

**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 an Order to Show Cause) Docket No: 18-CONS-3053-CSHO
Issued to Southwind Petroleum Corporation)
("Operator") for its Failure to Comply with) CONSERVATION DIVISION
K.A.R. 82-3-602 at the Dirks #27-2 Well in)
Rush County, Kansas.) License No: 6743

ORDER APPROVING SETTLEMENT AGREEMENT

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

1. On July 17, 2017, Commission Conservation Staff (Staff) filed a Motion for an Order to Show Cause, the Designation of a Prehearing Officer, and the Scheduling of a Prehearing Conference. Staff stated that “[o]n or about December 8, 2014, Operator filed Notice of Intent to Drill (C-1) Form and Application for Surface Pit (CDP-1) Form for its proposed Dirks #27-2 well....”¹ Staff approved the C-1 and CDP-4 for the subject well on December 8, 2014.² The Operator filed a Well Completion Form (ACO-1) on June 15, 2015, “indicating that the subject well was spud on January 8, 2015, and completed on March 19, 2015.”³ The Operator filed a Closure of Surface Pit Form (CDP-4) on March 31, 2016, stating that the pit was closed on October 22, 2015.⁴

¹ Staff’s Motion for an Order to Show Cause, the Designation of a Prehearing Officer, and the Scheduling of a Prehearing Conference, ¶ 7 (Jul. 17, 2017).

² *Id.*

³ *Id.*, ¶ 8.

⁴ *Id.*, ¶ 9.

2. On August 22, 2017, the Commission issued an *Order to Show Cause, Designating a Prehearing Officer, and Setting a Prehearing Conference*. The Order set a Prehearing Conference for October 2, 2017.⁵ Various continuances ensued.

3. On March 1, 2018, Staff filed a Motion to Approve Settlement Agreement with an attached proposed Settlement Agreement. The relevant terms of the Settlement Agreement state:

- a. Within 60 days of the effective date of this Agreement, Operator shall empty all pits at the Dirks #27-2 (API #15-165-221404), Eileen Hagerman #4-5 (API #15-145-21811), and Karst-Hoskins #27-3 (API #15-163-22109) locations (collectively “the subject locations”); close all pits; file complete, accurate pit closure forms for such closures; and file complete, accurate waste transfer forms as applicable.
- b. Operator shall be found to have committed one violation of K.A.R. 82-3-602(a)(1)(A). Within 90 days of the effective date of this Agreement, Operator shall pay a \$1,000 penalty for its violation of K.A.R. 82-3-602(a)(1)(A).
- c. If Operator fails to comply with any deadline [provided] in Paragraph 12 or 13 [of the Agreement], then Staff will recommend to the Commission that Operator be assessed an additional \$1,000 penalty for each missed deadline. Operator agrees that an additional \$1,000 penalty is a reasonable penalty for failure to comply with each missed deadline in Paragraph 12 or 13.
- d. If Operator fails to empty and close all pits at the subject locations within 90 days of the effective date of this Agreement, then Staff will recommend to the Commission that Operator be assessed an additional \$2,500 penalty and may request authorization for Staff to empty and close the pits and assess the costs to Operator. Operator agrees that an additional \$2,500 penalty and assessment of costs is a reasonable consequence for failure to empty and close the pits within 90 days.
- e. Operator understands that failure to address the matters set out in Paragraphs 11-15 [of the Agreement] and/or failure to pay any penalties or costs set out above could result in the suspension of its license without further notice, and the Commission may submit the matter for judicial enforcement or enforcement through the Kansas Attorney General’s Office.
- f. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring default proceedings pursuant to K.S.A. 77-520, this Agreement shall constitute a final resolution of this matter.⁶

⁵ *Order to Show Cause, Designating a Prehearing Officer, and Setting a Prehearing Conference*, Ordering Clause B (Aug. 22, 2017).

⁶ Settlement Agreement, pp. 3-4 (Mar. 1, 2018).

4. By signing the proposed Settlement Agreement, both Staff and the Operator have agreed that the Agreement “resolves issues specifically addressed between the parties” and “[t]he terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.”⁷

5. The Commission finds that the law encourages settlements.⁸ The Commission agrees that the Settlement Agreement attached to Staff’s Motion to Approve Settlement Agreement fully resolves the issues specifically addressed between the parties and constitutes a fair and reasonable resolution of this matter. The Settlement Agreement is incorporated into and made a part of this Order.

THEREFORE, THE COMMISSION ORDERS:

- A. Staff’s Motion to approve the attached Settlement Agreement is granted.
- B. The parties have 15 days, plus three days if mailed service, from the date of service of this Order to petition for reconsideration.⁹
- C. The Commission retains the 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; Keen, Commissioner

Dated: 04/17/2018



Lynn M. Retz
Secretary to the Commission

Date Mailed: 04/18/2018

MJD

⁷ Settlement Agreement, pp. 4-5.

⁸ *Bright v. LSI Corp.*, 254 Kan. 853, 858, 869 P.2d 686 (1994).

⁹ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 77-529(a)(1); *see* K.S.A. 66-118b.

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

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

In the matter of an Order to Show Cause issued)	Docket No. 18-CONS-3053-CSHO
to Southwind Petroleum Corporation)	
("Operator") for its failure to comply with)	CONSERVATION DIVISION
K.A.R. 82-3-602 at the Dirks #27-2 in Rush)	
County, Kansas.)	License No. 6743

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively) and Southwind Petroleum Corporation ("Operator"). Its effective date will be the date the Commission enters an order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 74-623, the Commission shall have the exclusive jurisdiction and authority to regulate oil and gas activities.
2. Pursuant to K.S.A. 55-150 *et seq.*, the Commission has authority to regulate the construction, operation, and abandonment of any well and the protection of the useable water of this state from any actual or potential pollution from any well.
3. Pursuant to K.S.A. 55-155, operators and contractors, as defined in K.S.A. 55-150, shall be licensed by the Commission.
4. Pursuant to K.S.A. 55-162, if the Commission finds that such person violated any provisions of K.S.A. 55-150 *et seq.*, the Commission shall take any appropriate action necessary to prevent pollution and protect water supply.

5. Pursuant to K.S.A. 55-164, in addition to any other penalty provided by law, the Commission, upon finding that an operator or contractor has violated the provisions of K.S.A. 55-150 *et seq.*, or any rule and regulation or order of the Commission, may impose a penalty not to exceed \$10,000, which shall constitute an actual and substantial economic deterrent to the violation for which the penalty is assessed. In the case of continuing violation, every day such violation continues shall be deemed a separate violation.

6. K.A.R. 82-3-602(a)(1)(A) provides that drilling pits shall be closed within 365 calendar days after the spud date of a well.

7. K.A.R. 82-3-602(c) provides that an operator of a pit shall file a pit closure form within 30 days after closure of the pit.

II. BACKGROUND

8. On July 17, 2017, Commission Staff filed a Motion for an Order to Show Cause, alleging Operator had failed to close a pit in violation of K.A.R. 82-3-602(a)(1)(A) and contrary to the representations made by Operator in its March 31, 2016, CDP-4 filing.

9. On August 22, 2017, the Commission issued an Order to Show Cause, setting an October 2, 2017, prehearing conference, subsequently continued to February 2, 2018.

10. Counsel for Operator and Litigation Counsel for Staff informally discussed the possibility of a settlement. During the informal discussions, Staff and Operator were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Operator for approval and signature.

III. TERMS OF THE STIPULATED SETTLEMENT AGREEMENT

11. 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 stipulations as set forth below.

12. Within 60 days of the effective date of this Agreement, Operator shall empty all pits at the Dirks #27-2 (API #15-165-22104), Eileen Hagerman #4-5 (API #15-145-21811), and Karst-Hoskins #27-3 (API #15-163-22109) locations (collectively "the subject locations"); close all pits; file complete, accurate pit closure forms for such closures; and file complete, accurate waste transfer forms as applicable.

13. Operator shall be found to have committed one violation of K.A.R. 82-3-602(a)(1)(A). Within 90 days of the effective date of this Agreement, Operator shall pay a \$1,000 penalty for its violation of K.A.R. 82-3-602(a)(1)(A).

14. If Operator fails to comply with any deadline in Paragraph 12 or 13, then Staff will recommend to the Commission that Operator be assessed an additional \$1,000 penalty for each missed deadline. Operator agrees that an additional \$1,000 penalty is a reasonable penalty for failure to comply with each missed deadline in Paragraph 12 or 13.

15. If Operator fails to empty and close all pits at the subject locations within 90 days of the effective date of this Agreement, then Staff will recommend to the Commission that Operator be assessed an additional \$2,500 penalty and may request authorization for Staff to empty and close the pits and assess the costs to Operator. Operator agrees that an additional \$2,500 penalty and assessment of costs is a reasonable consequence for failure to empty and close the pits within 90 days.

16. Operator understands that failure to address the matters set out in Paragraphs 11-15 above and/or failure to pay any penalties or costs set out above could result in the suspension of its license without further notice, and the Commission may submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.

17. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring default proceedings pursuant to K.S.A. 77-520, this Agreement shall constitute a final resolution of this matter.

IV. RESERVATIONS

18. This Stipulated Settlement Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

19. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

20. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

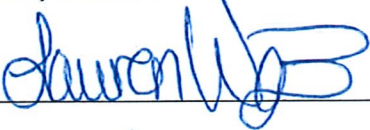
21. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court.

22. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties agree to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

23. This Settlement Agreement shall be binding on all parties upon signing.

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

Commission Staff
266 N. Main, Ste. 220
Wichita, Kansas 67202

By: 

Printed Name: Lauren Wright

Title: Litigation Counsel

Date: 03/01/18


Southwind Petroleum Corp.
1400 W. 14th Street
Wichita, Kansas 67203

By: 

Printed Name: ROBERT L. WILLIAMS, JR.

Title: AGENT

Date: FEB. 26, 2018


DANIEL WERNERT
WERNERT LAW LLC
ATTORNEY FOR SOUTHWIND PETROLEUM CORP.

CERTIFICATE OF SERVICE

18-CONS-3053-CSHO

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 04/17/2018.

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/S/ DeeAnn Shupe

DeeAnn Shupe