

April 30, 2014

**VIA EMAIL AND**  
**FIRST CLASS MAIL**

Glenda Davidson  
Docket Clerk  
Department of Environmental Protection  
400 Market Street  
Rachel Carson State Office Building  
16<sup>th</sup> Floor  
Harrisburg, PA 17101

**RE: In Re. Hilcorp Energy Company**  
**MMS No. 2013-SLAP-000528**  
**Docket No. 2013-01**

Dear Ms. Davidson:

Enclosed for filing in the above-referenced matter is Hilcorp Energy Company's Answer to Property Owners' Petition to Intervene and Response to Request for Continuance

Thank you, and please contact me with any questions.

Sincerely,

  
Daniel P. Craig

Enclosure

cc: Michael L. Bangs (via email)  
Donna Duffy, Esquire (via email)  
Michael Braymer, Esquire (via email)  
Elizabeth Nolan, Esquire (via email)  
Omar K. Abuhejleh, Esquire (via email)

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF OIL AND GAS MANAGEMENT**

In Re: The Matter of the Application of                    )  
Hilcorp Energy Company for                            )  
Well Spacing Units                                        )       Docket No. 2013-01  
  )

**HILCORP’S ANSWER TO PROPERTY OWNERS’ PETITION TO INTERVENE  
AND RESPONSE TO REQUEST TO CONTINUE THE HEARING ON HILCORP’S  
WELL SPCING APPLICATION**

Hilcorp Energy Company (“Hilcorp), by and through its undersigned counsel, Kevin L. Colosimo and Daniel P. Craig, hereby files this Answer to the Petition to Intervene in the above-captioned matter filed on April 25, 2014, by Martin Matteo and Suzanne Matteo, Robert Valentine and Carol Valentine, and Steve Emery (collectively the “Property Owners”). Hilcorp also hereby responds to the Property Owners’ email request for a thirty day continuance of the hearing on Hilcorp’s Well Spacing Application (the “Application”).

Hilcorp does not oppose the Property Owners’ Petition to Intervene, as they satisfy the definition of both an “operator” as to a 7/8 interest of their proportionate share of oil and gas in the pool and a “royalty owner” as to a 1/8 interest in that oil and gas under Section 2 of the Oil and Gas Conservation Law (the “Conservation Law”), 58 P.S. § 402(7) and (8), in that they own the right to develop, operate and produce oil and gas from the pool, and they are not parties to an existing oil and gas lease.

Hilcorp hereby opposes the Property Owners’ informal email request for a thirty day continuance of the scheduled hearing. As grounds for its opposition, Hilcorp states as follows:

1. Hilcorp originally filed its Application for Well Spacing Units with the Department of Environmental Protection (the “Department”) on July 17, 2013. The Department

responded by claiming that it lacked jurisdiction to rule on the Application, and that jurisdiction over the matter rested with the Environmental Hearing Board (the "Board").

2. Hilcorp filed its Application with the Board on August 26, 2013.

3. The Property Owners have been aware of Hilcorp's pending Well Spacing Application since October 5, 2013 at the latest, as evidenced by an article that ran in the Pittsburgh Tribune-Review on that date, attached hereto as Exhibit A, in which Suzanne Matteo was quoted as opposing Hilcorp's Well Spacing Application.

4. The Board issued an Opinion and Order on November 20, 2013, dismissing the Application for lack of original jurisdiction, and directing Hilcorp to submit its Application to the Department for consideration and action.

5. Hilcorp formally filed its Application with the Department on December 2, 2013 for the second time.

6. By Order dated February 19, 2014, the Hearing Officer scheduled a hearing on Hilcorp's Well Spacing Application for March 25-26, 2014.

7. The Department provided notice by publication of the hearing scheduled for March 25-26, 2014 in the *The New Castle News*, a paper of general circulation in both Lawrence and Mercer Counties, which first ran on March 11, 2014.

8. On March 14, 2014, the Department filed a Notification of Hearing, which acknowledged that Hilcorp had provided it with all of the additional information it had requested on February 27 and 28, 2014, and March 7, 2014, and that a hearing on the Application should move forward.

9. Due to concerns that the notice provided by the Department did not strictly comply with the mandates of the Conservation Law, the Hearing Officer entered an order, dated March 25, 2014, continuing the hearing on Hilcorp's Application until May 7 and 8, 2014.

10. On April 3, 2014, the Department mailed the public notice that ran in *The New Castle News* beginning on March 11, 2014, along with the Hearing Officer's orders dated March 17, 2014 and March 25, 2014, to each of the Property Owners.

11. Section 7 of the Conservation Law, 58 P.S. § 407 (4), states: "The [Department] shall, within forty five days after the application for well spacing is filed, either enter an order establishing spacing units ... or shall enter an order dismissing the application."

12. Section 7 of the Conservation Law provides that Department shall publish notice of the hearing "at least fifteen days before the date fixed for hearing." 58 P.S. §407 (2).

13. As currently scheduled, the hearing on Hilcorp's application will occur 294 days after it first filed its application with the Department, 214 days after Suzanne Matteo revealed her knowledge of the Application via an interview with the Pittsburgh Tribune-Review, 156 days after Hilcorp filed its application with the Department the second time, 61 days after the Department formally acknowledged Hilcorp's right to a hearing on the application, 57 days after notice by publication first ran in *The New Castle News*, and 34 days after the Department provided notice to the Property Owners by mail.

14. The Property Owners have been provided more than adequate notice of the hearing on Hilcorp's Application, and the time fixed by statute for a ruling on the application has now passed. The Property Owners should not be permitted to further delay this hearing by intervening and seeking a continuance at the eleventh hour in an already untimely process.

WHEREFORE, Hilcorp respectfully opposes the property Owners request for a continuance of the hearing scheduled for May 7 and 8, 2014.

DATED: April 30, 2014

Respectfully submitted,



Kevin L. Colosimo

PA ID No. 80191

Daniel P. Craig

PA ID No. 312238

Burleson LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 30<sup>th</sup> day of April, 2014, via e-mail, upon the following:

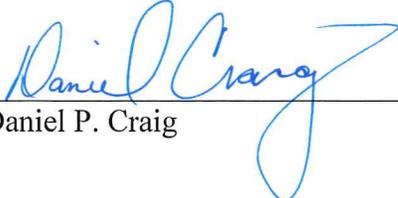
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# TRIBLIVE

## Hilcorp Energy first in Pa. to test law allowing access to gas without property owners' consent



Andrew Russell | Tribune-Review

Bob Svetlak, 73, Pulaski looks at one of the many contract for a drilling lease that he has received over the last few years in his home near the Ohio line, Thursday. Svetlak's land is unleased but sits right in the center of one of the drilling units. Hilcorp wants his land included in the unit, too, despite his opposition. Svetlak's biggest concern is not with the drilling itself but that he will be forced to allow drilling on his land.

By Timothy Puko

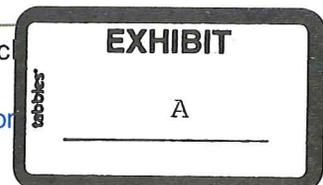
Published: Saturday, October 5, 2013 9:00 p.m.

Bob Svetlak has lived on his family's Lawrence County homestead since 1949, and none of it's for sale — not his

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house, not his trees and certainly not his gas rights.

But he may not have a choice about the gas.

Hilcorp Energy Co. has taken legal steps to access natural gas beneath the 14.6 acres Svetlak owns near the Ohio border without his consent, arguing a law more than five decades old gives it the right to combine his land with others into a drilling unit.

If Hilcorp succeeds, it would be the first time in Pennsylvania's shale boom that a driller used the tactic, and it could lead to more widespread use.

"I didn't buy this land to sell it," said Svetlak, 73, of Pulaski. "I bought it for peace and property, like a lot of people in this country. I live here for the tranquility."

Hilcorp is using a legal maneuver known as forced pooling, in which neighboring plots of land are combined into a single unit for drilling. In geologic formations deeper than the Marcellus shale, the 1961 law allows drillers to combine gas rights into pools, even if property owners oppose.

Any use of forced pooling likely will ignite a public outcry. Attempts to extend broad pooling powers to Pennsylvania's Marcellus shale drillers have been met with swift opposition — even Gov. Tom Corbett, a supporter of gas drilling, opposed the idea in 2011, calling it "private eminent domain."

"I've kind of been waiting for this situation to come up," said Ross H. Pifer, a Penn State University law professor who follows shale drilling legal issues. "I think a lot of people will be surprised to recognize that Pennsylvania does already have compulsory pooling."

Svetlak's property is part of 3,267 acres in Pulaski and neighboring Shenango in Mercer County where Hilcorp wants to drill. The area has not attracted much drilling, but Hilcorp wants to tap the Utica shale, a geologic layer thousands of feet below the Marcellus.

The company acquired the right to drill on all but 35 acres, which includes at least four properties whose owners don't want to lease or who leased with another company, according to the Aug. 26 filing Hilcorp made to the state Environmental Hearing Board.

Hilcorp spokesman Justin Furnace declined interview requests. He wrote in an email that the company spent months negotiating and made "good-faith" attempts to lease every tract.

Kevin Colosimo, a lawyer for Hilcorp, said he anticipates no obstacles to Hilcorp's request that a judge in Pittsburgh will decide.

'Not about the money'

Hilcorp has its supporters.

Among them is Martin "Bruce" Clingan, 71, owner of the 200-acre Clingan's Tanglewood Public Golf Course. Clingan, whose home is on the Pulaski golf course property, said it's unfair for a few small-parcel owners to block him from getting the most from his property.

"I paid taxes on this property for probably 60 years," Clingan said. "And I thought, 'Well, maybe the ground owes me a little bit of something — moneywise — back.' If anybody tells you it's not the money, they're crazy."

Clingan said he signed a deal with Hilcorp in 2010 for about \$650,000 in upfront bonuses plus 18 percent royalties.

Colosimo argued in Hilcorp's complaint that pooling protects landowners from losing their oil and gas to neighboring wells that don't pay them. The holdouts would get paid an amount set by the court.

"It's not about the money for us. We want peace; we want clean air. And now (drilling is) going to be forced on us," said Suzanne Matteo, 36, of Pulaski. "It's almost like Hilcorp is bullying me and targeting me and other landowners. It doesn't seem constitutional."

The Matteo family has four acres of land on which they planted a small garden of corn, soy and sunflowers. They don't want the industrial work of a drill site with traffic, lights, noises and smells close to their home, she said.

Matteo said her family's property lies within the boundaries Hilcorp outlined in its court filing, but she said the company won't tell her whether it is indeed part of the drilling unit. If so, she wants to fight it.

The Onondaga divide

Forced pooling laws of varying strength exist in nearly 40 states, according to a 2011 count by ProPublica, a nonprofit investigative news agency. Most laws were passed in the middle of the 20th century to promote conservation and end the days when derricks competed literally side by side to slurp oil from the same pool.

Hilcorp is targeting a rural area, far from hot spots of the shale gas rush. The Utica shale isn't as popular in most parts of Pennsylvania because of its depth and lack of liquid gases that bring in more money.

Hilcorp claims its target is more than 7,400 feet deep, a shallow part of the Utica. Its one test well averaged about 1.8 million cubic feet of gas and 33 barrels of oil a day for about four months this year, state records show.

Experts say forced pooling applies to the Utica but not the Marcellus in Pennsylvania largely because of history.

When Pennsylvania passed its law, the state's oil and gas industry rarely drilled below the Marcellus. Lawmakers chose the next layer down, the Onondaga, as a compromise to promote conservation in future drilling without upending industry practices, experts said.

But new technologies — sideways drilling combined with the rock-cracking hydraulic fracturing — changed drilling and revived a dormant industry, with target zones coincidentally on either side of the Onondaga divide. Hilcorp's Utica target lies 3,800 feet below the Onondaga.

State records show companies drill about 100 horizontal wells a month into the Marcellus. The Utica's depth in Pennsylvania makes it more expensive to reach, but it's rich enough with gas to make it potentially profitable.

"I don't see any logic in having pooling in one (formation) and not having it in the other," said Louis D. D'Amico, a pooling supporter and leader of the Pennsylvania Independent Oil & Gas Association. "I think it's foolish."

#### Reviving a controversy

Little attention has been paid to existing pooling laws, but when drillers wanted to extend them to the Marcellus formation, many people jeered the simple concept of giving up land for drilling against their will — even if they get paid. They found allies in some environmental groups eager to block drilling.

Rep. Garth Everett, R-Lycoming County, suggested a comprehensive pooling law in 2010 but backed off when he "got beat to death over" it by constituents, he said in a July interview.

The Hilcorp case could become a tipping point, spurring outrage or giving proponents a chance to show a well-run system can benefit drillers and landowners, experts said.

Hilcorp claims the hearing board, led by the Downtown-based Chief Judge Thomas W. Renwand, has until mid-October to announce a hearing date.

Getting money won't be enough to please Svetlak, a retired millworker. His house dates to the 1800s, and he doesn't want his fields or woods to change.

"I happen to like what I've got," Svetlak said. "I don't want to look outside and see dozers and oil tanks. ... And I may have to someday."

Timothy Puko is a Trib Total Media staff writer. Reach him at 412-320-7991 or [tpuko@tribweb.com](mailto:tpuko@tribweb.com).

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