

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

2015-12-28 09:47:14  
Kansas Corporation Commission  
/s/ Amy L. Green

Before Commissioners:        Shari Feist Albrecht, Chair  
                                     Jay Scott Emler  
                                     Pat Apple

In the matter of the failure Drake Exploration,	)	Docket No. 16-CONS-512-CPEN
LLC to comply with K.A.R. 82-3-603 at the	)	
Mitchell Lease Tank Battery in Sumner	)	CONSERVATION DIVISION
County, Kansas.	)	
_____	)	License No. 33556

**PRE-FILED TESTIMONY**

**OF**

**DAN FOX**

1 Q. What is your name and business address?  
2 A. Dan Fox, 3450 N. Rock Road, Suite 601, Wichita, Kansas 67226.  
3 Q. By whom are you employed and in what capacity?  
4 A. I'm employed by the Conservation Division of the Kansas Corporation Commission, as  
5 Compliance Officer for District #2, which covers most of central Kansas.  
6 Q. How long have you been employed by the KCC?  
7 A. Since April 2007. Before becoming Compliance Officer, I was an Underground Porosity  
8 Gas Storage Field Technician in District #2. I have been Compliance Officer since 2010.  
9 Q. Have you previously testified before this Commission?  
10 A. No, although I have submitted pre-filed testimony.  
11 Q. What does your position with the Conservation Division involve?  
12 A. As compliance officer, I prepare evidence necessary to recommend penalties for  
13 violations of Commission regulations. My job includes reviewing Staff field reports,  
14 sending notice of violation letters, and generally trying to resolve compliance issues. I  
15 conduct inspections myself whenever necessary.  
16 Q. Are you familiar with this KCC Docket, 16-CONS-512-CPEN?  
17 A. Yes.  
18 Q. How are you familiar with this Docket?  
19 A. I made the penalty recommendation that resulted in the Commission issuing the Penalty  
20 Order, and I conducted the necessary inspection to support the penalty recommendation.  
21 Q. How did you first become familiar with this matter?  
22 A. Commission regulations, specifically K.A.R. 82-3-603(b), require operators to notify the  
23 appropriate district office of any escape of saltwater that meets the definition of a spill.  
24 Under K.A.R. 82-3-101(a)(69), a spill is essentially any saltwater that escapes beyond six  
25 feet from a diked area, pit, or wellbore. On July 21, 2015, Drake Exploration  
26 ("Operator") called in a spill at the Mitchell Lease Tank Battery, stating that a saltwater  
27 tank had emptied into the diked area around the tank battery, washing out the diked area  
28 and releasing 18 barrels of fluid down the lease road and into a field. I took Operator's  
29 call reporting the spill. A copy of my notes from the time is attached (Exhibit A).  
30 Q. What did you tell Operator during the phone call?  
31 A. I told Operator that he would have to scrape up the contaminated soil and replenish it  
32 with fresh soil.

1 Q. Did you give Operator a deadline to do so?

2 A. No. Under K.A.R. 82-3-603(e)(1), operators are required to clean up any spill within 10  
3 days of discovery or knowledge, or by the deadline prescribed in writing by the district  
4 office. The district office does not always prescribe a deadline, because except for  
5 situations where the spill is especially large or difficult to clean up, we typically want the  
6 regulatory deadline to be determinative. Also, for example, if an operator reports a spill  
7 two weeks after the operator knew about it, we do not want to give any more time, since  
8 that would encourage late reporting. In this case, the spill should have been cleaned up  
9 within 10 days, and no additional time should have been necessary.

10 Q. Did Operator request a deadline?

11 A. No.

12 Q. What happened next?

13 A. On August 17, 2015, I inspected the spill site and determined that the soil had not been  
14 remediated. I took photographs, which are attached (Exhibit B). You can see the heavy  
15 salt crystals on the ground in the pictures and the general extent of the spill. You can also  
16 see that the dike around the tank battery is not very substantial. It was clear that Operator  
17 had not conducted any soil remediation. Since Operator had not cleaned up the spill  
18 within 10 days, as required by regulation, I submitted a penalty recommendation.

19 Q. Have you reviewed Operator's Request for Hearing?

20 A. Yes.

21 Q. Paragraph 3 of Operator's Request for Hearing states that "the spill was remediated in a  
22 timely manner." Is that true?

23 A. No. If the spill occurred July 21, 2015, which is what Operator reported, then according  
24 to our regulations it was required to be remediated by July 31, 2015.

25 Q. Paragraph 3 of Operator's Request for Hearing states that the spill has now been  
26 remedied. Is that true?

27 A. Yes. The Commission issued the Penalty Order on September 3, 2015. After the Penalty  
28 Order was issued, Operator started remediating the spill. It appears to now be remediated,  
29 although we will not know for certain until we see vegetation in the spring.

30 Q. Does this conclude your testimony as of this date, December 28, 2015?

31 A. Yes.



## TELEPHONE SPILL DATA SHEET

### OPERATOR, LEASE, & AGENT INFORMATION

Contact Name:	Darren Broyles	Phone:	620-441-7223				
Operator Name:	Drake Exploration	Lic #	33556				
Lease Name:	Mitchell # tank battery	County:	SK.				
Quarter calls:	NE/4	Section:	24	Township:	34	Range:	1E
Other Directions?							
Call Taken By:	Dan Fox	Agent Assigned:	Dan Fox	Case # Assigned:	02-2015-6738		
Date and Time of Call:							

7/21/15 @ 4:30p

### SPILL INFORMATION

Cause and Description of Spill Including Area Affected:							
Salt water tank emptied out into the dike. Washed out diked area. 18 bbl. Down lease Road. Did get in field.							
Did Spill Reach Waterway or pond?		Did Spill travel off the Lease?		Has the Spill been Stopped?		Has the Landowner been notified?	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Date and Time Spill occurred:		Date and Time Spill was discovered:		Fluid Amounts	Oil:	Brine:	Other(explain):
7/21/15 @ 9:00am		7/21/15 @ 9:00am			None	18 bbls	
Explain Cleanup Activities up to this Point:							
Vac truck picked up all free standing fluids. That was it.							
Describe Plans for Cleanup of Spill:							
I stated that Darren would have to scrape up any contaminated soil in the landowners cropped field. And replenish with fresh soil.							
Other Contacts and Phone Numbers:							

### ADMINISTRATIVE SECTION

Spill ID #:	Date Entered:
Other Notes:	

22482

7-21-2015



## I. DATE REPORTED:

Spill No. 7/21/2015 DKF 1630  
 mo day year initials time reported  
 (2400 hr)

Initial report ☒  
 Update ☐  
 (check one)

## II. INITIAL REPORT BY: (if other than spiller)

Name: \_\_\_\_\_ Telephone \_\_\_\_\_

Address: \_\_\_\_\_  
 (circle one) 2. NRC 9. EPA 15. anonymous  
 7. KDHE 13. Kansas Agency 16. other  
 8. private citizen 14. federal agency 17. DEP

EPA Spill No. \_\_\_\_\_ DEP Spill No. \_\_\_\_\_

## III. SPILLER:

Did spiller report incident? ☒ YES ☐ NO

Contact Darren Broyles Telephone 620 - 441 - 7223  
 Company Drake Exploration # 33556 Street 6535 12<sup>th</sup> Rd.  
 City Douglass State KS Zip 67039

## IV. SPILL INFORMATION:

KDHE District 2

Spill: Date 07 / 21 / 2015 Time 0900 Discovery: Date 07 / 21 / 2015 Time 0900  
 mo day year 2400 hr mo day year 2400 hr

Address \_\_\_\_\_ City \_\_\_\_\_  
 (OR)  
 Legal NE/4 of 24-34-1E County Sumner State Kansas

Material Spilled	Material Code	Amount Spilled	Amount Recovered	Unit Code	CAS Id.No
A. brine	28	18 bbls	unknown	3	6738
B					
C.					

## Material Codes:

- |                      |                      |
|----------------------|----------------------|
| 1. PCB               | 16. insecticides     |
| 3. crude oil         | 17. fertilizer       |
| 4. gasoline          | 18. metals           |
| 5. diesel fuel       | 19. acids            |
| 6. other fuel        | 20. organic solvents |
| 7. asphalt           | 21. caustics         |
| 8. animal/veg. oil   | 22. alcohol          |
| 9. waste oil         | 25. other            |
| 10. other oil        | 26. unknown          |
| 14. agric. chemicals | 28. brine            |

## Unit Codes:

- |            |
|------------|
| 1. gallons |
| 2. pounds  |
| 3. barrels |
| 4. tons    |
| 5. sheen   |
| 6. unknown |
| 7. ppm     |
| 8. pints   |
| 9. quarts  |

## SPILL TYPE: (Circle ALL that pertain)

- |                  |                   |                 |
|------------------|-------------------|-----------------|
| 1. motor vehicle | 6. tank           | 11. fire        |
| 2. rail          | 7. U.G. tank      | 12. oil lease   |
| 3. marine        | 8. discharge      | 13. transformer |
| 4. pipeline      | 9. fixed facility | 14. explosion   |
| 5. aircraft      | 10. other _____   | 15. evacuation  |

Circle **ALL** affected Media.

- |        |                 |                  |         |         |
|--------|-----------------|------------------|---------|---------|
| 1. air | 2. ground water | 3. surface water | 4. soil | 5. none |
|--------|-----------------|------------------|---------|---------|

Circle **ALL** affected waterways.

- |                |                   |                 |
|----------------|-------------------|-----------------|
| 1. river       | 5. sanitary sewer | 9. ground water |
| 2. stream      | 6. lake           | 10. reservoir   |
| 3. creek       | 7. pond           | 11. canal       |
| 4. storm sewer | 8. ditch          | 12. wetland     |

Incident Description:

7-21-15 Operator states the saltwater tank emptied into the diked area at tank battery, did wash out an area of the dike and ran down the lease road. some of the fluid did get into the landowners field and affected some of the crops.

V. INVESTIGATION AND CLEAN-UP:

Field investigation by: (Circle ALL that pertain)

2. EPA/TAT	19. local Fire	23. none
14. KDHE	20. local police	25. other
15. USCG	21. county	26. KCC
18. local health	22. fire marshal	27. DEP

If NOT KDHE/KCC:

Name: \_\_\_\_\_ Telephone \_\_\_\_\_

KDHE/KCC Staff Time:

Staff Computer Initials	Hours Worked	Signature
DKF	2.0	

VI. CLEAN-UP METHODS: (Circle ALL That Pertain)

1. physical removal	5. dilution	9. other
2. neutralization	6. biodegradation	10. unknown
3. stabilized	7. recycled	
4. burning	8. no clean-up	

Describe the clean-up:

7-21-15 Operator states they have called out a vac truck to pickup all free standing fluids.

No further remediation has been done, I did tell operator he would have to scrape up contaminated soil and replenish with fresh soil

8-17-15 No soil remediation has taken place, there are salt crystals all over the farm ground next to the tank battery. Operator shows no signs of physical removal of contaminated soil.

(Photos taken)

Follow up required? ☒ Yes ☐ No

Date Closed \_\_\_\_/\_\_\_\_/\_\_\_\_

Report prepared by: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_





Reported spill location: Mitchell Tank Battery.

Located in the NE/4 of 24-34-1E.

Operator: Drake Exploration, LLC

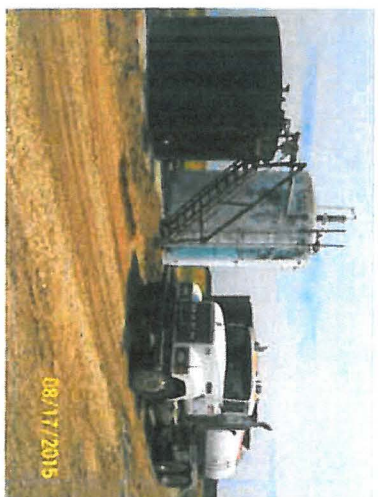
Lic#33556.

Spill was called into District 2 field office on July 21<sup>st</sup> 2015 by Darren Broyles.

No soil remediation conducted, very heavy salt crystals

Photos taken by Dan Fox- Compliance Officer.

No lease sign at tank battery.



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

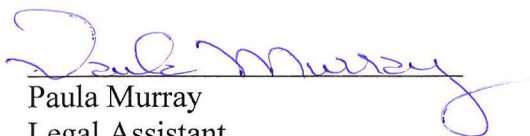
Before Commissioners:                Shari Feist Albrecht, Chair  
   Jay Scott Emler  
   Pat Apple

In the matter of the failure Drake Exploration,	)	Docket No. 16-CONS-512-CPEN
LLC to comply with K.A.R. 82-3-603 at the	)	
Mitchell Lease Tank Battery in Sumner	)	CONSERVATION DIVISION
County, Kansas.	)	
_____	)	License No. 33556

**CERTIFICATE OF SERVICE**

I, Paula Murray, certify that on December 28, 2015, I did cause a true and correct copy of the Pre-Filed Testimony of Dan Fox to be served by United States mail, first class, postage prepaid to the following:

Jeff Kennedy  
Martin, Pringle, et al.  
100 North Broadway, Suite 500  
Wichita, Kansas 67202  
*Attorney for Drake Exploration, LLC*

  
Paula Murray  
Legal Assistant  
Kansas Corporation Commission