



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Office of Chief Counsel



February 1, 2016

Jonathan E. Rinde, Esq.
Manko, Gold, Katcher & Fox LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

Dear Jonathan,

I am responding to your July 31, 2015 letter addressed to Richard Morrison regarding the Sunoco Pipeline LP, Pennsylvania and Ohio Pipeline Projects.

This response has taken some time to put together, in part, due to my transition. This letter addresses the Department's position regarding the Pennsylvania Historic and Museum Commission ("PHMC") issues raised and discussed previously between you, PHMC, and the Department. The Department's regulations and guidance do not allow DEP to deny a permit or suspend review of a DEP application based upon a separate request of an applicant from PHMC. Rather, the Department is required to provide PHMC with notice under certain circumstances. The Department is required to consider potential impacts to historic resources under 25 Pa. Code Chapter 105 when DEP conducts reviews of a water obstruction, encroachment or a dam permit application. However, 25 Pa. Code Chapter 102 does not require this consideration during the Department's review of general permit applications for earth disturbance activity. As you know, Section 508 of the Pennsylvania History Code requires interagency cooperation, which DEP intends to facilitate in these instances. But the History Code does not authorize our agency or any Commonwealth agency to stop the processing of permits solely due to possible or actual presence of archaeological or historic resources, unless the agency's enabling legislation contains specific statutory authorization for such action. DEP does not have such authorization here, but will seek to track the Commission's process on the Sunoco pipeline projects.

Therefore, the Department is proceeding with the review of the Sunoco Pennsylvania Pipeline project. When and if the project has acquired all necessary authorizations, as with all construction-related activities, the permittee will have ongoing obligations regarding archaeological and historic resources through the life of the project under Pennsylvania law. In addition to any requirements that PHMC may place or agree to on the subject project(s), should Sunoco or any of its agents, contractors or subcontractors or anyone working on the subject site encounter archaeological and/or historic resources, they must immediately: 1) cease earth disturbance activities, and 2) notify DEP and the PHMC, as required by law.

In an effort to keep us informed of the PHMC issue and how it is being addressed, we do request that Sunoco keep the Department permit application reviewer(s) apprised of the company's

coordination with PHMC regarding protection of Pennsylvania's archaeological and historic resources that are potentially present within and/or adjacent to the area(s) subject of the permits you have requested from our agency. We appreciate Sunoco's cooperation in this regard.

Sincerely,



Alexandra C. Chiaruttini
Chief Counsel