

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: LYCOMING



POLICE CRIMINAL COMPLAINT  
COMMONWEALTH OF PENNSYLVANIA  
VS.

Magisterial District Number: 29-3-03  
MDJ: Hon. JON KEMP  
Address: 46 SOUTH MAIN STREET  
MUNCY, PA 17756  
Telephone: (570) 546-7480

DEFENDANT: (NAME and ADDRESS):  
XTO ENERGY  
First Name Middle Name Last Name Gen.  
395 AIRPORT ROAD, INDIANA, PA 15701

NCIC Extradition Code Type

- 1-Felony Full  4-Felony No Ext.  B-Misdemeanor Limited  E-Misdemeanor Pending  
 2-Felony Ltd.  5-Felony Pend.  C-Misdemeanor Surrounding States  Distance: \_\_\_\_\_  
 3-Felony Surrounding States  A-Misdemeanor Full  D-Misdemeanor No Extradition

DEFENDANT IDENTIFICATION INFORMATION

Docket Number	Date Filed / /	OTN/LiveScan Number	Complaint/Incident Number 49-1082	SID	Request Lab Services? <input type="checkbox"/> YES <input type="checkbox"/> NO	
GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female	DOB / / AKA	POB	Add'l DOB / /	Co-Defendant(s) <input type="checkbox"/>		
First Name		Middle Name	Last Name		Gen.	
RACE <input type="checkbox"/> White <input type="checkbox"/> Hispanic	<input type="checkbox"/> Asian	<input type="checkbox"/> Black	<input type="checkbox"/> Native American	<input type="checkbox"/> Unknown		
ETHNICITY	<input type="checkbox"/> Non-Hispanic <input type="checkbox"/> Unknown					
HAIR COLOR	<input type="checkbox"/> GRY (Gray) <input type="checkbox"/> BLK (Black) <input type="checkbox"/> BLN (Blonde / Strawberry)	<input type="checkbox"/> RED (Red/Aubn.) <input type="checkbox"/> ONG (Orange)	<input type="checkbox"/> SDY (Sandy) <input type="checkbox"/> WHI (White)	<input type="checkbox"/> BLU (Blue) <input type="checkbox"/> XXX (Unk./Bald)	<input type="checkbox"/> PLE (Purple) <input type="checkbox"/> GRN (Green)	<input type="checkbox"/> BRO (Brown) <input type="checkbox"/> PNK (Pink)
EYE COLOR	<input type="checkbox"/> BLK (Black) <input type="checkbox"/> HAZ (Hazel)	<input type="checkbox"/> BLU (Blue) <input type="checkbox"/> MAR (Maroon)	<input type="checkbox"/> BRO (Brown) <input type="checkbox"/> PNK (Pink)	<input type="checkbox"/> GRN (Green) <input type="checkbox"/> MUL (Multicolored)	<input type="checkbox"/> GRY (Gray) <input type="checkbox"/> XXX (Unknown)	
Driver License	State	License Number	Expires: / /	WEIGHT (lbs.)		
DNA	<input type="checkbox"/> YES <input type="checkbox"/> NO	DNA Location				
FBI Number	MNU Number		Ft. HEIGHT In.			
Defendant Fingerprinted	<input type="checkbox"/> YES <input type="checkbox"/> NO					
Fingerprint Classification:						

DEFENDANT VEHICLE INFORMATION

Plate #	State	Hazmat <input type="checkbox"/>	Registration Sticker (MM/YY) /	Comm'l Veh. Ind. <input type="checkbox"/>	School Veh. <input type="checkbox"/>	Oth. NCIC Veh. Code	Reg. same as Def. <input type="checkbox"/>
VIN	Year	Make	Model	Style	Color		

Attorney for the Commonwealth  Approved  Disapproved because: \_\_\_\_\_

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. See Pa.R.Crim.P. 507).

CDAG GLENN A. PARNO

(Name of the attorney for the Commonwealth)

(Signature of the attorney for the Commonwealth)

(Date) / /

I, SSA PAUL ZIMMERER

(Name of the Affiant)

AT132940 #34

(PSP/MPOETC -Assigned Affiant ID Number & Badge #)

of PA OFFICE OF ATTORNEY GENERAL

(Identify Department or Agency Represented and Political Subdivision)

PA0222400

(Police Agency ORI Number)

do hereby state: (check appropriate box)

1.  I accuse the above named defendant who lives at the address set forth above  
 I accuse the defendant whose name is unknown to me but who is described as \_\_\_\_\_

I accuse the defendant whose name and popular designation or nickname are unknown to me and whom I have therefore designated as John Doe or Jane Doe with violating the penal laws of the Commonwealth of Pennsylvania at [231] PENN TOWNSHIP  
(Subdivision Code) (Place-Political Subdivision)

in LYCOMING County [41] on or about OCTOBER 1, 2010 THROUGH NOVEMBER 16, 2010  
(County)



# POLICE CRIMINAL COMPLAINT

<b>Docket Number:</b>	<b>Date Filed:</b> / /	<b>OTN/LiveScan Number</b>	<b>Complaint/Incident Number</b> 49-1082
<b>Defendant Name</b>	<b>First:</b> XTO ENERGY INC	<b>Middle:</b>	<b>Last:</b>

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.

(Set forth a *brief* summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 – 213.7.)

<input type="checkbox"/> <b>Inchoate Offense</b>	<input type="checkbox"/> <b>Attempt</b> 18 901 A	<input type="checkbox"/> <b>Solicitation</b> 18 902 A	<input type="checkbox"/> <b>Conspiracy</b> 18 903
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<input type="checkbox"/>	1	6018.610	1	of the	35	1	M3		
Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code	
<b>PennDOT Data (if applicable)</b>	Accident Number				<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone			

**Statute Description (include the name of statute or ordinance):** Solid Waste Management Act, unlawful conduct, 35 P.S. § 6018.610(1), a misdemeanor of the third degree as defined by 35 P.S. § 606(b).

**Acts of the accused associated with this Offense:** Unlawful conduct. The defendant, XTO Energy Inc, by its own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 307, did dump or deposit, or permit the dumping or depositing, of solid waste onto the surface of the ground or into the waters of the Commonwealth, by any means, without obtaining a permit from the Department of Environmental Protection (DEP), to wit: on one or more occasions from on or about October 1, 2010 through November 16, 2010, the defendant, XTO Energy Inc, did discharge, or permit the discharge, of gas well waste water onto the ground and/or into an unnamed tributary of Sugar Run, at the Marquardt well site, Penn Township, Lycoming County, Pennsylvania, without first obtaining a permit from the DEP.

<input type="checkbox"/> <b>Inchoate Offense</b>	<input type="checkbox"/> <b>Attempt</b> 18 901 A	<input type="checkbox"/> <b>Solicitation</b> 18 902 A	<input type="checkbox"/> <b>Conspiracy</b> 18 903
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<input type="checkbox"/>	2	6018.610	2	of the	35	1	M3		
Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code	
<b>PennDOT Data (if applicable)</b>	Accident Number				<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone			

**Statute Description (include the name of statute or ordinance):** Solid Waste Management Act, Unlawful Conduct, 35 P.S. § 6018.610(2), a misdemeanor of the third degree as defined by 35 P.S. § 606(b).

**Acts of the accused associated with this Offense:** Unlawful conduct. The defendant, XTO Energy Inc, by its own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 307, did operate or utilize a solid waste disposal facility without a permit from the Department of Environmental Protection (DEP), to wit: on one or more occasions from on or about October 1, 2010 through November 16, 2010, the defendant, XTO Energy Inc, did operate or utilize a solid waste disposal facility at the Marquardt well site, Penn Township, Lycoming County, Pennsylvania, by discharging gas well waste water onto the ground, without first obtaining a permit from the DEP.

<input type="checkbox"/> <b>Inchoate Offense</b>	<input type="checkbox"/> <b>Attempt</b> 18 901 A	<input type="checkbox"/> <b>Solicitation</b> 18 902 A	<input type="checkbox"/> <b>Conspiracy</b> 18 903
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<input type="checkbox"/>	3	6018.610	4	of the	35	1	M3		
Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code	
<b>PennDOT Data (if applicable)</b>	Accident Number				<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone			

**Statute Description (include the name of statute or ordinance):** Solid Waste Management Act, Unlawful Conduct, 35 P.S. § 6018.610(4) a misdemeanor of the third degree as defined by 35 P.S. § 606(b).

**Acts of the accused associated with this Offense:** Unlawful conduct. The defendant, XTO Energy Inc, by its own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 307, did store or dispose of, or assist in the storage or disposal of, solid waste contrary to the rules or regulations adopted under the Solid Waste Management Act (Act), or any term or any condition of any permit, or in any manner as to create a public nuisance or to adversely affect the public health, safety and welfare, to wit: on one or more occasions from on or about October 1, 2010 through November 16, 2010, the defendant, XTO Energy Inc, did discharge gas well waste water onto the ground and/or into an unnamed tributary of Sugar Run at the Marquardt well site, Penn Township, Lycoming County, Pennsylvania, contrary to the rules or regulations adopted under the Act and/or the terms and conditions of its permit and/or in a manner that created a public nuisance or adversely affected the public health, safety and welfare.



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<b>Defendant Name</b>	<b>First:</b> XTO ENERGY INC	<b>Middle:</b>	<b>Last:</b>

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.

(Set forth a *brief* summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 – 213.7.)

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<input type="checkbox"/>	4	691.611		of the	35	1	M2		
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code

<b>PennDOT Data (if applicable)</b>	<b>Accident Number</b>		<input type="checkbox"/> <b>Safety Zone</b>	<input type="checkbox"/> <b>Work Zone</b>
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**Statute Description (include the name of statute or ordinance):** Clean Streams Law, Unlawful Conduct, 35 P.S. § 691.611, a misdemeanor of the second degree as defined by 35 P.S. § 691.602(b).

**Acts of the accused associated with this Offense:** Unlawful conduct. The defendant, XTO Energy Inc, by its own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 307, did violate any of the provisions of the Clean Streams Law, to wit: on or about November 16, 2010, the defendant, XTO Energy Inc, did negligently discharge gas well waste water, an industrial waste, into an unnamed tributary of Sugar Run at the Marquardt well site, Penn Township, Lycoming County, Pennsylvania, without first obtaining a permit from the DEP, in violation of Section 691.307(a) of the Clean Streams Law.

<input type="checkbox"/> <b>Inchoate Offense</b>	<input type="checkbox"/> <b>Attempt</b> 18 901 A	<input type="checkbox"/> <b>Solicitation</b> 18 902 A	<input type="checkbox"/> <b>Conspiracy</b> 18 903
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<input type="checkbox"/>	5	691.611		of the	35	1	M2		
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code

<b>PennDOT Data (if applicable)</b>	<b>Accident Number</b>		<input type="checkbox"/> <b>Safety Zone</b>	<input type="checkbox"/> <b>Work Zone</b>
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**Statute Description (include the name of statute or ordinance):** Clean Streams Law, Unlawful Conduct, 35 P.S. § 691.611, a misdemeanor of the second degree as defined by 35 P.S. § 691.602(b).

**Acts of the accused associated with this Offense:** Unlawful conduct. The defendant, XTO Energy Inc, by its own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 307, did fail to comply with any rule or regulation of the Department of Environmental Protection (DEP), or violate any of the provisions of the Clean Streams Law or rules and regulations adopted thereunder, to wit: on or about November 16, 2010, the defendant, XTO Energy Inc, did negligently discharge gas well waste water into an unnamed tributary of Sugar Run at the Marquardt well site, Penn Township, Lycoming County, Pennsylvania, without first obtaining a permit from the DEP, in violation of 25 Pa. Code § 92.3.

<input type="checkbox"/> <b>Inchoate Offense</b>	<input type="checkbox"/> <b>Attempt</b> 18 901 A	<input type="checkbox"/> <b>Solicitation</b> 18 902 A	<input type="checkbox"/> <b>Conspiracy</b> 18 903
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<input type="checkbox"/>	6	691.611		of the	35	1	M2		
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**Statute Description (include the name of statute or ordinance):** Clean Streams Law, Unlawful Conduct, 35 P.S. § 691.611, a misdemeanor of the second degree as defined by 35 P.S. § 691.602(b)

**Acts of the accused associated with this Offense:** Unlawful conduct. The defendant, XTO Energy Inc, by its own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 307, did fail to comply with any rule or regulation of the Department of Environmental Protection (DEP), or violate any of the provisions of the Clean Streams Law or rules and regulations adopted thereunder, to wit: on one or more occasions from on or about October 1, 2010 through November 16, 2010, the defendant, XTO Energy Inc, did negligently fail to notify the DEP of one or more discharges of gas well waste water at the Marquardt well site, Penn Township, Lycoming County, Pennsylvania, in violation of 25 Pa. Code § 91.33(a).



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<input type="checkbox"/>	7	691.611		of the	35	1	M2		
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<b>PennDOT Data (if applicable)</b>	<b>Accident Number</b>		<input type="checkbox"/> <b>Safety Zone</b>	<input type="checkbox"/> <b>Work Zone</b>
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**Statute Description (include the name of statute or ordinance):** Clean Streams Law, Unlawful Conduct, 35 P.S. § 691.611, a misdemeanor of the second degree as defined by 35 P.S. § 691.602(b).

**Acts of the accused associated with this Offense:** Unlawful conduct. The defendant, XTO Energy Inc, by its own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 307, did fail to comply with any rule or regulation of the Department of Environmental Protection (DEP), or violate any of the provisions of the Clean Streams Law or rules and regulations adopted thereunder, to wit: on or about October 1, 2010 through November 16, 2010, the defendant, XTO Energy Inc, did negligently fail to take necessary measures at the Marquardt well site, Penn Township, Lycoming County, Pennsylvania, to prevent gas well waste water from directly or indirectly reaching an unnamed tributary of Sugar Run, through accident, carelessness, maliciousness, hazards of weather or from another cause, in violation of 25 Pa. Code § 91.34(a).

<input type="checkbox"/> <b>Inchoate Offense</b>	<input type="checkbox"/> <b>Attempt</b> 18 901 A	<input type="checkbox"/> <b>Solicitation</b> 18 902 A	<input type="checkbox"/> <b>Conspiracy</b> 18 903
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<input type="checkbox"/>	8	691.611		of the	35	1	M2		
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code

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**Statute Description (include the name of statute or ordinance):** Clean Streams Law, Unlawful Conduct, 35 P.S. § 691.611, a misdemeanor of the second degree as defined by 35 P.S. § 691.602(b).

**Acts of the accused associated with this Offense:** Unlawful conduct. The defendant, XTO Energy Inc, by its own conduct or the conduct of another pursuant to 18 Pa. C.S.A. § 307, did cause water pollution, to wit: on or about November 16, 2010, the defendant, XTO Energy Inc, did negligently discharge gas well waste water into an unnamed tributary of Sugar Run at the Marquardt well site, Penn Township, Lycoming County, Pennsylvania, and thereby caused pollution to the waterway.

<input type="checkbox"/> <b>Inchoate Offense</b>	<input type="checkbox"/> <b>Attempt</b> 18 901 A	<input type="checkbox"/> <b>Solicitation</b> 18 902 A	<input type="checkbox"/> <b>Conspiracy</b> 18 903
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<input type="checkbox"/>				of the					
Lead?	Offense#	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code

<b>PennDOT Data (if applicable)</b>	<b>Accident Number</b>		<input type="checkbox"/> <b>Safety Zone</b>	<input type="checkbox"/> <b>Work Zone</b>
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**Statute Description (include the name of statute or ordinance):**

**Acts of the accused associated with this Offense:**



# POLICE CRIMINAL COMPLAINT

<b>Docket Number:</b>	<b>Date Filed:</b> / /	<b>OTN/LiveScan Number</b>	<b>Complaint/Incident Number</b> 49-1082
<b>Defendant Name</b>	<b>First:</b> XTO ENERGY INC	<b>Middle:</b>	<b>Last:</b>

- I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
- I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.
- This complaint consists of the preceding page(s) numbered 1 through 5.

The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of the Assembly, or in violation of the statutes cited.  
**(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)**

\_\_\_\_\_ (Date) \_\_\_\_\_ (Signature of Affiant)

AND NOW, on this date \_\_\_\_\_ I certify that the complaint has been properly completed and verified.

An affidavit of probable cause must be completed before a warrant can be issued.

\_\_\_\_\_ (Magisterial District Court Number)

\_\_\_\_\_ (Issuing Authority)



## **INTRODUCTION**

We, the members of the Thirty-Sixth Statewide Investigating Grand Jury, having received evidence pertaining to violations of the Pennsylvania Solid Waste Management Act and Pennsylvania Clean Streams Law which occurred in Lycoming County, Pennsylvania, pursuant to Notice of Submission No. 4, do hereby make the following findings of fact and recommendation of charges:

## **FINDINGS OF FACT**

The Grand Jury initiated an investigation into the illegal discharge of over 50,000 gallons of gas well waste water from the Marquardt well site onto the ground and into the waters of Penn Township, Lycoming County, Pennsylvania on November 16, 2010. The grand jury heard testimony from a number of witnesses, including employees of XTO Energy Inc (XTO), Bosque Disposal Systems, LLC (Bosque), Clark Trucking, and the Pennsylvania Department of Environmental Protection (DEP), as well as Supervisory Special Agent Paul Zimmerer of the Office of Attorney General, Environmental Crimes Section. Based on the testimony of these witnesses, as well as a review of documents obtained through the investigative resources of the Grand Jury, the following factual findings have been made:

The Marquardt well site is owned by XTO, a subsidiary of ExxonMobil, with a principal office located at 395 Airport Road, Indiana, Pennsylvania. The Marquardt site is comprised of two natural gas wells, known as the Marquardt 8494 and the Marquardt 8537. During natural gas production, these wells release waste water containing toxic substances, such as chlorides, barium, strontium, and aluminum. This waste water, also known as "production water," is collected and must be treated or disposed in accordance with DEP regulations.

Located on the Marquardt site on November 16, 2010 were 49 mobile tanks used to store waste water. (See attached Exhibit "A.") Each storage tank has a capacity of approximately 21,000 gallons. Valves located on the front and rear of a storage tank can be opened to allow water to be pumped into and out of the tank using a hose. The valve on the front of a storage tank is typically used to fill the tank. The valve on the rear of a storage tank is primarily used for emptying the tank and is typically fitted with a four inch threaded plug. The plug is installed and removed with a wrench. In order to empty a storage tank using the rear valve, the plug must first be removed and the valve opened. Although the rear valves on the waste water storage tanks at the Marquardt site could be locked, none of the valves was equipped with a lock or any other device to prevent unauthorized use.

As of November 16, 2010, a group of six storage tanks at the Marquardt site (Tank 18174, Tank 18153, Tank 18152, Tank 18165, Tank 18162, and Tank 27943) were connected by a manifold system installed on the front of the tanks. The manifold system allowed waste water to flow freely between the tanks, turning the tanks into one large reservoir. (A Bosque employee recalled this manifold system was not present as of November 11, 2010.)

Neither XTO nor anyone acting on its behalf conducted inspections of the waste water storage tanks at the Marquardt well site. There was no fence or barrier around the Marquardt site to keep unauthorized individuals from entering the site. The site was unguarded and there were no alarms, surveillance cameras, or other security measures in place.

All of the storage tanks present at the Marquardt site on November 16, 2010 were leased by XTO and placed there at XTO's direction. XTO controlled the transportation of waste water to the storage tanks. Additionally, XTO was responsible for determining whether to place secondary containment, *i.e.* a liner that captures liquids in the event of a spill, under the waste water storage

tanks at the Marquardt site. As of November 16, 2010, XTO's practice regarding the use of secondary containment at a site was dependent on how long the waste water would be stored at the site and whether the site was manned or unmanned. Secondary containment was utilized if waste water was to be stored for an extended period of time at an unmanned site. None of the waste water storage tanks at the Marquardt site were placed on secondary containment because XTO originally intended to store fresh water, rather than waste water, in the tanks. It is estimated that installing secondary containment under the storage tanks at the Marquardt site would have cost approximately \$50,000.00.

In October 2010, XTO began to store waste water at the Marquardt site from the two Marquardt wells and three other nearby XTO well sites. XTO utilized Clark Trucking to transport waste water to the storage tanks at the Marquardt site. Bosque was hired by XTO to recycle, or process, waste water at the Marquardt site until construction of a central waste water processing facility could be completed.

Per DEP regulations, a gas well operator must obtain an "OG-71" permit prior to processing waste water at a well site. Charles Klobe, a consultant for Bosque, completed an OG-71 permit application for the Marquardt site on behalf of XTO and submitted it to the DEP on July 6, 2010. Klobe indicated on the permit application that waste water would be processed at the Marquardt site and stored in tanks placed on secondary containment. The DEP notified XTO by letter dated August 11, 2010 that an OG-71 permit for processing waste water was approved for the Marquardt site.

After the OG-71 permit was issued, Bosque transported its processing equipment, including nine large "settling" tanks, to the Marquardt site in order to begin recycling waste water. Bosque placed its settling tanks and all of its processing equipment on secondary containment in order to prevent any waste water from coming into contact with the ground.



Bosque recycled waste water at the Marquardt site from November 4 through November 11, 2010. On or about November 11, 2010, XTO directed Bosque to move their equipment from the Marquardt site to another XTO well site in West Virginia to recycle water at that location. Bosque was gone from the Marquardt site from November 12 until November 22, 2010. When Bosque left the Marquardt site, Tank 18174 was approximately three quarters full of waste water.

XTO continued to store additional waste water at the Marquardt site from November 12 until November 16, 2010, even though Bosque was gone from the site and no recycling occurred during this time. Based on interviews of Clark Trucking drivers and a review of Clark Trucking records, approximately 93,750 gallons of waste water was transported to the Marquardt site from November 12 through November 16, 2010. The following deliveries of waste water are of particular note:

1. On November 14, 2010, Robert Hitesman transported one and a half loads – approximately 8,250 gallons – of waste water to the Marquardt site and pumped the water into Tank 27943. Tank 27943 was connected to Tank 18174 via a manifold system.
2. On November 15, 2010, Mike Snyder transported two loads -- approximately 11,000 gallons -- of waste water to the Marquardt site and pumped both loads into Tank 27943.
3. On November 15, 2010, Russell Reynolds transported two loads -- approximately 11,000 gallons -- of waste water to the Marquardt site and pumped both loads into Tank 18174, filling the tank.
4. On November 16, 2010, Alan Van Pelt transported four and a half loads -- approximately 24,750 gallons -- of waste water to the storage tanks at the Marquardt site. Despite the fact that Reynolds filled Tank 18174 with waste water on November 15, 2010, Van Pelt observed the tank was empty upon his arrival. Van Pelt proceeded to

pump several loads of waste water into Tank 18174 sometime between 7:00 a.m. and 1:00 p.m. on November 16, 2010.

On November 16, 2010 at approximately 1:15 p.m., Jeremy Daniel, DEP Water Quality Specialist, conducted an unannounced inspection at the Marquardt site. No one else was present at the site when he arrived. Although it was raining steadily, Daniel heard the sound of running water coming from the rear of a waste water storage tank. Upon closer inspection, he noted the drain plug had been removed from the rear valve on Tank 18174 and the valve was partially open. Waste water was flowing out of the valve and onto the ground behind the tank. Daniel closed the valve and notified his supervisor of the situation. Daniel later traced the flow of the discharged waste water to an unnamed tributary of Sugar Run, a water of the Commonwealth.

Daniel observed the rear drain plugs on the Tank 18153, Tank 18152, Tank 18165, Tank 18162, and Tank 27943 had been removed and were lying on the ground below the tanks. The rear valves on all five tanks were closed. Liquid and sand were present in the rear valves on the tanks. (Sand is typically found in gas well waste water.) Additionally, Daniel noted sand and displaced gravel on the ground underneath the rear valve on Tank 27943. Daniel's observations are consistent with prior discharges of gas well waste water from these five storage tanks. Daniel also noticed that drain plugs had been removed or were missing from the rear valves on numerous other storage tanks at the Marquardt site.

Shortly after Daniel discovered waste water discharging from Tank 18174, Michael Hahn, XTO's Operations Supervisor, arrived at the Marquardt site. Hahn told Daniel he believed the waste water discharge was the result of vandalism. However, there is no record of XTO ever reporting an incident of vandalism at the Marquardt site to the police.

Daniel returned to the Marquardt site on November 17, 2010 and observed dead vegetation behind Tank 18174. The vegetation was likely killed by chlorides in the discharged waste water. Daniel also noted a large area of dead vegetation and displaced gravel on the ground behind a storage tank located nine tanks south of Tank 18174. Daniel did not recall seeing any dead vegetation behind this tank when he previously inspected the Marquardt site in October 2010. The rear valve on this tank was closed and there was a pool of water on the ground under the tank. Samples of the water were collected on November 19, 2010 and laboratory analysis revealed high levels of chlorides, barium, strontium, and total dissolved solids. These findings are consistent with a prior discharge of gas well waste water from this storage tank as well.

Joseph Sleppy is employed by XTO as a lease operator. His responsibilities include visiting XTO well sites, including the Marquardt site, five days a week to ensure the production equipment is operating properly. Sleppy's site visits typically last 20 to 30 minutes. As of November 16, 2010, his duties did not include inspecting waste water storage tanks. Sleppy's supervisor, Michael Hahn, had overall responsibility for the Marquardt site and Sleppy would occasionally see him at the site.

Sleppy may have been at the Marquardt site on November 15, 2010, but does not recall seeing anyone or anything unusual at that time. He was at the Marquardt site on November 16, 2010 shortly after the spill was discovered but did not take any action at that time. Michael Hahn was present at the Marquardt site on the morning of November 16, 2010 for an undetermined period of time, but left the site prior to Jeremy Daniel's arrival.

Sleppy returned to the Marquardt site on November 17, 2010 and measured the contents of all the waste water storage tanks on site. Only a few inches of waste water remained in Tank 18174. All of the storage tanks north of Tank 18174 were full and all of the tanks south of Tank 18174 were empty. The rear drain plugs had been removed from 5 to 10 storage tanks at the site, including Tank

18174, and were lying on the ground near the tanks. However, all of the rear valves were closed. Sleppy also noticed that 12 storage tanks were missing rear drain plugs altogether.

Approximately 57,000 gallons of gas well waste water delivered to the Marquardt site between November 12 and November 16, 2010 was unaccounted for following the spill on November 16, 2010.

The discharge of waste water at the Marquardt site necessitated the excavation and removal of approximately 3,098 tons of contaminated soil. This remediation process began on November 19, 2010 and was completed on February 8, 2011. Shortly after November 16, 2010, samples of the unnamed tributary to Sugar Run were collected and analyzed. Laboratory results confirmed the water was polluted by elevated levels of chlorides, aluminum, barium, and total dissolved solids. Repeated testing of the unnamed tributary revealed that water pollution was present through March 9, 2011.

The DEP requires a permit to discharge waste water onto the ground or into the waters of the Commonwealth. XTO never obtained such a permit for the Marquardt site. The DEP also requires a gas well operator to report any unauthorized release of waste water. XTO never notified the DEP of any release of waste water from any of the storage tanks at the Marquardt site.