

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**NEW MEXICO ENVIRONMENT
DEPARTMENT,**

Complainant,

v.

**AQB No. 25-01
(AQB Case: LUC-29885-2201)**

TARGA NORTHERN DELAWARE LLC,

Respondent.

**TARGA NORTHERN DELAWARE LLC'S
MOTION TO DISMISS PROCEEDING AS UNCONSTITUTIONAL**

Pursuant to 20.1.5.200.D NMAC, Targa Northern Delaware LLC (“Targa”) respectfully moves the Secretary and Hearing Officer for an order dismissing this entire proceeding on the grounds that it deprives Targa of its constitutional right to a jury trial. Due to the nature of this Motion, opposition from the New Mexico Environment Department (“Department” or “NMED”) is presumed. In support of this Motion, Targa states as follows:

INTRODUCTION

“The founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary.” *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 343 (1979) (Rehnquist, J, dissenting). Under applicable precedent from both the United States Supreme Court and the New Mexico Supreme Court, the constitutional right to a jury trial attaches where there was an analogous cause of action at common law or in the statutes at the time New Mexico became a state. That principle applies in this case for three reasons: (1) the United States Supreme Court recently held that the right to a jury trial applies to administrative cases

where a governmental agency is seeking civil penalties; (2) the United States Supreme Court has previously held that a jury trial is required when assessing liability in an enforcement action of an environmental statute; and (3) the New Mexico territorial statutes included a directly analogous cause of action for public nuisance because it provided for penalties for causing improper airborne pollutants. The case should be dismissed.

LEGAL BACKGROUND

I. THE RIGHT TO A JURY TRIAL

The Seventh Amendment to the United States Constitution provides: “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.” U.S. Const. amend VII. “The right to trial by jury ‘is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right has always been and should be scrutinized with utmost care.’” *SEC v. Jarkesy*, 144 S. Ct. 2117, 2128 (2024) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)).

Similarly, Article II, Section 12, of the New Mexico Constitution provides that “[t]he right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate.” The New Mexico Supreme Court has explained that this provision protects the right to a jury trial in civil cases if “the right existed either at common law or by statute at the time of the adoption of our constitution.” *Bd. of Educ. of Carlsbad Mun. Sch. v. Harrell*, 1994-NMSC-096, ¶ 33, 118 N.M. 470 (quoting *State ex rel. Human Servs. Dep’t v. Aguirre*, 1990-NMCA-083, ¶ 9, 110 N.M. 528). In applying this standard, the New Mexico courts have followed federal precedent related to the Seventh Amendment. *See, e.g., Harrell*, 1994-NMSC-096, ¶ 34 (“we find Supreme Court

decisions interpreting the Seventh Amendment relevant to our discussion of [the] right to a jury trial under the New Mexico Constitution”).

In the recent case of *Securities Exchange Commission v. Jarkesy*, the U.S. Supreme Court held that when an administrative agency seeks civil penalties, the Seventh Amendment entitles the defendant to a jury trial. As discussed below, that principle operates in this case to require the Secretary to dismiss the administrative proceedings and refile in district court.

II. THE AIR QUALITY CONTROL ACT

The New Mexico Legislature adopted the New Mexico Air Quality Control Act (“Air Act” or “AQCA”), NMSA 1978, Sections 74-2-1 to -17 (as amended through 2021), to prevent or abate air pollution in New Mexico. *See* NMSA 1978, § 74-2-5(A). The Air Act authorizes the Environmental Improvement Board (“EIB”) to adopt regulations relating to air quality and requires entities to obtain permits from the Department before causing emissions. § 74-2-7. Violations of the Air Act or permit provisions are subject to civil penalties. § 74-2-12. The Air Act also specifies that certain actions constitute felonies or misdemeanors subject to criminal penalties. § 74-2-14. In pursuing enforcement proceedings, the Air Act allows the Secretary to either issue a compliance order or commence a civil action in district court. *Compare* § 74-2-12(A)(1) *with* § 74-2-12(A)(2). Under either procedure, the maximum civil penalties shall not exceed \$15,000 “for each day during any portion of which a violation occurs.” § 74-2-12.1(A).

THE DEPARTMENT’S ALLEGATIONS RELEVANT TO THE MOTION

The Department issued an Administrative Compliance Order to Targa on December 5, 2024 (“ACO” or “Compliance Order”) pursuant to Section 74-2-12(A)(1) of the Air Act. Despite having the option, the Department did not initiate a civil action in district court. In the Compliance Order, the Department alleges four separate violations of the relevant permit provisions and Air

Quality Regulations, 20.2.7 NMAC, at Targa's Red Hills Gas Processing Plan ("the Facility" or "Red Hills"). The Department seeks a civil penalty of \$47,833,048.21 from Targa. In addition, in the press release that accompanied the Compliance Order, the Department represented that it had "referred this matter to federal and state regulatory agencies to investigate additional civil and potentially criminal violations." For convenience, a copy of the Department's press release is attached hereto as Exhibit A.

Targa denied the allegations and denied that the Department has authority to assess the penalties that it seeks. Targa requested a hearing pursuant to Section 74-2-12(C) and 20.1.5.200.A NMAC and the case was docketed as the current matter. If the matter is allowed to proceed, the Secretary, not a jury, will rule on all factual and legal matters and determine whether to assess over \$47 million in penalties.

ARGUMENT

As discussed below, this administrative proceeding must be dismissed because both the United States Constitution and the New Mexico Constitution require that an enforcement action under the Air Act seeking substantial civil penalties be brought in a district court.

UNDER CONTROLLING PRECEDENT, THE AIR ACT'S CIVIL PENALTY REGIME VIOLATES THE CONSTITUTIONAL RIGHT TO A JURY TRIAL

The Seventh Amendment guarantees a right to a jury trial in suits "at common law" where the amount at issue exceeds twenty dollars. U.S. Const. amend. VII. Similarly, the New Mexico constitution guarantees a right to a jury trial where a cause of action "existed either at common law or by statute at the time of the adoption of our constitution." *Harrell*, 1994-NMSC-096, ¶ 33. It follows that the questions presented in this Motion are whether the Department's Compliance Order seeking a \$47 million civil penalty from Targa for allegations related to air quality qualifies as a suit "at common law" as that term is used in the Seventh Amendment and whether a similar

cause of action existed at the time of statehood. Based on the Supreme Court's recent *Jarkesy* decision, as well as other controlling precedent, the answer to those questions is clearly yes.

In *Jarkesy* the Supreme Court held that the Seventh Amendment right to a jury trial applies to the Securities Exchange Act's civil penalties for securities fraud. The Court explained that the “Framers used the term ‘common law’ in the Amendment ‘in contradistinction to equity, and admiralty, and maritime jurisprudence.’” *Jarkesy*, 144 S. Ct. at 2128 (quoting *Parsons v. Bedford*, 28 U.S. 433, 446 (1830)). “The Amendment therefore ‘embraces all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume.’” *Id.* (internal quotation and citation omitted).

In other words, the Seventh Amendment applies to a “statutory claim if the claim is ‘legal in nature.’” *Id.* (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53 (1989)). A claim is legal in nature when it seeks a “monetary remedy” that is “designed to punish or deter the wrongdoer,” as opposed to “‘restore the status quo.’” *Id.* (quoting *Tull v. United States*, 481 U.S. 412, 422 (1987)).

The Court identified three characteristics of the Securities Exchange Act's civil penalty statute that demonstrated the penalty is designed to punish or deter the wrongdoer. All three of those characteristics are present in the New Mexico Air Quality Control Act's civil money penalty scheme.

First, the Securities Exchange Act conditions the availability of civil penalties on a variety of factors, several of which “concern culpability, deterrence, and recidivism.” *Jarkesy*, 144 S. Ct. at 2129. “Because [such factors] tie the availability of civil penalties to the perceived need to punish the defendant rather than to restore the victim, such considerations are legal rather than equitable.” *Id.* Similarly, the Air Act directs the Secretary and Hearing officer to consider factors

concerning culpability, deterrence, and recidivism. NMSA 1978, § 74-2-12(G). For example, the Air Quality Bureau Civil Penalty Policy (“Civil Penalty Policy”)¹ explains that the “primary purpose of enforcement is to deter noncompliance.” Civil Penalty Policy at 3.

Second, the Securities Exchange Act establishes three “tiers” of penalties, with “[e]ach successive tier authoriz[ing] a larger monetary sanction” conditioned “on the culpability of the defendant and the need for deterrence, not the size of the harm that must be remedied.” *Jarkesy*, 144 S. Ct. at 2129-30. Similarly, the Air Act contemplates levels of civil money penalties for increasingly “bad” conduct. *E.g.* NMSA 1978, § 74-2-12(G). Specifically, the Department assesses increasing levels of penalties based on the potential for harm, the extent of the deviation, the duration of an ongoing violation, perceived efforts to comply, willfulness, history of noncompliance, the financial condition of the alleged offender, and the economic benefit of noncompliance. Civil Penalty Policy at 6-9. Like the penalty scheme in *Jarkesy*, the size of the monetary sanction under the Air Act is based “on the culpability of the defendant and the need for deterrence, not the size of the harm that must be remedied.” *Jarkesy*, 144 S. Ct. at 2129-30.

Third, the Securities Exchange Act does not require the SEC “to return the money to victims.” *Jarkesy*, 144 S. Ct. at 2130. “Such a penalty by definition does not ‘restore the status quo’ and can make no pretense of being equitable.” *Id.* (quoting *Tull*, 481 U.S. at 422). Likewise, the Air Act specifically provides those civil penalties collected pursuant to an enforcement action “shall be deposited” in the “state general fund.” NMSA 1978, § 74-2-12(K)(2). Like the penalties at issue in *Jarkesy*, the civil penalties under the Air Act “can [therefore] make no pretense of being equitable.”

¹ Available at: <https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2024/09/Civil-Penalty-Policy-effective-4-October-2024-1.pdf>.

In sum, because the deterrence factors identified above “tie the availability of civil penalties to the need to punish the defendant rather than to restore the victim, such considerations are legal rather than equitable.” *Jarkesy*, at 2129-30. As explained by the United States Supreme Court, the Department’s current action to recover civil penalties seeks relief that is “legal in nature,” and that “remedy is all but dispositive” of the right to a jury trial. *Id.* at 2128-29.

Furthermore, as discussed above, the New Mexico constitution guarantees a right to a jury trial where a cause of action “existed either at common law or by statute at the time of the adoption of our constitution.” *Harrell*, 1994-NMSC-096, ¶ 33. And in *Jarkesy*, the Court made clear that a jury trial is required even if the common law or statutory cause of action that previously existed is not identical to the new statutory claim from the government. Instead, the analogous cause of action need only “target the same basic conduct . . . and operate pursuant to similar legal principles.” 144 S. Ct. at 2136. Thus, “if the action resembles a traditional legal claim, its statutory origins are not dispositive.” *Id.*

Here, a clear traditional legal claim existed prior to New Mexico statehood. For example, in *Tull*, the U.S. Supreme Court addressed a case in which the federal government sought penalties of over \$22 million for violations of the Clean Water Act.² The Court found that this action for civil penalties was “clearly analogous to the 18th-century action in debt.” 481 U.S. at 420. It therefore found that “the Seventh Amendment required a jury trial” for enforcement actions under the Clean Water Act. *Id.* at 420. The same reasoning applies in this case.

Moreover, the U.S. Supreme Court has recognized that another close historical analog for environmental enforcement laws is an action to abate a public nuisance. *Tull*, 481 U.S. at 420.

² “The Clean Air and Clean Water Acts are in *pari materia* with one another.” *United States v. Stauffer Chemical Co.*, 684 F.2d 1174, 1187 (6th Cir. 1982).

The Restatement (Second) of Torts defines the cause of action and the elements of public nuisance as:

- (1) A public nuisance is an unreasonable interference with a right common to the general public.
- (2) Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:
 - a. Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
 - b. Whether the conduct is proscribed by a statute, ordinance or administrative regulation, or
 - c. Whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

Restatement (Second) of Torts § 821B (Am. L. Inst. 1979). The territorial laws for the territory of New Mexico included a cause of action for public nuisance. Specifically, the statute made it a crime punishable by \$100 to “keep or maintain a public nuisance.” N.M. Stat. 1897, § 1240³; for convenience, a copy of the applicable territorial public nuisance statutes is attached hereto as Exhibit B. The territorial laws went on to require the territorial health officers to report to the nearest justice of the peace any nuisances, including nuisances emitting airborne pollutants. *See* Exhibit B at N.M. Stat. 1897, § 3709 (requiring health officers to report on nuisances that “may exhale malarial poisons resulting from the deposit of filth, slops, or animal materials”). The statute empowered those territorial health officers to “collect a fine” of \$25 if the person maintaining the public nuisance did not “abate” the airborne pollutants. *Id.* While the Air Act is more extensive, the purpose and nature of the two causes of action are the same – to prevent, abate, and punish

³ Available at https://books.google.com/books?id=t0Q4AAAAIAAJ&pg=PA337&source=gbs_toc_r&cad=2#v=onepage&q&f=true, p. 373 (last accessed March 13, 2025).

unreasonable air pollution. *See, e.g., Espinosa v. Roswell Tower, Inc.*, 1996-NMCA-006, ¶¶ 8-9, 121 N.M. 306 (recognizing that NMED can bring a cause of action under public nuisance to abate air pollution). Because the closely analogous public nuisance cause of action “existed . . . by statute at the time of the adoption of our constitution,” *Harrell*, 1994-NMSC-096, ¶ 33, it necessarily follows that a jury trial is required for the Department’s claims.

CONCLUSION

The Hearing Officer should grant this Motion and dismiss this administrative proceeding because the significant civil penalties sought by the Department require trial in a district court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2025, a true copy of the foregoing *Targa Northern Delaware LLC's Motion to Dismiss Proceeding as Unconstitutional* was served via electronic mail to the following:

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Jeffrey J. Wechsler



Environment Department

MICHELLE LUJAN GRISHAM, GOVERNOR

James C. Kenney, Cabinet Secretary

NEWS RELEASE

The Environment Department's mission is to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations.

For Immediate Release

December 6, 2024

Contact: Drew Goretzka, Director of Communications
New Mexico Environment Department
505.670.8911 | drew.goretzka@env.nm.gov

NMED fines natural gas firm \$47.8 million for harmful emissions *Company directed to cease polluting and pay civil penalty*

SANTA FE – Today, the New Mexico Environment Department (NMED) initiated an enforcement action against Targa Northern Delaware, LLC, a subsidiary of Houston, Texas-based natural gas firm Targa Resources Corp., for emission releases far greater than permitted limits at its Red Hills Gas Processing Plant near Jal in Lea County.

The enforcement action cites Targa for alleged violations of state rules including significant excess emissions of regulated air pollutants, late reporting, and an incomplete attempt at providing a root cause analysis to address the facility's ongoing excess emissions. NMED's enforcement action requires Targa to:

- Cease and desist all excess emissions at the Red Hills Gas Processing Plant effective immediately.
- Complete 16 projects, initiatives, and improvements to the Red Hills Gas Processing Plant to address its operations and excess emissions with an estimated cost of around **\$140 million**, as proposed by Targa.
- Pay a civil penalty of **\$47.8 million** to the state general fund.

“When the New Mexico Environment Department issues you a permit, it is a legally binding agreement to protect the health of New Mexicans,” said **NMED General Counsel Zachary Ogaz**. “If you violate your permit by failing to effectively invest in compliance, we will hold you accountable.”

In total, the excess emissions cited in the enforcement action address nearly 2 million pounds more than Targa's permitted air emission limits for five individual air pollutants: carbon monoxide, nitrogen oxides, sulfur dioxide, volatile organic compounds, and hydrogen sulfide.

NMED regulates the air pollutants subject to today's enforcement action through permit limits due to the danger that they pose to human health and the environment. For example, emissions of nitrogen oxides and volatile organic compounds react in the atmosphere to cause ozone, often referred to as smog.

When people are exposed to unsafe levels of ozone, it can damage their airways and lungs, making it difficult to breathe deeply and cause chest pain. Further, breathing unsafe levels of ozone can worsen chronic respiratory diseases like asthma, emphysema, and bronchitis.

During the timeframes of Targa's alleged violations, air quality monitors registered rising ozone concentrations exceeding 95% of the federal ozone standard. In counties where this occurs, NMED is required by state statute to take action to reduce ozone pollution.

Hydrogen sulfide, another of the subject pollutants, is often referred to as "swamp gas" and in moderate to high amounts can lead to vomiting, dizziness, loss of consciousness, seizures, coma, or even death.

Another benefit of NMED's enforcement action is that it curbs methane emissions. NMED estimates that the Red Hills Gas Processing Plant dumped an estimated 7 million pounds of methane into the air. Methane, the world's second-largest contributor to global warming, is 84 times more potent than carbon dioxide over two decades.

Targa is a Fortune 500 company with a market cap of over \$42 billion describing itself as a leading independent provider of midstream services for the natural gas industry. They are one of the largest gatherers and processors of natural gas in the Permian Basin and across the country, according to their public-facing materials.

Targa's year-over-year adjusted earnings increased by over \$229 million to over \$1 billion from Q3 2023 to Q3 2024, according to a [recent company release](#).

Regarding NMED's investigation, Targa said in a recent Securities and Exchanges Commission (SEC) [filing](#) that: "Although this matter is ongoing and management cannot predict its ultimate outcome, we do not expect that any expenditures related to this matter will be material to our consolidated financial Statements."

A portion of the excess emissions and late reporting violations stem from Lucid Energy Delaware, LLC, who previously owned the facility before Targa took over in 2022. However, as the excess emissions and late reporting continued under Targa, it is the entity responsible for the facility and its compliance with state law.

Targa must respond to NMED's enforcement action and pay the civil penalty within 30 days or request a hearing before a hearing officer for a decision by the NMED Cabinet Secretary. NMED's enforcement action is [available here](#).

NMED has also referred this matter to federal and state regulatory agencies to investigate additional civil and potentially criminal violations.

This enforcement action against Targa is the latest in a string of high-profile and high-cost civil penalties that NMED levied against bad actors in the oil and gas industry. These include:

- October 2024 - Hilcorp Energy Company agreed to pay \$9.4 million to settle alleged violations resulting from its failure to reduce emissions during well completion operations. Under the federal/state settlement, the U.S. Treasury received \$4.7 million of the civil penalty and the state's general fund received \$4.7 million.
- April 2024 - Ameredev II LLC agreed to pay \$24.5 million to settle alleged violations of state air regulations. This is the largest civil penalty collected by the Department with an oil and gas company and the total civil penalty was deposited in the state's general fund.
- February 2024 - Apache Corporation agreed to pay \$4 million in civil penalties and undertake projects expected to cost at least \$5.5 million to ensure 422 of its oil and gas well pads in New Mexico and Texas comply with state and federal clean air regulations and offset past illegal emissions. Under the federal/state settlement, the U.S. Treasury received \$2 million of the civil penalty and state's general fund received \$2 million.
- August 2023 - Mewbourne Oil Company agreed to pay a \$5.5 million penalty and to spend at least \$4.6 million for projects to ensure 422 of its oil and gas battery pads in New Mexico and Texas comply with state and federal clean air regulations. Under the federal/state settlement, the U.S. Treasury received \$2.75 million of the civil penalty and state's general fund received \$2.75 million.
- March 2023 - Matador Production Company agreed to pay \$1.15 million in civil penalties and undertake projects expected to cost at least \$5.05 million to ensure compliance with both state and federal clean air regulations at all 239 of its New Mexico oil and gas well pads to resolve liability alleged in a civil complaint filed today under the Clean Air Act and state regulation Under the federal/state settlement, the U.S. Treasury received \$650,000 of the civil penalty and state's general fund received \$500,000.

###

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator | NMED | 1190 St. Francis Dr., Suite N4050 | P.O. Box 5469 | Santa Fe, NM 87502 or (505) 827-2855 or nd.coordinator@env.nm.gov. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator.

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EXHIBIT B

COMPILED LAWS
OF THE
TERRITORY OF NEW MEXICO.
1897.

Section 1240:

§ 1240. Any person who shall erect, keep or maintain any public nuisance, to the inconvenience of any portion of the citizens of this territory, shall be fined in a sum not exceeding one hundred dollars.

Public nuisance, maintaining; penalty.
Id. § 4.

Section 3709:

Id. § 3. assist them in any reasonable efforts to localize and prevent the spread of any such diseases.

Duty to report nuisances and diseases.

§ 3709. It shall be the duty of such health officers to report to the nearest justice of the peace any nuisances or disease breeding localities, such as may exhale malarial poisons resulting from the deposit of filth, slops or animal matters, and that the said justices of the peace are hereby authorized and empowered to impose and collect a fine not to exceed twenty-five dollars in case the person causing such nuisances shall fail to abate the same on the order of the said health officers.

Id. § 4.

Available at:

https://books.google.com/books?id=t0Q4AAAAIAAJ&pg=PA337&source=gbs_toc_r&cad=2#v=onepage&q&f=true