



April 23, 2021

NOTICE OF VIOLATION

CERTIFIED MAIL NO. 7018 040 0000 0100 4812
RETURN RECEIPT NO. 9590 9402 1222 5246 4966 50

Mr. Matthew L. Gordon
Sunoco Pipeline, L.P.
535 Fritztown Road
Sinking Springs, PA 19608

Re: Violations of the Clean Stream Law and
Dam Safety and Encroachments Act
Pennsylvania Pipeline Project (a.k.a. Mariner East 2)
Permit Nos. E15-862 and ESG 01 000 15 001
West Whiteland Township
Chester County

Dear Mr. Gordon:

On April 4, 2021, the Department of Environmental Protection (“DEP”) received a complaint that Sunoco’s dewatering facility at the boring under Wetland B71 was failing and that sediment was being discharged into and across Wetland B71, and then into a tributary to Valley Creek and Valley Creek itself, near the Chester County Public Library. Due to the complaint, the site was inspected several times, including on April 4, 2021, April 6, 2021, April 9, 2021, and April 14, 2021.

The April 6, 2021, Inspection Report noted that groundwater was filling up the bore pit at a rate of approximately 700 gallons per minute and that orange clay colloidal water resulting from the permittee’s dewatering operations was being pumped through various Best Management Practices (BMPs), across the wetland, and into the tributary and Valley Creek. The inspection found that sediment from the discharge was deposited in Wetland B71 and on the banks of the tributary and Valley Creek. The Report requested that Sunoco provide a plan to the Chester County Conservation District (“District”), with a copy to DEP, detailing any additional or alternate measures the permittee will be pursuing with regard to its handling of the dewatering operation so as to best prevent sediment from entering the tributary and, subsequently, Valley Creek.

On April 9, 2021, Sunoco submitted its plan to address this situation. This plan proposes the use of flocculants, weir tanks, and sand filters before discharge to the sediment bag BMP on the existing plan. It is under review by DEP.

On April 14, 2021, DEP again inspected the site to examine impacts from the dewatering discharge from the Wetland B71 boring to Wetland B71, the tributary, and Valley Creek. DEP found a large area of sediment deposited in the area of the previous dewatering discharges in Wetland B71 and sediment deposited on the banks of the receiving streams. Two discharge points were observed.

Wetland B71, the tributary to Valley Creek, and Valley Creek, are all “waters of the Commonwealth” under Section 1 of the Clean Streams Law, 35 P.S. § 691.1, and the unpermitted discharge from the bore pit dewatering operation that contains sediment, including orange-colored colloidal clay, that discolored the tributary and Valley Creek, was deposited in Wetland B71 and on the banks of the tributary and Valley Creek, and settled on the bottom of the tributary and Valley Creek, constitutes “Pollution” under Section 1 of the Clean Streams Law, 35 P.S. § 691.1. The discharge of sediment from the bore hole dewatering operation to waters of the Commonwealth is in violation of Sections 401 and 611 of the Clean Stream Law 35 P.S. §§ 691.401 and 691.611.

Section 401 of the Clean Streams Law, 35 P.S. § 691.401, provides that: “It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance.”

Section 611 of the Clean Streams Law, 35 P.S. § 691.611, specifies that: “It shall be unlawful to fail to comply with any rule or regulation of the department or to fail to comply with any order or permit or license of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or license of the department, to cause air or water pollution, or to hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder or to violate the provisions of 18 Pa.C.S. section 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of sections 601, 602 and 605.”

DEP Permits E15-862 and ESG 01 000 15 001, and Paragraph 5 of the Stipulated Order (“Order”) entered by the Environmental Hearing Board on April 16, 2018, require the permittee to follow its revised “*HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan* (revised April 2018) (“IR PPC Plan”) that is part of the approved plans in the aforementioned permits to reduce, minimize, or eliminate a pollution event.

For any hydrological impacts, the IR PPC Plan and DEP Permits E15-862 and ESG 01 000 15 001 require that an immediate verbal notification be made to DEP for surfacing of groundwater (other than at the entry or exit pit where the volume of water does not exceed the volume of water being used for trenchless construction). This notification was not made.

Failing to comply with the PPC Plan, IR PPC Plan, and DEP Permits E15-862 and ESG 01 000 15 001 constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Dam Safety and Encroachment Act, 32 P.S. § 693.18.

The following measures need to be undertaken to bring the operation into compliance:

1. Obtain approval and implement a method to prevent pollution to waters of the Commonwealth from the bore pit dewatering operation. These methods include: (1) trucking away or otherwise removing all water from the bore pit without discharging it to waters of the Commonwealth, and then disposing it in accordance with applicable laws and regulations; (2) obtaining an authorization from DEP to discharge water from the bore pit dewatering operation in accordance with: (a) the Plan submitted on April 9, 2021, including any revisions that are needed to receive approval from DEP and the District; and (b) all terms and conditions of a DEP authorization obtained for the discharge, including monitoring of discharge quality and quantity for the parameters set forth therein; or (3) any other method reviewed and approved by DEP that prevents pollution to waters of the Commonwealth from the bore pit dewatering operation.
2. No discharges of water from the bore pit, including groundwater, are authorized to flow into waters of the Commonwealth, including Wetland B71, the tributary to Valley Creek, and Valley Creek, until a plan to adequately address sediment, turbidity, and other pollutants in the discharge is reviewed and approved by DEP. Any such discharge can only proceed in accordance with the terms and conditions of any authorizations that are obtained.
3. Develop and submit, for DEP approval, a Monitoring Plan to evaluate Wetland B71, the tributary, and Valley Creek upstream and downstream of the discharges, and provide a Report documenting impacts to wetland and aquatic habitat, aquatic life including benthic macroinvertebrates, fish, aquatic plants, and other indigenous aquatic life potentially or actually exposed to any discharges from the bore pit dewatering operation.
4. Provide immediate verbal notification to DEP and as otherwise required for the surfacing of groundwater (other than at the entry or exit pit where the volume of water does not exceed the volume of water being used for trenchless construction).

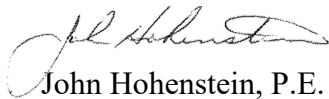
5. Halt any discharge, including groundwater and other substances, from the bore pit to the existing BMPs, and into waters of the Commonwealth, including Wetland B71, the tributary to Valley Creek, and Valley Creek, except as in accordance with 1 through 4, above.

Please be advised that DEP and/or the District will conduct additional inspections of the site. If future inspections reveal that corrective actions have not been made and/or additional violations have occurred, DEP may initiate enforcement action.

This Notice of Violation is neither an order nor any other final action of DEP. It neither imposes nor waives any enforcement action available to DEP under any of its statutes. If DEP determines that an enforcement action is appropriate, you will be notified of the action.

I look forward to your cooperation in this matter. If you have any questions, please contact Mr. Frank De Francesco, Compliance Specialist, by e-mail at fdefrances@pa.gov or by telephone at 484.250.5161.

Sincerely,



John Hohenstein, P.E.
Environmental Program Manager
Waterways and Wetlands

cc: Mr. Bryan – Energy Transfer Partners (ETP)
Mr. Embry – ETP
Ms. Styles – ETP
Mr. Prosceno – TetraTech
Mr. Sofranko – Chester County Conservation District
PA Fish and Boat Commission, Southeast Office
Mr. Caplan – U.S. Army Corps of Engineers, Philadelphia District
Mr. Hoernemann – U.S. Army Corp of Engineers, Philadelphia District
West Whiteland Township
Re 30 (GJS21WAW)109