

CHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

TELEPHONE: 610-344-6801
FAX: 610-344-5905

THOMAS P. HOGAN
DISTRICT ATTORNEY

201 W. MARKET STREET, SUITE 4450
POST OFFICE BOX 2746
WEST CHESTER, PA 19380-0991

September 24, 2019

PRESS RELEASE

Notice of Nuisance Action Regarding Pipeline

The Chester County District Attorney's Office served formal notice on Energy Transfer L.P., Energy Transfer Operating, L.P., Sunoco Logistics Partners Operations, L.P., and Sunoco Pipeline L.P. (collectively "Energy Transfer Entities") of intent to bring a civil public nuisance action against those entities regarding the construction and operation of the Mariner East pipeline project. A public nuisance is an activity that threatens public health, safety, or welfare.

Chester County First Assistant District Attorney Michael Noone stated, "The District Attorney's Office will do everything in its power to ensure the safety of the community and the citizens of Chester County. This action will require Energy Transfer to take steps to correct the nuisance it has created through its pipeline activities."

The activities that constitute the public nuisance in the notice to Energy Transfer include, but are not limited to, the following: exposed pipelines in creeks and tributaries, a pattern and practice by Energy Transfer of violating the terms and conditions of its work permits, and a pattern of inadvertent returns which discharge drilling fluids. These actions violate industrial waste discharge requirements in the Pennsylvania Clean Streams Act.

The Chester County District Attorney's Office intends to file an action in the Chester County Court of Common Pleas to force the Energy Transfer Entities to

abate the nuisance. Under the law, this written notice starts a period of 60 days during which Energy Transfer can abate the nuisance. If the 60 day period expires and the nuisance has not been corrected, the Chester County District Attorney's Office will bring a civil action in the Chester County Court of Common Pleas alleging actions both past and present that create a public nuisance and which should be abated, restrained, or such other relief granted.

First Assistant Noone added, "Chester County prosecutors and detectives diligently researched to find an approach that could hold Energy Transfer responsible *now* and force action *now*. Chester County citizens deserve to live peacefully in their homes, work in their communities, and educate their children safely in their schools. This step will force Energy Transfer to begin to right their wrongs and fix these problems."

* * * * *

Approved for release:

Michael Noone
First Assistant District Attorney



CHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

THOMAS P. HOGAN
DISTRICT ATTORNEY

201 W. MARKET STREET, SUITE 4450
POST OFFICE BOX 2746
WEST CHESTER, PA 19380-0991

TELEPHONE: 610-344-6801
FAX: 610-344-5905

**NOTICE OF INTENT OF CHESTER COUNTY DISTRICT ATTORNEY'S
OFFICE TO FILE A CIVIL NUISANCE ACTION UNDER THE
PENNSYLVANIA CLEAN STREAMS LAW**

September 24, 2019

Energy Transfer LP
c/o Mark Rush, Esquire
K&L Gates LLP
K&L Gates Center
210 Sixth Avenue
Pittsburgh, PA 15222

Dear Mr. Rush:

This letter shall serve as formal notice of intent of the Chester County District Attorney's Office to bring a civil public nuisance action against entities associated with the construction or operation of the Mariner East pipeline project. Those entities are: Energy Transfer LP, Energy Transfer Operating, L.P., Sunoco Logistics Partners Operations L.P., and Sunoco Pipeline L.P. (collectively, "Energy Transfer Entities").

A "public nuisance" is an activity that threatens public health, safety, or welfare. See Section 821B of the Restatement (Second) of Torts, as generally adopted by the Pennsylvania courts. See also Pennsylvania Clean Streams Law, 35 P.S. §§ 691.301, 691.401, 691.402, and 691.601. The Pennsylvania Clean Streams Law provides a civil nuisance remedy to protect against Clean Streams violations. The law states: "Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act, shall be abatable in the manner provided by law or equity for the abatement of public nuisances." 35 P.S. § 691.601(a).

The Clean Streams statute further authorizes “suits to abate such nuisances or suits to restrain or prevent any violation of this Act,” which may be brought “upon relation of the district attorney of any county,” in the name of the Commonwealth in a Court of Common Pleas located where the nuisance “activity has taken place, the condition exists, or the public is affected....” 35 P.S. § 691.601(a).

The Pennsylvania Clean Streams Law provides a timeline for initiation of a suit: “No action pursuant to this section may be commenced prior to sixty days after the plaintiff has given notice in writing of the violation to the department and to any alleged violator. . . .” 35 P.S. § 691.601(e). The notice to the “department” referenced in subsection (e) refers to the Pennsylvania Department of Environmental Protection (the “DEP”).

The Chester County District Attorney’s Office believes, based upon investigation, that the Energy Transfer Entities are conducting activities within Chester County, Pennsylvania in violation of the Pennsylvania Clean Streams Law that constitute a public nuisance under common law and by statute. The activities that constitute the public nuisance include, but are not limited to, the following activities:

1. Two exposed pipelines located in a creek that is an unnamed tributary to Valley Creek in West Whiteland Township, Chester County, Pennsylvania.
 - a. One of the pipelines is believed to be active and transporting petroleum. The other pipeline’s status is unknown, though it is believed that its purpose is the transportation of Natural Gas Liquids (“NGLs”). These pipelines have been exposed since at least June 2019 and have not been properly buried a minimum of three feet underground in accordance with Sunoco’s permits. Leaving these pipelines exposed in the unnamed tributary to Valley Creek creates a risk of danger to the health, safety, and welfare of the surrounding residents and the public generally in and around West Whiteland Township, Chester County, Pennsylvania, and constitutes a violation of the Clean Streams Law and the permit issued in accordance therewith.
 - b. On or about August 1, 2019, the DEP issued a permit to Sunoco for construction to bury the two pipelines to be consistent with Sunoco’s obligations under the original permits. On September 11, 2019, the DEP issued an order for Sunoco to cover 49 locations with identified exposed pipes across Pennsylvania within 60 days. That order includes these two pipelines in Chester County. Based on reasonable investigation the Commonwealth believes that these two pipelines have not been covered as of the date of this letter.
2. A pattern and practice by Energy Transfer Entities of activities in Chester County, Pennsylvania that violate the terms and conditions of its permits issued by the Pennsylvania Department of Environmental Protection.

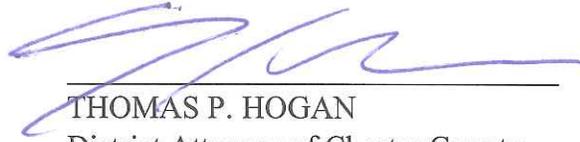
- a. These violations include, but are not limited to, Notices of Violation issued November 3, 2017, November 16, 2017, November 27, 2017, January 8, 2018, November 16, 2018, and April 25, 2019.
 - b. The DEP has issued 98 violations of the permit for the Mariner East 2 project since 2017, including five violations that have occurred in Chester County alone.
3. A pattern and practice by Energy Transfer Entities of activities in Chester County, Pennsylvania of Inadvertent Returns (“IR”)—the discharge and surfacing of drilling fluids—and other drilling activities some of which have caused damage to and loss of access to clean drinking water from private residential drinking water wells in Chester County, Pennsylvania. These actions violated industrial waste discharge requirements in the Clean Streams Act.
 - a. Energy Transfer Entities have failed to make diligent efforts to reduce, minimize, or eliminate a pollution event, as required by the Energy Transfer Entities’ permits issued by the DEP, and Sunoco’s own IR Preparedness, Prevention and Contingency (PPC) Plan (revised 8/8/2017).
 - b. Most recently, on or about August 19, 2019, Energy Transfer Entities’ drilling produced an IR in the area of Boot Road and Ship Road, Chester County.
 - c. On September 9, 2019, the Commonwealth Court reversed and remanded a suit filed by Pennsylvania State Senator Andrew E. Dinniman with instructions to dismiss the suit and dissolve an injunction barring Sunoco Pipeline L.P. from further Mariner East construction activities. As such, additional construction on the Mariner East 2 project is ongoing or imminent in Chester County.
 - d. Energy Transfer Entities’ prior activities have interfered with groundwater sources, leading to loss of access to clean drinking water for Chester County residents. The Commonwealth is aware from public testimony that Energy Transfer Entities can determine whether a particular drill path could impact an underground water source. New drilling activity that causes additional damage to previously impacted or identified residential wells could constitute knowing, reckless, or intentional damage.

The Chester County District Attorney’s Office intends to file an action against the Energy Transfer Entities in the Chester County Court of Common Pleas to abate the nuisance. An “abatement of nuisance” means action to remove or stop any activity that is, or has been, causing the nuisance.

This Notice of Intent letter shall constitute the written notice to the responsible parties and the Pennsylvania Department of Environmental Protection, and starting the period of 60 days to abate the nuisance pursuant to 35 P.S. § 691.601(e). If the 60 day period expires and the responsible parties have failed to abate the nuisance, the Chester County District Attorney’s Office will bring a civil action in the Chester County Court of Common Pleas alleging that the

activities both past and present constitute a public nuisance under the law, and should be abated, restrained, and/or such other relief as may be just and equitable under the circumstances.

Regards,



THOMAS P. HOGAN
District Attorney of Chester County

MICHAEL G. NOONE
First Assistant District Attorney

cc: Energy Transfer LP
Energy Transfer Operating, L.P.
Sunoco Logistics Partners Operations L.P.
Sunoco Pipeline L.P.
Department of Environmental Protection