

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Sunoco Pipeline, L.P.	:	Violations of The Clean Streams Law
535 Fritztown Road	:	and DEP Chapters 102 of Title 25 of
Sinking Springs, PA 19608	:	the Pennsylvania Code, the Dam Safety
	:	and Encroachments Act and DEP Chapter
	:	105 of Title 25 of the Pennsylvania Code,
	:	the Administrative Code, and the 2012 Oil
	:	and Gas Act
	:	
	:	Pennsylvania Pipeline Project—Mariner East II
	:	E&S Permit No. ESCG0100015001
	:	WO&E Permit No. E15-862
	:	
	:	West Whiteland Township, Uwchlan
	:	Township, Chester County

**CONSENT ORDER AND AGREEMENT**

This Consent Order and Agreement is entered into this 24<sup>th</sup> day of July 2017, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Sunoco Pipeline, L.P. ("Sunoco").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 ("Clean Streams Law"); the Dam Safety and Encroachment Act, the Act of November 26, 1978, P.L. 1375, *as amended*, 32 P.S. §§ 693.1 et seq. ("Dam Safety and Encroachment Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); the Oil and Gas Act of 2012, the Act of February 14, 2012, P.L. 87, *as amended*, 58 Pa. C.S. §§ 3201 – 3274 ("2012 Oil and Gas Act"); and the rules and regulations ("rules and regulations") promulgated thereunder.

B. Sunoco Pipeline, L.P. (“Sunoco”) is a foreign limited partnership doing business in Pennsylvania and maintains a mailing address of 535 Fritztown Road, Sinking Springs, PA 19608. Sunoco Logistics Partners Operations GP LLC is the general partner of Sunoco Pipeline L.P. Joseph Colella is the Executive Vice President for Sunoco Logistics Partners Operations GP LLC. Mr. Colella has been granted authority by Sunoco Logistics Partners Operations GP LLC to sign documents for Sunoco Pipeline L.P. on behalf of the General Partner.

C. Sunoco owns and operates numerous pipelines in Pennsylvania used to transport petroleum and natural gas products. Sunoco has undertaken an effort to expand certain existing transportation systems for natural gas liquids in Pennsylvania, collectively referred to as the Pennsylvania Pipeline Project—Mariner East II (“PPP-ME2”). As part of PPP-ME2, Sunoco is conducting pipeline installation activities in Chester County, Pennsylvania.

D. To construct PPP-ME2 through Chester County, Sunoco obtained the following permits from the Department:

1. an Erosion and Sediment Control Permit, Permit Number ESCG0100015001, under 25 Pa. Code Chapter 102 and;
2. a Water Obstructions and Encroachment Permit, Permit Number E15-862, under 25 Pa. Code Chapter 105.

E. The work area for PPP-ME2 in Chester County, Pennsylvania includes, but is not limited to, approximately 23 miles of pipeline construction. Sunoco has been working to install a portion of the pipeline in West Whiteland Township and Uwchlan Township (collectively, “the Townships”) utilizing a horizontal directional drill (“HDD”). The HDD is identified by Sunoco as HDD 360, also known as the Shoen Road Drill Area (“Shoen Road Drill Area” or “Drill Area”).

F. On June 14, 2017, Sunoco commenced HDD activities on the Shoen Road Drill Area. The Drill Area extends for approximately 2841 feet. Sunoco suspended HDD activities at the Drill Area on July 4, 2017. From July 5, 2017 to July 7, 2017, Sunoco installed grouting in the pilot hole of the Drill Area. On July 8, 2017, Sunoco resumed HDD drilling activities at the Drill Area. On July 13, 2017, Sunoco again halted activities at the Drill Area and has not resumed HDD activities in the Drill Area since that time. To date, Sunoco has completed approximately 1574 feet of the Drill.

G. From July 6, 2017 through July 10, 2017, the Department received 14 water supply complaints through its Oil and Gas Reporting Electronic (“OGRE”) system, reported to the Department by Sunoco pursuant to 25 Pa. Code § 78a.68a(j)(Horizontal Directional Drilling for Oil and Gas pipelines), for 14 homeowners in the vicinity of the Shoen Road Drill Area, specifically on Township Line Road and Valley View Drive in West Whiteland Township. The homeowners had complained of adverse impacts to their private water supplies including, *inter alia*, cloudy water, turbid water, discolored water, loss of water pressure, and diminution of water from July 2, 2017 through July 9, 2017. The 14 OGRE Reports are attached as “Exhibit A”.

H. The homeowners identified in Exhibit A have water wells that draw water from groundwater. Groundwater is a “Water of the Commonwealth” within the meaning of Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

I. In response to the water supply complaints, Sunoco collected water samples at 35 homes in the Valley View Drive and Township Line Road area on various days between July 5, 2017 through July 17, 2017, for various parameters. The 35 wells that were sampled by Sunoco included the wells of the 14 homeowners identified through OGRE that are identified in Exhibit A. The results of the water samples are attached as “Exhibit B”.

J. Special Condition B (Water Supply) of Permit E15-862 provides as follows:

B. In the event the permittee’s work causes adverse impacts to a public or private water supply source, the permittee shall also immediately notify the Department and implement a contingency plan, to the satisfaction of the public and private water supply owners that addresses all adverse impacts imposed on the public and private water supply as a result of the pollution event, including the restoration or replacement of the impacted water supply.

K. Section 1917-A of the Administrative Code (Abatement of Nuisances), 71 P.S. § 510-17, provides, in relevant part, that:

The Department of Environmental Resources shall have the power and its duty shall be:

(1) To protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition which is declared to be a nuisance by any law administered by the department;

(2) To cause examination to be made of nuisances, or questions affecting the security of life and health, in any locality, and, for that purpose, without fee or

hinderance,<sup>1</sup> to enter, examine and survey all grounds, vehicles, apartments, buildings, and places, within the Commonwealth, and all persons, authorized by the department to enter, examine and survey such grounds, vehicles, apartments, buildings and places, shall have the powers and authority conferred by law upon constables;

(3) To order such nuisances including those detrimental to the public health to be abated and removed;

L. Section 610 of the Clean Streams Law, 35 P.S. § 691.610 (Enforcement Orders), provides that:

The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. Such orders shall include, but shall not be limited to, orders modifying, suspending or revoking permits and orders requiring persons or municipalities to cease operations of an establishment which, in the course of its operation, has a discharge which is in violation of any provision of this act. Such an order may be issued if the department finds that a condition existing in or on the operation involved is causing or is creating a danger of pollution of the waters of the Commonwealth, or if it finds that the permittee, or any person or municipality is in violation of any relevant provision of this act, or of any relevant rule, regulation or order of the board or relevant order of the department: Provided, however, That an order affecting an operation not directly related to the condition or violation in question, may be issued only if the department finds that the other enforcement procedures, penalties and remedies available under this act would probably not be adequate to effect prompt or effective correction of the condition or violation. The department may, in its order, require compliance with such conditions as are necessary to prevent or abate pollution or effect the purposes of this act. An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the Environmental Hearing Board of the department's order shall not act as a supersedeas: Provided, however, That, upon application and for cause shown, the Environmental Hearing Board may issue such a supersedeas. The right of the department to issue an order under this section is in addition to any penalty which may be imposed pursuant to this act. The failure to comply with any such order is hereby declared to be a nuisance.

M. Section 20(a) of the Dam Safety and Enforcement Act (Enforcement Orders), 32 P.S. § 693.20(a), specifies that:

(a) The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. Such orders shall include, but shall not be limited to, orders modifying, suspending or revoking permits and orders requiring persons to cease any activity which is in violation of the provisions of this act. Such an order may be issued if the

department finds that a person is in violation of any provision of this act, or of any rule or regulation issued hereunder. The department may, in its order, require compliance with such terms and conditions as are necessary to effect the purposes of this act.

N. The term "Pollution" is defined in Section 1 of the Clean Streams Law (Definitions), 35 P.S. § 691.1, as:

"Pollution" shall be construed to mean contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters. The department shall determine when a discharge constitutes pollution, as herein defined, and shall establish standards whereby and wherefrom it can be ascertained and determined whether any such discharge does or does not constitute pollution as herein defined.

O. The Department has determined that Sunoco's activities adversely impacted the well water of the 14 homeowners identified in Exhibit A by its drilling activities at the Shoen Road Drill Area, including causing cloudy water, turbid water, and discolored water. Sunoco's activities at the Shoen Road Drill Area caused pollution and potential pollution to Waters of the Commonwealth.

P. The Department has determined that the adverse impacts to the water supplies of the homeowners identified in Exhibit A, including cloudy water, turbid water, and discolored water, diminution of domestic water supply, and loss of water pressure in domestic water supply, constitute a "nuisance" under Section 1917-A of the Administrative Code (Abatement of Nuisances), 71 P.S. § 510-17.

Q. The Department has determined that Sunoco failed to immediately notify the Department of adverse impacts to private water supplies in the Shoen Road Drill Area as required by Special Condition B of Permit E15- 862. Sunoco intends to, through this Consent Order and Agreement, to the extent it has not already done so, implement a contingency plan, to the satisfaction of the private water supply

owners, that addresses all adverse impacts imposed on the private water supply as a result of the pollution event, as required by Special Condition B of Permit E15-862.

R. The violations described in Paragraphs O and P constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18; a statutory nuisance under Section 601 of the Clean Streams Law, 35 P.S. § 691.601; and subject Sunoco to civil penalty liability under Section 605 of the Clean Streams Law, § 691.605 and Section 21 of the Dam Safety and Encroachments Act, 32 P.S. § 693.21.

S. The violations described in Paragraph Q constitute unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18; and subject Sunoco to civil penalty liability under Section 21 of the Dam Safety and Encroachments Act, 32 P.S. § 693.21.

T. The violations described in Paragraphs O, P and Q constitute unlawful conduct under Section 3259 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3259; a public nuisance under Section 3252 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3252; and violations of the regulations thereunder.

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Sunoco as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35 P.S. § 691.5; Section 20 of the Dam Safety and Encroachments Act, 32 P.S. § 693.20; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. Sunoco agrees that the findings in Paragraph A through Q are true and correct and, in any matter or proceeding involving Sunoco and the Department, Sunoco shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. Corrective Action.

a. Sunoco shall not resume HDD at the Shoen Road Drill Area until the Department provides written authorization to Sunoco to resume such activity.

b. Within 5 days from the date of this Order, Sunoco shall identify all homeowners with private water supplies within 150 feet of the Shoen Road Drill Area and provide such list to the Department.

c. Sunoco shall inform the Department, West Whiteland Township, Uwchlan Township, and all homeowners with private water wells within 150 feet of the Shoen Road Drill Area, at least 24 hours prior to resuming any HDD activities at the Drill Area.

d. As a temporary response, Sunoco shall continue to provide alternate potable water supplies adequate in quantity and quality for the purposes served, to each of the 14 homeowners identified in Exhibit A, as well as any other homeowners that Sunoco and/or the Department become aware have experienced cloudy, discolored or turbid water, or water loss or diminution from the Shoen Road Drill Area. Such measures may include Sunoco's provision of bottled water, water buffalos, or other similar units or supplies to affected homeowners, or water filtration units, utilizing .45 micron filters or better, as soon as practicable, but no later than August 15, 2017. Such measures shall continue to be implemented by Sunoco until a long term potable water solution is implemented in accordance with Paragraph 3.e.

e. As a long term response, within 10 days of the date of this Consent Order and Agreement, Sunoco shall submit to the Department a Water Supply Restoration Plan ("Plan") that, at a minimum, provides each of the homeowners that Sunoco and/or the Department have become aware have been impacted by Sunoco's activities in the Shoen Road Drill Area, including the 14 homeowners identified in Exhibit A that have experienced cloudy, discolored or turbid water, or water pressure loss or water diminution, with an alternative source of potable water supply. Such Plan shall include specific deadlines for completion of activities, including interim activities, and shall include bi-weekly reporting requirements. Upon approval or modification of the Plan by the Department, Sunoco shall immediately commence implementation of the Plan, as approved or modified. Upon approval of said Plan, the

Department may authorize resumption of HDD in the Shoen Road Drill Area.

f. Sunoco shall conduct a hydrogeological investigation of the impacted aquifer(s) in the Shoen Road Drill Area to determine the cause(s) of why the private water supplies that draw from the aquifer(s) were impacted by Sunoco's HDD activities. On or before September 1, 2017, Sunoco shall submit a report to the Department detailing the results of its investigation and its recommendations for recommencement of pipeline installation. Sunoco's recommendations shall include all steps it will undertake to prevent further impacts to the groundwater, or mitigate any such impacts, to the satisfaction of the Department.

g. Sunoco shall immediately notify the Department and the Chester County Conservation District by phone, followed up by an email as soon as practicable, to contacts identified in Sunoco's HDD Inadvertent Return, Assessment, Preparedness, Prevention and Contingency Plan for the Mariner East II Pipeline in Chester County, whenever it receives a complaint of an impacted water supply or otherwise becomes aware that it has adversely impacted a water supply by its HDD activities in the Shoen Road Drill Area. Notification regarding the events that were the subject of Sunoco's telephonic notice shall also be provided to the Department electronically within 24 hours through OGRE.

h. At such time as the Department permits Sunoco to resume drilling activities in the Shoen Road Drill Area, Sunoco shall immediately cease drilling upon (i) the occurrence of an inadvertent return; or (ii) groundwater infiltration into the borehole which is likely to have impact a water supply well(s). Drilling shall not recommence until the Department approves recommencement, in writing, upon a demonstration by Sunoco, to the satisfaction of the Department, that all adverse impacts have been adequately addressed.

4. Intent of Agreement. Sunoco and the Department agree that this Consent Order and Agreement is intended to provide for Sunoco's immediate response to the homeowner wells identified in Paragraph G above. The parties further recognize that the Department is currently conducting an investigation into these impacts and others that might be attributable to Sunoco's activities in the Drill Area, and that the Department specifically reserves the right, and this Consent Order and Agreement is without prejudice to, any further enforcement action that the Department may take, including the assessment of civil penalties.



5. Additional Remedies.

a. In the event Sunoco fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.

6. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Sunoco reserves the right to challenge any action which the Department may take to require those measures.

7. Liability of Operator. Sunoco shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers agents, employees, or contractors. Except as provided in Paragraph 8(c), Sunoco also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

8. Transfer of Shoen Road Drill Area.

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Shoen Road Drill Area or any part thereof.

b. If Sunoco intends to transfer any legal or equitable interest in the Shoen Road Drill Area which is affected by this Consent Order and Agreement, Sunoco shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Regional Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate Sunoco's duties and obligations under this Consent Order and Agreement upon transfer of the Shoen Road Drill Area. Sunoco waives any right that it may have to challenge the Department's decision in this regard.

9. Correspondence with Department. All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Frank DeFrancesco  
DEP, Waterways and Wetlands Program  
2 East Main Street  
Norristown, PA 19401  
(484) 250-5161  
[fdefrances@pa.gov](mailto:fdefrances@pa.gov)

10. Correspondence with Sunoco. All correspondence with Sunoco concerning this Consent Order and Agreement shall be addressed to:

Mr. Matthew Gordon  
Sunoco Pipeline, L.P.  
535 Fritztown Road  
Sinking Springs, PA 16908  
[Matthew.gordon@energytransfer.com](mailto:Matthew.gordon@energytransfer.com)

Sunoco shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

11. Severability. The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

12. Entire Agreement. This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

13. Attorney Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

14. Modifications. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

15. Titles. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling


16. Decisions Under Consent Order. Any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which Sunoco may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.


17. Termination. The obligations of Paragraph 3 shall terminate when the Department determines that Sunoco has complied with the requirements of Paragraph 3.

18. Execution of Agreement. This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Sunoco certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Sunoco; that Sunoco consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Sunoco hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. (Signature by Sunoco's attorney certifies only that the agreement has been signed after consulting with counsel.)

FOR SUNOCO PIPELINE, L.P.:

 7-24-17  
Joseph Colella                      Date  
Senior Vice President

 7/24/17  
Curtis N. Stambaugh, Esq.      Date  
Attorney for Sunoco Pipeline, L.P.

FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION:

\_\_\_\_\_  
Domenic Rocco, P.E.                      Date  
Environmental Program Manager

\_\_\_\_\_  
William J. Gerlach, Jr.                      Date  
Assistant Counsel

