

STATE OF KANSAS

CORPORATION COMMISSION
CONSERVATION DIVISION
266 N. MAIN ST., STE. 220
WICHITA, KS 67202-1513



PHONE: 316-337-6200
FAX: 316-337-6211
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

NOTICE OF PENALTY ASSESSMENT

19-CONS-3060-CPEN

August 16, 2018

Rob Abernathy
ELM III Operating Company LLC
1249 E. 33rd
Edmond, OK 73013

This is a notice of a penalty assessment for violation(s) of Kansas Oil and Gas Conservation Statutes, Rules, and Regulations. For a full description of the penalty and process please refer to the Penalty Order that is attached to this notice.

IF YOU ACCEPT THE PENALTY:

You have been assessed a \$100 penalty. You have 30 days from the service date of this Penalty Order to pay the fine amount. Check or money order must be made payable to the Kansas Corporation Commission and mailed to the Conservation Division of the Kansas Corporation Commission at 266 N. Main St., Suite 220, Wichita, Kansas 67202. The payment must include a reference to the docket number of this proceeding. Payment by credit card may be made by calling the Conservation Division at 316-337-6200.

IF YOU CONTEST THE PENALTY:

You have the right to request a hearing. A written request for hearing must be made within 30 days after service of the Penalty Order setting forth the specific grounds upon which relief is sought. Respondent must submit the request to the Commission, at 266 N. Main St., Suite 220, Wichita, Kansas 67202. The Commission shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act within 30 days after receipt of such request. K.S.A. 55-164; K.S.A. 77-542; K.A.R. 82-1-215.

IF YOU FAIL TO ACT:

Failure to pay the fine amount, or in the alternative, provide a written request for a hearing, within thirty (30) days of service of the Penalty Order, will result in the attached Penalty Order becoming a Final Order and may result in additional sanctions, including additional monetary penalties, the suspension of your oil and gas operating license, and the shutting-in of all operations until compliance is obtained. K.S.A. 55-164; K.S.A. 77-537.

Respectfully,

Lauren N. Wright
Litigation Counsel
316-337-6200

**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 ELM III)	Docket No.: 19-CONS-3060-CPEN
Operating Company LLC ("Operator") to)	
comply with K.A.R. 82-3-111 at the Etzold)	CONSERVATION DIVISION
Unit South #5-4 in Seward County, Kansas.)	
)	License No.: 34545

PENALTY ORDER

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined the files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION

1. The Commission has the exclusive jurisdiction and authority to regulate oil and gas activities in Kansas.¹ 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."² Every operator conducting oil and gas activity in Kansas must be licensed by the Commission.³

2. 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.⁴ 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

¹ K.S.A. 74-623.

² K.S.A. 55-152.

³ K.S.A. 55-155.

⁴ K.S.A. 55-162; K.S.A. 55-164.

economic deterrent to the violation for which the penalty is assessed.”⁵ “In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.”⁶

3. Within 90 days after operations cease on any well drilled for the purpose of exploration, discovery, service, or production of oil, gas, or other minerals, the operator of that well shall: (1) plug the well, (2) return the well to service, or (3) file an application with the Conservation Division requesting temporary abandonment (“TA”) authority, on a form prescribed by the Conservation Division.⁷ No well shall be temporarily abandoned unless first approved by the Conservation Division.⁸ A well shall not be eligible for TA 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.⁹ The failure to file a notice of temporary abandonment shall be punishable by a \$100 penalty,¹⁰ and the failure to obtain approval of temporary abandonment status shall subject the Operator to additional administrative action.¹¹

4. K.A.R. 82-3-111(e) provides an exemption for certain wells that are (1) fully equipped for production of oil or gas or for injection; (2) capable of immediately resuming production of oil or gas or of injection; (3) subject to a valid continuing oil and gas lease; when (4) the cessation period for the well is less than 365 days; and (5) the well is otherwise in full compliance with all of the Commission’s regulations.

II. FINDINGS OF FACT

5. The Operator conducts oil and gas activities in Kansas under active license number 34545.

⁵ K.S.A. 55-164.

⁶ *Id.*

⁷ See K.A.R. 82-3-111(a).

⁸ K.A.R. 82-3-111(b).

⁹ *Id.*

¹⁰ *Id.*

¹¹ K.S.A. 55-164; K.A.R. 82-3-111(b).

6. The Operator is responsible for the care and control of the Etzold Unit South #5-4 (“the subject well”), API #15-175-21001-00-01, located in Section 27, Township 33 South, Range 34 West, Seward County, Kansas.

7. On June 07, 2018, Commission records indicated that the subject well had been inactive and unplugged for longer than the 90 days allowed by K.A.R. 82-3-111 and that the well was not exempt pursuant to K.A.R. 82-3-111(e). The well had also not been approved for temporary abandonment status. Thus, District Staff sent a letter to the Operator, requiring the Operator to bring the subject well into compliance with K.A.R. 82-3-111 by July 5, 2018.¹²

8. Because the deadline in the letter passed and the violation had not been resolved, on August 03, 2018, District Staff inspected the subject well, verifying that the well continued to be inactive and unplugged.¹³

III. CONCLUSIONS OF LAW

9. The Commission finds and concludes that it has jurisdiction over the Operator and this matter under K.S.A. 55-152 and K.S.A. 74-623.

10. The Commission finds and concludes the Operator committed one violation of K.A.R. 82-3-111 because the subject well has been inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for TA status.¹⁴

THEREFORE, THE COMMISSION ORDERS:

A. The Operator shall pay a \$100 penalty.

B. The Operator shall plug the subject well, or return the well to service, or obtain TA status for the well if eligible. Obtaining TA status shall include application for, and Commission approval of, an exception to the 10-year limit on TA status if applicable.

¹² Exhibit A.

¹³ Exhibit B.

¹⁴ K.S.A. 55-164; K.A.R. 82-3-111(b).

C. If no party requests a hearing, and the Operator is not in compliance with this Order within 30 days from the date of service of this Order, then the Operator's license shall be suspended without further notice. The notice and opportunity for a hearing on this Order shall constitute the notice required by K.S.A. 77-512 regarding license suspension. The Commission may impose further sanctions, including additional monetary penalties and any other remedies available to the Commission by law, without further notice.

D. Checks and money orders shall be payable to the Kansas Corporation Commission. Payments shall be mailed to the Kansas Corporation Commission at 266 N. Main St., Suite 220, Wichita, Kansas 67202. The payment must include a reference to the docket number of this proceeding. Credit card payments may be made by calling the Conservation Division at 316-337-6200.

E. Any party may request a hearing on the above issues by submitting a written request, pursuant to K.S.A. 55-164, K.S.A. 77-537, and K.S.A. 77-542, setting forth the specific grounds upon which relief is sought, to the Commission at 266 N. Main St., Suite 220, Wichita, Kansas 67202, within 30 days from the date of service of this Order. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Operator's right to a hearing.

F. A corporation shall appear before the Commission by a Kansas licensed attorney.¹⁵

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

¹⁵ K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2).

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 08/16/2018



Lynn M. Retz
Secretary to the Commission

Mailed Date: 08/17/2018

LW



Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Dwight D. Keen, Commissioner

Corporation Commission

Jeff Colyer, M.D., Governor

NOTICE OF VIOLATION

ELM III OPERATING COMPANY LLC
1249 E. 33RD
EDMOND OK 73013

June 07, 2018
KCC Lic.-34545

RE: **TEMPORARY ABANDONMENT**
API Well No. 15-175-21001-00-01
ETZOLD UNIT SOUTH 5-4
27-33S-34W, SWSNW
SEWARD County, Kansas

Operator:

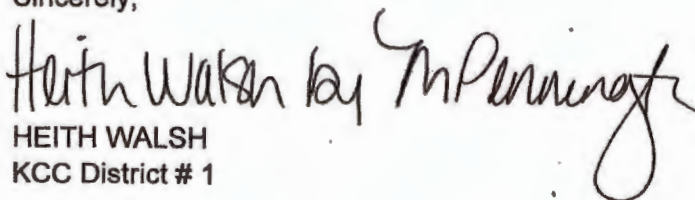
On June 07, 2018, a file review documented a probable violation of the following regulation at the referenced well:

- K.A.R. 82-3-111. Within 90 days after operations cease on a well, the operator must return the well to service, plug the well, or obtain approval for temporary abandonment status.

**Failure to remedy this violation
by JULY 05, 2018
shall be punishable by a \$100 penalty.**

You may contact me if you have any questions.

Sincerely,


HEITH WALSH
KCC District # 1

KCC OIL/GAS REGULATORY OFFICES

Date: 8/3/18

District: 1

Case #: _____

- ☒ New Situation
☒ Response to Request
☐ Follow-Up

- ☐ Lease Inspection
☐ Complaint
☒ Field Report

Operator License No: 34545
 Op Name: Elm III Operating Com. LLC
 Address 1: 1249 E. 33RD
 Address 2: _____
 City: Edmond
 State: OK Zip Code: 73013 -
 Operator Phone #: (405) 232-0418

API Well Number: 15-175-21001-00-01
 Spot: SW SW SE NW Sec 27 Twp 33 S Rng 34 ☐ E / ☒ W
2700 Feet from ☐ N / ☒ S Line of Section
3657 Feet from ☒ E / ☐ W Line of Section
 GPS: Lat: 37.14856 Long: 101.14856 Date: 8/3/18
 Lease Name: ETZOLD Unit South Well #: 5-4
 County: Seward

Reason for Investigation:

Check well status

Problem:

Well is inactive

Persons Contacted:

None

Findings:

8/3/18 10:30am

ETZOLD Unit South 5-4 is a injection well. The well is not in use and the flow line to the well head has been unhooked and the valves are closed.

Action/Recommendations:

Follow Up Required ☐ Yes ☐ No ☒ ☐

Date: _____

Send to Legal

Verification Sources:

Photos Taken: 2

- | | | |
|--|---|-------------------------------------|
| <input checked="" type="checkbox"/> RBDMS | <input type="checkbox"/> KGS | <input type="checkbox"/> TA Program |
| <input type="checkbox"/> T-I Database | <input type="checkbox"/> District Files | <input type="checkbox"/> Courthouse |
| <input checked="" type="checkbox"/> Other: <u>On Site Inspection</u> | | |

By: _____

Heith Walsh

Retain 1 Copy District Office
 Send 1 Copy to Conservation Division

Form: _____



8/3/18 10:30am

Elm III Operating Company, LLC

ETZOLD Unit South 5-4

Seward Co.

27-33-34

Facing South in picture showing the wellhead is unhooked from the flow line.

Exhibit B
Page 2 of 2

CERTIFICATE OF SERVICE

19-CONS-3060-CPEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 08/16/2018.

ROB ABERNATHY
ELM III OPERATING COMPANY LLC
1249 E 33rd
EDMOND, OK 73013

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l.wright@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe