

**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 Jack W.)	Docket No.: 16-CONS-056-CPEN
McFadden ("Operator") to comply with)	
K.A.R. 82-3-400 injection authority and/or)	CONSERVATION DIVISION
K.A.R. 82-3-409 reporting requirements)	
regarding injection that took place during the)	License No.: 8866
2014 calendar year.)	

ORDER SETTING PREHEARING CONFERENCE

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. 77-520 provides that if a party fails to attend any stage of an adjudicative proceeding, the agency may issue a default order with a statement of the grounds. The party has seven days to file a written motion to vacate, stating the grounds relied upon.

II. FINDINGS OF FACT

2. On July 23, 2015, the Commission issued a Penalty Order to the operator.

3. On August 6, 2015, the operator timely appealed.

4. On August 20, 2015, the Commission issued its Order Designating Prehearing Officer and Setting Prehearing Conference. The Order set a prehearing conference for September 15, 2015, at 1:30 p.m. The Order stated that telephonic attendance was available by request, and it stated that the failure to attend any stage of the proceeding shall result in a default order. The parties attended the prehearing conference on September 15, 2015. To facilitate

scheduling, the Prehearing Officer issued an Order continuing the prehearing conference until October 7, 2015, at 12:30 p.m.

5. On October 7, 2015, at 12:30 p.m., the prehearing conference was held. Operator failed to attend the Prehearing Conference in person or by phone.

6. On October 8, 2015, Staff filed a Motion for Default Order.

7. On October 16, 2015, Mr. McFadden filed an email in reply to the motion, stating that he had missed the conference because he assumed the Prehearing Officer would call him. Mr. McFadden stated he then called the Conservation Division four hours later, at 4:30.

8. On October 19, 2015, Staff filed a reply to Mr. McFadden's response to the motion. Staff alleged that Mr. McFadden informed Staff that he was in an area without cell phone reception at the scheduled time for the prehearing conference, indicating a consistency with the phone call confusion argument raised by Mr. McFadden. Staff also alleges that Mr. McFadden had previously attended a prehearing conference in this docket by telephone. Staff again requested a default order be issued.

III. CONCLUSIONS OF LAW

9. The operator's failure to attend the prehearing conference constituted default under the KAPA. However, the Commission will allow Mr. McFadden a second opportunity to participate in the Commission's proceedings and pursue his appeal. Staff's motion for a default order is denied, and a Prehearing Conference is scheduled for 4:30 pm on Tuesday, November 17, 2015. The Prehearing Conference will last 30 minutes and can be attended by phone. It is incumbent upon Mr. McFadden to obtain the proper instructions for telephonic attendance.

THEREFORE, THE COMMISSION ORDERS:

A. Staff's motion for a default order is denied.

B. A Prehearing Conference is scheduled for 4:30 pm on Tuesday, November 17, 2015.

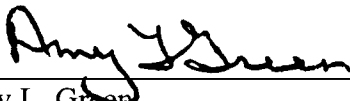
C. Pursuant to K.S.A. 77-520(b), Operator may file a written motion requesting that this Default Order be vacated and stating the grounds relied upon, within seven calendar days after service of this Order, with three additional days added for service by mail. The motion shall be addressed to the Commission and sent to 266 N. Main, Ste. 220, Wichita, Kansas 67202.

D. The Commission retains jurisdiction of the subject matter and the parties and may enter additional orders as it deems appropriate.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: NOV 05 2015



Amy L. Green
Secretary to the Commission

Mailed Date: Nov. 5, 2015

LRP

CERTIFICATE OF SERVICE

I certify that on 11/5/15, 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:

Jack W. McFadden dba McFadden Oil Co.
PO Box 394
Iola, KS 66749-0394

and hand-delivered to:

Jonathan R. Myers
Rene Stucky
KCC Central Office

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