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Hardcopy:

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RE: U.S. Army Corps of Engineers
Baltimore District: PN-16-45
Application Number: CENAB-OPR-P-2015-01664-P06 (Pennsylvania Pipeline Project)

Dear Mr. Chandler, Ms. Nizer, Mr. Caplan and Mr. Pritts:

Pipeline Safety Coalition, Clean Air Council, Mountain Watershed Association, Concerned Citizens of Lebanon County, the Pennsylvania Chapter of the Sierra Club, Lebanon Pipeline Awareness, the Andover Homeowners' Association, Inc., Clean Water Action, Allegheny Defense Project, Guardians of the Brandywine, (collectively, "Citizens") hereby submit the following comments in response to the U.S. Army Corp of Engineers, Baltimore District Notice of Application CENAB-OPR-P-2015-01664-P06 Baltimore District: PN-16-45 for the Pennsylvania Pipeline Project, referred to variously as the "Pennsylvania Pipeline Project," "Pennsylvania Pipeline Project/Mariner II" and the "Mariner East II," (here, "Mariner East 2" or the "Project"). As noted in comments submitted by Citizens for PA DEP Chapter 105¹ review, Chapter 102² review and herein, because of the common issues across multiple applications, Citizens have consolidated comments, will cross reference submitted comments and note that Citizens comments are directed to the proposed Individual Permits and also to the Project's application(s) for coverage under PASPGP-5, the state programmatic general permit that is proposed to cover the whole project, not just the 2 crossings highlighted in the Notice PN-16-45.

Commenting Organizations

Pipeline Safety Coalition (PSC) is a 501(c)(3) dedicated to pipeline safety education and the facilitation of productive, respectful conversations between stakeholders in pipeline-related issues. Located in Chester County, Pennsylvania, we follow regulations and safety issues in pipeline projects across the nation. PSC's mission is: "to gather and serve as a clearinghouse for factual, unbiased information; to increase public awareness and participation through education; to build partnerships with residents, safety advocates, government and industry; and to improve public, personal and environmental safety in pipeline issues."

Clean Air Council is a non-profit environmental organization headquartered at 135 South 19th Street, Suite 300, Philadelphia, Pennsylvania 19103, with more than 8,000 members in Pennsylvania. For more than 40 years, Clean Air Council has fought to improve the air quality across Pennsylvania. Clean Air Council works to protect everyone's right to a healthy environment.

¹ Exhibit A: PA DEP CHAPTER 105 COMMENTS BY CITIZENS

² Exhibit B: PA DEP CHAPTER 102 COMMENTS BY CITIZENS

The Mountain Watershed Association, home of the Youghiogheny Riverkeeper is a non-profit, community-based environmental organization located at 1414 Indian Creek Valley Rd., Melcroft, Pennsylvania 15462, with more than 1,400 members. Our major purposes include bringing about remediation of the numerous abandoned mine discharges, developing community awareness, promoting cooperative community efforts for stewardship and encouraging sound environmental practices throughout Pennsylvania's Laurel Highlands region and surrounding areas. Our mission is the protection, preservation and restoration of the Indian Creek and greater Youghiogheny River watersheds.

The Sierra Club was founded to explore, enjoy, and protect our planet. The Sierra Club has about 24,000 Pennsylvania members. Nationally and locally, the Sierra Club has been a leader in conservation practices and environmental protection. The Sierra Club has members across Pennsylvania who will be affected by the proposed pipeline. Our Pennsylvania members breathe the air, drink the water, travel on the roads, and recreate in the regions affected by this pipeline project.

Concerned Citizens of Lebanon County is a grassroots, nonprofit unincorporated association. Our mission is to keep citizens informed about the Sunoco Mariner East Pipeline Project and similar projects that may affect the health, safety and welfare of those who live, work and recreate in Lebanon County. We are a public interest organization, government watchdog and advocacy group for good government. We work with other groups who have similar objectives.

Lebanon Pipeline Awareness (LPA) is a local grassroots nonprofit organization that operates in collaboration with several other like-minded groups. Our mission is to provide information and raise public awareness on all aspects of pipeline impacts including: safety and health concerns, property devaluation, future economic development loss, construction damages, and especially impacts to air quality, farmland, forests, wetlands, waterways and for those along a pipeline right of way, quality of life. We serve as advocates for affected landowners in our county and also for the general citizenry. LPA provides awareness of larger issues including the negative impacts of the current fossil fuel economy and particularly the natural gas industry in Pennsylvania. We firmly support the necessary transition to a renewable energy future.

Clean Water Action (CWA) was founded during the campaign to pass the landmark Clean Water Act in 1972. Clean Water Action has worked to win strong health and environmental protections by bringing issue expertise, solution-oriented thinking and people power to the table. CWA's mission is to protect our environment, health, economic well being and community quality of life.

Allegheny Defense Project is a grassroots nonprofit organization dedicated to protecting and restoring the wild forests and rivers of the Allegheny Plateau, including the Allegheny National

Forest and other public lands in Pennsylvania. We support a citizen-led, public land ethic that attains biological diversity, and protects water quality, wildlife habitat, natural heritage, wilderness, and recreation opportunities. Shale gas development and related pipeline construction is incompatible with these values. Instead of building infrastructure for 19th century fossil fuels, we support increased conservation, energy efficiency, and a rapid transition away from our current fossil fuel dependency.

The Andover Homeowners' Association, Inc., is a Pennsylvania nonprofit corporation formed in 2006. The corporation is an Association of 39 property owners in a planned community in Delaware County. The current officers of the Association have established as their highest priorities the safety and security of the community; the protection of property values; and maximizing the quality of life within Andover for the benefit of Association Members. Sunoco's proposed project jeopardizes all three.

Guardians of the Brandywine, Inc. ("Guardians") is a non-profit corporation and 501(c)(3) tax-exempt Public Charity whose mission is to preserve the rural character of Wallace Township and focus on the protection and enhancement of the waters and other natural resources of the Upper East Branch of the Brandywine Creek's Watershed, including all of its tributaries. We believe that the mission requires us to educate the public about the quality of our natural resources and the quality of life enjoyed by our predecessors, and to further inform the public of the challenges to these qualities posed by the pressures of the twenty first century. Preservation and maintenance of riparian buffers are at the top of the list of the subjects which the public must understand if the Brandywine waters and surrounding environs are to be preserved from deterioration.

INTRODUCTION

Citizens learned of an application for a Army Corps of Engineers' permit³ by Sunoco Pipeline L.P.⁴, herein "Applicant," for the proposed Pennsylvania Pipeline Project (also referred to as the Mariner East, Mariner East 2) and herein "The Project." Although the 30-day public comment period was initiated on August 1, 2016, the notice of application was not published by the Baltimore District until August 5, 2016. Citizens have confirmed through Ms. Nizer that they may submit comments through Wednesday, September 7, 2016. Our comments are therefore timely.

³ Pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act (33.U.S.C.1344)

⁴ Sunoco Pipeline L.P., 535 Fritztown Road, Sinking Spring, Pennsylvania, 19608

BACKGROUND

Clean Water Act:

An applicant for a Clean Water Act Section 404 permit for a non-water-dependent activity (such as the Project) must “clearly demonstrate” that no practicable alternatives exist that do not require a discharge into wetlands or other special aquatic sites.⁵ “[T]he applicant and the [Corps/Baltimore District] are obligated to determine the feasibility of the least environmentally damaging alternatives that serve the basic project purpose. If such an alternative exists... the Clean Water Act (CWA) compels that the alternative be considered and selected unless proven impracticable.”⁶ Under the CWA, “the test is whether the alternative with less wetlands impact is ‘impracticable,’ and the burden is on the applicant...with independent verification by the [Corps/Baltimore District], to provide detailed, clear and convincing information proving impracticability.”⁷

The Baltimore District and the Applicant have not shown that the proposed pipeline route would be the least damaging practicable alternative.

NEPA:

The purpose of the National Environmental Policy Act (NEPA) / Clean Water Act (CWA) Section 404 decision-making process is in part to meet the standards of all signatories, to ensure that any preferred alternative selected under NEPA complies with CWA Section 404(b)(1) guidelines, and to establish a procedure and provide guidance to ensure that the environmental effects of, and any alternatives to, proposed actions are fully considered. CWA Section 404(b)(1) Guidelines prohibit issuance of a permit where:

- (i) There is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as such alternative does not have other significant adverse environmental consequences; or
- (ii) The proposed discharge will result in significant degradation of the aquatic ecosystem...; or
- (iii) The proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem; or

⁵ 40 C.F.R. § 230.10(a)(3). See *Shoreline Assocs. v. Marsh*, 555 F. Supp. 169 (D. Md. 1983), *aff'd*, 725 F.2d 677 (4th Cir. 1984)

⁶ *Utahns for Better Transp. v. U.S. Dept. of Transp.*, 305 F.3d 1152, 1188-1189 (10th Cir. 2002).

⁷ *Id.* at 1186 (emphasis in original).

(iv) There does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines.⁸

Citizens assert that in accordance with 404(b)(1) Guideline (iv)⁹ alone, the District is prohibited from issuing this permit. There does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with 404(b)(1) Guidelines.

There does not exist sufficient information to make a reasonable judgement as to Sections 404(b)(1) (ii) and (iii), and Citizens assert that practicable alternatives under Section 404(b)(1)(i) have not been considered.

No-Action Alternative:

Guidelines prohibit issuance of a permit where:

404(b)(1)(i): There is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as such alternative does not have other significant adverse environmental consequences;

Neither Applicant nor the District has shown that the proposed pipeline route would be the least damaging practicable alternative.

Within the range of alternatives, reasonable alternatives¹⁰ must be rigorously explored and objectively evaluated. Section 10502.14. A decision maker must consider all the alternatives discussed in an environmental impact statement (EIS). Section 1505.1(e). Here, a determination has not yet been made as to conducting an environmental assessment (EA) or EIS, however, it is reasonable to anticipate an EIS would be appropriate for a proposed project that would disturb at least 3,116 acres of land in Pennsylvania, nearly five (5) square miles, traverse Pennsylvania's three (3) largest watersheds and 17 Pennsylvania counties alone. Citizens urge an EIS be conducted for the Project in order to consider and document for public review:

- 1) Purpose and Need
- 2) Significant environmental impacts
- 3) Reasonable alternatives discussion
- 4) No-action alternative
- 5) Mitigation measures not part of proposals

⁸ 40 C.F.R. § 230.12(a)(3).

⁹ (iv) There does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines.

¹⁰ Sec. 1505.1(e)

- 6) Description of affected environment
- 7) Environmental consequences (both indirect and direct)
- 8) Possible conflicts with objectives of federal, regional, state, local land use plans, policies and controls for the areas concerned
- 9) Energy requirements and conservation potential of alternatives and mitigation measures
- 10) Natural or depletable resources requirements and conservation potential of various alternatives and mitigation measures
- 11) Urban quality, historic and cultural resources
- 12) Endangered species impacts
- 13) Ways to mitigate adverse environmental impacts

Section 1502.14¹¹ requires the EIS to examine *all reasonable alternatives* to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the Applicant. Reasonable alternatives include the No-Action or no permit alternative. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d).

Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." In new project reviews, "*No action*" would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

It is difficult to think of a situation where it would not be appropriate to consider a "no-action" alternative. The scale of this proposed project not only makes consideration of a no-action alternative appropriate, but provides an opportunity for the Commonwealth and the District to set benchmarks for analysis in this era of pipeline expansion by both size and numbers. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. Section 1502.14(c).

One of the documents that Sunoco submitted to PA DEP and apparently also to the District was an alternatives analysis. However, this alternatives analysis is severely flawed. Notably it fails to consider other major possible routes. Sunoco possesses additional pipeline infrastructure that could carry natural gas liquids east-to-west. Its pipeline from Icedale in Chester County west to

¹¹ Available at <https://www.gpo.gov/fdsys/granule/CFR-2012-title40-vol34/CFR-2012-title40-vol34-sec1502-14/content-detail.html>.

Allegheny County should have been considered in place of the proposed route for Mariner East 2, just as Mariner East 1 was largely built from a repurposed, pre-existing line.

Also, Sunoco's No-Action Alternative is deficient. First, the purpose of the Project is not and has never been to serve local or domestic markets, despite Sunoco's claims. Second, Sunoco argues for need for the Project based on "growing energy demand" and a need to obtain "natural gas supplies." The Project would not deliver natural gas, it would deliver natural gas liquids, which would overwhelmingly be used as petrochemical feedstocks, not to combust for energy. Third, Sunoco makes it sound as if this pipeline would be replacing truck and rail shipments of natural gas liquids to Marcus Hook. That is completely wrong. Sunoco is just now beginning to outfit Marcus Hook for receiving, processing, storing, and distributing natural gas liquids. Large-scale, long-distance road or rail hauling of NGLs to Marcus Hook has not been economically viable and has not happened.

Citizens ask for an EIS and valid No Action Alternative Analysis

ABSENCE OF DOCUMENTATION

Citizens acknowledge that there are likely documents that might be in PA DEP Chapter 105 and 102 applications relevant to Sunoco's application for Section 404 approval; however, we do not know which of those documents are being used by the District nor do we know what other documents Sunoco submitted to PA DEP or the District that Citizens don't have access to and that would be helpful in providing fully substantive comments.

Citizens did learn through requests to the District for scoping and other documents by reference within the application that, at this juncture in the process, Citizens are privy only to the cursory statements and documents included in the Notice. Citizens learned that since "this action" is currently under review and not completed by the Corps, that any information that has not been yet released to the Public for use in making a reasonable judgement as to whether the proposed discharge will comply with 404(b)(1) Guidelines would not be released to the Public at this time. This policy hamstring the Public in its ability to make a reasonable judgment as to whether the proposed discharge will comply with 404(b)(1) Guidelines. Although Citizens are told this is standard process in Corps' reviews, *Citizens assert that at this time comments made herein at best can be only cursory, and request that comments be reopened at such time as full application documents and District reviews are publically disclosed in order to evaluate statements set forth in the Notice.* While Citizens have the highest regard for the diligence of the Corps, experience in researching and commenting on PA DEP Chapters 105 and 102 permit applications give Citizens justification for asking for transparency in planning documents prior to final comments being submitted by Citizens. For example, the Notice provides that "The Corps has determined

this project will not affect any EFH [Essential Fish Habitat]”¹² yet does not provide documentation for public review of such finding.

The Notice 16-45 states, “The Corps of Engineers is soliciting comments from the public...in order to consider and evaluate the impacts of this proposed activity...” and further states that “...any comments received will be considered by the Corps...to determine whether to issue, modify, condition or deny a permit for this proposal...” *In the absence of the required Water Quality Certification application¹³ review and approval or denial, Citizens may not consider and evaluate the cumulative impacts of this proposed activity.*

By Notice, Applicant currently lacks the following authorizations, the requests for which are under review. The applicant must obtain any State or local government permits which may be required:

ENDANGERED SPECIES ACT: The preliminary review of compliance with the Endangered Species Act by the Corps states, “...the proposed work is *not likely or will significantly affect*, (emphasis added) Federal listed threatened or endangered species...pursuant to Section 7 of the Endangered Species Act...provided time of year and restrictions and avoidance/conservation measures are implemented.” The citing by Sunoco of compliance with the Endangered Species Act (ESA) when conducting hand cut deforesting at the Gerhart home, illustrates both Sunoco’s knowledge of ESA and how to use the Act to achieve Operator goals within their desired timelines. Citizens reference Corps’ issued Special Public Notice informing the public of the Federal listing of the Northern Long-Eared Bat (*Myotis septentrionalis*) as a Threatened Species (effective May 5, 2015), requiring “any and all avoidance measures listed on the PNDI receipt for Long-Eared Bat...”¹⁴

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The Corps has determined this project will not affect any EFH. *Citizens request documentation of this determination.*

WATER QUALITY CERTIFICATION: The applicant is required to obtain a water quality certification in accordance with Section 401 of the Clean Water Act from the Pennsylvania

¹² The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), amended (Public Law 04-267) Sustainable Fisheries Act of 1996.

¹³ Section 401 Clean Water Act.

¹⁴ <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/SPN%2015-30.pdf>

Department of Environmental Protection. The Section 401 certifying agency has a statutory limit of one year from the date of this public notice to make its decision.

COASTAL ZONE MANAGEMENT PROGRAMS: Where applicable, the applicant has certified in this application that the proposed activity complies with and will be conducted in a manner consistent with the approved Coastal Zone Management (CZM) Program. By this public notice, the District is requesting the State concurrence or objection to the applicant's consistency statement. *Citizens request documents used to determine consistency or lack thereof and a copy of any State concurrence or objection to Applicant's consistency statement.*

NATIONAL HISTORIC PRESERVATION ACT: Currently, the Pennsylvania Historical and Museum Commission is reviewing information, including archeological surveys, to determine if the proposed project will impact sites that are eligible for listing or are included in the National Register of Historic Places. Unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by the work to be accomplished under the requested permit. *Citizens reserve the right to comment when this study is complete and data is made available for public review.*

TRIBAL COORDINATION: A formal request for Government to Government consultation regarding the pipeline project was sent to sixteen federally recognized Tribes on June 2, 2016 in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) and USACE Tribal Policy. On June 24, 2016, additional information regarding the pipeline project, including the technical reports for the cultural resource investigations were provided to the Tribes that confirmed their interest in project review and coordination. At the current time the Tribes are reviewing the information submitted. *Citizens reserve the right to comment when this consultation is complete and data is made available for public review.*

CLEAN WATER ACT SECTION 404

CLEAN WATER ACT SECTION 401

Citizens assert that in order to make sufficiently meaningful comments, several things must occur: (1) substantive documentation by the District as shall be itemized below; (2) rectification of discovered discrepancies and omissions in documentation provided by the Applicant during PA DEP Chapters 105 and 102 reviews by Citizens and other commenters;¹⁵ (3) the comment period for this Application be reopened, rescheduled and extended, until after the aforementioned documents are made available to the Public for review; and (4) Public hearings should be scheduled during the comment period.

¹⁵ See: 25 PA Code Chapter 105

Citizens' Discussion of Issues

Cumulative Impacts: includes “the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions¹⁶” regardless of who undertakes them.

Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. A meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions – past, present, and proposed, and reasonably foreseeable – that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.

Neither the Applicant nor, as far as we can tell, the Baltimore District has studied indirect and cumulative impacts of the Project: There is no evidence that Applicant nor the Baltimore District has studied the indirect effects on the aquatic ecosystem. Similarly, there is no evidence that Applicant or the District considered the cumulative impact of the project’s selected route on the environment. The District cannot legally complete its permit analysis until it secures this information. See Chapter 105 comments.

Applicant and the Baltimore District have failed to demonstrate the impact that the proposed project will have on the structure and function of the impacted aquatic systems, nor has either provided a proper alternatives analysis that shows that the project has avoided and minimized the direct, indirect, and cumulative impacts to the maximum extent practicable. The Guidelines require the District to make certain factual determinations addressing the potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the aquatic environment. For example, the Guidelines require the following factual determinations such as 1) aquatic ecosystem and organism determinations; 2) determining the nature and degree of effect that the proposed discharge would have, both individually and *cumulatively*, on the structure and function of the aquatic ecosystem and

¹⁶ Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977). **Sec. 1508.7 Cumulative impact**

organisms; 3) consideration of the effect at the proposed disposal site of potential changes in substrate characteristics and elevation, water or substrate chemistry, nutrients, currents, circulation, fluctuation, and salinity, on the recolonization and existence of indigenous aquatic organisms or communities. *In the absence of these factual determinations, an adequate alternatives analysis is not possible and practicable avoidance and minimization measures cannot be determined.*

Mitigation: The Corps' notice does not provide sufficient detail regarding the proposed mitigation for even a cursory comment. The Corps regulation on this issue, states: "For an activity that requires a . . . permit pursuant to section 404 of the Clean Water Act, the public notice for the proposed activity must contain a statement explaining how impacts associated with the proposed activity are to be avoided, minimized, and compensated for (and that) the level of detail provided in the public notice must be commensurate with the scope and scale of the impacts."¹⁷

In light of the scope and scale of the Project, which involves significant impacts to significant aquatic resources, the Notice does not contain sufficient information on proposed mitigation for Citizen comment. What Citizens do know from the Notice, is that the Project estimates disruption of least 3,116 acres of land in Pennsylvania, nearly five (5) square miles, traverse Pennsylvania's three (3) largest watersheds and 17 Pennsylvania counties alone. Citizens remain committed to a cumulative impact review and note that the Notice states the pipelines would cross "an estimated" 643 streams/waters and 461 wetlands, resulting in approximately 47,721 linear feet of "temporary impact to streams and 32.34 acres of temporary impact to wetlands...and 0.71 acres of permanent conversion of palustrine forested (PFO) wetlands to palustrine emergent (PEM) wetlands. The Notice then segments impacts to the Baltimore District for this 404 review; estimating 345 stream/water crossings and 246 wetlands resulting in approximately 27, 451 linear feet of temporary impact to streams; 18.33 acres of temporary impact to wetlands and permanent conversion of 0.52 acres PFO to PEM. The Notice states on lty that the applicant has co-located the majority of the project with existing utility rights of ways and that re-route alternatives have been presented.¹⁸" 404(b)(1) Guidelines must be stringently adhered to in providing that: no permit shall be issued "unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem."¹⁹ 404 of the Clean Water Act, additionally states that the public notice for the proposed activity must contain a statement explaining how impacts associated with the proposed activity are to be avoided, minimized, and compensated for (and that) the level of detail provided

¹⁷ 33 C.F.R. § 332.4(b)(1) (emphasis added)

¹⁸ See: Notice

¹⁹ 40 C.F.R. § 230.10(d)

in the public notice must be commensurate with the scope and scale of the impacts.”²⁰ The Notice is absent of this requirement.

CEQ: December 18, 2014, CEQ released revised draft guidance for public comment that describes how Federal departments and agencies should consider the effects of greenhouse gas emissions and climate change in their NEPA reviews. This guidance explains that agencies should consider both the potential effects of a proposed action on climate change, as indicated by its estimated greenhouse gas emissions, and the implications of climate change for the environmental effects of a proposed action.

DISCUSSION

Citizens respectfully submit that the Baltimore District has rightful, due cause and obligation to deny Applicant’s request for this permit

1) By way of District Notice, any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal (and that) to make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above (and that) comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act (and that) comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Citizens reiterate there does not exist sufficient information in this Notice to make a reasonable judgment as to whether the proposed discharge will comply with Section 404 regulations, whether to issue, modify, condition or deny a permit, assess impacts on endangered species, historic properties, water quality, general environmental effects, public interest factors nor to determine the adequacy of an Environmental Assessment versus an Environmental Impact Statement. Due to a lack of sufficient and detailed information, pursuant to the National Environmental Policy Act there exists a need for a public hearing(s) to determine the overall public interest of the proposed activity.

2) By way of the Notice, comments are sought for two of the proposed pipeline crossings of waters and/or wetland, which require authorization under a Department of the Army Individual

²⁰ 33 C.F.R. § 332.4(b)(1) (emphasis added)

Permit²¹, and that “The evaluation of the impact for these two crossings on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act.”²²”

Citizens assert that the Notice PN-16-45 is deficient in that it does not even identify the river or watershed in which the two (2) crossings are located for which it seeks public comments and which require authorization under a Department of the Army Individual Permit. PN-16-45 states: “The decision whether to issue a permit for these two crossings will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest.” Citizens assert that NEPA and Section 404 require cumulative project review of all project crossings and therefore a reasonable judgment cannot be made by segmenting two specific crossings in the permit application.

3) According to PN-16-45, the pipelines would cross an estimated 643 streams/waters and 461 wetlands, resulting in approximately 47,721 linear feet of temporary impact to streams and 32.34 acres of temporary impact to wetlands. Approximately 0.71 acre of permanent conversion of palustrine forested (PFO) wetlands to palustrine emergent (PEM) wetlands is also proposed. In the Baltimore District, the pipelines would cross an estimated 345 streams/waters and 246 wetlands, resulting in approximately 27,451 linear feet of temporary impact to streams; 18.33 acres of temporary impact to wetlands; and permanent conversion of 0.52 acre of PFO wetland to PEM wetland.

Citizens reiterate the intent of NEPA and Section 404 cumulative impact review is to eliminate such segmentation as proposed in the Application. A project of this magnitude by rational and regulatory standards begets expansive cumulative impact analysis. In the cursory information we have alone, 54% of impacted streams/waters and 53% of impacted wetlands are in high population areas of the Baltimore District. Other development that is going on or may go on in those densely populated areas must be considered as part of the cumulative impact analysis. Temporary impacts need to be defined in cumulative impact reviews. Although Applicant proposes to use an existing right-of-way for some of the project, Applicant does not take into consideration cumulative impacts. “Maintenance” should be discussed in terms of the lifetime of the pipelines and should include anticipated maintenance such as replacing/repairing lines or infrastructure. Citizens do not see such a review.

4) According to PN-16-45, the applicant has co-located the majority of the project with existing utility right-of-ways (approximately 75% of the overall mileage). Twenty-two percent of

²¹ One of the crossings is located in North Middleton Township, Cumberland County,(Enclosure 2), while the second crossing is located in Frankstown Township, Blair County, Pennsylvania, (Enclosure 3).”

²²

proposed impacts to waters and twenty-nine percent of proposed impacts to wetlands are within existing utility rights of way (approximately 75% of overall mileage). Twenty-two percent of proposed impacts to waters and 29% of proposed impacts to wetlands are within existing maintained utility rows.

Citizens ask for more precise data, such as “What constitutes the ‘22% proposed impacts’ to waters and the ‘29% proposed impacts to wetlands’? These impacts make up 75% of the Project overall mileage. What exactly are the proposed impacts? What precisely are the remaining 78% and 71% proposed impact?”

We know from review of Sunoco’s “shapefiles” recently posted by the PA DEP in connection with its review under Chapter 105, that not all shapefiles agencies are using in their analyses of the Project are both up-to-date and complete. Are shapefiles being used by the District and if so, from what resource and are they available to the public to review?”

Does the District’s review consider High Consequence Areas (HCAs) where it is not possible to expand ROWs and still properly avoid, minimize, or mitigate the Project’s potential to harm to waterways and wetlands? The Application falls short of the requirements of the Clean Water Act (CWA) and its implementing regulations by not providing such data for public review. The District should therefore deny the Application until such time as public review of needed documentation and data and public hearing is able to be had.

5) Reroute alternatives and alternative crossing methods have been presented by Applicant demonstrating wetland, water, and endangered species habitat avoidance and minimization.

The Notice states the Applicant has presented reroute alternatives, avoidance and minimization, however the only such information available to the public for purposes of comment, as far as we know, is the alternatives analysis that, as we explained above, is insufficient. Citizens are not aware of what other documentation Applicant has provided to the District. Citizens request the substantive documentation, and an extension to public comment in order to submit substantive comments.

In the interim, Citizens note that the District must deny a Section 404 permit “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.”²³ An alternative is practicable “if it is available and capable of

²³ 40 C.F.R. § 230.10(a).

being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.”²⁴ The Corps and EPA have explained in a regulatory guidance letter that “the proposed discharge...must represent the least environmentally damaging practicable alternative in order to comply with the alternatives analysis requirement of the Guidelines[.]”²⁵

Where a discharge is proposed for a wetland or other special aquatic site, all practicable alternatives to the proposed discharge that do not involve a discharge to the wetland “are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.”²⁶ A No Action Alternative constitutes the most practicable alternative to proposed discharges.

6) According to the Notice PN-16-45, “The construction right-of-way across the majority of water and wetland crossings is proposed to be reduced to a width of 50 feet. Through implementation of construction right-of-way reduction at water and wetland crossings, and the implementation of directionally drilling under certain waters and/or wetlands, the applicant has reduced the potential impact associated with the project by approximately 29,000 linear feet of stream impact and 60 acres of wetland impact. Where possible the applicant would utilize existing access roads to access project workspaces during construction. No permanent filling, or loss of waters and/or wetlands is proposed by the applicant.” However, conversion of forested to emergent wetlands is proposed by the Applicant, which constitutes loss of forested wetlands. Moreover, the impacted wetlands would be heavily degraded. Applicant proposes essentially to destroy the wetlands then rebuild new wetlands in their place. While this is technically not a net loss of wetlands, wetlands are natural ecosystems which mature only after decades. Newly created wetlands differ greatly from mature, established wetlands, and therefore Applicant’s claim that wetlands would not be lost is deceptive.

The Notice provides statements without substantive documentation therefore sufficient information is not provided in order to make a public comment and a reasonable judgment. Until such time as the public is provided with substantive documentation of statements such as, “Through implementation of construction right-of-way reduction at water and wetland crossings, and the implementation of directionally drilling under certain waters and/or wetlands, the applicant has reduced the potential impact associated with the project by approximately 29,000 linear feet of stream impact and 60 acres of wetland impact...” and, “Where possible the applicant would utilize existing access roads to access project workspaces during

²⁴ 40 C.F.R. § 230.10(a)(2).

²⁵ RGL 92-2, Water Dependency and Cranberry Production, June 26, 1992 (emphasis added).

²⁶ 40 C.F.R. § 230.10(a)(3).

construction....” and “No permanent filling, or loss of waters and/or wetlands is proposed by the applicant....” *the permit application must be denied.*

Neither the District nor the public can rely on promises made by operators to protect the environment only 'where possible,' and Citizens urge the District not to grant permits lacking objective and verifiable protections."

7) The Notice PN-16-45 states, “The applicant proposes to restore all stream crossings to pre-construction contours, and all wetland crossings to the pre-construction contours, with a dominance of wetland vegetation, and adequate wetland hydrology, with the exception of the 0.71 acre of PFO wetland conversion to PEM wetland.” *The Corps’ notice states, but fails to demonstrate that Sunoco has avoided and minimized impacts to the maximum extent practicable nor do they address how the Applicant proposes to mitigate the impacts on the wetlands crossed.*
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There is no discussion of how the Project will ensure it minimizes impacts to already impaired waterways or to EV etc. Substantive documentation of compliance with standards of restoration are absent as are the concepts of avoidance and minimization.

Citizens observe it is logically, and practicably, impossible to restore stream crossings to pre-construction contours. Pipeline operators in general know this to be true, ecologist, botanists, environmental engineers would all agree that the standard use of language in PHMSA,²⁸ FERC²⁹ and other permitting agencies that states a return to pre-construction “as close as practicable” is a more accurate goal. Nevertheless, impacts to the aquatic life, biosphere may takeor never return... dependent upon duration of construction, expanse of construction, maintenance over time, other row influences of maintenance over time....while co-locating may be preferable to new ROW, overburdening a wetland, stream or HCA community has cumulative impacts.

Moreover, Sunoco’s record of doing restoring ROW contours after construction is less than stellar. As explained in the PA DEP Chapter 105 Comments by Citizens, Sunoco drastically altered the contours of the land in the neighborhood of Carol Gracon in Cumberland County in connection with Mariner East 1, and failed to restore those contours. As a result, her neighborhood and farm suffered severe topsoil loss and drainage problems. This took place after receiving erosion and sedimentation control permits from PA DEP.

The no-construction alternative is appropriate in these circumstances.

²⁷ See PA DEP Chapter 105 Comments by Citizens, discussion of 25 Pa. Code § 105.18a.

²⁸ PHMSA: Pipeline and Hazardous Materials Safety Administration

²⁹ FERC: Federal Energy Regulatory Commission

Certain erosion and sedimentation control plan drawings were included with the Notice. They reveal several problems with Applicant's plans to build the pipeline through the wetlands the Corps is focusing on:

- 1) details for wetlands restoration are not adequate on sheet ES 0.10, Details sheet. Other details should be reviewed for adequacy and applicability.*
- 2) The plan sheets show a wide limits of disturbance crossing the wetland areas. The limits of disturbance should be narrowed to minimize impacts to the wetlands in areas where the pipelines cross the wetlands.*
- 3) On sheet ES 3.44, there are additional areas in the limits of disturbance through wetland areas that need to be minimized or avoided. The limits of disturbance are too wide and appear to be unnecessary within the wetlands areas.*
- 4) The plans overall need work to minimize and decrease the footprint of the pipeline on the wetland areas.*

8) The Notice continues, "The applicant is currently preparing a compensatory mitigation plan to offset the aquatic functions and services lost as a result of these wetland conversion impacts." (emphasis added.) Since the compensatory mitigation plan is not yet prepared, Citizens cannot review it for compliance with the applicable standards for review.

Until applicant has submitted a compensatory mitigation plan, a permit cannot be issued.

That being said, compensatory mitigation is, and has always been, a last resort. Under the Corps' Guidelines for Preparing a Compensatory Mitigation Plan, a mitigation plan must provide a statement demonstrating the permittee's efforts to first avoid and minimize impacts. This statement must identify and specifically address impacts to outstanding resources (i.e., rare, unique, or high quality aquatic resources). The No Action Alternative must be considered.

To date, there is no meaningful explanation of how the identified mitigation sites will fully compensate for all of the aquatic impacts of the Project, not what the anticipated aquatic functions and services lost as result of wetland conversion consist of.

The Notice states that a mitigation plan is in the works, but doesn't disclose any elements thereof to the public. Specifically, the Corps' proposal fails to disclose, for example, the quantity of mitigation credits required, the location of the mitigation credits aside from stating a certain county, how PADEP and/or the Corps selected the proposed mitigation sites, what standards and criteria would be used to determine whether the plan appropriately compensates for lost

aquatic functions and values, and what adaptive management measures will be used to manage risks inherent in any restoration and enhancement activities proposed.

The Notice also lacks baseline information about the current state of the impacted watershed and the aquatic resources needed to be compensated for through mitigation. Without this information—including a full functional assessment of the streams and wetlands to be impacted—the available materials cannot provide reasonable assurance that the impacts of the Project will be adequately mitigated, nor can the public adequately comment on the proposal.

Citizens have noted over time that compensatory mitigation plans, while aiding in other areas of need, are offers indeed to “offset” aquatic functions and services lost as a result of these wetland conversion impacts. In and of itself, these compensatory mitigation plans are affirmations of permanent impacts due to construction.

Citizens ask that any and all compensatory mitigation plans for the entire project be made public prior to additional consideration of the Application.

9) PN-16-45 states, “As part of the proposed pipeline project, one crossing in Cumberland County, measuring approximately 1298 linear feet, would result in approximately 1.98 acres of temporary impact to a PEM wetland and a crossing in Blair County, measuring approximately 1,102 linear feet, would result in approximately 1.87 acres of temporary impact to a PEM wetland. Approximately thirty percent of the impact to the wetlands at these crossings is a result of the temporary placement of timber mats, which will be placed on a layer of geo-textile material. The timber mats are proposed to access the trench excavation areas for both pipelines.”

A definition of temporary impacts need to be provided and total estimated “temporary” impact for the Project discussed in terms of determining cumulative temporary and permanent impacts.

10) According to the Notice PN-16-45, “The proposed right-of-way at these two crossings has been reduced to 50 feet for the purpose of further avoidance and minimization of impacts to the aquatic resources. The purpose of this public notice is to solicit comments regarding these two crossings, including construction of the crossings as depicted on the enclosed plans (Enclosure 4). The remaining crossings of aquatic resources associated with the Pennsylvania Pipeline are being reviewed for authorization under the Pennsylvania State Programmatic General Permit - 5 by the Baltimore, Philadelphia, and Pittsburgh Districts.”

Citizens ask that the entire Project be reviewed for cumulative impacts to streams and wetland of the Project and other pipeline projects proposed (such as Atlantic Sunrise, natural gas gathering lines, etc.) and other utilities, community development and other types of impacts.

11) The applicant is proposing to install one 20-inch diameter pipeline and one 16-inch pipeline running parallel to each other for a total distance of 254.6 miles within existing and new right-of-ways (ROWS).

Citizens observe the omission of cumulative impacts due to existing infrastructure - i.e. present and reasonably foreseeable future actions such as maintenance of up to 4 pipelines in the ROW. The Notice is not specific as to miles and locations of new ROWs and does not take a holistic approach to review of the Project, as it omits existing infrastructure and the implications of foreseeable future impacts of additional supporting infrastructure. Supporting infrastructure is both temporary (staging areas and access roads) and permanent (pump stations) as described in the Notice. But the numbers of pump stations, temporary roads and locations of such, by nature will be dependent upon other permitting processes, obtaining necessary additional rights-of-way, and the myriad unaddressed issues Citizens reference in these comments. Simply, as far as Citizens can tell, both Citizens, and the District, need details.

CONCLUSION:

Citizens respectfully submit that the Baltimore District has rightful and due cause to deny Sunoco's Application for individual and general permits under Section 404 of the Clean Water Act.

The Project has not been adequately analyzed, nor have less damaging, practicable alternatives that would harm fewer water resources been truly considered, including the no-action alternative.

The cumulative and indirect effects of the Project, and how this Project would serve as a growth-inducing mechanism for further upstream shale gas infrastructure and gas well development, as well as the White House mandated CEQ required analysis of impacts to climate change³⁰, are not included in available data and therefore cannot be commented on by the public.

Until the cumulative and indirect effects of this Project are fully analyzed in conjunction with direct impacts, the Corps cannot approve the Project under its Public Interest balancing test. Citizens suggest that an Environmental Impact Statement is needed to determine:

- i. The environmental impact of the proposed action, citing to and evaluating application materials;

³⁰ https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf

- ii. Any adverse environmental effects which cannot be avoided should the proposal be implemented.
- iii. Alternatives to the proposed action, including but not limited to increased boring under wetlands, and use of alternative existing pipeline infrastructure in place of a new set of pipelines.

Citizens respectfully submit that the Baltimore District should, at minimum, defer deciding the merits of the Project pending further record development, including the issuance of an environmental impact statement (EIS), public hearings, and a public notice and extended comment period on the Application.

Specifically, Citizens respectfully request that the District:

- 1) Review cumulative impacts of the entire pipeline project as a whole, and make those reviews public in order to accomplish the goals of the Notice, to wit:
 - “determine whether to issue, modify, condition or deny a permit for this proposal (and that) to make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above (and that) comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act (and that) comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity”;
- 2) Provide a new public notice and comment period for the Application;
- 3) Provide public meetings;
- 4) Provide substantive data concluding that the Project’s impacts to the aquatic environment have been avoided and minimized, if they have been;
- 5) Provide substantive data that determines there are sufficient mitigation measures available to compensate for the tremendous landscape-scale impacts that would occur if the Project were constructed, if that is so;
- 6) Provide substantive data that determines the Project is justified in light of its substantial cost and impacts on wetlands, streams, and historic resource for a project overwhelmingly intended for export rather than domestic benefits, if that is so;
- 7) Provide substantive data that determines the Project will not impact water quality, if that is so;
- 8) Provide substantive data that determines whether the Project fulfills the Corp’s own public interest review criteria for Section 404 permits;
- 9) Demonstrate consideration of the Project impacts revealed in Sunoco’s coordinate applications to the PADEP for permits under Chapters 102 and 105 of the Pennsylvania Code, as well as by the public and PADEP itself in those permitting processes.

The District states the decision whether to issue a permit for these two crossings will be based on: 1) an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest, 2) the national concern for both protection and utilization of important resources, and 3) a balancing of the benefit which reasonably may be expected to accrue from the proposal against its reasonably foreseeable detriments.

Citizens submit approval of this Project would violate NEPA and its cumulative impact requirements. Reasonably foreseeable detriments have not been fully defined. NAPA requires that all factors, which may be relevant to the proposal be considered, including the cumulative effects thereof; among those are conservation, economic, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, and consideration of property ownership and in general, the needs and welfare of the people³¹.

The Section 404(b)(1) Guidelines prohibit issuance of a permit where:

- (i) There is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as such alternative does not have other significant adverse environmental consequences; or
- (ii) The proposed discharge will result in significant degradation of the aquatic ecosystem...; or
- (iii) The proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem; or
- (iv) There does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines.

Citizens submit that commenting on stated decision goals cannot be achieved due to lack of available document review by Citizens of:

- The severity of the impact;
- The degree to which the proposal impacts public health or safety;
- Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, and ecologically critical areas;
- The degree to which the possible effects are highly certain or involve unique or unknown risks;

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<http://www.nab.usace.army.mil/Missions/Regulatory/Public-Notices/Public-Notice-View/Article/902837/pn16-45-pennsylvania-pipeline-project-2015-01664/>

- The degree to which the action sets precedent for future actions which will have cumulative impacts;
- The degree to which the Project would affect districts, structures, or objects listed or eligible for listing in the National Register of Historic Places;
- The degree to which the Project may cause loss or destruction of significant scientific, cultural or historical resources; and
- The degree to which the Project may affect endangered or threatened species or habitat.

Citizens respectfully submit that the Baltimore District should, at minimum, defer deciding the merits of the Project pending further record development, including the issuance of an environmental impact statement (EIS), public hearings, and a public notice and extended comment period on the Application.

Citizens ask that we receive a copy of proceedings in the District review of the application.

Thank you for the opportunity to submit these comments on the proposed Project.

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