

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

In the matter of the failure of Mike) Docket No.: 23-CONS-3023-CPEN
McClenning dba Production Maintenance)
Service (Operator) to comply with K.A.R.) CONSERVATION DIVISION
82-3-111 at the Barton #3, HWR #1, Moyer #1,)
Welton #1, and Wilmoth #24-1 wells in) License No.: 32219
Montgomery County, Kansas.)

PRE-FILED DIRECT TESTIMONY

OF

RYAN DULING

ON BEHALF OF COMMISSION STAFF

NOVEMBER 14, 2022

1 **Q. What is your name and business address?**

2 A. Ryan Duling, 137 East 21st Street, Chanute, Kansas 66720.

3 **Q. By whom are you employed and in what capacity?**

4 A. I am employed by the Conservation Division of the Kansas Corporation Commission
5 (Commission), District #3 Office, as a Compliance Officer and Environmental Compliance
6 and Regulatory Specialist (ECRS).

7 **Q. Would you please briefly describe your background and work experience.**

8 A. After high school, I attended Neosho County Community College until 1997. I then worked
9 for R & F Farm Supply as a parts salesman until October 1999, when I began working for the
10 Geology Department with the Kansas Department of Transportation (KDOT) in Chanute,
11 Kansas. With KDOT, I started as a driller assistant and worked my way up to become a driller.
12 As a driller, I was responsible for the drilling of new bridges and roadways for the State of
13 Kansas. I constructed bridge, surface, and quarry reports and did survey projects using
14 Trimble 500 and Garmin E-Trex GPS units. I also interacted with landowners and the public.

15 In June 2004, I began my career with the Commission in the District #3 Office as a
16 Petroleum Industry Regulatory Technician I (PIRT I). As a PIRT I, I performed GPS surveys
17 to locate abandoned wells on leases where production had ceased or operators had gone out
18 of business. Shortly thereafter, I became a PIRT II, where I continued conducting GPS surveys
19 and was also in charge of the temporarily abandoned (TA) well program. In that position, I
20 reviewed TA applications and either approved or denied the applications. After a statewide
21 reclassification of environmental positions, I am now an ECRS. In September 2021, I also
22 became the Compliance Officer for the District #3 Office.

1 **Q. What are your duties with the Conservation Division?**

2 A. As Compliance Officer, I review operator data for compliance with Commission regulations
3 and prepare evidence necessary to recommend penalties for probable violations of those
4 regulations. Specifically, my job includes reviewing Staff field reports, coordinating day-to-
5 day operations of the District #3 Office, sending Notice of Violation (NOV) letters, and
6 generally trying to resolve compliance issues. I work to coordinate scheduling of Staff-
7 witnessed well completions, well pluggings, and mechanical integrity tests. I coordinate the
8 investigation of spills and complaints, verify proper construction of wells, help train District
9 Staff, and work with Commission Staff in Wichita. I conduct inspections and investigations
10 on special projects, or in the absence of assigned Staff, whenever necessary. I work with lease
11 operators, landowners, local, county, and state agencies and organizations to resolve oil and
12 gas related issues.

13 **Q. Have you previously testified before the Commission?**

14 A. Yes.

15 **Q. What is the purpose of your testimony in this matter?**

16 A. The purpose of my testimony is to discuss the evidence supporting the Commission's findings
17 in regard to the Penalty Order issued against Mike McClenning dba Production Maintenance
18 Service (Operator) in Docket 23-CONS-3023-CPEN (Docket 23-3023).

19 **Q. Please provide a brief overview of the facts in this docket.**

20 A. On July 28, 2022, the Commission issued a Penalty Order against Operator for five violations
21 of K.A.R. 82-3-111 at the Barton #3, HWR #1, Moyer #1, Welton #1, and Wilmoth #24-1
22 wells (Subject Wells). The wells were inactive in excess of the time allowed by regulation
23 without being plugged, returned to service, or approved for TA status. In the Penalty Order,

1 the Commission ordered Operator to plug the Subject Wells, return the wells to service, or
2 obtain TA status for the wells if eligible. The Commission also ordered Operator to pay a
3 \$500 penalty.

4 **Q. What are the requirements of K.A.R. 82-3-111?**

5 A. K.A.R. 82-3-111 states that within ninety days after operations cease on any well, the operator
6 of that well shall: (1) plug the well; (2) return the well to service; or (3) file an application
7 with the Conservation Division requesting TA status, on a form prescribed in writing by the
8 Conservation Division. K.A.R. 82-3-111 also states that no well shall be temporarily
9 abandoned unless first approved by the Conservation Division, and a well shall not be eligible
10 for TA status if the well has been shut-in for ten years or more without an operator first filing
11 an application for an exception pursuant to K.A.R. 82-3-100 and receiving approval by the
12 Commission. Finally, K.A.R. 82-3-111 provides that failure by an operator to file a notice of
13 TA status for a well shall be punishable by a \$100 penalty.

14 **Q. Please provide some background information regarding temporarily abandoned wells
15 in District #3.**

16 A. A priority for the Conservation Division has been to address inactive wells without approved
17 TA status on active operators' licenses. District #3 in particular has a large number of wells
18 that fall into this category. To tackle this problem, District #3 Staff has been reviewing
19 Commission records and sending Notice of Violation (NOV) letters to operators who have
20 inactive wells without approved TA status. The NOV letters give operators a deadline, and
21 indicate that if they do not address their inactive wells by that deadline, Staff will recommend
22 that the Commission issue a penalty order.

1 **Q. Did Staff send an NOV letter to Operator?**

2 A. Yes. On February 3, 2022, Commission records indicated that Operator had several inactive
3 wells without approved TA status. Consequently, Staff sent an NOV letter to Operator on that
4 date, with a deadline of March 5, 2022, to bring the wells into compliance with Commission
5 regulations. The NOV letter is attached to my testimony as *Exhibit RD-1*.

6 **Q. Did District #3 Staff perform field inspections of the Subject Wells?**

7 A. No. Given the number of temporarily abandoned wells in District #3, it is infeasible to conduct
8 field inspections for all such wells.

9 **Q. Did Operator submit TA applications for the Subject Wells?**

10 A. Yes. On March 1, 2022, Operator submitted TA applications for each of the Subject Wells.
11 Staff sent letters to Operator on March 10, 2022, stating that the TA applications had been
12 denied because all five Subject Wells had been shut-in for over ten years. The letters gave
13 Operator a new deadline of April 9, 2022, to bring the Subject Wells into compliance with
14 K.A.R. 82-3-111. The letters are attached to the Docket 23-3023 Penalty Order as *Exhibit A*.

15 **Q. So the deadline to bring the wells into compliance with K.A.R. 82-3-111 changed?**

16 A. Yes, after Staff denied the TA applications, Staff pushed back the deadline to bring the Subject
17 Wells into compliance by more than a month, from March 5, 2022, to April 9, 2022.

18 **Q. Were the Subject Wells out of compliance with K.A.R. 82-3-111 when Operator
19 submitted the TA applications on March 1, 2022?**

20 A. Yes, the wells were out of compliance with K.A.R. 82-3-111 on March 1, 2022. In fact, it
21 appears that the TA applications submitted on March 1, 2022, were the first TA applications
22 Operator ever submitted for the Subject Wells, even though each of the wells had been shut-
23 in for more than ten years.

1 **Q. Did Operator respond to the letters Staff sent on March 10, 2022?**

2 A. No. I spoke with Mr. McClenning in February 2022 after he received the February 3, 2022,
3 NOV letter, but I do not recall speaking to him again until after the Commission issued the
4 Penalty Order.

5 **Q. Did Operator file Plugging Applications for any of the Subject Wells?**

6 A. Yes, Operator filed Plugging Applications on March 29, 2022, for the Barton #3, HWR #1,
7 Moyer #1, and Wilmoth #24-1 wells. The Plugging Applications were approved by Staff on
8 March 30, 2022. Staff sent letters to Operator for the wells stating that Operator had
9 authorization to plug the wells until September 26, 2022. The letters sent by Staff are attached
10 as *Exhibit RD-2*.

11 **Q. Does that mean Operator had until September 26, 2022, to bring the Subject Wells into**
12 **compliance with K.A.R. 82-3-111?**

13 A. No, it does not. As *Exhibit RD-2* shows, each letter states that “The September 26, 2022
14 deadline does NOT override any compliance deadline given to you by Legal, District, or other
15 Commission Staff. Failure to comply with any given deadline will still result in the
16 Commission assessing penalties, or taking other legal action.” The deadline in the March 10,
17 2022, letters was still the superseding deadline. Even though Operator had filed Plugging
18 Applications for four wells, Operator still needed to bring all the Subject Wells into
19 compliance with K.A.R. 82-3-111 by April 9, 2022.

20 **Q. Has Operator brought the Subject Wells into compliance with K.A.R. 82-3-111?**

21 A. Yes. Between August 19, 2022, and September 20, 2022, Operator plugged the Barton #3,
22 HWR #1, Moyer #1, and Wilmoth #24-1 wells. Additionally, Operator transferred the Welton
23 #1 well to Stonegate Ranch, LLC, who has returned the well to service.

1 **Q. Has Operator paid the \$500 penalty ordered by the Commission in the Penalty Order?**

2 A. No, Operator has not paid the \$500 penalty.

3 **Q. Since all the Subject Wells are in compliance with Commission rules and regulations, do**
4 **you think it would be appropriate to simply waive the \$500 penalty?**

5 A. No, I do not believe it would be appropriate to waive the penalty. K.A.R. 82-3-111 declares
6 that failure by an operator to file a notice of TA status for a well shall be punishable by a \$100
7 penalty. Operator's wells were shut-in for more than ten years without approved TA status.
8 Operator has clearly violated the requirements of K.A.R. 82-3-111, and I think it is
9 inappropriate to simply waive the \$100 per well penalty explicitly required by the regulation.

10 More importantly, waiving the \$500 penalty in this docket would be a clear signal to other
11 operators that they can simply ignore the possibility of monetary penalties if they fail to
12 comply with Commission rules and regulations.

13 **Q. Please summarize your recommendations.**

14 A. I believe the information gathered by District #3 Staff is sufficient to affirm the Commission's
15 Penalty Order in this docket. The Subject Wells were inactive and unplugged without TA
16 status for longer than allowed by Commission regulations.

17 **Q. Does this conclude your testimony?**

18 A. Yes.

February 3, 2022

McClenning, Mike KLN#32219
Production Maintenance Service
P.O. Box 275
Tyro, KS 67364-0275

NOTICE OF VIOLATION(S)

Re: Inactive Well(s)

Operator:

District #3 Field Staff have determined that the attached list of inactive wells are unplugged without approved temporary abandonment status according to your well inventory and confirmed by Staff field investigation. **In other words, the well(s) on the attached list are in violation of Commission regulations, specifically K.A.R. 82-3-111.**

K.A.R. 82-3-111 requires operators to plug, return to service, or obtain temporary abandonment status for each inactive well within 90 days of the well becoming inactive. Exempted wells must be fully equipped, immediately capable of returning to service, subject to a valid lease, the well has produced within the past 365 days, and the well is otherwise in full compliance with all of the Commission's regulations.

Please contact Commission District Staff at 620-902-6450 if any of the following conditions are met prior to the deadline of March 5, 2022:

- Well(s) on the attached list are returned to service or plugged, or
- Well(s) on the attached list are fully equipped, immediately capable of returning to service, are on an active lease, and have been in service within the last year.

Please bring the well(s) on the attached list into compliance with K.A.R. 82-3-111 by March 5, 2022. Failure to comply with the deadline shall result in a penalty recommendation in the amount of \$100.00 per well. Temporary abandonment applications must be filed on KOLAR, except a more formal application must be filed if the well(s) have been inactive for over ten years. You may contact us with any questions.

Sincerely,

Ryan Duling
District Compliance Officer, ECRS
Kansas Corporation Commission
620-902-6450

Cc: Troy A. Russell
District #3 Supervisor, P.G.
Kansas Corporation Commission

McClenning, Mike / Inactive Well List ("IN" Status) 2/3/2022

KLN #	COUNTY	CONAME	WELL_NM	API_WELLNO	WELL_TYPE	SEC	TWP	RGE	LAT	LON	WELL STATUS
32219											
		MG									
McClenning, Mike			BARTON 3	1512502490000	OIL	29	33	16	37.1409225	-95.679925	IN
McClenning, Mike			BARTON 5	1512530636000	GAS	29	33	16	37.140942	-95.678009	IN
McClenning, Mike			BLOCK 1	1512502491000	OIL	29	33	16	37.1386371	-95.6765574	IN
McClenning, Mike			BLOCK 2	1512502492000	OIL	29	33	16	37.1395431	-95.6765479	IN
McClenning, Mike			BLOCK 3	1512502493000	OIL	29	33	16	37.1404491	-95.6765383	IN
McClenning, Mike			BLOCK 4	1512502494000	OIL	29	33	16	37.1404395	-95.6754067	IN
McClenning, Mike			BLOCK 5	1512502495000	OIL	29	33	16	37.1395335	-95.6754162	IN
McClenning, Mike			BUCHANAN 1	1512530403000	GAS	29	33	16	37.143089	-95.681969	IN
McClenning, Mike			FLANAGAN S 4	1512529679000	OIL	2	34	14	37.123633	-95.84435	IN
McClenning, Mike			GILLMAN-ISLE 1	1512520785000	OIL	23	34	15	37.073189	-95.737663	IN
McClenning, Mike			GILLMAN-ISLE 10	1512502498000	OIL	23	34	15	37.0750756	-95.7327681	IN

KLN #	COUNTY	CONAME	WELL_NM		API_WELLNO	WELL_TYPE	SEC	TWP	RGE	LAT	LON	WELL STATUS
McClenning, Mike			GILLMAN-ISLE	3	15125213310000	OIL	23	34	15	37.073189	-95.737663	IN
McClenning, Mike			GILLMAN-ISLE	4	15125221760000	OIL	23	34	15	37.073189	-95.737663	IN
McClenning, Mike			GILLMAN-ISLE	5	15125221730000	OIL	23	34	15	37.073189	-95.737663	IN
McClenning, Mike			GILLMAN-ISLE	6	15125223940000	OIL	23	34	15	37.073189	-95.737663	IN
McClenning, Mike			GILLMAN-ISLE	7	15125223950000	OIL	23	34	15	37.073189	-95.737663	IN
McClenning, Mike			GILLMAN-ISLE	8	15125243920000	OIL	23	34	15	37.073189	-95.737663	IN
McClenning, Mike			GILLMAN-ISLE	9	15125024970000	OIL	23	34	15	37.0782435	-95.734091	IN
McClenning, Mike			HILL	1	15125308660000	GAS	32	33	16	37.13356	-95.679703	IN
McClenning, Mike			HWR	1	15125312210000	GAS	25	34	14	37.06535	-95.834549	IN
McClenning, Mike			MARY ISLE	16-C	15125013890000	OIL	23	34	15	37.077808	-95.73082	IN
McClenning, Mike			MARY ISLE	16-D	15125013880000	OIL	23	34	15	37.077808	-95.729172	IN
McClenning, Mike			MARY ISLE	CORN 1	15125058110000	OIL	23	34	15	37.0778242	-95.7300673	IN
McClenning, Mike			MELANDER Q	1	15125291140000	OIL	35	33	14	37.125546	-95.847249	IN

KLN #	COUNTY	CONAME	WELL_NM	API_WELLNO	WELL_TYPE	SEC	TWP	RGE	LAT	LON	WELL STATUS
McClenning, Mike			MOYER 1	15125309950000	GAS	24	34	14	37.067131	-95.827103	IN
McClenning, Mike			WELTON 1	15125308640000	GAS	25	34	14	37.059849	-95.825851	IN
McClenning, Mike			WILMOTH 24-1	15125313310000	GAS	24	34	14	37.067039	-95.830643	IN

"IN" WELLS OUT OF COMPLIANCE 27

March 30, 2022

Mike McClenning
McClenning, Mike dba Production
Maintenance Service
PO BOX 275
TYRO, KS 67364-0275

Re: Plugging Application
API 15-125-02490-00-00
BARTON 3
SE/4 Sec.29-33S-16E
Montgomery County, Kansas

Dear Mike McClenning:

The Conservation Division has received your Well Plugging Application (CP-1).

Under K.A.R. 82-3-113(b)(2), you must notify DISTRICT 3 of your proposed plugging plan at least 5 days before plugging the well. DISTRICT 3's phone number is (620) 902-6450. Failure to notify DISTRICT 3, or failure to file a Well Plugging Record (CP-4) after the well is plugged will result in a penalty recommendation.

Under K.A.R. 82-3-600, you must file an Application for Surface Pit (CDP-1) if you wish to use a workover pit while plugging the well. Failure to timely file a CDP-1, failure to timely remove fluids, or failure to timely file Closure of Surface Pit (CDP-4) or Waste Transfer (CDP-5) forms will result in a penalty recommendation.

This receipt does NOT constitute authorization to plug this well if you do not otherwise have the legal right to do so.

This receipt is VOID after September 26, 2022. If the well is not plugged by then, you will have to submit a new CP-1 if you wish to plug the well.

The September 26, 2022 deadline does NOT override any compliance deadline given to you by Legal, District, or other Commission Staff. Failure to comply with any given deadline will still result in the Commission assessing penalties, or taking other legal action.

Sincerely,
Production Department Supervisor

cc: DISTRICT 3

March 30, 2022

Mike McClenning
McClenning, Mike dba Production
Maintenance Service
PO BOX 275
TYRO, KS 67364-0275

Re: Plugging Application
API 15-125-31221-00-00
HWR 1
NW/4 Sec.25-34S-14E
Montgomery County, Kansas

Dear Mike McClenning:

The Conservation Division has received your Well Plugging Application (CP-1).

Under K.A.R. 82-3-113(b)(2), you must notify DISTRICT 3 of your proposed plugging plan at least 5 days before plugging the well. DISTRICT 3's phone number is (620) 902-6450. Failure to notify DISTRICT 3, or failure to file a Well Plugging Record (CP-4) after the well is plugged will result in a penalty recommendation.

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Sincerely,
Production Department Supervisor

cc: DISTRICT 3

March 30, 2022

Mike McClenning
McClenning, Mike dba Production
Maintenance Service
PO BOX 275
TYRO, KS 67364-0275

Re: Plugging Application
API 15-125-30995-00-00
MOYER 1
SE/4 Sec.24-34S-14E
Montgomery County, Kansas

Dear Mike McClenning:

The Conservation Division has received your Well Plugging Application (CP-1).

Under K.A.R. 82-3-113(b)(2), you must notify DISTRICT 3 of your proposed plugging plan at least 5 days before plugging the well. DISTRICT 3's phone number is (620) 902-6450. Failure to notify DISTRICT 3, or failure to file a Well Plugging Record (CP-4) after the well is plugged will result in a penalty recommendation.

Under K.A.R. 82-3-600, you must file an Application for Surface Pit (CDP-1) if you wish to use a workover pit while plugging the well. Failure to timely file a CDP-1, failure to timely remove fluids, or failure to timely file Closure of Surface Pit (CDP-4) or Waste Transfer (CDP-5) forms will result in a penalty recommendation.

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Sincerely,
Production Department Supervisor

cc: DISTRICT 3

March 30, 2022

Mike McClenning
McClenning, Mike dba Production
Maintenance Service
PO BOX 275
TYRO, KS 67364-0275

Re: Plugging Application
API 15-125-31331-00-00
WILMOTH 24-1
SW/4 Sec.24-34S-14E
Montgomery County, Kansas

Dear Mike McClenning:

The Conservation Division has received your Well Plugging Application (CP-1).

Under K.A.R. 82-3-113(b)(2), you must notify DISTRICT 3 of your proposed plugging plan at least 5 days before plugging the well. DISTRICT 3's phone number is (620) 902-6450. Failure to notify DISTRICT 3, or failure to file a Well Plugging Record (CP-4) after the well is plugged will result in a penalty recommendation.

Under K.A.R. 82-3-600, you must file an Application for Surface Pit (CDP-1) if you wish to use a workover pit while plugging the well. Failure to timely file a CDP-1, failure to timely remove fluids, or failure to timely file Closure of Surface Pit (CDP-4) or Waste Transfer (CDP-5) forms will result in a penalty recommendation.

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Sincerely,
Production Department Supervisor

cc: DISTRICT 3

CERTIFICATE OF SERVICE

23-CONS-3023-CPEN

I, the undersigned, certify that a true and correct copy of the attached Prefiled Testimony of Ryan Duling has been served to the following by means of electronic service on November 14, 2022.

RYAN DULING
KANSAS CORPORATION COMMISSION
DISTRICT OFFICE NO. 3
137 E. 21ST STREET
CHANUTE, KS 66720
r.duling@kcc.ks.gov

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CENTRAL OFFICE
266 N. MAIN ST, STE 220
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mmcclenning@cox.net

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t.russell@kcc.ks.gov

/s/ Paula J. Murray

Paula J. Murray