

**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 )	Docket No.: 18-CONS-3077-CPEN
Db a Michael D. Weilert Oil Company ("Operator") )	
To comply with KAR 82030600, KAR 82-3-603, )	CONSERVATION DIVISION
and KAR 82-3-604 at the Gay E. Reidel C #2 well )	
in Ellis County, Kansas. )	License No.: 5798
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Pursuant to K.S.A. Chapter 60

**REPLY IN SUPPORT OF  
MOTION FOR SUMMARY ORDER ON THE PLEADINGS**

Micheal D. Weilert, d/b/a Micheal D. Weilert Oil Company ("Operator") submits the following in reply and in further support of its Operator's Motion to 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 further support of his motion, and in reply to Staff's Response, Operator states that staff have provided no evidence demonstrating or supporting the suggestion that the penalties issued herein were warranted. Rather, Staff has relied on unadorned allegation and attachments to the penalty order that are unsubstantiated and without any proper foundation.

By contract, in its motion, Operator provided evidence in the form of authenticated documentation, sworn affidavit testimony of three witnesses and verified statements from Operator establishing, among other things, that (1) there was no emergency pit on the premises, (2) there was no spill as defined in KAR 82-3-101, and ergo no obligation to notify the district office or landowner pursuant to KAR 82-3-603(d) or KAR 82-3-603a(a), (3) Operator removed all fluid in the diked area the same day it was reported, well before the 48 hours required by KAR 82-3-

604(b), and (4) there was no oil-field related discharge of five barrels or more into a diked area as defined in KAR 82-3-604(d), and therefore no failure to report the same.

In response, Staff provide no evidence, identify no documents that can be authenticated and that show the purported violations, and identify no witnesses who can testify about the alleged facts underlying the purported violations. It is evident, therefore, that Staff cannot support the alleged violations. Instead, Staff again resort to unsupported allegations that essentially do little more than quote the operative language of the regulation in question without providing facts or evidence in support. Staff has demonstrated no record that would support the alleged violations, and therefore summary disposition is appropriate.

Staff's position that Operator is simply attempting to shortcut the hearing process is indeed curious. Of course, it is logical and wholly appropriate that when, as is the case here, Staff cannot support the alleged violations at issue, and as such no hearing is necessary on the matter, all parties should wish to avoid the expense and trouble of holding a hearing.<sup>1</sup> Because a hearing is demonstrably unnecessary, Operator very much would prefer to dispose of this matter by summary proceeding as opposed to an evidentiary proceeding, as Operator assumes all reasonable parties would.

The Commission undoubtedly has the authority to rule on the merits of the pleadings through summary order.<sup>2</sup> The pleadings and affidavits show that Operator is compliant with Commission regulations, and that the violations are unsupported or are not based on adequate evidence. Given the opportunity to marshal any evidence in support of the alleged violations, Staff has produced none. Operator is within its statutory right to request that the Commission enter a summary order on the pleadings voiding the penalty order entered in this docket, waiving the

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<sup>1</sup> See K.S.A. 77-504 "a person may waive any right conferred upon that person by [KAPA]".

<sup>2</sup> 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).

\$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.

As to any issues unresolved through summary order, Operator reserves its right to a hearing.

Respectfully submitted,

MORRIS, LAING, EVANS, BROCK  
& KENNEDY, CHARTERED

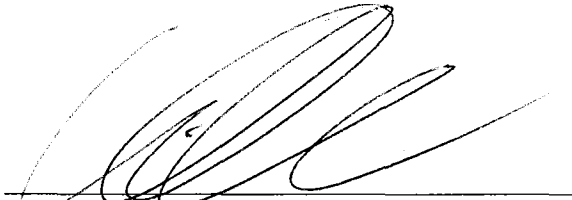
By: 

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*Attorneys for Operator*

#### **CERTIFICATE OF SERVICE**

I, Will B. Wohlford, hereby certify that on this 12th day of October, 2017, I caused the original of the foregoing, **Reply in Support of Motion for Summary Order on the Pleadings** 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](mailto:j.wright@kcc.ks.gov)

  
Will B. Wohlford, #21773