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August 16, 2016

Via Electronic Delivery: RA-EPWW-SERO@PA.GOV

Department of Environmental Protection  
Southeast Regional Office  
Waterways and Wetlands Program  
2 East Main Street  
Norristown, PA 19401

Re: Pennsylvania Pipeline Project  
Chapter 105, Water Obstruction and Encroachment Permit  
E15-862 (Chester County)

To Whom it May Concern:

Please accept and consider the comments below on the draft joint permit application submitted by Sunoco Pipeline, L.P. ("Applicant") to the Pennsylvania Department of Environmental Protection (PADEP or "the Department") and U.S. Army Corps of Engineers for wetlands fill pursuant to 25 Pa. Code Chapter 105 (as authorized by section 404 of the federal Clean Water Act, 33 U.S.C. § 1344) (application undated; entire package available at: [http://files.dep.state.pa.us/RegionalResources/SERO/SEROPortalFiles/Community%20Info/MarinerEastPipelineII/ChesterCounty/01%20-%20GIF/Parts/SE-Chester\\_GIF\\_FINAL.pdf](http://files.dep.state.pa.us/RegionalResources/SERO/SEROPortalFiles/Community%20Info/MarinerEastPipelineII/ChesterCounty/01%20-%20GIF/Parts/SE-Chester_GIF_FINAL.pdf)) (hereinafter, "Application") as part of Applicant's Pennsylvania Pipeline Project ("the Project").

Overall, and as stated with more particularity below, the Application lacks transparency. This is of special concern, because the Department has indicated, in public-noticing this proposed permit, that "[a]s an open and transparent agency, we take public comment and input very seriously", said Acting Secretary Patrick McDonnell. "We want to provide the public with several opportunities to review permit applications and provide thoughtful, critical, and constructive feedback to aide in our technical review."

1. Standing. The undersigned is an "adjacent property owner" identified in Section H of the applicant's Joint Application for Pennsylvania Water Obstruction and Encroachment Permit and U.S. Army Corps of Engineers Section 404 Permit.
2. Failure to Address Potential Problems with Horizontal Directional Drilling (HDD). The Application makes an assumption that many environmental issues which might otherwise arise from the Project will not occur because of its HDD approach. However, the HDD method contains its own potential problems, and the Application fails to identify them or to indicate how they will be avoided. For example, striking existing underground utilities is a known concern with the HDD method, as well as hole maintenance problems during

reaming when “collapse” may occur. *See e.g.*, U.S. Fish & Wildlife Service, Record of Decision for NiSource Permit (2013) (available at: [https://www.fws.gov/midwest/endangered/permits/hcp/nisource/2013NOA/pdf/NiSourceHCPfinalAppndxJ\\_HDD.pdf](https://www.fws.gov/midwest/endangered/permits/hcp/nisource/2013NOA/pdf/NiSourceHCPfinalAppndxJ_HDD.pdf)). The Department should require the Applicant to support its position that HDD is a more environmentally protective option without causing its own universe of problems before approving the application.

3. Air Emissions. The application (Q. 13.0) asks whether the project will “involve operations (excluding during the construction period) that produce air emissions”. Applicant has responded, “YES,” and indicated that the type and amount of air emissions are “To Be Determined.”<sup>1</sup> For purposes of fairness, due process and transparency, the application should be deemed administratively incomplete until Applicant identifies the type and amount of air emissions that the project is expected to emit, and includes such information with an amended application.
4. Water Supply. The application (Q. 16.0) asks whether the project will be “served by an existing public water supply.” It further requires that, if the applicant answers “Yes,” it is to indicate the name of the supplier and *to attach letter from supplier stating that it will serve the project.*” While Applicant did provide the name of three public water suppliers, it failed to include a letter from each (or any) supplier stating that it will serve the project. In fact, it answered “No” in response to the question as to whether Letter of Approval from Supplier was included. For purposes of fairness, due process and transparency, the applications should be deemed administratively incomplete until Applicant obtains a letter from each public water supply that will serve the project, and includes the letter with an amended application.
5. Treatment, Storage, Reuse or Disposal of Waste. The application (Q. 18.0) asks whether the project construction or operation will “involve treatment, storage, reuse, or disposal of waste? If ‘Yes’”, indicate what type (i.e., hazardous, municipal (including infectious & chemotherapeutic), residual) *and the amount to be treated, stored, re-used or disposed.*” While Applicant responded affirmatively and indicated the type of waste, it indicated “amount unknown” for the quantity of waste to be disposed. Such information should at least be available as an approximation via a modeling tool. Therefore, for purposes of fairness, due process and transparency, the applications should be deemed

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<sup>1</sup> Consistent with this response is the fact that Sunoco’s existing tanks may have experienced vapor-induced bubbling. The most recent (July 11, 2016) Minutes for the East Goshen Township Municipal Authority, the Township’s consulting engineer stated that with regard to Sequencing Batch Reactor 4 of the existing pipeline, “some of the coating on the tank had spots/bubbles on the sides, which are caused by vapor.” *See* <https://eastgoshen.org/wp-content/uploads/2016/08/MA-7-11-16-final.pdf>. (While it is not entirely clear from the Minutes whether the vapor issues are caused by Sunoco’s pipeline, the language in the Minutes creates enough of an implication to that effect that it bears consideration.)

administratively incomplete until Applicant provides an estimated amount of waste to be treated, stored, reused or disposed due to project construction or operation.

6. Lack of Certification. The Application is not signed by the Applicant, in contravention to the plain instructions on the form. (It is possible that the signed and dated version of the Application was not correctly uploaded to the PADEP website; in that case, the correct document should replace the incorrect one and the public afforded additional time to comment).
7. Stormwater Management Analysis Incomplete. Attachment 14 (Stormwater Management Analysis), Table 14-1, includes “PPP Summary of Stormwater Plan and Floodplain Consistency Correspondence for SERO Counties.” Included on the table are cells to indicate whether the Stormwater Plan is consistent. For many of the municipalities, the Applicant has indicated “TBD,” and even stated “N” [*i.e.*, “NO”] for others. Therefore, for purposes of fairness, due process and transparency, the applications should be deemed administratively incomplete until Applicant provides information demonstrating that the Stormwater Plan is consistent for each municipality within Chester County.
8. Effect on Endangered Bog Turtle Population. Part 06-A of the Permit package contains the Wetland Bog Turtle Assessment Summary for the Pennsylvania Pipeline Project (PPP) (Table 2) and, for Chester County, indicates that as of August 26, 2015, there were positive results for bog turtle occupation at multiple sites. Further, the permit application package includes an Aquatic Resource Avoidance, Minimization, and Mitigation Plan (rev. March 2016), Attachment 18, which – as noted above -- relies on the premise that HDD may reduce the effect on bog turtles and their habitat. *See e.g.*, “HDD Inadvertent Return Contingency Plan with Special Bog Turtle Area Procedures Pennsylvania Pipeline Project” (Feb. 29, 2016). However, while HDD may move the construction footprint further away from the stream, it too results in vegetative losses and soil compaction that can have direct stream impacts and therefore result in adverse effects on bog turtles and their habitat. The applicant has not demonstrated that it has performed a literature review to support its position that HDD is a panacea to the impacts on endangered species. For an opposing viewpoint, *see e.g.*, Illinois Center for Transportation, *Evaluation of Horizontal Directional Drilling (HDD)* (Nov. 2011) (available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.390.3249&rep=rep1&type=pdf> ). Therefore, for purposes of fairness, due process and transparency, the applications should be deemed administratively incomplete until Applicant provides information demonstrating that the effect of HDD on the endangered bog turtle population has been mitigated.

9. Cultural Resources. The Cultural Resource Notice, Attachment 4 to the Permit, indicates that multiple items are “pending”. These items include, among others: (1) Section H - Photographs of any buildings over 50 years old. Indicate what is to be done to all buildings in the project area. (2) Section H - Site maps of the proposed activity, if available. The permit application is therefore not administratively complete and also requires further documentation in order for public transparency. Further, DEP counsel has indicated that “[w]hen and if the project has acquired all necessary authorizations, as well with all construction-related activities, the permittee will have ongoing obligations regarding archeologic and historic resources through the life of the project under Pennsylvania law.” See Letter from Alexandra Chiaruttini, Esq., to Jonathan Rinde, Esq. (Feb. 1, 2016) (available at: [http://files.dep.state.pa.us/RegionalResources/SERO/SEROPortalFiles/Community%20Info/MarinerEastPipelineII/ChesterCounty/04%20-%20Cult%20Resource%20Ntc/DEP's%20PHMC%20Ltr%202116\\_001.pdf](http://files.dep.state.pa.us/RegionalResources/SERO/SEROPortalFiles/Community%20Info/MarinerEastPipelineII/ChesterCounty/04%20-%20Cult%20Resource%20Ntc/DEP's%20PHMC%20Ltr%202116_001.pdf)). Therefore, for purposes of fairness, due process and transparency, the applications should be deemed administratively incomplete until Applicant provides publicly-available information regarding the impact of the Project on cultural resources.

Please consider these comments with regard to the draft Permit. Also, I request a copy of the Responsiveness Summary issued by DEP to comments received regarding the draft Permit.

Sincerely,



Lori G. Kier, Esq.