

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

In the matter of the failure of Prairie Gas)	Docket No.: 20-CONS-3220-CPEN
Operating, LLC (“Operator”) to comply)	
With K.A.R. 82-3-111at the Watson Farms)	
#1,) Monroe #2-4H, and Fecht D # 1in)	
Greeley County, Kansas.)	CONSERVATION DIVISION
)	
)	License No.: 35442
)	

**PETITION BY PRAIRIE GAS OPERATING LC FOR ORDER
LIFTING A NOTICE OF LICENSE SUSPENSION DATED OCTOBER 9, 2020;
AND REQUEST FOR EXPEDITED HEARING**

1. Prairie Gas Operating, LLC, License No. 35442, hereby petitions the Commission for an Order lifting Notices of License Suspension entered under the aegis of Docket 20-CONS-2139-CPEN on October 9, 2020 (Attached as Exhibit A) and Docket 20-CONS-3220-CPEN on September 14, 2020 (attached as Exhibit B).
2. This filing follows extended discussions with Commission Staff inquiring into the reasons for continuance of a license suspension. While courteous, Staff’s explanations have been inconsistent and, Operator respectfully submits, vague and contrary to due process of law.

3. Operator has 47 producing wells in western Kansas all of which are currently shut down. This poses a serious threat to the economic existence of operator and results in unnecessary waste of natural resources.
4. Following the issuance of the two Notices, the Operator endeavored to bring the wells at issue into compliance. Operator and its counsel sought information and details of the basis for continuing suspension. Operator's position was stated in a letter to Litigation Counsel dated January 13, 2021. Attached as Exhibit C.
5. Counsel received a response from Litigation Counsel two months later, dated March 8, 2021. (Attached as Exhibit D). Counsel for the Conservation division articulated the basis of the suspension as follows: "There are currently two dockets, 20-CONS-3129-CPEN and 20-CONS-3220-CPEN, that Staff believes Prairie Gas is not in compliance with Kansas statutes and regulations requiring its license to be suspended."

Docket 3129

6. The Penalty Order at issued in docket 3129 held that Operator had committed a violation of K.A.R. 82-3-111 because the referenced wells had been inactive in excess of the time allowed by regulation without being plugged, returned to service, or approved for TA status.¹ There were no findings of fact or conclusions of law citing an impermissible to a high fluid level.

¹ See Penalty Order, Para. 10 (Nov. 7, 2019).

7. The Order imposed a \$200 penalty, which has been paid. The Order also ordered the Operator to” plug the subject wells, or return the wells to service, or obtain TA status for the wells if eligible.²
8. The Operator followed the directive in the Penalty Order and took steps to return the well to service. Among other actions, it notes that the Earl # 1 was tested on January 6 and the fluid level was 1665 feet. There has been no evidence that such a fluid level is a threat to usable water.
9. At various times, Operator asked Staff what needed to be done to t reinstate its license so it could restore production. Staff has responded citing various reasons, which such responses have not been consistent. Namely:
 - a. In an email from dated December 9, 2020, Staff informed the Operator relative to Docket 3129 that the Earl #1”was not producing gas so it will need work done so it’ll either be producing, TA’d or plugged per the Order. The \$200 fine is still outstanding.” The response from Staff made no reference to the Watson # 1.
 - b. Operator paid the fine and took action to restore the well to status capable of production thereby being eligible for approval as a temporary abandonment. .
 - c. On January 4, 2021, following further inquiry, Staff responded that Prairie was still suspended in Docket 3129 and that “[w]e need confirmation that there is no threat to usable water in dockets 20-3129 and 20-3220. “

² See Penalty Order, p. 4 (Nov. 7, 2019)

- d. Counsel for Staff subsequently responded to the Operator's further inquiry stating that the Watson and Earl wells had a high fluid levels; and that Staff takes the position that high fluid levels are indicative of a casing leak.
- e. Counsel for Staff also informed counsel for the Operator that the Order Closing the docket states "closing this docket will not prevent Commission Staff from taking any appropriate or necessary administrative actions related to the penalty order." See Exhibit D. The penalty order, however, contained no findings or conclusions that the well had a high fluid level or violated some other regulation.

Docket 3220

- 10. According to Counsel for Staff, another well at issue with respect to the License Suspension is the Fecht D #1 referenced in docket 20-CONS-3220-CPEN.
- 11. Docket 3220 originated with a Penalty Order dated February 13, 2021 referencing three wells including the Fecht # 1. *See* Exhibit B. The Penalty Order like that in 3129 was also based on findings and conclusions that the Fecht, was inactive and unplugged for longer than 90 days.³
- 12. The Penalty Order also directed the Operator to plug the well "or return the wells to service" or obtain TA status.
- 13. Operator previously returned the well to service status by ensuring that it was capable of resuming production.

³ See Order, Feb. 13, 2020.

14. In response to subsequent inquiries, Staff responded with varying reasons why the suspension would not be lifted:

- a. In an email of February 9, 2021, Staff stated that the Fecht #1 was out of compliance because it hasn't produced gas either and has a high fluid level. The Fecht #1 will need worked on so it'll either be producing, TA'd or plugged per Commission Order."
- b. Operator subsequently worked on the Fecht, ensured it was producing and produced water to lower the fluid level per request of staff.
- c. Counsel for Staff responded in his letter of March 8 as noted above and indicated that a "casing integrity test needs to be performed to ensure the protection of fresh and usable water.

15. Counsel also pinned a "right to denial" as an administrative action related to the penalty orders.⁴

16. As it relates to both dockets, it should be noted that the wells are all located in the Bradshaw Field. Staff has recently stated that it would require a shut in of 14 days to perform a test. Such an action is self-defeating. Shutting in a well in the Bradshaw field simply allows water to accumulate and water-out thus establishing a vicious cycle of production, no production, shut-in, watering out, followed by testing showing high water levels.

⁴ See Exhibit D

17. This Commission has noted and ruled that “pressures are so low in the Bradshaw Gas Field that the wells water-out during the test, and it can take months for wells to reestablish rates comparable to what those wells were producing prior to the test.” 2015 Kan. PUC LEXIS 110, *2 (Kan. Corp. Comm'n January 13, 2015).
18. As a consequence, the Order in *Linn Operating* exempted all wells from provisions of K.S.A. 82-3-304(c) et seq. *See Id.*

Legal Standards

19. The Petition is filed pursuant to K.A.R. Section 82-1-218.
20. The suspension of a license is a deprivation of a property right. Even if an operator’s license is characterized as a privilege, “once a person has a license, he or she is entitled to due process before it is taken away.” *Creecy v. Kan. Dep’t of Revenue*, 310 Kan. 454, 463, 447 P.3d 959, 967 (2019) The Kansas Constitution guarantees that one whose property rights are injured is entitled to a remedy by due course of law. Kan. Const. B. of R. § 18
21. The position taken by Staff is that the Operator’s license may be suspended due to some vague doctrine that the Staff is invoking its right of denial under K.A.S. 82-311 (c) which is an administrative action “related to the penalty orders.” See Exhibit D.
22. Neither penalty order had findings or conclusions related to the stated reason for continuing license suspension, i.e., fluid levels or speculation that a casing leak existed.

23. There has been no subsequent inspection. Indeed, the position of the Staff that the wells be shut in in order to inspect would in all likelihood result in a well watering out for the reasons noted above.
24. The position of staff is legally improper. First it denies due process. An allegation of possible casing leak as the basis for continuing a license suspension is by its very wording speculative and not demonstrable. There has been no formal process with notice, hearing and evidence relating to any such finding.
25. In addition, the position that the Staff is taking an action "relating to" a denial goes beyond the terms of the applicable penalty orders. "[O]mnibus phrases such as "relates to," "related to," "relating to," "in connection with," "concerning," or "relevant to" have been held improperly vague in the context of discovery requests. See *Emp'rs Commer. Union Ins. Co. of Am. v. Browning-Ferris Indus.*, CIVIL ACTION No: 91-2161-JWL, 1993 U.S. Dist. LEXIS 21098, at *10 (D. Kan. Apr. 5, 1993).
26. For the reasons stated, Operator seeks a lifting of the notices of license suspension. At a minimum, it would seem as though equity might require a less universal sanction relating to the three wells at issue.

Respectfully Submitted

PRAIRIE GAS OPERATING, LLC

By s/ Lee Thompson

LEE THOMPSON, #08361

THOMPSON LAW FIRM, LLC

106 East 2nd Street N

Wichita, Kansas 67202-2005

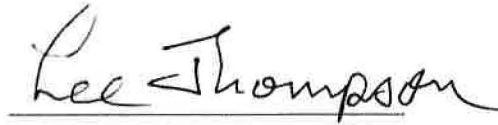
Phone: (316) 267-3933
Facsimile: (316) 267-3901
lthompson@tslawfirm.com

Attorney for Operator

VERIFICATION


STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

Lee Thompson, of lawful age, being first duly sworn upon his oath states that he is one of the attorneys for the Complainants named herein and states that he prepared the foregoing Complaint and declares that the statements made therein are true and correct to the best of his knowledge and belief.

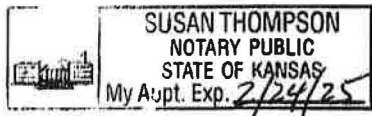


LEE THOMPSON

SUBSCRIBED AND SWORN to before me this 11th day of March 2021.


Notary Public

My Appointment Expires:



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



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

Susan K. Dully, Chair
Dwight D. Keen, Commissioner
Andrew J. French, Commissioner

Laura Kelly, Governor

October 9, 2020

Prairie Gas Operating, LLC
c/o Lee Thompson, Attorney
1919 N. Amidon Avenue, Site 315
Wichita, KS 67203-1480
Attorney for Prairie Gas Operating

Ian B. Acrey
Prairie Gas Operating, LLC
PO Box 2170
Tulsa, OK 74101-2170

NOTICE OF LICENSE SUSPENSION

License No. 35442

Docket No. 20-CONS-3129-CPEN

Docket No. 20-CONS-3144-CPEN

Operator:

Our records indicate that you are in violation of a Commission Order in the above Dockets.

Your license is hereby suspended.

Until your license is reinstated, it is illegal for you to conduct oil and gas operations in Kansas.

If, after 10 days from the date of this letter (October 19, 2020), Commission Staff discovers you performing oil and gas operations, Staff will recommend a Shut-In Order, including an additional \$10,000 penalty. If you are already shut-in, you must remain shut-in.

Any outstanding monetary penalty may be sent to collections.

You may review the Commission Orders, which was mailed to you, at the Commission's website. If you have questions, you may contact us at the phone number listed at the top of this page.

Sincerely,

Legal Department Staff

Exhibit A

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



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

Susan K. Duffy, Chair
Dwight D. Keen, Commissioner
Andrew J. French, Commissioner

Laura Kelly, Governor

September 14, 2020

Prairie Gas Operating, LLC
c/o Lee Thompson, Attorney
Thompson Law Firm, LLC
1919 N. Amidon Avenue, Site 315
Wichita, KS 67203-1480
Attorney for Prairie Gas Operating

Ian B. Acrey
Prairie Gas Operating, LLC
PO Box 2170
Tulsa, OK 74101-2170

NOTICE OF LICENSE SUSPENSION

License No. 35442

Docket No. 20-CONS-3220-CPEN

Operator:

Our records indicate that you are in violation of a Commission Order in the above Docket.

Your license is hereby suspended.

Until your license is reinstated, it is illegal for you to conduct oil and gas operations in Kansas.

If, after 10 days from the date of this letter (September 24, 2020), Commission Staff discovers you performing oil and gas operations, Staff will recommend a Shut-In Order, including an additional \$10,000 penalty. If you are already shut-in, you must remain shut-in.

Any outstanding monetary penalty may be sent to collections.

You may review the Commission Orders, which was mailed to you, at the Commission's website. If you have questions, you may contact us at the phone number listed at the top of this page.

Sincerely,

Legal Department Staff

Exhibit B

THOMPSON LAW FIRM, LLC

LEE THOMPSON
Email: lthompson@tslawfirm.com

1919 N. Amidon, Suite 315
Wichita, Kansas 67203

Phone: 316-267-3933
Cell: 316-207-4115

January 13, 2021

Kelcey Marsh
Litigation Counsel
Conservation Division
Kansas Corporation Commission
266 N. Main, Suite 220
Wichita, KS | 67202-1513
Via Email: Kelcey Marsh k.marsh@kcc.ks.gov

Re: Prairie Gas License Suspension

Dear Kelcey:

This is to follow up on our recent telephone conversations regarding the situation of Prairie Gas, License 35442. My understanding is that Prairie Gas' license is currently suspended which results in a requirement that all of its wells must be shut in. You and the staff have been cooperative in discussing this matter with me. However, because there seems to be ambiguity or inconsistency in the reasons and basis for the suspension, I outline below the status of our communications. Then, ultimately, on behalf of Prairie Gas, I formally request that we receive a specific recitation of the basis for the suspension, citing the specific order(s) in referenced dockets on which the Conservation Division asserts Prairie Gas' license is suspended. I also propose an alternative process which would permit the license suspension to be lifted.

Communications regarding license suspension and shut-in order(s).

1. Docket 20-CONS-3129-CPEN (Watson #1 and Earl #1)

The Penalty Order underlying this docket was based on violation of K.A.R. 82-3-111 and findings that the wells were inactive and unplugged for longer than 90 days. There was no allegation or finding of violations of other regulations.

In response to inquiry from Prairie requesting what would need to be done to resume production, Paul Murray responded in an email of December 9, 2020 that the Earl # 1 *"was not producing gas so it will need work done so it'll either be producing, TA'd or plugged per the Order. The \$200 fine is still outstanding."*

The \$200 fine has been paid and field staff has confirmed, I am informed, that the Earl # 1 was worked over on November 11 and production was restored and the well is producing gas and moving water. There have been reports that staff requires that gas be sold to qualify for an exemption under K.A.R. 82-3-111. That requirement is not in the regulation. We have discussed this, and I have not heard any position from the legal department asserting that an actual sale of gas is required as opposed to being fully equipped and capable of production.

Following further inquiry as to the reasons for suspension, Prairie received a subsequent email from Paula Murray on January 4 that Prairie was still suspended in docket 3129. She stated: *"We need confirmation that there is no threat to usable water in dockets 20-3129 and 20-3220."* There was no prior finding or penalty order regarding any violation in that respect. Field staff also apparently has raised an issue as to the Watson # 1 which was not identified earlier as being violative of any order currently.

As you know, these wells are in the Bradshaw field and it takes time to de-water them. The Earl # 1 was tested January 6 and the fluid level was 1665 feet, which does not pose a threat to usable water. If the Watson # 1 was included in the threat to usable water, we are entitled to know the basis for that allegation.

There have been no penalty notices issued regarding a threat to usable water and due process requires if there is to be a license suspension based on some unarticulated violation, the operator is entitled to the right to a hearing and to present evidence. Prairie Gas disputes that either the Earl or Watson poses a threat to usable water.

2. Docket 20-CONS-3220-CPEN (Watson Farms #1, Monroe #2-4H and Fecht D #1)

The penalty order in this docket dated February 13, 2020 was based on violation of K.A.R. 82-3-111 and findings that the wells were inactive and unplugged for longer than 90 days. There was no allegation or finding of violations of other regulations.

In the email of December 9, 2020, Paula Murray stated as to this docket that *"two of the wells are in compliance and the only well still out of compliance is the Fecht #1 and it hasn't produced gas either and has a high fluid level. The Fecht # 1 will need worked on so it'll either be producing, TA'd or plugged per Commission Order."* The Fecht has been re-worked and is producing gas and fluids. As a Bradshaw well, it is dewatering.

In the subsequent email of January 4, 2021, there was no mention of the wells not producing. The only basis for continued suspension was: "*We need confirmation that there is no threat to usable water in dockets 20-3129 and 20-3220.*" It is my understanding that the field inspector did not shoot a fluid level test during the last inspection of December 31.

I assume that the reference in the January 4 email as to docket 3220 dealt with the Fecht well. If for any reason there is a claim about a threat to usable water in the other two wells encompassed in that docket, it has never been shown or identified to my client.

3. Docket 20-CONS-3144_CPEN (Bounds # 2).

In the email of December 9, 2020, Paula Murray wrote: "Docket No. 20-CONS-3144-CPEN, the only outstanding item is the \$1000 fine." The only mention of this docket in the email of January 4 was that Prairie was still suspended in that docket. It is my understanding that Prairie will pay the \$1000 fine immediately. Thus, there would be no remaining justification for suspension under that docket.

Summary

As we have discussed before, it seems as though the putative issues of a threat to usable water should be addressed in a specific penalty finding and order so that Prairie may respond as allowed by law to an allegation. If the Commission were to proceed in that fashion, if in fact it still contends that there are threats to usable water following specific tests, there would be no justification for continuing the suspension of Prairie's license.

There are 60 wells shut in because of the allegation of continuing suspension, harming numerous landowners and endangering the financial future of this producer. Thus, we would request that the KCC provide due process as to specific wells alleged to be in violation and otherwise lift the license suspension. At an absolute minimum, I would appreciate the recitation of facts requested in the opening paragraph.

Thank you for your continuing courtesy and attention.

Yours very truly,
THOMPSON LAW FIRM, LLC

By Lee Thompson

March 8, 2021

Lee Thompson
Thompson Law Firm, LLC
1919 N. Amidon, Suite 315
Wichita, Kansas 67203
Attorney for Prairie Gas Operating, LLC

Re: Prairie Gas License Suspension

Mr. Thompson,

This letter is in response to your January 13, 2021 communication. I can confirm Prairie Gas' license is currently suspended which requires all of its wells to be shut in. There are currently two dockets, 20-CONS-3129-CPEN and 20-CONS-3220-CPEN, that Staff believes Prairie Gas is not in compliance with Kansas statutes and regulations requiring its license to be suspended.

Specifically, the wells at issue are the Earl #1 and Watson #1 in Docket 20-CONS-3129-CPEN and the Fecht D #1 in Docket 20-CONS-3220-CPEN. Each of these wells were found to be in violation of K.A.R. 82-3-111 when their respective penalty orders were issued. Operator filed temporary abandonment applications on each of these wells which were later denied or revoked due to a high fluid level. It is Staff's position that these high fluid levels are evidence of a potential casing leak in the wells at issue. Under K.A.R. 82-3-111(c), after an application for temporary abandonment has been filed, the well shall be subject to inspection by the conservation division to determine whether its temporary abandonment could cause pollution of fresh and usable water. If necessary to prevent the pollution of fresh and usable water, temporary abandonment may be denied by the conservation division, and the well may be required to be plugged or repaired according to the direction of the conservation division and in accordance with its regulations.

In your letter, you suggest that the putative issues of a threat to usable water should be addressed in a specific penalty finding and order so that Prairie Gas may respond as allowed by law to an allegation. However, Staff's position is that this has already occurred. Both of these dockets penalize Prairie Gas for violations of K.A.R. 82-3-111. While Prairie Gas initially appealed the penalty orders, it withdrew its appeal prior to a hearing being held on the matter. Therefore, an Order Closing Docket was issued by the Commission in Dockets 20-CONS-3129-CPEN and 20-CONS-3220-CPEN. Those Orders state that closing the dockets will not prevent Commission Staff from taking any appropriate or necessary administrative actions related to the penalty orders. Thus, Staff is invoking its right of denial under K.A.R. 82-3-111(c), which is an administrative action related to the penalty orders. Under K.A.R. 82-3-111(c) Prairie Gas must repair the wells or plug them. In order to tell what repairs need to be made, a casing integrity test needs to be performed to ensure the protection of fresh and usable water.

Exhibit D

Staff is aware that Operator alleges that the fluid levels in the wells have been reduced due to Operator pumping down the fluids during the period in which its license was suspended. Staff would reiterate that Prairie Gas is not allowed to conduct oil and gas operations under a suspended license. However, that does not resolve Staff's main concern, which are the potential casing leaks that appear to be present in the wells at issue. Staff is also aware that Prairie Gas alleges that they have spent \$100,000 getting the wells into compliance. If Prairie Gas can provide any invoices or other documentation that indicate Prairie Gas has conducted down-hole repairs to these wells, then Staff will gladly take those into consideration.

Sincerely,

/s/ Kelcey Marsh
Kelcey Marsh
Litigation Counsel
Kansas Corporation Commission

cc: Kenny Sullivan, Eric MacLaren, Michele Pennington, District #1