

Conservation Division
266 N. Main St., Ste. 220
Wichita, KS 67202-1513



2017-09-28 14:20:06
Kansas Corporation Commission
/s/ Lynn M. Retz

Phone: 316-337-6200
Fax: 316-337-6211
<http://kcc.ks.gov/>

Pat Apple, Chairman
Shari Feist Albrecht, Commissioner
Jay Scott Emler, Commissioner

Sam Brownback, Governor

NOTICE OF PENALTY ASSESSMENT

18-CONS-3160-CPEN

This is a notice of a penalty assessment for violation 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:

The Penalty Order may include the assessment of a monetary penalty. You have 30 days from the service date of this Penalty Order to pay \$500. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Conservation Division of the Kansas Corporation Commission at 266 N. Main St., Suite 220, Wichita, Kansas 67202, and must include a reference to the docket number of this proceeding. Credit card payment may be made by calling the Conservation Division at 316-337-6200.

The Penalty Order may require you to perform certain actions by deadlines stated therein. Compliance must be obtained by the applicable deadlines to avoid further compliance actions. If you have any questions about how compliance can be obtained, you may contact the legal department or the appropriate department or district office.

IF YOU CONTEST THE PENALTY:

You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Respondent must submit an original and seven copies of the request to the Commission, at 266 N. Main St., Suite 220, Wichita, Kansas 67202, within 30 days, plus three days to account for the mail, from the mailed date on the last page of the Penalty Order. K.A.R. 82-1-215.

IF YOU FAIL TO ACT:

Failure to either comply with the penalty order or request a hearing will result in the attached Penalty Order becoming a Final Order. Failure to comply or request a hearing by the deadlines in the Penalty Order 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.

**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.: 18-CONS-3160-CPEN
Giles ("Operator") to comply with K.A.R.)	
82-3-604 at the Ralston Lease Tank Battery in)	CONSERVATION DIVISION
Butler County, Kansas.)	
_____)	License No.: 5446

PENALTY ORDER

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

I. JURISDICTION

1. K.S.A. 74-623 provides that the Commission has the exclusive jurisdiction and authority to regulate oil and gas activities. K.S.A. 55-152 provides that 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. The Commission has licensing authority pursuant to K.S.A. 55-155.

2. K.S.A. 55-162 and K.S.A. 55-164 provide the Commission with authority to issue a Penalty Order regarding a violation of Chapter 55 of the Kansas Statutes Annotated, or of any rule, regulation, or order of the Commission. A Penalty Order may include a monetary penalty of up to \$10,000, and each day of a continuing violation constitutes a separate violation.

3. K.A.R. 82-3-604(a) provides that each operator shall notify the appropriate district office within 24 hours of discovery or knowledge of any oil field-related discharge of five or more barrels of saltwater, oil, or refuse into an emergency pit or diked area.

4. K.A.R. 82-3-604(b) provides that each operator of an emergency pit or diked area shall remove any fluid from the pit or diked area within 48 hours after discovery or knowledge, or as authorized by the appropriate district office.

5. K.A.R. 82-3-604(c) provides that for the purposes of this regulation, the point of “discovery or knowledge” shall mean the point when the operator know or reasonably should have known of the discharge.

6. K.A.R. 82-3-604(d) provides in pertinent part that failure to timely notify the district office in accordance with subsection (a) shall be punishable by a \$250 penalty for the first violation, a \$500 penalty for the second violation, and a \$1,000 penalty and operator license review for the third violation.

II. FINDINGS OF FACT

7. Operator conducts oil and gas activities in Kansas under license number 5446, and is responsible for the care and control of the Ralston lease, located in Section 10, Township 26 South, Range 4 East, Butler County.

8. On August 23, 2017, District #2 Staff conducted an inspection of the Ralston lease and found the diked area around the Ralston lease tank battery full of fluid, with oil floating on the surface. Staff documented its findings in an inspection report, including photographs.¹ Staff contacted Operator, stating that the fluid inside the dike needed to be removed.²

9. On August 29, 2017, Staff sent Operator a Notice of Violation letter, requiring the return of an Unreported Spill Data Form and requesting timely, appropriate remediation.³

10. On September 1, 2017, Operator submitted an Unreported Spill Data Form, indicating that 75 barrels of fluid, consisting of rainwater, had been recovered from an incident

¹ See Exhibit A.

² See Exhibit B.

³ See Exhibit C.

discovered August 28, 2017. Staff's sample of the fluid inside the diked area tested at 17,500 parts per million of chlorides.⁴ Under K.A.R. 82-3-101(a)(34), "fresh water" means water containing not more than 500 parts per million of chlorides.

11. On September 7, 2017, Staff conducted an inspection of the Ralston lease tank battery and found oily fluid remaining inside the diked area. Staff took photographs of the area.⁵

III. CONCLUSIONS OF LAW

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

13. The above findings of fact are sufficient evidence to support the conclusion that Operator committed one violation of K.A.R. 82-3-604(a) because Operator did not notify the appropriate District office of an oil field-related discharge into a diked area in a timely manner.

14. The above findings of fact are sufficient evidence to support the conclusion that Operator committed one violation of K.A.R. 82-3-604(b) because Operator failed to remove fluid from a diked area within 48 hours after discovery or knowledge, or as authorized by the appropriate district office.

THEREFORE, THE COMMISSION ORDERS:

- A. Operator shall pay a \$250 penalty for its violation of K.A.R. 82-3-604(a).
- B. Operator shall pay a \$250 penalty for its violation of K.A.R. 82-3-604(b).
- C. Operator shall remove all fluids remaining in the diked area around the Ralston lease tank battery.
- D. Operator shall file a Waste Transfer (CDP-5) Form for the fluids already removed from the diked area, and a separate CDP-5 Form for any additional fluids removed.

⁴ See Exhibit D.

⁵ See Exhibit E.

E. If no party requests a hearing, and Operator is not in compliance with this Order within 30 days, then 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.

F. Checks and money orders shall be payable to the Kansas Corporation Commission. For credit card payments, include the type of card (Visa, MasterCard, Discover, or American Express), account number, and expiration date. 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.

G. 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.

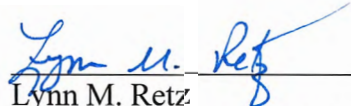
H. If a party requests a hearing, a corporation or similar entity shall not be permitted to enter an appearance except by its attorney. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record.

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

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: SEP 28 2017


Lynn M. Retz
Secretary to the Commission

Mailed Date: September 28, 2017

JDW

KCC OIL/GAS REGULATORY OFFICES

Date: 09/07/17

District: 02

Case #: _____

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

- ☒ Lease Inspection
☐ Complaint
☒ Field Report

Operator License No: 5446

Op Name: Giles, Benjamin M.

Address 1: 346 S. Lulu

Address 2: _____

City: Wichita

State: KS Zip Code: 67211

Operator Phone #: (316) 265-1992

API Well Number: _____

Spot: SE Sec 10 Twp 26 S Rng 4 ☒ E ☐ W

Feet from ☐ N ☐ S Line of Section

Feet from ☐ E ☐ W Line of Section

GPS: Lat: _____ Long: _____ Date: _____

Lease Name: Ralston Well #: Tank Battery

County: Butler

Reason for Investigation:

Lease/pit inspection

Problem:

Unreported spill at Tank Battery

Persons Contacted:

N/A

Findings:

- Discovered emergency pit full of fluid with oil floating on surface on 8/23/2017.
- Water sample pulled from surface indicated a chloride concentration of approx. 16000 ppm
- No spill report was made to the District 2 office. District Supervisor contacted Dusty Green on 8/28/2017 and instructed him to pick up all free fluids
- Operator's field staff reported the pit was emptied and fluid hauled off on 8/31/2017 and 9/1/2017. It is unknown where fluid was transported to. There remained heavy oil staining in bottom of pit. Operator indicated to District 2 staff that "Bag-Sorb" or "Oil-Hawg" would be applied to the remaining stain in pit/around water tank --- No evidence of this work being performed on 9/7/2017 inspection
- From previous inspections:
 - 2/22/2017 - Unreported spill discovered, fluid sample test for chlorides indicate a concentration of approx. 3457 ppm. NOV sent to operator
 - 5/23/2017 - Pit was observed full of fluid with a light oil sheen. Titration strip test of water indicated a chloride concentration of approx. 945 ppm. Evidence that fluid had reached capacity and was overflowing a low spot on the South end of dike and onto a large historic scar
 - 7/3/2017 - Pit was observed full of fluid. More evidence that pit is overflowing low spot on south side of dike wall, indicated by oil staining on both sides of the dike and vegetation outside of dike. Fluid in pit appeared clear with no evidence of oil sheen on fluid
- *** Continued in Action/Recommendations section

Action/Recommendations:

Follow Up Required ☒ Yes ☐ No ☐

Date: _____

- *** Continued from above:
- On the "Unreported Spill Data" form filled out by operator and returned to the District 2 office, Operator states that the material spilled into pit is "Rain-Water". As rain water does not contain brine or crude oil, it is evident that operator is not acting with reasonable diligence to prevent spills and safely confine oil field fluids.
- Operator also appears to admit that the emergency pit is not only being filled up with fluid but is routinely draining/removing the fluid after discovery or knowledge. Operator is also conveying that some of the oil-field refuse in the pit is 1-2 years old.
- KCC field staff has documented pit conditions on at least 11 inspections in 2017.
- Unreported spill NOV sent to operator on 8/29/2017
- Submit field report to District 2 Supervisor
- Recommend penalty for violation of K.A.R. 82-3-604 (b), spill notification. This is the Operator's 2nd confirmed unreported spill/discharge in this emergency pit in 2017.

Verification Sources:

Photos Taken: Yes

- ☒ RBDMS ☐ KGS ☐ TA Program
☐ T-I Database ☒ District Files ☐ Courthouse
☐ Other: _____

By: Jonathan Hill
ECRS

Retain 1 Copy District Office
 Send 1 Copy to Conservation Division

Form: _____

Ben Giles – Ralston tank battery
SE 10-26S-4E, 8/23/2017
Unreported spill or illegal dumping
Unknown blue fluid in pit with oil





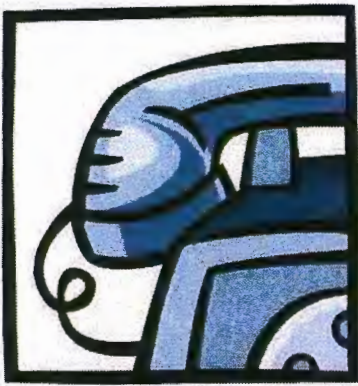
Ben Giles – Ralston tank battery
SE 10-26S-4E, 8/23/2017
Unreported spill or illegal dumping
Unknown blue fluid in pit with oil
Water sampled indicated chloride concentration
of 17500 ppm

Ben Giles – Ralston tank battery

SE 10-26S-4E, 8/23/2017

Low area on dike wall with evidence of
overflow onto old scar





RECORD OF PHONE CONVERSATION

STAFF: _____ Jeff Klock _____

DATE: _____ 8-29-2017 _____

TIME: _____ 3:40 PM _____

PERSON CONTACTED _____ Dusty / Field Man for Ben Giles, 316-655-7542

REGARDING:

WELL NAME / LEASE NAME _____ Ralston Tank Battery _____

LOCATION: _____ SE/4 Sec. 10-26-4E, BU Co. _____

RECORD OF CONVERSATION:

On 8/23 Jon Hill had performed a lease inspection at the Ralston tank battery and found and unreported spill. A water sample was collected from the dike area and tested 17,500 ppm CL-. Jon had left photos of the spill with me.

I contacted Dusty to notify him that there was an unreported spill in the dike and that the fluid needed to be picked up now. I also told Dusty that the water tested 17,500 and asked if any chemical was in the water that he knew of. Jon had pointed out that the water was a blue color like some chemical was making the water blue. Dusty said he wouldn't know why it was a blue color but would have a truck out to pick up the fluid. I also told Dusty to get the rest of the dike cleaned up and apply sphag. He said that he would.

*Note: This is certainly a situation that could easily be turned in for penalty for an unreported spill. I will follow up to see if Dusty follows through with spill clean-up and we will also send the unreported spill form to Mr. Giles.

Conservation Division
District Office No. 2
3450 N. Rock Road
Building 600, Suite 601
Wichita, KS 67226



Phone: 316-337-7400
Fax: 316-630-4005
<http://kcc.ks.gov/>

Pat Apple, Chairman
Shari Feist Albrecht, Commissioner
Jay Scott Emler, Commissioner

Sam Brownback, Governor

August 29, 2017

NOTICE OF VIOLATION

Received
KCC District #2
SEP 01 2017
Wichita, KS

Benjamin M. Giles
346 S. Lulu
Wichita, KS 67211

RE: UNREPORTED SPILL
Well Name: Ralston TB
Legal: SE/4 10-26-4E
County: Butler
License #: 5446

Dear Sir:

Following a recent lease inspection conducted on August 23, 2017, it has been determined that you are currently in violation of the General Rules and Regulations of the Kansas Corporation Commission regarding the conservation of crude oil and natural gas. Specifically, you are in violation of K.A.R. 82-3-603 (b) (2):

The operator shall notify the appropriate district of any escape of saltwater, oil, or refuse that meets the definition of "spill" in K.A.R. 82-3-101. This notification shall meet the Requirements of K.A.R. 82-3-603 (c) and shall be made no later than the next business day following the date of discovery or knowledge of the spill.

Enclosed is an Unreported Spill Data Form to be completed by the operator and returned to the District #2 office within **five (5) days of the date of this letter**. A self-addressed envelope is enclosed for your convenience.

Prior to commencing remediation of the affected area, contact the District #2 office for approval of your remediation plan. Failure to remediate the contaminated soil according to KCC requirements, and in a time frame acceptable to the KCC, will result in this matter being referred to our legal staff with a recommendation for an additional penalty and other possible actions.

Your cooperation in this matter is appreciated. If you have any questions, please contact me at this number 316-337-7400.

Sincerely,
Jonathan Hill, ECRS

UNREPORTED SPILL DATA
(TO BE COMPLETED BY SPILLER)

Received
KCC District #2
SEP 01 2017
Wichita, KS

Operator: Benjamin M. Giles

Approximate Spill Date: Last Rain Approximate Time: _____

Spill Discovery Date: 8-28-17 Time: _____

Person to Contact Regarding Spill: Ben Giles & Dusty Green

SPECIFIC INFORMATION REGARDING SPILL

Lease: RALSTON Legal: 6W/4 Sec 10-26-4E

Location of Spill: Tank Battery County: Butler

Type of Material Spilled: Rain Water Scum of Oil

Amount of Material Spilled: 75 barrels Water oil around water tank

Amount of Spill Recovered: 75 barrels is old - 1-2 years

Cause of Spillage: Rain Not current

Did spill material enter any waterway? No will be covered with absorbent

Name of waterway involved: None Bag-socks or Oil Haug

How was spilled material contained and cleaned up? Water sucked up
and hauled off Covered Oil with Absorbent
Covered pit

Extent of damages caused by spill: None

Was the spill reported to the KCC or any other regulatory agency? No It is Rainwater

Why wasn't the spill reported? Pit filled with Rainwater
that did not get pumped out

Date: 8-31-17

Signature of Benjamin M. Giles
Person Filing Report

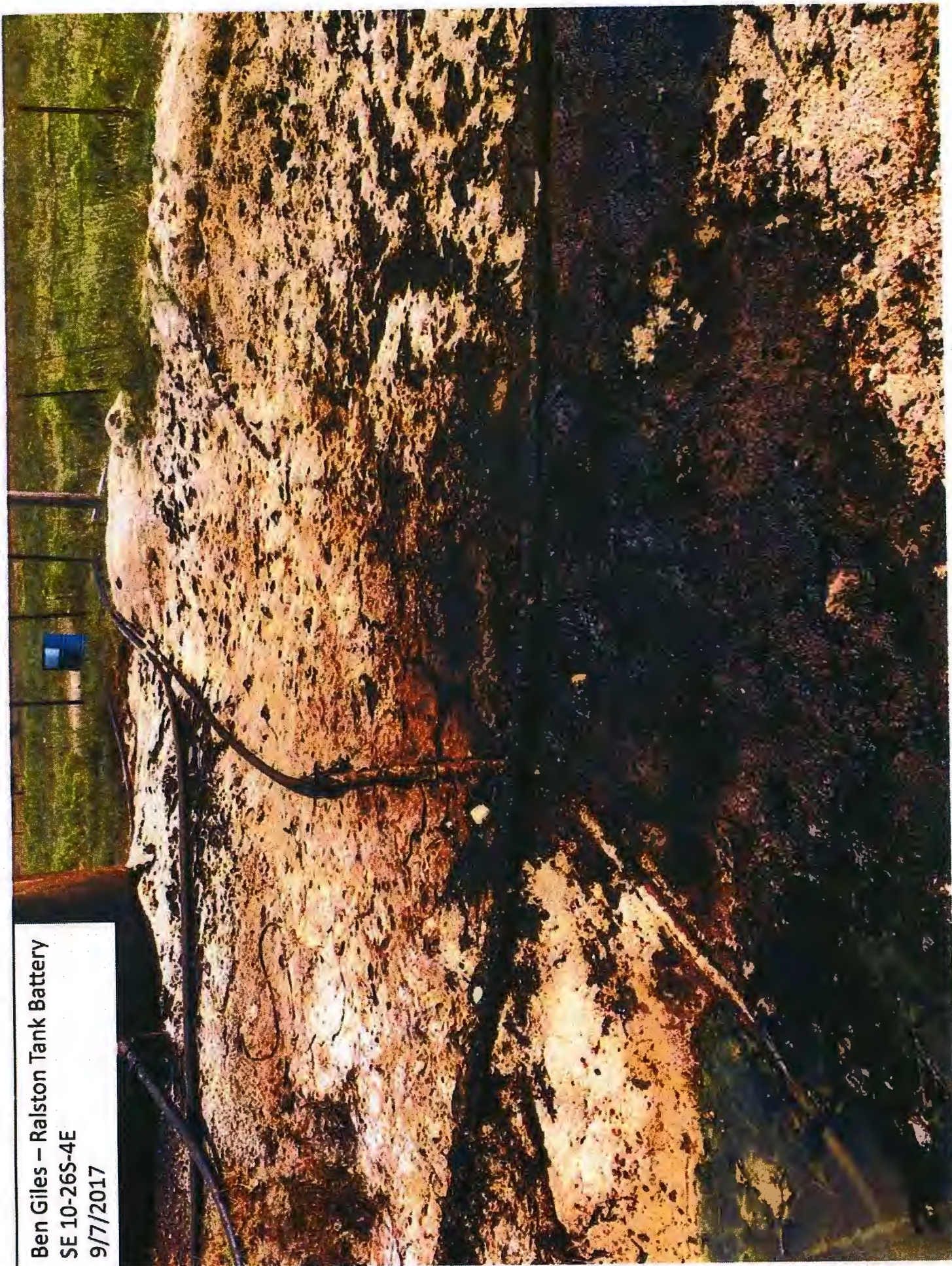
Ben Giles – Ralston Tank Battery
SE 10-26S-4E
9/7/2017



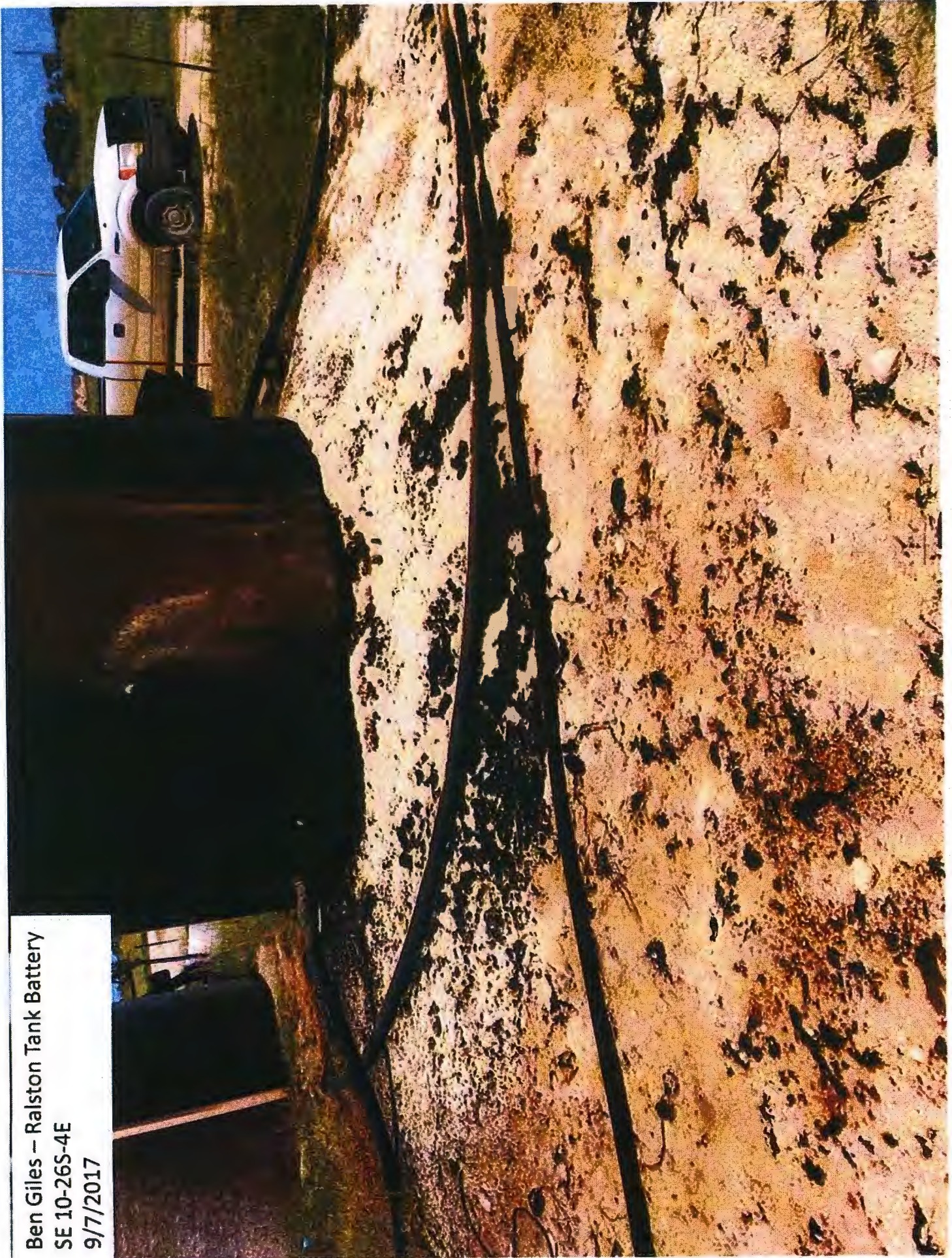
Ben Giles – Ralston Tank Battery
SE 10-26S-4E
9/7/2017



Ben Giles – Ralston Tank Battery
SE 10-26S-4E
9/7/2017



Ben Giles – Ralston Tank Battery
SE 10-26S-4E
9/7/2017



CERTIFICATE OF SERVICE

I certify that on 9/28/17, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

Benjamin M. Giles
346 S. Lulu
Wichita, Kansas 67211

and delivered by email to:

Dan Fox, Jeff Klock
KCC District #2

Joshua D. Wright, Litigation Counsel
KCC Central Office

/s/ Paula J. Murray
Paula J. Murray
Legal Assistant
Kansas Corporation Commission