

March 4, 2018

By Email

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**Re: Sunoco’s Response to DEP’s request for information on PA-WM1-0023.0000-RD**

Dear Ms. Drake:

On February 27, 2018, Sunoco submitted a letter to the Department in response to the Department’s February 8, 2018 requests for additional information regarding horizontal directional drilling (“HDD”) Site PA-WM1-0023.0000-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.

Sunoco’s reevaluation of the Site and its subsequent submissions to the Department have all suffered from two significant, overarching flaws: a lack of information, and a break-it-now-attempt-to-fix-it-later approach to planning that ignores the importance of preventing and avoiding harm. The Department has been pointed in its requests for additional information, focusing in on key health and safety concerns that are shared by the public. Appellants continue to support those requests and ask that the Department recognize Sunoco’s February 27, 2018 letter for the evasive, incomplete response that it is. Throughout the reevaluation process, it seems the Department has, in every instance, approved Sunoco’s plans after Sunoco’s second submission of supplemental information. Appellants urge you to continue pressing here.

**1./“1.a.”** In its February 8, 2018 letter, the Department asked Sunoco to “provide a justification, sealed by a Pennsylvania Professional Geologist, that wells outside of 150 feet of the profile will not be impacted.” It has not done so. Sunoco’s claim that water supplies outside 150 feet of the drilling profile will not be impacted remains wholly unsupported. Nevertheless, Sunoco has not retracted its claim. This arbitrary line-drawing is dangerous and misinforms the public. The fact

that Sunoco has not gotten a Professional Geologist to weigh in on the scope of potential impacts to water supplies, as required by the Department, strongly suggests those impacts are in fact expected to be greater than Sunoco reported. Because Sunoco has not complied with the Department's request though, the public does not know whose water supplies are at risk. It is entirely possible that wells even outside of Sunoco's 450-foot area of focus will be damaged. Sunoco should still be required to produce a report, sealed by a Pennsylvania Professional Geologist, that discusses the extent of risks to water supplies, *especially* if those risks extend beyond 150 feet from the profile.

The Department also required that Sunoco "enter into written agreements with all private water supply owners whose water supplies may be impacted by this drill" to supply replacement water "to the satisfaction of all potentially affected water supply owners." The Department further directed that Sunoco "shall provide proof of these agreements to DEP." Later, concerned about being "too restrictive," the Department gave Sunoco an alternative to pursuing such agreements with landowners: to "avoid" impacts to water supplies. Sunoco has failed to comply with either option.

Sunoco does not even claim to have avoided potential impacts to private water supplies. Its "goal" is merely to "minimize" such impacts by using an additive in the drilling mud. The Department must not authorize plans that cannot avoid impacts to water supplies. Damage to a resident's private water supply is illegal and actionable trespass to property and nuisance, as well as a violation of environmental protection laws. Providing replacement water is not an acceptable alternative to avoiding impacts. The provision of a temporary water supply after contaminating someone's well is like offering someone aspirin after beating them up—it's the least you can do, but by no means makes the offense acceptable. The Department must prevent harm, not merely try to dampen it.

Nevertheless, even given the option to proceed with damaging water supplies where landowners have agreed to accept temporary water, Sunoco has not satisfied the Department's requirements with regard to those agreements. First of all, because Sunoco ignored the Department's requirement that a Professional Geologist weigh in on the distance from the drilling profile at which water supplies could be impacted, no one, including Sunoco, knows who "all the potentially affected water supply owners" are. Sunoco has focused in on eight parcels located within 450 feet of the HDD, and provided incomplete information even with regard to those parcels. Sunoco claims "two parcels have three private water supply wells total and have accepted temporary water for these parcels." Sunoco has not "provided proof of these agreements to DEP" as directed. In fact, the entirety of Sunoco's discussion of these agreements is a single sentence. The Department is well aware from the history of this project that it would be foolish to simply take Sunoco's word with regard to compliance.

**3.a.** The Department was right to require an analysis of well production zones; that analysis was explicitly required in the Order, and is critical to protecting water supplies. Sunoco appears to understand what such an analysis entails:

Any technically defensible analysis of this subject in this unique geology is dependent upon information on the orientation of the fissures and bedding plane

partings; their width; do they dip or incline; and to what extent hydrostatic forces or the effects of gravity influence the movement of water in these bedrock features.

Sunoco also seems to think that providing such an analysis for the Site is too difficult and it admits it has not done so. Neither the Order nor the Department's letter said that Sunoco only has to provide analysis of well production zones as it wishes. Sunoco agreed to be bound by the Order. If the geology at the Site makes it too difficult for Sunoco to comply with this fundamental portion of the Order, the answer is not that Sunoco can just go forward anyway without having met the requirement; Sunoco cannot proceed with construction at this location.

**3.b.** In its February 8, 2018 letter to Sunoco, which was a response to Sunoco's January 4, 2018 submission of additional information, the Department requested a "map showing all private water supplies in the correct, surveyed locations." Sunoco now claims that it provided an accurate map as part of its January 4, 2018 response. If such a map was provided to the Department, it was not posted on the Department's website with the rest of Sunoco's response and Appellants ask that it be made available to the public so it can be verified.

**3.d.** Sunoco has attached multiple water quality test results to this most recent response. It is not clear which parcel each water quality test applies to and which might be duplicative, but at least of some of the lab results are from August 2016, and plainly do not satisfy the requirements of the Order. Specifically, those 2016 tests do not test for Total Coliform or E.Coli, and do not include an explanation of the results, as required by the Water Supply Plan. This is especially concerning because if Sunoco is relying on non-compliant water tests here, it may be in other locations as well. The Department must verify that each parcel has received testing in accordance with the Water Supply Plan as revised August 8, 2017. If that has not occurred, Sunoco is violation of the Order.

**3.e.** Sunoco has not conducted water quantity testing as required by the Department except for on one parcel. It seems Sunoco made a single attempt to conduct a yield test at another parcel and that landowner declined that day. From Sunoco's explanation, it is unclear whether the yield test was actually unwanted, or if the landowner was just not available for additional testing the day it was offered. If the landowner was interested in having the yield test conducted on a different day, Sunoco should accommodate that request.

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

Sincerely,

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