



October 6, 2020

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Sunoco Pipeline L.P.
535 Fritztown Road
Sinking Spring, PA 19608

Re: Notice of Intent to Sue for Violations of the Pennsylvania Clean Streams Law

Dear Sir or Madam:

Clean Air Council (“CAC”) hereby places Sunoco Pipeline L.P. (“SPLP”) on notice of the intent to sue SPLP pursuant to Section 601 of the Pennsylvania Clean Streams Law (35 P.S. § 691.601(c)), for falsifying reports submitted under SPLP’s E&S Permits and failing to report dangerous conditions threatening to pollute waters of the Commonwealth. This notice is provided pursuant to 35 P.S. § 691.601(e).

I. Background

SPLP is *inter alia* using Horizontal Directional Drilling (“HDD”) to construct the Mariner East II pipeline (ME2), which will transport propane, butane, and ethane across Pennsylvania. Construction on the pipeline began in 2017 and continues to this day. The Project consists of two parallel pipelines—one 20 inches in diameter, the other 16 inches—running 254.6 miles across the Commonwealth. Spread 6 covers Chester and Delaware counties where the purported violations have occurred.

SPLP’s ME2 pipeline was permitted to cross 1,227 streams, 570 wetlands, and 11 ponds. Of these regulated streams, 69 are Special Protection waters including 12 designated as High-Quality Cold-Water Fishery, 40 designated as High Quality-Trout Stocking Fishery and 17 being designated as Exceptional Value. In addition, the pipeline was approved to cross at least 92 EV wetlands.

As part of the permitting process for the ME2, SPLP received Erosion and Sediment Control Permits to ensure the protection of aquatic resources in the Commonwealth.

II. E&S Permits

SPLP received Erosion and Sediment Control permits from the Pennsylvania Department of Environmental Protection (the “Department”) for the construction of the ME2, including E&S Permit #0100015001 (the “E&S Permit”). The permit requires that “[t]he permittee shall document all visual inspections on an inspection report form.” E&S Permit Part A, Section III.C.4. The permit goes on to require that “[i]f the permittee discovers conditions in the field that pose a threat of pollution to waters of the Commonwealth, the permittee shall temporarily

stabilize the site and cease earth disturbance activities. Thereafter the permittee shall submit a plan and schedule to DEP for review and approval to resume earth disturbance activities while protecting waters of the Commonwealth.” E&S Permit Part A, Section III.C.5. Further, “[a]ny person who violates a permit condition, fails to take corrective action to abate violations or falsifies report or other documents may be subject to criminal and/or civil penalties or other appropriate action for violations of the terms and conditions of this permit under Sections 602 and 605 of the Clean Streams Law (35 P.S. §§ 691.602 and 691.605).” E&S Permit Part B, Section II.B.

The CSL provides that “any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this act or any rule, regulation, order or permit issued pursuant to this act against... any other person alleged to be in violation of any provision of this act or any rule, regulation, order or permit issued pursuant to this act.” 35 P.S. § 691.01(c). The CAC claims noticed in this letter are for SPLP’s violations of the E&S Permit. The Clean Air Council is dedicated to protecting and defending everyone’s right to a healthy environment through education and enforcement of environmental laws, specifically in the Mid-Atlantic Region. CAC has many members who live in the vicinity of the pipeline.

A. Failure to report conditions that pose a threat to water resources

Under the E&S Permits, if SPLP discovers any condition that “pose[s] a threat of pollution to waters of the Commonwealth, including streams and wetlands, the permittee shall temporarily stabilize the site and cease earth disturbance activities. Thereafter the permittee shall submit a plan and schedule to DEP for review and approval to resume earth disturbance activities while protecting waters of the Commonwealth.” E&S Permit Part A, Section III.C.5.

The Clean Streams Law defines “pollution” as “contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters.” 35 P.S. § 691.1.

On information and belief, in 2020, SPLP began a pattern and practice of requiring that their subsidiaries classify potentially dangerous conditions, including subsidence, i.e. sinkholes, as “earth features” in geologists’ reports so as not to incur any further Department review. Conditions such as subsidence above an active pipeline have a high potential to cause pollution to wetlands when the subsidence continues and causes breakage of the pipelines. Further, such classification meant that SPLP would not have to stabilize the site, cease the earth disturbance activities, or wait for Department approval to continue the earth disturbance activities.

On information and belief, the PGs have also been limited in the breadth of their inspections and investigations by Sunoco’s Limit of Disturbance (LOD) policy. The LOD policy

limits the PGs from inspecting potentially dangerous environmental conditions, except if they were inside of an arbitrarily designated and poorly delineated boundary. Such a policy deliberately promotes the suppression of potentially hazardous findings from being reported, monitored and mitigated, which could ultimately result in the release of pollutions into waters of the Commonwealth.

In addition to failing to report some incidents of subsidence, any monitoring of such unreported subsidence by SPLP and its agents was severely limited to the point of being useless. On information and belief, one subsidence above two active pipelines that had been discovered was monitored for only a week before monitoring was ordered “closed out”. Such a limited time period does not effectively monitor a non-catastrophic development of gradually evolving depression before it becomes critical. It only serves to allow the issue to be formally closed and for operations to continue as before.

On information and belief, a protected wetland W-H31, in Chester County, was the subject of a dangerous omission, whereby significant subsidence near said wetlands was not properly reported and/or monitored. Such subsidence has a high likelihood of causing pollution to those wetlands and should have been the cause of stoppage of drilling, stabilization of the site, and the creation of a plan for submission to the Department.

It is believed that such subsidence was common along the pipeline and that SPLP regularly ignored the protocols required when a potentially dangerous condition, such as subsidence, was found. On information and belief, many such dangerous conditions were ignored along the pipeline in the interest of expediency.

B. Submission of False/Fraudulent Data

CAC believes that SPLP, and/or their agents, altered their reporting practices sometime in early 2020. The changes involved making professional geology reports editable by non-geologists, requiring picture captions to be editable, and depriving the inspecting geologists of information necessary to make a complete and accurate report as required by the E&S permits.

Based on those changes, CAC believes that SPLP or their agents have been altering reports from the professional scientists working on the project before submittal to government agencies, potentially removing valuable information necessary to be reported for the safety of the public.

Further, on information and belief, the Professional Geologists (“PGs”) employed by SPLP are required to conform their reports to the Utility Inspectors’ reports after the fact, regardless of what those professionals actually had discovered and reported. Alternatively, such conformation is conducted after the submission of their reports to their superiors through so called “quality assurance”. Such a pattern and practice resulted, and will continue to result, in submission of modified inspection reports without full knowledge and/or consent of the inspecting PGs. The inspecting PGs simply do not know what is in the final reports submitted to the agencies under their names. Such modified inspection reports contain what the Utility Inspector and SPLP want to see but not necessarily the facts and observations on the ground as observed and intended to be reported by the inspecting PGs.

On information and belief, the PGs are also forced to work with limited data and kept away from drills as much as possible, often forced to observe from locations where observation is difficult or impossible. Those orders from SPLP cripple the PGs' ability to make accurate reports and observations. The inspecting PGs are also not allowed to talk to drillers or any third party, including any DEP or PUC inspectors about their observations at all. The PGs cannot even discuss the most important and necessary information with the drillers and steer hands, under threat and penalty of termination from employment. Instead, the PGs are forced to obtain all of their information from the Utility Inspectors, who are reluctant to provide other additional information except what is in their report, if any at all. The inspecting PGs thus have to make the best assumptions they can, given the limited information given to them and their limited ability to observe. Actions that purposefully limit the facts reported would constitute "falsifying" a report being submitted to the relevant government agencies.

This practice raises obvious suspicion regarding the validity of data in all of SPLP's reports submitted to state and federal agencies since the above-described changes were implemented. Therefore, CAC has a good faith belief that SPLP has failed, and continues to fail, in its obligation to submit and maintain accurate reports under their E&S permits.

The E&S Permit states that "[a]ny person who violates a permit condition, fails to take corrective action to abate violations or falsifies report or other documents may be subject to criminal and/or civil penalties or other appropriate action for violations of the terms and conditions of this permit under Sections 602 and 605 of the Clean Streams Law. . ." E&S Permit Section II.B. The submission by SPLP of fraudulent, or otherwise false, data leads to the inevitable conclusion that SPLP has violated its E&S Permit and thereby violated the Clean Streams Law.

III. Conclusion

Based on SPLP's apparent pattern and practice of repeatedly falsifying or otherwise providing inaccurate data in its Discharge Monitoring Reports, CAC reserves the right to add specific CSL violations based on the pattern of violations set forth herein upon determining that such claims exist. CAC takes these violations very seriously and intends to enforce any and all of SPLP's violations of the CWA that have occurred within the statute of limitations.

CAC believes that this letter provides sufficient information to place SPLP on notice of our intent to sue and the grounds for a complaint. At the close of the 60-day notice period, unless significant progress is made in remedying and preventing these violations, CAC intends to file suit in the County Court of Common Pleas in Chester County, Pennsylvania, pursuant to Section 601 of the Pennsylvania Clean Streams Law (35 P.S. §§ 691.601). This letter is sent on behalf of CAC.

If you wish to discuss the matters set forth in this letter, please contact me at the address listed below.

Sincerely,



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CC: (via certified mail—return receipt requested):

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