

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

6 MAP 2017

EQT PRODUCTION COMPANY,

Appellee,

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,**

Appellant.

BRIEF OF AMICUS CURIAE CHESAPEAKE BAY FOUNDATION, INC.

**Appeal from the Order of the Commonwealth Court of Pennsylvania, Docket
No.: 485 M.D. 2014**

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The Chesapeake Bay Foundation, Inc. (CBF) submits this brief as *amicus curiae* in support of the Pennsylvania Department of Environmental Protection (DEP).

I. STATEMENT OF INTEREST

No person or entity other than CBF has authored or paid for the preparation of this brief.

CBF is a not-for-profit citizen advocacy organization.¹ CBF is the largest independent organization dedicated solely to protecting and restoring the Bay and its tributary rivers including those in Pennsylvania. One of CBF's principal objectives is to improve water quality by reducing the amounts of pollutants discharged to the Chesapeake Bay and its tributaries.

CBF has an office in Harrisburg, Pennsylvania, as well as Annapolis, Maryland, Richmond and Norfolk, Virginia. In Pennsylvania, CBF operates an education program that takes students, administrators and teachers on field trips teaching them about local ecology and the value of clean water. CBF's Pennsylvania office also deploys field staff who work with localities, businesses, and citizens in the Commonwealth educating them on the value of a healthy ecosystem, how to protect water resources from pollution and degradation, and

¹ www.cbf.org.

installing best management practices such as trees and fences to improve local water quality.

CBF has over 233,000 members, volunteers, and electronic subscribers nationwide – approximately 34,000 of these members reside in Pennsylvania. CBF members enjoy swimming, boating, kayaking, sailing, fishing, crabbing, bird watching, and other aesthetic and recreational pursuits in the waters of the Bay and its rivers and streams.

CBF has spent millions of dollars restoring waterways and educating students and teachers about the value of the Chesapeake Bay and its tributaries. Last year alone, CBF spent \$6.2 million on just its education program which operates throughout the Bay region including Pennsylvania.

CBF has an interest in protecting the quality of water bodies within and natural resources of the Commonwealth of Pennsylvania. When appropriate, CBF has taken legal action to enforce the laws of the United States and Pennsylvania. *See, Borough of Bedford v. Commonwealth*, 972 A.2d 53 (2009). CBF has a distinct interest in seeing that penalties assessed against those who violate those laws, are of sufficient magnitude to deter future illegal behavior. Thus, CBF has a direct interest in this Court's consideration of the Commonwealth's appeal and in overturning the decision of the Commonwealth Court.

II. BACKGROUND

The Commonwealth Court held that the release of a pollutant from an industrial wastewater surface impoundment to groundwater is not a “discharge” under Section 307 of the Clean Streams Law, 35 Pa.Stat. § 691.307. *EQT Prod. Co. v. Dept. Env'tl. Prot.*, 153 A.3d 424, 433 (Pa. Cmwlth 2017). The court also ruled that Pennsylvania’s Clean Streams Law does not allow the Commonwealth to recover penalties for continuous water pollution violations. *Id.* at 435-36. These rulings essentially limit the Commonwealth to recover penalties only during the period a pollutant flows and stops flowing out of a pipe or other container. Respectfully, these are erroneous decisions and should be overturned.

A. Unconventional Natural Gas Production – Fracking

This case concerns the proper method for calculating penalties for violations associated with the illegal storage and release of “flowback” water and drilling production waste from unconventional natural gas drilling commonly referred to as “fracking”. Fracking uses water to fracture shale rock deep underground where natural gas is found. First, a well is bored between five to nine thousand feet below the surface. https://www3.epa.gov/npdes/pubs/hydrofracturing_faq.pdf.

Then, thousands of gallons of water mixed with chemicals are injected under pressure through the well boring. The water fractures the rock and gas is released. The injected water, salty water from the shale layer, and a variety of metals,

radionuclides, and organic compounds from the shale formation return to the surface. Rahm, B.G., *et al.*, *Wastewater management and Marcellus shale gas development: Trends, drivers, and planning implications*, 120 *Journal of Environmental Management*, 105-113 (2013). This fluid is called “flowback.” Due to its chemistry and the pollutants it contains, flowback fluid cannot be discharged to the ground or surface waters and must be stored, treated, or reused. 35 Pa.Stat. § 691.301.

See, https://www3.epa.gov/npdes/pubs/hydrofracturing_faq.pdf p. 3;
<https://fracfocus.org/hydraulic-fracturing-how-it-works/drilling-risks-safeguards>.

A single fracked well can produce over 10,000 cubic meters of flowback fluid which is largely brine and many times more saline than seawater.

Haluszczak, L, *et al.*, *Geochemical evaluation of flowback brine from Marcellus gas wells in Pennsylvania, USA*, *Applied Geochemistry*, Vol. 28:55-61, Jan. 2013); Rahm, *et al.*, *supra*. The brine contains concentrations of barium and radium that are commonly hundreds of times the safe drinking water standard. Haluszczak, *et al.*, *supra*. This water is stored in surface impoundments until it is either shipped offsite, treated, or reused.

Due to the high levels of chlorides found in flowback the solution exhibits high conductivity. Haluszczak, *supra*. Conductivity is the ability of an aqueous solution to carry an electrical current and is a measure of water quality.

<https://www.epa.gov/national-aquatic-resource-surveys/indicators-conductivity>.

Changes in conductivity can indicate that pollution has entered a body of water.

Id. “Generally, human disturbance tends to increase the amount of dissolved solids entering waters which results in increased conductivity.” *Id.*

The higher the ion concentration in the water, the higher the conductivity.

<https://www.epa.gov/national-aquatic-resource-surveys/indicators-conductivity>.

Ions come from chlorides and other compounds. When conductivity goes beyond its usual range, it can harm aquatic life. <http://www.fondriest.com/environmental-measurements/parameters/water-quality/conductivity-salinity-tds/#cond23>.

B. EQT’s Flowback Contained Pollutants That Continued to Harm the Environment Even After the Impoundment was Removed

EQT added pollutants to the water it used to frack the Phoenix well. EQT is a charter member of FracFocus, an independent educational website created by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. <https://www.eqt.com/our-business/production/hydraulic-fracturing>.

According to FracFocus, EQT injected several chemicals into the ground at the Phoenix well site including tributyl tetradecyl phosphonium chloride a biocide with long lasting effects, <http://www.msdsdigital.com/system/files/BE-9W.pdf>, and ammonium chloride, an acidic salt,

<https://fracfocusdata.org/DisclosureSearch/Search.aspx>. Both are toxic to aquatic organisms including trout,

<http://www.inchem.org/documents/icsch>http://www.pesticideinfo.org/List_AquireAll.jsp?Rec_Id=PC33861&Taxa_Group=Fish /icsc/eics1051.htm. Some of these chemicals returned to the surface via flowback and were sent to the surface impoundment.

Surface impoundments or pits are used for storage of flowback water, for emergency overflow, and for temporary storage of the fluids used to complete and treat the well. According to FracFocus,

the containment of fluids within an impoundment is the most critical element in the prevention of contamination of shallow ground water. The failure of a tank, pit liner, or the line carrying fluid (“flowline”) can result in a release of contaminated materials directly into surface water and shallow ground water. Environmental clean-up of these accidentally released materials can be a costly and time consuming process. Therefore, prevention of releases is vitally important.

<https://fracfocus.org/hydraulic-fracturing-how-it-works/drilling-risks-safeguards>.

C. Site Geography

The well at issue, Phoenix Pad S, was drilled in the Marcellus Shale gas formation which is found beneath land in New York, West Virginia, and Pennsylvania. Pad S is in Duncan Township, Tioga County, Pennsylvania.²

² <https://www.google.com/maps/place/Rock+Run/@41.6477472,-77.2524322,876m/data=!3m1!1e3!4m5!3m4!1s0x89ce325491bdd02b:0xbcdc471b8f856254!8m2!3d41.6393739!4d-77.2427064>

Flowback fluid from EQT's drilling and storage activities were discharged to a wetland, a spring, two unnamed tributaries, and Rock Run, a high value water and Class A wild trout water,

<http://www.fishandboat.com/Fish/PennsylvaniaFishes/Trout/Documents/classa.pdf>

p. 23. Rock Run flows south to Babb Creek a tributary of the Tioga River which runs east through Tioga State Forest. The Tioga River is a tributary of the Susquehanna River. Approximately half of all the freshwater that flows into the Chesapeake Bay is supplied by the Susquehanna River.

<http://www.chesapeakebay.net/discover/bay101/facts>

D. EQT Production Company

EQT Production is a natural gas producer owning 790,000 gross acres in the Marcellus Shale play. <https://www.eqt.com/our-business/production>. EQT is a leading player in the Marcellus Shale. <https://www.eqt.com/our-business/production/marcellus-shale>.

In 2013, the year penalties were assessed, EQT reported a 43% increase in total natural gas sales and an 82% increase in Marcellus shale play natural gas sales volumes. EQT 2013 Annual Report at p. 7.

http://ir.eqt.com/sites/eqt.investorhq.businesswire.com/files/doc_library/file/12-31-2013_10-K_-_FINAL.pdf. EQT reported an operating revenue of over \$1.8 billion up from approximately \$1.38 billion in 2012. *Id.* at p. 31.

EQT has 490 active wells in Pennsylvania and since January 2009 has had 115 violations of state law and paid over \$118,000 in fines.

<http://stateimpact.npr.org/pennsylvania/drilling/operators/eqt-production-co/>. EQT has had similar impoundment violations at other well sites.

<http://stateimpact.npr.org/pennsylvania/drilling/violations/78.56PITCNST/>

EQT adheres to “Guiding Principles” when fracking natural gas. These “are a comprehensive core of policies, procedures and practices, providing a foundation of training and operations within our drilling, completions and production activities. These simple and easily communicated guidelines demonstrate to employees and contractors EQT's commitment to safety and the environment.”

<https://www.eqt.com/our-business/production/marcellus-shale>. These principles include:

HIGH PRESSURE SYSTEMS ♣ All equipment and components used in pressurized systems are appropriately rated and capable of operating under the maximum rated pressure ♣ High pressure pumps and equipment are only used when necessary and appropriate for the task ♣ Equipment used for pressurized services is tested for integrity.

PIT DESIGN & OPERATION ♣ Prior to construction, potential pit locations are evaluated to establish suitability ♣ Pits are engineered and designed to be stable and impervious ♣ Pits are inspected to establish that they are constructed as designed ♣ Inspections are conducted regularly to evaluate pit integrity.

WELL DESIGN & CONSTRUCTION ♣ Wells are designed to protect fresh groundwater ...

<https://www.eqt.com/~media/sites/eqt/files/marcellus%20operations%20guiding%20principles%20july%202016.ashx?la=en>.

E. The Violations at Issue – What EQT Did

EQT knowingly violated the Clean Streams Law in its construction and operation of Phoenix Pad S and a related surface impoundment adjacent to the well.

In the fall of 2011, EQT constructed a six million gallon “freshwater impoundment.” Contrary to its “Guiding Principles,” in January 2012, EQT ignored proper safeguards and began placing drilling mud released from another well pad in the impoundment. According to DEP’s complaint, EQT learned on April 30, 2012, that downgradient groundwater monitoring wells showed unusually high conductivity, evidence of water pollution. At that time, EQT was on notice that the integrity of the impoundment liner was impaired. In fact, EQT found 6-7 holes in the liner on May 24. Recorded Record (RR) 35a-36a, ¶ I.

On May 8, 2012, again contrary to its “Guiding Principles”, EQT failed to test a pipe used to pump flowback fluid from the impoundment to the well for reuse. Thus, approximately 500 gallons of flowback was released on to the ground into a channel EQT had dug. The flowback fluid ran down the channel and into the woods. RR 35a, ¶ F. This fluid pooled in a sump, a pit dug by EQT, and oozed out of the ground from the southeast corner of the impoundment. *Id.* at ¶ H.

EQT continued to observe high conductivity in one of its groundwater wells, RR 36a, ¶ K, and in a spring located 250 feet away from the monitoring well. *Id.* Trees and bushes in the immediate vicinity of the spill and farther downgradient were stressed. *Id.* Disturbingly, water in Rock Run showed high conductivity, an indication that the flowback fluid released by EQT had reached surface water. *Id.*

On June 11, EQT found not 6 or 7 holes in the liner as earlier reported, but between 75-100 holes. RR 37a, ¶ N.

In June 2012, EQT excavated trenches west of the impoundment to catch fluid oozing through the soil. RR 37a, ¶ N, 38a, ¶ Q. Conductivity in a seep and an unnamed tributary remained high. DEP noted a dying tree along the ditch south of the impoundment. RR. 38a, ¶ R.

DEP noted that the pre-existing violations remained during its August 2, 2012, inspection and that there were new areas of stressed vegetation south of impoundment towards Babb Creek. RR. 38a, ¶ S. A week later, DEP found fluid leaking out from an unbermed liner in the northeast corner of the well pad. RR. 38a – 39a, ¶ U. Moreover, a wetland northeast of the well pad had elevated conductivity, again indicative that pollutants from the impoundment or pipe had flowed to a water of the Commonwealth. As noted in previous inspections, the original violations continued. RR. 39a, ¶ W.

In late September, DEP noted that a sump discharge had elevated conductivity with elevated levels of chlorides, sulfate and strontium in the discharge. Further, there had been no remedial containment of the discharge. RR. 39a, ¶ X.

DEP continued to inspect the well pad, impoundment and surrounding area through July 2013 when the penalty was assessed. The violations found in May 2012 continued until then. RR 39a, ¶ Z.

III. ARGUMENT

A. The Commonwealth Court Misapplied the Definition of “Discharge”.

The Commonwealth Court held that the flowback fluid from the EQT impoundment “infiltrated groundwater, not surface water” thus, it was not a discharge and is not a violation of Clean Streams Law section 307. *EQT v. DEP*, *supra*, at 433. This holding is incorrect for several reasons.

First, the court incorrectly applied the definition of “discharge” associated with National Pollution Discharge Elimination System (NPDES) permits. 25 Pa. Code §92a.2. This program allows the discharge of pollutants directly to surface waters as authorized by the United States Environmental Protection Agency (EPA) under the Clean Water Act. That is the stated purpose of this section. “The regulatory provisions contained in this chapter implement the NPDES Program by the Department under the Federal Act.” 25 Pa. Code §92a.1. *See*, 33 U.S.C.

§1342(b). The pollution released in this case were not subject to a permit. EQT illegally discharged flowback to groundwater and surface water through holes in the impoundment liner, a leak in a pipe, and from the Phoenix well pad. Those were *unpermitted* discharges. Thus, the definition of “discharge” in 25 Pa. Code §92a.2 does not apply.

Second, EQT’s impoundment flowback fluid *did flow* to surface water. That is why four different surface waters; a wetland, Rock Run, and two unnamed tributaries, showed continued high levels of conductivity. RR 36a, ¶ K5; 45a.

Third, the Clean Streams Law is broader than the CWA definition of “water” and includes groundwater. 35 Pa.Stat. § 691.301.

B. The Clean Streams Law Provides for Continuing Violations.

The Commonwealth Court held that a penalty cannot be assessed for the movement of industrial waste like fracking flowback fluid from one body of water to another. *EQT v. DEP, supra*, at 436. According to the court, “a violation of Section 301 occurs when a person ... does what is prohibited—*i.e.*, allows industrial waste to enter into the waters of the Commonwealth—and once it ceases that conduct, violations cease.” *Id.* Thus, penalties for polluting waters of the Commonwealth cease once “the spigot is turned off.” This is an incorrect interpretation of the law.

The Clean Streams Law has a variety of provisions designed to prevent the pollution of waters of the Commonwealth. None require repeated actions for continuing violations. *See, e.g.*, 35 Pa. Stat. § 691.401 (unlawful to *allow* any pollutant to be discharged into any waters of the Commonwealth)(emphasis added); 35 Pa. Stat. § 6905(a)(“*In addition to proceeding under any other remedy ... the department, after a hearing, may assess a civil penalty upon a person or municipality for such violation. Such a penalty may be assessed whether or not the violation was willful.*”)(emphasis added); 35 Pa. Stat. § 691.701 (“It is hereby declared to be the purpose of this act *to provide additional and cumulative remedies* to abate the pollution of the waters of this Commonwealth,”)(emphasis added).

Once a polluter takes or fails to take an action that allows contaminants to flow into a body of water that continue to harm water quality, there is a continuing violation subject to a penalty. The fact that some contaminated soil is removed may reduce the seriousness of the penalty, but it should not alleviate all consideration of a penalty.

C. In Reaching its Decision, the Commonwealth Court Ignored Important Requirements of the Clean Streams Law.

In reaching its decision, the Commonwealth Court selectively reads out several key provisions in the Clean Streams Law. First, the court determined that the law did not provide for continuing violations for the flow of pollutants through

bodies of water because “violations require culpable action or inaction by the polluter.” *EQT v. DEP*, *supra*, at 436. The court reached this conclusion because one of the factors to be considered in the calculation of a penalty was “the willfulness of the violation.” *Id.* However, the court ignored the remainder of that provision requiring DEP to consider “damage or injury to the waters of the Commonwealth or their uses, cost of restoration, and other relevant factors.” 35 Pa.Stat. § 691.605(a). None of these factors are predicated upon actions of the perpetrator. These factors concern the consequences of the defendant’s conduct. Thus, as the statute requires, a penalty should be assessed for the period a pollutant persists in the environment if it continues to damage or injure bodies of water or restrict their use.

An interpretation of the statute that fails to consider the ongoing damage a willful release of pollution causes ignores the plain language of the law.1 Pa. Cons. Stat. Ann. § 1921 (“Every statute shall be construed, if possible, to give effect to all its provisions.”); 1922(2)(“the General Assembly intends the entire statute to be effective and certain.”).

Moreover, the deterrent effect of a civil penalty is one of the “other relevant factors” which DEP and thus the court is required to consider. 35 Pa.Stat. § 691.605(a); *Pines at W. Penn. LLC v. Pa. Dept. Env'tl. Prot.*, 24 A.3d 1065, 1070 (2010), citing, *Leeward Const., Inc. v. Depart. of Env'tl. Prot.*, 821 A.2d 145 (Pa.

Cmwlth. 2003), appeal denied, 573 Pa. 706, 827 A.2d 431 (2003). Repeated violations should be deterred, *Pines at W. Penn, supra*, at 1073. The failure to consider the ongoing harm a pollution incident may have on the environment or human health again ignores the plain language of the statute.

In *Westinghouse Electric Corporation v. Department of Environmental Protection*, 705 A.2d 1349 (Pa. Cmwlth. 1998), appeal denied, 556 Pa. 717, 729 A.2d 1133 (1998) (*Westinghouse I*) and *Westinghouse Electric Corporation v. Department of Environmental Protection*, 745 A.2d 1277 (Pa. Cmwlth. 2000) (*Westinghouse II*), the Commonwealth Court found the release of trichloroethylene and trichloroethane into the soil, surrounding waters, and downstream wells over a period of seven years to warrant the imposition of significant penalties. The court considered the need to impose a stiff fine to deter future conduct. *Westinghouse II, supra*, at 1280-81. The fact that Westinghouse had to spend millions of dollars in remediation costs could not be considered in offsetting the penalty. *Id. See*, 25 Pa. Code § 101.2(e). The court also held that the requirement of notifying DEP of a discharge and taking steps to prevent injury and further water pollution “cannot reasonably be read as ceasing the day (or the hour) after a discharge takes place.” *Westinghouse I, supra*, 705 A.2d at 1354.

The Supreme Court has held “[t]he legislative history of the [CWA] reveals that Congress wanted the district court to consider the need for retribution and

deterrence, ..., when it imposed civil penalties.” *Tull v. United States*, 481 U.S. 412, 422-23 (1987).

Here, following the Commonwealth Court’s logic, the penalty period ran from the day EQT determined that flowback fluid entered groundwater from the impoundment,³ May 30, 2012, RR. 21a, ¶ 9, until the impoundment was drained, June 11, 2012, RR. 21a, ¶ P 10. According to EQT, a total of 12 days. RR. 21a, ¶ 11. Thus, the maximum penalty assessed (\$10,000 per day) would have been \$120,000. Such an amount represents .0087% of EQT’s operating revenue in 2012. Hardly an amount that would deter future illegal conduct and certainly not an amount that represents the ongoing harm to nearby vegetation or the trout and other living organisms in Rock Run.

Further, courts have found, regardless of continuing acts, that violations are ongoing where pollutants discharged without a permit or in violation of a permit remain in a waterway. *See, e.g., Raritan Baykeeper v. NL Industries, Inc.*, 2013 U.S. Dist. LEXIS 2628, 2013 WL 103880, at *50 (D.N.J. Jan. 8, 2013)(pollutants discharged into the river without a permit are a continuing violation of the CWA because remedial measures have not been taken that clearly eliminate the cause of the violation); *United States v. Alcoa, Inc.*, 98 F. Supp. 2d 1031, 1037 (N.D. Ind.

³ The Commonwealth Court ignored the fact that EQT had knowingly discharged flowback fluid into a channel and the ground from a two-inch hole in a pipe.

2000)(illegally discharged pollutants "settle into the sediment and from there, continue to be released into the water," constituting a "continuing violation" of the CWA); *Sasser v. EPA*, 990 F.2d 127, 128-129 (4th Cir. 1993)(pollutant discharged from a point source without a permit - "[e]ach day the pollutant remains in the wetlands without a permit constitutes an additional day of violation").

A federal district court has held that the seepage of contaminants from a solid waste disposal site into surface water without a discharge permit represented a continuing violation of the Clean Streams Law and the Clean Water Act.

PennEnvironment v PPG Indus. Inc., 127 F.Supp. 3d 336, 385-86 (W.D. PA 2015).

The violations continued even though DEP had entered into an administrative consent order with PPG to remediate the site.

A penalty that simply ceases when the valve is turned off turns a blind eye to the potentially long term harmful effects water pollution can have. For example, under the court's view, if EQT had opened a drum of water laced with arsenic onto the ground the calculation of a penalty would have ended when the spigot was turned off and any local soil was removed. That analysis would hold true regardless if the arsenic subsequently flowed into Rock Run, down to Babb Creek and into the Tioga River killing plants, animals and fish along the way. Such an interpretation nullifies the purpose of the Clean Streams Law and is contrary to

cannons of statutory construction. 1 Pa. Cons. Stat. Ann. § 1921(a). Thus, the Commonwealth Court's decision should be reversed.

D. Reviewing Courts Can Limit the Size of the Penalty Without Eliminating Days of Violations

The Commonwealth Court worries that allowing penalties to accrue as long as illegally discharged pollutants flow through streams and rivers “would result in potentially limitless continuing violations for a single unpermitted release...” *EQT v. DEP, supra*, at 435. But, this argument ignores the fact that the Environmental Hearings Board and reviewing courts are fully capable of reducing the size of the daily penalty.

A court can adjust the size of the penalty based upon the number of days the pollution exists in the environment and the amount of harm it causes up to the statutory maximum of \$10,000 per day. Thus, a court should not stop counting the days of violation simply because the defendant removed the original source of the pollution. *See, Pa. DEP Civil Penalty Assessment Procedure for Pollution Incidents*, p. 2, Continuing Violations.

<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-48287/550-4180-001.pdf>

The guidance states that “[s]ingular incidents or conditions that are not yet corrected, but not continually causing pollution or damage (e.g., erosion and sedimentation controls), should be considered single events, or possibly multiple events, but should not have a daily penalty assessed for continuing in violation.”

Id. (emphasis added). *See also, Pines at W. Penn., supra*, at 1069, *Civil Penalty Calculations for Effluent Violations*.


Here, the pollution emanating from the flowback impoundment and the hole in the transfer pipe continued to cause high levels of conductivity long after the pipe discharge stopped and the flowback fluid was removed from the impoundment. Therefore, a penalty should be assessed for a continuing injury to waters of the Commonwealth.

CONCLUSION

When a company like EQT makes the knowing and willful decision to place contaminants in such a way that they can be released into the environment and cause harm far from the initial location of placement, it runs the risk of being penalized for the full extent of the harm. That is what the Clean Streams Law requires.

Regardless of whether this Court agrees with DEP's penalty calculation, it should not adopt the Commonwealth Court's interpretation of the law. The decision of the Commonwealth Court should be reversed and the matter remanded for proper consideration of the appropriate penalty to be assessed against EQT for its wrongful conduct.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2017, a copy of the foregoing **Brief of Amicus Curiae Chesapeake Bay Foundation** was mailed to the Clerk of the Court with a Certificate of Mailing from the United States Postal Service and served by mailing (2) hard copies by U.S. Mail, postage prepaid, on the following:

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