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May 23, 2011

Sent via Certified First Class U.S. Mail & Electronic Filing

Maryanne Wesdock, Esq., Secretary
Environmental Hearing Board
2nd Floor – Rachel Carson State Office Building
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

**Re: Amended Notice of Appeal re Plan Approval PA-26-00588; EHB
Docket No. 2011-065-R**

Dear Secretary Wesdock:

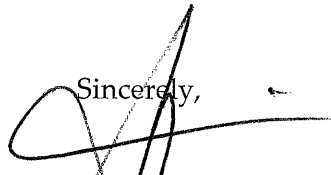
Enclosed for filing in the above-referenced matter is one (1) original and two (2) copies of the Amended Notice of Appeal and Objections with relevant exhibits.

Pursuant to 25 Pa. Code § 1021.53(a), the Group Against Smog and Pollution, through its counsel, is amending its appeal as of right.

We electronically filed the documents. However, pursuant to Board guidance, because the amended notice of appeal and the exhibits, taken together, exceed fifty (50) pages, we are also providing the Board with the enclosed hard copies.

Please let us know if you have any questions.

Sincerely,



Oday Salim, Esq.
Staff Attorney

Enclosures
OS



BEFORE THE COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
2nd Floor – Rachel Carson State Office Building
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457

GROUP AGAINST SMOG AND POLLUTION, :
: Appellant, :
: v. :
: EHB Docket No. 2011-065-R
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL : Plan Approval 26-00588
PROTECTION, : Noticed on April 2, 2011
: Appellee. :
_____ :

AMENDED NOTICE OF APPEAL

1. Name, address and telephone number of Appellant:

Group Against Smog & Pollution
Joe Osborne, Esq. - Legal Director
Wightman School Community Building
5604 Solway Street, Suite 204
Pittsburgh, PA 15217
412-325-7382
www.gasp-pgh.org

2. Subject of your appeal:

(a) Action of the Department for which review is sought (a copy must be attached):

The Group Against Smog & Pollution seeks review of the Department’s March 21, 2011 Plan Approval PA-26-00588 for Laurel Mountain Midstream Operating, LLC (“Laurel Mountain”) to construct, modify, reactivate, or install an air contamination source. This Plan Approval covered the installation and temporary operation of three new natural gas-fired compressor engines, as well as three previously authorized compressor engines, one turbine, one dehydrator, and one produced water tank at Laurel Mountain’s Shamrock Compressor Station located in German Township, Fayette County, Pennsylvania.

A copy of the Plan Approval is attached as Exhibit A.

(b) The Department's official who took the action:

The Department signatory to the Plan Approval and primary author of the response to comments on the Plan Approval application is Alan A. Binder, Air Quality Engineering Specialist, Department of Air Quality.

(c) The location of the operation or activity, which is the subject of the Department's action (municipality, county):

The Shamrock Compressor Station is located in German Township, Fayette County, Pennsylvania.

(d) On what date and how you received notice of the Department's action:

The issuance of Plan Approval PA-26-00588 was noticed on April 2, 2011 in the Pennsylvania Bulletin, Volume 41, No. 14.

3. Objections to the Department's action in separate, numbered paragraphs. The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.

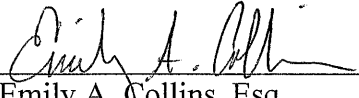
Please see attached sheet with amended objections.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

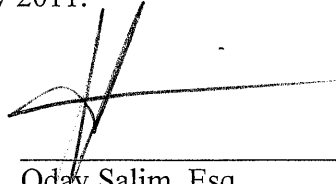
Other than the original appeal docketed as 2011-065-R, there is no other known related appeal.

The information submitted is true and correct to the best of our information and belief.

Respectfully submitted this 23rd day of May 2011.



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Attorneys for Appellant Group Against Smog and Pollution



BEFORE THE COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
2nd Floor – Rachel Carson State Office Building
400 Market Street, P.O. Box 8457
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GROUP AGAINST SMOG AND POLLUTION, :
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Appellant, :
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v. :
: EHB Docket No. 2011-065
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION, : Plan Approval 26-00588
: Noticed on April 2, 2011
:
Appellee. :
:
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AMENDED OBJECTIONS TO THE DEPARTMENT’S ACTION

1. In this appeal, the Group Against Smog and Pollution challenges the Department’s issuance of Plan Approval PA-26-00588 to Laurel Mountain Midstream Operating, LLC, (“Laurel Mountain”) for the Shamrock Compressor Station (“Shamrock”), because the Department acted unreasonably and in violation of the Pennsylvania Air Pollution Control Act and the federal Clean Air Act in issuing a Plan Approval based on an inadequate source determination.

2. Under both state and federal law, a proper source determination requires the Department to consider emissions from emission units that are under common control, belong to the same industrial grouping, and are contiguous or adjacent to the facility for which a permit is sought.

3. The Department’s decision to grant this Plan Approval was inappropriate and not in conformance with the law because there are facts that indicate that emissions from

73 contiguous and adjacent well sites should have been aggregated with the emissions from Shamrock Compressor Station to make a proper source determination.

4. Atlas Resources, the operator of the 73 associated well sites, is owned by Atlas Energy, Inc., which also has an ownership stake in Laurel Mountain. That is sufficient to find that the compressor station and the well sites are under common control. Also sufficient to find common control is the contractual relationship between Atlas Energy and Laurel Mountain.

5. The Department's common control analysis ignores: (a) Atlas Energy's ownership stake in Laurel Mountain Midstream Operating, LLC; (b) Atlas Energy's contractual relationship with Laurel Mountain; and (c) several other factors indicative of common control such as shared workforce and dependency of one facility on another.

6. The Department's adjacent or contiguous analysis is inadequate because it fails to consider dependency of production wells on the Shamrock Compressor Station.

7. Since emissions from emission units at the well sites were not included in the initial analysis and have the potential to negatively impact human and environmental health, the Department's decision to grant Plan Approval PA-26-00588 was unreasonable and not in conformance with the law.

8. Had the Department properly included emissions from emission units at the well sites, the facility's Potential To Emit would likely exceed 50 tons per year of Volatile Organic Compounds, requiring a major source designation.

9. Based on the Department's exclusion of emission units from the 73 well sites when making a source determination for Laurel Mountain's Shamrock Station, the Board should either vacate and remand Plan Approval PA-26-00588 to the Department for

reissuance in accordance with the law, or in the alternative, the Board may modify the Plan Approval to bring it into accordance with the law.

PARTIES

10. The Group Against Smog and Pollution (“GASP”) is a non-profit citizens group based in Pittsburgh, Pennsylvania. For over forty years GASP has served as a watchdog, educator, litigator, and policy-maker on many environmental issues, with a focus on air quality in southwestern Pennsylvania.

11. Though an appellant need not demonstrate or even allege standing in the notice of appeal, the Group Against Smog and Pollution satisfies the criteria for organizational and derivative standing. *Cooley v. DEP*, 2004 EHB 554; *Beaver Falls Municipal Authority v. DEP*, 2000 EHB 1026; *Ziviello v. DEP*, 2000 EHB 999; *Valley Creek Coalition v. DEP*, 1999 EHB 935.

12. GASP describes its history and efforts in the following manner:

The Group Against Smog and Pollution was founded in 1969 by a group of 43 volunteers concerned about air quality issues in southwestern Pennsylvania. Over the years, GASP has maintained a continuous program to educate the public on questions of pollution and its remediation. Through public meetings, engagement with the press, educational events, permit reviews, and other means, GASP has worked tirelessly to explain and combat our air quality problems.

See <http://gasp-pgh.org/about/history/>.

13. GASP's mission is "to obtain for the residents of western Pennsylvania clean air, water, and land in order to create the healthy, sustainable environment and quality of life to which we are entitled." See <http://gasp-pgh.org/about/history/>.

14. GASP achieves its mission by focusing on regional environmental issues; participating in state and national environmental decisions; delivering accurate and thorough information to the public and encourage active participation in the decision-making process; advocating, educating and serving as an environmental watchdog, mobilizing action. See <http://gasp-pgh.org/about/history/>.

15. GASP, in keeping with its mission, has participated in the decision-making process regarding the Shamrock Compressor Station by conducting two files reviews and submitting comments during the public notice and comment period for the Plan Approval at issue here. GASP also has been in communication with individuals living near Shamrock and the surrounding gas field who have shared their concerns with GASP about the natural gas operations.

16. James Rosenberg is a member of GASP with an interest in the air quality of southwestern Pennsylvania. Since July 1974, Mr. Rosenberg has lived in Redstone Township, Fayette County, Pennsylvania.

17. Mr. Rosenberg has been especially concerned about the public health and environmental consequences of natural gas development in western Pennsylvania. He has expressed concerns about seismic testing, pipeline installation, radioactive emissions, and the proximity of gas wells to waters of the Commonwealth.

18. Mr. Rosenberg currently lives nearly 5.4 miles as the crow flies from the site of the Shamrock Compressor Station. Mr. Rosenberg also lives nearly 5.0 miles as the

crow flies from the Howser Compressor Station, also owned and operated by Laurel Mountain.

19. Mr. Rosenberg is concerned about the Shamrock Compressor Station. His concern stems in part from the fact that he knows other people who claim to have suffered as a result of living in proximity to natural gas compressor stations elsewhere in western Pennsylvania, one of which, Springhill #2, is also operated by Laurel Mountain.

20. Mr. Rosenberg expressed his concern about the Shamrock Compressor Station by filing a comment during the public notice and comment period.

21. Mr. Rosenberg fast-walks around his home and is concerned that emissions from the Shamrock Compressor Station may impact his health.

22. Emissions from the Shamrock Compressor Station, especially those that would otherwise be appropriately regulated were the aggregation evaluation and the Potential To Emit calculation done properly, would impact Mr. Rosenberg's health and environmental interests.

23. Appellee Department is the state agency responsible for administering and for issuing plan approvals pursuant to the Air Pollution Control Act in the Commonwealth of Pennsylvania. The Department issued the deficient plan approval for the Shamrock Compressor Station.

PROCEDURAL & FACTUAL BACKGROUND

24. On August 19, 2010, Laurel Mountain submitted a Plan Approval application to obtain authorization to construct and operate equipment typically found at a natural gas production facility, in this case the Shamrock Compressor Station.

25. The Shamrock Compressor Station is located in German Township, Fayette County, Pennsylvania. Atlas Resources operates 73 natural gas production wells that are contiguous and adjacent to the Shamrock Compressor Station. While Laurel Mountain operates the Shamrock Compressor Station, Atlas Resources and Laurel Mountain are under common control and share resources.

26. On November 13, 2010, the draft Plan Approval was noticed in the Pennsylvania Bulletin. 40 Pa. B. 6537 (2010).

27. On December 13, 2010, the Group Against Smog and Pollution submitted comments to the Department regarding Laurel Mountain's Plan Approval PA-26-00588 application.

28. On February 3, 2011, Mr. Alan Binder from the Department requested additional information from Laurel Mountain related to this Plan Approval application.

29. In a letter dated February 14, 2011, Atlas Energy stated that it and its subsidiaries do not share any personnel with Laurel Mountain.

30. On February 15, 2011, representatives of the Department and the Williams Companies, the parent company of Laurel Mountain, met to discuss this permit action, including the ownership and operational structure for the proposed compressor station.

31. On February 25, 2011, the Department issued an order citing Laurel Mountain for causing or allowing the construction of three 1380 horsepower Caterpillar engines, at Shamrock Compressor Station, prior to receiving approval to construct these air contamination sources, contrary to section 6.1 of the Air Pollution Control Act and 25 Pa. Code section 127.11.

32. On March 2, 2011, Laurel Mountain sent an email regarding the contractual agreement between Atlas Energy and Laurel Mountain.

33. On March 4, 2011, Laurel Mountain responded to the Department's February 25th order with information about the Shamrock Compressor Station.

34. On March 21, 2011, the Department notified Laurel Mountain of its approval of Plan Approval PA-26-00588 and issued the final permit for this Plan Approval. Also on March 21, 2011 the Department responded to comments regarding Plan Approval PA-26-00588 submitted by Laurel Mountain.

35. Laurel Mountain submitted a letter on March 23, 2011 notifying the Department that the company had begun construction of three compressor engines, as provided by the Plan Approval PA-26-00588.

36. On April 2, 2011, the final approval of Plan Approval PA-26-00588 was noticed in the Pennsylvania Bulletin.

LEGAL BACKGROUND

37. Environmental Protection Agency Administrator William K. Reilly has stated that "the permit program is not only the most important procedural reform of the new Clean Air Act, but in many ways the key to effective enforcement and implementation of the law." David P. Novello, "EPA's Proposed Air Permit Regulations: Implementing the 1990 Clean Air Act Amendment," 21 *Envtl. L. Rep.* 10511, 10512 n.6 (September 1991) (quoting EPA Press Release, "EPA Proposes Permit Rules to Increase Industry Accountability Under New Clean Air Act" (April 24, 1991)).

38. One of the overarching goals of the Clean Air Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare

and the productive capacity of its population.” 42 U.S.C. § 7401. In order to effectuate the main goal of the Clean Air Act, the statute directs individual states to develop a State Implementation Plan. *See* 42 U.S.C. § 7410(a)(1).

39. The Department has the power and duty to implement the Clean Air Act in Pennsylvania. 35 P.S. § 4002. The Air Pollution Control Act provides for implementation of the provisions of the federal Clean Air Act in Pennsylvania.

40. Pennsylvania implements the Clean Air Act through its State Implementation Plan. Pennsylvania received final full approval from the Environmental Protection Agency (“EPA”) to operate its own Clean Air Act Title V Operating Permit Program and State Operating Permit and Plan Approval Programs on July 30, 1996. 60 Fed. Reg. 39597 (July 30, 1996).

41. Under Pennsylvania law, a plan approval is a permit that authorizes construction, installation, or modification of any air pollution source or facility. The regulations concerning plan approvals in Pennsylvania are found at title 25, chapter 127, of the Pennsylvania Code.

42. The Clean Air Act requires emissions sources to be regulated in several ways. New major sources of criteria pollutants and certain modified sources are required to undergo preconstruction review and a permitting process that conforms to federal law and regulations. In attainment areas, the process is called “prevention of significant deterioration” permitting, and in nonattainment areas, the process is called “new source review” permitting.

43. In order to administer its own Title V and Nonattainment New Source Review program, the Department’s regulations must be at least as stringent as EPA's

requirements for each program. 40 C.F.R. § 51.165; 45 Fed. Reg. 52676 (Aug.7.1980); 40 C.F.R § 70.1(c).

44. For purposes of Title V and Nonattainment New Source Review permitting, EPA defines a stationary source as “any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.” 40 C.F.R. § 51.165(a)(1)(ii).

45. Federal Nonattainment New Source Review rules define “building, structure, facility, or installation” as:

all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “Major Group” (i.e., which have the same first two digit code).

40 C.F.R. § 51.165(a)(1)(ii).

46. The Prevention of Significant Deterioration requirements published in 40 C.F.R. Part 52 are adopted in their entirety by the Department and incorporated by reference at 25 Pa. Code section 127.83. While federal Title V rules do not define “building, structure, facility, or installation,” the definition of “stationary source” should be interpreted consistently with the definition in Prevention of Significant Deterioration regulations. 61 Fed. Reg. 34202, 34210 (July 1, 1996); Memo from U.S. EPA Assistant Administrator Gina McCarthy to Regional Administrators, *Withdrawal of Source Determination for Oil and Gas Industries* (September 22, 2009), R. at 638-39; *MacClarence v. EPA*, 596 F.3d 1123, 1127 (9th Cir. 2010).

47. A source is subject to Title V regulations if it has the Potential To Emit 100 tons per year (“tpy”) or more of CO, NO_x, SO_x, and PM₁₀, 50 tpy of volatile organic

compounds, 10 tpy of a single hazardous air pollutant or 25 tpy of multiple hazardous air pollutants. EPA defines the Potential To Emit as “the maximum capacity of a stationary source to emit a pollutant under its physical and operational design.” 40 C.F.R. § 52.21(b)(4).

48. Under New Source Review standards, a facility that has the potential to emit 50 tpy or greater of volatile organic compounds (“VOCs”) is a “major source” and must be permitted in accordance with a major source designation. 40 C.F.R. § 51.165(a)(1)(iv)(A)(1)(ii); 25 Pa. Code § 127.201(c). When a facility applies for an operating permit or plan approval, the Department is required to conduct a source determination to assess whether the facility is a major source.

49. The EPA has set forth three regulatory criteria to establish when multiple air emission units should be aggregated into one source. *See* 45 Fed. Reg. 52676 (1980); Memo from Assistant Administrator Gina McCarthy to Regional Administrators, *Withdrawal of Source Determination for Oil and Gas Industries.*” (September 22, 2009). These criteria are: (1) whether the activities are under the control of the same person (“common control”); (2) whether the activities are located on one or more contiguous or adjacent properties (“contiguous or adjacent”); and (3) whether the activities belong to the same industrial grouping. 40 C.F.R. § 52.21(b)(6).

FACTUAL AND LEGAL OBJECTIONS

50. The issuance of the Shamrock Plan Approval violated the law because it was based on an inadequate source determination for the following reason: none of the emission units from the 73 surrounding well sites operated by commonly controlled Atlas

Resources were included in the aggregation analysis or in the resulting calculation for the facility's potential to emit.

51. Based on the definition of "stationary source," the Department is prohibited from issuing a plan approval to construct, modify, reactivate, or install an air contamination source without conducting an aggregation analysis and resulting source determination. 40 C.F.R. §§ 51.165(a)(1)(i) & 52.21(b)(5).

52. Emission units from the 73 well sites should have been included in the aggregation analysis conducted by the Department in the course of making a source determination for Shamrock. 40 C.F.R. §§ 51.165(a)(1)(ii) & 52.21(b)(6),

53. The Department acted unreasonably and in violation of the laws of the Commonwealth in issuing the Plan Approval to Laurel Mountain. *See Groce v. DEP and Wellington Development*, 2006 WL 3485200 (Nov. 22, 2006).

54. The Department's decision to grant Plan Approval PA-26-00588 was unreasonable and in violation of the law because there are facts that indicate that emissions from the 73 well sites should have been aggregated with the emissions from the compressor station, and total emissions from the properly defined source would exceed 50 tpy of VOCs, requiring a major source preconstruction permit.

55. Based on the requirements of the state's New Source Review permitting program and the Clean Air Act, the Plan Approval was the result of an improper aggregation analysis and will result in air pollution that may be damaging to the environment and human health.

56. For example, the unaccounted-for VOCs, which are associated with human and environmental health impacts, may interact and react with other pollutants emitted

from oil and gas operations, such as nitrogen oxide (“NOx”) or carbon monoxide, which results in an increase in ground-level ozone. *See*

<http://www.epa.gov/iaq/voc2.html#EPA%20Regulatory%20Definition>. Ozone is a constituent of photochemical smog, a common form of air pollution. *Id.* Thus, an increase in ozone production as a result of VOCs increases air pollution and associated risks to human health. Related human health concerns include increased respiratory problems, asthma, and other lung problems, particularly in children and older citizens.

57. The Pennsylvania Department of Environmental Protection acknowledges that not only do VOC-caused elevations in ground level ozone present human health concerns, but they also contribute to damage to crops and forests. *See* “Plug into Clean Power: Your Options for Cleaner Energy in Pennsylvania,” Clean Air Council and Pennsylvania Department of Environmental Protection, November 2002, *available at* <http://www.cleanair.org/sites/default/files/Plug%20into%20Clean%20Power.pdf>.

58. Since such significant levels of NOx and VOC emissions can be anticipated from sources at well pads and compressor engine sites, accurately accounting for emissions from these sources is necessary to ensure attainment of National Ambient Air Quality Standards.

59. Emissions units from the 73 well sites include condensate tanks, process heaters, and venting or flaring during well completions. The gas field in Southwestern Pennsylvania is known to have wet gas. *See* “Southwestern Pennsylvania Marcellus Shale Short-Term Ambient Air Sampling Report,” available at: http://www.dep.state.pa.us/dep/deputate/airwaste/aq/aqm/docs/Marcellus_SW_11-01-10.pdf. Wet gas yields condensate, and where condensate is produced, well sites must be

equipped with condensate tanks or some other mechanism to store or transport condensate.

60. A conservative estimate of emissions from the Shamrock Compressor Station can be calculated from information provided by Atlas regarding their well sites associated with its Deemston Station.

61. Based on figures from the Deemston Station, a conservative estimate is that each condensate tank would emit 0.195 tons per year of VOCs. This estimate is conservative because a large number of the well sites contributing to the Deemston Station were for conventional, shallow wells that only required 1,000 gallon condensate tanks. Condensate tanks at Marcellus Shale well sites often have much higher capacity, as much as 15,000 gallons or more, as well as greater throughput. Depending on how many of these larger condensate tanks are part of the gas field that contributes to the Shamrock Station, the quantity of VOCs emitted per condensate tank could be significantly larger.

62. Based on figures from the Deemston Station, process heaters are likely to contribute 0.01 tons per year of VOCs, and emissions from venting or flaring during well completion are expected to contribute a minimum of 0.281 tons per year of VOCs for all 73 well sites.

63. Therefore, using conservative figures, if each of the 73 well sites has at least one condensate tank and 70% have two condensate tanks, and if each well has one process heater, the additional 73 well sites could contribute at least 25.21 tons per year of VOCs to the facility—more than 25.21 tons per year depending on how many larger, Marcellus Shale-appropriate condensate tanks there are. The resulting Potential To Emit

for the facility, including the compressor station, would then be at least 51.45 tons per year, above the 50 ton per year major source threshold.

64. As to the first aggregation criterion, the Department failed to perform an adequate common control analysis.

- a. The Department's common control analysis ignores: (a) Atlas Energy's ownership stake in Laurel Mountain Midstream Operating, LLC; (b) Atlas Energy's contractual relationship with Laurel Mountain; and (c) several other factors indicative of common control such as shared workforce and dependency of one facility on another.
- b. Atlas Resources LLC is a subsidiary of Atlas Energy Inc. Atlas Energy Inc., has a large ownership stake in and the ability to exert significant control over Laurel Mountain, through a complex web of subsidiaries and joint ventures: other subsidiaries of Atlas Energy, Inc., include Atlas Pipeline Holdings, L.P ("AHD") and Atlas Pipeline Partners, L.P. ("APL"). Atlas Energy, Inc., owns a 64.3% ownership interest in AHD and a 100% ownership interest in its general partner. AHD, in turn, owns a 13.2% ownership interest in APL and a 100% ownership interest in APL's general partner. This is in addition to Atlas Energy's direct 2.2% ownership interest in APL. Or, to put the relationship more simply using Atlas Energy's own words: "Our consolidated financial statements contain the financial statements of AHD, which we control, and APL, which is controlled by AHD." See the Plan Approval application's Compliance Review Form and LMM's Limited Liability Company Agreement.
- c. In its most recent form 10-k SEC filing, Atlas Energy, Inc. describes

Laurel Mountain as: "a newly-formed joint venture between APL and The Williams Companies, Inc." and notes that APL has "a 49.0% ownership interest" in Laurel Mountain Midstream, LLC. Thus, Atlas Energy, Inc., controls both Atlas Resources, LLC - which has obtained permits for 73 wells in close proximity to Shamrock - and owns a 49% stake in Laurel Mountain Midstream, LLC, the operator of Shamrock. This ownership interest is likely sufficient in itself to establish common control.

- d. Atlas Energy's Form 10-k describes the gathering agreements between Atlas and LLM, LLC: "Under the Gathering Agreements, [Atlas] will dedicate [its] natural gas production in the Appalachian Basin to Laurel Mountain for transportation to interstate pipeline systems, local distribution companies, and/or end users in the area, subject to certain expectations. In return, Laurel Mountain is required to accept and transport our dedicated natural gas in the Appalachian Basin subject to certain conditions."
- e. The obligations of each party are described in greater detail in the gathering agreements themselves: Atlas Energy Resources LLC "dedicates to LMM for Gathering all...present and future right, title, and interest in Gas" in the Appalachian Basin. Under these agreements, virtually all Appalachian Basin natural gas produced by Atlas Energy Inc., and its subsidiaries will be transported via LMM infrastructure – in other words, a single purchaser contract indicative of common control.
- f. Though the relevant time period and geographic scope are redacted, an

additional, independent basis for establishing common control exists in all areas where LMM is obligated to dedicate 100% of its gathering capacity to Atlas: “LMM hereby reserves for the sole benefit of the Shippers one hundred percent (100%) of the capacity of the Gathering System (as currently existing and in the future expanded) in the following townships located in [Redacted], Pennsylvania: [Redacted].

- g. Atlas Energy’s Form 10-k also includes pipeline construction obligations constituting a contractual right to exert direct control over another facility: “To the extent that we own wells or propose wells that are within 2,500 feet to Laurel Mountain’s gathering system, we must at our cost construct up to 2,500 feet of flowline as necessary to connect the wells to the gathering system. For wells more than 2,500 feet from Laurel Mountain’s gathering system, if we construct a flow line to within 1,000 feet of Laurel Mountain’s gathering system, then Laurel Mountain must, at its own cost, extend its gathering system to connect to such flowline.”
- Since Atlas Energy, Inc.’s form 10-k states, “[w]e perform regular inspection, testing and monitoring functions on our operated wells and Laurel Mountain’s gathering systems with our own personnel,” Shamrock and the associated wells are likely to share a common workforce. In addition, the wells appear to be dependent on the Shamrock Station, as indicated by Atlas Energy, Inc.’s form 10-k, which states, “Our Appalachia business depends on the gathering and transportation facilities of Laurel Mountain Midstream, LLC (“Laurel Mountain”). Any limitation in the

availability of those facilities would interfere with our ability to market the natural gas we produce and could reduce our revenues and cash flows.

Laurel Mountain gathers more than 71% of our current Appalachia production.” Alan Armstrong, the Chief Executive Officer of Williams Partners is quoted as saying that “ in the Atlas JV [joint venture], the Laurel Mountain JV, very robust drilling plans, and we’re doing our dead level best to keep up with Atlas’s drillings there on the infrastructure side.” *Williams Partners CEO Discusses Q3 2010 Results – Earnings Call Transcript* (Oct. 3 2010) (available at <http://seekingalpha.com/article/233454-williams-partners-ceo-discusses-q3-2010-results-earnings-call-transcript?part=qanda>) (from the Q&A tab).

65. As to the second aggregation criterion, the Department failed to perform an adequate “adjacent or contiguous” analysis because it failed to consider the dependency of production wells on the Shamrock Compressor Station. Source aggregation decisions made by EPA Regional Offices over the last thirty years concerning whether facilities are “contiguous or adjacent,” generally focus on proximity, dependency or interdependence, and the existence of a physical connection, such as a pipeline, between facilities. The Department concluded that the Shamrock Compressor Station is not contiguous and adjacent with physically connected production wells by restricting the “dependency” inquiry to whether the compressor station is dependent on any single production well. Unless the production wells surrounding the Shamrock Compressor Station also have separate pipeline connections to other compressor stations or directly to a natural gas transmission line, each production well has no means other than via Shamrock to

transport natural gas from the production well to market – meaning the well is entirely dependent on Shamrock. And, mutual dependence is not necessary to establish the contiguous and adjacent factor. “One way” dependence is sufficient.

66. As to the third and final aggregation criterion, the 73 wells operated by Atlas are commonly owned, share the same industry grouping (SIC) code (they share the first two digits of their respective sic codes: 13), and are contiguous and adjacent to the Shamrock Compressor Station.

67. Therefore, the Department must perform a new aggregation analysis for the Shamrock Compressor Station including emissions from associated production wells and well pad emission units.

68. When emissions from associated well pad emission units are included in the source determination analysis VOC emissions from the Shamrock Compressor Station and aggregated well sites are likely to exceed the 50 tpy VOC threshold and necessitate a major source determination.

69. If the Department were to revoke the Plan Approval PA-26-00588 and reissue it following an adequate aggregation analysis and source determination, the errors outlined above could be remedied.

70. The Department would find that: (1) Atlas Energy Inc. has an ownership stake in Laurel Mountain as well as in Atlas Resources, the operator of the 73 associated well sites, that on its own or coupled with the contractual relationship between Atlas Energy and Laurel Mountain as well as other relevant facts, is sufficient to find that the compressor station and the well sites are under common control; (2) the fact that the 73 wells rely on the Shamrock Compressor Station to transport natural gas produced at each

well site to market, in combination with the overall nature of the operations of this gas field, require a finding that the well sites are contiguous and adjacent to the compressor station; and (3) the wells and the compressor station belong to the same industrial grouping.

71. Since all three prongs of the test for aggregation are met, the Department must consider and include emissions from emission units at the 73 well sites with emissions from the compressor station when determining potential to emit for a source determination.

72. Therefore, emissions from these well sites should be included in potential to emit calculations used to make a source determination. VOC emissions from these 73 well sites are estimated to be at least 25.21 tpy, which, when aggregated with VOC emissions of 26.24 tpy from the Compressor Station, result in a Potential To Emit for VOCs of more than 50 tpy.

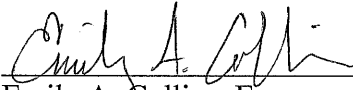
73. When a facility has the potential to emit 50 tpy or greater of VOCs, it must be permitted as a major source. Since the Plan Approval was approved under a minor source determination, the Board may vacate the Department's approval of this Plan Approval and remand to the Department for reconsideration in accordance with the facility qualifying as a major source. Since emissions from the well sites were not included in the initial analysis, the Department's decision to grant Plan Approval PA-26-00588 was inappropriate and not in accordance with the law.

74. Based on the above objections that demonstrate that the Department's approval of Laurel Mountain Midstream's Plan Approval was inappropriate and not in accordance with the laws of the Commonwealth, we request this matter be vacated and

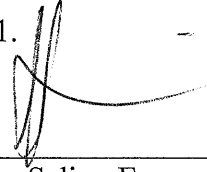
remanded to the Department. *Warren Sand & Gravel v. DEP*, 341 A.2d 556 (Pa. Commw. Ct. 1975); *see also, Morcoal v. Department of Environmental Resources*, 459 A.2d 1303 (Pa. Commw. Ct. 1983).

75. In the alternative, the Board may modify the Department's issuance of the Plan Approval and source determination analysis to aggregate emissions from emission units at the 73 well sites with emissions from the Shamrock Station. *Pequea Tp. v. Herr*, 716 A.2d 678, 686 (Pa. Commw. 1998); *see also, Environmental & Recycling Services, Inc. v. DEP*, 2002 EHB 461. Were the Board to modify the Department's approval, the Board should properly include emission units (such as emissions from condensate tanks, process heaters, and venting/flaring during well completion; small well pad compressor engines may be present as well) from the 73 commonly owned, contiguous and adjacent well sites. Were the Board to include these emission units when conducting the source determination for this plan approval, Shamrock would likely have a potential to emit VOCs in excess of 50 tpy, thus requiring a major source designation. 40 C.F.R. § 51.165(a)(1)(iv)(A)(1)(ii); 25 Pa. Code § 127.201(c).

Respectfully submitted this 23rd day of May 2011.



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EXHIBITS

- A. Plan Approval Letter dated March 21, 2011
- B. Plan Approval Permit # 26-00588

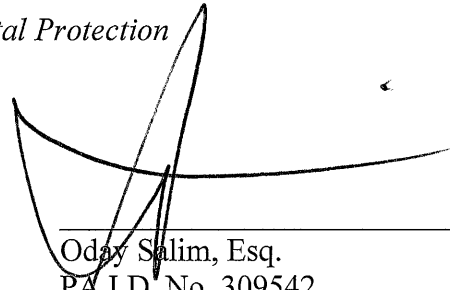
CERTIFICATE OF SERVICE

I, Oday Salim, certify that a true and correct copy of the foregoing Amended Notice of Appeal was served this 23rd day of May 2011 by electronic filing with the Environmental Hearing Board upon:

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Dated: Monday, May 23, 2011



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