



Delaware River Basin Commission

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Steven J. Tambini, P.E.

Executive Director

June 28, 2018

Via USPS and Email

Maya K. van Rossum
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007

SUBJECT: Sunoco Pipeline L.P. – Natural Gas Liquids Pipeline Project – Docket D-2015-018-1

Dear Ms. van Rossum:

Thank you for your letter on behalf of the Delaware Riverkeeper Network (also herein, “DRN”) dated June 15 regarding Docket D-2015-018-1 (“the Docket”). The Docket was issued to Sunoco Pipeline, L.P. (SPLP or “docket holder”) on December 9, 2015 for construction of the project commonly known as Mariner East 2 (“the Project”). Your letter calls upon the Delaware River Basin Commission (“DRBC” or “Commission”) to suspend its approval and revoke the Docket. For the reasons set forth below, the Commission at this time does not intend to do so.

Be assured that the Commission is concerned about any and all Docket violations by SPLP and about any harm to water resources of the Basin that such violations may have caused or may cause in the future. The Commission has by no means ruled out enforcement action of its own in connection with such potential violations. However, as we explain at greater length below:

- The releases described by DRN of hydrostatic test water, used drilling muds and solids by SPLP to waters of the Commonwealth have to date occurred largely outside the Delaware River Basin.
- To the limited extent that such releases have occurred in Basin waters (two of the 29 releases in DRN’s list occurred within the Basin), these have reportedly been to intrastate streams, and they have implicated Pennsylvania water quality standards.
- Unpermitted releases by SPLP to waters of the Commonwealth have been addressed through vigorous state enforcement activity and settlement agreements (to which DRN is a party).
- To the Commission’s knowledge, SPLP has made no changes to stream crossing techniques within the Basin without first obtaining the DRBC’s written approval in accordance with Condition “f” of the Docket.

The alleged Docket violations described in your June 15 letter are addressed in more detail below.

Alleged unpermitted releases to Basin waters. Your letter notes correctly that the release of used drilling mud and solids from the drilling process to any location other than a “State-approved disposal facility” constitutes a violation of Condition “e” of the Docket. With respect to such improper releases, DRN lists 19 “sediment-laden stormwater discharges” and 10 inadvertent returns (“IR”) of drilling fluids known by DRN to be associated with the Project. The vast majority – 27 of the 29 incidents described – occurred outside the Delaware River Basin and beyond DRBC jurisdiction. The two within the Basin involved stormwater discharges within the drainage area of Cacoosing Creek, in South Heidelberg and Spring townships, Berks County, respectively. As described below, the Commonwealth has undertaken extensive enforcement against SPLP for its infractions of Pennsylvania approvals and laws during construction of the Project, including for unapproved releases to waters of the Commonwealth. As you note in your letter, the Department documented an environmental cleanup underway as of August 2017 at the South Heidelberg release location. The Commission is separately requiring the docket holder to provide DRBC with a thorough account of the causes, consequences and remediation of its unpermitted releases in the Cacoosing Creek drainage and any other locations within the Delaware Basin.

Violation of Pennsylvania laws and approvals. Your letter notes that by the terms of the Docket, violations of permits issued by the PADEP are also violations of the Docket. However, where a host state has enforced against a docket holder for violations of the host state’s laws or approvals, as the Commonwealth clearly has, as a matter of practice the Commission generally does not do so. This is particularly so where, as here, no impacts on interstate waters are alleged.

The docket holder’s multiple violations of Pennsylvania laws and permits, and the Commonwealth’s response, are well documented in materials posted on the website of the Pennsylvania Department of Environmental Protection (“PADEP” or “Department”) (*see* <http://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/Mariner-East-II.aspx>). These materials include, but are not limited to:

- a press release issued July 21, 2017 by the PADEP, reporting in part that the Department had issued four notices of violation to SPLP for the Project; that PADEP had executed one Consent Order and Agreement with the company, including the imposition of a financial penalty; and that it had initiated investigations into numerous “incidents” and anticipated additional enforcement actions;
- a press release issued July 25, 2017 by the PADEP, reporting that (a) PADEP would enforce a Consent Order and Agreement with SPLP for violations associated with the Project; and (b) the Pennsylvania Environmental Hearing Board (EHB) had ordered SPLP to halt horizontal directional drilling (HDD) activities for the Project, pending a supersedeas hearing scheduled for August 7;
- a Corrected Stipulated Order of Pennsylvania’s Environmental Hearing Board (EHB) dated August 10, 2017, resolving a petition for temporary partial supersedeas and petition for partial supersedeas filed by third parties, including the Delaware Riverkeeper Network;
- an Administrative Order of the PADEP, suspending construction of the pipeline on January 3, 2018;

- a Stipulated Order of the EHB dated April 16, 2018, resolving a petition for supersedeas by third parties including the Delaware Riverkeeper Network, and requiring SPLP to implement an HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan;
- a Consent Order and Agreement dated February 8, 2018 between the PADEP and SPLP, in part lifting the January 3 order suspending permits; and
- an Assessment of Civil Penalty by the PADEP against SPLP, dated April 27, 2018.

Alleged failures to obtain DRBC approval for changes to HDD crossings. DRN states that “Sunoco has materially changed a number of HDD crossings without DRBC written approval” in violation of Condition “f” of the Docket. To our knowledge, SPLP is in compliance with Condition “f”. By letter dated May 22, 2017 (copy attached), the Executive Director approved changes from HDD to open cut crossings at Black Horse Creek and Wyomissing Creek in Chester and Berks County, respectively, within the Basin, in response to a written request from Tetra Tech on behalf of SPLP dated April 18, 2017 (copy attached). More recently, by letters dated October 13 and October 18, 2017 (copies attached), Tetra Tech requested approvals for changes from HDD to alternative methods at two Project locations in West Whiteland Township, Chester County within the Basin – one referenced as “Swedesford Rd. HDD; HDD# S3-381” and the other as “North Pottstown Pike – HDD S3-0370.” On June 20, 2018, DRBC received an email communication from Tetra Tech describing modifications to the proposed alternative design for the Swedesford Road location. In consultation with the PADEP, the DRBC is currently evaluating the October 2017 requests.

Failures to notify DRBC of violations. DRN points out that to the extent SPLP failed to timely inform the Commission in writing that violations of its Docket occurred, SPLP violated Condition “j” of the Docket. As noted above, the Commission has reminded SPLP of this obligation and is directing it in particular to supply the Commission with thorough reports of the causes, consequences and remediation performed, if any, at all unpermitted release sites within the Basin.

Again, the Commission shares DRN’s concern about the record of violations by SPLP in connection with the Project. We also recognize, however, that the vast majority of such violations have occurred outside the Delaware River Basin. To the limited extent that Basin waters are known to have been affected, no impacts on interstate waters are alleged, and SPLP’s unpermitted releases have been addressed through aggressive state enforcement, including a financial penalty in excess of \$12 million. Although DRBC is not a party to the settlement agreements into which the Delaware Riverkeeper Network and other third parties entered with the Department and SPLP, the Commission supports the terms of these agreements, including re-evaluation of Project construction techniques, and related communications and operations plans. The Commission is asking the Docket holder to furnish DRBC with the information it is required under the Docket to provide concerning any violations of DRBC’s approval. The Commission has not ruled out enforcement action of its own.

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I note that your letter also includes a request for information under DRBC's rules governing Public Access to Records and Information (18 CFR Part 401, Subpart H). Our FOIA Officer will be in contact with the Delaware Riverkeeper Network concerning that request.

If you should have any questions regarding this response, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stambini", with a stylized flourish at the end.

Steven J. Tambini, P.E.
Executive Director

Attachment

c: DRBC Commissioner Alternates