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Via electronic mail (RA-EPWW-SERO@PA.GOV)

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

**Re: Sunoco Pipeline L.P., PA Pipeline Project (PPP)/Mariner East II
Water Obstructions and Encroachments Permit Application, E40-769
Delaware and Chester Counties
46 Pa. Bull. 3270 (June 25, 2016)
46 Pa. Bull. 3698 (July 9, 2016).**

Dear Acting Commissioner McDonnell:

Sunoco Pipeline L.P. ("Sunoco") submitted a Water Obstruction and Encroachment permit application (the "Application") to the Department of Environmental Protection (the "Department" or "DEP") for its proposed expansion of the Mariner East Pipeline with two new, larger pipelines and related activities, known as the PA Pipeline Project/Mariner East II (the "Project" or "Mariner East II"). 46 Pa. Bull. 3270 (June 25, 2016) and 46 Pa. Bull. 3698 (July 9, 2016). The proposed pipeline would extend more than 300 miles, across three DEP regions. Citizens for Pennsylvania's Future ("PennFuture") obtained copies of the Application through an informal file review at DEP's Southeast Regional Office on July 8, 2016 and submits these comments based on materials made available during that review. These comments specifically address the Application submitted for Delaware and Chester Counties, but many of the comments have broader applicability.¹

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.

¹ This comment letter refers to the Application documents for Chester County unless specifically designated otherwise. Sunoco provides documents for each county, containing slight variations on county specific impacts.

Based on our review of the Application, PennFuture believes that Sunoco has not satisfied all the requirements set forth in the Chapter 105 regulations. Principally, the Application fails to present the cumulative impacts or appropriate alternatives for the Department to consider and does not demonstrate that there will be no adverse impacts on Exceptional Value (EV) streams and that no major impairment will result to other wetland resources. We request that the Department deny a Water Obstruction and Encroachment permit to Sunoco unless and until the regulatory requirements are fully satisfied.

1. Sunoco's Cumulative Impacts Analysis does not Contain Sufficient Information on Which the Department can make an Informed Determination.

When evaluating a proposed project's impact on health, safety, and the environment under 25 Pa. Code § 105.14, the Department must consider "the cumulative impact of this project and other potential or existing projects." 25 Pa Code § 105.14(b)(14). Cumulative impacts result when the environmental effects associated with construction and operation of a proposed project are added to or interact with the environmental effects of other projects or activities occurring in a particular area. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis.²

Nothing in the regulation limits the "other potential or existing projects" to those related to the project proposed in the application under review. A gas pipeline, a power line, a housing development, an industrial park, and a marina might have cumulative impacts on water resources that must be considered even though all of them are proposed by unrelated entities and none of them is engendered by any of the other projects or dependent on any other project to go forward. As part of its analysis of cumulative impacts, the Department must consider the potential impacts of "numerous piecemeal changes" on wetland resources and recognize that each wetland site "is part of a complete and interrelated wetland area." 25 Pa Code § 105.14(b)(14).

Sunoco fails to meet its obligation to provide the Department with sufficient information on which to consider the cumulative impacts of the Project. Sunoco acknowledges that "with the increased development of shale gas in recent years, the number of other recent, ongoing, and/or proposed gas development and pipeline expansion projects have been increasing in Pennsylvania." And that "it is fair to assume that other projects potentially affecting streams and wetlands in Pennsylvania will include energy development and energy transportation projects (including other pipelines), road/bridge infrastructure repair and expansion projects, and land development activities associated with residential and commercial developments." Application, Environmental Assessment Form, Enclosure D at 15 (hereinafter Enclosure D). But Sunoco has not compiled a list of recent, ongoing, or future proposed projects in the vicinity of this Project. *Id.* at 14. In addition to other gas development and pipeline expansion projects Sunoco should identify, Sunoco must also describe other potential or existing projects such as power lines, housing developments, or industrial parks, which might have piecemeal impacts on wetland resources.

Once Sunoco has identified potential and existing projects, Sunoco must discuss the cumulative impacts of such projects. Sunoco recognizes that cumulative "effects could adversely impact users of [] waterbodies and wetlands" but then concludes that "[t]he Project . . . will not

² See U.S. Environmental Protection Agency, Consideration of Cumulative Impacts in EPA of NEPA Documents, May 1999, available at <https://www.epa.gov/sites/production/files/2014-08/documents/cumulative.pdf>.

cause or contribute to pollution of groundwater or surface water resources, or interfere with their uses. . . [or] cause or contribute to the loss or impairment of the Commonwealth’s aquatic resources.” *Id.* at 15. Without identification and characterization of the potential or existing projects and their cumulative impacts, there is no basis for such conclusions.

Instead of identifying other potential or existing projects, Sunoco places the burden on county and town government officials to express concerns regarding the Project, including cumulative impacts of the proposed Project when combined with other projects that may be planned or ongoing. *Id.* at 14. Sunoco has the burden to identify other potential or existing projects and their impacts and cannot evade this responsibility. 25 Pa. Code § 105.18a(a)(6) (“the Department will not grant a permit under this chapter for a dam, water obstruction or encroachment located in, along, across or projecting into an exceptional value wetland, or otherwise affecting an exceptional value wetland, unless the applicant affirmatively demonstrates in writing [that] . . . [t]he cumulative effect of this project and other projects will not result in the impairment of the Commonwealth’s exceptional value wetland resources.”); 25 Pa. Code § 105.18a(b)(6).

The Application repeatedly states that Sunoco does not have any reasonably foreseeable future actions associated with this Project. *Id.* at 15, *see also* Chester County, Aquatic Resource Avoidance, Minimization, and Mitigation Plan, Revised March 2016, at 5 (hereinafter Mitigation Plan). But Sunoco’s lack of future plans does not alleviate its obligation to present cumulative impacts from *other* potential or existing projects.

Finally, cumulative impacts of the Project are likely to be significant. On behalf of the Clean Air Council, CNA Analysis and Solutions recently performed an analysis of the expected impacts on the Delaware River Basin resulting from the completion of eight proposed transmission pipelines, including Mariner East II. Just from these pipelines and just in Pennsylvania alone, CNA projected a loss of over 400 acres of forest, and permanent impacts on over 15 acres of wetlands. Lars Hanson and Steven Habicht, “Cumulative Land Cover Impacts of Proposed Transmission Pipelines in the Delaware River Basin” at 39, *available at* https://www.cna.org/CNA_files/PDF/IRM-2016-U-013158.pdf.

Before issuing a water obstruction and encroachment permit under Chapter 105, the Department must make a written finding that “cumulative effect of this project and other projects will not result in the impairment of the Commonwealth’s exceptional value wetland resources,” 25 Pa. Code § 105.18a(a)(6), and that the “cumulative effect of this project and other projects will not result in a major impairment of this Commonwealth’s wetland resources.” 25 Pa. Code § 105.18a(b)(6). The Department cannot make such a finding based on the application currently before it. The Department should thus require Sunoco to conduct a comprehensive cumulative impacts analysis identifying potential and existing projects and characterizing their impacts to determine whether they will result in an impairment of the state’s wetland resources before issuing this permit.

2. The Application Fails to Provide a Sufficient Alternatives Analysis on Which the Department can make an Informed Determination.

Applications for permit coverage must be accompanied by specific information, including an alternatives analysis. 25 Pa. Code § 105.13(e)(viii). This analysis must provide a detailed description of alternatives to the proposed action, including alternative location, routing or designs to avoid or minimize adverse environmental impacts.” *Id.* Sunoco provides an Alternatives Analysis in which it immediately dismisses a No Action alternative and provides “an overview of just a few” route variations for the Project. Joint Permit application for Pennsylvania Water Obstruction & Encroachment Permit and a U.S. Army Corps of Engineers Section 404 Permit Application, Revised March 2016 at 3-5 (hereinafter Alternatives Analysis). Such a cursory synopsis leaves the Department with insufficient information on which to determine whether an alternative to the proposed Project would be prudent.

Sunoco immediately dismisses the No Action alternative because it “would not fulfill the purpose or objectives of the Project.” *Id.* at 4. Sunoco describes the purpose of the Project as to “transport low cost Marcellus Shale production to markets locally and domestically in the U.S. and to international markets.” *Id.* at 3. By defining the purpose of the Project so narrowly, Sunoco summarily precludes the availability of the No Action alternative.

With the No Action option summarily dismissed, Sunoco presents an “overview of just a few” alternate routes and construction design methods. *Id.* at 5. Although Sunoco may believe it to be “impractical to document all the actions taken . . . to avoid/minimize impacts on a project of this size,” *id.* at 3, a permit application *must* contain a detailed analysis of this information. Without a description of the alternatives considered and an analysis of the varying impacts, the Department is left without the information necessary to make a determination. An overview of just a few options considered does not provide the Department with information necessary to determine whether the proposed project provides sufficient protections to Pennsylvania’s waterways and wetlands, including Exceptional Value wetlands.

3. The Project Will Have Impermissible Adverse Impacts on Exceptional Value Wetlands and Will Not Adequately Mitigate Degraded Functions and Values of Other Wetlands.

An application for any project that may affect an exceptional value (EV) wetland or more than one acre of non-EV wetlands must include an assessment of wetland functions and values using a methodology accepted by the Department. 25 Pa. Code §105.13(e)(3). The Department may not issue a permit for water obstruction or encroachment of an EV wetland unless the applicant demonstrates that the project “will *not* have an adverse impact on the wetland, as determined in accordance with §§ 105.14(b) and 105.15 (relating to review of applications; and environmental assessment).” 25 Pa. Code §105.18a(a)(1) (emphasis added).

For water obstructions and encroachments that will affect non-EV wetlands, the Department generally may issue a permit only if “[t]he cumulative effect of this project and other projects will not result in a *major impairment* of this Commonwealth’s wetland resources.” 25 Pa. Code § 105.18a(b)(6) (emphasis added). The term “major impairment” is not defined in Chapter 105; however, since wetlands are subject to the Department’s anti-degradation requirements set forth at 25 Pa. Code Chapter 93, the Department may not allow any impairment so “major” that it prevents wetlands from attaining their existing uses, and the Department must protect the level of

water quality necessary to protect those uses. 25 Pa. Code § 93.4a(b).³ Any wetland area or functions and values that are lost as the result of the Project must be replaced. 25 Pa. Code § 105.20a.

Sunoco fails to demonstrate that the Project will have no adverse effect on EV wetlands and does not show that the cumulative effect of this project and other projects will have no major impairments to non-EV wetlands. In fact, Sunoco admits that “some impacts to wetlands, including some EV wetlands, will be unavoidable.” Alternatives Analysis at 21. The Project will impact over 39 acres of wetlands and 55,000 feet of stream impacts across the state,⁴ crossing over 70 streams and 25 wetlands in Chester County alone. *Id.* at 20; and Mitigation Plan at 6 and 9. For the areas of wetlands (including EV wetlands) that Sunoco was not able to avoid, the company states that it considered “construction techniques, workspace reductions, and special wetland construction procedures . . . where feasible.” Alternatives Analysis at 21. Sunoco provides little discussion of the techniques or procedures considered and indicates that infeasibility was established by Sunoco’s determination that alternatives were less “environmentally sound, cost-effective, or logistically feasible.” *Id.* Sunoco provided little information about the application of these infeasibility criteria to specific wetlands or water crossings. In cases where Sunoco dismissed alternatives that would have otherwise avoided surface waters, impacts will result to streams and wetlands (including those entitled to the heightened protections of exceptional value designation). Under the clear language of 25 Pa. Code § 105.18(a)(1), any impacts to EV wetlands should be prohibited. The Department should not approve Sunoco’s Application unless and until these adverse effects on EV wetlands are eliminated from the Project plans.

Further, Sunoco dismisses any impacts to non-EV wetlands as temporary, insignificant, and *de minimus*. *Id.* at 22; Mitigation Plan at 11. Because of these conclusions, Sunoco states that “[n]o compensatory mitigation is required.” Mitigation Plan at 18. However these claims are not supported and do not relieve Sunoco from the requirement to mitigate.

The Project will result in permanent impairments to wetlands functions and values.⁵ As discussed above, such impacts to EV wetlands are prohibited under Section 105.18(a)(1). For non-

³ The Department’s anti-degradation program applies to all “surface waters,” and the term “surface waters” is defined in Chapter 93 to include wetlands. See 25 Pa. Code 93.4a(a), 25 Pa. Code 93.1.

⁴ In Chester County, the Project will cross a total of 10 EV wetlands for a total linear distance of approximately 0.49 miles. Therefore the total potential impact to EV wetlands in Chester County will be approximately 3.00 acres. Alternative Analysis at 22. In Delaware County, the Project will cross 1 EV wetlands for a total linear distance of approximately 0.046 miles. Therefore the total potential impact to EV wetlands in Delaware County will be approximately 0.279 acres. Delaware County Alternative Analysis at 22.

⁵ With respect to general habitat and natural biological functions (subsection (i) of section 105.1 definition), conversion will, among other things, decrease aboveground biomass, habitat for shade-loving plant species, the production of mast (e.g., acorns) for wildlife, and increase exposure to the elements and to localized effects of global warming. Schmid & Company, Inc., *The Effects of Converting Forest or Scrub Wetlands to Herbaceous Wetlands, Prepared for the Delaware Riverkeeper Network* (2014) at 16-17, available at http://www.schmidco.com/Leidy_Conversion_Final_Report.pdf. Concerning natural drainage patterns and water quality, conversion will decrease soil stabilization, streambank anchoring, and capacity for nutrient storage. *Id.*, at 19-20. Conversion will increase the volume of groundwater discharge and reduce transpiration, and decrease the capacity for erosion and sediment control. *Id.*, at 21-22. With regard to human recreation, conversion will impair landscape aesthetics, decrease interior forest and habitat for plants and animals, and impair the maintenance of cold water temperature for trout. *Id.*, at 22. This conversion is

EV wetlands, regulations require that “[f]unctions and values that are physically and biologically the same as those that are lost shall be replaced at a minimum ratio of 1:1.” 25 Pa. Code § 105.20a(a)(2). Because Sunoco will impact forested wetlands, even if they are restored to emergent wetlands, the functions and values of those previously palustrine forested wetlands will be permanently impaired. Thus Sunoco is required to replace the functions and values of the forested wetlands lost in the conversion.

By asserting the impacts are insignificant and thus do not require mitigation, Sunoco implies the existence of an exemption from mitigation measures. See Mitigation Plan at 18. No such exemption exists in the statute or the regulations. 25 Pa. Code § 105.17 (“Wetlands are a valuable public natural resource. This chapter will be construed broadly to protect this valuable resource.”).

Without a thorough discussion of the specific impacts, mitigation plans, and measure to restore areas, Sunoco does not meet its burden to establish that the project will *not* have an adverse impact on the EV wetlands and that it will have no major impairments to non-EV wetlands.

The Application consistently fails to provide sufficient information on which the Department can make required determinations. Thus, Sunoco has not satisfied all the requirements set forth in the Chapter 105 regulations. Therefore we request that the Department deny a Water Obstruction and Encroachment permit to Sunoco unless and until the regulatory requirements are fully satisfied.

Thank you for your time and consideration of PennFuture’s comments.

Sincerely,
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clearly an “adverse impact” on PFO wetlands.