



Young Gas Storage Company, Ltd.

September 14, 2023

Logan Hansen
State of Colorado
Energy and Carbon Management Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Re: Young Gas Storage Company, Ltd.'s Response to Field Inspection Reports
Natural Gas Storage Well Young Site #41, Document Number 708200540
Natural Gas Storage Well Young Site #45, Document Number 708200541

Dear Mr. Hansen:

On September 8, 2023, Young Gas Storage Company, Ltd. (Young) received the referenced Field Inspection Reports from the Energy and Carbon Management Commission (ECMC) via electronic mail. The Final Inspection Reports allege a number of instances of non-compliance at Young's Site #41 and Young's Site #45 (the "Subject Storage Wells").

Federal Preemption

As an initial matter, the Subject Storage Wells are federally-regulated facilities, not subject to ECMC jurisdiction. Young operates purely interstate natural gas storage facilities and wells, including the Subject Storage Wells, all of which are federally-regulated by the Federal Energy Regulatory Commission (FERC) and the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). The federal Natural Gas Act (NGA) and the Pipeline Safety Act (PSA) preempt state regulation of these interstate natural gas pipelines and storage facilities.¹ The PSA, in particular, states that a "State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation."

¹ Both the NGA and PSA apply equally to interstate pipelines and storage facilities, including wells. Under the PSA, "pipeline transportation" is defined as "transporting gas and transporting hazardous liquid[.]" 49 U.S.C. § 60101(19), and "transporting gas" includes "the storage of gas, in interstate or foreign commerce," 49 U.S.C. § 60101(21). See also *Colo. Interstate Gas Co. v. Wright*, 707 F. Supp. 2d 1169, 1185 (D. Kan. 2010) ("[A]n underground storage field used to store natural gas comes within the definition of an 'interstate gas pipeline facility.'"). Additionally, wells are included in the definition of "underground natural gas storage facility" under PHMSA regulations. See 49 C.F.R. § 192.3. Likewise, the NGA applies to companies engaged in the transportation of natural gas in interstate commerce, see 15 U.S.C. § 717(b), and "transportation" of natural gas includes the storage of natural gas, see *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 295 n.1 (1988). See also *CNG Transmission Corp. NE Hub Partners, L.P. v. CNG Transmission Corp.*, 90 FERC 61,103, 61,324 (Feb. 1, 2000) ("Storage wells . . . are jurisdictional facilities that require prior [FERC] authorization before drilling and installing a pipeline interconnection with the field storage pipeline system.")



49 U.S.C. § 60104(c). A state’s attempt to regulate interstate natural gas storage “violate[s] the Supremacy Clause [of the U.S. Constitution],” and is “pre-empted by the NGA and the PSA and ha[s] no force or effect on . . . interstate natural gas pipeline[s], storage facilities and transportation” *Colo. Interstate Gas Co. v. Wright*, 707 F. Supp 2d 1169, 1189–90 (D. Kan. 2010); see also *Northern Nat. Gas Co. v. Munns*, 254 F. Supp. 2d 1103, 1110 (S.D. Iowa 2003) (striking down state regulations as applied to interstate natural gas pipeline companies that set out requirements related to topsoil management, drain tile repair, rock and debris removal, soil restoration, erosion control, revegetation, and construction in wet conditions and stating that, “[t]he breadth of these [federal] statutes and regulations, when combined with extensive safety regulations applicable to pipeline construction, compel the conclusion that Congress has occupied the field of interstate gas pipeline regulation, including land maintenance and restoration standards”). While state pipeline regulators may apply to PHMSA to participate in an interstate agent agreement for the oversight and inspection of storage well facilities in their respective states under PHMSA’s regulations, the ECMC has not done so.

Retroactivity

As explained in more detail below, in some cases, the ECMC cited rule does not apply. The Commission’s 2020 Statement of Basis and Purpose, states “the Commission intends for its revised Rules to be prospective—applying to new operations after January 15, 2021—*unless otherwise specified in the text of a Rule or this Statement of Basis and Purpose*. The Commission specifically identified which Rules apply retroactively, and therefore would require retrofitting existing facilities, in a limited number of instances.” See [Appendix B to Statement of Basis, Specific Statutory Authority, and Purpose, 2 C.C.R. § 404-1, Cause No. 1R Docket No. 200600155 800/900/1200 Mission Change, November 23, 2020, p.16 \(emphasis added\)](#). Of note, none of the regulations cited in the ECMC inspection reports state that they apply retroactively.

Response

For the avoidance of confusion, each ECMC allegation and proposed corrective action is restated with Young’s response immediately following.

Young #41

- 1) This location does not comply with Rule 1004. During this inspection, Staff observed that the former well location does not appear to be progressing towards Rule 1004 regulations and standards. Undesirable vegetation (e.g. Russian thistle and Kochia) was observed throughout, and non-uniform vegetation cover resulting in areas of bare/exposed soils was evident.



Additional reclamation activities area required. Refer to attached inspection photos.

Corrective action: Comply with Rule 1004.

Response: Well Young #41 was abandoned and the site was reclaimed and returned to the control of the private landowner for use twenty years ago in 2003. Even assuming for the sake of argument that ECMS rules apply, which as explained above they do not, Rule 1004 does not retroactively apply to this site as the site is no longer within Young's operation and control and has not been for twenty years.

Young #45

1) Bullet casings observed on the eastern portion of location.

Corrective Action: Comply with Rule 606 and remove debris. Location will remain out of compliance until the corrective action has been resolved.

Response: The bullet casings observed were outside of the fenced area within Young's control and on land used and controlled by the third party landowner. Therefore, Young is not responsible for this "debris" nor can we control what the landowner does on his property. Nevertheless, Young personnel picked up and removed the bullet casings. Young notes that its personnel visit the Young #45 well site at least monthly for indications of issues including threats to the environment or personal safety inside the fenced area on which we operate and control.

2) Concrete structures observed on the south end of location.

Corrective Action: Comply with Rule 606 and remove any unused equipment.

Response: The concrete structures are outside of the fenced area for the well and belong to the landowner. Young does not have the legal right to remove them.

3) No wildlife protection device (e.g. netting) observed around secondary containment at day tank. Refer to attached inspection photos.

Corrective Action: Install or repair wildlife protection equipment per Rule 902.b.



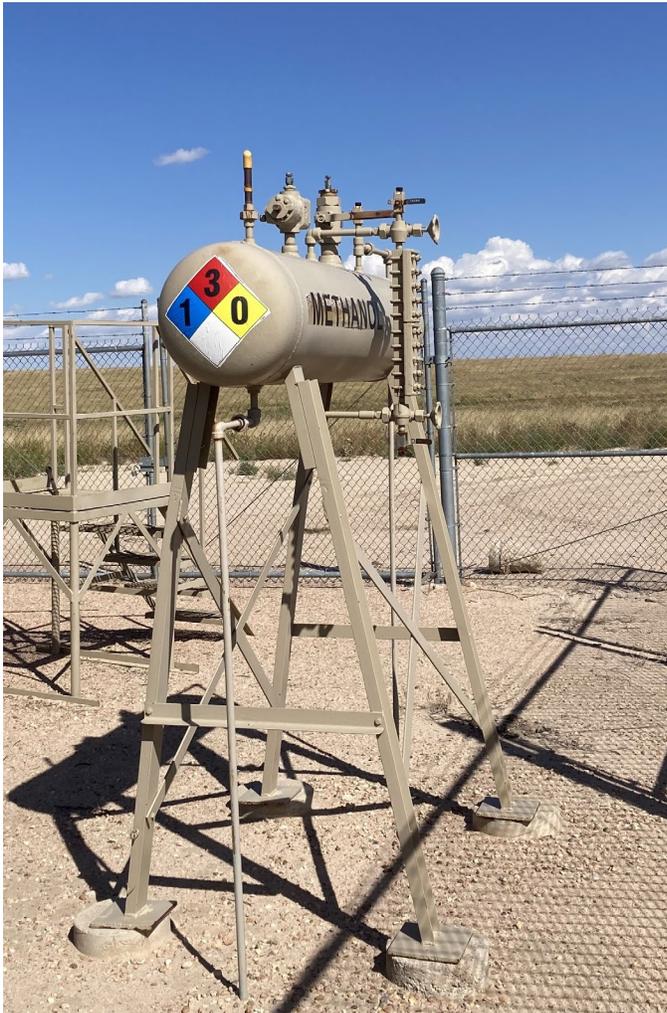
Response: As shown in the photograph below, Young installed netting on over the secondary containment on September 12, 2023.



4) NFPA Placards on day tank and equipment are either missing, not legible, or peeling/faded/cracked. Refer to attached inspection photos for additional.

Corrective Action: Install sign to comply with Rule 605.g.

Response: As you can see from the photograph above, Young installed a new label on the day tank. Additionally, the photograph below shows the new NFPA label on another tank:



- 5) This location does not comply with Rule 1003. During this inspection, Staff observed that the interim areas do not appear to be progressing Rule 1003 standards and regulations. The interim areas are predominantly undesirable vegetation (e.g. Russian thistle and Kochia; and Colorado List B Noxious Weed- Scotch Thistle) was observed to be growing throughout and does not appear to have been recently managed. Additional reclamation activities are required. Refer to attached inspection photos.

Corrective Action: Comply with Rule 1003.

Response: The alleged weeds are outside of the fence line of the area controlled and operated by Young and on land owned and controlled by the third-party landowner.



6) This location does not comply with Rule 1002.f. During this inspection, Staff observed that portions of the access road are experiencing erosion degradation with evidence of rilling. Additionally, no apparent stormwater control measures were observed to control and/or contain sediment from leaving location due to rill erosion occurring on the access road. Refer to attached inspection photos.

Correction Action: Comply with Rule 1002.f.

Response: In addition to the fact that ECMC's regulations are preempted by federal law as described above, natural gas transmission and storage facilities are also exempt from Clean Water Act stormwater requirements and therefore Rule 1002.f does not apply for that additional reason. 33 U.S.C.S. § 1342(l)(2).

Young is committed to operating in a safe and compliant manner, and appreciates the opportunity to respond to the allegations. Young is regulated by PHMSA and FERC and will continue to work with ECMC on a voluntary basis in accordance with our prior discussions. In the future, we request that the inspector contact our local operations personnel so that we can accompany them on the inspection for safety purposes. Should you have any questions, please contact me by phone (719-520-4557) or by email (Anthony_Trinko@kindermorgan.com).

Sincerely,

Anthony P. Trinko
Sr. Reservoir Engineer
Gas Storage Engineering