

Conservation Division  
266 N. Main St., Ste. 220  
Wichita, KS 67202-1513



2015-09-03 16:09:54  
Kansas Corporation Commission  
/s/ Amy L. Gilbert  
Phone: 316-337-6200  
Fax: 316-337-6211  
<http://kcc.ks.gov/>

Shari Feist Albrecht, Chair  
Jay Scott Emler, Commissioner  
Pat Apple, Commissioner

Sam Brownback, Governor

## NOTICE OF PENALTY ASSESSMENT 16-CONS-512-CPEN

This is a notice of a penalty assessment for violation of Kansas oil and gas conservation statutes, rules, and regulations. For a full description of the penalty and process please refer to the Penalty Order that is attached to this notice.

### **IF YOU ACCEPT THE PENALTY:**

The Penalty Order may include the assessment of a monetary penalty. You have 30 days from the service date of this Penalty Order to pay \$1000. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Conservation Division of the Kansas Corporation Commission at 266 N. Main St., Suite 220, Wichita, Kansas 67202, and must include a reference to the docket number of this proceeding. Credit card payment may be made by calling the Conservation Division at 316-337-6200.

The Penalty Order may require you to perform certain actions by deadlines stated therein. Compliance must be obtained by the applicable deadlines to avoid further compliance actions. If you have any questions about how compliance can be obtained, you may contact the legal department or the appropriate department or district office.

### **IF YOU CONTEST THE PENALTY:**

You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Respondent must submit an original and seven copies of the request to the Commission, at 266 N. Main St., Suite 220, Wichita, Kansas 67202, within 30 days, plus three days to account for the mail, from the mailed date on the last page of the Penalty Order. K.A.R. 82-1-215.

### **IF YOU FAIL TO ACT:**

Failure to either comply with the penalty order or request a hearing will result in the attached Penalty Order becoming a Final Order. Failure to comply or request a hearing by the deadlines in the Penalty Order may result in additional sanctions, including additional monetary penalties, the suspension of your oil and gas operating license, and the shutting-in of all operations until compliance is obtained.

**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 Drake	)	Docket No.: 16-CONS-512-CPEN
Exploration, LLC to comply with K.A.R. 82-	)	
3-603 at the Mitchell Lease Tank Battery in	)	CONSERVATION DIVISION
Sumner County, Kansas.	)	
<hr/>		License No.: 33556

**PENALTY ORDER**

The above captioned matter comes before the State Corporation Commission of the State of Kansas. Having examined the files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

**I. JURISDICTION**

1.        K.S.A. 74-623 provides that the Commission has the exclusive jurisdiction and authority to regulate oil and gas activities. K.S.A. 55-152 provides that the Commission has jurisdiction to regulate the construction, operation, and abandonment of any well and the protection of the usable water of this state from any actual or potential pollution from any well. The Commission has licensing authority pursuant to K.S.A. 55-155.

2.        K.S.A. 55-162 and K.S.A. 55-164 provide the Commission with authority to issue a Penalty Order regarding a violation of Chapter 55 of the Kansas Statutes Annotated, or of any rule, regulation, or order of the Commission. A Penalty Order may include a monetary penalty of up to \$10,000, and each day of a continuing violation constitutes a separate violation.

3.        K.A.R. 82-3-101(69) defines "spill" as any escape of saltwater, oil, or refuse by overflow, seepage, or other means from the vicinity of oil, gas, injection, service, or gas storage

wells, or from tanks, pipelines, dikes, or pits, if the wells, tanks, pipelines, dikes, or pits are involved in or related to any of the following:

- a. the exploration or drilling for oil or gas;
- b. the lease storage, treatment, or gathering of oil or gas; or
- c. the drilling, operating, abandonment, or postabandonment of wells. For purposes of this regulation, “vicinity” means the area within six feet of the wellhead.

4. K.A.R. 82-3-603(b)(2) provides that the operator shall notify the appropriate district office of any escape of saltwater, oil, or refuse that meets the definition of “spill” in K.A.R. 82-3-101. This notification shall be made no later than the next business day following the date of discovery or knowledge of the spill.

5. K.A.R. 82-3-603(d) provides that failure to comply with subsection (b) shall be punishable by a \$250 penalty for the first violation, a \$500 penalty for the second violation, and a \$1,000 penalty and an operator license review for the third violation.

6. K.A.R. 82-3-603(e)(1) provides that the operator shall clean up any spill or escape that requires notification under this regulation in accordance with the cleanup method approved by the appropriate district office. Except as otherwise required by law or regulation, the operator shall complete the cleanup of the spill or escape within 10 days after discovery or knowledge of the spill or escape, or by the deadline prescribed in writing by the district office.

7. K.A.R. 82-3-603(f) provides that the failure to contain and clean up the spill or escape in accordance with Commission regulations shall be punishable by a \$1,000 penalty for the first violation, a \$2,500 penalty for the second violation, and a \$5,000 penalty and an operator license review for the third violation.

## **II. FINDINGS OF FACT**

8. Operator conducts oil and gas activities in Kansas under license number 33556.

9. Operator is responsible for the care and control of the Mitchell lease ("the subject lease"), located in Section 24, Township 34 South, Range 1 East, Sumner County, Kansas.

10. On July 21, 2015, Operator contacted Commission District #2 Staff and reported that 18 barrels of brine water had emptied out of the tank battery at the subject lease. The fluid had spilled into the diked area and washed out the dike, before running down the lease road and also getting into the landowner's field, affecting some crops. Operator reported that the free-standing fluids had been vacuumed. Staff stated that the contaminated soil in the landowner's field would have to be scraped up and replenished with fresh soil.

11. On August 17, 2015, District #2 Staff inspected the subject lease and found that no soil remediation had occurred. Staff noted the presence of heavy salt crystals and took photographs of the spill site. To date, the site has not been effectively remediated.

## **III. CONCLUSIONS OF LAW**

12. The Commission concludes that it has jurisdiction over Operator and this matter under K.S.A. 55-152 and K.S.A. 74-623.

13. The above findings of fact are sufficient evidence to support the conclusion that Operator committed one violation of K.A.R. 82-3-603(e) because Operator did not clean up the spill at the subject lease in a timely manner.

### **THEREFORE, THE COMMISSION ORDERS:**

A. Operator shall pay a \$1,000 penalty.

B. Operator shall clean up the spill and remediate the affected area according to District #2 specifications.

C. If the spill site is not fully cleaned up and remediated by October 6, 2015, then Operator shall pay an additional \$2,500 penalty.

D. In addition, if the spill site is not fully cleaned up and remediated by October 30, 2015, then Staff is directed to clean up the spill and remediate the affected areas, and to assess the costs to Operator, with an additional \$7,500 penalty.

E. 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. The notice and opportunity for a hearing on this order shall constitute the notice required by K.S.A. 77-512 regarding license suspension. The Commission may impose further sanctions, including additional monetary penalties and any other remedies available to the Commission by law, without further notice.

F. Checks and money orders shall be payable to the Kansas Corporation Commission. For credit card payments, include the type of card (Visa, MasterCard, Discover, or American Express), account number, and expiration date. Payments shall be mailed to the Kansas Corporation Commission at 266 N. Main St., Suite 220, Wichita, Kansas 67202. The payment must include a reference to the docket number of this proceeding.

G. Any party may request a hearing on the above issues by submitting a written request, pursuant to K.S.A. 55-164, K.S.A. 77-537, and K.S.A. 77-542, setting forth the specific grounds upon which relief is sought, to the Commission at 266 N. Main St., Suite 220, Wichita, Kansas 67202, within 30 days from the date of service of this Order. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Operator's right to a hearing.

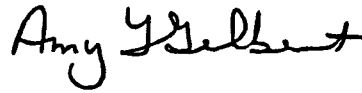
H. If a party requests a hearing, a corporation or similar entity shall not be permitted to enter an appearance except by its attorney. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record.

I. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: SEP 03 2015



Amy L. Gilbert  
Secretary to the Commission

Mailed Date: Sept. 3, 2015

JRM

**CERTIFICATE OF SERVICE**

I certify that on Sept. 3, 2015, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

Darren Broyles  
Drake Exploration, LLC  
15894 294<sup>th</sup> Circle  
Arkansas City, KS 67005

Dan Fox  
KCC District #2  
3450 N. Rock Road, Bldg. 600, Suite 601  
Wichita, KS 67226

And delivered by hand to:

Jonelle Rains  
Conservation Division Central Office

/s/ Paula Murray  
Paula Murray  
Legal Assistant  
Kansas Corporation Commission