



August 17, 2021

NOTICE OF VIOLATION

CERTIFIED MAIL NO. 7018 0040 0000 0100 4751
RETURN RECEIPT NO. 9590 9402 1222 5246 4966 81

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

Re: Violations of the Dam Safety and Encroachments Act (“DSEA”), Clean Streams Law (“CSL”), and Regulations Promulgated under the DSEA and CSL
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 July 12, 2021, July 14, 2021 July 31 2021, and August 5, 2021, the Department of Environmental Protection (“DEP”) received complaints and notice that Sunoco Pipeline, L.P.’s (“SPLP”) guided auger bore at the Briar Road Bore Site caused subsidence along the bore path. DEP inspected the site on July 12, 2021, July 14, 2021, July 31, 2021, and August 5, 2021 and evaluated SPLP’s response to the subsidence incidents. In its response to the subsidence incidents, SPLP excavated approximately 200 square feet of Wetland WL-B71 and 21.5 square feet of Stream S-B81 (Valley Creek-CWF,MF) in its attempt to determine the extent of the void created by the subsidences. SPLP then deposited flowable fill into the voids (13 cubic yards of fill in response to the first incident, 22 cubic yards of flowable fill in response to the second incident, 3 cubic yards of flowable fill for the third incident and 7 cubic yards of flowable fill for the fourth incident) which encroached upon Wetland WL-B71 and Stream S-B81. SPLP did not obtain prior approval from DEP to excavate and place flowable fill into Wetland WL-B71 or Stream S-B81.

Wetland WL-B71 is a “Body of Water” as defined under Section 3 of the DSEA, 32 P.S. § 693.3, and a “Regulated Water of this Commonwealth” as defined in 25 Pa. Code § 105.1. Stream S-B81 and its tributaries are a “Watercourse” as defined under Section 3 of the DSEA, 32 P.S. § 693.3, and a “Regulated Water of this Commonwealth” as defined in 25 Pa. Code § 105.1. SPLP’s excavations in Wetland WL-B71 and Stream S-B81 constitute an “Encroachment” as that term is defined at Section 3 of the DSEA. SPLP’s placement of

flowable fill into Wetland WL-B71 and Stream S-B81, constitutes a “Water Obstruction” as that term is defined at Section 3 of the DSEA, 32 P.S. § 693.3. SPLP’s excavations within Wetland WL-B71 and Stream S-B81, and placement of flowable fill without first obtaining a permit from DEP, constitutes a violation of Section 6(a) of the DSEA, 32 P.S. § 693.6(a), and 25 Pa. Code § 105.11(a).

Wetland WL-B71 and Stream S-B81 and its tributaries are also “Surface Waters” and “Waters of the Commonwealth” as those terms are defined, respectively, in 25 Pa. Code § 92a.2 and Section 1 of the CSL, 35 P.S. § 691.1. Sunoco’s excavation of portions of Wetland WL-B71 and Stream S-B81, and subsequent placement of flowable fill in Wetland WL-B71 and Stream S-B81, constitute the discharge of “Industrial Waste” without a permit, and “Pollution,” as those terms are defined Section 1 of the CSL, 35 P.S. § 691.1, in violation of Sections 301, 307, and 401 of the CSL, 35 P.S. §§ 691.301, 691.307, and 691.401.

Special Condition Q of Permit E15-862 provides that “all disturbed areas are to be restored, stabilized, and replanted with indigenous plant species” and that “excess fill from disturbed areas and construction activities shall be located outside of the floodway, floodplain and wetlands.” Special Condition X specifies that the permittee “shall avoid wetland impacts, to the extent practicable, and minimize any such impacts.” This Condition further specifies that “[e]xcess fill shall not be deposited in any wetland, watercourse, floodway, floodplain, or other body of water.”

Failing to comply with Permit E15-862, the DSEA, the CSL, and Chapter 105 constitutes unlawful conduct under Section 611 of the CSL, 35 P.S. § 691.611, and Section 18 of the DSEA, 32 P.S. § 693.18.

DEP requests that SPLP do the following, subject to review and approval by DEP, with regard to Wetland WL-B71 and Stream S-B81 (Valley Creek), on or before September 10, 2021:

1. Conduct an assessment and evaluation of Wetland WL-B71 that analyzes the functions and values of the Wetland as well as: (a) any physical, biological, and chemical impacts associated with the deposit of fill and other substances from the excavation activity and the placement of flowable fill on these functions and values; and (b) any hydrological impacts to Wetland WL-B71 from the excavation activity and the placement of flowable fill as a result of the July 12, July 14 and August 5th subsidence incidents.
2. Provide a plan providing for the restoration of Wetland WL-B71 to a condition equal to or better than that in place before the excavation activity and the placement of flowable fill as a result of the July 12, July 14, and August 5th subsidence incidents. The plan must include provisions for monitoring in accordance with Special Conditions for Restoration and Monitoring set out in Permit E15-862.

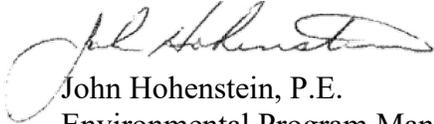
3. Apply for and obtain permits from DEP for the excavation activity and the placement of flowable fill in Wetland WL-B71 as a result of the July 12, July 14 and August 5th subsidence incidents, as well as any other activities SPLP is proposing to conduct in, along or across a “Regulated Water of this Commonwealth.”
4. SPLP shall conduct an assessment and evaluation of Valley Creek (Stream S-B81) that analyzes any physical, biological, chemical, and hydrological impacts associated with the July 31st subsidence.
5. SPLP shall provide a plan providing for the restoration of Valley Creek (Stream S-B81) to a condition equal to or better than that in place before the July 31st subsidence event. The plan must include provisions for monitoring of Valley Creek for a period of 5 years to ensure that all physical, biological, chemical, and hydrological impacts associated with the July 31st subsidence have been adequately addressed, and the stream restored, to the satisfaction of the Department and the Fish and Boat Commission.
6. Provide a plan that eliminates the risk of subsidence from SPLP activities that may adversely impact the functions and values of Wetland WL-B71 and/or any physical, chemical and biological amenities and resources of Valley Creek (Stream S-B81) and its tributaries.

Please be advised that DEP and/or the Chester County Conservation 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)210-6