

Mountain Watershed Association
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August 24, 2016

Department of Environmental Protection
Southeastern Regional Office
Waterways & Wetlands Program
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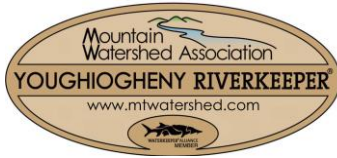
Re: Sunoco Pipeline L.P. Applications for Chapter 105 Permits for the “Pennsylvania Pipeline Project” / Mariner East 2, Nos. E31-234, E34-136, E36-945, E38-194, E50-258, E67-920, E06-701, E07-459, E21-449, E22-619, E23-524, E15-862, E02-1718, E11-352, E32-508, E63-674, E65-973

Dear Program Managers;

This comment is on behalf of the Mountain Watershed Association, home of the Youghiogheny Riverkeeper. We are a nonprofit, citizen-led, environmental organization focused on protection, preservation and restoration of the Indian Creek and greater Youghiogheny River watersheds in southwestern Pennsylvania. We represent over 1,400 members the majority of whom live above the shale gas formation and many of whom have been impacted by unfettered shale gas development.

We would like to discuss some of the troubling inadequacies of Sunoco’s Chapter 105 permit application. But first, we wish to emphasize that it is critical that the comment period for these Chapter 105 and 102 permits be extended. Due to the massive scale of this state-wide project and the technical nature of the permit applications it is impossible for the public to review the application in a 60 day time frame. If additional time is not ordered, the DEP will violate its duty to the public by depriving citizens of their right to participate in the administrative process.

In an attempt to exercise that right, and in conjunction with many other concerned citizens and organizations, MWA retained expert consultant Steve Kunz of Schmid & Company. Mr. Kunz has reviewed Sunoco’s Ch. 105 incomplete permit applications and identified several



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egregious deficiencies. If ignored, these deficiencies will endanger wildlife, natural resources, private property, and the health and livelihoods of people throughout the Commonwealth.

In order to review the entirety of the Ch. 105 application within a reasonable amount of time, Mr. Kunz requires shapefiles of the proposed route. Shapefiles contain geographic data that allows someone with a GIS program to quickly assess potential impacts of large scale projects such as the Mariner East II pipeline. As a part of Sunoco's Ch. 105 permit application a PNDI review was conducted. In conjunction with the PNDI review, Sunoco's contractor Tetra Tech submitted these shapefiles to the DCNR, Game Commission, Fish & Boat Commission, and the USFWS. However, the shapefiles were not included with the rest of the project files available on the DEP's PPP portal. When Mr. Kunz requested the files from DCNR on August 1, 2016, he was told that he was not allowed access to them unless Sunoco permitted it. Furthermore, a DEP staff member later stated that the DEP themselves were not in possession of these shapefiles.

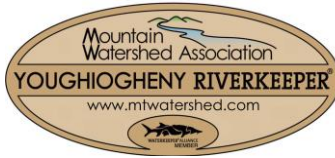
This begs the question: How is it possible for the DEP to deem the Ch. 105 applications technically complete - let alone for DEP to carefully review them - when they do not possess the necessary tools to do so? In addressing this comment we request that the DEP describe the decision-making process by which it deemed the applications complete and technically adequate in the face of this missing information. Please also address the technical review difficulties, if any, faced by PADEP specialists caused by the lack of these GIS data.

Even without access to geographical information for the entirety of the pipeline, Mr. Kunz identified an unacceptable amount of discrepancies and omissions in Sunoco's Ch. 105 permit applications. These findings are the beginnings of Mr. Kunz's discoveries and do not reflect the entirety of his findings which are attached. One can only imagine the scale of permit inadequacies discovered if the pipeline was viewed in its entirety and with a reasonable amount of time for review.

The following are selections from Mr. Kunz's preliminary findings:

1) The applicant is in violation of PADEP regulations

In section H of the Ch. 102 Erosion and Sedimentation form, the application states that the applicant *is in violation* of some Department permit, regulation, etc. However, they answer "no" to essentially the same question in Section E on the Chapter 105 (Joint Permit Application) form.



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The specific “violations” admitted to in the E&S application for the Mariner East II pipeline project are **not** attached to the information provided to the public in the DEP's online files for M.E. II. The omission of specific violations means either that the application is incomplete, or the online files omitted critical information. An incomplete application should not be accepted for review by the DEP, and by law DEP cannot approve a permit for an entity in continuing violation of its regulations.

2) Significant resources at risk have not been identified.

In one egregious instance in Washington County, two entire stream crossing impacts are not identified or evaluated and the streams themselves (both designated High Quality) are not shown on project drawings. No explanation is provided for the exclusion of these streams. Installing a pipeline through a stream can create irreparable damage. Because they are not identified in the application, if approved, Sunoco would have no obligation to implement the requisite protections for these HQ streams.

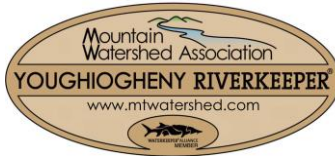
3) Significant discrepancies in the location and type of wetlands delineated have been found.

- In Jackson Township, Cambria County, within Gallitzin State Forest, the proposed pipeline crosses a stream and wetland complex. The wetland has been identified as Exceptional Value. The stream is a perennial waterway and was designated as High Quality-Cold Water Fishery.

This wetland is characterized by the applicant as PEM (Palustrine Emergent), and the site plans show **it is only herbaceous within the existing pipeline Right Of Way (ROW), where no work is proposed.** But where the new construction is proposed, just south of the existing ROW, it clearly is **wooded, as shown on Sunoco's aerial photos and by the "existing tree line" on the E&S plan drawings.** This means the wetland was improperly characterized.

The consequence of mischaracterizing this wetland as PEM is that it understates the short and long-term impacts that pipeline construction will have, **because instead of a temporary disruption of an herbaceous wetland, there will be a permanent conversion of a forested wetland to herbaceous wetland, or even to upland if the proposed restoration is not successful.**

- Another example is in Jackson Township, Perry County, within the Tuscarora State Forest; Laurel Run (designated Exceptional Value). In this case, the applicant identified



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four separate wetlands that all are the same type and connected together. More important than this odd mapping convention, however, is the fact **that the actual extent of wetland here is likely to be much larger than has been mapped**, in light of their landscape position at the base of steep slopes and on a broad, flat floodplain adjacent to the streams.

Apparently, only two of the five wetlands in this area are proposed to be impacted by the pipeline project, which proposes an open cut method through them. **Both impacted wetlands are characterized as "exceptional value" wetlands, yet no methods to avoid or minimize the impact (by boring or HDD) have been proposed** as is required by the applicant.

4) The extent of Exceptional Value Wetlands along the pipeline route likely has been underestimated.

Both Exceptional Value (EV) and High Quality (HQ) waters in Pennsylvania are entitled to Special Protection to prevent degradation when construction activities are being considered. Those waters identified as **Exceptional Value Waters** in Pennsylvania are to **receive the highest level of protection; i.e., no degradation of their quantity and quality.**

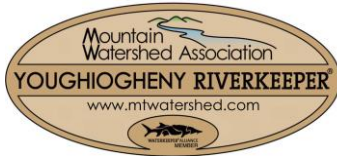
Exceptional Value Wetlands, which by DEP's own definition, are considered EV Waters, are to be afforded the same antidegradation "special protection" as streams that have been designated EV Waters, that is: **no reduction of their water quality is to be allowed by federal and State laws.**

Troublingly, in this application there are **instances of wetlands that are along EV streams, and thus qualify as being Exceptional Value, but they are not so listed. This means that if this application is approved by the DEP, they are sanctioning Sunoco's contamination of EV waters without repercussions.**

Two specific examples of EV wetlands that were incorrectly omitted are:

- 1.) Berks County Wetland W301: along Exceptional Value Hay Creek, proposed to have a 55-foot open cut crossing, and a permanent impact of 0.02 acre and:
- 2.) Chester County Wetland A46: along EV UNT to South Branch French Creek, proposed to have a 16-foot open cut crossing, and a permanent impact of 0.015 acre

Mr. Kunz even states that **there are likely to be additional wetlands proposed to be impacted that qualify as Exceptional Value in accordance with §105.17(1) criterion "iv"** that have not



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been identified. Criterion IV states: [Wetlands located along an existing public or private drinking water supply, including both surface water and groundwater sources, that maintain the quality or quantity of the drinking water supply.]

The proposed pipeline route passes through rural areas where many residents obtain their drinking water from onsite wells and springs (indeed, more than 3 million Commonwealth residents rely on wells for their drinking water supply). In addition, there are more than 14,000 public water supply systems throughout the State. One of the most widely recognized functions of wetlands¹ is their ability to absorb or filter pollutants such as nitrogen, phosphorus, and sediments and thereby to provide an important water quality benefit. When wetlands are located above or along public or private drinking water supplies, that water quality enhancement function is particularly significant. **It is entirely likely that some of the approximately 600 wetlands identified along this pipeline route are helping to maintain the quantity or quality of some drinking water supply.**

Any such wetlands along the Mariner East II Pipeline route would qualify as Exceptional Value Wetlands under criterion "iv". Yet this application **includes no discussion** at all about this criterion, **nor does it describe or even mention whether any of the wetlands along the proposed route are located above or along a public or private drinking water supply.**

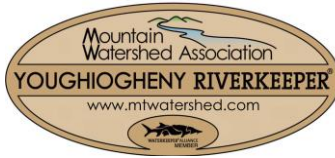
So even before gas is flowing through the pipelines, there is already a strong possibility of contamination and degradation to drinking water. This is to say nothing of the hazardous liquid leaks that occur once NGLs are pushed through. Just last year in Edgemont Township, the gasoline additive Methyl Tert-Butyl Ether was found in private well water near a corroded Sunoco pipeline.

Because of the likelihood that pipeline construction will contaminate drinking water supplies, baseline water testing for properties along the route is absolutely necessary. Several municipalities intend to demand that Sunoco conduct such testing for all homes, schools and businesses that are within 2,000 feet of any proposed horizontal drilling site.

5) Water Quality Antidegradation was not evaluated.

None of the proposed impacts to Exceptional Value Wetlands (which as discussed above are also EV Waters) has been evaluated by the applicant in terms of compliance with the Pennsylvania

¹ PADEP Fact Sheet 3930-FS-DEP1434 (2003): *Wetlands: Functions at the Junctions*.
<http://www.buckinghampa.org/media/4328/value-of-wetlands.pdf>



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antidegradation requirements prescribed at 25 Pa. Code Chapter 93. According to the PADEP Water Quality Antidegradation Implementation Guidance (Technical Guidance Document 391-0300-002; 29 November 2003; page 39) existing uses must be maintained and protected whenever an activity (including construction) is proposed which may affect a surface water. Before it issues any permit, **the PADEP must ensure that none of the impacts to EV Waters (including Exceptional Value Wetlands) will result in any degradation of water quality. How can DEP do this if numerous EV Waters are unidentified in the permit application?**

According to page 60 of the PADEP Water Quality Antidegradation Implementation Guidance, limited activities that result in **temporary and short-term changes** in the water quality of Exceptional Value Waters **can be allowed, but only if all practical means of minimizing such degradation will be implemented.**

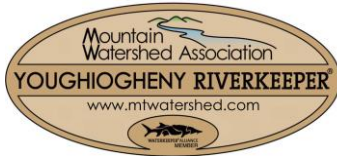
Sunoco has done no evaluation of the impacts to EV wetlands in regards to antidegradation requirements. Furthermore, only 37 of 129 (29%) of proposed crossings of Exceptional Value Wetlands have been minimized by the use of boring or HDD methods. Clearly, this project has not minimized degradation to our most important waters and wetlands.

6) Impacts to Exceptional Value Wetlands have not been fully evaluated.

As part of each of the seventeen Chapter 105 applications (one for each county crossed), an “Alternatives Analysis” has been submitted. Most, but not all, of those Alternatives Analyses describe each of the proposed crossings of Exceptional Value Wetlands and discuss why it is necessary. In 5 counties, no Exceptional Value Wetlands were identified by the applicant, so no such analysis was necessary. In 8 counties, all of the identified Exceptional Value Wetlands were discussed. In Blair County, only 15 of the 18 identified Exceptional Value Wetlands were discussed. In Cumberland County, only 9 of the 10 Exceptional Value Wetlands were discussed. **In Cambria and Indiana counties, where pipeline impacts to 21 and 12 Exceptional Value Wetlands (respectively) were identified by the applicant, there was no discussion of them in the Alternatives Analysis. Overall, 37 (out of 129) Exceptional Value Wetlands proposed to be crossed by this pipeline have not been evaluated in terms of potential alternatives to avoid or minimize impacts. This represents an inconsistent treatment of an important resource at risk which must be corrected before review of these applications continues.**

Conclusion

We would like to remind the DEP that omissions in Sunoco’s Ch. 105 permit application, including violations of DEP regulations, omissions of two entire streams, the permanent



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conversion of mischaracterized wetlands, and drinking water degradation are but a few of the disturbing ways in which this application explicitly violates DEP rules and state and federal laws. It is undeniably daunting to consider the full extent of the damage that will occur if the pipeline is developed in accordance with the Chapter 105 permits as they now stand.

We wish to impress upon the DEP the critical nature of extending the public comment period for all of the associated permits. If additional time is not instituted, it is impossible for the DEP or the public to review these permits. In this case, the public has gone above and beyond the usual involvement by citizens. The public has organized, strategized, developed and spent their own funds to retain an expert to review this application. Because the necessary shapefiles were withheld, even these extraordinarily concerned and involved citizens were not able to carry out a thorough and complete review. The DEP receives tax payer money expressly for the purpose of conducting these permit reviews and yet did not even require that these shapefiles be submitted directly to them by the applicants in a timely fashion. The DEP must extend the comment period and must address the fundamental problem that they cannot ostensibly do their job without this information.

Submitted by,

Melissa Marshall, Community Advocate
Mountain Watershed Association