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June 14, 2015

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room IA
Washington, DC 20426

REF: Mountain Valley Pipeline (MVP);
Docket No. PF15-3-000

Dear Ms. Bose:

On behalf of Preserve Craig, I am writing to express grave concern in regard to the capacity of MVP to construct and operate a gas pipeline in the public interest. MVP's capacity to construct and operate a gas pipeline is a matter about which FERC must make factual finding. The central topic of this letter is the environmental record of one of the major members of the joint venture in just one instance in Pennsylvania, and the behavior of contractors working at its direction during this pre-filing period. The record to date of the member EQT is a significant issue in the NEPA analysis because FERC must find that MVP has the requisite capacity.

EQT's environmental record is significant for several reasons. First, MVP is a limited liability company that has no record of gas pipeline construction. It is obvious that MVP was formed as a profit making venture by entities and individuals with the goal of capitalizing on the natural gas market bubble. Therefore, the records of the entities that make up MVP is relevant to the analysis, particularly when MVP is not operating itself as a single, unified entity. For example, when MVP held its open house in Craig County, at least seven months after the formation of the company, those staff members wearing crisp, new shirts with MVP logos freely admitted that were not MVP employees, but they instead were employees of the member entities such as EQT and Nextera; at least two persons wearing EQT shirts were employees of a lobbying firm from Richmond, Virginia. Similarly, a natural-resource-surveyor who has been charged with trespassing by landowners in Craig County admitted to taking direction from EQT, not MVP. Again, because MVP has no record itself, and is operating as a shell of a company without staff who can be held accountable, the records of the member entities are significant.

The main reason that the environmental records of the members of the joint venture are significant is that the Natural Gas Act requires the applicant to be both *qualified* and "able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder." 15 U.S. Code § 717f (e). The Commission must make a finding that the applicant is *able and willing*.

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[A] certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

15 U.S. Code § 717f (e).

Preserve Craig has performed detailed research into one instance of EQT's environmental record in Pennsylvania, which information we present below. We have turned over only one rock, however, and based on our experience in that research, we believe there is more regulatory compliance information to be learned about EQT. In addition, EQT is not the only member of MVP, and EQT operates an undetermined number of corporate forms that share elements of corporate identity. Therefore, based on EQT's record set forth below, FERC must perform an independent assessment of the environmental record of EQT and any other member of the joint venture that has an environmental compliance record. The environmental records are a significant issue that must be analyzed in order to meet the statutory requirements of the Natural Gas Act and to support any purported finding by the Commission that MVP is capable, willing and able to lawfully execute the project for which it seeks the right to take private property from Craig County citizens and cause permanent harm to both public and private assets.

EQT has been the subject of a criminal conviction and civil charges in Pennsylvania for operations at a natural gas fracking site. A representative of Preserve Craig has discussed the matter with three attorneys who have been involved in bringing EQT to justice on its environmental record. According to an assistant attorney general in Pennsylvania, the enforcement efforts are entwined with politics. The previous governor had given a pass to the oil and gas interests on environmental compliance, and dismantled the enforcement staffs. The current governor and attorney general are trying to right the ship.

The EQT case was first developed by an attorney who works for the Environmental Integrity Project, Mary Greene. Mary Greene intended to file a Clean Water Act "citizen suit"

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but then ran into some legal barriers to prosecuting that case under the Clean Water Act. Nevertheless, her investigation and report are thorough and plainly lay out the facts of EQT's operation. The following link is to a posting from the Environmental Integrity Project in April 2014. At the bottom of the press release, there are two additional links to the substantive parts of Mary Greene's work: http://environmentalintegrity.org/news_reports/04_07_2014.php.

The nutshell summary of EQT's offenses is that they: 1) sought and obtained a permit to build a fresh water impoundment from the PA Department of Environmental Protection (DEP), and then used it instead for fracking wastewater; and 2) the impoundment both overflowed and leaked into the groundwater through holes in the liner. The fracking waste caused harm to both the terrestrial and aquatic environments.

The significance of using an impoundment designed for freshwater as a wastewater pit is related to the design criteria for the impoundment. According to Mary Greene, EQT likely knew or should have known the difference.

The explanation of the distinction between the civil charges and the criminal charges is a bit more complex. The criminal and civil attorneys each explained the scenarios a bit differently so we will not attempt to explain why EQT is subject to both civil and criminal charges.

The criminal charges were brought on behalf of the Pennsylvania Fish and Boat Commission, under the laws for which the Fish and Boat Commission has jurisdiction (rather than the laws for which the DEP has jurisdiction). These violations of law are treated as strict liability. EQT was charged with misdemeanors. The assistant attorney general indicated that charging EQT with felonies would have brought on a work load that their office would have had difficulty handling. EQT pleaded guilty to the misdemeanor charges.

Enclosed with this letter, we submit the docket sheet from the court where the criminal charges against EQT were prosecuted.

In addition to the criminal conviction, the Pennsylvania DEP is seeking \$4.5 million in civil penalties against EQT. **The civil complaint against EQT, with the exhibits to the complaint, are enclosed with this letter.** The complaint describes the misuse of the impoundment. EQT is trying a legal maneuver to remove this matter from the jurisdiction of the quasi-judicial administrative tribunal and into the civil court. This is what is called "forum shopping" under the law. EQT apparently wants its case decided by a judge rather than the environmental hearing board. In any case, the civil matter and the \$4.5 million penalty is still pending.

It is noteworthy that when Preserve Craig sought information from the civil enforcement staff at the Pennsylvania DEP, we were asked to specifically identify the investigation of EQT about which we sought information. In other words, it was not enough to ask for information

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about the civil enforcement case against EQT, we had to specify which case. This means that potentially there are more environmental compliance cases pending against EQT in Pennsylvania. The FERC must investigate the record further in Pennsylvania, and beyond, because it is apparent that EQT has a significant environmental enforcement record.

We are only in the pre-filing stage of the pipeline certification process here in Virginia, and MVP has already acted so as to raise concerns about its capacity, willingness, and ability to conduct its business within the bounds of the law. Also enclosed with this letter is one news article dated Thursday 28 May, 2015, that reports trespassing charges filed against contractors working for MVP. The news article does not document that we know one of the men charged with trespassing told one of the landowners involved that he took his instructions directly from EQT. The trespassing charges are still pending.

Preserve Craig asserts that what we already know about EQT imposes a duty on FERC to fully investigate and analyze -- in the light of day -- whether MVP and its members are capable, willing and able to comply with the law. The statutorily-required finding by FERC must be based on information that is made part of the record of the analysis. There were no barriers or impediments to access of EQT's record in Pennsylvania, and there is no basis upon which the required analysis may be shielded from the public view.

Preserve Craig further asserts that even if FERC somehow determines that MVP is capable, willing, and able to comply with the law -- beyond the bounds of all logic and reason -- EQT's record in Pennsylvania is ample justification for imposition of permanent bond conditions on MVP should FERC grant certification. The fact that EQT obtained a permit to construct a freshwater holding basin and then used it for wastewater in a manner that caused harm to the environment is sufficient to require significant, locality-specific bonds for the benefit of each locality through which any approved pipeline would traverse. Preserve Craig specifically requests imposition of significant permanent bond requirements for all stages of the project from construction through abandonment.

Sincerely,



Tammy L. Belinsky,
Counsel for Preserve Craig, Inc.

Enclosures

COURT OF COMMON PLEAS OF TIOGA COUNTY

DOCKET



Docket Number: CP-59-CR-000035-2015

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
Washington EQT Production Company

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CASE INFORMATION

Judge Assigned:
OTN: T 571875-3 LOTN:
Initial Issuing Authority: Robert L. Repard
Arresting Agency: Pennsylvania Office of Attorney General
Complaint/Incident #: 491160
Case Local Number Type(s)

Date Filed: 01/28/2015 Initiation Date: 09/30/2014
Originating Docket No: MJ-04302-CR-0000184-2014
Final Issuing Authority: Robert L. Repard
Arresting Officer: Hentz, Donald A.
Case Local Number(s)

STATUS INFORMATION

<u>Case Status:</u>	<u>Status Date</u>	<u>Processing Status</u>	<u>Complaint Date:</u>
Closed	03/16/2015	Sentenced/Penalty Imposed	09/30/2014
	03/16/2015	Awaiting Sentencing	
	02/27/2015	Awaiting Plea Court	
	02/13/2015	Awaiting Formal Arraignment	
	01/28/2015	Awaiting Filing of Information	

CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>	<u>Start</u>	<u>Room</u>	<u>Judge Name</u>	<u>Schedule</u>
<u>Event Type</u>	<u>Start Date</u>	<u>Time</u>			<u>Status</u>
Arraignment	02/23/2015	8:30 am	Main Courtroom		Scheduled
Disposition	03/16/2015	11:00 am	Main Courtroom		Scheduled

DEFENDANT INFORMATION

Date Of Birth: City/State/Zip: Pittsburgh, PA 15222

CASE PARTICIPANTS

<u>Participant Type</u>	<u>Name</u>
Defendant	EQT Production Company, Washington

CHARGES

<u>Seq.</u>	<u>Orig Seq.</u>	<u>Grade</u>	<u>Statute</u>	<u>Statute Description</u>	<u>Offense Dt.</u>	<u>OTN</u>
1	1	M3	30 § 2504 §§A2	Allow Subst Del Dist Poison Fish To Fl	05/31/2012	T 571875-3
2	2	M3	30 § 2502 §§A	Disturbing Waterways Or Watersheds	05/31/2012	T 571875-3
3	3	M3	30 § 2504 §§A2	Allow Subst Del Dist Poison Fish To Fl	05/31/2012	T 571875-3
4	4	M3	30 § 2502 §§A	Disturbing Waterways Or Watersheds	05/31/2012	T 571875-3
5	5	M3	30 § 2504 §§A2	Allow Subst Del Dist Poison Fish To Fl	05/31/2012	T 571875-3
6	6	M3	30 § 2502 §§A	Disturbing Waterways Or Watersheds	05/31/2012	T 571875-3

DISPOSITION SENTENCING/PENALTIES

<u>Disposition</u>	<u>Disposition Date</u>	<u>Final Disposition</u>
<u>Case Event</u>	<u>Offense Disposition</u>	<u>Grade</u> <u>Section</u>
<u>Sequence/Description</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>
<u>Sentencing Judge</u>		

COURT OF COMMON PLEAS OF TIOGA COUNTY

DOCKET

Docket Number: CP-59-CR-000035-2015

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

Washington EQT Production Company

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DISPOSITION SENTENCING/PENALTIES

Disposition

<u>Case Event</u>	<u>Disposition Date</u>	<u>Final Disposition</u>	
<u>Sequence/Description</u>	<u>Offense Disposition</u>	<u>Grade</u>	<u>Section</u>
<u>Sentencing Judge</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>	
<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>	
<u>Sentence Conditions</u>			
Waived for Court (Lower Court)	Defendant Was Present		
Lower Court Disposition	01/26/2015	Not Final	
1 / Allow Subst Del Dist Poison Fish To FI	Waived for Court (Lower Court)	M3	30 § 2504 §§ A2
2 / Disturbing Waterways Or Watersheds	Waived for Court (Lower Court)	M3	30 § 2502 §§ A
3 / Allow Subst Del Dist Poison Fish To FI	Waived for Court (Lower Court)	M3	30 § 2504 §§ A2
4 / Disturbing Waterways Or Watersheds	Waived for Court (Lower Court)	M3	30 § 2502 §§ A
5 / Allow Subst Del Dist Poison Fish To FI	Waived for Court (Lower Court)	M3	30 § 2504 §§ A2
6 / Disturbing Waterways Or Watersheds	Waived for Court (Lower Court)	M3	30 § 2502 §§ A
Nolo Contendere			
Disposition	03/16/2015	Final Disposition	
1 / Allow Subst Del Dist Poison Fish To FI	Nolo Contendere	M3	30 § 2504 §§ A2
Leete, John B.	03/16/2015		
2 / Disturbing Waterways Or Watersheds	Nolo Contendere	M3	30 § 2502 §§ A
Leete, John B.	03/16/2015		
3 / Allow Subst Del Dist Poison Fish To FI	Nolo Contendere	M3	30 § 2504 §§ A2
Leete, John B.	03/16/2015		
4 / Disturbing Waterways Or Watersheds	Nolo Contendere	M3	30 § 2502 §§ A
Leete, John B.	03/16/2015		
5 / Allow Subst Del Dist Poison Fish To FI	Nolo Contendere	M3	30 § 2504 §§ A2
Leete, John B.	03/16/2015		
6 / Disturbing Waterways Or Watersheds	Nolo Contendere	M3	30 § 2502 §§ A
Leete, John B.	03/16/2015		

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DOCKET

Docket Number: CP-59-CR-000035-2015

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COMMONWEALTH INFORMATION

Name: Brian T. Coffey
Attorney General
Supreme Court No: 071664
Phone Number(s):
610-631-5958 (Phone)
Address:
PA Ofc of Attorney General
1000 Madison Ave Ste 310
Norristown, PA 19403-2426

ATTORNEY INFORMATION

Name: Efrem M. Grail
Private
Supreme Court No: 081570
Rep. Status: Active
Phone Number(s):
412-414-4586 (Phone)
Address:
421 Seventh Ave
Pittsburgh, PA 15219

Representing: EQT Production Company, Washington

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	01/28/2015		Court of Common Pleas - Tioga County
Original Papers Received from Lower Court			
1	01/29/2015		Criminal Division - Tioga
Arrest Scheduled 02/23/2015 8:30AM			
1	02/13/2015		Coffey, Brian T.
Information Filed			
1	02/25/2015		Tioga County Court Administration
Disposition Scheduled 03/16/2015 11:00AM			
1	02/27/2015		Leete, John B.
Waiver of Appearance at Arraignment and Entry of Plea			
1	03/16/2015		Leete, John B.
Nolo Contendere			
2	03/16/2015		Leete, John B.
Order - Sentence/Penalty Imposed			
3	03/16/2015		Leete, John B.
Nolo Contendere/ No Contest Plea Order			
Coffey, Brian T.			
03/16/2015			
Grail, Efrem M.			

COURT OF COMMON PLEAS OF TIOGA COUNTY

DOCKET

Docket Number: CP-59-CR-000035-2015

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Court Case



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ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
<u>Service To</u>		<u>Service By</u>	
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
03/16/2015	Tioga County Adult Probation		
03/16/2015	Tioga County Court Administration		
03/16/2015	Tioga County Prison Warden		
4	03/16/2015		EQT Production Company, Washington
	Plea of Corporate Defendant		
5	03/16/2015		Leete, John B.
	Sentence/Penalty Order Filed Coffey, Brian T.		
03/16/2015	EQT Production Company, Washington		
03/16/2015	Tioga County Adult Probation		
03/16/2015	Tioga County Prison Warden		
03/16/2015	Tioga County Sheriff		
1	03/19/2015		Court of Common Pleas - Tioga County
	Penalty Assessed		
1	03/23/2015		Court of Common Pleas - Tioga County
	Penalty Satisfied		

COURT OF COMMON PLEAS OF TIOGA COUNTY

DOCKET

Docket Number: CP-59-CR-000035-2015
CRIMINAL DOCKET

Court Case



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CASE FINANCIAL INFORMATION

Last Payment Date: 03/23/2015

Total of Last Payment: -\$338.50

EQT Production Company, Washington	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Costs/Fees					
ATJ	\$4.00	-\$4.00	\$0.00	\$0.00	\$0.00
C.JES	\$2.25	-\$2.25	\$0.00	\$0.00	\$0.00
Clerk Automation Fund (Tioga)	\$5.00	-\$5.00	\$0.00	\$0.00	\$0.00
Clerk Cost (Tioga)	\$70.00	-\$70.00	\$0.00	\$0.00	\$0.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$10.15	-\$10.15	\$0.00	\$0.00	\$0.00
County Court Cost (Act 204 of 1976)	\$33.00	-\$33.00	\$0.00	\$0.00	\$0.00
District Attorney Fee (Tioga)	\$5.00	-\$5.00	\$0.00	\$0.00	\$0.00
Firearm Education and Training Fund	\$5.00	-\$5.00	\$0.00	\$0.00	\$0.00
JCPS	\$21.25	-\$21.25	\$0.00	\$0.00	\$0.00
Judicial Computer Project	\$8.00	-\$8.00	\$0.00	\$0.00	\$0.00
Postage Fee (Tioga)	\$8.00	-\$8.00	\$0.00	\$0.00	\$0.00
State Court Costs (Act 204 of 1976)	\$11.85	-\$11.85	\$0.00	\$0.00	\$0.00
Central Booking Fee (Tioga)	\$30.00	-\$30.00	\$0.00	\$0.00	\$0.00
Local Victim Services Fee (Tioga)	\$75.00	-\$75.00	\$0.00	\$0.00	\$0.00
Costs of Prosecution - CJEA	\$50.00	-\$50.00	\$0.00	\$0.00	\$0.00
Costs/Fees Totals:	\$338.50	-\$338.50	\$0.00	\$0.00	\$0.00
Fines					
Fish Commission (Fish)	\$5,000.00	-\$5,000.00	\$0.00	\$0.00	\$0.00
Fish Commission (Fish)	\$5,000.00	-\$5,000.00	\$0.00	\$0.00	\$0.00
Fish Commission (Fish)	\$5,000.00	-\$5,000.00	\$0.00	\$0.00	\$0.00
Fish Commission (Fish)	\$5,000.00	-\$5,000.00	\$0.00	\$0.00	\$0.00
Fish Commission (Fish)	\$5,000.00	-\$5,000.00	\$0.00	\$0.00	\$0.00
Fish Commission (Fish)	\$5,000.00	-\$5,000.00	\$0.00	\$0.00	\$0.00
Fines Totals:	\$30,000.00	-\$30,000.00	\$0.00	\$0.00	\$0.00
Grand Totals:	\$30,338.50	-\$30,338.50	\$0.00	\$0.00	\$0.00

** - Indicates assessment is subrogated

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION,	:	
	:	
Plaintiff,	:	EHB Docket No. 2014 - _____
	:	
v.	:	
	:	
EQT Production Company,	:	
	:	
Defendant.	:	

NOTICE TO DEFEND

If you wish to defend against the claims set forth in the following pages, you must take action within 30 days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Board your answers, defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Board without further notice for any claim or relief requested by the Department.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, CONTACT THE SECRETARY TO THE BOARD AT (717)787-3483.

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION,	:	
	:	
Plaintiff,	:	EHB Docket No. 2014 - _____
	:	
v.	:	
	:	
EQT Production Company,	:	
	:	
Defendant.	:	

COMPLAINT FOR CIVIL PENALTIES

The Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), hereby files this Complaint for Civil Penalties, pursuant to Section 605 of The Clean Streams Law, 35 P.S. § 691.605; and 25 Pa. Code § 1021.71, and avers as follows:

Parties

1. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1-691.1001 ("Clean Streams Law"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §§ 510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder.

2. EQT is a Pennsylvania Corporation, having its principal office and place of business located at 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222.

Jurisdiction

3. The Environmental Hearing Board has jurisdiction over this matter pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, and Section 605 of The Clean Streams Law, 35 P.S. § 691.605.

Factual Background

4. EQT owns and operates a natural gas well facility known as the Phoenix Pad S (Exhibits A and B), which includes a well pad and impoundment, authorized by, *inter alia*, Department Permits numbered ESX10-117-0223 and 117-21148, and located in Duncan Township, Tioga County, Pennsylvania.

5. Pad S is located in the Rock Run watershed, which is designated by the Department's regulations as High Quality ("HQ"). 25 Pa. Code § 93.91.

6. In documents dated October 12, 2010, and submitted to the Department in support of a permit application, EQT describes the fluid containment structure (identified in those documents as "Impoundment 2") to be constructed at Pad S as a "6 million gallon freshwater impoundment."

7. The construction of Impoundment 2 encompassed blasting areas of the sandstone bedrock. After constructing Impoundment 2 (Exhibits A and B) in the fall of 2011, EQT expressed its intent to change the use of Impoundment 2 from a "freshwater impoundment" to use as a well site "pit" to store flowback fluid from Marcellus drilling operations for reuse in completion operations.

8. On January 11, 2012, the Department inspected the Pad S location and discovered three to five cubic yards of solid material placed in Impoundment 2. EQT informed the Department that the material was soil contaminated by drilling mud from a release at their Pad C. The Department issued a Notice of Violation ("NOV") to EQT on January 23, 2012 for unpermitted storage of residual waste.

9. On January 18, 2012, the Department met with EQT to discuss EQT's proposal to construct a centralized wastewater impoundment adjacent to Impoundment 2. EQT requested that the Department allow it to construct the proposed centralized wastewater impoundment prior to actually applying for or receiving the permit to do so, due to EQT's need to utilize the impoundment in early 2012. The Department did not agree to this request.

10. On April 30, 2012, EQT obtained water samples from groundwater Monitoring Wells 1 ("MW-1") and 5 ("MW-5") (Exhibit A), which showed unusually high conductivity (3,216 micro mhos ("umhos") in MW-1 and > 4,000 umhos in MW-5). EQT installed those monitoring wells to assess groundwater in connection with EQT's proposal to build the centralized wastewater impoundment.

11. On May 7, 2012, EQT notified the Department of the high chloride concentrations detected in MW-1 and MW-5 from the sampling event on April 30, 2012 (996 mg/l in MW-1 and 6,640 mg/l in MW-5). Department staff informed EQT of its concerns regarding the integrity of Impoundment 2 at that time.

12. On May 9, 2012, in response to a reported flowback fluid release that occurred on May 8, 2012, the Department inspected Impoundment 2 and an adjacent area where EQT proposed to build the centralized wastewater impoundment at Pad S, and found the following:

- a. An estimated 300 to 500 gallons of flowback fluid was released onto the ground in a channel along the east side of the impoundment access road (Exhibit B);
- b. The release occurred while pumping flowback fluid from Impoundment 2 through a 12-inch line to the gas well pad to be utilized for hydraulic fracturing;
- c. The 12-inch line, which was reused from another site, had a 2-inch hole in the bottom that had not been patched, and the line had not been pressure tested prior to beginning the flowback fluid transfer;
- d. The flowback fluid traveled south for approximately 250 to 300 feet down the length of the channel and into a rock apron located near the Pad S limit of disturbance, and evidence of a flow path into the woods was observed beyond the rock apron and Pad S limit of disturbance; and,
- e. Field conductivity measurements of standing puddles indicated the release was primarily confined to the channel, but a puddle was located outside the channel near the point of release from the 12-inch line.

13. The Department's May 9, 2012 inspection report included a NOV for the following:

- a. Failure to contain polluttional substances and wastes from completion of the well(s) in a pit, tank, or series of pits and tanks, in violation of 25 Pa. Code § 78.56(a);
- b. Creating the potential to pollute waters of the Commonwealth, in violation of Section 402 of The Clean Streams Law, 35 P.S. § 691.402; and,
- c. The unpermitted discharge of residual waste onto the ground, in violation of Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301.

14. On May 10, 2012, the Department inspected Impoundment 2 to verify the status of EQT's cleanup of the release and found the following:

- a. The entire length of the impacted channel had been excavated;
- b. A 3-foot deep sump excavated off the end of the rock apron was full of black liquid;
- c. Standing water was observed in the excavation at the top of the channel, near the point of release from the 12-inch line;
- d. Two seeps with elevated conductivity emerged from the side wall of the excavated channel from the direction of the southeast corner of Impoundment 2; and,
- e. Additional truckloads of flowback fluid were being deposited into Impoundment 2.

15. Between May 14 and May 16, 2012, the Department observed additional truckloads of flowback fluid being deposited into Impoundment 2.

16. On May 18, 2012, the Department advised EQT that Impoundment 2's liner may be compromised, and the Department requested EQT to: evaluate the origins of the seeps with elevated conductivity; evaluate the integrity of the liner; and ensure that all water from the seeps was captured and handled properly.

17. In correspondence provided by EQT to the Department, on May 22, 2012, EQT's consultant, Casselberry and Associates, referred to a proposed "hydrogeologic investigation of the extent of the groundwater contamination caused by the leaks from the reserve pit"

18. On May 24, 2012, EQT informed the Department that "6 to 7" holes were observed in the liner of Impoundment 2, in the northeast corner where the transfer of fluids had been occurring. This area with the holes in the liner was also in the area where the contaminated soil was deposited in the impoundment on January 11, 2012. The holes were discovered by EQT on May 21, 2012, during a visual inspection of the liner, and, according to EQT, the transfer of flowback fluid from Pad C to Impoundment 2 was ceased upon that discovery.

19. On May 30, 2012, EQT notified the Department that groundwater with high conductivity was detected for the first time in: Monitoring Well-2 ("MW-2") (Exhibit A), which was installed to monitor groundwater in connection with the proposed centralized wastewater impoundment; and in a spring located 250 feet northeast and downgradient from MW-2 (the "Northeast Spring").

20. At 9:40 p.m. on May 30, 2012, EQT reported to the Department that Impoundment 2 was leaking.

21. On May 31, 2012, the Department inspected Impoundment 2 and found the following:

- a. The Northeast Spring (Exhibit A) showed high conductivity when field tested by EQT's consultant (>30,000 umhos/cm) and by the Department (>19,990 umhos/cm);
- b. Trees and shrubs along the spring discharge flow path were stressed, as evidenced by yellowing/brown leaves and some defoliation;
- c. Stressed vegetation further downgradient beyond the end of the flow path;
- d. Elevated field conductivity measurements in Rock Run, an unnamed tributary to Rock Run, and a seep entering a large upstream wetland;
- e. Fluid was being removed from Impoundment 2, but this removal ceased at approximately noon; and,
- f. EQT stated that the hydraulic fracturing of the Phoenix 590935 well, assigned permit number 37-117-21115, was expedited to use most of the flowback fluid

in Impoundment 2, and that any remaining flowback fluid would be removed and transported to tanks on Phoenix Pad E.

22. The Department's May 31, 2012 inspection report included a NOV for the following:

- a. Failure to contain polluttional substances from the drilling, altering or completing of the well(s) in a pit, tank or series of pits and tanks, in violation of 25 Pa. Code § 78.56(a);
- b. The unpermitted discharge of production fluids, an industrial waste, into waters of the Commonwealth, in violation of Section 301 of The Clean Streams Law, 35 P.S. § 691.301;
- c. The unpermitted discharge of industrial waste into waters of the Commonwealth, in violation of Section 307 of The Clean Streams Law, 35 P.S. § 691.307;
- d. The unpermitted discharge of polluttional substances into waters of the Commonwealth, in violation of Section 401 of The Clean Streams Law, 35 P.S. § 691.401; and,
- e. The unpermitted discharges of residual waste, in violation of Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301.

23. EQT started pumping fluid from Impoundment 2 to the well pad for use in hydraulic fracturing of the 590935 gas well on June 1, 2012, at approximately 7:00 p.m.

24. On June 4, 2012, EQT's consultant, Casselberry and Associates, identified new seeps of flowback fluid along the west side of Impoundment 2 ("West Seeps") (Exhibits A and B).

25. Between June 1, 2012 and June 8, 2012, the Department inspected Impoundment 2 six (6) times to collect field conductivity measurements and to assess the extent of the flowback fluid release. During those inspections, the Department:

- a. Noted that Impoundment 2 was being drained, and seep fluid was being captured by trenches and sumps; and,
- b. Observed stressed and dying vegetation west of Impoundment 2 for the first time on June 4, 2012 and June 5, 2012.

26. On June 6, 2012, the Pennsylvania Fish and Boat Commission ("PFBC") installed data loggers to capture continuous temperature and conductivity readings in Rock Run and in the unnamed tributary at Station A (also known as Sand Spring) and Station W, where the Department had proposed routine sampling.

27. On June 7, 2012, the Department documented its discovery of two (2) new seeps of flowback fluid in an area labelled the "Danzer Seeps." (Exhibit A).

28. On June 7, 2012, EQT finished constructing the "West Trenches" to collect the West Seeps.

29. On June 11, 2012, the Department inspected Impoundment 2, collected field conductivity measurements, and found the following:

- a. Impoundment 2 had been drained, its liner was being pressure washed, and sediment in the bottom of the pit was being solidified for off-site disposal;
- b. Approximately 75-100 holes, as estimated by EQT, were observed in the liner; and,
- c. EQT had installed conductivity recorders in the West Trench sumps.

30. The Department's June 11, 2012 inspection report included a NOV for the following:

- a. Failure to maintain an impermeable pit or tank that contains polluttional substances, in violation of 25 Pa. Code § 78.56(a)(4);
- b. Failure to manage a pit, when a liner becomes torn or otherwise loses its integrity, to prevent the pit's contents from leaking, in violation of 25 Pa. Code § 78.56(a)(4)(iv); and,
- c. Failure to take necessary measures to prevent polluttional substances from directly or indirectly reaching waters of the Commonwealth, in violation of 25 Pa. Code § 91.34(a).

31. On June 12, 2012, the Department inspected Impoundment 2 and found the following:

- a. The holes in the liner appeared to have been made by punctures up through the liner, rather than down into the subgrade material; and,
- b. EQT stated that it had discovered the holes on June 8, 2012, when emptying Impoundment 2.

32. On June 13, 2012, the Department started routine weekly sampling. Between June 13, 2012 and June 27, 2012, the Department inspected Impoundment 2 six (6) times to document field measured conductivity and assess the extent of the flowback fluid release. During those inspections, the Department noted that sumps to capture fluids from the Danzer Seeps were being excavated, and that field-measured conductivity in the unnamed tributary to Rock Run remained elevated.

33. On June 22, 2012, EQT submitted its site characterization plan to the Department, which documented that EQT found more than 200 holes in the bottom of the Impoundment 2 liner.

34. In the month of July 2012, the Department inspected Impoundment 2 nine (9) times to complete field conductivity monitoring and routine sampling and to assess the extent of the unpermitted release of flowback fluid from the Impoundment. During that month, the Department documented the continued presence of stressed vegetation.

35. In the month of August 2012, the Department inspected Impoundment 2 ten (10) times to complete field conductivity monitoring and routine sampling.

36. On August 2, 2012, the Department conducted both an aerial inspection and a field inspection of Impoundment 2 to assess the extent of the impacts to the environment caused by the unpermitted release of flowback fluid from the Impoundment. Aerial photographs depicted the extent of stressed, defoliated, and dead vegetation previously documented from the field. The following was documented:

- a. Stressed Beech saplings were observed adjacent to the west side of the impoundment access road;
- b. Mature trees in the wooded area south of the impoundment were beginning to show signs of stress, including leaves turning brown from the outer edges inward;
- c. Two new separate clusters of stressed vegetation were located south of the proposed centralized impoundment. The most apparent of these appeared to be in line with the Danzer Seeps;
- d. Stressed vegetation was observed in the area of the West Seeps (Exhibit C) and Northeast Spring; and,
- e. That further investigation of the impacted areas south of the current and proposed impoundments was necessary to fully characterize the pollution and address the impacts to the environment caused by the unpermitted release of flowback fluid from the Impoundment.

37. On August 9, 2012, the Department inspected the Phoenix Pad S and found the following:

- a. Fluid was seeping out from beneath a patched, unbermed liner and discharging onto the ground in the northeast corner of the well pad where a row of tanks was staged; and,
- b. Elevated conductivity was measured in the wetland off the east corner of the pad and in ponded water located at a nearby bedrock outcropping.

38. The Department's August 9, 2012 inspection report included a NOV for, among other things, the following:

- a. The unpermitted discharge of residual waste, in violation of Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301;

- b. The unpermitted discharge of industrial waste into waters of the Commonwealth, in violation of Section 307 of The Clean Streams Law, 35 P.S. § 691.307;
- c. The unpermitted discharge of a pollutonal substance into waters of the Commonwealth, in violation of Section 401 of The Clean Streams Law, 35 P.S. § 691.401; and,
- d. The unpermitted discharge of industrial waste into waters of the Commonwealth, in violation of Section 301 of The Clean Streams Law, 35 P.S. § 691.301.

39. In a letter, dated August 10, 2012, the Department requested additional information from EQT concerning the extent of the unpermitted release of flowback fluid from Impoundment 2. The request specifically covered the information collected by EQT's consultant in connection with an evaporation/leak study, documentation of fluids delivered to and hauled out of Impoundment 2, and the results of EQT's forensic study of the pit liner.

40. On August 20, 2012, EQT began installing monitoring wells MW-7 through MW-15. (Exhibit A) These were the first wells installed to investigate the impacts to groundwater impacts from the unpermitted release of flowback fluid.

41. On August 28, 2012, EQT provided some, but not all, of the information requested in the Department's letter of August 10, 2012. EQT did not provide the: data underlying the conclusions set forth in its evaporation/leak study; any records regarding fluid deliveries or withdrawals between April 30, 2012, and May 2, 2012; and complete results of EQT's forensic study of the pit liner.

42. In September 2012, the Department inspected Impoundment 2 six (6) times to complete field conductivity monitoring and routine sampling. On September 7, 2012, EQT submitted for the first time the results of surface water sampling conducted since the start of the investigation in May 2012. The Department also documented that the removal of the liner from the south half of the Impoundment floor had been completed on September 12, 2012, and excavation of the soils on the Impoundment floor had begun.

43. On September 24, 2012, the first round of sample results from wells MW-7, MW-8S, MW-8D, MW-9, MW-11, and MW-12 showed elevated concentrations of chloride and other constituents of flowback fluid.

44. On September 24, September 25, and September 26, 2012, the Department inspected Phoenix Pad S and found the following:

- a. A sump discharge with elevated conductivity, located in the southeast corner of the well pad, was first observed by the Department on September 24, 2012;
- b. The Department notified EQT by e-mail of the discharge on September 24, 2012, and requested EQT to contain the discharge and identify the source;

- c. The sump discharge was sampled on September 25, 2012, and it did not appear that EQT had implemented any remedial containment measures;
- d. Sample results from September 24, 2012 and September 25, 2012 showed elevated chlorides, sulfate, and strontium in the discharge; and,
- e. Field conductivity was still elevated when EQT personnel on site were shown the discharge on September 26, 2012.

45. The Department's September 26, 2012 inspection report included a NOV for, among other things, the following:

- a. Creating the potential to pollute waters of the Commonwealth, in violation of Section 402 of The Clean Streams Law, 35 P.S. § 691.402; and,
- b. The unpermitted discharge of residual waste into waters of the Commonwealth, in violation of Section 301 of the Solid Waste Management Act, 35 P.S. § 6018.301.

46. On October 9, 2012, PFBC conducted a fish survey at a historic sampling site in Rock Run to document any changes to the fish community since its previous survey conducted in August 2005. The results of the October 2012 survey showed a brook trout population estimate of 996 per hectare which was much lower than the 2005 estimate of 2,187 brook trout per hectare. The results of the October 2012 survey also showed a brook trout biomass of 5.12 kg/hectare which was much lower estimate than the 2005 survey results that showed 36.17 kg/hectare.

47. In December 2012, PFBC ceased its continuous temperature and conductivity monitoring in Rock Run and the unnamed tributary at Stations A and W. PFBC's data demonstrated that elevated conductivity (>150 umhos/cm) had been present in all locations downstream of the discharge. Elevated conductivity was present in the unnamed tributary at Station W for at least 150 days between June 2012 and November 2012.

48. Between October 2012 and July 2013, the Department inspected Impoundment 2 twenty (20) times to complete field conductivity monitoring and routine sampling and to observe EQT's work on reclaiming Impoundment 2. The Department completed an additional aerial inspection May 31, 2013 which documented that the adverse impacts to vegetation from the unpermitted release of flowback fluid from Impoundment 2 were still present (Exhibit B).

49. On July 1, 2013, EQT's consultant, Groundwater Sciences Corporation, reported that reclamation of Impoundment 2 was completed.

50. On November 27, 2013, monitoring well MW-22 (Exhibit A) was installed to further define the extent of groundwater contamination. Results from samples collected on December 23, 2013, showed elevated concentrations of chloride and other constituents of flowback fluid.

51. EQT's unpermitted release of flowback fluid through multiple holes in the liner continuously entered the groundwater beneath Impoundment 2 until EQT drained the Impoundment. EQT's flowback fluid flowed, migrated, seeped, and leached from the Impoundment 2 site in different directions, and that fluid continues to enter into and pollute a number of surface waters downgradient of Impoundment 2. Those surface waters include the unnamed tributary to Rock Run, Rock Run, the Danzer Seeps (Number 1 and Number 2), the West Seeps (Upper and Lower), and the North Spring.

52. As of the date of this Complaint, waters of the Commonwealth continue to be polluted from the unpermitted release of flowback fluid and/or its constituents from Impoundment 2 to groundwater and surface waters (Exhibits D through H). Surface and groundwater monitoring and remediation are ongoing.

53. Since April 30, 2012, to the date of this Complaint, the Department, as part of its investigation in this case, has conducted at least 65 inspections, collected at least 200 water samples, and incurred at least \$112,296.00 in costs and expenses.

The Clean Streams Law

54. EQT is a "person" as defined by Section 1 of The Clean Streams Law, 35 P.S. § 691.1.

55. Rock Run and the unnamed tributary to Rock Run are each a "Water of the Commonwealth" as defined by Section 1 of The Clean Streams Law, 35 P.S. § 691.1.

56. The groundwater under and surrounding Impoundment 2 is a "Water of the Commonwealth" as defined by Section 1 of The Clean Streams Law, 35 P.S. § 691.1.

57. Flowback fluid from Marcellus drilling operations is an "industrial waste" as defined by Section 1 of The Clean Streams Law, 35 P.S. § 691.1.

58. All persons who discharge industrial waste must first obtain a permit from the Department to discharge industrial waste in any manner, directly or indirectly, into waters of the Commonwealth, pursuant to Sections 301 and 307 of The Clean Streams Law, 35 P.S. §§ 691.301 and 691.307.

59. Flowback fluid from Marcellus drilling operations is a "pollutant" as defined by 25 Pa. Code § 91.1. Flowback water from Marcellus drilling operations is also a "substance of [a] kind or character resulting in pollution," as that phrase is used in Section 401 of The Clean Streams Law, 35 P.S. § 691.401.

60. The presence of flowback fluid from Marcellus drilling operations in any water of the Commonwealth, constitutes "pollution" as defined by Section 1 of The Clean Streams Law,

35 P.S. § 691.1. To the extent that flowback water from Marcellus drilling operations, and/or its constituents, continues to be present in any water of the Commonwealth after the date that this Complaint is filed with the Environmental Hearing Board, the pollution continues, and EQT continues to incur liability for additional penalties.

61. The presence of flowback fluid from Marcellus drilling operations in the groundwater under and surrounding Impoundment 2 constitutes "pollution" as defined by Section 1 of The Clean Streams Law, 35 P.S. § 691.1. To the extent that flowback water from Marcellus drilling operations, and/or its constituents, continues to be present in the groundwater under and surrounding Impoundment 2 after the date that this Complaint is filed with the Environmental Hearing Board, the pollution continues, and EQT continues to incur liability for additional penalties.

62. Section 401 of The Clean Streams Law, 35 P.S. § 691.401, states in relevant part that

It shall be unlawful for any person ... to put or place into any of the waters of the Commonwealth, or to allow or permit to be discharged from property owned or occupied by such a person ... into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance.

63. Section 1 of The Clean Streams Law, 35 P.S. § 691.1, defines pollution as:

contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substance into such waters.

64. The Environmental Hearing Board sets the penalty amount pursuant to Section 605 of The Clean Streams Law, 35 P.S. § 691.605, by considering the willfulness of the violation, the damage or injury to waters of the Commonwealth and their uses, the cost to the Department of enforcing the provisions of the Act, cost of restoration, deterrent effect, and other relevant factors.

COUNT I

VIOLATIONS OF SECTIONS 301 AND 307 OF THE CLEAN STREAMS LAW

65. Paragraphs 1 through 64, above, are incorporated herein as though fully set forth.

66. EQT has violated, and continues to violate, Sections 301 and 307 of The Clean Streams Law, 35 P.S. §§ 691.301 and 691.307, by, without a permit or other authorization of the Department:

- a. placing or permitting the placement of flowback fluid from Marcellus drilling operations and/or its constituents into the unnamed tributary to Rock Run, Rock Run, the Danzer Seeps (Number 1 and Number 2), the West Seeps (Upper and Lower), and the North Spring;
- b. discharging or permitting the flow of flowback fluid from Marcellus drilling operations and/or its constituents into the unnamed tributary to Rock Run, Rock Run, the Danzer Seeps (Number 1 and Number 2), the West Seeps (Upper and Lower), and the North Spring;
- c. discharging or permitting the discharge of flowback fluid from Marcellus drilling operations and/or its constituents, directly and/or indirectly, the unnamed tributary to Rock Run, Rock Run, the Danzer Seeps (Number 1 and Number 2), the West Seeps (Upper and Lower), and the North Spring;
- d. placing or permitting the placement of flowback fluid from Marcellus drilling operations and/or its constituents into the groundwater under and surrounding Impoundment 2;
- e. discharging or permitting the flow of flowback fluid from Marcellus drilling operations and/or its constituents into the groundwater under and surrounding Impoundment 2; and,
- f. discharging or permitting the discharge of flowback fluid from Marcellus drilling operations and/or its constituents, directly and/or indirectly, into the groundwater under and surrounding Impoundment 2.

67. EQT's discharging or permitting the discharge of industrial waste, or permitting the placement and/or flow of flowback fluid from Marcellus drilling operations and/or its constituents into the groundwater under and surrounding Impoundment 2, or into any other water of the Commonwealth, was not authorized by any permit or regulation, and thereby constitutes violations of Sections 301 and 307 of The Clean Streams Law, 35 P.S. §§ 691.301 and 691.307, and a nuisance under the same sections.

68. Analytical results from samples collected between April 30, 2012 through June 26, 2014 (the most recent sampling event for which data has been submitted) continue to demonstrate that flowback fluid from Marcellus drilling operations and/or its constituents are entering into, and therefore impacting, waters of the Commonwealth.

WHEREFORE, the Department respectfully requests the Environmental Hearing Board to assess a civil penalty pursuant to Section 605(a) of The Clean Streams Law, 35 P.S. § 691.605(a), in the amount of up to and including TEN THOUSAND DOLLARS (\$10,000.00) per day for each day that:

- a. Prior to the filing of this complaint, EQT placed, discharged, or permitted the flow of flowback fluid from Marcellus drilling operations and/or its constituents into waters of the Commonwealth, together with costs incurred by the Department and such other relief the Board deems appropriate; and
- b. Beginning October 8, 2014, EQT continues to place, discharge, or permit the flow of flowback fluid from Marcellus drilling operations and/or its constituents into waters of the Commonwealth, together with costs incurred by the Department and such other relief the Board deems appropriate.

COUNT II

VIOLATIONS OF SECTION 401 OF THE CLEAN STREAMS LAW

69. Paragraphs 1 through 68, above, are incorporated herein as though fully set forth.

70. EQT did and continues to, without any permit and in violation of Section 401 of The Clean Streams Law, 35 P.S. § 691.401, put or place flowback fluid and/or its constituents into waters of the Commonwealth.

71. EQT did and continues to, in violation of Section 401 of The Clean Streams Law, 35 P.S. § 691.401, allow or permit flowback fluid and/or its constituents to be discharged to waters of the Commonwealth.

72. Analytical results from samples collected between April 30, 2012 through June 26, 2014 (the most recent sampling event for which data has been submitted) continue to demonstrate that flowback fluid from Marcellus drilling operations and/or its constituents are impacting waters of the Commonwealth

WHEREFORE, the Department respectfully requests the Environmental Hearing Board to assess a civil penalty pursuant to Section 605(a) of The Clean Streams Law, 35 P.S. § 691.605(a), in the amount of up to and including TEN THOUSAND DOLLARS (\$10,000.00) per day for each day that:

- a. Prior to the filing of this complaint, EQT placed, discharged, or permitted the flow of flowback fluid from Marcellus drilling operations and/or its constituents into waters of the Commonwealth, together with costs incurred by the Department and such other relief the Board deems appropriate; and
- b. Beginning October 8, 2014, EQT continues to place, discharge, or permit the flow of flowback fluid from Marcellus drilling operations and/or its constituents into waters of the Commonwealth, together with costs incurred by the Department and such other relief the Board deems appropriate.

COUNT III

UNLAWFUL CONDUCT CAUSING WATER POLLUTION UNDER SECTION 611 OF THE CLEAN STREAMS LAW

73. Paragraphs 1 through 72, above, are incorporated herein as though fully set forth.

74. Section 611 of The Clean Streams Law, 35 P.S. § 691.611, provides in relevant part that “[i]t shall be unlawful ... to cause air or water pollution.”

75. Section 1 of The Clean Streams Law, 35 P.S. § 691.1, defines pollution as:

contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substance into such waters.

76. EQT has caused, and continues to cause, water pollution to waters of the Commonwealth in that EQT has rendered such waters harmful, detrimental or injurious to public health, safety or welfare, and/or to domestic, municipal, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, and/or livestock, wild animals, birds, fish or other aquatic life.

77. EQT has caused, and continues to cause, water pollution to waters of the Commonwealth in that EQT has altered the chemical and biological properties of waters of the Commonwealth.

78. EQT has caused, and continues to cause, pollution to waters of the Commonwealth by discharging liquid, gaseous, solid or other substances into waters of the Commonwealth.

WHEREFORE, the Department respectfully requests the Environmental Hearing Board to assess a civil penalty pursuant to Section 611 of The Clean Streams Law, 35 P.S. § 691.611, in the amount of up to and including TEN THOUSAND DOLLARS (\$10,000.00) per day for each day that EQT placed, discharged, or permitted the flow of flowback fluid from Marcellus drilling operations and/or its constituents into waters of the Commonwealth, together with costs incurred by the Department and such other relief the Board deems appropriate.

COUNT IV

VIOLATIONS OF THE CLEAN STREAMS LAW, RULES AND REGULATIONS 25 PA. CODE § 91.34

79. Paragraphs 1 through 78, above, are incorporated herein as though fully set forth.

80. 25 Pa. Code § 91.34(a), provides that persons engaged in an activity which includes the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants shall take necessary measures to prevent the substances from directly or indirectly reaching waters of the Commonwealth through accident, carelessness, maliciousness, hazards of weather or from another cause.

81. EQT is engaged in the impoundment, storage, use, and application of flowback fluid.

82. EQT knew or should have known that careless use of its 6 million gallon impoundment would likely result in the release of flowback fluid to the environment, including waters of the Commonwealth.

83. EQT failed to take measures necessary to prevent flowback fluid and/or its constituents from directly and/or indirectly reaching waters of the Commonwealth by failing to:

- a. Cease the deposition of fluids into Impoundment 2 after detecting elevated levels of chlorides and other constituents of flowback fluid in groundwater near Impoundment 2 on April 30, 2012;
- b. Take active measures to remove fluid from Impoundment 2 after the detection of elevated levels of chlorides and other constituents of flowback fluid in groundwater near Impoundment 2 on April 30, 2012;
- c. Promptly define the extent of impacts from flowback fluid and/or its constituents to waters of the Commonwealth;
- d. Ensure that all personnel depositing fluids into Impoundment 2, withdrawing fluids from Impoundment 2, or treating fluids within Impoundment 2 were adequately trained;
- e. Ensure that all personnel depositing fluids into Impoundment 2, withdrawing fluids from Impoundment 2, or treating fluids within Impoundment 2 were properly advised of the nature and limitations of Impoundment 2's liner;
- f. Ensure that all personnel depositing fluids into Impoundment 2, withdrawing fluids from Impoundment 2, or treating fluids within Impoundment 2 took adequate measures to avoid compromising the integrity of Impoundment 2's liner;
- g. Ensure that all personnel depositing fluids into Impoundment 2, withdrawing fluids from Impoundment 2, or treating fluids within Impoundment 2 were advised of the potential consequences if proper practices were not followed

when depositing fluids into Impoundment 2 or withdrawing fluids from Impoundment 2;

- h. Advise all personnel depositing fluids into Impoundment 2, withdrawing fluids from Impoundment 2, or treating fluids within Impoundment 2 of the potential consequences if proper practices were not followed when depositing fluids into Impoundment 2 or withdrawing fluids from Impoundment 2; and,
- i. Supervise properly all personnel depositing fluids into Impoundment 2, withdrawing fluids from Impoundment 2, or treating fluids within Impoundment 2.

84. Analytical results from samples collected from April 30, 2012 through June 26, 2014 (the most recent sampling event for which data has been submitted) continue to demonstrate that flowback fluid from Marcellus drilling operations and/or its constituents are adversely impacting waters of the Commonwealth

WHEREFORE, the Department respectfully requests the Environmental Hearing Board to assess a civil penalty pursuant to Section 605(a) of The Clean Streams Law, 35 P.S. § 691.605(a), for violations of 25 Pa. Code § 91.34 in the amount of up to and including TEN THOUSAND DOLLARS (\$10,000.00) per day for each day that EQT placed, discharged, or permitted the flow of flowback fluid from Marcellus drilling operations and/or its constituents into waters of the Commonwealth, together with costs incurred by the Department and such other relief the Board deems appropriate.

Department's Consolidated Statement of Proposed Penalty

85. Pursuant to Section 605 of The Clean Streams Law, 35 P.S. § 691.605, the Board is to consider specific factors in determining the appropriate amount of the penalty to be imposed upon one who violates the statute, regulations, or orders of the Department. Those factors are "the willfulness of the violation, damage or injury to waters of the Commonwealth or their uses, cost of restoration, and other relevant factors." Id.

86. "Other relevant factors" include costs incurred by the Department, savings to the violator and a deterrent effect. *Commonwealth, DEP v. Leeward Construction, Inc.*, 2001 EHB 870.

87. The injuries inflicted on waters of the Commonwealth, and the uses of those waters of the Commonwealth, are fully set forth in the preceding paragraphs. As pled in counts I through IV above, the Department believes and therefore avers that civil penalties in the amount of at least \$4,532,296 are warranted for those violations and injuries to waters of the Commonwealth.

88. As of the date of filing this complaint, the Department is without information to determine how much EQT saved as a result of these violations, but this amount, to be determined through discovery, should be included in the penalty assessed by this Honorable Board.

89. This Honorable Board, therefore, should impose a civil penalty of at least \$4,532,296.00, which includes the Department's costs referenced in paragraph 88, plus the savings realized by EQT.

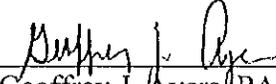
WHEREFORE, the Department respectfully requests the Environmental Hearing Board to assess a civil penalty pursuant to Section 605(a) of The Clean Streams Law, 35 P.S. § 691.605(a), in the amount of up to and including TEN THOUSAND DOLLARS (\$10,000.00) per day for each day that:

- a. Prior to the filing of this complaint, EQT placed, discharged, or permitted the flow of flowback fluid from Marcellus drilling operations and/or its constituents into waters of the Commonwealth, together with costs incurred by the Department and such other relief the Board deems appropriate; and
- b. Beginning October 8, 2014, EQT continues to place, discharge, or permit the flow of flowback fluid from Marcellus drilling operations and/or its constituents into waters of the Commonwealth, together with costs incurred by the Department and such other relief the Board deems appropriate.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Dennis A. Whitaker
PA I.D. No. 53975
Chief Counsel



Geoffrey J. Ayers, PA I.D. No. 63888
Regional Counsel
208 West Third Street
Williamsport, PA 17701

Date: October 7, 2014

Exhibit A: Monitoring well and surface water sampling locations.

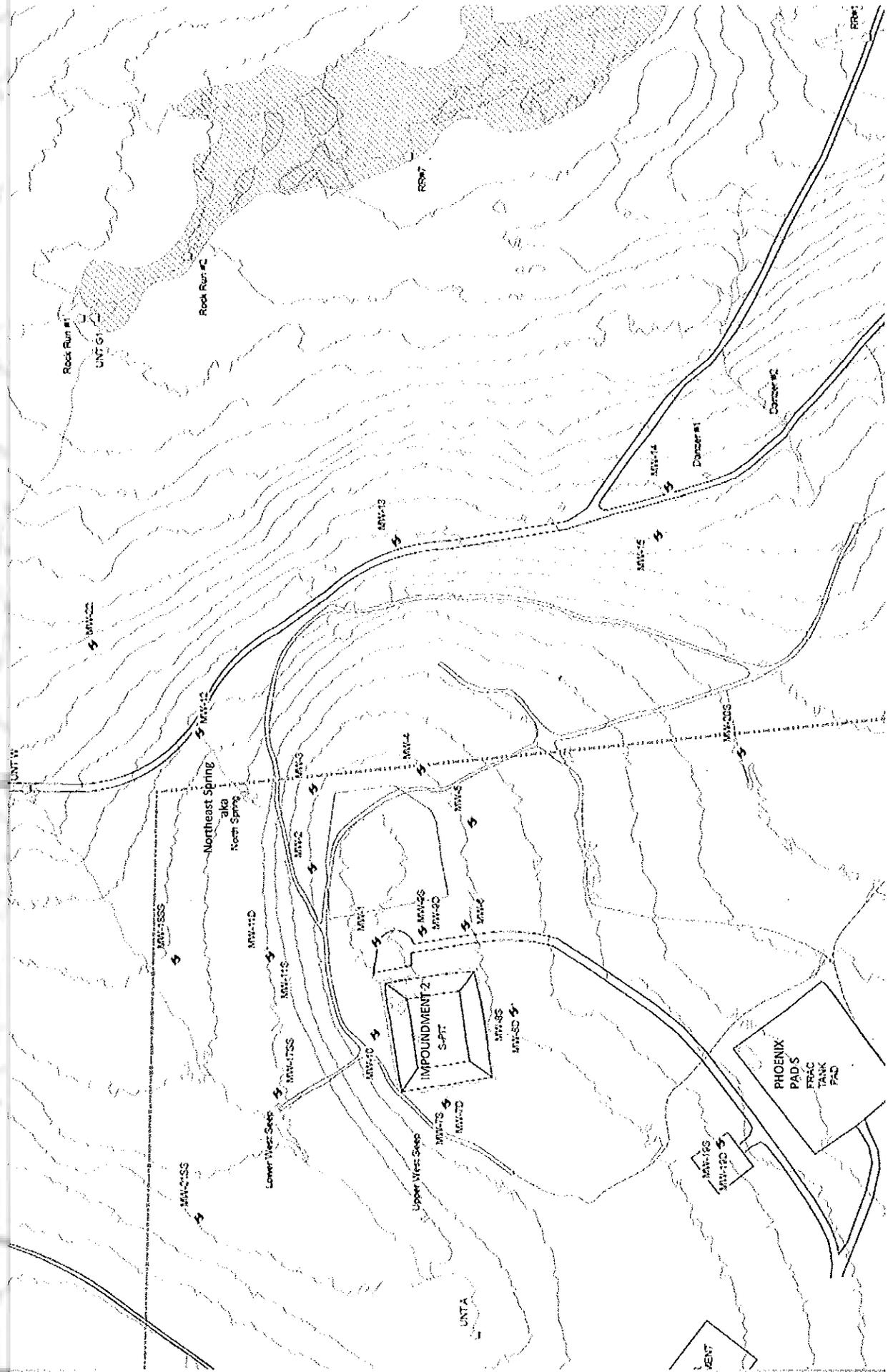


Exhibit B: EGT Phoenix Pad S site overview. Photo taken 5/31/13.

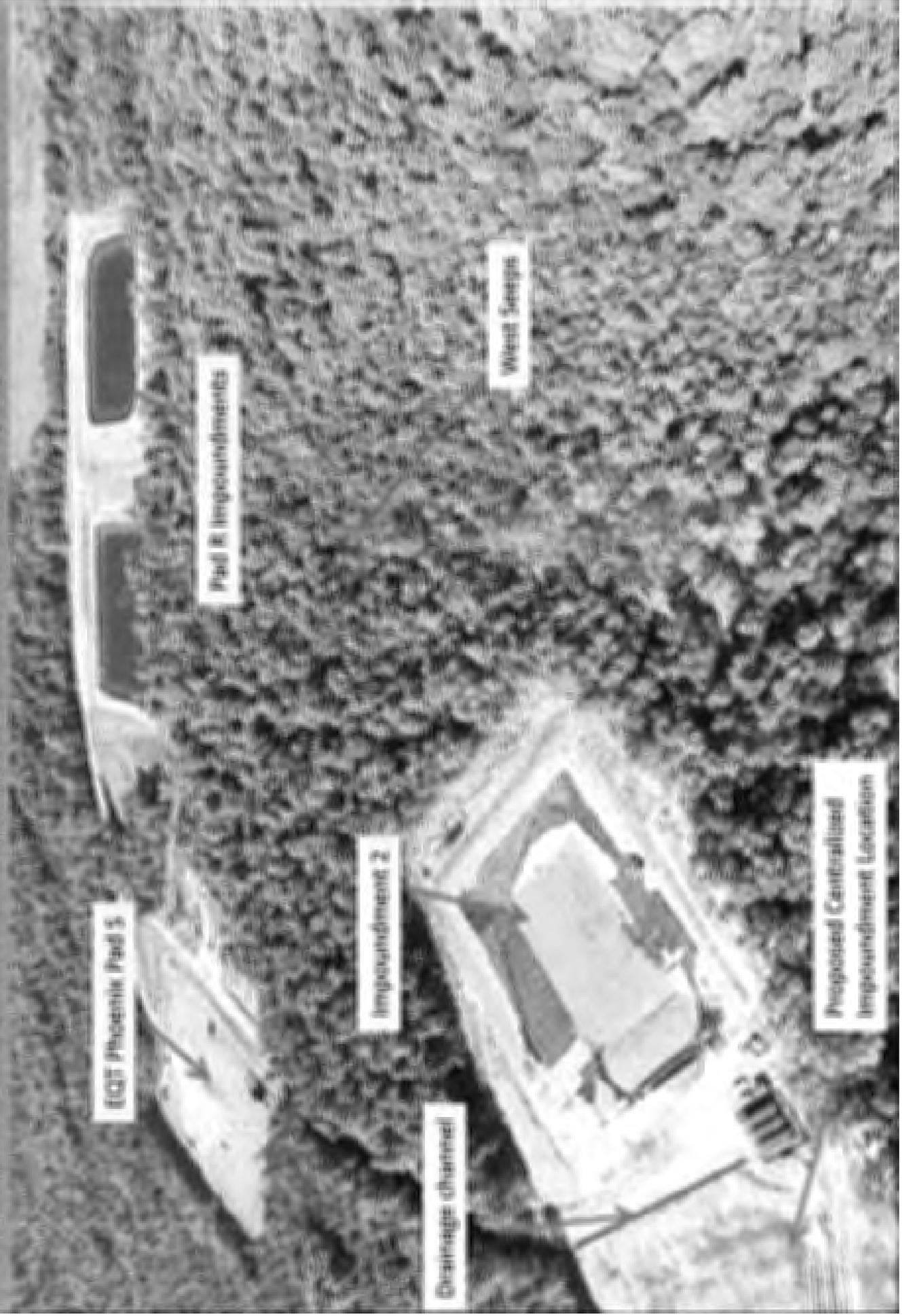


Exhibit C: View of Impoundment 2 looking SE. West Seeps impacted area in foreground. Photo taken 8/2/12.

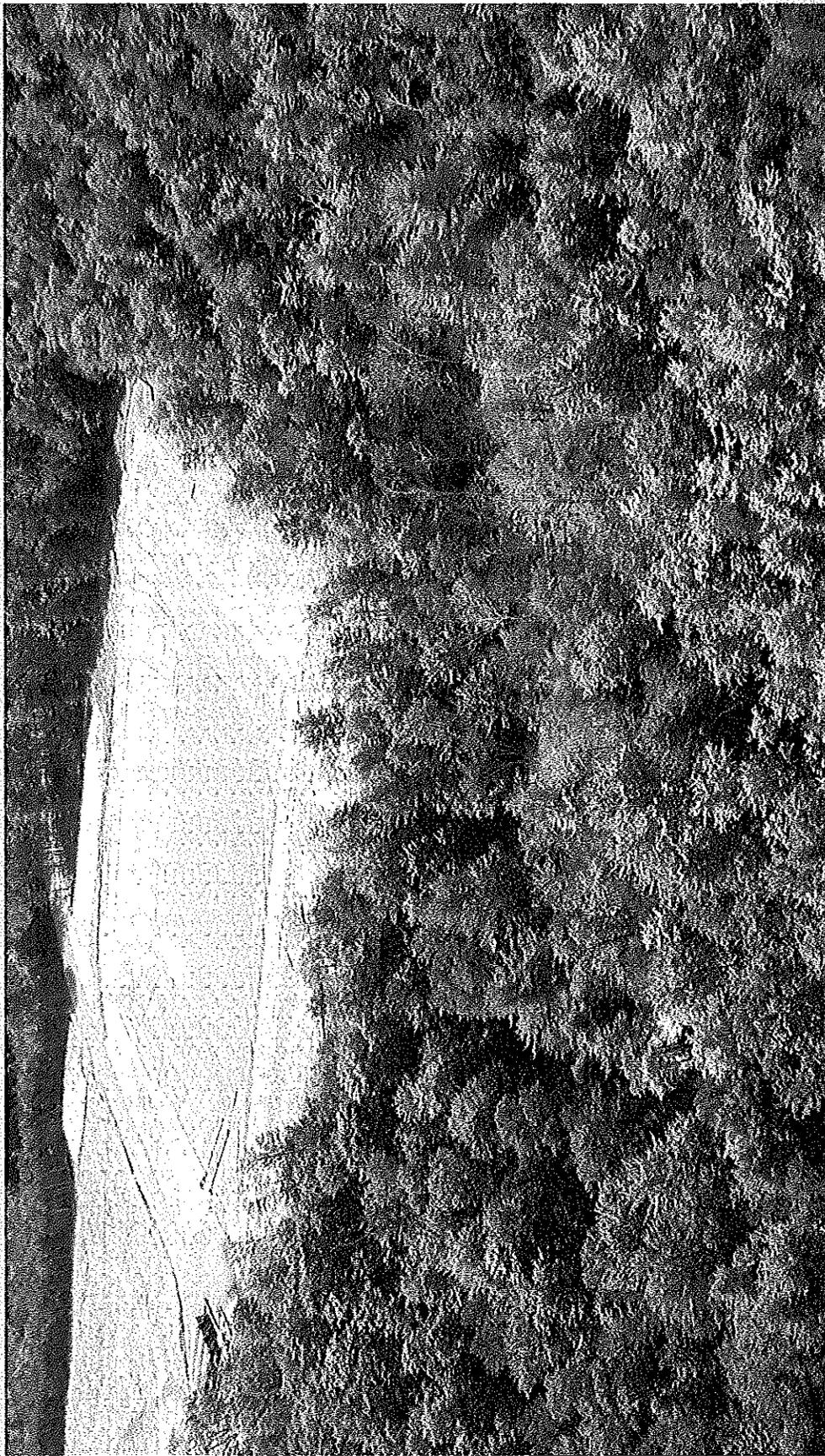


Exhibit D: Water quality Danzer 1 Spring

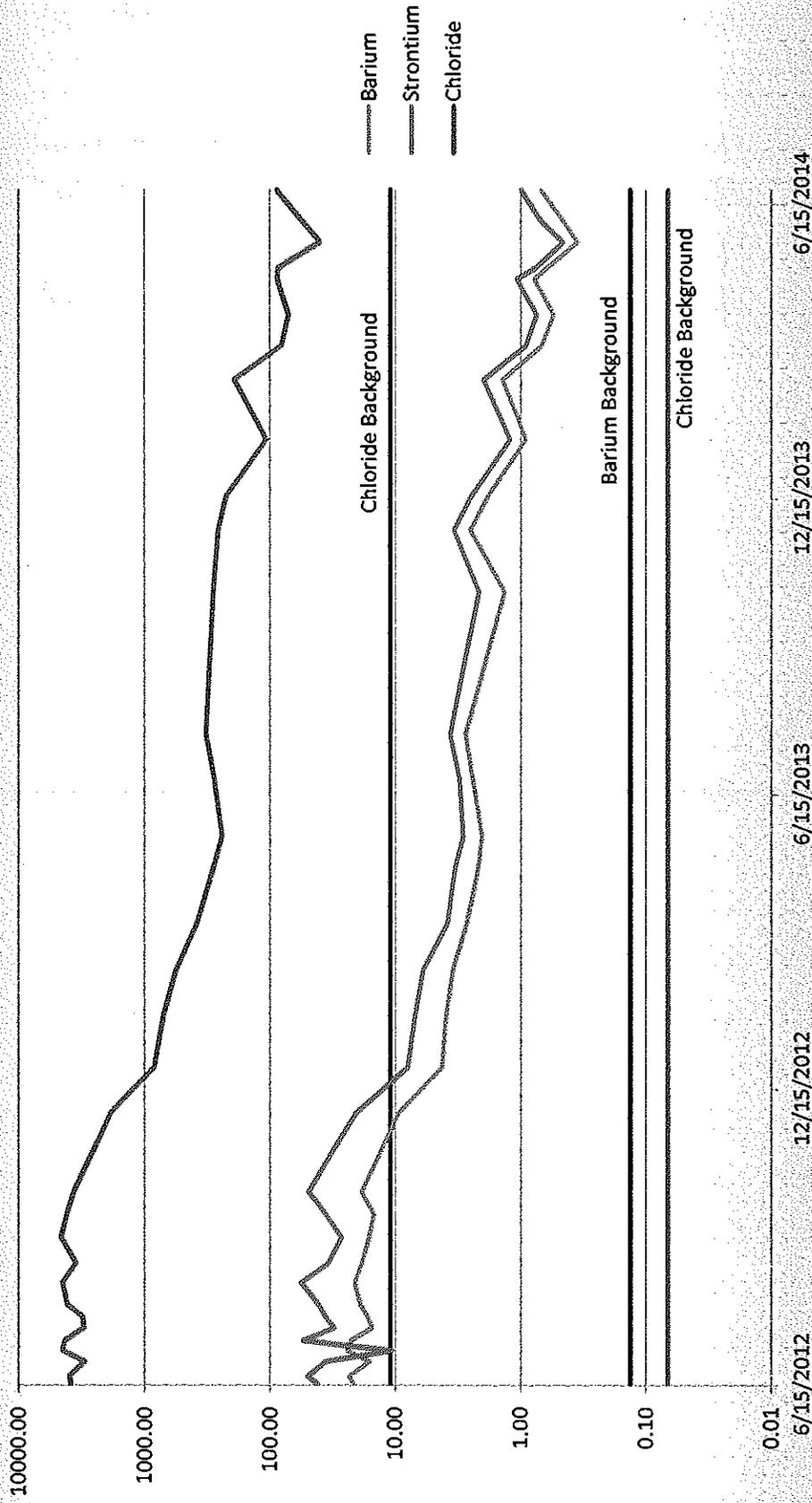
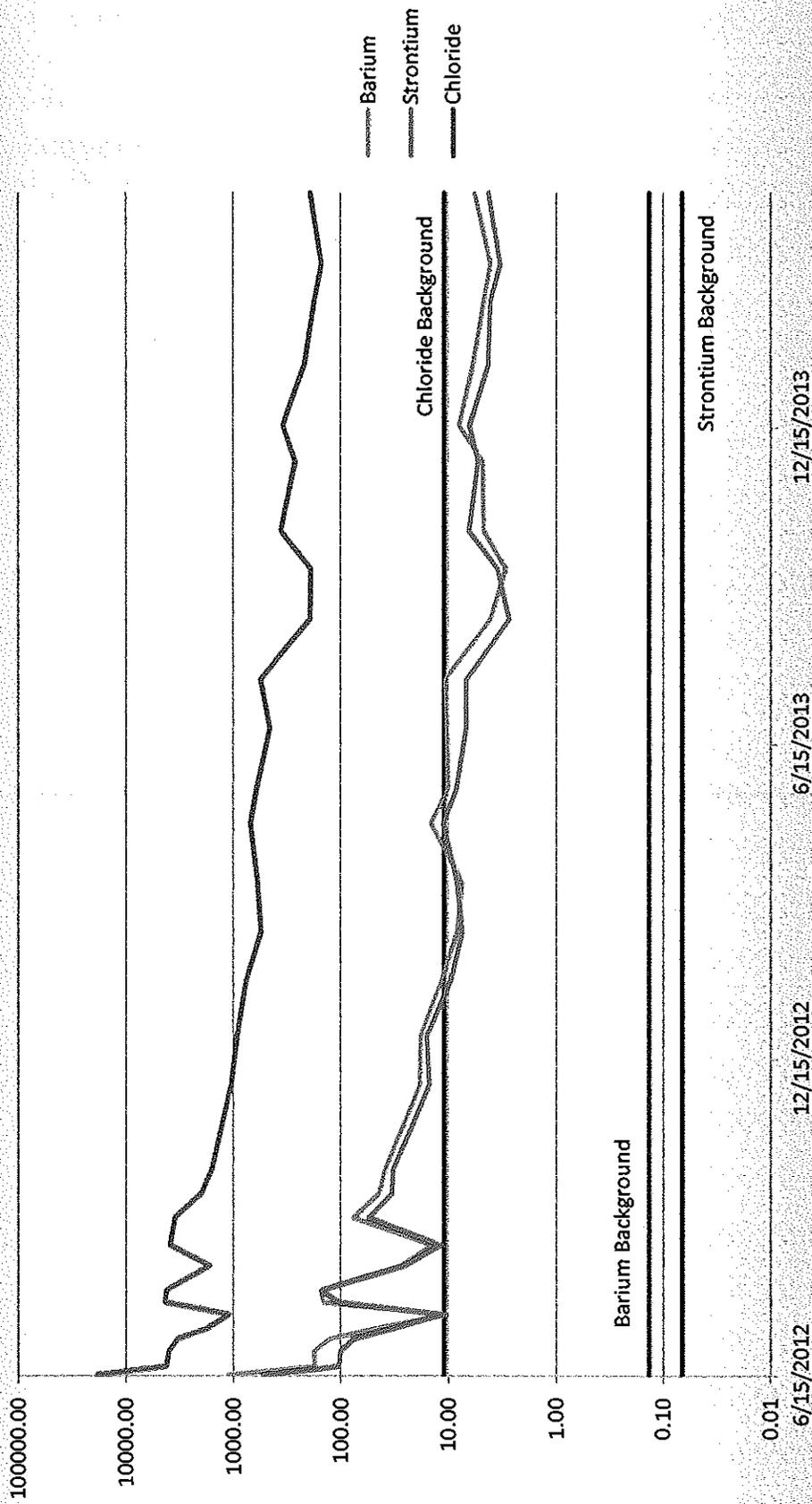
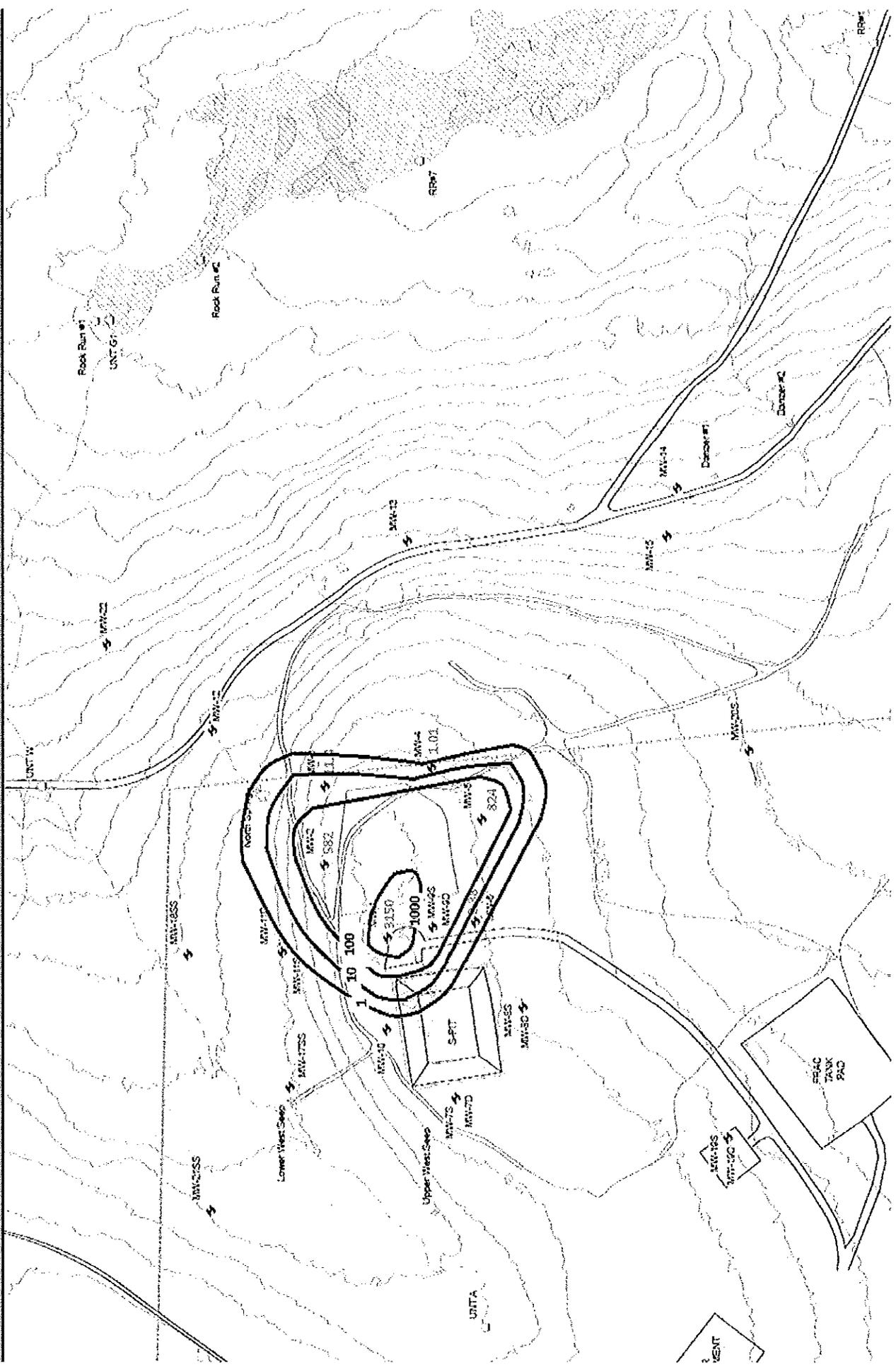


Exhibit E: Water quality lower west seeps.



**Exhibit F: Groundwater chloride concentrations in mg/L- May 30, 2012.
Secondary Maximum Contaminant Level (SMCL) is 250 mg/L.**



**Exhibit G: Groundwater chloride concentrations in mg/L - June 25, 2014,
Secondary Maximum Contaminant Level (SMCL) is 250 mg/L.**

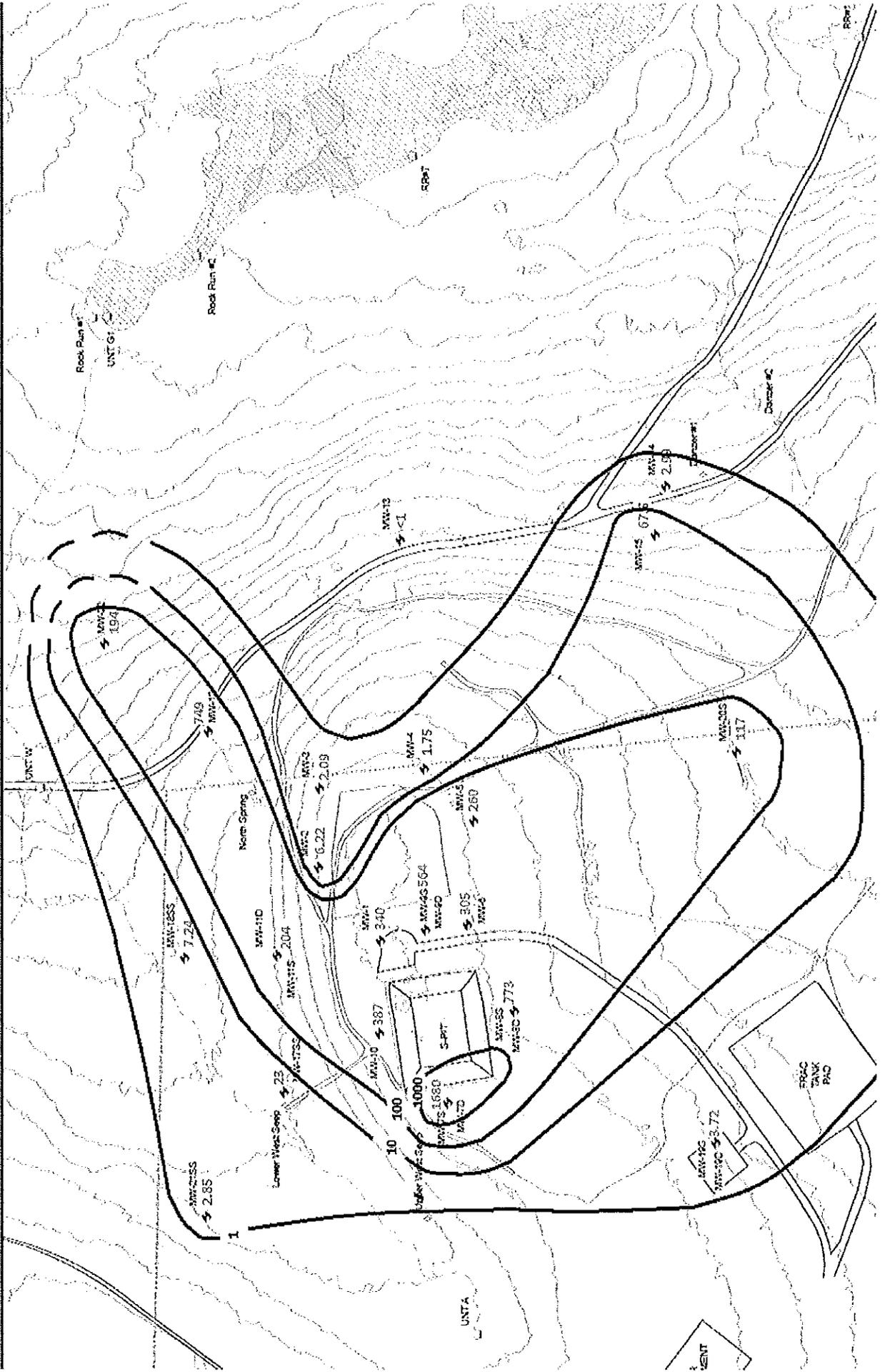
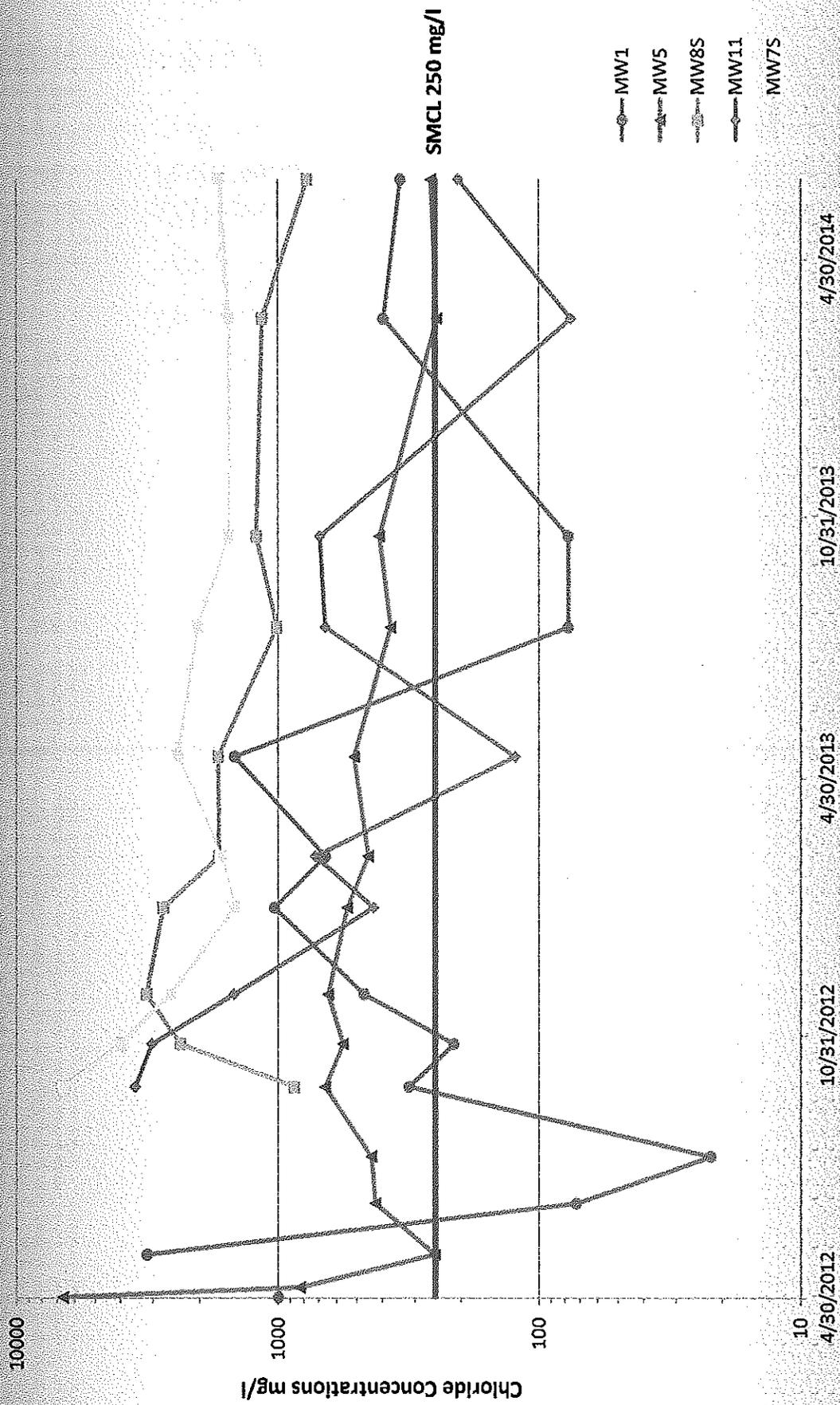


Exhibit H: Chloride concentrations versus time in select wells.



Pipeline contractors face trespassing charges in Craig County

By Duncan Adams duncan.adams@roanoke.com 981-3324 | Posted: Thursday, May 28, 2015 5:30 pm

Two Ohio men conducting environmental surveys for the proposed Mountain Valley Pipeline project were arrested and charged Tuesday night with misdemeanor trespass in Craig County after being accused of crossing private properties to complete survey work in the Jefferson National Forest.

Josiah G. Kleinhens, 19, and Lawrence Brewer, 61, both from Cincinnati, were not detained and are due to appear in court Tuesday in New Castle.

Read more: [Craig Co. crowd registers clear opposition to MVP](#)

The men, driving a pickup, are accused of using a private road serving the Foxfire subdivision, a rural housing development near Craig County's boundary with Montgomery County, to access the Jefferson National Forest to conduct environmental surveys along a possible pipeline route.

As proposed, the 42-inch diameter buried pipeline would transport natural gas at high pressure from Wetzel County, West Virginia, to another transmission pipeline in Pittsylvania County.

Routes proposed by Mountain Valley could impact Craig County residents and cross portions of the Jefferson National Forest. The 300-mile, \$3.2 billion pipeline project has stirred fierce opposition along its proposed routes but has also received support, including from Gov. Terry McAuliffe.

Two separate residents of the Foxfire subdivision said that the development's drive is clearly posted as private and that the subdivision also has "no trespassing" signs that specifically bar entry for survey work for the proposed pipeline.

Natalie Cox, a spokeswoman for Mountain Valley Pipeline, said the men are employees of Environmental Services and Innovations, or ESI, a Cincinnati-based subcontractor to Tetra Tech, which is the pipeline project's lead environmental survey contractor.

Mountain Valley has reported that ESI's crews are focused on identifying the presence of threatened or endangered species along a potential route.

Foxfire resident Ken Broughman said the men had plants in their possession when they emerged from the national forest Tuesday afternoon but said he was unable to identify the plants' species.

Broughman said the son of another Foxfire property owner first spotted the unmarked pickup, which was parked on the family's property and bore North Carolina license plates. Broughman called the sheriff's office.

In an email Wednesday, Cox confirmed that the men had been arrested but suggested that they were unaware the road was private.

"The ESI contractors conducting the environmental surveys appear to have accidentally parked their vehicle on the edge of a private road," Cox said. "However, it is unclear whether there was a 'no trespassing' sign posted, as they were unaware that this was a private road."

Broughman, who was at the scene Tuesday, rejected that account. He said both men acknowledged having seen the sign that described the drive as private. He said they would have driven right past other signs that specifically forbade pipeline survey work, and the way they parked the pickup suggested an effort to conceal it from view.

"They knew what they were doing," Broughman said.

Nancy Nemeč, another Foxfire resident, said a sign at the start of the road clearly states that it is a private drive. And she said the men would have passed at least seven signs that specifically bar pipeline-related surveys.

Many residents of Craig County, including residents of the Foxfire subdivision, have mailed certified letters to Mountain Valley Pipeline or its contractors that forbid access to their properties for survey work.

Copies of the certified letters have been shared with Craig County Sheriff Clifford Davidson, who said Thursday that he has received copies of roughly 50 such letters.

Davidson said it is clear that many residents of Craig County adamantly oppose the pipeline routing through the county.

Mountain Valley has said it will seek a court order to gain entry to private lands for surveying if property owners along a proposed route deny access.

Nemeč said her property could end up being adjacent to a pipeline route.

Both Nemeč and Broughman said the contractors' alleged trespass, which they contend was willful, makes them wonder what might happen during pipeline construction if the Federal Energy Regulatory Commission grants approval for the project.

Meanwhile, Ken Landgraf, natural resources group staff officer for the George Washington and Jefferson National Forests, said collecting plant samples could be acceptable practice under the special use permit granted to Mountain Valley to allow pipeline-related survey work in the Jefferson National Forest.

“It is common practice in conducting botanical surveys to collect samples of some plants to take back to the office/lab for identification,” Landgraf said Wednesday.

But the collection of endangered or threatened plant species would not be allowed, he said.

The organization Preserve Craig and others implored the Forest Service not to grant the special use permit. More than 50 percent of Craig County is Forest Service land.

Landgraf was asked whether the Forest Service will spot check the work of the survey crews when possible.

“Yes, we will,” he said. “The surveys have just started and I don’t believe we have been out yet, but will be soon.”