



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NOTICE OF APPEAL

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate a legal proceeding that asks the Board to review an action of the Department of Environmental Protection. Please read the instructions appended to this form in their entirety and follow closely the rules governing filing a Notice of Appeal, located at 25 Pa. Code § 1021.51. Failure to follow Board rules and orders may result in the dismissal of your appeal.

Pages 1 through 3 of the following form and any required attachments must be received by the Environmental Hearing Board within 30 days after your receipt of notice of the action of the Department that you are appealing. You may mail, fax, or hand-deliver your Notice of Appeal to:

**ENVIRONMENTAL HEARING BOARD
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738**

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received within the required time.

Attorneys may electronically file a Notice of Appeal at <http://ehb.courtapps.com/>

(rev'd June 2018)



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

**NOTICE OF APPEAL FORM
APPEAL INFORMATION**

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

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

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 directive to stop and not restart construction at the horizontal directional drilling ("HDD") location No. S3-0360 in West Whiteland Township, Chester County, as set forth in an August 20, 2020 Notice of Violation issued to SPLP, a copy of which is provided as "Attachment A."

(b) Which Department official took the action?

- John Hohenstein, P.E.
Environmental Program Manager
Waterways and Wetlands
Southeast Regional Office
Pennsylvania Department of Environmental Protection

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

- HDD No. S3-0360
West Whiteland Township, Chester County

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

- August 20, 2020 in a written Notice of Violation (copy attached as Attachment A).

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.)

- SPLP's detailed objections are set forth in Attachment "B."



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ENVIRONMENTAL HEARING BOARD

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

- None currently pending.

**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
2 nd Floor Rachel Carson State Office Bldg.
400 Market St., P.O. Box 8457
Harrisburg, PA 17105-8457 | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |
| (2) Department of Environmental Protection
Office of Chief Counsel
Attn: Administrative Officer
16 th Floor Rachel Carson State Office Bldg
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464 | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |
| (3) The officer of the Department
who took the action being appealed | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" 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 type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<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 2 of this form on the following date: August 24, 2020.

/s/ Robert D. Fox
Signature of Appellant or Appellant's Counsel

Date: August 23, 2020

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

Robert D. Fox, Esquire
Jonathan E. Rinde, Esquire
Diana A. Silva, Esquire
Manko Gold Katcher & Fox LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

Telephone No.: 484-430-5700
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dsilva@mankogold.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**

ATTACHMENT “A”



August 20, 2020

NOTICE OF VIOLATION

CERTIFIED MAIL NO. 7018 0040 0000 0100 4683
RETURN RECEIPT NO. 9590 9402 3847 8032 5779 98

Mr. Matthew L. Gordon
Sunoco Pipeline, L.P.
535 Fritztown Road
Sinking Springs, PA 16908

CERTIFIED MAIL NO. 7018 0040 0000 0100 4690
RETURN RECEIPT NO. 9590 9402 3847 8032 5779 81

Mr. Jayme Fye
Michels Corporation
817 Main Street
Brownsville, WI 53006

Re: Violations of the Clean Stream Law and Dam Safety and Encroachments Act
Pennsylvania Pipeline Project (a.k.a. Mariner East 2)
Permit Nos. E15-862 and ESG 01 000 15 001
West Whiteland Township
Chester County

Dear Messrs. Gordon and Fye:

On August 8, 2020, the Department of Environmental Protection (“DEP”) received notice of a discharge of turbid groundwater to a roadside swale at the Shoen Road side of Sunoco Pipeline, L.P.’s (“SPLP”) HDD Site S-3-0360 Devon Drive/Shoen Road in West Whiteland Township, Chester County. After review and investigation, DEP found that the discharge of groundwater was related to the construction activities of the above-referenced HDD, and as stated in Section 5.1.6 of the “*HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan*” “. . . SPLP shall treat the groundwater as an IR in accordance with the provisions of Section 6.3, below. Notifications relating to the surfacing of groundwater are addressed in Section 6.5.”

DEP Permits E15-862 and ESG 01 000 15 001, and paragraph 15 of the Corrected Stipulated Order (“Order”) entered by the Environmental Hearing Board on August 10, 2017, require

permittee(s) to follow their revised “*HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan*” (revised April 2018) (“IR PPC Plan”) that is part of the approved plans in the aforementioned permits to reduce, minimize, or eliminate a pollution event. Further, Conditions RRR of Permit E15-862 and C.IV.A. of ESG 01 000 15 001 require that SPLP comply with the “*Preparedness, Prevention and Contingency Plan*” (“PPC Plan”).

To demonstrate an appropriate compliance strategy, you need to submit the following to the attention of Mr. Frank De Francesco by e-mail at fdefrances@pa.gov by August 27, 2020:

1. Any initial or interim IR report form(s) for the site, as required by Section 6.3 of the HDD IR PPC Plan.
2. On August 17, 2020, a restart report was submitted for review. A revised restart report meeting the requirements of Section 5.1.5 (Monitoring Protocol for Condition 3) of the April 2018 HDD IR PPC Plan, that has been prepared and sealed by a Pennsylvania licensed Professional Geologist will need to be submitted along with the following additional information:
 - a. The report needs to examine the cause of the discharge and evaluate strategies to be implemented to avoid a recurrence.
 - b. Details of all of the alternative steps considered/analyzed to prevent future IRs.
 - c. The average daily flow rate of the groundwater discharge.

Failing to comply with the PPC Plan, IR PPC Plan, DEP Permits E15-862 and ESG 01 000 15 001, and the above statutory and regulatory provisions, constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Dam Safety and Encroachment Act, 32 P.S. § 693.18.

If future inspections reveal that corrective actions have not been made and/or additional violations have occurred, DEP may initiate enforcement action.

Please be reminded DEP approval is required before restarting drilling operations for HDD S3-0360-16. Additionally, a reevaluation is required for HDD S3-0360-20 in accordance with paragraph 3 of the August 10, 2017, Corrective Stipulated Order.

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


Mr. Matthew L. Gordon
Mr. Jayme Fye

- 3 -

August 20, 2020

I look forward to your cooperation in this matter. If you have any questions, please call Mr. Frank De Francesco, Compliance Specialist, at 484.250.5161.

Sincerely,



John Hohenstein, P.E.
Environmental Program Manager
Waterways and Wetlands

cc: Mr. Bryan, Energy Transfer
Mr. Embry, Energy Transfer
Ms. Styles, Energy Transfer
Mr. Simcik, TetraTech
Mr. Prosceno, TetraTech
Mr. Sofranko – Chester County Conservation District
PA Fish and Boat Commission, Southeast Office
Mr. Caplan – U.S. Army Corps of Engineers, Philadelphia District
West Whiteland Township
Re 30 (GJS20WAW)232

ATTACHMENT “B”

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

SUNOCO PIPELINE, L.P.	:	
	:	
Appellant/Permittee,	:	EHB DOCKET NO. _____
	:	
v.	:	
	:	ELECTRONICALLY FILED
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION,	:	
	:	
Appellee.	:	
	:	

NOTICE OF APPEAL

Sunoco Pipeline, L.P. (“SPLP”) appeals the action of the Department taken on August 20, 2020, in a Notice of Violation (“NOV”) (copy provided as Attachment “A” to Notice of Appeal Form), which includes a directive to stop and not restart construction at the horizontal directional drill (“HDD”) location Number S3-0360, located in West Whiteland Township, Chester County, Pennsylvania. The Department’s directive to SPLP to suspend drilling at HDD 360 directly contravenes the Department’s approval of SPLP’s January 15, 2020 Restart Report for this exact location. Beginning in October 2019, the Department received extensive technical information, met with SPLP representatives, reviewed SPLP’s January 15, 2020 Restart Report for over five months, and ultimately approved that report and confirmed the HDD could recommence construction in July 2020. In approving the January 15, 2020 Restart Report, the Department expressly determined that the mitigation measures SPLP proposed were adequate to protect public health, safety, and the environment in the event that the pre-existing water seep emerged during active construction of the HDD, whether that seep was clear or turbid. The

Department's approval further expressly stated that the drill would continue while SPLP implemented the approved mitigation measures.

HDD 360 recommenced at the Shoen Road drill location on July 31, 2020, the seep became turbid on August 8, and SPLP followed exactly the Department-approved mitigation measures. The Department does not contend otherwise. Yet, in complete disregard of its own approval of the January 15, 2020 Restart Report, the Department directed SPLP to suspend HDD 360 drilling, indefinitely. The Department's facially arbitrary and capricious action will cause irreparable injury to SPLP by allowing the groundwater to continue to discharge through the pilot hole, eventually leading to the complete loss of an over 2,800-foot pilot hole that is nearly fully drilled, and also cause injury to the public by further prolonging completion of this drill in a residential neighborhood, where the pilot hole is less than two weeks to completion.

In support of this appeal, SPLP avers in support as follows:

1. On February 13, 2017, the Department issued various permits to SPLP in connection with the Mariner East 2 pipeline project, including permits for construction activity in Chester County: Erosion and Sediment Control Permit issued under 25 Pa. Code Chapter 102, Permit No. ESG0100015001; and a Water Obstructions and Encroachment Permits under 25 Pa. Code Chapter 105, Permit Number E15-862.

2. One of the work locations for the Mariner East 2 pipeline project is an HDD location known as Devon Drive/Shoen Road, HDD No. S3-0360, in West Whiteland Township, Chester County ("HDD 360"), which is approximately 2,843 feet in length, and is located in a residential area.

3. Construction first commenced at HDD 360 on June 14, 2017. After various complaints were made by local residents regarding water well issues, construction was temporarily suspended.

4. Thereafter, the Department and SPLP entered into a Consent Order and Agreement dated July 24, 2017 (the “COA”, copy of which attached as Exhibit “1”), pursuant to which SPLP was required to take certain actions, including preparation of a Water Supply Restoration Plan, which ultimately required SPLP in the short term to “provide alternate potable water supplies adequate in quantity and quality for the purposes served,” and in the long term to provide “an alterative source of potable water supply” to those residents who had made a complaint, as well as all other residents who experienced issues with their water wells in the Shoen Road Drill Area. *See* Ex. 1, ¶ 3d.-e. Under the COA, SPLP also was required to perform a hydrogeological assessment of the area and submit a report to the Department that detailed recommendations for the recommencement of construction at this work location. *See* Ex. 1, ¶ 3f.

5. SPLP satisfied its obligation to provide an alternate water supply by connecting all impacted residents not previously connected to public water in the HDD 360 area to public water. SPLP also submitted all technical and other confirmatory documentation required by the COA and as further requested by the Department.

6. On February 9, 2018, the Department issued a letter confirming that SPLP had performed all corrective actions required by the COA, but asked for confirmation that certain notifications were made to landowners, which SPLP subsequently provided to the Department.

7. On March 28, 2019, the Department provided written confirmation via email that SPLP had satisfied all requirements of the COA and provided all required notifications to landowners, and therefore could restart construction of HDD 360.

8. Thereafter, SPLP commenced active HDD construction at HDD 360 on or about October 9, 2019.

9. On October 17, 2019, groundwater began to flow out from the HDD annulus to the drilling entry pit near Shoen Road. By the next day, on October 18, 2019, the groundwater flowback had increased in volume such that construction was suspended in accordance with the protocols established by the COA and also the HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan, as revised, dated April 2018 (the “HDD IR Plan”), copy attached as Exhibit “2”.

10. After suspending active construction at HDD 360, SPLP’s contractor installed a grout plug into the HDD annulus to stop the groundwater flowback during the time that the HDD construction would be suspended, to further mitigate any environmental conditions from developing during the period of the Department’s review of SPLP’s technical submittals.

11. The surfacing of groundwater was heavily negotiated and specifically addressed by the final April 2018 revisions to the HDD IR Plan between SPLP, the Department, and Appellants Clean Air Council et al. in an appeal of SPLP’s permits (EHB Docket No. 2017-0009). Section 5.1.6 of the HDD IR Plan lists the protocols that SPLP would take when groundwater surfaced during HDD construction, and required SPLP to treat groundwater surfacing in areas other than the entry or exist pit, to be treated as an inadvertent return (“IR”) under the HDD IR Plan in accordance with Section 6.3 and “Monitoring Protocol for Condition 3 – Inadvertent Returns in Surface Waters of the Commonwealth.” *See Ex. 2 at pgs. 9-10.*

12. The Board approved the revised HDD IR Plan as part of a second stipulation between the parties, after an evidentiary hearing on April 16, 2018, during which the Department represented that the HDD IR Plan was fully protective of the environment. During that hearing,

the Department's designated witness, Scott Williamson, confirmed that under the revised HDD IR Plan, a groundwater seep would be treated as an IR. *See* April 16, 2018 Transcript (attached as Exhibit "11.") at 25:20-27:24.

13. Pursuant to the HDD IR Plan, groundwater surfacing is treated as an IR regardless of whether it contains any drilling mud. *See id.*; *see also* Ex. 2 at Section 5.1.6.

14. The HDD IR Plan details the required components of the restart report, which must be signed and sealed by a licensed professional geologist. *See id.* Significantly, the HDD IR Plan provides explicitly that SPLP may recommence HDD activities only after PADEP provides written approval to restart, and that "[t]he restart report will not be approved unless SPLP demonstrates that the mitigation measures will adequately protect public health, safety, and the environment." *Id.*

15. Pursuant to the COA and the HDD IR Plan, and otherwise at the Department's request, after the October 18, 2019 suspension of drilling, SPLP provided the Department with a series of technical submissions regarding groundwater and related concerns at HDD 360, including HDD Restart Reports prepared under Monitoring Protocol 3 of the HDD IR Plan, via submissions dated: October 21, 2019; October 25, 2019; November 7, 2019, November 15, 2019, and January 15, 2020 HDD. These submissions were focused on two primary issues – (1) the management of groundwater flowback out of the annulus that was produced by the HDD operations; and, (2) the management of a pre-existing water seep located along property and a township right-of-way along Shoen Road.

16. The Department and SPLP also held several telephone conferences regarding these submittals, as well as an in-person meeting with SPLP's technical consultants and

representatives, the Department's technical staff, and each party's legal counsel, on January 7, 2020.

17. During and following this January 7, 2020 meeting, the Department and SPLP jointly developed protocols to address both groundwater flowback and the seep water emergence at HDD 360, which ultimately was written into a revision to a previously submitted HDD Restart Report.

18. On January 15, 2020, SPLP submitted a revised HDD Restart Report for HDD 360 (the "January 15, 2020 Restart Report"), a copy of which is attached as Exhibit "3." The January 15, 2020 Restart Report was a revision to prior restart reports and supplemental submissions listed in paragraph 15 above, and reflected the back and forth technical analyses and discussions between the Department and SPLP to address the groundwater flowback and seep concerns.

19. The January 15, 2020 Restart Report specifically addressed both issues raised by the Department, including most relevant for this Notice of Appeal the management of a pre-existing water seep along Shoen Road. The January 15, 2020 Restart Report included Attachment D – Seep Monitoring Work Plan Addendum, which was a specific plan to address what protocols SPLP would take if the water seep reemerged when HDD construction restarted:

Monitoring of the seep discharge on the nearby road-bank north of Shoen Road, to ensure that any turbid water that might discharge there will be monitored, sampled (if necessary), and captured and controlled using Best Management Practices, **without interruption of drilling processes**. Details of the Seep Monitoring Plan are provided in Attachment D.

Ex. 3 at pg. 5 (emphasis added).

20. The Seep Monitoring Work Plan Addendum includes specific plans and protocols during active HDD construction that SPLP would take when the water seep was observed, which

included monitoring of the seep to determine if it was flowing clear or was turbid. If the seep water was clear, SPLP continued to monitor the seep periodically during HDD operations. If the seep appeared turbid – and thus could indicate a potential IR – then personnel would take field measurements for three parameters (pH, conductivity, and color), and under certain circumstances, a sample of the seep water would be sent for laboratory analysis. *See* Ex. 3 at Attachment D.

21. Because laboratory analyses would take a minimum of 5 days to return results, and the Department told SPLP that the Department’s approved laboratory could take up to 30 days to return results, the Seep Monitoring Work Plan Addendum established Best Management Practices to be implemented to address the seep depending on whether it was flowing clear or was turbid:

The seep flow/discharge will be managed via a dam-and-pump collection system that will transfer *any turbid seep water* through a conduit placed under Shoen Road to storage tanks placed within the permitted work space on the south side of Shoen Road

Ex. 3 at Attachment D, pg. 4 (emphasis added).

22. The Seep Monitoring Work Plan Addendum also attached a description for best-management practices and typical drawings to construct a containment area around the seep location, which included sandbags and plastic visqueen to be placed within the area of the seep as underlayment, and a system of submersible pumps and hoses to move turbid seep water to storage tanks near the HDD staging area. *See* Ex. 3 at Attachment D, Attachment B (BMP Controls).

23. The best management practices and containment area were also subject to SPLP’s January 15, 2020 request for a minor permit amendment to Erosion and Sediment Control Permit issued under 25 Pa. Code Chapter 102, Permit No. ESG0100015001, which included additional

temporary workspace and limit of disturbance for the containment area, pump, associated hoses and electrical conduit, depicted on a redline drawing submitted to the Department for approval.

A copy of the minor permit amendment request and redline drawing are attached as Exhibit “4.”

24. This minor permit amendment was approved by the Department and issued via letter dated May 20, 2020 (copy attached as Exhibit “5”), which amended the permit to allow for the additional work space “along and across Shoen Road for proposed control of water from an existing hillside seep.”

25. Then, over five months after it was submitted to the Department approved the January 15, 2020 Restart Report, which included the Seep Monitoring Work Plan Addendum, by letter dated June 29, 2020 (copy attached as Exhibit “6”). The June 29, 2020 approval letter specifically referenced and listed the January 15, 2020 HDD Restart Report among the information supplied to the Department, and then reviewed the requirements to restart construction at HDD 360, indicating whether or not each requirement was satisfied. *See Ex. 6.*

The Department specifically noted under the category of “*Adverse Impacts*” that:

SPLP has completed a hydrogeologic analysis of HDD 360 and is proposing measures, including drilling techniques and methods that, if properly implemented, should prevent or minimize any adverse impacts from the Drill.

Ex. 6 at pg. 1.

26. Thus, the Department documented that SPLP had provided an adequate and appropriate HDD restart report under Monitoring Protocol Condition 3 of the HDD IR Plan, and that SPLP’s proposed path forward to complete the construction at HDD 360 was appropriate and adequately protective of human health and the environment.

27. SPLP then provided the Department with confirmation that certain required notices to landowners, the Department, and local townships had been completed. Upon receipt

of copies of those notices, the Department issued a letter dated July 2, 2020 (copy attached as Exhibit “7”) that again specifically referenced and listed the January 15, 2020 HDD Restart Report, and authorized the restart of the construction at HDD 360:

By this letter, in accordance with paragraph 3.a of the CO&A, the Department authorizes the restart of the Drill, subject to the terms and conditions of Permits ESG0100015001 and E15-862 and legal authorities, including the CO&A, the August 10, 2017, Corrected Stipulated Order, Preparedness, Prevention and Contingency Plans for the Drill, and all other applicable legal authorities.

Ex. 7 at pg. 1.

28. After receiving the Department’s July 2, 2020 approval to restart construction, SPLP recommenced construction at HDD 360. In accordance with the prior technical submittals and HDD Restart Reports, and as a further measure to alleviate potential adverse impacts from the construction, SPLP constructed the HDD 360 using the intersect drilling method. This process uses two drilling rigs, one from each side of the designed HDD drilling profile, to drill the borehole from each side entry/exit pit area, ultimately intersecting in the middle to create one continuous borehole beneath the surface of the ground.

29. On July 15, 2019, SPLP commenced active construction at the drilling rig located at the northwestern side of the HDD profile. SPLP began active construction at the drilling rig located at the southeastern side of the HDD profile (i.e. adjacent to Shoen Road) on July 31, 2020.

30. HDD construction on the northwestern drilling rig proceeded without incident, and HDD construction on the southeastern side drilling rig was without incident from August 1 through August 7, 2020. The HDD drilling rigs were continuing to drill the pilot hole, which is the first stage in the HDD process, using the intersect method. The northwestern rig had drilled approximately 1,560 feet as of August 6, 2020, when it was temporarily suspended to await the

southeastern drilling rig to meet and intercept/connect to that location. Both sides of the pilot hole were each fully drilled and overlapped by approximately 648 feet but did not yet connect. Further advancement of the southeastern rig would consist of drilling and steering the drill bit to intercept the two boreholes together to create one continuous borehole.

31. During this time period, SPLP followed the plans and protocols listed in its permits, the HDD IR Plan, and also the site-specific plans and protocols established by the various technical submittals for this location, including the January 15, 2020 Restart Report and Seep Monitoring Work Plan Addendum.

32. On Saturday, August 8, 2020, SPLP was inspecting and monitoring the seep location along Shoen Road in accordance with the January 15, 2020 Restart Report, and the Department-approved Seep Monitoring Work Plan Addendum. The seep flowed intermittently and appeared both turbid and clear during the morning of August 8th. At approximately 3:00 p.m., the turbidity of the seep changed to an orange-brown color for five minutes, before then returning to clear flow.

33. SPLP implemented its plans and protocols listed in the Department-approved Seep Monitoring Work Plan Addendum, installed a sandbag dam and began pumping the fluid to water storage tanks. While SPLP was implementing the approved protocol and taking response actions, a local resident temporarily prevented SPLP from working in the area, and the landowner removed the sandbag containment SPLP had constructed, throwing the sandbags into the roadway. Local law enforcement was called, which prevented SPLP's contractors from completing this work until approximately 5:55 p.m. The total estimated volume of the orange-brown discolored water seep emergence was a total of 5 gallons. Department personnel were also at the worksite and observed site conditions on August 8th.

34. Despite following all applicable protocols, including the Department-approved Seep Monitoring Work Plan Addendum, SPLP voluntarily shut down the southeastern HDD drilling rig on August 8th. SPLP's contractors indicate that the intercept process is now nearly complete and anticipate that it will take approximately 7-10 working days to finalize, which will result in a fully-drilled pilot hole along the entire 2,483 length of the HDD profile. Subsequent steps of the HDD construction process would then follow, and include the reaming process, where the pilot hole circumference is enlarged using progressively larger drilling bits, followed by pipe pullback and tie-ins to complete the installation of the pipeline.

35. While SPLP followed all plans and protocols, including the site-specific Department-approved Seep Monitoring Work Plan Addendum, because of the heightened public interest in this work location, SPLP promptly prepared and submitted certain information regarding the August 8th event requested by the Department. Just two business days later, on Tuesday August 11, 2020, SPLP submitted a letter signed and sealed by SPLP's professional geologists, GES (copy attached as Exhibit "8"), which demonstrated that SPLP followed the agreed-upon protocols listed in the Department-approved Seep Monitoring Work Plan Addendum.

36. But, then two days later, the Department told SPLP during a conference call on August 13, 2020 that the Department considered the August 8th event to be an IR, subsequently pointed to the provision in Section 5.1.6 of the HDD IR Plan regarding surfacing of groundwater to support the Department's position, and indicated that SPLP need to submit yet another restart report for this location – to address the exact same issue that was the subject of a nearly 8-month technical submission and review back-and-forth between SPLP and the Department, and the Department's approval of the January 15, 2020 Restart Report just one-month prior.

Furthermore, pursuant to the HDD IR Plan, the Department's approval of the January 15, 2020 Restart Report required the Department to determine that SPLP's plan and mitigation measures will adequately protect public health, safety, and the environment.

37. Out of an abundance of caution, given the Department's stated positions, and to ensure a prompt resumption of construction at HDD 360 – which as noted above was in a critical stage of the intersect drilling process – just two business days after the August 13th conference call, SPLP submitted an initial IR Report and yet another HDD Restart Report for this location, signed and sealed by a professional geologist, to the Department via email on Monday, August 17, 2020. A copy of the August 17, 2020 Restart Report is attached is Exhibit "9."

38. While not required, this Restart Report contained all of the information required by the HDD IR Plan under the protocol that applied to a larger volume IR. *See Ex. 9 and compare with Ex. 2* at pg. 10 (required components of HDD restart reports). The August 17, 2020 Restart Report reiterated the same mitigation measures the Department had already determined to be protective of human health, safety, and the environment, demonstrating the futility, superfluousness, and lack of necessity of a separate restart report for the Department's review and approval.

39. On a conference call with the Department on August 20, 2020, SPLP informed the Department of SPLP's position on the August 8th event, and that even if the event were to be considered an IR (which SPLP disagreed), that such an event was expressly contemplated by the prior technical submittals for this location, including the Department-approved January 15, 2020 Restart Report, and specifically the Seep Monitoring Work Plan Addendum. The resumption of construction at HDD 360 was subject to and conditioned upon these restart approvals, which already expressly contained the protocols and steps that SPLP would follow in the field if the

groundwater seep reemerged, either clear or turbid. And, that no further Department approval was needed.

40. Thus, the Department-approved January 15, 2020 Restart Report and Seep Monitoring Work Plan Addendum, fully satisfies any requirements for response to an IR at this location – monitoring, field sampling, reporting, and containment and management of the “IR” using pre-approved best management practices, so that the “IR” “to ensure that any turbid water that might discharge there will be monitored, sampled (if necessary), and captured and controlled using Best Management Practices, without interruption of drilling processes.” Ex. 3 at pg. 5 (emphasis added).

41. The protocols in the Department-approved January 15, 2020 Restart Report and Seep Monitoring Work Plan Addendum are no different than those set forth in various HDD restart reports submitted to the Department after an IR of drilling mud occurs during HDD construction for other locations on the Mariner East pipeline project, where the Department pre-approves a site-specific restart procedure that includes a containment structure to control an IR that is likely to reemerge upon resumption of the drilling rig, and which allows the HDD construction to continue with that containment structure in place. See Exhibit A to Petition for Supersedeas, Affidavit of Bryan ¶ 12.

42. This is precisely what was contemplated by both SPLP and the Department when the Department-approved January 15, 2020 Restart Report and Seep Monitoring Work Plan Addendum was developed – to develop a best management practice to address groundwater at a precise location while protecting human health and the environment, but to also specifically allow this critical work location to continue – which has now been delayed in construction for over three years.

43. It is important to note that pursuant to SPLP's efforts following the COA, all residents proximate to HDD 360 are on now public water, such that there are no concerns regarding any impacts to private drinking water wells in the area.

44. Ignoring its previously-approved January 15, 2020 Restart Report and Seep Monitoring Work Plan, and the express, agreed-upon purpose of that plan – which was to keep the HDD operating and to complete construction in a prompt and efficient manner – after the aforementioned conference call the Department issued an issued a Notice of Violation dated August 20, 2020. *See* Attachment A to Notice of Appeal Form.

45. The NOV requests that the SPLP submit: (1) an initial or interim IR report form; and, (2) a revised restart report that includes the following additional information:

- a. The report needs to examine the cause of the discharge and evaluate strategies to be implemented to avoid a recurrence.
- b. Details of all the alternative steps considered/analyzed to prevent future IRs.
- c. The average daily flow rate of the groundwater discharge.

See Attachment A at pg. 2.

46. SPLP responded to the NOV via letter submitted to the Department on August 21, 2020 (copy attached as Exhibit “10”).¹ SPLP affirmatively stated that SPLP had already provided all of the requested information when it submitted the August 17, 2020 Restart Report, and moreover, that item 2.d was not available or applicable, since the seep did not have an average daily flow rate – it is intermittent and often completely dry and the Department was aware and noted that both during on-site inspections on August 8th and during the August 20, 2020 conference call with SPLP.

¹ Note SPLP's letter responding to the NOV was submitted to the Department on 8/21/2020, but inadvertently lists the date 8/20/20 and the incorrect township on the RE: line.

47. Regardless, all of the information requested or required by the HDD IR Plan to be included in an HDD Restart Report was already submitted months ago, in the January 15, 2020 Restart Report (*see* Ex. 3), a submission that the Department took over five months to review and approve.

48. The exact reason that the January 15, 2020 Restart Report and Seep Monitoring Work Plan Addendum were developed, adopted, and approved by the Department was to prevent the exact circumstance in which SPLP and the Department now find themselves – a continuous loop of stopping and starting this HDD and making no significant construction progress, to address groundwater emerging at the pre-existing seep (whether considered an IR or not). The Department's approval of the January 15, 2020 Restart and Seep Monitoring Work Plan Addendum was specifically designed to avoid a repeated shut down of this important HDD for a temporary and minor increase in turbidity at the seep area, or any other discharge or IR that was contemplated and planned for appropriately.

49. As of the date of this filing, HDD 360 has now been shutdown for 15 days, without a technical or legal basis to do so, and in violation of the Department's approval of the January 15, 2020 Restart Report, less than two months ago.

50. The continued and prolonged shutdown of work at HDD 360 has created a significant risk of adverse consequences at this work location, including, but not limited to: a complete loss of the HDD over 2,800-foot borehole, and the continued discharge of groundwater through the existing pilot hole. *See* Exhibit A to Petition for Supersedeas, Bryan Affidavit, ¶ 13; *see also* Exhibit B to Petition for Supersedeas, Bechtel Affidavit ¶ 8.

51. In fact, the concern regarding a prolonged shutdown of an HDD and deterioration of a borehole was specifically acknowledged by the Department during the April 16, 2018 evidentiary hearing on the revisions to the HDD IR Plan, where Scott Williamson testified that:

the longer one of these HDDs is shut down – our experts have told us, Sunoco’s experts have told us, the longer an HDD operation is shutdown, the more deterioration of that bore hold can occur, and that can lead to increased risks of additional inadvertent returns at that location, in other locations on that same drill. And this is an effort to, for these minor events, try to get the operation back up and running so long as they’re taking their proper precautions to do so.

Ex. 11, April 16, 2018 Transcript at 24:5:14.

52. The continued and prolonged suspension of SPLP’s ability to complete this work has caused, and will continue to cause, irreparable injury not only to SPLP, but also irreparable injury to the public, most notably to the local community and residents who will now face yet another extension of the completion of construction activity near their homes.

53. The suspension of HDD 360 is also causing irreparable injury in the form of significant economic losses to SPLP each day that the HDD construction is suspended and not allowed to be completed. If the HDD borehole is lost, the economic loss to SPLP is substantial.

54. The Department’s directive to suspend construction, and continued suspension of construction at HDD 360 is directly contrary to its prior approvals, including the January 15, 2020 Restart Report and Seep Monitoring Work Plan Addendum, and is otherwise improper, arbitrary, capricious, and an abuse of the Department’s discretion.

WHEREFORE, Sunoco Pipeline, L.P., requests that the Board issue an order that vacates the Department’s August 20, 2020 directive to suspend construction at HDD 360; to allow HDD 360 to recommence construction immediately; to allow HDD 360 to complete construction in accordance with the plans and protocols previously approved by the Department in the January

15, 2020 Restart Report and Seep Monitoring Work Plan Addendum; and grant such other relief as the Board deems reasonable, just, and appropriate.

/s/ Robert D. Fox

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