

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair  
Jay Scott Emler  
Pat Apple

In the Matter of the Failure of VEEM Jade Oil & Gas LLC ("Operator") to comply with K.A.R. 82-3-111 at Daves #D21, Smith A #2, Smith B #10 and Smith B #12 in Elk County, Kansas.	)	Docket No. 18-CONS-3221-CPEN
	)	CONSERVATION DIVISION
	)	License No: 32874

**ORDER DENYING VEEM JADE OIL & GAS LLC'S PETITION FOR RECONSIDERATION**

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

**Background**

1. On November 21, 2017, the Commission issued a *Penalty Order* against VEEM Jade Oil & Gas LLC (Operator), finding that the Operator is responsible for the care and control of the Daves #D21, Smith A #2, Smith B #10, and Smith B #12 wells, all located in Elk County, Kansas.<sup>1</sup> The Commission found the Operator "committed four violation(s) of K.A.R. 82-3-111," penalized the Operator \$400, and ordered the Operator to "plug the subject wells, return the subject wells to service, or obtain TA status for the subject wells if eligible."<sup>2</sup> The Commission stated that "[o]btaining TA status shall include application for, and Commission approval of, an exception to the 10-year limit on TA status if applicable."<sup>3</sup> The Commission also ordered that "[i]f no party requests a hearing, and Operator is not in compliance with this Order within 30 days, then

<sup>1</sup> *Penalty Order*, ¶ 7 (Nov. 21, 2017).

<sup>2</sup> *Id.* at ¶ 13 and Ordering Clauses A & B.

<sup>3</sup> *Id.* at Ordering Clause B.

Operator's license shall be suspended without further notice.”<sup>4</sup> The Operator did not request a hearing on the *Penalty Order*.

2. On January 8, 2018, the Operator filed a Motion for [an] Expedited Order Lifting [the] License Suspension (Motion). The Operator stated that, in response to the *Penalty Order*, it “paid the \$400 penalty and did not contest the Order.”<sup>5</sup> The Operator asserted it complied with the requirements of the *Penalty Order* “by filing an Application [on January 2, 2018,] for an exemption of two of the subject wells, and for a determination of responsibility for the other two wells” in Docket No. 18-CONS-3260-CEXC.<sup>6</sup> The Operator conceded that its Application missed the deadline stated in the *Penalty Order* for obtaining compliance, but argued that the Application cured the Operator's violation and thus, the untimeliness of its action “is excusable neglect.”<sup>7</sup>

3. On January 11, 2018, Staff filed its Response to Operator's Motion for [an] Expedited Order Lifting [the] License Suspension (Response). Staff stated that (1) the Operator's time to request a hearing on the *Penalty Order* expired on December 27, 2017; (2) the Operator did not request a hearing; and (3) the Operator “has not plugged the subject wells, returned the subject wells to service, or obtained temporary abandonment status for the wells.”<sup>8</sup> Thus, Staff asked the Commission to deny the Operator's Motion.<sup>9</sup>

4. On January 25, 2018, the Commission issued its *Order Denying Motion for Expedited Order Lifting License Suspension* (Order). The Order found that the aforementioned *Penalty Order* required the Operator to “‘plug the subject wells, return the subject wells to service, or obtain TA status for the subject wells if eligible,’ and that ‘obtaining TA status’ required

---

<sup>4</sup> *Id.* at Ordering Clause C.

<sup>5</sup> Motion, ¶ 2.

<sup>6</sup> Motion, ¶ 2.

<sup>7</sup> Motion, ¶ 3.

<sup>8</sup> Response, ¶ 5.

<sup>9</sup> Response, p. 4.

‘Commission approval of an exception to the 10-year time limit on TA status if applicable.’”<sup>10</sup> The Order also found that, because the Operator provided no evidence of having plugged, returned to service, or obtained TA status for the four (4) wells at issue in the *Penalty Order*, the Operator had not met the requirements of the *Penalty Order*.<sup>11</sup> Moreover, the Order found the Operator’s failure to request a hearing on the *Penalty Order* and its non-compliance with the *Penalty Order’s* directives within 30 days of the issuance of the *Penalty Order* warranted continued suspension of the Operator’s license until compliance with the *Penalty Order* is achieved.<sup>12</sup> The Order, therefore, denied the Operator’s Motion.<sup>13</sup>

5. On February 9, 2018, the Operator timely filed a Petition for Reconsideration of the Commission’s Order (PFR). The Operator stated it “has now filed its Affidavits of Publication for its Temporary Abandonment Application, in Docket # 18-CONS-3260-CEXC.”<sup>14</sup> The Operator alleged that “[t]he remaining requirements” of the Commission’s January 25, 2018, Order “require on site work at the subject wells, thus requiring an operating license.”<sup>15</sup> The Operator stated it had to abandon the work it planned to do in January 2018 on the subject wells because its license was still suspended.<sup>16</sup> The Operator further stated it plans to work on the subject wells once it re-obtains its license, but alleged it is now “in a catch-22 situation; it being denied the authority and means to conduct the operations that are necessary to further comply with the Commission’s order.”<sup>17</sup> The Operator asserted, based on its having “met the notice requirements for its Temporary Abandonment application . . . Operator submits that all matters in this docket

---

<sup>10</sup> Order, ¶ 6.

<sup>11</sup> Order, ¶ 7.

<sup>12</sup> Order, ¶ 9.

<sup>13</sup> Order, ¶ 9 and Ordering Clause A.

<sup>14</sup> PFR, ¶ 1.

<sup>15</sup> PFR, ¶ 2.

<sup>16</sup> PFR, ¶ 2.

<sup>17</sup> PFR, ¶¶ 3-5.

have been cured and resolved.”<sup>18</sup> Thus, the Operator concluded “that it would be arbitrary and capricious to impose operating requirements on Operator, while denying Operator the licensing authority to carry out the required work.”<sup>19</sup> In addition to reconsideration, the Operator asked the Commission to reinstate its license.<sup>20</sup>

6. On February 19, 2018, Staff responded to the Operator’s PFR (Staff’s Response), asking the Commission to deny the Operator’s PFR, “except to the extent the Commission believes it appropriate to clarify that Operator may conduct any specific work necessary at the wells at issue to bring the wells into compliance with the Commission’s Penalty Order.”<sup>21</sup> Staff stated that the Operator “has not plugged, returned to service, or obtained TA status for any of the four subject wells. While Operator submitted an application for an exception to the 10-year limit on TA status for the Daves #21 and Smith A #2 wells, Operator has not obtained Commission approval of the application,” as required by the *Penalty Order*.<sup>22</sup> Moreover, according to Staff, “Operator has not even filed an application for TA status for the Smith B #10 and Smith B #12 wells,” which is “clearly not [in] compliance with the Penalty Order.”<sup>23</sup> Regarding the Operator’s claim that it is in a catch-22 situation, Staff asserted that “the Commission’s long-standing policy has been to allow an operator to conduct the specific work necessary at a well to bring said well into compliance.”<sup>24</sup> Staff clarified that it is not opposed to the Operator conducting any work at the subject wells to bring them into compliance, but reiterated its stance that the Operator’s license should remain suspended, and the Operator should not conduct operations, “especially production of hydrocarbons,” on its wells until it complies with the *Penalty Order*.<sup>25</sup>

---

<sup>18</sup> PFR, ¶ 5.

<sup>19</sup> PFR, ¶ 6.

<sup>20</sup> PFR, p. 3.

<sup>21</sup> Staff’s Response to Operator’s Petition for Reconsideration, p. 4 (Feb. 19, 2018).

<sup>22</sup> Staff’s Response, ¶ 12.

<sup>23</sup> Staff’s Response, ¶ 13.

<sup>24</sup> Staff’s Response, ¶ 14.

<sup>25</sup> Staff’s Response, ¶ 15.

7. On March 1, 2018, the Operator replied to Staff's Response (Operator's Reply), reiterating its request that its license be reinstated.<sup>26</sup> The Operator stated that "according to the plain reading of [the *Penalty Order*], the only apparent way out of the situation [for Operator] is either to *produce the wells*, or by Operator's filing of its now-pending Application for exception from the 10-year Temporary Abandonment limit (the 'Application'), in Docket No. 18-CONS-3260-CEXC. Either way, Operator has met the requirements of the Penalty Order to the extent it is within its ability to do so with a suspended license."<sup>27</sup> The Operator asserted that "[e]ither production *or* filing a TA application constitutes compliance with paragraph B [of the Commission's *Penalty Order*]."<sup>28</sup> The Operator stated that gaining approval for TA status "is out of an operator's control."<sup>29</sup> The Operator further asserted "continued suspension of Operator's license . . . is an erroneous interpretation and application of the law; is unlawful; and is arbitrary, capricious, and unreasonable."<sup>30</sup> The Operator went on:

Nowhere in the written warnings from Staff or the January 25 Order perpetuating the suspension, is there reference or deference to a policy of looking the other way while an operator performs certain operations. A continued suspension will serve no purpose except to insure that Operator can *never* comply with the Penalty Order. The required operations are prohibited by the suspension. The inability to operate will lead to bankruptcy. A bankrupted operator cannot fund the operations to produce or plug wells. Bankrupting an operator in this instance, will not lead to compliance; and will cause unreasonable and preventable waste, contrary to the Commission's statutory authority and mandates.<sup>31</sup>

### **Findings and Conclusions**

8. Kansas courts examine the validity of Commission orders pursuant to the Kansas Judicial Review Act (KJRA).<sup>32</sup> All actions of an administrative agency have a rebuttable

---

<sup>26</sup> Reply to Staff's Response to Petition for Reconsideration, p. 5 (Mar. 1, 2018).

<sup>27</sup> Operator's Reply, ¶ 2.

<sup>28</sup> Operator's Reply, ¶ 7.

<sup>29</sup> Operator's Reply, ¶ 8.

<sup>30</sup> Operator's Reply, ¶ 9.

<sup>31</sup> Operator's Reply, ¶ 12.

<sup>32</sup> K.S.A. 77-621 *et seq.* See *Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n.*, 28 Kan. App. 2d 313, 315, 16 P.3d 319 (2000).

presumption of validity.<sup>33</sup> As the party challenging the legality of the Commission's Order, the Operator bears the burden of proving the Commission's action was invalid.<sup>34</sup> The validity of the Commission's action is determined in accordance with the standards of judicial review provided in K.S.A. 77-621, as applied to the Commission's action at the time it issued its Order.<sup>35</sup> The Operator must prove one of the eight grounds under K.S.A. 77-621(c) in order to obtain relief.

9. The Operator asserted the Commission erroneously interpreted and applied Kansas law.<sup>36</sup> The law at issue, K.A.R. 82-3-111(b), states: "A well shall not be eligible for temporary abandonment 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*."<sup>37</sup> The Commission's January 25, 2018, Order reiterated the *Penalty Order's* requirement that the Operator "plug the subject wells, return the subject wells to service, or obtain TA status for the subject wells if eligible," and that "obtaining TA status" required "Commission *approval* of an exception to the 10-year time limit on TA status if applicable."<sup>38</sup> Thus, the *Penalty Order* and the January 25, 2018, Order properly interpreted K.A.R. 82-3-111(b). Moreover, the Operator admitted it "has filed its Application for exception to the 10-year limit on TA status."<sup>39</sup> Thus, the Commission finds it properly applied the approval requirement of K.A.R. 82-3-111(b) to the Operator in this case. Neither the Operator's PFR nor its Reply to Staff's Response provided evidence that the Operator has obtained approval of its application for an exception to the 10-year time limit on TA status. Rather, the Operator has incorrectly asserted that production or mere *filing* of its application constitutes compliance with the *Penalty Order*.<sup>40</sup> Thus, not having plugged, returned to service, or

---

<sup>33</sup> *Trees Oil Co. v. State Corp. Comm'n*, 279 Kan. 209, 226, 105 P.3d 1269 (2005).

<sup>34</sup> K.S.A. 77-621(a)(1). See *Trees Oil Co.*, 279 Kan. at 226.

<sup>35</sup> K.S.A. 77-621(a)(2).

<sup>36</sup> Operator's Reply, ¶ 9.

<sup>37</sup> Emphasis added.

<sup>38</sup> Order, ¶ 6. (Emphasis added).

<sup>39</sup> Operator's Reply, ¶ 5.

<sup>40</sup> See ¶ 7 of this Order, *supra*.

obtained TA status for the subject wells,<sup>41</sup> the Commission finds the Operator is still out of compliance with the *Penalty Order*.

10. The Operator's claim that the January 25, 2018, Order is arbitrary, capricious, and unreasonable was not supported by citation to or analysis of any Kansas statutes, regulations or case law to support the claim.

11. Under Kansas law, "[a]n agency's action is arbitrary and capricious if it is unreasonable or without foundation in fact."<sup>42</sup> "So long as the record contains competent evidence in support of the decision of the Commission, its decision is reasonable."<sup>43</sup> The Commission finds the material facts in this matter are not in dispute. Neither the Operator's PFR nor its Reply attempted to refute the *Penalty Order's* finding that the Operator is responsible for the care and control of the four (4) subject wells. Likewise, neither the PFR nor the Reply asserted that the Operator had plugged the wells, returned the wells to service, or obtained approval for its application for an exception to the 10-year time limit on TA status. Thus, the Commission's January 25, 2018, Order is based on a foundation in fact, supported by competent evidence in the record, and therefore, is not arbitrary, capricious, unlawful, or unreasonable.

12. The Commission need not analyze Staff's unsupported assertion regarding the Commission's alleged "long-standing policy" which would "allow an operator to conduct the specific work necessary at a well to bring said well into compliance."<sup>44</sup> The fact remains that the Commission, in its *Penalty Order*, required the Operator to either plug the subject wells, return the subject wells to service, or obtain TA status for the subject wells. By ordering the Operator to take such action, the Commission has *necessarily* granted the Operator the authority to do whatever is

---

<sup>41</sup> See Operator's Reply, ¶ 12.

<sup>42</sup> *Sunflower Racing, Inc. v. Bd. of Cty. Comm'rs of Wyandotte Cty.*, 256 Kan. 426, 431, 885 P.2d 1233 (1994).

<sup>43</sup> *Sw. Kansas Royalty Owners Ass'n v. State Corp. Comm'n*, 244 Kan. 157, 165, 769 P.2d 1, 8-9 (1989).

<sup>44</sup> See Staff's Response, ¶14.

required to plug or return to service the subject wells, notwithstanding the Operator's suspended license. Staff incorrectly offered the general assertion that "production of hydrocarbons" by the Operator "should remain impermissible until Operator complies with the Penalty Order."<sup>45</sup> The Commission finds that production of hydrocarbons on the subject wells is the very definition of returning those wells to service and would cure the violations causing the license suspension in the first place. Nevertheless, any wells the Operator may have that are not the subject of this docket must be shut in until the Operator's license is reinstated.

13. Therefore, the Commission denies the Operator's PFR, and the license suspension remains in effect until such time as the Operator plugs the subject wells, returns the subject wells to service, or obtains approval of its Application for exception to the 10-year limit on TA status.

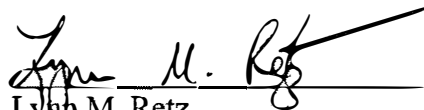
**THEREFORE, THE COMMISSION ORDERS:**

- A. VEEM Jade Oil & Gas LLC's Petition for Reconsideration is denied.
- B. This Order constitutes final agency action as defined by K.S.A. 77-607(b)(1). Lynn M. Retz, Secretary to the Commission, is the agency officer designated to receive service of a petition for judicial review on behalf of the agency.<sup>46</sup>
- C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

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

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: 03/08/2018 \_\_\_\_\_

  
Lynn M. Retz  
Secretary to the Commission

MJD

---

<sup>45</sup> Staff's Response, ¶ 15.

<sup>46</sup> K.S.A. 77-613(e).



**CERTIFICATE OF SERVICE**

18-CONS-3221-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 03/08/2018.

DIANA EDMISTON, EDMISTON LAW OFFICE, LLC  
EDMISTON LAW OFFICE LLC  
200 E. 1st Street  
Suite 301  
Wichita, KS 67202  
Fax: 316-267-6400  
diana@edmistonlawoffice.com

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SWARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
m.duenes@kcc.ks.gov

JONATHAN R. MYERS, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
Conservation Division  
266 N. Main St. Ste. 220  
WICHITA, KS 67202-1513  
Fax: 316-337-6211  
j.myers@kcc.ks.gov

/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe