

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

Before Commissioners: Susan K. Duffy, Chair  
Shari Feist Albrecht  
Dwight D. Keen

In the Matter of Addressing the COVID-19 ) Docket No: 20-GIMX-393-MIS  
pandemic in the State Kansas. )  
) CONSERVATION DIVISION  
)  
) License No.: N/A

**SPECIAL ORDER REGARDING CONSERVATION MATTERS**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed the public record, the Commission makes the following findings:

**I. Procedural Background**

1. On March 12, 2020, Governor Kelly issued a *State of Disaster Emergency Proclamation*, effective as of that date, and covering the entirety of Kansas. The proclamation suspended the provisions of any statute, order, rules, or regulations applicable to any state agency, if strict compliance would prevent, hinder, or delay necessary action in coping with COVID-19.<sup>1</sup>

2. On March 16, 2020, the Commission, via emergency proceedings pursuant to K.S.A. 77-536(b), stayed all open dockets and suspended all deadlines in all open Commission dockets.<sup>2</sup>

3. On March 17, 2020, Governor Kelly issued an executive order temporarily prohibiting mass gatherings.<sup>3</sup> The prohibition remains in effect, although the original executive order has been serially rescinded and replaced<sup>4</sup> On March 28, 2020, Governor Kelly issued an executive order

<sup>1</sup> See <https://governor.kansas.gov/wp-content/uploads/2020/03/2020-03-12-Proclamation.pdf>; see also K.S.A. 48-924; K.S.A. 48-925(c).

<sup>2</sup> See Emergency Order Staying All Dockets (Mar. 19, 2020) (issued in this docket).

<sup>3</sup> See Executive Order No. 20-04 (Mar. 17, 2020), Kansas Register at Vol. 39, No. 12A, at p. 299 (Mar. 19, 2020).

<sup>4</sup> See Executive Order No. 20-14 (Mar. 24, 2020); Executive Order No. 20-18 (Apr. 7, 2020); Executive Order 20-25 (Apr. 18, 2020).

establishing a statewide “stay home” order.<sup>5</sup> The “stay home” requirement, along with its exemption for exploration and extraction of fuels, remains in effect, having been extended on April 16, 2020.<sup>6</sup>

4. On April 9, 2020, Governor Kelly issued an executive order directing state agencies to extend renewal deadlines for any licenses, certificates, permits, and registrations issued by state agencies, provided such was in good standing as of March 12, 2020.<sup>7</sup> Pursuant to the executive order, such expired or expiring licenses, certificates, permits, and registrations are to remain valid until 90 days following termination of the state of disaster emergency.<sup>8</sup>

5. On April 9, 2020, the Commission modified its March 16, 2020, emergency order, stating that all filing deadlines will be extended by 30 days.<sup>9</sup> On April 14, 2020, the Commission clarified its modification, stating that all filing and regulatory deadlines in place on March 23, 2020, would be extended an additional 30 days from the lifting of stay-at-home restrictions, or until the Commission directed otherwise.<sup>10</sup>

## II. Findings of Fact

6. In light of the above-referenced orders and the circumstances now prevailing, the Commission finds:

- a. The regulation of oil and gas matters through its Conservation Division frequently involves time-sensitive environmental considerations;<sup>11</sup>
- b. Consistent, timely operator compliance with regulatory requirements significantly reduces potential environmental threat;

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<sup>5</sup> See Executive Order No. 20-16 (Mar. 28, 2020).

<sup>6</sup> See Executive Order 20-24 (Apr. 16, 2020).

<sup>7</sup> See Executive Order 20-19 (Apr. 9, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> See Amended Emergency Order Staying All Dockets (Apr. 9, 2020).

<sup>10</sup> See Order Clarifying Amended Emergency Order Staying All Dockets (Apr. 14, 2020).

<sup>11</sup> See, e.g., K.S.A. 74-623.

- c. The exploration and extraction of fuels (crude oil and natural gas) necessitates ongoing regulation of such activity;
- d. Most Commission statutes and regulations pertaining to regulation of oil and gas matters may be administered without preventing, hindering, or delaying necessary action in coping with COVID-19; and
- e. As it pertains to oil and gas matters, it is no longer apparent that the Commission's emergency orders in this docket prevent or avoid immediate danger to the public health, safety or welfare that justifies the use of emergency proceedings, or remedy a situation for which use of emergency adjudication is otherwise provided by law.<sup>12</sup>

### III. Conclusions of Law

7. Given the above, all Commission emergency orders in this docket shall no longer apply in matters involving the Conservation Division. This includes any amending or clarifying emergency order, as well as any subsequently-issued emergency order, unless such future order explicitly states otherwise. The Commission's *Order Temporarily Waiving Notary Requirement*, issued in this docket on April 21, 2020, relies upon the Commission's discretionary authority under K.A.R. 82-1-219(g) and thus is not an emergency order. Accordingly, it *shall* continue to apply to matters involving the Conservation Division.

8. To the extent any person reasonably believes that statutes, orders, rules, or regulations pertaining to oil and gas matters obligate such person to take an action pertaining to such matters that would (1) prevent, hinder, or delay necessary action in coping with COVID-19; (2) violate any executive order; or (3) put such individual, or any other individual, at meaningful risk of contracting COVID-19; then such person is directed to **NOT TAKE such action** and to notify Conservation Division staff of the nature of the issue and how it relates to COVID-19. The Commission will take

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<sup>12</sup> See K.S.A. 77-536(b).

up such issues as necessary, on a case-by-case basis, and intends to err on the side of public health and safety, rather than on the side of strict compliance with oil and gas statutes, orders, rules, or regulations.

9. Regarding dockets involving the Conservation Division that were open as of March 16, 2020, which was the date the Commission stayed all dockets, or have been opened since then:

- a. In dockets where a final order had been issued but the deadline for filing a petition for reconsideration of the final order had not elapsed as of March 16, to the extent it is legally permissible the Commission intends to consider any petition for reconsideration as timely if it is filed within 30 days of this special order being issued.
- b. In dockets where an evidentiary hearing has already been held but no final order has been issued, the Commission will issue such order as soon as practicable.
- c. In dockets where no evidentiary hearing has been held, but a prehearing officer has been assigned, a new prehearing conference will be set to establish or re-establish deadlines. Please note that evidentiary hearings might not be scheduled during these conferences due to uncertainty surrounding COVID-19.
- d. In dockets where a protest or request for hearing has already been submitted, but no prehearing officer has been assigned, a prehearing officer will soon be assigned, and a prehearing conference will be scheduled.
- e. In penalty dockets where no request for hearing was submitted, but as of March 16, the time for requesting a hearing had not elapsed, the Commission intends to recognize any request for hearing as timely so long as it is submitted within 30 days of this special order being issued. The penalty order will become final if no timely request for hearing is submitted.

f. In application dockets where as of March 16, the time for submitting a protest had not elapsed, the Commission intends to recognize any additional protest as timely, so long as it is submitted within 15 days of the date this special order is issued for any production matter, or 30 days of the date this special order is issued for any environmental matter.<sup>13</sup>

g. In general investigation dockets where Staff had been directed to file a quarterly report by March 31, 2020, such deadline is extended to May 18, 2020.

10. Regarding non-docketed applications, if notice was required pursuant to K.A.R. 82-3-135a and in the normal course of business the time to submit a protest against the application would have elapsed between March 16, 2020, and the day this special order is issued, then the Commission intends to recognize any protest as timely for any production matter so long as it is submitted within 15 days of the date this order is issued, and to recognize any protest as timely for any environmental matter so long as it is submitted within 30 days of the date this order is issued.

11. Regarding compliance agreements and settlement agreements, the provisions of Paragraph 9 shall not apply. Operators shall have 45 days from the date this special order is issued to become current in their obligations under the agreements; provided, however, that if an operator's license was suspended as of March 16 for non-compliance, then it shall remain suspended until the operator becomes current in their obligations.

12. Where Conservation Division Staff sent an operator a notice of violation letter with a deadline that elapsed after March 16, 2020, Staff is encouraged to send a new notice of violation letter, with a typical deadline, if there is no apparent immediate environmental concern.

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<sup>13</sup> See K.A.R. 82-3-135a(e).

13. Conservation Division Staff is directed, where the timeframe for license renewal is affected by Executive Order 20-19, to do the following:

- a. Make any necessary calculation of whether the operator has an acceptable record of compliance based upon the date the license is being renewed, rather than the date the license was originally set to expire;<sup>14</sup> and
- b. Make the new renewal date the same as if the license renewal had not been affected by Executive Order 20-19.

14. No filings pertaining to this special order will be accepted in this docket. Any person taking issue with any aspect of this special order is directed to file such complaint in the docket in which the consequences of this order would apply.

15. This Special Order shall be served upon all parties to open dockets involving the Conservation Division, as well as upon each member of the committee on regulation of oil and gas activities described in K.S.A. 55-153. This Special Order shall also be posted on the Commission's website, as well as on the Kansas Public Square website.<sup>15</sup>


**THEREFORE, THE COMMISSION ORDERS:**

The findings and conclusions above are hereby adopted.

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

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 04/23/2020

  
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Lynn M. Retz  
Secretary to the Commission

Mailed Date: 04/23/2020

JRM

<sup>14</sup> See K.S.A. 55-155(d)(3); K.A.R. 82-3-120(e).

<sup>15</sup> The Kansas Public Square website is: <https://publicsquare.ks.gov>.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served upon the parties listed below by email and US mail this 23<sup>rd</sup> day of April, 2020, to the following:

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