

May 27, 2018

By Email

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Re: Sunoco’s May 22, 2018 letter regarding PA-CH-0421.0000-RD

Dear Mr. DeFrancesco,

On May 22, 2018, Sunoco submitted a letter to the Department in response to the Department’s February 22, 2018 request for additional information regarding horizontal directional drilling (“HDD”) Site PA-CH-0421.0000-RD (“Site”). Pursuant to the Corrected Stipulated Order entered on EHB Docket No. 2017-009-L on August 10, 2017 (“Order”), and on behalf of Clean Air Council, Mountain Watershed Association, Inc., and the Delaware Riverkeeper Network (“Appellants”), we respectfully submit these comments in reply. Our comments mirror point by point (for most points) the requests and responses from the Department and Sunoco.

Point 2 (150-foot “impact area”)

Sunoco claims that its “previous statement concerning the potential effects within 150 ft is now moot” due to the Consent Order & Agreement. This is both incorrect and troubling because Sunoco is failing to provide documentation to confirm questionable statements it has made to the Department, and is failing to conduct an actual hydrogeological analysis of the Site, as required by the Order. Sunoco’s statement is incorrect because the provision of a temporary water supply does nothing to protect the private water supplies. It may stave off harm to landowners’ health during the course of the drilling, but still leave them with damaged or destroyed water supplies. Further, damage to a well affects the value and livability of the home, no matter the temporary band-aid provided.

There is no sound hydrogeological basis for claiming that water supplies are only at risk within 150 feet of the HDD alignment. But because it was convenient here, Sunoco made that representation to the Department. Having been called on its misrepresentation, Sunoco wants to brush it aside rather than own up to the fact that it made statements to the Department for which there is no justification. Appellants believe it is important for the integrity of the administrative process that the Department not let Sunoco get away with submitting falsehoods to the Department as truths.

As importantly, Sunoco needs to have done a scientifically valid hydrogeological evaluation of the Site. Sunoco withdrawing its very specific conclusion related to the critical issue of which wells might be impacted raises serious questions about the validity of its other scientific and hydrogeologic conclusions. The Order is not moot regardless of the Consent Order and Agreement. The Order requires scientific analysis including “analysis of well production zones.” These analyses need to be accurate and scientifically defensible. As it stands, neither the Department nor the public has any way of knowing how many wells may be impacted. Indeed, wells outside of even the 450-foot buffer in which Sunoco asserts it will provide replacement water could be at risk.

Point 3 (agreements for replacement water)

Replacement water has not yet been arranged for all residents whose water may be impacted by construction at the Site. Sunoco has indicated that it will initiate further contact with certain residents. Until that process is complete and the documentation of the agreements has been submitted to the Department, the plans for this site should not be approved.

Point 4 (changes to water quantity)

Sunoco writes:

both the Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan (‘IR Plan’) and the Operations Plan require SPLP to offer alternative water supplies to landowners with water supply wells within 450 ft of the drill profile. Obviously, to the extent a landowner accepts this offer, their water supply should not be adversely affected during HDD activities.

This is not obvious—in fact, it is not at all the case. Water well contamination and impairment is not a temporary matter that always resolves, leaving the supply owners free to start using their water supply good as new. The Department should reject the false presumption that offering a temporary water supply is a solution to property damage to third parties.

It should be stressed that Sunoco took most of the land for its pipeline from landowners under the threat of condemnation using eminent domain, or the actual use of eminent domain. These are third parties many of whom do not want this company tearing up their land to build these pipelines. The inability to use their own water supplies due to a Texas company’s forceful entry onto their property is an extreme circumstance. When Sunoco writes, “The best means to protect water well quality or quantity during the HDD is non-use,” Sunoco is attempting to normalize the theft of a third-party’s property rights—their ability to use their water supplies—for the purposes of Sunoco’s profits.

The best means to protect a water supply is to not violate the rights of the third parties in the first instance.

Point 5a (analysis of well production zones)

Sunoco has still not provided the analysis of well production zones requested by the Department and ordered by the Environmental Hearing Board. Its response amounts to generalities and offers little insight into strategies for protecting wells near the Site. Nevertheless, Sunoco claims: “Potential subsurface geologic characteristics will be used to predict possible communication pathways between the HDD and water wells in the area.” That must be done now, as part of the planning the process and *prior* to any Department approval.

Point 5d (water quality sample results)

The water quality results provided by Sunoco are merely a summary and fail to demonstrate compliance with the requirements of the Water Supply Plan. The table provided does not even include dates to show when testing took place. Full lab reports must be provided to the residents and the Department and it is not clear this has happened. The summary also indicates that a number of wells were not analyzed for E. coli, total coliform, and fecal coliform. The Water Supply Plan explicitly requires testing for such pathogens. Sunoco cannot rely on the incomplete tests it has summarized and landowners should be made aware that they are entitled to not only whatever testing Sunoco may have completed, but specifically testing for these bacteria. Bacterial contamination has been of particular concern for residents in the pipelines’ path and for good reason; there is no question that it poses a risk to health. No plans can be approved for this site until the required testing is completed for all locations.

Point 5e (water quantity testing)

Sunoco asserts it has offered residents water quantity testing and none have accepted the offer. It is unclear when or how those offers were made. Construction incidents continue to unfold and residents who did not request water quantity testing months ago may have more reason now to be interested in additional testing. As Sunoco is purportedly continuing its outreach efforts after having “not re-approached outstanding well owners recently,” it should also renew its efforts to offer water quantity testing.

Point 7 (additional examination of bedrock geology)

Sunoco has dismissed the Department’s request for additional examination of bedrock by claiming extensive coring would be needed. This ignores the possibility of using surface geophysical methods which have provided helpful information at previous sites and could provide helpful information here. While Sunoco points to additional analysis it has conducted, it is unclear what exactly the scope and nature of that analysis was. Sunoco says that analysis “will be provided prior to the NTP meeting.” Any such analysis needs to be made available to the Department and the public now, as part of the re-evaluation process, and incorporated into plans. It defeats the purpose of the re-evaluation process to withhold information and for study results to not be reflected in construction design.

Point 8 (difficulty steering)

Sunoco’s response ignores the fact that its professional geologists have previously made

specific recommendations regarding steering:

The only practical solutions for optimizing progress and staying on alignment may be to govern drilling rates and continue to use greater than typical alignment checks to maintain alignment. In addition, consideration should be given to lowering bit pressures, as well as mud pressures... Diamond bits may be beneficial for maintaining the cutting surface and steering through hard rock zones.

Not only has Sunoco refused to follow these recommendations, it altered and resubmitted the geologists' report to delete this language. Sunoco should be required to specifically address why it is not following these recommendations, and that explanation should be supported by analysis from a professional geologist.

Point 9 (overburden)

Sunoco claims overburden characteristics “have little value to an HDD design or analysis.” This is inaccurate and troubling. Overburden characteristics can contribute to inadvertent returns and sinkholes, regardless of whether construction is located in karst. A significant part of the re-evaluation process is to understand and inform the public about the risks associated with Sunoco's plans. Even if Sunoco does not find data on overburden characteristics helpful because it intends to ignore that data in its planning anyway, that does not negate the need for that information to be provided to the Department and the public so the plans and associated risks can be fully assessed.

Point 15 (Terracon Report)

As a report which is an integral part of the report is not yet in final form, the Department does not yet have the full set of information on which to base a decision to approve the start of this HDD. The Department should review the Terracon Report in final form when it is available before making a decision.

Points 16 and 18 (geophysical surveying)

The Department has reasonably pointed out the significant distance between profile-depth test bores at the Site and requested geophysical surveying to interpolate between the data points. Sunoco's response to Point 16, which focuses on the risks associated with drilling additional *geotechnical* test bores, evades entirely the question of additional geophysical surveys. As Sunoco is well aware, *geophysical* surveying—what the Department has directed for the Site—includes surface geophysical methods such as electrical resistivity, gravity, and seismic. These methods do not pose the risk of creating additional preferential pathways.

Furthermore, despite Sunoco's vague anecdotes about the usefulness, or lack thereof, of the data it has gathered from previous geophysical surveys, it is well understood that geophysical surveying methods can be used to gather relevant data regarding both overburden and bedrock, and in karst and non-karst terrain. Geophysical surveying is also not limited to the subsurface depths Sunoco suggests and can be performed to the

profile depth of the Site. As described above, even if Sunoco intends to ignore the results of geophysical surveying in its planning, overburden characteristics, for example, can provide important information about the likelihood of inadvertent returns and compaction or subsidence.

Unfortunately, Sunoco cannot be trusted to determine when geophysical surveying is appropriate. Sunoco tries to argue geophysical surveying would not provide usable data for this Site, but in reality, Sunoco has been loath to conduct geophysical surveying regardless of its usefulness. It claims to have conducted a suite of geophysical surveying at nine locations. It is unclear which locations or surveys it is referring to; to the best of Appellants' knowledge, geophysical data for nine separate locations has never been made available to the public or incorporated into plans. Perhaps with the exception of the surveys conducted around one of Sunoco's surface facilities, every geophysical study Appellants have been made aware of was performed only after Sunoco was ordered to do so, in response to serious incidents, or once a public water supplier had to step in. Geophysical studies are a powerful tool for preventing incidents but Sunoco has failed to accept this reality.

One of the most galling examples, as the Department is well familiar, occurred in nearby West Whiteland Township. Sunoco did not perform geophysical surveys until *after* large sinkholes opened up in backyards and exposed Sunoco's existing pipeline. Even then, the geophysical surveying was conducted as part of an emergency order of the Public Utility Commission ("PUC") and over a very limited survey area. Those surveys revealed further problems in the geology at that location, forcing Sunoco to abandon its plans for drilling there. Amazingly, even in the face of the clear evidence that its drilling caused the sinkholes, at a recent hearing before the PUC, Sunoco then blamed the Department for the mess Sunoco caused. The presiding judge saw through their scapegoating: "I am not persuaded by the testimony of Sunoco's witness Demko, who testified the sink holes near Lisa Drive were caused by inactivity of drills caused by a DEP injunction, then resumed HDD activity or that the subsidence was unrelated to the karst or other geological formations at Lisa Drive." *See* PUC Interim Emergency Order of May 21, 2018, attached hereto as Exhibit 1. Thus, not only can Sunoco not be trusted to conduct geophysical where necessary, it cannot be trusted to honestly represent the results of such surveys without careful oversight.

The Department should continue pushing for the geophysical surveys it has required and should also ensure results are made public. Only then, and after it has been confirmed that Sunoco's plans are safe in light of the survey results, would it be appropriate to consider approving them. Cutting corners only serves to endanger the public and our natural resources. As the Honorable Judge Elizabeth Barnes of the PUC aptly wrote just days ago in a decision that shut down ME2 construction in West Whiteland Township and ordered additional geophysical surveying, "Sunoco has made deliberate managerial decisions to proceed in what appears to be a rushed manner in an apparent prioritization of profit over the best engineering practices available in our time that might best ensure public safety." *Id.* The public is relying on the Department not to let Sunoco's desire to rush forward with construction override their safety by approving the current plans for this Site.

Thank you for considering these comments. Please keep us apprised of your next steps on this HDD Site.

Sincerely,

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