

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE  
RIVERKEEPER NETWORK; AND  
MOUNTAIN WATERSHED  
ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

Appellee,

*and* SUNOCO PIPELINE L.P.,  
Permittee.

EHB Docket No. 2017-009-L

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement (“Agreement” or “Settlement”) is made between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department” or “DEP”) and Clean Air Council, the Delaware Riverkeeper Network, and Mountain Watershed Association, Inc. (“Appellants”). The Department and Appellants are referred to collectively herein as “the Parties.”

A. On February 13, 2017, Appellants filed an appeal with the Environmental Hearing Board (“EHB”) at the docket number above challenging the Department’s issuance of Erosion and Sediment Control and Water Obstruction and Encroachment Permits to Sunoco Pipeline L.P. (“Sunoco” or “SPLP”) for the construction of the Mariner East 2 Pipeline Project (“Appeal”).

B. The Parties have participated in negotiations to avoid further judicial proceedings.

C. The Parties agree that it is desirable to resolve these matters under the terms and conditions set forth below.

THEREFORE, the Parties, intending to be legally bound hereby, without admitting any liability nor altering the appealed permits issued by the Department, and in consideration of mutual covenants and a mutual exchange of promises, warranties, agreements, and obligations as recited herein, and for good cause and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, agree as follows:

1. **SCOPE.** Except for Paragraph 4.C., below, this Agreement will apply to policies, procedures, and guidance developed regarding hazardous liquid, natural gas, and natural gas liquid multi-county Pipeline Projects as set forth herein, and the other obligations of the Parties as set forth below.

2. **INTERPRETATION & USE.**

A. Nothing in this Agreement will be construed in derogation of public and environmental protection, nor will anything in this Agreement be construed as setting a maximum level of protection or as restraining in any way the ability of the Department to require further measures to protect the public and the environment.

B. Nothing in this Agreement will be construed to authorize any violation of any statute, regulation, order, or permit issued or administered by the Department.

C. With regard to matters not addressed by this Agreement, the Department specifically reserves all rights to institute administrative, civil (equitable and legal) and criminal actions, for any past, present, or future violation of any statute, regulation, order, permit, license or other approval or for any pollution or potential pollution to the air, land, or waters of the Commonwealth.

**3. DEFINITIONS.**

A. “Applicant” means an individual or entity applying for Permits from the Department to construct a Project after the Execution Date.

B. “Documents” means policies, procedures, guidance, and/or internal operating procedures developed by the Department, for the topics set forth in Paragraph 4.B. of this Agreement, with input from appropriate stakeholders.

C. “Execution Date” means the date on which the last of the Parties signs this Agreement.

D. “Hazardous Liquids” means petroleum, petroleum products, anhydrous ammonia and other hazardous liquids as defined under the Federal pipeline safety laws.

E. “Horizontal Directional Drilling” (“HDD”) includes any trenchless construction methodology, including, without limitation, horizontal directional drilling, guided auger bore, cradle bore, conventional auger bore, jack bore/hammer bore, guided bores, and proprietary trenchless technology such as FlexBor.

F. “Inadvertent Return” (“IR”) means an unauthorized discharge of drilling fluids to the ground surface or surface waters, including wetlands, associated with HDD or other trenchless construction methodologies.

G. “Landowner” means both the owner of a parcel and any tenants or residents living or working on the parcel.

H. “Mariner East 2 Pipeline Project” means the project approved by the Department in the permits subject to the Appeal.

I. “Natural Gas” is a hydrocarbon gas that consists primarily of methane but may also include small amounts of other substances such as other alkanes, carbon dioxide, nitrogen, and hydrogen sulfide.

J. “Natural Gas Liquids” (“NGL”) are hydrocarbons composed exclusively of carbon and hydrogen, including ethane, propane, butane, isobutane, and pentane, that are separated from the gas state in the form of liquids, and may include small amounts of other substances.

K. “Permit” means an authorization granted by the Department under 25 Pa. Code Chapter 102 (Erosion and Sediment Control) and/or 25 Pa. Code Chapter 105 (Dam Safety and Waterway Management) to a Permittee for the construction of a Project.

L. “Permittee” means an Applicant who has received a Permit from the Department, and will include any agents, contractors and subcontractors, partners or corporate designees, independent contractors, or employees working for or on the Applicant’s behalf.

M. “Project” means a hazardous liquid, natural gas, or natural gas liquids intrastate or interstate Pipeline project that requires Permits for which an application is filed after the Execution Date.

N. “Pipeline” means a transmission pipeline (excluding a gathering line or local distribution or service line) that includes more than one Pennsylvania county that is intended to transport hazardous liquids, natural gas, or natural gas liquids from gathering systems to refining, storage, or processing facilities, or for use or further distribution by large volume customers such as factories, power plants, public utilities, or institutional users within or outside of Pennsylvania.

O. “Water Supply” means a private or public supply of water for human consumption or use, or for agricultural, commercial, industrial or other legitimate beneficial uses.

4. **DEPARTMENT POLICY DEVELOPMENT.**

A. **Online availability of Pipeline Permit Applications**

The Department has made all non-privileged, non-confidential major Pipeline permit applications materials and supporting documents available online for projects such as the Mariner East 2 project, the Atlantic Sunrise project and the Penn East project. In addition, on or before February 1, 2019, the Department will make all non-privileged, non-confidential Pipeline permit application materials and supporting documents available online, including: (i) all materials that the Applicant submits to the Department for the Department’s review and consideration of the Permit application, including but not limited to the initial application itself; (ii) technical deficiency letters and responses thereto; and (iii) final decision documents. This provision will be superseded by any subsequent regulation or Department policy that addresses online availability of these application materials.

B. **Policies, Procedures and Guidance** – The Department has begun development and limited implementation of policies and procedures related to Pipeline construction. In furtherance of the Department’s development of more formalized guidance on Pipeline construction, the Department will convene a balanced group of appropriate stakeholders to reflect the interests of representatives from the Appellants, the Department, and a select number of representatives chosen by the Department to represent the interests of proponents of Pipeline Projects, (collectively, the “Stakeholder Group”), in accordance with the schedule set forth below, and within the following parameters. The decision to publish final Documents will rest with the Department and that decision will not be subject to challenge and

will not constitute an appealable action. The Department will seek stakeholder input for policy, procedure, and/or guidance development related to the following:

i. **E&S Permits and Alternatives Analysis**

a. Categories of pipeline projects for which

- (1) the Department will request that Applicants for Projects obtain Individual Erosion and Sediment Control Permits for a Project, and
- (2) where public notice of the applications, and the opportunity for public comment will be provided by the Department as part of the permit application process.

b. The recommended methodology and factors to consider to complete an Alternatives Analysis under 25 Pa. Code § 105.13(e)(1)(viii).

ii. **HDD Construction and Operation**

a. Enhanced Best Practices (“EBP”) in the design and execution of HDDs and HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plans (“HDD IR PPC Plan”);

(1) The type of site-specific geological, topographical, and hydrological analysis to be considered, including, but not limited to past and current land use.

(2) The type of analysis and documentation of adjacent features in the vicinity of the project footprint and potential impact of the planned activity on or from adjacent features.

b. EBP for preventing and responding to IRs;

- c. EBP for preventing and responding to hydrological impacts from IRs;
- d. EBP for groundwater quality and quantity protection;
- e. EBP for procedures to be used to identify water supplies in the vicinity of a proposed HDD beyond the use of the Pennsylvania Groundwater Information System; and
- f. Recommendations for permittee to conduct water supply testing (quality and quantity) for landowners within the vicinity of an HDD.

iii. **Operational Measures**

- a. EBP for Permittee Training Plans that apply to management, employees, and contractors associated with construction, construction oversight and supervision, and Permittee compliance monitoring of the Project;
- b. EBP for pre-application landowner communication for purposes of ascertaining site-specific considerations presented on any specific property; and
- c. EBP for use of noninvasive species in construction, erosion and sediment control, and restoration plantings.

C. **ESCGP-3 Application Process Workgroup** - The Department has formed a workgroup that is evaluating changes to the application process associated with the Authorization of Coverage Under the Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities (“ESCGP-3”), which will be evaluating a number of the



same erosion and sedimentation issues presented in the Appeal (“Prioritized Review Workgroup”). The Department has invited Appellants to designate and provide one technical representative to participate in the Prioritized Review Workgroup. Appellants’ designated technical representative is subject to approval by the Department to ensure that Appellants’ representative possesses the appropriate technical qualifications.

**D. Review and Comment on Documents** - The schedule and procedure for review and comment on Documents developed by the Department in Paragraph 4.B., above, is as follows:

i. The Department will establish the Stakeholder Group referenced in 4.B., above, within 90 calendar days of the Execution Date of this Agreement.

ii. Within 365 calendar days of the Execution Date of this Agreement, the Department will prepare and share preliminary or conceptual draft Documents (“preliminary draft Documents”) it develops with the stakeholders for input.

iii. After the Department shares the preliminary draft documents with the stakeholders, stakeholders will be provided with no less than 60 calendar days to provide comment on the preliminary draft Documents. After receipt of stakeholder comments, taking stakeholder input into consideration, the Department will prepare proposed Documents that it will make available for review and comment by appropriate Department advisory committees (“Advisory Committees”) for the next available advisory committee meeting. The Advisory Committees will be provided with no less than 60 calendar days to provide comment on proposed Documents. Within 90 calendar days after the Department



has received input from the Advisory Committees, notice of the availability of the proposed Documents will be published in the *Pennsylvania Bulletin*.

iv. In the event that the Department determines that significant public interest has been expressed on one or more of the proposed Documents, the Department will, as appropriate, hold a public hearing on each proposed Document for which there has been significant public interest expressed, in a manner consistent with its practices and those procedures set forth in the Department's policy on *Public Participation in the Development of Regulations and Technical Guidance*, DEP Doc. No. 012-1920-001, or any subsequent policy amending this guidance.

v. If the Department determines that it will move forward with finalization of the Documents, the Department will finalize the Documents as policy or guidance, as applicable, within 540 calendar days after the close of the public comment period.

vi. The Department may extend any schedule set forth above due to scheduling or staffing limitations after an in-person discussion with the Appellants.

## 5. TERMINATION OF APPEAL

A. This Settlement terminates the Appeal filed by the Appellants. The Appellants will withdraw their Appeal within five (5) days of the Execution Date of this Settlement.

B. The withdrawal of the Appeal will not act as a waiver nor bar to any subsequent Department compliance action, permitting action, approval or disapproval of any

plan or submission, or any other interim or final action related to the Mariner II project permits and construction. In the event of such a future final action by the Department, all claims and defenses arising from that action will be available to the Parties.

6. **REMEDIES**. Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative of all other rights and remedies.

7. **HEADINGS**. The headings in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement or any provision hereof.

8. **NO WAIVER**. No failure or delay on the part of the Parties in the exercise of any power or right hereunder will operate as a waiver thereof. No single or partial exercise of any power or right hereunder will operate as a waiver of such power or right or of any other power or right.

9. **SEVERABILITY**. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision will be severed and will be inoperative, and the remainder of this Agreement will remain operative and binding on the Parties.

10. **PENNSYLVANIA LAW AND FORUM**. This Agreement will be construed and enforced pursuant to the laws of the Commonwealth of Pennsylvania. The Parties agree that if an action for enforcement of this Agreement is brought in the Commonwealth Court, the Parties will not assert lack of jurisdiction due to improper choice of forum.

11. **AGENCY AUTHORITY**. Nothing in this Agreement will be construed to limit or modify the authority accorded the Department by the Clean Streams Law, Dam Safety and Encroachments Act, 25 Pa. Code Chapter 102, and 25 Pa. Code Chapter 105, the policies thereunder, nor general principles of Administrative Law.

12. **PARTIES BOUND.** This Agreement will be binding upon and inure to the benefit of each Party and their respective beneficiaries, successors and assigns.

13. **AUTHORIZATIONS.** The Parties warrant to each other that all necessary authorizations and other actions have been taken such that execution, delivery, and performance of this Agreement and all other actions taken or to be taken in connection with this Agreement have been fully authorized.

14. **MODIFICATION.** It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by the Parties through their authorized representatives. The Parties hereby agree and acknowledge that they will not claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

15. **FEES AND COSTS.** After negotiation, and without any admission by the Department as to liability or any details of Appellants' claims, the Department has agreed to pay, and Appellants have agreed to accept, the sum of \$27,500 to be paid to Clean Air Council, as compromise and settlement of any potential liability the Department may have to Appellants with regard to attorneys' fees, expert fees, and other costs associated with the Appeal through the date this Agreement is executed. The monies received by Clean Air Council will be distributed by Clean Air Council among Appellants. This payment reflects only partial costs and expenses related to the Petition for Partial Supersedeas filed with the Pennsylvania Environmental Hearing Board on July 19, 2017 and subsequent proceedings thereon, but will fully resolve the Department's liability for this matter as set forth herein. The Department will make its best effort to forward payment to Appellants within 60 days of the filing of this

Agreement. Payment to Clean Air Council will be made by check payable to “Clean Air Council.” Other than the payment for fees and costs as set forth herein above, Appellants agree that they will not seek, or accept, further attorneys’ and/or experts’ fees, expenses, and/or costs, including any fees, expenses and costs incurred in any attorneys’ fees proceedings(s), associated with the Appeal, or the matters docketed with the Commonwealth Court at 101 MD 2018 and at EHB Docket No. 2018-023-L, from the Department. Nothing in this Stipulation of Settlement will constitute or be construed as a release or covenant not to sue regarding any claim or cause of action for attorneys’ fees and costs, past or future, in law or equity, which Appellants may have against any person other than the Department that is not a party to this Stipulation of Settlement. Appellants expressly reserve the right to sue any person other than the Department for attorneys’ fees and costs pursuant to 35 P.S. § 691.307(b) that is not a party to this Stipulation of Settlement.

**16. FULL AND FINAL RESOLUTION.** This Agreement is, and under any and all circumstances whatsoever will be construed as, a full and final resolution of the Appeal. There are no representations, agreements, or understandings relating to this Agreement other than those expressly contained in this Agreement. No prior or contemporaneous communication or prior drafts will be relevant or admissible evidence for purposes of determining the meaning or extent of any provision hereto in any other litigation or proceeding.

**17. COMPROMISE OF DISPUTED CLAIMS.** This Agreement, and the Parties’ performance of their respective duties, obligations and responsibilities hereunder, are a compromise of disputed claims set forth in the Appeal, and are not and will not be construed as an admission or evidence of any fact, wrongdoing, misconduct, or liability. Each Party stating affirmatively their respective and collective intent merely to terminate ongoing litigation.

18. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute a single document.

19. **EXECUTION.** Each of the signatories warrants that they are authorized to sign this Agreement on behalf of the Party for whom they sign and to bind that Party to the terms of this Agreement.

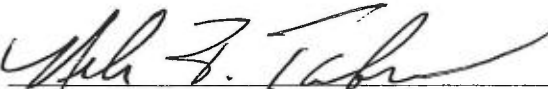
20. **TERMINATION.** The obligations of this Agreement will terminate upon completion of the Department's obligations set forth in Paragraph 4., above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives. The undersigned representatives of the Parties certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Agreement on behalf of the Parties, and that the Parties hereby knowingly waive their right to appeal this 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. Signatures for attorneys for the Parties certify that the Agreement has been signed after the Parties have consulted with counsel.

**THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION**

  
\_\_\_\_\_  
Domenic Rocco, P.E.  
Acting Program Manager  
Regional Permit Coordination Office

7/26/18  
Date:

  
\_\_\_\_\_  
Nels J. Taber  
Senior Litigation Counsel

7/26/2018  
Date:

**CLEAN AIR COUNCIL**

\_\_\_\_\_  
Joseph Otis Minott  
Executive Director

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Alexander G. Bomstein  
Attorney for Clean Air Council

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Date:

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**THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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Domenic Rocco, P.E.  
Acting Program Manager  
Regional Permit Coordination Office

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Date:

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Nels J. Taber  
Senior Litigation Counsel


\_\_\_\_\_  
Date:

**CLEAN AIR COUNCIL**

  
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Joseph Otis Minott  
Executive Director

7/26/2018

\_\_\_\_\_  
Date:

  
\_\_\_\_\_  
Alexander G. Bomstein  
Attorney for Clean Air Council

7/26/18

\_\_\_\_\_  
Date:



**THE DELAWARE RIVERKEEPER NETWORK**

/s/ Maya K. van Rossum

Maya K. van Rossum  
The Delaware Riverkeeper

7/26/2018

Date:



Aaron J. Stemplewicz  
Attorney for the Delaware Riverkeeper Network

7/26/2018

Date:

**MOUNTAIN WATERSHED ASSOCIATION, INC.**



Beverly Braverman  
Executive Director

7/26/2018

Date:



Melissa Marshall  
Attorney for Mountain Watershed Association, Inc.

7/26/2018

Date: