

Environmental Impacts from Construction of Mariner East 2 Pipeline Results in Charges of Environmental Crimes; Settlement Reached to Restore Marsh Creek Lake

March 1, 2022

FNREL Mineral and Energy Law Newsletter

Pennsylvania – Oil & Gas

(By **Joseph K. Reinhart**, **Sean M. McGovern**, **Matthew C. Wood** and **Gina N. Falaschi**)

On October 5, 2021, Pennsylvania Attorney General Josh Shapiro announced that the Environmental Crimes Section had charged Energy Transfer, L.P. (Energy Transfer), parent company of Sunoco Pipeline, L.P. (Sunoco), with 46 counts of environmental crimes. The charges stemmed from an investigation by the Forty-Fifth Statewide Investigating Grand Jury (Grand Jury), which concluded that Sunoco had violated Pennsylvania law in connection with its construction of the Mariner East 2 pipeline, a project that crosses 17 counties in the commonwealth. Two charges were later added from a criminal referral from the Pennsylvania Department of Environmental Protection (PADEP), bringing the total charges to 48. Among other things, Attorney General Shapiro and the Grand Jury alleged that Sunoco had repeatedly allowed—and failed to report to PADEP, as required by law—spills, leaks, and losses of drilling fluid during horizontal directional drilling (HDD) activities. The Grand Jury also heard testimony from landowners complaining of impacts to their properties, including to drinking water sources, and found that Sunoco's HDD activities had impacted multiple recreational lakes in different counties. See *generally* Police Criminal Complaint, *Commonwealth v. Energy Transfer, L.P.*, No. CR- 302-2021 (Pa. Commw. Ct. Oct. 5, 2021); Grand Jury's Presentment (Oct. 5, 2021).

On December 6, 2021, two months after Attorney General Shapiro announced the criminal charges, PADEP and the Department of Conservation and Natural Resources (DCNR) announced that it had reached a settlement with Sunoco that requires the company to address impacts from releases of drilling fluid and mud that occurred in August 2020 at Marsh Creek Lake State Park in Chester County, Pennsylvania. Specifically, the settlement requires Sunoco to (1) dredge the top six inches of sediment from approximately 15 acres of Ranger Cove (which was closed due to the impacts); (2) replace fish, turtle, and bird habitat structures impacted by the dredging; (3) dewater/transport all dredged material from the lake and restore shoreline and streamside forest buffers; (4) post a \$4 million bond (to ensure completion of the remediation); (5) pay \$4 million for natural resource damages to be used by DCNR for the benefit of the state park (e.g., an accessible boat launch, stream and shoreline restoration, invasive species suppression, efficiency measures that will take the park to net-zero energy, and a public visitor center); and (6) pay a civil penalty of \$341,000 to the Clean Water Fund for permit violations. See News Release, PADEP, “Wolf Administration Requires Sunoco to Restore Lake at Marsh Creek State Park in Chester County” (Dec. 6, 2021); Consent Order and Agreement, *In re Sunoco Pipeline, L.P.* (PADEP Dec. 6, 2021).

Concurrent with executing the settlement, PADEP approved major amendments to Sunoco's chapter 102 (Erosion and Sediment Control) and chapter 105 (Water Obstruction and Encroachments) permits for construction of the pipeline at Marsh Creek Lake. The amendments provide Sunoco an avenue to complete construction of the pipeline using a separate route and the open-cut method (as opposed to HDD, meaning no drilling fluids will be used). More information and documents about the Marsh Creek Lake impacts and settlement are available at <https://www.dep.pa.gov/About/Regional/SoutheastRegion/Community%20Information/Pages/Marsh-Creek-Lake-HDD-290.aspx>. Construction of the Mariner East 2 pipeline is expected to be completed in the first quarter of 2022. A preliminary hearing in the criminal case against Energy Transfer is scheduled for March 1, 2022.

Copyright © 2022, The Foundation for Natural Resources and Energy Law, Westminster, Colorado

Babst | Calland
Attorneys at Law

PITTSBURGH, PA | CHARLESTON, WV | HARRISBURG, PA | LAKEWOOD, NY | STATE COLLEGE, PA | WASHINGTON, DC