

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

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

In the matter of the failure of EnergyQuest II, LLC ("Operator") to comply with K.A.R. 82-3-400 regarding injection that took place during the 2015 calendar year.)	Docket No. 16-CONS-4068-CPEN
)	
)	CONSERVATION DIVISION
)	
)	License No. 35216

**REPLY IN SUPPORT OF MOTION
TO DISMISS AND RESCIND PENALTY ORDER**

EnergyQuest II, LLC ("EnergyQuest") responds to Staff's Response to Operator's Motion to Dismiss and Rescind Penalty Order (the "Staff Response") as follows:

1. Staff argues that the Commission has "repeatedly ruled" that the arguments raised by EnergyQuest in support of its motion to dismiss are "incorrect as a matter of law." Staff Response, p. 1. The Court of Appeals has held, however, that "an administrative agency is not bound by its prior decisions in contested cases; the doctrine of *stare decisis* – the principle that a judicial body should follow its past rulings when the same question arises again – normally doesn't apply to agencies." *John M. Denman Oil Co. v. State Corporation Comm'n*, 51 Kan.App.2d 98, 105, 342 P.3d 958, *rev. denied* (September 24, 2015).

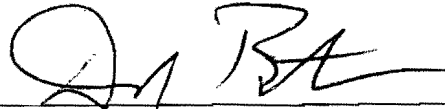
2. The only violation alleged in the Penalty Order is a violation of K.A.R. § 82-3-400 – injection without a permit. Staff's reference to its ability to prove, in the alternative, that EnergyQuest may have violated K.A.R. § 83-3-409(b) for allegedly submitting an injection report containing erroneous data, and a penalty based on that violation, is simply not at issue in this docket. The Penalty Order is clear and limited to an alleged violation of K.A.R. § 82-3-400.

3. No question of fact is presented by the motion to dismiss. The fact that the wells in question had, at all times, been operated in compliance with their permits was submitted only as background information and not necessary for the decision on the motion to dismiss. The only question presented by the motion is whether K.A.R. § 82-3-400 authorizes the imposition of a penalty for filing an injection report that contained incorrect information. K.A.R. § 82-3-400 only authorizes the Commission to penalize an operator for conducting injection operations without obtaining any permit for those operations. The Penalty Order does not allege that EnergyQuest did not have valid permits from the Conservation Division for each of the wells that are at issue herein.

4. K.A.R. § 82-3-400 is a penal statute and, as such, must be strictly construed against the Staff and in favor of EnergyQuest, and should not be expanded beyond its clear terms. See *Games Management, Inc. v. Owens*, 233 Kan. 444, 447, 662 Pl.2d 260 (1983).

WHEREFORE, EnergyQuest II, LLC requests an order from this Commission dismissing the Penalty Order, rescinding any penalties that might be assessed by virtue of the Penalty Order, and for such additional and further relief as this Commission may find appropriate.

Respectfully submitted,



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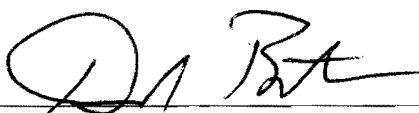
Attorneys for EnergyQuest II, LLC

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

David E. Bengtson, of lawful age, being first duly sworn upon oath states:

That he is the attorney for the EnergyQuest II, LLC and is duly authorized to make this verification; that he has read the foregoing Motion to Dismiss and Rescind Penalty Order and knows the contents thereof and that the facts set forth therein are true and correct to the best of his information and belief.



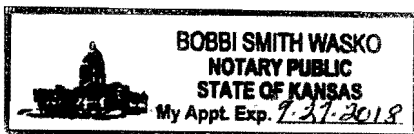
David E. Bengtson

SUBSCRIBED AND SWORN to before me this 15th day of September, 2016.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of September, 2016, he caused a true and correct copy of the foregoing Motion to Dismiss and Rescind Penalty Order to be filed with the Kansas Corporation Commission, and that he caused a copy to be served via electronic mail to the following parties:

Jon Myers
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A handwritten signature in black ink, appearing to read "D. Bengtson", written over a horizontal line.

David E. Bengtson