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May 7, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Sunoco Pipeline L.P. Docket Number C-2018-3006534;
**SUNOCO PIPELINE L.P. ERRATA TO MOTION TO STRIKE
RESPONSE OF FLYNN COMPLAINANTS IN OPPOSITION TO
JOINT PETITION OF SUNOCO AND BI&E FOR APPROVAL OF
SETTLEMENT**

Dear Secretary Chiavetta:

Enclosed please find errata to Sunoco Pipeline L.P.'s May 2, 2019 Motion to Strike, including a redline page of the errata and the corrected Motion in full.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure
cc: Per Certificate of Service

will (a) needlessly prolong this proceeding and have a chilling effect on the incentive to settle proceedings and (b) cause withdrawal from the settlement or delay time-sensitive~~agree to~~ settlement provisions that promote public safety that could not be achieved through litigation if SPLP is forced to incur additional time and costs in litigating this matter. Frankly, part of the quid pro quo for SPLP settling this matter is not to endure the significant time and delay of hearings and to promptly undertake the above and beyond the law actions (as opposed to needlessly delaying them for unwarranted and unnecessary legal process the non-party Flynn group want). If subjected to such process and delay, SPLP very well may walk from the Settlement as granting the non-party Flynn group's request or not considering the settlement directly by the Commission would constitute a modification permitting SPLP to withdraw.

That would be unfortunate and unnecessary given the terms that significantly exceed legal requirements that SPLP and I&E accomplished in the settlement. SPLP has no interest in making major concessions via settlement and then being subjected to delay and further costly litigation in the matter.

I. BACKGROUND

On December 13, 2018, the Commission's Bureau of Investigation and Enforcement (BI&E) filed a formal Complaint against SPLP. On January 31, 2019, SPLP filed an Answer and New Matter to the Complaint. During January, February and early March of 2019, the Parties engaged in extensive negotiations regarding the complex and highly technical issues raised by the Complaint and SPLP's responsive pleadings thereto. On April 3, 2019, SPLP and BI&E filed a Joint Petition for Approval of Settlement of the Complaint, prior to pleadings in this matter closing (BI&E did not file an Answer to New Matter) and prior to this matter being assigned to an Administrative Law Judge (ALJ).

Respectfully submitted,

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Dated: May 2, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement, Complainant	:	
	:	
v.	:	Docket No. C-2018-3006534
	:	
Sunoco Pipeline L.P. a/k/a Energy Transfer Partners, Respondent	:	

**SUNOCO PIPELINE L.P. MOTION TO STRIKE RESPONSE OF FLYNN
COMPLAINANTS IN OPPOSITION TO JOINT PETITION OF SUNOCO AND BI&E
FOR APPROVAL OF SETTLEMENT**

Pursuant to 52 Pa. Code § 5.103, Sunoco Pipeline L.P. (SPLP) moves to strike from the record the document Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (Flynn et al) filed on April 12, 2019, titled “Response of Flynn Complainants in Opposition to Joint Petition of Sunoco and BI&E for Approval of Settlement” (Flynn Response). The Flynn Response should be stricken because:

- A. Flynn et al lack standing to participate in this proceeding. Thus, their filing is not an allowable pleading under the Commission’s Rules of Practice and Procedure; they are not parties to this proceeding and have not petitioned to intervene. Their filing cannot be used to accomplish assignment of this proceeding to an Administrative Law Judge (ALJ),¹ which for reasons stated in the Settlement

¹ “An intervenor’s role in proceedings before this Commission is on a non-party basis, meaning that the initiating and responding parties can drive the outcome without regard to the alleged interests of would-be intervenors.” *Petition of the Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281 at 10 (Order entered May 3,2018) (citing 52 Pa. Code § 5.75(c)).

Agreement,² can and should be decided by the Commission directly after receipt of comments and reply comments under the Commission's own regulation and procedure for PUC Bureau (here I&E) actions which settle before the matter is transferred to an ALJ.

- B. Flynn et al improperly served the filing on non-parties to this proceeding in blatant disregard of the PUC's Rule of Practice and Procedure giving an incorrect impression that they are intervenors in the Morgantown I&E proceeding (which they are not) or at least causing confusion. The filing also contains a myriad of unverified misrepresentations contrary to the Commission's rules.
- C. The Flynn et al response is premature if considered to be comments to the Settlement.

The Commission should strike the Flynn Response from the record and proceed to expeditiously approve the Settlement without assignment to an ALJ. The Commission should utilize a comment period for the public to be heard, at which time Flynn et al can comment on this matter. The comment procedure I&E and SPLP Proposed in their settlement is specifically allowed under the law,³ was used as recently as March 2019 by the Commission in similar

² Consideration of the Settlement by the Commission will expedite implementation of the above and beyond regulatory requirement actions that SPLP has agreed to undertake and encourage settlements in bypassing needless and costly delay and litigation.

³ 66 Pa. C.S. § 331(b)(2) (providing exception to requirement of assignment of proceedings to an ALJ for safety matters and allowing Chairman to assign cases directly to Commissioners for decision); 52 Pa. Code § 5.232(g) (allowing for Commission decision on petitions for settlement without assignment to ALJ); *Flynn v. Sunoco Pipeline L.P.*, Docket Nos, C-2018-3006116, N.T. 624:10-20 (April 24, 2019 Prehearing Conference) (ALJ Barnes stated referencing the Settlement in this proceeding: "The Commission does have discretion to rule on the petitions to intervene and the joint petition for approval of settlement without reassigning the matter to the Office of Administrative Law Judge.").

proceedings,⁴ and indeed exceeds any procedural due process requirements for non-parties (who lack standing) and/or intervenors who have no right under Pennsylvania law to continue to press a case when a complainant has settled.⁵

What the Flynn et al non-parties ask for here is the exact opposite of what the Commission does encourage and should encourage here. Moreover, as recognized by I&E in its Statement in Support,⁶ because the Settlement contains safety and integrity features that substantially exceed what is required under prevailing law and applicable regulations and, importantly, exceeds what could be legally ordered by this Commission, expeditious approval is in the public interest. Notably the Settlement contains a Remaining Life Safety Study which was recommended by the Governor. “It is the policy of the Commission to encourage settlements,” 52 Pa. Code § 5.231(a), not to discourage them as Flynn et al seek to do. There is also a need for prompt approval for Commission ruling directly on the Settlement as many of the settlement features, *including those that offer time sensitive actions SPLP agreed to do voluntarily which are above and beyond what the Commission has the authority to order*. Assignment of this matter to an ALJ and to allow the Flynn et al non-parties to participate other than filing comments, per the Commission regulations,

⁴ *Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission v. Burgly Gas and Oil*, Docket No. C-2014-2411284.

⁵ *See Petition of the Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281 at 10 (Order entered May 3,2018) (citing 52 Pa. Code § 5.75(c)) (“Rights upon grant of petition. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. Intervenors are granted no rights which survive discontinuance of a case.”).

⁶ I&E Statement in Support at p. 5 (“I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and achieves a preferable outcome compared to one that would have been reached through litigation in that SPLP has agreed to perform actions above and beyond those required by any applicable law or regulation”).

will (a) needlessly prolong this proceeding and have a chilling effect on the incentive to settle proceedings and (b) cause withdrawal from the settlement or delay time-sensitive settlement provisions that promote public safety that could not be achieved through litigation if SPLP is forced to incur additional time and costs in litigating this matter. Frankly, part of the quid pro quo for SPLP settling this matter is not to endure the significant time and delay of hearings and to promptly undertake the above and beyond the law actions (as opposed to needlessly delaying them for unwarranted and unnecessary legal process the non-party Flynn group want). If subjected to such process and delay, SPLP very well may walk from the Settlement as granting the non-party Flynn group's request or not considering the settlement directly by the Commission would constitute a modification permitting SPLP to withdraw.

That would be unfortunate and unnecessary given the terms that significantly exceed legal requirements that SPLP and I&E accomplished in the settlement. SPLP has no interest in making major concessions via settlement and then being subjected to delay and further costly litigation in the matter.

I. BACKGROUND

On December 13, 2018, the Commission's Bureau of Investigation and Enforcement (BI&E) filed a formal Complaint against SPLP. On January 31, 2019, SPLP filed an Answer and New Matter to the Complaint. During January, February and early March of 2019, the Parties engaged in extensive negotiations regarding the complex and highly technical issues raised by the Complaint and SPLP's responsive pleadings thereto. On April 3, 2019, SPLP and BI&E filed a Joint Petition for Approval of Settlement of the Complaint, prior to pleadings in this matter closing (BI&E did not file an Answer to New Matter) and prior to this matter being assigned to an Administrative Law Judge (ALJ).

The Settlement proposes safety and integrity features that substantially exceed what is required under prevailing and applicable regulations which SPLP is willing to do to amicably resolve this matter before the commencement of formal legal proceedings. As BI&E stated in its Statement in Support: “I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and achieves a preferable outcome compared to one that would have been reached through litigation in that SPLP has agreed to perform actions above and beyond those required by any applicable law or regulation.” *Id.* at p.5. Expedient approval of the Settlement will result in prompt implementation of these measures and should not be delayed through assignment of this matter to an ALJ.

The Settlement requests Commission approval pursuant to procedures used in similar proceedings that exceed due process standards for non-parties. Specifically, SPLP and BI&E request that the Commission issue the settlement for a thirty-day comment period for the public to have the opportunity to be heard on this matter, with a corresponding reply comment period for SPLP and BI&E.

The Commission has not yet acted on the Settlement. On April 12, 2019, Megan Flynn et al. filed the Flynn Response.

II. ARGUMENT

A. **The Flynn Response is not an allowable pleading and cannot trigger assigning this matter to an ALJ**

Flynn et al lack necessary standing, are not a private attorney general, lack police powers that the I&E has been delegated, are not parties to this proceeding, and have not intervened in an attempt to become a party. Flynn et al are represented by counsel. Moreover, time has expired for intervention into this proceeding,⁷ and even if intervention were allowed, an intervenor must

⁷ 52 Pa. Code §§ 5.74 and 5.53 require a petition to intervene in a proceeding be filed within 60 days of the initiating pleading in a proceeding, absent “good cause shown.” 52 Pa. Code §

take the case as it stands and cannot inject additional issues or procedures into the proceeding.⁸ There is no Commission regulation that allows for the filing of a document objecting to a settlement by a non-party. Moreover, even if Flynn et al were granted intervenor status, they should be required to follow the comment procedures SPLP and BI&E requested in the Settlement to ensure orderly Commission consideration in this matter.

Regardless of party status, persons not Complainants or Respondents in a complaint proceeding cannot drive the outcome of a proceeding. Under Pennsylvania law an intervenor has no right to proceed to separately pursue claims made by a complainant when the complaint has been resolved:

An intervenor's role in proceedings before this Commission is on a non-party basis, meaning that the initiating and responding parties can drive the outcome without regard to the alleged interests of would-be intervenors.

Petition of the Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order, Docket No. P-2018-3000281 at 10 (Order entered May 3, 2018) (citing 52 Pa. Code § 5.75(c)) (“Rights upon grant of petition. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the

5.74(b)(3) mandates petitions to intervene be filed by the deadline in 52 Pa. Code § 5.53 where no other deadline has been set. Here, no other deadline has been set. 52 Pa. Code § 5.53 has a 60-day deadline. The Complaint in this proceeding was filed December 13, 2018, meaning petitions to intervene were due no later than February 11, 2019.

⁸ See, e.g., *See Com., et al. v. Energy Services Providers, Inc. d/b/a PaG&E, Order Granting Petition to Intervene*, Docket No. C-2014-2427656, 2015 WL 1957859 (Order entered Apr. 23, 2015) (Cheskis, J.) (“In granting intervention, however, Mr. Sobiech will be required to take the case as it currently stands. PaG&E is correct that intervenors generally take the record as they find it at the time of intervention.”); *Flynn et al v. Sunoco Pipeline L.P.*, Docket Nos. C-2018-3006116 et al *Second Interim Order* at 18 (Barnes J.) (Mar. 12, 2019) (“intervenors generally take the record as they find it at the time of intervention.”).

Commission in the proceeding. Intervenors are granted no rights which survive discontinuance of a case.”). Indeed, an intervenor possesses no right to appeal⁹ and its participation is contingent upon a complainant proceeding to litigation. *Id.*

Given a non-party or intervenor must take the proceeding as it stands,¹⁰ the Flynn Responses request that consideration of this matter be assigned to an ALJ must be rejected. The Settlement proposes safety and integrity features that are above and beyond what is required under prevailing and applicable regulations which SPLP is willing to do to amicably resolve this matter before the commencement of formal legal proceedings. Indeed, the Commission should directly consider the Joint Petition here because:

- It is expressly allowed under the Public Utility Code and the Commission’s regulations. 66 Pa. C.S. § 331(b)(2) (providing exception to requirement of assignment of proceedings to an ALJ for safety matters and allowing Chairman to assign cases directly to Commissioners for decision); 52 Pa. Code § 5.232(g) (allowing for Commission

⁹ To have the right to appeal, a party must have actual standing and in fact be aggrieved by the order in question. *Bensalem Racing Ass’n, Inc. v. Pennsylvania State Harness Racing Comm’n*, 19 A.3d 549, 556 (Pa. Cmwlth. 2011) (General Rules of Administrative Practice and Procedure (GRAPP) provide that a person seeking intervention in agency proceeding must have interest which may be directly affected, and it does not require demonstration of a direct, immediate, and substantial interest, which is the traditional test for standing). *See also* 2 Pa. C.S. § 702 (“Any person *aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication* shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).” (emphasis added)).

¹⁰ *See, e.g., See Com., et al. v. Energy Services Providers, Inc. d/b/a PaG&E, Order Granting Petition to Intervene*, Docket No. C-2014-2427656, 2015 WL 1957859 (Order entered Apr. 23, 2015) (Cheskis, J.) (“In granting intervention, however, Mr. Sobiech will be required to take the case as it currently stands. PaG&E is correct that intervenors generally take the record as they find it at the time of intervention.”); *Flynn et al v. Sunoco Pipeline L.P.*, Docket Nos. C-2018-3006116 et al *Second Interim Order* at 18 (Barnes J.) (Mar. 12, 2019) (“intervenors generally take the record as they find it at the time of intervention.”).

decision on petitions for settlement without assignment to ALJ); *Flynn v. Sunoco Pipeline L.P.*, Docket Nos, C-2018-3006116, N.T. 624:10-20 (April 24, 2019 Prehearing Conference) (ALJ Barnes stated referencing the Settlement in this proceeding: “The Commission does have discretion to rule on the petitions to intervene and the joint petition for approval of settlement without reassigning the matter to the Office of Administrative Law Judge.”).

- It is the process used for similar proceedings and there is no legally sufficient reason to treat this proceeding differently. *Bureau of Investigation and Enforcement of The Pennsylvania Public Utility Commission v. Burgly Gas and Oil*, Docket No. C-2014-2411284 (BI&E Complaint proceeding against natural gas utility involving safety concerns and resulting in settlement that Commission issued for comment procedures).;
- It will promote the public interest by allowing for timelier implementation of Settlement provisions that go above and beyond regulatory requirements, making major concessions, including the Remaining Life Study that the Governor requested and that both parties agree are in the public interest and should not be delayed.;
- The process is part of the quid pro quo for SPLP settling this matter so as not to endure the significant time and delay of hearings and to promptly undertake the above and beyond the law actions (as opposed to needlessly delaying them for unwarranted and unnecessary legal process the non-party Flynn et al group seeks). If subjected to litigation and delay, SPLP very well may walk from the Settlement as granting the non-party Flynn group’s request or not considering the settlement directly by the Commission would constitute a modification permitting SPLP to withdraw.
- The public and non-parties will be given the opportunity to be heard through comments which is more than due process requires as non-parties have no standing to

participate in a proceeding between a complainant and a respondent under longstanding Pennsylvania law.

B. The Flynn Response was improperly served and is inaccurate and misleading

The Commission should also strike the Flynn Response because it was improperly served and makes numerous inaccurate and misleading statements. The Flynn Response was served on a list of persons that appears to be a service list from the formal Complaint proceeding that Flynn et al initiated at Docket No. C-2018-3006116. This service is misleading, implying that those persons are parties to this proceeding. They are not, and only three of those parties have petitioned to intervene in this proceeding. This misleading service is highlighted when considering the inaccurate misrepresentations contained in the Flynn Response.

The Flynn Response consistently names Flynn et al as the Flynn Complainants. They are not Complainants in this proceeding. The Flynn Response also states this proceeding has already been assigned to ALJ Barnes. Flynn Response at p. 1 and ¶ 26. It has not, Flynn et al knew this based on the publicly available docket sheet and were specifically told this on April 24, 2019 by ALJ Barnes, yet have not bothered to correct this misrepresentation. At the April 24, 2019 prehearing conference in the Flynn Complaint matter, ALJ Barnes stated: “Some of you think that I am also assigned the Bureau of Investigation and Enforcement v. Sunoco Pipeline complaint at Docket No. C-2018-3006534. I am not.” *Flynn v. Sunoco Pipeline L.P.*, Docket Nos, C-2018-3006116, N.T. 624:10-12 (April 24, 2019 Prehearing Conference).

The Flynn Response also makes the absurd allegation that bypassing assignment to an ALJ will not expedite a ruling even while citing the regulation that proves such assignment would require additional procedures (at the very least a recommended or initial decision with an exception and reply exception period prior to Commission consideration of this matter). *Id.* at ¶ 26 (citing 52 Pa. Code § 5.232(d)); *see also* § 5.232(f) (providing for exceptions) and § 5.533 (providing for

exceptions to initial or recommended decisions). These additional procedures would result in delay of approval and implementation of the Settlement and Flynn et al’s assertion that they would not lacks candor.

SPLP reserves its right to respond in full to the assertions in the Flynn Response if it is not stricken from the record. However, it is imperative that the Commission know now the extent of some of these misrepresentations, which are discussed in the table below:

Cite	Misrepresentation	Response
¶¶ 43-47	The independent expert BI&E will choose from three independent experts SPLP proposes for the remaining life study will not be independent because SPLP has proposed the independent expert.	This argument completely ignores that the Settlement requires the three independent experts SPLP proposes must be qualified and have previously conducted independent studies for governmental agencies. Settlement at p. 5.
¶¶ 48-52	The remaining life study is not additional relief because Governor Wolf, “who of course directs the Commonwealth’s administrative agencies” already directed in a press release that the Commission should require SPLP to conduct such study.	Governor Wolf does not direct the Commission’s decisions. The PUC is an independent agency under the legislative branch, not an executive agency. ¹¹ Moreover, the suggestion that a statement in a press release could override all due process considerations of notice and hearing to find a violation of law, which is the only circumstance the Commission could attempt to order such relief, is completely contrary to Federal and Pennsylvania Constitutional due process requirements. See <u>West Penn Power Co. v. Pa. Pub. Util. Comm’n</u> , 478 A.2d 947, 949 (Pa.Cmwlt. 1984) (“We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in

¹¹ Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §61(a) (identifying the Pennsylvania Public Utility Commission as an “independent administrative... commission”); *Com. ex rel. Woodruff v. Stewart*, 134 A. 392, 393 (Pa. 1926), citing *Com. of Pa. ex rel. Woodruff v. Benn*, 131 A. 253, 258 (Pa. 1925) (cases demonstrate that “Public Service Commissioners must be viewed as deputies of the General Assembly to perform legislative work; and since, in the words of our Superior Court, the commissioners are the ‘representative of the Legislature and not of the executive.’”); Office of the Attorney General, *Public Utility Commissioners’ Salaries*, 73 Pa. D. & C. 447, 456 (1950) (collecting cases that “establish clearly that the Public Utility Commission is a legislative agency and its members are deputies or agents of the legislature.”).

		<u>violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.”).</u>
¶ 63	The Settlement only requires ILI runs for two small portions of the ME1 pipeline and “[n]othing in the Joint Petition suggests that the remainder of the ME1 pipeline is going to be examined or replaced if necessary as part of the ILI process.”	The Settlement clearly requires after the ILI runs of two identified portions of ME1 that SPLP conduct two additional ILI runs of the entire ME1 pipeline at 18-month intervals. Settlement at p. 7, C.a. (“Thus, the Parties agree that SPLP will conduct the two remaining ILI runs in April 2019 or within 60 days of ME1 resuming service, then conduct ILI run #1 of ME1 eighteen (18) months after the date SPLP enters into an agreement with I&E, and then conduct ILI run #2 of ME1 eighteen (18) months after the completion of ILI run #1.”) (emphasis added).
¶¶ 86-89	SPLP has a demonstrated history of violating settlement agreements, supported by the allegation that SPLP “deliberately and deceitfully violated a previous settlement agreement with West Goshen Township” referencing the Commission’s findings of compelling legal issues in its Order on a request for preliminary injunction at Docket No. C-2017-2589346.	The Order on preliminary injunction referenced only found a substantial legal issue as to whether SPLP violated that agreement. In fact, ALJ Barnes and the Commission found that SPLP DID NOT VIOLATE THE AGREEMENT. <i>West Goshen Township v. Sunoco Pipeline L.P.</i> , Docket No. C-2017-2589346 (Order entered Oct 1, 2018) at 15 (ALJ finding that SPLP did not breach duty of good faith and fair dealing), 16 (ALJ finding that SPLP satisfied notice provisions of agreement), 18 (“ The ALJ found that Sunoco did not breach the Agreement ”), 22 (adopting ALJ Barnes’ Recommended Decision in full).
¶¶ 90-91	SPLP deliberately and deceitfully violated agreement and judicial order through side agreement made in contravention of settlement and judicial order. As Judge Brobson remarked in argument “I’m struggling to understand how you can be in litigation in front of EHB dealing with HDD plan and having separate side agreements to modify it. I don’t understand. Maybe it’s something unique to EHB Mr. Byer; but I’ve been	Sunoco did not “deliberately” or “deceitfully” violate a settlement and judicial order as the Complainants assert in paragraphs 90 and 91. Moreover, the quote from Judge Brobson in paragraph 91 is presented without the proper background and has been taken out of context. The referenced settlement agreement and order relate to an appeal to the Pennsylvania Environmental Hearing Board by the Clean Air Council and others (the “appellants”) of the PADEP permits issued for the Mariner East 2/X project. While that appeal was pending before the Board, Sunoco, the appellants, and

	<p>around long enough to know that you try not to do that kind of stuff.”</p>	<p>PADEP agreed, among other things, to revise the HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan (“HDD IR Plan”) for the project. The revised HDD IR Plan was referenced in a Corrected Stipulated Order entered by the Board in August 2017. In December 2017, PADEP presented Sunoco with a revised version of the HDD IR Plan, which without Sunoco’s knowledge or agreement, had been unilaterally modified by PADEP at the request of the appellants. The December 2017 revised version of the HDD IR Plan became a component of a January 2018 Administrative Order issued by PADEP. When Sunoco and PADEP later resolved the January 2018 Administrative Order by entering into a Consent Order and Agreement in February 2018, a further revised version of the HDD IR Plan was adopted and agreed to by PADEP and Sunoco, and made a component of the Consent Order and Agreement. The appellants challenged the February 2018 version of the HDD IR Plan by filing parallel actions with the Board and the Commonwealth Court. The referenced quote from Judge Brobson is from the hearing on the preliminary injunction, through which the appellants sought to have the Commonwealth Court require the parties to adopt the December 2017 version of the HDD IR Plan, which had been modified without Sunoco’s consent. The matter was ultimately resolved when PADEP, Sunoco, and the appellants agreed to a final revised version of the HDD IR Plan, which was adopted and entered by an order of the Board in April 2018. See Attachment A hereto.</p>
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C. The Flynn Response is premature

Flynn et al will have the opportunity to be heard on this matter during the comment period when the Commission orders comments. The Flynn Response should be stricken now to allow for an orderly comment procedure with known deadlines for filings. Given the Commission has not yet ordered procedures and deadlines for comments and reply comments, the Flynn Response should be stricken as premature and can be filed during the appropriate comment period so that

SPLP, BI&E, and the Commission will know what the document is (allowable comments instead of a disallowed pleading) and the deadline for filing reply comments to the substance of the document. In the alternative, if the Flynn Response is not stricken now, SPLP requests that the Commission order that the Flynn Response will be considered as comments to the Settlement and that SPLP and BI&E can file reply comments to the Flynn Response when all reply comments are due.

III. CONCLUSION

WHEREFORE, SPLP respectfully requests the Commission strike the Flynn Response, or in the alternative, order that the Flynn Response will be considered as comments to the Settlement and that reply comments to the Flynn Response will be due at the same time all reply comments are due.

Respectfully submitted,



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Dated: May 7, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

ATTACHMENT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Clean Air Council, the Delaware
Riverkeeper Network, and Mountain
Watershed Association, Inc.

Petitioners,

v.

No. 101 MD 2018

Commonwealth of Pennsylvania,
Department of Environmental
Protection

and

Sunoco Pipeline L.P.,

Respondents.

JOINT STIPULATION OF FACTS

Pursuant to the Court's Order of March 5, 2018, the parties to the above-captioned matter, by and through their undersigned counsel, hereby submit this Joint Stipulation of Facts, and stipulate as follows:

1. On February 13, 2017, the Department of Environmental Protection ("DEP") issued three erosion and sediment control permits under 25 Pa. Code § 102.1 *et seq.*, and seventeen water obstruction and encroachment permits under 25 Pa. Code 105.1 *et seq.*, to Sunoco Pipeline L.P. ("Sunoco") for the Mariner East 2 pipeline project.

2. On the same day, Petitioners appealed the Department's issuance of the permits to the Environmental Hearing Board (the "Board"), which is a pending case, EHB Docket No. 2017-009-L.

3. On July 19, 2017, Petitioners filed a Petition for Temporary Partial Supersedeas and a Petition for Partial Supersedeas that sought to suspend all Horizontal Directional Drilling ("HDD") construction operations on the Mariner East 2 pipeline project.

4. On July 25, 2017, the Board granted Petitioners' application for temporary partial supersedeas.

5. Exhibit C to Plaintiffs' Motion for Preliminary Injunction is a true and correct copy of the temporary partial supersedeas order.

6. On August 3, 2017, the Board ordered the parties to participate in an in-person settlement conference with the Board.

7. On August 7, 2017, the parties met to further discuss settlement of Petitioners' Petition for Partial Supersedeas.

8. On August 8, 2017, the parties signed a document the first paragraph of which reads as follows: "AND NOW this 8th 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, as follows:”. On August 8, 2017, the parties filed a proposed stipulated order with the Board for review and approval.

9. Exhibit A to Plaintiffs’ Motion for Preliminary Injunction is a true and correct copy of the August 8 signed document titled “Stipulated Order” that was filed with the Board on August 8, 2017.

10. On August 8, 2017, the proposed stipulated order was entered by the Board in the form presented, except that the Board removed a sentence which read: “The Board hereby retains jurisdiction over enforcement of this Stipulated Order.”

11. On August 10, 2017, the parties filed a Corrected Stipulated Order with the Board that included the Board’s revision and also corrected certain typographical errors in the prior version of the order.

12. Exhibit B to Plaintiffs’ Motion for Preliminary Injunction is a true and correct copy of the Corrected Stipulated Order.

13. As part of the resolution of Petitioners’ Petition for Partial Supersedeas, the parties agreed to revise certain plans that are incorporated as components of the

permits issued for the Mariner East 2 pipeline project, including, the HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan (“HDD Plan”), which was revised and dated August 8, 2017.

14. Exhibit D to Plaintiffs’ Motion for Preliminary Injunction is a true and correct copy of the HDD Plan as revised August 8, 2017.

15. On January 3, 2018, DEP issued an Administrative Order captioned “In the matter of: Sunoco Pipeline, L.P.,” that suspended the permits issued for the Mariner East 2 pipeline project.

16. Exhibit L to the Complaint is a true and correct copy of the Administrative Order, which included three exhibits, including a revised version of the HDD Plan dated December 15, 2017.

17. On Friday, February 2, 2018, SPLP appealed the Administrative Order by filing a Notice of Appeal to the Board, EHB Docket No. 2018-012-L, which included, *inter alia*, objections relating to the December 15, 2017 revised version of the HDD Plan.

18. Petitioners did not appeal the Administrative Order.

19. On February 8, 2018, Sunoco and DEP entered into a Consent Order and Agreement (“COA”), and Sunoco’s appeal of the Administrative Order was marked as settled.

20. Exhibit E to the Preliminary Injunction Motion is a true and correct copy of the COA.

21. On February 28, 2018, Petitioners appealed the COA to the Board, EHB Docket No. 2018-023-L, which is pending.

22. The COA included, among other things, a revised HDD Plan dated February 6, 2018, which was attached as Exhibit “6” to the COA, a true and correct copy of which is included in Exhibit E to the Preliminary Injunction Motion.

23. Exhibit Q of the Complaint is an accurate computer-generated comparison of the HDD Plan as revised February 6, 2018 and the HDD Plan as revised December 15, 2017.

24. Exhibit R of the Complaint is an accurate computer-generated comparison of the HDD Plan as revised February 6, 2018 and the HDD Plan as revised August 8, 2017.

25. HDD construction for the Mariner East 2 pipeline project is still either planned or currently in progress at over 100 locations.

26. Exhibit K to the Preliminary Injunction Motion is a true and correct copy of Sunoco’s table titled “Pending Earth Disturbance & Water Obstruction & Encroachment Related Activities,” which Sunoco provided to the Department as a component of Sunoco’s response to the Administrative Order.

27. The COA also contains an Operations Plan, a true and correct copy of which was attached as Exhibit 2 to the Department's Answer to Petitioners' Motion for Preliminary Injunction.

28. The attachment hereto is a true and correct copy of the Mariner East 2 inadvertent return table as revised March 16, 2018, which was generated by DEP and posted publicly to DEP's website page related to Mariner East 2 at: <http://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/Mariner-East-II.aspx>.

Respectfully submitted,

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Dated: March 16, 2018

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on March 16, 2018, the foregoing Joint Stipulation of Facts was served upon all counsel of record through electronic service through PACFile.



Kathryn L. Urbanowicz, Esq

Sunoco Mariner East II - Pipeline Construction Inadvertent Returns - Waters of the Commonwealth

Date	County	Location	Description	Status
<i>Southwest Region</i>				
5/4/2017	Westmoreland	40.441, -79363	150 Gallons; UNT Boatyard Run (CWF) and W-P14; turbid Water ~600 feet in channel	NOV issued 7/28/2017
5/12/2017	Westmoreland	40.44213, -79.34305	300 gallons, 90'x50' area - Wetland W-045	NOV issued 7/28/2017
5/13/2017	Indiana	40 27'10.16"; -79 13'30.34"	130 gallons bentonite clay; 20 gallons to UNT Blacklick Creek, no deposition; 200'x5'in W J53 and 2'x300' plume in S-J58	NOV issued 7/28/2017
5/16/2017	Westmoreland	40 26' 17.48", -79 26' 16.11"	30 gallons 2' x 40' area none to lake	IR stopped
5/23/2017	Westmoreland	40 26' 17.48", -79 26' 16.11"	60 gallons: 30 gal, 20, gal, 10 gal to 3 upland areas (2' x 45', 2' x 30', 2'x 40'	IR stopped
5/23/2017	Westmoreland	40.289, -79.668	20,000 gallons drilling mud, 1,000 to stream and rest in upland or ephemeral channel; Ephemeral Stream (TSF), L Sewickley Creek S-229, 250' x 2' unknown depth	NOV issued 7/28/2017
5/23/2017	Westmoreland	40.289, -79.668	Part of 20,000 gallons above to a 60' x40' farm field, 4-10" deep	NOV issued 7/28/2017

Date	County	Location	Description	Status
5/23/2017	Westmoreland	40.289, -79.668	Part of 20,000 gallons above to a 100' x 20' farm field, 0.5 -3" deep	NOV issued 7/28/2017
5/24/2017	Westmoreland	40.44213, -79.34305	525 gallons; 300 Gallons to wetland W-045 75'x100', 225 gallons to Spruce Run S-061 600'x10'	NOV issued 7/28/2017
5/25/2017	Westmoreland	40.439, -79.437	25 gallons, 1 pint to Loyahanna Lake; Upland 7' x 50', lake 3' diameter circle	COA Executed December 15, 2017
5/26/2017	Allegheny	40.223140, -79.893688	50 gallons in a 15' x 30' upland area	IR stopped
5/26/2017	Westmoreland	40 26' 21.13", -79 26' 3.92"	50 Gallons drilling mud to lake, 5 gallons to upland; Loyalhanna Lake S-P27 2 locations ~8'x600', 1 upland 2'x25'	COA Executed December 15, 2017
5/28/2017	Westmoreland	40 26' 2.44", -79 26' 11.72"	50 gallons to upland area (25' x 50'), 20 gallons to Loyalhanna Lake (5' x25')	COA Executed December 15, 2017
5/31/2017	Westmoreland	40 26' 19.19", -79 26' 14.20"	8 Gallons to the Lake; Loyalhanna Lake-no flow path seen leading into the lake or a release point in the water, 20' x 12' area	COA Executed December 15, 2017

Date	County	Location	Description	Status
5/31/2017	Allegheny	40.223, -79.893	2000 gallons total, 1500 gallons into the creek and 500 gallons contained in upland; 2 stream (UNT Sunfish Run-WWF) within S-150 upstream of joining S-149; S-149 under travel lane bridge; 1 upland (east of S-150) 50'x20' area; deposits in stream isolated to areas where material was released, turbid water 0.3 miles south to Sunnyside Hollow Road	NOV issued 7/28/2017
6/1/2017	Westmoreland	40.26' 17.48", -79 26'16.11"	10 gal upland, 4 gallon near lake, <1 gallon into lake; upland and lake (multiple locations on the hillside)	COA Executed December 15, 2017
6/2/2017	Washington	40.231, -79.998	200 gallons to upland areas. 1500 gallons of diluted mixture of water and drilling fluid to stream. Turbid water for ~.25 miles.; 3 upland locations. The material from the third location flowed directly into a culvert and into an UNT of Froman Run.	NOV issued 7/28/2017
6/6/2017	Westmoreland		Pump ran out of fuel that was maintaining an IR, 25 gallons to creek; Small amount made it to the storm drain (<1 pint)	COA Executed December 15, 2017

Date	County	Location	Description	Status
6/6/2017	Washington	40.2352778, -80.103333	At start of HDD, noticed streambed material beginning to push up through two spring seeps, about 10' apart and at the toe of the bank of the stream at the NW edge. ~ 5 gallons in stream-no bentonite; S129 UNT Little Chartiers Creek (HQ-WWF), 100 sq. ft.	NOV issued 7/28/2017
6/6/2017	Westmoreland	40.441, -79.363	Unknown quantity bentonite mixture, drilling over, cleanup started, unsure if fish were impacted-about 350 gallons to stream; UNT Boatyard Run (CWF) S-P20 (350 gal); turbid water and mud deposits for ~800' within the channel	NOV issued 7/28/2017
6/8/2017	Washington	40.23055, -79.99622	20 gallons diluted drill water (minor amount made it to creek); Stream S27 (Froman Run)	NOV issued 7/28/2017
6/10/2017	Washington		40 gallons to upland	IR stopped
6/11/2017	Washington	40.23052, -79.99665	100 gallons to 125 sq ft upland area	NOV issued 7/28/2017
6/11/2017	Washington	40.23055, -79.99622	30 gallons of diluted drill mud and water; Stream S27 (Froman Run) about 400' for 3'-5' wide	NOV issued 7/28/2017
6/12/2017	Washington	40.2298, -79.97295	1000-1500 gallons in upland area ~858 sq ft	Investigation Ongoing.
6/23/2017	Washington		Bentonite into stream	NOV issued 7/28/2017

Date	County	Location	Description	Status
6/24/2017	Washington	40.235123, -80.102816	1000 gallons bentonite; 2 UNTs Little Chartiers Creek. Streams 280 and 129; 280 is about 10 feet from original IR and 129 IR came up in containment area; ~225' stream 280 impacted pump around and cleanup	NOV issued 7/28/2017
6/29/2017	Westmoreland	40.441, -79.363	410 Gallons Bentonite clay and Water; 60 gallons to upland and 350 to waterbody; UNT Boatyard Run for about 1200' 2 locations in the stream	NOV issued 7/28/2017
7/16/2017	Westmoreland	40°26' 16.22", -79° 26' 11.35"	320 gallons; 20 to Loyalhanna Lake (12' x 30'), 300 to upland	COA Executed December 15, 2017
7/17/2017	Westmoreland	40°26' 16.22", -79°26' 11.35"	800 gallons, 80 into Loyalhanna Lake (12' x 60'), 720 in upland	COA Executed December 15, 2017
7/18/2017	Washington		5000-60000 gallons to upland area 250' west of Monongahela River	IR Stopped
9/5/2017	Westmoreland	40.4172, -79.607	to an UNT to Turtle Creek and Turtle Creek	NOV issued 9/26/2017
9/22/2017	Westmoreland	40°26'42.5", -79°18'03.9"	2700 gallons to Wetland W-N28, 30'x50' area	NOV issued 1/25/2018
9/27/2017	Indiana	40°27'03.3", -79°12'38.9"	Weirs Run, and at least 1000' of Blacklick Creek	NOV issued 1/25/2018
10/3/2017	Cambria	40.414, -78.567	less than 50 gallons drilling fluid to Wetland M-59	NOV issued 1/25/2018
10/10/2017	Cambria	40.414, -78.567	about 250 gallons into existing containment area	NOV issued 1/25/2018

Date	County	Location	Description	Status
10/11/2017	Cambria	40.414, -78.567	less than 50 gallons drilling fluid to Wetland M-59	NOV issued 1/25/2018
12/13/2017	Cambria	40.437155, -78.763529	2 Gallons into UNT Stewart Run	NOV issued 1/25/2018
<i>Southcentral Region</i>				
5/6/2017	Cumberland	40.228757, -77.132769	160,000 gallons.; wetland WL-130 (EV)	IR stopped. COA 6/27/17.
5/10/2017	Lancaster	40.280, -76.195	wetland J54 and stream J59	IR stopped. Remediation reported as complete.
5/13/2017	Lancaster	40.280833, -76.210278	25 to 30 gallons; west side of wetlands K-32	IR stopped.
5/19/2017	Cumberland	40.228703, -77.141032	50 gallons; wetland 32 (ER Call); wetland 132 (initial report); wetland W-121 (interim report 1); wetland W-132 (interim report 2)	IR stopped. COA 6/27/17.
5/26/2017	Lancaster	40.280, -76.195	30 to 50 gallons; stream J59	IR stopped. Remediation reported as complete.
5/31/2017	Berks	40.277, -76.020	500 gallons; Pond-B7 (retention pond)	IR stopped.
6/3/2017	Cumberland	40.228603, -77.140614	~150 gallons (initial) 450 gallons (total); WL-132 (initial report)	IR stopped. COA 6/27/17.
6/9/2017	Lancaster	40.281, -76.209	~20 gallons on 6/9. ; wetland W-K32	IR stopped.
6/12/2017	Lancaster	40.280787, -76.210161	~25 gallons initial on 6/12--a total of 5500 recovered in total.; Wetland W-K32	IR stopped.
6/20/2017	Berks	40 16' 38" - 76 1'12"	~20 gallons in culvert, 10-20 gallons in pond B7	IR stopped.

Date	County	Location	Description	Status
6/23/2017	Lebanon	40 17' 7", -76 14' 17"	~300 gallons; Wetland H-13	IR stopped.
6/26/2017	Blair	40.34, -78.269	2,000 gallons; stream S-M33 (HQ-CWF)	IR stopped.
6/28/2017	Blair	40.409, -78.442	~100 gallons; Wetland M-79 (PFO)	IR stopped. NOV issued 10/26-2017
7/1/2017	Blair	2800 ft east of Mill Road Duncansville, Blair TWP. 40.409, -78.442	50 gal and then 250 gal ; PFO and possible WT trib	IR stopped.
7/6/2017	Huntingdon	40.342, -77.852	~300 gallons; Stream L28	IR stopped
7/11/2017	Cumberland	1-81 drill. 40.134352, -77.75766	none stated	IR stopped. COA 6/27/17.
7/13/2017	Cumberland	Newville	none stated; discharge of hydrotest water through an approved outlet, but at the 'wrong location'.	Additional information provided by SPLP indicates that discharge of hydrotest water occurred through a BMP in an upland area and that the quality of the water was in compliance with the requirements of the PAG-10.
7/19/2017	Lancaster	~1000 FT W of S Peartown Rd. 40.28250, -76.15806	250 gallons; Wetland A-56	IR stopped.

Date	County	Location	Description	Status
8/17/2017	Dauphin	Susquehanna River Drill. 40° 11' 57" N, 76° 47' 48" W	495 gallons; Susquehanna River	IR was not active at the time of discovery. It is suspected to have occurred on 7/19/2017--when approximately 1,000 gallons of mud was reportedly lost during drilling operations. Low visibility in the river reportedly prevented previous detection of IR.
8/24/2017	Dauphin	Susquehanna River Drill. 40° 11' 57" N, 76° 47' 48" W	50 gallons; Susquehanna River	IR stopped. NOV issued 8/30/2017. Clean-up completed. DEP approved HDD restart on 9/12/2017.
8/31/2017	Blair	40° 24' 33" N; 78° 26' 36" W	50-75 gallons into Wetland W-M79	IR stopped. Containment/clean-up in progress. NOV issued 10/26/2017.
8/31/2017	Lebanon	40.29063°, - 76.428132°	50 gallons to Snitz Creek	Containment/clean-up completed. DEP approved HDD restart on 9/14/2017. NOV issued 10/27/2017.
9/5/2017	Blair	roadshoulder in the vicinity of 2156 Reservoir Road, Hollidaysburg	20-30 gallons to wetland BB58	IR stopped. Containment/clean-up in progress. NOV issued 10/26/2017.

Date	County	Location	Description	Status
9/8/2017	Dauphin	40° 15' 5" N, 76° 40' 6" W	250-300 gallons, impacting wetland C26	IR stopped. Containment/clean-up in progress. NOV issued 10/26/2017.
9/15/2017	Dauphin	Susquehanna River Drill. 40° 14' 55.7" N; 76° 47' 48" W	350 gallons to the Susquehanna River	IR stopped. Containment/clean-up in progress. NOV issued 9/18/2017.
9/20/2017	Lebanon	40.29063°, -76.428132°	~1 gallon to Snitz Creek	IR stopped. Containment/clean-up in progress. NOV issued 10/27/2017.
9/27/2017	Cumberland	40° 14' 41" N, 77° 19' 39" W	500 gallons to wetland J35	IR stopped. Containment/clean-up in progress. NOV issued 10/26/2017.
9/28/2017	Cumberland	I-81 drill. 40.134352, -77.75766	~2.5 gallons to wetland I30	COA 6/27/17
10/10/2017	Huntingdon	40.321145, -77.789497	5,000-10,000 to wetland K69	IR stopped. Containment/clean-up in progress. NOV issued 10/26/2017.
11/10/2017	Dauphin	40.205643, -76.769297	~300 gallons to wetland W118	IR Stopped. Containment/clean-up in progress. NOV issued 11/14/2017.

Date	County	Location	Description	Status
11/11/2017	Berks	40.1886, -75.891	unquantified release to UNT to Hay Creek (S-Q90)	IR Stopped. Containment/clean-up in progress. NOV issued 11/15/2017.
11/20/2017	Blair	40.441, -78.331	~10 gallon release to an UNT to Frankstown Branch Juniata River (S-BB92) and associated wetland (Wetland Q60)	IR Stopped. Containment/clean-up in progress. NOV issued 11/22/2017.
12/5/2017	Dauphin	40° 15' 5" N, 76° 40' 6" W	~200 gallon release into wetland C26 during the punch out of the pilot hole.	IR stopped. Containment/clean-up in progress.
12/20/2017	Lebanon	40.254, -76.592	~50 gallon release in an upland, which ran downslope into wetland A30.	IR stopped. Containment/clean-up in progress. NOV issued 12/22/2017
12/20/2017	Huntingdon	40.369, -78.066	25-30 gallons to an upland area, which ran downslope into Raystown Lake.	IR stopped. Containment/clean-up in progress. NOV issued 12/22/2017
12/29/2017	Lebanon	40.254, -76.592	within pre-existing containment (see 12/20/17 event at same location) and 3 gallon release to wetland A30 outside of existing containment.	IR stopped. Containment/clean-up in progress.
2/27/2018	Cumberland	40.2447, -77.3306	~100 gallon release to stream S-J41 (UNT to Locust Creek--WWF) and wetland J35	IR stopped. Containment/clean-up in progress.

Date	County	Location	Description	Status
<i>Southeast Region</i>				
5/3/2017	Delaware	Brookhaven Borough, Delaware County – at edge of Chester Creek Rd. and onto sidewalk – IR went into storm drain and then Chester Creek	500 gallons of drilling fluid to Chester Creek; lost return of 20,000 gallons of drill fluid. IR identified 5.09 PM.	NOV issued 5/9/17.
5/4/2017	Delaware	Brookhaven Borough, Delaware County – upland lawn area of vacant lot	50 gallons release of drilling fluids into uplands; no fluids reached Chester Creek. IR identified 3.10 PM.	IR stopped.
5/10/2017	Delaware	Brookhaven Borough, Delaware County – within Chester Creek	75 gallons release of drilling fluids emerging in 3 locations in Creek (25 gallons in each location). IR identified at 12.15 PM.	IR stopped.
5/17/2017	Delaware	Brookhaven Borough, Delaware County – within Chester Creek	5 gallons total release of drilling fluids in 2 locations in Chester Creek. IR identified at 1.45 PM.	IR stopped.
5/18/2017	Delaware	Brookhaven Borough, Delaware County – within Chester Creek	25 gallons release of drilling fluids in 1 location in Chester Creek. IR identified at 12.40 PM.	IR stopped.
5/19/2017	Delaware	Brookhaven Borough, Delaware County – within Chester Creek	200 gallons total release of drilling fluids in 2 locations in Chester Creek. IR identified at 12.20 PM.	IR stopped.

Date	County	Location	Description	Status
5/27/2017	Delaware	Brookhaven Borough, Delaware County – within Chester Creek	25 gallons release of drilling fluids in 1 location in Chester Creek	IR stopped.
6/7/2017	Chester	East Goshen Township, Chester County UPLANDS ONLY	100 gallons of drilling solution in two locations. One emergence was outside of the LOD. The second was within no disturbance LOD.	IR stopped.
6/17/2017	Chester	Upper Uwchlan Township, Chester County, Hickory Park	5 gallons of drilling solution into tributary to Marsh Creek	IR stopped.
6/24/2017	Chester	Upper Uwchlan Township, Chester County	100 gallons of drilling solution into wetland and stream.	IR stopped.
7/17/2017	Delaware	Middletown Township, Delaware County	1500 gallons of drilling solution into UNT to Chester Creek	NOV issued 7/20/17.
8/29/2017	Chester	Upper Uwchlan	50 gallons of drilling solution into wetland and stream.	IR Stopped /Under investigation. NOV issued on 9/8/17.
9/2/2017	Delaware	Middletown Township, Delaware County	50 gallons of drilling solution into UNT of Chester Creek	IR Stopped/Under Investigation. NOV issued on 9/12/17.
9/8/2017	Chester	East Goshen Township, Chester County UPLANDS ONLY	40 gallons of drilling solution to upland area.	IR Stopped. Solution cleaned up
9/9/2017	Chester	Upper Uwchlan	.5 gallon of drilling solution to Marsh Creek	IR Stopped. Solution lost downstream.

Date	County	Location	Description	Status
10/5/2017	Chester	W. Whiteland Township, UPLANDS ONLY	50-75 gals to upland area	IR Stopped. Solution Cleaned up
10/5/2017	Chester	East Goshen Township, Chester County UPLANDS ONLY	500 gallons to uplands area	IR Stopped. Solution cleaned up
10/6/2017	Delaware	Middletown Township UPLANDS ONLY	50 gallons of drilling solution to upland areas	IR Stopped. Solution Cleaned up
10/7/2017	Chester	East Goshen Township, Chester County UPLANDS ONLY	600 gallons to upland area	IR Stopped. Solution Cleaned Up
10/10/2017	Chester	East Goshen Township, Chester County UPLANDS ONLY	50 gallons of drilling solution to upland areas	IR Stopped. Solution Cleaned Up
10/10/2017	Chester	East Goshen Township, Chester County UPLANDS ONLY	20 gallons of drilling solution to upland areas	IR Stopped. Solution Cleaned Up
10/13/2017	Delaware	Edgmont Township, UPLANDS ONLY	50 gallons of drilling solution to upland areas	IR Stopped. Solution Cleaned up
10/18/2017	Delaware	Edgmont Township, UPLANDS ONLY	1 gallons of drilling solution to upland areas	IR Stopped. Solution Cleaned up
10/20/2017	Delaware	Middletown Township UPLANDS ONLY	30 gallons of drilling solution to upland areas	IR Stopped. Solution Cleaned up DEP Inspected
10/24/2017	Delaware	Edgmont Township, UPLANDS ONLY	1 gallons of drilling solution to upland areas	IR Stopped. Solution Cleaned up

Date	County	Location	Description	Status
10/25/2017	Chester	East Goshen Township, Chester County	500 gallons in total, 490 gal to uplands, ~ < 10 gal to storm drain street inlet	IR Stopped. Solution Cleaned Up. DEP Inspected. NOV Issued 11/03/17.
10/25/2017	Delaware	Edgmont Township, Delaware County UPLANDS ONLY	15 gallons to upland area	IR Stopped. Solution Cleaned Up
10/27/2017	Delaware	Middletown Township Delaware County	1 gallon of drilling solution to Waters	IR stopped, solution cleaned up, DEP inspected, work suspended. NOV Issued 11/03/17, work suspended pending DEP approval
11/11/2017	Chester	West Whiteland Township, Chester County UPLANDS ONLY	Unknown amount to uplands area	IR stopped, Solution cleaned up, DEP inspected, work suspended pending DEP approval. No initial report, no verbal notice, NOV Issued 11/16/17
12/15/2017	Delaware	Middletown Township Delaware County	40 gallons of drilling solution to UNT of Chester Creek	Mud pump inoperable so solution overwhelmed containment area entering creek; DEP inspected and work suspended pending DEP approval; late initial report; NOV to be issued

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons, listed below, in accordance with the requirements of § 1.54 (relating to service by a party). This document has been filed electronically on the Commission's electronic filing system.

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Dated: May 7, 2019