

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

OHIO VALLEY ENVIRONMENTAL
COALITION, INC., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:12-3412
(Consolidated with 2:13-6870)

ALEX ENERGY, INC., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Plaintiffs' motion to compel inspection (ECF No. 23), Defendants' motion for partial summary judgment (ECF No. 29), and Plaintiffs' motion for relief under Federal Rule of Civil Procedure 56(d) (ECF No. 39). After reviewing the pleadings, and for reasons appearing to the Court, the Court now **GRANTS** Plaintiffs' motion to compel inspection (ECF No. 23), **DENIES** as premature Defendants' motion for partial summary judgment (ECF No. 29), and **GRANTS** Plaintiffs' motion for relief under Federal Rule of Civil Procedure 56(d) (ECF No. 39). In doing so, the Court notes that Defendants raise serious questions concerning whether post-complaint violations support a finding of violations at the time of the complaint. At this point, however, the Court is not inclined to reach the question and is not now deciding definitively whether Plaintiffs can ultimately use the sampling the Court now allows.

The Court **DIRECTS** the Clerk to send a copy of this written Opinion and Order to counsel of record and any unrepresented parties.

ENTER: June 13, 2013



ROBERT C. CHAMBERS, CHIEF JUDGE