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March 17, 2014

Glenda Davidson  
Docket Clerk  
Department of Environmental Protection  
400 Market Street, 16th Floor  
Harrisburg, PA 17101  
gdavidson@pa.gov

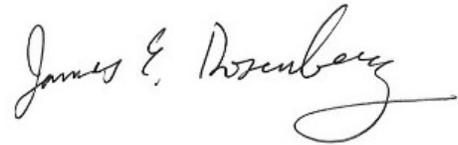
Dear Ms. Davidson:

Enclosed please find a 1 PA Code §35.23 Protest in the matter:

Application of Hilcorp Energy Company for Well Spacing Units  
MMS No. 2013-SLAP-000528  
Docket Number 2013-01

If your office is not the correct place to file this protest, please advise.

Thank you,

A handwritten signature in black ink that reads "James E. Rosenberg". The signature is written in a cursive style with a long, sweeping underline.

James E. Rosenberg  
Pro se

Cc:  
"Michael L. Bangs" <mikebangs@verizon.net>  
"Daniel P. Craig" <dcraig@burlesonllp.com>  
"Elizabeth A. Nolan" <elnolan@pa.gov>  
Kurt Klappowski <kklappowsk@pa.gov>

1 PA Code §35.23 Protest  
In the Matter Application of Hilcorp Energy Company for Well Spacing Units  
MMS No. 2013-SLAP-000528  
Docket Number 2013-01

Pursuant to 1 PA Code §35.23, I hereby file this protest concerning whether in the matter Application of Hilcorp Energy Company for Well Spacing Units, Docket Number 2013-01, timely public notice has been given for the hearing scheduled March 25-26, 2014 by Order of Hearing Officer Bangs dated February 19, 2014.

**I. Summary:**

Public Notice for the hearing in this matter did not appear in a newspaper of general circulation until March 11, 2014. The hearing is scheduled to begin March 25, 2014. This does not conform to the statutory requirement of 15 days' notice. Moreover, the public notice did not inform royalty owners who have no voluntary agreement with Hilcorp that matters pertaining to potential integration of their subsurface would be discussed at the hearing. I therefore protest scheduling of this hearing, and petition Hearing Officer Bangs that the hearing be rescheduled in a manner that conforms to 58 P.S. §407 and other statutes.

**II. Statement of Facts:**

1. On November 26, 2013, Hilcorp Energy Company ("Hilcorp") filed an application ("Application") for Well Spacing Units with the Department of Environmental Protection ("DEP") pursuant to the Oil and Gas Conservation Law (58 P.S. §§ 401-419) ("OGC Law")<sup>1</sup>.
2. In Application, Hilcorp asserts a *pool* under the OGC Law beneath an area of land which it designates as "The Pulaski Accumulation ("Accumulation").
3. On December 30, 2013, by letter ("Letter") from E. Christopher Abbruzzo, in his capacity as secretary of DEP, Michael L. Bangs, Esquire, was appointed Hearing Officer in this matter, which was captioned MMS No. 2013-SLAP-000528, Docket No. 2013-01.
4. On February 19, 2014, Hearing Officer Bangs issued an order to convene a hearing in this matter ("Hearing")

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<sup>1</sup> There is prior history of an earlier application by Hilcorp to DEP in this matter, return of that application by DEP claiming that jurisdiction belonged to the Environmental Hearing Board ("EHB"), subsequent filing of the application at EHB, where it was captioned Docket 2013155, <[http://ehb.courtapps.com/public/document\\_shower\\_pub.php?csNameID=4737](http://ehb.courtapps.com/public/document_shower_pub.php?csNameID=4737)>, and a ruling by EHB that jurisdiction did indeed belong with DEP. This history is omitted from this protest.

on March 25 and 26, 2014, at the Lawrence County Government Center, 430 Court Street, New Castle, Pennsylvania, 16101.

5. On March 11, 2014, a legal notice (“Notice”) appeared in a newspaper of general circulation called *The New Castle News*. A copy of Notice is attached herein as Attachment A.

6. No evidence has been presented to the Hearing Officer in this case of any earlier publication of Notice in a newspaper of general circulation than March 11, 2013.

7. No evidence has been presented to the Hearing Officer in this case that *royalty owners* within Accumulation have been provided notice of Hearing at any earlier date than March 11, 2014<sup>2</sup>.

8. A March 11, 2014 publication date for Notice fails to meet the standard of 15 days’ notice from the date of March 25, 2014.

### **III. Statement of Law:**

9. 58 P.S. § 407(2) states: “The first publication and the mailing of such notice shall be at least fifteen days before the date fixed for hearing.”

10. 58 P.S. § 408 states: “The commission as part of the order establishing a spacing unit or units shall prescribe the terms and conditions upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated ***without the necessity of a subsequent separate order*** integrating the royalty interests.” [Emphasis added.]

11. 2 Pa.C.S.A. § 504 states: “No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.”

### **IV. Assertions:**

12. Notice fails to meet the standard of 58 P.S. § 407(2) and is thereby invalid.

13. Hearing must, by virtue of the passage quoted above from 58 P.S. § 408, consider “the terms and conditions

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<sup>2</sup> It is my belief based on personal communication with a royalty owner within Accumulation that even as of this writing, March 15, 2014, there are royalty owners within Accumulation who have been given no notification of Hearing.

upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated”. I.e.: Matters pertaining to a possible Integration Order **may not be postponed** to a subsequent hearing considering only the matter of an Integration Order. Therefore:

14. Any royalty owner within Accumulation who does not have a voluntary agreement with Hilcorp is covered by the passage from 2 Pa.C.S.A. § 504 cited above. All such royalty owners must receive proper notice of Hearing. Since that has not occurred, Hearing must be postponed.

15. An “opportunity to be heard” which is subject to an arbitrary or unreasonable time limit, such as 5 minutes, is not satisfactory under 2 Pa.C.S.A. § 504 for a royalty owner within Accumulation who does not have a voluntary agreement with Hilcorp.

16. Public notice for Hearing is defective if it does not inform the public that consideration of “the terms and conditions upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated” will be heard.

17. Issues of law and fact pertaining to whether “the Oil and Gas Conservation Commission” retains the authority to issue an Integration Order in the face of Section 2(3) of 2006, May 4, P.L. 148, No. 35 must be heard at Hearing.

18. To put it more colloquially: By virtue of the passage from 58 P.S. § 408 cited above (point 10), the issue known as Forced Pooling must be on the table at Hearing, and any landowners within Accumulation potentially subject to Forced Pooling must be heard **on that subject**.

#### **V. Statement of Public Interest:**

19. This is a case of widespread public interest, and is a *case of first impression* on a significant number of issues of interest to a large number of citizens of Pennsylvania. These issues include, but are not limited to:

- What is required to establish a “pool” under the Oil & Gas Conservation Law?
- Does the concept of “pool” even make any sense in the context of shale gas?
- In what sense does the concept of correlative rights even apply to shale gas?
- Does Forced Pooling qualify constitutionally in Pennsylvania as eminent domain?
- Does Article 1 Section 1 of the PA Constitution confer a right to have one's fossil fuels be kept in the

ground? Would not Forced Pooling be an uncompensated taking of that right?

These are matters of profound concern throughout the Commonwealth of Pennsylvania. Hilcorp may assert that Hearing is a mere “administrative matter”. As a case of first impression, the passage from 58 P.S. § 408 cited above demonstrates otherwise.

#### **VI. Petition:**

Now THEREFORE, I, James E. Rosenberg, being a resident of Redstone Township, Fayette County, Pennsylvania, being a royalty owner surrounded on three sides by royalty owners with an agreement with a producer of natural gas, believing I have an Article 1 Section 1 right under the Constitution of the Commonwealth of Pennsylvania to insist that my fossil fuels *be left in the ground*, being potentially subject to an Integration Order under the Oil and Gas Conservation Law when gas from the Utica Shale is produced in my vicinity, and thereby having direct interest in the effect upon my property of this case as precedent, do hereby petition Hearing Officer Bangs in this matter, pursuant to 1 PA Code §35.23, to:

(i) Find that Notice is defective, and does not meet the standard of 58 P.S. § 407(2), 58 P.S. § 408, and 2 Pa.C.S.A. § 504; and

(ii) Issue a new Order, rescheduling Hearing, so that notice conforming to the above statutes can be properly given.

#### **VII. Certificate of Service:**

I am mindful that I am not currently a party to this case, and that the submitter of a Protest is not obligated to serve parties. However, due to the seriousness with which I regard the matter of defective Notice, and given the ramifications of postponement of Hearing upon parties, I am serving parties anyway, and Certificate of Service is attached.

Respectfully submitted,  
James E. Rosenberg, pro se  
555 Davidson Road  
Grindstone, PA 15442  
(724) 785-9398

jr@amanue.com

March 17, 2014

Attachment A  
Notice of Hearing

**LEGAL NOTICE**

The Pennsylvania Department of Environmental Protection (DEP) will hold a public hearing on an Application for Gas Well Spacing Units (Application) filed by Hilcorp Energy Company (Hilcorp) pursuant to the Pennsylvania Oil and Gas Conservation Law, 58 P.S. §§401-419. In the Application, Hilcorp requests that DEP issue a well drilling and spacing unit order that establishes four gas well drilling units on approximately 3,267 acres of the Utica Shale Formation in Pulaski Township, Lawrence County, and Shenango Township, Mercer County. The public hearing will be held on March 25 and March 26, 2014, in the Penn State Extension Conference Room at the Lawrence County Government Center, 430 Court Street, New Castle, PA, 16101. The public hearing will start at 10:00 a.m. on March 25, 2014, and at 8:00

a.m. on March 26, 2014. Testimony will be taken at the hearing regarding the Application. For more information, please contact Kurt Klapkowski, Director, Bureau of Oil and Gas Planning and Program Management, (717) 772-2199.

[kklapkowski@pa.gov](mailto:kklapkowski@pa.gov)

Legal: March 11, 2014

In the Matter Application of Hilcorp Energy Company for Well Spacing Units  
MMS No. 2013-SLAP-000528  
Docket Number 2013-01  
Certificate of Service

I hereby certify that a true and correct copy of James E. Rosenberg's Protest concerning whether in the matter Application of Hilcorp Energy Company for Well Spacing Units, Docket Number 2013-01, timely public notice has been given for the hearing scheduled March 25-26 has been served this day, March 17, 2014 via E-mail and will be by tomorrow's US Mail to the following parties:

Michael L. Bangs  
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