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August 4, 2021

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Second Floor North  
Harrisburg, PA 17120

RE: Carlisle Pike Self Storage and Regency South Mobile Home Park v. Sunoco Pipeline L.P.; Docket No. C-2021-3027262; **SUNOCO PIPELINE L.P.’S PRELIMINARY OBJECTIONS TO FORMAL COMPLAINT**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.’s Preliminary Objections to the Formal Complaint of Carlisle Pike Self Storage and Regency South Mobile Home Park in the above-referenced proceeding. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact the undersigned counsel.

Respectfully submitted,

*/s/ Whitney E. Snyder*

Thomas J. Sniscak  
Whitney E. Snyder  
Bryce R. Beard

*Counsel for Sunoco Pipeline L.P.*

WES/das  
Enclosures

cc: Diana A. Silva, Esquire ([dsilva@mankogold.com](mailto:dsilva@mankogold.com))  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CARLISLE PIKE SELF STORAGE AND	:	
REGENCY SOUTH MOBILE HOME	:	
PARK	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3027262
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

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**NOTICE TO PLEAD**

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You are hereby advised that, pursuant to 52 Pa. Code § 5.61, you may file a response within ten (10) days of the attached preliminary objections. Any response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Sunoco Pipeline, L.P., and where applicable, the Administrative Law Judge presiding over the issue.

File with:  
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CARLISLE PIKE SELF STORAGE AND	:	
REGENCY SOUTH MOBILE HOME	:	
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v.	:	Docket No. C-2021-3027262
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

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**SUNOCO PIPELINE L.P. PRELIMINARY OBJECTIONS TO CARLISLE PIKE SELF STORAGE AND REGENCY SOUTH MOBILE HOME PARK FORMAL COMPLAINT**

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Pursuant to 52 Pa. Code § 5.101, Sunoco Pipeline L.P. (SPLP) submits these Preliminary Objections to the Formal Complaint of Carlisle Pike Self Storage and Regency South Mobile Home Park. The Complaint is insufficiently specific,<sup>1</sup> concerns subject matter over which the Commission lacks jurisdiction, is barred by the doctrine of *lis pendens* and is legally insufficient. The Complaint should be dismissed.<sup>2</sup>

**I. INTRODUCTION**

1. The Complaint<sup>3</sup> is insufficiently specific in that it fails to give notice to SPLP of any allegations of violation of the Public Utility Code, the Commission’s regulations, or any

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<sup>1</sup> Pursuant to 52 Pa. Code § 5.101(d), (e) SPLP is not filing an answer to the Complaint at this time.

<sup>2</sup> The Commission has the discretion to treat preliminary objections as a motion to dismiss. *Wroblewski v. Pennsylvania Electric Company*, Docket No. C-2008-2058385, Order entered May 15, 2009; 52 Pa.Code § 1.2(a); *see also, Cuff v. PECO Energy Company*, Docket No. C-2013-2370894, Final Order acknowledging finality of ALJ decision entered October 7, 2013.

<sup>3</sup> Despite listing legal counsel in the Complaint and the Commission’s regulation at 52 Pa. Code § 1.21(b) that require entities to be represented by counsel, it appears Complainant completed the form itself and chose not to have counsel

Commission Order. The Complaint utilizes the Commission's formal complaint form, but instead of making any averments or allegations, it attaches approximately 100 pages of materials. Complainant checked the box that states: "I am having a reliability, safety or quality problem with my utility service" but Complainant is not a customer of SPLP and does not receive utility service from SPLP. The Complaint fails to give SPLP notice of what Complainant is alleging SPLP to have done or not done in violation of the Code, the Commission's regulations, or a Commission order. The Complaint does not give SPLP adequate notice to allow SPLP to fully prepare a defense.

2. The Commission lacks jurisdiction over the subject matter of the Complaint. It appears the Complaint is making reference to earth features on Complainant's property. To the extent these earth features are alleged to be related to SPLP's pipeline construction, there is nothing alleged that places the issue within the Commission's jurisdiction. SPLP's construction activities are permitted by the Pennsylvania Department of Environmental Protection. The Commission has no jurisdiction to enforce terms of SPLP's DEP permits. Moreover, Complainant has already sought relief from DEP for allegations of DEP permit violations and DEP took no action against SPLP, which Complainant has appealed to the Environmental Hearing Board.<sup>4</sup> The Commission does not have jurisdiction to entertain appeals from DEP decisions.

3. The Complaint should be dismissed based on the doctrine of *lis pendens* given the ongoing DEP proceeding against SPLP. The parties are the same (Complainant and SPLP), the

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draft its legal pleading. Complainant must be represented by counsel and thus is not and cannot be treated as a *pro se* Complainant under the Commission's regulations.

<sup>4</sup> See Attachments A-D, discussed in greater detail below. The Commission can take judicial notice of the fact that this DEP investigation occurred and was closed. 52 Pa. Code § 5.408.

cause of action is the same (alleged impacts of SPLP's construction activities), and the relief sought is the same (remediation of Complainant's property).

4. The Complaint as a whole is legally insufficient because it fails to state a claim upon which relief can be granted. It fails to allege SPLP's actions or inactions violated the Public Utility Code or any Commission regulation or Commission Order. Moreover, the timeline of events attached to the Complaint begins in 2017. Any claims dating more than three years prior to the filing of the Complaint are time-barred. 66 Pa. C.S. 3314.

## II. ARGUMENT

### A. Legal Standards.

5. The Commission's regulations allow a respondent to file preliminary objections to a complaint. 52 Pa. Code § 5.101. Preliminary motion practice before the Commission is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994) (citing Pa. R. Civ. P. 1017). A preliminary objection in civil practice seeking dismissal of a pleading will be granted where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

6. In determining whether to sustain preliminary objections, all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true. *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. Ct. 2000), *appeal denied*, 788 A.2d 381 (Pa. 2001). The pleaders' conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.* The preliminary objections should be sustained if, based on the facts averred by the plaintiff, the law

says with certainty that no recovery is possible. *Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. Ct. 2011), *appeal denied*, 50 A.3d 126 (Pa. 2012).

7. A formal complaint must set forth “the act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701; 52 Pa.Code § 5.22(a)(4). The Commission's regulations require that a complaint contain a clear statement of the relief sought. 52 Pa.Code § 5.22(a)(5). A complaint should contain information specific enough to allow Respondent to understand the allegations against it, in order to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense. *Altland v. Met-Ed*, Docket No. C-2018-3003455 (Initial Decision issued Oct. 9, 2018) (Final via Act 294).

8. It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

9. Preliminary objections allow dismissal of a case due to pendency of a prior proceeding or the doctrine of *lis pendens*. 52 Pa. Code § 5.101(a)(6). The purposes of recognizing the doctrine of *lis pendens* are to prevent the respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on

duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. “The law is quite clear that *lis pendens* is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions (citations omitted).” *Procacina v. Susen*, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982). The three-pronged identity test “requires more than a mere allegation of a pending suit; it requires proof that the prior case is the same, the parties are substantially the same, and the relief requested is the same (citations omitted).” *Hillgartner v. Port Authority of Allegheny Cty.*, 936 A.2d 131, 137 (Pa. Cmwlth. 2007). “[I]t is purely a question of law determinable from an inspection of the records in the two causes.” *Hillgartner*, 936 A.2d at 138 (quoting *Hessenbruch v. Markle*, 194 Pa. 581, 45 A. 669 (1900)).

10. In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code § 5.22(a)(4); *see, e.g., James Drake v. Pennsylvania Electric Co.*, Docket No. C-2014-2413771, Initial Decision Sustaining Preliminary Objection and Dismissing Complaint, 2014 WL 2003281, \*4 (May 7, 2014).

B. Preliminary Objection 1: The Complaint is insufficiently specific.

11. Instead of stating with any particularity what action SPLP allegedly has taken or failed to take in violation of the Public Utility Code, the Commission’s regulations, or a Commission Order, the Complaint checks a box that claims it is “having a reliability, safety or quality problem with my utility service” and then attaches approximately 100 pages of materials. Given Complainant is not a customer, the allegation that it is having issues with its utility service does not give SPLP sufficient notice of the claims against it; nor does attaching a multitude of

documents, none of which make any claim that SPLP violated the Code, the Commission's regulations, or a Commission order.

12. Moreover, relying on an array of attached documents instead of specified allegations creates a serious due process problem in terms of SPLP being able to prepare an Answer where, as here, the Commission's regulations require a utility to admit or deny each allegation of a complaint. The Complaint is insufficiently specific.

C. Preliminary Objection 2: The Commission lacks jurisdiction over the Complaint.

13. As the Complaint admits, Complainant has already raised to DEP the "environmental" claims it is attempting to raise here. Complaint at pdf page 9, the April 29, 2021 report of Barton & Loguidice, D.P.C. ("The environmental site investigation by B&L identified various environmental effects which have been presented to the Pennsylvania Department of Environmental Protection (PA DEP)."). The Commission lacks jurisdiction over Complainant's allegations regarding environmental laws, issues, and permitting obligations. *Pickford v. Pa. Pub. Util. Comm'n*, 4 A.3d 707, 712-14 (Pa. Cmwlth. 2010) (holding while framed as a complaint about reasonableness under 66 Pa. C.S. § 1501, claims regarding DEP and EPA determinations were outside scope of Commission's jurisdiction and disallow collateral attack on DEP's decision); *see also Baker and Blume v. SPLP*, Docket No. C-2020-3022169, Initial Decision at 11-12 (Barnes, J) (ID entered Dec. 8, 2020) ("The Commission does not permit or regulate the environmental permitting process for SPLP's construction. Those permits are sought, obtained, modified, and enforced by the Department of Environmental Protection (DEP). Therefore, the Commission lacks jurisdiction over such matters.").

14. DEP has already denied Complainant relief and Complainant has appealed. In response to Complainant's DEP complaint, DEP issued a "Notice of Violation" that requested

SPLP provide a site remediation plan for Complainant's property. See Attachment A. SPLP provided two responses to DEP, included here as Attachment B. SPLP explained that SPLP's construction did not impact Complainant's property as alleged, but instead the earth features and other issues complained of appear to be due to Complainant's own actions or inactions, including but not limited to faulty construction of its own infrastructure, likely in violation of NPDES permitting requirements. SPLP informed DEP that due to SPLP's findings, SPLP would not be preparing the remediation plan DEP requested. Attachment B at 12. DEP acknowledged SPLP's response and stated: "The Department has reviewed the attached supplemental NOV response, and has deemed that, based upon the currently available information, no further information or action is needed at this time." See Attachment C (Email from DEP). On July 29, 2021, Complainant submitted a Notice of Appeal to the Environmental Hearing Board at EHB Docket No. 2021-072-L regarding this matter. *See* Attachment D (Notice of Appeal).

15. That DEP has already investigated and dealt with Complainant's concerns shows the Commission lacks jurisdiction. The Commission can take judicial notice of the DEP's actions. 52 Pa. Code § 5.408(a) ("judicial notice of facts may be taken by the Commission or the presiding officer"); Pa.R.E. 201(b)(2) "The court may judicially notice a fact that is not subject to reasonable dispute because it: ... (2) can be readily determined from sources whose accuracy cannot be reasonably disputed."). SPLP is not relying upon factual averments as to the inaccuracy of Complainant's claims to show the Commission's lack of jurisdiction here but has merely provided explanation and context.

16. Moreover, the Complaint makes no reference to any law or order over which the Commission has jurisdiction. There is none because the Commission lacks jurisdiction over these issues.

D. Preliminary Objection 3: *Lis pendens* bars the Complaint.

17. The doctrine of *lis pendens* is a valid defense when the parties, the causes of action and the relief sought are the same in both actions. *Supra Procacina*. Here, as discussed above, Complainant has already started a proceeding before the DEP against SPLP. The parties are the same. Complainant is raising the same claims before both agencies regarding alleged SPLP construction activities and alleged impacts thereof. The causes of action are the same. Moreover, Complainant appears to be seeking remediation of its property before both agencies. The relief sought is the same. Accordingly, the Complaint should be dismissed based on the doctrine of *lis pendens*.

E. Preliminary Objection 4: The Complaint is legally insufficient.

18. The Complaint is legally insufficient and fails to state a claim upon which relief can be granted because it fails to allege SPLP's actions or inactions violated the Public Utility Code, the Commission's regulations, or a Commission order.

19. Portions of the Complaint are legally insufficient because they are barred by the three year statute of limitations in 66 Pa. C.S. § 3314 ("No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part."). *See, e.g.*, Complaint at pdf pages 13-15 (timeline beginning in 2017).

20. The Complaint is legally insufficient and fails to state a claim upon which relief can be granted.

### III. CONCLUSION

WHEREFORE, SPLP respectfully requests that these Preliminary Objections be granted and that the Complaint be dismissed.

Respectfully submitted,

/s/ Whitney E. Snyder

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*Attorneys for Respondent Sunoco Pipeline L.P.*

Date: August 4, 2021

# **ATTACHMENT A**



October 7, 2020

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

Re: Violations of The Clean Streams Law, and  
the Solid Waste Management Act  
Pennsylvania Pipeline / Mariner East II Project  
DEP Permit Nos. ESG0300015002  
Middlesex Township, Cumberland County

Dear Mr. Gordon:

On May 22, 2020, the Department of Environmental Protection (“Department”) received a PG Report from Sunoco Pipeline, LP (“SPLP”) in response to a complaint associated with the Appalachian Trail and Appalachian Drive Horizontal Directional Drill (“HDD”) sites located in Middlesex Township, Cumberland County. The complaint alleged that drilling fluids containing bentonite had surfaced (“Inadvertent Returns” “IRs”) in and around the Regency South Mobile Home Park, and the Carlisle Pike Self Storage properties (“Sites”). The complaint further alleged that the IRs were never cleaned up and are now detrimentally affecting infiltration rates at the respective properties, including but not limited to areas within a stormwater basin. As noted, the surfacing of drilling fluids is considered an IR which constitutes an Industrial Waste. The discharge of Industrial Waste to waters of the Commonwealth without a permit is a violation of Section 301 of The Clean Streams Law, 35 P.S. § 691.301.

Department permit ESG030015002 requires permittee(s) to follow their ‘*HDD Inadvertent Return, Preparedness, Prevention, and Contingency Plan*’, (“HDD IR PPC Plan”) that is part of the approved plans in the aforementioned permit that requires the permittee(s) complete cleanup of upland IR’s. The current version of the HDD IR PPC Plan contains a revision date of April 2018.

According to Section 299.218(a) of the Pennsylvania Residual Waste Regulations, “[a] person or municipality that generates or releases residual waste as a result of an accident, spill or emergency shall notify the Department prior to the disposal or processing of the waste...”, 25 Pa. Code 299.218(a). Section 302(a) of the Solid Waste Management Act (SWMA) provides, “It shall be unlawful for any person or municipality to dispose, process, store, or permit the disposal, processing, or storage of any residual waste in a manner which is contrary to the rules and regulations of the [D]epartment or to any permit or to the terms or conditions of any permit... issued by the [D]epartment”, 35 P.S. § 6018.302(a). Additionally, the dumping or depositing, or allowing the dumping or depositing, of any solid waste onto the

surface of the ground or underground, by any means, is considered unlawful conduct under Section 610(1) of the Solid Waste Management Act, 35 P.S. § 6018.610(1).

Allowing the unauthorized discharge of Industrial Waste into the stormwater basin constitutes a violation of Section 301 of the Clean Streams Law, 35 P.S. § 691.301 and constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

Based on a review of the SPLP PG Report, and all supporting information that was provided by the complainant, including photographs and infiltration reports, the Department believes that SPLP is responsible for the cleanup and remediation of all affected areas. These areas include but are not limited to the stormwater basin, and the self-storage parking areas/driveways. Remediation of the stormwater basin includes returning its previous functionality for the management of rate, volume and water quality of runoff.

In order to move forward and develop an appropriate enforcement strategy, the Department requests that you submit a remediation plan for the cleanup and restoration of drilling fluids at the Site, including an implementation schedule, to me by email at [reberts@pa.gov](mailto:reberts@pa.gov) by November 6, 2020.

This letter is neither an order nor any other final action of the Department. It neither imposes nor waives any enforcement action available to the Department under any of its statutes. If the Department determines that an enforcement action is appropriate, you will be notified of the action.

The Department looks forward to your cooperation in this matter. If you have any questions, please contact me at 717.705.4819.

Sincerely,

*Ronald C Eberts, Jr.*

Ronald C. Eberts, Jr.  
Environmental Protection Compliance Specialist  
Conservation, Restoration, and Inspection Section  
Waterways & Wetlands Program

cc: Matt Stough - Cumberland County Conservation District  
Chris Embry - Sunoco Pipeline, LP  
Monica Styles - Sunoco Pipeline, LP  
Nick Bryan - Sunoco Pipeline, LP  
Middlesex Township



# **ATTACHMENT B**



February 22, 2021

**Via Electronic Mail** – [reberts@pa.gov](mailto:reberts@pa.gov)

Ronald C. Eberts, Jr.  
Environmental Protection Compliance Specialist  
Conservation, Restoration, and Inspection Section  
Waterways & Wetlands Program  
Pennsylvania Department of Environmental Protection  
Southcentral Regional Office  
909 Elmerton Avenue  
Harrisburg, PA 17110

Re: Pennsylvania Pipeline/Mariner East II Project  
DEP Permit Nos. ESG0300015-002  
Appalachian Drive and Appalachian Trail  
Horizontal Directional Drills  
Middlesex Township, Cumberland County  
Supplemental Response to October 7, 2020 Request for Remediation Plan and Schedule

Dear Mr. Eberts,

Sunoco Pipeline L.P. (“SPLP”) provides this supplemental response to the Department’s October 7, 2020 letter that requested SPLP to develop and implement a remediation plan for alleged impacts from inadvertent returns (“IRs”) at the Appalachian Trail HDD No. S3-0230 and Appalachian Drive HDD No. S3-0240 for two adjacent properties – the Regency South Mobile Home Park Site (“Mobile Home Park Site”) and the Carlisle Pike Storage Site (“Storage Site”). This letter supplements SPLP’s initial November 5, 2020 response to the Department’s October 7, 2020 letter, which included a memorandum from RETTEW reviewing and responding to the alleged impacts, and that provides further information to support SPLP’s position that the HDD construction activities did not cause the impacts alleged by the landowners.

As an initial matter, SPLP appreciates the productive call with the Department on December 10, 2020 about these issues, as well as the Department’s prior and subsequent efforts to obtain additional information regarding the landowner’s complaints, which will allow both SPLP and the Department to fully evaluate the landowners’ claims. SPLP understands that the Department has been unable to obtain any further documentation from the landowners or their counsel to support the complaints.

Through counsel, SPLP has been attempting to obtain documentation regarding the landowners' claims regarding alleged impacts from the HDD construction. The landowners had claimed to have various reports, photographs, and other documentation regarding the alleged conditions at the Sites, but that they would only provide these documents to SPLP at an on-site meeting. By letter dated October 28, 2020, SPLP requested that the landowners provide the referenced documents in advance of any on-site meeting, so that SPLP might properly assess and respond to the landowners claims as appropriate. A copy of SPLP's October 28, 2020 letter – which requests several categories of environmental documentation for the property including an Environmental Site Investigation, post-construction stormwater management plans and approvals, post-construction infiltration testing for the bio-retention basin, infiltration testing for the retention basin, inspection and maintenance records for the retention basin, site development plans and post-construction stormwater management plans for the Lot 2 development, site investigation and percolation test hole reports, and analytical results for water and soil testing – is provided as **Attachment “A.”**<sup>1</sup>

After waiting a month for the requested documents, SPLP received no response to its October 28, 2020 letter, and therefore renewed its request for these documents by letter dated November 30, 2020, a copy of which is provided as **Attachment “B.”** After still not receiving a response from the landowners, SPLP renewed its request yet again by letter dated December 8, 2020, a copy of which is provided as **Attachment “C.”** Since then, SPLP has diligently attempted to obtain the documents from the landowners by renewing its request and following-up via email multiple times, but to no avail. Copies of the series of follow-up emails that SPLP has sent to the landowners' counsel – which have largely gone completely unanswered – are provided as **Attachment “D.”** As of the date of this letter, the landowners have still not provided SPLP with any of the requested documentation, which is essential for both SPLP and the Department to properly and fully assess any alleged impacts to the properties.

Nevertheless, SPLP has diligently attempted to obtain copies of this critical information from file reviews at the Cumberland County Conservation District and Silver Spring Township, through which SPLP was able to obtain copies of limited documentation on file with those entities, which included copies of the following documents, provided as **Attachment “E”**:

1. Final Land Development (LD) Plan for Self Storage Facility for William C. Kollas, Esq., prepared by Snyder, Secary & Associates, LLC (last revised 5/17/11)
2. Post Construction Stormwater Management (PCSM) Plan for the Self Storage Facility for William C. Kollas, Esq., prepared by Snyder, Secary & Associates, LLC (last revised 5/23/11)

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<sup>1</sup> Certain of the communications between SPLP and the landowners' counsel may potentially contain confidential information; therefore, these communications are being provided to the Department with the understanding that the documents will be maintained as confidential by the Department and will not subject to a Right-to-Know Request – SPLP has marked these respective Attachments A through D with a “**CONFIDENTIAL**” stamp.

3. Post Construction Stormwater Management Report (PCSM) for Self Storage Facility, prepared by Snyder, Secary & Associates, LLC (last revised 5/23/11)
4. NPDES Permit No PAG-02-0021-10-025 Authorization, NOI, and Renewal
5. Various Earth Disturbance Inspection Reports prepared by Cumberland County Conservation District (dated between 12/2011 to 6/2015)

In addition to the information previously provided in SPLP's November 5, 2020 response, SPLP's review of these additional documents was instructive and further supports SPLP's position that SPLP's HDD construction activities did not impact the properties or cause or create the alleged interference with the stormwater management systems at the Storage Site. A summary of SPLP's review and analysis of these documents and the landowners' claims follows.

### **Storage Site Bio-Retention Basins Were Incorrectly Designed and Never Completed**

The first major issue that SPLP's review of additional documents has revealed is that the drainage area ratio used to design the bio-retention basins on the Storage Site is incorrect, and therefore the basins should be much larger in size than the basins that were actually constructed. The basins were designed too small, such that they do not have a sufficient surface area to manage and infiltrate the total volume of stormwater runoff from the Storage Site. And it appears that both of the bio-retention basins were not actually constructed per the design, or ever converted from an "during construction" erosion and sediment control best management practices ("BMPs") into a PCSM BMP to address stormwater at the Storage Site. SPLP has made this determination by evaluating the following information.

First, SPLP reviewed the PCSM Report for the Storage Site, including Appendix F – which provides Infiltration Testing Results prepared by Act One Consultants – and identified that there were no limiting zones/layers identified or noted in any of the three test pits where soil descriptions were reported. The Storage Site was located within the FEMA mapped floodplain prior to its development, and therefore it would be typical to find redoximorphic characteristics for soils that would indicate a perched zone of saturation or a seasonal high-water table. The Infiltration Testing Results indicate a depth to limiting zone of 72 inches+, which may be based upon encountering bedrock at 6-foot depth in a probe hole at the front-center of the Storage Site. The other tests pits were excavated to a maximum depth of 36-inches, which does not meet the standard protocol set forth in Step 2 of Appendix C to the Department's Site Evaluation and Soil Testing, Pennsylvania Stormwater Best Management Practices Manual (dated 12/30/2006) (the "BMP Manual"). The BMP Manual requires that each infiltration test pit be dug to a depth of a minimum of 72 inches to 90 inches, or until bedrock or fully saturated conditions are encountered. (*See* BMP Manual, Appendix C, Step 2). Therefore, the test pits used for infiltration testing that form the basis for subsequent stormwater management calculations and design did not meet the Department's requirements.

Second, in accordance with the BMP Manual, for large infiltration areas (i.e., basins, commercial, institutional, industrial, and other proposed land uses), multiple infiltration test pits should be evenly distributed at a rate of 4 to 6 tests per acre of BMP area. (See BMP Manual, Appendix C, Step 2). According to the PCSM Report, the total bottom surface area between the 2 bio-retention basins is 0.2 acres. This would require a minimum of 4 test pits be performed, 2 test pits per each bio-retention basin. But only 1 test pit (Test Pit #2) was conducted in the eastern bio-retention basin (identified as Bioretention Basin #2, on Sheet 2 of the PCSM Plans). The Infiltration Test Report for this location reflected an average infiltration rate in Test Pit #2 of 0.5 inches/hour. Regardless of the fact that additional testing should have been conducted in this area and all other proposed bio-retention basin locations, a 0.5 inches/hour infiltration rate should have been used to design the infiltration component of the bio-retention basins – but it was not, a **2.15 inches/hour** average rate was used (which was also incorrectly calculated as noted below), which is **more than four times** the infiltration rate that was actually observed by infiltration testing in that area. Comparatively, the infiltration testing that was conducted on January 16, 2020 by Barton & Loguidice (B&L), specifically hole numbers 7a and 7b that were located within the interior of Bioretention Basin #2, had an average infiltration rate of **0.25 inches/hour**. But, this slow infiltration rate is not surprising given the basins lack adequate pretreatment facilities, such as forebays, that would treat the sediment laden runoff from the unfinished crushed aggregate parking lots before the runoff would enter the infiltration area of the basins. Without proper construction and maintenance of the basins, within just a few years it would be expected that the initial rate of 0.5 inches/hour would be reduced, which is what in fact was observed by the B&L infiltration testing.

Third, a geometric mean should be used to determine the average infiltration rate following multiple infiltration tests. (See BMP Manual Appendix C, Step 3). The average infiltration rate listed on page 2 of the Infiltration Test Report incorrectly used an arithmetic mean to create a 2.15 inches/hour average rate, instead of a geometric mean for the 10 test pits, which would result in a much lower infiltration rate of **1.56 inches/hour**.

Fourth, a 2-foot clearance is required to be maintained from the bottom of the proposed BMP to the seasonal high-water table and bedrock. (See BMP Manual Appendix C, Site Conditions and Constraints, 1.a and 1.b). But, per the Infiltration Test Report, Test Pit #2 was dug only to a depth of 36 inches. According to Sheet 2 of the PCSM Plans, the predevelopment existing ground elevation at the location of Test Pit #2 is 449.20 feet. Per Sheet 3 of the PCSM Plans, the proposed finished grade at the bottom of the bio-retention basins was 449.00 feet. But, the bio-retention basins proposed 2 feet of planting soils within the bottom of the basin, so that the subgrade elevation would be 447.00 feet. Per Appendix E of the PCSM Report, the incorrectly calculated infiltration rate listed above was applied at the subgrade elevation of 447.00 feet for both bio-retention basins. Therefore, all test pits located within the area of the proposed bio-retention basins should have been excavated to a minimum depth of 445.00 feet to confirm the presence/absence of limiting zones/layers. But Test Pit #2 was dug to only an approximate

elevation of 446.20 feet, and therefore not deep enough to establish presence or absence of limiting zones/layers.

Fifth, the Storage Site is located in karst geology. Per the BMP Manual, in karst areas a maximum impervious loading ratio of 3:1 and a maximum total loading ratio of 8:1 is to be applied to the bio-retention basins. (See BMP Manual, Appendix C, Design Considerations, 2.e). But, Appendix E of the PCSM Report reflects that for each bio-retention basin, the drainage areas, impervious loading ratio, and total loading ratio were not in accordance with the requirements in the BMP Manual. For Bioretention Basin #1 – the impervious loading ratio was 27:1 and total loading ratio was 32:1. For Bioretention Basin #2 – the impervious loading ratio was 29:1 and total loading ratio was 38:1. The loading ratios for each bio-retention basin on the Storage Property, therefore, are **9 times** the maximum impervious loading ratio and **5 times** the maximum total loading ratio established by the BMP Manual.

Sixth, as the Department is aware, the designer of the stormwater systems is required to provide thorough oversight of the construction to ensure that the BMP facilities are properly installed per design and in accordance with specifications, i.e. the observation and certification of the “Critical Stages of Construction.” While the steps for inspection and preparation of the bio-retention basins and final sign-off for conversions from construction-related sediment traps to PCSM facilities is listed on Sheet 3 of the PCSM Plans, and pages 12-13 of the PCSM narrative report, based on available documents SPLP reviewed – it does not appear that these critical steps and inspections in fact occurred. There is no record of construction oversight or inspections in the Cumberland County Conservation District records for the Storage Site.<sup>2</sup> In addition, the current cover conditions of the drainage areas for the bio-retention basins are not completely stabilized in accordance with the requirements and specifications in the PCSM Plan – because they are not paved as per the design but rather are constructed of aggregate/crushed stone surfaces. Further, the bio-retention basins should have remained functioning as sediment traps and not converted, particularly since there is no adequate pre-treatment device installed to remove sediment and other pollutants for the bio-retention basins, such as sediment forebays. Upon completion of the permanent paving of the Storage Site, final conversion from construction-related sediment traps to permanent bio-retention basins could take place. But inadequate pretreatment, particularly of sediment-laden runoff at the Storage Site, will cause gradual but significant reduction in the ability for the basins to properly infiltrate stormwater at the designed rates. From available documents, it appears that the bio-retention basins were never actually constructed and completed in accordance with design specifications, have inadequate pre-treatment devices installed, and were never properly converted for PCSM purposes.

Seventh, under the BMP Manual, Appendix C, Consideration of Infiltration Rate in Design and Modeling Application section, a project should use a minimum factor of safety of 2.0 for

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<sup>2</sup> The Cumberland County Conservation District had no record of any Critical Stages of Construction inspections being performed, which should have occurred during the conversion of sediment traps to bio-retention basins. This is a potential violation of the NPDES Permit for the Storage Site.

design purposes. Using a 2.0 factor of safety, the design infiltration rate that should have been used for the bio-retention basins was 0.25 inches/hour based on the infiltration testing results for Test Pit #2. This is nearly **9 times lower** than the incorrectly applied 2.15 inches/hour infiltration rate described above, and also validates the results of the B&L infiltration testing (as noted above), because it accounts for the typical decrease in infiltration rates during the life of an infiltration facility. Because the relationship between an infiltration rate and the total time a basin takes to dewater is inversely proportional, a lower infiltration rate results in a higher time to dewater a basin. A slower infiltration rate would also require a larger basin bottom (i.e. more infiltration surface area) to infiltrate stormwater within the required 72-hour time period. This is yet another reason demonstrating why the bio-retention basins at the Storage Site were not designed, installed, or functioning properly, and that their function – or lack thereof – has nothing to do with SPLP’s HDD construction activity in the area.

**Storage Site Stormwater Management Systems Were Only Designed to Manage Lot 1 Development – There Is No NPDES Authorization for Development of Lot 2**

Another issue that demonstrates the alleged impacts on the stormwater management systems at the Storage Site are completely unrelated to SPLP’s HDD construction activities is that it appears that the landowners developed Lot 2 at the property without any apparent permit approval. The NPDES permit authorization for the Storage Site is limited to impervious improvements on Lot 1. Under the approved NPDES Permit, PCSM drawings, plans, and narrative report, Lot 2 on the property was to remain as open space or lawn cover.

But, the current condition of Lot 2 is that it was developed into an additional parking facility with impervious surfaces, which **do not appear** in the NPDES Permit, or related PCSM drawings, plans, or narrative report for the Storage Site. SPLP was unable to find any record of a major or minor permit modification request that would encompass this additional development on Lot 2.<sup>3</sup> Lot 2 is 1.824 acres – this would generate 8,134 cubic feet of excess volume in stormwater runoff for a 2-year storm event. This additional development activity changed pre-development cover conditions on Lot 2 from pervious surfaces (i.e. open space/lawn), to post-development impervious surfaces (i.e. aggregate/crushed stone surface). Lot 2 is within the drainage area for Bioretention Basin #2, and therefore stormwater runoff from the additional developed area of Lot 2 appears to be draining to that basin. Since Bioretention Basin #2 was only designed and approved to capture stormwater runoff from impervious surfaces associated with the Lot 1 development – and Bioretention Basin #2 was not designed or approved to capture the additional impervious surface runoff from the apparently un-permitted improvements made to Lot 2 – that basin is capturing and attempting to manage a significantly increased volume and rate of stormwater runoff than what was designed and approved. In fact, per our calculations which include the additional impervious areas on Lot 2, the Storage Site’s post development peak rate for the 100-year storm

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<sup>3</sup> Assuming that the additional development and improvements made on Lot 2 were constructed without an approved modification, that development was in violation of the NPDES Permit for the Storage Site.

event now **exceeds** the predevelopment peak rate by **4.43 cubic feet per second**. A copy of the stormwater calculations that SPLP performed to demonstrate this significant change is provided as **Attachment “F.”** This significant increase would mean that the Storage Site is no longer in compliance with the NPDES permit for the property and is also likely not in compliance with the local municipality’s stormwater management ordinance. Moreover, as noted above, the maximum loading ratios per the Department’s BMP Manual were already being exceeded, even before the additional impervious footprint and runoff of Lot 2 is included.

Furthermore, based on a review of aerial images dated April 15, 2016 and February 19, 2017 (copies provided as **Attachment “G”**), it appears that during construction of the Lot 2 expanded parking area, a grey-colored sediment appears in the aggregate/crushed stone surface cover. Importantly – this grey-colored fine sediment was present at the Storage Site in mid-April 2016, nearly a year **before** PADEP issued SPLP’s permits for the Mariner East 2/2X pipeline project and over a year before any construction activity occurred in the area began – as survey staking of the HDD construction workspaces began on March 4, 2017, and the active HDD construction in this area did not commence until June 19, 2017, when the 20” Appalachian Trail HDD started. It is possible that this grey-colored fine sediment present in the imported fill material adversely impacted the infiltration functions of the bio-retention basins at the Storage Site from stormwater runoff from this area of the property. This grey-colored fine sediment and the imported fill used to develop Lot 2 may also be a potential source of clay materials observed in the samples taken from the bio-retention basins (see below).

### **Inadequate Pre-Treatment Devices**

Another potential problem with the current functionality of the stormwater management systems on the Storage Site is that they do not appear to have proper or adequate pre-treatment devices installed, such as forebays, to catch sediments and prevent them from entering into the bio-retention basins. There appears to be hoods or snouts included in the design of the bio-retention basins, but these are no longer accepted by the Department as appropriate pre-treatment devices.

### **PCSM Requirements Not Being Observed**

One of the approved water quality BMPs in the NPDES Permit for the Storage Site was street sweeping as a long-term PCSM BMP. SPLP is not aware of any documentation that demonstrates the landowner is following through with a regular schedule of street sweeping.<sup>4</sup> The lack of this maintenance activity could result in additional sediment-laden runoff from the impervious parking areas and driveways on the Storage Site entering the bio-retention basins

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<sup>4</sup> If the landowner does not have documentation that demonstrates street-sweeping BMP is being performed at regular intervals, this may be another violation of the NPDES Permit for the Storage Site, for failing to comply with permit terms and to meet the water quality requirements of the NPDES Permit.

during storm events, which will further negatively impact infiltration rates in the basins as the soil porosity decreases.

### **NPDES Permit Is Expired**

It appears that the NPDES Permit authorization for the Storage Site has expired. One renewal was granted on June 8, 2013, which expired on June 8, 2018. But even if the NPDES Permit for the Storage Site is expired, that does not release the landowners as the permittee from the obligations established by the original permit. SPLP was unable to find any record of a Notice of Termination for this Permit filed with the Cumberland County Conservation District, which would have triggered both landowner and engineering certification that the improvements and stormwater management systems at the Storage Site were constructed according to the approved plans.

### **No IRs or LOCs/LORs Occurred in or Impacted the Bio-Retention Basins**

In addition to SPLP's review of the additional information regarding the stormwater management systems on the Storage Site, SPLP has further evaluated the Department's concerns that there was a potential for an IR or a loss of circulation/loss of return ("LOC/LOR") event to have negatively impacted conditions on the properties.

As previously presented to the Department in the November 5, 2020 Memorandum from RETTEW, the IRs that occurred on the Appalachian Trail HDD were outside and down slope of the developed area of the Storage Site. No IRs occurred in the developed area of the Storage Site and no material released during an IR flowed on to the Storage Site. The IRs occurred on the eastern edge of the Mobile Home Park. After the initial IR on February 19, 2019 the subsequent IRs on February 20 and February 22, 2019 occurred inside the containment area. The 4-5-foot slope between the Storage Site and the IR locations are at the base of the slope. This would prevent any impact from these IRs to the Storage Site. All of these IRs were immediately cleaned up and the areas remediated. None of the IRs occurred within an area that drains to the Storage Site or the planned bio-retention basins on that property.

Likewise, for the Appalachian Drive HDD, the first two IRs that occurred were located 75 and 125 feet to the south of and downslope of the Storage Site. The third IR was approximately 1,700 feet southeast of and downslope of the Storage Site. Each of these IRs were immediately cleaned up and the areas remediated. None of the IRs occurred within an area that drains to the Storage Site or the planned bio-retention basins on that property.

During the December 10, 2020 call, the Department expressed a potential concern that a LOR/LOC on either the Appalachian Trail HDD or Appalachian Drive HDD could have negatively impacted the planned bio-retention basins or the Storage Site. The Department did not provide any details as to the manner in which this may have occurred. The claimed impacts are a reduction

of the surface infiltration rates. It is unclear how a LOR/LOC may have an impact on surface infiltration rates at the ground surface. If drilling fluid had risen to or very near the land surface such that surface infiltration rates would have been impacted across the site – as the landowners apparently allege – it seems reasonable that an IR would have occurred somewhere in this area. But, no IR occurred in these areas. If the Department can provide an explanation as to how it believes a LOR/LOC could potentially affect surface infiltration rates in the bio-retention basins, then SPLP can review and respond to this alleged concern.

### **X-Ray Diffraction Results Reflect Fill Materials, Not HDD-Related Bentonite**

The landowners provided the Department with results from X-ray diffraction (“XRD”) analysis of seven samples collected at various locations on the property. Photographs of clay-like areas in the surface of the gravel parking area were also provided.

As described in the site development plan, construction of the Storage Site required raising the entire site above the level of the 100-year flood plain and installing the four drainage culverts to convey Potteiger Run under the site. In some areas, more than 8 feet of fill was needed to raise the grade of the Storage Site for the development. Assuming an average fill depth of 4 feet across the 14 acres comprising Lots 1 and 2, an estimated 88,000 cubic yards of fill material was brought to the Storage Site during its development. SPLP has not been able to obtain any information regarding the actual volume of fill used to develop the Storage Site, the source or type(s) of the fill material, or any amendments added to the fill material from the landowners.

The landowners claimed that the areas shown in the photographs were the result of IRs occurring in the developed parking area. But, Attachment F shows two aerial images of the Storage Site that pre-date the ME2 construction activities – one from April 15, 2016 and another from February 19, 2017. As noted above, the commencement of any pipeline related activity occurred on March 4, 2017 when the surveyors began staking out the site, and the first HDD at this location did not begin until several months later on June 19, 2017. The April 15, 2016 image is the same image used as a base map in the information the landowners submitted to the Department. Both images show lighter-colored areas in the gravel parking lot that are very similar to those shown in the photographs submitted by the landowners. Coincidentally, these light-colored areas are concentrated in the Lot 2 area, which is the portion of the Storage Site property that was not included in any approved site development plans. While a specific explanation for these apparent areas of fine and clay-like sediments collecting in the Lot 2 area has not been determined, it may be due to poor or uneven grading of the Storage Site, which would allow the fines in the fill material to wash into and collect in lower areas on the property.

The results of the XRD are summarized on the table provided as **Attachment “H,”** together with sample locations shown on a corresponding map, provided as **Attachment “I.”** The map identifying sampling locations is based upon information provided by the landowners. A discussion of each of the XRD samples from the landowners is provided below.

- **Control - #2 (Bentonite)** – This sample is allegedly a sample of bentonite from the HDD. This sample is reported to contain 73% clay, all of which is Smectite. None of the clay minerals, Illite or Chlorite, are reported in the clay fraction. The sample is also reported to contain Heulandite (16%) and Cristobalite (6%). This is the only sample in which these two minerals were reported. It is not known why these two minerals were not also detected or reported in any of the other samples that the landowners claimed were taken from areas they allege were impacted by bentonite-based drilling fluid from HDD construction activities.
- **Control Office** – This sample is the only sample in which Smectite is not reported. The sample is 27% clay consisting of Illite (15%) and Chlorite (12%). These results indicate that the fill material imported to the site as part of land development had a substantial clay content. Without information regarding the source of the fill material, composition of the fill material, and any amendments used with the fill material – a specific explanation for the lack of a Smectite detection cannot be provided. This location is outside of the parking area and is possibly fill from a different source used in this area. This sample did not contain any Dolomite and the other samples collected from the parking area contained Dolomite.
- **IR Behind Shed and Side Road** – This is the only sample collected on March 21, 2019. While SPLP does not have confirmation of where this sample was taken, it is possible that this sample was collected by the landowners from the IR containment structure that was temporarily present near this location. This sample is 56% clay of which 48% is Smectite. Other than the Control - #2 sample, this is the only sample in which the Smectite concentration exceeded either the concentration of Illite or Chlorite.
- **IR Shed** – Again, while SPLP does not have confirmation of where this sample was taken, it is assumed that this sample was collected from the same area as the IR identified as the “Behind Shed” sample. This sample is 31% clay, with Smectite (3%), Illite (7%), and Chlorite (21%). Importantly, this location is directly downslope from the gravel parking area, and therefore would receive stormwater runoff that could carry the fine-grained materials from the filled area on the property to this location. While a specific explanation for the significant increase in Chlorite and Illite at the location has not been determined, it may be due to sediment running off from the gravel parking area.
- **Known/Control #3** – This sample was collected from the northern edge of the gravel parking area in Lot 1. While SPLP does not have confirmation of where this sample was taken, it is assumed this location was intended to represent another background sample from an unimpacted area. This sample is 7% clay with Smectite (1%), Illite (3%), and Chlorite (3%).
- **Unknown #1** – This sample was collected from the northern edge of the Lot 2 area. This sample is 17% clay with Smectite (3%), Illite (7%), and Chlorite (7%).

- **Front Pond** – This sample is from the eastern end of the planned bioretention basin in area where runoff from Lot 2 would be expected to flow into the basin. This sample is 29% clay with Smectite (3%), Illite (13%), and Chlorite (13%). This sample indicates how runoff of the fine sediment in the Lot 2 fill is collecting in the area of the bio-retention basin.

In summary, an analysis of the XRD samples taken by the landowners reflects that: (1) the clay minerals were present in the fill material that was imported to the property to develop the Storage Site; (2) the XRD samples that were taken in areas where no IR occurred – including in so-called “control” samples – reflect the present of Smectite, which is the clay mineral that is attributable to bentonite in the product used at these HDDs; (3) the sample taken from the “raw” bentonite drilling mud (i.e. sample Control #2) reflects the presence of Heulandite (16%) and Cristobalite (6%) – but neither of these minerals is present in any other sample taken by the landowners on other areas of the Storage Site, including in any area that the landowners claim to have been impacted by drilling mud from HDD construction activities; and, (4) the sample taken from the “raw” bentonite drilling mud (i.e. sample Control #2) does not contain any Illite or Chlorite, while those clays are present in nearly every other sample taken at the Storage Site. The XRD samples clearly indicate that the large concentrations of Illite and Chlorite clays in the fill material are impacting the area of the proposed bio-retention basins.

Thus, contrary to the landowners’ claims, the XRD samples taken at various locations of the Storage Site, despite reflecting small quantities of Smectite, do not definitively indicate that the area sampled was impacted by drilling mud from the HDD construction activities. The landowner’s claim of an impact from HDD construction activities is based exclusively on the Smectite detected in the XRD samples. No other evidence of drilling fluid impacting the parking area or the proposed bio-retention basins was provided or identified by the landowners. Moreover, no IRs occurred in these areas and no drilling fluids from IRs flowed into these areas. There are other possible sources for the Smectite detected in the samples, including, most notably, the imported fill material. Following the Department’s existing procedures for the evaluation of alleged water well impacts, where solely the presence of bentonite in a water sample is not considered sufficient evidence of an impact from HDD construction activities – additional information on the fill material imported to the Storage Site is necessary to fully evaluate the landowners’ claims.

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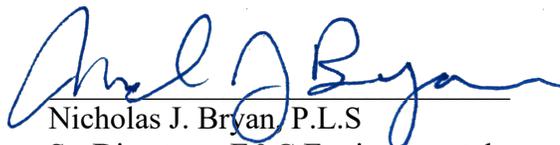
SPLP appreciates the opportunity to provide the Department with this additional detailed information, which further supports that SPLP is not responsible for any impacts alleged by the landowners. SPLP believes that upon the Department’s review of this additional information and its own investigation, the Department will concur. The alleged issues with the functionality of the stormwater management systems on the Storage Site are unrelated to SPLP’s HDD construction activities. The Department’s BMP Manual acknowledges that the primary causes of reduced performance of an infiltration BMP include: poor construction techniques that result in

significantly reduced infiltration rates; inadequate pretreatment, particularly from sediment-laden runoff that can cause a gradual reduction in infiltration rates; lack of proper maintenance; and inadequate design. (See BMP Manual, pgs. 18-19). All of these issues are present at the Storage Site and is causing the observed conditions and reduced functionality of the bio-retention basins – not SPLP’s HDD construction activities.

As such, SPLP has not, and will not, prepare or submit to the Department “a remediation plan for the cleanup and restoration of drilling fluids” at the Mobile Home Park Site or the Storage Site, because there are no drilling fluids to cleanup or remediate at either property, and because the alleged impacts to the stormwater bio-retention basin functionality at the Storage Site is unrelated to SPLP’s HDD construction activities. Moreover, even if SPLP were to consider preparing such a restoration plan, SPLP is unable to do so given the complete lack of information regarding the post-development conditions of the stormwater management system at the Storage Site, or the condition of the stormwater management systems prior to the Mariner East 2/2X construction. Without this additional information, it is not possible to develop a plan to remediate the stormwater management basin to pre-ME2/2X construction conditions.

If you have any questions or need additional information regarding this supplemental response and the enclosed documents, please contact me at (570) 505-3740 or via email at Nick.Bryan@EnergyTransfer.com.

Thank you,

  
Nicholas J. Bryan, P.L.S  
Sr. Director – E&C Environmental  
Energy Transfer

cc: Mark Silver, Esq. (via email)  
Curtis Stambaugh, Esq. (via email)  
Stephanie Carfley, Esq. (via email)

**Attachments:**

- Attachment A – SPLP’s October 28, 2020 letter to landowners - **CONFIDENTIAL**
- Attachment B – SPLP’s November 30, 2020 letter to landowners - **CONFIDENTIAL**
- Attachment C – SPLP’s December 8, 2020 letter to landowners - **CONFIDENTIAL**
- Attachment D – SPLP’s follow-up emails to landowners - **CONFIDENTIAL**
- Attachment E – Documents obtained from file reviews
- Attachment F – Stormwater calculations
- Attachment G – Aerial images
- Attachment H – Summary of XRD Sampling Data
- Attachment I – XRD Sample Location Map

# **ATTACHMENT C**

## Whitney Snyder

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**From:** Diana Silva <DSilva@mankogold.com>  
**Sent:** Monday, July 19, 2021 2:36 PM  
**To:** Whitney Snyder  
**Subject:** FW: [External] Carlisle Storage Area NOV response.

**Diana A. Silva, Esquire**  
484.430.2347 (office) | 610.504.0761(cell) | 484.430.5711(f)  
[dsilva@mankogold.com](mailto:dsilva@mankogold.com)

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**From:** Eberts, Ron <[reberts@pa.gov](mailto:reberts@pa.gov)>  
**Sent:** Thursday, July 1, 2021 8:23 AM  
**To:** Bryan, Nick <[Nick.Bryan@energytransfer.com](mailto:Nick.Bryan@energytransfer.com)>  
**Cc:** Williamson, Scott <[scwilliams@pa.gov](mailto:scwilliams@pa.gov)>; Styles, Monica L <[MONICA.STYLES@energytransfer.com](mailto:MONICA.STYLES@energytransfer.com)>; Phillips, Nathan <[natphillip@pa.gov](mailto:natphillip@pa.gov)>; Gates, David <[dagates@pa.gov](mailto:dagates@pa.gov)>; Rocco, Domenic <[drocco@pa.gov](mailto:drocco@pa.gov)>; Albert, Rebecca <[realbert@pa.gov](mailto:realbert@pa.gov)>; Foley, Andrew <[anfoley@pa.gov](mailto:anfoley@pa.gov)>; Long, Timothy <[timlong@pa.gov](mailto:timlong@pa.gov)>  
**Subject:** RE: [External] Carlisle Storage Area NOV response.

Good morning SPLP,

The Department has reviewed the attached supplemental NOV response, and has deemed that, based upon the currently available information, no further information or action is needed at this time.

Regards,

Ronald C. Eberts, Jr. | Environmental Protection Compliance Specialist

Department of Environmental Protection

Southcentral Regional Office

Waterways & Wetlands Program

909 Elmerton Avenue | Harrisburg, PA 17110

Phone: 717.705.4819 | Fax: - 717.705.4760

[http://secure-web.cisco.com/13atCIMFbkTMNhu8WjxPEa4esD3BPeXEM-rhigv11179z6NjrAcloGb9Kwvn2sQoA7Ij8F2ysshkt76TaeCLxBXTW8h5yQKD7AZv3yZgHDT4Mg6VGSdmElOXKkXrPVgKIhmsvwV\\_5BDlehg1X99\\_cjL92LTrkOxb\\_sOyAkpgaXRLzx-YX8ldbtyhcr-E9f2\\_2H7Sy0Ky1mkUQgY7QTheD-mbUY3-GcCMLp9vv6GiX6wedtcVCWxqbna67Tf48NMd6cTOwsCgbEnXTzIHLU6eog/http%3A%2F%2Fwww.depweb.state.pa.us](http://secure-web.cisco.com/13atCIMFbkTMNhu8WjxPEa4esD3BPeXEM-rhigv11179z6NjrAcloGb9Kwvn2sQoA7Ij8F2ysshkt76TaeCLxBXTW8h5yQKD7AZv3yZgHDT4Mg6VGSdmElOXKkXrPVgKIhmsvwV_5BDlehg1X99_cjL92LTrkOxb_sOyAkpgaXRLzx-YX8ldbtyhcr-E9f2_2H7Sy0Ky1mkUQgY7QTheD-mbUY3-GcCMLp9vv6GiX6wedtcVCWxqbna67Tf48NMd6cTOwsCgbEnXTzIHLU6eog/http%3A%2F%2Fwww.depweb.state.pa.us)

24-hour toll free Emergency Response number for SCRO: 1-800-541-2050.

The Department of Environmental Protection (Department) has launched an e-permit for Chapter 105 Wetland and Waterway Obstruction and Encroachment General Permits to make application submittal and review more efficient and enable faster responses to applicants. Information on e-permits can be found on our website at [https://secure-web.cisco.com/1jeauaGgoFZjkKt9IMs7BfM1yl\\_vwUBnkTEVgnVJXviHFN9PtCd83L9\\_NqeKb0p6l8A1leemacP3WiUkRu9l2iLT1zfWAzmd63uQM00ZnnRROgnO9p6k1XYw\\_OWAE1m9O2tI7SgvjflMfION8YrEAioayxdUn9d5lIOQ3L\\_XPNv0ZMw1np1AMF\\_MjOiYV7oDe06KhBwUvxUhXz64\\_FLWHoulGrQDkHsRb48qTk0Bn74etjduHPRI5gZleSldSrGDyWle4EgyM9vgSxIN1-soA/https%3A%2F%2Fwww.dep.pa.gov%2FBusiness%2FWater%2FWaterways%2FPages%2FePermitting.aspx%26nbsp;](https://secure-web.cisco.com/1jeauaGgoFZjkKt9IMs7BfM1yl_vwUBnkTEVgnVJXviHFN9PtCd83L9_NqeKb0p6l8A1leemacP3WiUkRu9l2iLT1zfWAzmd63uQM00ZnnRROgnO9p6k1XYw_OWAE1m9O2tI7SgvjflMfION8YrEAioayxdUn9d5lIOQ3L_XPNv0ZMw1np1AMF_MjOiYV7oDe06KhBwUvxUhXz64_FLWHoulGrQDkHsRb48qTk0Bn74etjduHPRI5gZleSldSrGDyWle4EgyM9vgSxIN1-soA/https%3A%2F%2Fwww.dep.pa.gov%2FBusiness%2FWater%2FWaterways%2FPages%2FePermitting.aspx%26nbsp;)

PRIVILEGED AND CONFIDENTIAL COMMUNICATION The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers.

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**From:** Bryan, Nick <[Nick.Bryan@energytransfer.com](mailto:Nick.Bryan@energytransfer.com)>

**Sent:** Tuesday, February 23, 2021 4:35 PM

**To:** Eberts, Ron <[reberts@pa.gov](mailto:reberts@pa.gov)>

**Cc:** Williamson, Scott <[scwilliams@pa.gov](mailto:scwilliams@pa.gov)>; Styles, Monica L <[MONICA.STYLES@energytransfer.com](mailto:MONICA.STYLES@energytransfer.com)>

**Subject:** RE: [External] Carlisle Storage Area NOV response.

Good afternoon Ron,

Attached please find a supplemental response to the Department's October 7, 2020 request for a remediation plan and schedule for the properties located near the Appalachian Trail and Appalachian Drive HDDs. Attachments A-E referenced in the attached letter were too large to transmit via email, so all the attachments have been uploaded to a Share File site, which can be accessed via the following secure link: <https://mankogold.sharefile.com/d-s76baa52a7c864318aa1857d68e43b527>

Please let me know if you have any trouble access the attachments, or need any further information.

Thanks,

Nick

# **ATTACHMENT D**



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

**NOTICE OF APPEAL FORM**  
**APPEAL INFORMATION**

1. Name, address, telephone number, and email address (if available) of Appellants:

Carlisle Pike Self Storage  
7099 Carlisle Pike  
Carlisle, PA 17015

Regency South Mobile Home Park  
7099 Carlisle Pike  
Carlisle, PA 17015

[regencypark5@comcast.net](mailto:regencypark5@comcast.net) (applicable for both appellants)

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

*(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)*

The Department's July 1, 2021 email denying Appellants' request that the Department investigate and take action related to discharges of Industrial Waste on or adjacent to their properties associated with the construction of the Mariner East 2 pipeline and related work.

(b) Which Department official took the action?

Ronald C. Eberts, Jr.  
Environmental Protection Compliance Specialist  
Southcentral Regional Office

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

7099 Carlisle Pike, Carlisle, 17015, Middlesex and Silver Spring Townships, Cumberland County, Pennsylvania

(d) How, and on what date, did you receive notice of the Department's action?

July 1, 2021 via email

3. Describe your objections to the Department's action in separate, numbered paragraphs.

*(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.)*

1. The PA Pipeline Project (PPP)/Mariner East II is an expansion of the existing Sunoco Mariner East pipeline system. The pipeline will traverse 17 counties in the southern tier of Pennsylvania, including Cumberland County. The pipeline crosses and/or is adjacent to the Appellants' property. The pipeline is owned by Sunoco Pipeline, L.P. ("SPLP").
2. On April 20, 2020, the Appellants submitted a complaint to the Department alleging that drilling fluids containing bentonite had surfaced ("Inadvertent Returns" or "IRs") in and around the Appellants' property. The complaint also stated that the IRs were never cleaned up and that they were detrimentally affecting infiltration rates at their properties, including but not limited to areas within NPDES permitted stormwater basins.
3. The IRs and related drilling activities conducted by SPLP have also caused significant damage to the Appellants' property including, but not limited to, cracking in building and residential foundations and the formation of sink holes that threaten infrastructure on their property.
4. The purpose of the Appellants' complaint was to have the Department investigate the Appellants' allegations and to require SPLP to implement appropriate remedial actions.
5. The surfacing of drilling fluids is an IR that constitutes an Industrial Waste. The discharge of an Industrial Waste to the waters of the Commonwealth without a permit is a violation of Section 301 of The Clean Streams Law, 35 P.S. § 691.301.
6. On October 7, 2020, the Department issued a Notice of Violation ("NOV") to SPLP. Based upon a review of information submitted by the Appellants and SPLP, the Department in the NOV concluded that "SPLP is responsible for the cleanup and remediation of all affected areas. These areas include but are not limited to the stormwater basin, and the self-storage parking areas/driveways. Remediation of the stormwater basin includes returning its previous functionality for the management of rate, volume and water quality of the runoff." (emphasis in original)
7. The Department in the NOV requested that SPLP submit a remediation plan for the cleanup and restoration of drilling fluids at the Site, including an implementation schedule by November 6, 2020.
8. SPLP has not only denied any responsibility for the remediation of the IRs but, on information and belief, has also failed to submit the remediation plan requested by the Department.
9. To date, SPLP has not addressed the concerns raised by the Appellants in their complaint and request for relief to the Department.
10. The Department's July 1, 2021 email denying the Appellants' request for relief is a final action of the Department.
11. The Department's final action is based, at least in part, on its failure to properly investigate the Appellants' complaint and request for relief, in violation of the

Department's constitutional, statutory, and regulatory responsibilities.

12. The Department's final action, as set forth in its July 1, 2021 email, denying the Appellants' request for relief and refusing to take any further action, to require SPLP to comply with applicable constitutional, statutory requirements is arbitrary and capricious, unlawful, and an abuse of the Department's discretion.
  13. The Department's final action, as set forth in its July 1, 2021 email, denying the Appellants' request for relief and refusing to take any further action, violates the Department's duties and obligations under Article I, Section 27 of Pennsylvania's Constitution.
  14. The Department's final action, as set forth in its July 1, 2021 email, denying the Appellants' request for relief and refusing to take any further action, violates its duties and obligations under The Clean Streams Law, 35 P.S. § 691.101 *et seq.*, the Solid Waste Management Act, 35 P.S. § 6018.101 *et seq.*, their implementing regulations, and other applicable statutes and regulations.
  15. The Appellants reserve the right to supplement this Appeal to include other objections that may become known during the course of this Appeal.
  16. A copy of the Department's July 1, 2021 email is attached as Exhibit 1.
4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

None

**NOTICE OF APPEAL FORM  
PROOF OF SERVICE**

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (2) and (3) below, and where applicable, upon other interested parties indicated by numbers (4) and (5). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

- |   |            |   |
|---|------------|---|
| (1) Environmental Hearing Board<br>2 <sup>nd</sup> Floor Rachel Carson State Office Bldg.<br>400 Market St., P.O. Box 8457<br>Harrisburg, PA 17105-8457   | <i>via</i> | <input type="checkbox"/> first class mail, postage paid<br><input type="checkbox"/> overnight delivery<br><input type="checkbox"/> personal delivery<br><input checked="" type="checkbox"/> electronic filing |
| (2) Department of Environmental Protection<br>Office of Chief Counsel<br>Attn: Administrative Officer<br>16 <sup>th</sup> Floor Rachel Carson State Office Bldg.<br>400 Market Street, P.O. Box 8464<br>Harrisburg, PA 17105-8464 | <i>via</i> | <input type="checkbox"/> first class mail, postage paid<br><input type="checkbox"/> overnight delivery<br><input type="checkbox"/> personal delivery<br><input checked="" type="checkbox"/> electronic filing |
| (3) The officer of the Department<br>who took the action being appealed   | <i>via</i> | <input checked="" type="checkbox"/> first class mail, postage paid<br><input type="checkbox"/> overnight delivery<br><input type="checkbox"/> personal delivery<br><input type="checkbox"/> electronic filing |

**Note to Attorneys who *electronically* file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel. There is no need for you to independently serve the Department.**

Additionally, if your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following, as applicable:

- |  |            |   |
|--|------------|---|
| (4) The entity to whom the permit, license approval, or certification was issued.  | <i>via</i> | <input checked="" type="checkbox"/> first class mail, postage paid<br><input type="checkbox"/> overnight delivery<br><input type="checkbox"/> personal delivery |
| (5) Where applicable, any of the following:  |            |   |
| <input type="checkbox"/> Any affected municipality, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7; |            |   |
| <input type="checkbox"/> The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq.;  |            |   |
| <input type="checkbox"/> The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218;   |            |   |
| <input type="checkbox"/> The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.                                |            |   |



**NOTICE OF APPEAL FORM  
SIGNATURE PAGE**

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 4 of this form on the following date: July 29, 2021.

\_\_\_\_\_  
Signature of Appellant or Appellant's Counsel

Date: July 29, 2021

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Martin R. Siegel  
PA ID No. 35661  
Barley Snyder  
100 East Market Street  
York, PA 17401  
717-718-7581  
msiegel@barley.com

TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

\_\_\_\_\_  
**Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.**



# EXHIBIT 1

----- Original Message -----

From: "Eberts, Ron" <reberts@pa.gov>  
To: Regency Park <regencypark5@comcast.net>  
Cc: "Williamson, Scott" <scwilliams@pa.gov>, "Phillips, Nathan" <natphillip@pa.gov>, "Long, Timothy" <timlong@pa.gov>, "Rocco, Domenic" <drocco@pa.gov>, "Albert, Rebecca" <realbert@pa.gov>, "Foley, Andrew" <anfoley@pa.gov>  
Date: 07/01/2021 8:25 AM  
Subject: RE: [External] Carlisle Pike Self Storage - DEP Information Request Email (12-23-20) - Sunoco Pipeline L.P. Notice of Violation (10-07-20)

Mrs. Blymier,

The Department has reviewed the attached Response Package. Based upon the currently available information, the Department will not be taking any further action at this time.

Regards,

Ronald C. Eberts, Jr. | Environmental Protection Compliance Specialist  
Department of Environmental Protection  
Southcentral Regional Office  
Waterways & Wetlands Program  
909 Elmerton Avenue | Harrisburg, PA 17110  
Phone: 717.705.4819 | Fax: - 717.705.4760  
www.depweb.state.pa.us

24-hour toll free Emergency Response number for SCRO: 1-800-541-2050.

The Department of Environmental Protection (Department) has launched an e-permit for Chapter 105 Wetland and Waterway Obstruction and Encroachment General Permits to make application submittal and review more efficient and enable faster responses to applicants. Information on e-permits can be found on our website at <https://www.dep.pa.gov/Business/Water/Waterways/Pages/ePermitting.aspx>

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

**VIA ELECTRONIC MAIL ONLY**

Lynde Blymier, Property Manager  
Carlisle Pike Self Storage and  
Regency South Mobile Home Park  
7099 Carlisle Pike  
Carlisle, PA 17015  
[regencypark5@comcast.net](mailto:regencypark5@comcast.net)

Anthony T. Lucido, Esquire  
301 Market Street  
P.O. Box 109  
Lemoyne, PA 17043  
[alucido@johnsonduffie.com](mailto:alucido@johnsonduffie.com)

*Counsel for Carlisle Pike Self Storage and  
Regency South Mobile Home Park*

Diana A. Silva, Esquire  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004  
[dsilva@mankogold.com](mailto:dsilva@mankogold.com)

*Co-counsel for Respondent Sunoco Pipeline  
L.P.*

*/s/ Whitney E. Snyder* \_\_\_\_\_

Thomas J. Sniscak, Esq.  
Whitney E. Snyder, Esq.  
Bryce R. Beard, Esq.

Dated: August 4, 2021