



Daniel P. Craig  
724.743.3091 (phone)  
724.746.6645 (fax)  
[dcraig@burllesonllp.com](mailto:dcraig@burllesonllp.com)

June 9, 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

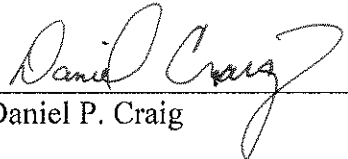
**RE: In Re. Hilcorp Energy Company**  
**MMS No. 2013-SLAP-000528**  
**Docket No. 2013-01**

Dear Ms. Davidson:

Enclosed for filing in the above-referenced matter is Hilcorp Energy Company's Motion to Schedule Hearing Date.

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)  
Gerard L. Noguee and Claudia A. Noguee (via First Class Mail)

**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 MOTION TO SCHEDULE HEARING DATE**

Hilcorp Energy Company (“Hilcorp”), by and through its undersigned counsel, Kevin L. Colosimo and Daniel P. Craig, hereby files this Motion to Schedule a Hearing Date on Hilcorp’s Application for Well Spacing Units (the “Application”). Hilcorp hereby moves for an Order scheduling a hearing date, and in support thereof, avers the following:

1. On April 25, 2014, Martin Matteo and Suzanne Matteo, Robert Valentine and Carol Valentine, and Steve Emery (collectively the “Property Owners”) filed a Petition to Intervene in the above-captioned matter.

2. On May 2, 2014, E. Christopher Abruzzo, Secretary of the Department of Environmental Protection (the “Department”), issued an Order granting the Property Owners unopposed Petition to Intervene. On that same day, the Property Owners filed a Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief in the Commonwealth Court of Pennsylvania.

3. On May 5, 2014, the Property Owners filed a Motion to Stay the administrative proceedings on the Application. Hilcorp filed an Answer to Property Owners’ Motion for Stay of Proceedings on May 8, 2014, opposing the motion and requesting that the Hearing Officer schedule a hearing date on the Application.

4. On May 12, 2014, by Gerard L. Nogee and Claudia A. Nogee, husband and wife (collectively the “Nogees”) filed a Petition to Intervene in the above-captioned matter. Hilcorp

filed an Answer, opposing the Nogeas' Petition to Intervene on May 19, 2014. Secretary Abruzzo has yet to respond to that Petition.

5. On May 17, 2014, an article published in the Pittsburgh Post-Gazette stated that Morgan Wagner, a spokeswoman for the Department, asserted that hearings on the Application have been postponed until the Commonwealth Court "rules on the case." However, neither the Hearing Officer nor any Department representative has officially indicated that the hearing is in fact postponed pending action by the Commonwealth Court, and such a postponement would be improper.

6. On May 20, 2014, Hilcorp filed Preliminary Objections to the Property Owners Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief, challenging the Court's jurisdiction to hear the case at this early stage in the proceedings. On June 6, 2014, the Property Owners filed an Amended Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief, asserting a new, but equally untenable theory for the Commonwealth Court's proper exercise of jurisdiction in this matter.

7. The Commonwealth Court will likely decline to exercise jurisdiction over the Property Owners' declaratory judgment action under the doctrine of ripeness because the Department has yet to take any action on the Application, the issues in this case are inadequately developed for judicial review and the Property Owners will face no hardship if the Commonwealth Court's review is delayed until after the administrative process has taken place. *See Alaica v. Ridge*, 784 A.2d 837 (Cmwlth. 2000).

8. The Commonwealth Court will likely refrain from exercising equitable jurisdiction because the doctrines of primary jurisdiction and exhaustion of administrative remedies precludes a party challenging administrative decision making from obtaining judicial

review without first exhausting all administrative remedies when those remedies are adequate, the question presented is one within the agency's specialization, and the administrative remedy is as likely as the judicial remedy to provide the desired result. *See Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 499 Pa. 39, 46-48 (1982); *see also* 1 Pa. C.S. § 1504.

9. In this case, a well-established administrative appeal scheme exists for all actions of the Department, whereby the Environmental Hearing Board (the "Board") has the power and the duty to hold hearings and issue adjudications on orders, permits, licenses or decisions of the Department. 35 P.S. § 7514. Moreover, whether an order establishing spacing units over a pool of oil and gas for the purpose of preventing waste and protecting correlative rights is appropriate under the circumstances is a question that lies uniquely within the Department's specialization, as it is the agency regulating all other aspects of the oil and gas industry in Pennsylvania. Finally, if the Property Owners' eventually exhaust their administrative remedies, they would have the right to then appeal to the Commonwealth Court, so the administrative remedy is as likely as the judicial remedy at this juncture to provide the desired result.

10. The Commonwealth Court will likely decline to exercise equitable jurisdiction because the Property Owners would suffer no "direct and immediate" impact as a result of the Department's eventual action on the Application, since any decision of the Department may be appealed to the Environmental Hearing Board (the "Board"), and any decision of the Board may be appealed to the Commonwealth Court. *See Arsenal Coal Co. v. Commonwealth*, 477 A.2d 1333, 1339 (Pa. 1984); *see also* 35 Pa.C.S. § 7514 and 42 Pa.C.S. § 763.

11. No decision of the Department would take effect, so long as the Property Owners pursue available administrative remedies, until the Commonwealth Court ultimately rules on the issues presented after all administrative remedies are exhausted because, pursuant to 35 Pa.C.S. §

7514 (d), the Board has the power to issue a supersedeas halting the effect of the Department's action on the Application upon a showing of irreparable harm to the petitioner in the absence thereof and, pursuant to Pa. R.C.P. No 1531, the Commonwealth Court has the power to issue a preliminary injunction preventing the Department's order from taking effect to prevent immediate and irreparable harm to Petitioners in the absence thereof. *See also* 42 Pa.C.S. § 562.

12. In its Amended Petition, the Property Owners assert that the Commonwealth Court has jurisdiction over Petitioners' constitutional challenge to the Conservation Law because neither the Department nor the Board has authority to rule on the constitutionality of statutes. That assertion is irrelevant at this stage of the proceedings because the Commonwealth Court may be called upon to rule on the Conservation Law's constitutionality once the Department and the Environmental Hearing Board have ruled on the Application. The Property owners also assert that the Commonwealth Court has jurisdiction over their remaining claims because those claims fall within an exception to the requirement of exhaustion of administrative remedies as expressed in *Pa. State Educ. Ass'n ex rel Wilson v. Pa. Office of Open Records*, 50 A.3d 1263, 1277 (Pa. 2012). However, a review of the cited case reveals that recourse to this exception to the doctrine of exhaustion of administrative remedies requires the party seeking premature review to show that no established administrative remedy would permit the aggrieved party to seek relief from agency action (where citizens made Right to Know requests for the personal addresses of public school teachers, and the school district, not the teachers themselves, was the only party with the right to pursue administrative remedies, and the school district declined to pursue those remedies).

13. If the Commonwealth Court does decide to exercise equitable jurisdiction in this case, it has the power to issue a preliminary injunction halting the proceedings in the above-

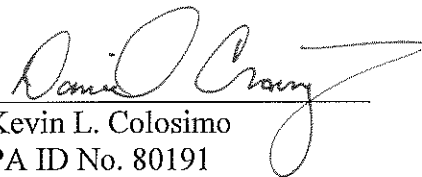
captioned matter, rendering it unnecessary for the hearing officer to order a stay of proceedings at this time. Pa. R.C.P. No. 1531.

14. Hilcorp and its lessors are the only parties that stand to suffer irreparable harm in this instance, as Hilcorp's leases are limited in term and each additional delay lessens the time in which these leases may be developed. Hilcorp originally filed its Application with the Department on July 17, 2013. Despite the 45 day statutory mandate contained in the Conservation Law, Hilcorp has yet to receive its statutorily mandated relief requested. If this matter and the lengthy appeals process that will follow is not completed prior to the expiration of Hilcorp's leases, it will lose the right to develop the land and the lessors will lose their opportunity to collect royalties from that development.

WHEREFORE, Hilcorp respectfully requests that the Hearing Officer enter an Order scheduling a hearing date, in substantially the same form as the Proposed Order attached hereto as Exhibit A.

DATED: June 9, 2014

Respectfully submitted,



Kevin L. Colosimo  
PA ID No. 80191  
Daniel P. Craig  
PA ID No. 312238  
Burlison LLP  
Southpointe Town Center  
1900 Main Street, Suite 201  
Canonsburg, PA 15317  
724-746-6644

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 9<sup>th</sup> day of June, 2014, via e-mail upon the following:

Michael L. Bangs  
Bangs Law Office, LLC  
429 South 18<sup>th</sup> Street  
Camp Hill, PA 17011  
mikebangs@verizon.net  
Hearing Officer

Omar K. Abuhejleh  
Attorney at Law  
429 Forbes Avenue, Suite 450  
Pittsburgh, Pennsylvania 15219  
ohejleh@gmail.com  
Counsel for Intervenors

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

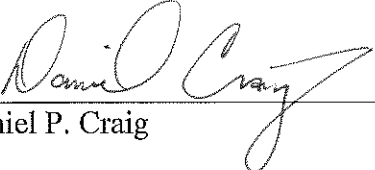
*I further certify that a true and correct copy  
of the foregoing was served via First Class  
Mail upon the following:*

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

Donna Duffy, Esquire  
Michael Braymer, Esquire  
Department of Environmental Protection  
230 Chestnut Street  
Meadeville, PA 16335  
doduffy@pa.gov  
mbraymer@pa.gov  
Counsel for the Department of  
Environmental Protection

Gerard L. Noguee and Claudia A. Noguee  
2374 Marr Road  
Pulaski, PA 16143  
Intervention Applicants

Elizabeth Nolan, Esquire  
Department of Environmental Protection  
400 Market Street, 9<sup>th</sup> Floor  
Harrisburg, PA 17105  
elnolan@pa.gov  
Counsel for the Department of  
Environmental Protection

  
\_\_\_\_\_  
Daniel P. Craig

**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  
  )

**[PROPOSED] ORDER**

**NOW**, this \_\_\_ day of \_\_\_\_\_, 2014, it is hereby ordered and directed as follows:

1.       The First Session of the public hearing on Hilcorp’s application for well spacing units will commence at \_\_\_\_\_ a.m. on \_\_\_\_\_, 2014, and \_\_\_\_\_ a.m. on \_\_\_\_\_, 2014, at the Albert P. Gettings Government Center Annex of the Lawrence County Government Center, Assembly Room, 439 Countyline St, New Castle, Pa. 16101.

2.       Pursuant to 58 P.S. §407(2), the Department shall provide notice of the hearing by publication in a newspaper of general circulation in both Lawrence and Mercer Counties for two successive weeks prior to the hearing, beginning, at the latest, on \_\_\_\_\_, 2014.

3.       At the First Session, any and all “royalty owners” and/or “other operators” as those terms are defined in Section 2 of the Pennsylvania Oil and Gas Conservation Law (Oil and Gas Conservation Law) 58 P.S. §402, that are located within the proposed spacing order shall be given the opportunity to support, oppose, and/or present their own plan of development as provided for in 25 Pa. Code §79.23(b).

4.       “Royalty owners” and/or “other operators” wishing to present testimony at the First Session shall contact Glenda Davidson at 717-787-4449, seven (7) days prior to the First Session on \_\_\_\_\_, 2014, and provide the following: name, status as a “royalty owner” and/or “other operator”, address, and phone number.



5. The Second Session of the public hearing will commence at \_\_\_\_\_ p.m. on \_\_\_\_\_, 2014, at the Albert P. Gettings Government Center Annex of the Lawrence County Government Center, Assembly Room, 439 Countyline St, New Castle, Pa. 16101.

6. Interested persons wishing to present testimony at the Second Session are requested to contact Glenda Davidson at 717-787-4449, seven (7) days prior to \_\_\_\_\_, 2014, to reserve a time for oral testimony, and provide the following: name, address, phone number, and a brief statement of interest. Oral testimony will be limited to five minutes for each party. Witnesses will be requested to submit three written copies of their oral testimony to the Hearing Officer. The purpose of the Second Session is to receive testimony on the Application.

SO ORDERED,

\_\_\_\_\_  
Michael L. Bangs  
Hearing Officer