

ORDER APPROVING PARTIAL SETTLEMENT AGREEMENT

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds the following:

1. On June 27, 2017, the Commission issued a Penalty Order against Benjamin M. Giles (Operator) alleging the Operator violated K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Flying J Geer #2 OWWO, API #15-015-01490-00-01 (Flying J Geer #2), in Butler County, Kansas and assessed the Operator a \$2,600 penalty for the violations.¹

2. On August 1, 2017, the Commission issued a Penalty Order against the Operator alleging violation of K.A.R. 82-3-111 at the Paulsen #1, API #15-015-01020-00-02 (Paulsen #1), in Butler County, Kansas and assessed the Operator a \$100 penalty for the violation.²

3. On September 28, 2017, the Commission issued a Penalty Order against the Operator alleging violation of K.A.R. 82-3-604(a) and (b) at the Ralston Lease Tank Battery in Butler County, Kansas and assessed the Operator a \$500 penalty for the violations.³

4. On October 12, 2017, the Commission issued a Penalty Order against the Operator alleging the Operator violated K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Wright #1 OWWO,

¹ Penalty Order at 2, 5-6, *Matter of the Failure of Benjamin M. Giles ("Operator") to Comply with K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Flying J Geer #2 OWWO well in Butler County, Kansas*, Docket No. 17-CONS-3684-CPEN (June 27, 2017) [*hereinafter* 17-3684 Docket].

² Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-111 at the Paulsen #1 in Butler County, Kansas*, Docket No. 18-CONS-3057-CPEN (Aug. 1, 2017) [*hereinafter* 18-3057 Docket].

³ Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-604 at the Ralston Lease Tank Battery in Butler County, Kansas*, Docket No. 18-CONS-3160-CPEN (Sept. 28, 2017) [*hereinafter* 18-3160 Docket].

API #15-015-01211-00-02 (Wright #1), in Butler County, Kansas and assessed the Operator a \$10,100 penalty for these violations.⁴

5. On October 26, 2017, the Commission issued a Penalty Order against the Operator alleging violation of K.A.R. 82-3-602 at the Wright #1 and assessed the Operator a \$100 penalty for such violation.⁵

6. On October 26, 2017, the Commission issued a Penalty Order against the Operator alleging violation of K.A.R. 82-3-608 at the Wright #1 and assessed the Operator a \$250 penalty for such violation.⁶

7. The Operator filed a timely request for hearing in all dockets.

8. On February 19, 2018, Commission Conservation Division Staff (Staff) moved the Commission, unopposed by the Operator, to consolidate the aforementioned dockets.

9. On March 8, 2018, the Commission granted Staff's motion and consolidated the dockets.

10. On April 6, 2018, Staff filed a Motion to Approve Partial Settlement Agreement stating that the Operator and Staff had come to an agreement on less than all of the alleged violations throughout the various dockets.⁷ The Partial Settlement Agreement states that the only remaining issues in contest would be the \$2,500 fine for violation of K.A.R. 82-3-104 at the Flying

⁴ Penalty Order at 2, 6-7, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-104 and K.A.R. 82-3-111 at the Wright #1 OWWO well in Butler County, Kansas*, Docket No. 18-CONS-3167-CPEN (Oct. 12, 2017) [*hereinafter* 18-3167 Docket].

⁵ Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-602 at the Wright #1 OWWO well in Butler County, Kansas*, Docket No. 18-CONS-3188-CPEN (Oct. 26, 2017) [*hereinafter* 18-3188 Docket].

⁶ Penalty Order at 2-3, *Matter of the failure of Benjamin M. Giles ("Operator") to comply with K.A.R. 82-3-608 at the Wright #1 OWWO well in Butler County, Kansas*, Docket No. 18-CONS-3189-CPEN (Oct. 26, 2017) [*hereinafter* 18-3189 Docket].

⁷ Motion to Approve Partial Settlement Agreement at 2 (Apr. 6, 2018).

J Geer #2, in Butler County, Kansas in the 17-3684 Docket and the \$10,000 fine for violation of K.A.R. 82-3-104 at the Wright #1, in Butler County, Kansas, in the 18-3167 Docket.⁸

11. The Commission finds the Partial Settlement Agreement to be less than clear in that the Agreement keeps the violation of K.A.R. 82-3-104 at the Wright #1 in the 18-3167 Docket but goes on to state in paragraph twenty-five (25) that the “Operator has complied with the Commission’s direction in Docket[] . . . 19[sic]-CONS-3167-CPEN”⁹

12. Nonetheless, the Commission finds the Partial Settlement Agreement is sufficiently informative to convey the agreed upon end result. Staff and the Operator no longer wish to contest Counts 2-5 and 7-9 as applied in the Order consolidating the dockets.¹⁰ The Operator agrees to two violations of K.A.R. 82-3-111.¹¹ The Operator agrees to pay \$575 in fines and to bring the Paulsen #1 into compliance by April 30, 2018 by returning the well to service, plugging or obtaining temporary abandonment status.¹² The two remaining issues are a \$2,500 penalty for violation of K.A.R. 82-3-104 at the Flying J Geer #2 and a \$10,000 penalty for violation of K.A.R. 82-3-104 at the Wright #1 both in Butler County, Kansas. The Parties may appropriately limit their testimony and pleadings to those two remaining issues.

13. Kansas law favors compromising and settling disputes when the agreement is entered intelligently, and in good faith.¹³ The Commission finds that the SA provides a fair and efficient resolution of the issues resolved. Pursuant to the Partial Settlement Agreement, the Operator is hereby on notice that failure to comply with the provisions of the Partial Settlement Agreement may result in the Operator’s license being suspended.

⁸ Partial Settlement Agreement at 5 (Apr. 6, 2018).

⁹ *Id.* at 5-6.

¹⁰ *Id.*; *see* Order Consolidating Dockets and Setting Procedural Schedule at 4 (Mar. 8, 2018).

¹¹ Partial Settlement Agreement at 7.

¹² *Id.*

¹³ *Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994).

THEREFORE, THE COMMISSION ORDERS:

A. The Motion to Approve Partial Settlement Agreement is granted and the Partial Settlement Agreement is approved.

B. Any party affected by this Order may file with the Commission a petition for reconsideration pursuant to K.S.A. 2016 Supp. 77-529(a). The petition shall be filed within 15 days after service of this Order, plus three days if mailed, and must state the specific grounds upon which relief is requested. The petition shall be addressed to the Commission and sent to 266 N. Main, Ste. 220, Wichita, Kansas 67202.

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chairman; Emler, Commissioner; Keen, Commissioner

Dated: 04/26/2018

Mailed Date: 04/27/2018



Lynn M. Retz
Secretary to the Commission

DLK/sc

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

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

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

In the matter of the failure of Benjamin M. Giles) Docket No.: 18-CONS-3057-CPEN
("Operator") to comply with K.A.R. 82-3-111 at)
the Paulsen #1 in Butler County, Kansas.) CONSERVATION DIVISION
_____) License No.: 5446

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

In the matter of the failure of Benjamin M. Giles) Docket No.: 18-CONS-3167-CPEN
("Operator") to comply with K.A.R. 82-3-104)
and K.A.R. 82-3-111 at the Wright #1 OWWO) CONSERVATION DIVISION
well in Butler County, Kansas.)
_____) License No.: 5446

In the matter of the failure of Benjamin M. Giles) Docket No.: 18-CONS-3188-CPEN
("Operator") to comply with K.A.R. 82-3-602 at)
the Wright #1 OWWO well in Butler County,) CONSERVATION DIVISION
Kansas.)
_____) License No.: 5446

In the matter of the failure of Benjamin M. Giles) Docket No.: 18-CONS-3189-CPEN
("Operator") to comply with K.A.R. 82-3-608 at)
the Wright #1 OWWO well in Butler County,) CONSERVATION DIVISION
Kansas.)
_____) License No.: 5446

PARTIAL SETTLEMENT AGREEMENT

This Partial Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively) and Benjamin M. Giles ("Operator"). Its effective date will be the date the Commission enters an order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 74-623, the Commission shall have the exclusive jurisdiction and authority to regulate oil and gas activities.

2. Pursuant to K.S.A. 55-150 *et seq.*, the Commission has authority to regulate the construction, operation, and abandonment of any well and the protection of the useable water of this state from any actual or potential pollution from any well.

3. Pursuant to K.S.A. 55-155, operators and contractors, as defined in K.S.A. 55-150, shall be licensed by the Commission.

4. Pursuant to K.S.A. 55-162, if the Commission finds that such person violated any provisions of K.S.A. 55-150 *et seq.*, the Commission shall take any appropriate action necessary to prevent pollution and protect water supply.

5. Pursuant to K.S.A. 55-164, in addition to any other penalty provided by law, the Commission, upon finding that an operator or contractor has violated the provisions of K.S.A. 55-150 *et seq.*, or any rule and regulation or order of the Commission, may impose a penalty not to exceed \$10,000, which shall constitute an actual and substantial economic deterrent to the violation for which the penalty is assessed. In the case of continuing violation, every day such violation continues shall be deemed a separate violation.

6. K.A.R. 82-3-104 provides that every person who drills a well that penetrates formations containing oil, gas, fresh water, mineralized water, or valuable minerals shall case or seal off the formations to effectively prevent migration of oil, gas, or water from or into strata that would be damaged by such migration. The effectiveness of the casing or sealing off shall be tested in a manner prescribed or approved by an agent of the Commission.

7. K.A.R. 82-3-111 provides that 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. 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. The failure to file a notice of temporary abandonment shall be punishable by a \$100 penalty.

8. K.A.R. 82-3-111(e) provides an exemption for certain wells that are (1) fully equipped and capable of 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.

9. K.A.R. 82-3-602(a) provides that unless otherwise specified in writing by the Commission, each operator shall close drilling pits within 365 calendar days after the spud date of a well.

10. K.A.R. 82-3-602(c) provides that each operator of a pit shall file a pit closure form prescribed by the Commission within 30 days after the closure of the pit. Failure to file the pit closure form shall be punishable by a \$100 penalty.

11. 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 dike area.

12. 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.

13. 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 knows or reasonably should have known of the discharge.

14. 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.

15. K.A.R. 83-3-608(a) provides that each operator shall file a form prescribed by the commission within 30 days after the operator transfers refuse from any pit or diked area or refuse relating to any remediation or cleanup activity.

16. K.A.R. 82-3-608(b) provides that the failure to timely submit the form specified in subsection (a) shall be punishable by the following penalties: \$250 for the first violation, \$500 for the second violation, and \$1,000 and an operator license review for the third violation.

II. BACKGROUND

17. On February 19, 2018, Staff filed an uncontested motion to consolidate the six captioned dockets and set a procedural schedule, which has been granted. This Agreement settles all five violations originating from four of the dockets. It also settles two smaller violations originating from the two remaining dockets, while leaving the two primary violations originating from the two remaining dockets unresolved.

18. Upon approval of this Agreement, the sole unresolved issues will be (1) Operator's appeal of the Commission's \$2,500 penalty for Operator's alleged violation of K.A.R. 82-3-104 at the Flying J. Geer #2, and (2) Operator's appeal of the Commission's \$10,000 penalty for Operator's alleged violation of K.A.R. 82-3-104 at the Wright #1 OWWO.

19. On June 27, 2017, in Docket 17-CONS-3684-CPEN, Operator was penalized \$2,600 for violations of K.A.R. 82-3-104 and K.A.R. 82-3-111. Operator was directed to conduct a bond log on the Flying J. Geer #2 OWWO, and if the log failed to demonstrate casing effectiveness, then to repair or plug the well.

20. On August 1, 2017, in Docket 18-CONS-3057-CPEN, Operator was penalized \$100 for a violation of K.A.R. 82-3-111. Operator was directed to plug, return to service, or obtain TA status for the Paulsen #1.

21. On September 28, 2017, in Docket 18-CONS-3160-CPEN, Operator was penalized \$500 for two violations of K.A.R. 82-3-604. Operator was directed to remove fluids from the diked area around the Ralston lease tank battery and file Waste Transfer CDP-5 forms.

22. On October 12, 2017, in Docket 18-CONS-3167-CPEN, Operator was penalized \$10,100 for violations of K.A.R. 82-3-104 and K.A.R. 82-3-111. Operator was directed to plug

or complete the Wright #1 OWWO, and to obtain TA status if the well was completed but not returned to service.

23. On October 26, 2017, in Docket 18-CONS-3188-CPEN, Operator was penalized \$250 for a violation of K.A.R. 82-3-602. Operator was directed to file a Surface Pit Closure CDP-4 form for the pit associated with the Wright #1 OWWO.

24. On October 26, 2017, in Docket 18-CONS-3189-CPEN, Operator was penalized \$250 for a violation of K.A.R. 82-3-608. Operator was directed to file a Waste Transfer CDP-5 form for the Wright #1 OWWO.

25. Operator has complied with the Commission's direction in Dockets 18-CONS-3160-CPEN, 19-CONS-3167-CPEN, 18-CONS-3188-CPEN, and 18-CONS-3189-CPEN.

26. Operator has not complied with the Commission's direction in Dockets 17-CONS-3684-CPEN and 18-CONS-3057-CPEN. Specifically, Operator has not conducted a bond log demonstrating casing effectiveness or plugged the Flying J. Geer #2 OWWO, and has not plugged, returned to service, or obtained temporary abandonment status for the Paulsen #1.

27. Staff and Operator informally discussed the possibility of a settlement. During the informal discussions, Staff and Operator were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Operator for approval and signature.

III. TERMS OF THE SETTLEMENT AGREEMENT

28. The parties agree that the Commission has jurisdiction and authority over this matter. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

29. Operator admits to no wrongdoing, but acknowledges that for purposes of license renewal under K.A.R. 82-3-120, Operator shall be found to have committed two violations of K.A.R. 82-3-111.

30. By April 30, 2018, Operator shall pay a \$575 penalty. Except as described below, no other violations shall be found in these matters, and no other penalties shall be assessed. Both parties specifically note, however, that the issue of the alleged violation of K.A.R. 82-3-104 at the Wright #1 OWWO and the \$10,000 assessed penalty for that alleged violation, and the alleged violation of K.A.R. 82-3-104 at the Flying J. Geer #2 and the \$2,500 assessed penalty for that alleged violation, remain unresolved, and such violations may eventually be found and such penalties may eventually be upheld and assessed upon resolution of those issues.

31. By April 30, 2018, Operator shall return to service, plug, or obtain temporary abandonment status for the Paulsen #1. Operator understands and agrees that failure to comply with this deadline shall result in Commission assessment of a \$1,000 penalty. Operator further understands and agrees that if the Paulsen #1 is not returned to service, plugged, or without temporary abandonment status by May 30, 2018, then the Commission shall assess Operator an additional \$2,500 penalty, and Staff may be directed by the Commission to plug the well and assess the costs to Operator.

32. Operator understands and agrees that if Operator elects to return the Paulsen #1 to service, then the well shall not be considered as having been brought into compliance for the purpose of meeting any deadline unless, in addition to being initially returned to service, all equipment necessary for the well to be in service remains installed at the well through October 30, 2018. Further, such equipment shall not include a mobile generator or mobile tank.

33. If Operator elects to obtain temporary abandonment status for the Paulsen #1, then among other standard requirements for obtaining temporary abandonment status, the well must first successfully pass a Staff-witnessed casing integrity test by holding 300 pounds of pressure for 30 minutes.

34. Operator understands and agrees that failure to comply with the provisions of any of the above paragraphs, and the assessment of any penalties or costs under this Agreement, will result in the Commission suspending Operator's license upon fourteen days' prior written notice after such non-compliance or such assessment of penalties or costs, until compliance is obtained and all outstanding penalties and costs are paid.

35. Operator further understands and agrees that if Operator is found conducting oil and gas operations following suspension of Operator's license, and Operator's license is still suspended, then the Commission shall order all of Operator's oil and gas operations sealed and shall assess an additional \$5,000 penalty.

36. Operator acknowledges that upon any suspension of Operator's license, this matter may be submitted for judicial enforcement or enforcement through the Kansas Attorney General's Office.

37. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring default proceedings pursuant to K.S.A. 77-520, this Agreement shall constitute a final resolution of this matter, except as it pertains to the alleged violations described in Paragraph 18 above.

IV. RESERVATIONS

38. This Settlement Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

39. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

40. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

41. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court.

42. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties agree to be bound by its terms and the

Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

43. This Settlement Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, the parties hereby execute and approve this Settlement Agreement by subscribing their signatures below.

Commission Staff
266 N. Main, Ste. 220
Wichita, Kansas 67202

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

By: 

By: 

Printed Name: JON MYERS

Printed Name: Benjamin M. Giles

Title: LITIGATION COUNSEL

Title: Operator/Owner

Date: 4/6/18

Date: 4-5-18

CERTIFICATE OF SERVICE

17-CONS-3684-CPEN, 18-CONS-3057-CPEN, 18-CONS-3160-CPEN,
18-CONS-3167-CPEN, 18-CONS-3188-CPEN, 18-CONS-3189-CPEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of
electronic service on 04/26/2018.

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/S/ DeeAnn Shupe
DeeAnn Shupe