

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Failure of Haas Petroleum,	)	Docket No. 23-CONS-3345-CPEN
LLC (Operator) to Comply with K.A.R. 82-3-120	)	
and K.A.R. 82-3-133 by Operating Under a	)	CONSERVATION DIVISION
Suspended and Revoked License.	)	License No. 33640

**RESPONSE TO PETITION FOR RECONSIDERATION**

COME NOW Haas Petroleum, LLC ("Haas Petroleum"), and in response to Staff's Petition for Reconsideration of Final Order, Haas Petroleum states:

1. The Commission's final order violates the due process rights of not less than five lease owners and operators who are not parties to these proceedings. During the hearing in this Docket Haas Petroleum warned the Commission that many of the wells which were listed on Haas Petroleum's well inventory had been assigned to unrelated third parties and cautioned the Commission against issuing orders affecting the wells without providing these unrelated third parties who owned and operated said wells notice and an opportunity to respond. The Commission nevertheless included the following in ordering Paragraph A of its Final Order,

. . . however, since the wells remain on Operator's license, which is suspended and expired, operation of the wells that remain on Operator's license is accordingly prohibited. Staff may keep such wells shut-in and sealed until placed on a current, active license.

There would be no issue with stating, since Haas Petroleum doesn't have an operator's license, Haas Petroleum is prohibited from operating these or any wells (i.e. an order affecting the operator) but the Final Order goes beyond that and includes the above statement which affects the wells at issue and **not** Haas Petroleum.

There is a significant difference between taking action affecting an operator, and taking action

affecting a well and the parties who are entitled to notice of each of such actions can be different. In this case, there are at least five unrelated parties who purchased leases/wells that are still listed on Haas Petroleum's operator license. The Commission's Final Order prohibits operation of those wells without having notified these five un-related parties who own the affected wells and giving them an opportunity to respond. This is a clear violation of due process and other fundamental rights which will undoubtedly be raised by such owners if/when Staff attempts to enforce the Final Order. The Commission's actions in this regard do not directly affect Haas Petroleum and thus Haas Petroleum will not spend further time and money attempting to warn the Commission of these issues beyond providing the following explanation:

A distinction must be recognized between an operator's license (i.e. a personal right given to someone) and the ownership of a well. In addition, some of the Commission's regulations concern the condition of a well and some of its regulations concern the actions of an operator. Violations by an operator should result in orders which affect the operator, violations concerning the condition of a well should result in orders which affect the well (and often the operator responsible for the well also). The operator's license is akin to a driver's license, in that a driver's license permits someone to operate a motor vehicle. Anyone can own a motor vehicle, whether they have a driver's license or not, they simply cannot drive the motor vehicle unless they have a valid driver's license. If someone fails to obey the law while driving, the driver's license may be taken or the driver may be fined; however, the consequence does not involve confiscating the car which may be owned by someone other than the driver or prohibiting the car from being driven by another licensed driver. The Commission's order in this Docket and other recent dockets fail to recognize this distinction and contain language affecting both the operator and the wells in addressing violations by an operator that are wholly unrelated to the

condition of the affected wells. In this Docket, Haas Petroleum does not have an operator's license, thus it cannot operate any wells. The Commission correctly found in this Docket that Haas Petroleum did not operate any wells. Thus, what does the Commission have to gain by issuing orders which prevent other licensed operators from operating the wells?

The effect of the Commissions order in DB Energy, LLC, Docket 23-CONS-3109 on the accuracy of the Commission's records is made clear through this Docket. Haas Petroleum has filed T-1s for several wells to not less than five different operators. Because Staff has not processed the T-1s Haas Petroleum is still listed as the operator for the subject wells and is the only party who was served with notice of this Docket. However, the Commission issued its Final Order prohibiting these five unrelated parties from operating wells that they legally own, without ever having given said parties notice of these proceedings. Staff will undoubtedly respond that the wells are not listed on these five operator's licenses. However, assignments are recorded in the office of the register of deeds providing constructive notice of the ownership interests of these five unrelated parties, and the Commission has received but not processed T-1 filings to these parties. Thus, the Commission had both actual and constructive notice of said parties ownership interest in said wells and failed to notify them of its actions affecting their vested property interests. This is a textbook violation of due process rights.

2. Staff's Petition requesting the Commission to reconsider its decision to rescind the \$50,000 penalty assessed in this docket should be denied. The facts in this case are simple, 1) all parties agree that BHD Resources, LLC was physically operating the wells at issue in this docket, 2) BHD Resources, LLC has already been penalized for the illegal operations that are the subject of this docket. The specific regulations that Haas Petroleum is accused of violating are K.A.R. 82-3-133 and

K.A.R. 82-3-120 and the language of both regulations as plainly written do not justify the imposition of a penalty upon Haas Petroleum as a result of BHD Resources, LLC's operation of certain wells.

K.A.R. 82-3-133(a) provides,

The production of oil or gas in violation of the provisions of a basic proration order, or otherwise in violation of the statutes or the rules and regulations of the commission, shall be deemed unlawful and shall be presumed to violate correlative rights and to constitute waste.

There is absolutely no evidence in the record that indicates that Haas Petroleum produced any oil from the subject wells thus a violation of K.A.R. 82-3-133 clearly did not occur.

K.A.R. 82-3-120(a) provides,

(a)(1) No operator or contractor **shall undertake any of the following activities** without first obtaining or renewing a current license:

(A) Drilling, completing, servicing, plugging, or operating any oil, gas, injection, or monitoring well;

(B) operating a gas-gathering system, even if the system does not provide gas-gathering services as defined in K.S.A. 55-1,101(a), and amendments thereto; or

(C) constructing or operating an underground porosity gas storage facility.

Each operator in **physical control** of any such well or gas storage facility shall maintain a current license even if the well or storage facility is shut in or idle.

(Emphasis added). This regulation prohibits activities, and speaks to someone in **physical control** of a well. It is undisputed that Haas Petroleum did not conduct any activities, nor was it in "**physical control**" of the subject wells. Staff alleges that BHD Resources, LLC was in **physical control** of the subject wells and produced them, and without citing to any regulation or statute argues that Haas Petroleum should be penalized for BHD Resources, LLC's conduct because the wells were listed on Haas Petroleum's license.

It is well settled law in this State that, laws which are penal in nature must be strictly construed. *See eg. State v. Davidson*, 2 Kan.App.2d 463, 468 (1978)(stating, "[b]asically the rule of strict construction of penal statutes means that ordinary words are to be given their ordinary meaning and that the penal statute should not be read so as to add to it something that is not readily found therein or to read out of it what as a matter of ordinary English is in it. [citation omitted]"). Staff is arguing that BHD Resources, LLC physically operated certain wells and since those wells had not yet been transferred from Haas Petroleum's operator license, Haas Petroleum should be fined \$50,000.00. The question then becomes how can Staff justify this position without reading the above referenced regulations to add something that is not readily found therein? In this Docket something occurred which Staff subjectively feels was improper, but the regulations neither prohibit what occurred nor justify the imposition of a \$50,000.00 penalty. The Commissions regulations are clearly and plainly written and they need to be enforced as written and any attempt to expand or alter the Commission's regulations which are penal in nature through quasi judicial proceedings is unlawful and unsound regulatory practice.

3. In its Petition for Reconsideration Staff makes the following arguments:
  - i. The T-1s filed by Haas Petroleum showing that operator responsibility had been transferred to BHD Resources, LLC were not complete (i.e., no copy of the documentation that indicates operator responsibility had been transferred was attached). *See* Paragraph 3.
  - ii. Just because an operator claims it contracted away its rights and obligations to a lease, it does not follow that such operator is no longer responsible for regulatory obligations associated with the wells covered by the lease. *See* Paragraph 6.

These two arguments are addressed in turn below.

**I. THE T-1S FILED BY HAAS PETROLEUM SHOWING THAT OPERATOR RESPONSIBILITY HAD BEEN TRANSFERRED TO BHD RESOURCES, LLC WERE NOT COMPLETE (i.e., NO COPY OF**

**THE DOCUMENTATION THAT INDICATES OPERATOR RESPONSIBILITY HAD BEEN TRANSFERRED WAS ATTACHED)**

This argument does not indicate that a violation of K.A.R. 82-3-133 or K.A.R. 82-3-120 occurred (which are the only two regulations Haas Petroleum is alleged to have violated in this Docket). Even if Haas Petroleum had completely failed to report that operator responsibility had been transferred, K.A.R. 82-3-136(e) would impose a \$1,000 penalty for such conduct. Yet Staff's argument contends that a \$50,000 penalty should be upheld because the T-1 which was filed was allegedly incomplete. This argument is not based upon a plain reading of the Commission's regulations and certainly does not apply a strict construction to the Commission's regulations which are penal in nature. Moreover, the evidence in this Docket was undisputed that the first time Staff asserted the T-1s were not approved because of a missing attachment to such forms was at the hearing in this Docket. At no time before the hearing in this matter did Staff either reject the T-1s which were filed, or notify Haas Petroleum that an additional attachment was necessary in order to process the subject T-1s.

**II. JUST BECAUSE AN OPERATOR CLAIMS IT CONTRACTED AWAY ITS RIGHTS AND OBLIGATIONS TO A LEASE, IT DOES NOT FOLLOW THAT SUCH OPERATOR IS NO LONGER RESPONSIBLE FOR REGULATORY OBLIGATIONS ASSOCIATED WITH THE WELLS COVERED BY THE LEASE**

The problem with this argument is that the regulations which Haas Petroleum is accused of violating are not regulatory obligations associated with any wells; and neither prohibits the actions which were taken by Haas Petroleum. Both K.A.R. 82-3-133 and K.A.R. 82-3-120 govern operator conduct and prevent operators for taking certain actions. Neither speaks to regulatory obligations associated with wells/leases at all.

Moreover, if a regulatory violation is committed by an operator, that violation is punishable whether before or after a well is transferred to another operator. The transfer has no effect upon the

Commission's ability to penalize a past or present operator if they violate the Commission's regulations. The question Staff is raising is, which operator is responsible for taking subsequent remedial measures which may be necessary in order to correct a violation that deals with the condition of a well/lease. However, this question is irrelevant in this Docket as none of the regulatory violations asserted in this Docket involved regulatory issues related to the condition of any well/lease. Instead, both regulations simply prohibit certain actions by operators.

WHEREFORE, for the reasons set forth herein, Haas Petroleum asks the Commission to correct the due process violations raised herein, and to deny Staff's Petition to Reconsider the Commission's Final Order, and for such other and further relief as the Commission deems just and equitable.



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STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

Keith A. Brock, of lawful age, being first duly sworn on oath, states: That he is attorney for Haas Petroleum, LLC, and is duly authorized to make this affidavit; that she has read the foregoing Response to Petition for Reconsideration, knows the contents thereof; and that the facts set forth therein are true and correct.



Keith A. Brock

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of March, 2024.



Notary Public

Appointment/Commission Expires:

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via electronic mail this 28<sup>th</sup> day of March, 2024, addressed to:

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