

multiple places in the record of the proceeding such as the NPDES Stormwater Management Permit. The Affidavit explains these issues and responds to the Sunoco argument as to the composition of stormwater flows.

As the Hearing Officer is aware, the Department presented Deputy Commissioner Katz at the hearing, after submission of the NPDES stormwater management permit as well as other discovery responses and written testimony directly related to the Clean Water Act and its requirements. PWD Statement 8 at 5-7; PWD Exhibit 4 (Attachment 9); PWD Exhibit 41; Tr. 1026-1037.² Sunoco had the opportunity to cross examine Deputy Commissioner Katz on all stormwater management issues at the hearing. Mr. Katz also remains available to the parties at the direction of the Hearing Officer.

WHEREFORE, the Department requests that Sunoco's Objection to the Affidavit of David A. Katz be overruled and that the Affidavit be included of record.

Respectfully submitted,

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² The issues addressed in the Affidavit are not "new issues" as described in the Sunoco Sur-Reply Brief (at page 9), but are among numerous issues addressed by the Department and other parties in this record. See, NGCSS Statement 1 at 23-24. The Affidavit, however, presents a response to the Sunoco legal claims raised in its brief – indicating that same are baseless given the presence of sewage and pollutants in stormwater flows.