

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 of VEEM Jade)
Oil & Gas LLC (“Operator”) to comply with) Docket 18-CONS-3221-CPEN
K.A.R. 82-3-111 at the Daves #21, Smith A) CONSERVATION DIVISION
#2, Smith B #10 and Smith B #12 in Elk) License No. 32874
County, Kansas.)

REPLY TO STAFF’S RESPONSE TO PETITION FOR RECONSIDERATION

COMES NOW, Veem Jade Oil & Gas LLC (“Operator”), and submits this limited Reply to the Staff’s Response to Petition for Reconsideration (“Staff’s Response”). For its Reply, Operator states the following:

1. Reference is made to the summary of its position, at paragraph 15 of Staff’s Response, which paragraph states:

“15. Staff agrees an operator would be in an absurd position if it wished, for example, to return a well to service to get its license reinstated, but could not return the well to service *because* its license had not been reinstated. If Operator wishes for Commission clarification that Operator may conduct any specific work necessary at the wells at issue to bring the wells into compliance, Staff is not opposed. Operator's license, however, should remain suspended, and *any other operations, especially production of hydrocarbons, should remain impermissible until Operator complies with the Penalty Order.*” [Emphasis added.]

2. The Staff’s acknowledgment of the ‘absurd’ situation this Operator is currently in is heartening. Not only is Operator currently in an impossible situation until the suspension is lifted, but according to the plain reading of the above-captioned Penalty Order, the only apparent way out of the situation is either to *produce the wells*, or by Operator’s filing of its now-pending Application for exception from the 10-year Temporary Abandonment

limit (the “Application”), in Docket No. 18-CONS-3260-CEXC. Either way, Operator has met the requirements of the Penalty Order to the extent it is within its ability to do so with a suspended license.

3. The Commission’s November 21, 2017, Penalty Order mandated that Operator do the following:

“THEREFORE THE COMMISSION ORDERS:

- A. Operator shall pay a \$400 penalty.
- B. Operator shall plug the subject wells, return the subject wells to service, or obtain TA status for the subject wells if eligible. Obtaining TA status shall include application for, and Commission approval of, an exception to the 10-year limit on TA status if applicable.
- C. If no party requests a hearing, and Operator is not in compliance with this Order within 30 days, then Operator's license shall be suspended without further notice. ...”

4. Operator promptly complied with paragraph A.
5. In compliance with paragraph B., Operator has filed its Application for exception to the 10-year limit on TA status. No party has filed a protest or response to Operator’s Application. The protest and response deadlines have expired.
6. Additionally, Operator has informed the Commission of its plan to immediately return the wells to production, if the initial planned testing described in the Application shows that production is immediately feasible.
7. Either production *or* filing a TA application constitutes compliance with paragraph B. So to prohibit Operator from producing until it has complied with paragraph B, is patently erroneous, when paragraph B specifically orders production as a means to satisfy the mandate.

8. Furthermore, to adopt the Staff's position that TA status must be *approved* within the 30-day deadline in Paragraph C, imposes a requirement that is out of an operator's control. Once the operator submits a TA application, or application for exception to the 10-year TA limit, then it is up to the Staff and Commission to act; by approving the application, or notifying the operator of additional information or testing needed before approval should be granted. An application for exception to the 10-year limit contains notice and procedural requirements that in themselves render it practically impossible for the Commission to be able to issue an approval within 30 days after the Penalty Order, even if the operator were to file the application on the very day the Penalty Order itself was issued; a virtual impossibility in itself. An erroneous requirement should not be the basis for a license suspension.
9. K.S.A.77-621(c) (1) through (8) lists the types of agency action that are invalid:
- “(1) The agency action, or the statute or rule and regulation on which the agency action is based, is unconstitutional on its face or as applied;
 - (2) the agency has acted beyond the jurisdiction conferred by any provision of law;
 - (3) the agency has not decided an issue requiring resolution;
 - (4) the agency has erroneously interpreted or applied the law;
 - (5) the agency has engaged in an unlawful procedure or has failed to follow prescribed procedure;
 - (6) the persons taking the agency action were improperly constituted as a decision-making body or subject to disqualification;
 - (7) the agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act; or
 - (8) the agency action is otherwise unreasonable, arbitrary or capricious.”

This continued suspension of Operator's license based on a catch-22 requirement, is an erroneous interpretation and application of the law; is unlawful; and is arbitrary, capricious, and unreasonable. Operator has taken those prescribed steps it can take toward compliance with the November 21, 2017, Penalty Order, until the Commission declares the license suspension has been lifted.

NO GAP IN ENFORCEMENT

10. In lifting the suspension, the Commission concedes no oversight or control over the wells and compliance with K.A.R. 82-3-111. Through the pending Application proceeding, the Commission will review Operator's proposed plan, and can require further information and impose further conditions on temporary abandonment, if deemed appropriate within the scope of the Commission's statutory mandates. Once the Commission has issued its order(s) on Operator's Application, then if Operator fails to adhere to the order(s), the Commission may use its statutory powers to pursue enforcement of its order(s) issued in that docket.
11. Operator has informed the Commission, that once the suspension is lifted, Operator plans to proceed with the operations described in the Application, without waiting for the Commission to rule on the Application. Operator has stated that it will be attempting to restore production in the wells, which, if accomplished before the Commission rules on the Application, will actually render the Application moot.
12. While the lifting of this suspension leaves no gap in enforcement, a *continued* suspension will perpetuate the 'absurd' status quo, in which Operator remains under a written, unequivocal threat of severe penalties if caught operating; and Operator is prevented from

producing its wells to provide the income to fund the required operations. Nowhere in the written warnings from Staff or the January 25 Order perpetuating the suspension, is there reference or deference to a policy of looking the other way while an operator performs certain operations. A continued suspension will serve no purpose except to insure that Operator can *never* comply with the Penalty Order. The required operations are prohibited by the suspension. The inability to operate will lead to bankruptcy. A bankrupted operator cannot fund the operations to produce or plug wells. Bankrupting an operator in this instance, will not lead to compliance; and will cause unreasonable and preventable waste, contrary to the Commission's statutory authority and mandates.

WHEREFORE, Operator requests that the Commission reconsider its January 25, 2018, Order, and declare that the automatic suspension of Operator's license is lifted, and for such other relief as the Commission deems necessary and appropriate.

Respectfully Submitted,

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Attorney for Veem Jade Oil & Gas LLC

VERIFICATION

STATE OF OKLAHOMA)
) SS:
COUNTY OF TULSA)

Mahesh Chhabra, of lawful age, being first duly sworn, upon oath states that he is the Managing Member of Veem Jade Oil & Gas LLC; and that he has read the foregoing **Reply**, is familiar with the contents thereof, and that the statements contained therein are true and correct according to his knowledge, information and belief.

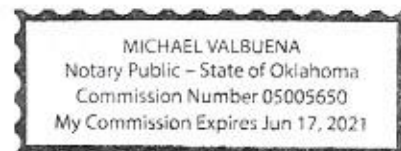
Subscribed and sworn to before me, a notary public.



My appointment expires:

6/17/21 _____


Name Michael Valbuena
Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this **1st** day of **March, 2018**, she caused the above and foregoing **Reply** to be electronically delivered, to the following person at the addresses shown:

Jon Myers, Litigation Counsel
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/s/ Diana Edmiston