

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter of the Failure of Benjamin M. Giles)	Docket No.: 17-CONS-3684-CPEN
("Operator") to comply with K.A.R. 82-3-104)	
and K.A.R. 82-3-111 at the Flying J Geer #2)	CONSERVATION DIVISION
OWWO well in Butler County, Kansas.)	License No.: 5446

In the Matter of the Failure of Benjamin M. Giles)	Docket No. 18-CONS-3057-CPEN
("Operator") to comply with K.A.R. 82-3-111 at)	
the Paulsen #1 in Butler County, Kansas.)	

In the Matter of the Failure of Benjamin M. Giles)	Docket No. 18-CONS-3160-CPEN
("Operator") to comply with K.A.R. 82-3-604 at)	
the Ralston Lease Tank Battery in Butler County,)	
Kansas.)	

In the Matter of the Failure of Benjamin M. Giles)	Docket No.: 18-CONS-3167-CPEN
("Operator") to comply with K.A.R. 82-3-104)	
and K.A.R. 82-3-111 at the Wright #1 OWWO)	
well in Butler County, Kansas.)	

In the Matter of the Failure of Benjamin M. Giles)	Docket No.: 18-CONS-3188-CPEN
("Operator") to comply with K.A.R. 82-3-602 at)	
the Wright #1 OWWO well in Butler County,)	
Kansas.)	

In the Matter of the Failure of Benjamin M. Giles)	Docket No.: 18-CONS-3189-CPEN
("Operator") to comply with K.A.R. 82-3-608)	
at the Wright #1 OWWO well in Butler, County,)	
Kansas.)	

FINAL ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds the following:

I. BACKGROUND

1. On June 27, 2017, the Commission issued a Penalty Order against Benjamin M. Giles (Operator), alleging the Operator violated K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Flying J Geer #2 OWWO well, API #15-015-01490-00-01 (Flying J Geer #2), in Butler County, Kansas and assessing the Operator a \$2,600 penalty for the violations.¹

2. On August 1, 2017, the Commission issued a Penalty Order against the Operator, alleging violation of K.A.R. 82-3-111 at the Paulsen #1 well, API #15-015-01020-00-02 (Paulsen #1), in Butler County, Kansas and assessing the Operator a \$100 penalty for the violation.²

3. On September 28, 2017, the Commission issued a Penalty Order against the Operator, alleging violation of K.A.R. 82-3-604(a) and (b) at the Ralston Lease Tank Battery in Butler County, Kansas and assessing the Operator a \$500 penalty for the violations.³

4. On October 12, 2017, the Commission issued a Penalty Order against the Operator, alleging the Operator violated K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Wright #1 OWWO well, API #15-015-01211-00-02 (Wright #1), in Butler County, Kansas and assessing the Operator a \$10,100 penalty for these violations.⁴

¹ Penalty Order at 2, 5-6, *Matter of the Failure of Benjamin M. Giles ("Operator") to Comply with K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Flying J Geer #2 OWWO well in Butler County, Kansas*, Docket No. 17-CONS-3684-CPEN (June 27, 2017) [*hereinafter* 17-3684 Docket].

² Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-111 at the Paulsen #1 in Butler County, Kansas*, Docket No. 18-CONS-3057-CPEN (Aug. 1, 2017) [*hereinafter* 18-3057 Docket].

³ Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-604 at the Ralston Lease Tank Battery in Butler County, Kansas*, Docket No. 18-CONS-3160-CPEN (Sept. 28, 2017) [*hereinafter* 18-3160 Docket].

⁴ Penalty Order at 2, 6-7, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Wright #1 OWWO well in Butler County, Kansas*, Docket No. 18-CONS-3167-CPEN (Oct. 12, 2017) [*hereinafter* 18-3167 Docket].

5. On October 26, 2017, the Commission issued a Penalty Order against the Operator, alleging violation of K.A.R. 82-3-602 at the Wright #1 and assessing the Operator a \$100 penalty for such violation.⁵

6. On October 26, 2017, the Commission issued a Penalty Order against the Operator, alleging violation of K.A.R. 82-3-608 at the Wright #1 and assessing the Operator a \$250 penalty for such violation.⁶

7. The Operator filed a timely request for hearing in all dockets.

8. On February 19, 2018, Commission Conservation Staff (Staff) moved the Commission, unopposed by the Operator, to consolidate the aforementioned dockets.

9. On March 8, 2018, the Commission granted Staff's motion and consolidated the dockets.

10. On April 6, 2018, Staff filed a Motion to Approve Partial Settlement Agreement, stating that the Operator and Staff had come to an agreement on some of the alleged violations above.⁷ The Partial Settlement Agreement states that the only remaining contested issues are the \$2,500 fine for violation of K.A.R. 82-3-104 at the Flying J Geer #2, in Butler County, Kansas in the 17-3684 Docket, and the \$10,000 fine for violation of K.A.R. 82-3-104 at the Wright #1, in Butler County, Kansas in the 18-3167 Docket.⁸

11. On April 26, 2018, the Commission approved the Partial Settlement Agreement.

⁵ Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82 3-602 at the Wright #1 OWWO well in Butler County, Kansas*, Docket No. 18-CONS-3188-CPEN (Oct. 26, 2017) [hereinafter 18-3188 Docket].

⁶ Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82 3-608 at the Wright #1 OWWO well in Butler County, Kansas*, Docket No. 18-CONS-3189-CPEN (Oct. 26, 2017) [hereinafter 18-3189 Docket].

⁷ Motion to Approve Partial Settlement Agreement at 2 (Apr. 6, 2018).

⁸ Partial Settlement Agreement at 5 (Apr. 6, 2018)

12. The Commission received pre-filed direct testimony from two Staff witnesses and three Operator witnesses and rebuttal testimony from two Staff witnesses and two Operator witnesses.

13. On May 17, 2018, the Commission convened an evidentiary hearing in which the Commission admitted the testimony and exhibits into the record, and the witnesses, with the exception of Operator witness, Jacob Storm, stood for cross-examination. Due to the consolidation of the dockets, two distinct issues with equally distinct fact patterns were set for hearing. The Commission will discuss each separately.

II. JURISDICTION

14. The Commission has the exclusive jurisdiction and authority to regulate oil and gas activities in Kansas.⁹ 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.”¹⁰ Every operator conducting oil and gas activity in Kansas must be licensed by the Commission.¹¹

15. The Commission has the authority to issue a Penalty Order for violation of any provision of K.S.A. 55-101 *et seq.*, rule, regulation, or order of the Commission.¹² The Commission shall take appropriate action, which may include, but not be limited to, imposing a monetary penalty “not to exceed \$10,000, which shall constitute an actual and substantial economic deterrent to the violation for which the penalty is assessed.”¹³

⁹ K.S.A. 74-623.

¹⁰ K.S.A. 55-152.

¹¹ K.S.A. 55-155.

¹² K.S.A. 55-162; K.S.A. 55-164.

¹³ K.S.A. 55-164.

16. After a hearing and finding that a violation has occurred, “the Commission shall take any appropriate action necessary to prevent pollution and protect water quality.”¹⁴ Such action may include ordering the operator to take action to remedy the violation.¹⁵

17. The regulation at issue in these matters, K.A.R. 82-3-104 provides:

Every person who drills a well or test hole, for any purpose, that penetrates formations containing oil, gas, fresh water, mineralized water, or valuable minerals shall case or seal off these formations to effectively prevent migration of oil, gas, or water from or into strata that would be damaged by this migration. The effectiveness of the casing or sealing off shall be tested in a manner prescribed or approved by an agent of the commission.

III. THE WRIGHT #1

A. FINDINGS OF FACT:

18. Staff witness Jeff Klock pre-filed direct and rebuttal testimony and stood for cross-examination at the hearing. Mr. Klock is the Commission District #2 Supervisor.¹⁶ Staff Witness Jonathan Hill pre-filed direct and rebuttal testimony and stood for cross-examination at the hearing. Mr. Hill is a District #2 Environmental Compliance and Regulatory Specialist.¹⁷ The Operator, Ben Giles, pre-filed direct testimony and rebuttal testimony on his own behalf concerning the Wright #1. The Operator’s two additional witnesses, Jerry Sullivan and Jacob Storm, did not testify to the events concerning the Wright #1.

19. Mr. Giles testified that the well plugging reports indicated the Wright #1 was plugged in 1965.¹⁸ The records provided there was 130 feet of casing cemented into the well.¹⁹ On June 23, 2014, Mr. Giles filed a Notice of Intent to Drill (2014 Intent to Drill) for the Wright

¹⁴ K.S.A. 55-162(a).

¹⁵ *Id.*

¹⁶ Pre-filed Testimony of Jeff Klock at 2 (Apr. 23, 2018) [*hereinafter* Klock Direct].

¹⁷ Pre-filed Testimony of Jonathan Hill at 2 (Apr. 23, 2018) [*hereinafter* Hill Direct].

¹⁸ Pre-filed Direct Testimony of Benjamin M. Giles at 2 (Apr. 30, 2018) [*hereinafter* Giles Direct].

¹⁹ Giles Direct at 3; Klock Direct at 3.

#1.²⁰ Mr. Giles stated that upon excavating the Wright #1 on or about July 8, 2014, it was discovered that the well was not plugged or cemented as the records had indicated.²¹ Mr. Giles testified that 130 feet of 8 5/8 inch casing was hanging inside of a larger pipe.²²

20. According to Mr. Klock, the Operator's field staff notified him of the actual condition of the Wright #1.²³ Mr. Klock stated that Staff approved the Operator's 2014 Intent to Drill based upon the information provided therein and correspondence from the Operator's field staff.²⁴ The Operator was directed by Staff to "cement the 130 feet of 8 5/8" casing in place prior to starting the wash down and perform additional cementing from 250 feet back to surface."²⁵

21. Mr. Giles testified that he pulled the 130 feet of casing from the hole and found it to be unusable even though he had requested, and Commission Staff had approved, that the casing be cemented in place.²⁶ According to Mr. Giles, after discovering the condition of the casing, he had to re-engineer the wellbore and did not have the proper equipment on site to commence drilling.²⁷

22. Mr. Giles filed a new Notice of Intent to Drill (2015 Intent to Drill) for the Wright #1 and requested a surface casing exception on July 15, 2015.²⁸ Mr. Hill testified that, in response to the new filing, he inspected the Wright #1 on July 16, 2015.²⁹ Mr. Hill stated that the Wright #1 appeared to be abandoned based on the absence of a discernible road, overgrowth of foliage at the site, and debris covering the well itself.³⁰ Mr. Hill stated that he observed a piece of plywood

²⁰ Giles Direct at 3.

²¹ *Id.*

²² *Id.*

²³ Klock Direct at 3.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Giles Direct at 4.

²⁷ *Id.*

²⁸ *Id.* at 4; Klock Direct at 4.

²⁹ Hill Direct at 3.

³⁰ *Id.*

covering twenty-four-inch pipe and below that was a casing string not joined to the twenty-four-inch pipe.³¹

23. According to Mr. Klock, the Operator violated K.A.R. 82-3-104 when the Operator abandoned the Wright #1 after pulling the 8 5/8 inch casing from the hole and not casing or sealing off the well.³² Mr. Klock explained that the Wright #1 was not accessible prior to the Operator digging it up and that exposing the well to the surface created a dangerous condition.³³ Mr. Klock testified the Operator never communicated to Staff that the Operator had pulled the 8 5/8 inch casing or that the Operator planned to re-assess drilling the well with different equipment.³⁴ Mr. Klock stated Staff only became aware of the actual condition of the Wright #1 after making inspection following the Operator filing the 2015 Intent to Drill.³⁵

24. Staff approved the Operator's 2015 Intent to Drill on August 31, 2015 and based upon the requested casing exception required that surface casing be cemented at least 200 foot to surface.³⁶ Mr. Klock stated that Staff approved the 2015 Intent to Drill based upon the Operator's attestation that a different drilling rig was necessary, that such a drilling rig was on an adjacent lease and the Operator would attempt to secure that rig for completion of the Wright #1.³⁷

25. Mr. Klock met with the Operator on September 21, 2015, and communicated Staff's concerns regarding the Wright #1, including the fact that Staff considered the Wright #1 to be a raw borehole.³⁸ Mr. Klock stated that in response to this meeting, the Operator assured Staff that he would complete the Wright #1 after completing another well in the immediate vicinity.³⁹

³¹ *Id.*

³² Klock Direct at 5.

³³ Rebuttal Testimony of Jeff Klock at 2 (May 7, 2018) [*hereinafter* Klock Rebuttal].

³⁴ *Id.* at 3.

³⁵ Klock Direct at 4.

³⁶ Transcript at 29-30 (May 17, 2018); Giles Direct at 4.

³⁷ Transcript at 30.

³⁸ Klock Direct at 6.

³⁹ *Id.* at 6-7.

26. According to Mr. Giles, he spud the Wright #1 on August 29, 2016, within 365 days of Staff's approval of the 2015 Intent to Drill.⁴⁰ Mr. Klock testified the Operator had completed two additional wells in the time from approval of the 2015 Intent to Drill to spudding the well.⁴¹ Mr. Klock testified that from the time the Operator began work on the Wright #1 on July 14, 2014, until the setting of surface casing on or around August 26, 2016, the Wright #1 was not cased or sealed off in a manner to effectively prevent migration of oil, gas or water.⁴²

27. Mr. Hill testified that upon inspection on September 27, 2016, he observed that surface casing had been cemented, the Operator's service rig had been removed, and no work was being performed on the Wright #1.⁴³ Mr. Hill visited the Wright #1 again on January 11, 2017, with no observable change from the previous inspection.⁴⁴ Mr. Giles stated that he had moved his rig from the Wright #1 site to complete other work.⁴⁵

28. Mr. Giles testified that he resumed work on the Wright #1 in January or early February of 2017.⁴⁶ Mr. Hill inspected the Wright #1 on February 10, 2017.⁴⁷ Mr. Hill stated that the Operator was working on the well, having "drilled out of the surface casing . . . [and] Operator's crew stated they were getting oil and mud returns to the surface"⁴⁸

29. On April 12, 2017, Mr. Hill visited the Wright #1 and noted the Operator's service rig was over the well, but the Operator's staff were not present and the surface pits were full of fluid containing oil.⁴⁹ Upon inspection on June 7, 2017, Mr. Hill testified that a partially

⁴⁰ Giles Direct at 5.

⁴¹ Klock Direct at 7.

⁴² Transcript at 73-74.

⁴³ Hill Direct at 4.

⁴⁴ *Id.*

⁴⁵ Giles Direct at 5.

⁴⁶ *Id.*

⁴⁷ Hill Direct at 4.

⁴⁸ *Id.*

⁴⁹ *Id.*

operational service rig remained over the Wright #1, but that foliage had again overgrown parts of the area, and there was no indication of recent activity.⁵⁰

30. On June 26, 2017, Staff sent the Operator a notice of violation letter, giving the Operator until July 26, 2017, to complete work on the Wright #1.⁵¹ Mr. Hill testified that he again inspected the well on June 29, 2017, and noted that the Operator had replaced the rig over the well, but work had not resumed.⁵² On July 13, 2017, according to Mr. Klock, the Operator requested more time to complete the well but Staff declined as Staff “had been more than generous with the time allowed to recomplete the well.”⁵³

31. Mr. Giles testified at hearing that he received Commission Staff’s June 26, 2017 letter requiring him to complete the Wright #1 by July 26, 2017, and that Staff had not extended that deadline.⁵⁴ However, Mr. Giles stated that he had not been notified of a potential violation of K.A.R. 82-3-104 at any time prior to Staff’s letter.⁵⁵

32. On July 27, 2017, Mr. Hill inspected the Wright #1 and found that work had resumed, but that additional casing had not been set because the hole had collapsed.⁵⁶ Mr. Hill followed up on August 2, 2017, to find the same conditions.⁵⁷ On August 18, 2017, Mr. Hill noted that the Operator had returned the original rig to the Wright #1 but nobody was working on the well at that time.⁵⁸ Mr. Hill visited the Wright #1 on September 15 and 21, 2017, and observed no

⁵⁰ *Id.* at 5.

⁵¹ Klock Direct at 8 (referencing Exhibit K of the Penalty Order).

⁵² Hill Direct at 5.

⁵³ Klock Direct at 8 (referencing Klock Exhibit 4).

⁵⁴ Transcript at 143-145.

⁵⁵ Rebuttal Testimony of Benjamin M. Giles at 3 (May 7, 2018) [*hereinafter* Giles Rebuttal].

⁵⁶ Hill Direct at 5.

⁵⁷ *Id.* at 5-6.

⁵⁸ *Id.* at 6.

service rig was present, the Operator's crew was not present, and the casing had not been cemented.⁵⁹

33. On October 12, 2017, the Commission issued the Penalty Order against the Operator.⁶⁰ On November 9, 2017, Mr. Hill inspected the Wright #1 and found that the Operator had resumed working on the well.⁶¹ Mr. Giles testified that the well was completed on November 10, 2017.⁶² On November 13, 2017, Mr. Hill observed the Wright #1 was in fact completed.⁶³ Mr. Klock testified that the completed construct of the Wright #1 was cased and cemented in accordance with Commission regulations.⁶⁴

34. Mr. Giles alleged that he encountered numerous problems that prevented him from completing the Wright #1 in a timely fashion including: service rig repairs in May, pipe stuck in the well in July, service rig repairs in August, rainy weather in the spring, extreme heat in the summer, and tough drilling conditions down-hole throughout the process.⁶⁵ Mr. Giles added that the drilling rig was over the well at all times, except when repairs were being made.⁶⁶ Mr. Klock testified that Staff considered the Operator to be in violation of K.A.R. 82-3-104 due to the periods of time in which the Operator had ceased work on the well from when the Operator drilled out of the surface casing on February 10, 2017 to completion.⁶⁷

B. CONCLUSIONS OF LAW:

35. The Operator questions the Commission's Penalty Order and Staff's insistence that K.A.R. 82-3-104 is the appropriate regulation under consideration. The Operator alleges that

⁵⁹ *Id.*

⁶⁰ *See supra* ¶ 4.

⁶¹ Hill Direct at 6.

⁶² Giles Direct at 7.

⁶³ Hill Direct at 7.

⁶⁴ Transcript at 63-64.

⁶⁵ Giles Direct at 5-6.

⁶⁶ *Id.* at 6.

⁶⁷ Transcript at 75-76

K.A.R. 82-3-106 is the controlling regulation.⁶⁸ The clearly stated purpose of K.A.R. 82-3-104 is “to effectively prevent migration of oil, gas, or water from or into strata that would be damaged by this migration.”⁶⁹ Casing or sealing off “formations containing oil, gas, fresh water, mineralized water, or valuable minerals” is the means by which an operator achieves this purpose.⁷⁰ K.A.R. 82-3-106 provides specific requirements for well construction under which operators in certain scenarios are to case and cement wells to protect fresh and usable water.⁷¹ K.A.R. 82-3-104 provides the “why” and K.A.R. 82-3-106 provides the “how” of effectively casing or sealing a well.

36. At issue here is whether the Operator *effectively* cased or sealed the Wright #1. Under the facts presented here, the Operator pulled the casing from the Wright #1 on or about July 8, 2014, and finally completed the well on November 10, 2017, with Staff verification on November 13, 2017.⁷² Despite numerous inspections, communications, and meetings with Staff, the record reflects that the Operator did not take definitive action to case or seal the well until after the Commission issued its penalty order on October 12, 2017. The Commission construes Staff’s multiple inspections as indicating serious concern for the condition of the Wright #1 and its ability to effectively prevent migration of oil, gas, or water from the formations exposed by pulling the casing from the well. The Commission finds and concludes that K.A.R. 82-3-104 is properly under consideration in this matter.

37. The Commission finds the penalty for violation of K.A.R. 82-3-104 at the Wright #1 should be affirmed but mitigated. The Commission finds there is sufficient evidence that the

⁶⁸ Transcript at 26, 28.

⁶⁹ K.A.R. 82-3-104.

⁷⁰ *Id.*

⁷¹ See generally K.A.R. 82-3-106.

⁷² See *supra* ¶¶ 19, 21, 33.

Operator did not case or seal off the formations penetrated by the Wright #1 thereby failing to “effectively prevent migration of oil, gas or water from or into strata that would be damaged by this migration.”⁷³ However, because the well is now cased and sealed in compliance with Commission regulations, the Commission finds it proper to mitigate the overall penalty amount from \$10,000 to \$7,500.

38. The Operator posited that K.A.R. 82-3-104 has no temporal requirement.⁷⁴ While this is true, it does not advance the Operator’s argument. The Operator testified that the Wright #1 had not harmed the water table since 1965; sitting in the same condition in which the Operator found the well.⁷⁵ While there is no evidence of record to verify the accuracy of the statement, it matters little. K.A.R. 82-3-104 is preventative in nature. Upon discovering the actual condition of the Wright #1 and removing casing from the well, the Operator, being in care and control of the well at that time, was responsible for ensuring compliance with K.A.R. 82-3-104.

39. Mr. Giles testified that he uncovered the actual condition of the Wright #1 on or about July 8, 2014, when he pulled casing out of the hole.⁷⁶ With the exception of noting a rig failure in January 2015, Mr. Giles did not communicate to Staff the status of the Wright #1 or the fact that it was necessary to re-engineer the well.⁷⁷ Upon filing the 2015 Intent to Drill, Mr. Giles provided that a rig capable of performing the work was nearby.⁷⁸ Mr. Giles did not communicate to Staff that the rig was ultimately unavailable.⁷⁹

40. Staff notified the Operator of Staff’s concerns with the Wright #1 in September 2015, but was satisfied by Mr. Giles assurances that work would resume after completing another

⁷³ K.A.R. 82-3-104.

⁷⁴ Transcript at 79-80.

⁷⁵ Giles Rebuttal at 5.

⁷⁶ See *supra* ¶¶ 19, 21.

⁷⁷ See *supra* ¶ 23; Transcript at 19.

⁷⁸ See *supra* ¶ 24; Transcript at 29-30.

⁷⁹ See Transcript at 31.

well in the immediate vicinity.⁸⁰ Instead of completing the one well as he promised Staff, the Operator completed two wells on the adjacent lease without working on the Wright #1.⁸¹

41. Beyond re-engineering the well, one rig failure, and the unavailability of another, Mr. Giles offered no explanation as to why it took from July 8, 2014 until August 29, 2016 to continue work on the Wright #1. Regardless of whether the Operator would have had 365 days from approval of the 2015 Intent to Drill to do so, the Commission finds the fact that no work was being done whatsoever after discovering the condition of the well demonstrates the Operator did not exert the effort required to comply with his obligation pursuant to K.A.R. 82-3-104. The Commission finds this constitutes violation of K.A.R. 82-3-104.

42. Of additional concern is the length of time taken to complete the well once the Operator had drilled out of the surface casing again exposing the well to the surface. Mr. Giles testified, as was confirmed by Staff, that work on the Wright #1 resumed in February of 2017 but the well was not completed until November.⁸² Based on Staff's verification of the delays and downtime through inspections, the Commission finds the Operator's insistence that he applied all due diligence less than convincing.

43. Staff noted that although drilling resumed in February of 2017, work had ceased by April, and foliage had taken over the area again by June, with no real progress made.⁸³ Mr. Giles only cited the weather and equipment failure in May as reasons for the delay during this period.⁸⁴ Mr. Hill noted that the rig had been replaced by June 29, 2017, but work had still not resumed.⁸⁵

⁸⁰ See *supra* ¶ 25.

⁸¹ See *supra* ¶ 26.

⁸² See *supra* ¶¶ 28, 33.

⁸³ See *supra* ¶ 29.

⁸⁴ See *supra* ¶ 34.

⁸⁵ See *supra* ¶ 30.

44. The record supports the fact that work would have resumed sometime in July of 2017, but the well was still not completed by the next equipment failure sometime in August.⁸⁶ The Operator's only explanation, notwithstanding bad weather, was that the hole had collapsed.⁸⁷ The next rig failure, as noted, happened in August and halted progress until October.⁸⁸ However, the testimony shows that the Operator had multiple rigs, and when work finally resumed in October, it still took nearly a month to complete.⁸⁹

45. Mr. Giles only cited three specific failures, two equipment related and one in the well, during the balance of the time frame from February 2017 until completion of the well. Despite the Operator's insistence that weather and overall drilling conditions played a role, the Commission does not find credible the claim that seasonal conditions and the drilling process were so onerous at all times so as to limit all progress outside of the specific failures. Therefore, the Commission finds that Mr. Giles' lack of diligence supports the conclusion that the Operator violated K.A.R. 82-3-104.

46. Mr. Giles' testimony regarding the numerous delays and slow progress from July 2014 until November 2017 is insufficient to fill the gaps on why such delays had occurred in completing the Wright #1. Therefore, the Commission finds the Operator violated K.A.R. 82-3-104, and the penalty should be affirmed. However, as noted, because the Wright #1 is now compliant, the Commission, in its discretion, will reduce the fine amount from \$10,000 to \$7,500.

⁸⁶ See *supra* ¶¶ 32, 34.

⁸⁷ See *supra* ¶ 34.

⁸⁸ *Id.*; Giles Direct at 6.

⁸⁹ See *supra* ¶ 33.

IV. THE FLYING J GEER #2

A. FINDINGS OF FACT:

Staff Witnesses:

47. Mr. Klock pre-filed direct testimony and stood for cross examination at the hearing regarding the Flying J Geer #2 (Geer #2). Mr. Hill pre-filed direct and rebuttal testimony and stood for cross examination at the hearing regarding the Geer #2.

48. Mr. Klock stated that the Operator filed a Notice of Intent to Drill for the Geer #2 on May 10, 2013.⁹⁰ Mr. Klock testified that the well originally had 130 feet of surface casing, but Commission regulations required 200 feet of surface casing.⁹¹ Mr. Klock stated that the Operator requested an exception to the regulation to instead “cement the top 200 feet of production casing in place.”⁹²

49. According to Mr. Klock, the Operator’s request was granted based upon two stipulations: 1) “that upon completion of the well, the production or long-string casing nearest the formation wall must be immediately cemented from a depth of at least 250 feet back to surface,” and 2) “that the KCC District 2 office be notified prior to spudding the well and one day before cementing the long-string so that they may have the opportunity to witness the procedure.”⁹³ Mr. Klock testified that the Operator notified Staff of spudding the well on June 11, 2013, but the Operator did not notify Staff of cementing the long-string casing.⁹⁴ Mr. Klock testified that the failure to notify and allow Staff to witness the cementing was a violation of K.A.R. 82-3-104.⁹⁵

⁹⁰ Klock Direct at 9.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 10.

⁹⁵ Transcript at 47.

50. Mr. Klock refuted the Operator's contention as to when he completed the Geer #2 and its assertion that the well was completed in accordance with Commission regulations.⁹⁶ Mr. Klock testified that the cement ticket referenced July 23, 2014 as the cementing date.⁹⁷ Moreover, Mr. Klock stated that the Well Completion Report, submitted by the Operator on January 29, 2014, did not contain the necessary information to determine if the well had been completed in accordance with Commission regulations.⁹⁸

51. Mr. Hill inspected the Geer #2 on March 31, 2015.⁹⁹ According to Mr. Hill, the well was abandoned, having no lease infrastructure and only partially equipped for operation.¹⁰⁰ Mr. Hill performed a subsequent inspection on the well on September 15, 2015, with no observable changes.¹⁰¹

52. Mr. Klock testified that Staff and the Operator discussed the Geer #2 on September 21, 2015, and the Operator offered to bring the well into production within 30 days of submitting a completed Well Completion Report by October 16, 2015.¹⁰² Mr. Klock testified that failure to do so would require the filing of an application for temporary abandonment.¹⁰³

53. Mr Hill again inspected the well on August 30, 2016 and observed no change from previous inspections.¹⁰⁴ Staff sent a notice of violation letter on October 19, 2016 for failure to file an application for temporary abandonment.¹⁰⁵ Mr. Klock testified Mr. Giles hand-delivered a copy of Staff's letter with handwriting on it indicating that the Operator had filed for temporary

⁹⁶ Klock Direct at 10-11.

⁹⁷ *Id.* at 11 (referencing Ex. 4. of the Penalty Order).

⁹⁸ *Id.*

⁹⁹ Hill Direct at 7.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Klock Direct at 12.

¹⁰³ *Id.*

¹⁰⁴ Hill Direct at 7.

¹⁰⁵ Klock Direct at 12.

abandonment on November 18, 2016.¹⁰⁶ Mr. Klock testified that Staff had placed three conditions on the granting of temporary abandonment status for the Geer #2: 1) the Operator had to submit a revised well completion report; 2) the Operator had to submit a cement ticket demonstrating that cement was circulated to the surface; and, 3) Staff required a bond log be conducted to verify the cement job.¹⁰⁷

54. Regarding the Well Completion Report and cement ticket, Mr. Klock testified the Operator submitted both on January 13, 2017.¹⁰⁸ Mr. Klock testified that the Operator had taken the original cement ticket back to the company who performed the cement job three years after the job had been performed.¹⁰⁹ It was at that time, not when the job was performed, that the Operator obtained a hand-written notation that cement was circulated to the surface.¹¹⁰

55. Mr. Hill testified that the information submitted provided no evidence that “Operator has circulated cement back to surface in a manner that protects fresh and usable water.”¹¹¹ Mr. Hill performed an analysis, based upon the information submitted by the Operator, that served as the basis for this conclusion, namely, that cementing in compliance with the regulation would require approximately 86 barrels or 361 sacks of cement, but that the Operator’s information only demonstrated 35.8 barrels or 150 sacks had been used.¹¹²

56. Regarding the bond log, Mr. Klock testified that Staff had required the Operator to conduct the bond log before April 28, 2017 and to notify the District #2 Office so that Staff could

¹⁰⁶ Klock Direct at 12 (referencing Klock Ex. 7).

¹⁰⁷ *Id.* at 12-13.

¹⁰⁸ *Id.* at 13.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Hill Direct at 8.

¹¹² Hill Direct at 8-9, Ex. 3.

witness the log.¹¹³ Mr. Hill and Mr. Klock testified that the Operator did not notify the District Office.¹¹⁴

57. Mr. Hill provided an analysis of the bond log in Exhibit 4 of his testimony, wherein he identified numerous anomalies.¹¹⁵ Mr. Hill testified that in addition to identical sections of the bond log, an impossible scenario, the overall evidence suggested that the bond log was poorly run or that the well is not adequately cemented.¹¹⁶

58. In response to newly provided information regarding the construction of the Geer #2, Mr. Klock testified that he does not understand the construction of the well to date.¹¹⁷ In addition, Mr. Klock stated that he does not know whether 150 sacks of cement was adequate to circulate cement to the surface.¹¹⁸

59. Mr. Hill further testified regarding the Operator's pre-filed direct testimony and the additional information regarding the construction of the well. Mr. Hill testified that the Operator's testimony revealed additional or alternative well completion information that had not previously been provided to Staff in any report.¹¹⁹ Mr. Hill testified that the new information may affect the analysis of the bond log and that his analysis in his Exhibit 3 is now incomplete.¹²⁰

60. However, Mr. Hill stated that the newly provided information does not change his conclusion based on the bond log or Staff's overall belief that the Geer #2 is not cemented in accordance with Commission regulations in a manner that would effectively case and seal off the strata, resulting in a violation of K.A.R. 82-3-104.¹²¹

¹¹³ Klock Direct at 14.

¹¹⁴ *Id.*; Hill Direct at 8.

¹¹⁵ Hill Direct at 9.

¹¹⁶ *Id.* at 9-10; Ex. 4.

¹¹⁷ Transcript at 57.

¹¹⁸ *Id.* at 57-63, 65.

¹¹⁹ Hill Rebuttal at 2-3; Transcript at 90.

¹²⁰ Transcript at 102-103, 109.

¹²¹ Hill Rebuttal at 2-5; Transcript at 89-93, 105-107, 114-115.

Operator Witnesses:

61. Mr. Giles pre-filed direct testimony and rebuttal testimony and stood for cross-examination concerning the Geer #2. Jerry Sullivan, President of Dyna-Log, Inc., pre-filed direct and rebuttal testimony and stood for cross-examination on behalf of the Operator.¹²² Mr. Sullivan is a professional engineer with forty years' worth of experience analyzing cement bond logs.¹²³ Jacob Storm, a field office manager with Consolidated Oil Well Services, LLC, pre-filed direct testimony on behalf of the Operator.¹²⁴ Mr. Storm was not present at the evidentiary hearing and did not stand for cross-examination.

62. Mr. Giles testified that he spud the Geer #2 on November 20, 2013.¹²⁵ Mr. Giles stated that the cement job was performed on July 23, 2014, cementing 4 ½ diameter liner pipe or production casing inside the 5 ½ casing all the way to the surface.¹²⁶ Mr. Giles testified that he believed his employees called in notification of the cementing to Commission Staff.¹²⁷ Mr. Giles further stated that Staff approved the Well Completion Report on January 29, 2014.¹²⁸ According to Mr. Giles, he notified Commission Staff of the construction of the well on multiple occasions.¹²⁹

63. Mr. Giles testified that he was not notified of any deficiency in his Well Completion Report until after filing for temporary abandonment status on November 18, 2016.¹³⁰ Mr. Giles also stated that he submitted a revised report with cement tickets on January 13, 2017.¹³¹ Mr. Giles

¹²² See Pre-Filed Direct Testimony of Jerry Sullivan at 2 (Apr. 30, 2018) [*hereinafter* Sullivan Direct].

¹²³ *Id.*

¹²⁴ See Pre-Filed Direct Testimony of Jacob Storm at 2 (Apr. 30, 2018).

¹²⁵ Giles Direct at 8.

¹²⁶ *Id.*

¹²⁷ *Id.* at 10.

¹²⁸ *Id.* at 8 (referencing Ex. G-5).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 8-9.

testified that Staff did not believe that the cement ticket demonstrated that the well was adequately cemented.¹³²

64. Mr. Giles argued that Staff “should have known that a very small amount of cement would be necessary to cement the well from bottom to top.”¹³³ Mr. Giles asserted that Mr. Hill’s calculations regarding the amount of cement would be useless, noting the construction of the well and the narrow annulus between the casing strings.¹³⁴ Mr. Giles explained at hearing:

[T]he casing had collars on them and it just fits inside of the 5 1/2. There’s no room to put centralizers and really there’s no need to because you’re right square in the middle of the 5 1/2. At the most probably an 8th to a quarter of an inch from the wall of the 5 1/2.¹³⁵

65. In rebuttal testimony, Mr. Giles provided a photograph which he claimed depicted cement at the surface of the Geer #2.¹³⁶ At the hearing, Mr. Giles testified that the photo was taken by his foreman in January, 2017, and it depicts the Geer #2’s condition as it would have been in 2014.¹³⁷ Upon further questioning, Mr. Giles admitted, “I’m not sure exactly when he took the picture.”¹³⁸

66. Mr. Giles testified that he also contacted the company who performed the cementing, and the employee who had supervised the job remembered that four barrels circulated to surface and corrected the cement ticket.¹³⁹ Mr. Giles stated that he re-submitted the Well Completion Report on February 10, 2017.¹⁴⁰ Mr. Giles testified that the new submission was immediately rejected, and Commission Staff requested that he conduct a bond log.¹⁴¹

¹³² *Id.* at 9.

¹³³ *Id.*

¹³⁴ Giles Rebuttal at 2.

¹³⁵ Transcript at 160.

¹³⁶ Giles Rebuttal at 2.

¹³⁷ Transcript at 136.

¹³⁸ *Id.* at 163.

¹³⁹ Giles Direct at 9.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

67. Mr. Sullivan testified that he conducted the bond log on April 26, 2017.¹⁴² Mr. Sullivan argued that the bond log shows that cement circulated from total depth and at least 250' to approximately 30-50' from the surface.¹⁴³ Mr. Sullivan explained that the bond log has no data from approximately 30-50' to surface because he was unable to keep the well bore full of fluid.¹⁴⁴ However, Mr. Sullivan added that the lack of fluid or data did not mean there was no cement in that portion of the well.¹⁴⁵

68. Mr. Sullivan testified that the bond log was typical for the well construction.¹⁴⁶ Mr. Sullivan explained that the bond log results were due to the Geer #2 having only ½ to ¼ inch of spacing between casing strings.¹⁴⁷ Mr. Sullivan testified that Staff had overlooked this aspect of the well construction.¹⁴⁸

69. Mr. Sullivan asserted, in direct, there were no irregularities in the bond log “nor have a[sic] cut up and recreated the bond log.”¹⁴⁹ Mr. Sullivan stated in rebuttal that the identical portions of the bond log could have been a result of having to stop the tool to re-fill the well with water.¹⁵⁰ Mr. Sullivan expanded on this at hearing, explaining that because he had to re-fill the well, the bond log had to be stopped for an interval and then “spliced” together.¹⁵¹ Mr. Sullivan conceded that portions of the bond log may not be accurate due to this process. “I won’t tell you that it’s a perfect bond log but I will tell you that there was cement there and there was intervals that I think would provide a seal for the well.”¹⁵²

¹⁴² Sullivan Direct at 2.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 2-4.

¹⁴⁷ Sullivan Rebuttal at 2.

¹⁴⁸ *Id.* at 4.

¹⁴⁹ Sullivan Direct at 3.

¹⁵⁰ Sullivan Rebuttal at 4.

¹⁵¹ Transcript at 171-172.

¹⁵² *Id.* at 175-176.

70. According to Mr. Giles, the Geer #2 is compliant with K.A.R. 82-3-104 because the engineering of the well exceeds Commission requirements.¹⁵³

B. CONCLUSIONS OF LAW:

71. The Operator again raised the argument that the Commission's Penalty Order regarding the Flying J Geer #2 erroneously applies the wrong regulation.¹⁵⁴ Applying the same analysis as above in paragraph 35, the Commission finds K.A.R. 82-3-104 is under proper consideration here. The Commission finds that the penalty for violation of K.A.R. 82-3-104 at the Flying J Geer #2 should be affirmed in all respects. The Commission finds sufficient evidence that the Operator has not cased or sealed off the formations penetrated by the Geer #2 to "effectively prevent migration of oil, gas or water from or into strata that would be damaged by this migration."¹⁵⁵ The Commission also finds that the Operator has not tested the effectiveness of the casing in a manner prescribed by an agent of the Commission.¹⁵⁶

72. It is unrefuted that Staff asked to witness the long-string casing and the bond log.¹⁵⁷ It is an open question whether such notification took place so that Staff could indeed witness the operations. Staff testified that no such notification took place.¹⁵⁸ The Operator has only offered anecdotal rebuttal stating that it would have been his employees that would have made the calls. Mr. Giles testified that he *believed* the call regarding the cementing of the long-string was made by one of his employees.¹⁵⁹ Regarding the bond log, Mr. Giles testified that he does not know whether any notification was made.¹⁶⁰ There is no evidence or testimony presented to refute Staff

¹⁵³ Giles Direct at 11.

¹⁵⁴ Transcript at 46-47.

¹⁵⁵ K.A.R. 82-3-104.

¹⁵⁶ *See id.*

¹⁵⁷ *See supra* at ¶¶ 49, 56.

¹⁵⁸ *Id.*

¹⁵⁹ *See supra* at ¶ 62.

¹⁶⁰ Giles Direct at 11.

by anyone who would have actually made such notification. Therefore, the Commission finds Staff's testimony credible on this point and finds that this supports violation of K.A.R. 82-3-104 for not testing the effectiveness of the casing in a manner prescribed by an agent of the Commission.

73. Staff testified the Operator did not submit adequate information through the reports and information to confirm that the Geer #2 is cased or sealed in accordance with K.A.R. 82-3-104. Specifically, Mr. Hill, testified that the bond log had discrepancies and repeated portions that were indicative of a poor cement job or a bad bond log.¹⁶¹

74. Mr. Storm filed direct pre-filed testimony regarding the actions of another individual who did not present testimony.¹⁶² Mr. Storm was not present at the hearing. Mr. Giles testified on Mr. Storm's behalf regarding the documentary evidence that the cement was circulated to surface, thereby indicating a thorough cement job.¹⁶³ Over objection, the Commission allowed the testimony into the record.¹⁶⁴ However, the testimony suffers from a lack of attestation by the original individual and a lack of cross-examination regarding Mr. Storm's own understanding of the situation. Therefore, the Commission attributes little to no weight to Mr. Storm's testimony.

75. The Commission finds Mr. Giles' testimony and the photograph depicting cement at the surface of the Geer #2 unconvincing as well. The individual who actually took the picture did not file testimony and was not present at the hearing.¹⁶⁵ Moreover, Mr. Giles did not know

¹⁶¹ See *supra* at ¶¶ 57, 59-60.

¹⁶² See Storm Direct at 2-3 (Mr. Storm explained that it was employee by the name of Ron McCullick who both supervised the original cementing and made the correction on the cement ticket. Mr. McCullick did not testify in this Docket.)

¹⁶³ Transcript at 119-120.

¹⁶⁴ *Id.* at 120-123.

¹⁶⁵ See Transcript at 131.

when the photo was taken.¹⁶⁶ Thus, while the Commission admitted the evidence into the record and considered the photograph, it affords the evidence little value.

76. Additionally, the Commission finds Mr. Sullivan's testimony unpersuasive. Mr. Sullivan admitted to the deficiencies in the bond log, whether it was due to lack of fluid in the well or the "splicing" of the log.¹⁶⁷ Mr. Sullivan testified "[t]here was evidence of cement there."¹⁶⁸ Mr. Sullivan's statement on this point seems to summarize the whole of the Operator's testimony and evidence. That is, there may be cement in the Geer #2, but the Commission finds there is virtually no evidentiary support for the adequacy of the cement job throughout.

77. Mr. Giles testified that the engineering of the well supports the conclusion that the casing is adequate. However, Mr. Giles admitted that the construction of the well leaves no room for centralizers and that the collars had to be machined down just to leave room for cementing.¹⁶⁹ Mr. Giles had no coherent answer for how he could be assured there was an effective cement job under this type of construction.¹⁷⁰ As Staff had requested, a bond log would have been at least one method by which to be sure. However, Staff's analysis of the bond log, with the exception of the top 30-50' and the duplicated portion, would presumably not be any different today than when it was conducted. Staff's analysis, together with the deficiencies recounted above, supports the conclusion that the Geer #2 is not effectively cased or sealed off to prevent migration. The Operator has not produced any credible or convincing evidence to refute this conclusion.

78. The Commission finds that the balance of the evidence supports Staff's position that the well is not adequately cemented and sealed off from the penetrated formations. The

¹⁶⁶ See *supra* at ¶ 65.

¹⁶⁷ See *supra* at ¶¶ 68-69.

¹⁶⁸ Transcript at 175.

¹⁶⁹ *Id.* at 160-161.

¹⁷⁰ *Id.* at 161.

Commission also finds that the Operator has failed to test the Geer #2 in the manner prescribed by Staff. The Commission concludes that the Penalty should be affirmed and that the \$2,500 serves as a substantial economic deterrent to such future conduct. Additionally, the Commission orders the Operator to take such action as is necessary to remedy the violation, whether that be to test the well in accordance with Staff's directive or to plug the well.

V. CONCLUSION

79. The Commission finds and concludes that the Operator did not take necessary precautions nor did the Operator act with any diligence to effectively prevent migration of oil, gas, or water at the Wright #1, in violation of K.A.R. 82-3-104. However, because the Wright #1 was eventually cased and sealed in accordance with Commission regulations, the Commission, in its discretion, will mitigate the penalty from \$10,000 to \$7,500.

80. The Commission finds and concludes that the Operator has not tested the effectiveness of the casing on the Geer #2 in the manner prescribed by an agent of the Commission. Additionally, the Commission finds and concludes the Operator has not cased or sealed off the Geer #2 in a manner that would prevent the migration of oil, gas or water. Therefore, the Operator remains in violation of K.A.R. 82-3-104. The Commission not only affirms the full penalty regarding the Geer #2, but pursuant to its authority under K.S.A. 55-162(a), the Commission orders the Operator to test the well as prescribed by Staff or to plug the well.

THEREFORE, THE COMMISSION ORDERS:

A. The Operator shall pay a \$7,500 penalty for violation of K.A.R. 82-3-104 at the Wright #1 OWWO well, API #15-015-01211-00-02, in Butler County, Kansas.

B. The Operator shall pay a \$2,500 penalty for violation of K.A.R. 82-3-104 at the Flying J Geer #2 OWWO well, API #15-015-01490-00-01, in Butler County, Kansas. Within 30

days of the effective date of this Order, the Operator shall perform such test as shall be prescribed by Staff to demonstrate the effectiveness of the casing or plug the well.


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).¹⁷¹

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 07/10/2018 _____



Lynn M. Retz
Secretary to the Commission

Mailed Date: _____

DLK/sc

¹⁷¹ 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

17-CONS-3684-CPEN; 18-CONS-3057-CPEN; 18-CONS-3160-CPEN
18-CONS-3167-CPEN; 18-CONS-3188-CPEN; 18-CONS-3189-CPEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties
by means of electronic service on 07/10/2018.

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