

**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 Morton) CONSERVATION DIVISION
County, Kansas.)
_____) License No.: 32446

MOTION TO APPROVE SETTLEMENT AGREEMENT

Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby files this Motion to Approve Settlement Agreement. In support of its Motion, Staff states as follows:

1. On May 2, 2023, the Commission issued a penalty order against Operator in the captioned docket for one violation of K.A.R. 82-3-603. The Commission's penalty order assessed a \$1,000 penalty and directed Operator to fully remediate a spill at its WMSU lease in Morton County, Kansas (Spill).

2. On May 31, 2023, Operator filed a request for hearing regarding the Commission's penalty order, disputing Operator committed any violation of Commission regulations as alleged in the penalty order.

3. Staff and Operator discussed resolution of the underlying issues in this docket, and reached a settlement in this matter. The Settlement Agreement (Agreement) has been reduced to writing and is attached hereto as **Attachment A**.

4. Operator is required to pay the \$1,000 penalty assessed by the Commission within 30 days of the effective date of this Agreement. Additionally, the Agreement provides Operator six months from the effective date (Reuse Period) to beneficially reuse refuse which has been treated to contain a chloride concentration less than 500 ppm and an Electric Conductivity reading

of less than 4.0 mmho/cm. After the Reuse Period has elapsed, the Agreement provides Operator 30 days to haul any remaining refuse to a landfill. Operator is able to request a 30-day extension upon good cause shown. Failure to meet the deadlines described in the Agreement shall result in Operator paying an additional \$5,000 penalty and suspension of Operator's license. Additionally, the Agreement allows Staff to contract to have any remaining refuse from the Spill removed and assess the costs associated with the removal to Operator. Operator's license shall remain suspended until all of the refuse associated with the Spill is removed and the associated penalties are paid. Staff believes the Agreement constitutes a reasonable resolution of all the issues in this docket. Further, the Agreement will allow Staff and Operator to avoid potential litigation costs, and thus foster administrative efficiency.

WHEREFORE, Staff respectfully requests the Commission grant this motion, thereby approving the Settlement Agreement attached hereto as Attachment A.

Respectfully Submitted,

/s/ Kelcey Marsh

Kelcey Marsh, #28300

Litigation Counsel | Kansas Corporation Commission

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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 Morton) CONSERVATION DIVISION
County, Kansas.)
_____) License No.: 35414

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between Commission Staff and Operator (collectively referred to herein as the Parties). If the Commission does not approve this Agreement by a signed Order, then the Agreement shall not be binding on either party. The effective date of this Agreement shall be the date the Commission enters an order approving the Agreement.

I. BACKGROUND

1. On May 2, 2023, the Commission issued a penalty order against Operator in the captioned docket. The Commission’s penalty order assessed a \$1,000 penalty and directed Operator to fully remediate a spill (Spill) at its WMSU lease in Morton County, Kansas.¹

2. On May 31, 2023, Operator filed a request for hearing regarding the Commission’s penalty order, disputing Operator committed any violation of Commission regulations as alleged in the penalty order.

3. On June 4, 2024, the Presiding Officer issued an order rescheduling the evidentiary hearing in this matter for June 26, 2024. Prior to the evidentiary hearing taking place, the Parties discussed resolution of the underlying issues in this docket, and reached a settlement in this matter.

¹ See Penalty Order, Ex. A, for a description of the Spill.

As part of the settlement, Staff agreed to reduce the terms to writing and submit the same for Commission approval. The terms of the settlement are set forth below.

II. TERMS OF THE SETTLEMENT AGREEMENT

4. The Parties agree that the Commission has jurisdiction and authority over this matter. The Parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the terms as set forth below.

5. Operator shall have 30 days from the effective date of this Agreement to pay the \$1,000 penalty assessed by the Commission. The parties agree that the penalty order assessed by the Commission will become a final order on the effective date of this Agreement.

6. Operator has identified several locations on various properties (Soil Reuse Locations) where it can beneficially reuse the soil affected by the Spill (Refuse) currently located on its 80-acre property in the South Half of the Northwest Quarter of Section 33, Township 34 South, Range 41 West (Operator's Property). The Soil Reuse Locations are identified in Exhibit A, and the location of the Refuse is depicted on Exhibit B. Operator shall be able to beneficially reuse the Refuse from Operator's Property at the Soil Reuse Locations once the Refuse has been treated to contain a chloride concentration less than 500 ppm and an Electric Conductivity reading of less than 4.0 mmho/cm. Operator shall not transfer Refuse to any other location without written consent from the District #1 Supervisor. The District #1 Supervisor shall provide his consent or objection to such additional Soil Reuse Location within 7 days of request. Operator acknowledges that it remains responsible for addressing any pollution that occurs from the Refuse taken to the Soil Reuse Locations.

ATTACHMENT A

7. Operator shall notify Staff at least 48 hours prior to conducting any sampling of the Refuse located on Operator's Property. Operator shall provide the results of any such sampling to Staff promptly upon receipt.

8. Prior to beneficially reusing the treated Refuse from Operator's Property, Operator shall obtain written landowner approval and provide the written approval and landowner contact information to the District #1 Supervisor. Operator shall notify the Commission District #1 Supervisor in writing at least 48 hours prior to transporting the treated Refuse to any Soil Reuse Location for the purpose of beneficial reuse. Failure to obtain landowner consent or adequately notify the District #1 Supervisor shall result in a \$250 fine for the first violation, a \$500 penalty for the second violation, and a \$1,000 penalty and an operator license review for the third violation.

9. Operator may beneficially reuse treated Refuse per the terms of this Agreement within 6 months of the effective date of this Agreement (Reuse Period). Operator shall submit a waste transfer (CDP-5) form for all Refuse transferred from Operator's Property. Failure to submit a CDP-5 form for the transfers shall result in a penalty pursuant to K.A.R. 82-3-608.

10. Within 30 days after the conclusion of the Reuse Period, Operator shall haul any remaining Refuse to a landfill. Operator may request a 30 day extension of time to haul any remaining Refuse to a landfill upon good cause shown. Staff will grant or deny the request. If granted, Staff shall cause a status update to be filed in the docket created for this matter, stating the deadline has been extended. No further extensions of the extended deadline are permitted.

11. Failure to timely perform the obligations described in paragraphs 9 and 10 of this Agreement shall result in Operator paying an additional \$5,000 penalty and suspension of Operator's license. Additionally, Commission Staff may contract to have the remaining Refuse

ATTACHMENT A

removed and have the costs associated with the removal assessed to Operator. Operator's license shall be suspended until all Refuse is removed and associated penalties are paid.

12. Operator agrees to waive its right to appeal the Commission's Order approving this Agreement, and any penalties or suspensions assessed per the terms of this Agreement.

IN WITNESS WHERETO, the Parties hereby execute and approve this Settlement Agreement by subscribing their signatures below.

Commission Staff

By: Kelcey Marsh

Printed Name: Kelcey Marsh

Title: Litigation Counsel

Date: 6/21/24

Merit Energy Company, LLC

By: SEAN F. CRAVEN

Printed Name: SEAN F. CRAVEN

Title: ENVIRONMENTAL MGR

Date: 6/20/24

EXHIBIT A

Soil Reuse Locations – Estimated Need in Cubic Yards (cy)

Well Name	Land	Estimated Dirt, cy	Reason for Need	Distance from WMSU, Miles
Sides A-2	Private Owner	150	Cover Two Track	3
Wares 1-9	Private Owner	150	Ruts on Lease Road	6
Crandall B-2 SWD	Private Owner	100	Lease Road/Tank Battery	7
Riley D-3	Private Owner	250	Washout on Lease Road	10
Thompson F-1	Private Owner	650	Washout (CTB & Road)	10
Fitzgerald 1-17	Private Owner	100	Washout on Lease Road	15
Wilson E-1	Private Owner	150	Ruts on Lease Road	15
Hershey 1-3	Private Owner	125	Washout on Lease Road	15
Brown C-3	Private Owner	1,250	Washout (CTB & Road)	15
Coulter B-1	Private Owner	75	Washout on Lease Road	20
Rickart B-1 SWD	Private Owner	100	Washout on Lease Road	25
RFR 1-25 SWD	Private Owner	900	Washout on Lease Road	25
Keller 1-36	Private Owner	650	Washout on Lease Road	25
Osborne B-3/B-6	Seaboard/Private Owner	75	Washout on Lease Road	30
Emrie 1	Private Owner	165	Washout on Lease Road	40
	Total Estimated	4,965		

Note: Estimates are based on field personnel's visual inspections and past experiences remediating roads and location washouts.

Merit Energy - Exhibit B

WMSU

Green = current soil treatment area
Red = approximate location of clean soil



Google Earth

Image © 2024 Airbus

1000 ft



CERTIFICATE OF SERVICE

23-CONS-3273-CPEN

I, the undersigned, certify that a true and correct copy of the attached Motion to Approve Settlement Agreement has been served to the following by means of electronic service on June 21, 2024.

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/s/ Paula J. Murray

Paula J. Murray