

Conservation Division  
Finney State Office Building  
130 S. Market, Rm. 2078  
Wichita, KS 67202-3802



Phone: 316-337-6200  
Fax: 316-337-6211  
<http://kcc.ks.gov/>

Mark Sievers, Chairman  
Thomas E. Wright, Commissioner  
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

## NOTICE OF PENALTY ASSESSMENT 14-CONS-037-CPEN

This is a notice of a penalty assessment for violation of Kansas oil and gas conservation statutes, rules, and regulations. For a full description of the penalty and process please refer to the Penalty Order that is attached to this notice.

### IF YOU ACCEPT THE PENALTY:

The Penalty Order may include the assessment of a monetary penalty. You have 30 days from the service date of this Penalty Order to pay the fine amount. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Conservation Division of the Kansas Corporation Commission at 130 S. Market St., Room 2078, Wichita, Kansas 67202, and must include a reference to the docket number of this proceeding. Credit card payment may be made by calling the Conservation Division at 316-337-6200.

The Penalty Order may require you to perform certain actions by deadlines stated therein. Compliance must be obtained by the applicable deadlines to avoid further compliance actions. If you have any questions about how compliance can be obtained, you may contact the legal department at 316-337-6200, or the appropriate department or district office.

### IF YOU CONTEST THE PENALTY:

You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Respondent must submit an original and seven copies of the request to the Commission's Executive Director at 130 S. Market, Room 2078, Wichita, Kansas 67202, within 30 days, plus three days to account for the mail, from the mailed date on the last page of the Penalty Order. K.A.R. 82-1-215.

### IF YOU FAIL TO ACT:

Failure to either comply with the penalty order or, in the alternative, request a hearing within 30 days as set forth above, will result your being in noncompliance with a Commission Order, which may result in additional sanctions, including additional monetary penalties, the suspension of your oil and gas operating license, and the shutting-in of all operations until compliance is obtained.

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

Before Commissioners:                      Mark Sievers, Chairman  
    Thomas E. Wright  
    Shari Feist Albrecht

In the matter of the failure of ELM III	)	Docket No.: 14-CONS-037-CPEN
Operating Company LLC ("Operator") to	)	
comply with K.A.R. 82-3-111 at the Leathers	)	CONSERVATION DIVISION
Land A #4A in Haskell County, Kansas.	)	
<hr/>		License No.: 34545

**PENALTY ORDER**

The above captioned matter comes before the State Corporation Commission of the State of Kansas. Having examined the files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

**I. JURISDICTION**

1. K.S.A. 55-152 provides that the Commission has jurisdiction to regulate the construction, operation, and abandonment of any well and the protection of the usable water of this state from any actual or potential pollution from any well, with licensing authority pursuant to K.S.A. 55-155. K.S.A. 74-623 provides that the Commission has the exclusive jurisdiction and authority to regulate oil and gas activities.
2. K.S.A. 55-162 and K.S.A. 55-164 provide the Commission with authority to issue a Penalty Order regarding a violation of Chapter 55 of the Kansas Statutes Annotated, or of any rule, regulation, or order of the Commission. A Penalty Order may include a monetary penalty of up to \$10,000; each day of a continuing violation constitutes a separate violation.
3. K.A.R. 82-3-111 provides that within 90 days after operations cease on any well, the operator of that well shall plug the well, return the well to service, or file an application with the Conservation Division requesting temporary abandonment ("TA") status. A well shall not be

eligible for TA status if the well has been shut-in for 10 years or more without an application for an exception pursuant to K.A.R. 82-3-100 and approval by the Commission. The failure to file an application for TA status shall be punishable by a \$100 penalty. K.A.R. 82-3-111 provides an exemption for certain wells for 365 days if they are fully-equipped and capable of production.

## **II. FINDINGS OF FACT**

4. Operator conducts oil and gas activities in Kansas under license number 34545.
5. Operator is responsible for the care and control of the Leathers Land A #4A ("the subject well"), API #15-081-21173-00-02, located in Section 10, Township 30 South, Range 34 West, Haskell County, Kansas.
6. District Staff inspected the subject well and collected evidence indicating it has been inactive and unplugged for longer than the 90 days allowed by K.A.R. 82-3-111. The well did not appear to be exempt pursuant to K.A.R. 82-3-111(e). The operator either did not file a TA application or did not bring the well into compliance after a TA application was denied.
7. District Staff sent a Notice of Violation letter to the Operator, requiring the Operator to bring the subject well into compliance with K.A.R. 82-3-111 by a deadline.
8. District Staff inspected the subject well after the deadline in the Notice of Violation letter passed, verifying that the well continued to be inactive and unplugged.
9. District Staff collected evidence and submitted it to the Legal Department with a recommendation that the Commission issue this Order. The recommendation sheet submitted by the District Staff is attached to this Order as Exhibit A, incorporated into this Order, and shall serve as the concise and explicit statement of facts required by K.S.A. 77-526.

### **III. CONCLUSIONS OF LAW**

10. The Commission concludes that it has jurisdiction over the Operator and this matter under K.S.A. 55-152 and K.S.A. 74-623.

11. The above findings of fact are sufficient evidence to support the conclusion that the Operator committed one violation of K.A.R. 82-3-111 because the subject well has been inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for TA status.

#### **THEREFORE, THE COMMISSION ORDERS:**

A. Operator shall plug the subject well, return the well to service, or obtain TA status for the well if eligible. Obtaining TA status shall include application and Commission approval of an exception to the 10-year limit on TA status if applicable. Compliance shall be obtained within 30 days of service of this Penalty Order.

B. Pursuant to K.S.A. 55-164, K.S.A. 77-537, and K.S.A. 77-542, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Commission's Executive Director, at 130 S. Market, Room 2078, Wichita, Kansas 67202, within 30 days from the date of service of this Penalty Order. If service is by mail, three days will be added to the Mailed Date listed at the end of this Penalty Order. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of the Operator's right to a hearing.

C. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. A corporation or similar entity shall not be permitted to enter an appearance except by its attorney.

D. If you do not request a hearing, the payment of the monetary penalty is due within 30 days from the date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include the type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Kansas Corporation Commission at 130 S. Market, Wichita, Kansas 67202. The payment shall include a reference to the docket number of this proceeding.

E. The failure to comply with this Order within 30 days shall be punishable by license suspension without the need for an additional Order to be issued by the Commission. The notice and opportunity for a hearing on this order shall constitute the notice required by K.S.A. 77-512 regarding license suspension. In addition, the Commission may impose further sanctions, including additional monetary penalties and any other remedies available to the Commission by law, without further notice.

F. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Sievers, Chmn.; Wright, Com.; Albrecht, Com.

Dated: AUG 01 2013

  
\_\_\_\_\_  
Kim Christiansen  
Executive Director

Mailed Date: 8-2-2013

LRP

I CERTIFY THE ORIGINAL  
COPY IS ON FILE WITH  
The State Corporation Commission

AUG 01 2013



## **PENALTY ORDER RECOMMENDATION**

### **\*\*\*ROUTINE TEMPORARY ABANDONMENT VIOLATION\*\*\***

*Note: this sheet will be attached to the Order that is mailed to the operator.*

<b>Date of Recommendation:</b>	July 17, 2013
<b>District/Department:</b>	District #1
<b>Person Recommending Penalty:</b>	Richard Lacey Acting District Supervisor
<b>Operator Name:</b>	ELM III Operating Company LLC
<b>Operator License Number:</b>	34545
<b>Well/Lease Name &amp; Well Number:</b>	Leathers Land "A" #4A
<b>Well/Lease Location, and County:</b>	NW NW NW Sec. 10-30S-34W, Haskell County.
<b>Well API Number:</b>	15-081-21173-00-02
<b>UIC Docket Number:</b>	N/A
<b>Regulation Number:</b>	82-3-111
<b>Description of Violation:</b>	Failure to plug, produce, or obtain TA status (including after a TA application is filed and denied).
<b>Date of NOV letter.</b>	April 18, 2013
<b>Deadline in NOV letter.</b>	June 17, 2013
<b>Date of follow-up lease inspection.</b>	July 5, 2013
<b>Requested Monetary Penalty:</b>	\$0
<b>Requested Operator Activity:</b>	Plug, produce, or obtain TA status if eligible (including the 10-year TA application if required).
<b>Supervisor Initials</b>	<i>RNL</i>

**CERTIFICATE OF SERVICE**

I certify that on 8-2-2013, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

Rob Abernathy  
ELM III Operating Company LLC  
1249 E. 33<sup>rd</sup>  
Edmond, Oklahoma 73013

Dennis Herlocker  
Resident Agent for ELM III Operating Company LLC  
115 E. 9<sup>th</sup> Avenue  
Winfield, Kansas 67156

Richard Lacey  
KCC District #1  
210 E. Frontview, Suite A  
Dodge City, Kansas 67801

/s/ Lane R. Palmateer  
Lane R. Palmateer  
Litigation Counsel  
Kansas Corporation Commission