

March 18, 2004

Via Fax: 302-739-6242

Secretary John A. Hughes
Delaware Department of Natural Resources & Environmental Control
89 Kings Highway
Dover, DE 19901

RE: Public Hearing Request On Sunoco's Water Allocation Permit Application

Dear Secretary Hughes:

On behalf of the Mid-Atlantic Environmental Law Center, I write in objection to the Sunoco, Inc. (R&M) ("Sunoco") permit application to allow an industrial water allocation for cooling water from the Delaware River using an existing intake located at the Sunoco Refinery north of Claymont and ask you to hold a public hearing. The Mid-Atlantic Environmental Law Center is a not-for-profit environmental law firm that provides legal services to public interest organizations in environmental matters. The Center aims to ensure that environmental requirements are met, and that legislation and regulations are adequately implemented by the responsible federal, state and local agencies.

The Center has reviewed and is familiar with Sunoco's February 24, 2004 permit application. This request is timely submitted within 15 days following DNREC's March 7, 2004 public notice. The public has a right to understand and participate in the decision-making process concerning this permit application. Sunoco has requested an industrial water allocation for cooling water from the Delaware River using an existing intake (RW-7) located at its refinery north of Claymont. The permit would allow a maximum withdrawal of 43.2 MGD from the Delaware River. The following problems with the application and requested water allocation warrant a public hearing: (1) Changes to the intake structure are needed to protect the early life stages of fish; (2) Sunoco is subject to penalties for its past withdrawals without a permit; (3) the allocation permit should require limits which meet or exceed federal regulations for new facilities; (4) the description of the proposed water conservation program is inadequate; (5) Sunoco's proposed drought plan does not describe when and how it will be implemented; and (6) Sunoco must meet DRBC requirements. Each of these problems is discussed below.

1. Changes to the Intake Structure are Needed To Protect the Early Life Stages of Fish: Changes in the design of the intake structure are needed to protect the early life stages of fish. Under Section 3.03 of the Delaware Regulations Governing the Allocation of Water, the requested withdrawal must ensure the protection of valuable fish and

wildlife and include limitations to protect ecological, recreational, aesthetic, and private benefits. The intake is located in the spawning grounds for several fish species including American shad, hickory shad, river herring, and both shortnose and Atlantic sturgeon. The shortnose sturgeon is a federally listed rare and endangered species and the Atlantic sturgeon is a candidate species for listing. Delaware recognizes the area of the intake as being in the center of the striped bass spawning grounds of the Delaware River stock of Atlantic striped bass. We understand that Sunoco's intake structure only has 2-inch fencing surrounding a 4-ft diameter open-end intake pipe.

In a memo dated January 28, 2004, the Delaware Coastal Management Program (DCMP) concluded that a proposed mesh screen provided no protection to prevent entrainment of fish eggs and larvae and recommended a more effective screening device such as a high quality wedge-wire screen system (a copy of the memo is attached). DNREC must ensure that any permit issued to Sunoco requires the use of a screening device on Sunoco's water intake that is fully protective of early life stages of fish (eggs and larvae). Section 5.05.J. of the water allocation regulations allows DNREC to include such a requirement.

2. Sunoco is Subject to Penalties For Its Past Withdrawals Without a Permit: We understand that Sunoco has been using this water intake for several years and never applied for a water allocation permit until this February. Under Delaware's Water Allocation Regulations, Sunoco's permit application should have been filed with DNREC no later than June 1987--within 90 days of the effective date of the regulations (see Section 1.04 C). Under Section 1.07 of the regulations, Sunoco forfeited all of its right and claim to withdraw water from this intake. DNREC should not grant a water allocation permit to Sunoco until Sunoco has paid penalties for: (1) Sunoco's failure to timely apply for an allocation permit and (2) Sunoco's withdrawals from June 1987 to the present without an allocation permit.

3. The Allocation Permit Should Require Limits Which Meet or Exceed Federal Regulations for New Facilities: Section 316(b) of the Clean Water Act requires the EPA to ensure that the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts. DNREC should require Sunoco to meet or exceed the federal rules applicable to cooling water intake structures for new facilities under the Clean Water Act. See 40 C.F.R. Part 125 Subpart I. These federal regulations require the following limits for withdrawals greater than 10 MGD: (a) reduction of intake flow to a level that can be attained by a closed-cycle recirculating cooling water system; (b) design of the intake structure to a maximum through screen design intake velocity of 0.5 ft/s; (c) design of the intake structure does not exceed 5% of the source water annual mean flow; (d) selection and implementation of measures to minimize impingement mortality of fish and shellfish; (e) implementation of measures to minimize entrainment of life stages of fish and shellfish; and (f) specific monitoring and recordkeeping requirements. These federal requirements provide good guidance for the limitations that DNREC should require Sunoco to meet under Section 3.03 of the Delaware Regulations Governing the Allocation of Water.

4. The Description of the Proposed Water Conservation Program is Inadequate: Sunoco refers to a SPCC plan as its conservation program, but this plan is not attached to the application for public review. The description of the conservation plan is inadequate for several reasons, including: (1) the application does not describe the amount of water that will be conserved through the SPCC plan; (2) Sunoco does not appear to monitor and record the amount of water it withdraws; and (3) Sunoco does not discuss whether it uses the best practical methods and devices to conserve water (such as using a closed-cycle recirculating cooling water system). For these reasons, the application does not demonstrate the existence of and commitment to a water conservation program as required by Section 4.03 of Delaware's water allocation regulations.

5. Sunoco's Proposed Drought Plan Does Not Describe When and How It Will Be Implemented: Sunoco's plan only outlines "recycling and conservation measures that can be taken." There is no description of when the drought plan will be triggered and no explanation of the amount of water that will be saved (if any) through the proposed measures under the plan. Sunoco should be required to submit a revised drought plan that describes when and how the specific measures will be implemented before an allocation permit is issued. The proposed drought plan should contain deadlines for implementation and assurance that Sunoco will implement the proposed measures.

6. Sunoco Must Meet DRBC Requirements: Sunoco makes no mention of DRBC approval in its application. This omission makes it unclear whether the application is for an existing DRBC-approved withdrawal or if Sunoco seeks a permit for an allocation in addition to an allocation previously approved by the DRBC. Section 3.05 of Delaware's water allocation regulations requires the applicant to show that the proposed allocation is consistent with state and regional water management policies. If Sunoco is seeking an allocation in addition to what DRBC has previously approved, DNREC should require Sunoco to obtain DRBC approval before granting a new allocation permit. If this request is for an allocation that DRBC has already approved, Sunoco should provide documentation to confirm DRBC's approval.

In conclusion, for the reasons identified herein, we respectfully request DNREC hold a public hearing on Sunoco's permit application for a water allocation. Thank you.

Sincerely,

Lyman C. Welch, General Counsel
James. R. May, Executive Director