

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Susan K. Duffy

In the matter of the failure of Midwest Oil, LLC) Docket No: 22-CONS-3119-CPEN
(Operator) to comply with K.A.R. 82-3-120.)
) CONSERVATION DIVISION
)
_____) License No: 34497

**ORDER DENYING REQUESTS FOR REINSTATEMENT/RENEWAL OF OPERATOR'S
LICENSE AND EXCEPTION FROM PROVISIONS OF K.A.R. 82-3-120**

On October 29, 2021, Operator submitted a filing in this docket asking for its license to be reinstated/renewed, and/or seeking an exception to K.A.R. 82-3-120 so that it could obtain a new license. For the following reasons, Operator's requests are denied.

I. Factual Background

1. On January 25, 2021, Operator submitted an application for license renewal.¹
2. On April 29, 2021, the Commission issued a Penalty Order in Docket 21-CONS-3250-CPEN, directing Operator to file an annual fluid injection report and pay a \$100 penalty.²
3. On June 16, 2021, Staff suspended Operator's license for non-compliance with the Penalty Order in Docket 21-3250.³
4. On August 3, 2021, the Commission issued an Order Denying Application for License in Docket 22-CONS-3038-CMSC, ruling: (1) Operator's January 25, 2021 application for license renewal did not meet the requirements of K.A.R. 82-3-120(c) because Operator did not provide a Certificate of Good Standing showing it was authorized to engage in business in Kansas, and (2) Operator's application for license renewal did not meet the requirements of K.S.A. 55-155(c)(4) and

¹ See Docket 22-CONS-3038-CMSC, Order Denying Application for License, ¶ 5 (Aug. 3, 2021).

² See Docket 21-CONS-3250-CPEN, Penalty Order, Ordering Clauses A, B (Apr. 29, 2021).

³ See Docket 22-CONS-3038-CMSC, Order Denying Application for License, ¶ 7.

K.A.R. 82-3-120(g)(2) because Operator was suspended at that time for non-compliance with the Commission's Penalty Order in Docket 21-3250.⁴

5. On September 9, 2021, the Commission issued a Penalty Order against Operator in the present docket, finding violation of K.A.R. 82-3-120(a) because unplugged wells remained on Operator's expired license.⁵ On September 16, 2021, Operator requested a hearing on the Penalty Order;⁶ the last pre-filed testimony is due January 7, 2022, and the matter is not yet set for an evidentiary hearing.⁷

6. On October 29, 2021, Operator requested, in the present docket, an order authorizing renewal and reinstatement of Operator's operating license, and/or that the Commission authorize an exception to K.A.R. 82-3-120 so as to let Operator obtain a new operating license.⁸ Staff was provided a November 19, 2021, deadline by which to file a response to the requests;⁹ Staff did not.

7. Commission records indicate Operator's license was unsuspended on September 20, 2021; Operator has now complied with the Penalty Order in Docket 21-3250.¹⁰ The license does, however, remain expired, as it has been since January 30, 2021.¹¹ Kansas Secretary of State records, publicly available online, indicate Operator's authority to do business in Kansas, previously forfeit, has now been reinstated; Operator's October 29, 2021, filing attests to the same.¹²

⁴ See *id.* at ¶¶ 9-10.

⁵ See Penalty Order, ¶¶ 6, 7, 10 (Sept. 9, 2021).

⁶ Request for Hearing (Sept. 16, 2021).

⁷ See Presiding Officer Order Setting Procedural Schedule (Oct. 11, 2021).

⁸ See Application for Reinstatement of Operator License and for Exception from Provisions of K.A.R. 82-3-120(j) (Oct. 29, 2021).

⁹ Presiding Officer Order Setting Response Deadline (Nov. 4, 2021).

¹⁰ See K.A.R. 82-1-230(h).

¹¹ *Id.*

¹² See Application, ¶ 14.

II. Legal Standards

8. K.S.A. 55-155(b) provides “Every operator and contractor shall file an application or renewal application with the commission. Application and renewal application forms shall be prescribed, prepared and furnished by the commission.”

9. K.A.R. 82-3-120(i) provides “A [license application or renewal application] denial pursuant to K.S.A. 55-155(c)(3) or (4)...shall be considered a license revocation.”

10. K.S.A. 55-155(e) provides “No new license shall be issued to any applicant who has had a license revoked until the expiration of one year from the date of such revocation.”

11. K.S.A. 82-3-120(j) provides “Upon revocation of a license, no new license shall be issued to that operator or contractor until after the expiration of one year from the date of the revocation.

12. K.A.R. 82-3-100 provides “An exception to the requirements of any regulation in this article may be granted by the commission...each party requesting an exception shall file an application...The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a....”

III. Analysis

13. Operator characterizes its October 29, 2021 filing, in part, as an application for renewal and/or reinstatement of its license. Operator does not meaningfully distinguish between renewal and reinstatement, and Commission statutes and regulations discuss renewals, not reinstatements.¹³ To the extent there is a difference, in this situation the manner in which Operator’s license would be “reinstated” is through renewal. But license renewal applications must be submitted on a form provided by the Commission.¹⁴ And there is no such pending application. Operator’s most recent application, that of January 2021, was denied via final order, in part for failure to meet the

¹³ See, e.g., K.S.A. 55-155; K.A.R. 82-3-120.

¹⁴ See K.S.A. 55-155(b); K.A.R. 82-3-120(c).

requirements of K.S.A. 55-155(c)(4), in August 2021.¹⁵ Too, Operator's October 29, 2021 filing does not contain all of the items required in a license renewal application.¹⁶ To the extent it matters for future filings,¹⁷ the Commission shall consider Operator's ask for renewal/reinstatement to be a motion, rather than an application. Regardless, for the reasons described, Operator's request is denied.

14. Operator's October 29, 2021 filing asks, in the alternative, for an exception to K.A.R. 82-3-120. The pertinent legal theory is as follows: if the Commission grants an exception to K.A.R. 82-3-120(i), then the August 2021 license renewal denial would not be considered a revocation, and if it is not considered a revocation and everything else is in order, then Operator is not statutorily prohibited from obtaining a new license prior to August 2022. There are two problems here. First, Operator's request, while at times discussing K.A.R. 82-3-120(i), actually seeks an exception to K.A.R. 82-3-120(j), which reads "Upon revocation of a license, no new license shall be issued to that operator or contractor until after the expiration of one year from the date of the revocation." If the Commission granted an exception to K.A.R. 82-3-120(j), such exception would be useless, as K.S.A. 55-155(e) says essentially the same thing as K.A.R. 82-3-120(j), and the Commission cannot grant an exception to a statute. In order to obtain a new license prior to August 2022, Operator would need an exception to K.A.R. 82-3-120(i), not K.A.R. 82-3-120(j). Second, Operator has not done what is necessary for the Commission to consider granting an exception to K.A.R. 82-3-120(i) – under K.A.R. 82-3-100, Operator has to publish notice of its application for an exception to Commission regulations pursuant to K.A.R. 82-3-135a. Operator has not provided evidence of such publication.

THEREFORE, THE COMMISSION ORDERS:

A. Operator's October 29, 2021 requests are denied.

¹⁵ See Docket 22-CONS-3038-CMSC, Order Denying Application for License.

¹⁶ See K.A.R. 82-3-120.

¹⁷ See, e.g., K.S.A. 55-155(c)(3), (4); K.A.R. 82-3-120(i).

B. Any future Operator application for an exception to Commission regulations shall not be filed in this Docket 22-CONS-3119-CPEN, but rather in a separate docket.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 12/14/2021



Lynn M. Retz
Executive Director

Mailed Date: 12/14/2021

JRM

CERTIFICATE OF SERVICE

22-CONS-3119-CPEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
electronic service on 12/14/2021.

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