

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

STAFF'S RESPONSE TO OPERATOR'S SEPTEMBER 6, 2017 REPLY

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission", respectively) files its Response to Operator's September 6, 2017 Reply. Staff again asserts Operator's Motion for Summary Order on the Pleadings should be denied, a prehearing officer should be designated, and the matter should be set for a prehearing conference in anticipation of an evidentiary hearing. For its Response, Staff states as follows:

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.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.

BACKGROUND

3. Operator conducts oil and gas activities in Kansas under license number 5446, and is responsible for the care and control of the Flying J Geer #2 OWWO well, API 15-015-01490-00-01, (“the subject well”) located in Section 32, Township 25 South, Range 4 East, Butler County, Kansas.

4. On May 10, 2013, Operator sought an exception to the Table 1 Minimum Surface Casing Requirements. The Director of the Conservation Division granted the exception with the condition that the production or long-string casing nearest the formation wall would be immediately cemented from a depth of at least 250 feet back to surface. Operator was further instructed in writing to notify the KCC District Office prior to spudding the well, and also one day before cementing the long-string, so Staff could have the opportunity to witness the procedure.

5. On June 13, 2013, Operator spudded the subject well and notified Staff by telephone.¹ On January 29, 2014, over six months after the subject well was spudded, and therefore in violation of K.A.R. 82-3-107 and K.A.R. 82-3-130, Operator submitted a Well Completion (ACO-1) Form for the subject well. The ACO-1 indicated that the well was completed on November 20, 2013. No casing records, cement tickets, or perforation records were included with the ACO-1 form.²

6. Operator waited from November 20, 2013, until July 23, 2014, before cementing the long-string, leaving a raw bore hole for 245 days, in violation of K.A.R. 82-3-104 and K.A.R.

¹ See, Exhibit A of Staff’s Response to Operator’s Motion for Summary Order on the Pleadings (Filed August 17, 2017).

² See, Exhibit D of Operator’s Request for Hearing and Motion for Summary Order on the Pleadings (Filed July 31, 2017).

82-3-106, and constituting a direct threat to usable water. Operator did not contact Commission Staff about cementing the casing, contrary to Operator's assertion otherwise.³

7. On September 3, 2015, Commission Staff performed a lease inspection and found the subject well inactive and shut in with no lease infrastructure present. Staff subsequently met with Operator and required submission of a completed ACO-1 form, including cement tickets, and directed Operator to obtain temporary abandonment status to bring the subject well into compliance with K.A.R. 82-3-111.

8. On August 30, 2016, Commission Staff conducted a lease inspection which revealed the subject well remained inactive and shut in with no lease infrastructure present. Furthermore, Operator had neither submitted a completed ACO-1 form, including cement tickets, nor obtained temporary abandonment status as required by Staff.

9. On November 18, 2016, Operator submitted a Temporary Abandonment (CP-111) Application for the subject well. No supporting documentation to verify the well construction was provided. On December 19, 2016, Staff denied temporary abandonment status for the well due to Operator's failure to submit a complete ACO-1 with documentation as required on the second page of the form. Staff then set a deadline of January 6, 2017, for the subject well to be brought into compliance. Staff subsequently extended the deadline to January 13, 2017, to allow Operator to submit the missing well information regarding casing and production.

10. On January 13, 2017, Operator submitted a cement ticket that failed to provide information indicating whether cement was circulated or returned to surface as requested by Staff. Commission Staff had significant concerns that the requirements of the surface casing exception had not been met by Operator due to Operator's failure to afford Staff an opportunity

³ See, Exhibit A of Staff's Response to Operator's Motion for Summary Order on the Pleadings (Filed August 17, 2017).

to witness the cementing. Staff then received a second copy of the cementing ticket from Operator with the addition of a handwritten note allegedly from an employee of Consolidated Oil Well Services stating, “[c]ement did circulate approx. 4 BBL to pit.” Since the only evidence of appropriate cement circulation was now an addition of a handwritten note to a cement ticket, for work performed over three years prior, Commission Staff requested a cement bond log be performed to ensure casing requirements were met as is authorized by K.A.R. 82-3-104 and also that Staff be notified prior to the procedure to allow the opportunity to witness the bond log.

11. On April 14, 2017, Commission Staff sent a letter to Operator, giving an April 28, 2017 deadline to run a bond log on the subject well. The letter also notified Operator that it was required to contact Staff’s District Office prior to performing the work, so that Staff could witness the procedure.⁴

12. On April 26, 2017, Commission Staff received the bond log and noted irregularities in the log method utilized and corresponding results, which included no data from 40 feet up to surface, and identical sections between the depths of 776-899 feet and 899-1022. Staff again was not contacted as directed and was not afforded an opportunity to witness the bond log procedure. The bond log was performed utilizing unorthodox methodology and contained identical entries.⁵

13. On June 27, 2017, the Commission issued a Penalty Order against Operator for its violations of K.A.R. 82-3-104 and K.A.R. 82-3-111.

14. On July 31, 2017, Operator timely requested a hearing, alternatively filing a motion for summary order.

⁴ See, Exhibit B of Staff’s Response to Operator’s Motion for Summary Order on the Pleadings (Filed August 17, 2017). Letter from District #2 Supervisor Jeff Klock to Operator dated April 14, 2017. “Notify this office when the log will be run so [S]taff can be onsite to witness.”

⁵ See, Exhibit C of Staff’s Response to Operator’s Motion for Summary Order on the Pleadings (Filed August 17, 2017).

15. On August 17, 2017, Staff filed its Response to Operator's Motion for Summary Order on the Pleadings.

16. On September 6, 2017, Operator filed its Reply to Staff's Response to Operator's Motion for Summary Judgment on the Pleadings.

DISCUSSION

17. Under K.S.A. 55-164, K.S.A. 77-537, and K.S.A. 77-542, Operator is entitled to a hearing in regard to the Commission's June 27, 2017, Penalty Order. Instead, Operator desires the Commission to short-circuit the statutory processes and to render an opinion as to the accuracy of its arguments via summary judgment, despite significant Staff concerns regarding fresh and usable water, Operator credibility, and the undisputed fact that Operator is in violation of various regulations, Operator twice did not follow instructions to allow Staff to witness the procedures necessary to ensure the protection of fresh and usable water.

18. Operator's Reply to Staff's Response asserts, in essence, that: (1) the compliance issues outlined by the Commission's Penalty Order are either non-substantive or immaterial to this matter, rendering an evidentiary hearing unnecessary; (2) Operator and its associates have attested to the accuracy of Operator's claims and the Commission should make a favorable credibility determination without holding an evidentiary hearing; (3) the Commission may grant a summary order on the pleadings pursuant to K.S.A. 55-706; and (4) Operator's filing of a TA application satisfies K.A.R. 82-3-111, so a penalty is not appropriate. Operator's arguments are without merit. Operator's motion for summary judgment should be denied, and this matter should be set for an evidentiary hearing.

The Issues In Dispute Are Substantive and Material

19. Operator's characterization of the issues in this docket are incorrect. K.A.R. 82-3-104 provides that casing must be tested in a manner prescribed by Commission Staff. Staff prescribed a Staff-witnessed bond log on the subject well, and that requirement was made clear. Operator, however, did not conduct a Staff-witnessed bond log, just like Operator did not notify Staff of its work on the long-string casing. Operator would have the Commission overlook significant concerns of Staff regarding the subject well's casing integrity which could have been avoided if Operator had followed Commission regulations and Staff's straightforward instructions to notify the District #2 Office before performing the necessary work. Summary judgment in favor of Operator would be completely inappropriate.

20. Further, in issuing its Penalty Order under K.S.A. 55-162, by statute the Commission has already determined that reasonable cause exists to believe violations of K.A.R. 82-3-104 and K.A.R. 82-3-111 occurred. Operator's filings cannot eliminate that reasonable cause; instead, they point to contested material facts, making summary judgment inappropriate.

21. In addition, Staff has presented plausible concerns regarding the credibility of Operator and the veracity of its assertions. It would be inappropriate to weigh the credibility of Operator, which would have to be done to reach summary judgment, when Operator has not been subject to cross-examination.

K.S.A. 55-706 Is Inapplicable To The Relief Sought By Operator

22. K.S.A. 55-706 addresses the manner in which proceedings may be instituted before the Commission, and further provides that the Commission is authorized to designate Commission Staff to perform investigatory functions and provide a written report to the Commission subsequent to the investigation. Operator cites to K.S.A. 55-706 in support of its

request for the Commission to dispense with an evidentiary hearing, accept Operator's assertions as true, and summarily grant the relief Operator seeks. However, the statute is wholly inapplicable to a request for summary resolution of a docket.

A Penalty For Violating K.A.R. 82-3-111 Is Appropriate

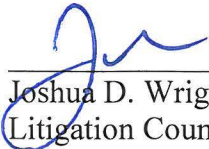
23. Operator once more contends that filing a new application for temporary abandonment precludes the Commission from penalizing the operator for a violation of K.A.R. 82-3-111. If this were true, this procedure would allow any operator who fails to comply with K.A.R. 82-3-111 to file renewed applications indefinitely to avoid temporary abandonment requirements, which is both preposterous and not the intent of the regulation. A second temporary abandonment application does not cure Operator's failure to establish cementing from 250 feet to surface, which under K.A.R. 82-3-111 is valid grounds for Staff to determine the well could cause pollution of fresh and usable water resources and deny an application.

CONCLUSION

24. It is no more appropriate for the Commission to grant Operator's request for a favorable summary order on the pleadings than if Staff proclaimed itself more credible than Operator and made the same request. Operator has exercised its right to a hearing, and therefore, Staff believes an evidentiary hearing is necessary to resolve this docket.

WHEREFORE, Commission Staff respectfully requests the Commission deny the relief sought by Operator and schedule this matter for a prehearing conference in anticipation of an evidentiary hearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on 9/15/17, I caused a complete and accurate copy of this Response to be served electronically and via United States mail, with the postage prepaid and properly addressed to the following:

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/s/ Paula J. Murray
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