

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HIGH SWARTZ LLP  
David J. Brooman, Esquire (I.D. No. 36571)  
Richard C. Sokorai, Esquire (I.D. No. 80708)  
Mark R. Fischer, Jr., Esquire (I.D. No. 94043)  
40 East Airy Street  
Norristown, PA 19404  
(t) 610-275-0700  
(f) 610-275-5290  
dbrooman@highswartz.com  
rsokorai@highswartz.com  
mfischer@highswartz.com

*Attorneys for West Goshen Township*

---

WEST GOSHEN TOWNSHIP,	:	
Petitioner	:	Docket No. C-2017-2589346
	:	
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
Respondent	:	

---

**ANSWER OF WEST GOSHEN TOWNSHIP TO SUNOCO'S MOTION TO  
MODIFY THE PROCEDURAL SCHEDULE**

Complainant West Goshen Township ("Township") hereby answers Respondent Sunoco Pipeline L.P.'s ("SPLP" or "Sunoco") Motion to Modify the Procedural Schedule. The procedural schedule in this case was set approximately three months ago, on July 24, 2017, upon the denial of SPLP's motion for judgment on the pleadings. The Township's initial written testimony is due on February 1, 2018, in approximately three months. The Township has been acting in reliance on this schedule. Now, over 40% into the established schedule, SPLP is seeking a dramatic alteration in the schedule, requiring Township to come forward with an expert report analyzing complex engineering issues in less than a month, within which the

Thanksgiving holiday will occur, when SPLP has admittedly not even provided all of the engineering documents required for this evaluation.<sup>1</sup>

SPLP's bases for such relief are essentially two-fold: 1) it is attempting to unilaterally create a prima facie burden on the Township to disprove SPLP's unsupported assertions that engineering constraints make it unable to site the subject Valve on the SPLP Use Area; and 2) it claims that all other HDD operations have resumed in the Commonwealth and this case is the only thing holding up the completion of the ME2 project, causing it costly delay. However, SPLP's legal assertions are incorrect and its factual assertions are false.

With respect to SPLP's attempt to impose an initial burden upon the Township to disprove SPLP's unsupported engineering conclusions, the Township's burden is to establish that SPLP has a contractual obligation to site the Valve on the SPLP Use Area and that it has not done so. If SPLP establishes by a preponderance of the evidence that it is actually unable to locate the Valve on the SPLP Use Area, which it has not yet proven, then the burden shifts to the Township to demonstrate that the contract requires SPLP to locate the Valve on another part of the SPLP Additional Acreage, as opposed to wherever in the Township it unilaterally decides.

With respect to SPLP's assertion that all other HDD operations have resumed in the Commonwealth, it is simply false.<sup>2</sup> There are multiple locations where HDD has not resumed following shutdowns by the Department of Environmental Protection ("DEP") related to frack-outs and inadvertent returns compromising waterways, water sources and water wells.

---

<sup>1</sup> SPLP's proposed relief establishes November 8, 2017 for SPLP to provide all engineering information which it considers relevant to the siting of Valve 344. Further, SPLP's discovery response to request No. 4-17, 22, 25, 27 and 28, explains that SPLP is still reviewing and gathering such information. Further, certain SPLP objections have been overruled and SPLP has been ordered to produce further documents, pursuant to an Order dated October 26, 2017.

<sup>2</sup> This is not the first time that SPLP has been less than truthful in this case. At the July 18, 2017 hearing, SPLP, upon being confronted with documents, admitted that it planned to site the Valve on the Janiec 2 Tract, when it promised in the Settlement Agreement submitted to the PUC for approval, that it would site the Valve on the SPLP Use Area and that it had no plans to site it elsewhere.

The Township will be severely prejudiced if the procedural schedule were changed at this late date. Sunoco has admittedly not yet produced the documents necessary to assess its contentions. Sunoco is trying to unilaterally create a new legal burden for Township to meet. Sunoco is asserting false facts to support its position. For all of these reasons, and the reasons set forth below, the Township respectfully requests that Your Honor deny SPLP's Motion to Modify the Procedural Schedule entered on July 24, 2017.

**I. RESPONSE TO BACKGROUND**

1. Admitted. By way of further answer, the Township filed this action challenging the placement of a valve and appurtenant facilities at a location completely inconsistent with the promises and representations of SPLP under the terms of the referenced Settlement Agreement.

2. Denied as stated. The Amended Complaint, as a writing, speaks for itself and any characterization thereof is denied. The Township is seeking to enforce the Settlement Agreement with SPLP regarding the placement and location of the subject Valve.

3. Denied as stated. The Amended Complaint, as a writing, speaks for itself and any characterization thereof is denied. The Township does not dispute that this is an important requested relief, however, also important is not allowing the Valve to be installed elsewhere.

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied. Matthew Gordon did not testify that the Valve could not be placed on the SPLP Use Area. Rather, Gordon merely testified that:

(a) from an engineering standpoint it would not be "prudent" to site the valve on the SPLP Use Area, because it's extremely difficult and "potentially unsafe" (NT 194:2-11).

(b) he noted challenges in constructability (NT 223:8-12).

(c) he does not know whether “it’s practical” (NT 249:6-10).

It is also denied that Gordon testified that HDD was infeasible. Further, while Gordon did articulate a number of traffic or safety concerns regarding open cutting Boot Road, he did not testify that these issues were insurmountable and did not articulate reasonable efforts by SPLP to address these issues, rather than simply placing the Valve where it was most convenient to SPLP regardless of the consequences, or its promises, to West Goshen Township.

8. Admitted in part and denied in part. It is admitted that Kuprewicz testified that he did not speak with Mike Slough of SPLP as to whether the SPLP Use Area would be a prudent location. However, any implication by SPLP’s use of the word “conceded” is denied, as it implies that he failed to do so. Further, the Settlement Agreement does not condition SPLP’s agreement to locate the Valve on the SPLP Use Area on whether it was prudent. SPLP failed to comply with the terms of the Settlement Agreement. Finally, the Kruprewicz report referenced in this paragraph is a writing that speaks for itself and any characterizations thereof by SPLP are denied.

9. Admitted.

10. Admitted in part, denied in part. It is admitted that on July 24, 2017 Administrative Law Judge Elizabeth Barnes (“ALJ”) issued an Interim Emergency Order, which is a writing that speaks for itself. Any characterization of said writing by SPLP is denied. By way of further answer, after the instant Motion was filed, the PUC affirmed the Interim Emergency Order on October 26, 2017.

11. Admitted.

12. Admitted.

13. Admitted. By way of further answer, after the instant Motion was filed, the PUC affirmed the Interim Emergency Order on October 26, 2017.

14. Admitted.

15. Admitted.

16. Admitted in part and denied in part. The Stipulated Order, as a writing, speaks for itself and any characterization thereof is denied. It is admitted that the Stipulated Order at Exhibit B to the Motion was approved. It is denied that it permitted SPLP to immediately resume HDD activities. Rather, the Stipulated Order put in place significant requirements prior to the resumption of drilling at numerous locations, including but not limited to:

- (a) Re-examine the geology at each site using information and data gathered during HDD operations at that and other sites during construction of the pipelines subject to the permits in the above-captioned Appeal;
- (b) Consider data that is specific to the needs of each HDD being reevaluated, including at a specific HDD; geological strength at profile depth, overburden strength, HDD depth, entry angle, pipe stress radius, open cut alternatives, a re-route analysis for all HDDs (including those on Exhibit "D) and analysis of well production zones.
- (c) Conduct, as appropriate, additional geotechnical evaluation at each site using techniques generally recognized within the scientific community which may include:
  - (i) Additional field drilling and sampling
  - (ii) Seismic surveys
  - (iii) Ground penetrating radar; and
  - (iv) Electromagnetic surveys/electrical resistivity tomography
- (d) In karst areas, Sunoco shall consider the use of seismic surveys and electromagnetic surveys/electrical sensitivity tomography for the re-evaluation undertaken pursuant to this Order, and if it does not use these evaluation methodologies, it will provide the Department [of Environmental Protection] with an explanation for why they were not used at that side.

Further, under that same Stipulated Order, in addition to a number of other pre-requisites, SPLP after such re-evaluation, must then submit a report by a professional geologist, for review and comment by the Clean Air Council, and review and approval by the DEP, specifying all

actions to be taken by SPLP to eliminate, reduce, or control the release of inadvertent returns or HDD drilling fluids to the surface of the ground or impact to water supplies.

17. Denied. It is specifically denied that SPLP has resumed drilling at its remaining drilling locations in the Commonwealth, or that except for the West Goshen portion of the pipeline, the entire Pipeline will be completed and ready to deliver product by the fourth quarter of 2017 or 2018. To the contrary, on or about July 25, 2017, due to multiple frack outs and inadvertent returns throughout the Commonwealth, many of SPLP's HDD locations were temporarily halted by Stipulated Order in a case before the Pennsylvania Environmental Hearing Board ("EHB") pending a hearing on the issues for certain permits related to the HDD. *See Clean Air Council, et al. v. Commonwealth of Pennsylvania, Department of Environmental Protection and Sunoco Pipeline, L.P., Permittee*, EHB Docket No. 2017-009-L. That order was modified on July 28, 2017, August 1, 2017, and August 3, 2017, to allow HDD at some locations, but many were still halted. On August 8, 2017, the parties to the EHB case, entered into a Stipulated Order, that, among other things, SPLP would re-evaluate the HDD Plans for multiple halted locations throughout the Commonwealth and then submit the reevaluated plans to the DEP for approval, and submit them to the Clean Air Council for the opportunity to comment. Alex Bomstein, Esquire, Senior Litigation Counsel for the Clean Air Council, advises that revised plans have not even been resubmitted at multiple HDD locations within Pennsylvania and thus HDD at these locations has not resumed, contrary to the representation in SPLP's Motion. Further, discovery has continued in the EHB case. The DEP, through corporate designee deposition testimony on October 19, 2017, (the same date this Motion was filed) has also explained that there are HDD sites in the Commonwealth for which plans have not even

been resubmitted and HDD has not resumed, contrary to the representation in SPLP's Motion. See the affidavit of Alex Bomstein, attached hereto as Exhibit A.

18. Denied. The Township cannot determine if SPLP is referring to HDD within the Township or throughout the Commonwealth. Upon information and belief, the HDD associated with the Mariner East 2 project will be far longer than 6 months.

## **II. RESPONSE TO REQUESTED RELIEF**

19. Denied. SPLP is attempting to create a non-existent prima facie burden and shift the obligation onto the Township to make an "initial showing that engineering concerns cited by SPLP for not locating the Valve on the SPLP Use Area are illusory and misplaced." The Township's burden is to prove that SPLP has a contractual obligation to place the Valve on the SPLP Use Area and that SPLP has breached that obligation. If SPLP believes it is "unable" to locate the Valve on the SPLP Use Area due to engineering constraints, the Agreement places the burden upon SPLP to provide notice of such constraints to the Township, after which the two parties could work out an acceptable location on the SPLP Additional Acreage. SPLP has to date provided only disputed testimony that it would not be prudent to locate the Valve on the SPLP Use Area, and has failed to provide any data or other information substantiating engineering constraints making it unable to locate the Valve on the SPLP Use Area as agreed. Further, SPLP has admittedly withheld documents on this subject (which were the subject of the Township's motion to compel granted on November 1, 2017), as its Motion proposes that SPLP produce such information by November 8, 2017. See Paragraph 20 of the Motion.

20. Denied. The schedule should not be so modified. SPLP has not even fully responded to the Township's initial discovery responses, which if anything, should add time to the schedule not take time away. In addition, SPLP has waited months to request a modification of the schedule, which the Township has relied upon to date. To suddenly expedite the schedule,

and add a deadline for the production of an expert report in less than a month, based on documents that have not even been produced, to meet a prima facie burden that does not exist for the Township, with the Thanksgiving Holiday right in the middle of the proposed new deadlines, is highly prejudicial to the Township, and an insult to the ALJ's initial determination of the schedule in this matter. The schedule should, at a minimum, stay in place as-is, if not be extended if SPLP's documents are not timely produced.

### **III. RESPONSE TO ARGUMENT**

21. Denied. This allegation is denied as a conclusion of law to which no response is required. By way of further answer, the cases cited by SPLP are inapposite to its request to expedite the schedule in this matter, as there is nothing to bifurcate in this matter. *See Pennsylvania Pub. Util. Comm'n v. National Fuel Gas Distribution Corp.*, R-00016789, 2002 WL 31958785 (July 23, 2002) (in which the Commission bifurcated the proceedings, after six (6) months of litigation, to allow the parties to continue settlement discussions on a specific issue, whereas here no settlement discussions have occurred); *Pennsylvania Pub. Util. Comm'n v. Equitable Gas Company*, 59 P.U.R.4th 470, 472 (Nov. 22, 1983) (in which the Commission bifurcated the proceedings just seven days after the filing of the complaint in order to separate out issues that did not impact the complainant's business, whereas here the location of the Valve impacts all pipeline activities in the Township).

22. Denied. This allegation is denied as a conclusion of law to which no response is required. By way of further answer, the cases cited by SPLP in support of its request are entirely distinguishable from the circumstances in this case. *See A. Moses, Inc. v. Verizon Pennsylvania Inc.*, C-2010-2205259, 2011 WL 6008999, at \*5 (Oct. 14, 2011) (in which the Commission remanded the complaint to the ALJ and directed that any further proceedings be expedited due to the passage of over a year between the complaint and the Commission's order); *In re Peco*



*Energy Co.*, 87 Pa. P.U.C. 718 (Oct. 9, 1997) (in which the Commission directed an expedited schedule in a complex consolidated litigation relating to the competing utilities' plans because the Commission was required to issue a decision by a certain deadline). In this case, there has been no excessive passage of time and the Commission is not under any imposed deadline to decide the Township's Amended Formal Complaint. Further, ALJ Barnes clearly issued the current schedule after consideration of the underlying issues, following a conference with the parties and an evidentiary hearing on the Township's Petition for Interim Emergency Order.

23. Admitted. Further, ALJ Barnes already acted upon her authority under 52 Pa. Code § 5.483 when she issued the current schedule in this matter.

24. Denied as stated. The Township's Amended Complaint is a writing that speaks for itself, but SPLP's defenses, assertions and testimony to date make clear that the underlying dispute involves complex legal, engineering and factual issues.

25. Denied. SPLP has defended this case in a number of ways, raising complex legal, engineering and factual issues.

26. Denied. SPLP has not even fully responded to the Township's discovery requests for the Township to fully evaluate SPLP's position. *See also* the Township's response in paragraph 19 above.

27. Denied. By way of further answer, the Township has relied on the testimony of SPLP's own witness at the July 18, 2017 hearing, regarding the lack of effort to even attempt to locate the Valve where promised because SPLP had already decided to locate it elsewhere before it made its promise. Further, a full analysis has not been possible because SPLP has not even fully responded to Township's discovery requests. *See also* the Township's response in paragraph 19 above.

28. Denied. SPLP has an obligation to address any safety and feasibility concerns related to siting the Valve where it promised in the Settlement Agreement, which it has not done or reasonably attempted to do. Even if the Valve could not be placed on the SPLP Use Area due to engineering constraints, the re-location, per the Agreement, would be on the remaining SPLP Additional Acreage in coordination with the Township.

29. Denied. The burden is on the Township to prove that SPLP has certain duties under the Settlement Agreement and that SPLP has not complied with the Settlement Agreement, and even if a re-location were warranted, it would be on the SPLP Additional Acreage, not wherever SPLP decides in the Township. *See also* the Township's response in paragraph 19 above.

30. Admitted in part and denied in part. It is admitted only that there are certain economic benefits for a major pipe line project such as Mariner East. It is denied that such benefits outweigh any contractual obligations that SPLP entered into with the Township, or that SPLP is free to cause whatever harm it chooses in the name of other benefits. Further, the opinions cited, as writings, speak for themselves and any characterization thereof is denied.

31. Denied as stated. It is admitted that the Township is seeking to compel SPLP to comply with its contractual obligations under the Settlement Agreement, not just delay the project or block the entire pipeline. However, if this case delays the project, SPLP caused the delay by not complying with the Settlement Agreement. Further, the Township denies SPLP's characterization that the Township has "repeatedly" represented what it does not intend.

32. Admitted in part and denied in part. It is specifically denied that SPLP has resumed drilling at its remaining drilling locations in the Commonwealth, or that except for the West Goshen portion of the pipeline, the entire Pipeline will be completed and ready to deliver

product by the fourth quarter of 2017 or 2018. To the contrary, see paragraph 17 above. It is admitted only that because SPLP refuses to abide by the terms of the Settlement Agreement, and until it does, SPLP will not be able to resume drilling in West Goshen Township for the foreseeable future.

33. Denied. Whether there are any engineering constraints as cited by SPLP is only part of the analysis. Assuming that there are legitimate engineering constraints, it would have to be determined if they make SPLP unable to put the Valve at the promised location. Even then, if unable to do so, the proper location for the Valve would be on the SPLP Additional Acreage, in coordination with the Township, as agreed.

34. Denied. First, SPLP waited almost three months following the entry of the injunction order to seek a modification of the schedule. This is problematic as the Township has been operating pursuant to the schedule approved on July 24, 2017 since that time. Second, by its own admission, SPLP has not even produced all of the discoverable documents requested by the Township. SPLP proposes that the Township produce an expert report within twenty (20) days of SPLP producing documents so voluminous and complex that heretofore it has not been able to produce. Lastly, it is SPLP's own conduct that is causing any delay by promising to do something when it had no intention of doing so. The proposed modified schedule is not fair or appropriate, the delay is not causing SPLP any harm, if it were, SPLP could modify its plans to conform with its agreement and resume operations.

35. Denied. Adjusting the schedule will do nothing to promote judicial economy, the same issues will have to be addressed, and such a late request will unduly prejudice the Township. Further, see paragraph 19 above regarding the imaginary burden SPLP is attempting to create.

36. Denied. SPLP has raised many complex and complicated legal, engineering and factual issues that must be addressed. To be sure, SPLP has not even responded fully to Township's discovery requests as of yet.


**III. RESPONSE TO REQUEST FOR EXPEDITING BRIEFING SCHEDULE**

37. Denied. Judge Barnes has already adjusted the motion response schedule to fifteen (15) days and therefore, this request is denied as moot.

**IV. CONCLUSION**

The Township respectfully request that the Order entered on July 24, 2017, remain in full force and effect, given the amount of time that has elapsed since the Order was entered in relation to the next deadlines, the prejudice that would be suffered by the Township if the schedule was accelerated, the fact that SPLP has not even responded fully to the Township's discovery requests and the fact that if any delay is being suffered by SPLP, it is of its own doing. SPLP knew even before making its promises to locate the Valve on the SPLP Use Area that it intended to site the Valve on the Janiec 2 Tract and instead of either changing its plans or negotiating a different agreement, it decided it would simply wait until it could argue that placing the Valve in the agreed location would cause delay to the project.

HIGHSWARTZ LLP

By: 

David J. Broome, Esquire  
Richard C. Skorai, Esquire  
Mark R. Fischer, Jr., Esquire  
Attorneys for Petitioner  
West Goshen Township

Date: 11/3/2017

Exhibit "A"

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

WEST GOSHEN TOWNSHIP,	:	
Petitioner	:	Docket No. C-2017-2589346
	:	
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
Respondent	:	

---

**AFFIDAVIT OF ALEXANDER G. BOMSTEIN, ESQUIRE**

I, Alexander G. Bomstein, Esquire, hereby depose and say as follows:

1. I am an adult individual and Senior Litigation Attorney at Clean Air Council, with a professional address at 135 South 19<sup>th</sup> Street, Suite 300, Philadelphia, Pennsylvania, 19103.

2. Clean Air Council is a nonprofit environmental organization serving the Mid-Atlantic region dedicated to protecting and defending everyone’s right to breathe clean air.

3. On or about February 13, 2017, Clean Air Council, along with other non-profit environmental organizations, the Delaware Riverkeeper Network and Mountain Watershed Association (Clean Air Council, Delaware Riverkeeper Network and Mountain Watershed Association are collectively referred to as the “Non-profit Appellants”) filed an appeal with the Environmental Hearing Board (“EHB”) to a series of water encroachment and erosion and sediment control permits issued by the Pennsylvania Department of Environmental Protection (“DEP”) to Sunoco Pipeline L.P. (“SPLP”). The bases of the appeal, among other reasons, was that the DEP did not perform a thorough enough review of each individual permit application, and that as a result, the environment, particularly exceptional value waters, were not adequately protected. The appeal is styled *Clean Air Council, the Delaware Riverkeeper Network and Mountain Watershed Association v. Commonwealth of Pennsylvania, Department of*

*Environmental Protection and Sunoco Pipeline L.P., Permittee*, EHB Docket No. 2017-009-L (the “EHB appeal”). A copy of the EHB appeal is attached as Exhibit 1.

4. The following day, the Non-profit Appellants filed an application for temporary supersedeas and supersedeas, seeking to suspend the relevant permits, and effectively to halt the horizontal directional drilling (“HDD”) and other pipeline installation operations within the Commonwealth of Pennsylvania, pending the outcome of their appeals.

5. The application on the temporary supersedeas was denied on February 22, 2017, and in that same order a hearing on the application for supersedeas was scheduled for March 1, 2017.

6. The petition for supersedeas was subsequently denied on or about March 3, 2017.

7. On July 19, 2017, due to a series of “frac-outs” and “inadvertent returns” during HDD operations that compromised exceptional value waters, as well as damage done to private potable water supplies throughout the Commonwealth from HDD operations, the Non-profit Appellants filed a new application for temporary partial supersedeas and petition for partial supersedeas. The supersedeas petition is attached as Exhibit 2.

8. On July 25, 2017, the Environmental Hearing Board granted a temporary partial supersedeas, which halted ongoing HDD at locations throughout the Commonwealth, prevented HDD operations from beginning at approximately 168 locations throughout the Commonwealth, and set a hearing for August 7, 2017. The July 25, 2017 EHB Order is attached as Exhibit 3.

9. Based on additional information that SPLP submitted to the Environmental Hearing Board, that EHB Order was modified several times, including July 28, 2017, August 1, 2017 and August 3, 2017, to allow HDD to continue at some locations in the Commonwealth based on representations by SPLP that continuing HDD operations at those sites would be more

protective to human health and the environment than the status quo, but approximately 39 HDD locations where work had begun remained halted. The July 28, 2017, August 1, 2017 and August 3, 2017 Orders are attached collectively as Exhibit 4.

10. Prior to the hearing on the renewed petition for partial supersedeas occurring, the Non-profit Appellants, DEP, and SPLP entered into a stipulated order, dated August 8, 2017, requiring SPLP, among other things, to re-evaluate the HDD plans for more than 50 HDDs throughout the Commonwealth, including those where work had begun and those where work had not yet begun, and then submit the re-evaluated plans to DEP for approval, with the submissions also to, and the opportunity to comment by, the Non-profit Appellants, including Clean Air Council. The August 10, 2017, EHB Corrected Stipulated Order (hereinafter “Corrected Stipulated Order”) is attached as Exhibit 5.

11. The Corrected Stipulated Order also contains a provision whereby SPLP must re-evaluate as well the HDD plans for installation of the second Mariner East 2 pipeline at HDD locations where a new inadvertent return occurs during the installation of the first Mariner East 2 pipeline.

12. As Senior Litigation Attorney for Clean Air Council, I receive, and I or my colleagues review, all revised SPLP HDD plans and related data submitted concurrently to the DEP and the Non-profit Appellants under the Corrected Stipulated Order.

13. To date, SPLP has submitted eight (8) of the required resubmissions to the DEP; seven (7) of the resubmissions have been commented on by the DEP, and only one of them has been approved by the DEP.

14. Counsel for West Goshen Township has provided me a copy of the Motion to Modify the Procedural Schedule in the case of *West Goshen Township v. Sunoco Pipeline, L.P.*,



Docket No. C-2017-2589346 and asked me to provide information relevant to SPLP's allegation in paragraphs 17 and 32 thereof that SPLP has resumed its HDD program at all of its remaining drilling locations in the Commonwealth, except for West Goshen Township.

15. SPLP's allegation is not correct.

16. There are at least 50 HDDs throughout the Commonwealth where HDD operations are prohibited from taking place for the time being, pending approval of re-evaluated plans. In fact, there are at least 40 HDDs in the Commonwealth where the necessary plans and data have not even been re-submitted to the DEP or Clean Air Council.

17. Further, recently, on October 19, 2017, the same day as I understand SPLP's Motion to Modify the Procedural Schedule was filed in *West Goshen Township v. SPLP*, the Non-profit Appellants in the EHB case took the deposition of DEP representative, Scott Williamson ("Williamson"), head of the division responsible for handling issues related to Mariner East 2 in the DEP's Southcentral Region.

18. Williamson testified that there are HDD sites in his region alone where SPLP is awaiting DEP approval and HDD has not resumed, contrary to the representation of SPLP in its Motion to Modify the Procedural Schedule. See the October 19, 2017 deposition of Scott R. Williams at pages 178-180, attached hereto as Exhibit 6.

19. As of the date of this affidavit, based on the field investigations, re-evaluations, and probable permit modifications implicated as a result of the Corrected Stipulated Order, the pace and number of submissions to date, the public comments submitted to DEP, the DEP comment letters to SPLP, SPLP responses, and the status of DEP approvals, my best estimate is that it is likely to take at least several more months before SPLP will be legally able to perform HDD operations at all sites in the Commonwealth.

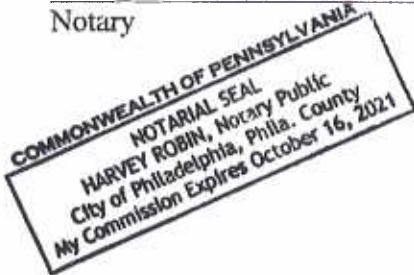
Further your affiant sayeth not.

By:   
Alexander G. Bomstein, Esquire

Date: Nov 3<sup>rd</sup> 2017

Sworn and subscribed before me this  
3<sup>rd</sup> day of Nov,  
2017.

  
Notary



# **EXHIBIT 1**



**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE  
RIVERKEEPER NETWORK; AND MOUNTAIN  
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Appellee,

*and* SUNOCO PIPELINE L.P.,

Permittee.

EHB Docket No. \_\_\_\_\_

ELECTRONICALLY FILED

**NOTICE OF APPEAL**



**NOTICE OF APPEAL FORM  
APPEAL INFORMATION**

1. Name, address, telephone number, and email address (if available) of Appellant:

Clean Air Council  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
(215) 567-4004

Delaware Riverkeeper Network  
925 Canal St., Suite 3701  
Bristol, PA 19007  
(215) 369-1188

Mountain Watershed Association  
1414-B Indian Creek Valley Road  
PO Box 408  
Melcroft, PA 15462  
(724) 455-4200

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

Permits issued under 25 Pa. Code Chapters 102 and 105 for the Pennsylvania Pipeline Project a/k/a Mariner East 2 (Attached as Exhibit A – received by Appellants on February 13, 2017)

Chapter 105 permits, by county from West to East:

E63-674 (Washington)  
E02-1718 (Allegheny)  
E65-973 (Westmoreland)  
E32-508 (Indiana)  
E11-352 (Cambria)  
E07-459 (Blair)  
E31-234 (Huntingdon)  
E34-136 (Juniata)  
E50-258 (Perry)



E21-449 (Cumberland)  
E67-920 (York)  
E22-619 (Dauphin)  
E38-194 (Lebanon)  
E36-945 (Lancaster)  
E06-701 (Berks)  
E15-862 (Chester)  
E23-524 (Delaware)

Chapter 102 permits, by Department region from West to East:  
ESG0500015001 (Southwest Region)  
ESG0300015002 (South-central Region)  
ESG0100015001 (Southeast Region)

Please note that while the Department has stated that it has issued *each* county Chapter 105 permit and each Chapter 102 permit, it has not made publicly available the York County Chapter 105 permit, No. E67-920. Appellants have attached hereto each of the permits except for the York County Chapter 105 permit, which it will provide to the Board as soon as it is able to obtain a copy.

(b) Which Department official took the action?

The following Program Managers for Waterways and Wetlands:

- Dominic Rocco (Southeast Region)
- Scott Williamson (South-central Region)
- Rita Coleman (Southwest Region)

In addition, Gregory Holesh (Southwest Region)

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

Chartiers Township, Washington County  
North Strabane Twp, Washington County  
Nottingham Twp, Washington County  
Union Twp, Washington County  
Elizabeth Twp, Allegheny County  
Forward Twp, Allegheny County  
Derry Twp, Westmoreland County  
Hempfield Twp, Westmoreland County  
Jeannette, Westmoreland County  
Loyalhanna Twp, Westmoreland County  
Murrysville Boro, Westmoreland County



Penn Twp, Westmoreland County  
Rostraver Twp, Westmoreland County  
Salem Twp, Westmoreland County  
Sewickley Twp, Westmoreland County  
South Huntingdon Twp, Westmoreland County  
Burrell Twp, Indiana County  
East Wheatfield Twp, Indiana County  
West Wheatfield Twp, Indiana County  
Cambria Twp, Cambria County  
Cresson Boro, Cambria County  
Jackson Twp, Cambria County  
Munster Twp, Cambria County  
Washington Twp, Cambria County  
Allegheny Twp, Blair County  
Blair Twp, Blair County  
Frankstown Twp, Blair County  
Juniata Twp, Blair County  
Woodbury Twp, Blair County  
Penn Twp, Huntingdon County  
Shirley Twp, Huntingdon County  
Tell Twp, Huntingdon County  
Union Twp, Huntingdon County  
Lack Twp, Juniata County  
Jackson Twp, Perry County  
Toboyne Twp, Perry County  
Lower Allen Twp, Cumberland County  
Lower Frankford Twp, Cumberland County  
Lower Mifflin Twp, Cumberland County  
Middlesex Twp, Cumberland County  
Monroe Twp, Cumberland County  
North Middleton Twp, Cumberland County  
Silver Spring Twp, Cumberland County  
Upper Allen Twp, Cumberland County  
Upper Frankford Twp, Cumberland County  
Fairview Twp, York County  
Conewago Twp, Dauphin County  
Derry Twp, Dauphin County  
Highspire Boro, Dauphin County  
Londonderry Twp, Dauphin County  
Lower Swatara Twp, Dauphin County  
Middletown Boro, Dauphin County  
Cornwall Boro, Lebanon County  
Heidelberg Twp, Lebanon County



South Annville Twp, Lebanon County  
South Lebanon Twp, Lebanon County  
South Londonderry Twp, Lebanon County  
West Cornwall Twp, Lebanon County  
Clay Twp, Lancaster County  
West Cocalico Twp, Lancaster County  
Brecknock Twp, Berks County  
Caernarvon Twp, Berks County  
Cumru Twp, Berks County  
New Morgan Boro, Berks County  
Robeson Twp, Berks County  
South Heidelberg Twp, Berks County  
Spring Twp, Berks County  
East Goshen Twp, Chester County  
East Nantmeal Twp, Chester County  
East Whiteland Twp, Chester County  
Elverson Boro, Chester County  
Wallace Twp, Chester County  
West Goshen Twp, Chester County  
West Nantmeal Twp, Chester County  
West Whiteland Twp, Chester County  
Westtown Twp, Chester County  
Upper Uwchlan Twp, Chester County  
Uwchlan Twp, Chester County  
Aston Twp, Delaware County  
Brookhaven Boro, Delaware County  
Chester Twp, Delaware County  
Edgmont Twp, Delaware County  
Middletown Twp, Delaware County  
Thornbury Twp, Delaware County  
Upper Chichester Twp, Delaware County

(d) How, and on what date, did you receive notice of the Department's action?

The Department issued the permits on or about February 13, 2017. Appellants received notice of the Department's actions on February 13, 2017, by publication of such notice on the Department's website.

3. Describe your objections to the Department's action in separate, numbered paragraphs. (NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets if necessary.)





See attached additional sheets.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

The appeal docketed at EHB Docket No. 2016-073.



COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL; THE DELAWARE  
RIVERKEEPER NETWORK; AND MOUNTAIN  
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Appellee,

*and* SUNOCO PIPELINE L.P.,  
Permittee.

EHB Docket No. \_\_\_\_\_

ELECTRONICALLY FILED

OBJECTIONS TO THE DEPARTMENT'S ACTIONS

Background

1. In July and August, 2015, in connection with its Mariner East 2 pipeline project (the "Project"), Sunoco Pipeline L.P. (hereinafter "Permittee") submitted seventeen applications for water encroachment and obstruction permits under 25 Pa. Code Chapter 105, and three applications for Erosion & Sediment Control General Permits (ESCGP-2) under 25 Pa. Code Chapter 102.
2. The Pennsylvania Department of Environmental Protection (the "Department") issued the permits for these applications ("Permits") after roughly a year and a half of back-and-forth with Permittee attempting to resolve a host of deficiencies and inconsistencies in the applications.



3. Despite that protracted process, when the Department issued the Permits, it had not yet completed its technical review. The applications were in large part incomplete, internally inconsistent, and in violation of the law.
4. The issuance of the Permits is especially egregious because of the magnitude of the project.
5. The area of land subject to earthmoving under the Chapter 102 permits exceeds 3,000 acres.
6. More than a hundred exceptional value wetlands would be trenched for the pipelines.
7. More than 800 streams would be crossed.
8. More than 1,500 acres of trees would be felled.
9. Several thousand parcels of land lie on the route, and so thousands of Pennsylvania landowners and residents would have their lives disrupted. 30,000 comments have already been submitted on the Project to the Department.
10. This appeal addresses each of those seventeen permits issued under Chapter 105 and three permits issued under Chapter 102.
11. Though there are multiple permits, the Department has consistently and correctly treated the Mariner East 2 project as a unified project, following the lead of the Southeast Regional Office though the Project spans three Department regions.

The Parties

12. The Appellants are Clean Air Council (the "Council"), Delaware Riverkeeper Network ("DRN") and Mountain Watershed Association, Inc. ("Mountain Watershed").



13. The Council is a tax-exempt non-profit organization started in 1967 under the laws of Pennsylvania. The Council works to protect everyone's right to a clean environment.
14. The Council has members and supporters throughout the Commonwealth, including individuals who are harmed by the issuance of the Permits.
15. The Council fights to improve the environment across Pennsylvania through public education, community organizing, and litigation.
16. The Council's interests are harmed by the Department's approvals because, *inter alia*, those approvals threaten to undo environmental improvements that the Council has fought for, and also threaten the health, welfare, and quality of life of Council members.
17. DRN is a non-profit organization established in 1988 to protect and restore the Delaware River, its associated watershed, tributaries, and habitats. DRN is a membership organization headquartered in Bristol, Pennsylvania, with more than 16,000 members.
18. To achieve these goals, DRN organizes and implements streambank restorations, a volunteer and scientific monitoring program, educational programs, environmental advocacy initiatives, recreational activities, and environmental law enforcement efforts throughout the entire Delaware River watershed and beyond when that litigation has direct implications for the watershed.
19. DRN's interests are harmed by the Department's approvals because, *inter alia*, those approvals threaten water quality within the Delaware River Basin and beyond, the health of Pennsylvania communities, future generations, and constitutionally-protected environmental rights, all of which Riverkeeper fights for on behalf of itself and its

members. Many of DRN's members live, work, and/or recreate in areas affected by the proposed project.

20. Mountain Watershed, 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.
21. Mountain Watershed's 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.
22. Mountain Watershed's mission is the protection, preservation and restoration of the Indian Creek and greater Youghiogheny River watersheds.
23. The Mariner East 2 pipelines would cut through miles of land in the Youghiogheny River watershed. Mountain Watershed's interests in protecting the Youghiogheny River watershed are harmed by the Department's approvals of the Permits, which authorize clearing many acres of forest, cutting through numerous streams, and doing large amounts of earthmoving within the watershed.
24. Permittee Sunoco Pipeline L.P., a subsidiary of Sunoco Logistics, is headquartered in Newtown Square, Pennsylvania.

#### Objections

25. The Project would be sited within over a hundred exceptional value wetlands despite the Permittee not having affirmatively demonstrated (and not being able to demonstrate) that



it has met *any* of the seven independent requirements for siting projects in exceptional value wetlands as set forth in 25 Pa. Code § 105.18a(a).

26. The Project would be sited in hundreds of other wetlands despite the Permittee not having affirmatively demonstrated (and not being able to demonstrate) that it has met *any* of the seven independent requirements for siting projects in other wetlands as set forth in 25 Pa. Code § 105.18a(b), or alternatively, that under Section 105.18a(c), it has met the independent requirements of Sections 105.18a(b)(2)-(7) and the Project is necessary to abate a substantial threat to the public health or safety. Quite the contrary—the Project itself *is* a substantial threat to the public health and safety.
27. The Project would be sited in and have an adverse effect upon exceptional value streams and areas which serve as habitat of threatened and endangered species, in violation of 25 Pa. Code §§ 105.16(c)(3),(4).
28. The Project would have an adverse effect on the environment and public natural resources which would not be outweighed by any public benefits of the Project, in violation of 25 Pa. Code §§ 105.16(a),(b).
29. The Project's wetlands mitigation plan does not satisfy the criteria for wetland replacement set forth in 25 Pa. Code § 105.20a, including by not replacing enough acreage of wetlands, not replicating the wetlands values and functions lost, and by unreasonably failing to replace wetlands within the same watershed.



30. The Department arbitrarily and unreasonably authorized earth disturbance activities without the use of best management practices that minimize the potential for accelerated erosion and sedimentation.
31. The Department arbitrarily and unreasonably accepted as complete Permittee's materially incomplete, inaccurate, and self-contradictory applications for Chapter 102 permits, in violation of 25 Pa. Code §§ 102.4, 102.6, and 102.8.
32. The Department arbitrarily and unreasonably accepted as complete Permittee's materially incomplete, inaccurate, and self-contradictory applications for Chapter 105 permits, in violation of 25 Pa. Code §§ 105.13(a) and 105.21(a)(1).
33. Permittee failed to comply with its requirements under Act 14 of 1984 to notify West Cornwall Township, Lebanon County and Cresson Borough, Cambria County that it intended to apply for Chapter 105 permits for Lebanon and Cambria Counties.
34. Permittee's applications under Chapter 105 grossly undercounted wetlands and wetland acreage and systematically misclassified wetlands as less-highly-protected "emergent" or scrub-shrub wetlands rather than forested wetlands.
35. The Department arbitrarily and unreasonably authorized backfilling into regulated waters of the Commonwealth without requiring Permittee to obtain permits for discharges of dredged or fill material.
36. The Department arbitrarily and unreasonably permitted the Project despite the grave threat it poses of contamination of water wells and aquifers along the pipeline route.



37. The Department arbitrarily and unreasonably permitted the Project despite Permittee's worst-in-the-nation record of hazardous liquids pipeline incidents and its atrocious environmental compliance history in Pennsylvania, which indicate that there will likely be non-compliance with the Permits.
38. The Department arbitrarily and unreasonably waived requirements to protect riparian buffers from clearing due to pipeline construction, per 25 Pa. Code § 102.14.
39. The Project as permitted fails to leave riparian buffers undisturbed to the extent practicable in violation of 25 Pa. Code § 102.14(d)(1)(vii).
40. The Department arbitrarily and unreasonably issued the Permits under Chapter 102 despite Permittee's failure to minimize thermal impacts to streams.
41. The Department arbitrarily and unreasonably issued the Permits, authorizing thousands of acres of earthmoving and installations in streams and wetlands for a right-of-way, despite the application's lack of calculations regarding the effect of clearing and installing equipment on stormwater or runoff from the right-of-way. *See* 25 Pa. Code § 105.13(e)(1)(vii).
42. The Department arbitrarily and unreasonably issued the Permits under Chapter 102 without Permittee providing any plan on how it would address the spread of toxic substances from disturbed earth despite knowing that the location of the earthmoving includes areas with contaminated soils.





43. In violation of 25 Pa. Code Chapters 102 and 105, the Department issued the Permits without Permittee having demonstrated compliance with the antidegradation requirements of 25 Pa. Code Chapter 93.
44. The Department arbitrarily and unreasonably approved Permittee's inappropriate site restoration plans, which include the planting of plants considered by the Department of Conservation and Natural Resources to be invasive in Pennsylvania.
45. The Department arbitrarily and unreasonably failed to consider Permittee's applications to be withdrawn per 25 Pa. Code §§ 102.6(c) and 105.13a(b), despite more than 60 days having passed since the Department found the applications to be incomplete, and instead continued to review the applications, ultimately issuing the Permits without understanding the full nature of the activities it was permitting.
46. A fair weighing of the factors to be considered in 25 Pa. Code § 105.14 shows that the Project would be detrimental to health, safety, and the environment. The Department's decision to issue the Permits despite the harm to health, safety, and the environment was arbitrary, unreasonable, and in violation of 25 Pa. Code § 105.21(a)(3).
47. The Department arbitrarily and unreasonably issued the Permits knowing that they authorized construction which would violate municipal ordinances enacted for the preservation of the health, safety, and welfare of the public.
48. The Permits authorize construction of the Project, which would involve backfilling streams, without requiring permit applications or the information required therein under 25 Pa. Code § 105.401.



49. The Department has made the Permits conditional on a set of conditions including those that are vague, unenforceable, and contradictory.
50. The Department issued the Permits in violation of its constitutional obligations under the Pennsylvania Environmental Rights Amendment, Article I, Section 27 (“Section 27”) of the Pennsylvania Constitution, and 25 Pa. Code § 105.21(a)(4).
51. In light of the Department’s duties under Section 27, the Department, *inter alia*, failed to properly consider the cumulative impacts on water quality, air quality, and other natural resources from issuing the Permits. These impacts include, without limitation, the environmental effects of upstream gas development and of additional industrial activities at the pipeline terminal at Marcus Hook, some of which are currently subject to an ongoing appeal at EHB Docket No. 2016-073.
52. The Department arbitrarily and unreasonably issued the Permits without having completed a full review of the Permit applications.
53. The Department arbitrarily and unreasonably issued the Permits without having received responses from Permittee to outstanding Departmental requests regarding the Permits.
54. The Department arbitrarily and unreasonably issued the Permits despite knowing that the plans were not final, and in fact would need to be materially changed before construction commenced at various locations due to inconsistencies between the plans and the on-the-ground conditions, and the lack of property rights allowing Permittee to do construction work in certain portions of the proposed Project location.

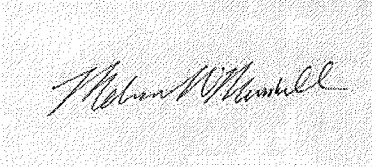


55. The Department arbitrarily and unreasonably issued the Permits without providing a new public comment period following Permittee's resubmission of the applications in response to hundreds of pages of deficiencies the Department found after the close of the comment period, and despite the nearly unparalleled public interest in the Project permitting process.
56. Issuance of these permits violates the regulations found in 25 Pa. Code Chapter 102.
57. Issuance of these permits violates the regulations found in 25 Pa. Code Chapter 105.
58. Issuance of these permits violates the regulations found in 25 Pa. Code Chapter 93.
59. Issuance of these permits violates the Clean Streams Law.
60. Issuance of these permits violates the Dam Safety and Encroachments Act.
61. Issuance of these permits violates Act 14 of 1984 regarding cooperation with municipalities.
62. Issuance of these permits violates Article I, Section 27 of the Pennsylvania Constitution.
63. Appellants reserve the right to amend this notice of appeal with any additional objections that may be relevant if and when more information becomes available through publication, the discovery process, or otherwise.

64. Because of the Department's actions and inactions as set forth above, the Department did not impose adequate protections and its issuance of the permits to Permittee was unlawful and beyond its authority.

By filing this Notice of Appeal with the Environmental Hearing Board, the undersigned hereby certify that the information submitted is true and correct to the best of our information and belief.

Date: February 13, 2017



Melissa Marshall, Esq.  
PA ID No. 323241  
Mountain Watershed Association  
P.O. Box 408  
1414-B Indian Creek Valley Road  
Melcroft, PA 15462  
Tel: 724.455.4200  
mwa@mtwatershed.com

s/ Aaron J. Stemplewicz  
Aaron J. Stemplewicz, Esq.  
Pa. ID No. 312371  
Attorney for Delaware Riverkeeper Network  
Delaware Riverkeeper Network  
925 Canal Street, Suite 3701  
Bristol, PA 19007  
Tel: 215.369.1188  
aaron@delawareriverkeeper.org



Joseph Otis Minott, Esq.  
Executive Director & Chief Counsel  
PA ID No. 36463  
joe\_minott@cleanair.org

Alexander G. Bomstein, Esq.  
PA ID No. 206983  
abomstein@cleanair.org

Kathryn L. Urbanowicz, Esq.  
PA ID No. 310618  
kurbanowicz@cleanair.org

Clean Air Council  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
Tel: (215) 567-4004



**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE  
RIVERKEEPER NETWORK; AND MOUNTAIN  
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Appellee,

*and* SUNOCO PIPELINE L.P.,  
Permittee.

EHB Docket No. \_\_\_\_\_

ELECTRONICALLY FILED

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that a true and correct copy of the foregoing Notice of Appeal was filed with the Pennsylvania Environmental Hearing Board and was served on the following on the date listed below:

*Electronic Service via the Board*

Department of Environmental Protection  
Office of Chief Counsel  
Attn: April Hain  
16<sup>th</sup> Flr. Rachel Carson State Office Building  
400 Market Street, P.O. Box 8464  
Harrisburg, PA 17105-8464

*Overnight Delivery*

Matthew L. Gordon, Principal Engineer  
Sunoco Pipeline L.P.  
535 Fritztown Road  
Sinking Spring, PA 19608

Rita Coleman  
Program Manager, Waterways and Wetlands  
Gregory Holesh  
Permits Chief, Waterways and Wetlands  
Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222



Scott Williamson  
Program Manager, Waterways and Wetlands  
Department of Environmental Protection  
909 Elmerton Avenue  
Harrisburg, PA 17110

Domenic Rocco  
Program Manager, Waterways and Wetlands  
Department of Environmental Protection  
2 E. Main Street  
Norristown, PA 19401

s/Alexander G. Bomstein  
Alexander G. Bomstein, Esq.

Date: February 13, 2017

# **EXHIBIT 2**



**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE  
RIVERKEEPER NETWORK; AND MOUNTAIN  
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Appellee,

*and* SUNOCO PIPELINE L.P.,  
Permittee.

EHB Docket No. 2017-009-L

ELECTRONICALLY FILED

**APPLICATION FOR TEMPORARY PARTIAL SUPERSEDEAS**

Appellants, by and through counsel, respectfully submit this Application for Temporary Partial Supersedeas requesting that the Pennsylvania Environmental Hearing Board issue a temporary partial supersedeas of the appealed permits to the extent they authorize horizontal directional drilling to prevent Appellants from suffering further irreparable injury before the Board can conduct a hearing on Appellants' accompanying Petition for Partial Supersedeas. 25 Pa. Code § 1021.64. In support thereof, Appellants state as follows:

1. An appellant may apply for temporary supersedeas when she or he may suffer immediate and irreparable injury before the Board can conduct a hearing on a petition for supersedeas. 25 Pa. Code § 1021.64(a).

2. Pursuant to 25 Pa. Code § 1021.64(e), the Board will consider:

- a. The immediate and irreparable injury the applicant will suffer before a hearing on the petition for supersedeas is held;
- b. The likelihood that injury to the public, including the possibility of





pollution, will occur while the temporary supersedeas is in effect; and

c. The length of time required before the Board can hold a hearing on the petition for supersedeas.

3. An application for temporary supersedeas must be accompanied by a petition for supersedeas. 25 Pa. Code § 1021.64(b). Appellants' Petition for Partial Supersedeas and its accompanying affidavits and exhibits are incorporated herein by reference as if set forth in full.

4. While the default period for termination of a temporary supersedeas is six business days, the Board may order otherwise. 25 Pa. Code § 1021.64(f).

5. On February 13, 2017, the Pennsylvania Department of Environmental Protection (the "Department") granted to Permittee Sunoco Pipeline L.P. ("Sunoco") three (3) Erosion and Sediment Control Permits issued under 25 Pa. Code Chapter 102, and seventeen (17) Water Obstruction and Encroachment Permits issued under 25 Pa. Code Chapter 105 (collectively the "Permits").

6. Immediately after the Permits were issued, Sunoco began rushing to complete the construction of the Mariner East 2 pipelines. Horizontal directional drilling for crossing of surface features is underway all across the state.

7. Based on new information Appellants recently learned through discovery, news reports, and independent investigation, the drilling authorized by the Permits has already inflicted significant, irreparable harm upon the environment, the Appellants and their respective members, and the Pennsylvania public. Those harms mount with each day that drilling continues.

8. There have been at least 61 spills in a span of two months based just on the limited information made available to Appellants. The actual number of spills is likely far



greater as construction has been underway for five months and the Department's enforcement efforts appear to have been halted.

9. These spills have polluted multiple exceptional value wetlands, high-quality trout streams, ponds, groundwater, and uplands, endangering valuable ecosystems and threatening the health of aquatic life.

10. During drafting of this Petition, on July 17, 2017, Sunoco again spilled drilling fluids in Chester Creek in Delaware County, a location where there had already been repeated spills.

11. Even more troubling though, is that Sunoco's horizontal direction drilling has devastated private water supplies and threatens the safety of public water supplies.

12. Within the last few weeks, families in Chester County have been displaced from their homes because Sunoco destroyed an aquifer, resulting in contamination of the private water wells and loss of well pressure.

13. It appears the integrity of that aquifer, and thus the wells it serves, has been compromised.

14. The Department admits that private water supplies have also been damaged by Sunoco's drilling operations in at least two other parts of the state.

15. Additionally, just yesterday, Appellants learned that Sunoco's drilling operations have hit underground springs in Middletown Township, Delaware County. Copious amounts of cloudy water mixed with unknown substances was pouring for days out of what was clearly an inadequate and ineffective attempt at containment, and a water well is now being tested for possible contamination.



16. Nevertheless, drilling has continued all across Pennsylvania, even where there have been repeated spills, Sunoco's chosen methods and locations for drilling have proven unsuitable and unsafe, and Sunoco has failed to mitigate and contain the dozens of spills that have already occurred.

17. Tens of thousands of gallons of lost drilling fluid remain unaccounted for and threaten to cause irreparable harm to more wells and waterways.

18. The public's interest in protecting public health and safety, the local environment, and reliable sources of clean drinking water suffer escalating irreparable harm if Sunoco's horizontal directional drilling continues as planned. Accordingly, Appellants and their respective members will suffer immediate and irreparable harms unless the Board issues a temporary partial supersedeas.

19. Further, the granting of a temporary partial supersedeas will not result in any pollution or injury to the public health, safety or welfare. Indeed, the granting of a temporary supersedeas here would *prevent* such threats.

20. The granting of a temporary partial supersedeas will not alter the status quo as it now lawfully exists. Appellants simply ask for the status quo to be preserved.

21. For the foregoing reasons, and as more fully set forth in Appellants' accompanying Petition for Partial Supersedeas, Appellants respectfully request the Board to issue a temporary partial supersedeas effective immediately, suspending the permit authorization and twenty permits listed above to the extent that they authorize Sunoco's horizontal directional



drilling plans until such time as a hearing can be completed on the Petition for Partial Supersedeas.

Respectfully submitted this 19th day of July, 2017.

---

Melissa Marshall, Esq.  
PA ID No. 323241  
Mountain Watershed Association  
P.O. Box 408  
1414-B Indian Creek Valley Road  
Melcroft, PA 15462  
Tel: 724.455.4200  
mwa@mtwatershed.com

---

s/ Aaron J. Stemplewicz  
Aaron J. Stemplewicz, Esq.  
Pa. ID No. 312371  
Delaware Riverkeeper Network  
925 Canal Street, 7th Floor, Suite 3701  
Bristol, PA 19007  
Tel: 215.369.1188  
aaron@delawareriverkeeper.org

---

Joseph Otis Minott, Esq.  
Executive Director & Chief Counsel  
PA ID No. 36463  
joe\_minott@cleanair.org

Alexander G. Bomstein, Esq.  
PA ID No. 206983  
abomstein@cleanair.org

Kathryn L. Urbanowicz, Esq.  
PA ID No. 310618  
kurbanowicz@cleanair.org

Clean Air Council  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
Tel: (215) 567-4004



**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE  
RIVERKEEPER NETWORK; AND MOUNTAIN  
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Appellee,

*and* SUNOCO PIPELINE L.P.,

Permittee.

EHB Docket No. 2017-009-L

ELECTRONICALLY FILED

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that a true and correct copy of the foregoing Application for Temporary Partial Supersedeas was filed with the Pennsylvania Environmental Hearing Board and was served on all counsel of record on July 19, 2017.

s/Alexander G. Bomstein  
Alexander G. Bomstein, Esq.



**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE  
RIVERKEEPER NETWORK; AND MOUNTAIN  
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Appellee,

*and* SUNOCO PIPELINE L.P.,

Permittee.

EHB Docket No. 2017-009-L

ELECTRONICALLY FILED

**PETITION FOR PARTIAL SUPERSEDEAS**

Appellants Clean Air Council, the Delaware Riverkeeper Network, and Mountain Watershed Association, Inc., by counsel, respectfully request that the Board supersede in part the three (3) Chapter 102 Permits and seventeen (17) Chapter 105 Permits (collectively, the “Permits”) that are the subject of this appeal to the extent that they authorize horizontal directional drilling.

The Board considered and denied a supersedeas petition Appellants filed in February of this year, in conjunction with their Notice of Appeal of the Permits (“February Petition”). The February Petition sought much broader relief than the instant petition and was filed when the harms to be forestalled were still largely in the future. Appellants had not intended to seek supersedeas a second time, but Sunoco’s escalating harm inflicted on the public now requires it.

Since the initial supersedeas hearing, Appellants have learned through discovery, news reports, and independent investigation that in its use of horizontal directional drilling as



authorized under the Permits, permittee Sunoco Pipeline L.P. (now a division of Texas corporation Energy Transfer) has spilled drilling fluid dozens of times into waters of the Commonwealth. The spills and drilling have polluted Exceptional Value wetlands, destroyed a pure drinking water aquifer in suburban Chester County, and contaminated or cut off the water supplies of many households. The Department knew that there was a strong possibility that these spills and contamination would occur--and initially requested that Sunoco take more protective measures--but recklessly permitted Sunoco to engage in these dangerous practices without requiring those protections.

With each passing day, Sunoco continues to endanger the health and private property of residents all over the state who are unfortunate enough to live near its horizontal directional drilling.

In just the past few weeks in Chester County, Sunoco's drilling has contaminated and depleted the private water wells of over a dozen households. As the finishing touches are being put on this petition, it is breaking news that Sunoco has breached two underground springs in Delaware County and may have impaired water supplies in that location as well. Several Pennsylvania legislators have called for Sunoco to halt the construction of Mariner East 2 while measures can be taken to ensure that no further harm will be done. Yet even as Appellants seek relief from this Board, drilling continues, impacted residents have no guarantees of protection from further harm, and the Department has taken no action.

Appellants seek an immediate partial supersedeas to protect Pennsylvania residents from further harm while the Board considers the legality of the Permits' authorization of horizontal directional drilling as planned and executed by Sunoco.



In support of this Petition, Appellants state as follows:

**I. Factual and Procedural Background**

1. In February 2017, permittee Sunoco Pipeline L.P., now Energy Transfer Partners, L.P., (“Sunoco”) began to dig and install a pair of pipelines as part of a project it calls Mariner East 2. This pipeline project consists of a 20-inch diameter and a 16-inch diameter line carrying highly volatile natural gas liquids, which would traverse hundreds of miles across 17 counties in Pennsylvania alone.
2. In order to build these pipelines, Sunoco is cutting through hundreds of streams and wetlands, and crossing many roads and developed areas.
3. On February 13, 2017, the Pennsylvania Department of Environmental Protection (the “Department”) approved Sunoco’s construction plans for Mariner East 2 as submitted in a series of applications, issuing three (3) individual Erosion and Sediment Control permits under 25 Pa. Code Chapter 102 (“Chapter 102 Permits”), and seventeen (17) Water Obstruction and Encroachment permits under 25 Pa. Code Chapter 105 (“Chapter 105 Permits”) (collectively, “Permits”).
4. During its technical review of the Permit applications, the Department issued several rounds of technical deficiency letters and emails, amassing long lists of problems with the applications. Some of these technical deficiency letters are available to view and download on a public website hosted by the Department at <http://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/Mariner-East-II.aspx>.
5. Among the chief concerns of the Department before issuing the Permits was the safety of





Sunoco’s horizontal directional drilling (sometimes called “HDD”) plans. The risks the Department was concerned about included water supply contamination and spills of drilling fluids, sometimes known euphemistically as “inadvertent returns,” or “IRs.” Up through the very end of the review process, the Department was raising these concerns with Sunoco and seeking its resolution of them.

6. On February 6, 2017, exactly one week before the Department issued the permits, Sunoco responded to the then-latest round of technical deficiencies from the Department, in a letter addressed to Ann Roda, Director of Program Integration for the Department. *See* Feb. 6, 2017 letter to Ms. Roda, attached hereto as Exhibit A.
7. The Department raised the following deficiency with Sunoco, among many others:

Karst area near Exton and the East Whiteland compressor branch present additional risks of IRs during HDD. Provide a detailed assessment of measures to reduce the risk of drilling in these area. There are two areas are [sic] the most concerning, especially Exton. There are carbonate rocks, karst surface depressions; and identification of other public water supplies (groundwater or surface water) within one mile. The “water supply areas” geography used in the report [Sunoco submitted] is irrelevant to well locations. Locations assessed as medium risk to water wells should have more monitoring and response during the HDD process and for an extended time period after. Also risk categorization should include the distance from the HDD to the wells and the available categories indicating the amount of water and people supplied from the well. Groundwater impacts from an inadvertent return cannot be directly visually observed from the surface. Any loss of circulation is the only indicator of drilling fluid migrating out of the borehole into the groundwater.

Exhibit A at pp. 12-13.

8. Sunoco’s response only addressed coordination with the local public water supplier, not the risks of inadvertent returns generally, or protection of private water supplies. *Id.*



9. The Department had raised other concerns, including ensuring Sunoco had identified “All water wells within 400 ft. of HDD.” Exhibit A at 24. Sunoco had not. Testimony from the supersedeas hearing in March of this year--after construction had begun and drilling had been expedited--revealed that Sunoco still had not identified all private wells within even 150 feet of horizontal directional drilling. This identification effort was required by the approved Water Supply Assessment Preparedness, Prevention, and Contingency Plan. *See* transcript of Supersedeas Hearing in this appeal, attached hereto as Exhibit B, at pp. 828-830; Water Supply Plan, attached hereto as Exhibit C, at Section 6.1.
10. Besides identifying the Exton location as particularly worrisome, the Department had also identified a location in Fairview Township, York County, as a place where drilling would pose a high risk to water wells. *See* Exhibit A at 24; *see also* Para. 31, *infra*, detailing later spill.
11. Additional related Department comments can be seen in Exhibit A under the heading “Misc. Comments on Water Supply, PPC, IR, & Karst Aspects of Chapter 105 Applications.”
12. The Department knew of significant problems with Sunoco’s horizontal directional drilling for the earlier Mariner East 1 pipeline and, as revealed in documents recently obtained through discovery, also knew that contamination of wells by Mariner East 2 “has the potential to really blow up.” *See* January 17, 2017 email from Southeast Regional Office Waterways and Wetlands Program Manager, attached hereto as Exhibit D.
13. Rather than resolving these risks before issuing the permits, the Department approved Sunoco’s inadequate plans and merely incorporated a few “special conditions” into the permits to paper over the public endangerment.



14. The water supply special conditions do not actually prevent or limit risks to water supplies and did not alter how Sunoco would conduct its horizontal directional drilling or make it safer. They are by and large notice requirements. *See, e.g.,* Chester County Chapter 105 Permit, attached to Notice of Appeal, pp. 4-5. That notice does not go far, as Sunoco has failed to even identify most at-risk water wells.
15. Appellants submitted an affidavit from Dr. James A. Schmid with their February Petition and presented his testimony at the supersedeas hearing in March, 2017.
16. In his affidavit, Dr. Schmid explained that “trenchless pipeline construction,” which includes horizontal directional drilling, “still poses a risk of inadvertent return of drilling fluids, which have damaged a number of Pennsylvania streams.” Schmid Aff. at ¶ 52.
17. The Department recognizes that sedimentation of streams, such as from drilling fluids, causes numerous problems for the health of the stream ecology. *See, e.g.,* “Minimizing Accelerated Soil Erosion and Preventing Sediment Pollution,” Pennsylvania Department of Environmental Protection Fact Sheet, June 2015, available at <http://www.cumberlandcd.com/esc/3150-FS-DEP1841.pdf>.
18. Dr. Schmid also weighed in on the risks of the project to private water supplies and springs. Schmid Aff. at ¶¶ 53-58.
19. Dr. Schmid noted that “Sunoco’s primary resource for locating private wells ... is demonstrably and grossly inaccurate for purposes of assessing the impacts of this project.” Schmid Aff. at ¶ 55. “The Department’s deficiency letters ... specifically note that long-term impacts on wells can occur as far as 0.5 mile from pipelines, and short-term impacts can occur within 400 feet. There are hundreds of nearby wells along the proposed pipelines.



Yet the applicant has not shown the location of wells or springs on drawings, thus precluding public review of private water supplies at risk. Unknown wells can receive no consideration during pipeline construction.” *Id.* at ¶ 57.

20. “Pipeline construction and operation are expected by the applicant to be most likely to impact private water supplies in areas where horizontal directional drilling (HDD) is utilized,” explained Dr. Schmid, “because the pressurized slurry mixture of bentonite, water, and additives can escape a drill hole and enter aquifers as well as streambeds and wetlands through faults, cracks, and unstable geological materials.” *Id.* at ¶ 56.
21. Not only is contamination a risk, but also water supply, due to the dewatering necessary for drilling. *Id.*
22. Had they remained in effect, the Erosion and Sediment Control Plans (the “E&S Plans”) that the Department approved as part of the Permits at the time of issuance might have helped to make up for Sunoco’s initial failure to identify private wells.
23. The approved E&S Plans required landowners be invited to pre-construction meetings. Those meetings would have been an opportunity for Sunoco to talk to landowners about their wells and whether their neighbors have wells that might be at risk from construction. It is thus especially unsettling that after the Permits were issued, as recently revealed through discovery, Sunoco submitted revised E&S Plans to the Department, specifically removing landowners from pre-construction meetings. *See e.g.*, first pages of Revised Washington County E&S Plans, May 04, 2017, attached hereto as Exhibit E, at p. 4 (see modifications in red).
24. Unbeknownst at first to the public, the Department has started receiving reports from



Sunoco of drilling fluids spilled into the waters of the Commonwealth. Appellants have compiled documents obtained from the Department on the spills as a composite exhibit, with a demonstrative summary at the front of the exhibit for clarity. *See generally* Exhibit F.<sup>1</sup>

25. Spill reports dating between late April and mid-June that Appellants have recently obtained reveal at least 61 drilling fluid spills in just that period of less than two months. These spills span the breadth of the state, from westernmost Washington County to easternmost Delaware County.
26. The total number of spills to-date is likely far greater. Construction has been underway for over five months, and rather than demanding safer practices from Sunoco to avoid further spills, or putting a halt to the drilling, the Department appears to have backed off of issuing notices of violation altogether.
27. Appellants have seen no evidence of a notice of violation having been issued for any spills occurring after May 17, 2017, despite some of those spills amounting to hundreds, thousands, and in one case, tens of thousands of gallons of drilling fluid.
28. Drilling fluid has been spilled into Exceptional Value wetlands, trout streams, ponds, groundwater, and uplands. The ultimate destination of much of the lost drilling fluid, though, remains unknown. *See discussion below.*
29. Most spills are in clusters, indicating that Sunoco failed to fix the problems that caused the first spill and continued to drill despite methods and locations that may be unsuitable. There have also been locations where Sunoco has been notified that its activities threaten to pollute

---

<sup>1</sup> Due to its size being greater than the electronic filing size limit, Appellants have split Exhibit F into two files, Exhibit F (Section I) and Exhibit F (Sections II & III).



waterways and Sunoco has later spilled at those very places.

30. For example, in Middlesex Township, Cumberland County, Sunoco had separate spills into two forested Exceptional Value wetlands (labeled I30 and I32) associated with High Quality, Cold Water Fishery, LeTort Spring Run. One of those spills was reported as totaling 1500-2000 gallons of drilling fluid. Exhibit F at Section I, pages SCRO 003597 through SCRO 003601. There have been several spills in that watershed. *See* transcript of the deposition of Ann Roda, July 14, 2017, attached hereto as Exhibit G, Tr. 185:16-21.
31. In Fairview Township, York County, Department inspectors warned that operations posed a potential for pollution of the Susquehanna, Marsh Run, and Yellow Breeches Creek. *See* Exhibit F at Section II, pages SCRO 003747 through SCRO 003748; *see also supra* at Para. 10 (pre-permit issuance warning). Less than ten days later, a spill of 500 gallons into Yellow Breeches Creek was reported. Exhibit F at Section I, page SCRO 003830.
32. There appear to have been ten or more spills in and around Loyalhanna Lake alone, a reservoir and recreational destination in the Laurel Highlands of Westmoreland County. Exhibit F at Section I, pages SWOCC 001316 through SWOCC 001321.
33. Sunoco also contaminated a residential water well on the shore of Loyalhanna Lake. *Id.*
34. A series of spills in Chester Creek, Delaware County starting in May, 2017 are, upon information and belief, the only drilling fluid spills so far made public. These spills came to light due to actions of impacted residents rather than Sunoco or the Department. While Sunoco claims those spills are in the hundreds of gallons of drilling fluid, the Department noted that “they lost 20,000 gallons of fluid over the past few days so who knows where that went.” *See* DEP May 4, 2017 email and incident report, attached as Exhibit H.



35. On or about July 16, 2017, Sunoco spilled drilling fluids in Chester Creek yet again. *See* “Leak at Sunoco Pipeline Site in Delaware County Causes Mud to Flow Into Creek,” NBC10, July 18, 2017, attached as Exhibit I.
36. Based on the latest available information, Sunoco’s drilling hit two springs on the east side of Chester Creek in Middletown Township. Sunoco pumped cloudy water up the hill and into a straw bale containment pond on the pipeline right-of-way the size of a swimming pool. As of July 18, 2017, that containment pond was overflowing into the woods while contractors were building a second straw bale structure. *See* Affidavit of Faith Zerbe attached hereto; *see also* Exhibit I.
37. Upon information and belief, a water well in that area is now being tested to determine whether it too has been impaired by Sunoco’s drilling.
38. As of July 18, 2017, Delaware County State Representative Chris Quinn is calling for Sunoco to halt activities on the Mariner East 2 pipelines in Delaware County until proper safeguards can be put in place. NBC10 reported Rep. Quinn as declaring, “What is occurring here is unacceptable.” *See* Exhibit I.
39. Despite the significant impacts of these spill on water resources, the Department and Sunoco have not alerted local residents about the spills. *See* Exhibit G, Tr. 190:9-11.
40. Sunoco, now Energy Transfer, has assured residents that the drilling fluid is non-toxic, harmless bentonite clay. Energy Transfer provided that same assurance to the Federal Energy Regulatory Commission for its horizontal directional drilling of the Rover pipeline in Ohio. After Energy Transfer spilled two million gallons of drilling fluid into an Ohio wetland, the Commission ordered Energy Transfer to halt new horizontal directional



- drilling. *See* May 10, 2017 FERC Order, attached hereto as Exhibit J.
41. Within a month, diesel fuel was discovered in the spilt drilling fluid, contrary to Energy Transfer's representations to regulators as to the contents of the drilling fluid. *See* June 1, 2017 FERC Letter, attached hereto as Exhibit K.
  42. Perhaps more troubling than Sunoco's drilling fluid spills is the damage to water supplies and wells across the Commonwealth.
  43. Appellants have just learned that each of the three Department regional offices monitoring construction under the Permits has received reports of water supply problems in the vicinity of the construction. Reports have come in from Westmoreland County, outside of Pittsburgh; Blair County, outside of Altoona; and Chester County, in the Philadelphia area. *See* Exhibit G, Tr. 190:12-17, 193:19-25, 194:1-8.
  44. Only the dire events in the suburbs of Philadelphia have come to light in the public eye.
  45. The Schoen Road horizontal directional drilling site in the Exton area of Chester County was one of the first sites where Sunoco began setting up drilling operations, in early March, 2017. *See* Affidavit of Matthew L. Gordon, attached as Exhibit A to Appellants' Emergency Motion for Expedited Hearing and for Reconsideration of the Denial of Temporary Supersedeas, at ¶ 31.
  46. On June 22, 2017, Sunoco drilled into the spring that fed the wells of perhaps fifteen households in the Exton area, straddling West Whiteland and Uwchlan Townships. *See* July 14, 2017 *StateImpact* article, "Sunoco halts drilling in Chester County where pipeline construction damaged drinking water wells," attached hereto as Exhibit L.
  47. David Mano's household was among those impacted. On July 5, 2017, Mr. Mano, of 158





Valleyview Road, learned that the well pumps of some neighbors were not working.

Another's well water was brown. *See* Affidavit of David A. Mano, attached hereto, at ¶¶ 6, 10-11.

48. Mr. Mano and his fiancée drew their water from a spring-fed well for all the years they have lived on Valleyview Road. It had been pristine. Mano Aff. at ¶¶ 3-4.

49. When Mr. Mano checked the unfiltered water in his well tank, after learning of his neighbor's problems, he discovered it was chocolate brown with a lot of sediment. Mano Aff. at ¶ 8.

50. The neighbors did not know at the time, but suspected that Sunoco's drilling down the street was the cause of their collective water well problems. Mano Aff. at ¶ 12.

51. Sunoco alerted Mr. Mano that the water was not safe to drink, but that he could shower with it. Sunoco provided him bottles of water. Mano Aff. at ¶¶ 14-15, 22.

52. Mr. Mano is concerned about the water from his well that he and his fiancée had been drinking before they discovered their well was contaminated, and is upset about the damage that Sunoco's drilling did to his well and the communal aquifer. Mano Aff. at ¶¶ 23, 25.

53. As it turns out, the Department had anticipated water supply problems *especially in the Exton area*. *See* Exhibit A at pp. 12-13. In its rush to get the permits issued, the Department neglected to do what was needed to protect residents. *See* Exhibit G, Tr. 41:18-42:10; 76:7-93:5 (discussing condensed timeframe for issuing the Permits); 100:11-102:4 (Conservation District concerned about "unreasonably short timetable").

54. Only after Mr. Mano broke the news to the press about the water contamination in Chester County did Sunoco do anything in response. Mano Aff. at ¶¶ 20-21.



55. State elected officials representing Chester County have called for Sunoco to halt all construction on Mariner East 2 until safety can be assured. *See* July 15, 2017 *Daily Local News* article, “Dinniman calls for halt to all Mariner East 2 pipeline construction,” attached hereto as Exhibit M; *see also* July 9, 2017 *WCHE* 1520 AM article, “Dinniman, Comitta Calling for Halt on Construction of Mariner II Pipeline,” attached hereto as Exhibit N.
56. On July 13, 2017, Sunoco agreed to a temporary pause of drilling, of uncertain duration, at the Schoen Road location. *See* Exhibit L.
57. Because the Department has not taken action in response to these contamination incidents, there are likely to be more as drilling continues. *See* Exhibit G, Tr. 195:15-19.
58. The horizontal directional drilling authorized by the Permits, as Appellants warned and as foretold by the concerns the Department communicated to Sunoco, has caused widespread and grave harm to the public and the environment.
59. This did not have to happen. Department officials initially sought from Sunoco further protections from drilling fluid spills and water supply problems before issuing the Permits. Sensitive areas such as the Exceptional Value wetlands in the LeTort Spring Run watershed into which Sunoco spilled drilling fluids could have been routed around. Extra precautions could have been taken to protect water supplies in dense neighborhoods relying on well water. Particularly vulnerable geologies such as the karst in Exton could have been routed around as well.
60. Instead, Sunoco continues drilling and the Department stepped aside.
61. The horizontal directional drilling will likely continue for months, and--based on the newly uncovered information summarized here--there is every reason to believe that more and



more damage to residents, their property, and the environment will take place in that time without timely action by the Board. *See* Exhibit B, Tr. 492:20-22; 493:6-9 (testimony of Matthew L. Gordon on length of drilling).

62. For these reasons, and as explained in more detail below, Appellants respectfully request that the Board grant this Petition for Partial Supersedeas.

## II. Standard of Review

63. The Board reviews Departmental actions *de novo*. *Warren Sand & Gravel Company v. DEP*, 341 A.2d 556, 565 (Pa. Commw. Ct. 1975); *Consol Pa. Coal Co. v. DEP*, 2011 EHB 571, 573; *Smedley v. DEP*, 2001 EHB 131.

64. This *de novo* review by the Board extends to the issue of whether a continuation of the permitted activity is appropriate based upon up-to-date information. *Solebury School v. DEP*, 2014 EHB 482, 526; *Tinicum Township v. DEP*, 2002 EHB 822, 835

65. Where the Board finds that the Department has abused its discretion, the Board may substitute its own discretion for that of the Department. *Pequea Township v. Herr*, 716 A.2d 678 (Pa. Commw. Ct. 1998).

66. A supersedeas is an extraordinary remedy that will not be granted absent a clear demonstration of appropriate need. *Hopewell Township v. DEP*, 2011 EHB 732, 733.

67. The grant or denial of a supersedeas is guided by statutory and regulatory criteria, relevant judicial precedent, and the Board's own precedent. 35 P.S. § 7514(d)(1); 25 Pa. Code § 1021.63(a).

68. Among the factors that the Board considers are: (1) the likelihood of the petitioner prevailing on the merits; (2) irreparable harm to the petitioner; and (3) the likelihood of



injury to the public or other parties. 35 P.S. § 7514(d); 25 Pa. Code § 1021.63(a)(1)-(3); *Hudson v. DEP*, 2015 EHB 719, 725-26; *Hopewell Township v. DEP*, 2011 EHB 732, 733; *Neubert v. DEP*, 2005 EHB 598, 601; *Westmoreland Land, LLC v. DEP*, 2011 EHB 700, 702; *Kennedy v. DEP*, 2008 EHB 423, 424.

69. The issuance of a supersedeas is committed to the Board's discretion based upon a balancing of the three aforementioned factors. *Hudson v. DEP*, 719 EHB 726; *UMCO Energy, Inc.*, 2004 EHB 797, 802; *Global Eco-Logical Services, supra*; *Svonavec, Inc. v. DEP*, 1998 EHB 417, 420.
70. The Board's rules prioritize the prevention of pollution or injury to the public health, safety, or welfare. 25 Pa. Code § 1021.63(b).
71. Where the Department has taken an action which permits pollution and environmental injury, the Board may issue a supersedeas to prevent those harms during the pendency of an appeal. *See generally Center for Coalfield Justice v. DEP*, EHB Docket No. 2016-155-B (February 1, 2017).
72. In order for the Board to grant a supersedeas, a petitioner must make a credible showing as to irreparable harm and the likelihood of injury to the public or other parties and must make a strong showing that it is likely to succeed on the merits of its appeal. *Hudson v. DEP*, 2015 EHB 719, 726; *Carter v. DEP and Cabot Oil & Gas Co.*, 2011 EHB 845, 852.

**III. The Board Should Supersede the Permits Because They Clearly Violate Pennsylvania Law and Threaten Irreparable Harm.**

73. Appellants are likely to prevail on the merits and can identify clear violations of law, including of 25 Pa. Code §§ 105.14, 105.15, and 105.18a, as well as Article I, Section 27 of the Pennsylvania Constitution.



74. Appellants support their arguments with affidavits (attached hereto and to the February Petition) from members of the public who have been harmed by the Department's actions and other exhibits demonstrating that irreparable harm is ongoing and will continue unabated unless the Board supersedes the Permits in part to the extent they allow horizontal directional drilling.
75. Appellants establish herein that the horizontal directional drilling has caused and will cause impairment and destruction of water supplies and widespread pollution into waters of the Commonwealth.
76. Appellants seek to preserve the status quo while the Board has a chance to hear this Appeal. Failure to preserve the status quo would result in continued pollution into streams, lakes, and wetlands, and continued destruction and/or contamination of water supplies.
77. In this case, harm to the public and harm to Appellants are aligned, as Appellants seek to further the public interest, and establish harm to the Appellants based in part on harms to individual members of the public.
78. Appellants demonstrate that, while Sunoco will likely claim economic damage and harm to the public, those claims are due to its own actions, do not outweigh the harm to the public, and are mitigated by the limited scope of the requested supersedeas.
79. Finally, Appellants request that a bond not be required of Appellant public interest groups here. To do so would be unprecedented and contrary to a proper weighing of the equities.
80. All told, Appellants have more than met the requirements for the issuance of a supersedeas. Appellants urge the Board to grant their request in the interest of justice.



**IV. Likelihood of Success on the Merits**

**A. Standard for Establishing Likelihood of Success on the Merits**

81. To establish the likelihood of success on the merits, a petitioner must make a showing sufficient to establish a reasonable probability of success on the merits. *Achenbach v. DEP*, 2005 EHB 536, 539.
82. A petitioner need not establish the claim absolutely, but the petitioner's chance of success on the merits must be more than speculative. *Id.*
83. To prevail in an appeal of a permit decision, third-party appellants bear the burden of proving by a preponderance of the evidence that the Department's decision to issue the permit was arbitrary, capricious, or contrary to law. 25 Pa. Code § 1021.101(a); *Blose v. DEP*, 2000 EHB 189.
84. Where the Department "does not review an application as required by the statutes and regulations, it abuses its discretion." *Oley Township v. DEP*, 1996 EHB 1098, 1119.
85. Where an agency ignores or fails to apply its own regulations properly in reviewing a permit application, and issues the permit, the agency acts contrary to law. *Zlomsowitch v. DEP*, 2004 EHB 756; *see also Teledyne Columbia-Summerhill Carnegie v. Unemployment Compensation Board of Review*, 634 A.2d 665, 668 (Pa. Commw. Ct. 1993) ("A duly promulgated regulation has the force and effect of law and it is improper for the [agency] to ignore or fail to apply its own regulation.").

**B. Appellants Are Likely to Succeed on the Merits**

86. There are two principal harms which this petition addresses: (1) destruction and contamination of water supplies; and (2) spills of drilling fluids from horizontal directional



drilling.

87. The Department knew that each posed a great danger, but nevertheless permitted the Mariner East 2 as planned.
88. Prevention of these harms falls squarely within the Department's purview under Chapter 105.
89. 25 Pa. Code § 105.14(b)(3), together with Section 105.15(a)(1), requires the Department, in considering the impact of an encroachment (in this case the pipelines installed using horizontal directional drilling), to evaluate the effect on "the property or riparian rights of owners upstream, downstream or adjacent to the project." *See Lyons v. DEP*, 2011 EHB 169, 183-184 (Labuskes, J.) (applying Section 105.14(b)).
90. Water wells along the pipeline route are property, and the impact of Mariner East 2 drilling on the rights of the wells' owners is a factor Section 105.14(b)(3) required the Department to weigh. *See, e.g., Angela Cres Trust of June 25, 1998 v. DEP*, 2009 EHB 342, 369 (effects on fish hatchery must be given consideration under Chapter 105).
91. Spills of drilling fluid on properties along the route, and into waters which nearby residents use, injure adjacent and downstream owners as well.
92. Likewise, the Department must consider "other significant environmental factors" under Section 105.14(b)(4), which would include the effects of contamination and sedimentation of waters from spills as well as contamination of water supplies.
93. Under Sections 105.18a(a)(5) and (b)(5), the Department may not permit a project crossing an Exceptional Value or other wetland (such as this project) unless the applicant demonstrates that the project will not "cause or contribute to pollution of groundwater or



surface water resources or diminution of resources sufficient to interfere with their uses.”

*See also* 35 P.S. § 691.1 (defining pollution broadly).

94. Sunoco’s reckless horizontal directional drilling for Mariner East 2 has caused both pollution and diminution of groundwater sufficient to interfere with its use.
95. The Department unreasonably issued the Permits, approving Sunoco’s drilling plans, despite knowing the likely damage that would be done from spills and to water supplies. It expressed those concerns to Sunoco on numerous occasions but ultimately issued permits allowing the damage to occur. *See, e.g.*, Exhibit A (acknowledgment of concerns in technical deficiencies) and Exhibit D (acknowledgment of water well impairment concern).
96. Since the issuance of those Permits, it has become clear that the Department has no intention of doing anything meaningful to protect the public or the environment from Sunoco’s reckless horizontal directional drilling. The Department appears to have stopped issuing violations to Sunoco for spills and has admitted that it has not taken action despite several separate water supply incidents. Exhibit G, Tr. 195:15-19.
97. The gravity of the foreseen harms which have occurred and which continue to occur should have led the Department to refrain from issuing the Permits until Sunoco responded meaningfully to its technical deficiencies addressing water supply and inadvertent return risks. The Department’s failure to do so renders the issuance of the Permits arbitrary, capricious, and contrary to law in light of 25 Pa. Code Sections 105.14(b)(3), 105.14(b)(4), and 105.15(a)(1).
98. The Department’s decision to issue the Permits was also barred by Section 105.18a. While Sections 105.18a(a)(5) and (b)(5) do not define what constitutes “pollution” of groundwater





or surface water resources, rendering such drinking water undrinkable, as has happened in Chester County, certainly counts.

99. The dozens of spills of drilling fluid also constitute significant pollution of groundwater or surface water resources. The main component of drilling fluid besides water--bentonite--smothers aquatic life where it settles in water bodies. *See* May 15, 2017 *StateImpact* article, "Sunoco's pipeline construction releases drilling mud into Delco Creek," attached hereto as Exhibit O.
100. Sunoco has not disclosed all of the components of its drilling fluids, which may include more toxic elements. *See, e.g.,* Exhibit K ("On May 26, 2017, the Ohio Environmental Protection Agency (Ohio EPA) notified FERC staff and Rover of the presence of petroleum hydrocarbon constituents, commonly found in diesel fuel, in samples of drilling fluid from various locations near the HDD of the Tuscarawas River.
101. While some of the spills Sunoco has reported as small amounts, e.g. Exhibit F at Section II, pages SERO 001325 through SERO 001328, others involve thousands of gallons, e.g. Exhibit F at Section II, pages SCRO 003643 through SERO 003646, and for at least one, tens of thousands of gallons of drilling fluid was lost and could be seeping into water resources. Exhibit H (May 2017 Chester Creek DEP email).
102. Much drilling has yet to be done, and Energy Transfer three months ago on another pipeline project just one state over proved that its horizontal directional drilling has the potential to cause a catastrophic release of millions of gallons of drilling fluid. *See* Exhibit J.
103. The Department let Sunoco ignore concerns about drilling fluid spills and water supply impairment, knowing the significant risk of such damaging problems. In doing so, the



Department violated Appellants' substantive rights to clean water under Article I, Section 27 of the Pennsylvania Constitution, and acted unreasonably as a trustee of the Commonwealth's natural resources. See *Pennsylvania Environmental Defense Foundation v. Commonwealth of Pennsylvania, et al.*, No. 10 MAP 2015, 2017 Pa. LEXIS 1393, \*36-37 (June 20, 2017); Pa. Const. art. I, § 27.

104. The Department's act of permitting Sunoco's plans for horizontal directional drilling thus violated Article I, Section 27 as well.
105. For these reasons, Appellants are likely to succeed on the merits of their claims with respect to Sunoco's horizontal directional drilling.

V. **Appellants Will Suffer Continued Irreparable Harm if Partial Supersedeas Is Not Granted.**

106. The central purpose of a supersedeas is to prevent an appellant from suffering irreparable harm while the Board considers the appeal. *Center for Coalfield Justice v. DEP*, EHB Docket No. 2016-155-B, slip op. at 18 (February 1, 2017).
107. Sunoco's continued and expanded use of horizontal directional drilling will almost certainly result in continued and additional spills of drilling fluids into waters of the Commonwealth, and contaminate and/or destroy additional water supplies. Precedent from the Board and Pennsylvania appellate courts is very clear that harms of this nature are to be considered irreparable. *Commonwealth v. Kennedy*, 87 A. 605, 606 (Pa. 1913) (pollution of a stream constitutes irreparable harm warranting an injunction); *Tinicum Township v. DEP*, 2002 EHB 822, 832 (damage to a hydrologic regime constitutes irreparable harm *per se*, and the violation of statutes prohibiting water losses and pollution constitutes irreparable harm *per se*); *Indian Lake Borough v. DEP*, 1996 EHB 1372, 1373-74 (dewatering of lake, if



shown, would have constituted irreparable harm).

108. The irreparable harm that this Project will continue to inflict if the Permits are not partially superseded while the Appeal progresses will happen not just to the natural environment itself, but to many individuals along and downstream of the pipeline route. Appellants have attached a statement from one of these individuals, and refer back to affidavits attached to the February Petition.

109. As explained more fully in the February Petition and the affidavits attached thereto, a number of Appellants' members live on or alongside horizontal directional drilling locations. Those include:

- Dawn Law (Law Aff. at ¶ 19)
- Ellen Gerhart (Gerhart Aff. at ¶¶ 14, 17-19)
- William Poteau (Poteau Aff. at ¶¶ 11, 15-20)
- Eric Friedman (Friedman Aff. at ¶ 14)
- Robert and Terri Joran (Joran Aff. at ¶¶ 9, 12)

110. The Jorans live in Exton very close to the site of the contamination discovered in Chester County, and about thirty yards from a horizontal directional drilling site. Joran Aff., attached to February Petition, at ¶¶ 3, 9. They are at risk of injury from the drilling.

111. Mr. Poteau described in detail his concerns about contamination of his water well from the horizontal directional drilling that is currently slated to take place next door to his house. As he explained in his affidavit, his water table is at the same level as the drilling would be. Poteau Aff., attached to February Petition, at ¶¶ 11, 15-20. His household is at risk too.

112. Appellants, through their members including these individuals, will suffer irreparable



harm if the Permits are not superseded to the extent they authorize horizontal directional drilling.

113. Appellants will also suffer irreparable harm through the damage done to the environment by horizontal directional drilling for the project that sets back the work they fight for in support of their missions of environmental protection.

114. Horizontal directional drilling of the Mariner East 2 pipelines threatens continued grave and irreparable harm to the environment and to Pennsylvanians if it continues under the flawed and unlawful Permits the Department issued.

**VI. Harm to Appellants and the Public Outweighs Any Potential Harm to Others**

115. Besides considering likelihood of success on the merits and irreparable harm, “injury to the public and other parties” is among the key factors the Board considers and balances in determining whether to grant a supersedeas. *UMCO Energy, Inc. v. DEP*, 2004 EHB 797; *Global Eco-Logical Services, Inc. v. DEP*, 2000 EHB 829; *see also Harriman Coal Corp. v. DEP*, 2001 EHB 234.

116. In the case at hand, harm to the public aligns very closely with irreparable harm to Appellants.

117. As with all relevant factors, injury to the public and other parties should be considered in light of the purpose of supersedeas, which is to “preserve the lawful status quo while the appeal is proceeding to final disposition.” *Solomon v. DEP*, 1996 EHB 989.

118. Here, the harm the public would suffer if partial supersedeas is not granted far outweighs any harm Sunoco might claim, and granting partial supersedeas would preserve the legal status quo.



**A. Denial of supersedeas would pose significant harm to the public.**

119. The environmental degradation and damage to public health and property that will result from the spills and water supply damage caused by horizontal directional drilling for the Mariner East 2 pipeline project is harm to the public.
120. As stated *supra*, Sunoco's construction has and will continue to damage aquifers that feed the water supplies of residents located in the path of the construction. If anything, such damage appears to be accelerating. The resulting irreparable harm to those residents and their inability to access clean water constitutes harm to the public.
121. Aside from Appellants' own members, certain individuals have come forth with their own stories of the damage this drilling, as permitted, would inflict.
122. Michael Di Domenico executed an affidavit attached to the February Petition.
123. Mr. Di Domenico is the Chairman of the Westtown Township Board of Supervisors, in Chester County. Di Domenico Aff., attached to February Petition, at ¶¶ 2-3. Mr. Di Domenico gets the drinking water at his house from a water well on his property that lies less than 250 feet from the route the Department has permitted for Mariner East 2. Di Domenico Aff. at ¶ 5. That segment of the pipelines would be bored underground using horizontal directional drilling, at depths between 70 and 180 feet according to Sunoco. Di Domenico Aff. at ¶¶ 5-6.
124. Concerned about his well water quality, Mr. Di Domenico has spoken with two hydrogeologists and three well drillers to understand the risks of the boring to his well water. Based on his conversations with those professionals, it is Mr. Di Domenico's understanding that there is a very good chance the boring will negatively impact the aquifer and his well water. Di Domenico Aff. at ¶ 9.



125. If the boring takes place by his house and his well water is contaminated or depleted, Mr.

Di Domenico will not be able to connect to public water due to the mismatch between the piping used in his home and the water pressure used by the municipal water supplier, and will have no water supply at his home. Di Domenico Aff. at ¶ 12.

126. Mr. Di Domenico is not alone in being at risk of having his water supply contaminated.

Many houses along that segment of horizontal directional drilling get their water from wells, and in fact most Westtown Township water towers store groundwater from wells. Di Domenico Aff. at ¶¶ 8 and 13.

127. As explained above, David Mano and his neighbors have already had their water contaminated. *See generally* Mano Aff. The drilling at that site is not yet complete and further damage may result from the continued risky drilling in the same location. *See* Exhibit A at pp. 11-12 (DEP acknowledging danger of drilling in areas with previous spills, asking Sunoco questions such “How the previous occurrence of an IR at this location was accounted for in the design of the proposed crossing”).

128. These public harms are already mounting, and cannot be offset by any alleged utility of the Mariner East 2 pipeline project.

129. In sum, the harm the Project would continue to inflict if the Permits are not partially superseded to the extent they authorize horizontal directional drilling would be enormous, and not outweighed by any speculative benefits.

**B. Grant of partial supersedeas would not significantly harm Sunoco.**

130. Any harm that Sunoco claims will result from an order suspending its ability to continue one discrete portion of the construction activities of Mariner East 2 is purely economic and a



consequence of its own reckless disregard of pollution prevention and the rights of residents along the pipeline route.

131. The harm to Sunoco is outweighed by the harm to the public. The Federal Energy Regulatory Commission implicitly found as much in parallel circumstances when it ordered a halt to new horizontal directional drilling on the even larger Energy Transfer pipeline in Ohio, Rover. The same is true of State Senator Andy Dinniman and State Representative Carolyn Comitta of Chester County, who have called for a halt on activity on the pipeline project after the revelation of water well contamination in their districts, and State Representative Chris Quinn, who has joined their calls. *See* Exhibits I, J, M, and N.

132. With respect to past costs, courts have recognized that oil and gas companies are on notice that their permits can be revoked or suspended through court challenges, and should take precautions to protect their interests at their own expense. *Harrison v. Cabot Oil & Gas Corp.*, 110 A.3d 178, 186 (Pa. 2015) (recognizing “that oil-and-gas-producing companies are free to proceed according to their own devices to negotiate express tolling provisions for inclusion in their lease” and, therefore, can protect their investments without help from the courts).

133. Any past costs incurred by Sunoco prior to the issuance of a permit should not be considered in deciding whether to grant supersedeas relief. *See Center for Coalfield Justice v. DEP*, slip op. 1, 22 (February 1, 2017) (“we conclude that the harm asserted by Consol is less than it claims and is at least in part the result of operational choices that Consol made on its own,” because the alleged need to revise the company’s plans was “directly the result of Consol proceeding with the planning and development of the 3L panel as if it had Permit



Revision No. 204 in hand even though it did not ....”).

134. When considering potential harm to a permittee, the Board appropriately considers whether harms related to project delay are a result of the permittee’s own decisions and conduct. *See UMCO v. DEP*, 2004 EHB at 818-822.
135. Here, Sunoco has not only had ample consultation with the Department and was several times formally notified of numerous, egregious deficiencies in its Chapter 102 and 105 permit applications, but has nevertheless recklessly endangered the public living near its horizontal directional drilling operations. Therefore, any harm to Sunoco associated with the delay in drilling would be attributable to its own recklessness, not the grant of a partial supersedeas.
136. Similarly, any harm to Sunoco done by granting the partial supersedeas sought here would be mitigated by its limited scope, which would allow Sunoco to continue other work authorized under the Permits.
137. The public has already suffered greatly from this preventable harm. Sunoco has within its power the ability to stop future harm from occurring. Any cost to Sunoco in going to that trouble is dwarfed by the costs of inaction.

**VII. The Grant of Supersedeas Should Not Be Subject to a Bond Requirement**

138. While the Board has authority under 25 Pa. Code § 1021.63(c) to require a bond when granting a petition for supersedeas, there does not appear to be any precedent for the Board imposing such a condition on the public or public interest groups.
139. Section 1021.63(c) states: “In granting a supersedeas, the Board may impose such conditions as are warranted by circumstances including, where appropriate, the filing of a





bond or other security.” 25 Pa. Code § 1021.63(c). The rules do not further address bond requirements. See 25 Pa. Code §§ 1021.61-1021.64.

140. Historically, the Board has required a bond under Section 1021.63(c) only as a tool to protect the public interest and to guard against environmental harm. See *Tire Jockey Services, Inc. v. DEP*, 2001 EHB 1141, 1163 (finding that issuing a bond against Tire Jockey Services was “necessary to protect, at least to some degree, the interests of the public.”); *Global Eco-Logical Services, Inc. v. DEP*, 1999 EHB 649, 653 (where “likelihood of injury to the public or of pollution occurring during a supersedeas [was] low,” the granting of petition for supersedeas was conditioned, pursuant to § 1021.63(c), on additional requirements, and not just on waste demolition facility’s compliance with its permit); *UMCO Energy, Inc., v. DEP*, 2004 EHB 797, 822-823 (declining to grant energy company’s petition for supersedeas, even with a bond that would address potential long-term natural resource damage, where irreparable damage to the environment was predicted).
141. Here, requiring a bond would not serve to protect the public interest or protect against environmental harm. On the contrary, Appellants seek the partial supersedeas itself specifically in order to prevent further harm to the public and the environment.
142. The balance of the equities weighs in favor of protecting the public interest that Appellants pursue in their appeal, and thus the imposition of a bond would be detrimental to the public interest.

### **VIII. The Nature of the Relief**

143. Appellants seek a partial supersedeas of the Permits to the extent they permit Sunoco to conduct horizontal directional drilling.



144. The reason Appellants request this remedy in particular is that the most dire illegal conduct of which Appellants are aware has been caused by Sunoco's horizontal directional drilling.

145. Appellants are not aware of a principle by which the Board could logically limit this remedy and still prevent the most serious harms. The problems of which Appellants are aware have occurred all across Pennsylvania.

146. However, Appellants recognize that a supersedeas, even partial, is a rare and serious remedy. If the Board does not grant a supersedeas as to all horizontal directional drilling, Appellants alternatively request that the Board use its discretion to grant a supersedeas that addresses the concerns raised in this Petition to the extent possible.

**IX. Conclusion**

147. When the public's water supplies are being destroyed, when Exceptional Value wetlands are being filled with drilling fluids, when dozens of spills dot the landscape, and when these harms are escalating, it is time to step in and act.

148. The harms now being inflicted on the public and on Pennsylvania's natural environment were foreseen by the Department and by Appellants, and are preventable. The Department had the right idea in pushing Sunoco to improve its plans for horizontal directional drilling, but it backed off and permitted the plans anyway. The result is the current unspooling disaster.

149. The Department's permitting of Sunoco's horizontal directional drilling plans violates Chapter 105 and Article I, Section 27 of the Pennsylvania Constitution. Appellants and the public have been and will further be harmed if Sunoco is allowed to continue drilling under



the Permits while this Appeal is heard. Any harm to Sunoco in partially superseding the Permits is minor compared to the harm to the public, is mitigated by the partial scope of the supersedeas, and is of Sunoco's own doing.

WHEREFORE, for the foregoing reasons, Appellants respectfully request that the Board grant this Petition for Partial Supersedeas and suspend the Chapter 102 and Chapter 105 permits at issue in this matter to the extent they authorize horizontal directional drilling until such time as the Board can reach a final decision on this appeal.

Respectfully submitted this 19th day of July, 2017.

---

Melissa Marshall, Esq.  
 PA ID No. 323241  
 Mountain Watershed Association  
 P.O. Box 408  
 1414-B Indian Creek Valley Road  
 Melcroft, PA 15462  
 Tel: 724.455.4200  
 mwa@mtwatershed.com

---

s/ Aaron J. Stemplewicz  
 Aaron J. Stemplewicz, Esq.  
 Pa. ID No. 312371  
 Delaware Riverkeeper Network  
 925 Canal Street, 7th Floor, Suite 3701  
 Bristol, PA 19007  
 Tel: 215.369.1188  
 aaron@delawareriverkeeper.org

---

Joseph Otis Minott, Esq.  
 Executive Director & Chief Counsel  
 PA ID No. 36463  
 joe\_minott@cleanair.org

---

Alexander G. Bomstein, Esq.  
 PA ID No. 206983  
 abomstein@cleanair.org

---

Kathryn L. Urbanowicz, Esq.  
 PA ID No. 310618  
 kurbanowicz@cleanair.org

---

Clean Air Council  
 135 South 19th Street, Suite 300  
 Philadelphia, PA 19103  
 Tel: (215) 567-4004



**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE  
RIVERKEEPER NETWORK; AND MOUNTAIN  
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Appellee,

*and* SUNOCO PIPELINE L.P.,

Permittee.

EHB Docket No. 2017-009-L

ELECTRONICALLY FILED

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that a true and correct copy of the foregoing Petition for Partial Supersedeas was filed with the Pennsylvania Environmental Hearing Board and was served on all counsel of record on July 19, 2017.

s/Alexander G. Bomstein  
Alexander G. Bomstein, Esq.

# **EXHIBIT 3**



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :  
RIVERKEEPER NETWORK, AND :  
MOUNTAIN WATERSHED ASSOCIATION, :  
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and SUNOCO PIPELINE, L.P., :  
Permittee :

**ORDER**

AND NOW, this 25<sup>th</sup> day of July, 2017, following two conference calls during which the parties presented extensive argument in support of their respective positions, it is hereby ordered that the Appellants' application for a temporary partial supersedeas is **granted**. The permits that are the subject of this appeal are hereby superseded effective immediately to the extent they authorize the Permittee to conduct horizontal directional drilling. However, this Order may be modified in part if the Permittee provides the Board with detailed affidavits explaining why it would cause equipment damage, a safety issue, or more environmental harm than good to stop drilling at the 55 locations where drilling is actively underway. This temporary partial supersedeas shall expire at 9:00 a.m. on August 7, 2017, unless further extended by the Board. The hearing on the Appellants' petition for a partial supersedeas shall commence in the Board's Harrisburg hearing room on the date requested by the parties; namely, **9:00 a.m. on August 7, 2017.**



**ENVIRONMENTAL HEARING BOARD**

s/ Bernard A. Labuskes, Jr. \_\_\_\_\_  
**BERNARD A. LABUSKES, JR.**  
**Judge**

**DATED: July 25, 2017**

**c: For the Commonwealth of PA, DEP:**

William J. Gerlach, Esquire  
Gail Guenther, Esquire  
Margaret O. Murphy, Esquire  
Curtis C. Sullivan, Esquire  
Nels J. Taber, Esquire  
(*via electronic filing system*)

**For Appellant, Clean Air Council:**

Alexander G. Bomstein, Esquire  
Kathryn L. Urbanowicz, Esquire  
Joseph O. Minott, Esquire  
(*via electronic filing system*)

**For Appellant, Delaware Riverkeeper Network:**

Aaron J. Stemplewicz, Esquire  
(*via electronic filing system*)

**For Appellant, Mountain Watershed Association, Inc.:**

Melissa Marshall, Esquire  
(*via electronic filing system*)

**For Permittee:**

Robert D. Fox, Esquire  
Neil S. Witkes, Esquire  
Diana A. Silva, Esquire  
Jonathan E. Rinde, Esquire  
Terry R. Bossert, Esquire  
(*via electronic filing system*)

**Court Reporter:**

Premier Reporting, LLC  
(*via electronic mail*)

# **EXHIBIT 4**





COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :  
RIVERKEEPER NETWORK, AND :  
MOUNTAIN WATERSHED ASSOCIATION, :  
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and SUNOCO PIPELINE, L.P., :  
Permittee :

ORDER

AND NOW, this 28<sup>th</sup> day of July, 2017, in consideration of the Permittee's emergency motion to modify our July 25, 2017 Order and the affidavit submitted in support thereof, and the Appellants' response in opposition to the Permittee's motion, which also included an affidavit, it is hereby ordered that the motion is granted in part. The temporary partial supersedeas imposed by our previous Order of July 25, 2017 is lifted with respect to the following three horizontal directional drilling locations as identified in the Permittee's motion:

- The HDD at Harrisburg Pike in Cumberland County, where the only drilling work to be completed as of July 25, 2017 was the final cleaning ream
- The HDD at Wetland 161 in Lebanon County, where the reamed hole was 95 percent completed
- The HDD at Creek 110 in Lebanon County, where 1,500 feet of the total hole of 1,527 feet (98 percent) of the reamed hole was completed

The Board takes the Permittee's motion with respect to the other 14 locations listed in the motion under advisement.



ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.  
BERNARD A. LABUSKES, JR.  
Judge

DATED: July 28, 2017

c: For the Commonwealth of PA, DEP:  
William J. Gerlach, Esquire  
Gail Guenther, Esquire  
Margaret O. Murphy, Esquire  
Curtis C. Sullivan, Esquire  
Nels J. Taber, Esquire  
(via electronic filing system)

For Appellant, Clean Air Council:  
Alexander G. Bomstein, Esquire  
Kathryn L. Urbanowicz, Esquire  
Joseph O. Minott, Esquire  
(via electronic filing system)

For Appellant, Delaware Riverkeeper Network:  
Aaron J. Stemplewicz, Esquire  
(via electronic filing system)

For Appellant, Mountain Watershed Association, Inc.:  
Melissa Marshall, Esquire  
(via electronic filing system)

For Permittee:  
Robert D. Fox, Esquire  
Neil S. Witkes, Esquire  
Diana A. Silva, Esquire  
Jonathan E. Rinde, Esquire  
Terry R. Bossert, Esquire  
(via electronic filing system)



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :  
RIVERKEEPER NETWORK, AND :  
MOUNTAIN WATERSHED ASSOCIATION, :  
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and SUNOCO PIPELINE, L.P., :  
Permittee :

**ORDER**

AND NOW, this 1<sup>st</sup> day of August, 2017, in consideration of the Permittee’s affidavit correcting certain information provided in its July 27, 2017 affidavit and seeking confirmation that it may resume drilling at the horizontal directional drilling locations subject to the Board’s Order of July 28, 2017, it is hereby ordered that the temporary partial supersedeas continues to be lifted with respect to the following horizontal directional drilling locations as identified in the Permittee’s affidavit:

- The HDD at Harrisburg Pike in Cumberland County, PA-CU-0136.0000-RD
- The HDD at Wetland S161 in Lancaster County, PA-LA-0014.0000-SR

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr. \_\_\_\_\_  
BERNARD A. LABUSKES, JR.  
Judge

DATED: August 1, 2017



**c: For the Commonwealth of PA, DEP:**  
William J. Gerlach, Esquire  
Gail Guenther, Esquire  
Margaret O. Murphy, Esquire  
Curtis C. Sullivan, Esquire  
Nels J. Taber, Esquire  
(via electronic filing system)

**For Appellant, Clean Air Council:**  
Alexander G. Bomstein, Esquire  
Kathryn L. Urbanowicz, Esquire  
Joseph O. Minott, Esquire  
(via electronic filing system)

**For Appellant, Delaware Riverkeeper Network:**  
Aaron J. Stemplewicz, Esquire  
(via electronic filing system)

**For Appellant, Mountain Watershed Association, Inc.:**  
Melissa Marshall, Esquire  
(via electronic filing system)

**For Permittee:**  
Robert D. Fox, Esquire  
Neil S. Witkes, Esquire  
Diana A. Silva, Esquire  
Jonathan E. Rinde, Esquire  
Terry R. Bossert, Esquire  
(via electronic filing system)



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :  
RIVERKEEPER NETWORK, AND :  
MOUNTAIN WATERSHED ASSOCIATION, :  
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and SUNOCO PIPELINE, L.P., :  
Permittee :

ORDER

AND NOW, this 3<sup>rd</sup> day of August, 2017, in further consideration of the Permittee's emergency motion to modify our July 25, 2017 Order, it is hereby ordered that the temporary partial supersedeas is lifted with respect to all horizontal directional drilling locations identified in the Permittee's motion, except for the HDD at Creek 110 in Lebanon County, PA-LE-0117.0000-WX.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr. \_\_\_\_\_  
BERNARD A. LABUSKES, JR.  
Judge

DATED: August 3, 2017

c: For the Commonwealth of PA, DEP:  
William J. Gerlach, Esquire  
Gail Guenther, Esquire  
Margaret O. Murphy, Esquire  
Curtis C. Sullivan, Esquire  
Nels J. Taber, Esquire  
(via electronic filing system)



**For Appellant, Clean Air Council:**

Alexander G. Bomstein, Esquire  
Kathryn L. Urbanowicz, Esquire  
Joseph O. Minott, Esquire  
*(via electronic filing system)*

**For Appellant, Delaware Riverkeeper Network:**

Aaron J. Stemplewicz, Esquire  
*(via electronic filing system)*

**For Appellant, Mountain Watershed Association, Inc.:**

Melissa Marshall, Esquire  
*(via electronic filing system)*

**For Permittee:**

Robert D. Fox, Esquire  
Neil S. Witkes, Esquire  
Diana A. Silva, Esquire  
Jonathan E. Rinde, Esquire  
Terry R. Bossert, Esquire  
*(via electronic filing system)*

# **EXHIBIT 5**



COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL; THE DELAWARE	:	
RIVERKEEPER NETWORK; and	:	
MOUNTAIN WATERSHED	:	
ASSOCIATION, INC.,	:	
	:	
Appellants,	:	EHB DOCKET NO. 2017-009-L
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION,	:	
	:	
Appellee,	:	
	:	
and	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Permittee.	:	

**CORRECTED STIPULATED ORDER**

AND NOW this 10th day of August, 2017, the Clean Air Council, the Delaware Riverkeeper Network, the Mountain Watershed Association, Inc. (collectively "Appellants"), Sunoco Pipeline L.P. ("Sunoco"), and the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), by and through their respective counsel, hereby agree to resolve the Appellants' Application for Temporary Partial Supersedeas and Petition for Partial Supersedeas, both of which were filed on July 19, 2017, through a negotiated agreement with regard to the following terms and conditions, which shall be entered by the Environmental Hearing Board ("Board") as a Stipulated Order, and which supersedes and replaces the Stipulated Order approved by the Board on August 9, 2017, as follows:





1. Appellants' Petition for Temporary Partial Supersedeas and Petition for Partial Supersedeas are hereby withdrawn without prejudice. The Board's Orders dated July 25, 2017, July 28, 2017, August 1, 2017, August 3, 2017, and August 4, 2017 (attached as Exhibit "1") are hereby vacated. Appellants reserve the right to seek a temporary or permanent supersedeas for conduct after the Board's entry of this Stipulated Order, including any activities related to horizontal directional drilling ("HDD").

2. Sunoco will perform a re-evaluation of the 41 HDDs listed on Exhibit "2" attached hereto. Exhibit "2" provides the rationale for selecting these HDDs for re-evaluation as well as the nature of the re-evaluation.

3. Sunoco will also perform a re-evaluation of the HDDs listed on Exhibit "3." These HDDs constitute drills for which an inadvertent return ("IR") occurred during the installation of one pipe (20" or 16" diameter) and where a second pipe will hereafter be installed in the same right-of-way ("ROW"). In addition, Sunoco will perform a re-evaluation of HDDs for which an IR occurs in the future during the installation of one pipe where a second pipe will thereafter be installed in the same ROW.

4. In re-evaluating the design of the HDD techniques for the sites referenced in Paragraphs 2 and 3 herein, Sunoco shall:

- i. Re-examine the geology at each site using information and data gathered during HDD operations at that and other sites during construction of the pipelines subject to the permits in the above-captioned Appeal;
- ii. Consider data that is specific to the needs of each HDD being reevaluated, including at a specific HDD: geologic strength at profile depth, overburden strength, HDD depth, entry angle, pipe stress radius, open cut alternatives, a



re-route analysis for all HDDs (including those on Exhibit “2”) and analysis of well production zones;

iii. Conduct, as appropriate, additional geotechnical evaluation at each site using techniques generally recognized within the scientific community which may include:

- Additional field drilling and sampling;
- Seismic surveys;
- Ground penetrating radar; and
- Electromagnetic surveys/electrical resistivity tomography.

iv. In karst areas, Sunoco shall consider the use of seismic surveys and electromagnetic surveys/electrical resistivity tomography for the re-evaluation undertaken pursuant to this Order, and if it does not use these evaluation methodologies, it will provide the Department with an explanation for why they were not used at that site.

5. Upon completion of Sunoco’s re-evaluation of each HDD site referenced in Paragraphs 2 and 3 herein, Sunoco shall provide for each such site a report signed and sealed by a Professional Geologist, describing and presenting the results of its study for that location (“Report”). The Professional Geologist shall be a person trained and experienced in geotechnical and hydrogeologic investigation. The Report shall specify all actions to be taken by Sunoco to eliminate, reduce, or control the release or IR of HDD drilling fluids to the surface of the ground or impact to water supplies at that location during HDD operations.

i. The Report shall document in detail the information considered for the re-evaluation of the design of the HDD at that site.



- ii. The Report shall contain an evaluation of the feasibility of constructing the proposed HDD crossing at that location and, as appropriate, propose modification of the design of the HDD or relocation of the pipeline based upon the results of its study for that location.
6. Sunoco will submit the Reports to the Department for review and approval.
  - i. For any recommendation that requires a major permit modification, the Department's procedures for major permit modifications shall apply.
  - ii. For all recommendations for which a minor permit modification is required, including, but not limited to, certain changes from HDD to an open cut or certain changes to the Limit of Disturbance ("LOD"), the Department will have 21 days to review the submission and render a determination with respect to such minor permit modification, unless Sunoco agrees to extend the 21-day time period. Appellants and private water supply landowners, who have received notice pursuant to Paragraph 7 below, shall submit comments, if any, within 14 days of the Department's posting of Sunoco's Reports on the Department's Pennsylvania Pipeline Portal website. Comments on the Reports shall be submitted to the Department at: Karyn Yordy, Executive Assistant, Office of Programs, Department of Environmental Protection, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101; Email – [kyordy@pa.gov](mailto:kyordy@pa.gov); Phone – (717) 772-5906; Fax – (717) 705-4980. Appellants will provide copies of their comments by email to Sunoco to the email address provided to Appellants'



counsel. The Department shall consider comments received and document such consideration.

- iii. For all other recommendations, including, but not limited to, recommendations of no change or of changes that do not require a minor permit modification, the Department will have 21 days to review the submission and render a determination with respect thereto, unless Sunoco agrees to extend the 21-day time period. Appellants and private water supply landowners who have received notice pursuant to Paragraph 7 below, shall submit comments, if any, within 14 days of the Department's posting of Sunoco's Reports on the Department's Pennsylvania Pipeline Portal website. Comments on the Reports shall be submitted to the Department at: Karyn Yordy, Executive Assistant, Office of Programs, Department of Environmental Protection, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101; Email – kyordy@pa.gov; Phone – (717) 772-5906; Fax – (717) 705-4980. Appellants will provide copies of their comments by email to Sunoco to the email address provided to Appellants' counsel. The Department shall consider comments received and document such consideration.

7. At the same time that Sunoco provides the Report to the Department, Sunoco will also provide a copy of the Report to Appellants by email to the address provided to Sunoco's counsel. The Department shall post Sunoco's Report to the Pennsylvania Pipeline Portal website within one business day of receipt. Sunoco shall send a copy of the Report (by U.S. Postal



Service Certified Mail and First Class Mail) to all landowners who have a private water supply that is located within 450 feet of the HDD addressed by the Report.

8. Ten days before HDD operations start at an HDD location, or re-start at an HDD location at which there was an IR (as listed on Exhibit "4"), Sunoco will identify all landowners within 450 feet of HDD alignments, and notify all such landowners (by U.S. Postal Service Certified Mail and First Class Mail) and offer such landowners the opportunity to have their water supplies within 450 feet of the HDD alignment sampled before, during, and after start or re-start of such HDD in accordance with the parameters in the water supply testing plan (Appendix B of the Water Supply Assessment, Preparedness, Prevention and Contingency Plan). For any such water supplies, the drill path will be compared to the well depth and geology of the area. Those water supplies in geologies with potentially significant interconnected secondary porosity (solution openings and structural features) will be considered for monitoring during HDD installs depending on specific individual water supplier requirements.

9. At the 22 HDDs identified on Exhibit "5," water supplies within 150 feet shall receive 72 hours' notice (by U.S. Postal Service Certified Mail and First Class Mail) in advance of restarting these HDDs, and Sunoco will provide notice to landowners (by U.S. Postal Service Certified Mail and First Class Mail) between 150 feet and 450 feet of the HDD within 30 days of the HDD restarting. Such notice shall offer the landowner with the opportunity to have a water supply located within 450 feet of the HDD alignment sampled in accordance with the parameters in the water supply testing plan (Appendix B of the Water Supply Assessment, Preparedness, Prevention and Contingency Plan) within 10 days of the landowner's request.

10. Sunoco shall provide copies of the Certified Mail receipts and landowner responses to the Department, and copies of the Certified Mail receipts to Appellants.



11. Sunoco will immediately notify a landowner with a water supply within 450 feet of an HDD when Sunoco or the Department has determined that there is a substantial possibility that the operation of the HDD will impact his or her water supply.

12. Within 14 days of the Board's entry of this Stipulated Order, Sunoco will provide the Department with a complete list of drilling instructions and specifications provided to all drillers performing HDD operations associated with the permits that are subject to the above-captioned Appeal, which provide the general operational parameters and best management practices to be utilized by the drillers during the performance of HDD operations under said permits.

13. The Department may review the drilling instructions and specifications, and suggest modifications to be incorporated into the instructions and specifications. If appropriate, the Department and Sunoco will discuss the feasibility of incorporating the Department's suggested modifications into the drilling instructions and specifications.

14. Within 14 days of the Board's entry of this Stipulated Order, Sunoco will provide the Department with as-builts for six HDDs that have been completed and at which an IR occurred to assure that the HDDs are being built in accordance with approved plans. To the extent possible, the as-builts shall represent the work of at least three different drilling contractors for HDD work performed in at least three different spreads of the pipelines subject to the permits in the above-captioned Appeal.

15. The parties have agreed to revisions to: the HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan; the Water Supply Assessment, Preparedness, Prevention and Contingency Plan; and, the Void Mitigation Plan for Karst Terrain and



Underground Mining (collectively, the "Plans"), as revised, such revisions dated August 8, 2017.

Sunoco agrees to abide by these Plans, as revised.

16. Sunoco shall inform, as appropriate, its officers, agents, employees, and contractors of the August 8, 2017 revisions to the Plans and ensure that the Plans as revised are present onsite during drilling operations and are made available to the Department.

SUNOCO PIPELINE L.P.:

/s/ Robert D. Fox  
Robert D. Fox, Esq.

THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

/s/ Nels J. Taber  
Nels J. Taber, Esq., Regional Counsel

CLEAN AIR COUNCIL:

/s/ Joseph O. Minott  
Joseph O. Minott, Esquire

DELAWARE RIVERKEEPER  
NETWORK:

/s/ Aaron J. Stemplewicz  
Aaron J. Stemplewicz, Esquire

s/ Maya K. van Rossum  
Maya K. van Rossum

MOUNTAIN WATERSHED  
ASSOCIATION:

/s/ Melissa Marshall  
Melissa Marshall, Esquire

APPROVED AND SO ORDERED  
ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.  
**BERNARD A. LABUSKES, JR.**  
Judge

DATED: August 10, 2017



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :  
RIVERKEEPER NETWORK, AND :  
MOUNTAIN WATERSHED ASSOCIATION, :  
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and SUNOCO PIPELINE, L.P., :  
Permittee :

**ORDER**

AND NOW, this 25<sup>th</sup> day of July, 2017, following two conference calls during which the parties presented extensive argument in support of their respective positions, it is hereby ordered that the Appellants' application for a temporary partial supersedeas is **granted**. The permits that are the subject of this appeal are hereby superseded effective immediately to the extent they authorize the Permittee to conduct horizontal directional drilling. However, this Order may be modified in part if the Permittee provides the Board with detailed affidavits explaining why it would cause equipment damage, a safety issue, or more environmental harm than good to stop drilling at the 55 locations where drilling is actively underway. This temporary partial supersedeas shall expire at 9:00 a.m. on August 7, 2017, unless further extended by the Board. The hearing on the Appellants' petition for a partial supersedeas shall commence in the Board's Harrisburg hearing room on the date requested by the parties; namely, **9:00 a.m. on August 7, 2017.**





ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr. \_\_\_\_\_  
**BERNARD A. LABUSKES, JR.**  
**Judge**

**DATED: July 25, 2017**

**c: For the Commonwealth of PA, DEP:**

William J. Gerlach, Esquire  
Gail Guenther, Esquire  
Margaret O. Murphy, Esquire  
Curtis C. Sullivan, Esquire  
Nels J. Taber, Esquire  
(*via electronic filing system*)

**For Appellant, Clean Air Council:**

Alexander G. Bomstein, Esquire  
Kathryn L. Urbanowicz, Esquire  
Joseph O. Minott, Esquire  
(*via electronic filing system*)

**For Appellant, Delaware Riverkeeper Network:**

Aaron J. Stemplewicz, Esquire  
(*via electronic filing system*)

**For Appellant, Mountain Watershed Association, Inc.:**

Melissa Marshall, Esquire  
(*via electronic filing system*)

**For Permittee:**

Robert D. Fox, Esquire  
Neil S. Witkes, Esquire  
Diana A. Silva, Esquire  
Jonathan E. Rinde, Esquire  
Terry R. Bossert, Esquire  
(*via electronic filing system*)

**Court Reporter:**

Premier Reporting, LLC  
(*via electronic mail*)



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :  
RIVERKEEPER NETWORK, AND :  
MOUNTAIN WATERSHED ASSOCIATION, :  
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and SUNOCO PIPELINE, L.P., :  
Permittee :

**ORDER**

AND NOW, this 28<sup>th</sup> day of July, 2017, in consideration of the Permittee’s emergency motion to modify our July 25, 2017 Order and the affidavit submitted in support thereof, and the Appellants’ response in opposition to the Permittee’s motion, which also included an affidavit, it is hereby ordered that the motion is granted in part. The temporary partial supersedeas imposed by our previous Order of July 25, 2017 is lifted with respect to the following three horizontal directional drilling locations as identified in the Permittee’s motion:

- The HDD at Harrisburg Pike in Cumberland County, where the only drilling work to be completed as of July 25, 2017 was the final cleaning ream
- The HDD at Wetland 161 in Lebanon County, where the reamed hole was 95 percent completed
- The HDD at Creek 110 in Lebanon County, where 1,500 feet of the total hole of 1,527 feet (98 percent) of the reamed hole was completed

The Board takes the Permittee’s motion with respect to the other 14 locations listed in the motion under advisement.



ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.  
**BERNARD A. LABUSKES, JR.**  
Judge

**DATED: July 28, 2017**

**c: For the Commonwealth of PA, DEP:**

William J. Gerlach, Esquire  
Gail Guenther, Esquire  
Margaret O. Murphy, Esquire  
Curtis C. Sullivan, Esquire  
Nels J. Taber, Esquire  
*(via electronic filing system)*

**For Appellant, Clean Air Council:**

Alexander G. Bomstein, Esquire  
Kathryn L. Urbanowicz, Esquire  
Joseph O. Minott, Esquire  
*(via electronic filing system)*

**For Appellant, Delaware Riverkeeper Network:**

Aaron J. Stemplewicz, Esquire  
*(via electronic filing system)*

**For Appellant, Mountain Watershed Association, Inc.:**

Melissa Marshall, Esquire  
*(via electronic filing system)*

**For Permittee:**

Robert D. Fox, Esquire  
Neil S. Witkes, Esquire  
Diana A. Silva, Esquire  
Jonathan E. Rinde, Esquire  
Terry R. Bossert, Esquire  
*(via electronic filing system)*



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :  
RIVERKEEPER NETWORK, AND :  
MOUNTAIN WATERSHED ASSOCIATION, :  
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and SUNOCO PIPELINE, L.P., :  
Permittee :

**ORDER**

AND NOW, this 1<sup>st</sup> day of August, 2017, in consideration of the Permittee's affidavit correcting certain information provided in its July 27, 2017 affidavit and seeking confirmation that it may resume drilling at the horizontal directional drilling locations subject to the Board's Order of July 28, 2017, it is hereby ordered that the temporary partial supersedeas continues to be lifted with respect to the following horizontal directional drilling locations as identified in the Permittee's affidavit:

- The HDD at Harrisburg Pike in Cumberland County, PA-CU-0136.0000-RD
- The HDD at Wetland S161 in Lancaster County, PA-LA-0014.0000-SR

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr. \_\_\_\_\_  
**BERNARD A. LABUSKES, JR.**  
Judge

**DATED: August 1, 2017**



**c: For the Commonwealth of PA, DEP:**

William J. Gerlach, Esquire  
Gail Guenther, Esquire  
Margaret O. Murphy, Esquire  
Curtis C. Sullivan, Esquire  
Nels J. Taber, Esquire  
(via *electronic filing system*)

**For Appellant, Clean Air Council:**

Alexander G. Bomstein, Esquire  
Kathryn L. Urbanowicz, Esquire  
Joseph O. Minott, Esquire  
(via *electronic filing system*)

**For Appellant, Delaware Riverkeeper Network:**

Aaron J. Stemplewicz, Esquire  
(via *electronic filing system*)

**For Appellant, Mountain Watershed Association, Inc.:**

Melissa Marshall, Esquire  
(via *electronic filing system*)

**For Permittee:**

Robert D. Fox, Esquire  
Neil S. Wilkes, Esquire  
Diana A. Silva, Esquire  
Jonathan E. Rinde, Esquire  
Terry R. Bossert, Esquire  
(via *electronic filing system*)



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :  
RIVERKEEPER NETWORK, AND :  
MOUNTAIN WATERSHED ASSOCIATION, :  
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and SUNOCO PIPELINE, L.P., :  
Permittee :

**ORDER**

AND NOW, this 3<sup>rd</sup> day of August, 2017, in further consideration of the Permittee's emergency motion to modify our July 25, 2017 Order, it is hereby ordered that the temporary partial supersedeas is lifted with respect to all horizontal directional drilling locations identified in the Permittee's motion, except for the HDD at Creek 110 in Lebanon County, PA-LE-0117.0000-WX.

**ENVIRONMENTAL HEARING BOARD**

s/ Bernard A. Labuskes, Jr.  
**BERNARD A. LABUSKES, JR.**  
**Judge**

**DATED: August 3, 2017**

**c: For the Commonwealth of PA, DEP:**  
William J. Gerlach, Esquire  
Gail Guenther, Esquire  
Margaret O. Murphy, Esquire  
Curtis C. Sullivan, Esquire  
Nels J. Taber, Esquire  
(via electronic filing system)



**For Appellant, Clean Air Council:**

Alexander G. Bomstein, Esquire  
Kathryn L. Urbanowicz, Esquire  
Joseph O. Minott, Esquire  
(*via electronic filing system*)

**For Appellant, Delaware Riverkeeper Network:**

Aaron J. Stemplewicz, Esquire  
(*via electronic filing system*)

**For Appellant, Mountain Watershed Association, Inc.:**

Melissa Marshall, Esquire  
(*via electronic filing system*)

**For Permittee:**

Robert D. Fox, Esquire  
Neil S. Witkes, Esquire  
Diana A. Silva, Esquire  
Jonathan E. Rinde, Esquire  
Terry R. Bossert, Esquire  
(*via electronic filing system*)







**For Appellant, Clean Air Council:**

Alexander G. Bomstein, Esquire  
Kathryn L. Urbanowicz, Esquire  
Joseph O. Minott, Esquire  
*(via electronic filing system)*

**For Appellant, Delaware Riverkeeper Network:**

Aaron J. Stemplewicz, Esquire  
*(via electronic filing system)*

**For Appellant, Mountain Watershed Association, Inc.:**

Melissa Marshall, Esquire  
*(via electronic filing system)*

**For Permittee:**

Robert D. Fox, Esquire  
Neil S. Witkes, Esquire  
Diana A. Silva, Esquire  
Jonathan E. Rinde, Esquire  
Terry R. Bossert, Esquire  
*(via electronic filing system)*

**Ex. 2 -Horizontal Directional Drills For Design Review  
Sunoco Mariner 2 Project**



**Factors For Selecting These HDDs**

Sunoco considered a variety of screening factors in identifying HDDs for reevaluation. No one factor was dispositive. These factors included proximity to public and private water supplies, proximity to natural features (e.g. streams and wetlands) and the value of those natural features, proximity to man-made features (e.g. underground utilities and pipelines, railroad crossings), known impacts to rock from historic blasting, geologic conditions, depth of cover, and occurrence of inadvertent returns. In addition to these HDDs that will undergo reevaluation, Sunoco is reevaluating every HDD for the 16 inch line where there was an IR on the HDD for the proximate 20 inch line. In three cases there was an IR on the HDD for the 16 inch line and Sunoco will reevaluate the proximate 20 inch line for that HDD.

**Data Review to Perform**

In re-evaluating the design of the HDD techniques for the HDDs, Sunoco shall:

- (1) Re-examine the geology at each site using information and data gathered during HDD operations at that and other sites during construction of the pipeline subject to the permits in this Appeal.
- (2) Consider data that is specific to the needs of each HDD being reevaluated, including at a specific HDD, geologic strength at profile depth, overburden strength, HDD depth, entry angle, pipe stress radius, open cut alternatives, a re-route analysis for all HDDs (including those on this Exhibit) and analysis of well production zones.
- (3) Conduct, as appropriate, additional geotechnical evaluation at each site using techniques generally recognized within the scientific community which may include: (i) Additional field drilling and sampling; (ii) Seismic surveys; (iii) Ground penetrating radar; and (iv) electromagnetic surveys/electrical resistivity tomography.
- (4) In karst areas, Sunoco shall consider the use of seismic surveys and electromagnetic surveys/electrical resistivity tomography for the re-evaluation undertaken pursuant to this Order, and if it does not use these methodologies, it will provide the Department with an explanation for why they were not used at that site.

<b>Construction</b>					
	<b>Spread</b>	<b>HDD Name</b>	<b>HDD #</b>	<b>PADEP 105 Permit HDD #</b>	<b>County</b>
<b>1</b>	Spread 1	Wheeling and Lake Erie RR	S1B-0120	PA-WA-0171.0000-RR (20")	Washington
<b>2</b>	Spread 1	Gombach Road	S1B-0260	PA-WM1-0111.0000-RD (20")	Westmoreland
<b>3</b>	Spread 1	Hildebrand Road	S1B-0190	PA-WM1-0023.0000-RD (20")	Westmoreland
<b>4</b>	Spread 1	Norfolk Southern	S1B-0250	PA-WM1-0088.0000-RR (20")	Westmoreland
<b>5</b>	Spread 2	Goldfinch Lane	S2-0069	PA-CA-0016.0000-RD (20" & 16")	Cambria
<b>6</b>	Spread 2	William Penn Ave (Route 271)	S2-0070	PA-CA-0023.0000-RD (20" & 16")	Cambria
<b>7</b>	Spread 2	Wetland C-17	S2-0075	PA-CA-0047.0000-SR (20" & 16")	Cambria
<b>8</b>	Spread 2	Spinner Road	S2-0080	PA-CA-0069.0000-RD (20" & 16")	Cambria
<b>9</b>	Spread 3	Piney Creek	S2-0142	PA-BL-0126.0000-RD (20")	Blair
<b>10</b>	Spread 3	Juniata River	S2-0140	PA-BL-0122.0000-WX (20" & 16")	Blair
<b>11</b>	Spread 3	Aughwick Creek	S2-0153	PA-HU-0078.0000-WX (20")	Huntingdon

Ex. 2 -Horizontal Directional Drills For Design Review  
Sunoco Mariner 2 Project



Construction		HDD Name	HDD #	PADEP 105 Permit HDD #	County
Spread					
12	Spread 3	Horse Valley	S2-0157	PA-PE-0002.0000-RD (20" &16")	Perry
13	Spread 4	Creek Rd	S2-0181	PA-CU-0125.0001-WX (20" &16")	Cumberland
14	Spread 4	Yellow Breeches Creek	S2-0250	PA-CU-0203.0000-WX (20" &16")	Cumberland
15	Spread 5	Wetland J-47	S3-0090	PA-LE-0001.0000-SR (20" &16")	Lebanon
16	Spread 5	Route 897	S3-0170	PA-LA-0024.0000-RD (20" &16")	Lancaster
17	Spread 6	N. Pottstown Pike	S3-0370	PA-CH-0212.0000-RD (20" &16")	Chester
18	Spread 6	Swedesford Rd	S3-0381	PA-CH-0219.0000-RD (20" &16")	Chester
19	Spread 6	Chester Rd	S3-0541	PA-CH-0421.0000-RD (20" &16")	Chester
20	Spread 6	Gradyville Rd	S3-0580	PA-DE-0032.0000-RD (20" &16")	Delaware
21	Spread 6	Valley Rd	S3-0591	PA-DE-0046.0000-RD (20" &16")	Delaware
22	Spread 6	Devon Dr. - Shoen Rd.	S3-0360	PA-CH-0199.0000-RD (16")	Chester
23	Spread 6	Eagleview Blvd.	S3-0321	PA-CH-0135.0000-RD (16")	Chester
24	Spread 5	Joanna Road	S3-0250	PA-BR-0181.0000-RD (20" & 16")	Berks
25	Spread 6	Bow Tree Drive	S3-0520	PA-CH-0413.0000-RD (20")	Chester

Ex. 3 - HDDs for Reevaluation



	Construction Spread	Drill Name	HDD #	PADEP 105 Permit HDD #	First HDD Pipe Diameter	Second HDD Pipe Diameter
1.	2	Loyalhanna Lake	S2-0010	PA-WM2-0064.0000-WX	20	16
2.	2	Livermore Rd	S2-0016	PA-WM2-0093.0000-RD	20	16
3.	2	Kendall Rd/Norfolk Southern RR	S2-0040	PA-IN-0019.0000-RR	20	16
4.	3	Old US220	S2-0109	PA-BL-0001.0027-RD	20	16
5.	3	Everett RR	S2-0121	PA-BL-0001.0048-RR	20	16
6.	3	Finney Creek	S2-0142	PA-BL-0126.0000-RD	20	16
7.	3	Aughwick Creek	S2-0153	PA-HU-0078.0000-WX	20	16
8.	4	Letorte Springs Run	S2-0210	PA-CJ-0136.0002-WX	20	16
9.	4	I-81	S2-0220	PA-CJ-0136.0003-RD	20	16
10.	4	Hwy 15	S2-0247	PA-CJ-0176.0019-RD	20	16
11.	4	Lewisberry Road	S2-0260	PA-YO-0016.0000-RD	20	16
12.	5	Laural Lane	S3-0091	PA-LE-0005.0000-RD	20	16
13.	5	T307 & Creek SC86	S3-0110	PA-LE-0117.0000-WX	20	16
14.	5	Wetland K32 & S-K35	S3-0111	PA-LA-0004.0000-SR	20	16
15.	5	Wetland A54 & A55	S3-0161	PA-LA-0014.0000-SR	20	16
16.	5	Hwy 222	S3-0200	PA-BR-0075.0000-RD	20	16
17.	6	Milford Rd. S3-0290	S3-0290	PA-CH-0100.0000-RD	20	16
18.	6	Wetland 043 - Park Road S3-0300	S3-0300	PA-CH-0111.0000-RD	20	16
19.	6	Bow Tree Dr. S3-0520	S3-0520	PA-CH-0413.0000-RD	20	16
20.	6	Glen Riddle/SEPTA S3-0620 (16")	S3-0620	PA-DE-0100.0000-RR	16	20
21.	6	Chester Creek (Gun Club) S3-0631 (16")	S3-0631	PA-DE-0104.0008-WX	16	20
22.	6	Commerce Drive S3-0670 (16")	S3-0670	PA-DE-0104.0023-RR	16	20



## Ex. 4

	Spread	Drill Name	HDD #	PADEP 105 Permit HDD #	Diameter
1	Spread 1	LINDEN ROAD	S1B-0080	PA-WA-0119.0000-RD	20
2	Spread 1	WHEELING AND LAKE ERIE RR	S1B-0120	PA-WA-0171.0000-RR	20
3	Spread 3	Old US 220	S2-0109	PA-BL-0001.0027-RD	20
4	Spread 3	Everett RR	S2-0121	PA-BL-0001.0048-RR	20
5	Spread 3	Piney Creek	S2-0142	PA-BL-0126.0000-RD	20
6	Spread 3	Aughwick Creek	S2-0153	PA-HU-0078.0000-WX	20
7	Spread 4	Letorte Springs Run	S2-0210	PA-CU-0136.0002-WX	20
8	Spread 4	I-81	S2-0220	PA-CU-0136.0003-RD	20
9	Spread 4	Hwy 15	S2-0247	PA-CU-0176.0019-RD	20
10	Spread 4	Lewisberry Road	S2-0260	PA-YO-0016.0000-RD	20
11	Spread 5	Laural Lane	S3-0091	PA-LE-0005.0000-RD	20
12	Spread 5	T307 & Creek S-C86	S3-0110	PA-LE-0117.0000-WX	20
13	Spread 5	Hwy 222	S3-0200	PA-BR-0075.0000-RD	20
14	Spread 6	Milford Rd.	S3-0290	PA-CH-0100.0000-RD	20
15	Spread 6	Wetland C43 - Park Road	S3-0300	PA-CH-0111.0000-RD	20
16	Spread 6	Bow Tree Dr.	S3-0520	PA-CH-0413.0000-RD	20
17	Spread 6	Riddlewood Dr	S3-0620	PA-DE-0100.0000-RR	16



Ex. 5					
	Spread	Drill Name	HDD #	PADEP 105 Permit HDD #	Diameter
1	Spread 1	Norfolk RR	S1B-0250	PA-WM1-0088.0000-RR	20
2	Spread 1	Old William Penn	S1B-0270	PA-WM1-0144.0000-RD	20
3	Spread 2	Grange Hall Rd	S2-0064	PA-IN-0086.0000-RD	20
4	Spread 3	Raystown Lake	S2-0150	PA-HU-0020.0008-WX	20
5	Spread 4	Pipeline/Double Gap Rd	S2-0160	PA-CU-0015.0000-RD	20
6	Spread 4	Wildwood Road	S2-0180	PA-CU-0067.0000-RD	20
7	Spread 4	Appalachian Trail	S2-0230	PA-CU-0136.0012-RD	20
8	Spread 4	Arcona Rd, Lisburn Rd	S2-0249	PA-CU-0189.0000-RD	20
9	Spread 4	S Market Street	S2-0246	PA-CU-0174.0001-RD	20
10	Spread 4	Waltonville Road	S3-0080	PA-DA-0056.0000-RD	20
11	Spread 5	Peach Tree Lane	S3-0201	PA-BR-0079.0000-RD	20
12	Spread 5	Gebhart School Road	S3-0230	PA-BR-0138.0001-RD	20
13	Spread 5	Joanna Road	S3-0250	PA-BR-0181.0000-RD	20
14	Spread 6	Pennsylvania Drive	S3-0310	PA-CH-0124.0000-RD	20
15	Spread 6	Dairy Queen Parking Lot	S3-0331	PA-CH-0138.0000-RD	20
16	Spread 6	Devon Dr. - Shoen Rd.	S3-0360	PA-CH-0199.0000-RD	20
17	Spread 6	Exton Bypass	S3-0400	PA-CH-0256.0000-RR	20
18	Spread 6	Hollyview Ln.	S3-0421	PA-CH-0290.0000-RD	20
19	Spread 6	Greenhill Road	S3-0460	PA-CH-0326.0000-RD	20
20	Spread 6	Carriage Dr.	S3-0461	PA-CH-0326.0004-SR	20
21	Spread 6	Village Square Dr.	S3-0471	PA-CH-0326.0006-RD	20
22	Spread 6	Highway 23		PA-CH-0002.0000-RD	20

# **EXHIBIT 6**

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL; THE : EHB Docket NO.  
DELAWARE RIVERKEEPER : 2017-009L  
NETWORK; AND MOUNTAIN :  
WATERSHED ASSOCIATION, :  
INC., :

APPELLANTS :

vs. :

COMMONWEALTH OF :  
PENNSYLVANIA, DEPARTMENT :  
OF ENVIRONMENTAL :  
PROTECTION, :

APPELLEE :  
and SUNOCO PIPELINE L.P., :

PERMITTEE :

DEPOSITION OF SCOTT R. WILLIAMSON - VOLUME I  
Taken in the offices of Bureau of  
Regulatory Counsel, 400 Market Street, Harrisburg,  
Pennsylvania, on Thursday, October 19, 2017,  
commencing at 9:35 a.m. before Gina L. Clements,  
Registered Professional Reporter.

APPEARANCES:

CLEAN AIR COUNCIL

By: KATHRYN URBANOWICZ, ESQ.  
and

ALEXANDER G. BOMSTEIN, ESQ.  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
(215) 567-4004

KUrbanowicz@cleanair.com  
Abomstein@cleanair.com

-- For the Plaintiffs



Page 2

1 APPEARANCES (Continued):  
 2  
 3  
 4 COMMONWEALTH OF PENNSYLVANIA  
 GOVERNOR'S OFFICE OF GENERAL COUNSEL  
 By: CURTIS SULLIVAN, ESQ.  
 5 Office of Chief Counsel  
 and  
 6 NELS J. TABER, ESQ.  
 Regional Counsel  
 7 Department of Environmental Protection  
 Southcentral Regional Office  
 8 909 Elmerton Avenue  
 Harrisburg, PA 17110  
 (717) 787-8790  
 9 CSullivan@pa.gov  
 NTaber@pa.gov  
 10 -- For the Appellee  
 11 Commonwealth of Pennsylvania  
 Department of Environmental Protection  
 12  
 13  
 14 BUREAU OF REGULATORY COUNSEL  
 OFFICE OF CHIEF COUNSEL  
 By: MARGARET O. MURPHY, ESQ.  
 15 400 Market Street  
 16 RCSOB 9th floor  
 Harrisburg, PA 17101-2301  
 (717) 787-7060  
 17 Mamurphy@pa.gov  
 18 -- For the Appellee  
 Commonwealth of Pennsylvania  
 19 Department of Environmental Protection  
 20  
 21 \* \* \*  
 22 VERITEXT LEGAL SOLUTIONS  
 MID-ATLANTIC REGION  
 23 1801 Market Street - Suite 1800  
 Philadelphia, PA 19103  
 24  
 25

Page 3

1 APPEARANCES (Continued):  
 2  
 3  
 4 MANKO, GOLD, KATCHER, FOX, LLP  
 By: DIANA A. SILVA, ESQ.  
 5 401 City Avenue, Suite 901  
 Bala Cynwyd, PA 19004  
 (484) 430-5700  
 6 DSilva@mankogold.com  
 -- For the Permittee  
 7 Sunoco Pipeline, L.P.  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20 VERITEXT LEGAL SOLUTIONS  
 MID-ATLANTIC REGION  
 21 1801 Market Street - Suite 1800  
 Philadelphia, PA 19103  
 22  
 23  
 24  
 25

Page 4

1 INDEX TO WITNESSES  
 2  
 3 WITNESS PAGE  
 4 SCOTT R. WILLIAMSON  
 5 By Ms. Urbanowicz 5  
 6  
 7 INDEX TO EXHIBITS  
 8  
 9 WILLIAMSON PAGE  
 10 EXHIBIT DESCRIPTION MARKED  
 11 1 Tetra Tech packet 42  
 12 2 Common technical deficiencies 57  
 13 3 Handwritten notes 75  
 14 4 Letter regarding State Water  
 Obstruction and  
 Encroachment permit 78  
 15 5 Proposed timeline 100  
 16 6 E-mail with attachments 116  
 17 7 E-mail 119  
 18 8 E-mail 124  
 19 9 E-mails 128  
 20 10 E-mails 133  
 21 11 E-mails 135  
 22 12 E-mail 141  
 23 13 Table of inadvertent returns 160  
 24 14 PPC Plan 174  
 25

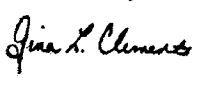
Page 5

1 SCOTT R. WILLIAMSON, having been duly  
 2 sworn, was examined and testified as follows:  
 3 \* \* \*  
 4 EXAMINATION  
 5 BY MS. URBANOWICZ:  
 6 Q. Good morning, Mr. Williamson.  
 7 A. Good morning.  
 8 Q. Thank you for being here today. I'm going  
 9 to ask you a lot of questions today and I'm just going  
 10 to ask that you answer to the best of your knowledge.  
 11 If there is something that you don't  
 12 understand or need me to repeat, please let me know.  
 13 And if I don't hear anything from  
 14 you about not understanding a question, I'm just going  
 15 to assume that you understood it. Okay?  
 16 A. Okay.  
 17 Q. The court reporter is recording your  
 18 answers, so we need verbal responses to questions. So  
 19 obviously nodding, shaking heads can't be recorded for  
 20 the record, so that's going to be important.  
 21 If you need a break at any time,  
 22 just let me know. The only thing I'm going to ask is  
 23 that if there's a question pending, please provide an  
 24 answer to the question first and then we can take a  
 25 break after that.

1 returns to waters of Commonwealth.  
 2 Q. Are you aware of your staff implementing  
 3 these protocols on page six and seven differently  
 4 for uplands and wetlands?  
 5 A. I think I would need to review the rest  
 6 of the PPC plan because I think -- or other components  
 7 of the PPC plan because I think that there's some  
 8 better clarification, as I recall, in certain sections  
 9 of it about what happens in uplands versus what  
 10 happens in waters. And that also helps guide our  
 11 decision making.  
 12 I can say that we do, even in  
 13 my region for this project, even if there's an  
 14 inadvertent return that occurs in uplands, we're still  
 15 inspecting that the same day, if at all possible, or  
 16 getting boots on the grounds to go look at it.  
 17 Q. Are there HDD sites where Sunoco is  
 18 currently awaiting DEP approval before it can restart  
 19 drilling?  
 20 A. That's my recollection, yes.  
 21 Q. And what sites are those?  
 22 A. One site that my recollection is they're  
 23 waiting for a decision from us for is Smiths Creek,  
 24 the Smiths Creek HDD in Lebanon County.  
 25 I believe there are also several on

1 the list of HDDs in the corrected stipulated order  
 2 where the department has not rendered a determination  
 3 yet.  
 4 We've -- I don't believe that we've  
 5 rendered a decision on the LeTort Spring Run drill in  
 6 Cumberland County, which I believe is the wetland  
 7 complex and the stream itself separate from the I-81  
 8 drill.  
 9 Beyond that, those are a couple  
 10 of the specifics that I can speak to where my  
 11 recollection is they're waiting for us to provide some  
 12 sort of response and determination.  
 13 Q. And why hasn't that determination been made  
 14 yet?  
 15 A. I think for the HDDs that are currently  
 16 under review that are part of the corrected stipulated  
 17 order list, I believe we're still evaluating  
 18 additional information that Sunoco had provided  
 19 to the department's letters or the department is  
 20 evaluating the initial package of information that  
 21 was provided on the re-evaluation for a specific HDD.  
 22 Again, I'm only speaking for south  
 23 central region and what I'm charged with reviewing or  
 24 my staff is charged with reviewing.  
 25 In the case of Smiths Creek and the

1 LeTort, I don't believe that we're satisfied with the  
 2 information that Sunoco has provided yet.  
 3 Q. Thank you.  
 4 MS. URBANOWICZ: And we are at 4:26.  
 5 And I want to be respectful of your time.  
 6 THE WITNESS: Appreciate that.  
 7 MS. URBANOWICZ: We have a little bit  
 8 that will need to be wrapped up tomorrow. A lot, lot  
 9 shorter.  
 10 MR. TABER: I should hope.  
 11 \* \* \*  
 12 (Witness excused.)  
 13 \* \* \*  
 14 (Deposition concluded at 4:26 p.m.)  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1  
 2 C E R T I F I C A T E  
 3  
 4  
 5  
 6 I do hereby certify that I am a  
 7 Notary Public in good standing, that the aforesaid  
 8 testimony was taken before me, pursuant to notice, at  
 9 the time and place indicated; that said deponent was  
 10 by me duly sworn to tell the truth, the whole truth,  
 11 and nothing but the truth; that the testimony of said  
 12 deponent was correctly recorded in machine shorthand  
 13 by me and thereafter transcribed under my supervision  
 14 with computer-aided transcription; that the deposition  
 15 is a true and correct record of the testimony given by  
 16 the witness; and that I am neither of counsel nor kin  
 17 to any party in said action, nor interested in the  
 18 outcome thereof.  
 19  
 20 WITNESS my hand and official seal  
 21 this 22nd day of October, 2017.  
 22   
 23 \_\_\_\_\_  
 24 Notary Public  
 25



Thomas J. Sniscak, Esquire  
Kevin J. McKeon, Esquire  
Whitney E. Snyder, Esquire  
Hawke McKeon & Sniscak, LLP  
100 North Tenth St.  
Harrisburg, PA 17101  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)  
Attorneys for Sunoco Pipeline L.P.

High Swartz, LLP  


David J. Krooman, Esquire  
Richard C. Sakurai, Esquire  
Mark R. Fischer, Jr., Esquire  
Attorneys for Petitioner  
West Goshen Township