

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

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

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

**OPERATOR’S REPLY TO STAFF’S RESPONSE TO
OPERATOR’S MOTION FOR SUMMARY ORDER ON THE PLEADINGS**

Benjamin M. Giles (“Operator”) submits this reply to Staff’s response to Operator’s motion for summary order on the pleadings. The unrebutted evidence in the record shows that the Flying J Geer #2 OWWO (“Subject Well”) is—and at all relevant times has been—compliant with K.A.R. 82-3-104, -106 and -111. Staff alleges that there are factual issues necessitating an evidentiary hearing, however, none of the alleged factual disputes are substantive or material to resolving this matter. As such, Kansas statutes permit the Commission to grant Operator’s motion for summary order on the pleadings (“Motion”).

K.A.R. 82-3-104. Pollution; Prevention

The genesis of this matter is a surface casing exception the Director granted¹ to Operator for the Subject Well on May 14, 2013—more than four years ago. The surface casing exception required Operator to cement the long-string casing in the Subject Well from a depth of at least 250’ to surface. The overwhelming and unrebutted evidence in the record demonstrates that this requirement was satisfied on July 23, 2014—more than three years ago. Although the surface casing exception was granted pursuant to K.A.R. 82-3-106(f), Staff alleges the Subject Well is not

¹ Pursuant to K.A.R. 82-3-106(f), upon written request, the Director may provide an exception to the requirements of surface casing and cement regulations.

compliant with K.A.R. 82-3-104, which requires any person who drills a well to seal off all formations penetrated to prevent migration of gas, oil and water. The un rebutted evidence also shows that the Subject Well is cased and cemented such that all formations penetrated are sealed off in compliance with K.A.R. 82-3-104.

The cement ticket in the record shows that cement was circulated behind the long-string casing in the Subject Well from bottom to top (~2,540'). Jacob Storm, manager of Consolidated Oil Well Services, has attested to the truth and correctness of the cement ticket. Operator has attested that the volume of cement utilized, when taking into consideration the engineering of the Subject Well, is sufficient to circulate cement behind the entire length of the long-string casing to surface. The cement bond log in the record also shows that there is cement behind the long-string casing of the Subject Well from bottom (~2,540') to 30-50' from surface. Jerry Sullivan, President of Dyna-Log, has attested to the truth and correctness of the bond log. Mr. Sullivan has also testified that the bond log, together with the cement ticket and existing surface casing are satisfactory to show that Operator has satisfied both the requirements of the surface casing exception and K.A.R. 82-3-104. Finally, it is un rebutted that the fluid level in the Subject Well is 1,800' from surface, which mitigates against any concerns regarding pollution of fresh water or waste of oil and gas. Simply put, the un rebutted evidence overwhelming shows that the Subject Well is, and has for over three years, been compliant with Commission regulations at issue.

Rather than attempt to rebut the evidence, Staff assails the credibility of Operator. Staff does not, however, challenge the veracity of the affidavits given by Jacob Storm and Jerry Sullivan, the independent third-parties who have attested to the truth and correctness of the evidence that irrefutably demonstrates that the cement behind the long-string casing in the Subject Well satisfies the requirements of the surface casing exception and K.A.R. 82-3-104 and -106. Staff's suspicions

of Operator², founded or not, are insufficient to rebut the affidavits of Jacob Storm and Jerry Sullivan. There is no reason for the Commission to conduct an evidentiary hearing in this matter, because the evidence and testimony that would be presented at a hearing is identical to the evidence and testimony attached to Operator's Motion and presently before the Commission.

On the face of the pleadings, the only facts alleged to be in dispute are whether Operator called in the cement on the long-string casing over three years ago, and whether Staff had the opportunity to witness the recent cement bond log test. These facts are immaterial to whether the long-string casing in the Subject Well is cemented in from bottom-to-top in compliance with the requirements of the surface casing exception and K.A.R. 82-3-104 and -106—which the evidence irrefutably demonstrates to be the case. To resolve these alleged factual disputes is to resolve nothing, and an evidentiary hearing to resolve immaterial facts is not in the interest of Operator, Staff or the Commission.

Operator has been penalized and fined \$2,500 for allegedly failing to comply with K.A.R. 82-3-104. The un rebutted evidence shows that the Subject Well has been cased and sealed off in since July 23, 2014. No violation of K.A.R. 82-3-104 or -106, therefore, could have occurred as of the date of the penalty order. Under K.S.A. 55-706³, the Commission has the authority to weigh the un rebutted evidence before it and enter a summary order on the pleadings. As such, the

² Staff complains that a "hand-written note" on the cement ticket indicating cement circulated to surface is somehow evidence of foul play. But the entire contents of the cement ticket are hand-written, so it is unclear what significance can be attached to the hand-written portion Staff cites to. In any event, Jacob Storm has attested to the truth and correctness of the cement ticket, and Staff does not challenge his affidavit. Staff also complains that the cement bond log was somehow performed "utilizing unorthodox methodology." Staff does not explain what was unorthodox about the test they admittedly did not witness, instead they point to two small portions of the log well below 250' that appear similar. Regardless, Jerry Sullivan has attested that the bond log does not contain irregularities, and Staff does not challenge his affidavit. Lastly, Staff cites to a 2015 Final Order from the Kansas Board of Accountancy as a basis for its suspicions concerning Operator. Operator does not dispute that Staff does not trust him, as evidenced by the three successive conditions Staff placed on "obtaining" TA status for the Subject Well prior to initiating this penalty docket. Operator contends that Staff's distrust merely supports a finding that it acted in an arbitrary, capricious and unreasonable manner towards Operator.

³ See also, K.A.R. 82-1-232(b)(2).

Commission should grant Operator's Motion, rescind the penalty order and void the associated fines.

K.A.R. 82-3-111. Temporarily Abandoned Wells; Penalty; Plugging

It is un rebutted that Operator's temporary abandonment application for the Subject Well has been pending with Staff since January 17, 2017. K.A.R. 82-3-111 requires that:

“Within 90 days after operations cease on any well . . . the operator of that well shall perform either of the following: (1) plug the well; or (2) **file** an application with the conservation division requesting temporary abandonment authority. . .”

A plain reading of this regulation shows that the Subject Well became compliant with K.A.R. 82-3-111 the moment Operator filed a TA application for the Subject Well—more than 6 months before the penalty order in this docket was entered. Staff has now had nearly 9 months to take action on that TA application, and has refused to do so. It is entirely unfair, unreasonable, arbitrary and capricious for Staff to indefinitely hold Operator's TA application in abeyance and then charge him with a penalty when he has done exactly what the regulation requires.

Staff's position is that Operator failed to “obtain” TA status for the Subject Well in violation of K.A.R. 82-3-111. The word “obtain” does not appear anywhere in K.A.R. 82-3-111. What Staff has done, is improperly attempt to amend the requirements of K.A.R. 82-3-111 from:

“(2) **file** an application with the conservation division requesting temporary abandonment authority . . .”

to:

“(2) **obtain** temporary abandonment authority from the conservation division.”

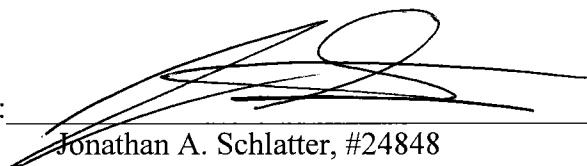
Staff exceeds its authority by impermissibly modifying the requirements of Commission regulations in order to charge a penalty to Operator when no penalty exists. Under no circumstance should Operator be penalized for doing exactly what Commission regulations prescribe. Again, the Commission has the authority to weigh the un rebutted evidence before it and enter a summary

order on the pleadings. As such, the Commission should grant Operator's Motion, rescind the penalty order and void the associated fines.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED

By: _____




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VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

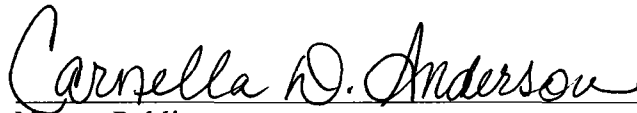
Jonathan A. Schlatter, being of lawful age and being first duly sworn upon his oath, deposes and says:

That he is the attorney for Benjamin M. Giles; that he has read the above and forgoing pleading and is familiar with the contents and that the statements made therein are true and correct to the best of his knowledge and belief.

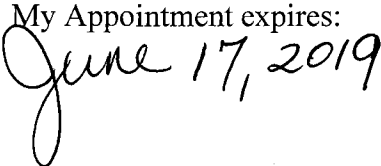


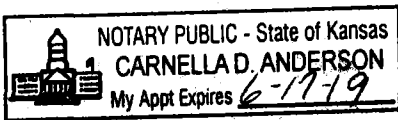
Jonathan A. Schlatter

SUBSCRIBED AND SWORN to before me this 6th day of September, 2017.



Notary Public

My Appointment expires:




CERTIFICATE OF SERVICE

I, Jonathan A. Schlatter, hereby certify that on this 6th day of September, 2017, I caused the original of the foregoing pleading to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and emailed true and correct copies of the same to the following individual:

Joshua Wright, Litigation Counsel
Kansas Corporation Commission
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courtesy copy to:

Michael Duenes, Prehearing Officer
Kansas Corporation Commission
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Jonathan A. Schlatter, #24848