

**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 Michael D. ) Docket No.: 18-CONS-3077-CPEN  
Weilert dba Michael D. Weilert Oil Company )  
("Operator") to comply with KAR 82-3-603, ) CONSERVATION DIVISION  
and K.A.R. 82-3-604 at the Gay E Reidel C #2 )  
well in Ellis County, Kansas. ) License No.: 5798

**STAFF'S RESPONSE TO OPERATOR'S REQUEST FOR HEARING AND MOTION  
FOR SUMMARY ORDER ON THE PLEADINGS**

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission", respectively) files its Response to Operator's two motions entitled Request for Hearing and Motion for Summary Order on the pleadings ("Operator's Motions"). Staff asserts Operator's Motions 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.

## **BACKGROUND**

2. Operator conducts oil and gas activities in Kansas under license number 5798, and is responsible for the care and control of the Gay E Reidel C #2 , API #15-051-15828-00-02, (“the subject well”) located in Section 6, Township 14 South, Range 19 West, Ellis County.

3. On July 12, 2017, District #4 Staff received a complaint that crude oil and saltwater had escaped the diked area around the subject well and tank. Staff inspected the diked area the same day. Staff found in excess of five barrels of fluid, with a layer of oil on top, within the diked area. Dark staining at the top edge of the dike, oil staining on nearby grass, and salt crystallization outside the eastern side of the dike indicated fluid had escaped the diked area. Staff took photographs during the inspection. Staff contacted Operator by telephone and instructed Operator to remove all fluid inside the diked area.

4. On July 13, 2017, Staff sent a Notice of Violation letter to Operator, stating that Operator’s failure to notify the appropriate District Office of the spill constituted a violation of K.A.R. 82-3-603, and stating that Staff would recommend a penalty for the violation. The letter also gave Operator a July 20, 2017, deadline to submit an Unreported Incident Form, and a July 23, 2017, deadline to remediate the spill.

5. On July 18, 2017, Staff conducted a follow-up inspection and found fluids remained inside the diked area, and that an emergency pit had been dug inside the diked area. On July 21, 2017, Staff sent a Notice of Violation letter to Operator, indicating that use of the pit constituted a violation of K.A.R. 82-3-600.

6. On July 20, 2017, Operator submitted a Report of Incident form from Operator, in which Operator stated no spill had occurred and 55 barrels of fluid had been recovered, consisting only of rainwater. Staff’s sample of the fluid inside the dike, obtained July 14, 2017,

tested at 15,500 parts per million of chlorides. Under K.A.R. 82-3-101(a)(34), “fresh water” means water containing not more than 500 parts per million of chlorides.

7. On July 24, 2017, District #4 Staff conducted another follow-up inspection and found that Operator had scraped the affected soil outside of the dike area, used it to rebuild the dike around the salt water tank, and had filled in the unpermitted pit. Staff finds the cleanup acceptable.

8. On August 22, 2017, the Commission issued a Penalty Order finding that Operator committed violations of K.A.R. 82-3-600, K.A.R. 82-3-603(d), K.A.R. 82-3-603a(a), K.A.R. 82-3-604(b) and K.A.R. 82-3-604(d).

9. On September 25, 2017, and September 26, 2017, respectively, Operator’s Motions were filed.

### **DISCUSSION**

10. 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 August 22, 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 order on the pleadings, despite factual disputes that exist between the parties.

11. Operator’s Motions assert, in essence, that: (1) Operator disagrees with the penalty order regarding whether a pit existed in the dike area or that an emergency pit had been dug around the well; (2) Operator removed fluid from Diked area within 48 hours; and (3) no notification of the district office or landowner was necessary because no spill triggering the reporting requirement occurred. Operator’s motion for summary judgment should be denied, and

this matter should be set for an evidentiary hearing as Staff has provided ample information to the contrary.

**An Evidentiary Hearing Is Necessary**

12. Staff disagrees with all three assertions made by Operator in Operator's Motions, which necessitates a hearing before the Commission.

**CONCLUSION**

13. 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 10/5/17, 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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and delivered by email to:

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