

May 19, 2018

By Email

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Re: Sunoco’s May 12, 2018 letter regarding PA-CH-0413.0000-RD

Dear Mr. Hohenstein:

On May 12, 2018, Sunoco submitted a letter to the Department in response to the Department’s March 13, 2018 request for additional information regarding horizontal directional drilling (“HDD”) Site PA-CH-0413.0000-RD (“Site”). 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”), we respectfully submit these comments in reply. Our comments mirror point by point (for most points) the requests and responses from the Department and Sunoco.

Points 2 and 31 (Sunoco’s consideration of recommendations from GES Report)

The GES Report accompanying Sunoco’s re-evaluation report (“RR”) sets forth a set of recommendations made by the Professional Geologist for moving forward with HDD at the Site. The Department has asked Sunoco to follow these recommendations. Sunoco appears to have refused to commit to any of them.

Sunoco’s response is alluded to in Point 2 and contained in Point 31. In its continuing efforts to appear as though it is responding to the Department’s requests without actually doing so, Sunoco has responded point-by-point to the recommendations without saying it will follow any. Some it brushes aside as “not a geology or hydrogeology task related to the success or failure of the proposed HDDs.” This is not a response. It also appears untrue. It is unclear why, for example, Sunoco considers flooding of the HDD entry point to not be related to the success or failure of the proposed HDDs.

Sunoco’s responses to the Professional Geologists’ recommendations that door-to-door surveying be performed, a plan for providing alternative water supplies be developed, and the survey area be extended beyond 450 feet based on geological features are all similarly dismissive. This despite protection of water supplies clearly going to the very purpose of the

reevaluation. Sunoco indicates that agents will update information about water supplies as they are able. This leaves timing ambiguous. The Department should ensure all information regarding water supplies is collected and incorporated in plans prior to approval. The surveying of areas outside the 450-foot buffer that have high risk indicators of inadvertent returns and documentation of the water supplies on those properties must also be completed prior to approval.

Others recommendations Sunoco says are “included” or “listed” as a best management practice. However, that does not mean Sunoco will follow those recommendations. In its RR, Sunoco wrote, “The best management practices in the Reconsideration of the Horizontal Directional Drill section below, lists the measures that will *or may* be employed to minimize or prevent IRs and Loss of Circulation during implementation of these HDDs.” In other words, being a best management practice does not mean Sunoco will do it. This generalized, noncommittal approach to best management practices is especially concerning as Sunoco has consistently purported to follow best management practices throughout the last year of construction. Plainly that approach has been inadequate, as evidenced by Sunoco’s compliance and incident record.

A careful reading of Sunoco’s response shows that it has committed to nothing its geologists recommended. The Department should require Sunoco to actually commit to following the recommendations, which are sensible, as it originally requested.

Point 5 (“competent bedrock”)

In its RR, Sunoco wrote that one of the best management practices Sunoco “may” employ is “SPLP will mandate rotational drilling of the pilot hole until competent bedrock is reached, such that the initial drilling at entry is performed at fluid pressures less than those required to operate the mud motor drive.” Naturally, the Department inquired about “what could be considered ‘competent’ bedrock in each of the borings,” and asked for analysis.

Now, upon questioning, Sunoco plays dumb. “SPLP is not aware of any established regulatory or HDD industry definition of ‘competent bedrock.’” Sunoco fails to provide the requested analysis. Sunoco itself used the term “competent bedrock” in the BMP section of its RR. If Sunoco does not know what it means, that renders that BMP meaningless. The Department should require Sunoco to explain what, if anything, that BMP means.

Furthermore, in reevaluations of other sites, Sunoco has modified its plans specifically to ensure the drill would go through competent bedrock, because as Sunoco has explained, this reduces the risk of inadvertent return.

Points 6, 7, and 14 (surface geophysics and identification of points of weakness)

In response to the Department’s recommendation that surface geophysics be employed at this site, Sunoco claims geophysics will “provide no functional information.” Sunoco has not provided a sound basis for this conclusion. First, it seems to suggest that the geophysics it performed at a single previous site that was not located in karst was not useful. It has provided no information about that site, what studies were performed, or how that relates to the present

site. Sunoco's ambiguous anecdote is wholly unpersuasive.

Second, any suggestion that geophysics is useful at 15 ft to 60 ft bgs but not at 79 ft to 94 ft bgs grossly misrepresents the capabilities of geophysical methods. Depending on the methodology you use, it can provide effective information much deeper than 60 feet below ground surface. For just one example, at the following link, Spectrum Geophysics describes a study it conducted to determine depth to bedrock including as deep as 130 feet below ground surface. <https://spectrum-geophysics.com/bedrock.html>.

Sunoco's response appears intended to deceive the Department; it is a weak attempt, the Department request is on point. The Department should require the requested analysis to be performed. Sunoco has provided no convincing reason geophysics would not be effective or useful.

Furthermore, Sunoco does not identify the specific point of potential weak bedrock and soils that the Department requests Sunoco identify. It says it will discuss those "ahead of drilling, with a plan devised to address such zones." But it wants approval to start the HDD before it does so, for a reason it fails to explain. If Sunoco can do this now, it should do this now. Otherwise, Sunoco is merely dangling the carrot in front of the Department without any commitment.

Point 9 (site-specific information)

The Department asks for site-specific information in Point 9 and Sunoco responds in generalities about what usually occurs, using terms such as "typical" and "could be" and "vary." This is non-responsive. Likely this is because Sunoco has not decided what it will do. Now, rather than after approval, is the time for Sunoco to make those choices as the Department must evaluate them.

Point 12 (Terracon Report)

As a report which is an integral part of the RR is not yet in final form, the Department does not yet have the full set of information on which to base a decision to approve the start of this HDD. The Department should review the Terracon Report in final form when it is available before making a decision.

Point 13 (soil depth versus mud pressure)

The Department requests "discussion regarding sufficient depth of soil cover versus maximum allowable mud pressure" for certain areas of the HDD path. Sunoco has not provided that, instead disagreeing with the premise and saying that the driller will take care of the issue.

Of course, the purpose of this process is because IRs have occurred despite Sunoco's drillers being in charge of managing these issues. The Department should require Sunoco to provide the requested response.

Points 16.c. and 18 (water supply contamination response plan)

Sunoco writes, “Both the Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan (‘IR Plan’) and the Operations Plan require SPLP to offer alternative water supplies to landowners with water supply wells within 450 ft of the drill profile. Obviously, to the extent a landowner accepts this offer, their water supply should not be adversely affected during HDD activities.”

This is not obvious—in fact, it is not at all the case. Water well contamination and impairment is not a temporary matter that always resolves, leaving the supply owners free to start using their water supply good as new. The Department should reject the false presumption that offering a temporary water supply is a solution to property damage to third parties.

It should be stressed that Sunoco took most of the land for its pipeline from landowners under the threat of condemnation using eminent domain, or the actual use of eminent domain. These are third parties many of whom do not want this company tearing up their land to build these pipelines. The inability to use their own water supplies due to a Texas company’s forceful entry onto their property is an extreme circumstance. When Sunoco writes, “The best means to protect water well quality or quantity during the HDD is non-use,” Sunoco is attempting to normalize the theft of a third-party’s property rights—their ability to use their water supplies—for the purposes of Sunoco’s profits.

The best means to protect a water supply is to not violate the rights of the third parties in the first instance.

Point 27 and 33 (geological explanation for radius of impacted wells)

When asked to have a Professional Geologist sign off on its conclusion that wells outside of 150 feet will not be impacted, Sunoco claims that its “previous statement concerning the potential effects within 150 ft is now moot” due to the Consent Order & Agreement. This is both incorrect and troubling because Sunoco is failing to provide documentation to confirm questionable statements it has made to the Department and is failing to conduct an actual hydrogeological analysis of the Site, as required by the Order. Sunoco’s statement is incorrect because the provision of a temporary water supply does nothing to protect the private water supplies. It may stave off harm to landowners’ health during the course of the drilling, but still leave them with damaged or destroyed water supplies. Further, as explained by residents in previous comments, damage to a well affects the value and livability of the home, no matter the temporary band-aid provided.

The reality is, there is no sound hydrogeological basis for claiming that water supplies are only at risk within 150 feet of the HDD alignment. But because it was convenient here, Sunoco made that representation to the Department. Having been called on its misrepresentation, Sunoco wants to brush it aside rather than own up to the fact that it made statements to the Department for which there is no justification. Appellants believe it is important for the integrity of the administrative process that the Department not let Sunoco get away with submitting falsehoods to the Department as truths.

As importantly, Sunoco needs to have done a scientifically valid hydrogeological

evaluation of the Site. Sunoco withdrawing its very specific conclusion related to the critical issue of which wells might be impacted raises serious questions about the validity of its other scientific and hydrogeologic conclusions. The Order is not moot regardless of the Consent Order and Agreement. The Order requires scientific analysis including “analysis of well production zones.” These analyses need to be accurate and scientifically defensible. As it stands, neither the Department nor the public has any way of knowing how many wells may be impacted. Wells even outside of 450 feet from the alignment may be at risk, especially given the recommendation of Sunoco’s geologist that additional surveying be conducted beyond that radius because of geological features such as fractures that increase the risk of IRs.

Points 28 and 29 (replacement water)

The Department asked Sunoco to provide proof of the agreements entered with landowners regarding replacement water supplies. Sunoco has indicated such agreements have not been reached and that is re-contacted the landowners. Until this process is complete and the requested documentation has been provided to the Department, this plan should not be approved.

Point 36 (private well production zones and impacts)

a. (analysis of well production zones)

Sunoco has refused time and again to provide an analysis of well production zones. This time, it has nevertheless set forth a plan that is all but certain to result in releasing industrial waste into groundwater: “Based upon known information, the majority of the HDD profile will be within the groundwater zone, and within a perpendicular distance of the HDDs such that use of the wells could result in the draw of diluted drilling fluids into the well.” This is a brazen admission. Groundwater is a water of the Commonwealth and must be protected. As Sunoco well knows from its long and growing list of violations, releasing drilling fluid into a water of the Commonwealth is unlawful. Even setting aside the Clean Streams Law though, the HDD IR Plan requires drilling to be stopped if a water supply is contaminated or if groundwater surfaces. Thus, if this plan is approved, drilling at this site is destined to be stopped anyway. If the Department then approves restart, surely, given the geology, the same problems will emerge and a dragged out series of stops and restarts and contamination incidents will be underway. In the meantime, water supplies and property will be damaged. The Department has an opportunity prevent this now by not authorizing the current plans instead of just reacting as the mess unfolds.

d. (water quality testing)

The water quality results provided by Sunoco are merely a summary and fail to demonstrate compliance with the requirements of the Water Supply Plan. The table provided does not even include dates to show when testing took place. Full lab reports must be provided to the residents and the Department and it is not clear this has happened. The summary also indicates that a number of wells were not analyzed for E. coli, total coliform, and fecal coliform. Testing

for such pathogens is explicitly required by the Water Supply Plan. Sunoco cannot rely on the incomplete tests it has summarized and landowners should be made aware that they are entitled to not only whatever testing Sunoco may have completed, but specifically testing for these bacteria. Bacterial contamination has been of particular concern for residents in the pipelines' path and for good reason; there is no question that it poses a risk to health. No plans can be approved for this site until the required testing is completed for all locations.

Thank you for considering these comments. Please keep us apprised of your next steps on this HDD Site.

Sincerely,

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