

D. To construct PPP-ME2 through Cumberland County, Sunoco obtained Erosion and Sediment Control Permit, Permit Number ESG0300015002, under 25 Pa. Code Chapter 102 and Water Obstruction and Encroachment Permit, Permit Number E21-449, under 25 Pa. Code Chapter 105.

E. DEP permits E21-449 and ESG0300015002 require Sunoco to conduct HDD operations in a manner that implements and maintains effective Best Management Practices (“BMPs”) to effectively minimize accelerated erosion and sedimentation to “Regulated Waters of this Commonwealth” (“RWC”).

F. On June 29, August 18, September 12, October 13, and October 23, 2017, the Cumberland County Conservation District (“CCCD”) conducted inspections and observed conditions at areas where Sunoco was conducting pipeline construction activities in Lower Frankford Township, Upper Frankford Township, Lower Mifflin Township, and North Middleton Township, Cumberland County (“Sites”).

G. The receiving waters at these Sites are an unnamed tributary (“UNT”) to Doubling Gap Creek, an UNT to Conodoquinet Creek, Rock Run, Locust Creek and its associated wetlands. These receiving waters constitute Waters of the Commonwealth as that term is defined at 35 P.S. § 691.1.

H. As set forth at 25 Pa. Code § 93.9o, the designated use for the UNT to Doubling Gap Creek is High Quality – Cold Water Fishes (HQ-CWF), Migratory Fishes (MF). The designated use for the UNT to Conodoquinet Creek, Rock Run, and Locust Creek is Warm Water Fishes (WWF), Migratory Fishes (MF).

I. On June 29, 2017, the CCCD conducted an inspection of Sunoco’s earthmoving activity in the right-of-way (“ROW”) between Pipeline Road and Perry County at the Site located in Lower Mifflin Township, Cumberland County. The CCCD observed that sediment laden water had overwhelmed the silt sock that Sunoco had placed along the north side of the ROW at station # 9184+00. Sunoco allowed the sediment laden water to flow into the UNT to Doubling Gap Creek (S-J44) which then flowed into a pond located on the north side of Pipeline Road. The CCCD observed sediment deposition in the UNT to Doubling Gap Creek from the point of entry downstream to the pond on Pipeline Road.

J. On August 18, 2017, the CCCD and the Department conducted an inspection of Sunoco’s earthmoving activities in the ROW at the Site located in Upper Frankford Township. The CCCD and the Department observed that sediment laden water had overwhelmed Sunoco’s erosion and sedimentation controls on the south side of the ROW just east of the Rock Run stream crossing (S-K8) and left the ROW. The sediment laden water had been diverted by a water bar installed by Sunoco that directed sediment laden water to an unstabilized private access road on the south side of the ROW, instead of directing flows to a stabilized area. From there, the sediment laden water from Sunoco’s ROW flowed down slope into Rock Run, 20 feet south of the ROW. Sediment was deposited from the floodway at the point where the sediment laden water had entered Rock Run to a pond located 700 feet downstream. At the time of the inspection, the downstream pond was observed to be cloudy with suspended sediment.

K. On August 18, 2017, the CCCD and the Department also conducted an inspection of Sunoco’s earthmoving activities in the ROW at the Site located in North Middleton Townships. The CCCD and the Department observed that Sunoco had not installed the filter bag at that location according to the details shown in Standard Construction Detail #3-16 of the Department’s Erosion and Sediment Pollution

Control Program Manual (Technical Guidance No. 363-2134-008). In addition, Sunoco had installed the silt fence on the north side of the ROW on the east side of S-J25, in a manner which allowed fill material to pass under the silt fence and enter an UNT to the Conodoguinet Creek. The area to the west of the crossing on the north side of the ROW was disturbed, but Sunoco had not installed any erosion and sedimentation controls between the disturbance and the UNT to the Conodoguinet Creek. Several of the silt socks installed by Sunoco at crossing S-J27 had not been maintained by Sunoco. Sunoco had allowed sediment to be deposited to more than half the height of the silt socks contrary to the conditions contained in Erosion and Sediment Control Permit Number ESG0300015002.

L. On September 12, 2017, the CCCD conducted a follow-up inspection at the Rock Run Site visited on August 18, 2017. At the time of the inspection, Sunoco had not remediated the sediment impact to Rock Run (S-K8) and the floodway of Rock Run. Sunoco had added an additional water bar to the BMP's upslope of where sediment laden water had previously left the ROW. However, Sunoco had installed the additional water bar in a way that resulted in it discharging water to an unstabilized area of the ROW and directing the water towards the crossing at S-K8 causing additional sediment impacts. The previously requested BMP logs had still not been provided to the CCCD by Sunoco. In addition, Sunoco had not provided the non-compliance report for the pollution event to the CCCD as required by the conditions contained in Erosion and Sediment Control Permit Number ESG0300015002.

M. On October 13, 2017, in response to a report by Sunoco, the CCCD conducted an inspection at Crossing S-J44, at the UNT to Doubling Gap Creek. At the time of the inspection, a section of Sunoco's temporary equipment crossing was broken on the downstream side, allowing sediment and sediment laden water to enter the UNT to Doubling Gap Creek. Sunoco had attempted to repair the broken section of temporary equipment crossing. However, Sunoco's repair was inadequate. Sunoco had not repaired a bulge in the geotech material. Sunoco had also placed a silt sock in the stream channel. In addition, Sunoco had not maintained the geotech material on the gutter system of the upstream side of the bridge. Sunoco's geotech material was full of sediment and resting on the creek bottom. Sunoco's geotech material also had several holes in it, which allowed sediment laden water to enter the floodway of the UNT to Doubling Gap Creek. The UNT to Doubling Gap Creek flowed downstream to a pond that was turbid with suspended sediment. The sediment laden water was leaving the pond and flowing into the UNT to Doubling Gap Creek south of Pipeline Road.

N. On October 23, 2017, the CCCD and the Department conducted an inspection at Sunoco's HDD operation at Pipeline Road in Lower Mifflin Township. At Crossing S-J43, Sunoco had matted the stream bank, but not out to 50 feet from top of bank as required by the plans for that site and the conditions contained in Erosion and Sediment Control Permit Number ESG0300015002. At Crossing S-J44, Sunoco had removed the pumped bypass and allowed stream flow to return to the stream channel before Sunoco had properly stabilized the stream channel and stream banks. Sediment deposition was noted in the UNT to Doubling Gap Creek just downstream of the ROW. Sunoco had submitted a report about a pollution event near station #9190+00 to the CCCD on October 19, 2017. The incident had occurred on October 17, 2017. Sunoco was required to notify the CCCD within 24 hours of the incident but failed to do so. The event was the result of Sunoco's failure to properly maintain a slope pipe. Sunoco was dewatering a trench into a filter bag. Sunoco had placed the filter bag at the mouth of the slope pipe. However, Sunoco had not maintained the slope pipe. The far end of the slope pipe was blocked by a soil pile. Water backed up

and flowed over the disturbed area of the ROW and overtopped the perimeter BMP's, leaving the ROW, entering the UNT to Doubling Gap Creek and depositing sediment into the creek.

O. On August 18, 2017 and September 12, 2017, Sunoco failed to implement effective Best Management Practices ("BMPs") to effectively minimize accelerated erosion and sedimentation at the Sites.

P. On August 18, 2017, October 13, 2017, and October 23, 2017, Sunoco failed to maintain BMPs to effectively minimize accelerated erosion and sedimentation at the Sites.

Q. On October 23, 2017, Sunoco failed to temporary stabilize all areas of the Sites upon completion of earth disturbance activities at the Site.

R. On September 12, 2017, Sunoco conducted earth disturbance activities at the Sites that created a potential for sediment pollution to Rock Run, a water of the Commonwealth.

S. On August 18, 2017, September 12, 2017, and October 23, 2017, Sunoco conducted earth disturbance activities at the Sites in a manner contrary to the conditions contained in Erosion and Sediment Control Permit Number ESG0300015002.

T. On June 29, 2017, August 18, 2017, October 13, 2017, and October 23, 2017, Sunoco caused or allowed accelerated erosion, resulting in sedimentation from earth disturbance activities at the Sites to enter an UNT to Doubling Gap Creek, an UNT to Conodoquinet Creek, and Rock Run.

U. 25 Pa. Code §102.4(b)(1) requires persons to implement and maintain erosion and sedimentation control BMPs to effectively minimize the potential for accelerated erosion and sedimentation.

V. 25 Pa. Code § 102.22(a) requires all areas of the Sites to be permanently stabilized and protected from accelerated erosion and sedimentation upon final completion of an earth disturbance activity or any stage or phase of an activity.

W. Conduct creating a potential for sediment pollution to waters of the Commonwealth constitutes unlawful conduct under Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

X. Failure to comply with permit conditions constitutes unlawful conduct and a nuisance under Section 402(b) of the Clean Streams Law, 35 P.S. § 691.402(b) and constitutes 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.

Y. Conduct causing or allowing accelerated erosion and resulting sedimentation into waters of the Commonwealth by earth disturbance activities at the Sites constitutes unlawful conduct under Sections 401 and 611 of The Clean Streams Law, 35 P.S. §§ 691.401 and 691.611. Sunoco's failure to implement and maintain erosion and sedimentation control BMPs to effectively minimize accelerated erosion and sedimentation at the Sites as described in Paragraphs I and J, above, constitutes a violation of 25 Pa. Code §102.4.

Z. Sunoco's failure to implement and maintain erosion and sedimentation control BMPs to effectively minimize the potential for accelerated erosion and sedimentation as described in Paragraphs O and P, above, constitutes a violation of 25 Pa. Code § 102.4(b)(1).

AA. Sunoco's failure to stabilize all areas of the Sites upon completion of earth disturbance activities as described in Paragraph Q, above, constitutes a violation of 25 Pa. Code § 102.22(b).

BB. Sunoco's conduct creating a potential for sediment pollution from the Sites to waters of the Commonwealth as described in Paragraph R, above, constitutes a violation of Sections 402 and 611 of The Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

CC. Sunoco's failure to comply with permit conditions at the Sites as described in Paragraph S, above, constitutes a violation of Section 402 of The Clean Streams Law, 35 P.S. § 691.402.

DD. Sunoco's conduct causing or allowing accelerated erosion and resulting sedimentation into waters of this Commonwealth by earth disturbance activities at the Sites as described in Paragraph T, above, constitutes a violation of Section 401 of The Clean Streams Law, 35 P.S. § 691.401.

EE. Sunoco's violations described in Paragraphs Z through DD, above, constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611; a statutory nuisance Section 601 of the Clean Streams Law, 35 P.S. § 691.601; and subjects Sunoco to civil penalty liability under Section 605 of the Clean Streams Law, § 691.605.

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

1. **Assessment.** In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 605 of The Clean Streams Law, 35 P.S. § 691.605, the Department hereby assesses a civil penalty of **\$78,621.00**, which Sunoco hereby agrees to pay.

2. **Civil Penalty Settlement.** Sunoco consents to the assessment of the civil penalty of SEVENTY-EIGHT THOUSAND SIX HUNDRED AND TWENTY-ONE DOLLARS (\$78,621.00), which shall be paid in full within five (5) days of its receipt of a fully-executed CACP. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in paragraphs F. through EE. herein, covering the period from June 29, 2017 to October 23, 2017. The payments shall be by corporate check or the like, made payable to the following: a) Within five (5) days of its receipt of a fully-executed CACP, payment in the amount of **\$77,200.00** to the "**Commonwealth of Pennsylvania**" and b) payment in the amount of **\$1,421.00** to the "**Cumberland County Conservation District**". The payment of SEVENTY - SEVEN THOUSAND TWO HUNDRED DOLLARS (\$77,200.00) shall be deposited in the Clean Water Fund. Both checks shall be sent c/o Ronald C. Eberts Jr., Environmental Protection Compliance Specialist, DEP Waterways and Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

3. **Findings.**

a. Sunoco agrees that the Findings in Paragraphs A through N are true and correct, and in any matter or proceeding involving Sunoco or any of their affiliates and the Department, Sunoco shall not challenge the accuracy or validity of the Findings.

b. The parties do not authorize any other persons to use the Findings in this CACP in any matter or proceeding.

4. **Remedies.** In the event that Sunoco fails to make the payment required by this CACP, all remaining payments shall be immediately due and payable. In that event, the Department may pursue any remedy available for failure to pay a civil penalty, including an action for breach of contract or the filing of this CACP as a lien in any county in this Commonwealth.

5. **Reservation of Rights.** The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings. Sunoco reserves the right to challenge any action which the Department may take but waives the right to challenge the content or validity of this CACP.

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