

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the matter of the failure of Utah Oil, LLC (Operator)) Docket No: 24-CONS-3315-CPEN
to report activity that occurred during the 2023)
calendar year in compliance with K.A.R. 82-3-409.) CONSERVATION DIVISION
)
_____) License No: 34223

FINAL ORDER

Operator contests a Penalty Order that assessed a \$4,000 penalty for violations of K.A.R. 82-3-409; the Penalty Order alleged Operator failed to timely submit annual fluid injection reports for 40 wells. The Commission affirms the Penalty Order.

I. Procedural Background

1. On May 2, 2024, the Commission issued its Penalty Order in this docket, which described the following facts: (1) Operator was responsible for the 40 injection wells at issue during the 2023 calendar year; (2) K.A.R. 82-3-409 requires operators to submit annual fluid injection reports for the prior year by March 1st; (3) on March 8, 2024, Commission Staff sent a Notice of Violation letter to Operator, providing Operator an April 11, 2024, deadline to submit a report for each well to avoid a penalty, and (4) as of the date of the Penalty Order, Operator had not filed the reports.¹

2. On May 8, 2024, Operator filed a request for hearing.

3. On September 27, 2024, the Commission held its evidentiary hearing. Commission Staff was represented by its Litigation Counsel Tristan Kimbrell; Operator was represented by Keith Brock of Anderson & Byrd, L.L.P.² Parties acknowledge notice of the hearing was proper.³ At

¹ See Penalty Order, ¶¶ 3-7 (May 2, 2024).

² See K.A.R. 82-1-232(a)(2); Tr. 8:17 to 9:2.

³ Tr. 9:6 to 10:2.

hearing, the Commission heard and accepted testimony from Staff witnesses Ryan Hoffman, Todd Bryant, and Denise Klug, and Operator witnesses Dee Roehl and Brad Leach, all of whom submitted pre-filed testimony across July and August 2024.⁴

II. Finding of Fact and Conclusions of Law

4. Under K.S.A. 74-623, the Commission has exclusive jurisdiction and authority to regulate oil and gas activities. No party contests, and Commission records indicate, that Operator is a Commission-licensed operator pursuant to K.S.A. 55-155, and that the wells at issue exist for production of hydrocarbons. Accordingly, the Commission has jurisdiction over this matter.⁵

5. Operator acknowledges the Commission has the legal ability to issue the penalty it issued, and that Operator violated Commission regulation.⁶ Operator, however, asks that the Commission “reduce the number of violations and the penalty amount imposed...to an amount which the Commission feels is reasonable and more in line with the nature of the mistake which occurred.”⁷ Commission Staff favors full affirmation of the Penalty Order.

6. While Staff and Operator highlight different facts while making their respective arguments, the facts are essentially undisputed. Under K.A.R. 82-3-409, annual fluid injection reports were due by March 1, 2024, and Operator did not submit its reports until May 1, 2024.⁸ Operator was provided email reminders on January 24, 2024, and February 28, 2024, and was sent a Notice of

⁴ All pre-filed testimony was admitted into the record. *See* Tr. 30-33 (Hoffman); Tr. 58 (Bryant); Tr. 61-62 (Klug); Tr. 81 (Roehl); Tr. 93-94 (Leach). The Commission notes the Index appearing on Page 4 of the transcript is not entirely accurate; the Commission uses the page numbers at the bottom of each transcript page in its citations throughout this order.

⁵ *See also* Tr. 9:21 to 10:2.

⁶ *See* Tr. 112:3-10 (Operator closing statement) (“[Y]ou can issue the penalty. No one is arguing that, legally, you don’t have that ability. No one is arguing that there was not, technically, a violation of the black letter law of these regulations.”).

⁷ *See* Pre-Filed Testimony of Leach, 5:3-5 (Aug. 9, 2024).

⁸ K.A.R. 82-3-409 implies filing of reports on a per-well basis; modern practice also allows operators to “bulk upload” the information, which then populates separate, per-well forms. *See, e.g.*, Pre-Filed Direct Testimony of Klug, 3:14 to 4:11 (Jul. 19, 2024).

Violation letter on March 28, 2024.⁹ The Notice of Violation stated that failure to submit the reports by April 11, 2024, would result in a \$100 per-well penalty.¹⁰

7. On April 1, 2024, upon receipt of the Notice of Violation, Operator uploaded the necessary data onto the Commission’s online reporting website but failed to *submit* the uploaded data – the final step of the process, in which the data is provided to the Commission.¹¹ On May 1, 2024, upon realizing it was about to be penalized,¹² Operator logged on to the reporting website and submitted the upload.¹³ Operator characterizes its failure to submit the data on April 1, 2024, as an honest mistake;¹⁴ the Commission fully credits this testimony. At the same time, the Commission notes the process of submitting such data has not substantially changed in the last few years,¹⁵ that the annual deadline has not changed in the last few decades,¹⁶ and that there was no evidence presented that any of the many other Commission-regulated operators are making similar mistakes.

8. Operator frames this matter as representing a policy shift away from the halcyon days of yesteryear when the Commission merely wished to assist operators in achieving compliance, and toward a dangerous regimen where the Commission seeks penalization.¹⁷ The Commission does not believe the facts in this case demonstrate such worry is merited. Aside from Operator’s general obligation to know the law, Operator was sent two email reminders prior to its deadline this year, and

⁹ See, e.g., Pre-Filed Direct Testimony of Hoffman, 4:7-11 (Jul. 19, 2024).

¹⁰ See *id.*

¹¹ See, e.g., Pre-Filed Testimony of Roehl, 1:10 to 2:1 (Aug. 9, 2024); Pre-Filed Testimony of Leach, 4:8-14 (Aug. 9, 2024); Pre-Filed Direct Testimony of Klug, 5:13 to 6:12.

¹² The Commission posts the agenda for its business meetings online, typically at least a day before the meeting.

¹³ See, e.g., Pre-Filed Testimony of Leach, 4:8-14.

¹⁴ See, e.g., Tr. 99:15-19 (Leach testifying).

¹⁵ See, e.g., Pre-Filed Direct Testimony of Klug, 5:18-20; Pre-Filed Rebuttal Testimony of Klug, 2:22 to 3:3 (Aug. 23, 2024).

¹⁶ See K.A.R. 82-3-409.

¹⁷ See, e.g., Tr. 26:10-22 (Operator’s opening statement) (“For years, the Commission’s goal has been to achieve compliance, not enforcement. They wanted [operators] to take steps to avoid mistakes, but they did not take on a posture of being inflexible and penalizing someone just because they could. This policy has changed.... This is a drastic policy shift from the past.”); Tr. 114:23 to 115:4 (Operator’s closing statement) (“And so the Commission’s objectives to want to achieve compliance have been met through the Commission’s current policy. [W]hat’s happening is that this policy is shifting, not from one to achieve compliance, but one to achieve penalization.”)

Operator was also sent a Notice of Violation providing an additional opportunity to avoid penalty. In short, the Commission's willingness to encourage and assist operators in obtaining regulatory compliance is alive and well.

9. In addition, the Commission notes Operator presented no substantive evidence of any broad shift in policy; the Commission has been issuing penalties for regulatory violations for decades, as authorized by law. The limited evidence that could speak to a policy change – that Operator's annual fluid injection forms were submitted late each year from 2016 to 2023 and that Operator has never before been penalized¹⁸ – does not evidence any change in policy;¹⁹ among other reasons, the forms in those years were submitted earlier (between March 2 and April 9).²⁰ But also, to the extent this year's penalization could be read as signaling a change in policy, Operator's chronically late forms could just as easily indicate prior policy was insufficiently encouraging of compliance.

10. Operator argues the \$4,000 penalty and the concomitant financial assurance obligations associated with its annual license renewal for the next three years are excessive.²¹ The Commission understands such penalty could be hard to stomach where, if Operator had basically pressed one more button on April 1, 2024, a penalty may not have been levied. But as Staff clearly and convincingly laid out in its testimony, compliance with regulatory obligations, and in particular submission of annual fluid injection reports, is important.²² Operator was given ample opportunity to achieve compliance prior to the issuance of the penalty. Operator, albeit seemingly unwilfully (the Commission has no reason to doubt Operator's honesty), had been unnecessarily playing with fire for some time through its habitually lax approach to compliance deadlines.

¹⁸ See, e.g., Pre-Filed Direct Testimony of Hoffman, 4:15-20 & Exhibit RH-1; Tr. 103:12-16 (Leach testifying).

¹⁹ To be clear, Operator did not claim its lack of previous penalties demonstrated a change in policy.

²⁰ See Pre-Filed Direct Testimony of Hoffman, Exhibit RH-1.

²¹ See, e.g., Tr. 108:14-17 (Leach testifying); see also K.A.R. 82-3-120 (financial assurance).

²² See, e.g., Pre-Filed Direct Testimony of Hoffman, 2:5-14; Pre-Filed Direct Testimony of Bryant, 3:20 to 4:15 (Jul. 19, 2024).

11. Forty wells were at issue here, and K.A.R. 82-3-409(c) states that failure to file an annual fluid injection form shall be punishable by a \$100 penalty. The Commission finds the \$4,000 assessed in this matter to be exactly what was envisioned by regulation. The penalty also complies with the mandate in K.S.A. 55-164(a) that it “constitute an actual and substantial economic deterrent to the violation for which the penalty is assessed.” Indeed, it could be more substantial – under the same statute, “every day such violation continues shall be deemed a separate violation.” The Commission sees no reason to compound the penalty, but also no persuasive reason to lower it.

THEREFORE, THE COMMISSION ORDERS:

A. The Penalty Order in this matter is affirmed. As described in the Penalty Order, Operator shall pay the \$4,000 penalty within 30 days, and if Operator fails to comply, then Staff is directed to suspend Operator’s license until such time as Operator does comply.


B. Under K.S.A. 55-164(d), the Commission may order an operator to pay any costs and reasonable attorney fees incurred by the Commission in imposing and collecting any penalty. The Commission declines to do so.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²³

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Kuether, Commissioner

Dated: 11/05/2024



Lynn M. Retz
Secretary to the Commission

Mailed Date: 11/05/2024
JRM

²³ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

Dissenting Opinion

While my colleagues affirm a finding of forty violations of K.A.R. 82-3-409 (filing of annual UC3 fluid injection forms) and assess a \$4,000 penalty, I believe they fail to adequately consider important mitigating circumstances. I would instead find one violation of K.A.R. 82-3-409 and assess a \$100 penalty.

As documented in a footnote in the Final Order, Operator elected to file its annual fluid injection forms as a single bulk filing. Filing is a multi-step electronic process, and Operator completed four of the five steps prior to the deadline in Staff's Notice of Violation letter. Operator was mistakenly confused about the submission procedures involved in the final step, and thus failed to properly execute the final "submit" function. As a result, the forms were not timely filed, and the Commission imposed the penalty affirmed in the Final Order today. Ironically, had Operator filed separate annual fluid injection forms for each well in lieu of its bulk filing, it is most probable that Operator's submission mistake would have been more readily detected and corrected and not repeated forty individual times.


The forms as ultimately submitted by Operator were identical to those prepared, uploaded, completed, but not properly submitted prior to the deadline in the Notice of Violation. Operator's mistake was simple and inadvertent – not the result of intentional omission or a willful act. Herein lies the real distinction with a difference that the Commission ignores in rendering its penalty. The Commission can and should be willing to distinguish between genuine mistakes and purposeful, harmful disregard of regulatory requirements.

Further, the assessed penalty results in Operator – who has no prior record of violations - being subject to heightened financial assurance requirements incidental to its annual license renewal for the next three years. Penalties should coincide with the gravity and nature of the violations; here, the penalty affirmed in the Final Order is harsh and excessive.

Importantly, I am also concerned about the perception this penalty may create regarding the Commission's willingness to fairly evaluate, balance, and reconcile the relationship between the relative seriousness of violations, operator actions undertaken to address and mitigate violations, and the Commission's subsequent and ultimate imposition of penalties. The facts here may be easily distinguished from circumstances involving the willful disregard of Commission requirements, and in this instance, Operator's inadvertent mistake did not cause even a scintilla of environmental harm.

Accordingly, balancing these competing factors, and under these circumstances, I would find one violation of K.A.R. 82-3-409 and lower the penalty to \$100.

For the reasons set forth herein, I respectfully dissent.


Dwight D. Keen, Commissioner

CERTIFICATE OF SERVICE

24-CONS-3315-CPEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 11/05/2024.

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/S/ KCC Docket Room

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