

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

Before Commissioners: Susan K. Duffy, Chair
Dwight D. Keen
Andrew J. French

In the matter of the failure of Lawco Holdings,) Docket No: 20-CONS-3088-CPEN
LLC (“Operator”) to comply with K.A.R. 82-3-)
400 at the Radcliff #7-5 well in Cowley County,) CONSERVATION DIVISION
Kansas.)
_____) License No: 34878

FINAL ORDER

Operator contests a Penalty Order that concluded that Operator had conducted unauthorized injection at the Radcliff #7-5 in violation of K.A.R. 82-3-400. The Penalty Order also assessed a \$1,000 penalty. For the reasons described below, the Commission affirms its Penalty Order.

I. Procedural Background

1. On November 5, 2019, the Commission issued its Penalty Order, which described the facts as follows: in August 2019, Operator filed an injection application for its Radcliff #7-5; the afternoon of September 23, 2019, Commission Staff conversed with Operator regarding the application; the morning of September 24, 2019, Staff inspected the well and found it in use without an injection permit; the afternoon of September 24, 2019, Staff issued Operator an injection permit.¹

2. On December 2, 2019, Operator filed a request for hearing. Operator denies that unauthorized injection occurred.

3. On October 7, 2020, the Commission held its evidentiary hearing. Commission Staff was represented by its Litigation Counsel Kelcey Marsh; Operator was represented by Charles C. Steincamp of Depew Gillen et al.² Parties acknowledge notice was proper.³

¹ Penalty Order, ¶¶ 6-12.

² See K.A.R. 82-1-232(a)(2).

³ Tr. 6:14 to 7:10.

4. At hearing, the Commission heard and accepted testimony from the following individuals, each of whom had previously submitted pre-filed testimony:

- a. Staff witness Rene Stucky, holder of a bachelor's degree in Geology, with 30 years of work as a Petroleum Geologist within the industry, employed by the Commission since 2006, supervisor of the Conservation Division's Production Department since 2014 and of its Underground Injection Control Department since 2015;⁴
- b. Staff witness Duane Krueger, an Environmental Compliance and Regulatory Specialist employed with the Commission since April 2005, and who has worked in oil-field related businesses for over 40 years;⁵
- c. Operator witness Aaron Lawson, Chief Operating Officer of Operator, holder of a Bachelor of Science Business Administration degree in Information Systems, who has over 15 years of full-time business development experience focused on oil and gas operations and exploration;⁶ and
- d. Operator witness Mike Mackey, employed as a contractor for Operator, who has 39 years of experience as a wireline company owner, oil producer, and oilfield consultant for several companies.⁷

5. On November 3, 2020, both parties submitted post-hearing briefs.

II. Findings of Fact and Conclusions of Law

6. 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, responsible for the physical operation and

⁴ See Pre-Filed Testimony of Stucky, 2:3-12. Stucky's pre-filed testimony was admitted at Tr. 12:6-10.

⁵ See Pre-Filed Testimony of Krueger, 2:3-8. Krueger's pre-filed testimony was admitted at Tr. 31:15-21.

⁶ See Pre-Filed Testimony of Lawson, 2:3-11. Lawson's pre-filed testimony was admitted at Tr. 78:9-12.

⁷ See Pre-Filed Testimony of Mackey, 2:3-9. Mackey's pre-filed testimony was admitted at Tr. 88:7-10.

control of the Radcliff #7-5 well, and that such well exists for the disposal of saltwater associated with the production of hydrocarbons. Accordingly, the Commission has jurisdiction over this matter.⁸

7. Further, no party contests that K.A.R. 82-3-400 forbids the injection of saltwater without a permit, or that Operator did not have a permit on the morning of September 24, 2019, or that if injection occurred that morning it was unauthorized and that a \$1,000 penalty is appropriate.

8. The only contested issue before the Commission is one of pure fact – whether injection occurred at the Radcliff #7-5 on the morning of September 24, 2019. As described in Operator’s post-hearing brief, the standard of proof is preponderance of the evidence.⁹ In other words, the question is whether it is more probably true than not that injection occurred at the Radcliff #7-5 on the morning of September 24, 2019.¹⁰ In contested penalty matters such as these, Commission Staff bears the burden of meeting the standard of proof.¹¹

9. The Commission finds Staff met its burden. In pre-filed testimony and at hearing, Staff witness Krueger testified he was on site the morning of September 24, 2019, and that he was “at the wellhead of the Radcliff #7-5 where [he] could clearly hear fluids moving through the line, and through the wellhead down into the well.”¹² Krueger’s same-day inspection report, and the District #2 Supervisor’s phone log documenting a same-day conversation with Krueger, are consistent with Krueger’s testimony.¹³ The Commission finds Krueger’s testimony credible and compelling; nothing in the record, or otherwise demonstrated at hearing, suggests Krueger was lying or evasive about what he heard, or that he is insufficiently experienced to understand what he heard. To the contrary, the Commission finds Krueger appeared truthful, and that his experience was well-documented.¹⁴

⁸ See also Tr. 7:7-10.

⁹ See Post-Hearing Brief of Lawco, pp. 1-2.

¹⁰ See *id.*

¹¹ See *id.*

¹² Pre-Filed Rebuttal Testimony of Krueger, 4:4-10.

¹³ See Penalty Order, Exhibits B & C.

¹⁴ See, e.g., Tr. 74:8 to 75:3.

10. Further evidence is generally supportive of a finding that injection was occurring at the Radcliff # 7-5 on the morning of September 24, 2019. Krueger testified, backed by photographic evidence in his inspection report, that there were two open valves allowing fluid to travel to the wellhead;¹⁵ Operator does not dispute these valves were open.¹⁶ More at issue is the status of a third valve at the wellhead itself. Krueger testified the valve was cracked open, as demonstrated by a photograph from his inspection report, allowing fluids into the wellbore.¹⁷ Operator contends the photograph does not show the third valve cracked open,¹⁸ although its witness Mackey states the valve is “not exactly perpendicular.”¹⁹ The Commission finds the photograph to be inconclusive – the shadowing and quality of the photograph are insufficient to determine whether the valve was cracked open or completely closed.²⁰ Still, Krueger’s photographs and uncontested testimony demonstrate fluid could travel down the entire line, all the way to the wellhead.

11. Krueger testified, backed by video evidence taken during his inspection, that fluid was moving through the portion of line leading exclusively to the wellhead.²¹ The Commission has closely examined the video, especially comparing the location from which it was taken with the exhibits within Krueger’s pre-filed rebuttal testimony. The Commission is convinced the video was taken at a portion of a line leading exclusively to the Radcliff #7-5. The Commission has also closely listened to the video. Both times the video moves closer to the line, the sound of fluid in the line gets louder. The one time it moves away, the sound of fluid in the line gets quieter. The Commission is convinced the sound from the video demonstrates fluid moving through that portion of line leading exclusively

¹⁵ See, e.g., Pre-Filed Direct Testimony of Krueger, 3:19 to 4:2.

¹⁶ See, e.g., Tr. 99:10-12 (Mackey testifying).

¹⁷ See, e.g., Pre-Filed Direct Testimony of Krueger, 3:19 to 4:2.

¹⁸ See, e.g., Tr. 126:17 to 127:12 (Operator’s closing statement).

¹⁹ Tr. 95:22 to 96:2. If a valve is perpendicular, it’s closed. See Tr. 39:20-23 (Krueger testifying).

²⁰ Under cross examination, Krueger testified that the original picture he took “clearly showed that the stem was at a degree of an angle being open,” but that it was hard to see in the copy presented at hearing. Tr. 40:14 to 41:5.

²¹ See, e.g., Pre-Filed Direct Testimony of Krueger, 4:6-11.

to the Radcliff #7-5. So the evidence before the Commission is that the only person on site the morning of September 24, 2019, was credible, experienced Staff witness Krueger, who testified that he heard fluid running down the wellbore of the Radcliff #7-5, where no one disputes the portion of line running exclusively to the Radcliff #7-5 was open at least all the way up to the wellbore, and where fluid was moving through that same portion of line. The question then becomes how fluid could be moving through the line. The most obvious way is if the valve at the wellhead was cracked open. Then fluid would be drawn down the line and into the wellbore.²² This would also match Krueger's testimony that he heard fluid running into the wellbore.

12. Operator witness Mackey contests Krueger's testimony. As Mackey explained it at hearing, a day or two before September 24, 2019, he had ensured the valve at the wellbore was closed before successfully pressure-testing the line with air.²³ Then he had opened the two valves running from the tank battery to fill the line with saltwater and to bleed the line of air, so as to save a few hours of on-site time when the anticipated injection permit was issued.²⁴

13. In many respects, Mackey's testimony was not particularly credible. Under oath he testified that his pre-filed testimony was true and correct to the best of his knowledge.²⁵ But in his pre-filed testimony, in answer to the question "Were you present on the Radcliff Lease at the time the KCC inspector was present on September 24, 2019?" his answer was "No, I was off the Radcliff Lease by the time the inspector arrived. I was driving home,"²⁶ while at hearing he stated "I probably wasn't headed home...I hadn't been to the Radcliff lease."²⁷ In his pre-filed testimony, he stated that on September 24, 2019, "We were filling the line with saltwater so that we could pressure test the

²² See, e.g., Tr. 54:4-24 (Krueger); Tr. 90:22 to 91:1 (Mackey).

²³ See Tr. 90:11-13; 93:7-11.

²⁴ See Tr. 93:7-11; Tr. 105:20 to 106:22.

²⁵ Tr. 87:24 to 88:6.

²⁶ Pre-Filed Testimony of Mackey, 2:19-21.

²⁷ Tr. 89:1-6.

line,”²⁸ while at hearing he stated “We don’t pressure test with fluid, we pressure test with air” and that the line had been pressure tested one or two days prior to September 24, 2019.²⁹ In his pre-filed testimony: “I am employed by Lawco...as a contractor providing roustabout services.”³⁰ But at hearing, a question by Commissioner Keen: “[I]s it correct that you are a contractor providing roustabout services?” Answer: “No, I don’t provide roustabout services. I oversee drilling and completions. But I do hire the roustabout services that we use.”³¹ While the Commission is not inclined to completely discount Mackey’s testimony, it is not confident that any given statement was entirely accurate, and Mackey’s testimony during cross-examination was significantly different from his direct, pre-filed testimony.

14. There are some troubling aspects in even the most charitably-understood version of Mackey’s testimony. For example, as Krueger testified, a pressure test of a line is usually performed with a water truck on site to pump fresh water down the line.³² If Operator did in fact pressure test the dirt-covered line with air,³³ then if there was a failure it could have been difficult to identify the location of the leak. Further, at hearing, for the first time Mackey stated there was a vacuum gauge that could have definitively demonstrated that the Radcliff #7-5 was not taking fluids.³⁴ So it was somewhat surprising to hear that upon Mackey’s arrival on the afternoon of September 24, 2019, just hours after Staff had accused Operator of unauthorized injection, Mackey himself did not look at this vacuum gauge.³⁵

²⁸ Pre-Filed Testimony of Mackey, 4:13-14.

²⁹ Tr. 91:6-7; 92:16-21.

³⁰ Pre-Filed Testimony of Mackey, 2:3-5.

³¹ Tr. 107:23 to 108:3.

³² See Pre-Filed Rebuttal Testimony of Krueger, 4:21 to 5:2.

³³ Tr. 93:12-19 (Mackey testifying).

³⁴ See, e.g., Tr. 103:9 to 104:8.

³⁵ See Tr. 106:16 to 18.

15. Difficulties with Operator's position further abound. Mackey himself testified that it was difficult to explain the video evidence of fluid running down the line if the wellbore valve was closed.³⁶ He posited perhaps the sound from Krueger's video could be trapped air percolating back out of the line, stating that it could take a minimum of a couple of hours for air to be bled out.³⁷ Krueger suggested it could be done in five to ten minutes.³⁸ At hearing, Mackey was uncertain whether he had conducted the pressure test one day or two days before September 24, 2019, which creates a wide range of likely time between the purported pressure test and Krueger's arrival on the lease.³⁹ Further, Krueger testified he was on site for longer than ten minutes and the fluid could be heard flowing throughout that time.⁴⁰ His twenty-one second video records a steady and somewhat energetic sound of fluid movement. Krueger testified the line to the Radcliff #7-5 could hold only about 48 barrels of fluid.⁴¹ The Commission credits Krueger's testimony, the sound from the video is inconsistent with the air-percolating theory, and the Commission finds the theory rather unlikely.

16. Further, the air-percolating theory is premised on the most charitably-understood version of Mackey's testimony – that he had kept the valve at the Radcliff #7-5 closed but had opened the line leading to the well to bleed off air. If the setup was such that air could have been bled off, then it should have happened long before Krueger's arrival on the lease. But at the same time, the Commission is somewhat doubtful the set-up as described even allowed for air to be bled off. Mackey said air could not go into the tank battery,⁴² and while the line was plumbed in a manner that in theory could have drawn its contents off to the Radcliff #2-5,⁴³ that well was taking fluid from the tank

³⁶ See Tr. 101:23 to 102:1-12;

³⁷ See Tr. 105:20 to 106:12; Tr. 106:13-22.

³⁸ See Tr. 71:16-21.

³⁹ Tr. 92:4-9 (one day); Tr. 92:16-21 (one or two days); Tr. 101:14-22 (one day); Tr. 115:3-9 (one or two days).

⁴⁰ See Pre-Filed Rebuttal Testimony of Krueger, 4:4-6; Tr. 71:22 to 72:2.

⁴¹ Tr. 71:3-12.

⁴² Tr. 118:7-10.

⁴³ See, e.g., Tr. 118:1-7.

battery,⁴⁴ which Krueger reported contained plenty of fluid.⁴⁵ Since the line running exclusively to the Radcliff #7-5 was split,⁴⁶ perhaps the physics are somewhat complicated, but it is difficult to see how they would allow for a bleed off resulting in the sound captured in Krueger's video.

17. As a lesser consideration, the Commission notes Operator's testimony reflects a sizeable number of people potentially on site in the days leading up to September 24, 2019. Mackey reports "probably five or six other people" with him during the pressure test.⁴⁷ And to the question "[I]s it possible that the pumper could have opened [the wellbore valve] inadvertently, Mackey answered "I don't know why he would have, but I don't, I can't speak to that. But possibly."⁴⁸ And Operator witness Lawson's testimony is carefully worded: he states somebody told contractors to close the valve and remove the handle to avoid accidental opening, but it is not clear who exactly said it to whom, or when.⁴⁹ Even if Mackey's testimony regarding the valve at the wellhead was fully credible, the valve could have been subsequently cracked open.

18. Operator attempts to undercut Krueger's credibility. In its post-hearing brief, Operator states it is "important to note that pre-filed testimony in this case was created roughly ten months after the events in question,"⁵⁰ and argues that the contemporary evidence of what Krueger observed is in [Commission District #2 Supervisor] Jeff Klock's phone log of a conversation with Krueger, wherein "[Krueger] did *not* state that water could be heard going down the well. No doubt [Klock] simply relayed exactly what he had been told by [Krueger] that water could be heard running at the tank battery, which...would not in and of itself constitute a violation."⁵¹ There are three flaws with this

⁴⁴ See, e.g., Tr. 48:13-17.

⁴⁵ See, e.g., Tr. 46:9 to 47:23.

⁴⁶ See, e.g., Tr. 119:6-14.

⁴⁷ Tr. 122:16-19

⁴⁸ Tr. 116:12-15.

⁴⁹ See Pre-Filed Testimony of Lawson, 4:11-13.

⁵⁰ Post-Hearing Brief of Lawco, p. 2.

⁵¹ *Id.* at p. 5 (emphasis in original).

argument. First, Krueger's inspection report is dated either the day of the inspection or the day thereafter, and thus is either contemporaneous or nearly so.⁵² It is also consistent with Krueger's pre-filed testimony and live testimony under cross examination that fluid was travelling down the wellbore. Second, the phone log states Krueger had reported "that the Radcliff #7-5 was in use and taking water."⁵³ Third, Operator's witness Lawson testified that Operator was "contacted by Jeff Klock with the KCC at 10:30 a.m. [on September 24] informing us that the KCC believed the #7-5 well was being used for disposal at that time."⁵⁴ Thus, the idea that Krueger had not relayed his belief that fluid was being injected into the Radcliff #7-5 is without merit.

19. Operator's post hearing brief characterizes Krueger's video as one "taken a quarter of a mile away from the well where what may be running water can be heard moving from the tank battery, which was connected to both the [Radcliff] #7-5 and the [Radcliff] #2-5 (the latter being an approved disposal well)."⁵⁵ While it is true the video was taken at some distance from the wellbore, the portion of the line video recorded runs exclusively to the Radcliff #7-5. Further, Operator witness Mackey agreed that it was running water.⁵⁶ Operator's discounting of the video evidence is undercut by its own witnesses' testimony. And as previously discussed, the most probable explanation for fluid running in the line during Krueger's inspection is that fluid was injecting into the Radcliff #7-5.

20. Ultimately, Operator claims the quality and quantity of Staff's evidence is insufficient to support the proposition that, more likely than not, injection was occurring at the Radcliff #7-5.⁵⁷ Operator argues Staff failed to produce relevant, material evidence on an issue particularly within its knowledge or power to produce, stating that Krueger could have captured video of sound at the

⁵² See Penalty Order, Exhibit B.

⁵³ Penalty Order, Exhibit C.

⁵⁴ Pre-Filed Testimony of Lawson, 3:4-5.

⁵⁵ Post-Hearing Brief of Lawco, pp. 3-4.

⁵⁶ See Tr. 99:5-9; Tr. 118:7-10

⁵⁷ See Post-Hearing Brief of Lawco, p. 6.

wellhead, could have put the handle back on the valve to show its position, and could have photographed the pressure vacuum gauge, which creates an inference adverse to Staff.⁵⁸ This confuses the production of evidence with the creation of evidence. The adverse inference rule “is a rule weighing evidence, not a rule that forces parties to produce the best possible evidence or lose their case.”⁵⁹ There is no indication that Staff has done anything but provide all the evidence in its possession. And Staff’s evidence overwhelmingly indicates that, more likely than not, injection was occurring at the Radcliff #7-5 on the morning of September 24, 2019.

21. The only person on site the morning of September 24, 2019, was a credible, well-experienced witness who testified he heard fluid travelling down the wellbore. Nobody credibly disputes there was fluid in the line leading exclusively to the wellbore, audio from the video-recording demonstrates that fluid was moving through that line, and by far the most sensical explanation for that movement is that the wellbore valve was open a crack, which matches the testimony of the witness who was present. If one looks past the many inconsistencies within Operator’s testimony, it may be possible to construct a world where: (1) a set of Operator’s actions make sense; (2) Krueger did not hear what he said he heard; and (3) steady, energetic fluid movement in the line can be explained by a physics contrary to witness expectations and Commission understanding. But it is more likely than not that the valve at the wellbore was open a crack, whether intentionally or inadvertently, through the actions of Operator witness Mackey or otherwise.

THEREFORE, THE COMMISSION ORDERS:

A. The Penalty Order in this matter is affirmed. As described in the Penalty Order, Operator shall pay the \$1,000 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.

⁵⁸ See Post-Hearing Brief of Lawco, pp. 3, 4.

⁵⁹ *Becker v. Knoll*, 301 Kan. 274, 280 (2015).

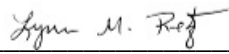
B. Under K.S.A. 55-164(d), the Commission may order an operator to pay any costs and reasonable attorney fees incurred by the Commission in imposing and collecting any penalty. Operator is directed to pay the \$871.50 in court reporter costs incurred by the Commission in imposing the penalty in this matter within 30 days.

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).⁶⁰

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 12/10/2020



Lynn M. Retz
Secretary to the Commission

Mailed Date: 12/10/2020

JRM

⁶⁰ 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).

CERTIFICATE OF SERVICE

20-CONS-3088-CPEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

first class mail and electronic service on 12/10/2019.

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