated liquefied natural gas, or bi-fuel (§2702 & §2703). Eligible applicants are: Commonwealth or municipal authorities, Turnpike Commission, local transportation organizations (political subdivisions, public transportation, port or redevelopment authority, nonprofits providing public transportation), nonprofit entities, state-owned or state related universities or companies.

Section 1, Part III (Utilization)

Chapter 32 – Development. This chapter is intended to permit the optimal development of oil and gas resources consistent with: 1) the protection of the health, safety, environment and property of citizens, 2) the protection of the personnel and facilities developing oil and gas, 3) the protection of citizens (and their property rights) residing in areas where resource development occurs, and 4) the protection of the natural resources and environment secured under the PA Constitution (§3202).

Subchapter B (General Requirements) describes the process for obtaining well permits, objecting to permits, registering wells, location restrictions and site restoration, protection of water supplies and notification to public drinking water systems, containment, well emergency response and reporting requirements, fracturing chemical disclosure requirements, air contaminant emissions, etc.

Components of interest (and applicable subchapters/sections):

- notification requirements for local municipalities and landowners of permit applications (§3211);
- permits issued or denied within 45 days of application; withdrawal or use of water requires approved water management plan (§3211);
- municipalities entitled to submit written comments describing local conditions and circumstances that should be considered pursuant to any well permit application (§3212.1);
- provisions for active and inactive well status (when wells are drilled and capped for later use)(§3213);
- wells may not be drilled within 200 feet, or, in the case of an unconventional gas well, 500 feet measured horizontally from the vertical well bore to a building or water well (§3215);
- unconventional gas wells may not be drilled within 1,000 feet measured horizontally from the vertical well bore to any existing water well, surface water intake, reservoir or other water supply extraction point used by a water purveyor without the written consent of the water purveyor (variances permitted if consent not obtained) (§3215);
- additional setbacks for wells (all provisions may be waived) - no well site may be prepared or well drilled within 100 feet or, in the case of an unconventional well, 300 feet from the vertical well bore or 100 feet from the edge of the well site, whichever is greater, measured horizontally from any solid blue lined stream; the edge of the disturbed area associated with any unconventional well site must maintain a 100-foot setback from the edge of any solid blue lined stream, spring or body of water (on USGS quad maps); no unconventional well may be drilled within 300 feet of any wetlands greater than one acre in size, and the edge of the disturbed area of any well site must maintain a 100-foot setback from the boundary of the wetlands (greater than 1 acre) (§3215);
- no drilling in floodplains (with exceptions) (§3215);
- a well operator who affects a public or private water supply by pollution or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity or quality for the purposes served by the supply (water supply within 1,000 ft of conventional well and within 6 months of drilling, or within 2,500 feet of unconventional well and within 12 months of drilling) (§3218);
- semiannual reports of well production (§3222);
- registry of fracturing additives and chemicals (unless entitled to protection as a trade secret or confidential proprietary information) (§3222);
- creation of an Oil and Gas Technical Advisory Board (to consult with and advise DEP and EQB)(§3226);
- air contaminant emissions reporting requirement (§3226);
- underground gas storage requirements (Subchapter C);
- eminent domain (Subchapter D);
- enforcement and remedies (Subchapter E);

- provisions allowing DEP to suspend or revoke permits is operations continually violate provisions of Act (§3253);
- DEP to post inspection reports to its website (§3262)

Chapter 33 – Local Ordinances Relating to Oil and Gas Operations. This chapter outlines provisions under which municipal governance of oil and gas operations is permitted or superseded. Issues covered include state preemption pursuant to Chapter 32 and associated environmental regulations, uniformity requirements, and enforcement/remedies.

Components of interest:

- “Oil and Gas Operations” (§3301) – broadly defined to include the following:
 - (1) well location assessment, including seismic operations, well site preparation, construction, drilling, hydraulic fracturing and site restoration associated with an oil or gas well of any depth;
 - (2) water and other fluid storage or impoundment areas used exclusively for oil and gas operations;
 - (3) construction, installation, use, maintenance and repair of:
 - (i) oil and gas pipelines;
 - (ii) natural gas compressor stations; and
 - (iii) natural gas processing plants or facilities performing equivalent functions; and
 - (4) construction, installation, use, maintenance and repair of all equipment directly associated with activities specified in paragraphs (1), (2) and (3), to the extent that:
 - (i) the equipment is necessarily located at or immediately adjacent to a well site, impoundment area, oil and gas pipeline, natural gas compressor station or natural gas processing plant; and
 - (ii) the activities are authorized and permitted under the authority of a Federal or Commonwealth agency;
- all local ordinances purporting to regulate oil and gas operations regulated by Chapter 32 (relating to development) are superseded (except with respect to local ordinances adopted pursuant to the MPC or the Floodplain Management Act – regardless, such ordinance may not impose conditions on the same features covered in Chapter 32) (§3302);
- the state exclusively regulates oil and gas operations and preempts and supersedes the local regulation of oil and gas operations regulated by any state environmental act (§3302 & §3303);
- all local ordinances regulating oil and gas operations shall allow for the reasonable development of oil and gas resources, as follows (§3304):
 - allow well and pipeline location assessment;
 - may not impose conditions on the construction of oil and gas operations that are more stringent than conditions imposed on construction activities for other municipal permitted industrial uses;
 - may not impose conditions on the heights of structures, screening and fencing, lighting or noise relating to permanent oil and gas operations in excess of the conditions imposed on other municipal permitted industrial uses or other land development within the zoning district within which the oil and gas operation exists;
 - shall provide a review period of 30 days for permitted use and not more than 120 days for conditional uses;
 - shall authorize oil and gas operations as permitted uses in all zoning districts (only exceptions are activities at impoundment areas, compressor stations and processing plants);

- may prohibit wells or wells sites, or permit by conditional use, within residential districts where such is within 500 feet of an existing building (also requires that the outside edge of well pads not be closer than 300 feet from an existing building; however the placement, use and repair of pipelines, access roads or security facilities may be placed within 300 feet of an existing building);
- shall authorize impoundment areas as permitted uses in all zoning districts provided the edge of the area is not located closer than 300 feet from an existing building;
- shall authorize natural gas compressor stations as a permitted use in agricultural and industrial zoning districts and as a conditional use in all other zoning districts, if the natural gas compressor building meets the following standards:
 - is located 750 feet or more from the nearest existing building or 200 feet from the nearest lot line, whichever is greater, unless waived by the owner of the building or adjoining lot; and
 - the noise level does not exceed a noise standard of 60dbA at the nearest property line or the applicable standard imposed by Federal law, whichever is less;
- shall authorize a natural gas processing plant as a permitted use in an industrial zoning district and as conditional uses in agricultural zoning districts if all of the following apply:
 - the natural gas processing plant building is located at the greater of at least 750 feet from the nearest existing building or at least 200 feet from the nearest lot line unless waived by the owner of the building or adjoining lot;
 - the noise level of the natural gas processing plant building does not exceed a noise standard of 60dbA at the nearest property line or the applicable standard imposed by Federal law, whichever is less;
- shall impose restrictions on vehicular access routes for overweight vehicles only as authorized under 75 Pa.C.S. (relating to vehicles) or the MPC;
- may not impose limits or conditions on subterranean operations or hours of operation of compressor stations and processing plants or hours of operation for the drilling of oil and gas wells or the assembly and disassembly of drilling rigs;
- may not increase setback distances set forth in Chapter 32 (relating to development) or this chapter (a local ordinance may impose setback distances that are not regulated by or set forth in Chapter 32 or this chapter if the setbacks are no more stringent than those for other industrial uses within the geographic boundaries of the local government
- PUC role (§3305)
 - may provide advisory opinions to municipalities concerning whether proposed ordinances violate Chapter 32, Chapter 33 or the MPC ; 120 day review period;
 - at the behest of a local citizen or owner/operator of an oil and gas operation, may provide a review of an existing ordinance to determine if it violates Chapter 32, Chapter 33 or the MPC ; 120 day review period (Note: findings under this provision are subject to de novo review by the Commonwealth Court)
- civil actions may be brought against any ordinance thought to violate Chapter 32, Chapter 33 or the MPC (such action may be brought with or without PUC review)(§3306)
- attorney fees and costs associated with civil actions may be required to be paid by either party should the municipality disregard state law or should the plaintiff's action be considered frivolous (§3307)
- local ordinances found to be in violation of Chapter 32, Chapter 33 or the MPC shall be immediately ineligible to receive any funds collected under Chapter 23 (unless ordinance repealed or decision reversed)(§3308)

Chapter 35 – Responsibility for Fee. This chapter advances the legitimate public purpose of ensuring that entities responsible for the impacts of unconventional oil and gas well development are solely responsible for payment of impact fees.

IMPACT OF ROBINSON TOWNSHIP ET. AL. CHALLENGE

On March 29, 2012 seven Pennsylvania municipalities and the Delaware Riverkeeper filed a legal challenge to the constitutionality of certain provision of Act 13 including Section 3304 before the Pennsylvania Commonwealth Court. Commonwealth Court is a state-wide appellate court that has original jurisdiction to hear certain types of challenges to state statutes. Named defendants to the action include the two agencies charged with enforcing Act 13, the Pennsylvania Public Utility Commission, and the Pennsylvania Department of Environmental Protection, and the Pennsylvania Office of the Attorney General.

On July 26, 2012 Commonwealth Court in an *en banc* decision issued its ruling striking down portions of Act 13 including the uniformity of zoning provisions described above in Section 3304 of the Act. The Court ruled that the provisions amounted to unconstitutional “spot zoning”. Essentially, the Court reasoned that a municipality could not lawfully establish uniform zoning regulations under the MPC without regard to area wide and site specific considerations of the zoning district in which the activity is to occur, and for that reason the Pennsylvania General Assembly in enacting Act 13 was likewise prohibited from doing the same. The defendants filed appeals of the decision to the Pennsylvania Supreme Court.

On August 15, 2012 Commonwealth Court President Judge Pellegrini issued an order that municipalities do not need to amend their zoning ordinances to comply with Section 3304 while the appeals of Commonwealth Court's July 26th decision are pending before the Supreme Court. This action maintains the stay on this provision in place since shortly after the lawsuit was filed. This means that municipalities at the present do not need to adopt revised zoning ordinances to comply with Act 13. Similarly, on October 26, 2012 Commonwealth Court issued an order suspending review by the Pennsylvania Public Utility Commission of local ordinances, as authorized by Section 3305 of Act 13, pending the decision of the Supreme Court. This decision allowed for the release of impact fee funds to certain municipalities whose local ordinances remained under review by the PUC.

Commonwealth Court on July 26, 2012 also ruled that another section of Act 13 is unconstitutional because it gives insufficient guidance to DEP about granting natural gas facilities waivers from setback requirements. However with respect to this issue, Judge Pellegrini on August 15th ruled that Commonwealth Court's July 26th order that Section 3215(b)(4) is unconstitutional is stayed while the appeals are pending. As a result, the DEP can continue to issue waivers from setback requirements from streams, springs and bodies of water.

The appeals before the Pennsylvania Supreme Court have been briefed by the parties, and the Court held oral argument on October 17, 2012. Its decision remains pending. At the present time, the Supreme Court currently has only six justices. A 3-3 tie vote would leave the decision of the Commonwealth Court as the law in Pennsylvania, and therefore votes of at least four justices would be necessary to reverse the ruling of Commonwealth Court.

Pertaining to local zoning ordinances, the decision of Commonwealth Court only impacts Section 3304 of Act 13: Municipalities still need to ensure that their zoning ordinances comply with Sections 3301-3303. As described above, certain of those provisions, including Section 3302 and 3303 pertaining to the supercession of local ordinances except with respect to local ordinances adopted under the MPC and the Floodplain Management Act, and the preemption of local ordinances purporting to regulate oil and gas operations regulated under the state environmental statutes, were already the law of the Commonwealth prior to the enactment of Act 13. Local municipalities should consult with their municipal solicitors regarding ongoing compliance with these provisions of Act 13.

CONCLUSIONS

Under Act 13, municipalities are limited in the types of regulations they can adopt for “oil and gas operations”; for example, municipalities can clearly not regulate “how” such operations occur, and to a great extent they have but limited power to regulate “where” such operations locate (within prescribed standards), however they do have some latitude regarding typically municipal regulatory functions, such as height of structures, screening and fencing, lighting, or noise, provided such regulatory functions are no greater than for other uses within the same district (or within the industrial district, depending on the use).

Furthermore, municipalities are not limited in any way from regulating new development or redevelopment in proximity to oil and gas operations; nor are they precluded from adopting regulations regarding the impacts of any use, including oil and gas operations, on local roads. Finally, municipalities are in no way precluded from incorporating oil and gas operations into their comprehensive plans as the types of uses for which they need to plan and coordinate accordingly (including the need to ascertain and understand where such facilities are located, including the location of pipeline rights-of-way, and how they and their citizens may be affected by such operations).

With these issues in mind, several model ordinances have been prepared for municipal use. The four prong approach developed herein originally pre-dated Act 13. **Of the four components prepared, three are consistent with the prior Oil and Gas Act and Act 13 of 2012 and are on solid ground from a planning and legal perspective.** As such, they remain valid municipal planning tools whether Act 13 is upheld or not (see the ordinance section for further details).

Regulatory issues to consider should Act 13 be upheld by the Pennsylvania Supreme Court:

- 1) Should municipalities presume that oil and gas operations are permitted in all districts (with exceptions) under state law or specifically add such uses to municipal zoning ordinances?
- 2) Should municipalities provide for specific uses within specific districts (or as conditional uses elsewhere) or rely on state law to determine industrial and agricultural districts?
- 3) What latitude do municipalities have in setting setbacks and other provisions for oil and gas operations?

Pipelines and Pipeline Safety: Land Use & Model Ordinances

“Pipeline Planning and You”
September 4, 2012

John M. Gaadt, AICP - Gaadt Perspectives, LLC



Considerations

- PA sits atop one of the largest deposits of natural gas in the world; volume of gas estimated in PA = more extraction wells than any other state but Texas
- Long term implications – approximately 20 years of drilling and 50 years of extraction
- Deposits predominantly west of Chester County yet more than 25 transmission pipelines cross the county

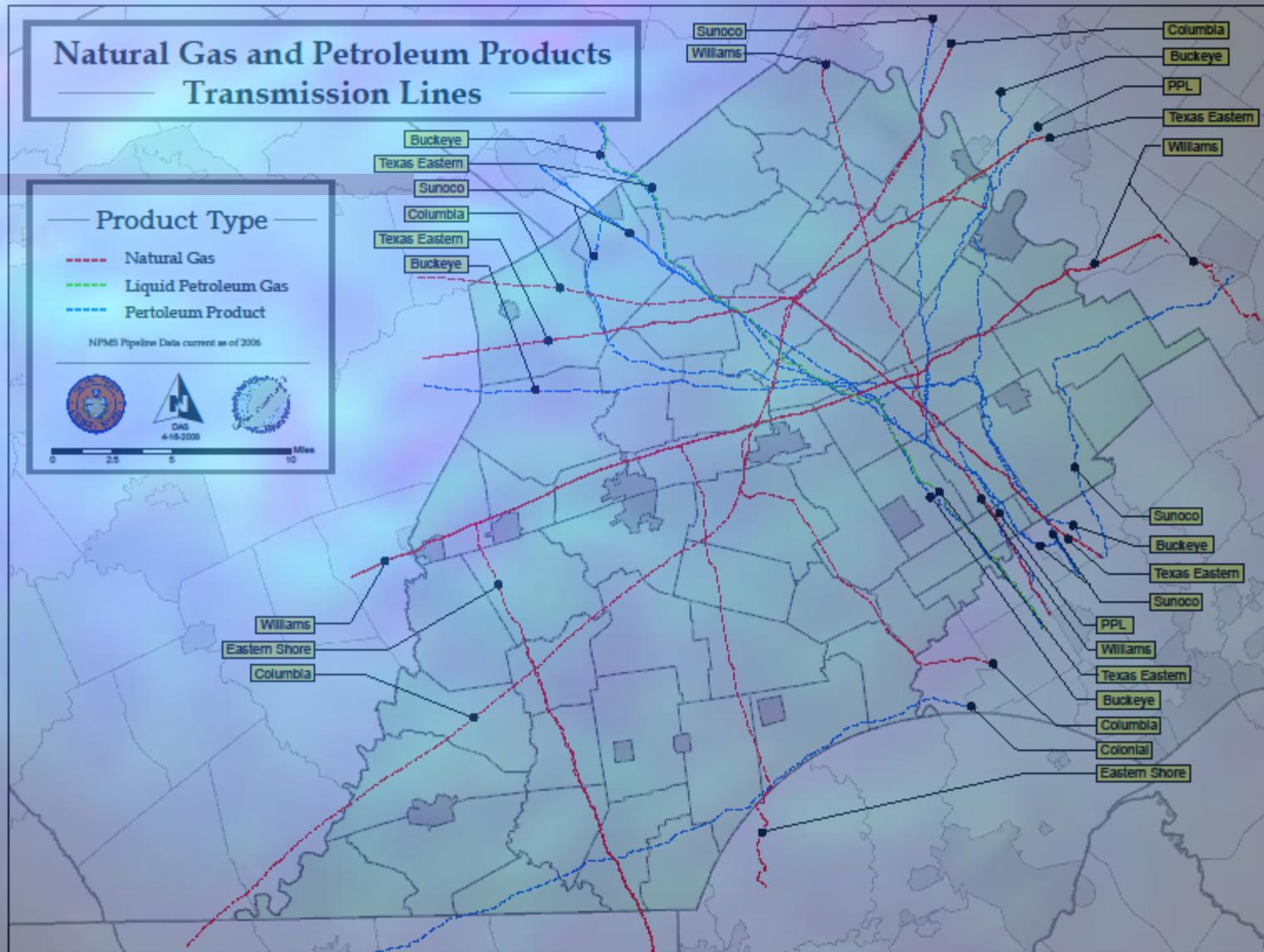
Natural Gas and Petroleum Products Transmission Lines

Product Type

- Natural Gas
- Liquid Petroleum Gas
- Petroleum Product

NPMS Pipeline Data current as of 2006

0 2.5 5 10 Miles



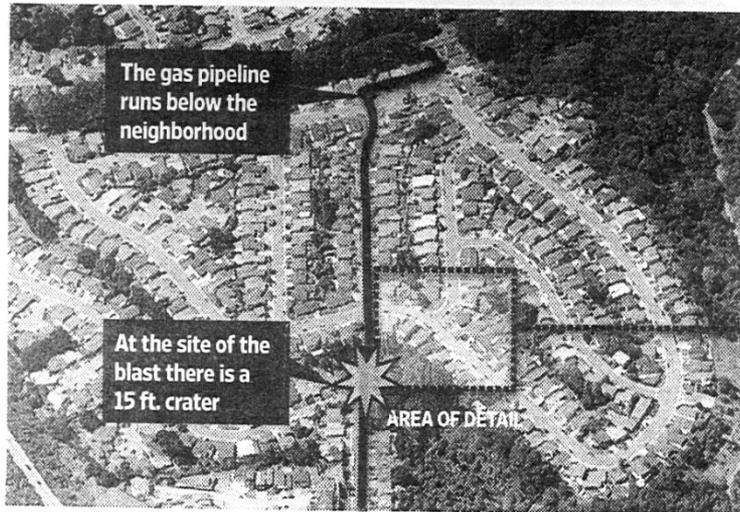
Considerations (cont.)

- Opportunities –
 - valuable resource (although the price is currently below the cost of production)
 - cleaner than other forms of fossil fuels (emits about 50% less carbon when burned).
 - PA ideally suited to deliver gas (transportation accounts for approximately 40% of fuel costs)
- Costs and Risks –
 - pipelines, drilling pads and wastewater storage pits alter the landscape, fragment wildlife habitat, impact land use decisions (including property values)
 - health impacts
 - billions of gallons of water used to frack shale
 - heavy rigs damage roads
 - accidents and errors have contaminated land and drinking water (Clearfield Co. discharge; Dimock Twp., Susquehanna Co. contamination)
 - numerous state parks and forest lands are under lease for gas drilling (Ohio)
 - September '10 San Bruno, CA transmission pipeline explosion

San Bruno Transmission Pipeline Explosion

September 9, 2010

Before



After



Safety

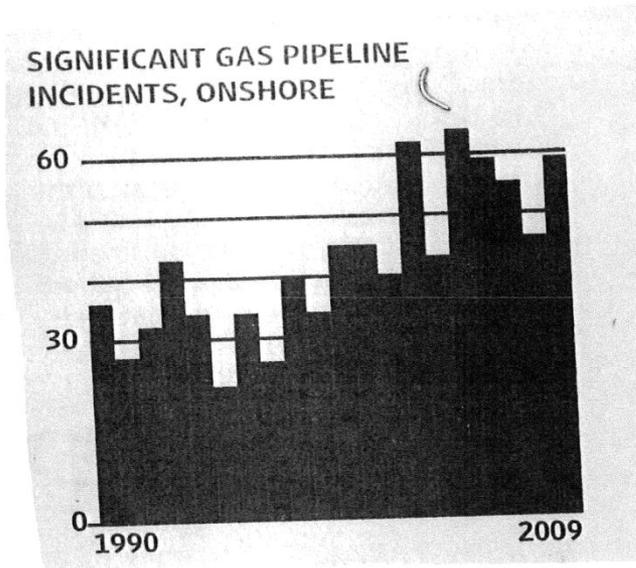
- Old Pipes – San Bruno is not unique; many pipelines in PA are 50± years old
- Inadequate maintenance, Incorrect repairs, Leaks go undetected
- Residents unaware of pipelines
- NTSB Investigation of 2008 Fatal Pipeline Explosion in Rancho Cordova, California found as a major contributing factor the inability to quickly identify the source of the leak and the failure to evacuate the neighborhood
- Is maintenance spending keeping up with deterioration?
- Need a new focus on Maintenance Issues

Safety (cont.)

- Recent pipeline leaks and explosions in:
- Allentown – 600 people evacuated, 2 homes destroyed, 5 people killed
- Philadelphia – Several injured, 1 person killed
- San Bruno (again) – backhoe accidentally dug up a pipeline



Incidents



Need To Find A Balance:

Drilling and Transporting

v.

Protection/Restoration of Natural
Environment; Health, Safety and
Welfare

Moving Forward

- Federal – FERC (Federal Energy Regulatory Commission); PHMSA (Pipeline and Hazardous Materials Safety Administration)
- PA Act 13 – consolidating and modifying the Oil and Gas Act of 1984; Recent Court Challenge
- Numerous bills in the “pipeline” in Harrisburg
- Municipalities Planning Code (MPC)
- State, County & Local Regulations/Ordinances in other communities

- What is the Municipal Role in PA?

In recent years, municipalities have wanted a say regarding the land use implications of pipelines

- Wanted to address the health and welfare issues of siting transmission pipelines and be consistent with local land use planning regulations and comprehensive land use planning
- Wanted to provide for:
 - Uses not otherwise permitted;
 - Securing sites against vandalism;
 - Suitable access to pipeline sites;
 - Landscape buffers and setbacks for new development;
 - Signage;
 - Etc.

The TAG Grant Approach

prior to the enactment of Act 13

- A multi-prong municipal regulatory approach that addresses:
 - 1) Surface land uses affiliated with pipelines (providing for uses not otherwise permitted in most ordinances),
 - 2) Street opening standards,
 - 3) Standards for new development in proximity to pipelines, and
 - 4) Revisions to municipal comprehensive plans (providing the nexus between the comp. plan and code of ordinances).
- These four items combined to provide an effective approach towards proactively addressing pipelines within the legislative and regulatory climate in existence.
- Considered on solid ground from a planning and legal perspective (pre-Act 13) – PHMSA circulated model ordinances statewide.

Surface Land Uses Affiliated With Pipelines

- E.g. - Above-ground transmission pipeline facilities including, but not limited to, compressor stations, pumping stations, regulator stations, launcher/receiver stations, and other surface pipeline appurtenances.
- Purposes
 - Accommodate such uses consistent with desire to protect the citizens of the municipality;
 - Minimize aesthetic, nuisance and visual impacts through proper design, siting and screening;
 - Ensure the location of such uses complies with industry standards; and
 - Preserve community character adjacent to such uses.

Surface Land Uses Affiliated With Pipelines

(cont.)

- Locational Provisions
 - Industrial Districts, etc.
 - Special Use Districts (areas where pipeline corridors already exist)
 - Prohibitions (within historic preservation overlay districts, scenic corridor overlay districts, etc.)
 - Conditional use?
- Standards
 - Setbacks from property line or right-of-way
 - Screening and Buffering: landscape plan, fencing
 - Noise reduction
 - Odor reduction
 - Signage: limit to appropriate warning and utility identification
 - Parking
 - Lighting
 - Design: engineered plan and review function, compatibility with surrounding uses
 - Visual Impact Reduction
 - Sufficient Need
 - Licensing Documentation
 - Removal Requirements

Street Opening Standards

- E.g. – Provides for the regulation of street openings, installations and driveways.
- Purpose
 - To provide applicable standards for the opening, cutting, excavating, grading, boring, crossing, installation or disturbance upon, in, under, or across a Township road or road right of way.
- Standards
 - Permit requirement
 - Application and Fees
 - PA One-Call
 - Traffic Maintenance
 - Detour provisions

Street Opening Standards (cont.)

- Standards (cont.)
 - Erosion Control (possible references)
 - OSHA requirements
 - Work notification
 - Backfill requirements
 - Overnight site security and public safety
 - Installation and Clean-up
 - Temporary and permanent road restoration
 - Identification of applicant and contact information
 - Security deposit and work guarantee
 - Utility placement and drainage
 - Violations and penalties
 - Insurance
 - Driveway Standards (optional): permits, dimensions, locations, etc.

Standards for New Development in Proximity to Pipelines

- E.g. - Plan submission, buffer, setback, signage and landscaping provisions for new development adjacent to transmission pipelines.
- Purposes
 - Help prevent and minimize unnecessary risk to the public health and welfare due to transmission pipelines and ensure consistency with the intent of the Township's Comprehensive Plan;
 - Minimize the likelihood of accidental damage to transmission pipelines due to external forces, such as construction activity and equipment;
 - Avoid exposing land uses with high on-site populations that are difficult to evacuate; and
 - Help reduce adverse impacts in the event of a pipeline failure.

Standards for New Development in Proximity to Pipelines (cont.)

- Applicability and Standards

- Plan content for preliminary and final plan submissions
 - Document the location, right-of-way and limits of all easements for transmission pipelines.
- Setbacks for new residential buildings, commercial, industrial and institutional uses. Limits on grading that could create depressions where flammable materials may collect.
Protection of pipeline r-o-w - temporary barricades and signage.
- Consultation Zone – applies to any application for new uses within proximity of pipeline r-o-w. Requires applicant to communicate plan details to pipeline operator and provide sufficient access to pipeline.
- Land uses with high on-site populations – Such uses within 500 feet of pipelines shall develop mitigation measures (emergency procedures, employee training and education).
- Design, buffering and screening – incorporating linear appearance of pipeline into development design; landscaping to minimize and buffer pipeline.
- Signage – need for, number of and placement of identification and/or warning signs

What we are trying to avoid!

Washington State

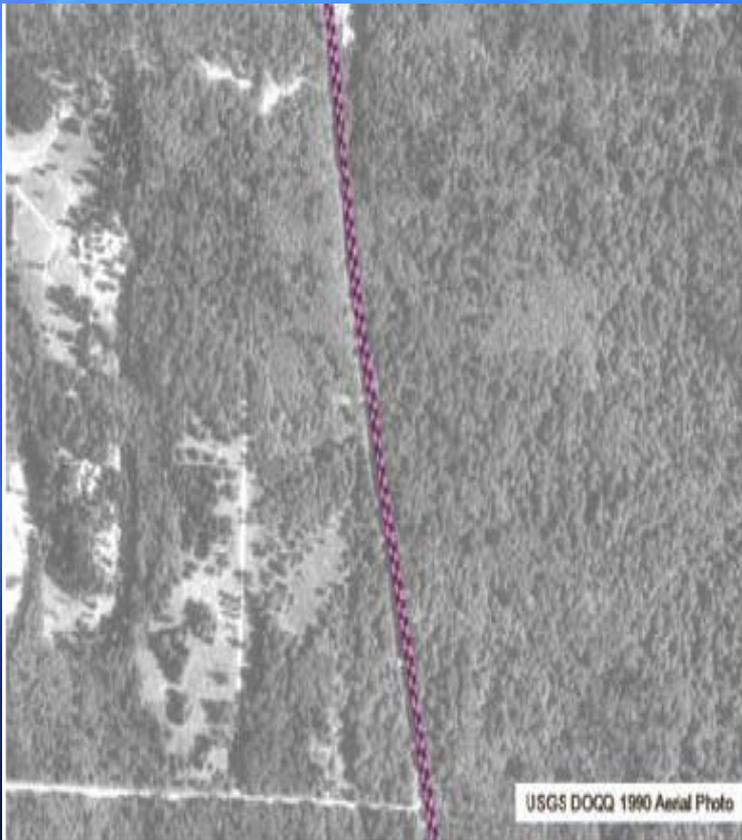


Figure 1 - 1990

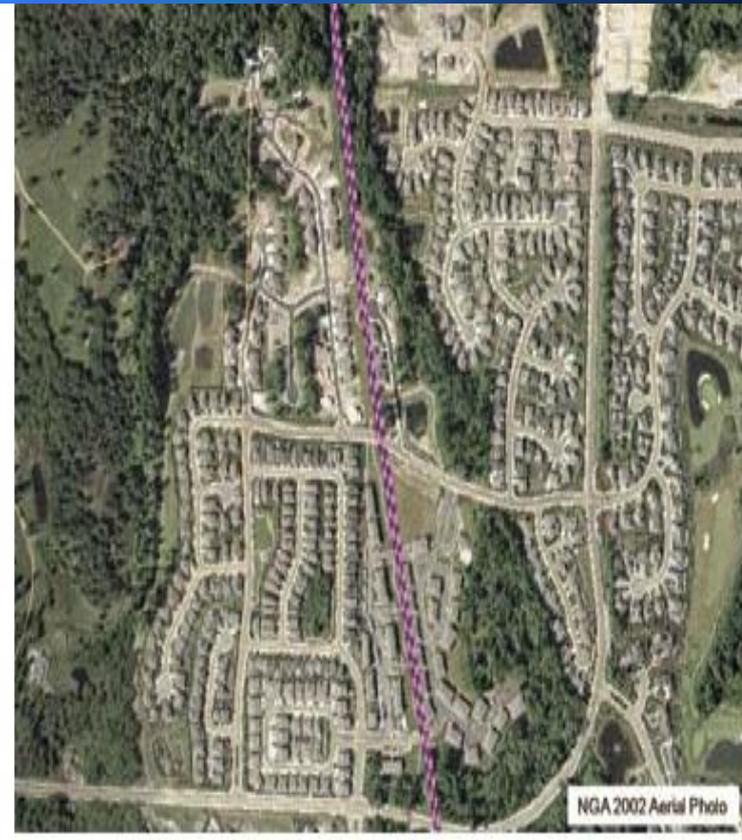
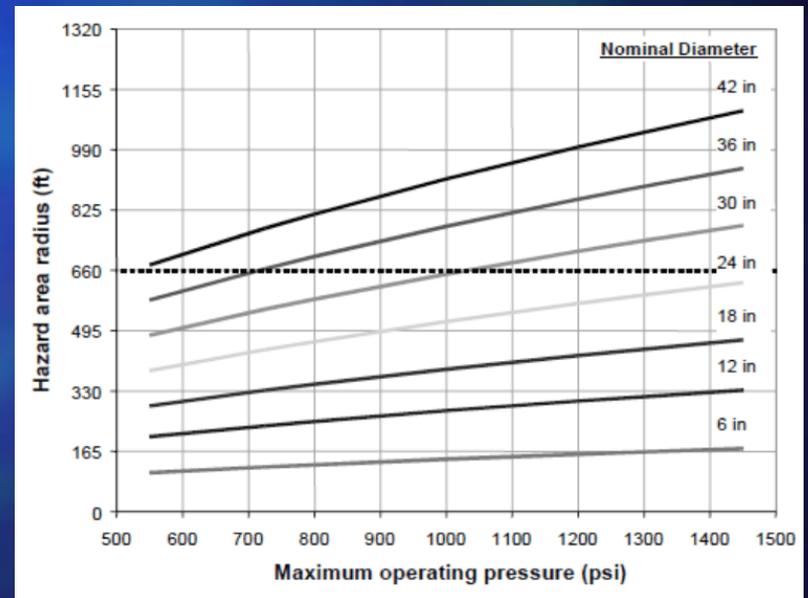


Figure 2 - 2002

Revision being considered – “Potential Impact Radius”

- Potential impact radius can be determined by knowing diameter and pressure of pipeline.



Municipal Comprehensive Plans

- Provides the rational nexus between the comprehensive plan and municipal ordinances (Sect 105 of the MPC)
- Revisions to chapters/sections addressing community facilities and services.
 - Acknowledge existing and proposed pipelines
 - Acknowledge benefits and risks
 - The need to monitor existing and proposed activity
 - The need to enact regulations complimentary to state and federal law
 - Examples: access provisions, buffer and setback standards, etc.
 - Seek out increased communication with pipeline operators
 - Issues: new development impacts, land uses with high on-site populations, etc.
 - Reference related county and statewide planning goals
 - Coordinate with county and state on new pipeline projects

Focus on Act 13 of 2012

Zoning Update

- Chapter 33 – Local Ordinances Relating to Oil and Gas Operations
- Section 3302 provides that all ordinances regulating oil and gas operations except those adopted under the MPC and FPMA are superseded. This was in the prior statute.
- Section 3303 provides that all ordinances regulating oil and gas operations adopted under state environmental acts are superseded.
- Section 3304 provides for uniformity of local ordinances including use and setback requirements for siting oil and gas operations in zoning districts. “Reasonable development” clause – permit oil & gas operations in all zoning districts.

Focus on Act 13 of 2012 (cont.)

Robinson Township, et al. v. Commonwealth, et al.

- On March 29th municipalities challenged the constitutionality of Act 13 including Section 3304.
- On July 26th Commonwealth Court issued its ruling striking down portions of Act 13 including the uniformity of zoning provisions in Section 3304. Essentially, the Court ruled that the provisions amounted to unconstitutional "spot zoning".
- On August 15th Commonwealth Court President Judge Pellegrini issued an order that municipalities do not need to amend their zoning ordinances to comply with Section 3304 while the appeals of Commonwealth Court's July 26th decision are pending before the Supreme Court. This action would maintain the stay on this provision in place since shortly after the lawsuit was filed. This means that municipalities at the present do not need to adopt revised zoning ordinances to comply with Act 13.
- Municipalities still need to ensure that their zoning ordinances comply with Sections 3301-3303.

Focus on Act 13 of 2012 (cont.)

Robinson Township, et al. v. Commonwealth, et al.

- Commonwealth Court on July 26th also ruled that another section of Act 13 is unconstitutional because it give insufficient guidance to DEP about granting natural gas facilities waivers from setback requirements. Judge Pellegrini on August 15th also ruled that Commonwealth Court's July 26th order that Section 3215(b)(4) is unconstitutional is stayed while the appeals are pending. As a result, the DEP can continue to issue waivers from setback requirements from streams, springs and bodies of water.

Considerations given the challenge

- The Commonwealth could still appeal Judge Pellegrini's order and ask the Supreme Court to lift the stay pending appeal, although this is not thought to be likely.
- The time frame for the Supreme Court to hear and decide the appeal is unclear. Also, at the present time the Supreme Court has only six justices hearing cases, and the votes in some recent decisions have been evenly split 3-3, resulting in the affirmance of the decision below.
- As Section 3304 was considered important to the oil and gas industry, a legislative fix may be needed although such a fix would have to pass constitutional muster.
- Should municipalities wait to amend local ordinances, or proceed?

Some things can be done now!

Three of the four items drafted are consistent with the old Oil and Gas Act and Act 13 of 2012. These are considered on solid ground from a planning and legal perspective.

- Standards for new development in proximity to pipelines
- Street opening standards
- Revisions to municipal comprehensive plans (providing the rational nexus between the comp. plan and code of ordinances).
- The fourth item, "Surface land uses affiliated with pipelines" (providing for uses not otherwise permitted in most ordinances), is not consistent with the zoning provisions of Act 13. Should the act be upheld, municipalities would need to revise their ordinances to be consistent with Section 3304 (uniformity of local ordinances including use and setback requirements for siting oil and gas operations in zoning districts).

Contact Information

John M. Gaadt, AICP – Principal
Gaadt Perspectives, LLC
251 S. Fairville Road
Chadds Ford, PA 19317
jgaadt@gaadt.com
www.gaadt.com

Pennsylvania Pipeline Safety &
Environmental Protection
www.papipelinesafety.org
(website prepared in conjunction
w/ U.S. DOT TAG Grant)



PIPELINE PLANNING AND YOU
Presented through a Technical Assistance Grant Awarded to
Charlestown Township by US Dept. of Transportation
Pipeline Hazardous Materials Safety Administration
September 04, 2012
Chester County Library, Struble Room
6:30pm – 8:30pm

AGENDA

- 6:30pm – 6:35pm Welcome by Eileen Quinn Juico, Project Manager for Technical Assistance Grant Awarded to Charlestown Township.
- 6:40pm – 6:50pm Senator Andy Dinniman: Opening Remarks.
- 7:00pm – 7:20pm Dr. Roberta Winters, Vice President for Issues and Action, League of Women Voters of Pennsylvania:
Overview of Pipelines and What Citizens Can Do to Make Their Voices Heard in Pipeline Proceedings.
- 7:20pm – 7:40pm Aaron Stemplewicz, Staff Attorney, Delaware RiverKeeper Network:
Pipeline Construction Activity: Why We Should Care in Chester County; Who Regulates It, and the PA Department of Environmental Protection Permitting Process.
- 7:40pm – 8:00pm John Gaadt, AICP, Gaadt Perspectives, LLC, Environmental Planning and Consulting:
Pipelines in Chester County and the Role of Municipalities in Zoning and Land Planning.
- 8:00pm – 8:30pm Question and Answer Session.

News »Local»

Pipeline safety seminar raises awareness issues

By SARA MOSQUEDA-FERNANDEZ
smfernandez@dailylocal.com

Wednesday, September 5, 2012

WEST WHITELAND — Speakers at pipeline safety informational meeting Tuesday night said safety and awareness should be everyone's concern.

During the latest educational session of pipeline safety seminars in the Struble Room of the Chester County Library in Exton, state Sen. Andy Dinniman, D-19th of West Whiteland, predicted the future of Chester County will feature the expansion of current gas lines and the construction of new ones.

"There's no profit from the Marcellus Shale unless this gets to market," said Dinniman. "And the major place it will get to market is thru Chester County and (other) suburban counties on its way to the ports of Wilmington and Philadelphia. The gas lines are going to come, make no mistake about it. That's the future."

The session, Pipeline Planning and You, also featured Aaron Stemplewicz, staff attorney for the Delaware RiverKeeper Network; Roberta Winters, vice president of Issues and Action for the League of Women Voters of Pennsylvania; and John Gaadt, principal of the environmental planning group Gaadt Perspectives as speakers.

This meeting was another in a series of public educational seminars that focused on informing Chester County residents about pipeline safety and the tools available to them to better prevent pipeline incidents and assist emergency responders. It has featured political, environmental, governmental, and municipal speakers, as well as representatives from pipeline companies.

This meeting aimed at informing attendees about:

- pipeline planning and the community;
- how pipeline construction activities are regulated;
- the officials concerned with pipeline safety;
- how community members can voice their concerns during the regulatory process; and
- the latest updates on pipelines and municipal zoning.

Dinniman said a pipeline issue affecting every homeowner and drinker of water in the county is a pipeline replacement proposal that will cross the Brandywine Creek at two locations.

This proposal comes from the Transcontinental Gas and Pipeline Co. (Transco), which is attempting to replace 2,200 feet of gas pipeline along the border of East Caln and East Brandywine.

Williams filed for a special permit with the Department of Environmental Protection to complete the project. In 2009, the agency denied the proposal to replace the 2,200-foot section due to the proposed methods of crossing the creek.

Williams is proposing a method of replacing the pipeline called a coffer dam. With that method, a section of the creek, about two-thirds of the width of the water, would be dammed off, allowing water to pass by on the other third. The water would then be pumped out of the dammed section and the company would dig a trench for the pipe. Under the damming method, about nine acres of land would be disturbed, and would take about two to three months with about two to three weeks spent in the water.

Aaron Stemplewicz, staff attorney at the Delaware Riverkeeper Network, was also a speaker at the pipeline informational meeting on Tuesday. Stemplewicz has previously stressed the environmental consequences of the coffer dam method, such as increased stormwater runoff, sediment erosion, and disturbance of natural habitats.

On Tuesday, Stemplewicz again encouraged audience members to be aware of pipeline companies' activities in their communities, and to contact their legislative representatives and environmental agencies with any concerns. He also presented other avenues of information and action that are available to the public.

Winters and Stemplewicz encouraged attendees to pursue methods of involvement and education in the process, although they said that this could at times be difficult.

"What is out of sight can in fact hurt us," said Winters. She said that a great resource for safety information, especially for anyone digging for any reason, is the phone number 811. State law mandates that anyone excavating with the aid of power equipment must call the number prior to digging. If a pipeline is directly touched by a hit or scratch, it can be adversely affected and should be reported.

According to both Stemplewicz and Winters, resources available to the public include the Federal Register, which lists pipelines throughout the commonwealth; the Pipeline Safety Trust, at www.pstrust.org; the Pipeline Safety Coalition; and the Delaware River Basin Commission.

The series of meetings comes from a grant awarded to Charlestown by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration. The Technical Assistance Grants for pipeline safety initiatives award a total of \$1 million to various communities.

According to the U.S. Department of Transportation, the grant provides funds for assistance and analyses of locally focused pipeline safety issues, aimed at promoting public participation in official proceedings.

Follow us on Facebook and Twitter:

www.twitter.com/dailylocalsara

www.facebook.com/dailylocalnews