



## Pa. Supreme Court hears case over fracking pit leak, could limit water pollution fines



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HARRISBURG — Pennsylvania’s high court will decide whether the penalties in the state’s stream protection law apply only to discrete spills or also to the spreading contamination that follows after leaks are stopped, a distinction that could mean a difference of millions of dollars for companies facing pollution fines.

The state Supreme Court justices heard arguments Tuesday in what an attorney for the Department of Environmental Protection told them is the most important environmental case to come before their court in recent years.

The lower Commonwealth Court [ruled in January](#) that fines for spills into streams and groundwater must be based on the duration of the initial release and not on the days pollution flows through waterways — siding with Downtown-based EQT Corp. and rejecting state environmental regulators' longstanding practice for calculating penalties.

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EQT [filed the case](#) to challenge DEP's proposed fine for a leak in a 6-million-gallon fracking wastewater holding pond at a Marcellus Shale drilling site in Tioga County in 2012 that caused widespread and persistent pollution.

Jonathan Massey, a Washington, D.C.-based attorney who was [brought in to represent the DEP](#), told the court that the state Clean Streams Law's text, history and purpose all indicate the Legislature's broad interest in preventing and promptly cleaning up pollution by allowing for penalties for ongoing violations.

At the same time, the limits on DEP's authority are substantial, he said, and include the fact that the state Environmental Hearing Board — not the Department of Environmental Protection — imposes penalties based on scientific evidence in cases when settlements can't be reached.

Robert Byer, an attorney for EQT, said the law does not prescribe mounting fines for as long as any trace of pollution remains. Other laws and resources allow DEP to ensure spills are stopped,

including the agency's ability to issue cleanup orders or seek damages, he said.

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Most of the justices' questions during the session were aimed at clarifying the two sides' positions.

Justice Max Baer asked Mr. **Massey** if "for every yard" a spill travels down a river, "is that another infraction?" (Mr. **Massey's** answer was no, it would be a new violation when contamination moves from groundwater to a seep to a stream.)

Justice Baer later asked Mr. Byer to consider the example of the 1989 Exxon Valdez oil spill in Alaska as a one-day rupture in the tanker ship that created an environmental disaster.

"Under your interpretation," he said, "it would be a \$10,000 fine." Mr. Byer agreed, but said it is for the Legislature to change the law if it wants fines to cover pollution that remains in waterways.

The state Environmental Hearing Board [assessed a \\$1.1 million fine](#) against EQT in May for the wastewater pond leak, which amounted to a quarter of the financial penalty that DEP recommended. Both DEP and EQT have appealed the penalty ruling.

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