

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

In the matter of the failure of Merit Energy) Docket No. 23-CONS-3273-CPEN
Company, LLC (Operator) to comply with)
K.A.R. 82-3-603 at its WMSU lease in) CONSERVATION DIVISION
Morton County, Kansas.)
_____) License No. 32446

REQUEST FOR HEARING

Merit Energy Company, LLC (“Operator”) respectfully requests a hearing in the referenced docket. In support of its request, Operator alleges and states:

1. On May 2, 2023, the Penalty Order that is the subject of this docket was entered by the Commission. The Penalty Order found that Operator violated K.A.R. 82-3-603(e)(1) for failing to timely cleanup a reported spill, and further assessed a \$1,000 penalty.¹

2. Omitted from the Penalty Order are numerous facts demonstrating that Operator did not violate K.A.R. 82-3-603(e)(1). These facts include: the immediate remedial work conducted by Operator, the discussions Operator and district staff were actively engaged in to develop a cleanup method, which discussions had been ongoing and continuous since the time of the spill, that Operator commenced excavation of contaminated soil on April 25, 2023—seven days before the Penalty Order was entered, and that staff has not yet approved or prescribed a cleanup method for the spill.

3. K.A.R. 82-3-603(e)(1) expressly requires that Operator to clean up any spill that requires notification “in accordance with the cleanup method approved by the appropriate district office.” The time deadlines to cleanup a spill, and which the Commission relies upon for finding

¹ Penalty Order ¶ 12.

a violation of K.A.R. 82-3-603(e)(1), are expressly qualified by the condition that Operator adhere to the cleanup method approved by staff.²

4. Because staff has not yet approved a cleanup method, Operator cannot cleanup the spill according to the requirements of K.A.R. 82-3-603(e)(1), and therefore could not have violated the regulation. Accordingly, this Penalty Order should be vacated as a matter of law.

5. Operator continues to work with staff to develop a staff-approved cleanup method. Until that happens, it is not possible for Operator to comply with the Commission's order to remediate the spill in accordance with K.A.R. 82-3-603(e)(1).³ The Penalty Order is therefore unlawful and inequitable on its face.

WHEREFORE, for the foregoing reasons Operator requests that the Penalty Order be vacated as a matter of law, or, in the alternative, a hearing be set in this docket, and for such further relief as the Commission deems necessary and proper.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED

By: 

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² See K.A.R. 82-3-603(e)(1) (“Except as otherwise required by law or regulation, each operator shall complete the cleanup of the spill within 10 days after discovery or knowledge, or by the deadline prescribed in writing by the district office.

³ Penalty Order ¶ B.

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

Jonathan A. Schlatter, being of lawful age and being first duly sworn upon his oath, deposes and says:

That he is the attorney for Merit Energy Company, LLC; he has read the above and forgoing Request for Hearing and is familiar with its contents, and that the statements made therein are true and correct to the best of his knowledge and belief.


Jonathan A. Schlatter

SIGNED AND SWORN to before me this 31st day of May, 2023.


Notary Public

My Appointment expires: 11/05/2024



CERTIFICATE OF SERVICE

I, Jonathan A. Schlatter, hereby certify that on this 31st day of May, 2023, I caused the original of the foregoing **Request for Hearing** to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and caused true and correct copies of the same to be delivered by electronic mail to the following persons:

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