

**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. Weilert)
Dba Michael D. Weilert Oil Company (“Operator”))
To comply with KAR 82030600, KAR 82-3-603,)
and KAR 82-3-604 at the Gay E. Reidel C #2 well)
in Ellis County, Kansas.)
_____))
Pursuant to K.S.A. Chapter 60

Docket No.: 18-CONS-3077-CPEN

CONSERVATION DIVISION

License No.: 5798

**REQUEST FOR HEARING AND
MOTION FOR SUMMARY ORDER ON THE PLEADINGS**

Micheal D. Weilert, d/b/a Micheal D. Weilert Oil Company (“Operator”) respectfully requests a hearing in the above-captioned docket, and alternatively moves the State Corporation Commission of the State of Kansas (“Commission”) for a summary order voiding the Penalty Order entered in this docket and waiving the fine assessed therein. In support of his request and motion, Operator states and alleges as follows:

BACKGROUND

1. Operator is a sole proprietor with a mailing address of 866 230th Ave., Hays KS 67601. The Commission has issued Operator oil and gas operator’s License No. 5798, which license is in effect through June 30, 2018.

Well History

2. Operator operates the Gay E. Reidel ‘C’ #2 saltwater disposal well (“Well”), API No. 15-051-15828-0002, located approximately 4,620’ from the South line and 2,310’ from the East line of Section 6, Township 14 South, Range 19 West, Ellis County, Kansas.

3. The Well was originally drilled in 1953 as an oil well, and was later converted into saltwater disposal well. Under Permit No. D-30,612.0, Operator is authorized to dispose up to 2000 BOWD through the well into the Cedar Hills formation at a maximum injection pressure of 0 psig.

The Incident in Question

4. On or about July 12, 2017, Operator was contacted by District 4 staff and informed that it had received a complaint that oil and saltwater had escaped from the dike around the Well.

5. Staff informed Operator that it observed standing water or fluid all within the dike area, with a layer of oil on top. However, staff believed, based on purported dark staining on the top edge of the dike and crystallization outside the eastern side of the dike, that fluid had escaped the dike.

6. Operator was instructed to remove the fluid inside the dike.

7. Operator contacted Blackhawk Tank Services (“Blackhawk”) to remove the fluid in the dike. On July 12, 2017, by and through its owner, Todd Werth, Blackhawk removed all the fluids in the dike.

8. The Affidavit of Todd Werth (“Werth Aff.”), providing his expected testimony, is attached hereto and incorporated fully herein, including the following:

- a) There was approximately 50-55 barrels of rain water in the dike around the Well on July 12, 2017, all of which was removed that day and disposed down the Well;
- b) There were no emergency pits within the dike;
- c) By 4:00 pm on July 12, 2017, all standing water or fluids had been removed from the dike, and there were no fluids or water inside the dike surrounding the Well at that time;

- d) There did not appear to be spillover or fluids outside the dike on July 12, 2017 because the pit was not full enough to spill over the top of the dike; and
- e) There was not a substantial volume of oil in the dike on July 12, 2017, less than 5 barrels.
- f) The water in the dike did not appear to be spilled saltwater.

9. The Affidavit of Pierce Day ("Day Aff."), providing his expected testimony is attached hereto and incorporated fully herein, including the following:

- a) The water in the dike at the Well on July 12, 2017 was rainwater from rains the previous night, not a spill;
- b) There was no emergency pit dug at the Well at any time; and
- c) All of the fluid in the dike was removed on July 12, 2017.

10. On July 13, 2017, Operator received a Notice of Violation letter alleging violations of KAR 82-3-603 for failure to notify the District Office of a spill, and setting deadlines of July 20, 2017 to submit an unreported incident form, and July 23, 2017 to remediate the spill.

11. On July 14, 2017—two days after all fluids had been removed by Blackhawk—, staff purportedly sampled fluid inside dike around the Well and found 15,500 ppm of chlorides.

12. Based on his experience in the area, Operator states that the chloride content from water produced from wells that is disposed down the Well is 30,000 to 50,000 ppm of chlorides from the Arbuckle formation and at least 100,000 ppm of chlorides from the Lansing-Kansas City formation. Therefore, chlorides of 15,500 ppm would not be indicative of water disposed into the Well or spilled from its tanks, rather rainwater mixed with chlorides present in a dry dike.

13. On July 18, 2017 Staff conducted follow-up inspection at the Well. Staff reported that it discovered that fluids remained inside the diked area, that they had discovered an “emergency pit” had been dug inside the diked area.

14. Between July 12 and July 18, 2017 no work was performed at the Well other than Blackhawk’s removal of fluids from pit. There was no dirt work, digging, or any other work of any kind performed on the Well or the dike between July 12 and July 18, 2017.

15. On July 20, 2017, Operator submitted a Report of Incident form (instead of Unreported Incident Form) on which Operator reported no spill had occurred and 55 barrels of rainwater had been recovered. Operator did so because, based on his information, there had not been a spill at the Well, but rather there had been standing rain water in the dike, which had been removed. This conclusion was based on information provided to Operator by Todd Werth of Blackhawk, and his pumper, Pierce Day.

16. On July 21, 2017, Operator received a Notice of Violations for an alleged unpermitted “emergency pit”. Operator hired J&J Roustabout (“J&J”) to rebuild the dike using fill dirt from inside the pit, which is a standard oil field practice.

17. James Hertl of J&J performed the work the Operator retained J&J to perform. Mr. Hertl’s Affidavit (“Hertl Aff.”) is attached hereto and incorporated herein by reference, including the following:

- a) J&J was hired to repair the dike walls and clean any oil residue out of the dike at the Well on July 21, 2017.
- b) There was a small amount of oil staining the soil in the dike, it was at most 3 to 4 barrels, and there had not been a spill outside the dike
- c) There were no standing fluids in the dike on that day;
- d) There was no emergency pit within the dike;
- e) J&J rebuilt the dike walls and filled in any low spots within the dike.

18. Operator states that a small amount of oil, approximately 3 to 4 barrels, had previously gone into the dike, and had previously been removed by the Operator. Any oil in the dike after the rain on or about July 11, 2017 was likely residue from those 3 to 4 barrels. In addition, any oil staining the soil in the dike was likely residue from that 3 to 4 barrels previously removed by Operator. In addition, there is likely saltwater sediment in the bottom of the dike from occasional leaks and small spills that will cause fluids in the dike to contain higher level of chlorides than normal rainwater, but lower level of chlorides than water produced from the wells that dispose of produced water into the Well.

19. On July 24, 2017, Staff conducted follow-up inspection and found that Operator brought all violations into compliance.

20. Operator has never been cited for a violation by the KCC in 45 years of operation in Kansas.

The Penalty Order

21. On or about August 22, 2017, a Penalty Order was issued by the Commission, finding the following violations:

- a) Violation of KAR 82-3-600 for use of a pit without a permit
- b) Violation of KAR 82-3-603(d) for failure to notify the District office of a spill at the Well in a timely manner.
- c) Violation of KAR 82-3-603a(a) for failure to notify landowner of a spill in a timely manner
- d) Violation of KAR 82-3-604(b) because of failure to remove fluid from a diked area within 48 hours after discovery or knowledge, or as authorized by the appropriate district office
- e) Violation of KAR 82-3-604(d) for failure to notify the appropriate District office of an oil-related discharge into a diked area in a timely manner.

22. The Commission ordered penalties in the total amount of \$1,500, ordered Operator to file an Application for Surface Pit (CDP-1) and a Closure of Surface Pit (CDP-4) for the purported emergency pit at the Well, and to file a Waste Transfer (CDP-5) Form for the fluids removed from the diked area.

Operator's Response

Emergency Pit – KAR 82-3-600

23. Operator contests the violation identified in paragraph 21 of the Penalty Order under KAR 82-3-600. There is no evidence that there was a pit in the dike area or that an emergency pit had been dug around the well. Indeed, the only evidence on the issue is the testimony of the affiants here, Mr. Werth, Mr. Hertl and Mr. Day who all testify that there was no pit in the dike, nor was there any emergency pit at the Well. *See Hertl Aff. at ¶ 7; Werth Aff. At ¶ 8; Day Aff. At ¶ 9.*

24. Staff has not provided any support, nor has it identified the alleged “emergency pit” it contends was utilized by Operator at the Well. This is insufficient to warrant a citation or a penalty in light of the clear and irrefutable testimony by the affiants Mr. Werth, Mr. Hertl and Mr. Day, who unequivocally testify that there was no pit in the dike or emergency pit.

Failure to Remove Fluid from Diked Area Within 48 Hours – KAR 82-3-604(b)

25. Operator contests the alleged violation identified in paragraph 24 of the Penalty Order under KAR 82-3-604(b) for failure to remove fluids from the dike within 48 hours. The only evidence in the record clearly provides that *all* of the fluids in the dike on July 12, 2017 was removed that very same day by Blackhawk. This is clearly demonstrated by the testimony of all three affiants, Mr. Werth, Mr. Hertl and Mr. Day. *See Hertl Aff. at ¶ 6–7; Werth Aff. At ¶ 6–9; Day Aff. At ¶ 5–9.* Staff have provided *zero* evidence which would support any suggestion that

Operator had failed to timely remove the fluids. This violation is completely without support in the record.

Timely Notification of District Office – KAR 82-3-603

26. Operator contests the alleged violation identified in paragraph 22 of the Penalty Order under KAR 82-3-603(d) for failure to provide timely notice to the District office of a spill. The evidence submitted shows that there was no reportable spill, but rather that the dike at the Well contained standing rain water, which was removed by Operator as soon as he was notified that it was in the dike.

27. KAR 82-3-603(b)(2) provides that the reporting requirements of a “spill” are triggered only if there is a spill as defined in KAR 82-3-101. Pursuant to KAR 82-3-101(69) defines a spill as an “escape of saltwater, oil, or refuse by overflow, seepage, or other means from the vicinity of oil, gas, injection, service, or gas storage wells, or from tanks, pipelines, dikes, or pits” Here, there has been no “spill” because there is no evidence of overflow or seepage outside the dike. The affiants here, Mr. Werth, Mr. Hertl and Mr. Day, all provided clear testimony that there was no overflow of the dike at any time. *See Hertl Aff. at ¶ 7; Werth Aff. At ¶ 6–9; Day Aff. At ¶ 5–9.*

28. Staff does not provide sufficient, if any, evidence in support of the alleged violation. Staff cannot refute the testimony of the Mr. Werth and Mr. Day that the standing water in the dike on July 12, 2017 was rainwater, not saltwater spillage, and staff have not and cannot provide any evidence that any water—rainwater or saltwater—overflowed the dike. The record shows no indication that staff ever observed fluids that had overflowed and were outside the dike. Moreover, the clear evidence shows that the water standing in the dike was removed completely on July 12, 2017. Staff purports to test water in the dike two days later, but all the water in question had been

removed. Moreover, the chloride levels of the fluid purportedly tested by staff are not indicative of water produced from wells in the area. Staff have not provided any foundation for the purported tests to establish their validity or reliability, and therefore these purported tests of the water in the dike, water which had been removed two day prior, must be rejected and ignored.

29. The evidence demonstrates that there was no “spill” as defined in KAR 82-3-101(a)(69), but rather that rainwater had collected in the dike. As such, there was no notification obligation on behalf of Operator. Rather, Operator’s Report of Incident filed on July 20, 2017 reporting collection and removal of rain water from dike was accurate, and no penalty is warranted.

Timely Notification of Landowner – KAR 82-3-603a(a)

30. Operator contests the alleged violation identified in paragraph 23 of the Penalty Order under KAR 82-3-603a(a) for failure to provide timely notice to the landowner of a spill. As discussed in detail above, the evidence submitted shows that there was no reportable spill as defined in KAR 82-3-101(a)(69), and therefore no obligation to report to the District office under KAR 82-3-603(b). Pursuant to KAR 82-3-603a(a), Operator’s obligation to report to the landowner is only triggered when its obligations to report to the District office under KAR 82-3-603(b) are triggered. Because there was no reportable “spill” as defined in KAR 82-3-101(a)(69), and the District office reporting obligations were never triggered under KAR 82-3-603(b), Operator was similarly not obligated to report under KAR 82-3-603a(a). Operator incorporates all the evidence discussed above in paragraphs 27 and 28 herein.

31. In addition, Operator is aware that it was the landowner who initially reported the alleged spill to the District office, and the landowner’s concerns were then relayed by the District office to Operator. KAR 82-3-603a does not require Operator to report a spill to the landowner if the landowner is already aware of the spill. Therefore, even if there were a “spill,” which there

was not, Operator would not be obligated to report it to the landowner who was already aware of the incident.

Failure to Report Oil Field-Related Discharge – KAR 82-3-604(d)

32. Operator contests the alleged violation identified in paragraph 25 of the Penalty Order under KAR 82-3-604(d) for failure to report an oil field-related discharge under KAR 82-3-604(d). This section requires reporting of a discharge only when it involves five or more barrels of saltwater, oil or refuse.

33. Although Operator concedes that small volumes of oil had previously discharged into the dike (*see Supra*, ¶ 18), that discharge was less than 5 barrels and therefore did not trigger Operator's obligation to report under KAR 82-3-604(d). *See Hertl Aff. at ¶ 6; Werth Aff. At ¶ 9; Day Aff. at ¶ 6*. Staff yet again provide no evidence from which it could be reasonably concluded that five or more barrels of oil had spilled into the dike. This violation is without support and is undermined by the uncontroverted evidence presented by the affiants here.

Request for Relief

34. The Commission has the authority to rule on the merits of the pleadings through summary order.¹ The pleadings and affidavits show that Operator is compliant with Commission regulations, and that the violations are unsupported or are not based on adequate or reliable evidence. Operator requests that the Commission enter a summary order on the pleadings voiding the penalty order entered in this docket, waiving the \$1,500 fine charged thereunder, and reversing the orders that Operator file an Application for Surface Pit (CDP-1) and a Closure of Surface Pit (CDP-4) for the purported emergency pit at the Well, and a Waste Transfer (CDP-5) Form for the fluids removed from the diked area.

¹ See K.S.A. 77-506; K.S.A. 77-537; K.A.R. 82-1-232(b)(2); *see also* K.S.A. 60-212(c).

35. In the alternative, Operator requests that the matter be scheduled for an evidentiary hearing to address the issues presented by the Penalty Order.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK
& KENNEDY, CHARTERED

By: 

Will B. Wohlford, #21773

Jonathan A. Schlatter, #24848

300 N. Mead, Suite 200

Wichita, KS 67202-2745

Telephone - (316) 262-2671

Facsimile -- (316) 262-6226

Email – wwohlford@morrislaing.com

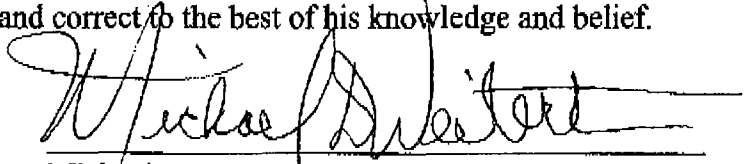
Attorneys for Operator

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF ELLIS)

Michael D. Weilert, being of lawful age and being first duly sworn upon his oath,
deposes and says:

That he has read the above and forgoing pleading and is familiar with the contents and
that the statements made therein are true and correct to the best of his knowledge and belief.



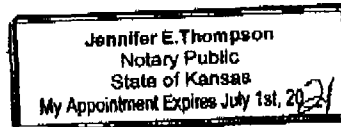
Michael D. Weilert

SUBSCRIBED AND SWORN to before me this 25 day of September, 2017.



Notary Public

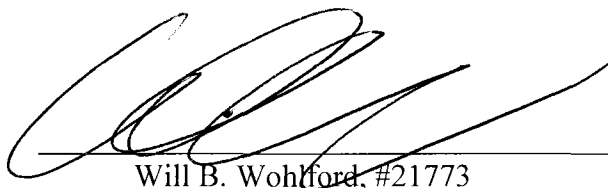
My Appointment expires:



CERTIFICATE OF SERVICE

I, Will B. Wohlford, hereby certify that on this 25th¹ day of September, 2017, I caused the original of the foregoing pleading to be electronically filed with the Conservation Division of the State Corporation Commission of the State of Kansas, and emailed true and correct copies of the same to the following individuals:

Joshua Wright, Litigation Counsel
Kansas Corporation Commission
j.wright@kcc.ks.gov



Will B. Wohlford, #21773

**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. Weilert)
Dba Michael D. Weilert Oil Company ("Operator"))
To comply with KAR 82030600, KAR 82-3-603,)
and KAR 82-3-604 at the Gay E. Reidel C #2 well)
in Ellis County, Kansas.)
_____)

Docket No.: 18-CONS-3077-CPEN

CONSERVATION DIVISION

License No.: 5798

Pursuant to K.S.A. Chapter 60

AFFIDAVIT OF TODD WERTH

STATE OF KANSAS)
) ss:
COUNTY OF ELLIS)

COMES NOW TODD WERTH, being of lawful age and first duly sworn, and attests as follows:

1. My name is Todd Werth I am a resident of Ellis County, Kansas. I am of sound mind and of lawful age to make this affidavit.
2. The statements in this affidavit are based on my personal knowledge and are true to the best of my knowledge.
3. I am a principal and owner of Blackhawk Tank Service, Inc. ("Blackhawk") located in Hays, Kansas, and authorized to make this affidavit on its behalf.
4. On July 12, 2017, Blackhawk was hired by Micheal D. Weilert to remove water from the dike around the Gay E. Reidel C #2 saltwater disposal well ("Well") in Ellis County, Kansas. I personally went to the location of the Well to perform the requested work. A true and correct copy of Blackhawk's invoice for the above-referenced work is attached hereto.

5. Blackhawk was hired to empty water in the dike or firewall area around the Well and dispose of it down the Well.

6. As I arrived at the location of the Well, I noticed water in the dike, but there was no water outside the dike, and there was not enough water in the dike to have spilled over the walls of the dike. I removed all of the water standing in the dike on July 12, 2017, which amounted to 50 to 55 barrels of fresh water. I removed all the water in the dike and put it down the Well.

7. When I left there was no standing water or fluids in or around the dike around the Well.

8. Although there were some low spots in the dike, no pit had been dug within the dike.

9. I left the premises at approximately 4:00 pm on July 12, 2017, at which time all the standing water in the dike had been removed, and there were no other fluids in the dike. I observed green moss and algae within the dike, which would be indicative of freshwater in the dike, and not a substantial quantity of saltwater or oil in the dike. There did not appear to be oil in the water in the dike at the time, or if there was any, it was an amount less than 5 barrels.

FURTHER AFFIANT SAYETH NAUGHT.

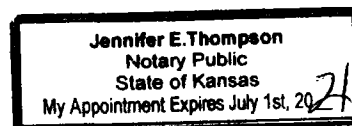

TODD WERTH

STATE OF KANSAS)
) ss:
COUNTY OF ELLIS)

This instrument was acknowledged before me on this 22 day of September, 2017, by Todd Werth, and at the same time the affiant was by me duly sworn to the foregoing affidavit.

My appointment expires:





BLACKHAWK TANK SERVICE, INC.
AARON WERTH & TODD WERTH, OWNERS
P.O. BOX 771
HAYS, KS 67601
785-625-2359

Invoice

DATE
7/12/2017

INVOICE #
28343

BILL TO

Michael D. Weilert Oil Co.
866 230th Ave.
Hays, KS 67601

LEASE NAME

Riedel SWD

DESCRIPTION

HOURS

RATE

AMOUNT

7-12-17: Empty firewall - 50 bbls fresh water. - NO CHARGE

0.00

Thank you for your business! Please remit within 30 days.

Subtotal

0% Tax

Total

**THE STATE CORPORATION COMMISSION
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)

Docket No.: 18-CONS-3077-CPEN

CONSERVATION DIVISION

License No.: 5798

Pursuant to K.S.A. Chapter 60

AFFIDAVIT OF PIERCE DAY

STATE OF KANSAS)
) ss:
COUNTY OF ELLIS)

COMES NOW PIERCE DAY, being of lawful age and first duly sworn, and attests as follows:

1. My name is Pierce Day. I am a resident of Ellis County, Kansas. I am of sound mind and of lawful age to make this affidavit.
2. The statements in this affidavit are based on my personal knowledge and are true to the best of my knowledge.
3. I work as a pumper for the Michael D. Weilert Oil Company, and I am the ^{step son} ~~son-in-law~~ of the owner, Michael Weilert. PD
4. I am responsible for pumping the Gay E. Reidel 'C' #2 saltwater disposal well ("Well") in Ellis County, Kansas, and do so on a near daily basis.
5. on July 12, 2017, I observed rainwater in the dike around the Well, likely from the substantial rains in the area of the Well the evening before. I did not report the rainwater in the

dike to Michael Weilert because it is my understanding that the presence of rainwater in a dike is not a reportable event under Kansas Corporation Commission rules and regulations.


6. I observed green moss algae in the rainwater in the dike around the Well, indicating that it was in fact rainwater and not a discharge from the Well.

7. That same day Micheal Weilert contacted me because of an alleged spill near the Well.

8. I told Michael Weilert that I observed no spill near the Well, but that I had previously observed rainwater in the dike.

9. There was no emergency pit dug within the dike around the Well at any time, and I observed no fluid in the dike when pumping the Well on July 13, 2017, the day after the rainwater was removed from the dike by Blackhawk Tank Services.

FURTHER AFFIANT SAYETH NAUGHT.



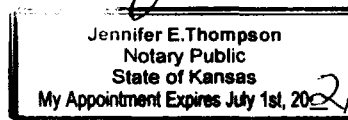
PIERCE DAY

STATE OF KANSAS)
) ss:
COUNTY OF ELLIS)

This instrument was acknowledged before me on this 22 day of September, 2017, by PIERCE Day, and at the same time the affiant was by me duly sworn to the foregoing affidavit.

My appointment expires:

Notary Public



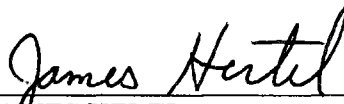
5. J&J was hired to rebuild the dike walls and remove traces of oil residue from the bottom of the dike, which it did on July 21, 2017.

6. I was at the location of the Well on July 21, 2017, and there was a small amount of oil staining the soil in the dike. I removed the affected soil from the dike area, which I estimate had no more than 3 to 4 barrels of oil, and used it to rebuild the walls of the dike to complete my work. This is a standard industry practice.

7. When I left there were no fluids in the dike. I observed that there was no pit or emergency pit within the dike. When I rebuilt the dike walls, I filled in any low spots that were present within the dike.

8. After I completed my work, I left the premises.

FURTHER AFFIANT SAYETH NAUGHT.

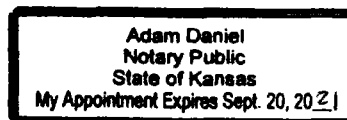

JAMES HERTL

STATE OF KANSAS)
) ss:
COUNTY OF ELLIS)

This instrument was acknowledged before me on this 23 day of September, 2017, by James Hertl, and at the same time the affiant was by me duly sworn to the foregoing affidavit.

My appointment expires:





J & J Roustabout LLC

2156 MOUNT PLEASANT ROAD
P.O. BOX 61
VICTORIA, KS 67671

Invoice

DATE	INVOICE NO.
8/28/2017	7242

BILL TO
Michael D. Weilert Oil Company 866 230TH AVE HAYS, KS 67601-9605

REMIT TO
J & J Roustabout LLC 2156 Mt. Pleasant Road P. O. Box 61 Victoria KS 67671

DATES	ITEM	DESCRIPTION	AMOUNT
July 21, 2017	Backhoe	Gay Riedel SWD - scraped oil mess out of dike and used it to rebuild dike. Backhoe - 4 hours @ \$85/hour 2 Extra men - 2.5 hours @ \$80/hour	540.00
	sales tax	Ellis County sales tax @ 7%	37.80
THANK YOU.			Total \$577.80

Phone #

785-650-3118