

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

Sunoco Pipeline, L.P.	:	Violations of The Clean Streams Law
535 Fritztown Road	:	and Chapters 93 and 102 of Title 25
Sinking Springs, PA 19608	:	of the Pennsylvania Code, and the Dam
	:	Safety and Encroachments Act and
	:	Chapter 105 of Title 25 of the
	:	Pennsylvania Code
	:	
	:	PA Pipeline Project—Mariner East II
	:	E&S Permit Nos. ESCG0300015002
	:	
	:	WO&E Permit Nos. E07-459; E21-449
	:	E34-136; E38-194

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty (“CACP”) is entered into this 5th day of August 2021, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), the Pennsylvania Fish and Boat Commission (“PFBC”), and Sunoco Pipeline, L.P. (“Sunoco”).

The Department has found and determined the following:

Parties

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); the Dam Safety and Encroachments Act, the Act of November 26, 1978 P.L. 1375, as amended, 32 P.S. §§ 693.1 et seq. (“Dam Safety and Encroachments Act”); Section

1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder..

B. The PFBC is the agency with the duty and authority to enforce the Pennsylvania Fish and Boat Code, the Act of October 16, 1980, P.L. 996, No. 175, 30 Pa. C.S. §101 *et seq.*; and the rules and regulations promulgated thereunder.

C. Sunoco Pipeline, L.P. (“Sunoco”) is a foreign limited partnership doing business in Pennsylvania and maintains a mailing address of 535 Fritztown Road, Sinking Springs, PA 19608. Sunoco Logistics Partners Operations GP LLC is the general partner of Sunoco Pipeline, L.P. Joseph J. Perez is Senior Vice President – Engineering & Construction Services Support for Sunoco Logistics Partners Operations GP LLC. Mr. Perez has been granted authority by Sunoco Logistics Partners Operations GP LLC to sign documents for Sunoco on behalf of the General Partner.

D. Sunoco owns and operates numerous pipelines in Pennsylvania used to transport petroleum and natural gas products. Sunoco has undertaken a project to expand existing transportation systems for natural gas liquids in Pennsylvania, which is collectively referred to as the Pennsylvania Pipeline Project – Mariner East II (“PPP-ME2”). As part of PPP-ME2, Sunoco has conducted pipeline installation activities in seventeen counties in Pennsylvania, including Blair, Cumberland, Juniata, and Lebanon Counties.

Permits

E. To construct PPP-ME2 through Blair, Cumberland, Juniata, and Lebanon Counties, Sunoco obtained the following permits from the Department:

- a. Erosion and Sediment Control Permit under 25 Pa. Code Chapter 102, Permit Number ESG0300015002 (Chapter 102 Permit) and;
- b. Water Obstruction and Encroachment Permit Number E07-459, to construct PPP-ME2 through Blair County;
- c. Water Obstruction and Encroachment Permit Number E21-449 to construct PPP-ME2 through Cumberland County;
- d. Water Obstructions and Encroachment Permit Number E34-136, to construct PPP-ME2 through Juniata County; and
- e. Water Obstruction and Encroachment Permit Number E38-194 to construct PPP-ME2 through Lebanon County.

F. For purposes of this CACP, the terms “Horizontal Directional Drilling” and “Inadvertent Return” shall be defined as follows:

- a. Horizontal Directional Drilling (“HDD”) is any steerable trenchless method used for installation of an underground pipe in an arc along a prescribed path by using a surface launched drilling rig.
- b. An Inadvertent Return (“IR”) is an unauthorized discharge of drilling fluids to the ground or surface waters, including wetlands, associated with HDD or other trenchless construction methodologies.

Sites

G. The work area for PPP-ME2 in Blair County, Pennsylvania includes the crossing of Wetland BB60 in Blair Township (“Blair HDD Site”).

H. The work area for PPP-ME2 in Cumberland County, Pennsylvania includes the crossing of an unnamed tributary (“UNT”) to Locust Creek in Lower Frankford Township, and crossings of Wetlands I30, I31, J35, and Letort Spring Run in Middlesex Township (“Cumberland HDD Sites”).

I. The work area for PPP-ME2 in Juniata County, Pennsylvania includes the crossing of Wetland K-59, and Tuscarora Creek in Lack Township (“Juniata HDD Sites”).

J. The work area for PPP-ME2 in Lebanon County, Pennsylvania includes the crossing of Snitz Creek in West Cornwall Township (“Lebanon HDD Site”).

K. The receiving waters for the Blair HDD Site is an UNT to Locust Creek, a water of this Commonwealth. The fishery classification for the Locust Creek basin in 25 Pa. Code § 93.9n is WWF (“Warm Water Fishes”), MF (“Migratory Fishes”).

L. The receiving waters for the Cumberland HDD Sites are an UNT to Locust Creek, and Letort Spring Run, waters of this Commonwealth. The fishery classification for Locust Creek in 25 Pa. Code § 93.9o is WWF, MF. The fishery classification for Letort Spring Run basin in 25 Pa. Code § 93.9o is CWF (“Cold Water Fishes”), MF. Letort Spring Run is classified as a wild trout (natural reproduction) water by the PFBC. See http://www.fishandboat.com/Fish/PennsylvaniaFishes/Trout/Documents/trout_repro.pdf

M. The receiving water for the Juniata HDD Sites is Tuscarora Creek, a water of this Commonwealth. The fishery classification for the Tuscarora Creek basin in 25 Pa. Code § 93.9n is CWF, MF.

N. The receiving water for the Lebanon HDD Site is Snitz Creek, a water of this Commonwealth. The fishery classification for the Snitz Creek basin in 25 Pa. Code § 93.90 is TSF (“Trout Stocking”), MF.

O. Between April 29, 2019, and August 31, 2020, the Department received thirteen (13) notices from Sunoco that IRs either occurred within or discharged into waters of the Commonwealth at the sites referenced above and as more fully described in Exhibit A, attached. The drilling fluids released during each of the IRs described in Exhibit A were all contained and remediated as per the April 2018 revised HDD IR PPC Plan.

Violations

P. The drilling fluids that comprised the IRs described in Exhibit A constitute Industrial Waste. Sunoco’s discharge of Industrial Waste to waters of the Commonwealth without a permit is a violation of 25 Pa. Code § 92a.1(b) and Section 301 of the Clean Streams Law, 35 P.S. § 691.301.

Q. The violations described in Paragraph P, above, constitute a nuisance under Section 401 of the Clean Streams Law, 35 P.S. § 691.401, unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18 and subject Sunoco to civil penalty liability under Section 605 of the Clean Streams Law, § 691.605 and Section 21 of the Dam Safety and Encroachments Act, 32 P.S. § 693.21.

R. Section 2502(a) of the Fish and Boat Code, 30 Pa.C.S.A. § 2502(a) states that “No person shall alter or disturb any stream, stream bed, fish habitat, water, or watershed in any manner that might cause damage to, or loss of, fish without the necessary permits.” Sunoco violated 30

Pa.C.S.A. § 2502(a), by allowing drilling fluids constituted as Industrial Waste per the Pennsylvania Department of Environmental protection to disturb the watershed without the necessary permits on ten (10) separate occasions during the period from April 29, 2019 to August 31, 2020 as described in Paragraph P.

S. Section 2504(a)(2) of the Fish and Boat Code, 30 Pa.C.S.A. § 2504(a)(2) states that “No person, regardless of intent shall; allow any substance, deleterious, destructive, or poisonous to fish, to be turned into or allowed to run, flow, wash or be emptied into any waters within or bordering on this Commonwealth.” Sunoco violated 30 Pa.C.S.A. § 2504(a)(2) by allowing drilling fluids, to enter waters within this Commonwealth on ten (10) separate occasions during the period from April 29, 2019 to August 31, 2020 as described in Paragraph P.

T. The violations described in Paragraph P, above, subject Sunoco to a claim for civil damages by the PFBC, which the PFBC is authorized to pursue under Section 2506 of the Fish and Boat Code, 30 Pa. C.S. §2506.

After full and complete negotiation of all matters set forth in this CACP and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department, PFBC, and AGREED to by Sunoco as follows:

1. **Assessment.** In resolution of the Department’s claim for civil penalties, which the Department is authorized to pursue under Section 605 of The Clean Streams Law, 35 P.S. § 691.605 and Section 21 of the Dam Safety and Encroachments Act, 32 P.S. § 693.21, the Department hereby assesses a civil penalty of \$85,666.00 which Sunoco hereby agrees to pay.

2. **Civil Penalty Settlement.**

a. Sunoco consents to the assessment of the civil penalty of EIGHTY-FIVE THOUSAND SIX HUNDRED AND SIXTY-SIX DOLLARS (\$85,666.00), which shall be paid in full upon signing this CACP. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs P and Q, above, covering the period from April 29, 2019 to August 31, 2020. The payments shall be by corporate check(s) or the like, made payable to the following:

i. EIGHTY-FOUR THOUSAND FIVE HUNDRED (\$84,500) DOLLARS to the "Commonwealth of Pennsylvania" with a notation "Clean Water Fund" on the memo line;

ii. FIFTY-SEVEN DOLLARS (\$57.00) to the "Blair County Conservation District";

iii. SIX HUNDRED AND THIRTY-ONE DOLLARS (\$631.00) to the "Cumberland County Conservation District";

iv. FOUR HUNDRED AND SEVENTY-EIGHT DOLLARS (\$478.00) to the "Juniata County Conservation District."

All checks shall be sent c/o Ronald C. Eberts, Jr., Environmental Protection Compliance Specialist, DEP-SCRO Waterways and Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

3. **Civil Damages.** In resolution of the PFBC's claim for civil damages, which the PFBC is authorized to pursue under Section 2506 of the Fish and Boat Code, 30 Pa. C.S. §2506, the PFBC hereby accepts civil damages in the amount of TWELVE THOUSAND FOUR HUNDRED AND TWENTY-FOUR DOLLARS (\$12,424.00), which Sunoco hereby agrees to

pay upon signing this COA. This payment is in settlement of the PFBC's claim for civil damages for the violations set forth in Paragraphs R and S, above. Payment of the PFBC assessment of \$12,424.00 shall be by corporate check, or the like, made payable to the "**Pennsylvania Fish and Boat Commission**," and sent c/o Ronald C. Eberts, Jr., Environmental Protection Compliance Specialist, DEP-SCRO Waterways and Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

4. **Findings.**

a. Sunoco agrees that the findings in Paragraphs A. through O. are true and correct, and in any matter or proceeding involving Sunoco or any of their affiliates and the Department, and the PFBC, Sunoco shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the Findings in this CACP in any matter or proceeding.

5. **Remedies.** In the event that Sunoco fails to make the payment required by this CACP, all remaining payments shall be immediately due and payable. In that event, the Department and the PFBC may pursue any remedy available for failure to pay a civil penalty, including an action for breach of contract or the filing of this CACP as a lien in any county in this Commonwealth.

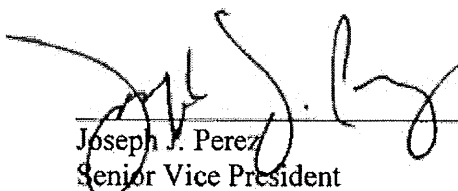
6. **Reservation of Rights.** The Department and the PFBC reserve all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings. Sunoco reserves the right to challenge any action which the Department or the PFBC may take but waives the right to challenge the content or validity of this CACP.


7. **Execution of Consent Assessment of Civil Penalty.** This CACP may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. The delivery by any party hereto of a telecopy, facsimile, or PDF by email signature shall have the binding effect as the delivery of an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Assessment of Civil Penalty to be executed by their duly authorized representatives. The undersigned representatives of Sunoco certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Assessment of Civil Penalty on behalf of Sunoco; that Sunoco consents to the entry of this Consent Assessment of Civil Penalty as a final ORDER of the Department and the PFBC; and that Sunoco hereby knowingly waives its right to appeal this Consent Assessment of Civil Penalty and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by Sunoco's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR SUNOCO PIPELINE, L.P.:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:


Joseph J. Perez
Senior Vice President
Date 7/22/2021


Domenic Rocco, P.E.
Environmental Program Manager
Date 7/26/21

[SIGNATURES CONTINUED ON PAGE 10]

Diana A. Silva
Diana A. Silva, Esq. Date 7/26/2021
Attorney for Sunoco Pipeline, L.P.

Nels J. Taber 8/3/2021
Nels J. Taber Date
Senior Litigation Counsel

FOR THE PENNSYLVANIA FISH AND
BOAT COMMISSION:

CPT. Anthony J. Quarracino 07/27/21
Anthony J. Quarracino, Jr. Date
PFBC SCRO Captain