EXHIBIT B
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OBJECTIONS TO THE DEPARTMENT’S ACTION

1. Sunoco Pipeline L.P. (“SPLP”) is a foreign limited partnership doing business in Pennsylvania and maintains a mailing address of 535 Fritztown Road, Sinking Springs, PA 19608.

2. SPLP owns and operates several pipelines in Pennsylvania used to transport petroleum and natural gas products. SPLP has undertaken to expand existing transportation systems for natural gas liquids in Pennsylvania as part of its Mariner East 2 project.

3. On February 13, 2017, in connection with the Mariner East 2 project, the Department issued to SPLP:

   a. Three Erosion and Sediment Control Permits under 25 Pa. Code Chapter 102, Permit Numbers ESG0300015002, ESG0500015001, and ESG0100015001; and


4. As part of the Mariner East 2 project, which will ultimately transport natural gas liquids across Pennsylvania, SPLP conducted pipeline installation activities in seventeen counties. These activities in part involved trenchless construction methodologies, including bores and horizontal directional drilling (“HDD”), as a construction method. Trenchless construction methodologies are used to avoid impacts to surface waters and other ecological and culturally-sensitive areas.
5. On January 3, 2018, the Department issued an Administrative Order to SPLP, dated January 3, 2018 (the “Administrative Order”) (attached as Exhibit A to the Notice of Appeal), which is the subject of this appeal. The Administrative Order specifically addresses SPLP’s pipeline installation activities at site locations in Berks, Blair, Cumberland, Dauphin, Huntingdon, Perry, and Washington Counties in Pennsylvania.

6. The Administrative Order contains allegations that SPLP violated the Pennsylvania Clean Streams Law, as amended, 35 P.S. §§ 691.1 et seq. (“Clean Streams Law”), the Dam Safety and Encroachments Act, as amended, 32 P.S. §§ 693.1 et seq. (“Dam Safety and Encroachment Act”), and Chapters 93, 102 and 105 of Title 25 of the Pennsylvania Code at the site locations identified in the Administrative Order by, among other things, allegedly allowing the unauthorized discharge of industrial waste to waters of the Commonwealth, failing to obtain certain Chapter 102 and 105 modifications, failing to adhere to permit conditions, and failing to perform work according to permit and stipulated specifications identified in the Corrected Stipulated Order entered by the Environmental Hearing Board on August 10, 2017 in the matter of Clean Air Council, Mountain Watershed Association, and Delaware Riverkeeper Network, Inc. v. Department of Environmental Protection and Sunoco Pipeline L.P. (the “Corrected Stipulated Order”).

7. In support of these alleged violations, the Department contends, among other things, that releases of drilling mud, which consists primarily of water and non-toxic bentonite, otherwise known in the pipeline construction industry as inadvertent returns (“IRs”), constitute industrial waste under applicable regulations that cannot be discharged to waters of the Commonwealth without a permit or other authorization; that SPLP lacked authorization from the Department to engage in certain construction methods, including certain trenchless construction
methodologies, at identified work areas; that SPLP failed to obtain authorizations to conduct trenchless construction activities at certain identified work areas; and that SPLP allegedly released IRs in uplands that created a potential for pollution of waters of the Commonwealth.

8. The Administrative Order directed SPLP to “immediately suspend all work” authorized by the Mariner East 2 project permits until SPLP complied with certain enumerated conditions. The Administrative Order further provides that SPLP cannot resume work until after the Department provided written authorization to do so.

9. The Department’s Administrative Order is arbitrary, capricious, unreasonable, vague, an abuse of discretion, improper, not supported by substantial or accurate evidence, contrary to fact and law, and constitutes an error of law because of, among other reasons, the following:

   a. The Department improperly defined HDD as “any steerable trenchless technology that controls the direction and deviation to a predetermined underground target or location,” resulting in an overbroad and imprecise application of the term by the Department throughout the Administrative Order, and as a result, incorrectly classified and characterized the trenchless construction methods used at certain locations;

   b. The Department mischaracterized IRs, which are comprised of non-toxic bentonite mud, water, and additives approved by the Department in the Mariner East 2 project permits, as industrial waste;

   c. The Department has imposed unreasonable burdens on SPLP following the occurrence of IRs that are arbitrary and capricious, and contrary to law and fact;
d. The Department incorrectly alleges that IRs occurred in certain identified work areas, including, but not limited to, Hay Creek in New Morgan Borough, Berks County, and Tell Township, Huntingdon County;

e. The Department incorrectly alleges that SPLP misrepresented the nature and extent of its construction activities at certain locations;

f. The Department mischaracterized SPLP’s conduct, including the use of certain construction methods relating to water/wetland crossings, as “intentional,” “egregious,” and/or “willful” violations;

g. The Department lacks legal authority to require prior approval for changes in construction methodology in uplands that occur entirely within the authorized limits of earth disturbance; and

h. The Department’s imposition of a shutdown order and related conditions as set forth in the Administrative Order was excessive, overbroad, and an abuse of discretion.

10. SPLP further challenges and/or reserves the right to challenge, among other things: (a) the Department’s findings, characterization, and portrayal of the facts; (b) the Department’s factual and legal conclusions concerning and characterization of actions or inactions by SPLP, its contractors, and subcontractors; (c) the Department’s recitation, interpretation, characterization, and application of the requirements and scope of the Clean Streams Law, the Dam Safety and Encroachments Act, and Chapters 93, 102, and 105 of Title 25 of the Pennsylvania Code and related statutes and regulations and the Corrected Stipulated Order; (d) positions that the Department or any other party or intervenor take in the context of
this appeal or other related proceedings; and (e) any penalties assessed as a result of the factual allegations and legal conclusions contained in the Administrative Order.

11. SPLP reserves the right to assert additional grounds for appeal, and the right to amend this Notice of Appeal, for, among other reasons, the following: (a) as of right pursuant to the Board’s Rules and other relevant statutes, regulations, and common law; (b) after the opportunity for discovery; (c) following any clarification or amendment of the Administrative Order; (d) following any action by the Department under the purported authority of the Department’s Administrative Order; and/or (e) following any changes in fact, law or pertinent circumstances.

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