



January 6th, 2022

The Honorable Josh Shapiro  
Attorney General for the Commonwealth of Pennsylvania  
Pennsylvania Office of Attorney General  
Strawberry Square  
Harrisburg, PA 17120

Re: Request for Enforcement

Dear Attorney General Josh Shapiro,

As you know, the construction of the Mariner East line has caused devastating pollution events all across the Commonwealth of Pennsylvania racking up 126 Notices of Violation and 48 criminal charges, as well as contaminating both private drinking water and public waterways. However, none of the countless consent decrees or numerous settlements with state regulators have resulted in the prevention or abatement of this public nuisance, nor has it held this corporate polluter truly accountable for the damage that it has caused.

On December 6, 2021, the Department of Environmental Protection entered into yet another settlement with Sunoco/Energy Transfer following the spillage of 21,000 - 28,000 gallons of drilling mud into Marsh Creek Lake in August of 2020. We believe that the current mitigation efforts for sediment control at Marsh Creek Lake are failing. On January 3, 2022 residents documented and alerted the Department of Environmental Protection to sediment that was visible at the inlet at the top of Ranger Arm, where the August 2020 spill occurred. We believe that Sunoco/Energy Transfer's current open trench construction of Mariner East is releasing sediment into the lake in further and ongoing violation of the Clean Streams Law as well as state

level permits. To our knowledge this remains unaddressed by the Department of Environmental Protection.

In addition to the issues continuing to occur at Marsh Creek Lake, we would also include the continuing and outstanding items still not adhered to as part of previous Notices of Violation; such as their requirement to do a geological investigation and provide an analysis of why the sinkhole happened in Valley Creek on August 27, 2021 and September 3, 2021 and remediation that has remained unaddressed at Chester County Library and Chester Valley Trail. We also wish to include the countless private water contamination events across the Commonwealth, which continue to leave residents without access to clean water for far too long.

We are writing to request that you invoke your authority under the Clean Streams Law to file an emergency injunction to halt construction on the Mariner East line. Additionally, we request that this same authority be utilized to commence a nuisance lawsuit on behalf of the Commonwealth of Pennsylvania and its citizens to abate and prevent further violations by Sunoco/ Energy Transfer (ET).

Under the Pennsylvania Clean Streams Act, the Attorney General may commence a suit under the name of the Commonwealth to abate nuisances violative of the act or “to restrain or prevent any violation of this act”.<sup>1</sup> In doing so, the Attorney General may, “[i]n cases where the circumstances require it or the public health is endangered, [seek] a mandatory preliminary injunction or special injunction [] be issued” by a court.<sup>2</sup>

The Clean Streams Act describes a number of potential nuisances, including “discharge of sewage or industrial waste or *any substance...* which causes or contributes to pollution.”<sup>3</sup> Moreover, “discharge of industrial wastes without a permit or *contrary to the terms and conditions of a permit or contrary to the rules and regulations of the department*” is considered a nuisance under the Act.<sup>4</sup> This Act’s definition is broad, going so far as to include discharging into state waters “any substance of any kind or character resulting in pollution”, whether it be done by a person or municipality, even if such a discharge was only “allow[ed] or permit[ted]to be discharge[d]” by that person or municipality.<sup>5</sup>

Moreover, violating DEP regulations and orders “shall constitute a nuisance, and whenever such a pollution shall be maintained or continued contrary to such orders and regulations, the same may be abatable in the manner provided by this act.” This means that if, after violation of DEP regulations and/or orders, pollution continues unabated, then the Attorney General may file suit on behalf of the Commonwealth to abate such a nuisance. Payment of a penalty for violating the Act does not prohibit a suit from proceeding to abate nuisance pollution, as “*the purpose of this act [is] to provide additional and cumulative remedies to abate the pollution of the waters of this Commonwealth*”.<sup>6</sup> Persistent violation of required permit conditions and regulations demonstrates that if “the activity involved is a public nuisance [that] cannot be regulated, [it] must be abated.”<sup>7</sup>

The Pennsylvania Supreme Court has long understood that pollution of state waters is an “enjoinable nuisance, if the public uses the water” as “the public has a sufficient interest in clean streams alone regardless of any *specific* use.”<sup>8</sup> As such, a nuisance may be enjoined regardless of whether a water’s use is for drinking, recreation, or other meaningful uses.

This sort of ongoing violation of state permits and regulations is exactly what was anticipated by the Clean Stream Act’s empowerment of the abatement suits. With construction of this line needing to cut through yet another wetland, we are urging the Attorney General to take action that would halt further harms to our communities and believe that this is the kind of meaningful action that residents deserve.

---

1 Clean Streams Act, Sec. 601(a).

2 Clean Streams Act, Sec. 601(b).

3 Clean Streams Act, Sec. 3 (emphasis added).

4 Clean Streams Act, Sec. 307 (emphasis added).

5 Clean Streams Act, Sec. 401.

6 Clean Streams Act, Sec. 701.

7 *Commonwealth v. Barnes & Tucker Co.*, 455 Pa. 392, 418, 319 A.2d 871, 885 (Pa. 1974).

8 *Id.*, 455 Pa. at 412, 319 A.2d at 882, citing *Pennsylvania R. Co. v. Sagamore Coal Co.*, 281 Pa. 233, 238 (Pa. 1924) (emphasis added).

Sincerely,



Senator Katie J. Muth



Representative Dianne Herrin



Representative Danielle Friel Otten

Cc: Tom Wolf, Governor, Commonwealth of Pennsylvania  
 Patrick McDonnell, Secretary, Department of Environmental Protections  
 Deb Ryan, District Attorney, Chester County