

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

Sunoco Pipeline L.P.
535 Fritztown Road
Sinking Springs, PA 19608

: Violations of The Clean Streams Law
: and DEP Chapter 93 and 102 of Title 25 of
: the Pennsylvania Code, and the Dam Safety
: and Encroachments Act and DEP
: Chapter 105 of Title 25 of the
: Pennsylvania Code

: PA Pipeline Project - Mariner East II
: E&S Permit Nos. ESG0100015001;
:
: Temporary Discharge Authorization
:
: WO&E Permit Nos. - E15-862

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty ("CACP") is entered into this 6th day
of July, 2023, by and between the Commonwealth of Pennsylvania, Department
of Environmental Protection ("Department" or "DEP"), and Sunoco Pipeline L.P. ("Sunoco").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce
The Clean Streams Law, the Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 - 691.1001
("Clean Streams Law"); the Dam Safety and Encroachment Act, the Act of November 26, 1978 P.L.
1375, as amended, 32 P.S. §§ 693.1 - 6393.27 ("Dam Safety and Encroachment 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 ("rules and
regulations").

B. 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. Sankar R. Devarpiran is Senior Vice President – Engineering & Special Projects of the General Partner. Mr. Devarpiran has been granted authority to sign documents for the General Partner in its capacity as the general partner of Sunoco, on behalf of Sunoco.

C. Sunoco owns and operates numerous pipelines in Pennsylvania used to transport petroleum and natural gas products. Sunoco has undertaken an effort 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 completed pipeline installation activities and is in the process of completing restoration work in seventeen counties in Pennsylvania, including Chester County.

D. Sunoco obtained Erosion and Sediment Control Permit, Permit Number ESG0100015001, and Water Obstruction and Encroachment Permit, Permit Number E15-862, to construct PPP-ME2 through Chester County.

E. The work area for PPP-ME2 in Chester County, Pennsylvania includes, but is not limited to, approximately 24 miles of pipeline construction. Sunoco conducted earth disturbance activities to install a portion of the pipeline in West Whiteland Township utilizing a guided auger bore, including in an area along Briar Road (“Briar Road Site”). The guided auger bore installation at the Briar Road Site was identified as, among other things, WL-B71, Exton Library Site, and Boring Site 381. Sunoco initially proposed the installation of 16” and 20” pipes in this area and adjacent locations as a longer installation segment of 4,888 linear feet to be completed via Horizontal Directional Drilling (“HDD”), referred to as the Swedesford Road HDD, HDD No. S3-0381. Following reassessment of that longer installation segment for the pipelines, pursuant to terms of the Corrected Stipulated Order

("Stipulated Order") entered by the Environmental Hearing Board ("EHB" or "Board") on August 10, 2017 for this HDD, and submission of a report and revised plans to the Department for review and approval, the installation method for the portion that became the Briar Road Site was modified to the guided auger bore method of pipeline installation.

F. On February 22, 2018, the Department approved Sunoco's Re-evaluation Report for the Swedesford Road (HDD No. S3-081) pipeline segment. The approved Re-evaluation Report replaced the original 4,888-foot HDD installation with a series of open cut/trenched installations, a 953-foot HDD segment (referred to as S3-0382), and five conventional auger bores, subject to obtaining modifications to Permit Number ESG0100015001 and Permit Number E15-862. Permit modifications approving the proposed redesign were issued by DEP on August 16, 2018. On June 29, 2020 the Department approved SPLP's minor permit amendment request to modify the installation method under Wetland WL-B71 for the 16-inch and 20-inch pipelines from separate conventional bores to one conventional bore using a 48-inch casing and the two pipes bundled inside, and to change to the limit of disturbance and proposed dewatering activities, including discharge of groundwater to Valley Creek. Preparation work began in the end of January 2020, and the guided auger bore commenced on January 4, 2021. On September 17, 2020, Sunoco applied for minor modifications to the Permit to conduct geotechnical investigation activities, anomaly remediation and expand the Limit of Disturbance in the area of Wetland WL-B71. The modification request was approved on November 19, 2020.

G. The receiving waters for the Briar Road Site are an unnamed tributary ("UNT") to Valley Creek (Ship Road Run/S-B79), Valley Creek (S-B81), and its associated Wetland (WL-B71). The portion of Valley Creek which receives water from the Site has a designated water use listed as Cold Water Fishes, Migratory Fishes ("CWF, MF"), pursuant to Section 93.9g of the Department's regulations, 25 Pa. Code § 93.9g.

H. On April 4, 2021, and April 14, 2021, the Department conducted inspections of sediment laden runoff from the dewatering facility at the Briar Road Site. The Department observed sediment and sediment laden runoff discharging into and across Wetland (WL-B71), an UNT to Valley Creek (Ship Run Road/S-B79), and Valley Creek (S-B81), Waters of the Commonwealth.

I. On April 9, 2021, Sunoco submitted its plan to address the situation set out in Paragraph H above. This plan proposed the use of flocculants, weir tanks, and sand filters before discharge to the sediment bag BMP on the existing plan.

J. The Department issued a Temporary Discharge Authorization ("TDA") dated April 22, 2021 (amended and reissued on May 6, 2021, and on June 10, 2021), authorizing a temporary discharge of groundwater dewatering during excavation of the bore pit at the Briar Road Site, which was then pumped through a dewatering system that consisted of a static mixer system, a series of weir tanks, sand filters, sediment filter bags, and erosion and sediment perimeter controls, through which the groundwater ultimately discharged to Valley Creek (CWF, MF) (also referenced as S-B81) or its tributary, Ship Road Run (sometimes referred to as an UNT and also referenced as S-B79), Waters of the Commonwealth, in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the approval.

K. On June 2, 2021, and June 3, 2021, the Department became aware of a discharge of sediment laden water from the temporary treatment system at the Briar Road Site. On June 3, 2021, the Department conducted an inspection at the Site. The Department observed sediment laden water being discharged into and across the Wetland (WL-B71), an UNT to Valley Creek (Ship Run Road), and Valley Creek (S-B81), Waters of the Commonwealth. The Department issued a Notice of Violation to Sunoco on June 4, 2021 regarding these observations, to which Sunoco responded on June 7, 2021.

L. On July 7, 2021, July 12, 2021, July 14, 2021, July 31, 2021, and August 5, 2021, in accordance with permit requirements, Sunoco reported incidents to the Department, who thereafter conducted inspections of Sunoco's Briar Road Site that included four separate incidents of subsidence that occurred within the Wetland (WL-B71) and one that occurred within Valley Creek (S-B81). The Department observed areas of subsidence and Sunoco excavating and depositing flowable fill into the subsidences in the Wetland (WL-B71) and Stream (S-B81), Waters of the Commonwealth, without first obtaining prior approval or a permit from the Department to excavate or place flowable fill into the Wetland (WL-B71) or Stream (S-B81). The flowable fill was placed into the subsidence areas in order to stabilize the areas. The fill was placed in accordance with the "Void Mitigation Plan for Karst Terrain and Underground Mining Plan" ("Void Plan"). The grouting and stabilization work that Sunoco performed following the subsidence events was completed under the oversight of the Public Utility Commission (PUC), the Department, and their respective representatives, and was necessary to mitigate risks to existing pipelines in the area. The Department issued a Notice of Violation to Sunoco on August 17, 2021 regarding its observations for the above subsidence, excavation, and fill incidents, to which Sunoco responded on September 24, 2021.

M. On August 27, 2021, August 30, 2021, and again on September 3, 2021, in accordance with permit requirements, Sunoco reported incidents to the Department, who thereafter conducted inspections of the Briar Road Site that included two separate incidents of subsidence that occurred within Valley Creek (S-B81). On August 27, 2021, the Department observed Sunoco excavating the stream and depositing flowable fill into the subsidence areas to stabilize the areas. On August 30, 2021, the Department observed that the flume pipe was installed but the majority of the water was being pumped through the pipe rather than being passively flumed. On September 3, 2021, a Department inspection observed that the hole resulting from the subsidence was excavated and the extent of the void was being filled with grout. It was also observed that Sunoco had dug two trenches

to vacuum the water and was pumping grout into the toe of the embankment. The deposit of flowable fill was accomplished in accordance with the Void Plan. The grouting and stabilization work that Sunoco performed following the subsidence events was undertaken to mitigate risks to existing pipelines in the area. The grouting and stabilization work was completed under the oversight of the PUC, the Department, and their respective representatives. The excavation of the area and placement of flowable fill into Valley Creek (S-B81) to stabilize the area was conducted without first obtaining a permit from the Department. On September 1, 2021, the Department issued a Notice of Violation to Sunoco regarding its observations of the August 27, 2021 subsidence, excavation, and fill incident, and on September 10, 2021, the Department issued a Notice of Violation to Sunoco regarding its observations of the September 3, 2021 subsidence, excavation, and fill incident. Sunoco responded to the September 1, 2021 NOV and to the September 10, 2021 NOV on September 24, 2021.

N. Discharge Monitoring Reports ("DMRs") submitted for May 2021 through October 2021 by Sunoco revealed nine (9) violations of the effluent limitations set forth in the TDA, as detailed in Attachment A.

O. On February 8, 2022, the Department conducted an administrative file review of the monitoring results submitted by Sunoco, as required by the TDA, and found that there was a failure by Sunoco to collect two samples per operational week during the week of August 22, 2021.

P. Sunoco's conduct in causing or allowing pollutants including accelerated erosion and resulting sedimentation into Waters of this Commonwealth by earth disturbance activities at the Site constitutes unlawful conduct under Sections 401 and 611 of The Clean Streams Law, 35 P.S. §§ 691.401 and 691.611.

Q. Sunoco's failure to obtain permit authorization prior to excavating and placing flowable fill into Wetland (WL-B71) and Valley Creek (S-B81) violates Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a) and 25 Pa. Code § 105.11(a), and constitutes

unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18 and Sections 402 and 611 of The Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

R. Sunoco's unpermitted discharges from the bore pit dewatering operation that contain sediment, including orange-colored colloidal clay, that discolored the tributary and Valley Creek, was deposited in Wetland WL-B71 and on the banks of the tributary and Valley Creek, constitutes "Pollution" under Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

S. The discharge of sediment from the bore pit dewatering operation to Waters of the Commonwealth is in violation of Sections 401, 402 and 611 of the Clean Stream Law, 35 P.S. §§ 691.401, 691.402 and 691.611.

T. Failing to comply with the TDA, and DEP Permits E15-862 and ESG 01 000 15 001, constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Dam Safety and Encroachment Act, 32 P.S. § 693.18.

U. Wetland WL-B71, Valley Creek and Ship Road Run, are each a "Body of Water" as defined under Section 3 of the DSEA, 32 P.S. § 693.3, and a "Regulated Water of this Commonwealth" as defined in 25 Pa. Code § 105.1.

V. Sunoco's excavations in Wetland WL-B71, Valley Creek, and Ship Run Road constitute an "Encroachment" as that term is defined at Section 3 of the DSEA.

W. Sunoco's placement of flowable fill into Wetland WL-B71, Valley Creek, and Ship Run Road constitutes a "Water Obstruction" as that term is defined at Section 3 of the DSEA, 32 P.S. § 693.3.

X. Sunoco's excavation and placement of the flowable fill within Wetland WL-B71, Valley Creek, and Ship Run Road without first obtaining a permit from the Department constitutes a violation of Section 6(a) of the DSEA, 32 P.S. § 693.6(a), and 25 Pa. Code § 105.11(a).

Y. Wetland WL-B71, Ship Road Run, and Valley Creek are each a "Surface Water" and a "Water of the Commonwealth" as those terms are defined, respectively, in 25 Pa. Code § 92a.2 and Section 1 of the CSL, 35 P.S. § 691.1.

Z. Sunoco's excavation of portions of Wetland WL-B71, Valley Creek, and Ship Road Run and subsequent placement of flowable fill into those waterbodies without a permit constitutes "Pollution," as those terms are defined Section 1 of the CSL, 35 P.S. § 691.1, in violation of Sections 401 and 402 of the CSL, 35 P.S. §§ 691.401 and 691.402.

AA. Special Condition Q of Permit E15-862 provides that "all disturbed areas are to be restored, stabilized, and replanted with indigenous plant species" and that "excess fill from disturbed areas and construction activities shall be located outside of the floodway, floodplain and wetlands."

BB. Special Condition X of Permit E15-862 specifies that the permittee "shall avoid wetland impacts, to the extent practicable, and minimize any such impacts." This Condition further specifies that "[e]xcess fill shall not be deposited in any wetland, watercourse, floodway, floodplain, or other body of water."

CC. Section 401 of the Clean Streams Law, 35 P.S. § 691.401, provides that: "It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance."

DD. Section 402(b) of the Clean Streams Law, 35 P.S. § 691.402(b), states "Whenever a permit is required by rules and regulations issued pursuant to this section, it shall be unlawful for a person or municipality to conduct the activity regulated except pursuant to a permit issued by the department. Conducting such activity without a permit, or contrary to the terms or conditions of a

permit or conducting an activity contrary to the rules and regulations of the department or conducting an activity contrary to an order issued by the department, is hereby declared to be a nuisance.”

EE. Section 91.34(a) of the Department’s rules and regulations, 25 Pa. Code § 91.34(a), states: “Persons engaged in an activity which includes the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants shall take necessary measures to prevent the substances from directly or indirectly reaching waters of this Commonwealth, through accident, carelessness, maliciousness, hazards of weather or from another cause.”

FF. The discharges of pollutants, including turbid water and sediment from the groundwater dewatering system resulting in pollution in Waters of the Commonwealth, as described in Paragraphs H, K, L, and M herein, were not otherwise authorized by permit or regulation, and thus constitute violations of Sections 401 and 402(b) of the Clean Streams Law, 35 P.S. §§ 691.401 and 402(b).

GG. The discharges of pollutants, as described in Paragraphs K, L, M, and N herein, were contrary to the terms and conditions of the TDA and not otherwise authorized by permit or regulation, and thus constitute violations of the TDA and Sections 401 and 402(b) of the Clean Streams Law, 35 P.S. §§ 691.401 and 402(b).

HH. Sunoco’s failure to conduct sampling as required by the TDA, as noted in Paragraph O, constitutes a violation of Section 402(b) of the Clean Streams Law, 35 P.S. § 691.402(b).

II. Sunoco’s failure to take appropriate measures to prevent the release of a polluting substance from being released to Waters of the Commonwealth, as set forth in Paragraphs H, K, L, and M, is a violation of 25 Pa. Code § 91.34(a).

JJ. The violations described in Paragraphs H, K, L, M, N, O, P, Q, R, S, T, FF, GG, HH, and II constitute unlawful conduct under Sections 401, 402, and 611 of the Clean Streams Law, 35 P.S. §§ 691.401, 691.402, and 691.611; a statutory nuisance under Sections 401 and 601 of the Clean

Streams Law, 35 P.S. §§ 691.401 and 691.601; and subject Sunoco to civil penalty liability under Section 605 of the Clean Streams Law, § 691.605.

KK. The subsidence, excavation, and filling of grout in a watercourse are each an unpermitted encroachment and water obstruction in violation of 25 Pa. Code § 105.11(a). These violations are described in Paragraphs L, M, Q, T and X.

LL. The violations in Paragraphs L, M, Q, T, and X constitute unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18, and subject Sunoco to a claim of civil penalty under Section 21 of the Dam Safety and Encroachments Act, 32 P.S. § 693.21.

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

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 \$270,000.00 which Sunoco hereby agrees to pay.

2. **Civil Penalty Settlement.** Sunoco consents to the assessment of the civil penalty assessed in Paragraph 1, which shall be paid in full upon signing. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs P – LL, above, covering the period from April 4, 2021 to the date of execution of this CACP. The payments shall be by corporate check(s) or the like, made payable to the following: TWO HUNDRED AND SEVENTY THOUSAND DOLLARS (\$270,000.00) to the "Commonwealth of Pennsylvania." The payment of shall be divided between the Department's Special Funds as follows: a) ONE HUNDRED FIFTY-THREE THOUSAND EIGHT HUNDRED AND FIFTY DOLLARS (\$153,850.00) shall be deposited to the "Clean Water Fund"; b) ONE HUNDRED AND FIFTEEN THOUSAND DOLLARS

(\$115,000.00) to the "Dams and Encroachments Fund"; and c) ONE THOUSAND ONE HUNDRED AND FIFTY DOLLARS (\$1,150.00) to the "Chester County Conservation District". All checks shall be sent c/o Robert Page, Environmental Group Manager, DEP Waterways and Wetlands Program, 2 E. Main Street, Second Floor, Norristown, PA 19401.

3. Findings.

a. Sunoco agrees that the findings of fact set forth above 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, 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.

4. 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 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.

5. Reservation of Rights. The Department reserves 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 may take but waives the right to challenge the content or validity of this CACP.

IN WITNESS WHEREOF, the parties have caused the CACP 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 CACP on behalf of Sunoco, that Sunoco consents to the entry of this CACP as an ASSESSMENT of the Department; that Sunoco hereby knowingly waives any right to a hearing under the statutes referenced in this CACP; and, that

Sunoco knowingly waives its rights to appeal this CACP, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Sunoco's attorney certifies only that this CACP has been signed after consulting with legal counsel.

FOR SUNOCO PIPELINE L.P.:



6/20/2023

Sankar R. Devarpiran Date
Senior Vice President
Engineering & Special Projects
Support of the General Partner



6/22/2023

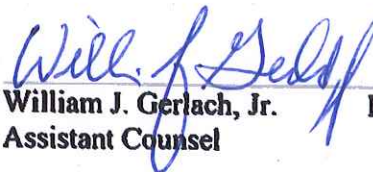
Curtis N. Stambaugh Date
Attorney for Sunoco Pipeline, L.P.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



7/6/2023

Domenic Rocco, P.E. Date
Director
Regional Project Coordination Office



7/6/23

William J. Gerlach, Jr. Date
Assistant Counsel