

# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet



County

For Prothonotary Use Only:	
Docket No:	2176 of 2019 GD

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

<b>Commencement of Action:</b>	
<input checked="" type="checkbox"/> Complaint	<input type="checkbox"/> Writ of Summons
<input type="checkbox"/> Transfer from Another Jurisdiction	<input type="checkbox"/> Declaration of Taking
<input type="checkbox"/> Petition	
Lead Plaintiff's Name: Brent G. Broadwater and Wanda Y. Broadwater	Lead Defendant's Name: Chevron Appalachia, LLC
Are money damages requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Dollar Amount Requested: (check one) <input type="checkbox"/> within arbitration limits <input checked="" type="checkbox"/> outside arbitration limits
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: Jennifer Schiavoni, Esq.	
<input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

**Nature of the Case:** Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

SECTION B

<p><b>TORT</b> (do not include Mass Tort)</p> <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____ _____	<p><b>CONTRACT</b> (do not include Judgments)</p> <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____ _____	<p><b>CIVIL APPEALS</b></p> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____ _____
<p><b>MASS TORT</b></p> <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____ _____	<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____ _____	<p><b>MISCELLANEOUS</b></p> <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations <input type="checkbox"/> Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____ _____
<p><b>PROFESSIONAL LIABILITY</b></p> <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____ _____		

4/11/19  
 2/11/19  
 no instructions

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

BRENT G. BROADWATER and  
WANDA Y. BROADWATER, husband  
and wife,

Plaintiffs,

v.

CHEVRON APPALACHIA, LLC, a  
Pennsylvania Limited Liability  
Company, in its own right and as  
successor-in-interest to ATLAS  
AMERICA, LLC, ATLAS ENERGY  
RESOURCES, LLC and ATLAS  
ENERGY, INC., CHEVRON U.S.A.,  
INC., a Pennsylvania Corporation, in its  
own right and as successor-in-interest to  
ATLAS AMERICA, LLC, ATLAS  
ENERGY RESOURCES, LLC and  
ATLAS ENERGY, INC.,

Defendants.

CIVIL DIVISION

Case No.:

2176 of 201960

Type of Pleading:

**COMPLAINT IN CIVIL ACTION  
AND CLAIM FOR EQUITABLE  
RELIEF**

FILED ON BEHALF OF:  
Plaintiffs

COUNSEL OF RECORD FOR THIS  
PARTY:

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**JURY TRIAL DEMANDED**

FILED  
2019 OCT -4 PM 1:10  
FAYETTE COUNTY  
PROthonotary

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

BRENT G. BROADWATER and WANDA Y. BROADWATER, husband and wife,	)	CIVIL DIVISION
	)	Case No.:
	)	
Plaintiffs,	)	
	)	Type of Pleading:
v.	)	<b>COMPLAINT IN CIVIL ACTION AND</b>
	)	<b>CLAIM FOR EQUITABLE RELIEF</b>
CHEVRON APPALACHIA, LLC, et al.	)	
	)	FILED ON BEHALF OF:
Defendants,	)	Plaintiffs
	)	
	)	
	)	
	)	

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your 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 court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED RATE OR NO FEE.

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Pennsylvania Bar Association  
100 South Street  
P.O. Box 186 Harrisburg, PA 17108  
Telephone: 1-800-692-7375**

IN THE IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

BRENT G. BROADWATER and WANDA Y. BROADWATER, husband and wife,	)	CIVIL DIVISION
	)	Case No.:
	)	
Plaintiffs,	)	
	)	Type of Pleading:
v.	)	<b>COMPLAINT IN CIVIL ACTION AND</b>
	)	<b>CLAIM FOR EQUITABLE RELIEF</b>
CHEVRON APPALACHIA, LLC, et al.	)	
	)	FILED ON BEHALF OF:
Defendants,	)	Plaintiffs
	)	
	)	
	)	
	)	

**COMPLAINT IN CIVIL ACTION**

AND NOW, come the Plaintiffs, Brent G. Broadwater and Wanda Y. Broadwater, husband and wife, (collectively, the “Plaintiffs” or “Broadwaters”), by and through their counsel, Smith Butz, LLC, and files the following Complaint in Civil Action:

**PARTIES**

1. Plaintiff, Brent G. Broadwater, is an adult individual residing at 254 Cemetery Road, East Millsboro, PA 15433. Brent is the husband of Wanda Y. Broadwater and owns the property located at Fayette County Tax Parcel Identification No. 19-25-018602, with his wife.
2. Plaintiff, Wanda Y. Broadwater, is an adult individual residing at 254 Cemetery Road, East Millsboro, PA 15433. Wanda is the wife of Brent G. Broadwater and owns the property located at Fayette County Tax Parcel Identification No. 19-25-018602, with her husband.
3. Defendant, Chevron Appalachia, LLC, is a Pennsylvania limited liability company with a business address of 700 Cherrington Parkway, Moon Township, PA 15108-4315.



4. Defendant, Chevron U.S.A., Inc., is a Pennsylvania Corporation with a business address of 700 Cherrington Parkway, Moon Township, PA 15108-4315.

5. Defendants Chevron Appalachia, LLC, and Chevron U.S.A., Inc., are collectively referred to as "Chevron". Upon information and belief, Chevron is the successor-in-interest to Atlas America, LLC, Atlas Energy Resources, LLC, and Atlas Energy, Inc., which were acquired by Chevron.

### **FACTS AND BACKGROUND**

#### **I. The Plaintiffs' Property**

6. The Plaintiffs acquired certain real property located in Luzerne Township, Fayette County, Pennsylvania identified as Tax Parcel Identification No. 19-25-018602 (the, "Property") on January 31, 1992, from Alvinia L. Broadwater, widow, by deed recorded in the Fayette County Recorder of Deeds' Office in Deed Book Volume 931, Page 9. *See*, January 31, 1992, Deed from Alvinia L. Broadwater to Plaintiffs, a copy is attached hereto as **Exhibit 1**.

7. The Property consists of approximately 131.8000 acres.

8. Plaintiff, Brent Broadwater, was born and raised on the Property, which has been used for his family's farm since the time Brent was a child. Neither Brent nor any of his previous family members have ever experienced a seep developing on the Property, prior to operations at the National Mines Site.

9. Since first acquiring the Property in 1992, the Plaintiffs used the Property to raise cattle and sell the same to members of the public. The Plaintiffs' primary source of income is derived through a cow/calf operation. Plaintiffs raise heifers (young female cows) on the Property for breeding. Plaintiffs then sell the calves borne to the heifers.

10. Plaintiffs also use the Property for a large hay operation and to plant corn and oat in order to generate feed for their cattle.

11. Up until recent times, Plaintiffs have partially relied on ground well water and natural springs for their cattle and their cow/calf operation. Plaintiffs have never experienced issues with the water quality prior to the beginning of operations at the National Mines Site, described *infra*.

## **II. Overview of the National Mines Well 26H Site**

12. The National Mines Well 26H Site located in Luzerne Township, Fayette County, Pennsylvania consisted of 6.39 acres of a well pad, a drill cuttings pit, and three (3) impoundments, (collectively, "National Mines Site"). The National Mines Site was located on Plaintiffs' Property.

13. The well pad consists of the site cleared for drilling of the gas wells (the "National Mines Well Pad").

14. The drill cuttings pit is a lined earthen pit designed and constructed to contain contaminated drill cuttings, drilling fluids and related mineral residues generated during the drilling of oil and gas wells (the "National Mines Drill Cuttings Pit" or "Drill Cuttings Pit").

15. An impoundment is an earthen pit several acres in size containing flowback/produced water which has been used during the hydraulic fracturing process and then brought back to the surface for storage and reuse. The Impoundments on the National Mines Site will be referred to as the "National Mines Impoundments" or "Impoundments."

16. Upon information and belief, the National Mines Site was originally owned and/or operated by Atlas America, LLC, Atlas Energy Resources, LLC, and/or Atlas Energy, Inc. (collectively "Atlas"). Subsequently, Chevron acquired Atlas at which time Chevron assumed full ownership and responsibility for the National Mines Site.

17. At all times relevant, Atlas and/or Chevron were responsible for the construction, operation, and closure of the National Mines Site, including the disposal, treatment or transport of the hazardous substances and residual waste associated with the National Mines Site.

18. Chevron has acknowledged in its Annual Report, 10-K Filing to the United States Securities and Exchange Commission that its operations, "...have inherent risks and hazards that require significant and continuous oversight." *See*, Chevron's Annual Report, 10-K Filing, for 2010, at p. 32. Chevron explained to its investors that: "...[F]ailure to manage these risks effectively could result in unexpected incidents, including releases, explosions or mechanical failures resulting in personal injury, loss of life, environmental damage, loss of revenues, legal liability and/or disruption to operations." *Id.*

19. Even though its operations at the National Mines Site were within close proximity to Plaintiffs' cattle and farm, Chevron never warned Plaintiffs of any of these known risks.

### **III. Construction of the National Mines Site; Drilling and Completions of the National Mines #26 Well**

20. On October 5, 2009, the Pennsylvania Department of Environmental Protection ("PA DEP") approved the Erosion and Sedimentation Plan (ESCGP-1) submitted by Atlas for the National Mines Site. The PA DEP issued an original Erosion and Sedimentation Control General Permit (ESCGP -1) allowing for construction of the National Mines Site to begin. *See*, Sept. 29, 2009, ESCGP-1 for National Mines Site, attached hereto as **Exhibit 2**.

21. The Erosion and Sedimentation Plan for the National Mines 26H Site contained a well pad measuring 335' x 350' in size and a single drill cuttings pit. *See*, Exhibit 2. The original approved ESCGP-1 for the National Mines 26H well site never contained three (3) impoundments nor was it approved for three (3) impoundments to be constructed. *Id.*

22. On October 20, 2009, a revised ESCGP-1 was submitted and later approved by the PA DEP with changes made only to the access road and a reduction in the acreage involved in the project. *See*, Oct. 20, 2009, ESCGP-1 for National Mines Site, attached hereto as **Exhibit 3**.

23. With its ESCGP-1 applications, Atlas submitted to the PA DEP its "Preparedness, Prevention and Contingency Plan" ("PPC Plan"). *See*, PPC Plan for National Mines Site, attached hereto as **Exhibit 4**.

24. On June 7, 2010, the Well Permit for the National Mines 26H Well was approved by the PA DEP. *See*, Well Permit for National Mines 26H, attached hereto as **Exhibit 5**.

25. Upon information and belief, on or about August 20, 2010, horizontal drilling for the National Mines 26H Well was underway.

26. To aid in the natural gas extraction process, Atlas constructed its Drill Cuttings Pit at the National Mines Site to contain the drill cuttings, fluids, mud and related mineral residues generated by the physical drilling of the National Mine #26H Well. The substances in the Drill Cuttings Pit were both hazardous and toxic.

27. Once drilling operations were completed for the National Mines #26H Well, Atlas undertook the completions process known as hydraulic fracturing.

28. Hydraulic fracturing generally consists of forcing a mixture of water, proppant, and chemicals, commonly referred to as "frac fluid," down the wells at high pressure in order to fracture the rock/shale formation and hold those fractures open to allow the natural gas and other hydrocarbons to flow freely into the well. Hydraulic fracturing requires the discharge of enormous volumes of frac fluid.



29. The composition of frac fluid includes chemicals that are carcinogenic and toxic, including but not limited to, diesel fuel, products containing volatile organic compounds and semi-volatile organic compounds, additives, scale inhibitors, biocides and lubricating materials.

30. Frac fluid that is returned to the surface (“flowback” or “produced water”) contains hazardous, radioactive materials, and other toxic substances.

31. On or about October 12, 2010, hydraulic fracturing of the National Mines #26H Well was underway. *See*, E-mail between Atlas and PA DEP, attached hereto as **Exhibit 6**. Prior to hydraulic fracturing beginning, three (3) impoundments were constructed on the National Mines Site to retain, at a minimum, the flowback/produced fluid from the Site.

32. On or about December 10, 2010, hydraulic fracturing of the National Mines #26H Well was finished and the Well Completion Record was submitted to the PA DEP. *See*, Well Completion Record for National Mines #26H, attached hereto as **Exhibit 7**.

#### **IV. Permitting Requirements for the National Mines Drill Cuttings Pit**

33. At the time the National Mines Site was built and in operation, Chapter 78 of the regulations issued pursuant to Pennsylvania’s Oil and Gas Act governed the construction, operation, closure, and restoration of oil and gas drill cuttings pits. *See*, 25 Pa. Code Chapter 78.<sup>1</sup>

34. Any and all waste contained in a drill cuttings pit sought to be buried on-site must satisfy the requirements of the Chapter 78, including specifically *See*, 25 Pa. Code § 78.62(a)(5)-(18). Specifically, any liner used in a drill cuttings pit must satisfy the requirements of EPA 9090 chemical compatibility testing, discussed *infra. Id.* at § 78.62(a)(11).

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<sup>1</sup>In October of 2016, 25 Pa. Code Chapter 78A was enacted relative to unconventional wells.

35. Any substances buried on-site must meet the requirements set forth in 25 Pa. Code § 78.62(b)(1)-(4), as demonstrated through chemical analyses of the waste remaining in the drill cuttings pit.

36. Atlas submitted an application to the PA DEP for an OG-71 Permit – Request for Approval of Alternative Waste Management Practices, associated with the National Mines Drill Cuttings Pit. *See*, Application for OG-71 Permit for National Mines, attached hereto as **Exhibit 8**. This application for an OG-71 Permit was requested by Atlas specifically to dispose the waste contained in the Drill Cuttings Pit at the Site.

37. On or about September 23, 2010, Atlas' OG-71 Permit request was approved by the PA DEP. *See*, OG-71 Permit for National Mines, attached hereto as **Exhibit 9**. Atlas was permitted to solidify and dispose of residual waste on the National Mines Site in the Drill Cuttings Pit while using only the product known as "Soli-Bond". *Id.*

#### **V. Permitting Requirements for the National Mines Impoundments**

38. In addition the Oil and Gas Act Chapter 78 regulations, Pennsylvania's Solid Waste Management Act, Clean Streams Law, and Dam Safety & Encroachments Act govern the construction, operation, use, closure, and restoration of a wastewater impoundment associated with oil and gas development activities. *See*, 35 P.S. §§ 6018.101 *et seq.*; 35 P.S. §§ 691.1 *et seq.*; 32 P.S. §§ 693.1 *et seq.*

39. Separate from its permit received related to the Drill Cuttings Pit, Atlas was required to secure a permit from the PA DEP to construct, operate and close the Impoundments. *See*, 25 Pa. Code § 78.57. This permit issued by the PA DEP is meant to ensure continued PA DEP oversight and compliance with Pennsylvania law, including regulations governing the design and construction of impoundments. *See*, 25 Pa. Code §§ 78.54-78.64.

40. The PA DEP promulgated design standards for impoundments. *See*, 25 Pa. Code § 105.54; 25 Pa. Code § 288.434-436; 25 Pa. Code § 78.57-62; 25 Pa. Code § 289.262. These rules and regulations were enacted and became effective before the design or construction of the National Mines Site and Impoundment. *Id.*

#### **VI. Two-Liner System for Impoundments**

41. In order to protect the surrounding environment, regulations regarding design and construction set forth mandatory requirements for the liner systems used in such impoundments. *See*, 25 Pa. Code §§ 288.434-436. These regulations require that impoundments, like National Mines, be lined with two (2) impermeable liners, and a leak detection zone in between them. *See id.*

42. Pennsylvania regulations require that the liner system for impoundments include the following elements:

- a. Sub base;
- b. Secondary liner;
- c. Leak Detection Zone;
- d. Primary Liner.

*See*, 25 Pa. Code § 288.431.

43. The primary liner is designed to be the primary barrier between the fluid in the impoundment and the surrounding soil and groundwater. It holds the water or flowback fluid and prevents it from entering the secondary liner. The primary liner cannot be adversely affected by the physical and chemical characteristics of fluid that it is in contact with, whether during design, installation or use. *See*, 25 Pa. Code § 288.436.

44. The secondary liner is designed to prevent fluid from leaking into the surrounding soil and groundwater, essentially as a ‘last line of defense’. Like the primary liner, it must be impermeable and must not be adversely affected by the physical and chemical nature of the fluids that it is exposed to. *See*, 25 Pa. Code § 288.434.

45. Pennsylvania regulations require that both the primary liner and the secondary liner used in wastewater impoundments for natural gas development, “satisfy EPA Method 9090, *Compatibility Test for Wastes and Membrane Liners* or other documented data approved by the Department.” *See*, 25 Pa. Code § 78.57. The EPA Method 9090A “is intended for use in determining the effects of chemicals in a surface impoundment . . . on the physical properties of flexible membrane liner (FML) materials intended to contain them.” *See*, EPA Method 9090A.

46. The EPA Method 9090A chemical compatibility testing involves immersing a liner material sample in the chemical environment that it is designed to interact with for a period of several months and examining its physical properties in various fashions, including puncture resistance, tear resistance, elasticity, elongation, hardness and thickness. This testing is meant to determine if the liner will withstand the chemical environment it is intended to be used in.

47. Because of the EPA Method 9090 chemical compatibility test requirements, it is imperative that all chemicals, including all proprietary chemicals, be identified and the quantity and combination of those chemicals be disclosed so that the rigors of the EPA 9090 are complied with. Compliance with this chemical compatibility test is the only way it can be determined that a liner can withstand and survive the chemicals put into it.

48. Regardless of the statutory and regulatory requirements, basic duties of reasonable safety require that steps be taken to ensure that both impoundments and drill cutting pits intended to hold hazardous substances are capable of doing so without unreasonable risk of harm. This



includes, but is not limited to, taking reasonable steps to ensure that the liner(s) utilized are physically and chemically capable of withstanding the substances they are intended to contain.

## **VII. Leak Detection Zone for Impoundments**

49. In addition to the liner requirements, Pennsylvania regulations require that a leak detection zone be created between the primary and secondary liners. *See*, 25 Pa. Code § 288.435.

50. That leak detection zone required regular monitoring and any water found in it must be tested to determine if a leak in the liner exists. The leak detection zone serves to “rapidly detect and collect liquid entering the leak detection zone,” that can then be tested. *See*, 25 Pa. Code § 288.435. The purpose of the leak detection zone is to determine if there has been a breach, such as a hole or tear in the secondary liner, and to provide notice of a leak before it can penetrate the primary liner and enter the groundwater.

51. Regardless of the express requirements of Pennsylvania regulations, general duties of reasonable safety require that reasonable measures be taken to ensure that leaks from impoundments containing hazardous chemicals and substances are prevented, which would include, but not be limited to, the construction of a leak detection zone.

## **VIII. Groundwater Monitoring for Impoundments**

52. Pennsylvania regulations specifically require the installation of a groundwater monitoring system consisting of the following:

- a. At least one (1) monitoring well at a point hydraulically upgradient from the impoundment area in the direction of increasing static head that is capable of providing representative data of groundwater **not** affected by the facility . . .
- b. At least three (3) monitoring wells at points hydraulically downgradient in the direction of decreasing static head from the area in which solid waste has been or will be disposed...

*See*, 25 Pa. Code § 289.262.

53. The “leak detection zone” is designed to show whether fluids have escaped the ‘primary’ liner of the impoundment. The “groundwater monitoring system”, being comprised of the groundwater monitoring wells, is designed to show whether fluids have escaped the ‘secondary’ liner of the impoundment and have entered the soil and groundwater. Thus, the groundwater monitoring system will detect if there has been a complete failure of all other lines of defense in place at an impoundment.

54. Regardless of the express requirements of Pennsylvania regulations, a duty of care requires that reasonable steps be taken to ensure leaks from impoundments are prevented, including, but not limited to, the use of a groundwater monitoring system with groundwater well monitors positioned where fluids and substances leaking from an impoundment would naturally flow—down-gradient.

#### **IX. Unlawful Conduct Regarding the Construction, Operation, and Closure of the National Mines Drill Cuttings Pit**

55. On January 27, 2012, the PA DEP received from Chevron the Well Site Restoration Report for the National Mines Site Well (the “Well Site Report”). *See*, Well Site Report, attached hereto as **Exhibit 11**. The Well Site Report indicates that Chevron closed the Drill Cuttings Pit and buried it on-site with the solidified waste contained in it. *Id.*

56. The Well Site Report also indicates that Chevron utilized the solidification material “Petroset Fixation Solid-L” to solidify the Drill Cuttings Pit’s contents by mixing it with a backhoe. *See*, Exhibit 11. In doing so, the Drill Cuttings Pit liner became increasingly susceptible to degradation, tears, and failure.

57. “Petroset Fixation Solid-L” was not permitted for use by the PA DEP at the National Mines Site. Rather, the PA DEP only approved “Soli-Bond” for use to solidify the Drill

Cuttings Pit's contents for on-site burial. This approval occurred through the OG-71 Permit received by Atlas. *See*, Exhibits 8 & 9.

58. Upon information and belief, Chevron did not apply for an OG-71 Permit to obtain approval to use "Petroset Fixation Solid-L" in the Drill Cuttings Pit waste for on-site burial. It is also reasonably believed and therefore averred that Chevron did not submit to the PA DEP either a Safety Data Sheet (SDS) or Material Safety Data Sheet (MSDS), identifying the chemical composition of "Petroset Fixation Solid-L".

59. On or about September 26, 2013, Chevron's restoration of the Drill Cuttings Pit was not yet complete. Instead, an investigation by the PA DEP revealed that, "issues had arose [sic] at the site such as pit liner holes and violations which delayed restoration." *See*, September 18, 2013, PA DEP Complaint, attached hereto as **Exhibit 10**.

60. Upon information and belief, Chevron failed to inspect the Drill Cuttings Pit liner to ensure that it did not have any holes, rips, or tears prior to burying it with any waste contained in the Drill Cuttings Pit.

61. Upon information and belief, Chevron did not analyze the waste buried on-site in the Drill Cuttings Pit prior to its closure to ensure compliance with 25 Pa. Code § 78.62(b)(1)-(4). Chevron did not ensure that the buried waste would not cause contamination to the soil and groundwater on the Property.

62. Upon information and belief, Chevron did not provide the PA DEP with results from any analyses of the Drill Cuttings Pit waste prior to its on-site burial. The PA DEP was not provided with results to review and ensure that the waste did not contain hazardous and/or toxic contaminants that could invade the soil and groundwater beneath the Drill Cuttings Pit.

63. Upon information and belief, Chevron failed to identify and disclose all chemicals contained within the products that were put into and stored in the Drill Cuttings Pit, which were subsequently buried on-site. As a result, unknown quantities of undisclosed chemicals were buried at the National Mines Site on the Property by Chevron.

64. Upon information and belief, Atlas and/or Chevron did not provide the PA DEP with the required EPA 9090 testing to demonstrate that the liner used in the Drill Cuttings Pit could withstand the waste contained in the Drill Cuttings Pit and buried on-site, while maintaining its integrity. The chemical content of "Petroset Fixation Solid-L" made the Drill Cuttings Pit liner increasingly susceptible to degradation.

65. It is believed and therefore averred that neither the National Mines Site nor its Drill Cuttings Pit were permitted by the PA DEP to act as a landfill such that it was not legally permitted to accept, store, or dispose of any waste from any drill sites other than the National Mines Site. *See*, 25 Pa. Code § 78.61, 78.62.

#### **X. Unlawful Conduct Regarding the Construction, Operation, and Closure of the National Mines Impoundments**

66. Both the original and revised Erosion & Sedimentation Control Plan (ESCGP-1) approved by the PA DEP for the National Mines Site contained only one (1) Drill Cuttings Pit on a 335'x 350' well pad. *See*, Exhibits 2 & 3. However, upon information and belief, the National Mines Site was constructed with one (1) Drill Cuttings Pit, a well pad, and three (3) flowback impoundments.

67. Neither Chevron nor Atlas submitted an application to the PA DEP for an ESCGP-1 that contemplated three (3) wastewater impoundments at the National Mines Site. Similarly, the PA DEP did not approve an ESCGP-1 that authorized three (3) impoundments on the Site.



68. It is reasonably believed and therefore averred that Atlas and/or Chevron constructed three (3) large Impoundments on the National Mines Site without obtaining permits from the PA DEP. No permits exist at the PA DEP for any of the three (3) Impoundments at the National Mines Site.

69. It is also reasonably believed and therefore averred that these Impoundments were used to service the National Mines Site and potentially other well sites in the area.

70. Because the Impoundments were built without permits, it is reasonably believed and therefore averred that Atlas and/or Chevron failed to notify the PA DEP of the products, including their chemical constituency, that were used at the National Mines Site and then generated the flowback to the three (3) Impoundments.

71. Upon information and belief, Atlas and/or Chevron did not construct the Impoundments with a double liner system, a leak detection zone, or an approved groundwater monitoring program. As a result, Atlas and/or Chevron could not guard against leaks and releases from the Impoundments, prior to fluids reaching the surrounding soil and groundwater.

72. Upon information and belief, Atlas and/or Chevron did not provide the PA DEP with the required EPA 9090 testing to demonstrate that the liners used in the Impoundments could withstand the chemical combinations placed into the Impoundments while maintaining their integrity.

73. Upon information and belief, Atlas and/or Chevron failed to routinely inspect the liners used in the Impoundments to ensure that the liners did not have any holes, rips, or tears.

74. On or about April 5, 2011, Chevron closed the Impoundments by backfilling them without first submitting a closure and restoration plan to the PA DEP for approval. *See*, April 5, 2011, PA DEP Inspection Report, attached hereto as **Exhibit 12**.

75. Because Chevron closed the Impoundments without approval and/or oversight from the PA DEP, it is reasonably believed and therefore averred that Chevron did not adhere to regulatory requirements and/or proper safety protocols when closing the Impoundments. Rather, Chevron closed the Impoundments in the same manner as the Drill Cuttings Pit, contrary to Pennsylvania law.

76. Upon information and belief, Chevron failed to sample, test, and analyze the waste contained in the Impoundments before they were closed in order to determine if the Impoundments contained any hazardous or toxic constituents.

77. Chevron failed to submit to the PA DEP any disposal records for the waste contained in the Impoundments. These records would have identified the chemical content of the waste in the Impoundments.

78. Upon information and belief, Chevron did not apply for or receive approval from the PA DEP to bury any waste contained in any of the three (3) Impoundments.

79. Upon information and belief, Chevron did not remove the liners from the Impoundments prior to their closure.

80. Upon information and belief, Chevron did not perform any confirmatory soil sampling demonstrating that the soil below the Impoundments' liners was not contaminated.

81. Given Chevron's failure, it is reasonably believed and therefore averred that Chevron buried the waste in the Impoundments on-site without prior approval from the PA DEP, rather than removing the waste, removing the liners, sampling the soil, and restoring the area as legally required.

#### **XI. Waste Buried at the National Mines Site Causes a Contamination Seep**

82. Although the Drill Cuttings Pit and Impoundments were buried on-site and closed without proper protocols and protections, Chevron did not warn or advise Plaintiffs of the possible negative impact to their Property that could result from such activity.

83. Atlas and/or Chevron failed to take reasonable measures to test the liners used in the Drill Cuttings Pit and Impoundments for sustained chemical compatibility or otherwise reasonably ensure that these liners would withstand destruction and/or leakage while in use and following their burial and closure.

84. Atlas and/or Chevron failed to take reasonable measures to inspect the liners used in the Drill Cuttings Pit and Impoundments to ensure that the liners did not contain any holes, rips or tears prior to their burial and closure.

85. Thus, at the time Atlas and/or Chevron filled and closed the Drill Cuttings Pit and Impoundments, containing, *inter alia*, flowback, radioactive materials, and residual wastes, Atlas and/or Chevron had not complied with the express requirements of Pennsylvania law, nor had Atlas and/or Chevron taken reasonable measures to ensure that its liners were able to withstand the waste and prevent it from leaking into the ground.

86. As a result of Atlas and/or Chevron's actions, waste in the Drill Cuttings Pit and the three (3) Impoundments remains buried at the National Mines Site, resulting in contamination sources found seeping onto the Property.

87. Following the Drill Cuttings Pit and Impoundments' closure, the Broadwaters discovered a well-defined seep of fluid that developed on their Property, flowing from the National Mines Site (the "Seep"). The Seep created an unnatural water pathway through the Property running directly through the field where the Broadwaters kept their heifers.

88. The Seep continues through the present day to contaminate the soil, surface, and aquifer on the Property. Testing results performed on the Seep, discussed *infra*, demonstrate impact from the operations at the National Mines Site and the waste buried on-site.

89. As a result of the Seep, the Broadwaters documented continuing issues related to runoff, vegetation death, vegetation discoloration, and contaminated water quality.

## **XII. Chevron's Failure to Disclose and Test for Chemicals Used at National Mines Site**

90. Atlas and/or Chevron did not have a complete list of all chemicals used during hydraulic fracturing the Site, as required by Pennsylvania law. As such, Atlas and/or Chevron utilized products without knowing the complete chemical composition content of those products. Atlas and/or Chevron then caused these chemicals to be stored and buried in the Drill Cuttings Pit and/or unpermitted Impoundments.

91. Atlas and/or Chevron used the following products, *inter alia*, during its operations at the National Mines Site without knowledge of full chemical composition for each product: Petroset Fixation Solid-L; Hydrochloric Acid 15%; Supersurf; Unicide 2000; Flomax 50; Bioclear 200. *See*, Exhibit 4.

92. For example, the Material Safety Data Sheets (MSDS) or Safety Data Sheets (SDS) for each of the following products reveal that not all of the chemicals contained in the products are identified:

a. Petroset Fixation Solid-L:

- i. 1-6% of the product contains Crystalline Silica which is a cancer-causing agent. The remaining 94% of Petroset's chemical make-up is not disclosed on the MSDS/SDS by the manufacturer, due to a trade secret claim. Without prior approval, Atlas and/or Chevron used Petroset in the Drill Cuttings Pit without knowing all the chemicals contained in the product. *See*, Petroset Fixation Solid-L MSDS, attached hereto as **Exhibit 13**.

b. Supersurf:



- i. The MSDS/SDS for Supersurf lists only one chemical, methanol or methyl alcohol, which makes up only 30%-60% of the total product. Therefore, 70%-40% of the chemical makeup of Supersurf is unknown. *See*, Supersurf MSDS, attached hereto as **Exhibit 14**.

c. Flomax 50:

- i. The Flomax MSDS lists ethylene glycol, isopropyl alcohol, D-Limonene, 1-octanol and alcohol c6-c12ethoxylated as chemicals that make up ~52.5% of the product. The MSDS does not identify the other ~47.5% of the chemicals contained in the product. *See*, Flomax 50 MSDS, attached hereto as **Exhibit 15**.

93. A review of Frac Focus<sup>2</sup>, (the national database for chemical disclosure by the oil and gas industry), demonstrates that neither Atlas nor Chevron disclosed all the chemicals used to frac at the National Mines Site.

94. Atlas and/or Chevron's failure to identify all the chemicals in the products used at the National Mines Site prohibited compliance with the chemical compatibility testing required by EPA 9090.

95. Atlas and/or Chevron's failure to identify all the chemicals in the products used at the National Mines Site not only violated relevant regulations, it gave Chevron the ability to deny that the Seep resulted from waste leaking from the operations at the National Mines Site. Chevron did not test the Seep samples for all the chemicals in the products used at the Site.

96. Some of the products specifically used at the National Mines Site contained chemicals later found in the Seep developed on Plaintiffs' Property.

97. The MSDS/SDS of the products that were disclosed by Atlas and/or Chevron in the PPC Plan demonstrate that they contain the following chemicals: 2,2-Dibromo-3-Nitropropionamide, Polyethylene Glycol Mixture, Isopropyl Alcohol, Ethylene Glycol, Alcohol C6-C12 Ethoxylated, D-Limonene, and 1-Octanol methanol. *See*, Exhibit 4.

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<sup>2</sup> [www.fracfocus.org](http://www.fracfocus.org)

98. With the exception of one sample in which Ethylene Glycol, Propane and Acetone were sampled for in the Seep, Chevron never accurately engaged in testing the Seep for chemicals known to be in the products used at the National Mines Site.

### **XIII. EPA Water Testing Parameters for Contamination**

99. The United States Environmental Protection Agency (“EPA”) conducted a two-year study on hydraulic fracturing entitled, “Retrospective Case Study in Southwestern Pennsylvania, Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources” (the “EPA Study”).

100. The EPA Study set forth a comprehensive set of testing parameters to determine if water has been impacted and contaminated by natural gas drilling operations. These are grouped into three subsets:

- a. The first subset identifies chemicals found in hydraulic fracturing fluid, including: volatile organic compounds (VOCs) as well as semi volatile organic compounds (SVOCs); Gasoline Range Organics (GROs), Diesel Range Organics (DROs), glycols, and alcohols.
- b. The second subset includes a selection of specific components known to be present in flowback/produced water, including: magnesium, oil & grease, potassium, strontium, barium, glycols, alcohols, naphthalene and boron.
- c. The third subset includes naturally occurring substances mobilized by the fracking process, such as: arsenic, manganese, other trace metals, pH and major anions (like nitrate, bromide, chloride, fluoride and sulfate), as well as cations (like aluminum and copper).

101. According to the EPA Study, Water samples demonstrating an increase in these materials evidence contamination resulting from natural gas drilling operations.

### **XIV. May 9, 2012 Sampling on the Broadwater Property**

102. On May 9, 2012, Chevron sampled the Seep on the Property. *See*, May 9, 2012, Seep Sample Results, attached hereto as **Exhibit 16**.

103. Chevron only tested for 9 parameters which does not cover the numerous parameters associated with oil and gas activities, including those identified in the EPA Study. *See*, Exhibit 16.

104. This Seep sampling was conducted after the National Mines Well 26H had been vertically and horizontally drilled, as well as hydraulically fractured. No effort was made by Chevron to identify and test for any of the chemicals contained in the products it knew were utilized at the Site.

105. The parameters that were tested for in this sample do not contain many of the primary contaminants known to be associated with natural gas drilling and hydraulic fracturing, including: low level Volatile Organic Compounds (VOCs), Semi Volatile Organic Compounds (SVOCs), Chloride, Bromide, Methyl Blue Active Substance (MBAS), 2 Butoxethanol (2-BE), and ethylene and propylene glycol.

106. Notwithstanding the limited sampling that occurred, the May 9, 2012 seep testing demonstrates impacts from the National Mines Site.

107. Specifically, Manganese detected at .061mg/l exceeds the SMCL. *See*, Exhibit 16. Manganese exceeding the SMCL in conjunction with elevated levels of Iron in the Seep (detected at .297mg/l, SMCL is .3mg/l) have been found by the EPA to be associated with gas drilling activities<sup>3</sup>. Thus, there is evidence in this very limited May 9, 2012 sample result that the Seep demonstrated impact from Chevron's operations.

108. The results of this testing evidence above-average levels of Calcium, Magnesium, and Potassium, all of which are identified in the EPA Study as being associated with gas drilling activities. *See*, Exhibit 16.

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<sup>3</sup>Retrospective Case Study in Southwestern Pennsylvania, Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources, United States Environmental Protection Agency. EPA 600/R-14/084May2015.

109. In the May 9, 2012 sampling event, Calcium was detected at 271.387mg/l. *See*, Exhibit 16.

110. According to the Pennsylvania State University College of Agriculture, Agricultural Engineering Department (Penn State<sup>4</sup>), the average level of Calcium in groundwater in the Commonwealth is 37mg/l. The amount of Calcium detected in the May 9, 2012 sample exceeds the average level of Calcium in groundwater as well as the recommended maximum limit for water, 250mg/l, in the Commonwealth of Pennsylvania. *See*, Exhibit 16.

111. The EPA Study lists Calcium as a chemical identified in hydraulic fracturing fluid and flowback/produced water. Given its elevated level in the Seep on the Property in relation to the timing of activities at the National Mines Well Site, such a finding is evidence of impact from Chevron's operations.

112. Similarly, Magnesium detected at 70.827mg/l in the May 9, 2012 sampling event demonstrates an elevated level of Magnesium in the Seep. *See*, Exhibit 16. The average in Pennsylvania is 8.3mg/l.

113. Magnesium is identified in the EPA Study as a chemical found in hydraulic fracturing fluid and flowback/produced water as it is one of the major cations found in brine waters. Given the elevated levels of Magnesium detected in the Seep in conjunction with the timing of activities at the National Mines Site, the levels of Magnesium are evidence of gas drilling impacts.

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<sup>4</sup>How to Interpret A Water Analysis Report, Agricultural Engineering Fact Sheet, the Pennsylvania State University College of Agriculture Cooperative Extension Service, University Park, Pennsylvania. N. Henry Wooding, Extension Agricultural Engineer.

114. Additionally, Potassium was detected in the Seep on the Broadwater's property during the May 9, 2012 sampling event at 8.081mg/l, compared to the average Potassium in water in Pennsylvania of 2.5mg/l. *See*, Exhibit 16.

115. The EPA Study lists Potassium as a chemical contained in hydraulic fracturing fluid and flowback/produced water. Due to the documented activities at the National Mines Site and the elevated levels of Potassium in the Seep, such a finding is evidence of impact from Chevron's operations.

116. Thus, Chevron had clear evidence that the National Mines Site was leaking, contaminating the surrounding aquifer and seeping onto the Broadwater Property, yet failed to inform the Broadwaters.

117. Notwithstanding the foregoing results, the Chevron told the Broadwaters that the May 9, 2012 sampling did not demonstrate any impact from the National Mines Site. The Broadwaters relied on Chevron's representations.

#### **XV. The June 13, 2012 Sampling on the Broadwater Property**

118. On June 13, 2012, Chevron once again tested the Seep. *See*, June 13, 2012, Seep Sample Results, attached hereto as **Exhibit 17**. It does not appear that there was any attempt made by Chevron to identify and test for the specific chemicals used at the National Mines Site during its operations.

119. In this round of sampling, Chevron did attempt to perform more-expansive sampling by including Volatile Organic Compounds (VOCs). *See*, Exhibit 17. However, the laboratory analysis regarding the VOCs was performed using wastewater test methods rather than groundwater or drinking water methods. *Id.* The wastewater test method carries a higher detection limit for VOCs than the test methods used for drinking or groundwater.



120. The VOCs utilized in drilling and hydraulic fracturing are highly volatile and, as a result, their presence in drilling, flowback and frac water will inevitably be very low. The EPA Study confirmed that VOCs related to hydraulic fracturing exist at low levels. Therefore, to accurately characterize whether VOCs were present in the sampling, a more sensitive test method for VOCs must have been employed.

121. Despite this, there were multiple parameters detected that exceeded their respective SMCLs in the June 13, 2012 Seep testing. *See*, Exhibit 17. Sulfates, Aluminum, Iron, and Manganese all exceed their respective SMCLs. *Id.*

122. According to the EPA Study, elevated levels of Iron and Manganese found together are evidence of oil and gas-related contamination. Given that both Iron and Manganese exceed their respective SMCLs, coupled with the timing of the activities that occurred at the National Mines Site, their elevations indicate that the Seep was impacted by Chevron's operations.

123. According to the EPA Study, Sulfates are a chemical commonly found in hydraulic fracturing fluids. Their presence in the June 13, 2012 sample above SMCL indicates the Seep's impact from the National Mines Site.

124. The elevated level of Aluminum in the sample also indicates impact from Chevron's gas operations. Aluminum has been identified in the EPA Study as a chemical contained in hydraulic fracturing fluid.

125. Multiple detections of heavy metals exceeding their SMCLs, present together in the same sample, further demonstrate impact from Chevron's operations.

126. Two parameters which are not normally present in groundwater were detected in the June 13, 2012 Seep sample, namely Molybdenum and Silicon. *See*, Exhibit 17. While neither are typically present in Pennsylvania groundwater, both are found in hydraulic fracturing fluids

according to the EPA Study. Their presence demonstrates that the Seep resulted from the National Mines Site.

127. Iron Related Bacteria and Sulfate Reducing Bacteria were also present in the June 13, 2012 Seep sample. *See*, Exhibit 17. Both are known contaminants of flowback/produced fluid.

128. Given that the National Mines Site had three (3) unpermitted Impoundments that held flowback/produced fluid, contamination of the Seep on the Broadwater's property with Iron Related Bacteria and Sulfate Reducing Bacteria occurred from these sources.

129. Levels of Magnesium and Potassium in the June 13, 2012 Seep sample exceed the normal levels naturally found in groundwater in Pennsylvania, indicating impact from drilling operations. *See*, Exhibit 17.

130. The Total Dissolved Solids (TDS) detected at 1048mg/l exceeded the SMCL by more than double, and Specific Conductance (SPC) was detected at 1078 umhos/cm, which is more than double the average found in uncontaminated groundwater in Pennsylvania. *See*, Exhibit 17. Both evidence contamination from the National Mines Site. Such exceedances in TDS and SPC were associated with oil and gas drilling operations in the EPA Study.

131. Notwithstanding the foregoing results, the Chevron told the Broadwaters that the June 13, 2012 sampling did not demonstrate any impact from the National Mines Site. The Broadwaters relied on Chevron's representations.

#### **XVI. The October 3, 2016 Sampling on the Broadwater Property**

132. On October 3, 2016, the PA DEP and Chevron both sampled the Seep. *See*, October 3, 2016, Chevron Seep Sample Results, attached hereto as **Exhibit 18**; *see also*, October 3, 2016, PA DEP Seep Sample Results, attached hereto as **Exhibit 19**.

133. In the October 3, 2016 sampling, TDS, Sulfates, Aluminum, and Iron all exceeded the SMCL in both the DEP and Chevron samples of the Seep. *See*, Exhibits 18 & 19. All of these elevated parameters occurring together indicate impact from oil and gas activities according to the EPA Study.

134. In the October 3, 2016 results, multiple parameters exceeded their average amounts typically found in the groundwater, including SPC, Alkalinity, Calcium, Magnesium and Hardness. *See*, Exhibits 18 & 19. The exceedances of all of these parameters have been associated with impacts from oil and gas operations.

135. In particular, in Chevron's test results of the Seep sample taken on October 3, 2016, Lithium was detected. *See*, Exhibit 18. Lithium has been termed a "geochemical indicator" of oil and gas impact by the EPA Study.

136. Notwithstanding the foregoing results, the Chevron told the Broadwaters that the October 3, 2016 sampling did not demonstrate any impact from the National Mines Site. The Broadwaters relied on Chevron's representations.

#### **XVII. The June 8, 2017 Sampling on the Broadwater Property**

137. On June 8, 2017, the PA DEP sampled the Seep daylighting in the Broadwater's pasture. *See*, June 8, 2017, Seep Sample Results, attached hereto as **Exhibit 20**.

138. In the June 8, 2017 results, consistent with previous Seep sample results, Aluminum, TDS, and Sulfates all exceeded their respective SMCLs. *See*, Exhibit 20. The elevations of all of these parameters indicate impacts from Chevron's activities at the National Mines Site.

139. Calcium, Alkalinity, Magnesium, Potassium, and SPC all exceed, some more than double, their respective average naturally-occurring levels in Pennsylvania groundwater. *See*,

Exhibit 20. The exceedances of all of these parameters together in this same sample, and in prior sampling events, demonstrate continuing and renewed impacts from Chevron's operations.

140. Notwithstanding the foregoing results, the Chevron told the Broadwaters that the June 8, 2017 sampling did not demonstrate any impact from the National Mines Site. The Broadwaters relied on Chevron's representations.

#### **XVIII. The June 14, 2018 Sampling on the Broadwater Property**

141. On June 14, 2018, Chevron and the PA DEP once again sampled the Seep located on the Broadwater property. *See*, June 14, 2018, Chevron Seep Sample Results, attached hereto as **Exhibit 21**; *see also*, June 14, 2018, PA DEP Seep Sample Results, attached hereto as **Exhibit 22**. In addition to sampling the Seep, both the PA DEP and Chevron sampled fluid, soil and forage at different locations near the National Mines Well Site.

142. The June 14, 2018 test results of both the PA DEP and Chevron on the Seep indicate that the following parameters once again exceeded their respective SMCLs: Total Dissolved Solids (TDS), Sulfates, and Iron. *See*, Exhibits 21 & 22.

143. Iron was also noted to exceed livestock drinking water screening criteria, of which its significance to the Broadwater cattle is discussed *infra*. *See*, Exhibits 21 & 22.

144. The following parameters were detected by both Chevron and PA DEP above their respective average levels found in groundwater: Specific Conductivity (SPC), Alkalinity, Calcium, Magnesium and Potassium. *See*, Exhibits 21 & 22.

145. The elevated levels of these contaminants found together indicate that the Seep has been impacted by Chevron's operations.

146. Relative to the sampling done at other points around the National Mines Site, in samples "Water 2", "Water 3" and "Water 4" exceedances of Iron, Magnesium, and Manganese



were detected. *See*, Exhibits 21 & 22. Their exceedances are consistent with the exceedances observed in the Broadwater Seep over multiple sampling events.

147. Calcium and Potassium in samples “Water 2”, “Water 3” and “Water 4” all exceed the average levels of Calcium and Potassium in groundwater, which is similar to the detections of Calcium and Potassium consistently found in the Seep. *See*, Exhibits 21 & 22.

148. Likewise, elevated levels of Sulfate were detected in samples “Water 2”, “Water 3” and “Water 4”, as found in the multiple test results of the Seep. *See*, Exhibits 21 & 22. SPC and Alkalinity also exceeded their respective averages for groundwater. *Id.*

149. Moreover, in sample “Water 3”, Lithium was detected just as it was previously in the Seep. *See*, Exhibits 21 & 22. Lithium, as mentioned, detected in groundwater around oil and gas activities is known as “geochemical indicator” evidencing impacts from oil and gas operations.

150. Notwithstanding the foregoing results, the Chevron told the Broadwaters that the June 14, 2018 sampling did not demonstrate any impact from the National Mines Site. The Broadwaters relied on Chevron’s representations until such time that the Broadwaters sought an independent review of their water test results by a veterinarian toxicologist in September of 2018.

#### **XV. Impact to the Broadwater Cattle**

151. The Seep on the Broadwater’s property runs through a pasture on their farm where they raise cattle. The Broadwater’s informed Chevron that their cattle previously had access to the Seep and drank fluid from the Seep.

152. Following construction of the National Mines Site and the Seep’s development, the Broadwaters began experiencing cattle infertility, aborting fetuses, calves’ death, and coat discoloration.



153. The cattle exposed to the Seep had documented significant decreases in fertility, produced deformed fetuses, and aborted fetuses preterm. Due to significant issues with reproduction, several calves died.

154. Upon information and belief, this is a direct result of the cattle consuming the contaminated water from the Seep as it is consistent with scientific literature regarding trace element deficiency in cattle exposed to groundwater containing elevated levels of Iron, Calcium, Manganese, Molybdenum and Sulfate.

155. The Broadwaters had some of their cattle tested, and the cattle were found to have both Copper and Selenium deficiencies.

156. It is clear from the Seep test results that it has contained and continues to contain contaminants that adversely affect the health and well-being of cattle.

157. For example, Iron was documented at elevated levels, including exceeding SMCL in multiple tests and exceeding the Livestock Drinking Water Criteria. Elevated Iron levels in water consumed by cattle reduces the absorption of Copper in cattle consuming it, leading to deficiencies in essential nutrients required by cattle.<sup>5</sup>

158. Calcium, in all tests of the Seep, exceeded the average level found in groundwater: (37 mg/L) 5-9-12; (271.387 mg/L) 6-13-12; (201.717 mg/L) 10-3-16; (319 mg/L (Chevron)/ 325 mg/L DEP)) 6-8-17; (115.755 mg/L) 6-14-18 (416 mg/L (Chevron)/ 344.8 mg/L (DEP)). High levels in Calcium in groundwater consumed by cattle causes a Copper deficiency in the cattle and generally reduces nutrient digestibility.

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<sup>5</sup> Interpreting Drinking Water Tests for Dairy Cows, Water Quality, Penn State Extension; Livestock Water Quality, a Field Guide for Cattle, Horses, Poultry and Swine, Agriculture and Agri-Food Canada, University of Saskatchewan, Andrew A. Olkowski, PhD, DVM, MS, BS (2009).

159. Further, high levels of Calcium can reduce the absorption of Selenium in cattle, a necessary nutrient for cattle performance. Prolonged intake of elevated Calcium can cause osteoporosis, vertebral ankyloses, degenerative osteoarthritis and calcium deposition in the heart muscle causing heart failure.

160. Manganese levels in the testing of Seep performed by Chevron and the DEP exceeded the SMCL for Manganese at .05 mg/L. Elevated levels of Manganese in groundwater reduces a cattle's ability to absorb Copper leading to symptoms of Copper deficiency including depigmentation of coat, thin and sparse hair coat, diarrhea, anemia, reduced fertility, weight loss, stiff coat, heel cracks, sole abscesses and foot rot.

161. Additionally, the June 13, 2012 sample results from the Seep evidences the presence of Molybdenum. Similar to Iron, Calcium and Manganese, Molybdenum in groundwater consumed by cattle, decreases the cattle's ability to absorb Copper leading to a Copper deficiency.

162. Finally, in all of Seep testing, Sulfate has been detected and has exceeded its respective SMCL of 250 mg/L. In fact, in the June 8, 2017 and June 14, 2018 sampling events of the Seep performed by the DEP, Sulfate levels were measured at 1143 mg/L and 1016 mg/L. Such levels of Sulfate are known to be toxic to cattle, causing death. High levels of Sulfate have a synergistic effect when interacting with Molybdenum that can cause disruption and interference with a cattle's metabolism of Zinc, Copper, Manganese, Magnesium and Phosphorus.

163. To date, Chevron has failed to properly remediate the National Mines Site along with Plaintiffs' Property to eliminate the effects of its operations at the National Mines Site. As a result, Defendants have never informed nor warned the Plaintiffs that dangerous chemicals are present in their water and on their Property. Plaintiffs' Property continues to be contaminated and harmed by Defendants' actions up through the present day.

164. As a result of the foregoing and following allegations, Plaintiffs seek, *inter alia*, equitable relief barring Defendants from engaging in the acts complained of and requiring Defendants to abate and correct the nuisances, unlawful conduct, violations and damages created by them, and an order requiring Defendants to pay compensatory damages, punitive damages, and to provide any further relief that the Court may find appropriate.

**CAUSES OF ACTION**

**COUNT I – NEGLIGENCE**  
**Plaintiffs v. Defendants**

88. All of the above paragraphs of this Complaint are incorporated herein by reference as though fully set forth at length.

89. Chevron owed to the Plaintiffs a general duty of reasonable care when engaged in the construction, operation, maintenance and closure of the National Mines Site, including the Impoundments, National Mines Well Pad, and National Mines Drill Cuttings Pit, including but not limited to:

- a. A duty to construct, operate, maintain, and close the Impoundment according to Pennsylvania law;
- b. A duty to construct, operate, maintain, and close the Drill Cuttings Pit according to Pennsylvania law;
- c. A duty to follow and abide by permits issued by the PA DEP;
- d. A duty to responsibly drill, transport and store drilling wastes, fracking materials, downhole materials, flowback materials and substances;
- e. A duty to know all chemicals in the products used at the National Mines Site;
- f. A duty to ensure that drilling wastes, fracking materials, downhole materials, flowback materials and substances are disposed of in a reasonably safe manner;
- g. A duty to take reasonable measures to prevent its operations from harming or damaging Plaintiffs' Property;

- h. A duty to take all reasonable measures necessary to notify, inform and protect the Plaintiffs from the contamination of their water, and from exposure to hazardous chemicals; and
- i. A duty to warn Plaintiffs of the dangers.

90. Additionally, Chevron's operations at the National Mines Well Site, National Mines Drill Cuttings Pit and National Mines Impoundments were and are subject to the following laws of the Commonwealth of Pennsylvania, including any and all respective regulations promulgated thereunder:

- a. Pennsylvania Clean Streams Law ("CSL");
- b. Pennsylvania Solid Waste Management Act ("SWMA");
- c. Pennsylvania Dam Safety and Encroachments Act ("DSEA")
- d. Pennsylvania Oil and Gas Act ("Oil and Gas Act"); and
- e. Pennsylvania Hazardous Sites Cleanup Act ("HSCA").

91. The CSL prohibits "water pollution," which is broadly defined as any contamination of water, including surface water, including **changes in color, taste and odor** and prohibits unpermitted **discharge of "industrial wastes,"** broadly defined as liquids, gases and solids from manufacturing or industry. *See*, 35 P.S. §691.1, 691.3, 691.307(c), 604, 605.

92. The SWMA prohibits the unpermitted release of 'residual waste' which is broadly defined as solid or liquid garbage, refuse or discarded material produced by industrial facility into or onto the surface soil, subsurface soils and waters of the Commonwealth. The SWMA further provides that the unpermitted release of 'residual waste' "**shall constitute a public nuisance**". *See*, 35 P.S. § 6018.103, 6018.601, 6018.605.

93. The DSEA was enacted, in part, to, “provide for the regulation of dams and reservoirs, water obstructions and encroachments in the Commonwealth, in order to protect the health, safety and welfare of the people and property.” *See*, 32 P.S. § 693.2.

94. The Oil and Gas Act requires brines from oil and gas production to be disposed of in accordance with the Clean Streams Law; prohibits a well operator from polluting or diminishing a public or private water supply; and States that any violation of statutory provisions designed to protect water supplies constitute a public nuisance. *See*, 58 P.S. § 601.207, 601.208, 601.502.

95. The HSCA renders any responsible party strictly liable for any release of a hazardous substance or contaminant which presents a substantial danger to the public health or safety or the environment and prohibits any person from causing or allowing a release of a hazardous substance. *See*, 35 P.S. § 6020.507, 6020.1108.

96. These numerous statutory regimes were created and enacted to protect the natural environment of Pennsylvania and its citizens from harm. These legislative enactments are specifically directed at Defendant’s conduct, including the operation of gas-well drilling activities. The purpose of these legislative enactments is, in part, to protect the interests of those persons similarly situated to Plaintiffs who live near gas drilling and production activities and the environment surrounding them.

97. Accordingly, these statutory regimes further establish Chevron’s duties to the Plaintiffs, the violation of which constitutes negligence *per se* and/or strict liability.

98. Chevron breached these duties to the Plaintiffs in the following ways:

- a. In failing to design, construct, operate and close the National Mines Impoundments and Drill Cuttings Pit in compliance with Pennsylvania law;
- b. In failing to obtain the proper permits and approvals to operate and close the National Mines Impoundments and Drill Cuttings Pit in compliance with Pennsylvania law;



- c. In causing or failing to prevent the release of hazardous chemicals into the soil and water surrounding the National Mines Well Pad, National Mines Impoundments and National Mines Drill Cuttings Pit;
- d. In failing to design the National Mines Well Pad, National Mines Impoundment and National Mines Drill Cuttings Pit so that such releases and spills would not occur;
- e. In failing to employ adequate planning and warning systems for such releases or other emergencies;
- f. In designing and building an impoundment to store and contain flowback and frackwater, including hazardous chemicals and substances, without considering or accounting for the groundwater sources beneath and nearby that supplied Plaintiffs' cattle;
- g. In designing and building a drill cuttings pit to store and contain hazardous chemicals and substances without considering or accounting for the groundwater sources beneath and nearby that supplied Plaintiffs' cattle;
- h. By disposing of drilling wastes, fracking materials, downhole materials, flowback materials and substances in a manner that Chevron knew, or in the exercise of reasonable care should have known, would result in the release of hazardous chemicals into the ground and water;
- i. In failing to take proper measures to clean and remediate the Property and water supplies contaminated by releases from the National Mines Site;
- j. In storing, containing, and burying dangerous and hazardous chemicals and substances in the National Mines Impoundments and National Mines Drill Cuttings Pit when Chevron knew it was not properly designed to prevent leaks and releases;
- k. In failing to identify all chemical and substances placed into the National Mines Impoundments and National Mines Drill Cuttings Pit;
- l. In failing to perform the appropriate chemical compatibility testing, including EPA 9090, on the liners used the National Mines Impoundments and Drill Cuttings Pit;
- m. In failing to utilize liners in the National Mines Impoundments and Drill Cuttings Pit capable of withstanding the substances placed into them;
- n. In closing the National Mines Impoundments and Drill Cuttings Pit by burying waste on-site;

- o. In failing to perform the appropriate analytical testing before and after closing the National Mines Impoundments and Drill Cuttings Pit, including waste analyses;
- p. In failing to warn Plaintiffs of releases from the National Mines Impoundments and Drill Cuttings Pit into the soil and groundwater beneath and around the National Mines Impoundments and Drill Cuttings Pit;
- q. In failing to warn Plaintiffs of releases from the National Mines Impoundments and Drill Cuttings Pit into the groundwater sources that supplied Plaintiffs' cattle;
- r. In allowing Plaintiffs to continue to utilize water from their groundwater sources when Chevron knew or should have known that their water sources had been contaminated by the National Mines Well Site, Impoundments and Drill Cuttings Pit;
- s. In failing to remediate and/or repair the Property and water sources damaged and contaminated by Chevron's operations at the National Mines Well Site, Impoundments, and Drill Cuttings Pit;
- t. In violating the CSL;
- u. In violating the SWMA;
- v. In violating the DSEA;
- w. In violating the Oil and Gas Act;
- x. In violating the HSCA;
- y. In failing to design and construct the National Mines Impoundments in compliance with Pennsylvania law as follows:
  - i. By constructing the National Mines Impoundments without proper permits;
  - ii. By designing and constructing the National Mines Impoundments without a leak detection zone;
  - iii. By *designing and constructing the National Mines Impoundments* without a double-liner system;
  - iv. By designing and constructing the National Mines Impoundments without groundwater well monitors;
  - v. By designing and constructing the National Mines Impoundments with liners that had not undergone proper chemical compatibility testing.

99. Chevron knew, or in the exercise of reasonable care should have known, its operations would result in the release or the threat of release of hazardous chemicals into the ground and water.

100. Chevron knew, or in the exercise of reasonable care should have known, of the dangerous, offensive, hazardous or toxic nature of their operations.

101. Chevron knew, or in the exercise of reasonable care should have known, of the dangerous, offensive, hazardous or toxic nature of the hazardous chemicals released from the National Mines Site and that they were capable of polluting the water supplies on the Plaintiffs' Property, damaging property and causing natural resource damage.

102. Chevron's acts and/or omissions alleged herein were the direct and proximate cause of damages and injuries to the Plaintiffs as follows:

- a. Plaintiffs' water supplies are contaminated by drilling wastes, downhole materials, frac fluid and flowback/produced water and have lost the quality and quantity of their water;
- b. Plaintiffs' Property has been and continues to be exposed to hazardous chemicals;
- c. Plaintiffs' livestock, animals, personal and real property have been harmed and diminished in value;
- d. Plaintiffs have lost the use and enjoyment of their Property, and the quality of life otherwise enjoyed;
- e. Plaintiffs' cattle have been caused to become physically sick and ill, manifesting symptoms consistent with toxic exposure, as set forth above and incorporated herein;
- f. Plaintiffs have suffered inconvenience and discomfort due to the contamination of their water supplies;
- g. Loss of business income;
- h. Past and future pain and suffering;
- i. Expert fees and costs;

- j. Damages for property remediation and replacement of water supplies;
- k. Monies expended on other out-of-pocket expenses; and
- l. Mental anguish.

103. Chevron's actions and/or omissions constitute gross negligence and recklessness, and as such, Chevron should be subject to the imposition of punitive damages, which Plaintiffs respectfully demand.

WHEREFORE, Plaintiffs respectfully demand judgment in their favor and against Defendants in an amount in excess of arbitration limits and/or in excess of \$50,000, plus fees, costs, punitive damages and any and all other relief this Honorable Court deems just and appropriate.

**A JURY TRIAL IS DEMANDED**

**COUNT II – FRAUD**  
**Plaintiffs v. Defendants**

101. All of the above paragraphs of this Complaint are incorporated herein by reference as though fully set forth at length.

102. Chevron made material representations to the Plaintiffs regarding the results of water sampling performed and the quality of their drinking water.

103. Chevron, as set forth in more detail above, engaged in a pattern, practice and scheme the object of which was to defraud the Plaintiffs and cause them to believe their water had not been contaminated by operations taking place at the National Mines Site and when in fact it was contaminated.

104. When these material representations were made, they were made with either knowledge of their falsity or with reckless disregard as to whether or not they were true or false.

105. All of the material representations were made with the intent of misleading the Plaintiffs to believe that drilling constituents were not detected or where otherwise not present.

106. Chevron knew at the time that they took these actions and engaged in this scheme that said actions and representations were false and misleading, and that the Plaintiffs would rely on their actions and representations.

107. Plaintiffs justifiably relied upon these misrepresentations and, as a result, have been injured and harmed by such reliance. The reliance of the Plaintiffs on these actions and misrepresentations was reasonable.

108. As a direct and proximate result of the fraud perpetrated by Chevron, the Plaintiffs have suffered and continue to suffer injuries in the following particulars:

- a. Plaintiffs' water supplies are contaminated by drilling wastes, downhole materials, frac fluid and flowback/produced water and have lost the quality and quantity of their water;
- b. Plaintiffs' Property has been and continues to be exposed to hazardous chemicals;
- c. Plaintiffs' livestock, animals, personal and real property have been harmed and diminished in value;
- d. Plaintiffs have lost the use and enjoyment of their Property, and the quality of life otherwise enjoyed;
- e. Plaintiffs' cattle have been caused to become physically sick and ill, manifesting symptoms consistent with toxic exposure, as set forth above and incorporated herein;
- f. Plaintiffs have suffered inconvenience and discomfort due to the contamination of their water supplies;
- g. Loss of business income;
- h. Past and future pain and suffering;
- i. Expert fees and costs;
- j. Damages for property remediation and replacement of water supplies;



k. Monies expended on other out-of-pocket expenses; and

l. Mental anguish.

109. The Defendants' actions to defraud the Plaintiffs were, and are, intentional, reckless, outrageous and done with an evil motive and, as a result, should be subject to the imposition of punitive damages, which Plaintiffs accordingly seek.

WHEREFORE, Plaintiffs respectfully demand judgment in their favor and against Defendants in an amount in excess of arbitration limits and/or in excess of \$50,000, plus fees, costs, punitive damages and any and all other relief this Honorable Court deems just and appropriate.

**A JURY TRIAL IS DEMANDED**

**COUNT III – PRIVATE NUISANCE**  
**Plaintiffs v. Defendants**

110. All of the above paragraphs of this Complaint are incorporated herein by reference as though fully set forth at length.

111. As a result of the discharges and releases described herein, Defendants have caused an unreasonable and substantial interference with Plaintiffs' private rights to use and enjoy Plaintiffs' Property.

112. As a result of exposure to contamination caused by Defendant, Plaintiffs' cattle are continuously ill and suffer adverse health effects and ailments from living on the Property; are unable to drink the water without illness; and Plaintiffs are unable to maintain their farms and gardens on the Property.

113. Defendant, including its officers, agents, and/or employees, have created and maintained a continuing nuisance in the National Mines Site by allowing the Drill Cuttings Pit and

Impoundments to exist and operate in a dangerous and hazardous condition, by burying and improperly closing the Impoundments and Drill Cuttings Pit, and allowing the releases from the Impoundments and Drill Cuttings Pit to continue to spread to surrounding areas, including onto Plaintiffs' Property, into Plaintiffs' surrounding water supplies, resulting in injuries to Plaintiffs' cattle and Plaintiffs' Property.

114. Defendants' conduct caused an invasion onto the Plaintiffs' Property and was intentional and unreasonable or reckless, negligent or abnormally dangerous.

115. This nuisance continues presently, and is likely to continue into the future.

116. Defendants' activities at the National Mines Site caused the following harms and damages to Plaintiffs:

- a. Plaintiffs' water supplies are contaminated by drilling wastes, downhole materials, frac fluid and flowback/produced water and have lost the quality and quantity of their water;
- b. Plaintiffs' Property has been and continues to be exposed to hazardous chemicals;
- c. Plaintiffs' livestock, animals, personal and real property have been harmed and diminished in value;
- d. Plaintiffs have lost the use and enjoyment of their Property, and the quality of life otherwise enjoyed;
- e. Plaintiffs' cattle have been caused to become physically sick and ill, manifesting symptoms consistent with toxic exposure, as set forth above and incorporated herein;
- f. Plaintiffs have suffered inconvenience and discomfort due to the contamination of their water supplies;
- g. Loss of business income;
- h. Past and future pain and suffering;
- i. Expert fees and costs;
- j. Damages for property remediation and replacement of water supplies;

k. Monies expended on other out-of-pocket expenses; and

l. Mental anguish.

117. Defendant has acted intentionally, knowingly, willfully, recklessly and outrageously in causing this private nuisance on Plaintiffs' properties and, as a result, should be subject to the imposition of punitive damages which Plaintiffs accordingly seek.

WHEREFORE, Plaintiffs respectfully demand judgment in their favor and against Defendants in an amount in excess of arbitration limits and/or in excess of \$50,000, plus punitive damages, fees, costs, and any and all other relief this Honorable Court deems just and appropriate.

**A JURY TRIAL IS DEMANDED**

**COUNT VI – TRESPASS**  
**Plaintiffs v. Defendants**

118. All of the above paragraphs of this Complaint are incorporated herein by reference as though fully set forth at length.

119. Defendants' aforementioned acts both constituted and resulted in such physical invasion of Plaintiffs' Property and the aquifers underlying Plaintiffs' Property, such that Plaintiffs have suffered damages to such Property.

120. Through contamination of Plaintiffs' soil and water, Defendant has caused instrumentalities under its control to wrongfully enter and remain upon land in possession of the Plaintiffs without a privilege to do so.

121. Despite having full knowledge that it has no license, justification, claim of right, or any other legal basis to do so, Defendants have occupied and continue to occupy the surface and subsurface of Plaintiffs' Property.

122. Plaintiffs have exercised exclusive possession and control of Plaintiffs' soil and water and continue to do so presently.

123. Defendants' trespass has caused the following harms and damages to Plaintiffs:

- a. Plaintiffs' water supplies are contaminated by drilling wastes, downhole materials, frac fluid and flowback/produced water and have lost the quality and quantity of their water;
- b. Plaintiffs' Property has been and continues to be exposed to hazardous chemicals;
- c. Plaintiffs' livestock, animals, personal and real property have been harmed and diminished in value;
- d. Plaintiffs have lost the use and enjoyment of their Property, and the quality of life otherwise enjoyed;
- e. Plaintiffs' cattle have been caused to become physically sick and ill, manifesting symptoms consistent with toxic exposure, as set forth above and incorporated herein;
- f. Plaintiffs have suffered inconvenience and discomfort due to the contamination of their water supplies;
- g. Loss of business income;
- h. Past and future pain and suffering;
- i. Expert fees and costs;
- j. Damages for property remediation and replacement of water supplies;
- k. Monies expended on other out-of-pocket expenses; and
- l. Mental anguish.

124. Defendants have acted intentionally, knowingly, willfully, recklessly and outrageously in trespassing on Plaintiffs' Property and, as a result, should be subject to the imposition of punitive damages, which Plaintiffs accordingly seek.

WHEREFORE, Plaintiffs respectfully demand judgment in their favor and against Defendants in an amount in excess of arbitration limits and/or in excess of \$50,000, plus punitive damages, fees, costs, and any and all other relief this Honorable Court deems just and appropriate.

**A JURY TRIAL IS DEMANDED**

**COUNT V – HAZARDOUS SITES CLEAN UP ACT**  
**Plaintiffs v. Defendants**

125. All of the above paragraphs of this Complaint are incorporated herein by reference as though fully set forth at length.

126. The locations of the releases of hazardous substances as set forth above constitute “sites” as defined by the Pennsylvania Hazardous Sites Cleanup Act (“HSCA”). 35 P.S. §§ 6020.101, *et seq.*

127. The spills, releases and discharges set forth above constitute “releases” of hazardous substances and contaminants under the HSCA.

128. At all relevant times, Defendants owned and/or operated the National Mines Site, including the National Mines Well Pad, Drill Cuttings Pit, and Impoundments, and Defendants owned or possessed and arranged for the disposal, treatment or transport for disposal or treatment of the hazardous substances, under the HSCA.

129. Defendants are “responsible persons” under the HSCA responsible for the release or threatened release of hazardous substances.

130. As set forth above, Defendants have caused, and continue to cause, releases or substantial threats of releases, of hazardous substances or contaminants, which present a substantial danger to the public health or safety or the environment under the HSCA.



131. Pursuant to §§ 507, 702, and 1101 of the HSCA, Defendants are strictly liable for costs incurred by Plaintiffs to respond to Defendants' releases or threatened releases of hazardous substances and contaminants.

132. Pursuant to §§ 507, 702 and 1101 of the HSCA, Defendant is strictly liable for the damages its releases or threatened releases have caused to the natural resources surrounding the National Mines Well Site, including Plaintiffs' water and Property.

133. The above releases and threats of releases of hazardous substances and contaminants by Defendants constitute public nuisances under § 1101 of the HSCA.

134. The above releases and threats of releases of hazardous substances and contaminants constitute unlawful conduct under § 1108 of the HSCA.

135. The above releases and threats of releases of hazardous substances and contaminants by Defendants have caused and threaten to cause property damage to the Plaintiffs.

136. Defendants, by reason of these releases and threats of releases, are liable for all the response costs, damages and injuries to Plaintiffs and damages to natural resources proximately caused by the releases and threats of releases, and to remediate the releases, threats of releases and the resultant contamination.

WHEREFORE, Plaintiffs respectfully demand judgment in their favor and against Defendants in an amount in excess of arbitration limits and/or in excess of \$50,000, the remediation of Plaintiffs' Property, plus attorneys' fees, costs, and any and all other relief this Honorable Court deems just and appropriate.

**A JURY TRIAL IS DEMANDED**

**COUNT VI – MANDATORY PERMANENT INJUNCTION**  
**Plaintiffs v. Defendants**

165. All of the above paragraphs of this Complaint are incorporated herein by reference as though fully set forth at length.

166. Defendants' actions at the National Mines Site caused the Seep to develop, resulting in contamination to the surrounding soil and groundwater.

167. The Seep continues to run through the Property and continues to cause contamination upon the Property. Plaintiffs reasonably believe and therefore aver that Defendants' actions in causing the Seep are continuing, and will continue, into the foreseeable future.

168. Plaintiffs reasonably believe and therefore aver that Defendants' continued actions at the National Mines Site, including burying the Drill Cuttings Pit and Impoundments, are causing and will continue to cause significant, irreparable harm to Plaintiffs.

169. Plaintiffs have lost the use and enjoyment of their Property, including through the following:

- a. Plaintiffs are precluded from using the Property for their own purposes;
- b. Plaintiffs are precluded from developing the Property due to Defendants' continuing intrusion;
- c. Defendants have destroyed natural resources on the Property; and
- d. Defendants have caused contamination that is continuing to spread through the Property.

170. The issuance of a mandatory Permanent Injunction enforcing Plaintiffs' rights and prohibiting Defendants from causing continuing contamination on the Property is necessary to prevent immediate and irreparable harm to the Plaintiffs that cannot be compensated by monetary damages alone.

171. The issuance of a mandatory Permanent Injunction is necessary to cause Defendants to remove the Drill Cuttings Pit and Impoundments buried on the National Mines Site and to fully remediate and restore the Property to its original condition, removing all waste and contamination.

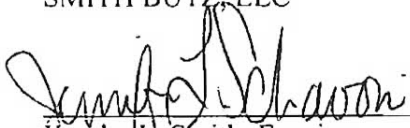
172. The issuance of a mandatory Permanent Injunction against Defendants is in the public interest.

WHEREFORE, Plaintiffs respectfully demand judgment in their favor and against Defendants and enter an order prohibiting Defendants' continuing contamination on the Property and requiring Defendants to fully remediate and restore the Property to return it to its original condition, and any and all other relief this Honorable Court deems just and appropriate.

**A JURY TRIAL IS DEMANDED**

Respectfully submitted,

SMITH BUTZ, LLC



Kendra L. Smith, Esquire  
Jennifer L. Schiavoni, Esquire  
*Counsel for Plaintiffs*

**CERTIFICATE OF COMPLIANCE**


I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Plaintiffs  
Signature: Jennifer L. Schiavoni  
Name: Jennifer L. Schiavoni  
Attorney No. (if applicable): 311650

**VERIFICATION**

I, Brent G. Broadwater, have read the foregoing **COMPLAINT IN CIVIL ACTION**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

A handwritten signature in cursive script that reads "Brent G. Broadwater". The signature is written in black ink and is positioned to the right of the text above it.



**VERIFICATION**

I, Wanda Y. Broadwater, have read the foregoing **COMPLAINT IN CIVIL ACTION**.

The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

A handwritten signature in cursive script that reads "Wanda Y. Broadwater". The signature is written in black ink and is positioned above a horizontal line.