

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  
)

**PRE-HEARING STATEMENT**

NOW COMES the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP), by its undersigned attorneys, hereby submits its Pre-Hearing Statement in accordance with the Standing Practice Order, dated January 17, 2014.

**I. Background**

On July 19, 2013, Hilcorp Energy Company (Hilcorp) first submitted an application to DEP requesting a spacing order establishing four well drilling units pursuant to Section 407 of the Oil and Gas Conservation Law (Conservation Law), 58 P.S. § 407. The proposed drilling units covered 3,267 acres of the Utica Formation in Lawrence and Mercer Counties.

On August 5, 2013, DEP returned the application to Hilcorp based upon its interpretation of the relevant law that the Pennsylvania Environmental Hearing Board (Board) had exclusive and original jurisdiction to conduct hearings and issue adjudications under the Conservation Law. Accordingly, on August 26, 2013, Hilcorp filed a Complaint and Application with the Board requesting the spacing order establishing the four well drilling units, or in the alternative, directing DEP to issue the requested spacing order establishing four well drilling units.

On November 20, 2013, the Board issued an Opinion and Order dismissing Hilcorp's Complaint and Application for lack of jurisdiction. Subsequently, Hilcorp again submitted an application for a spacing order establishing four well drilling units for the same area requested in

the previous applications pursuant to Section 407 of the Conservation Law (Application). DEP received the Application on December 2, 2013.

On December 30, 2013, DEP Secretary E. Christopher Abruzzo appointed Michael L. Bangs, Esquire to act as a hearing officer to adjudicate this matter in accordance with the Conservation Law, 58 P.S. §§ 401 *et seq.*, and its Regulations, 25 Pa. Code Chapter 79 (Regulations); the Administrative Agency Law, 2 Pa. C.S.A. §§ 501 *et seq.*; and the General Rules of Administrative Practice and Procedure, 1 Pa. Code, Part II.

On January 22, 2014, DEP notified Hilcorp, pursuant to Conservation Law, the Administrative Agency Law, 25 Pa. Code Chapter 79, 1 Pa. Code Chapter 31, and 1 Pa. Code Chapter 35, that the Application is materially deficient and incomplete and, therefore, is not a “proper application” as required by the Conservation Law and the Regulations to hold a hearing on the Application.

## II. Statement of Legal and Factual Issues

### A. The Application is materially deficient and incomplete and, therefore, is not a “proper” application under the Conservation Law.

Section 407 of the Conservation Law provides: “The commission shall, to carry out the purpose of this act, and upon *proper application* and notice given as hereinafter provided, and after a hearing as provided in said notice, enter an order establishing well spacing and drilling units of a specified and an approximate uniform size and shape for each pool . . . .” 58 P.S.

§ 407 (emphasis added). Additionally, Section 405(c)(iv) of the Conservation Law provides DEP the authority to enter a spacing order only after a proper application is submitted. 58 P.S. § 59(c)(iv); *See also* 25 Pa. Code § 79.21 (relating to application requirements); 1 Pa. Code § 31.5(c) (“In a proceeding when upon inspection the agency is of the opinion that . . . an application or similar document, does not sufficiently set forth required material or is otherwise

insufficient, the agency may . . . accept it for filing and advise the person tendering it of the deficiency and require the deficiency be corrected.”); 1 Pa. Code § 35.1 (“Applications for authorization or permission which an agency may give under statutory or other delegated authority administered by it, in addition to the requirements prescribed in this part, shall conform to the requirements of the regulations promulgated by the agency under the several statutes and delegations of authority administered by it.”); 1 Pa. Code § 35.2(4) (“Applications . . . shall set forth . . . [o]ther information as required by statutes and regulations under which a specific type of application is filed, and as may be required by the agency in a particular proceeding.”).

DEP has determined that the Application is materially deficient and incomplete and, therefore, is not a “proper application” under the Conservation Law for the reasons more fully set forth in DEP’s letter to Hilcorp, dated January 22, 2014 (Deficiency Letter). This Letter is attached as Exhibit A and incorporated by reference as if fully set forth herein.

As identified in the Deficiency Letter, the material deficiencies in the Application include, among other things: (1) the Application does not identify the maximum area that could be economically and efficiently drained by one well, *see* 58 P.S. § 407; 25 Pa. Code § 79.21(a)(3); (2) the Application does not include the required plat, *see* 25 Pa. Code § 79.21(a)(2); and (3) the Application does not contain information that a “pool” has been established as that term is defined under the Conservation Law. *See* 58 P.S. § 407(1); 25 Pa. Code § 79.21(a).

Additionally, Section 407(1) of the Conservation Law, 58 P.S. § 407(1), provides that an application shall be accompanied by “such information as [DEP] may request.” *See* Application, Section VI.A. at page 8 (“DEP has the power to require the applicant to attach any additional information it deems relevant to the application.”).

In the Deficiency Letter, DEP requested information identified in the Application's accompanying affidavits that Hilcorp used to make its conclusions, and requested other information necessary for DEP to evaluate the Application in accordance with the Conservation Law and its Regulations. Thus, because the Application is materially deficient and incomplete, it is not a "proper application" as required under the Conservation Law and its Regulations.

B. The Application should be dismissed if Hilcorp fails or refuses to submit the information necessary to complete the Application.

Because the submission of a proper application is a pre-requisite to holding a hearing, this matter may not move forward until Hilcorp provides the necessary information required under the Conservation Law and its Regulations, and identified by DEP in the Deficiency Letter. Should Hilcorp fail or refuse to submit the necessary information, DEP will request that the Hearing Officer recommend to the Secretary that the Application be dismissed without a hearing or any other proceeding. *See* 58 P.S. § 407(4) ("The commission shall . . . either enter an order . . . or shall enter an order dismissing the application.")

**III. Exhibits**

Because the Application is materially deficient and incomplete and not a proper application under the Conservation Law and its Regulations, DEP is currently unable to identify the exhibits that it would seek to introduce at a hearing in this matter. DEP reserves the right to supplement this Pre-Hearing Statement to add and identify exhibits when Hilcorp submits the additional information needed to complete the Application as required under the Conservation Law and its Regulations, and identified by DEP in the Deficiency Letter. DEP further reserves the right to use any and all documents that have and will be submitted by Hilcorp to support the Application.

#### IV. Stipulations

The Parties have not negotiated any factual stipulations. Upon Hilcorp submitting the additional information needed to complete the Application as required under the Conservation Law and its Regulations, and identified by DEP in the Deficiency Letter, DEP will discuss with Hilcorp and stipulate to facts not in dispute at that time.

#### V. Witnesses

Because the Application is materially deficient and incomplete and not a proper application under the Conservation Law and its Regulations, DEP is currently unable to identify the witnesses that it would seek to call to testify at a hearing in this matter. DEP reserves the right to supplement this statement to add and identify witnesses when Hilcorp submits the additional information needed to complete the Application as required under the Conservation Law and its Regulations, and identified by DEP in the Deficiency Letter.

Notwithstanding, should Hilcorp submit the additional information needed to complete the Application, DEP generally anticipates calling the following witness:

##### *Expert Witnesses*

1. Andrew N. Kleit, Ph.D.,  
Professor of Energy and Environmental Economics,  
The Pennsylvania State University  
201 Hosler Building  
University Park, Pa 1682
2. John Yilin Wang, Ph.D.,  
Assistant Professor of Petroleum and Natural Gas Engineering,  
The Pennsylvania State University  
202 Hosler Building  
University Park, Pa 1682

##### *Fact Witnesses*

1. Scott Perry,  
Deputy Secretary,

Office of Oil and Gas Management,  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building,  
P.O. Box 2063  
Harrisburg PA 17105

2. Kurt Klappkowski,  
Director,  
Bureau of Oil and Gas Planning and Program Management,  
Office of Oil and Gas Management,  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building,  
P.O. Box 2063  
Harrisburg PA 17105

DEP reserves the right to call additional fact witnesses for rebuttal to any matter raised by the Hilcorp at the hearing. DEP further reserves its right to call any witnesses identified in Hilcorp's Pre-Hearing Statement, and any witness who is called at the hearing by any other Interested Party.

**VI. Estimated Time Needed at Hearing**

Because the Application is incomplete and not a proper application under the Conservation Law and its Regulations, DEP is currently unable to estimate the time needed for hearing. DEP is unsure on the amount of witnesses and exhibits that will be needed for the hearing. Further, DEP is not currently aware of the number of landowners and other interested parties who will be seeking to be heard pursuant to Section 410 of the Conservation Law, 58 P.S. § 410(b). *See also*, 25 Pa. Code § 79.23(b).

**VII. Available Hearing Dates**

Because the Application is materially deficient and incomplete and not a "proper" application, a hearing is not required until the Application is completed in accordance with the Conservation Law and its Regulations. DEP is generally available in the next months, and will provide specific availability for hearing upon Hilcorp's submission of the additional information


needed to complete the Application as required under the Conservation Law and its Regulations, and identified by DEP in the Deficiency Letter.

**VIII. Reservation of Rights**

DEP reserves the right to amend this Pre-Hearing Statement at any time.

Respectfully submitted,

COMMONWEALTH OF  
PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

  
Elizabeth A. Nolan, PA I.D. No. 309648  
Assistant Counsel

elnolan@pa.gov  
Bureau of Regulatory Counsel  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101

Donna L. Duffy PA I.D. No. 68030  
Regional Counsel  
doduffy@pa.gov  
Michael A. Braymer, PA I.D. No. 89215  
Assistant Counsel

mbraymer@pa.gov  
Northwest Regional Counsel  
230 Chestnut Street  
Meadville, PA 16335-3481  
Telephone: 814-332-6070  
Fax: 814-332-6996

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

In Re. The Matter of the Application of )  
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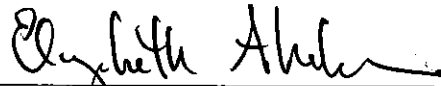
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of DEP's Pre-Hearing Statement in the above-captioned matter was this day served upon the following Counsel for Hilcorp *via* E-mail and Pre-Paid First Class U.S. Mail:

Kevin L. Colosimo  
Daniel P. Craig  
Burleson LLP  
501 Corporate Drive, Suite 105  
Canonsburg, PA 15317

Respectfully submitted,

COMMONWEALTH OF  
PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION



Elizabeth A. Nolan, PA I.D. No. 309648  
Assistant Counsel  
elnolan@pa.gov  
Bureau of Regulatory Counsel  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101



# Exhibit A



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

January 22, 2014

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 the Commonwealth of Pennsylvania, Department of Environmental Protection's letter to Hilcorp Energy Company regarding Hilcorp's Application for Well Spacing Units.

Thank you, and if you have any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth A. Nolan".

Elizabeth A. Nolan  
PA I.D. No. 309648  
Assistant Counsel

Enclosures

cc: Michael L. Bangs, Hearing Officer  
Hilcorp Energy Company  
Kevin L. Colosimo  
Daniel P. Craig



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF OIL AND GAS MANAGEMENT

January 22, 2014

Hilcorp Energy Company  
1201 Louisiana Street, Suite 1400  
Houston, TX 77002

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

Dear Hilcorp Energy Company:

The Department of Environmental Protection (DEP) has reviewed the Application for Well Spacing Units (Application) submitted by Hilcorp Energy Company (Hilcorp) received on December 2, 2013. DEP has determined that the Application is incomplete. In accordance with the Oil and Gas Conservation Law (Conservation Law), the Administrative Agency Law, 25 Pa. Code Chapter 79, 1 Pa. Code Chapter 31 and 1 Pa. Code Chapter 35, please be advised that your Application contains the following significant deficiencies.

The Application does not set forth the following required material:

- The Application does not contain information concerning the “maximum area which may be drained efficiently and economically by one well” as required by the application requirements in 25 Pa. Code § 79.21(a)(3). This is a critical requirement, as Section 407(4) of the Conservation Law, 58 P.S. § 407(4), bars DEP from entering a final order establishing spacing units “smaller than the maximum area that can be efficiently and economically drained by one well.”

Instead, the Application, in Section II. Project Description on page 3 and Section VI.B.iv on page 11, proposes two units that “represent the maximum area that can be efficiently and economically drained from a single well pad.” Additionally, the Application contains a conclusory statement contained in paragraph (9) of the affidavit of Kyle Koerber (Koerber Affidavit) relating to the maximum area that may be efficiently and economically drained from a single well pad. The Application does not contain any information demonstrating that the proposed spacing units are the maximum area that can economically be drained by one well. Further, the Application does not contain any technical information or data demonstrating that the proposed spacing units are the maximum area that can be efficiently drained by one well.

- The Application does not contain information that a well has been drilled establishing a pool as required by Section 407(1) of the Conservation Law, 58 P.S. § 407(1), and 25 Pa.

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Rachel Carson State Office Building | P.O. Box 2063 | Harrisburg, PA 17105-2063

Code § 79.21(a). Section 407(1) of the Conservation Law and the application requirements in 25 Pa. Code § 79.21(a) require that a discovery well establishing a pool be drilled prior to the submission of an application for well spacing and units in that pool. There is no information in the Application that the Pulaski-Kinkela 1H Well established a “pool,” as that term is defined in Section 402 of the Conservation Law, 58 P.S. § 402, and 25 Pa. Code § 79.1 (relating to definitions) and that the proposed units are to be established in that pool.

The Affidavit of Nina Delano (Delano Affidavit) contains a conclusory statement to that effect but no information is included in the Application which supports Ms. Delano’s conclusion.

DEP requests that the information generated and/or reviewed by Ms. Delano in reaching the conclusions outlined in her Affidavit be submitted to DEP pursuant to Section 407(1) of the Conservation Law, including:

- Well log data,
  - Core data,
  - Reservoir quality analyses,
  - Geological prognosis and horizontal well plans for the HEC-110 unit,
  - Geological prognosis for the HEC-111 unit,
  - Geological prognosis and directional plans for the Pulaski-Kinkela 1H, 2H and 3H Wells in the Pulaski-Kinkela South Unit,
  - Geological prognosis and directional plans for the Pulaski-Kinkela 4H Well in the Pulaski-Kinkela North Unit,
  - Maps prepared from public well logs and wireline logs from the recently drilled Hilcorp wells (presumably but not explicitly the Pulaski-Kinkela 1H, 2H 3H and 4H Wells) tracing the thickness of the Utica and Point Pleasant shales over the Pulaski Accumulation, and
  - Production and microseismic data regarding the Utica/Point Pleasant formation in the Pulaski Accumulation.
- The Application does not contain a plat “indicating the latitude and longitude of each well drilled to the pool to be spaced . . . .” as required by 25 Pa.Code § 79.21(a)(2).

And, the Application is otherwise insufficient as follows:

- The Application does not contain the information Mr. Koerber reviewed. DEP requests that the information reviewed by Mr. Koerber in reaching the conclusions outlined in his Affidavit be submitted to DEP pursuant to Section 407(1) of the Conservation Law, including:
  - Maps prepared by Hilcorp geologists from public well logs and recently drilled Hilcorp well logs tracing the thickness of the Utica/Point Pleasant shales over the Pulaski formation,
  - Wireline well log data,
  - Core data,
  - Seismic data,
  - Aeromagnetic data,
  - Stimulation designs,
  - Reservoir quality analyses from the Pulaski Accumulation,
  - Reservoir quality analyses from other portions of the Utica/Point Pleasant formation,
  - Production data from analog tight rock shale plays,
  - Production data from the Kinkela pad,
  - Development plan for the existing Pulaski-Kinkela North and Pulaski-Kinkela South Units, and
  - Development plans for the proposed HEC 110-H and HEC 111-H Units.

Additionally, DEP requests pursuant to Section 407(1) of the Conservation Law Hilcorp's development plans, including well pad layout, drilling, stimulation, expected reserves and economic analysis for the proposed HEC 110-H and HEC 111-H Units with and without a spacing order. Based on Hilcorp's development plans, DEP further requests, an estimate of how much gas will be extracted with and without a spacing order as well as an estimate of the difference in costs of production with and without a spacing order.

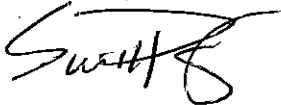
For the reasons outlined above, DEP has determined that the Application is not a "proper application" as required by the Oil and Gas Conservation Law, 1 Pa. Code Chapter 31 and 1 Pa. Code Chapter 35 for the DEP to hold a public hearing on the Application. *See* 58 P.S. § 405(c)(1), 407, 407(1), 1 Pa. Code § 31.5(c), 1 Pa. Code § 35.1, 1 Pa. Code § 35.2 A hearing on

the Application may not proceed until the deficiencies are corrected and the requested information is provided resulting in submission of a "proper application" under the Conservation Law. You should resubmit the Application responding to the listed deficiencies and the requested information for a "proper application."

If you believe that any of the stated deficiencies are not significant, instead of submitting a response to that deficiency, you have the option of asking for a decision based on the information with regard to the subject matter of that deficiency that you have already made available. If you choose this option with regard to any deficiency, you should explain and justify how your current submission satisfies that deficiency. Please keep in mind that if you fail to respond, your application may be dismissed in accordance with the Conservation Law.

This deficiency letter is not a final action of DEP. Upon receipt of the requested information DEP will notify you of receipt of a proper application in accordance with Section 407 of the Conservation Law. Upon receipt of a proper application, DEP will notify the hearing officer that a hearing is necessary in accordance with the Conservation Law.

Sincerely,



Scott R. Perry  
Deputy Secretary  
Oil and Gas Management

cc: Michael L. Bangs, Esquire, Hearing Officer  
Glenda Davidson, Docket Clerk  
Kevin L. Colosimo, Attorney for Applicant Hilcorp Energy Company  
Daniel P. Craig, Attorney for Applicant Hilcorp Energy Company