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By Electronic and First Class Mail

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Re: Sunoco Pipeline L.P. Applications for Chapter 102 ESCGP-2 Permits for the
"Pennsylvania Pipeline Project" / Mariner East II, Nos. ESG0500015001,
ESG0300015002, and ESG0100015001

Dear Program Managers:

Clean Air Council, Mountain Watershed Association, Concerned Citizens of Lebanon County, Pipeline Safety Coalition, Citizens for Pennsylvania's Future, the Pennsylvania Chapter of the Sierra Club, Lebanon Pipeline Awareness, Appalachian Mountain Advocates, Clean Water Action, Allegheny Defense Project, Lower Susquehanna Riverkeeper, and the Andover Homeowners' Association, Inc. (collectively, "Citizens") hereby submit the following comments in response to the Pennsylvania Department of Environmental Protection's (the "Department") opening of public comment on Sunoco Pipeline L.P.'s ("Sunoco") applications for Chapter 102 Erosion and Sediment Control General Permits for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment Operations or Transmission Facilities (ESCGP-2) for the proposed Mariner East 2 pipelines, 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"). Because of the common issues across the three applications, Citizens have consolidated their comments into this single document. As there are also common issues with the applications Sunoco made under Chapter 105, Citizens ask that these comments be considered to incorporate by reference the joint technical comments some of these same organizations made to the Department on August 24, 2016 ("Chapter 105 Joint Comments"), and also that the Chapter 105 Joint Comments be considered retroactively to incorporate these comments as well. Indeed, Citizens refer to that document and the exhibits thereto in these comments.

Commenting Organizations

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.

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.

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."

Citizens for Pennsylvania's Future (PennFuture) is a membership-based, public interest, environmental organization whose activities include advocating and advancing legislative action on a state and federal level; providing education for the public; and assisting citizens in public advocacy. PennFuture is concerned with the protection of Pennsylvania's waters and the conservation of its resources for future generations.

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.

Appalachian Mountain Advocates is a non-profit law and policy center focused on protection of the environment and human communities in the Appalachian region, with offices in Virginia and West Virginia. Appalachian Mountain Advocates works to promote sensible energy policies that protect the environmental and economic well-being of the citizens of the region in the short and long term. Appalachian Mountain Advocates opposes any energy development that unreasonably impacts the region's communities, landscapes, and water resources and contributes to long-term reliance on climate-altering fossil fuels.

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.

Lower Susquehanna Riverkeeper is dedicated to improving the ecological integrity of the Susquehanna Watershed and Chesapeake Bay. A significant focus of our work concerns the protection and restoration of Pennsylvania's water resources. Our membership includes residents of Pennsylvania, New York, and Maryland who use waters of the Susquehanna and its tributaries for swimming, fishing, and other recreational purposes, as well as citizens of the Commonwealth who rely on its waters for drinking and household use.

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.

Background and Summary

Sunoco's Mariner East 2 project, if built, would be one of the largest pipeline construction projects in the Commonwealth. The damage it would do to Penn's Woods falling within the scope of a Chapter 102 review would outweigh any perceived benefits the Project might provide citizens of the Commonwealth. The Mariner East 2 lines—up to two lines, a 20-inch and a 16-inch line—would traverse 17 counties in Pennsylvania alone, carving a permanent path through the state, generally fifty feet wide, 75 feet with additional construction space. Due to how pipeline operators interpret federal integrity management best practices for pipeline safety, pipeline rights-of-way will not be revegetated to pre-construction status, in order to facilitate pipeline inspections, thereby permanently altering ecosystems the pipeline crosses.

The pipelines would disturb at least 3,116 acres of land in Pennsylvania, nearly five square miles, not even taking into account surrounded impacted land. Mariner East 2 would carry highly volatile hazardous liquids at very high pressure to the Marcus Hook Industrial Complex straddling Delaware County, PA and New Castle County, DE. In whole, the Project requires many permits from the Department beyond the Chapter 102 permits, including Chapter 105 permits, a Section 401 Water Quality Certification, and various air pollution permits.

Sunoco submitted its Chapter 102 permit applications to the Department in the summer of 2015. Sunoco's applications were incomplete. The Department communicated with Sunoco about its applications' incompleteness and, rather than issue permit denials, worked with Sunoco and allowed it to revise and resubmit its application materials. The Department declared the applications complete by Pennsylvania Bulletin Notice published on August 6, 2016, which began the "technical review," although the applications are still plainly incomplete. However, the public comment period, which closes today, September 6, 2016, was held without complete or technically accurate information. This limited the impacted public's meaningful opportunity to assess what was really being proposed. As we will address, the public comment period should therefore be reopened, if the permits are not simply denied outright.

Citizens commend the Department for making application materials available online. This has greatly reduced the burden on the public.

Citizens comment below on several topics, including that:

- The Department should require individual Chapter 102 permits for Mariner East 2;
- Sunoco's applications are materially incomplete;
- harm from erosion and sedimentation would not be minimized under Sunoco's plans;
- Sunoco has not justified waiving riparian buffer protections;
- protection of the Chesapeake Bay and other watersheds should take priority; and
- the public deserves a chance it has not yet had to comment on complete applications.

We conclude that the Department should deny the applications as incomplete and technically deficient. If the Department allows Sunoco to further complete its applications, the public should be given a new 90-day public comment period, beginning after the Department receives and makes public the full and complete applications.

Citizens appreciate the opportunity to submit these comments.

COMMENTS

1. The Department Should Require Individual Chapter 102 Permits for Mariner East 2.

The use of the ESCGP-2 general permit for the Mariner East 2 project is inappropriate due to the nature of the Project. Under 25 Pa. Code § 102.5(m)(1),

The Department may issue a general permit on a regional or Statewide basis or limited to specific watersheds, particular categories of streams or designated geographic regions, for a category of activities not subject to the NPDES requirements, but regulated under this chapter, if the Department determines the following:

(i) The projects in the category are similar in nature.

(ii) The projects in the category can be adequately regulated utilizing standardized specifications and conditions, including reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulate the particular category of activities.

(iii) The projects which are in the category and meet the specifications and conditions will comply with this chapter.

(iv) The projects which are in the category in the opinion of the Department are more appropriately controlled under a general permit than under individual permits.

(v) The projects which are in the category individually and cumulatively do not have the potential to cause significant adverse environmental impact.

Citizens do not take a position here on whether the ESCGP-2 permit itself meets these requirements. However, the ESCGP-2 general permit cannot be applied to construction of Mariner East 2 without violating these requirements.

The Project would do massive damage to the Commonwealth, and our shared resources. As illustrated by the tables below, Pennsylvania's public resources would be greatly harmed by the Project.

State and Local Forests and Parks Crossed

Total properties crossed: 13¹

Total length of crossings: 27.30 miles (144,144 feet)

Approximate footprint of 50-ft. ROW: 7,207,200 sq.ft. = 165.45 acres

Name	Type
Marsh Creek	State Park
Gallitzin	State Forest
Tuscarora	State Forest
Gallitzin	State Forest
West Pike Street Community Park	Neighborhood Parks
Meadowbrook Manor Park	Neighborhood Parks
Opossum Lake Park	Natural Resource Areas
North Strabane Township Park	Large Urban Parks
Shiloh Hills Park	Large Urban Parks
Pine Ridge Park	County Parks
Borough of Highspire Reservoir Park	Community Parks
Hickory Park	Community Parks
Charles L. Roof Memorial Park	Community Parks

¹ Please note that this list is longer than that contained in Sunoco’s Chapter 105 applications’ Environmental Assessment Form, Enclosure D - Project Impacts. This is because that list was incomplete. Since this table was compiled, Citizens identified another local park Mariner East 2 would cross that Sunoco did not list—Sleighton Park, Middletown Township, Delaware County. The values for length of crossings and footprint have not been updated to include the crossing of Sleighton Park. There may be other parks still that have not been identified as on the proposed Mariner East 2 right-of-way.

State Game Lands Crossed

Total properties crossed: 10

Total length of crossings: 24.41 miles (128,885 feet)

Approximate footprint of 50-ft. ROW: 6,444,250 sq.ft. = 147.94 acres

NAME
46
71
420 - Raystown Lake
52
276
118
411 - Conemaugh River Lake
419 - Loyalhanna Lake
147
198

Additional disruptions

State Roads Crossed: 254

Local Roads Crossed: 369

State registered hiking trails crossed: 30

The scale of the Project has also changed it *qualitatively*, not just quantitatively, from other pipeline construction projects. As described in these comments and the Chapter Joint Comments, Sunoco has made very general statements of intentions it plans to apply across the length of the pipeline, even though three hundred miles of right-of-way contain too much diversity for one-size-fits-all plans. Sunoco’s applications show that it cannot meet criteria (ii) and (iii) of Section 102.5(m)(1) for Mariner East 2, as Sunoco’s use of these standardized specifications and conditions has resulted in applications that do not comply with Chapter 102. Individual permits, at least on the county level or for a smaller territory, might force Sunoco to focus in on actual conditions on the ground.

Additionally, under criterion (v), whatever can be said about other types of pipeline projects, it should not take much reflection or analysis to conclude that the Mariner East 2 project alone and in combination with other pipeline projects would cause significant adverse environmental impact. Citizens direct the Department to the discussion of cumulative impacts under 25 Pa.

Code § 105.14(b)(14) in the Chapter 105 Joint Comments. In particular, the Governor's Pipeline Infrastructure Task Force concluded that pipeline rights-of-way are projected to occupy a full one percent of the entire landmass of Pennsylvania, more than all the state parks combined.² The CNA report attached to the Chapter 105 Joint Comments as Exhibit L analyzed land use changes in the Delaware River Basin due to transmission pipeline projects, including Mariner East 2, in depth.

Mariner East 2 is simply not the type of relatively minor project for which general permits were designed. Citizens respectfully urge the Department to deny Sunoco's notices of intent to operate under ESCGP-2 permits, and require any re-submitted applications to be for smaller individual Chapter 102 permits.

2. Sunoco's applications are materially incomplete and technically inadequate. It was therefore premature for the Department to open a public comment period on August 6, 2016.

Sunoco's applications are materially incomplete. In particular, the erosion and sedimentation controls are incomplete and inaccurate, the post construction stormwater management plans are missing or incomplete, Sunoco failed to include a demonstration of compliance with antidegradation requirements, and Sunoco omitted any consideration of karst topography.

These missing and inaccurate pieces not only put the applicant in violation of Chapter 102, but they render the applications too piecemeal to be properly reviewed. As the Department is aware, the Conservation Districts have had difficulty reviewing these applications. For example, in a five-page internal memorandum, the manager of the Delaware County Conservation District reported numerous application deficiencies to the Department. As a result of these deficiencies, the Conservation District was unable to complete its review of the application. If the Delaware County Conservation District cannot complete its review of the applications, clearly neither can the public.

The Department should restart the public comment period only after Sunoco completes its applications with full and accurate materials.

- a. E&S plans are incomplete.

25 Pa. Code § 102.4(b)(5) requires that:

The E&S Plan must contain drawings and narrative which describe the following: ...

- (ii) The types, depth, slope, locations and limitations of the soils.

² Governor's Pipeline Infrastructure Task Force (PITF) Report, February 2016, available at <http://files.dep.state.pa.us/ProgramIntegration/PITF/PITF%20Report%20Final.pdf>.

(iii) The characteristics of the earth disturbance activity, including the past, present and proposed land uses and the proposed alteration to the project site.

(iv) The volume and rate of runoff from the project site and its upstream watershed area. ...

(v) The location of all surface waters of this Commonwealth which may receive runoff within or from the project site and their classification under Chapter 93. ...

(vi) A sequence of BMP installation and removal in relation to the scheduling of earth disturbance activities, prior to, during and after earth disturbance activities that ensure the proper functioning of all BMPs. ...

(vii) Identification of the naturally occurring geologic formations or soil conditions that may have the potential to cause pollution during earth disturbance activities and include BMPs to avoid or minimize potential pollution and its impacts from the formations.

Sunoco's erosion and sedimentation (E&S) plans violate each of these requirements.

The E&S plans fail to contain "types, depth, ... and limitations of the soils." They also fail to contain past and present land uses. Roads, buildings, waters, and vague descriptions such as "well vegetated area" and "wooded area" are the extent of the descriptions of present land uses. The E&S plans contain no past land use descriptions. The plans seem to attempt to satisfy this requirement by generically stating "Past and present land use consists of agricultural, forested, and residential areas. Post construction land use will be a maintained, vegetated right-of-way." This is uniform across hundreds of miles of Pennsylvania, with no site-specificity whatsoever. Industrial areas, lakes, barren land, and other types of lands are lumped into this generic description that fails to comply with § 102.4(b)(4)(iii). The Department has previously asked Sunoco to provide more specificity in its notes on future land use, explaining that the "meadow" that Sunoco uniformly said would be established in the right-of-way would be inappropriate where the pipelines would cross residential lawns. Sunoco ignored that request, now calling the future right-of-way "vegetated" or, still, "meadow" for its entire length in its E&S plans.

Even the generic "well vegetated" and "wooded" descriptions Sunoco uses on the plan sheets are imprecise at best. For example, Linvilla Orchards, located in Delaware County, has land covered in orchard trees described as "well vegetated area," rather than as crop or orchard land (compare Delaware County E&S Plan Sheet 23 & 24 of 35 with Delaware County Site Plan Sheet 15 of 23).

The E&S plans fail to identify any "naturally occurring geologic formations or soil conditions that may have the potential to cause pollution," or appropriate best management practices (BMPs) to minimize that pollution and its impacts. Also in Delaware County are lands, such as the former Fairhope Orchard and the Andover planned community, contaminated with arsenic

that sits stable in the soil but would be activated by earth disturbance. Arsenic is one of nature's most toxic elements.³ Exposure to arsenic through airborne dust generated by earth disturbance could jeopardize the health and safety of people far beyond the limit of disturbance of the proposed construction activity. Sunoco has submitted no plans to account for that, and none of its application materials show any awareness of soil contamination issues. This issue was addressed in the technical remarks dated July 8, 2016 from the Manager of the Delaware County Conservation District to the Department.

Because of Sunoco's proposed use of a uniform construction procedure for the entire route, without accounting for soil or geological characteristics as required by Chapter 102, it threatens to cause environmental harm that could have been avoided if it paid attention to local circumstances and designed proper BMPs and BMP sequences as needed for those circumstances. See discussion below of soil compaction.

Sunoco has failed to provide a sequence of BMP installation and removal applicable to "travel only" areas and non-right-of-way work spaces, despite the earth disturbance that would result in those areas. The Standard Erosion and Sedimentation Control Plan Notes, while certainly helpful, do not address the variety of impacts that all of those additional spaces Sunoco intends to use might experience, such as the use of cleared and grubbed workspaces for parking or HDD staging.

Sunoco calculates runoff in its notices of intent, but not in the E&S plans, where those calculations are required to be.⁴

Sunoco has failed to identify all of the surface waters of the Commonwealth that might receive runoff from the Project. This is at least in part because, as explained in the Chapter 105 Joint Comments, Sunoco has failed to identify all of the waters of the Commonwealth that would be crossed by the Project.

The E&S plans also generally provide insufficient detail for the Department to understand the likely impacts of the construction. A couple weeks ago, East Goshen Township, Chester County received a punch list of issues with the E&S plans from their engineers. See Exhibit A, attached hereto. This list of issues illustrates the problematic lack of detail—and apparent errors—in the E&S plans.⁵

The Department has told Sunoco several times that it needs identification of areas of disturbance beyond the limits of the pipeline right-of-way in the E&S plans. Sunoco's E&S plans continue to leave such additional disturbance spaces unlabeled in most instances. Without that labeling,

³ Pennsylvania Department of Health, Arsenic Project, accessed September 6, 2016, available at www.health.pa.gov/My%20Health/Environmental%20Health/Environmental%20Public%20Health%20Tracking/Pages/Arsenic-Project.aspx#.V87WJ53D-M8.

⁴ As explained below, those calculations appear incorrect and missing important pieces.

⁵ It also highlights the lack of area-specific emergency preparedness to protect lives from a leak of toxic, flammable, highly volatile liquids. See Exhibit A at item 20.

the Department is unable to evaluate whether that extra earth disturbance is necessary, or whether it is another example of Sunoco’s failure to minimize environmental impacts.

The E&S plans contain a rash of mislabeling as well. In addition to that pointed out in the East Goshen Township document, and as just a small example, the aerial site plan for Westmoreland County, Sheet 74 of 82, labels a portion of Derry Township as Loyalhanna Township. In Delaware County, E&S Sheet 32 of 35, a watershed division line is drawn which purports to show drainage on one side to Chester Creek, and on the other to Repaupo Creek. Repaupo Creek is in New Jersey. The Berks County E&S plan states “The project takes place within Lancaster County, Pennsylvania.” These are just examples—Citizens do not have the time or resources to identify every flaw in the E&S plans, especially given the length of the proposed pipelines and the public comment period of only 30 days.

All told, the E&S plans need much more work before they are complete and able to be evaluated for compliance with Chapter 102.

b. PCSM plans are either missing or incomplete.

Sunoco has provided no post construction stormwater management (PCSM) plans for the pipeline rights-of-way, only for aboveground facilities. This is in violation of 25 Pa. Code § 102.8(a). There is no distinction in the Pennsylvania Code allowing an applicant to avoid providing PCSM plans for disturbed areas that would be pervious after construction as long as it provides them for areas that would be impervious. In fact, the Code is clear that it pertains to soil and vegetated areas as well as impervious areas. *See* 25 Pa. Code § 102.8(b)(5) (“Maximize the protection of existing drainage features and existing vegetation.”), (b)(6) (“Minimize land clearing and grading.”), and (b)(7) (“Minimize soil compaction.”).

Even the PCSM plans that Sunoco did provide, for the aboveground facilities, do not all comply with Section 102.8.⁶ One of the most detailed and complete PCSM plans is that for the Twin Oaks station in Delaware County. Even that plan, though, does not contain:

- “The types, depth, slope, locations and limitations of the soils and geologic formations,” (§ 102.8(f)(2));
- “An identification of the net change in volume and rate of stormwater from preconstruction hydrology to post construction hydrology for the entire project site and each drainage area,” (§ 102.8(f)(4));
- “Supporting calculations,” (§ 102.8(f)(8)); and

⁶ Citizens discuss in this section omissions from the PCSM plans. To be clear, Sunoco’s PCSM plans also fail to comply with, at least, Sections 102.8(b), (g), and (h), and 102.11(a)(2) as well. Because the reasons for these deficiencies are largely the same as for the other deficiencies in Sunoco’s applications identified in these comments, and because Citizens have not had time to do a full analysis in this thirty-day period overlapping with public comment periods for Sunoco’s applications under Chapter 105 and Section 404 of the Clean Water Act, Citizens do not explain in detail these deficiencies. For compliance under Section 102.8(b), *see* Sections 2.c. and 3 of these comments. For compliance under Sections 102.8(g) and (h), and 102.11(a)(2), *see* Section 2.c. of these comments.

- “An identification of naturally occurring geologic formations or soil conditions that may have the potential to cause pollution after earth disturbance activities are completed and PCSM BMPs are operational and development of a management plan to avoid or minimize potential pollution and its impacts,” (§ 102.8(f)(12)).

As the soil at the Twin Oaks Terminal is contaminated with leaded gasoline (*see*, e.g., Remedial Investigation and Risk Assessment Report approved by the Department December 16, 2015), the last point is particularly important for Twin Oaks.

But the Twin Oaks PCSM plan is better than most that Sunoco has submitted, where it has submitted a PCSM plan. For example, the Conemaugh River West Block Valve PCSM Plan, in addition to suffering from the same omissions as the Twin Oaks plan, also fails to contain:

- “The characteristics of the project site, including the past, present and proposed land uses and the proposed alteration to the project site,” (§ 102.8(f)(3)); and
- *any* of the BMP requirements of Section 102.8(f)(6-7) and (10-13), though a few BMPs are drawn into the plan.

It is not an answer that some BMPs are set forth generally in the E&S plans, and the notices of intent identify changes in volume of stormwater and thermal impacts for aboveground facilities. 25 Pa. Code § 102.8(d) provides that “Unless otherwise approved by the Department, the PCSM Plan must be separate from the E&S Plan and labeled ‘PCSM’ or ‘Post Construction Stormwater Management Plan’ and be the final plan for construction.”⁷ Also, the *general* BMPs for construction work on the Project cannot satisfy the *specifics*, such as attunement to soil types and conditions, required by Chapter 102.⁸

c. Sunoco has not demonstrated compliance with state antidegradation requirements.

Though the focus of this public comment period is Sunoco’s Chapter 102 permit applications, Sunoco will have to abide by many other laws if it is to build and operate Mariner East 2 legally. Among these are the antidegradation laws in Chapter 93 of the Environmental Protection Code, which protect High Quality (HQ) and Exceptional Value (EV) Waters. These protections are imported into Chapter 102 review by way of 25 Pa. Code § 102.4(b)(6). Because the Project would impact HQ and EV waters, Section 102.4(b)(6) requires Sunoco to evaluate nondischarge alternatives in its E&S plans, and if there are none, to implement antidegradation best available combination of technologies—ABACT. As defined in Section 102.1, the ABACT technologies need to

⁷ The Conemaugh River West Block Valve PCSM Plan also was not final for construction; it states “BMP installation to be adjusted as needed to accommodate actual contours to be identified in field during various phases of the project.”

⁸ This is a theme throughout the Chapter 102 and Chapter 105 applications for the Project: submission of general statements of plans and conditions in place of the specifics required by the law. While this probably saves applicants money and legwork by enabling the use of boilerplate language, it is illegal and does a disservice to the Commonwealth.

individually or collectively manage the difference in the net change in stormwater volume, rate, and quality for storm events up to and including the 2-year/24-hour storm when compared to the stormwater rate, volume and quality prior to the earth disturbance activities to maintain and protect the existing quality of the receiving surface waters of this Commonwealth.

As with all other requirements of Chapter 102, it is the applicant's burden to demonstrate compliance. *Leeward Construction Co. v. Department of Environmental Protection*, 821 A.2d 145, 152 n.7 (Pa. Cmwlth. 2003), *appeal denied*, 827 A.2d 431 (Pa. 2003). Sunoco has failed to include any ABACT analysis on which the Department could rely to conclude that the Project would satisfy the HQ and EV water antidegradation requirements of Chapters 93 and 102. Sunoco checked off boxes in its notices of intent indicating the use of certain ABACT BMPs, and it has told municipalities in its Act 167 letters that "no increase in stormwater runoff, rate or volume would occur," but there is no analysis that backs that up.

The only analysis that does exist is in the notice of intent Summary Tables for Supporting Calculation and Measurement Data. Those summary tables do not by themselves demonstrate antidegradation compliance. Sunoco provided summary tables only for areas where it would create impervious surface, which ignores the vast majority of its earth disturbance activities which would increase stormwater runoff. The calculations in the summary tables also show increases in stormwater discharge rates during certain design frequency storms due to the Project, in spite of Sunoco's promises that none would occur.

Furthermore, the numbers that Sunoco uses in its Summary Tables appear either incomplete or miscalculated. While this comment applies across the board, an illustration will suffice here. In the South-Central Region Notice of Intent, Sunoco includes a Summary Table for "Middletown Junction DA2- Dauphin County." Stormwater discharge rates are shown to be higher post-construction for every design frequency storm. Sunoco has listed that the net change in post-construction stormwater volume, however, is zero. To reach this figure, Sunoco must implement BMPs that handle 0.013 acre-feet of runoff (0.015 minus 0.002). The only BMP Sunoco lists is an infiltration berm, which it says would handle 181 cubic feet of water, unhelpfully using a different unit than the notice of intent form uses. Converting that into acre-feet yields a little over 0.004 acre-feet—less than a third of the difference Sunoco says its BMPs would make. How Sunoco comes up with 0.013 acre-feet is a mystery unexplained anywhere in its application.

Other times the volume of stormwater runoff handled by the BMP is *greater* in the notice of intent than the net change in volume listed—in fact, greater even than the *entire stormwater runoff projected post-construction*. See, e.g., the Chestnut Ridge Road Summary Table in the Southwest Region Notice of Intent. These discrepancies leave in place the mystery of how Sunoco is claiming zero net change in stormwater runoff volume, pre-construction to post-construction, due to its BMPs. This is a major omission in Sunoco's applications.⁹

⁹ 25 Pa. Code § 102.11(a)(1) requires a Chapter 102 applicant to "Design, implement and maintain E&S BMPs to minimize the potential for accelerated erosion and sedimentation to protect, maintain, reclaim and restore water

There simply is no demonstration in Sunoco's Chapter 102 applications of its claimed compliance with the antidegradation requirements of Chapter 93 and 25 Pa. Code § 102.4(b)(6). Without this, the applications are incomplete and must be rejected.

d. Sunoco failed to consider karst topography.

Besides the omissions described above, Sunoco's applications failed to consider karst topography. Stormwater management is strongly affected by the presence of karst, as increased runoff in karst topography can lead to sinkholes. As the Department's Erosion and Sedimentation Pollution Control Program Manual ("E&S Manual") puts it, in Appendix E, "Obviously, the potential for sinkhole development is pertinent to the areas of Pennsylvania affected by karst topography." The Department's Pennsylvania Stormwater Best Management Practices Manual further explains, "When addressing stormwater management issues, the complexities of a karst system demand more rigorous scrutiny than other geologic settings."¹⁰ Among other complexities, karst features serve as direct recharge zones to local and regional aquifers, making these areas highly vulnerable to groundwater contamination. Counties through which Mariner East 2 would cross karst include Chester, Lebanon, Cumberland, Juniata, Huntingdon, and Blair. Yet karst is nowhere discussed. This is a worrisome omission.

Overall, the Department should not have declared these applications complete and open for public comment, as there are many crucial missing pieces to them. Moving forward, Citizens respectfully urge the Department to reject these applications as incomplete.

3. Harm from erosion and sedimentation would not be minimized under Sunoco's plans.

A general principle of environmental protection under Chapter 102 is harm minimization. Sunoco's Chapter 102 applications do not demonstrate that Sunoco will minimize the harm done by its Project construction.

25 Pa. Code § 102.4(b)(4) provides:

Unless otherwise authorized by the Department or conservation district after consultation with the Department, earth disturbance activities shall be planned and implemented to the extent practicable in accordance with the following:

- (i) Minimize the extent and duration of the earth disturbance.
- (ii) Maximize protection of existing drainage features and vegetation.
- (iii) Minimize soil compaction.

quality and existing and designated uses." For the same reasons described here, Sunoco has not shown that its BMPs accomplish what this provision requires.

¹⁰ Section 7.4, available at http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-48478/08_Chapter_7.pdf.

- (iv) Utilize other measures or controls that prevent or minimize the generation of increased stormwater runoff.

Looking at each of these measures, Sunoco has not minimized impacts.

a. Sunoco has not minimized the extent or duration of the earth disturbance.

As explained above, the extent of the limits of disturbance and the need for additional areas beyond the main right-of-way is generally unexplained, despite Departmental requests for explanation. Additional temporary workspaces and storage areas are, of course, a normal part of pipeline construction. But the burden is on Sunoco to show need for each such area, and the E&S plans and aerial site plans rarely explain the purposes of those spaces. Citizens make the same comment with respect to access roads. Some access roads are likely necessary, but Sunoco has not provided explanation for why individual access roads are necessary, and necessary in those locations. Thus the Department cannot determine at this point whether the extent of earth disturbance has been minimized.

Also, as explained below in these comments with respect to riparian buffers, and in the Chapter 105 Joint Comments with respect to stream and wetland crossings, Sunoco has failed to minimize disturbance of sensitive environmental features, despite having the ability and resources to do so. Furthermore, Sunoco's planned protection measures, in the notices of intent and elsewhere, are generally qualified with statements such as "to the extent practicable" or "limited to the area required for construction." These wishy-washy statements are essentially unenforceable. If Sunoco truly wanted to minimize land disturbance, it would promise objective and enforceable protection measures. That it makes few such promises is a good indication of the level of protection the Department can expect from Sunoco if it issues these permits.

As for the duration of the earth disturbances, Sunoco again proposes to only do the least minimization of harm it can. The E&S Manual provides that, as a general matter, the land disturbed for building pipelines in open trenches should generally only be disturbed for thirty days. E&S Manual at 283. Narrow stream crossings should take no more than 24 hours, and wider stream crossings no more than 48 hours. *Id.* at 286. Sunoco proposes nothing more protective for stream crossings than the E&S Manual calls for. *See* Aquatic Resource Avoidance, Minimization, and Mitigation Report, Section 2.1.2.1. Citizens have not been able to find any commitment on Sunoco's part to disturb land Mariner East 2 would cross for thirty days or less, let alone for a smaller time period. The time frame allowable for earth disturbance should be written into the notes of the E&S plans, at the very least.

b. Sunoco has not maximized protection of existing drainage features and vegetation.

Among the existing drainage features and vegetation that protects the area Sunoco proposes to use as its right-of-way include existing landscape contours, wetlands, and riparian buffers.

Sunoco proposes to return the landscape to its existing contours after construction. However, its record of doing so is less than stellar. As explained in the Chapter 105 Joint Comments, 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 the Department.

As noted above, Sunoco has not minimized its planned harm to wetlands and riparian buffers, which of course means it has not maximized their protection. Vegetation, and in particular trees, soak up much of the water that passes through landscapes. Sunoco has displayed a wanton disregard for protection of these parts of our environment by needlessly beginning clear-cutting its proposed right-of-way half a year ago, far before its Chapter 102 and 105 applications were even considered complete by the Department, and farther still before Sunoco might have any likelihood of building the Project, if it ever gains that legal right.

c. Sunoco has not minimized soil compaction.

Besides the use of timber matting to evenly distribute vehicle weight across hydric soils, which is necessary from a construction standpoint and not just as a measure to protect the environment, the only measures Sunoco proposes to take to protect the earth it would disturb from soil compaction appears to be surface scarification, mulching, and revegetation. Each of these helps soil recover from compaction rather than preventing it, and each of these is a standard BMP the Department instructs applicants to use in the E&S Manual. See pages 262-263.

Sunoco has not adopted other BMPs to avoid or remediate soil compaction. For example, the E&S Manual suggests that “Vehicular traffic should be restricted from areas to be seeded to prevent soil compaction.” E&S Manual at 265. Sunoco makes no commitment to do so. Sunoco also labels certain areas of its proposed right-of-way “travel only,” indicating, basically, that no ditch-digging will take place there. Sunoco has not explained anywhere what construction sequence or practices it would use for “travel only” areas, or additional temporary work spaces. Presumably heavy equipment would be moved across those areas, which would likely lead to soil compaction, rutting, and other types of earth disturbance. Whether and how Sunoco would minimize compaction (and other impacts) in those areas is unknown.

As another consequence of Sunoco’s failure to identify the soils along its pipeline routes, it has not set forth different construction procedures for areas with different types of soil. Ralph Blume, of Cumberland County, experienced the consequences of this. The land he farms has a thin layer of topsoil, only inches deep, on top of rock. When Sunoco went through his land to work on Mariner East 1, it failed to account for the thinness of the soil, and mixed crushed rock with the topsoil on his property. After laying the adulterated topsoil back on his land, he could no longer farm that portion of his land.

In sum, Sunoco’s proposed efforts to minimize soil compaction and other soil harms would not in fact minimize them.

d. Sunoco has otherwise not sufficiently minimized the Project’s generation of increased stormwater runoff.

Pipeline construction leads to increased stormwater runoff through a number of mechanisms, which generally boil down to the diminishment of natural ecosystems’ abilities to store, use, and slow water. In particular, the destruction or reduction of vegetation (both live plants and root systems), compaction, erosion, or pavement of soils, smoothing and channelization of

waterways, and topological simplification, among other things, all contribute to increased stormwater runoff.

As discussed elsewhere here and in the Chapter 105 Joint Comments, Sunoco has not minimized harm to vegetation, soil compaction, stream crossings, and wetland crossings. Sunoco has also not formulated (or at least submitted to the Department) PCSM plans pertaining to most of the earth disturbance—that is, the disturbance for the right-of-way. The right-of-way would suffer from soil compaction, devegetation, removal of root systems that slow runoff and hold soil together, simplified geographic contours that would increase runoff speed, and many other impacts that tend to increase stormwater runoff. The generally straight-line geometry of the right-of-way would further serve to accelerate stormwater runoff. The failure to consider stormwater management post-construction is a huge omission and by itself demonstrates a failure to minimize the generation of increased stormwater runoff.

Municipal engineers and officials have been able to scrutinize Sunoco’s stormwater plans at a level of detail Citizens have not. More than half of the municipalities through which Mariner East 2 would pass have not signed off on Sunoco’s stormwater management plans, either because Sunoco has not provided enough detail or resolved outstanding questions, or because the municipalities have determined that the plans are inconsistent with the municipal stormwater management programs. *See* Chapter 105 Joint Comments discussion of 25 Pa. Code § 105.14(b)(9). This clearly demonstrates that Sunoco’s plans for addressing stormwater runoff are not adequate.

- e. In general, harm from erosion and sedimentation would not be minimized under plans that Sunoco has not followed and may not follow.

Considering 25 Pa. Code § 102.4(b)(4) as a whole, the Department should conclude that Sunoco is not likely to minimize erosion and sedimentation under its plans. An important consideration is that Sunoco may not follow its E&S plans; in fact, Sunoco has already violated those plans.

The following are standard provisions of E&S plans, which Sunoco has included verbatim in its plans: (1) “Clearing, grubbing, and topsoil stripping shall be limited to those areas described in each stage of the construction sequence. General site clearing, grubbing and topsoil stripping may not commence in any stage or phase of the project until the E&S BMPs specified by the BMP sequence for that stage or phase have been installed and are functioning as described in this E&S plan.” E&S Manual at Appendix C, page 394; and (2) “All earth disturbances, including clearing and grubbing as well as cuts and fills shall be done in accordance with the approved E&S plan.” *Id.*

“Clearing” means “removal of vegetative ground cover,” for example trees. *Id.* at Appendix L, page 507. Despite these provisions in its E&S plans, Sunoco has commenced clearing operations for Mariner East 2, with the attendant runoff and thermal impacts, without having obtained Chapter 102 permits to do so, and without having put in place the E&S BMPs in the sequence required by its E&S plans. This illegal clearing took place on a number of parcels, including that of the Gerharts, as described in the Chapter 105 Joint Comments.¹¹ As far as Citizens are aware,

¹¹ In cutting trees on the Gerhart property in April, Sunoco also violated its E&S plan provision that “All tree clearing project-wide must be performed between October 1 to March 31.”

Sunoco may still today be continuing this type of clearing. The Department should not reward illegal conduct in violation of an applicant's E&S plans by awarding the applicant E&S permits.

This was not an isolated incident. Sunoco has a pattern of violating Chapter 102 and its E&S plans while working on Mariner East. The Department issued to Sunoco a number of different types of violations of erosion and sedimentation controls requirements while working on Mariner East 1, which violations it settled with the Department on June 12, 2015. *See* Exhibit G to Chapter 105 Joint Comments. Specifically, Sunoco on five separate occasions was caught failing to:

- “implement and/or maintain effective BMPS at various locations along the Mariner East pipeline as approved in its ESCGP and allow[] sediment laden runoff from locations along the Mariner East pipeline to discharge to waters of the Commonwealth contrary to the conditions of its ESCGP;” and
- “temporarily and/or permanently stabilize areas of earth disturbance at various locations along the Mariner East pipeline.”

Considering these many problems with Sunoco's plans to minimize the environmental harms from its Mariner East 2 project under Chapter 102, the Department should deny Sunoco's requests to operate under ESCGP-2 permits.

4. Sunoco has not justified exemption from or waiver of riparian buffer protections.

Riparian buffers are a stream's first line of defense. Trees and other vegetation slow runoff, filter sediment and pollution, and shade the stream so cold-water-loving creatures can thrive. 25 Pa. Code § 102.14 mandates protections for Pennsylvania's vital riparian buffers. In its Riparian Buffer Waiver Requests, Attachment 6 to its notices of intent, Sunoco claims it is exempt from subsection (a) of these mandates for areas covered by the Chapter 105 permits which it has not received, and may not yet legally receive, due to the exception for “Activities authorized by a Department permit under another chapter of this title which contains setback requirements, and the activity complies with those setback requirements.” Sunoco does not explain what setback requirements protecting riparian buffers are contained within Chapter 105; Citizens have looked but cannot find them. As these unissued permits would regardless not appear to be the type of permits allowing for such an exemption, Sunoco cannot rely on Section 102.14(d)(1)(ix) to avoid protecting riparian buffers.

Sunoco also seeks a waiver from the Department of its Section 102.14 requirements only “for areas within 150' of surface waters that are outside of the Chapter 105 permit area.” For pipelines, the Department “may grant a waiver from any of the requirements of subsections (a) and (b) upon a demonstration by the applicant that there are reasonable alternatives for compliance with this section, so long as any existing riparian buffer is undisturbed to the extent practicable and that the activity will otherwise meet the requirements of this chapter.” 25 Pa. Code § 102.14(d).

As explained elsewhere in these comments, Sunoco's applications do not otherwise meet the requirements of Chapter 102. But beyond that, it also does not leave existing riparian buffers

undisturbed to the extent practicable. Rather, Sunoco appears to attempt to *minimally* comply with other requirements regarding riparian buffers, and disturb them greatly even where lesser disturbance would be practicable.

It is important to separately consider riparian buffer protection near stream crossings and riparian buffer protection in areas where the pipelines would skirt the streams but cross only their riparian buffers at those locations, not the streams themselves.

- a. Sunoco has no plans to minimize harms to riparian buffers in areas where the protected streams are not themselves crossed.

Despite Sunoco only requesting a waiver of the riparian buffer protections in areas where the Project would not cross the streams themselves, Sunoco has proposed *zero* measures to protect riparian buffers in those areas. This is apparent from the section “Demonstration of Minimizing Impacts” in Sunoco’s waiver request. Every proposal there concerns stream crossings, which are explicitly not within the scope of Sunoco’s Waiver Requests.

This is also clear from an examination of the E&S plans, which show Sunoco planning to cut straight through riparian buffers not involving stream crossings at those locations, where Sunoco could have drilled under them or routed around them. For example, in South Lebanon Township, Lebanon County, Sunoco proposes to cut through most of the southern riparian buffer to an unnamed tributary to Quittapahilla Creek, eliminating the northern temporary workspace only to avoid working in the watercourse of the tributary itself. *See* Lebanon County Site Plan, Sheet 23 of 39. Sunoco could have deviated its straight course through the area to avoid that riparian buffer, but chose not to do so. As another example, in Londonderry Township, Dauphin County, Sunoco plans to skirt the edge of an unnamed tributary to Chester Creek, destroying much or most of its southern forested riparian buffer, limiting the temporary right-of-way only so that it does not intrude in the creek bed itself. *See* Dauphin County Site Plan, Sheet 12 of 24. Neither of these riparian buffers was even identified in Sunoco’s Waiver Requests. Other riparian buffers that Sunoco *did* identify, where it plans to destroy much of the buffer outside an area of stream crossing, for example RB-082 (HQ-EV), underscore Sunoco’s failure to take the concept of impact minimization seriously. Many other missed opportunities to protect riparian buffer exist along the 300-mile length of the proposed pipelines.

Sunoco has thus not made the required showing under 25 Pa. Code § 102.14(d) that “any existing riparian buffer is undisturbed to the extent practicable.”

- b. Sunoco’s plans to minimize harms to riparian buffers at stream crossings mostly amount to planned regulatory compliance.

Sunoco’s riparian buffer harm minimization efforts at stream crossings, in turn, are little more than efforts to comply with Department requirements.

For example, the Department requires storage of spoil from stream trenching at least ten feet from the tops of stream banks. *See* E&S Manual at 287, Standard Construction Detail #13-1. Sunoco instead portrays its use of this practice in its waiver request as an example of

minimization of harms: “Necking down of the ROW at resources and locating temporary workspaces 10 feet from resources is a significant construction constraint that is done to minimize the impacts to streams, wetlands, and riparian buffers.” Minimization of harm means doing something other than inflicting the *maximum* harm the Department might allow. More generally, Sunoco’s Aquatic Resource Avoidance, Minimization, and Mitigation Plan, and its claimed mitigation in its Waiver Requests, in large part describe Sunoco’s stated plans to comply with legal requirements rather than to do more than necessary. Sunoco’s track record shows that even the bare minimum of legal compliance is often more than it accomplishes. *See* Chapter 105 Joint Comments analysis of 25 Pa. Code § 105.14(b)(6).

It is not enough to write conclusory statements such as “The final route that was selected minimizes environmental impacts to the maximum extent practicable while still maintaining the project’s overall constructability and ensuring a safe working environment while also taking landowner constraints into consideration.” Sunoco has provided no concrete examples of harm minimization. Sunoco could have explained how a certain practice would have been the cheapest for it, but it chose another, more expensive practice, because it would be more protective of riparian buffers. It has not done so. 25 Pa. Code § 102.14(d)(2) requires “*a demonstration by the applicant* that there are reasonable alternatives for compliance with this section, so long as any existing riparian buffer is undisturbed to the extent practicable” (emphasis added). This should be done on a buffer-by-buffer basis, as any evaluation of practicability must measure the constraints of the locations in question. There is no such demonstration in Sunoco’s applications, for even one site of riparian buffer disturbance. Likewise, Sunoco wrote “Workspaces that provide additional space for stream crossing activities have been placed outside of riparian buffers where possible.” It gave no examples. The Department thus has no basis to reach the conclusion that Sunoco has justified the grant of a waiver here.

The evidence in Sunoco’s applications, and its recent historical record, show the opposite—that Sunoco’s actions and plans stick as close as possible to what it terms in its Waiver Requests as the “Baseline Project Alternative”: “that the project is built based on ease of construction and not limiting impacts to resources.” Sunoco’s Alternatives Analysis submitted as part of its Joint Permit Application for a Pennsylvania Water Obstruction & Encroachment Permit and a U.S. Army Corps of Engineers Section 404 Permit Application contains route variations Sunoco says it considered to avoid sensitive resources. Riparian buffers do not appear to have been a consideration in any of its considered route variations, despite Sunoco’s claim to the contrary in its Waiver Requests.

Sunoco also has no plan for compensation of the harms the Project would do to riparian buffers. 25 Pa. Code § 102.14(d)(4) provides that “An applicant requesting a waiver may propose and the Department may allow offsite protection, conversion or establishment of riparian forest buffers or provide compensation to fund riparian forest buffer protection, enhancement or establishment.” Such a proposal might do something to show an effort harm minimization. Sunoco has failed to avail itself of even this opportunity.

In conclusion, the Department has no grounds for recognizing an exemption to the riparian buffer protection mandates, or for granting a waiver of them.¹²

5. Protection of the Chesapeake Bay and other watersheds should take priority.

In coordination with other Commonwealth agencies, and partly in response to the U.S. Environmental Protection Agency withholding \$3 million from Pennsylvania, the Department has launched a Chesapeake Bay restoration strategy, or “reboot.” The strategy rightly focuses on agriculture in order to reduce nutrient load in the Susquehanna River Watershed and, ultimately, the Bay. The Department, however, should not ignore the role that pipelines such as Mariner East 2 can play in destroying riparian buffers at water crossings, creating linear pathways for increased sediment load in waterways, and reducing the efficacy of wetlands in cleaning and storing water that makes its way into the Bay. The Susquehanna River Basin is already one of the most flood-prone basins in the nation.

25 Pa. Code § 102.2 explains that “This chapter requires persons proposing or conducting earth disturbance activities to develop, implement and maintain BMPs to minimize the potential for accelerated erosion and sedimentation and to manage post construction stormwater.” As explained elsewhere in this comment, Sunoco proposes to build Mariner East 2 in a manner that causes needless erosion and sedimentation. The pipeline as planned would snake through roughly 147 miles of the Susquehanna River Watershed, which comprises 43% of the Chesapeake Bay’s drainage area and provides 50% of its fresh water flows.¹³ The pipeline’s impacts would be substantial, and would threaten the safety and sanctity of the Chesapeake Bay.

Moreover, Sunoco proposes to conduct this earth disturbance under the ESCGP-2 general permit, a condition for which is that “The projects which are in the category individually and cumulatively do not have the potential to cause significant adverse environmental impact.” 25 Pa. Code § 102.5(m)(1)(v). The ESCGP-2 general permit covers oil and gas development and transmission. Cumulatively, there can be no question that oil and gas development and transmission in the Susquehanna River Basin has caused and has the continuing potential to cause significant adverse environmental impact. Over half of the nearly 10,000 shale gas wells drilled in Pennsylvania in the last decade were drilled in the Susquehanna River Basin. As shale gas development moves south and west from the more agricultural areas of Northeast Pennsylvania into the more forested areas, loading rates into Susquehanna tributaries are likely to increase dramatically.

The Project would also involve water crossings and land disturbance in the Schuylkill River Watershed, which was awarded an EPA Targeted Watershed Award. The Targeted Watershed Grant is an EPA program designed to encourage successful community-based approaches and

¹² As one last note on Sunoco’s Riparian Buffer Waiver Requests, Sunoco looked at a No-Impact Alternative in evaluating its riparian buffer minimization. Sunoco seems to have mistakenly done that analysis assuming that its pipelines would carry natural gas, not natural gas liquids. The markets for natural gas and natural gas liquids are completely different, and thus Sunoco’s No-Impact Alternative discussion simply does not apply to Mariner East 2. This is indicative of Sunoco’s inattention to detail in its applications to the Department.

¹³ See Susquehanna River Basin Commission, Information Sheet – Susquehanna River Basin, revised May 2013, available at http://www.srb.com/pubinfo/docs/SRB%20General%205_13%20Updated.pdf.

management techniques to protect and restore the nation's waters. The Department should give extra consideration of its stewardship of watersheds specially invested in by EPA for protection.

6. Environmental justice and constitutionality concerns

Citizens additionally wish to direct the Department's attention to public participation opportunities for environmental justice communities, and the Department's responsibility under Article I, Section 27 of the Pennsylvania Constitution.

First, the Department should consider whether the impacts from the Chapter 102, Chapter 105, and minor source air permit for the Ebensburg pumping station cumulatively should be considered Opt-In Permits under the Department's Environmental Justice Public Participation Policy, in connection with the environmental justice community in and around Ebensburg, Cambria County. Citizens make the same suggestion in connection with the Twin Oaks pumping station and the environmental justice community in and around Chester, Delaware County.

Also, as explained in the Chapter 105 Joint Comments, and as the Department is well aware, Article I, Section 27 of the Pennsylvania Constitution provides that "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people." The location of Section 27 in the Commonwealth's Declaration of Rights signifies a particular constraint on Commonwealth actions because this portion of our charter "delineates the terms of the social contract between government and the people that are of such 'general, great and essential' quality as to be ensconced as 'inviolable.'" *Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth*, 83 A.3d 901, 950, 947 (Pa. 2013) (plurality) (citing PA. CONST. art. I, Preamble & § 25). Each of the "three mandatory clauses" in Section 27 establishes distinct "substantive" constraints, and they all reinforce the Department's duty to complete robust environmental reviews before taking action. *Robinson Twp.*, 83 A.3d at 950, 957. The third clause of Section 27 prohibits the Department from infringing upon the people's environmental rights, and from permitting or encouraging the degradation, diminution, or depletion of public natural resources. *Robinson Twp.*, 83 A.3d at 953.

In light of the numerous deficiencies in Sunoco's applications and great harm the Project would inflict on the "natural, scenic, historic and esthetic values of the environment" in Pennsylvania, Citizens believe Article I, Section 27 requires strict scrutiny of Sunoco's applications, and the utmost diligence in protecting our natural environment.

7. The Department should restart the comment period only after the applications are complete.

Should the Department decide not to reject Sunoco's Chapter 102 applications at this stage, Citizens respectfully request that the Department restart the public comment period only after Sunoco corrects and completes its incomplete applications. As documented above, as of the end of the public comment period, Sunoco's applications are incomplete and technically deficient.

The public should have the opportunity to comment on *full* permit applications. *See* the Department's Policy on Public Participation in the Permit Review Process, March 1, 2014.

Also, the technical analysis of these applications is a lengthy, expensive, involved process which the public has not been able to fully perform even on the parts of the applications Sunoco has submitted. Not even the Department has been able to complete its technical review. It is right that the Department is giving itself time to do a thorough technical analysis, though it should have not given up on getting Sunoco to complete its applications first. But the Department should recognize that a Project of this size requires an unusually long period for the public to do its own technical analysis as well.

Those who would be harmed by the building of the pipeline are Pennsylvanians from all walks of life, most of whom have not had adequate time to pore over the more than a thousand pages of technical documents in Sunoco's Chapter 102 applications. It can be overwhelming. The Department should give impacted people meaningful opportunities to protect their lives and their livelihoods by weighing in on the Project during the public comment period.

The public comment periods for Mariner East 2 should also be coordinated. On June 25, 2016, the Department published in the Pennsylvania Bulletin notices of Sunoco's Chapter 105 (wetland and waterway crossing) applications for coverage of the Mariner East 2 pipeline project, one for each county crossed. The notices established a 60-day public comment period ending August 24, 2016. The Department is reviewing Sunoco's Chapter 102 and Chapter 105 permit applications for Mariner East 2 at the same time. Therefore, the Department should establish public comment periods of the same duration and coordinate public hearings for these companion permits. Furthermore, the U.S. Army Corps of Engineers has announced a public comment period ending August 30, 2016 for Sunoco's Mariner East 2 Section 404 (wetlands) permit applications which are reviewed by the federal agency under the Clean Water Act together with the Department's Chapter 105 permit applications. All public comment periods and agency reviews for this project should be harmonized, as these applications are best evaluated in tandem.

So that everyone has a fair chance to provide input on a major project that is projected to do great harm to the land and waters of this Commonwealth, Citizens respectfully request that the Department restart the public comment period only after Sunoco has completed its applications and the Department has made them publicly available. The Project here would have a comparable per-mile impact as the proposed Atlantic Sunrise pipeline project, for which the Department rightfully granted a 90-day Chapter 105 public comment period, but be a hundred miles longer. That restarted, coordinated public comment period should be 90 days, and be enriched with public hearings, commensurate with a project of this unusual magnitude and potential destructive effect.

CONCLUSION

For the reasons set forth above, Citizens respectfully ask the Department to deny Sunoco's permit applications as incomplete and as proposing a course of action which would violate Chapter 102 in numerous, independent ways. If the Department instead allows Sunoco to

complete or resubmit its applications, Citizens ask the Department to open a public comment period only after the Department has received complete applications from Sunoco.

Thank you for the opportunity to comment. Please keep us apprised of any future actions related to Sunoco's applications for these Chapter 102 permits.

Sincerely,

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