

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

EQT Production Company	:	Violations of the 2012 Oil and Gas Act; and
625 Liberty Avenue	:	The Clean Streams Law
Pittsburgh, PA 15222	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“COA”) is entered into this 6th day of November 2018, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and EQT Production Company (“EQT”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce Chapter 32 of Title 58 of the Pennsylvania Consolidated Statutes, 58 Pa. C.S. §§ 3201 – 3274 (“2012 Oil and Gas Act”); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 – 691.1001 (“The 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 (“Regulations”).

B. EQT, a Pennsylvania corporation, is engaged in various oil and gas exploration and production activities in Pennsylvania. EQT’s business address is 2400 Zenith Ridge Road, Suite 200, Canonsburg, PA 15317.

C. EQT is the owner and operator of the Monongahela to Rostosky Waterline (“Waterline”), located in Forward Township, Allegheny County. EQT plans to use the Waterline to transport freshwater from the Monongahela River to the Rostosky Well Site for use in unconventional well development.

D. EQT is the permittee of the Erosion and Sediment Control General Permit authorization for earth disturbance associated with the Waterline, number ESX16-003-0001 (“Monongahela to Rostosky Waterline ESCGP-2”), issued on September 16, 2016.

E. On July 15, 2016, EQT submitted to the Department an application for the Monongahela to Rostosky Waterline ESCGP-2 (“Application”). Question No. 11 of the Notice of Intent Form (“NOI”) contained within the Application asks, “Has the project site been investigated to identify naturally occurring geologic formations or soil types that may cause pollution when disturbed?” EQT answered Yes to this question. The following question on the NOI asks, “Have *naturally occurring geologic formations* or soil types that may cause pollution when disturbed been identified?” (emphasis added). EQT answered No.

F. The Application included, as Attachment 5, an Erosion and Sedimentation and Restoration Plan, dated July 2016 (“E&S Plan”). The E&S Plan has a section entitled “Naturally Occurring Geologic Formations” on page 5. Within the “Naturally Occurring Geologic Formations” section, the E&S Plan states “near surface strata in the project area are included within both the Casselman Formation and Monongahela Formation”. The E&S Plan describes the types of strata expected within each formation. It also notes that “some commercial coal may be present”, and that there are “several abandoned coal mines within the limit of disturbance of the site.”

G. EQT relied upon a regional map, which generally described the mine pools in this area as “not flooded or unknown” (WV173 Phase IV EPA Region III Mine Pool Project, 2004) but did not undertake any further investigation.

H. On January 29, 2017, EQT was using horizontal directional drilling (“HDD”) to bore a hole for the Waterline under State Route 136. Near the area where the bore was

occurring, there were seeps of orange water. During boring activities, EQT inadvertently bored into an abandoned coal mine (the Gallatin mine), causing a discharge of Abandoned Mine Drainage (“AMD”) water onto the ground and into waters of the Commonwealth.

Approximately four million gallons of AMD water were released from the mine through the waterline bore to unnamed tributaries to the Monongahela River, the Monongahela River, and associated wetlands. The discharge from the waterline bore hole was stopped by EQT on January 31, 2017. EQT described the pre-existing visibility of AMD in a letter dated August 24, 2017, as follows: “aerial photography dated 2013, shows that the stormwater drainage swale south of Route 136 was orange with mineral staining from AMD. EQT also observed dry weather flow of what appeared to be AMD in the stormwater swale prior to drilling activities.”

I. AMD water is an “industrial waste” as that term is defined in Section 1 of The Clean Streams Law, 35 P.S. § 691.1.

J. On the dates and at the location set forth in Paragraph H, EQT:

1. Discharged industrial waste into waters of the Commonwealth in a manner not authorized by the rules and regulations of the Department, in violation of Sections 301 and 307 of The Clean Streams Law, 35 P.S. §§ 691.301 and 691.307;

2. EQT’s interim measures failed to prevent the release of AMD water from reaching waters of this Commonwealth, in violation of 25 Pa. Code §§ 78a.66(b)(3)(i) and 91.34(a); and

3. Failed to properly contain fluids, in violation of 25 Pa. Code § 78a.54.

K. On the dates set forth in Paragraphs G and H, above, EQT failed to adequately identify existing conditions with pollutional potential and did not include all necessary BMPs to

avoid or minimize potential pollution and its impacts from the geologic formations, in violation of 25 Pa. Code §§ 78a.53 and 102.4(b)(5)(xii).

L. The violations described in Paragraphs J and K, above, constitute unlawful conduct under Sections 401 and 611 of The Clean Streams Law, 35 P.S. §§ 691.401 and 691.611, and Section 3259 of the 2012 Oil and Gas Act, 35 P.S. § 3259; constitute a public nuisance under Section 307 of The Clean Streams Law, 35 P.S. § 691.307; and subject EQT to a claim for civil penalties under Section 605 of The Clean Streams Law, 35 P.S. § 691.605, and Section 3256 of the 2012 Oil and Gas Act, 35 P.S. § 3256.

M. As of August 17, 2017, all violations cited in this COA were corrected.

N. Since the latest dates in Paragraph H, EQT has implemented a multi-department process to prevent future mine water releases that includes coal, permitting, environmental, construction, land, and legal professionals, and outside consultants. EQT states that this process starts with a thorough desktop review of multiple sources of publicly available information on Acid Producing Rock (“APR”), then moves to a summary of that review and, if the review indicates that APR or AMD could be encountered or is unknown, a plan for a field investigation. EQT also develops soil testing plans to avoid “any areas of increased risk for APR discharge,” which include, but are not limited to, areas that were previously mined by surface, auger, or deep mining; mine voids (tunnels, shafts, vents, etc.); mine workings/voids near the river; coal seams that are mined or disturbed; and APR influenced discharges. EQT conducts a thorough on-site investigation, if warranted, and prepares an APR report that details how the APR will be avoided, handled, and disposed of. All this information is then used by engineering to design well lines/water lines to avoid a release.

O. EQT reestablished the subsurface collection and conveyance system for the abandoned Gallatin coal mine in Forward Township, Allegheny County, at 40° 11' 51" N, 79° 53' 30.95" W (the "Mine Drain"). The purpose of the Mine Drain was to reestablish an existing collection and drainage system for mine water that had existed after the closing of the abandoned mine and to convey that water to the existing Pennsylvania Department of Transportation ("PADOT") stormwater catch basin located on the north side of State Route 136 ("SR 136"). The design and location of the Project are described in a letter report dated August 24, 2017 from Groundwater Sciences Corporation, attached as Exhibit A.

P. As part of this settlement, EQT has agreed to create a fund with a third-party, specifically the Clean Stream Foundation, a Pennsylvania Charitable Trust, to provide for the maintenance, operation, and replacement of the Project. The total cost of the fund is \$100,000.00, which EQT has agreed to pay.

Q. The Department will be the beneficiary of the fund identified in Paragraph P, above. The Department, through its Bureau of Abandoned Mine Reclamation ("BAMR") is willing to oversee performance of maintenance, operation, and replacement of the Mine Drain upon EQT's creation of the fund identified in Paragraph P, above.

Order

After full and complete negotiation of all matters set forth in this Consent Order and Agreement, and upon mutual exchange of the covenants contained herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by EQT as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5, 316, and 610 of The Clean Streams Law, 35 P.S.

§§ 691.5, 691.316, and 691.610; Section 3253 of the 2012 Oil and Gas Act, 58 Pa. C.S. § 3253; and, Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. ***Findings.***

a. EQT agrees that the Findings in Paragraphs A through K and M through Q, above, are true and correct and, in any matter of proceeding involving EQT and the Department, EQT shall not challenge the accuracy or validity of these Findings.

b. The Parties do not authorize any other persons to use the Findings in this Consent Order and Agreement in any matter or proceeding.

3. ***Civil Penalty Settlement.*** Upon signing this Consent Order and Agreement, EQT shall pay a civil penalty of Two Hundred Ninety-Four Thousand Dollars (\$294,000.00). This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs J and K, above. The payment shall be by corporate check or the like, made payable to "Commonwealth of Pennsylvania" and sent to the address set forth in Paragraph 10 (Correspondence with the Department), below, or by wire transfer to the account number provided by the Department for deposit by the Department into the appropriate special funds, as identified by the Department.

4. ***Funding of Drain Maintenance.***

a. Within ten (30) days of the date of this Consent Order and Agreement, EQT shall enter into a Participation Agreement with the Clean Stream Foundation, and create the "Rostosky Maintenance & Replacement Fund," with the Department as beneficiary, for the purpose of providing for the maintenance, operation, and replacement of the Project, as described in Paragraph P, above. The amount of the fund shall be \$100,000.00 and shall be paid contemporaneously with the creation of the Rostosky Maintenance & Replacement Fund.

b. Within 10 business days of creation of the Rostosky Maintenance & Replacement Fund, EQT shall provide to the Department a copy of the fully executed Participation Agreement and submit, to the Department, proof of full funding of the Rostosky Maintenance & Replacement Fund.

5. *Stipulated Civil Penalties*

a. If EQT fails to comply in a timely manner with any applicable term or provision of this Consent Order and Agreement, EQT shall be in violation of this Consent Order and Agreement, and, in addition to other applicable remedies, EQT shall pay the following civil penalty: \$1,000 for each day for failing to complete obligation set forth in Paragraph 4.a., 4.b., and 4.c., above.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month. Stipulated civil penalty payments shall be forwarded as described in Paragraph 3 (Civil Penalty Settlement), above.

c. Any payment under this Paragraph shall neither waive EQT's duty to meet its obligations under this Consent Order and Agreement, nor preclude the Department from commencing an action to compel EQT's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only EQT's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalty payments shall be due automatically and without notice.

6. *Costs.* EQT shall not deduct the Civil Penalty for any tax purpose or otherwise obtain favorable tax treatment for those costs.

7. ***Additional Remedies.***

a. If EQT fails to comply with any provision of this Consent Order and Agreement, EQT shall be in violation of this Consent Order and Agreement, and the Department may, in addition to the remedies prescribed herein or, pursue any remedy available for a violation of an order of the Department.

b. The remedies provided by this Paragraph and Paragraph 5 (Stipulated Civil Penalties), above, are cumulative, and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

c. The Department may pursue any remedy available for failure to pay a civil penalty, including the filing of this Consent Order and Agreement as a lien in any county in this Commonwealth for the amount of \$294,000.00 for a failure to comply with Paragraph 3, above, and/or the amount of \$100,000.00 for failure to pay the sums set forth in Paragraph 4.a., above.

8. ***Liability of Operator.*** EQT shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. EQT also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

9. ***Reservation of Rights.*** The Department reserves the right to require additional measures to achieve compliance with applicable law. EQT reserves the right to challenge any action which the Department may take to require those measures.

10. ***Correspondence with the Department.*** All correspondence with the Department concerning this consent Order and Agreement and documents submitted in compliance with this Consent Order and Agreement shall be addressed to:

Attn. Dave McDermott
Environmental Group Manager
Southwest Oil and Gas Operations
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
Phone 412-442-5866

11. ***Correspondence with EQT.*** All correspondence with EQT concerning this Consent Order and Agreement shall be addressed to:

Attn. Stephanie Gallogly, Counsel
EQT Production Company
635 Liberty Avenue
Pittsburgh, PA 15222

EQT shall notify the Department in writing whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

12. ***Decisions Under Consent Order and Agreement.*** Except as provided in Paragraph 4, above, any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that the civil penalty and/or the stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S.A. § 101. Any objection that EQT may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

13. **Severability.** The Paragraphs of this Consent Order and Agreement shall be severable, and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the Parties.

14. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provisions herein in any litigation or any other proceeding.

15. **Attorney Fees.** The Parties shall bear their respective attorney fees, expenses, and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

16. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the Parties.

17. **Titles.** A title used at the beginning of any Paragraph of this Consent Order and Agreement may be used to aid in the construction of that Paragraph, but shall not be treated as controlling.

18. **Termination of Consent Order and Agreement.** EQT's obligations, but not the Findings, of this Consent Order and Agreement shall terminate when EQT has: 1) completed all of the requirements of this Consent Order and Agreement; and 2) paid any outstanding stipulated civil penalties due under Paragraph 5 (Stipulated Civil Penalties), above. In all cases, EQT shall complete all obligations set forth under this Consent Order and Agreement no later than **October 31, 2019.**

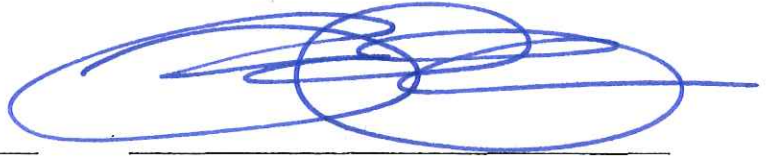
IN WITNESS WHEREOF, the Parties have caused this Consent Order and Agreement to be executed by their duly authorized representatives. EQT certifies under penalty of law, as provided by 18 Pa. C.S.A. § 4904, that it consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that it hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S.A. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by EQT's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR EQT PRODUCTION COMPANY:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Name: DAVID M. ELKIN
Title: SVP ASSET OPTIMIZATION



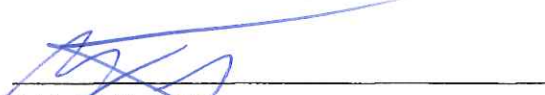
Daniel F. Counahan
District Manager
Southwest Oil and Gas Operations

M/A

Name:
Title:



Name: TERRY R. BESSEY
Attorney for EQT Production Company



Richard T. Watling
Assistant Counsel
Southwest Regional Office

Exhibit A