

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION OF
TARGA MIDSTREAM SERVICES LIMITED PARTNERSHIP
FOR APPROVAL OF AN ACID GAS INJECTION WELL,
LEA COUNTY, NEW MEXICO

Case No. 14-92

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RESPONSE TO MOTION TO DISMISS

TARGA MIDSTREAM SERVICES LIMITED PARTNERSHIP, ("Targa"),
by its undersigned attorneys, Montgomery and Andrews, P.A., (J. Scott
Hall), for its Response to the Motion To Dismiss filed on behalf of Range
Operating New Mexico, Inc., ("Range"), states:

Targa has filed an Application for an order approving the use of its
Eunice Plant 161 SWD Well No. 1 for conversion to acid-gas injection
operations. In addition, Targa has alternatively proposed to drill a new well,
the Eunice Middle-Plant AGI Well No. 1, for acid-gas injection operations.
The existing SWD well and the alternate location are both in Section 3, T-22-
S, R-37-E. At the hearing on the Application, Targa will present as evidence
the same data that would support the administrative Form C-108.

Range seeks the dismissal of the Application, not for any
misapprehension that a C-108 and supporting materials would be unavailable
before the hearing,¹ but only because of a rather strict reading of Rule 701

¹ In an exchange of e-mails between counsel (Exhibit A, attached) it was made clear that
C-108 materials would be provided to Range in advance of the hearing.

that is at odds with administrative efficiency and current agency guidance. Importantly, Range does not assert a violation of due process or any other grounds as a basis for its motion.

As is known, in the past, the Division handled applications for approvals for acid-gas injection wells much in the same manner as applications for salt water disposal wells were processed. The protocols in place for Class I and Class II disposal wells were followed and administrative approvals could issue after review of the C-108 checklist and any supporting materials. Hearings were not mandatory.

More recently, the Division recognized that there was not a square overlap of the regulatory definitions and classifications of Underground Injection Control wells ("UIC") under Rule 701 and the WQCC regulations at *inter alia* §20.6.2.5002 NMAC where the injection of hazardous substances may be the subject of a proposed UIC operation. Accordingly, the Division Director mandated that applications for acid-gas injection wells would only be considered for approval pursuant to Examiner or Commission hearing. Such applications would no longer be approved administratively. Correspondingly, the Division's procedural rules for adjudicatory hearings are to apply. In addition, Division staff has determined that the Area of Review for AGI wells should be expanded from a one-half mile radius to a full mile and that all surface owners and operators within one mile should be notified.

The requirements for initiating an adjudicatory proceedings are set forth at Rule 19.15.14.1206 NMAC. Under Rule 1206 A, an application is required to include the following:

- 1) the applicant's name;
- 2) the applicant's address, or the address of the applicant's attorney, including an e-mail address and fax number if available;
- 3) the name or general description of the common source or sources of supply or the area the order sought affects;
- 4) briefly, the general nature of the order sought;
- 5) a proposed legal notice for publication; and
- 6) any other matter these rules or a division order require.

Targa's Application comports fully with the requirements of Rule 1206 A and the agency's current interpretation and application of Rule 701 to AGI projects. The Application contains more than sufficient detail to provide full and fair notice to affected persons to allow them to conduct their own due-diligence evaluation of the proposal.

There is sufficient adherence to due process here "*...to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.*" *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. at 314, 70 S. Ct. at 657 (1950), cited in *Uhden v. New Mexico Oil Cons. Com'n.*, 112 N.M. 528, 817 P. 2d 721 (1991).

Copies of Targa's Application have been sent to all surface owners and operators within the expanded one-mile area of review. In this case, providing notice was no small undertaking, involving more than one-hundred individuals and companies. (See Notice List, Exhibit B, attached.) In addition,

a notice of the hearing has been published in the Lea County newspaper. (Exhibit C).

The Division has not yet undertaken a formal rulemaking proceeding to codify its new guidance for the processing of acid-gas injection well applications. In the interim, the Director's mandate and Rule 701 have been interpreted and applied by Division staff in a manner consistent with the agency's duties under the Oil and Gas Act. That is, to ensure the proposed injection operations can be conducted in a safe and responsible manner without causing waste, impairing correlative rights or endangering fresh water, public health or the environment. Even absent a formal rulemaking, the agency's interpretations and applications are entitled to some deference.

Range's rigid reading of Rule 701 is at odds with the agency's interpretation and application. Range's interpretation is also impracticable. As Range would have it, before this Application can proceed at all, copies of the C-108 and supporting materials must be sent to each of the one-hundred plus owners and operators in the area of review. Whether doing so would be meaningful is questionable. The data supporting a C-108 Form will be presented at a formal hearing in any event.

To do as Range demands, the Application must be dismissed, re-filed, affected persons re-notified and provided with typically voluminous C-108 technical supporting materials. Doing so serves no meaningful purpose, is burdensome, and defeats any administrative efficiencies or economies.

WHEREFORE, Targa requests the Division enter its order denying Range Operating New Mexico, Inc.'s Motion To Dismiss. Alternatively, the Division may wish to continue the October 16, 2008 hearing on the Application should Range prove to the satisfaction of the Examiner that unfairness would otherwise result.

MONTGOMERY & ANDREWS, P.A.

By: J. Scott Hall

J. Scott Hall

Attorneys for Targa Midstream
Services Limited Partnership
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873

Certificate of Service

I hereby certify that a copy of the foregoing pleading was faxed to the following on this 9th day of October, 2008.

W. Thomas Kellahin, Esq.
Attorney for Range Operating
New Mexico, Inc.
706 Gonzales Road
Santa Fe, NM 87501
982-2047 - fax

David Brooks, Esq.
NMOCD
1220 S. St. Francis Drive
Santa Fe, NM 87505
476-3462 - fax

J. Scott Hall

J. Scott Hall

J. Scott Hall

From: J. Scott Hall
Sent: Thursday, October 02, 2008 6:12 PM
To: 'Tom Kellahin'
Cc:
Subject: RE: NMOCD Case 14192 (Traga's acid gas injection well)

Dear Tom:

This is not the agency's current interpretation and application of its rule. However, I will forward your request to Targa.

Regards,

J. Scott Hall
Montgomery & Andrews, P.A.
P. O. Box 2307
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shall@montand.com
(505) 986-2646

THIS MESSAGE CONTAINS INFORMATION WHICH MAY BE CONFIDENTIAL AND PRIVILEGED. UNLESS YOU ARE THE ADDRESSEE (OR AUTHORIZED TO RECEIVE FOR THE ADDRESSEE), YOU MAY NOT USE, COPY OR DISCLOSE TO ANYONE THE MESSAGE OR ANY INFORMATION CONTAINED IN THE MESSAGE. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE ADVISE THE SENDER BY REPLY E-MAIL TO shall@montand.com AND DELETE THE MESSAGE. THANK YOU.

-----Original Message-----

From: Tom Kellahin [mailto:tkellahin@comcast.net]
Sent: Thursday, October 02, 2008 5:49 PM
To: J. Scott Hall
Cc: Deanna Poindexter
Subject: RE: NMOCD Case 14192 (Traga's acid gas injection well)

Dear Scott,

The current Division guidance requiring AGI injection well application to be processed by adjudication, does not excuse the applicant from filing the C-108 as part of the original application. I request that your client voluntarily dismiss this application and re-file when your client has the C-108 ready to file.

Regards,

Tom Kellahin
Kellahin & Kellahin
Attorneys at Law
706 Gonzales Road
Santa Fe, NM 87501
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From: J. Scott Hall [mailto:SHall@montand.com]
Sent: Thursday, October 02, 2008 5:16 PM

10/7/2008

Exhibit A

To: Tom Kellahin
Cc: CLoughman@targaresources.com
Subject: RE: NMOCD Case 14192 (Traga's acid gas injection well)

Dear Tom:

The current Division guidance is that AGI injection wells may no longer be approved administratively and therefore applications are to be submitted according to the adjudicatory proceeding rules. Presumably, you have a copy of the application. Please let me know if you do not.

I do not have a C-108 with attachments to provide to you today. I will see to it that you are provided with a copy as soon as it becomes available. It is my expectation that the C-108 will be available for your review in advance of the hearing.

Regards,

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THIS MESSAGE CONTAINS INFORMATION WHICH MAY BE CONFIDENTIAL AND PRIVILEGED. UNLESS YOU ARE THE ADDRESSEE (OR AUTHORIZED TO RECEIVE FOR THE ADDRESSEE), YOU MAY NOT USE, COPY OR DISCLOSE TO ANYONE THE MESSAGE OR ANY INFORMATION CONTAINED IN THE MESSAGE. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE ADVISE THE SENDER BY REPLY E-MAIL TO shall@montand.com AND DELETE THE MESSAGE. THANK YOU.

-----Original Message-----

From: Tom Kellahin [mailto:tkellahin@comcast.net]
Sent: Thursday, October 02, 2008 3:14 PM
To: J. Scott Hall
Cc: Deanna Poindexter
Subject: NMOCD Case 14192 (Traga's acid gas injection well)

Dear Scott,

Range Operating has requested that I appear and represent them at the OCD hearing, currently set for October 16th, concerning the referenced application you filed on September 12 for Targa--case 14192.

Division Rule 701 requires that form C-108, complete with all attachments, be filed at the time the application is made. The NMOCD case file does not contain a copy of form C-108 attached to your application.

It is difficult to review Targa case without having a copy of form C-108. I would appreciate you emailing a copy to me as soon as possible.

Thanks,

Tom Kellahin
Kellahin & Kellahin
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10/7/2008

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Commissioner of Public Lands
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NOTICE

Targa Midstream Services L. P. has filed an application with the New Mexico Oil Conservation Division as follows: Case 14192: Application of Targa Midstream Services Limited Partnership for Approval of an Acid-Gas Injection Well, Lea County, New Mexico. Applicant seeks an order approving the use of the Eunice Plant 161 SWD Well No. 1 for conversion to acid-gas injection operations. The well is currently in use for salt water disposal at the following location:

Eunice Plant 161 SWD Well No. 1

API No. 30-025-22583
2255' FNL and 908' FEL
Section 3: SE/4 NE/4 (Unit H)
T-22-S, R-37-E, NMPM

Applicant proposes to evaluate this well for injection of acid gas and water through a closed system into the lower San Andres formation, Eunice-San Andres Pool, through an open-hole completion at depths of 4,131' to 4,900'.

As an alternative to the conversion of the Eunice Plant 161 SWD Well No. 1, Applicant proposes to drill a new well for acid-gas injection operations at the following location in Section 3:

Eunice Middle-Plant AGI Well No. 1

1557' FNL and 1345' FEL
Section 3: SW/4 NE/4 (Unit G)
T-22-S, R-37-E, NMPM

For the Eunice Middle-Plant AGI Well No. 1, Applicant proposes to inject acid gas and water through a closed system into the lower San Andres formation via an open-hole completion at a depth interval of 4,500' to 5,000'. Injection operations through either well will be conducted at an anticipated maximum surface injection pressure of 2,000 psi or as permitted by the Division. Applicant proposes injection of acid-gas at average daily rates of approximately 2,200 bbls and at maximum daily rates of approximately 2,500 bbls. Additional injection of produced water and non-hazardous wastewater will range from 250 to 1,575 barrels per day, for a total injection volume of 2,450 to 4,075 barrels per day. The subject lands are located approximately one-half mile south of Eunice, New Mexico.

The application is scheduled to be heard at 8:15 a.m. on Thursday, October 16, 2008 at the Division's offices located at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505. For further information, contact the applicant's attorney, J. Scott Hall, Montgomery and Andrews, P.A., 325 Paseo de Peralta, Santa Fe, New Mexico 87501, (505) 982-3873.