



# CENTER FOR COALFIELD JUSTICE

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March 22, 2022

Union Township Board of Supervisors  
3904 Finleyville-Elrama Road  
Finleyville, PA, 15332  
Washington County

**Re: Proposed EQT Sarah Well Pad**

Dear Board of Supervisors,

Center for Coalfield Justice (“CCJ”) is a non-profit organization dedicated to protecting the public and environmental health in southwestern Pennsylvania. As such, and on behalf of our members, we are acutely aware of the impacts caused by oil and gas development and the need to address those impacts adequately. Residents living near the proposed Sarah Well Pad have raised concerns about the proposed development and operation of the site. CCJ believes that these concerns can be addressed efficiently and cost-effectively by the Board of Supervisors and EQT.

Article I, Section 27 of the Pennsylvania Constitution means something very tangible and real to people across the Commonwealth. It protects inherent rights that are essential to life. The text of Article I, Section 27 (“Section 27”) identifies two distinct yet related fundamental rights and corresponding duties. *Pa. Envtl. Def. Found. v. Commonwealth*, 161 A.3d 911, 931 (Pa. 2017) (“*PEDF*”). The first “inherent and inalienable” right guarantees “clean air, pure water, and the preservation of the natural scenic, historic and esthetic values of the environment.” *Id.* The second grants common ownership to “all the people” of “Pennsylvania’s public natural resources.” *Id.* The final clause of the Environmental Rights Amendment creates a trust designating the Commonwealth and all its subdivisions (including Union Township) as the trustee, the natural resources of the Commonwealth composing the trust res, and all the people and future generations as the beneficiaries *Id.*

Union Township’s duties as a trustee require the conservation and maintenance of the corpus of the trust—the public natural resources of the Commonwealth. *Id.* at 932 (quoting *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 956–57 (Pa. 2013)). “The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources.” *PEDF* 161 A.3d at 932. The Commonwealth, including Union Township, has a further duty to “act toward the corpus of the trust...with prudence, loyalty, and impartiality.” *Id.* Put more simply, the Board of Supervisors must act to conserve and maintain public natural resources in a prudent, loyal, and impartial manner.

The Pennsylvania Supreme Court has been clear: the protection of environmental values is a “quintessential local issue that must be tailored to local conditions.” The Court has also stressed the importance of having a strong evidentiary record and instructed townships to make well-reasoned decisions about how the oil and gas industry will be regulated at the local level. A well-reasoned decision requires a pre-decisional analysis, including careful consideration of public input about the

residents' expectations regarding a particular zoned district and the impacts of oil and gas development on public natural resources.

Section 27 requires a pre-action analysis capable of informing the Township on whether degradation is likely to occur, which necessarily entails understanding local conditions and using scientific data and analysis. The Board of Supervisors previously heard testimony related to flooding in and along Lobbs Run and an unnamed tributary ("UNT") which flows into Lobbs Run. According to EQT's application materials, the primary stormwater controls utilized on the Sarah Well Site are two managed release controls and one detention pond. The receiving streams are a UNT to Lobbs Run and Lobbs Run. Although EQT concludes that the stormwater control practices described in the application will reduce stormwater runoff, EQT does not acknowledge the existing flooding in the receiving streams. As a result, it is unclear whether EQT considered the existing flooding in its modeling. The Board of Supervisors must ensure that EQT'S construction and operation of the Sarah Well Pad will not exacerbate existing flooding in Lobbs Run or its tributaries. Any defensible pre-action analysis necessarily starts with acknowledging the existing local conditions like flooding in the receiving streams.

The Board of Supervisors cannot make an informed decision regarding the environmental effects of its actions if it does not have an adequate understanding of what those effects are or will be. Likewise, the Board of Supervisors cannot be said to have acted with prudence when it acts on speculative or incomplete information. A trustee's discretion does not extend to decisions based on speculation. *In re Cope's Estate*, 50 Pa. D. & C. 189, 200 (1944); *Wood's Estate*, 197 A. at 641; *Hart's Estate*, 53 A. at 367. This is because speculation on the part of the trustee demonstrates negligence in "being ignorant of the facts which ordinary intelligence would have disclosed to him, or, if known, in not exercising his best judgment upon them." *Hart's Estate*, 53 A. at 367. Indeed, the Supreme Court remarked, "the trustee's fiduciary duties . . . [do] not equate to mere subjective judgment." *PEDF*, 161 A.3d at 933 (quoting *Robinson Twp*, 83 A.3d at 978).

Nearby residents have raised other concerns about noise, air emissions, truck traffic, and potential impacts on private drinking water supplies. We encourage the Board of Supervisors and EQT to work with these residents to address their concerns. EQT prides itself on being a community partner. Particularly considering the past issues at the Trax Well Pad, EQT now has an opportunity to demonstrate how it plans to communicate with nearby residents and protect surrounding properties during the development and operation of the Sarah Well Pad. Simple measures like appointing one or two EQT employees as the primary community contact(s) for the Sarah Well Pad would go a long way to increase community confidence that EQT will be responsive to community questions and concerns for the life of the Sarah Well Pad. We encourage EQT and the Board of Supervisors to explore other creative and cost-effective solutions that would address residents' questions and concerns and prevent unconstitutional degradation.

Respectfully,

/S/

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Community Advocate

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