



For Immediate Release:

February 13, 2019

Contact:

Maya van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network, 215-801-3043 (cell)
Aaron Stemplewicz, Senior Attorney, Delaware Riverkeeper Network, 215-369-1188 x 115

The Delaware Riverkeeper Network Defeats Motion to Dismiss Complaint against Sunoco for Clean Water Act Violations

Philadelphia, PA – On February 12, 2019, the Delaware Riverkeeper Network (DRN) defeated a motion to dismiss filed by Sunoco Pipeline L.P., thus allowing the case to proceed. DRN’s complaint was filed in June 2018 against Sunoco for their failure to obtain a National Pollutant Discharge Elimination System Permit (NPDES permit) for the Mariner East 2 pipeline project.

“Our government, both state and federal, has been complicit in helping to advance the dirty fracked gas industry despite its traumatic impacts on our water, air, forests, climate and future generations. When it comes to pipelines, not only is the law stacked against us, but our state and federal agencies have twisted themselves in to pretzels to find ways to help pipeline companies advance the full power of the laws that should apply. The Clean Water Act is one place where this is abundantly clear. Our government officials have not required pipeline companies like Sunoco to comply with the pollution permitting requirements of the Clean Water Act, they have allowed the companies to evade this mandate of the law entirely. Had Pennsylvania mandated compliance with state and federal permitting requirements from the get go, we would not have had the devastating impacts we see today,” **said Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.**

“Sunoco failed to obtain the necessary permits for the construction and operation of the Mariner East 2 project, which has resulted in numerous unnecessary harms to the environment. The Court’s decision denying Sunoco’s motion to dismiss sends a strong message that our claims are valid, and that justice will be done regarding Sunoco’s continued violations of the law,” **said Aaron Stemplewicz, Senior Attorney at the Delaware Riverkeeper Network.**

NPDES permits are required under the federal Clean Water Act (CWA) and Pennsylvania’s Clean Streams Law (CSL). Construction and operation of the Mariner East II pipeline has resulted in unlawful discharges of sediment-laden water and other pollutants into waters of the United States in violation of the CWA and the CSL.

DRN is requesting the Court require Sunoco to obtain and comply with a NPDES permit, perform ground water assessments, provide relief to nearby residents if assessments show water contamination, and pay all civil penalties associated with the permit violations.

In an additional blow to the Mariner East 2 project, last Friday, February 8, the Pennsylvania Department of Environmental Protection announced that it has halted review of all pending construction permits for the Mariner East 2 pipeline. This action was a result of Energy Transfer's (Sunoco's parent company) continued violations of Pennsylvania state law. Governor Wolf stated that, "There has been a failure by Energy Transfer and its subsidiaries to respect our laws and our communities."

"It is laudable that the Governor is putting a hold on permitting for the Sunoco Mariner East project at this time, but it would have been even better if they had enforced the mandates of the law from the start. If PADEP faithfully implemented our state laws there may never have been a Mariner East 2 pipeline to inflict so much damage, including advancing climate change; and most certainly, even if the project had been approved, it would have advanced in a way that may have avoided many of the devastating impacts we are seeing today. The best path is always avoidance of harm, not trying to find a way to respond after the fact. That being said, with our litigation we are holding the pipeline companies and our state and federal governments accountable for good governance and full compliance with the law. Clearly the judge agrees that there is benefit to the rule of law for allowing our case to advance," **said Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.**

Sunoco has faced several fines and permit suspensions throughout construction of the Mariner East II project for violations such as drilling fluid spills and water contamination. Sunoco's construction activities have also caused large sinkholes to open up in residential neighborhoods, threatening the integrity of the parallel Mariner East 1 pipeline and consequently leading the Pennsylvania Public Utility Commission ("PUC") to issue an Emergency Order temporarily suspending Sunoco's operations to prevent "catastrophic results impacting the public." A judge at the PUC specifically noted that Sunoco has "made deliberate managerial decisions to proceed in what appears to be a rushed manner in an apparent prioritization of profit over the best engineering practices available."

The pipeline would cross the state of Pennsylvania and carry highly volatile hazardous liquids at very high pressure to the Marcus Hook Industrial Complex straddling Delaware County, Pennsylvania and New Castle County, Delaware, where such compounds would be stored and shipped overseas.

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