

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, 102, and 105 of
Sinking Springs, PA 19608	:	Title 25 of the Pennsylvania Code.
	:	
	:	PA Pipeline Project—Mariner East II
	:	E&S Permit No. ESG0100015001
	:	
	:	WO&E Permit No. E15-862

ADMINISTRATIVE ORDER

Now this 11th day of September, 2020, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), has found and determined the following facts and findings and by this Administrative Order imposes the specified performance obligations upon Sunoco Pipeline, L.P. (“Sunoco”).

Findings

Parties

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 promulgated thereunder (“rules and regulations”).

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 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 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 seventeen counties in Pennsylvania, including Chester County.

Permits

- D. To construct PPP-ME2 through Chester County, Sunoco obtained:
- a. An Erosion and Sediment Control Permit under 25 Pa. Code Chapter 102, Permit Number ESG0100015001 (“Chapter 102 Permit”) and;
 - b. A Water Obstructions and Encroachment (“WOE”) Permit under 25 Pa. Code Chapter 105, Permit Number E15-862 (“Chapter 105 Permit”).

E. For purposes of this Administrative Order, Horizontal Directional Drilling (“HDD”) is defined to include any steerable trenchless technology that controls the direction and deviation to a predetermined underground target or location.

Site

F. The work area for PPP-ME2 in Chester County, Pennsylvania includes the horizontal directional drill (“HDD”) installation of a 16-inch diameter pipeline and a 20-inch diameter pipeline that traverses Little Conestoga Road in Upper Uwchlan Township, Chester

County, Pennsylvania (“HDD S-3-0290”). The alignment of HDD S-3-0290 passes from the northwest to the southeast in the Marsh Creek Watershed with groundwater flow in the HDD bore alignment being towards Marsh Creek/Marsh Lake to the south and southwest.

G. The 16-inch pipeline was installed in 2017. During that installation, the HDD had an inadvertent return (“IR”) of approximately 100 gallons of drilling fluids to wetland WL-17 and two unnamed tributaries, S-H 10 and S-H 11, to Marsh Creek Lake on June 24, 2017. S-H 10 and S-H 11 are listed as High Quality-Trout Stocked Fisheries. On August 29, 2017, another IR of approximately 40 to 50 gallons occurred in wetland WL-17 along Stream S-H 11 approximately 40 feet from the original IR location during drill ream operations on HDD S-3-0290.

H. In accordance with the Corrected Stipulated Order entered by the Environmental Hearing Board on August 10, 2017 at Docket No. 2017-009-L, Sunoco conducted a re-evaluation of HDD S-3-0290 for installation of the 20-inch pipeline. The HDD S-3-290 re-evaluation report was submitted to the Department on May 28, 2019 and approved by the Department on January 23, 2020 (“Re-evaluation Report”).

I. As part of that re-evaluation, Sunoco reported that:

A 1.01 mile reroute to the north of the HDD is technically feasible. This would entail adjusting the project route prior to this HDD’s northwest entry/exit point to proceed north, cross under the Pennsylvania Turnpike, then proceed east for 0.7 miles parallel to the turnpike, cross Little Conestoga Road, then turn south, cross under the turnpike, and then re-intersect the existing project route just east of this HDDs southeast entry/exit point. There is no existing utility corridor here, however; therefore, this route would create a Greenfield utility corridor and would result in encumbering previously unaffected properties. The route would still cross two Waters of the Commonwealth and possible forested wetlands, and would pass in near proximity or immediately adjacent to five residential home sites. Both crossings of the turnpike would require “mini” HDD’s or direct pipe bores to achieve the required depth of cover under the highway. Considered against the possibility of additional IR’s occurring on the proposed HDD, **which are readily contained and cleaned up with minimal affect to natural resources**, the permanent taking of the new

easement and likely need to use condemnation against previously unaffected landowners results in SPLP's opinion that managing the proposed HDD is the preferred option. (emphasis added). Re-evaluation Report at p. 6 "Re-Route Analysis".

J. The Re-evaluation Report also included an "HDD Hydrogeologic Reevaluation Report – HDD S3-0290 dated May 2019 ("Hydro Report"). It was noted as a conclusion in that report that "[t]he synthesis of regional and local geologic data together with past drilling performance during drilling for the 16-inch pipeline indicate that **installation of the 20-inch line at HDD S3-0290 has a moderate to high risk of drilling fluid loss and IRs.**" (emphasis added) Hydro Report at p. 15.

K. In February 2020, Sunoco commenced drilling the pilot hole for the 20-inch pipeline at HDD S-3-0290.

L. In spite of Sunoco's assurances that it could readily contain and clean up any IRs that might occur on HDD S-3-0290 with minimal affect to natural resources, on August 10, 2020, the Department received notice from Sunoco of an IR at HDD Site S-3-0290, PA-CH-0100.0000-RD, in the vicinity of Green Valley Road in Upper Uwchlan Township, Chester County. Sunoco ultimately reported that approximately 8163 gallons of drilling fluids had surfaced in wetland WL-17 and two unnamed tributaries, S-H 10 and S-H 11, the same aquatic resources impacted by the 2017 IRs.

M. At the time of the Department's inspection on August 10, 2020, Sunoco had attempted to contain the IR by deploying various silt fences in wetland WL-17 and unnamed tributaries S-H 10 and S-H 11 and two sets of instream silt containment booms (weighted silt curtains) to reduce the amount of bentonite entering Marsh Creek Lake. There was no sandbag containment in wetland WL-17 to capture drilling fluids. An effort was being made to pump some of the drilling fluids from wetland WL-17. Representatives from Sunoco indicated that they were

still attempting to obtain landowner permission in order to gain access to areas to fully address the IR. Despite Sunoco's efforts to contain and clean up the IR, the IR discharged to wetland WL-17 and two unnamed tributaries, S-H 10 and S-H 11 and then flowed and discharged into Marsh Creek Lake, a water of the Commonwealth. Wetland WL-17 and two unnamed tributaries, S-H 10 and S-H 11 were coated with a thick layer of drilling mud. A plume of drilling mud filled a cove of Marsh Creek Lake.

N. Marsh Creek Lake is in Marsh Creek State Park, one of the most visited state parks in Pennsylvania. Marsh Creek State Park receives more than 1,000,000 visitors each year. Marsh Creek Lake is one of the primary recreational resources in the park. The 535-acre lake is used year-round for fishing and boating. It also provides important habitat for migrating waterfowl. Following the inadvertent return, 33 acres of Marsh Creek Lake had to be closed to the public.

O. On August 11, 2020, the Department received notice of a subsidence event in wetland WL-17 measuring 15 foot in diameter and 8 foot deep. The subsidence event allowed drilling fluids into the underground horizon and the wetland, adversely impacting the functions and values of the wetland, and constituting a discharge of industrial waste to groundwater, a water of the Commonwealth and wetlands, a water of the Commonwealth.

P. Immediately after the inadvertent return the Department conducted inspections of this area on August 10, 2020, August 11, 2020, August 12, 2020, and August 13, 2020.

Q. On August 17, 2020, Sunoco submitted a Restart Report for HDD S-3-290. In that report, Sunoco proposes to construct "unconventional pressure relief points" ("UPRPs"), which consist of sand-bag dams constructed at the location of the two IRs that occurred in 2017 and in wetland WL-17. Sunoco asserts, once again, that if a future IR were to occur at any of those locations, this time the drilling fluids will be collected and transported to either the entry or exit

pits for HDD S-3-0290 and recycled at the mud plant. Sunoco did recognize that placement of the sandbag dam within wetland WL-17 would require additional permitting. The Department has not approved the Restart Report for HDD S-3-0290.

R. On August 20, 2020, the Department issued a Notice of Violation to Sunoco, requesting that Sunoco provide plans to address the impacts of the inadvertent return and subsidence events to waters of the Commonwealth and information regarding various aspects of the HDD. To date the Department has not received all information requested by that Notice of Violation.

S. Sunoco's efforts to clean up the inadvertent return and assess its impacts to waters of the Commonwealth continues as of the date of this order. The Department continues to monitor conditions and cleanup efforts at this site. The 33-acre portion of Marsh Creek Lake referenced in Paragraph M, above, remains closed to recreational boating and fishing and all other public use due to the presence of drilling fluids on the lake bottom.

Violations

T. The drilling fluids described in Paragraphs L, M and O, above, constitute Industrial Waste. Sunoco's discharge of Industrial Waste to waters of the Commonwealth without a permit is a violation of 25 Pa. Code § 92a.1(b) and Section 301 of the Clean Streams Law, 35 P.S. § 691.301 and Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18.

U. The violations described in Paragraphs L, M and O, above, constitute unlawful conduct under Sections 401 and 611 of the Clean Streams Law, 35 P.S. §§ 691.401 and 691.611; and a statutory nuisance under Sections 401 and 601 of the Clean Streams Law, 35 P.S. §§ 691.401 and 691.601. The violation in Paragraph L constitutes unlawful conduct under Section 18 of the

Dam Safety and Encroachments Act, 32 P.S. § 693.18; and a statutory nuisance under Section 19 of the Dam Safety and Encroachments Act, 32 P.S. § 693.19.

NOW, THEREFORE, pursuant to Section 20 of the Dam Safety and Encroachments Act, 32 P.S. § 693.20; Sections 5, 402, and 610 of The Clean Streams Law, 35 P.S. § 691.5, 691.402, and 691.610; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17, the Department hereby ORDERS the following:

1. Except as specified herein, Sunoco shall immediately suspend all work authorized by the permits described in Paragraph D, above, for HDD S-3-0290 until the Department provides written authorization to resume work, except as is necessary to stabilize the site to prevent erosion and sedimentation in accordance with Paragraph 6, and to prevent additional pollutants from entering waters of the Commonwealth, including wetland WL-17, unnamed tributaries S-H 10 and S-H 11 of Marsh Creek Reservoir, and the Marsh Creek Reservoir, which is located in Marsh Creek State Park. In no event shall Sunoco undertake any pipeline installation activities at the site of HDD S-3-0290, including drilling or drilling-related preparation and drilling support activities, or the installation of casing, unless expressly authorized by the Department in writing.

2. Sunoco shall take all steps necessary, including the submission of appropriate applications and supporting materials for permit amendments, to implement the reroute of HDD S-3-290 that Sunoco previously found to be technically feasible in the Re-evaluation Report.

3. Within 30 days of the effective date of this Administrative Order, Sunoco shall submit a report to the Department that fully explains how the August 10, 2020 inadvertent return described in Paragraph L above, occurred and how the August 11, 2020 subsidence event described in Paragraph N above, occurred. Such report shall also detail the results of all geophysical testing

conducted by or on behalf of Sunoco from January 1, 2010 to the date of this Order for the 2000-foot-long by 50-foot-wide section of the HDD profile centered on the August 10, 2020 IR location areas of the HDD profile, as well as the results of all geophysical testing conducted on behalf of Sunoco from January 1, 2010 to the date of this Order in any other areas or resources that were impacted by the August 10, 2020 IR and subsidence event. The geophysical testing data shall include all results of microgravity, electrical resistivity, seismic refraction and any other geophysical testing. The report shall include analyses of each of the tests, verified by a qualified professional,

4. Sunoco shall address, to the Department's satisfaction, all impacts to waters of the Commonwealth that occurred as a result of the August 10, 2020 inadvertent return and the August 11, 2020 subsidence event by restoring and remediating impacted aquatic life, biota, and habitat, including the functions and values of the impacted wetlands resources, and all impacted recreational uses, to a condition equal to or better than that in place before the incidents occurred.

a. On or before October 1, 2020, unless the Department approves a later date in writing, Sunoco shall submit an impact assessment ("Impact Assessment") and a cleanup and restoration plan for HDD S-3-0290 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 as a result of the August 10, 2020 inadvertent return and August 11, 2020 subsidence event. The Impact Assessment and the Restoration Plan shall include a detailed resource delineation and function assessment for the wetland, stream, and reservoir in the areas impacted by the IR and subsidence event, as well as reference areas. The Restoration Plan shall provide for at least five (5) years of monitoring after the restoration activities are completed. For the first two (2) years, Sunoco shall submit

monitoring reports under the Restoration Plan to the Department on a quarterly basis with monitoring reports due on January 30th, April 30th, July 30th, and October 30th of each year for the preceding calendar quarter. After the initial two (2) year monitoring period, monitoring reports shall be submitted on an annual basis, with the first annual report due on January 30th following year three (3).

b. If the Department finds that Sunoco's implementation of the Restoration Plan has failed to eliminate impacts to waters of the Commonwealth, then Sunoco shall submit a mitigation plan for the HDD S-3-0290 Drill Site ("Mitigation Plan") to the Department for review and approval to address impacts to waters of the Commonwealth that occurred as a result of the August 10, 2020 inadvertent return and the August 11, 2020 subsidence event. 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 Marsh Creek watershed. In accordance with Permit No. E15-862, special condition EE, the Mitigation Plan shall provide for at least five (5) years of monitoring after the restoration activities are completed.

c. Sunoco shall conduct the Impact Assessment and implement the Restoration Plan at Paragraph 4.a., 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 4.b., then Sunoco shall implement the Mitigation Plan at Paragraph 4.b., above, within 90 days of receiving written approval from the Department, unless the Department extends that timeframe in writing.

5. In the event the Department determines that additional information, revisions, modifications or amendments are necessary to any permit, plan, any other submission, or restoration and remediation work required by this Order, then within ten (10) days after receipt of written notice from the Department, Sunoco shall submit to the Department such information, revisions, amendments or modifications, and/or complete the modified work, unless an alternative timeframe is approved by the Department in writing.

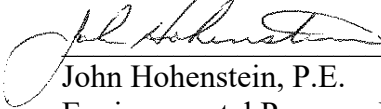
6. Effective immediately, Sunoco shall secure the partially constructed borehole with grouting or an equivalent method and stabilize all disturbed areas at HDD S-3-0290 in accordance with the approved E&S Plans and in compliance with 25 Pa. Code § 102.22(a) and/or (b), as appropriate. Sunoco shall continue routine monitoring of the installed BMPs and shall perform all necessary ongoing operation and maintenance activities to ensure the BMPs continue to perform as designed, in accordance with the approved E&S Plan and permit until the disturbed areas along the current alignment for HDD S-3-0290 are permanently stabilized.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

A handwritten signature in cursive script, appearing to read "John Hohenstein", is written over a horizontal line.

John Hohenstein, P.E.
Environmental Program Manager