

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the matter the failure of Roger Krier)	Docket No.: 17-CONS-3105-CPEN
dba Krier Oil Operation ("Operator") to)	
comply with K.A.R. 82-3-600 and K.A.R.)	CONSERVATION DIVISION
82-3-603 at the Eichman Tank Battery in)	
Russell County, Kansas.)	License No.: 33153

**MOTION FOR DEFAULT ORDER AFFIRMING PENALTY
AND FOR ASSESSMENT OF COSTS PURSUANT TO K.S.A. 55-164(d)**

For the following reasons, Commission Staff moves for an Order finding Operator in default, affirming the Penalty Order in this matter, and assessing costs against Operator.

I. Background

1. On September 22, 2016, the Commission issued a Penalty Order against Operator, finding various violations, assessing a \$1,750 penalty, and requiring Operator to take specific actions pertaining to a pit.¹ Operator subsequently took the required actions pertaining to the pit, and timely appealed the Penalty Order.²

2. On December 9, 2016, Operator attended a prehearing conference, where the parties agreed to a procedural schedule. The Commission's December 20, 2016, Order Setting Procedural Schedule established a January 27, 2017, deadline for submission of Staff's pre-filed testimony; a February 3, 2017, deadline for submission of Operator's pre-filed testimony; and set an evidentiary hearing for February 20, 2017.³

¹ Penalty Order, ¶¶18-21, ¶¶A-C (Sept. 22, 2016).

² Request for Hearing (Oct. 21, 2016).

³ Order Setting Procedural Schedule, ¶2 (Dec. 20, 2016).

3. On January 20, 2017, Staff timely submitted pre-filed testimony.⁴ Operator did not submit pre-filed testimony. As a result, on February 6, 2017, Staff filed a Motion to Restrict Operator's Right to Testify and Present Evidence, which is still pending. Operator did not respond to the motion.

4. On February 20, 2017, Staff attended the scheduled evidentiary hearing, with its three witnesses prepared to testify in support of the Penalty Order. Operator failed to attend.

II. Motion for Default and Affirmation of Penalty Order

5. Under the Kansas Administrative Procedures Act, if a party fails to attend or participate in a hearing, the absent party may be found in default.⁵ Further, the Commission's December 20, 2016, Order stated that any party who fails to attend the evidentiary hearing may be held in default.⁶ Operator failed to attend the February 20, 2017, evidentiary hearing, and therefore should be held in default. Because Operator specifically requested a hearing on the Penalty Order and failed to pursue the request, Staff recommends that the Commission affirm the findings of the September 22, 2016, Penalty Order as issued.

III. Motion for Assessment of Costs

6. K.S.A. 55-164(d) states that the Commission may order an Operator to pay the costs and reasonable attorney fees incurred by the Commission in imposing and collecting any penalty. The penalty assessed by the Commission's Penalty Order remains unpaid. Staff's preparation for the hearing to defend the Penalty Order, which Operator requested but failed to attend, resulted in significant costs to impose and collect the assessed penalty. An accounting of

⁴ See Pre-filed Testimony of Ray Dinkel (Jan. 20, 2017), Pre-filed Testimony of Chris Neeley (Jan. 20, 2017), and Pre-filed Testimony of Richard Williams (Jan. 20, 2017).

⁵ See K.S.A. 77-520.

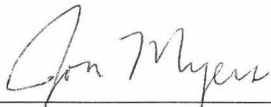
⁶ Order Setting Procedural Schedule, ¶6 (Dec. 20, 2016).

the costs and fees is included herein as Attachment A. Staff recommends that the Commission should order Operator to pay the costs and fees described in Attachment A.

IV. Conclusion

7. For the reasons described above, Staff moves for an Order: (1) finding Operator in default for failing to appear and participate in the evidentiary hearing; (2) affirming the Commission's September 22, 2016 Penalty Order; (3) assessing Operator the costs and fees incurred imposing and collecting the penalty in the amount of \$1,294.70 pursuant to K.S.A. 55-164(d); and (4) for any such further relief as the Commission deems necessary and proper.

Respectfully submitted,



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Attachment A

Item	Employee	Hours	Hourly Pay (Including Benefits)	Cost
Pre-Filed Testimony Preparation	Jon Myers	2	\$38.39	\$76.78
Hearing Preparation	Jon Myers	0.5	\$38.39	\$19.20
Motion Preparation	Jon Myers	1	\$38.39	\$38.39
Pre-Filed Testimony Preparation	Rich Williams	2	\$37.79	\$75.58
Hearing Preparation	Rich Williams	0.25	\$37.79	\$9.45
Travel to/from Hearing	Rich Williams	5	\$37.79	\$188.95
Attending Hearing, Incl. Waiting for Hearing to Be Called	Rich Williams	2	\$37.79	\$75.58
Pre-Filed Testimony Preparation	Chris Neeley	0.5	\$36.27	\$18.14
Hearing Preparation	Chris Neeley	0.25	\$36.27	\$9.06
Travel to/from Hearing	Chris Neeley	5	\$36.27	\$181.35
Attending Hearing, Incl. Waiting for Hearing to Be Called	Chris Neeley	2	\$36.27	\$72.54
Pre-Filed Testimony Preparation	Ray Dinkel	0.5	\$30.59	\$15.30
Hearing Preparation	Ray Dinkel	0.25	\$30.59	\$7.65
Travel to/from Hearing	Ray Dinkel	5	\$30.59	\$152.95
Attending Hearing, Incl. Waiting for Hearing to Be Called	Ray Dinkel	2	\$30.59	\$61.18
Travel Expenses, Vehicle, Roundtrip Hays to Wichita	Williams, Neeley, Dinkel	360 Miles	\$0.535 per mile	\$192.60
Court Reporter Fees				\$100.00
			GRAND TOTAL:	\$1,294.70

CERTIFICATE OF SERVICE

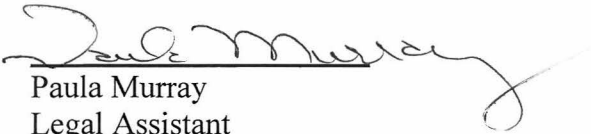
I certify that on March 3, 2017, I caused a complete and accurate copy of this Motion to be served via United States mail, with the postage prepaid and properly addressed to the following:

Thomas J. Berscheidt
PO Box 550
Great Bend, Kansas 67530

Roger Krier dba Krier Oil Operation
PO Box 763
Great Bend, Kansas 67530

And delivered by email to:

Michael Duenes
KCC Topeka office


Paula Murray
Legal Assistant
Kansas Corporation Commission