

### COMMONWEALTH OF PENNSYLVANIA BEFORE THE ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL; THE DELAWARE RIVERKEEPER NETWORK; AND MOUNTAIN WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION Appellee,

and SUNOCO PIPELINE L.P., Permittee.

EHB Docket No. 2017-009-L

ELECTRONICALLY FILED

#### MOTION FOR CLARIFICATION OF BOARD ORDER DATED AUGUST 10, 2017

Appellants Clean Air Counsel, the Delaware Riverkeeper Network, and Mountain Watershed Association ("Appellants") hereby file this Motion for Clarification of Board Order Dated August 10, 2017, pursuant to 25 Pa. Code § 1021.95, and aver as follows:

- Appellants move the Board to clarify its Corrected Stipulated Order dated August 10,
   2017, and indicate whether the monitoring and inadvertent return protocols apply with equal force to both uplands and wetlands.
- 2) Currently, it is the Department's interpretation that the monitoring protocols for inadvertent returns as codified in the revised plans, per the Corrected Stipulated Order, are not applicable to inadvertent returns that take place outside of waters, such as wetlands or waterways.
- 3) Appellants request the Board to issue an Order that: 1) the Department must apply the monitoring and inadvertent return protocols for all inadvertent returns, regardless of location in uplands or waters, as negotiated and agreed upon by the parties, and as



codified in Section 5.1.5 of the revised *HDD Inadvertent Return Assessment*,

Preparedness, Prevention and Contingency Plan; and 2) grant any further relief the
Board deems appropriate.

- 4) Appellants have attempted via several telephone calls, email correspondence, and inperson discussion to come to a reasonable resolution with the Department, but have been unsuccessful.
- 5) The Board is well within its authority to determine whether the Department and/or a project applicant's "conduct shows that [a] current order is in need of modification or clarification." *Rausch Creek Land, LP v. DEP*, 2012 EHB 54, 56 (Labuskes, J.).

Respectfully submitted this 23rd day of October, 2017.

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#### **CERTIFICATE OF SERVICE**

I, the undersigned, certify that a true and correct copy of the foregoing Motion was filed with the Pennsylvania Environmental Hearing Board and was served on all counsel of record on October 23, 2017.

s/Aaron J. Stemplewicz
Aaron J. Stemplewicz, Esq.



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CLEAN AIR COUNCIL; THE DELAWARE RIVERKEEPER NETWORK; AND MOUNTAIN WATERSHED ASSOCIATION, INC. Appellants, v.	EHB Docket No. 2017-009-L
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION Appellee,	ELECTRONICALLY FILED
and SUNOCO PIPELINE L.P., Permittee.	
ORDER	
And now, this day of, 2017	, Appellants' Motion for Clarification of
Board Order Dated August 10, 2017, is <b>GRANTED</b> and it is <b>ORDERED</b> as follows: The	
Department must apply the monitoring and inadvertent return protocols of Section 5.1.5 of the	
revised HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan	
for all inadvertent returns, regardless of location, as agreed upon by the parties and as codified in	
Section 5.1.5.	
EN	NVIRONMENTAL HEARING BOARD
Dated:, 2017,	

BERNARD A. LABUSKES, JR.

Judge