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VIA ELECTRONIC MAIL

Margaret O. Murphy, mamurphy@pa.gov

Curtis C. Sullivan, curtsulliv@pa.gov

Elisabeth Davis, elidavis@pa.gov

Domenic Rocco, drocco@pa.gov

Patrick McDonnell, pmcdonnell@pa.gov

RA-EPREGIONALPERMIT@pa.gov

Department of Environmental Protection
Rachel Carson Building
400 Market Street, 10th Floor
Harrisburg, PA 17101

**Re: Sunoco Pipeline L.P. – Pennsylvania Pipeline Project (Mariner East II)
Chapter 102 Permit Nos. ESG0500015001, ESG0300015002, & ESG0100015001
Supplemental Comments on March 2022 Revised Renewal Applications**

Clean Air Council, Mountain Watershed Association, Delaware Riverkeeper Network, Food & Water Watch, and Protect PT (collectively, “Commenters”) jointly submit these supplemental comments on Sunoco Pipeline L.P.’s (“Sunoco’s”) revised E&S permit renewal applications for the Mariner East 2 (ME2) Pipeline, which Sunoco submitted on March 4, 2022 and March 24, 2022. The revised applications are for renewal of Sunoco’s permits for the Mariner East 2 project (“ME2”) issued under 25 Pa. Code Chapter 102. Because of the common issues across the three applications, Commenters have consolidated their comments into this single document.

Commenters generally object to the lack of an additional formal comment period after Sunoco submitted significantly revised applications in March 2022. Sunoco withdrew their initial application and resubmitted, without public notice, revised applications that contained almost 2,000 pages of additional and revised material. For the first time, Sunoco now asks that the permit renewals cover the area around several miles of the pipeline for which Sunoco previously claimed its work was completed. By declining Commenters' request for an additional public comment period, the Department stifled the public's right to participate in the permitting process. Considering the volume of modified material, there is not enough time for Commenters to conduct a thorough review. Additionally, any errors the public identifies in the new and revised application material will likely not be addressed formally by the Department's response document.

Furthermore, since construction began in 2017, Sunoco's Mariner East Pipeline Project has a state record for noncompliance—it has accrued over \$16.3 million in fines for environmental violations to date. A grand jury has also charged Sunoco with numerous criminal violations related to the project. That track record makes it even more crucial that the Department not renew Sunoco's applications until, at minimum, it resolves ongoing violations and corrects the glaring errors and omissions in its applications.

Comments

1. Sunoco's March 2022 revised applications obscure what work is completed and what work remains.

According to DEP's Standard Operating Procedures, a Section 102 renewal application is incomplete unless it contains "a description of the work that has been completed and the work that is still remaining" in the E&S and PCSM plans.¹ Yet the March 2022 revised applications still lack such information.

Sunoco has submitted modified maps that show more explicitly *where* the work needs to be done yet neither the narratives nor the drawings describe *what* work remains. For some sections, Sunoco may be seeking a renewal for something as simple as removing fencing, as complex as revegetation projects for an entire impacted area, or for significant remaining earth disturbance activities.

When Commenters met with DEP on April 19, 2022, DEP representatives stated that, after reviewing the applications, they believed that Sunoco had completed construction projects

¹https://files.dep.state.pa.us/water/Wastewater%20Management/EDMRPortalFiles/SOPs/BPNPSM_E&S_SOP.pdf

and has only restoration work remaining. However, Commenters see multiple indications to the contrary. For example, the March 2022 version of page ES-2.34 of the Cambria County plans adds a shaded area marked “construction completed/partial Notice of Termination Area.” A line indicating “area to be bored” is only *partially* contained in the shaded area, which Commenters interpret as meaning that boring activity remains.

Similarly, in the “Permit Renewal Tracking Table” for Delaware County, three sections on page ES-6.17 are described as having pending activity. Elsewhere on the table describes where restoration work is in progress, and the drawings on page ES-6.17 illustrate construction activities. Additionally, the following page specifies that “Pipe installation and restoration has been completed to this location and will not involve future disturbance,” whereas page ES-6.17 states in present tense that it illustrates an “area to be bored.” Thus, Commenters presume that Sunoco was obtusely indicating that the pending activities in that area involve construction.

The fact that interpreting Sunoco’s descriptions of remaining activity requires sleuthing and guesswork plainly means that Sunoco failed to effectively describe work completed and work remaining as required for a Section 102 renewal application.

2. Sunoco’s March 2022 revised applications are ambiguous as to whether some planned construction is actually new, including new access roads, which would require an application for a modification.

a. Potentially New Access Routes

Sunoco’s applications indicate that it may be planning to construct new access roads, despite new construction being outside the scope of a permit renewal. The renewal tracking tables for Cambria, Cumberland, Indiana, and Westmoreland Counties respectively list 27, 17, 24 and 10 tracts as containing “potential access routes.”

Sunoco leaves several open questions regarding these 78 potential access routes. It does not indicate what would be accessed, how many routes are needed in total, or whether the routes would be temporary (perhaps to facilitate monitoring) or permanent. Commenters note that elsewhere, for example as indicated on page ES-6.18 of the Delaware County plans, Sunoco has built permanent access roads. It seems odd, as well, that in the five years since the Department granted the original permits, Sunoco has been unable to determine exactly which access routes are needed.

Without knowing where these routes are and what they might entail, it is impossible for DEP to determine whether the access routes have been completed, whether they constitute “work

still remaining,” or whether they would in fact be new construction that would require a Sunoco to apply for a Major or Minor Amendment.

b. Other Potentially New Construction Activities

As mentioned above and in our previous comments, Sunoco three times lists “Activities pending” within the Permit Renewal Tracking Table for Delaware County. It fails to explain what those activities are, and without a substantive description, DEP and the public cannot ascertain whether they entail new construction.

3. DEP must enforce the original permit requirement that Sunoco restore impacted riparian buffers.

As a condition of the original permits, DEP explicitly required Sunoco to restore the 178 acres of riparian buffers within the LOD. Sunoco does not explain whether or how it has restored the portion of the riparian buffers contained within the nearly 600 areas for which Sunoco proposed Notices of Termination (NOTs). That Sunoco, in its revised applications, again asks DEP to waive the riparian buffer restoration requirements, underscores the need for clarification.

Commenters note that Sunoco checked boxes on the forms in both the original and renewal application materials that served to request a “waiver” from the requirement to replant riparian buffer areas. DEP did not grant such waivers in any material Commenters reviewed. To the contrary, the permits’ special conditions require that:

Prior to submission of the Notice of Termination, the permittee shall replant forested riparian areas in temporary right of ways along surface waters. Replanting shall be conducted for a minimum distance of fifty (50) feet landward from the top of both banks of warm water fisheries and trout stocked fisheries; 100 feet from cold water fisheries; and 150 feet from HQ/EV streams.

Sunoco does not provide information in the application materials or in the NOTs that would allow the Department to evaluate whether Sunoco has met this requirement. The Department cannot approve the NOT for an area containing a disturbed riparian buffer without ensuring their restoration. It is the Department’s responsibility to ensure that Sunoco complies with this condition. Thus, the Department must require the Sunoco to revise the “Permit Renewal Tracking Table” for each county to indicate whether it has appropriately replanted forest riparian buffer areas as required by its permits.

4. Several miles of disturbed areas have been removed from NOTs and newly added to the renewal areas in the March applications without a chance for public review,

despite at least some of the changes being based on Sunoco erroneously claiming that ECDs had been removed and other inaccuracies.

Without an opportunity for public comment, Sunoco withdrew substantial areas from its NOTs and added them as areas for which it is seeking permit renewals. Presumably Sunoco did this because the additional review by the Department and the counties triggered by public comment on the October 2021 applications revealed that Sunoco previously misrepresented the status of multiple areas.

Drone footage showed ECDs remaining in at least seven York County sections for which Sunoco previously claimed they were removed, as described in Sunoco's contradictory Permit Renewal Tracking Tables in the former and revised applications. Sunoco does not explain the change in status for most other sections. However, the volume of the changes is staggering, and underscores the importance of the Department verifying the information reported by Sunoco and of the public being given a chance to review the information.

In Delaware County alone, Sunoco is newly seeking permit renewal for over 5 miles of disturbed areas. ESG0100015001, PDF page 172 (March 2022). Previously, Sunoco incorrectly submitted a partial NOT for 60% of the impacted area in the county. Additionally, tracking table for Cambria County newly notes that Sunoco has identified an unspecified "earth feature" in one section, which might be related to why that section was added to the renewal request. Sunoco should provide further information. There are also an additional 645 feet in Indiana County, over a mile in Perry County, 17 sections in Blair County, and 12 sections in Chester County which Sunoco has removed from the partial NOTs.

The public deserves an explanation which includes what errors or other misinformation Sunoco provided when attempting to declare that its work in those areas was completed and should have been given an opportunity to comment on the true scope of Sunoco's renewal applications.

5. The Department should ensure that Sunoco resolves active violations and submits a complete compliance history before renewing Sunoco's permits.

Sunoco maintains an incomplete compliance history in the revised applications, does not demonstrate that violations are resolved, and has at least one ongoing violation. Sunoco is required to submit a comprehensive violation history as part of its renewal applications.² The

² "Standard Operating Procedure (SOP) Review of Erosion and Sediment Control Permit Applications Stormwater Discharges Associated with Construction Activities" states, "The Compliance History section of the application should contain at a minimum all violations that have been the subject of a DEP/CCD enforcement action. The applicant is expected to report all such violations of a regulation, permit, order, or schedule of compliance in a truthful and accurate manner." Accessed at https://files.dep.state.pa.us/water/Wastewater%20Management/EDMRPortalFiles/SOPs/BNPNSM_E&S_SOP.pdf

E&S permit application form expressly requires Sunoco to list every time it violated any “DEP regulation, permit, order or schedule of compliance” within the past 5 years, whether it be for Mariner East or another facility.³ For each violation, Sunoco must describe the non-compliance and the steps taken to achieve compliance.⁴

Furthermore, according to the Clean Streams Law, the Department can not approve a permit or renewal if Sunoco, “has failed and continues to fail to comply with any provisions of law.” This means new permits and permit renewals should not be issued if there are unresolved violations, except when the application demonstrates that the “unlawful conduct” is in the process of being corrected to the “satisfaction of the department.”⁵

Sunoco failed to include a complete compliance history and also failed to provide evidence that all outstanding violations have been resolved or are being corrected to the satisfaction of the Department.

a. Incomplete Compliance History

Sunoco submitted a compliance history that lists 106 violative incidents. Yet information on the Department’s own website reveals at least 127 violations as well as five consent orders, which each include multiple violations.

Sunoco also did not update its compliance history past September 2, 2021. Yet the Department issued a Notice of Violation for Sunoco’s activities in Indiana County on January 11, 2022. Sunoco revised applications in March of 2022 neglected to mention this recent and presumably active violation.

b. Open Violations

Sunoco lists two ongoing unresolved issues in Chester County with no indication that it is addressing them to the satisfaction of the Department. Additionally, the Department’s eFacts page indicates that Sunoco’s January 11, 2022 Chapter 102 violation is ongoing.⁶ If Sunoco were taking steps toward compliance, Commenters would expect that Sunoco would not have omitted all mention of this violation from its compliance history.

To provide further details, the Department most recently cited Sunoco for, “[f]ailure to obtain a permit for an activity that creates a danger of pollution as determined by DEP.” The January violation included issues such as:

³ ESG0100015001 Application, PDF page 10 (March 2022).

⁴ *Id.*

⁵ cite

⁶ https://www.ahs.dep.pa.gov/eFACTSWeb/searchResults_singleViol.aspx?InspectionID=3308211.

- Incomplete tree restoration plantings
- A stream channel that was improperly restored to the extent that it now reroutes and causes flooding.
- Creation of wetland in a novel location, which now prevents vehicle access to the north end of Complainant's property.⁷

Accordingly, the Department should not have deemed the renewal application administratively complete without a complete compliance history, and the Clean Streams Law prohibits renewal of Section 102 permits while Sunoco has outstanding unresolved violations.

c. Missing Explanations

Almost all of the violations Sunoco listed simply state they are “resolved.” Sunoco omits the required explanations of the measures that were taken to resolve each issue.

The Department should ensure that Sunoco completes its compliance history accurately and resolves open violations before approving its permit renewals.

6. The March 2022 revised renewal applications contain several additional errors and omissions.

- a. Map drawings have been updated in March 2022 but revision dates remain marked as 2021.

In response to DEP's request for additional information, Sunoco submitted roughly 2,000 pages of updated site maps. But Commenters note that few drawings list an accurate revision date. Almost all revision dates remain marked as 2021, despite the fact that they have clearly been altered, per Sunoco's own admission, in March of 2022. Inspection and enforcement staff rely on these drawings and their revision dates to be able to ensure compliance, and if they are not properly marked it could create confusion and errors in the future.

- b. Sunoco failed to update the number of feet and percentage of the LOD subject to renewal in several counties.

As previously discussed, the area for which Sunoco is now requesting renewal changed in multiple counties, in some cases increasing dramatically. Yet Sunoco failed to update the total area subject to renewal in the summary beneath each “Permit Renewal Tracking Table” for

⁷ *****cite

multiple counties in its revised applications, including in the tables for Cumberland, Huntington, and York Counties.

c. Vague references to “potential LO issues”

Among the other incomplete and inaccurate information in the revised applications, Sunoco twice vaguely references “potential LO issue[s]” without an explanation that would allow the Department or the public to evaluate the importance of those issues.

7. The Department should require Sunoco to submit additional restoration information for its review.

Because of Sunoco’s egregious compliance history, the minimal review by DEP that is generally allowed by DEP should not be deemed sufficient. Reports from CCD’s include minimum information and generally summarize that vegetative cover percentages are met. In the case of this chronic violator, this is not sufficient information to determine whether restoration has been done properly and whether plans for remaining work are adequate.

The permit conditions require a wealth of information be recorded by Sunoco - almost none of which appear in the permit application. For example, one condition requires that for all stream and wetland plantings monitoring must be done regularly and reports prepared that include information such as: site photographs - alongside site plans, that prove work is being done according to plan, records of deficiencies that have arisen, how those problems will be resolved, and the quantity and type of vegetation at the site.

Yet to Commenters’ knowledge, the Department has not reviewed or requested these reports during their review. Nor was there a summary or report about them from the County Conservation Districts. It is not known where these reports were kept, if they were kept, and to what extent they were reviewed by enforcing agencies. Additionally, Sunoco has not submitted the required photographic evidence of the conditions of many stream crossings when including those crossings in partial NOTs. These represent yet more permit conditions that Sunoco either did not meet or for which Sunoco did not provide evidence of compliance in its renewal applications.

Instead, the Department merely reviewed final inspection records from CCDs. Many of these provide minimal information. For example, in the case of Indiana County, the final report shows no evidence or description of sites inspected and says little beyond the sentence, “Dull [sic] of ICCD completed inspections of proposed terminated areas for Sunoco/Mariners East II Pipeline in Indiana County. All temporary E&S controls have been removed and sites appear to be stable.”

Similarly, in Cambria County, the CCD report says it includes a list of locations they inspected but no such description is included in the application material. As with Indiana County, the Department would have no way of knowing what was inspected as they reviewed the applications.

Conclusion

For the above reasons, Commenters request that the Department require further information from Sunoco, including evidence of compliance with the conditions of its original permit conditions, before approving Sunoco's renewal applications.

Thank you for the opportunity to comment. Please keep us apprised of any future actions related to Sunoco's applications for renewal of its Chapter 102 permits.

Sincerely,

/s/ Joseph Otis Minott

Joseph Otis Minott
Executive Director & Chief Counsel
Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103
215.567.4004
joe_minott@cleanair.org

/s/ Maya K. van Rossum

Maya K. van Rossum
the Delaware Riverkeeper
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 191007
215.369.1188 x102
keepermaya@delawareriverkeeper.org

/s/ Melissa W. Marshall, Esq.

Community Advocate
Mountain Watershed Association
1414-B Indian Creek Valley Road
P.O. Box 408
Melcroft, PA 15462
(724) 455-4200x7#
melissa@mtwatershed.com

/s/ Ginny Marcille-Kerslake

Ginny Marcille-Kerslake
Eastern Pennsylvania Organizer
Food and Water Watch
103 Shoen Rd
Exton PA 19341
215-200-2966
gmarcillekerslake@fwwatch.org

/s/ Gillian Graber

Gillian Graber

Executive Director

Protect PT (Penn-Trafford)

3344 Route 130, Suite D

Harrison City, PA 15636

724-392-7023

gillian@protectpt.org