

**IN THE COURT OF APPEALS OF OHIO
SEVENTH APPELLATE DISTRICT
HARRISON COUNTY**

Sunoco Pipeline L.P.,	:	
	:	Case Nos. 16 HA 0002 & 16 HA 0005
Plaintiff-Appellee,	:	
	:	Expedited Calendar
v.	:	
	:	
Carol A. Teter, Trustee, et al.,	:	Appeal from Harrison County Court of
	:	Common Pleas, Case No. CVH-2015-0058
Defendants-Appellants.	:	

**BRIEF OF *AMICI CURIAE*
ASSOCIATION OF OIL PIPE LINES,
AMERICAN PETROLEUM INSTITUTE,
OHIO MANUFACTURERS' ASSOCIATION, AND
OHIO CHEMISTRY TECHNOLOGY COUNCIL
IN SUPPORT OF APPELLEE**

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Issues Presented for Review

1. Whether the term “petroleum” found in R.C. 1723.01 should be reasonably construed to include refined petroleum products like natural gas liquids?
2. Whether a pipeline which is intended to safely and efficiently transport Ohio products to market and provide propane to consumers qualifies as a “public use” under Ohio’s eminent domain statute?

Statement of the Case

Amici curiae accept the statement of the case and the procedural posture submitted by the Appellee, Sunoco Pipeline L.P.

Statement of Facts

Amici curiae accept the statement of facts submitted by the Appellee, Sunoco Pipeline L.P.

I. Introduction and Statement of Interest of *Amici Curiae* American Petroleum Institute, Association of Oil Pipe Lines, Ohio Chemistry Technology Council, and Ohio Manufacturers’ Association

Development of Ohio’s oil and gas resources, in particular the Utica and Marcellus shale, has been a key reason for the economic growth and opportunity that Ohioans have enjoyed over the past few years. The last annual report published by the Ohio Department of Job and Family Services found that the average annual Ohio employment in core shale-related oil and gas industries totaled 13,863 jobs, and the average annual Ohio employment in ancillary shale-related industries totaled 172,009 jobs. *See* Department of Job and Family Services, *2014 Annual Ohio Shale Report* (July 2015).¹ At its peak, oil and gas development provided a greater than \$12 billion contribution to Ohio’s labor income and more than \$28 billion in value added to the Ohio economy. *See* PWC,

¹ *Available at:* <http://ohiolmi.com/OhioShale/OhioShale.htm> (last visited April 27, 2016).

Economic Impacts of the Oil and Natural Gas Industry on the U.S. Economy in 2011 (July 2013).²

While the industry has suffered through historically low commodity prices in recent months, this temporary contraction does not change the inescapable conclusion that development of Ohio's shale resources is good for Ohio when it is done safely and efficiently.

Petroleum pipelines are critical to the continued success and safe development of Ohio's oil and gas resources and the many industries they support – industries which comprise the membership of *amici curiae*. Pipelines move large volumes of refined petroleum products long distances and at low cost. Pipelines transport approximately 71% of this nation's oil and petroleum, and they do so at a significant cost advantage over other modes of transport, like freight and rail. Pipelines are also a safe and environmentally friendly way to transport petroleum products. *See, e.g., Ohio Senate Concurrent Resolution No. 7*, 130th General Assembly, enrolled April 17, 2013 (recognizing that pipelines are a very safe method for transporting petroleum products).³ For all of these reasons, the continued growth and modernization of Ohio's pipeline network is essential to the safe and efficient development of Ohio's shale resources.

However, despite the efforts of many in the industry, pipeline development has lagged behind demand, resulting in a glut of product unable to be shipped to waiting markets. This glut, as well as a lack of sufficient pipeline infrastructure in the region, hurts both Ohio's economy and the U.S. economy – particularly the construction and retail workers whose jobs are tied to the development of the energy sector; the manufacturers who depend on low energy costs and access to petroleum products for their businesses; the producers that drill and ship the product; and the landowners on whose properties the wells have been drilled, and who await royalties resulting from

² Available at: http://www.api.org/~media/files/policy/jobs/economic_impacts_ong_2011.pdf (last visited April 27, 2016).

³ Available at: http://archives.legislature.state.oh.us/ResolutionText130/130_SCR_7_EN_N.html (last visited April 27, 2016).

production. See, e.g. *Weak Gas Infrastructure Fueling Utica's Struggles*, Crain's Cleveland Business, Dan Shingler, July 25, 2015 (reporting that demand for pipeline infrastructure is far outpacing available pipeline capacity and hampering the development of the Utica Shale).⁴ In short, pipeline growth is critical to Ohio's economic growth.

In most cases, pipelines are built with little or no use of eminent domain. However, the very nature of pipeline projects, like roadway projects, may expose them to opposition by a limited number of landowners who would refuse the project regardless of the public necessity or benefit. Unlike most projects, in which a company need only purchase one or two tracts for the construction of the proposed facility, a pipeline project requires contiguous easement rights across many dozens (and sometimes thousands) of miles of land. The lineal configuration of a pipeline makes it particularly vulnerable to the obstructions and objections of a few landowners who, in the absence of eminent domain authority, could defeat an entire project regardless of public need. For this reason, eminent domain authority, such as that granted by the General Assembly in R.C. 1723.01 *et seq.*, is critical to pipeline development. In this way, pipelines could not be more dissimilar to steel mills – the analogy drawn by Appellants in their brief. A pipeline company does not have the luxury of identifying multiple potential sites for its mill, then negotiating a deal with those most willing to sell – it must obtain easements across hundreds and sometimes thousands of landowners' properties. It was undoubtedly for this very reason that the General Assembly – like other state legislatures – identified pipeline companies as among the very few types of private entities authorized to use the eminent domain power. Without this grant of authority, pipeline construction would in many cases be impossible.

⁴ Available at: <http://www.crainscleveland.com/article/20150725/NEWS/150729882/weak-gas-infrastructure-fueling-uticas-struggles> (last visited April 27, 2016).

Although eminent domain authority is critical to pipeline development, the actual use of eminent domain remains a tool of last resort. There are many reasons why companies do not like to use eminent domain – most notably, a preference to work cooperatively with the landowners who live and work in the communities where the pipeline operates, and also to avoid the costs and delays inherent in litigation. Sunoco’s project is a perfect example of this principle. Despite crossing nearly 30 miles of land in Jefferson and Harrison counties, and more than 148 individual parcels of land, this is the only case concerning Sunoco’s project that has gone to trial in Ohio. Thus, although the power of eminent domain is critical to successful pipeline development, it is a power that is used only sparingly.

It is also worth noting that, unlike eminent domain for other projects like roads, the property right that is “taken” for pipeline construction is very limited. In almost every case, as is the case here, the pipeline company receives a limited easement interest in a narrow corridor (typically fifty feet in width) across the property. The landowner retains fee ownership. Broadly speaking, landowners are typically able to enjoy nearly all of the same activities and benefits from the property *after* the pipeline is buried as they enjoyed before, except they are not permitted to build structures directly upon the easement or excavate or plant trees on the easement. Typically included within the list of permissible activities are the right to continue to grow crops, farm, hunt, ride recreational vehicles over the easement, and extract oil and gas from far below the easement.

Amici Curiae share compelling interests in the outcome of this appeal and they respectfully submit that the protection of the public interest in maintaining an efficient, safe, and reliable supply of petroleum through pipelines mandates affirmance of the trial court’s sound decision—a decision supported by the only reasonable interpretation of R.C. 1723.01.

American Petroleum Institute

Amicus Curiae American Petroleum Institute (“API”) is a national trade association that represents all segments of America’s oil and natural gas industry. API traces its origins to World War I, when Congress and the domestic oil and natural gas industry promoted the war effort. API was chartered in 1919 to afford a means of cooperation between the industry and the government; to foster foreign and domestic trade in American petroleum products; to promote the interests of all segments of the petroleum industry; to promote the mutual improvement of API’s members; and to study the arts and sciences connected with the oil and natural gas industry. Today, API’s 640 members – including exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms – provide much of the nation’s energy and have invested significantly in Ohio. API is also the worldwide leading standards-making body for the oil and natural gas industry. Accredited by the American National Standards Institute (“ANSI”), API has issued more than 500 consensus standards governing all segments of the industry, including standards and recommended practices incorporated or referenced in numerous state and federal regulations. API speaks for the oil and natural gas industry to the public, Congress, the Executive Branch of the federal government, state governments, and to the media. API negotiates with regulatory agencies, represents the industry in legal proceedings, participates in coalitions, and works in partnership with other associations to achieve its members’ public-policy goals.

Association of Oil Pipe Lines

Amicus Curiae Association of Oil Pipe Lines (“AOPL”) is a nonprofit national trade association that represents the interests of oil pipeline owners and operators before the United States Congress, regulatory agencies, and the judiciary. AOPL’s members operate pipelines that carry approximately 96 percent of the crude oil and petroleum products moved by pipeline in the United

States. Its members deliver crude oil and refined products to market through pipelines that extend approximately 192,396 miles across the United States. These pipelines safely, efficiently, and reliably deliver approximately 14.9 billion barrels of crude oil and petroleum product each year. American consumers benefit when AOPL's member pipelines deliver the gasoline they need to drive their cars and commute to work. American consumers and businesses benefit when diesel fuel is used to power trucks and trains to deliver commercial goods. American homeowners benefit with propane for their gas grills and rural heating. American farmers benefit with propane to dry their crops and keep their livestock warm in winter. American manufacturers benefit from plentiful, affordable raw materials like ethane. AOPL strives to ensure that the public and all branches of government understand the benefits and advantages of transporting crude oil and petroleum products by pipeline as the safest, most reliable, and cost effective method.

Ohio Chemistry Technology Council

Amicus Curiae the Ohio Chemistry Technology Council ("OCTC") is a statewide association representing more than 70 member companies, which collectively employ more than 45,000 Ohioans at over 120 facilities throughout the State, serving the public-policy mission of promoting the highest standards of environmental, health, safety, and security performance. OCTC is the leading advocate for Ohio's chemical technology industry, which is the second largest manufacturing industry in Ohio and an industry closely tied to the efficient development of Ohio's oil and gas resources. Ohio's chemical technology industry is the sixth largest in the nation, making OCTC's work critical not only to Ohioans, but also to the national economy.

OCTC prides itself on providing its members value by voicing their goals and concerns to the courts, to Ohio's elected officials, to the media, and to the public. OCTC is a member-driven organization with each member company having an equal voice in establishing priorities.

Designated representatives from each member company provide input to the Council and vote on all matters brought to the membership for decisions. Several of OCTC's members are leaders in the oil & gas industry, including the pipeline segment, and thus have a keen interest in ensuring that pipeline operators like Sunoco may exercise the power of eminent domain under the appropriate circumstances, as the General Assembly intended.

Ohio Manufacturers' Association

Amicus Curiae the Ohio Manufacturers' Association ("OMA") is a statewide trade association of more than 1,400 manufacturers whose mission is to protect and grow Ohio manufacturing. The OMA pursues its mission by promoting and advancing policies, laws, and regulations that foster competitive advantages for its membership so that Ohio is an attractive environment for manufacturers of all kinds. The OMA routinely represents manufacturers' interests before the General Assembly and state regulatory agencies seeking to improve manufacturing competitiveness in the State of Ohio. A major concern of the OMA is maintaining low energy costs and a ready supply of raw materials for its members. The OMA recognizes that pipelines are the safest, most reliable and cost effective means of transporting petroleum and petroleum products, which contributes to reliable and low-cost energy and raw materials for manufacturing. For these reasons, a robust and reliable pipeline network in Ohio is critical to maintaining a competitive and vibrant manufacturing base in Ohio.

For the following reasons, and for the reasons expressed in Sunoco's brief, these *amici curiae* respectfully urge this Court to affirm the trial court's decision confirming Sunoco's right to exercise the power of eminent domain with respect to the pipeline at issue.

II. Law and Argument

A. The term “petroleum” in R.C. 1723.01 includes natural gas liquids and other forms of refined petroleum.

The trial court correctly concluded that the term “petroleum” in R.C. 1723.01 includes petroleum in both its natural and refined states. The trial court’s ruling is consistent with the industry’s definition of petroleum, as well as the eminent domain statutes and the case law interpreting them.

- i. Relevant definitions and authorities indicate that the term “petroleum” should be reasonably construed to include natural gas liquids.

As this Court is aware, R.C. 1.42 provides that “[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” “Petroleum” has acquired a particular meaning within the oil and gas industry and *Amici Curiae* OCTC, AOPL, OMA and API can each attest that “petroleum” is generally understood in the industry to encompass both crude *and* refined petroleum products. Moreover, contrary to Appellant’s suggestion, this Court is not required to adopt an overly narrow or tortured construction of the term “petroleum” simply because an eminent domain statute is at issue. The Ohio Supreme Court has repeatedly recognized the importance of eminent domain to the public and held that, although eminent domain laws should be strictly construed, courts should place a “reasonable construction” upon eminent domain statutes and avoid a “narrow and [parsimonious] strictness” which would defeat the policy behind the statute. *Ohio Power Co. v. Deist*, 154 Ohio St. 473, 481 (1951).

Appellants’ unreasonably narrow interpretation of “petroleum” ignores this admonition and, indeed, ignores nearly every available authority on the proper scope of the term. Appellants instead rely entirely upon the prepared direct testimony of their expert, as well as a single cherry-picked

definition from the 1947 Second Edition of *Webster's International Dictionary*. Although it is possible to root out, as Appellants have done here, an obscure definition of petroleum that excludes natural gas liquids and similar petroleum products, the overwhelming weight of authority supports the inclusion of these products within petroleum's definition.

In reaching its decision, the trial court correctly examined numerous sources in an effort to arrive at a "reasonable" construction of the word. These sources included R.C. 3746.01, Ohio Admin. Code 1301:7-7-38, and the U.S. Energy Information Administration's definition.⁵ *Amici Curiae* would add that another credible authority on the proper definition of "petroleum" in this context is the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), which is the federal agency that regulates the safety of petroleum products pipelines, including Sunoco's pipeline at issue in this case. PHMSA is a division of the U.S. Department of Transportation, Office of Pipeline Safety, and its regulations define "petroleum" as "crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas." 49 C.F.R. 195.2 (emphasis added). Section 195.2 also provides that "petroleum product means flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds." *Id.* (emphasis added). Thus, the federal agency responsible for the safe operation of Sunoco's pipeline unambiguously defines natural gas liquids ("NGLs") as petroleum and petroleum products.

The Pennsylvania PUC shares this view, as it has similarly defined the products proposed to be transported by Sunoco on this pipeline as "petroleum products." Pennsylvania PUC, *Opinion*

⁵ The U.S. Energy Information Administration, an unbiased government information agency, defines petroleum as follows: "A broadly defined class of liquid hydrocarbon mixtures. Included are crude oil, lease condensate, unfinished oils, refined products obtained from the processing of crude oil, and *natural gas plant liquids*. Note: Volumes of finished petroleum products include non hydrocarbon compounds, such as additives and detergents, after they have been blended into products." See Glossary, U.S. Energy Information Administration, Independent Statistics & Analysis, available at: <http://www.eia.gov/tools/glossary/index.cfm?id=P> (emphasis added) (last visited May 12, 2016).

and Order on Consolidated Petitions by Sunoco Pipeline, L.P., Docket Nos. P-2014-2411941, et. seq., October 29, 2014, p. 37 (“The product to be shipped by Sunoco – “petroleum products” – is a broad term that includes both propane and ethane.”).

- ii. Legislative history and rules of statutory construction support a reasonable reading of Ohio’s eminent domain statute.

If Ohio’s General Assembly had intended to ascribe the narrow definition to petroleum that Appellants advocate, it could have easily done so by adding the word “raw” or “crude” or “natural” in front of the word petroleum. That it did not do so is telling. Appellants nonetheless rely upon the phrase “coal or its derivatives” within the statutory language to suggest that the absence of the “or its derivatives” modifier around the word “petroleum” indicates a legislative intent to exclude from the definition of petroleum certain derivative or refined products, like NGLs. But this argument ignores the generally accepted, reasonable definition of petroleum as already discussed above, and is completely undermined by the legislative history behind the statute.

The phrase “coal or its derivatives” was inserted into the statute by itself, over 70 years after the statute’s enactment. When the statutory predecessor to R.C. 1723.01 was first passed in the Ohio General Code in 1868, it granted eminent domain authority to companies “carrying on said business of transporting oils through tubing and piping.” 65 Laws of Ohio 109, §§1, 2, 3 (April 25, 1868). In 1875, the legislature amended the statute to substitute the word “petroleum” for “oils.” 72 Laws of Ohio 151, §§1, 2 (March 30, 1875). It was not until 1951, however, that the phrase “coal or its derivatives” was added to the statute. As a result, no conclusion as to the intended meaning of the phrase “petroleum” can be drawn from the fact that the legislature added a new phrase, “coal or its derivatives,” to the statute 76 years later.

In fact, this very argument was previously considered and rejected by the United States District Court for the Northern District of Ohio. In *Inland Corp. v. Buckeye Tank Terminals, Inc.*,

1977 U.S. District LEXIS 14973, *102 (N.D. Ohio July 15, 1977) vacated on mootness grounds, 1980 U.S. App. LEXIS 17528 (6th Cir. May 15, 1980), the court considered a 1951 amendment to the Public Utilities Act which, like R.C. 1723.01, was amended to include the phrase “coal or its derivatives.” Plaintiff there argued that the inclusion of this modifier for coal, but not for another term within the statute – “oil” – indicated a legislative intention to exclude refined oil from the statute’s coverage. The court rejected this argument, finding that the addition of the “coal or its derivatives” language in 1951 shed no light on what was intended by the legislature when it originally included “oil” in the statute in 1911. “It is concluded that the 1951 amendment was a self-contained piece of legislation. No inference, therefore, may be drawn from the inclusion of the words, ‘or its derivatives’ that [the legislature] thereby intended to limit the word ‘oil’ to ‘crude oil’ or to exclude the derivatives of ‘crude oil.’” *Id.* at *111. For the same reasons, no inference can properly be drawn here from the inclusion of the term “coal or its derivatives” 76 years after the eminent domain legislation was passed.

iii. Case law supports a reasonable construction of the term “petroleum” and “oils” in the eminent domain statute.

In addition to the multiple definitional sources and rules of construction that support Sunoco’s proffered definition, every Ohio court to have considered this or similar issues has ruled in a manner that supports the construction of “petroleum” adopted by the trial court. In the closest cases on point, both the Fourth and Fifth District Courts of Appeal determined in 2001 that the word “petroleum” in R.C. 1723.01 includes refined petroleum products, like gasoline, diesel fuel, kerosene, and jet fuel. *Ohio River Pipe Line LLC v. Henley*, 144 Ohio App.3d 703 (5th Dist. 2001); *Ohio River Pipe Line, LLC v. Gutheil*, 144 Ohio App.3d 694 (4th Dist. 2001). The same rationale that guided the Fourth and Fifth Appellate Districts applies here, as both the industry and multiple definitional sources make clear that propane and butane are refined petroleum products.

Indeed, the Ohio Supreme Court has arguably come even closer to touching on the specific issue in this case. In *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 247 (1978), the Court held that the generic terms “oil” and “gas” in pipeline easements included propane and butane within their purview (as well as fuel oil and gas oil). Although the Court did not wrestle with the specific term “petroleum” in R.C. 1723.01, the Court’s rationale remains instructive here, particularly given the traditionally overlapping use of the words oil and petroleum in both the industry and in many statutes (*see, e.g.*, R.C. 1723.06, which uses the term “oils” rather than “petroleum,” despite the use of “petroleum” in R.C. 1723.01):

It is clear that at the time of the execution of the 1911 right-of-way agreement, the words “oil” and “gas” included products in both the refined and natural states. A restriction of these terms could easily have been achieved by use of a qualifying adjective such as “crude” or “natural.” Because the parties executing this agreement did not choose to qualify the terms of “oil” and “gas,” we must therefore assume that they intended no restrictive meaning.

Id. at 248. The Supreme Court’s rationale and explanation is instructive about what the General Assembly intended and what it understood the generic terms “petroleum” and “oils” to mean under the Ohio eminent domain laws now codified in Revised Code Chapter 1723.

Amici curiae submit that two other decisions are also relevant here – *Natl. Gas v. Hamby*, 5th Dist. Muskingum No. CA 80-27, 1981 Ohio App. LEXIS 4943 and *Ohio Power Co. v. Deist*, 154 Ohio St. 473, 481, 96 N.E.2d 771 (1951). The *Hamby* decision rebuts Appellant’s suggestion that the legislature understood “petroleum” as having a narrow definition around the time when the eminent domain statute was amended to include that term, while the *Deist* decision makes clear that, even if, *arguendo*, this were true, terms within the eminent domain statutes should be read so as to give effect to technological advances.

The *Hamby* court considered whether a pipeline company had violated a 1919 pipeline easement by transporting natural gas through its pipeline, when the easement allowed for the

transport of only “petroleum.” In the process of answering this question in the negative, and thereby overruling the trial court’s overly restrictive reading of the easement, the court considered various historic reference materials, including the 1911 edition of the Encyclopaedia Britannica Dictionary of Arts and Oxford University Press’ “The Science of Petroleum,” which both defined petroleum broadly. After considering these definitions in an attempt to determine what the parties intended in the 1919 easement, the court held, “[t]he term ‘petroleum’ shall be given a reasonable, nonrestrictive interpretation.” *Id.* at *9.

Although the foregoing authorities make clear that “petroleum” has long been defined broadly to include the products sought to be transported by Sunoco, the Ohio Supreme Court also made clear in *Deist* that, even if that were not the case, this court should still construe the term reasonably in light of the technological advances that now permit the fractionation of petroleum products that were infeasible generations ago. In *Deist*, the Ohio Supreme Court was asked to determine whether an electric utility could use the power of eminent domain to construct a coal conveyor belt system from the coal mine to the power plant. Although the Plaintiff was a utility, the conveyor belt was a new invention and was not a structure for which the statute authorized the use of eminent domain. In allowing the use of eminent domain to procure land for the conveyor system, the Court examined cases from other states and explained:

This court recognizes the well-established rule that statutes delegating authority to exercise the right of eminent domain must be strictly construed, but we do not believe that such construction should be so strict as to be unreasonable or strained.

* * *

[I]t appears that the courts have recognized the propriety of placing a reasonable construction upon statutes authorizing condemnation of private land. This is particularly true when public utilities face practical problems which are the result of mechanical and scientific progress.

Deist, supra at 477 and 481. The *Deist* decision makes clear that eminent domain statutes must be given a “reasonable” construction, that allow for advancements in technology.

Finally, although not binding on this Court, it is also worth noting that every Ohio trial court to have considered this issue has found that NGL pipelines possess eminent domain authority. In addition to the trial court's decision below, the Common Pleas Courts for Jefferson, Butler, Warren, and Coshocton counties have recognized the eminent domain authority of these types of pipelines. Each of those cases involved the ATEX pipeline, which was recently constructed in Eastern Ohio to transport ethane, a natural gas liquid. Commensurate with the right to appropriate property under Chapter 1723 is the right to enter private property to survey land in advance of the appropriation proceedings. R.C. 1723.01. When numerous landowners along the proposed route refused to grant ATEX permission to enter their properties to conduct surveys, ATEX sought temporary restraining orders in each of the foregoing courts. In each of those cases, the courts recognized ATEX's authority under Chapter 1723 and granted the requested injunctions. The Orders from those courts are attached collectively as Exhibit A.

The foregoing case law, industry definitions and rules of statutory construction strongly support the trial court's conclusion that the only reasonable interpretation of the word "petroleum" in R.C. 1723.01 is one that includes both crude oil and refined petroleum products. Moreover, given the wealth of Ohio authority supporting this interpretation, it is reasonable to infer that the Ohio General Assembly has accepted this interpretation. Indeed, the *Ohio River Pipeline* cases plainly and unambiguously defined "petroleum" within R.C. 1723.01 to include refined petroleum products, as well as crude oil. Fifteen years have passed since those decisions, and the General Assembly has taken no action to repudiate those rulings.

In fact, had the General Assembly wished to amend the statute to reject the *Ohio River Pipeline* courts' interpretation of the Chapter 1723 language, it had the perfect opportunity to do so less than ten years ago. In 2007 the General Assembly extensively amended Ohio's eminent

domain statute – Chapter 163 – in response to the U.S. Supreme Court’s controversial decision in *Kelo v. City of New London*, 545 U.S. 469 (2005), as well as the Ohio Supreme Court’s subsequent decision in *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799. *See* 2007 Am.Sub.S.B. No. 7. The Supreme Court held in *Kelo* that the power of eminent domain extended so far as to permit the government to take private property and transfer it to a private enterprise for a purely private commercial development (in that case, office buildings, luxury apartments and a new marina). *Kelo*, 545 U.S. at 485-486. The Ohio Supreme Court rejected that overly broad interpretation of the state’s eminent domain power in *Norwood*, and the General Assembly then responded in Am.Sub.S.B. 7 by making numerous amendments to the Ohio eminent domain statute. In making those significant revisions, the legislature could have likewise rejected the Ohio courts’ interpretation of “petroleum” in Chapter 1723. That the General Assembly did not do so is compelling evidence that the Fourth and Fifth Appellate districts did not misinterpret the General Assembly’s intent in enacting Chapter 1723.

For all of these reasons, *Amici Curiae* respectfully submit that the trial court properly construed the term “petroleum” in R.C. 1723.01.

B. Petroleum products pipelines serve compelling public uses.

Petroleum pipelines, like the one proposed by Sunoco, serve many public uses. Indeed, although Ohio’s eminent domain statute only requires an agency to establish a single public use, the Mariner East 2 pipeline, and others like it, will actually serve multiple public uses. First, as the trial court correctly noted, it will be regulated as a FERC-tariffed common carrier that is open to any members of the public who wish to transport product through it.

Second, as discussed in the introduction, the pipeline will serve the public’s interest by providing critical take-away capacity for natural gas processing facilities in Eastern Ohio, thereby

supporting the development of Ohio's Marcellus and Utica Shale plays. Perhaps even more importantly, the pipeline will transport the product safely, efficiently, and economically. This factor becomes even more apparent when one considers the countless tanker trucks that would have to navigate Jefferson and Harrison County roads over the coming decades in order to match the capacity of the Mariner East 2 pipeline.

Third, the pipeline will serve the public in an even more direct fashion by delivering propane – an important home heating fuel – to both existing facilities and proposed facilities to be constructed along the pipeline's route for sale to consumers. The propane distribution facilities that Sunoco has planned along the Mariner East 2 pipeline route will address the need for uninterrupted deliveries of propane to regional markets and ensure that there is adequate pipeline capacity to meet peak demand for propane during the winter season.

Appellants nevertheless contend that the supply of propane in this case is not a true public use because the propane will be delivered outside Ohio. But Appellant's argument on this point is not supported by the statute. Nowhere does the statute require the pipeline to benefit Ohioans exclusively. And Appellant's parochial view is both short-sighted and ultimately self-defeating. Some pipelines transport products into a state, while others transport products out of the state. If surrounding states took the view that Appellant espouses here – that a pipeline only serves a public use when it is transporting products into that particular state – then no interstate pipelines would possess eminent domain authority across their routes. A proposed pipeline to transport gasoline from Michigan refineries into Ohio, for example, would be stopped in its tracks in Michigan on the grounds that it was not shipping any product to Michigan residents, and therefore lacked eminent domain authority in that state. Appellant's argument finds no support in Ohio's eminent domain statute.

Nevertheless, even if the Court were inclined to accept Appellant's insular view of public use, it is still the case that Sunoco's pipeline is benefitting Ohioans in many ways. As detailed above, the pipeline is taking Ohio product to market and thereby helping to relieve a glut which has depressed the Ohio shale play and negatively impacted thousands of Ohioans and Ohio companies, including *Amici Curiae*'s members.

III. Conclusion

For the foregoing reasons, and for those stated in Sunoco's merit brief, *Amici Curiae* American Petroleum Institute, Association of Oil Pipe Lines, Ohio Chemistry Technology Council, and Ohio Manufacturers' Association respectfully ask the Court to affirm the trial court's decision in all respects.

Respectfully submitted,



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*Counsel for Association of Oil Pipe Lines,
American Petroleum Institute,
Ohio Manufacturers' Association, and
Ohio Chemistry Technology Council,
Amici Curiae in support of Appellee*

CERTIFICATE OF SERVICE

I certify that, on May 12, 2016, a copy of this brief was served by regular U.S. Mail upon the following counsel of record:

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James B. Hadden

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

2012 APR 30 PM 3:46

JAMES L. SPAETH
CLERK OF COURTS

ENTERPRISE LIQUIDS PIPELINE :
LLC :

Case No. 12 CV 81965

Plaintiff,

Judge Peeler

v.

EMLEE'S RUN, LLC

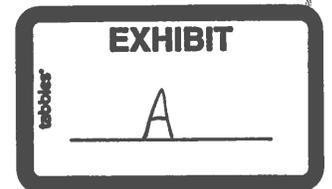
Defendant.

ORDER GRANTING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER

This matter comes before the Court pursuant to Plaintiff's Motion for Temporary Restraining Order pursuant to Rule 65(A) of the Ohio Rules of Civil Procedure.

Upon consideration of Plaintiff's Verified Complaint and Plaintiff's Motion for Temporary Restraining Order and Memorandum in Support, the Court finds that (a) Defendants' actions, unless enjoined, will cause immediate and irreparable harm to Plaintiff; (b) Plaintiff has demonstrated a likelihood of success on the merits; (c) all requirements of Ohio Civil Rule 65 have been satisfied, and appropriate steps have been taken to provide adequate notice of Plaintiff's Motion for Temporary Restraining Order to Defendant; and (d) in order to prevent irreparable harm, Plaintiff's motion should be, and hereby is, GRANTED.

It is therefore ORDERED, ADJUDGED, and DECREED that Defendant is prohibited from further interfering with Plaintiff's statutory right to enter upon and survey Defendant's land

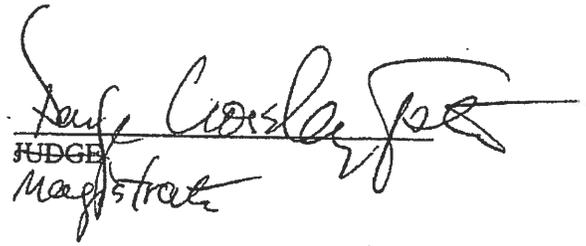


for a proposed pipeline project, and that Plaintiff, having given proper notice, may enter upon the Property described in the Complaint for this purpose.

Bond is hereby set at \$ 5,000 -.

This Order shall expire fourteen (14) days after entry unless otherwise extended or modified by this Court.

IT IS SO ORDERED.


JUDGE
Magistrate

Date

for a proposed pipeline project, and that Plaintiff, having given proper notice, may enter upon the Properties described in the Complaint for this purpose.

Bond is hereby set at \$1,000.00.

This Order shall expire fourteen (14) days after entry unless otherwise extended or modified by this Court.

IT IS SO ORDERED.



JUDGE | BATCHELOR

6/22/12
Date

CA

IN THE COURT OF COMMON PLEAS
JEFFERSON COUNTY, OHIO

FILED
COMMON PLEAS COURT
2017 MAY 16 A 11:00

JOHN A. CORRIGAN
CLERK OF COURTS
JEFFERSON COUNTY, OH

ENTERPRISE LIQUIDS PIPELINE :
LLC :

Plaintiff, :

v. :

NANCY M. HYDE, ET AL., :

Defendants. :

Case No. 12CV00212 ✓

Judge Bruzzese

ORDER GRANTING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER

This matter comes before the Court pursuant to Plaintiff's Motion for Temporary Restraining Order pursuant to Rule 65(A) of the Ohio Rules of Civil Procedure.

Upon consideration of Plaintiff's Verified Complaint and Plaintiff's Motion for Temporary Restraining Order and Memorandum in Support, the Court finds that (a) Defendants' actions, unless enjoined, will cause immediate and irreparable harm to Plaintiff; (b) Plaintiff has demonstrated a likelihood of success on the merits; (c) all requirements of Ohio Civil Rule 65 have been satisfied, and appropriate steps have been taken to provide adequate notice of Plaintiff's Motion for Temporary Restraining Order to Defendants; and (d) in order to prevent irreparable harm, Plaintiff's motion should be, and hereby is, GRANTED.

It is therefore ORDERED, ADJUDGED, and DECREED that Defendants are prohibited from further interfering with Plaintiff's statutory right to enter upon and survey Defendant Nancy

JR. 458, PG. 5

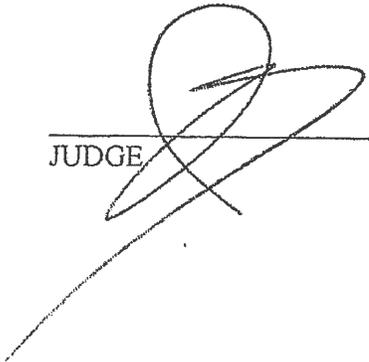
Hyde's land for a proposed pipeline project, and that Plaintiff, having given proper notice, may enter upon the Property described in the Complaint for this purpose.

If and to the extent Plaintiff's survey crews need to use stakes in order to complete their survey, and if Plaintiff's survey crews leave such stakes on the Property after completing their survey work, then Defendants shall have the right to remove and discard such stakes.

Bond is hereby set at Ø.

This Order shall expire fourteen (14) days after entry unless otherwise extended or modified by this Court.

IT IS SO ORDERED.



JUDGE

5-16-12
Date

JK-458, 16.6

APR 2012

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

2012 APR 24 10:08 AM
COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

JAMES L. SPAETH
CLERK OF COURTS
ENTERPRISE LIGHTS COBBLE
LLC :

Case No. 12 CV 81897

Judge Flannery

Plaintiff,

v.

STANLEY L. ALEXANDER, et al.

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER**

This matter comes before the Court pursuant to Plaintiff's Motion for Temporary Restraining Order pursuant to Rule 65(A) of the Ohio Rules of Civil Procedure.

Upon consideration of Plaintiff's Verified Complaint and Plaintiff's Motion for Temporary Restraining Order and Memorandum in Support, the Court finds that (a) Defendants' actions, unless enjoined, will cause immediate and irreparable harm to Plaintiff; (b) Plaintiff has demonstrated a likelihood of success on the merits; (c) all requirements of Ohio Civil Rule 65 have been satisfied, and appropriate steps have been taken to provide adequate notice of Plaintiff's Motion for Temporary Restraining Order to Defendants; and (d) in order to prevent irreparable harm, Plaintiff's motion should be, and hereby is, GRANTED.

It is therefore ORDERED, ADJUDGED, and DECREED that Defendants are prohibited from further interfering with Plaintiff's statutory right to enter upon and survey Ms. Alexander's



land for a proposed pipeline project, and that Plaintiff, having given proper notice, may enter upon the Properties described in the Complaint for this purpose.

Bond is hereby set at 5,000.

This Order shall expire fourteen (14) days after entry unless otherwise extended or modified by this Court.

IT IS SO ORDERED.

4/24/12
Date

J. Flannery
JUDGE

FILED

2012 APR 25 PM 1:48

IN THE COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

SWAIN
BUTLER COUNTY
CLERK OF COURTS

ENTERPRISE LIQUIDS PIPELINE
LLC

Case No. CV 2012 04 1420

Judge _____

Plaintiff,

v.

JACK CORNETT, Trustee, et al.

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER**

This matter comes before the Court pursuant to Plaintiff's Motion for Temporary Restraining Order pursuant to Rule 65(A) of the Ohio Rules of Civil Procedure.

Upon consideration of Plaintiff's Verified Complaint and Plaintiff's Motion for Temporary Restraining Order and Memorandum in Support, the Court finds that (a) Defendants' actions, unless enjoined, will cause immediate and irreparable harm to Plaintiff; (b) Plaintiff has demonstrated a likelihood of success on the merits; (c) all requirements of Ohio Civil Rule 65 have been satisfied, and appropriate steps have been taken to provide adequate notice of Plaintiff's Motion for Temporary Restraining Order to Defendants; and (d) in order to prevent irreparable harm, Plaintiff's motion should be, and hereby is, GRANTED.

It is therefore ORDERED, ADJUDGED, and DECREED that Defendants are prohibited from further interfering with Plaintiff's statutory right to enter upon and survey Defendants' land

for a proposed pipeline project, and that Plaintiff, having given proper notice, may enter upon the Properties described in the Complaint for this purpose.

Bond is hereby set at 5,000.

This Order shall expire fourteen (14) days after entry unless otherwise extended or modified by this Court.

*16 necessary preliminary injunction hearing set for
MAY 10, 2012 @ 10AM*
IT IS SO ORDERED.

[Handwritten Signature]

JUDGE

4-25-2012
Date

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

APR 11 PM 3:33

JAMES L. SPAE II
CLERK OF COURTS

ENTERPRISE LIQUIDS PIPELINE :
LLC :

Case No. 12CV81850

Plaintiff, :

Judge Bronson

v. :

HLF FINANCIAL LLC, et al. :

Defendants. :

**ORDER GRANTING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER**

This matter comes before the Court pursuant to Plaintiff's Motion for Temporary Restraining Order pursuant to Rule 65(A) of the Ohio Rules of Civil Procedure.

Upon consideration of Plaintiff's Verified Complaint and Plaintiff's Motion for Temporary Restraining Order and Memorandum in Support, the Court finds that (a) Defendants' actions, unless enjoined, will cause immediate and irreparable harm to Plaintiff; (b) Plaintiff has demonstrated a likelihood of success on the merits; (c) all requirements of Ohio Civil Rule 65 have been satisfied, and appropriate steps have been taken to provide adequate notice of Plaintiff's Motion for Temporary Restraining Order to Defendants; and (d) in order to prevent irreparable harm, Plaintiff's motion should be, and hereby is, GRANTED.

It is therefore ORDERED, ADJUDGED, and DECREED that Defendants are prohibited from further interfering with Plaintiff's statutory right to enter upon and survey Defendants' land

for a proposed pipeline project, and that Plaintiff, having given proper notice, may enter upon the Properties described in the Complaint for this purpose.

Bond is hereby set at \$5,000.00.

This Order shall expire fourteen (14) days after entry unless otherwise extended or modified by this Court.

IT IS SO ORDERED.

JUDGE
Magistrate

07-11-2012
Date