

March 31, 2020



By Email

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**Re: Sunoco's response to the Department's request for information on HDD PA-CH-0124.0000-RD (HDD# S3-0310)**

Dear Mr. Hohenstein,

On February 26, 2020, the Department requested additional information from Sunoco regarding its reevaluation ("Report") of the horizontal directional drilling ("HDD") indicated by drawing number PA-CH-0124.0000-RD (the "HDD Site"). Sunoco responded to the February 26, 2020 email on March 5, 2020, revising the Report. Pursuant to the Corrected Stipulated Order entered on EHB Docket No. 2017-009-L on August 10, 2017 ("Order"), and on behalf of Clean Air Council, Mountain Watershed Association, Inc., and the Delaware Riverkeeper Network ("Appellants"), please accept these comments regarding Sunoco's March 5, 2020 supplemental response ("March Response").

**1. Appellants received no notice of the March Response.**

Neither Sunoco nor the Department provided any notice to Appellants of the supplemental response or the associated comment deadline. Appellants learned of the deadline by reviewing the HDD Reevaluation Table on the Department's website during the pendency of the comment period. Appellants do not at this time know whether neighbors received any notice either. Please resume the normal practice of providing notice.

**2. The Department should not be approving additional HDD re-evaluations at this time.**

A pandemic is sickening the world. Business as usual has stopped in Pennsylvania. Though Sunoco has been trying to continue operating as if we were in normal times, we are not. Governor Wolf has shut down non-life-sustaining work. One would have to dig deep to find work less life-sustaining than a pipeline designed to export plastics feedstocks to Europe. The urgency of staying inside and avoiding spread of COVID-19 should far surpass that of authorizing new construction on the dangerous and controversial Mariner East 2 pipelines.

The virus has hampered the Department as well, forcing all of the Department's offices closed, requiring cancellations of planned meetings and hearings, and even leading to a suspension of regulations. See <https://www.dep.pa.gov/Pages/AlertDetails.aspx>. The

Department reports that it has limited inspection capacity right now: “To limit exposure to and spread of the virus, DEP is currently prioritizing field inspections that are critical to public health and safety.” *Id.* The Department is asking permittees to limit work, “encourag[ing] operators of essential industries to employ social distancing practices and limiting activities as possible.”

Authorizing a *new* activity at this time—especially one by an operator which has required an enormous amount of Department resources to oversee—would be unwise. The Department would not have the staffing to inspect the sites frequently enough, and Sunoco has an ongoing history of failing to affirmatively report problems to the Department. Pennsylvania residents quarantined near worksites would be especially at risk, and left relatively unprotected by the Department. To add insult to injury, the U.S. EPA has just announced that it is suspending enforcement of certain federal regulations as well.

For all of these reasons, the Department should not be authorizing further new construction activities on Mariner East 2 at this time. Residents’ health and welfare is at stake. The Department should suspend consideration of this re-evaluation until such time as the Commonwealth has moved beyond the COVID-19 crisis and business can resume as before.

**3. The Order does not allow Sunoco to rely in its Report on non-public information, and geophysical survey results are not confidential.**

The Order plainly provides at Paragraph 7 that Sunoco will provide the same re-evaluation report information to Appellants and neighboring landowners as it does to the Department. There is no provision allowing Sunoco to provide information to the Department that it does not provide to Appellants and neighboring landowners. Yet in the March Response, Sunoco writes: “The final geophysical survey report is considered Confidential Security Information, and was separately transmitted to the Department by counsel this afternoon.” This is impermissible. The Department must publish this information and provide it to Appellants and the appropriate neighboring landowners to review and comment on.

Furthermore, the claim that geophysical survey information is confidential is patently absurd. Sunoco has made such information public in numerous other instances. The following table shows those instances:

Document	Date
Re-Evaluation of S2-142/ PA-BL-0136.000-RD	12/28/2017
Re-Evaluation of S2-210-16/ PA-CU-0136.0002-WX-16	2/6/2019
Re-Evaluation of S3-0101/ PA-LE-0055.0000-RD-16	2/7/2019
Re-Evaluation of S3-0250/ PA-BR-0181.0000-RD-16	3/7/2019
Re-Evaluation of S2-0220/ PA-CU-0136.0003-RD-16	3/7/2019
Re-Evaluation of S2-0247/ PA-CU-0176.0019-RD-16	3/7/2019
Re-Evaluation of S2-0247/ PA-CU-0176.0019-RD-16	5/3/2019
Re-Evaluation of S3-0620/ PA-DE-0100.0000-RR	5/17/2019
Re-Evaluation of S3-0011/ PA-DA-0005.0000-RD-16	5/23/2019
Re-Evaluation of S3-0290/ PA-CH-0100.0000-RD	5/28/2019

Re-Evaluation of S3-0400/ PA-CH-0256.0000-RR	5/30/2019
Re-Evaluation of S3-0320/ PA-DE-0104.0008-WX	6/6/2019
Re-Evaluation of S2-0240/ PA-CU-0136.0020-RD-16	6/10/2019
Re-Evaluation of S3-0300/ PA-CH-0111.0000-RD	6/20/2019
Re-Evaluation of S2-0156/ PA-JU-0004.0000-WX-16	8/19/2019
Re-Evaluation of S3-0101/ PA-LE-0055.0000-RD-16	8/29/2019
Re-Evaluation of S2-0121/ PA-BL-0001.0048-RR	9/19/2019
Re-Evaluation of S3-0500/ PA-CH-0370.0000-RD	9/19/2019
Re-Evaluation of S3-0471/ PA-CH-0326.0006-RD	9/26/2019
Re-Evaluation of S3-0421/ PA-CH-0290.0000-RD	12/17/2019
Re-Evaluation of S3-0300/ PA-CH-0111.0000-RD	2/4/2020

This email is also the first time Appellants have seen *anyone* suggest that *any* geophysical information is confidential. All it shows is what the earth looks like underground. There is no plausible claim to confidentiality. Sunoco does not even attempt to concoct such a claim in its March Response.

The Order requires that Appellants and the public have access to this information, so the Department should provide it so that it can be publicly evaluated before a decision is made, as Judge Labuskes ordered.

**4. Sunoco has not shown that removing the temporary casing would not cause ground collapse.**

Ground collapse has been a frequent problem with Mariner East construction, especially in Southeast Pennsylvania. In its February email, the Department reasonably asked Sunoco to provide an explanation demonstrating how it would prevent ground collapse after removing the casings, if the casings were temporary. Indeed the casings would be temporary, Sunoco responded, so long as it checked and ensured that their removal would not cause problems.

While Sunoco’s response is better than nothing, it is a broad and unspecific response that does not directly answer the question, and is not reassuring based on Sunoco’s track record. Sunoco provides four points it says it will consider: Doing an inspection for subsidence (Sunoco’s point 1) around the casing before it is pulled out does not answer what will prevent subsidence once it is pulled out. “[R]eview of any issues encountered during the pipe pull” (point 2) is too broad to mean anything. “[A]bility to pull the casing without adverse effect to the installed pipe” (point 3) is essentially just restating the question. And “the logistics and effectiveness of providing suitable replacement materials (such as backfill soils or grout) following the casing removal” is an issue, not a strategy.

The Department should require Sunoco to give a complete and responsive explanation *demonstrating* that it will be able to prevent sinkholes, not just that it will look at some issues related to sinkholes at a future time.

Thank you for considering these comments. Please keep Appellants apprised of any next steps.

Sincerely,

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