

Mallula Well Testing Put on Hold – For the Moment

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Over the past two months, concerned residents in Van Etten have been raising questions about the potential use of a no-longer producing gas well, as an underground injection well for brine. In October, Fortuna Energy received a State Pollutant Discharge Elimination System (SPDES) permit from the Department of Environmental Conservation (DEC). The six-month permit, which expires April 30, 2009, allows Fortuna to run a series of “injectivity tests” to determine the suitability of the Mallula well for underground storage.

Those tests have been put on hold, for now. On December 17, Mark Sheuerman, speaking for Fortuna Energy, told *Broader View Weekly* that “No testing is taking place at the Mallula 1 well right now, and no further activities are planned for the well at this time.” He declined to elaborate on the reasons leading to this decision, stating only that Fortuna plans to hold a community meeting sometime early in January to speak about their plans for the well.

Some landowners in the drilling unit, however, have their own ideas about what’s holding up the Mallula well tests: Storage clauses. Or rather, the lack of them. Two different landowners, who asked that their identities not be revealed, told *Broader View Weekly* in phone interviews that their leases contained no storage clauses.

“We made sure that our storage clause was struck from the lease,” said one landowner. “I remember crossing it out with black magic marker.”

Because of the way Environmental Conservation Law Article 23 (mineral resources) was written, the absence of a storage clause in even one lease on land included in a drilling unit may mean that Fortuna can’t store anything – gas or brine – in the Mallula well. The language in Title 9 of the law, detailing compulsory integration, explains that drilling in any part of a spacing unit “shall be deemed” the same as if drilling happened on each separately owned tract in the spacing unit.

Same with production. That portion of gas (or oil) allocated to you, based on your acreage in the unit, is the same as if it had been produced by a well on your individual tract.

If what comes out of a pooled unit is the same as though it had come from individual wells, then the same laws should hold for what is put back into the ground for storage. And, as landowners have heard time and again from everyone from their hometown lawyer to the Office of the Attorney General, the language of the lease is of utmost importance.

Chris Denton, an attorney who works with oil and gas leases, explained some of the law during a telephone interview two weeks ago. “You cannot store anything without

permission from the landowner,” Denton said. “The lack of a storage clause in a lease means that the right to store was not granted.”

Would using a gas well as an injection well violate the lease? “Absolutely,” Denton said. And you wouldn’t have to have the well on your property. According to Denton, using a well as an underground storage well for brine – or any waste – would be a violation of such a lease regardless of where it was located in the spacing unit.

Even if there was only one lease with the storage clause removed, Denton believes that would be enough to halt the use of a well for storage.

Landowners without leases, who become part of a spacing unit, are protected as well, Denton said. “Compulsory integration only allows the energy company to take your gas,” he explained. “It does not allow them to store anything below your property.”

Now, with the injectivity testing on hold, Fortuna wants to take the time to talk with the community about the Mallula Well. They plan to hold an informational session sometime soon, where they can, as Sheuerman said, address the public’s questions.

“It is our hope that by taking this step we can provide some clear and helpful information on this activity which we believe does not threaten the well-being of our neighbors located near the well or anywhere else,” Sheuerman stated. As of press time a meeting time and location had not been determined.

To read the Environmental Conservation law regarding gas production, go to <http://public.leginfo.state.ny.us/menuf.cgi> and click on Laws of New York. Then go down the menu to ENV (environmental conservation) and go down menu to Article 23 (mineral resources).