

**ORDINANCE #2016:05**

**AN ORDINANCE OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF  
PARSIPPANY-TROY HILLS, MORRIS COUNTY, NEW JERSEY AMENDING THE  
CODE OF TOWNSHIP OF PARSIPPANY-TROY HILLS, INCLUDING CHAPTER 430,  
ARTICLE IV, GENERAL DISTRICT REGULATIONS, SECTION 430-26, PIPELINES,  
AND CHAPTER 430, ARTICLE XLIII, WELLHEAD PROTECTION, SECTION 430-322  
POTENTIAL POLLUTANT SOURCES**

**WHEREAS**, the Liquid Integrity Management Rule and 49 C.F.R., Parts 195.0 - 195.12, Transportation of Hazardous Liquids by Pipelines, specifies how pipeline operators must identify, prioritize, assess, evaluate, repair and validate the integrity of hazardous liquid pipelines that could, in the event of a leak or failure, affect High Consequence Areas ("HCAs") within the United States. HCAs include: population areas; areas containing drinking water and ecological resources that are unusually sensitive to environmental damage; and commercially navigable waterways; and

**WHEREAS**, pursuant to that certain letter from Jeffrey D. Wiese, Associate Administrator, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, to TransCanada Corporation, dated May 28, 2014, local governments have an interest in the health, safety and welfare impacts regarding the excavation, adjacent land uses, setbacks, and emergency response plans for both inter and intrastate pipelines; and

**WHEREAS**, pursuant to Township Code § 430-316, *et seq.*, the Township has established Wellhead Protection Zones regarding the Buried Valley Aquifer Systems of the Central Passaic River Basin, which are designated as a "sole source" aquifer under Section 1424(e) of the federal Safe Drinking Water Act of 1974; and

**WHEREAS**, the Township Council desires to expand the protections of its Wellhead Protection Zones to include Hazardous Liquid Pipelines as a major Potential Pollutant Source; and

**WHEREAS**, the Township Council desires to further the health, safety and welfare of Township residents by establishing minimum setbacks and standards for the placement of Hazardous Liquid Pipelines; and

**WHEREAS**, it is in the best interests of the Township and its residents to provide for standards and guidelines for Hazardous Liquid Pipelines located in the Township so as to protect the public health and welfare of its residents.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Parsippany-Troy Hills, County of Morris, State of New Jersey, as follows:

**SECTION 1.** Section 430-26, Pipelines, is hereby repealed in its entirety and replaced as follows:

A. Definitions:

**ESSENTIAL PUBLIC FACILITIES**

Those public facilities which are required in order to provide basic health and safety services to residents and visitors of the Township, including, without limitation, water sanitation plants, water treatment plants, sewer treatment plants, water storage facilities, telecommunication towers, police stations, fire stations, jails, courthouses, public health facilities, and emergency operations centers.

**HAZARDOUS SUBSTANCE**

Any substance designated under 40 CFR 116 pursuant to Section 311 of the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act, Public Law 92-500; 33 U.S.C. 1251 et seq.), the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or Section 4 of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-4). Substances listed include petroleum, petroleum products, pesticides, solvents and other substances.

**HAZARDOUS SUBSTANCE TRANSMISSION PIPELINE CORRIDOR OR TRANSMISSION PIPELINE CORRIDOR**

The pipeline pathway defined by rights-of-way and easements in which the pipelines and facilities of a Hazardous Substance Transmission Pipeline are located, or proposed to be located, including rights-of way and easements over and through public or private property.

**HAZARDOUS SUBSTANCE TRANSMISSION PIPELINE OR TRANSMISSION PIPELINE**

A pipeline, whether above or below ground, which transports or is designed to transport a Hazardous Substance. As used herein, a Transmission Pipeline includes all parts of those physical facilities through which hazardous substance moves in transportation, including pipes, valves, and other appurtenances attached to pipes, compressor units, pumping stations, metering stations, regulator stations, delivery stations, emergency response terminals, holders, breakout tanks, fabricated assemblies, and other surface pipeline appurtenances.

## **HIGH CONSEQUENCE LAND USE**

A land use that if located in the vicinity of a Hazardous Materials Transmission Pipeline represents an unusually high risk to life in the event of a Transmission Pipeline failure due to the characteristics of the inhabitants or functions of the use. High Consequence Land Uses include:

- A. Child Care;
- B. Houses of Worship, including churches and other religious institutions;
- C. Hospitals;
- D. High-rise buildings, including hotels, dormitories, apartment complexes, and office buildings which may not lend themselves to a timely evacuation;
- E. Open space uses, including Green Acres and Township-owned lands designated as open space preservation areas, farmland preservation areas, historic preservation areas, blue acres preservation areas, active recreation areas, and passive recreation areas;
- F. National Park service designated National Natural Landmarks;
- G. New Jersey Department of Environmental Protection (NJ DEP) designated New Jersey Natural Areas and Natural Heritage Priority sites;
- H. Residential Care Facilities;
- I. Institutional uses including public and private schools, day care facilities, and public or quasi-public buildings; and
- J. Essential Public Facilities.

## **TRANSMISSION PIPELINE OPERATOR**

The company or person responsible for the operation, maintenance and management of the Transmission Pipeline.

## **WETLAND**

An area delineated and approved as a wetland by the New Jersey Department of Environmental Protection ("DEP") or other governmental authority.

- B. Applicability. The provisions in this section that apply to Transmission Pipelines apply to all proposed pipelines. To the extent any regulations within this section conflict with state or federal regulations or laws regulating Hazardous Substance Transmission Pipelines, those state or federal regulations and laws shall take precedence over these regulations. The Township hereby adopts by reference the definitions set forth in the Hazardous Liquid Pipeline Safety Act of 1979, as amended, and re-codified in 49 U.S.C. 601 and 49 C.F.R. 190-199.
- C. Pipelines uses. Pipelines not distributing services to end users within the Township which are not otherwise regulated by the New Jersey Board of Public Utilities are prohibited in all residential zones and districts within the Township, and shall constitute conditional uses in all other zones and districts within the Township.
- D. Requirements and standards for the development and construction of new Hazardous Substance Transmission Pipelines. The following requirements and standards shall apply for the development and construction of new Hazardous Substance Transmission Pipelines:
1. Approvals Required; Application. A resolution of approval by the Township Planning Board shall be required prior to the commencement of any work to install a Transmission Pipeline within the Township. An original application for a Pipeline Approval and Permit shall be submitted to the Township Planning Board Secretary and a copy submitted to the Township Engineer. Each application shall be accompanied by three (3) sets of plans showing dimensions and locations of the pipelines, related items or facilities within the subject right-of-way and roadway improvements. Also required for submittal are:
    - i. Detailed cross section drawings for all public street right-of-way easements, wetland and waterway crossings;
    - ii. A flow diagram showing daily design capacity of the proposed Transmission Pipeline;
    - iii. Changes in flow in the Transmission Pipeline; and
    - iv. The proposed maximum operating pressure, expressed in pounds per square inch gauge (psig) at all points of change in elevation greater than 500 feet, or every 500 feet in length as a minimum.

2. Hazardous Substance Transmission Pipeline corridor. Any easements or rights-of-way obtained by the Pipeline Owner or Operator shall be recorded in the office of the County Clerk for all new Hazardous Substance Transmission Pipelines.
3. Setbacks. In order to mitigate the aesthetic and environmental impacts of Hazardous Substance Transmission Pipelines, while minimizing potential damage or interruption to Essential Public Facilities caused by Transmission Pipelines, the following setbacks shall be observed:
  - i. Except as set forth in this section or unless approved by the Township Engineer as part of the approval and permit process, where adequate mitigation measures have been demonstrated by the applicant to the satisfaction of the Township Engineer, Hazardous Substance Transmission Pipeline Corridors shall not be located within the vicinity of a Wellhead Protection Area (“WHPA”), as is defined in Article XLIII of this Code, and shall not be located closer than twenty-five hundred (2,500) feet in a Tier 1 WHPA, one thousand (1,000) feet in a Tier 2 WHPA, and five hundred (500) feet in a Tier 3 WHPA. However, conditions such as slope and terrain may require additional mitigation as identified in the permit and approvals process.
  - ii. Except as otherwise set forth in this section, Hazardous Substance Transmission Pipelines shall not be located closer than one hundred (100) feet from:
    - a. Any Wetland;
    - b. Any year round naturally occurring creek, stream, river, private or public well, or pond, unless approved by the Township Engineer as part of the permit and approvals process where adequate mitigation measures have been demonstrated by the applicant; or
    - c. Any property in a business district or where a business is located.
  - iii. A Hazardous Substance Transmission Pipeline, facility or appurtenance shall not be located closer than:
    - a. One thousand (1,000) feet from any High Consequence Land Use lot or Essential Public Facility structure;

- b. One hundred fifty (150) feet from any residential property, zone or district on level grade; or
  - c. Two hundred fifty (250) feet from any residential property, zone or district where the residential property, zone or district is located downhill from the Transmission Pipeline, facility or appurtenance at a grade equal to or greater than five percent (5%), except that no Transmission Pipeline shall be located on slopes of a grade equal to or greater than fifteen percent (15%).
- iv. An emergency response terminal shall not be located closer than:
- a. Two thousand, five hundred (2,500) feet from any High Consequence Land Use lot or Essential Public Facility structure; or
  - b. Two thousand, five hundred (2,500) feet from any residential property, zone or district on level grade
4. Submittal of information. Preliminary as-built information, including, without limitation, as built drawings or additional information as may be requested by the Township Engineer about the Transmission Pipeline, including a copy of GIS shapefiles of the pipelines and all appurtenances within the Township, will be filed within ninety (90) days before the pipeline is commissioned, with the Township Engineer. Updated as-built information including without limitation as built drawings or additional information as may be requested by the Township Engineer about the Transmission Pipeline including a copy of GIS shapefiles of the pipelines and all appurtenances within the Township, will be filed within sixty (60) days after the pipeline is commissioned with the Township Engineer.
5. Hazardous Substance Transmission Pipeline construction. The Transmission Pipeline Owner, Operator and/or contractor shall give documented notice forty-eight (48) hours prior to the commencement of pipeline construction to the affected residents, businesses (including agricultural businesses) and to the Township Police Department. Private property owners and business owners shall have access to their property at all times during construction.

- E. Hazardous Substance Transmission Pipeline failure and remediation. In the event that a leak or failure has occurred with the Transmission Pipeline, the Transmission Pipeline Operator shall notify the Township Engineer, Township Police Department, and all property owners within 1000-feet of the affected pipeline area within (4) hours of discovery. Transmission Pipeline Operators shall, after being notified of an emergency, cooperate with Township officials and make every effort to respond as soon as possible to protect the public's health, safety, and welfare. All leak or spill remediation plans shall be made in consultation with the Township and no remediation may be deemed complete without final approval thereof by the Township. In the event that a Transmission Pipeline is shut down due to a leak or failure, the Transmission Pipeline Operator shall not restart the Transmission Pipeline without the written approval of the Township Engineer.
  
- F. Hazardous Substance Transmission Pipeline repair and maintenance. Following any repair of a Transmission Pipeline, any areas disturbed by such repair shall be re-vegetated in accordance with the applicable provisions of the Township Code.
  
- G. Hazardous Substance Transmission Pipeline marking. Markers shall be installed and maintained to identify the location of Transmission Pipelines in accordance with all federal and state pipeline marking requirements.
  
- H. Emergency preparedness plan. Prior to commissioning a Transmission Pipeline, the Pipeline Operator shall meet with the Township Police Department and submit a copy of an Emergency Preparedness Plan for any and all emergencies that may result in an accidental leak or failure incident regarding the pipeline or any supplemental equipment. The essential requirements stated in 49 CFR Parts 195-402 and 195-403 shall be covered by the Emergency Preparedness Plan. No Transmission Pipeline shall be commissioned, nor shall any Hazardous Substance be introduced into the pipeline prior to the Pipeline Operator receiving written approval of its Emergency Preparedness Plan by the Chief of Police or his designee. Transmission Pipeline Operators shall designate a responsible local emergency response official and a direct 24-hour emergency phone number.

- I. Insurance required. No Transmission Pipeline Owner or Operator shall commission any Transmission Pipeline or introduce any Hazardous Substance into a Transmission Pipeline without first securing insurance policies covering general liability, environmental incidents and contamination, and property damage in an aggregate amount to be determined by the Township and based upon reasonable estimates of potential liability and property damage that would result from a leak, spill or other failure of a Transmission Pipeline. Prior to commissioning any Transmission Pipeline and every year in which the Transmission Pipeline is in operation thereafter, the Pipeline Owner or Operator shall submit proof its insurance coverage to the Township and the Township shall be named as an additional insured on all required policies.
  
- J. Indemnification and hold harmless. Prior to commissioning a Transmission Pipeline, the Pipeline Operator shall agree in writing to indemnify and hold harmless the Township, as well as its officers, officials, supervisors, employees, agents, contractors, and assigns from any and all liability relating to or arising from the Transmission Pipeline including, but not limited to, any failure, leak, spill, contamination, clean up, remediation, property damage, and personal injury. The indemnification and hold harmless agreement shall include a provision for the payment of the Township's reasonable attorney's fees and litigation costs.

**SECTION 2.** Section 430-322 of the Township Code, Potential pollutant sources, is hereby amended and supplemented as follows:

A. Major PPSs include:

- 20. Transmission Pipelines, including Hazardous Substance Transmission Pipelines, as defined in Article IV, Section 430-26 of this Code.

**SECTION 3.** All actions of the Township taken prior to the date of adoption hereof contemplated by this Ordinance are hereby ratified and approved.

**SECTION 4.** If any section, paragraph, subsection, clause or provision of this ordinance shall be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this ordinance as a whole or any part thereof.

**SECTION 5.** All ordinances or parts of ordinances of the Township of Parsippany-Troy Hills heretofore adopted that are inconsistent with any of the terms and provisions of this ordinance are hereby repealed to the extent of such inconsistency.

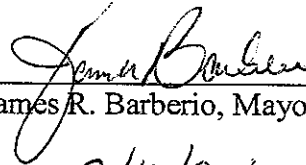
**SECTION 6.** This ordinance shall take effect immediately upon its final passage, approval and publication as provided by law.



*I HEREBY CERTIFY the above to be a true copy of an Ordinance introduced by the Township Council of the Township of Parsippany-Troy Hills at a duly convened meeting held on February 16, 2016, and adopted on March 15, 2016*



Khaled Madin, Township Clerk



James R. Barberio, Mayor

Date 3/17/2016