

**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 DEP Chapters 93 and 102 of Title 25 of
Sinking Springs, PA 19608	:	the Pennsylvania Code, and the Dam Safety
	:	and Encroachments Act and DEP Chapter
	:	105 of Title 25 of the Pennsylvania Code
	:	
	:	Pennsylvania Pipeline Project—Mariner East II
	:	E&S Permit No. ESCG0300015002
	:	WO&E Permit No. E21-449
	:	
	:	Middlesex Township, Cumberland County
	:	
	:	DEP File NOV 21 17 101

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 27<sup>th</sup> day of June 2017, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") 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, 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 et seq. ("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 ("rules and regulations") promulgated thereunder.

B. 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 Colella is the Executive Vice President for Sunoco Logistics Partners Operations GP LLC. Mr. Colella has been granted authority by Sunoco Logistics Partners Operations GP LLC to sign documents for Sunoco Pipeline L.P. on behalf of the General Partner.

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 is conducting pipeline installation activities in Cumberland County, Pennsylvania.

D. The work area for PPP-ME2 in Cumberland County, Pennsylvania includes, but is not limited to, two sites in Middlesex Township. The first site is located along the west side of Middlesex Road (SR 1005) between Interstate 81 and Interstate 76 (“I-81 Drill Site”). The second site is located between the north side of Interstate 76 and the Love’s Travel Stop at the intersection of Harrisburg Pike (SR 0011) and Pilot Drive (“Letort Drill Site”).

E. The receiving waters for discharges from the I-81 Drill Site are a tributary to Letort Spring Run and associated exceptional value wetland WL-I30, as defined at 25 Pa. Code § 105.17(1)(iii), are waters of the Commonwealth. The fishery classification for the Letort Spring Run basin in 25 Pa. Code § 93.9(o) is high quality cold water fishes (HQ-CWF).

F. The receiving waters for discharges from the Letort Drill Site are Letort Spring Run and associated exceptional value wetland WL-I32, as defined at 25 Pa. Code § 105.17(1)(iii), are waters of the Commonwealth. The fishery classification for the Letort Spring Run basin in 25 Pa. Code § 93.9(o) is high quality cold water fishes (HQ-CWF).

G. To construct PPP-ME2 through Cumberland County, Sunoco obtained the following permits from the Department:

1. an Erosion and Sediment Control Permit, Permit Number ESG0300015002, under 25 Pa. Code Chapter 102 and;
2. a Water Obstructions and Encroachment Permit, Permit Number E21-449, under 25 Pa. Code Chapter 105.

H. On May 6, 2017, Sunoco reported an inadvertent return (“IR”) of horizontal directional drilling (“HDD”) fluids (“drilling fluids”) to the surface of the ground at the I-81 Drill Site in Wetland WL-I30. HDD operations were stopped at the time of the IR. The drilling fluids, consisting of municipal water and sodium bentonite, were contained within the wetland in a 50 foot by 50 foot area by silt fencing. The drilling crew set up pumps and hoses to relay the drilling fluids back to drill rig site where the fluids were reused in the drilling process. Between May 6 and June 7, 2017, Sunoco estimated that the total returns recirculated from this IR totaled approximately 160,000 gallons of drilling fluids. Between May 6 and June 9, 2017, Sunoco reported an IR of drilling fluids had occurred within Wetland WL-I30 on thirteen (13) separate days, including: May 6, 8, 9, 10, 11, 12, 15, 27, 30, and June 5, 6, 8, and 9, 2017.

I. On May 19, 2017, Sunoco reported an IR of drilling fluids to the surface of the ground at the Letort Drill Site in Wetland WL-I32. HDD operations were stopped at the time of the IR. The drilling fluids, consisting of municipal water and sodium bentonite, were contained within the wetland using silt fencing and straw bales. Pumps and hoses were brought in to relay released drilling fluids to an original IR location in the upland area and then pumped back from that location to the drilling rig where the fluids were reused in the drilling process. On June 2, 3 and 5, 2017, additional IRs surfaced in Wetland WL-I32. The crew used similar containment measures to contain the IRs and pump the drilling fluids to the drilling rig. Sunoco estimated that the total returns recirculated from these IRs totaled approximately 450 gallons of drilling fluids. Between May 19 and June 9, 2017, Sunoco reported an IR of drilling fluids had occurred within Wetland WL-I32 on four (4) separate days, including: May 19 and June 2, 3 and 5, 2017.

J. The horizontal drilling fluids referenced in Paragraphs H and I, above, are

“pollution” and “industrial wastes,” as those terms are defined by Section 1 of the Clean Streams Law, 35 P.S. §691.1, and “residual wastes” as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103.

K. The discharge of Industrial Waste to waters of the Commonwealth without a permit is a violation of Sections 301 and 307 of the Clean Streams Law, 35 P.S. §§ 691.301 and 691.307.

L. Sunoco is not authorized by either DEP permits E21-449 or ESG030015002 to discharge drilling fluids to regulated waters of the Commonwealth at either the I-81 Drill Site or the Letort Drill Site.

M. DEP permits E21-449 and ESG030015002 require Sunoco to conduct HDD operations in a manner to prevent a release of drilling fluid to “Regulated Waters of this Commonwealth” (RWC). The permits also require Sunoco to remediate impacts to wetlands caused by inadvertent returns that occur during HDD operations. As of this date, Sunoco has not remediated the impacts to Wetland W-I30 and Wetland W-I32 caused by the IRs described above in Paragraphs H and I. Upon request by the Department, Sunoco voluntarily discontinued the HDD operations at both sites on June 9, 2017.

N. Sunoco’s discharge of drilling fluids, an Industrial Waste, to Wetland WL-I30 and Wetland WL-I32, as described above in Paragraphs H and I, constitutes a violation of Section 301 and 307 of the Clean Streams Law, 35 P.S. §§ 691.301 and 691.307.

O. The violations described in Paragraph M and N constitute unlawful conduct under Sections 401 and 611 of the Clean Streams Law, 35 P.S. §§ 691.401 and 691.611; a statutory nuisance under Section 601 of the Clean Streams Law, 35 P.S. § 691.601; and subjects Sunoco to

civil penalty liability under Section 605 of the Clean Streams Law, § 691.605. The violations in Paragraph M constitute unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18, and subjects 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 Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Sunoco as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35 P.S. § 691.5; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. Sunoco agrees that the findings in Paragraph A through I inclusive, and Paragraph M are true and correct and, in any matter or proceeding involving Sunoco 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 Consent Order and Agreement in any matter or proceeding.

3. Corrective Action.

a. Sunoco shall not resume horizontal directional drilling (“HDD”) activities at the I-81 Drill Site or the Letort Drill Site until the Department provides written authorization to resume HDD activities at the respective site. Sunoco shall be able to remove the drill bit and

string at the Letort Drill Site. Sunoco shall inform the Department at least 24 hours prior to resuming any HDD activities at the I-81 Drill Site or the Letort Drill Site.

b. On or before July 1, 2017, unless the Department approves a later date in writing, as required by Permit No. E21-449 special condition oo, Sunoco shall submit written plans for completion of HDD operations for the 20-inch line at both the I-81 Drill Site and the Letort Drill Site to the Department for review and approval. The written plans shall also consider all possible appropriate actions to be taken by Sunoco to eliminate, reduce, or control further IRs upon recommencement of HDD operations including, but not limited to, the use of: alternative drilling locations and/or depths, reduced drilling fluid pressures, thickened drill mud, pre-approved loss circulation materials, bore hole casing, and/ or relief wells. As Sunoco eliminates options from consideration, the written plan must include a detailed justification for doing so. The written plans shall include the proposed schedule for recommencement of HDD operations and the anticipated duration of the HDD operations.

c. On or before August 1, 2017, unless the Department approves a later date in writing, and before commencing with the activity, Sunoco shall submit revised alternatives analyses for the installation of the second 16-inch line at both the I-81 Drill Site and the Letort Drill Site (“Alternatives Analysis”) to the Department for review and approval. The Alternatives Analysis must address the second line installations at the I-81 Drill Site and the Letort Drill Site as “High Risk” HDD activities. If either of the submitted alternatives analyses concludes that HDD is the least impactful line installation method, it must also include site-specific measures that will be used to eliminate, reduce, or control any inadvertent returns to the maximum extent practicable.

d. On or before July 1, 2017, unless the Department approves a later date in writing, Sunoco shall submit a cleanup and restoration plan for the I-81 Drill Site and the Letort Drill Site (“Restoration Plan”) to the Department for review and approval to address all temporary and/or permanent impacts to waters of the Commonwealth that occurred between the date of commencement and the date of completion of HDD operations for the 20-inch line at both the I-81 Drill Site and the Letort Drill Site. In accordance with Permit No. E21-449 special condition bb, the Restoration Plan shall provide for at least three (3) years of monitoring after the restoration activities are completed. Sunoco shall submit to the Department monitoring reports under the Restoration Plan to the Department on a quarterly basis with monitoring reports due on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, and October 1<sup>st</sup> each year.

e. If the Department finds that Sunoco’s implementation of the Restoration Plan has failed to eliminate permanent impacts to waters of the Commonwealth, then Sunoco shall submit a mitigation plan for the I-81 Drill Site and/or the Letort Drill Site (“Mitigation Plan”) to the Department for review and approval to address all permanent impacts to waters of the Commonwealth that occurred between the date of commencement and the date of completion of HDD operations for the 20-inch line at both the I-81 Drill Site and the Letort Drill Site. The Mitigation Plan shall provide for replacement of the functions and values of all impacted wetlands at a minimum area of 0.25 acre or at a ratio of 2:1, whichever is greater, within the Letort Spring Run watershed. In accordance with Permit No. E21-449 special condition ff, the Mitigation Plan shall provide for at least five (5) years of monitoring after the restoration activities are completed.

f. Sunoco shall implement the Restoration Plan at Paragraph 3.d., above, immediately upon receipt of written approval from the Department unless the Department extends that timeframe in writing. If the Department determines that a Mitigation Plan is needed pursuant to Paragraph 3.e., then Sunoco shall implement the Mitigation Plan at Paragraph 3.e., above, within 90 days of receiving written approval from the Department, unless the Department extends that timeframe in writing.

g. The Department agrees to timely review the plans submitted by Sunoco pursuant to this Paragraph 3. In the event the Department determines that additional information, revisions, modifications, or amendments to the Alternatives Analysis, Restoration Plan, and/or Mitigation Plan are necessary, or that modifications to restoration work required by this Order are required, within ten business days after receipt of written notice, Sunoco shall submit to the Department such information, revisions, modifications, or amendments, or complete the modified work, unless an alternative timeframe is approved by the Department in writing.

h. The Department may approve, approve with modifications, or reject any submission. Sunoco shall implement each submission as approved in accordance with any schedule contained in the approved submission.

i. Upon full execution of this COA by Sunoco and the Department, the Department shall consider that the outstanding compliance issues with regard to the I-81 Drill Site and the Letort Drill Site are currently being corrected to the satisfaction of the Department.

4. Civil Penalty Settlement. Sunoco consents to the assessment of a civil penalty of EIGHTY-SEVEN THOUSAND SIX HUNDRED DOLLARS (\$87,600), 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 Paragraph O, above, covering the period from May 6, 2017 to June 9, 2017. The payment shall be made by corporate check or the like made payable to the Commonwealth of Pennsylvania. The penalty will be disbursed by the Department in the following amounts:

- Payment in the amount of SEVENTY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$76,500) to the Clean Water Fund.
- Payment in the amount of ELEVEN THOUSAND ONE HUNDRED (\$11,100) to the to the Dams and Encroachment Fund.

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

5. Stipulated Civil Penalties.

a. In the event Sunoco fails to comply in a timely manner with any term or provisions of this Consent Order and Agreement, Sunoco shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$250.00 per day for each violation.

b. For each IR that occurs within or otherwise discharges to Waters of the Commonwealth after the recommencement of HDD operations at either the I-81 Drill Site or the Letort Drill Site, Sunoco shall pay a civil penalty in the amount of \$5000.00 per day for each day or part thereof that an IR occurs.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be forwarded as described in Paragraph 4 (Civil Penalties) above.

c. Any payment under this paragraph shall neither waive the Sunoco's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Sunoco's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Sunoco's liability for civil penalties arising from the violations of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

6. Additional Remedies.

a. In the event Sunoco fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 5 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

7. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Sunoco reserves the right to challenge any action which the Department may take to require those measures.

8. Liability of Operator. Sunoco shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers agents, employees, or contractors. Except as provided in Paragraph 9(c), Sunoco also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

9. Transfer of Site.

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Site or any part thereof.

b. If Sunoco intends to transfer any legal or equitable interest in the Site which is affected by this Consent Order and Agreement, Sunoco shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Regional Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate Sunoco's duties and obligations under this Consent Order and Agreement upon transfer of the Site. Sunoco waives any right that it may have to challenge the Department's decision in this regard.

10. Correspondence with Department. All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Ron Eberts  
Waterways and Wetlands Program  
909 Elmerton Avenue  
Harrisburg, PA 17110  
(717) 705-4819  
reberts@pa.gov

11. Correspondence with Sunoco. All correspondence with Sunoco concerning this Consent Order and Agreement shall be addressed to:

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

Sunoco shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent

Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

12. Force Majeure.

a. In the event that Sunoco is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstance beyond Sunoco's control and which Sunoco, by the exercise of all reasonable diligence, is unable to prevent, then Sunoco may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond Sunoco's control. Sunoco's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. Sunoco shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Sunoco to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. Sunoco's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Sunoco and other information available to the Department. In any subsequent litigation, the Sunoco shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

13. Severability. The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

14. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

15. Attorney Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

16. Modifications. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

17. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling

18. Decisions Under Consent Order. Except for any approval with modification or rejection of any plan as provided in Paragraph 3.h., any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which Sunoco may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.


19. Termination. The obligations of Paragraphs 3 and 5 shall terminate when the Department determines that Sunoco has complied with the requirements of Paragraph 3, including the successful implementation of all monitoring required pursuant to the Restoration and Mitigation Plans.


21. Execution of Agreement. This Consent Order and Agreement 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.

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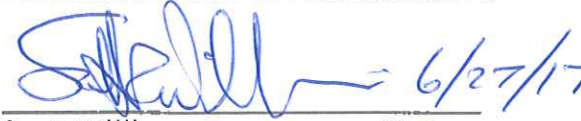
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Sunoco certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Sunoco; that Sunoco consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Sunoco hereby knowingly waives its right to appeal this Consent Order and Agreement 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.:

  
Joseph Colella      6-24-17  
Executive Vice President      Date

  
Curtis N. Stambaugh, Esq.      6/27/17  
Attorney for Sunoco Pipeline, L.P.      Date

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

  
Scott Williamson      6/27/17  
Environmental Program Manager      Date

  
Nels J. Taber      6/27/17  
Regional Counsel      Date