

May 31, 2018



*Via Electronic Filing*  
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.  
**Consolidated Docket Nos. C-2018-3001451 and P-2018-3001453**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission in the above-captioned proceeding please find Brief of Intervenor Clean Air Council.

Thank you very much for your assistance.

Respectfully,

A handwritten signature in black ink, appearing to read "Joseph Otis Minott".

Joseph Otis Minott, Esq.  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania State Senator:	:	
Andrew E. Dinniman	:	Consolidated Docket Nos.
Complainant,	:	C-2018-3001451
v.	:	P-2018-3001453
	:	
Sunoco Pipeline, L.P.,	:	
Respondent.	:	

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**BRIEF OF INTERVENOR CLEAN AIR COUNCIL**

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Pursuant to 52 Pa. Code § 5.305, Clean Air Council (the “Council”) submits the following brief on the certified material questions in the Interim Emergency Order and Certification of Material Question docketed on May 24, 2018 in the above-captioned matter (“Emergency Order”).

**I. Statement of the Case**

On May 24, 2018, after presiding over two days of evidentiary hearing and reviewing post-hearing briefs submitted by the parties, Hon. Elizabeth Barnes granted Senator Andrew E. Dinniman’s Amended Petition for Interim Emergency Relief. Citing numerous past and ongoing safety and environmental threats posed by the Mariner East natural gas liquids pipelines, the Emergency Order enjoined operation and construction of the pipelines in West Whiteland Township, Chester County, and set forth measures to be taken by Sunoco to assess and improve safety of the pipelines. Judge Barnes certified the Order for review by the Commission. The Council has intervened in support of Senator Dinniman’s Emergency Petition and Complaint<sup>1</sup> and strongly supports the Emergency Order as a much-needed protection for the residents of West Whiteland Township.

**II. Summary of Argument**

Sunoco’s Mariner East 2 pipelines have been fraught with problems from the start. From hundreds of thousands of gallons of drilling fluid spills, to the destruction of drinking water supplies, and permit violations egregious enough to result in two shutdowns, the project has been nothing short of an environmental disaster. The Mariner East 2 pipelines have also threatened the safety of the residents along the route as Sunoco has pressed forward with construction despite its failure to study the subsurface geology it is disrupting, leaving sinkholes in its wake. The residents of West Whiteland Township have been in the crosshairs of this destruction. Despite the threat these pipelines pose to the life and property of the residents of West Whiteland Township, the residents have not been given specific information about how to mitigate these risks and protect themselves. For these reasons, the Mariner East 2 pipelines

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<sup>1</sup> The Council has contributed as an intervenor in numerous PUC proceedings, including in other PUC dockets regarding Sunoco’s Mariner East Project: PUC Docket Nos P-2014-2411941, *et. al.* The Council also has many members along the Mariner East route, including in West Whiteland Township, and has been actively litigating issues raised in or related to Senator Dinniman’s claims in the present matter.

are unsafe and unreasonable. Swift action was needed to prevent further harms from Mariner East 2 and to ensure that Mariner East 1 has not been, and will not be, compromised by Mariner East 2 construction. The Emergency Order rendered necessary and proper relief.

### **III. Argument**

Under the Board's rules, a petitioner seeking emergency relief must establish the following: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and (4) the relief requested is not injurious to the public interest. 52 Pa. Code § 3.6. Those factors have been met here and Emergency Relief was properly entered.

#### **A. The Emergency Order's finding of an existing immediate emergency is well supported by fact and law.**

The Emergency Order grounds its finding of "an imminent risk to the public and a need for immediate relief" in large part on the dangerous leaks and PHMSA violations on the existing Mariner East 1 pipeline as well as Sunoco's violations of environmental regulations in building the Mariner East 2 and 2X pipelines. Emergency Order at 17-20. The Emergency Order is on firm footing.

The law is clear that evidence of past occurrences tending to show a present dangerous condition forms a solid foundation for a finding of immediate harm supporting an injunction order. *Commonwealth v. Barnes & Tucker Co.*, 319 A.2d 871, 885 (Pa. 1974) ("We believe that abatement of water pollution is unquestionably a reasonable exercise of the police power in the abstract. We are not swayed in this belief by the fact that the mining activity which gave rise to the present condition is past conduct which obviously cannot now be abated."); *Commonwealth v. Barnes & Tucker Co.*, 371 A.2d 461, 467 (Pa. 1977) ("Nor, does the fact that the present condition arises only from past activities affect the appropriateness of invoking the police power to dispel the immediate dangerous condition.").

Such evidence has been the basis for previous injunction orders on Commission dockets, for example, in the proceeding docketed at P-2008-2075142. There, on December 18, 2008, the Commission ratified an emergency order dated December 12, 2008. That emergency order enjoined a water utility company from increasing water pressure on its system where the increases in pressure were associated

with a series of water main breaks. *See* 2008 Pa. PUC LEXIS 1081 (Pa. P.U.C. December 23, 2008). The immediacy of the emergency was demonstrated through past occurrences--the water main breaks. Because these occurrences tended to show the existence of an ongoing dangerous condition, the immediacy element of the injunction standard was met. *Id.* at \*1-\*2.

It is, of course, commonplace that past performance is no guarantee of future results. But the Emergency Order correctly finds that evidence of structural danger in the Mariner East 1 pipeline, not counterbalanced by any evidence showing that these dangers have been remedied, demonstrates the existence of a clear and present danger. Likewise, the Emergency Order also correctly finds that Sunoco's persistent pattern of conduct endangering the public in its building of the Mariner East 2 and 2X pipelines is not counterbalanced by any evidence showing that its construction will be made safe absent the ordered relief. This, too, demonstrates the existence of a clear and present danger.

**B. The Emergency Order properly found Petitioner's right to relief is clear.**

The standard for demonstrating a clear right to relief is well established. It is not necessary to determine the merits of the controversy or dispute in order to find that a petitioner has satisfied the first prong of Section 3.2(b) of the Commission's regulations, 52 Pa. Code § 3.2(b), by showing that the right to relief is clear. Consistent with Pennsylvania law outside of Commission proceedings, the Commission has found that if a petitioner raises "substantial legal questions," then a petitioner has established that its right to relief is clear. *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered September 23, 2011); *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114 (Order entered August 8, 2002); *T. W. Phillips Gas and Oil Company v. the Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985). The Emergency Order was right to find that Senator Dinniman has raised substantial legal questions, demonstrating that the right to relief is clear.

1. The Mariner East pipelines are unsafe and unreasonable because Sunoco has failed to comply with safety requirements.

The Mariner East pipelines are unsafe and unreasonable because Sunoco has consistently failed to

comply with safety requirements. Sunoco has failed to identify leaks on its own pipelines, has failed to report leaks and spills to appropriate authorities when they occur,<sup>2</sup> and has failed to follow its own protocols and safety procedures established to protect the public.

Concerns regarding Sunoco accidents and the lack of public information are not hypothetical. Sunoco's Mariner East 1 went into operation in late 2014. Within a span of 12 months, Mariner East 1 experienced three leaks, all of which occurred in high consequence areas.<sup>3</sup> One of these leaks occurred at or near 5530 Morgantown Road, Morgantown, PA (Berks County) on April 1, 2017.<sup>4</sup> Sunoco's own leak detection system failed to identify this hazardous highly volatile liquids (HVL) release in Morgantown. The leak, which was the result of subsurface corrosion, was discovered and reported not by Sunoco, but by a landowner. It qualified as an accident under 49 CFR § 195.50. From the time the landowner informed the operator of the probable leak, it took approximately 90 minutes to shut the pipeline down, and in that time nearly 1,000 liquid gallons of a natural gas liquids mixture were released. This is an extremely dangerous quantity of an extremely dangerous material.

In addition to numerous leaks on Mariner East 1, Sunoco has also had safety violations on Mariner East 2. On January 11, 2018, PHMSA issued Sunoco a Notice of Probable Violation and Proposed Compliance Order<sup>5</sup> alleging violations of construction requirements on Mariner East 2. In essence, it appears a PHMSA inspector discovered Sunoco in the process of burying damaged Mariner East 2 pipe sections. It had not been reported. Sunoco's safety consultant, Mr. John Zurcher, was unaware of this incident when he rendered his opinion about the safety of the Mariner East pipelines. Tr.

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<sup>2</sup> For example, see the recent May 3, 2018 Notice of Violation issued by DEP, which notes that Sunoco failed (on four separate occasions covered by the NOV) to properly report the events.

<sup>3</sup> See

[https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM\\_opid\\_18718.html?nocache=2461#\\_Incidents\\_tab\\_4](https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM_opid_18718.html?nocache=2461#_Incidents_tab_4) for a list of Sunoco pipeline accidents, including accidents on Mariner East 1 on 5/27/16, 8/16/16, and 4/1/17, and see

[https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/data\\_statistics/pipeline/PHMSA\\_Pipeline\\_Safety\\_Flagged\\_Incidents.zip](https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/data_statistics/pipeline/PHMSA_Pipeline_Safety_Flagged_Incidents.zip) for Sunoco 7000-1 accident report forms filed with PHMSA for ME1 accidents on 5/27/16, 8/16/16, and 4/1/17.

<sup>4</sup> See Exhibit CAC-1.

<sup>5</sup> See January 11, 2018 Notice of Violation, available at [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120185002/120185002\\_NOPV%20PCO\\_01112018\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120185002/120185002_NOPV%20PCO_01112018_text.pdf).

579: 16-21. His opinion was also not based on the actual studies that had taken place at Lisa Drive. Tr. 577: 20-25.

Sunoco's pattern of safety violations is an invitation for a catastrophic incident. In January 2015 a 20" ATEX ethane pipeline similar in size, pressure, and diameter to Mariner East 2 leaked well over a million gallons (1,003,842 gallons according to PHMSA<sup>6</sup>). That liquid expanded into roughly 450 million gallons of gas as it volatilized, producing a fireball that scorched five acres. A house 2,000 feet away suffered thermal damage. Consistent with the fears regarding the integrity of Mariner East 1 at Lisa Drive when a sinkhole opened, subsidence was at play in this incident and the integrity of the pipeline was compromised: according to PHMSA, a survey "indicated that the pipe had dropped more than 3 feet since the line was originally constructed"<sup>7</sup> 13 months prior. PHMSA further identified mining in the area of the sunken ethane pipeline:

A geotechnical survey conducted by Pennsylvania Soil and Rock determined that the failed pipe was installed across a transition area or "head wall" of an old underground mine and surface strip mine. In addition, the soil on which the pipeline was laid had undergone little consolidation since the mining was completed.

*Id.* Sunoco's pipeline safety consultant was also unaware of the facts of this explosion when he testified to the safety of the Mariner East pipelines. Tr. 575-576.<sup>8</sup>

At least one aspect of Mr. Zurcher's testimony strongly supports the findings of the Emergency Order. Mr. Zurcher testified that one of the reasons pipelines leak is internal

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<sup>6</sup> See PHMSA Corrective Action, available at [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120155002H/120155002H\\_Amended%20Corrective%20Action%20Order\\_03122015\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120155002H/120155002H_Amended%20Corrective%20Action%20Order_03122015_text.pdf)

<sup>7</sup> See PHMSA Accident Report, available at <https://cms.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/inspections-and-investigations/17866/149469enterpriseproductsoperatingllcfir2015126reportandappendices.pdf>.

<sup>8</sup> Understandably, Sunoco has desperately attempted to distract from the troubling and undeniable parallels between the ATEX ethane pipeline explosion and the risks posed by the Mariner East project, pointing to Mr. Zurcher's testimony regarding "weight of equipment on top of the soil." Tr. 576: 22-25. However, to suggest that additional material being added on top of the pipeline was the sole cause of the sinking—especially given the proximity to an underground mine—defies logic. For the pipeline to sink three feet, it had to have sunken into something. The Failure Investigation Report implied that the three feet of space that the pipeline moved into did *not* appear to be the result of soil being compressed under the pipeline; as noted above, "the soil on which the pipeline was laid had undergone little consolidation..." If the space was not a result of compressed soil, it was caused by some other factor. Moreover, Mr. Zurcher's understanding was demonstrably mistaken. He claimed there "was not subsidence of the pipeline itself," Tr. 577: 1-2. There is no dispute the ethane pipeline had sunken three feet before it exploded. The PHMSA documents regarding this incident, which were identified at hearing, Tr.575-576, speak for themselves.



corrosion. Tr. 564:1-10. Discussing internal corrosion, Mr. Zurcher testified that “We control that through our gas quality and keeping water out of the pipeline. As long as there’s no water in the pipeline, it won’t corrode internally, so we keep the water out.” Tr. 564:10-13. However, Sunoco does *not* in fact keep the water out of its Mariner East pipelines. Currently pending before DEP is an application from Sunoco to install a dehydrator at its Marcus Hook facility to remove water that is mixed in with the ethane stream arriving at Marcus Hook after traveling through the Mariner East pipelines. 48 Pa.B. 2282. Specifically, Sunoco has averred to DEP that “After exiting the pipeline, ethane will be treated to remove carbon dioxide via an amine treating system, and water via a dehydration system.”<sup>9</sup> Thus, the testimony of Sunoco’s expert affirms the Emergency Order’s finding that an injunction is needed to protect the public from Sunoco’s risky pipeline operation practices.

2. The Mariner East pipelines are unsafe and unreasonable because Sunoco has commenced construction of Mariner East 2 without properly locating Mariner East 1.

In Sunoco’s post-hearing brief, it claims it “knows the exact location of [Mariner East] 1.” Sunoco Post-Hearing Brief at 10. Though it provided no citation for this claim, at the hearing of this matter, Sunoco proffered testimony that it had located Mariner East 1 through a technique referred to as “potholing” for the “entire length of the project.” Tr. 402: 1-3. Whatever the method by which Sunoco claims to documented the location of Mariner East 1, it was clearly insufficient.

In Westmoreland County, after HDD had already commenced at a site, “[d]uring verification of the tracking data for the pilot hole in progress, it was discovered that the 12-inch line [ME1] was not accurately located and resurveying was required.”<sup>10</sup> Sunoco further admitted “[s]teering was difficult during the initial pilot boring and there was uncertainty regarding the horizontal and vertical position of

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<sup>9</sup> See Application for Plan Approval 23-0119I, Section 2.0, available at <http://files.dep.state.pa.us/RegionalResources/SERO/SEROPortalFiles/Application.pdf>.

<sup>10</sup> See *Re-Evaluation of Norfolk Southern Railroad Crossing Construction Site*, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/Norfolk%20Southern%20Railroad%20Crossing%20-%20S1B-0250%20-%20PA-WM1-0088.0000-RR.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/Norfolk%20Southern%20Railroad%20Crossing%20-%20S1B-0250%20-%20PA-WM1-0088.0000-RR.pdf)

the active 12-inch [Mariner East I] which had to be relocated for purposes of the reevaluation.” *Id.*

Drilling was stopped and the drilling profile for Mariner East 2 ultimately had to be adjusted to account for Mariner East 1. *Id.*

Sunoco’s failure accurately to locate Mariner East 1 at this Westmoreland County site calls into question whether Sunoco has accurately located Mariner East 1 throughout the rest of the route, including in West Whiteland Township. Sunoco’s difficulty with staying on the planned alignment is also concerning given the proximity of Mariner East 2 not only to Mariner East 1, but to other utilities.

3. The Mariner East pipelines are unsafe and unreasonable because Sunoco has continually failed to comply with environmental laws and regulations.

Sunoco’s environmental compliance record for the Mariner East 2 pipelines speaks for itself. Pipeline construction began at a few locations in February 2017 and slowly ramped up. In April 2017, as horizontal directional drilling began in earnest across the Commonwealth, reports of drilling fluid spills began to flood DEP’s offices. *See* DEP “Sunoco Mariner East II - Pipeline Construction Inadvertent Returns - Uplands” (reporting dates and details of drilling fluid spills to uplands);<sup>11</sup> DEP “Sunoco Mariner East II - Pipeline Construction Inadvertent Returns - Waters of the Commonwealth” (reporting dates and details of drilling fluid spills in waters of the Commonwealth).<sup>12</sup>

The charts documenting Sunoco’s drilling fluid spills reveal that most spills are in clusters, indicating that Sunoco failed to fix the problems that caused the first spill and continued to drill despite methods and locations that may be unsuitable. The charts also demonstrate the enormous number of spills that Sunoco has caused during construction of Mariner East 2--over 160 and counting, including several reports that have recently come in from spills during the month of May. The total spillage so far amounts to hundreds of thousands of gallons.

Sunoco’s record of erosion and sediment control violations is abysmal as well. Sunoco has

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<sup>11</sup> Available on DEP’s Mariner East Pipeline II portal page, [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Sunoco\\_Mariner\\_East\\_II-Pipeline\\_Construction\\_Inadvertent\\_Returns-Uplands\\_Revised.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Sunoco_Mariner_East_II-Pipeline_Construction_Inadvertent_Returns-Uplands_Revised.pdf).

<sup>12</sup> Available on DEP’s Mariner East Pipeline II portal page, [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Sunoco\\_Mariner\\_East\\_II-Pipeline\\_Construction\\_Inadvertent\\_Returns-Waters\\_of\\_the\\_Commonwealth\\_Revised.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Sunoco_Mariner_East_II-Pipeline_Construction_Inadvertent_Returns-Waters_of_the_Commonwealth_Revised.pdf).

regularly failed to use adequate best management practices (“BMPs”) to avoid unlawful discharges of sediment into receiving water bodies during earthmoving activities. For example, DEP issued a notice of violation on August 16, 2017, detailing how Sunoco’s failure to install and maintain appropriate erosion and sediment control BMPs resulted in its violating the Clean Streams Law, the conditions of its permits, and the Dam Safety and Encroachments Act.<sup>13</sup>

Every spill and discharge of sediment into a water of the Commonwealth--be it wetland, stream, lake, or otherwise--is an illegal and unpermitted release of industrial waste. DEP has issued more than 50 notices of violation for drilling fluid spills and sediment discharges.<sup>14</sup> Sunoco refuses to correct its lack of compliance. For example, DEP issued the first notice of violation for Mariner East 2 in May 2017 in response to a drilling fluid spill in Delaware County. In that notice, DEP instructed that Sunoco must immediately notify DEP upon the occurrence of certain types of drilling fluid spills.<sup>15</sup> The third-to-latest posted notice of violation, in May 2018 in response to a drilling fluid spill in Delaware County, takes Sunoco to task for, among other things, failing to notify DEP of a drilling fluid spill.<sup>16</sup> Sunoco simply does not prioritize compliance with laws and DEP requirements.

West Whiteland Township has seen its share of these problems, even setting aside the happenings at Lisa Drive, which were preceded by multiple drilling fluid spills at the site.<sup>17</sup> The contamination of over a dozen water wells in Chester County due to Sunoco’s improper horizontal directional drilling occurred along a drilling alignment spanning Uwchlan and West Whiteland Townships. *See* July 24,

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<sup>13</sup> *See* August 16, 2017 Notice of Violation, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/NOV%2038%2017%20102%20-%208-16-2017%20\(Bachman%20Run\),%20Lebanon%20County.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/NOV%2038%2017%20102%20-%208-16-2017%20(Bachman%20Run),%20Lebanon%20County.pdf).

<sup>14</sup> *See* linked documents available under “Notices of Violation” at DEP’s Mariner East Pipeline II portal page, <http://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/Mariner-East-II.aspx>.

<sup>15</sup> *See* May 9, 2017 Notice of Violation, available at <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/2018/May%209,%202017%20Delaware%20County.pdf>.

<sup>16</sup> *See* May 3, 2018 Notice of Violation, available at <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/2018/May%203,%202018%20Delaware%20County.pdf>.

<sup>17</sup> *See* November 16, 2017 Notice of Violation, available at <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/2018/November%2016,%202017%20Chester%20County.pdf>.

2017 Consent Order and Agreement.<sup>18</sup> Sunoco has also sought significant changes to its construction methodology at two locations in West Whiteland Township which the Department of Environmental Protection is evaluating.<sup>19</sup> These changes have provoked a massive public outcry in large part due to the planned destruction of cherished public and natural resources that would be lost as part of the construction at those locations.<sup>20</sup>

These series of problems caused by Sunoco's Mariner East 2 construction have not gone unnoticed, but efforts to remedy them have had mixed results. DEP has imposed civil penalties on two occasions, in January and then April of this year.<sup>21</sup> The first penalty, for over 12 million dollars, came after DEP suspended construction on Mariner East 2 for more than a month. DEP had concluded that "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. Suspension of the permits described in Paragraph

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<sup>18</sup> Available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/Sunoco Consent Order and Agreement.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/Sunoco%20Consent%20Order%20and%20Agreement.pdf).

<sup>19</sup> See "Addendums to Chapter 105, Water Obstruction and Encroachment Permits and Chapter 102, Erosion and Sediment Control (E&S) Permits" on DEP's Mariner East Pipeline II portal page, <http://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/Mariner-East-II.aspx>, and the documents linked therein, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/EastSwedesfordRoad/East%20Swedesford%20Road%20-%20HDD%20S3-381%20\(aka%20Drill%20381\).pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/EastSwedesfordRoad/East%20Swedesford%20Road%20-%20HDD%20S3-381%20(aka%20Drill%20381).pdf) and [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NorthPottstownPike/North%20Pottstown%20Pike%20-%20HDD%20S3-0370%20\(aka%20Drill%20370\).pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NorthPottstownPike/North%20Pottstown%20Pike%20-%20HDD%20S3-0370%20(aka%20Drill%20370).pdf).

<sup>20</sup> See aggregated public comments on Swedesford Road crossing at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD Reevaluation Report s/Public Comments/SwedesfordRoadCrossing/1st%20comment%20period%20-%20Swedesford%20Road%20Crossing.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD%20Reevaluation%20Report%20Public%20Comments/SwedesfordRoadCrossing/1st%20comment%20period%20-%20Swedesford%20Road%20Crossing.pdf), and aggregated public comments on the North Pottstown Pike crossing at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD Reevaluation Report s/Public Comments/NorthPottstownPike/1st%20comment%20period%20-%20North%20Pottstown%20Pike%20Crossing.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD%20Reevaluation%20Report%20Public%20Comments/NorthPottstownPike/1st%20comment%20period%20-%20North%20Pottstown%20Pike%20Crossing.pdf).

<sup>21</sup> See Consent Order and Agreement dated February 8, 2018, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary of Order/Sunoco %20Pipeline%20LP,%20Consent%20Order%20and%20Agreement%20-%20February%208,%202018.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary%20of%20Order/Sunoco%20Pipeline%20LP,%20Consent%20Order%20and%20Agreement%20-%20February%208,%202018.pdf); Consent Assessment of Civil Penalty dated April 27, 2018, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary of Order/Sunoco %20Pipeline%20LP,%20Consent%20Order%20and%20Agreement%20-%20February%208,%202018.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary%20of%20Order/Sunoco%20Pipeline%20LP,%20Consent%20Order%20and%20Agreement%20-%20February%208,%202018.pdf).

D, above, is necessary to correct the egregious and willful violations described herein.”<sup>22</sup> This “lack of ability or intention” to comply is consistent with Sunoco’s refusal to voluntarily suspend Mariner East 1 service despite the risk to the public: Unless Sunoco is forced to take action to protect the public that may impact its bottom line, it will not.

The Environmental Hearing Board has separately shut down horizontal directional drilling to build Mariner East 2 after granting a temporary supersedeas petition by Clean Air Council and other groups filed in response to the ongoing endangerment of Pennsylvanians’ water supplies from the construction. July 25, 2017 Order, EHB Docket No. 2017-009-L, available at <http://ehb.courtapps.com/efile/documentViewer.php?documentID=38322>. An agreement was reached to settle the supersedeas petition, which the Environmental Hearing Board signed off on August 10, 2017. Corrected Stipulated Order, EHB Docket No. 2017-009-L, available at <http://ehb.courtapps.com/efile/documentViewer.php?documentID=38633>. Nonetheless, Sunoco breached that agreement and had to be taken back to court yet again for failure to comply. See EHB Docket No. 2018-023-L.

Unfortunately, the list goes on. The new Mariner East pipeline construction has been an environmental and public health disaster due to (using DEP’s words) “a lack of ability or intention on the part of Sunoco to comply” with the law. Sunoco has failed to provide safe and reasonable public utility service, and its track record demonstrates that it will not likely do so.

4. The Mariner East pipelines are unsafe and unreasonable because Sunoco has destroyed and continues to threaten drinking water supplies.

The aquifers of West Whiteland Township provide an essential water supply to the area’s growing population. Tr. 73: 3-5. Hundreds of West Whiteland residents rely on private water supplies. Tr. 71: 15-2. Multiple *public* water supplies are also sourced from within West Whiteland Township, some very near to the Mariner East route. Tr. 71: 24-25. Sunoco’s poor planning and sloppy execution in

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<sup>22</sup> DEP Administrative Order in the matter of Sunoco Pipeline, L.P. dated January 3, 2018, at ¶ WWW., available at <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/OrderSuspendingConstructionActivities010318.pdf>.

the construction of the Mariner East 2 pipelines has, and continues to, put these water supplies at risk.

From the start, Sunoco has failed to adequately identify and document well locations. Tr. 87: 7-9. In the entire 350-mile pipeline route, Sunoco only identified 22 private wells in its water permit applications. Tr. 86: 14-15. By contrast, fourteen wells have since gone dry in just one area of West Whiteland Township. Tr. 86: 16-20. Sunoco's complacency regarding well identification foreshadowed the damage to water supplies that followed.

In June and July of 2017, Sunoco's drilling near the border of Uwchlan and West Whiteland Townships in Chester County caused more than a dozen homes to lose access to clean water from their wells.<sup>23</sup> Sunoco again failed to immediately notify DEP of the fact that its construction of the pipelines impaired or destroyed residents' wells.<sup>24</sup> It was residents, not Sunoco, who notified DEP about impacts to water supplies. Tr. 98: 16-18. Faced with loss of water supplies and flooding, some of the residents were moved to hotels. Tr. 97: 10-18. Senator Dinniman saw numerous samples of contaminated water gathered by concerned members of his community and described it frankly: It looked like something you would "find in a toilet." Tr. 89: 19-20, *see also* Tr. 358: 14-20 (Virginia Marcille-Kerslake describing the increased turbidity, brown color, and cloudiness of the water). The Senator also learned that one of the wells tested positive for bentonite. Tr. 149: 9-13.

At the hearing in this matter, Sunoco's litigation consultant in toxicology downplayed the risks of bentonite ingestion, noting its presence in sunscreen and makeup. Tr. 315: 25, 316: 1-2. This testimony missed an important point. Even if it were advisable to eat sunscreen and makeup, it is not just the risks associated with the ingestion of or exposure to pure bentonite that need to be assessed. Increased turbidity, or cloudiness in water, is more than an unpleasant aesthetic harm. Dr. Sasosky, an expert in geology, karst geology, and hydrogeology testified, "turbidity is frequently a measure of the level of concern we would have for biological contamination... if particles of clay can be transported, then

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<sup>23</sup> See Consent Order and Agreement dated July 24, 2017, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/Sunoco\\_Consent\\_Order\\_and\\_Agreement.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/Sunoco_Consent_Order_and_Agreement.pdf).

<sup>24</sup> *Id.*

biological particles could also be transported.” Tr. 280: 5-13. Indeed, bacterial contamination of water supplies has been a concern throughout the construction of the Mariner East 2 pipelines. Sunoco’s Water Supply Assessment, Preparedness, Prevention and Contingency Plan<sup>25</sup> was modified through a settlement with DEP, Clean Air Council, Delaware Riverkeeper Network, and Mountain Watershed Association, Inc. to include testing for bacterial pathogens<sup>26</sup> after horizontal directional drilling had been shut down by the Environmental Hearing Board in response to the nonprofits’ request for emergency relief.<sup>27</sup> Sunoco is still planning on implementing construction methods in West Whiteland Township that require the use of fluids. Tr. 473: 10-16.<sup>28</sup> As Dr. Sasosky explained, introducing fluids underground could result in sediment reaching water supplies. Tr. 280: 1-4. The risk persists.

Disruption of the flow of water into private wells has also been an ongoing concern. Dr. Sasosky testified that bentonite can reduce the flow of water to a well. Tr. 279: 23-25. Judge Barnes found this testimony credible. Emergency Order at 12-13. On the other hand, in looking at the impacts of bentonite, Sunoco’s litigation consultant did not look at impacts to water systems, Tr. 321: 24-25, 322: 1-3, how bentonite could alter the movement of groundwater, Tr. 324: 17-19, or how bentonite could disrupt the flow of water into a drinking water well, Tr. 324: 20-24. It is unsafe to cut off or contaminate people’s water supplies and unreasonable to expect people to give up their private water in favor of bottles, tanks, and water bills because Sunoco has chosen not to protect their private wells.

5. The Mariner East pipelines are unsafe and unreasonable because Sunoco has not adequately investigated the geology along the route.

The series of sinkholes that opened up on Lisa Drive may have been one of the more dramatic

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<sup>25</sup> Referenced throughout and developed in conjunction with SPLP Exhibits 7 and 8, also available directly through DEP’s website at <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Water%20Supply%20Assessment,%20Preparedness,%20Prevention%20and%20Contingency%20Plan%20w%20appendices%20-%20Revised%20080817.pdf>.

<sup>26</sup> See *id.* at Appendix B, Well Test Plan.

<sup>27</sup> See Order Environmental Hearing Board dated July 25, 2017, EHB Docket No. 2017-009-L, available at <http://ehb.courtapps.com/efile/documentViewer.php?documentID=38322>.

<sup>28</sup> See also List of 102 and 105 Activities That Have Yet to Be Completed or Commenced, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary\\_of\\_Order/Para%208%20-%20Exhibit%20D%20-%20Pending%20Earth%20Disturbance%20Water%20Obstruction%20%20Encroachment.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary_of_Order/Para%208%20-%20Exhibit%20D%20-%20Pending%20Earth%20Disturbance%20Water%20Obstruction%20%20Encroachment.pdf).

manifestations of Sunoco's failed planning, but as the foregoing context has made clear, the sinkholes were far from the start of the problems, and certainly not isolated incidents. One common thread that runs through the scores of drilling fluid spills, the destruction of water supplies, and the sinkholes is Sunoco's failure to account for the subsurface geology it has been disrupting with its construction.

Sunoco was warned before the start of Mariner East 2 construction about the vulnerability of the geology in the Exton area.<sup>29</sup> Yet Sunoco waited until its construction caused potentially "catastrophic" conditions before it performed any surface geophysical studies in West Whiteland Township.<sup>30</sup> Surface geophysical studies include electrical resistivity, gravity, and seismic methods that can help provide an image of subsurface conditions; these are the types of studies that were ordered by the Commission when it recently shut down operation of Mariner East 1.<sup>31</sup> Prior to the Commission's Emergency Order, instead of performing geophysical studies, Sunoco utilized *geotechnical* test boring at horizontal direction sites prior to the start of drilling. Tr. 470: 15-22. The distinction is significant and plainly the test boring was insufficient. Repeated and voluminous drilling fluid spills, destruction of water supplies, and sinkholes on Lisa Drive all occurred after test boring and despite the availability of test bore data.

The inadequacy of Sunoco's test boring regime is no surprise. As Sunoco's geology consultant Mr. Demko explained, a test bore is like a biopsy. It gives information about one specific point. Tr. 683: 16-17. To continue Mr. Demko's analogy, a doctor cannot trust a biopsy to tell a patient he is cancer free if the doctor took a biopsy of the patient's liver and the tumor is in the lung. Surface geophysical studies, "like an MRI," provide the needed context. *See* Tr. 683: 16-17. It is thus little comfort that Sunoco continues to rely on data from test boring and not geophysical studies for the sites in West Whiteland where Sunoco intends to use HDD. When DEP has asked Sunoco to perform geophysical testing to interpolate between the limited data points provided by test boring, Sunoco has repeatedly refused.<sup>32</sup>

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<sup>29</sup> *See* Exhibit P-6.

<sup>30</sup> *See* Emergency Order of the Public Utility Commission dated March 7, 2017. Docket No. P-2018-3000281.

<sup>31</sup> *Id.*

<sup>32</sup> Sunoco Response to DEP Request for Information on Bow Tree Drive Construction, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/Sunoco\\_Response/Sunoco%27s%20Response%20to%20DEP%20-%205-12-18%20-%20Strasburg%20Road-](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/Sunoco_Response/Sunoco%27s%20Response%20to%20DEP%20-%205-12-18%20-%20Strasburg%20Road-)



It appears the *only* location in West Whiteland Township that Sunoco performed surface geophysical studies, like those ordered by the Commission, was in a very limited area around Lisa Drive itself. At hearing, the testimony presented by Sunoco about which studies were performed at which sites was scattered and unclear. The documents that speak to this point are instructive.

Matthew Gordon, the project manager for Mariner East 2, testified that geophysical studies were conducted at North Pottstown Pike and Swedesford Road but could not recall specifics. Tr. 449: 8-20. Upon request of counsel, questions regarding geophysical surveying were then deferred for Sunoco's geologist. Tr. 449: 21-25. Mr. Demko testified that seismic studies were conducted at North Pottstown Pike. Tr. 662: 9-14. Sunoco made a similar claim in the cover letter for its major modification request, dated October 17, 2017.<sup>33</sup> However, Sunoco's reevaluation report for the same site, reviewed and signed by Mr. Demko, dated November 7, 2017, says "[n]o geophysical studies have been completed" for that location.<sup>34</sup> If geophysical studies have been performed in the intervening months, they did not inform and were not incorporated into the construction plans. At Swedesford Road, a "downhole" geophysical study--as opposed to a surface geophysical survey--was performed near the threatened Aqua Pennsylvania public water source.<sup>35</sup> There is no question that downhole testing is a different scope and nature of study than electrical resistivity, seismic, or gravimetry, which provide the MRI-like scan Mr. Demko described. The HDD reevaluation report for Swedesford Road, which was also reviewed and signed by Mr. Demko,

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[Bow%20Tree%20Drive%20Crossing.pdf](#); Sunoco Response to DEP Request for Information on Valley Road Construction, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/Sunoco\\_Response/Sunoco%27s%20Response%20to%20DEP%20-%205-21-18%20-%20Valley%20Road%20Crossing.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/Sunoco_Response/Sunoco%27s%20Response%20to%20DEP%20-%205-21-18%20-%20Valley%20Road%20Crossing.pdf); Sunoco Response to DEP Request for Information on Arch Bishop Road Construction, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/Sunoco\\_Response/Sunoco%27s%20Response%20to%20DEP%20-%205-22-18%20-%20Arch%20Bishop%20..%20South%20Chester%20Road%20Crossing.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/Sunoco_Response/Sunoco%27s%20Response%20to%20DEP%20-%205-22-18%20-%20Arch%20Bishop%20..%20South%20Chester%20Road%20Crossing.pdf).

<sup>33</sup> See Exhibit SPLP-5.

<sup>34</sup> See North Pottstown Pike HDD Reevaluation Report at Attachment 1, p. 10, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/N.%20Pottstown%20Pike%20Crossing%20-%20S3-370%20-%20PA-CH\\_0212.0000%20-%20HDD%20Reanalysis.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/N.%20Pottstown%20Pike%20Crossing%20-%20S3-370%20-%20PA-CH_0212.0000%20-%20HDD%20Reanalysis.pdf).

<sup>35</sup> See Swedesford Road HDD Reevaluation Report at Attachment 1, p.8, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/E15-862%20-%20Swedesford%20Road%20Crossing%20-%20PA-CH-0219.0000%20-S3-0382.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/E15-862%20-%20Swedesford%20Road%20Crossing%20-%20PA-CH-0219.0000%20-S3-0382.pdf)

even recommended geophysical testing:

A geophysical study is required to determine the extent of karst development along the profile of HDD S3-0382, especially in light of installation challenges that are being experienced at HDD S3-400 due south of HDD S3-0382, including excessive groundwater discharge; loss of fluids, with no IRs to date; and difficulties steering the pilot hole.<sup>36</sup>

Sunoco did not follow this recommendation; geophysical surveying was “not implemented.”<sup>37</sup>

Perhaps even more importantly, even if geophysical studies had been conducted at both the North Pottstown Pike and Swedesford Road sites, *there is no dispute* that the vast majority of West Whiteland Township has not been evaluated with geophysical surveys.

During the hearing, Sunoco focused on its intention to limit HDD in West Whiteland, modifying its plans for Lisa Drive and other locations to other trenchless construction methods and/or open trench installation.<sup>38</sup> Changing construction methods does not make up for the lack of studies. HDD is not and has never been the only source of the danger that Sunoco’s Mariner East 2 and 2X pipelines have presented in West Whiteland Township. For example, many neighbors raised with DEP their concerns over flooding in the Meadowbrook Manor neighborhood due to Sunoco’s proposed non-HDD construction techniques in that area.<sup>39</sup> The neighbors reported that Meadowbrook Manor already has a problem with flooding that has caused two homes to be torn down in recent years. *Id.*

Furthermore, Sunoco still intends to use construction methods, such as FlexBor and other boring techniques, that introduce liquids underground. Tr. 473: 10-16.<sup>40</sup> Mr. Demko and Dr. Sasowsky agree

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<sup>36</sup> *Id.* at Attachment 1, p. 10.

<sup>37</sup> *Id.* at the unnumbered second page of the PDF.

<sup>38</sup> As part of its ordered response to DEP’s January 3, 2018 Administrative Order suspending construction on the Mariner East 2 pipelines, Sunoco compiled a table of outstanding construction activities. *See supra* footnote 28. 25 lines of the table are devoted to activities occurring in West Whiteland Township. Roughly half of these items describe HDD activities or other types of boring activities, for both Mariner East 2 and Mariner East 2X. The Interim Emergency Order rightly found that the danger still present within West Whiteland Township requires injunctive relief to protect the public.

<sup>39</sup> *See* comments to Swedesford Road Crossing HDD Re-evaluation Report, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report\\_s/Public\\_Comments/SwedesfordRoadCrossing/1st%20comment%20period%20-%20Swedesford%20Road%20Crossing.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report_s/Public_Comments/SwedesfordRoadCrossing/1st%20comment%20period%20-%20Swedesford%20Road%20Crossing.pdf).

<sup>40</sup> *See also* List of 102 and 105 Activities That Have Yet to Be Completed or Commenced, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary\\_of\\_Order/Para%208%20-%20Exhibit%20D%20-](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/Summary_of_Order/Para%208%20-%20Exhibit%20D%20-)

that water contributes to subsidence and sinkholes. This is particularly concerning as not all of the methods Sunoco intends to use are specifically covered by Sunoco's Void Mitigation Plan. Tr. 474: 10-11.<sup>41</sup>

Even where *no* fluid is being used in construction, a risk of subsidence remains. As Dr. Sasowsky explained, open trenching does not remove all concerns; there is still the potential of hitting soil filled voids which are only "pseudo-stable" and can collapse. Tr. 267: 7-21. Anywhere there is carbonite lithology, you should be cautious of sinkholes. Tr. 260: 1-10. Moreover, it is not just the actual excavation sites themselves that are at risk, sinkholes can propagate even a thousand yards away from the excavation site. Tr. 268: 2-3. Similarly, the risk of sinkholes and subsidence persists after construction is complete. Tr. 265: 2-5. If construction activity disrupts the subsurface and creates a void, a sinkhole might take weeks or years to materialize; it could be triggered by a weather event or even someone riding a lawn mower. Tr. 264: 12- 24. This risk must be taken seriously; sinkholes are hazardous and cause loss of life and property. Tr. 261: 3-6.

Sunoco's failure to adequately address geological risk predictably led to a series of ongoing problems which continue to plague its pipeline construction. As described above, this has endangered residents and led to environmental harm along the construction route. Because of this failing, the Mariner East pipelines have been unsafe and their construction unreasonable.

6. The Mariner East Pipelines are unsafe and unreasonable because the vast majority of Sunoco's construction plans are not informed by adequate site-specific analysis and Sunoco ignores crucial guidance from scientists and regulators.

On August 10, 2017, after construction had already been underway for six months and resulted in extensive spilling and destruction of water supplies, the Environmental Hearing Board ordered re-

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[%20Pending%20Earth%20Disturbance%20Water%20Obstruction%20%20Encroachment.pdf](#) (listing construction activities still to be complete in West Whiteland).

<sup>41</sup> See also, SPLP Exhibit 7.

evaluation of certain horizontal directional drilling plans and other protections.<sup>42</sup> The re-evaluation process requires construction plans to be reviewed by a professional geologist and modified as necessary where there are measures that could have been taken to avoid spilling, water contamination, and other harms. So far 25 sites have been re-evaluated.<sup>43</sup> Every drilling plan that has undergone scientific and engineering re-evaluation has had to be modified. Sunoco has not taken a second look at its plans on its own volition, but as a result of being forced to after litigation and settlement. Sunoco could have used a similar process prior to starting construction, but did not; it cut corners. Unfortunately, not all, or even most, of Sunoco's construction plans have gone through this re-evaluation process. With 25 out of 25 plans that were looked at by scientists needing to be improved, there is every reason to believe that if Sunoco's other construction plans were subject to similar scrutiny, additional protective measures would be identified for those plans as well.

Even where Sunoco's construction plans have been re-evaluated, Sunoco cannot be trusted to do what is necessary to protect the public. At a drill site that crosses the border of Chester and Delaware Counties, Sunoco has gone so far as to delete the recommendations of its professional geologists from the professional geologist reports instead of following those recommendations. In reviewing the plans for that site, the professional geologists pointed out that steering the drill bit through the rock in that area had proven problematic.<sup>44</sup> The professional geologists recommended five protective measures to help keep the drill on alignment, citing them as the "only practical solutions".<sup>45</sup> Sunoco refused to adopt these

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<sup>42</sup> See Corrected Stipulated of the Environmental Hearing Board, dated August 10, 2017, available at: <http://ehb.courtapps.com/efile/documentViewer.php?documentID=38633>.

<sup>43</sup> The complete list of re-evaluations, DEP responses thereto, and supplemental information from Sunoco, and comments on those re-evaluations is maintained in a table on the DEP website, available at: <http://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/HDD-Reevaluation-Reports.aspx>.

<sup>44</sup> See Re-Evaluation of Arch Bishop Construction Site, at p. 10 of GES report, available at: [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report\\_s/Arch%20Bishop%20-%20South%20Chester%20Rd%20Crossing%20-%20S3-0541%20-%20PA-CH-0421.0000-RD.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report_s/Arch%20Bishop%20-%20South%20Chester%20Rd%20Crossing%20-%20S3-0541%20-%20PA-CH-0421.0000-RD.pdf).

<sup>45</sup> *Id.*

recommendations and later deleted them from the geologists' report without explanation.<sup>46</sup> The construction plans at issue are for a highly populated area with public water supply intakes and private water supplies nearby.

Sunoco has also refused to analyze which drinking water wells could be impacted by its construction activities. It has claimed on numerous occasions that wells within 150 feet of drilling could be impacted by HDD without providing any explanation for how it determined that impact radius.<sup>47</sup> When asked by DEP to have a professional geologist sign off on this crucial claim, instead of providing the requested scientific support, Sunoco argued the impact radius no longer mattered because it was offering replacement water to residents with wells within 450 feet of the drilling alignment.<sup>48</sup> Not only does this call into question the scientific integrity of Sunoco's plans, but it leaves residents along the route uninformed as to whose wells might be at risk.

Sunoco has also been dismissive of the DEP recommendations for improving construction plans. At one that is under re-evaluation and groundwater is at risk, DEP recommended extending a "bentonite plug" to further protect groundwater.<sup>49</sup> Instead of agreeing to follow DEP's recommendation, Sunoco merely replied "SPLP appreciates the Departments [sic] recommendation."<sup>50</sup>

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<sup>46</sup> Compare *Id.* with Resubmitted Re-evaluation of Arch Bishop Site, at p. 10 of GES report, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/Sunoco\\_Response/Arch%20Bishop%20-%20South%20Chester%20Road%20Crossing%20-%20Sunoco%20Response%20to%20DEP%20-%20201-2-18.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/Sunoco_Response/Arch%20Bishop%20-%20South%20Chester%20Road%20Crossing%20-%20Sunoco%20Response%20to%20DEP%20-%20201-2-18.pdf).

<sup>47</sup> See, e.g., Response Re: Re-evaluation of Norfolk Southern Railroad Crossing, at p. 1, available at : [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/Sunoco\\_Response/Sunoco%27s%201st%20Response%20to%20DEP%20-%20Norfolk%20Southern%20Railroad%20Crossing%20-%202012-29-17.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/Sunoco_Response/Sunoco%27s%201st%20Response%20to%20DEP%20-%20Norfolk%20Southern%20Railroad%20Crossing%20-%202012-29-17.pdf); Re-Evaluation of Arch Bishop Construction Site, in "Adjacent Features Analysis" section, available at: [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/Sunoco\\_Response/Arch%20Bishop%20-%20South%20Chester%20Road%20Crossing%20-%20Sunoco%20Response%20to%20DEP%20-%20201-2-18.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/Sunoco_Response/Arch%20Bishop%20-%20South%20Chester%20Road%20Crossing%20-%20Sunoco%20Response%20to%20DEP%20-%20201-2-18.pdf); Re-Evaluation of Piney Creek Construction Site, in "Adjacent Features Analysis" section, available at: [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/Piney%20Creek%20Crossing%20-%20S2-0142%20-%20PA-BL-0126.0000-RD.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/Piney%20Creek%20Crossing%20-%20S2-0142%20-%20PA-BL-0126.0000-RD.pdf).

<sup>48</sup> See, e.g., Sunoco Response Re: Re-evaluation of Arch Bishop Construction Site, available at, [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report/s/Sunoco\\_Response/Sunoco%27s%20Response%20to%20DEP%20-%20205-22-18%20-%20Arch%20Bishop%20..%20South%20Chester%20Road%20Crossing.pdf](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report/s/Sunoco_Response/Sunoco%27s%20Response%20to%20DEP%20-%20205-22-18%20-%20Arch%20Bishop%20..%20South%20Chester%20Road%20Crossing.pdf)

<sup>49</sup> See Sunoco Response re: Re-evaluation of Valley Road Construction Site, available at [http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD\\_Reevaluation\\_Report](http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/HDD_Reevaluation_Report)

Looked at in totality, Sunoco has consistently ignored guidance and agency recommendations when inconvenient, resulting in the Mariner East pipelines being unsafe and unreasonable.

7. The Mariner East pipelines are unsafe and unreasonable because Sunoco has not adequately informed communities along the route about how to respond to an emergency.

The Emergency Order properly found that “Sunoco has failed to take reasonable efforts to warn and protect the public from danger.” Emergency Order at 15. Regardless of any rhetoric Sunoco has put forth about its efforts of public notice and communication, the reality on the ground for residents in West Whiteland Township--those who actually have to live with the threat of the Mariner East pipelines running by their homes and schools--is that residents do not know how to protect themselves, and Sunoco has not answered their questions. Two large school districts have taken the extraordinary step of writing to Governor Wolf asking what to do in case of an emergency. Tr. 62: 2-6.<sup>51</sup> A private school, St. Peter and Paul, has lost 20 students this year over fears related to the pipeline. Tr. 62: 19-22. Residents crave specific information about how to respond in an emergency, but have only received “boilerplate” and “general” information. Tr. 111: 5-8. Even if the concerns of the average resident are not given weight, the concerns of emergency response professionals undoubtedly should be. Chester County Emergency Services has requested to see the emergency management plan. As of the hearing in this matter, over a year into construction, that meeting about that information had not yet occurred. Tr. 190: 4-5. Judge Barnes properly found “local and state government needs time to create evaluation and notification plans and to educate the public before operations should resume.” Emergency Order at 19. Without more information from Sunoco, this cannot happen.

The testimony of Sunoco’s pipeline safety consultant at the hearing did little to address the concerns of residents. One of the questions that has emerged from residents along the route is whether it is safe to use cell phones in the event of a leak. Sunoco’s expert was unsure and acknowledged science

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[s/Sunoco\\_Response/Sunoco%27s%20Response%20to%20DEP%20-%205-21-18%20-%20Valley%20Road%20Crossing.pdf](#)

<sup>50</sup> *Id.*

<sup>51</sup> *See also* Exhibits P-1 and P-2.

still needed to be done, but also characterized the question as fun. Tr. 567: 1-13. Nothing about this situation and the possibility of an explosion feet from their homes is fun to the residents of West Whiteland Township. When asked what people who are unable to run are supposed to do in the event of a leak, such as people with disabilities, residents of nursing homes, and daycares, Sunoco's expert ultimately could not answer. Tr. 579-580. Such individuals are particularly reliant on a strong integrity management plan. Tr. 579-580. Unfortunately, the level of safety and integrity management really depends on how the company carries out its policies, Tr. 554: 20-23, and Sunoco has demonstrated time and again an unwillingness to follow protocol.

**C. The Emergency Order properly found the need for relief is immediate.**

The relief Senator Dinniman requested to protect the residents of West Whiteland Township was urgently needed. Sunoco's record of safety violations and pattern of failure to self-report incidents made it critical that the Commission step in to protect the public before Sunoco causes further harm.

The Lisa Drive incidents are a prime example. On November 11, 2017, DEP received notice of a spill at the site not from Sunoco, but from a third party.<sup>52</sup> DEP had to remind Sunoco more than once that when there is a loss of drilling fluid circulation, it must notify DEP, and that it must keep Amtrak apprised of potential voids near its tracks.<sup>53</sup> DEP noted "[t]o date, no notice of any loss of circulation has been received from Sunoco, and Sunoco has not provided the Department with information about any contacts they may have made with Amtrak on this issue, despite explicit Department request for such information."<sup>54</sup> Immediate notification to DEP is a permit requirement, but DEP had no record of receiving any such notice from Sunoco about the November 11, 2017 inadvertent return or the losses of circulation. DEP went on to explain: "The Department is very concerned with Sunoco's continued failure to provide the required notifications for these incidents."<sup>55</sup> Sunoco also failed to provide the required

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<sup>52</sup> Notice of Violation dated November 16, 2017, available at <http://files.dep.state.pa.us/ProgramIntegration/PA%20Pipeline%20Portal/MarinerEastII/NOV/2018/November%2016,%202017%20Chester%20County.pdf>

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

technical reports.<sup>56</sup> A few months later, on March 3, 2018, it was a resident, and again not Sunoco, who reported to PUC that additional sinkholes had formed.<sup>57</sup>

Sunoco's pattern of disregard for safety regulations and failure to self-report is not limited to the Lisa Drive incidents or the other Mariner East incidents described above; it permeates Sunoco projects across the country. Just a few such examples follow.

In April 2016, Sunoco received a Notice of Probable Violation for pipeline construction irregularities involving the Permian Express II (PEX II) pipeline in Texas. PHMSA alleged that Sunoco used unqualified welders and unqualified welding procedures to make more than 3,000 welds on PEX II.

Upon discovery of these errant practices, Sunoco attempted to qualify the welders by re-testing them after-the-fact. While this is not consistent with the requirements of Part 195, it is even more problematic that some of these welders who had already made production welds on the PEX II pipeline failed to pass the re-test, and in some cases failed multiple qualification attempts.<sup>58</sup>

Sunoco put PEX II in service anyway, upon which it promptly failed "in the vicinity of a girth weld."<sup>59</sup> Sunoco had initial indications of a problem on PEX II on or about August 30, 2016, but failed to determine the pipeline had ruptured for 11 long days--PEX II was not shut down until September 10.<sup>60</sup> Sunoco then was subject to an additional federal enforcement action for the PEX II rupture.<sup>61</sup> Sunoco initially reported that PEX II had leaked 800 barrels of hazardous liquids, a figure it later revised by an order of magnitude to 8,600 barrels.

On November 6, 2012, PHMSA served Sunoco with a Notice of Probable Violation and Proposed

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<sup>56</sup> *Id.*

<sup>57</sup> Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order, at p. 1.

<sup>58</sup> Notice of Probable Violation and Proposed Civil Penalty and Proposed Compliance Order dated April 28, 2016, available at [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011\\_NOPV%20PCP%20PCO\\_04282016\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165011/420165011_NOPV%20PCP%20PCO_04282016_text.pdf)

<sup>59</sup> Corrective Action Order dated September 14, 2016, available at [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H\\_Corrective%20Action%20Order\\_09142016\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H_Corrective%20Action%20Order_09142016_text.pdf).

<sup>60</sup> *See id.*

<sup>61</sup> September 14, 2016 Corrective Action Order, available at [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H\\_Corrective%20Action%20Order\\_09142016\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420165030H/420165030H_Corrective%20Action%20Order_09142016_text.pdf).



Civil Penalty for failing to file a required report relating to an accident that occurred on February 8, 2011 in Sharon Hill, Pennsylvania.<sup>62</sup> PHMSA issued a Final Order finding a violation on June 13, 2013.<sup>63</sup>

Even more seriously, and more recently, Sunoco, on April 6, 2017, received another Notice of Probable Violation and Proposed Compliance Order from PHMSA.<sup>64</sup> The document states “SUNOCO failed to submit a written DOT Form 7000-1 for an accident that occurred on August 12, 2016, at its Terminal facility in Nederland, Texas. The accident involved a release of crude oil, ignition of the crude oil, and injuries requiring in-patient hospitalization.”<sup>65</sup> In fact, at least seven people were injured in this accident.<sup>66</sup>

The risk to the public from further malfeasance is ongoing and serious, so the need for relief was immediate.

**D. The Emergency Order properly found the injury would be irreparable if relief is not granted.**

The relief sought was necessary to prevent irreparable injury. There can be no question but that the risk of physical injury or death as a result of unsafe construction and operation constitutes irreparable harm. For example, the Commonwealth Court in *Woods at Wayne Homeowners Ass'n v. Gambone Bros. Constr. Co.* upheld the trial court’s issuance of a mandatory preliminary injunction requiring the stabilization of a retaining wall that was at risk of collapsing and damaging adjacent townhouses and injuring their occupants. 893 A.2d 196 (Pa. Cmwlth. 2006). The Court held that “[t]he injunction was needed to prevent irreparable injury, such as death, not compensable in money damages.” The

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<sup>62</sup> See Notice of Probable Violation and Proposed Civil Penalty dated November 6, 2012, available at [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120125019/120125019\\_NOPV\\_PCP\\_11062012\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120125019/120125019_NOPV_PCP_11062012_text.pdf)

<sup>63</sup> Final Order dated June 13, 2013, available at [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120125019/120125019\\_Final%20Order\\_06132013\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120125019/120125019_Final%20Order_06132013_text.pdf)

<sup>64</sup> Available at [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420175011/420175011\\_NOPV%20PCO\\_04062017\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420175011/420175011_NOPV%20PCO_04062017_text.pdf).

<sup>65</sup> Notice of Probable Violation and Proposed Civil Penalty dated April 6, 2017, available at [https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420175011/420175011\\_NOPV%20PCO\\_04062017\\_text.pdf](https://primis.phmsa.dot.gov/comm/reports/enforce/documents/420175011/420175011_NOPV%20PCO_04062017_text.pdf)

<sup>66</sup> *Id.*

Commission indeed has already found that harm of this type is irreparable in its ruling on the Bureau of Investigation and Enforcement's Petition for Issuance of an Ex Parte Emergency Order. *See* March 7, 2018 Emergency Order, Docket No. P-2018-3000281.

In this case, the construction of the Mariner East 2 pipelines has already led to a grave risk of rupture of the Mariner East 1 pipelines with which the Commission is familiar. Besides that, as detailed above, it has led to loss of water supplies, flooding, and evacuation. Tr. 97: 10-18. Contamination of water supplies such as what has already happened due to the Mariner East 2 construction endangers public health. *See* Tr. 89: 19-20, 358: 14-20. Illness short of death is still irreparable injury.

Environmental injury due to continued spills of drilling fluids and discharges of sediment into waters is irreparable as well. *See, e.g., Commonwealth v. Kennedy*, 87 A. 605, 606 (Pa. 1913) (pollution of a stream constitutes irreparable harm warranting an injunction); 35 Pa. Stat. Ann. § 6018.102 (“The Legislature hereby determines, declares and finds that ... improper and inadequate solid waste practices create public health hazards, environmental pollution, and economic loss, and cause irreparable harm to the public health, safety and welfare”).

The nature of the threatened harm is irreparable: it cannot be compensated by money damages, and indeed cannot be adequately compensated for at all.

**E. The Emergency Order properly found the relief requested is not injurious to the public interest.**

Injunctive relief is crucial to protecting the public interest. Here, relief is being sought specifically on behalf of the public, to ensure that public utility service is provided only to the extent that it is “proper for the safety, accommodation, and convenience of the public.” 66 Pa. C.S. § 1505(a). The public needs protection from much that Sunoco threatens: sinkholes; water contamination; destruction of or damage to private property; degradation of public natural resources; explosion and loss of health or life; and more. The relief sought is unambiguously for the public interest.

Sunoco's approach has been to muddy the waters by putting on evidence intended to show injury to itself and others. For example, Sunoco claims it would sustain financial injury. Injury to Sunoco, a

foreign, for-profit corporation, does not constitute injury to the public interest. As the Emergency Order aptly sets forth at pages 21-22:

Any financial harm to Sunoco, a foreign for-profit corporation, or its shipper(s) is outweighed by the by the potential harm the public may sustain without Commission intervention at this critical juncture and prior to the completion and start of [Mariner East] 2 and 2X. Sunoco has made deliberate managerial decisions to proceed in what appears to be a rushed manner in an apparent prioritization of profit over the best engineering practices available in our time that might best ensure public safety. Oil companies are free to protect their investments through tolling provisions in their leases. *Harrison v. Cabot Oil and Gas Corp.*, 110 A.3d 178, 186 (Pa. 2015).

Sunoco has also put on evidence intending to show harm to the workers building Mariner East 2. There is no question that when a pipeline company executes its project in a hazardous manner, that will affect the workers doing the construction. The testimony establishes, however, that compensation to construction workers continues during some delays. Tr. 502:20-25. Pipeline projects are necessarily of limited duration and then the workers move on to other work. Tr. 498:12-14. If Mariner East 2 does not ultimately start up, the Marcus Hook terminal can receive natural gas liquids by rail or truck. Tr. 506:17-22. Jobs would then increase in those industries. Sunoco merely speculates that any hypothetical decrease in the amount of work due to pipeline construction would not be more than compensated by an increase in longer-term jobs transporting natural gas liquids by rail or truck.

Sunoco's malfeasance has been damaging the public's perception of pipeline projects. Tr. 221:18-23. If this makes it harder for other pipeline companies to build their projects, that means less work on pipeline construction for the unions who do that work. Tr. 501:1-4.

Moreover, while it may be Sunoco's position that the Commission should value moving ahead on its project over public safety, that is not the opinion of the union representative that Sunoco called; he made clear that lives should never be put in danger over jobs. Tr. 511: 5-6.

The evidence shows that issuing the Emergency Order was in the public interest, and Sunoco has not met its burden to show a countervailing public interest that will suffer substantial harm.

#### **IV. Conclusion**

For the foregoing reasons, the Interim Emergency Order should be upheld by the Commission.

Respectfully,

A handwritten signature in black ink, appearing to read "Joseph M. ...". The signature is fluid and cursive, with a prominent initial "J" and a long horizontal stroke at the end.

Executive Director & Chief Counsel  
Clean Air Council  
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May 31, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that this day I have served a copy of the forgoing upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a party).

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Dated: May 31, 2018



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