



January 25, 2022

**VIA ELECTRONIC MAIL**

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**Re: Sunoco Pipeline L.P. – Pennsylvania Pipeline Project (Mariner East II)  
Chapter 102 Permit Nos. ESG0500015001, ESG0300015002, & ESG0100015001  
Joint Comments on October 28, 2021 Renewal Applications**

The following organizations jointly submit these comments on Sunoco Pipeline L.P.’s (“Sunoco’s”) applications to renew its permits for the Mariner East 2 project (“ME2”) issued under 25 Pa. Code Chapter 102 (“Permits”): Clean Air Council, Delaware Riverkeeper Network, Food & Water Watch, Mountain Watershed Association, and Protect PT (collectively, “Commenters”). Because of the common issues across the three applications, Commenters have consolidated their comments into this single document.

Commenters have identified substantive problems with the proposed renewal of the Permits that are discussed at length below. The greatest and most obvious problem is that the Department lacks the authority to renew the Permits under 35 P.S. § 691.5(b)(5) because Sunoco “has failed and continues to fail to comply with any [relevant] provisions of law,” and “has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations.” *See* 35 P.S. § 691.609. Under those circumstances, the law plainly instructs that the Department “shall not” approve the permits. *Id.* Indeed, it is no exaggeration to remark that the last five years of Sunoco’s construction under these three Permits has been some of the most disastrous on record.

Some of the work under the Permits is at the restoration stage, and the Department has a responsibility under the Clean Streams Law to ensure that Sunoco’s mess is cleaned up and monitored over time to track restoration/remediation success or failure. Sunoco cannot be relieved of that obligation. However, no reasonable ground exists for allowing Sunoco to continue construction work under the Permits. Doing so will further endanger the communities that have already been put through five years of torment, and the Clean Streams Law will not allow it.

Sunoco has also failed to include accurate, up-to-date information about the scope of the remaining work and thus provided few clues as to the remaining work subject to the proposed permit renewal. Without this information, it is not possible for Commenters—really, for anyone—to weigh in on what is acceptable and what is not about its proposal. Indeed, at least based on what has been made public, the Department itself does not have enough information to make a reasoned decision about whether to renew the permits.

In addition to these comments below, Commenters have attached additional comments by Schmid & Company, Inc. as Exhibit A. To be clear, this is not a supporting document, but rather a continuation of comments for the Department’s consideration. Commenters incorporate them by reference in this document.

Before getting into the details and problems with the Permit renewal applications, Commenters set the stage with a brief summary of the past five years. Commenters appreciate the opportunity to submit these comments.

### **Background and Context**

The disastrous history of the ME2 pipeline project begins with Sunoco’s work on Mariner East 1. Several of the contributors to these comments received reports from residents along the pipeline route whose land had been despoiled or eroded from careless and shoddy Sunoco construction. During a comment period in the run-up to the Department’s issuance of the ME2 water permits, such reports were submitted to the Department as a warning of what might happen. For example, see photos of destructive flooding caused by Sunoco damaging the soil and vegetation on a family farm in Western Pennsylvania, attached hereto as Exhibit B. Sunoco’s ineptitude at building a crossing with horizontal directional drilling (“HDD”) became evident during its construction of Mariner East 1 as well. A June 2015 consent assessment of civil penalty for several Mariner East 1 drilling fluid spills is attached as Exhibit C. Both were included in public comments to the Department on Sunoco’s permit applications for ME2 in 2016.

Throughout 2016, residents submitted frequent comments to the Department regarding concerns with construction of the ME2 pipelines, and in particular impacts to wetlands, waterways, and drinking water. In early 2017, residents met face to face with Secretary McDonnell to present studies demonstrating that if the permit applications were approved in their current state, public drinking water supplies and private drinking water wells across the state would be contaminated and destroyed. Despite countless warnings from residents, the inadequate permit applications were approved by the Department in February 2017.

Almost immediately with the start of pipeline construction, drilling led to spilling. By summer 2017, spills of drilling fluid mud began to occur in Delaware County, while an aquifer and over a dozen wells were compromised in Chester County. By November 2017, sinkholes began to open up across various drilling sites, threatening the safety of homeowners and entire neighborhoods. Over the course of the following four years, Sunoco continued to rack up hundreds of drilling mud spills and sediment-laden discharges into waterways of the Commonwealth and over 127 notices of violation were issued by the Department. Some of the more notable instances of these violations include a series of spills in Snitz Creek in Lebanon County and releases of drilling mud under Raystown Lake in Huntington County.

Over the five years that pipeline construction has been underway, residents have experienced all manner of nuisance and violation, from more than seventy days of 24-hour drilling, shaking, and floodlights in Middletown Township, Delaware County, to issues with dust and noise in East Goshen Township, a series of unresolved and dangerous sinkholes across West Whiteland Township, the creation of groundwater seeps, and harassment from pipeline workers throughout the state. This pipeline's tragic history also involves the untimely death of 18-year-old Maclean Maund on January 25, 2020.

"Mac" Maund was a typical teenager who liked to have fun. But he was all seriousness when he stepped onto the pitcher's mound. He was a star athlete who had attended Penn Trafford High School, was a freshman at Seton Hill studying business administration, and intended to play baseball for the university in the spring. Mac was traveling on Route 130 near Jeannette when he encountered water that had pooled on the roadway and had frozen over. The ice caused his vehicle to spin out of control, and he ended up sideways in the opposite lane. His vehicle was struck by an oncoming pickup truck and Mac died of his injuries. The fatal ice patch had come from improper drainage from the ME2 work area which pooled water on the roadway that had then frozen. Mac's parents have filed a lawsuit against Sunoco, among others, and it is lodged at 21-CI-01439, in the Prothonotary's office of Westmoreland County.

What makes this accident even more shocking is that it occurred almost exactly 11 months after the Department received a formal report that Sunoco's activities created the treacherous road condition. On February 22, 2019, Ryan Graber filed a complaint with the Department stating that there was "water and ice on road from improper pipeline construction and drainage. I almost slipped off the road this morning driving to work this morning and there has been a noticeable change in the amount of water on the road since the pipeline construction. We have pictures of build-ups of ice but this morning it was very thin, you couldn't see it and it almost caused me to drive off the road. It needs to be fixed before someone gets hurt." In fact, someone died 11 months later.

Remarkably, a similar situation continues to this day in Thornbury Township, Delaware County, where Mariner East construction has resulted in water runoff onto the road at a busy intersection which has a history of vehicular accidents. The Department has been made aware of the hazard but neither the Department nor Energy Transfer have acted to remedy the hazard. Such inaction is inexcusable, particularly in light of the tragic loss of a young life in Westmoreland County.

The ME2 pipeline construction across the Commonwealth of Pennsylvania has been nothing short of disastrous.

### **COMMENTS**

#### **1. Section 609 of the Clean Streams Law Bars the Department from renewing the Permits.**

Sunoco has caused a staggering number of violations of the Chapter 102 and Chapter 105 regulations promulgated under the Clean Streams Law in the course of building the ME2 pipeline project. Over the course of the last five years, Sunoco illegally spilled drilling fluids at least 330

times according to the Department's count. It deviated from its permits in major ways without Departmental permission, such as building an unpermitted bridge and changing methods of stream crossing without notice. It has failed to report many of these violations, in further violation of its permits.

The Department has acted on these and other violations episodically, resulting in at least 127 notices of violation. By any measure, Sunoco's compliance record is among the poorest in the Commonwealth among permittees.

In enacting the Clean Streams Law, the General Assembly contemplated what to do if an operator stubbornly resisted abiding by the rule of law. Section 609 of the Clean Streams Law provides that

*The department shall not issue any permit required by this act or renew or amend any permit if it finds, after investigation and an opportunity for informal hearing<sup>1</sup> that:*

(1) *the applicant has failed and continues to fail to comply with any provisions of law* which are in any way connected with or related to the regulation of mining or of any relevant rule, regulation, permit or order of the department, or of any of the acts repealed or amended hereby; *or*

(2) *the applicant has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations.* Any person, partnership, association or corporation which has engaged in unlawful conduct as defined in section 611 or which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has engaged in such unlawful conduct shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department. ...

35 P.S. § 691.609 (emphasis added).

The prohibition in Section 609 on the Department granting a permit renewal where the applicant fails to comply with the law or shows a lack of ability or intention to do so is non-discretionary. That is, under these circumstances, the Department *cannot* choose to grant a renewal. To do so would violate the plain letter of the statute and invite appeal.

Section 609(1) relates to the compliance history of the applicant. The Department's practice has been to look both at: (1) the record of closed violations; and (2) what violations, if any, are outstanding. The latter inquiry is a moving target, as Sunoco's history of agency-documented violations has been ceaseless across multiple counties over the entire five-year permit period. As of January 7th, at least, the Department had an outstanding request to Sunoco regarding

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<sup>1</sup> The opportunity for informal hearing is satisfied by the applicant's right to appeal an adverse decision to the Environmental Hearing Board. *Fiore v. DER*, 655 A.2d 1081, 1086 (Pa. Commw. Ct. 1995).

a notice of violation from September 1, 2021. As noted in the opening paragraphs of this section, the record of violations has been by any measure egregious.

This could be contrasted with the situation as it stood in February or May of 2017. In February, the Department had only the pre-ME 2 compliance history to review. While there were concerning violations, including drilling fluid spills and poor erosion control on Mariner East 1, the sheer number of violations on record then does not compare with the current record of consistent noncompliance. In the context of a petition for supersedeas in May 2017, the Environmental Hearing Board considered the argument of a landowner along the pipeline route that “Sunoco’s compliance history should have prevented the Department from issuing the ME2 permit.” *Simon v. DEP*, 2017 EHB 414, 429. The Simons’ argument was in essence that the Department’s compliance review was inadequate. Without the ME2 violation record to consider, the Board concluded that the Simons “did not demonstrate that Sunoco has shown a lack of ability or intention to comply with the law” and that “the Department conducted what appears to be a thorough review of the outstanding violations of Sunoco Pipeline.” Sunoco’s record is starkly different now.

It was during that Spring of 2017—as soon as Sunoco began work in earnest—that violations began accruing. As early as January 3, 2018, the Department had already come to the conclusion that “*Throughout the installation of the ME II pipeline, Sunoco has produced [inadvertent returns] in uplands which have created a potential for pollution to waters of the Commonwealth pursuant to Section 402 of the Clean Streams Law, 35 P.S. § 691.402.*” See Jan. 3, 2018 Administrative Order in the matter of Sunoco Pipeline, L.P. at ¶ UUU (emphasis added). The Department continued, “Sunoco’s unlawful conduct set forth in Paragraphs T. through FFF., above, *demonstrates a lack of ability or intention on the part of Sunoco to comply with the Clean Streams Law, the Dam Safety and Encroachments Act, and the permits issued thereunder.*” *Id.* at ¶ WWW (emphasis added). The Department reached this conclusion, using the language from Clean Streams Law Section 609(2), less than a year into the tenure of the permits now up for renewal in 2022.

A humbler, more responsible operator, interested in complying with the law, might simply have worked to meet the conditions of the Administrative Order and get back to compliance. Sunoco is not such an operator. It appealed the Order to the Environmental Hearing Board. See EHB Docket No. 2018-012-L. This was just the first time Sunoco appealed a Departmental action relating to ME2 that it disliked. In a monumental showing of disinterest in complying with the law, Sunoco continued to appeal substantial Departmental actions against it rather than simply complying. See EHB Docket Nos. 2020-078-L; 2020-085-L; and 2021-057-L.

Over the course of the five years of Sunoco’s operations, the Department has issued violations and entered into consent agreements again and again and again. The latest was on December 6, 2021, in response to Sunoco spilling tens of thousands of gallons of drilling fluid into Marsh Creek Lake, a DCNR-owned state park located in Chester County.

But Sunoco’s “lack of ability or intention to comply with such laws” is demonstrated not just by its record of DEP violations, but also by its criminal record. On October 5, 2021, Pennsylvania Attorney General Josh Shapiro announced 48 grand jury criminal charges against Sunoco relating to its ME2 construction. See Presentment, available at

<https://s3.documentcloud.org/documents/21079232/2021-10-05-mariner-east-presentment.pdf>.

This Presentment catalogs violations of the Clean Streams Law far beyond those detailed by the Department. For example, at page 55, the grand jury explained that “Sunoco reported less than 100 losses of circulation to DEP over the entire span of the project. ... [However,] there were a total of 397 losses of circulation that were beyond the amount of fluid expected to lose on those drills. Each of those 397 losses should have been reported to DEP.” That amounts to about 300 violations just relating to losses of circulation. The grand jury concluded that hundreds of residents had complained about impacts to their drinking water. *Id.* at 61.

The Presentment documented in detail Sunoco’s failure to report violations to the Department and lies to the Department after violations time and time again indicating systemic, repetitive, and persistent harms by a brazen Sunoco. Evidence on record even shows that Sunoco lied to the Environmental Hearing Board. The grand jury presentment stated at page 5, among other things, that “Some of the additives used by drillers during this pipeline project, however, were not on DEP’s approved list of additives.” This directly contradicts Sunoco’s false statement to the Environmental Hearing Board, in attempting to overturn the January 3, 2018 DEP Administrative Order, that its drilling fluids “are comprised of non-toxic bentonite mud, water, and additives approved by the Department.” *See* EHB Docket No. 2018-012-L (Notice of Appeal Objections at ¶ 9.b). Some of these additives even contained petroleum. *See* Presentment at 63.

A full discussion of Sunoco’s failures to comply with the Clean Streams Law and lack of intent to comply with it would require far more space than is sensible to take up in this comment. The January 3, 2018 Administrative Order and the grand jury presentment, spanning collectively nearly a hundred pages, only opened a partial window into the criminal history and irreparable environmental harms from the construction of the ME2 pipelines.

If there is any compliance record at all that requires outright denial of applications for permit renewals, this is it. Section 609 makes it plain that the legislature did not give the Department the authority to renew these permits after Sunoco clearly demonstrated its lack of intention to comply with the law. Thus, the Department must deny Sunoco’s applications.

## **2. The Department must ensure that disturbed areas are adequately restored.**

As explained above, the Department is legally barred from renewing the Permits. However, that is not the end of the story. The Department must at the same time ensure that Sunoco does not just walk away from the sites it has disturbed without adequately restoring them.

Coverage under Sunoco’s Chapter 102 permits expires on February 12, 2022. As explained below, Sunoco did not submit a timely and administratively complete application for renewal at least 180 days prior to the permit expiration date. *See* Permit Qualification 4. Accordingly, Sunoco must cease all earth disturbances authorized by the permits at that time. At the same time, however, Sunoco remains bound by the permits’ post-construction stormwater management and site restoration obligations until the Department issues written approval of a full Notice of Termination. *See* 25 Pa. Code § 102.7, Permit Conditions Part B.I.B.

Fortunately, solutions exist under the Clean Streams Law to ensure that restoration occurs without violating Section 609 by broadly renewing the Permits. The Department has multiple options.

First, the Department could institute a civil action for abatement of nuisances under Section 601. Section 601(a) provides that “Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act, shall be abatable in the manner provided by law or equity for the abatement of public nuisances.” When the Chapter 102 permits expire, the remaining unrestored ground will constitute a nuisance in the absence of proper restoration work. *See* 35 P.S. § 691.402(b). Upon petition, a court can require Sunoco to conduct the needed work to finish its restoration. While this would require some additional procedural steps on the Department’s end, it avoids a violation of Section 609.

Alternatively, and perhaps more simply, the Department could issue an enforcement order under Section 610. Section 610 provides that “The department may, in its order, require compliance with such conditions as are necessary to prevent or abate pollution or effect the purposes of this act.” Issuing a Department order requiring compliance with restoration conditions (but not authorizing further work on locations not yet in restoration) would satisfy the Clean Streams Law even as the Permits lapse, and would not require going to court.

The Department may be aware of additional means by which it can require the needed restoration to avoid more sustained environmental harm where damage has already occurred without violating Section 609 of the Clean Streams Law by renewing the Permits. Regardless of method, this is what the Department must do.

### **3. Sunoco’s applications are materially incomplete and technically deficient.**

Sunoco’s applications are materially inadequate. In particular, Sunoco’s Erosion and Sedimentation plans fail to even indicate for what actions they seek approval or otherwise meet the requirements of Chapter 102. As such, a riparian buffer waiver is neither permitted nor justified.

- a. Sunoco’s E&S plans are inaccurate and substantially fail to comply with regulatory requirements.

A legally sufficient E&S Plan must contain *drawings and narratives* which describe, *inter alia*, “the characteristics of the earth disturbance activity, including the past, present and proposed land uses and the proposed alteration to the project site”; all impacted surface waters of this Commonwealth, including their Chapter 93 classification; and “naturally occurring geologic formations or soil conditions” that might “cause pollution during earth disturbance activities,” as well as Best Management Practices to “avoid or minimize” such impacts. 25 Pa. Code § 102.4(b)(5).

As an initial matter, the drawings included in the applications are outdated, having been completed on June 17, 2021, while work along the pipeline has continued through the date of this comment, and significant changes certainly occurred before Sunoco submitted its renewal applications on October 28, 2021.

Moreover, the Department would have to be clairvoyant to understand from Sunoco’s E&S plans the additional earth disturbance activities it wants the Department to approve. The plans contain almost no site-specific narrative descriptions of its proposed plans, and it is impossible for

anyone to tell from the drawings what work remains. Sunoco's plans also misrepresent the impacted waters of the Commonwealth and contain numerous other omissions and errors.

Indeed, the closest Sunoco's E&S plans come to specific narrative descriptions of remaining earth disturbance activities are in each county's "Permit Renewal Tracking Table." For example, Sunoco's cover letter for its ESG0500015001 renewal application states that some areas "still hav[e] land disturbance activities remaining," but the application provides no narrative description of any such activities. Likewise, the project description in Sunoco's renewal application for Delaware and Chester counties states, "This renewal is for the 7.5 miles that have not meet the permit requirements or *may require additional earth disturbance.*" (emphasis added). The only narrative information regarding the remaining earth disturbance is within the Delaware County tracking table, which contains the enlightening descriptor of "activities pending" for three tracts and absolutely no description of those activities. Although the E&S plan includes numerous maps which diagram some previously proposed activities, Sunoco provides no way to determine what work has been completed, what Sunoco still intends to do, or whether any proposed activities are in fact new endeavors. In fact, although the Department states on its website that "these renewal applications do not include any proposals for new work," the scant information Sunoco provided makes even that much impossible to discern.

Furthermore, a Delaware County map indicates that in the course of these mysterious pending activities, "[e]rosion & sediment control BMP installation [is] to be adjusted as needed to accommodate actual contours identified," indicating that after five years, Sunoco has yet to determine the "types, depth, slope, locations and limitations of the soils" as required by section 102.4(b)(5)(ii); nor does Sunoco understand whether there are naturally occurring geologic and soil conditions in that tract which might cause or exacerbate pollution as instructed by section 102.4(b)(5)(xii). Moreover, the only "characteristics of the earth disturbance activity" Sunoco provides are nonspecific assurances that the "earth disturbance [is] to be minimized" and that "topsoil [was? will be? Sunoco leaves it to the Department's imagination] stripped and stockpiled where necessary." It provides no details to allow the Department to evaluate those claims, and its assurances ring hollow against the backdrop of its history of lies.

Continuing the theme of indeterminate descriptions, the Cumberland County and Indiana County plans respectively list 17 and 24 tracts with "potential access routes," yet do not indicate what would be accessed, how many routes are needed in total, whether the routes would be temporary (perhaps to facilitate monitoring) or permanent, etc. 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.

Additionally, although areas which require additional restoration work are outlined on the maps included in the plans, the type of work remaining is largely unspecified. Beyond often vague phrases in the tracking tables, Sunoco provided no narrative descriptions of the remaining work. For instance, in Blair County, the description for one tract is "Surface rock and mixed growth." Commenters are left to speculate what this means. Is Sunoco claiming that the natural surface is too rocky to permit 70% vegetative cover? Is it indicating that its activities caused erosion, leaving exposed rock in an area it needs to restore? The permit provides no additional clues. Sunoco also claimed that numerous sites were sufficiently restored, but as of the date of its application, at least nine county conservation districts had yet to confirm the accuracy of its representations.



Further vague “narratives” included on the tracking tables for most counties are renewal areas for which the only description is the name of a block valve or block valve “area” outside special protection watersheds. Those listings do not indicate what work Sunoco plans to do in those areas, or even whether it intends restoration or construction work.

Another regulatory violation described in the attached Schmid Report (Exhibit A) is that Sunoco failed to properly identify waters of the Commonwealth, in some cases omitting some entirely from its maps. Such gross inaccuracies make independent verification of Sunoco’s other representations all the more vital.

Sunoco also omitted mandatory information from the updated General Information Forms (“GIF”) it submitted to the Department in relation to its permit renewal applications. The GIFs are used by the Department to determine whether a project requires additional permits or authorizations from the Department. Question 13.0.2 required Sunoco to “identify each type of emission followed by the estimated amount” which would be produced by project operations. Nevertheless, Sunoco excluded that information from all three GIFs.

The scant information Sunoco provided, the almost complete lack of narrative descriptions pertaining to individual tracts, and the mistakes or intentional misrepresentations in the renewal application preclude meaningful review of their application. Sunoco’s submissions do not meet the requirements of Chapter 102, and thus the permits must either be denied or the Department must require Sunoco to provide significant supplemental information followed by a renewed public comment period.

b. Sunoco has not justified an exemption from or waiver of riparian buffer protections.

The Department should deny Sunoco’s requested waiver of Chapter 102’s riparian buffer requirements because the project does not satisfy the regulatory requirements for a waiver and, regardless, any waiver is discretionary and unjustifiable. Sunoco relies on the fact that the Department is permitted to grant a waiver to a “linear project” such as ME2 under certain circumstances. 25 Pa. Code § 102.14(d)(2)(ii). However, the Department may waive riparian buffer protections only if: (1) the applicant demonstrates that there are reasonable alternatives for compliance with the riparian buffer requirements; (2) any existing riparian buffer is undisturbed to the extent practicable; and (3) the activity will otherwise meet the requirements of Chapter 102. *See id.* at § 102.14(d)(2).

Although Sunoco submitted an NPDES Antidegradation Analysis Module 3 form on which it checked off three alternatives, including that it would limit the extent and duration of disturbance, Sunoco did not provide any particularized information on *how* it planned to minimize such disturbance. The Department, and the public, are apparently supposed to accept Sunoco’s word despite its above-described history of lying to the Department about its repeated violations of the original permits for this pipeline. Moreover, Sunoco provides far too little information in its application to demonstrate that it would “otherwise meet the requirements of” Chapter 102.

Additionally, when the Department waived some of the riparian buffer protections for Sunoco’s original application, it set a series of conditions with which Sunoco was required to comply, detailed in the attached Schmid Report (Exhibit A). Those conditions included restoration

requirements Sunoco must meet before submission of notices of termination (“NOTs”). Although Sunoco claims to have met those requirements for areas for which it submitted NOTs, as of its renewal application several conservation districts had not yet indicated concurrence. Again, Sunoco expects the Department to ignore its track record and accept its unproven assurances. Instead, it makes little sense to blindly grant another waiver without first independently verifying that Sunoco met the conditions included in the first.

Regardless, Sunoco has not demonstrated the necessity of waiver and granting Sunoco’s request could irreparably harm the waters of the Commonwealth. The Department must not waive the protections lightly or at all. Section 102.14 mandates protections for Pennsylvania’s vital riparian buffers because they are a stream’s first line of defense. Trees and other vegetation slow runoff, filter sediment and pollution, and shade the stream so cold-water-loving creatures can thrive. The Department should therefore deny any further waivers of riparian buffer protections.

Even if the Department grants Sunoco’s request, the Sunoco must comply with the mandatory, unwaivable requirements for riparian buffers provided by section 102.14(c), including managing stormwater, erosion, and sedimentation “in accordance with §§ 102.4(b)–(e) and 102.8 (relating to erosion and sediment control requirements; and PCSM requirements).”

#### **4. Sunoco has not demonstrated that it would minimize harm from erosion and sedimentation.**

A general principle of environmental protection under Chapter 102 is harm minimization. Sunoco’s renewal applications do not demonstrate that Sunoco will minimize the harm done by its Project construction. 25 Pa. Code § 102.4(b)(4) provides:

Unless otherwise authorized by the Department or conservation district after consultation with the Department, earth disturbance activities shall be planned and implemented to the extent practicable in accordance with the following:

- (i) Minimize the extent and duration of the earth disturbance.
- (ii) Maximize protection of existing drainage features and vegetation.
- (iii) Minimize soil compaction.
- (iv) Utilize other measures or controls that prevent or minimize the generation of increased stormwater runoff.

Although Sunoco states at various points that it will meet these requirements, it simply fails to provide sufficient supporting information. It supplies details only within the NPDES Antidegradation Analysis Module 3 forms for right-of-way, pump stations, and block valves within special protection watersheds. Even there, the information is incomplete—as pointed out in the Schmid Report (Exhibit A), Sunoco did not consistently “check any of the boxes that identify possible ABACT PSCM BMPs that might be utilized.”

Beyond that, as described above, the Department and the public are left to guess what earth moving activities Sunoco still intends to complete and how it would minimize earth disturbance, protect existing drainage features, or otherwise minimize harm when conducting those activities. What is instead certain is Sunoco's track record of destruction and misrepresentations. Thus, Sunoco's renewal application should be denied for failing to meet the basic requirements of "explaining what work has been completed and what work remains on the project site." E&S Permit Application Checklist, Form 3800-PM-BCW0019c. Without such fundamental information, the Department cannot meaningfully evaluate whether Sunoco would meet the requirements of Section 102.4(b)(4).

### CONCLUSION

For the reasons set forth above, Commenters respectfully ask the Department to deny Sunoco's applications for renewal of its Permits as incomplete, inadequate, and barred by Section 609 of the Clean Streams Law. The Department should instead take action under the Clean Streams Law limited to requiring completion and thorough monitoring of the restoration of existing areas of earth disturbance. It is absolutely critical, with Sunoco's record of regulatory noncompliance and pending criminal charges, that agency monitoring of the remediation/restoration is thorough and ensures success to avoid the permanent harms that come with pipeline construction.

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,

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