



November 16, 2017

NOTICE OF VIOLATION

Mr. Matthew Gordon
Sunoco Pipeline, L.P.
535 Fritztown Road
Sinking Springs, PA 16908

Andrew Mack
Welded Construction, L.P.
P.O. Box 470
Perrysburg, OH 43552

Re: Violations of The Clean Streams Law, and the
Dam Safety and Encroachments Act
Pennsylvania Pipeline / Mariner East II Project
DEP Permit Nos. ESG0300015002 and E06-701
DEP File No NOV 06 17 102
New Morgan Borough, Berks County

Dear Mr. Gordon and Mr. Mack:

On November 11, 2017, the Department of Environmental Protection (“Department”) received notice of a release of sediment to an unnamed tributary (“UNT”) to Hay Creek (S-Q90) in New Morgan Borough, Berks County (“Site”). On November 13 and 14, 2017, the Berks County Conservation District (“BCCD”) conducted inspections of the Site and documented that an inadvertent return (“IR”) of drilling fluids had occurred within an UNT to Hay Creek (S-Q90), a water of the Commonwealth, as a result of Horizontal Direction Drill (“HDD”) activities at this location. Hay Creek is a Class A wild trout fishery and the Hay Creek basin is classified as an Exceptional Value Waters in 25 Pa. Code § 93.9(f). The drilling fluids that comprised the IR constitute Industrial Waste. The discharge of Industrial Waste to waters of the Commonwealth without a permit is a violation of Section 301 of The Clean Streams Law, 35 P.S. § 691.301. The Department did not authorize any IRs at the Site by permit or other authorization. Further, the Department did not authorize the crossing of the UNT to Hay Creek (S-Q90) using HDD methodology.

Department permits ESG030015002 and E06-701 require permittee(s) to follow their ‘*HDD Inadvertent Return, Preparedness, Prevention, and Contingency Plan*’, (“IR PPC Plan”) that is part of the approved plans in the aforementioned permits to reduce, minimize, or eliminate a pollution event. The IR PPC Plan, E06-701, and ESG030015002 contain the following requirements:

- A. Immediately notify the pertinent Department Regional Office 24-hour Emergency Response Line of an IR. For the Southcentral Office, the number is 866.825.0208. No such notification was made.
- B. Notify the Department at least 24 hours prior to the beginning of each HDD, including conventional boring under waters of the Commonwealth. No such notification was made.
- C. Submit an initial report of the IR to the Department using Attachment B of the IR PPC Plan. No such report has been submitted.
- D. Obtain an amendment to E06-701 prior to deviating from the construction methodology or project design that is shown on the approved drawings. The crossing of S-Q90 was approved as a dry stream crossing/open cut. No permit amendment was obtained prior to altering the construction methodology to an HDD.

Allowing the unauthorized discharge of Industrial Waste to waters of the Commonwealth, failing to obtain a Chapter 105 permit, failing to comply with permit conditions, and failing to perform work according to permit specifications, constitutes a violation of Section 301 of the Clean Streams Law, 35 P.S. § 691.301 and constitutes 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.

In order to develop an appropriate enforcement strategy, the Department requests that you submit the following to the attention of Ronald Eberts by email at reberts@pa.gov by November 22, 2017:

1. IR reporting form(s) for the Site—as required by the Section 6.3 of the IR PPC Plan.
2. A detailed description, including photos documenting current Site conditions, of the actions taken to contain and remove the IR from waters of the Commonwealth and a plan for any additional measures necessary to complete remediation.
3. Daily construction logs, including drill logs, covering the time period from the commencement of HDD activities through present day. The logs should document the following for each day of activity: start and stop times of drill, stage of HDD process, approximate progress along the drill alignment, drill pressure, depth of cover, and any loss of pressure and/or drilling fluids, including volumes or percentages of diminished returns.

4. An assessment by a qualified professional geologist of the events, circumstances, and/or site conditions that caused or contributed to the IR. The assessment should also include a discussion and evaluation of the effectiveness of any and all measures that have been employed to prevent or minimize the occurrence of an IR at the Site, including, but not limited to, reduced drilling pressures, thickened drilling fluid mixture, and/or addition of pre-approved loss circulation materials. The assessment must be completed, signed, and sealed by a qualified professional geologist licensed to practice in the Commonwealth of Pennsylvania.
5. A proposed plan of action, including schedule, for completing pipeline construction at the Site. The plan should clearly indicate whether a permit amendment request for E06-701 will be sought for the altered construction methodology or if the current HDD activities will be properly abandoned to returned to the construction methodology already approved in E06-701.
6. A list of all pipeline crossings of a water of the Commonwealth along the entire Mariner East II Project where construction has been completed and/or initiated using a crossing methodology other than what was authorized by the initial permit approval or amendment thereto. At a minimum, the listing should include the following information:
 - Water Obstruction and Encroachment Permit number
 - crossing identifier (specifying 20-inch or 16-inch line),
 - county and municipality,
 - latitude and longitude for the beginning and end of each crossing,
 - approved construction methodology,
 - utilized construction methodology,
 - date of construction initiation,
 - date of construction completion,
 - stage of current construction if the crossing is not complete, and
 - for each HDD, including conventional boring under waters of the Commonwealth—the date that the Department was notified of the initiation of construction.

Please be reminded Department approval is required before restarting any HDD operations or any other crossing methodology at this location. Additionally, as an IR occurred during the first pipe installation at this location, a re-evaluation is required for any subsequent pipe installation in accordance with Paragraph 3 of the August 10, 2017 Corrected Stipulated Order.

This Notice of Violation is neither an order nor any other final action of the DEP. It neither imposes nor waives any enforcement action available to DEP under any of its statutes. If DEP determines that an enforcement action is appropriate, you will be notified of the action.

Mr. Matthew Gordon
Mr. Andrew Mack

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DEP looks forward to your cooperation in this matter. If you have any questions, please contact me at 717.705.4763.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Blosser". The signature is fluid and cursive, with a large initial "A" and "B".

Andrea Blosser
Environmental Group Manager
Conservation, Restoration, and Inspection Section
Waterways & Wetlands Program

cc: Brian Shields –Berks County Conservation District
Captain Raymond Bednarchik - PA Fish and Boat Commission, Southeast Region
Debby Nizer - US Army Corps of Engineers, Baltimore District
Chris Embry - Sunoco Pipeline, LP
New Morgan Borough