



September 1, 2021

**NOTICE OF VIOLATION**

**CERTIFIED MAIL NO. 7015 0640 0002 3146 0799**  
**RETURN RECEIPT NO. 9590 9402 1222 5246 4968 03**

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 August 27, 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 within the channel of Stream S-B81 (Valley Creek-CWF, MF). The subsidence resulted in Stream S-B81 flowing into it for some period of time.

DEP inspected the site on August 27, 2021, and August 30, 2021, and evaluated SPLP’s response to the subsidence incident. As part of that response, SPLP excavated Stream S-B81 in an attempt to determine the extent of the void created by the subsidence. SPLP then deposited 2 cubic yards of flowable fill into the void. The subsidence in the stream channel, excavation of the subsidence, and placement of flowable fill in the stream channel excavation encroached upon Stream S-B81. SPLP did not obtain prior approval from DEP for subsidence in the stream channel, or to excavate within the stream channel or place flowable fill into Stream S-B81.

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” (“RWC”) as defined in 25 Pa. Code § 105.1. The subsidence in Stream S-B81 that resulted from SPLP’s activities is an unpermitted “encroachment” as that term is defined at Section 3 of the DSEA. Also, SPLP’s excavations in Stream S-B81 similarly constitute an “Encroachment,” and SPLP’s placement of flowable fill into Stream S-B81 constitutes an “Encroachment” and a “Water Obstruction”

as those terms are defined at Section 3 of the DSEA, 32 P.S. § 693.3. The subsidence in Stream S-B81 resulting from SPLP's activity, SPLP's excavations within Stream S-B81, and SPLP's placement of flowable fill without first obtaining a permit from DEP, each constitute a violation of Section 6(a) of the DSEA, 32 P.S. § 693.6(a), and 25 Pa. Code § 105.11(a).

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 Stream S-B81, and the subsequent placement of flowable fill in 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 NNN of Permit E15-862 provides that the "permit authorizes specific impacts to RWC that were specifically described in the permit applications and revisions. Any proposed changes regarding the specific impacts will require a permit modification." Special Condition OOO specifies that "[a]ny additional impacts to RWC, such as temporary access roads, lay-down areas, staging areas, or temporary work spaces that have not been specifically identified in the permit application are not authorized by this permit." Permit E15-862 did not authorize subsidence in Stream S-B81, the excavation in the stream channel, or the placement of flowable fill within that excavation.

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 Stream S-B81 (Valley Creek), on or before September 15, 2021:

1. Conduct an assessment and provide an evaluation of Valley Creek (Stream S-B81) that analyzes any physical, biological, chemical, and hydrological impacts associated with the August 27th subsidence, including any direct or indirect impacts to fish mortality as a result of stream flow being diverted into the subsidence feature.
2. Conduct a geologic investigation and provide an assessment that explains why the August 27th subsidence occurred in the stream when no boring activity was taking place.
3. Provide a plan restoration of Valley Creek (Stream S-B81) to a condition equal to or better than that in place before the August 27th subsidence event. The plan should 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

August 27th subsidence event have been adequately addressed, and the stream restored, to the satisfaction of DEP and the Pennsylvania Fish and Boat Commission.

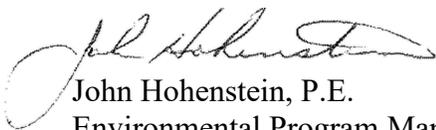
4. Provide a plan that eliminates the risk of subsidence from SPLP activities that may adversely impact the functions and values/or any physical, chemical and biological amenities and resources of Valley Creek (Stream S-B81) and its tributaries.
5. Apply for and obtain permits from DEP for the excavation activity and the placement of flowable fill in Stream S-B81 as a result of the August 27th subsidence incident, as well as any other activities SPLP is proposing to conduct in, along or across a "Regulated Water of this Commonwealth."

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](mailto: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)244-5