



Daniel P. Craig
724.743.3091 (phone)
724.746.6645 (fax)
dcraig@burllesonllp.com

May 8, 2014

VIA EMAIL AND
FIRST CLASS MAIL

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

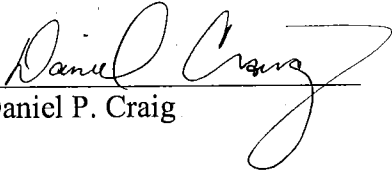
RE: In Re. Hilcorp Energy Company
MMS No. 2013-SLAP-000528
Docket No. 2013-01

Dear Ms. Davidson:

Enclosed for filing in the above-referenced matter is Hilcorp Energy Company's Answer to Property Owners' Motion for Stay of Proceedings and 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)

**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’ MOTION FOR STAY OF
PROCEEDINGS AND 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 Answer to Property Owners’ Motion for Stay of Proceedings in the above-captioned matter, which was filed on May 5, 2014 by Martin Matteo and Suzanne Matteo, Robert Valentine and Carol Valentine, and Steve Emery (collectively the “Property Owners”), and simultaneously moves for an order scheduling a hearing date on Hilcorp’s Application for Well Spacing Units (the “Application”). Hilcorp hereby opposes the Property Owners’ Motion for Stay of Proceedings and, in support of that opposition, avers the following:

1. 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).

2. 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.

3. In this case, a well-established administrative appeal scheme exists for all actions of the Department, whereby the Environmental Hearing 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.

4. 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.

5. 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.

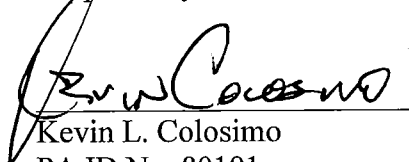
6. If the Commonwealth Court does decide to exercise equitable jurisdiction in this case, it has the power to issue a preliminary injunction halting the proceedings in the above-captioned matter, rendering it unnecessary for the hearing officer to order a stay of proceedings at this time. Pa. R.C.P. No. 1531.

7. 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. 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 opposes the Property Owners' request for a stay of proceedings and respectfully requests that the Hearing Officer enter the Proposed Order attached hereto as Exhibit A.

DATED: May 8, 2014

Respectfully submitted,



Kevin L. Colosimo

PA ID No. 80191

Daniel P. Craig

PA ID No. 312238

Burleson LLP

501 Corporate Drive, Suite 105

Canonsburg, PA 15317
724-746-6644

4841-7518-1082, v. 1

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 8th day of May, 2014, via e-mail, upon the following:

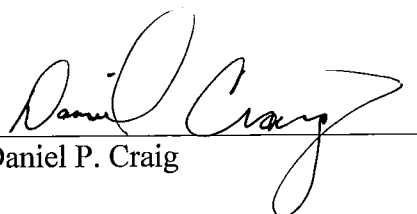
Michael L. Bangs
Bangs Law Office, LLC
429 South 18th Street
Camp Hill, PA 17011
mikebangs@verizon.net
Hearing Officer

Glenda Davidson
Department of Environmental Protection
400 Market Street
Rachel Carson State Office Building, 16th 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

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

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


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:

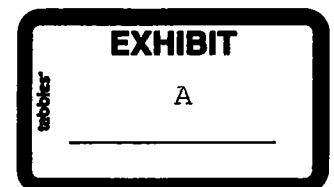
1. The Motion for Stay of Proceedings, filed on May 5, 2014 by Martin Matteo and Suzanne Matteo, Robert Valentine and Carol Valentine, and Steve Emery, is hereby denied.

2. 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.

3. 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.

4. 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).

5. “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.

6. 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.

7. 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