

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Dwight D. Keen

In the Matter of an Order to Show Cause) Docket No: 18-CONS-3053-CSHO
Issued to Southwind Petroleum Corporation)
("Operator") for its Failure to Comply with) CONSERVATION DIVISION
K.A.R. 82-3-602 at the Dirks #27-2 Well in)
Rush County, Kansas.) License No: 6743

ORDER ASSESSING ADDITIONAL PENALTY

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

Background:

1. On August 22, 2017, the Commission issued an *Order to Show Cause, Designating a Prehearing Officer, and Setting a Prehearing Conference*. The Order set a Prehearing Conference for October 2, 2017.¹ Various continuances ensued.
2. On March 1, 2018, Staff filed a Motion to Approve Settlement Agreement with an attached proposed Settlement Agreement. The relevant terms of the Settlement Agreement stated:
 - a. *Within 60 days of the effective date of this Agreement, Operator shall empty all pits at the Dirks #27-2 (API #15-165-22104), Eileen Hagerman #4-5 (API #15-145-21811), and Karst-Hoskins #27-3 (API #15-163-22109) locations (collectively "the subject locations"); close all pits; file complete, accurate pit closure forms for such closures; and file complete, accurate waste transfer forms as applicable.*

¹ *Order to Show Cause, Designating a Prehearing Officer, and Setting a Prehearing Conference*, Ordering Clause B (Aug. 22, 2017).

- b. Operator shall be found to have committed one violation of K.A.R. 82-3-602(a)(1)(A). *Within 90 days of the effective date of this Agreement, Operator shall pay a \$1,000 penalty for its violation of K.A.R. 82-3-602(a)(1)(A).*
- c. *If Operator fails to comply with any deadline [provided] in Paragraph 12 or 13 [of the Agreement] (i.e., Paragraphs a. and b. above), then Staff will recommend to the Commission that Operator be assessed an additional \$1,000 penalty for each missed deadline.* Operator agrees that an additional \$1,000 penalty is a reasonable penalty for failure to comply with each missed deadline in Paragraph 12 or 13 (i.e., Paragraphs a. and b. above).
- d. *If Operator fails to empty and close all pits at the subject locations within 90 days of the effective date of this Agreement, then Staff will recommend to the Commission that Operator be assessed an additional \$2,500 penalty* and may request authorization for Staff to empty and close the pits and assess the costs to Operator. Operator agrees that an additional \$2,500 penalty and assessment of costs is a reasonable consequence for failure to empty and close the pits within 90 days.
- e. Operator understands that failure to address the matters set out in Paragraphs 11-15 [of the Agreement] and/or failure to pay any penalties or costs set out above could result in the suspension of its license without further notice, and the Commission may submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.
- f. 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.²

3. By having signed the proposed Settlement Agreement, both Staff and the Operator agreed that “[t]he terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein”³ and “[i]f 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.”⁴

4. On April 17, 2018, the Commission issued its *Order Approving Settlement Agreement*, wherein the Commission found “the Settlement Agreement attached to Staff’s

² Settlement Agreement, pp. 3-4 (Mar. 1, 2018) (emphasis added).

³ Settlement Agreement, ¶ 18.

⁴ Settlement Agreement, ¶ 22.

Motion to Approve Settlement Agreement fully resolves the issues specifically addressed between the parties and constitutes a fair and reasonable resolution of this matter. The Settlement Agreement is incorporated into and made a part of this Order.”⁵ Thus, the Commission approved the Settlement Agreement.⁶

5. On July 23, 2018, Staff filed a Motion to Recommend Additional Penalty. Staff stated that, as of June 18, 2018, the Operator had failed to close the pit at its Dirks #27-2 well (API #15-165-22104), in violation of the Settlement Agreement.⁷ Staff recommended an additional \$1,000 penalty against the Operator.⁸ Staff stated that, as of July 20, 2018, the pit at the Dirks #27-2 well remained open, in violation of the Settlement Agreement.⁹ Staff recommended an additional \$2,500 penalty against the Operator.¹⁰ Staff stated that, also on July 20, 2018, Conservation District Staff discovered that the Operator had not closed the working pit, reserve pit, water pit, and the cellar and flow ditch at its Eileen Hagerman #4-5 well (API #15-145-21811), in violation of the Settlement Agreement.¹¹ Staff recommended an additional \$1,000 penalty against the Operator for missing the 60-day deadline and a \$2,500 penalty for missing the 90-day deadline to accomplish the requisite tasks.¹² In addition, Staff stated that the Operator failed to pay its \$1,000 penalty for violation of K.A.R. 82-3-602(a)(1)(A) by the deadline stipulated in the Settlement Agreement.¹³ Staff recommended an additional \$1,000 penalty against the Operator.¹⁴

⁵ *Order Approving Settlement Agreement*, ¶ 5 (Apr. 17, 2018).

⁶ *Order Approving Settlement Agreement*, Ordering Clause A.

⁷ Motion to Recommend Additional Penalty, ¶ 4 (July 23, 2018).

⁸ Motion to Recommend Additional Penalty, ¶ 4.

⁹ Motion to Recommend Additional Penalty, ¶ 5.

¹⁰ Motion to Recommend Additional Penalty, ¶ 5.

¹¹ Motion to Recommend Additional Penalty, ¶ 6.

¹² Motion to Recommend Additional Penalty, ¶ 6.

¹³ Motion to Recommend Additional Penalty, ¶ 7.

¹⁴ Motion to Recommend Additional Penalty, ¶ 7.

6. In total, Staff recommended the Commission assess an additional \$8,000 penalty against the Operator for failure to comply with the terms of the Settlement Agreement and grant Staff the authority to empty and close the relevant pits and assess the costs to the Operator.¹⁵ Staff attached Exhibits B, C, and D to its Motion as supporting evidence of the Operator's non-compliance with the Settlement Agreement.

Findings and Conclusions:

7. The Commission finds the Operator has failed to comply with the 60-day deadline in Paragraph 12 of the Settlement Agreement with respect to the Dirks #27-2 well,¹⁶ and thus, an additional \$1,000 penalty is reasonable for the Operator's missing of this deadline.¹⁷

8. The Commission finds the Operator has failed to comply with the 90-day deadline in Paragraph 15 of the Settlement Agreement (Paragraph 2d. of this Order) with respect to the Dirks #27-2 well,¹⁸ and thus, an additional \$2,500 penalty is reasonable for the Operator's missing of this deadline.¹⁹

9. The Commission finds the Operator has failed to comply with both the 60-day and 90-day deadlines in Paragraphs 12 and 15 of the Settlement Agreement with respect to the Eileen Hagerman #4-5 well,²⁰ and thus, additional \$1,000 and \$2,500 penalties are reasonable for the Operator's missing of this deadline.²¹

10. The Commission finds the Operator has failed to comply with the 90-day deadline in Paragraph 13 of the Settlement Agreement (Paragraph 2b. of this Order), requiring

¹⁵ Motion to Recommend Additional Penalty, p. 3.

¹⁶ See Motion to Recommend Additional Penalty, ¶ 4 and Exhibit B.

¹⁷ See Paragraph 2c. of this Order, *supra*.

¹⁸ See Motion to Recommend Additional Penalty, ¶ 5 and Exhibit C.

¹⁹ See Paragraph 2d. of this Order, *supra*.

²⁰ See Motion to Recommend Additional Penalty, ¶ 6 and Exhibit D.

²¹ See Paragraphs 2c. and 2d. of this Order, *supra*.

the Operator to pay the \$1,000 penalty assessed against it for violation of K.A.R. 82-3-602(a)(1)(A),²² and thus, an additional \$1,000 penalty is reasonable for the Operator's missing of this deadline.²³

11. Based on the above, the Commission finds the Operator shall be assessed a total additional penalty of \$8,000. The Commission finds that because of the Operator's failure to comply with the terms of the Settlement Agreement, Staff shall be authorized to empty and close the Operator's pits and assess the costs to the Operator. The Commission also finds that failure to pay this penalty and these costs could result in the suspension of the Operator's license without further notice, and the Commission may submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.²⁴

THEREFORE, THE COMMISSION ORDERS:

A. Staff's Motion to Recommend Additional Penalty is approved, and the Operator is assessed an additional penalty of \$8,000.

B. Staff is authorized to empty and close the pits belonging to the Operator and to assess the costs to the Operator.

C. Pursuant to Paragraph 16 of the Settlement Agreement, failure to pay this penalty and these costs could result in the suspension of the Operator's license without further notice, and the Commission may submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.

D. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²⁵

²² See Motion to Recommend Additional Penalty, ¶ 7.

²³ See Paragraph 2c. of this Order, *supra*.

²⁴ Settlement Agreement, ¶ 16; Paragraph 2e of this Order, *supra*.

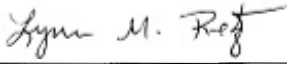
²⁵ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

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

BY THE COMMISSION IT IS SO ORDERED

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 09/06/2018



Lynn M. Retz
Secretary to the Commission

Date Mailed: 09/07/2018

MJD

CERTIFICATE OF SERVICE

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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 09/06/2018.

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