

**RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
HEARINGS SECTION**

OIL AND GAS DOCKET NO. 01-0253716

**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY DAVID THALMANN
VAC SERVICE, INC. (851060), AS TO THE RECLAMATION PLANT (R-9 PERMIT NO. 01-0688),
DIMMIT COUNTY, TEXAS**

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on January 24, 2008, and that the respondent, David Thalmann Vac Service, Inc. (851060), failed to appear or respond to the Notice of Opportunity for Hearing. Pursuant to § 1.49 of the Commission's General Rules of Practice and Procedure [Tex. R. R. Comm'n, 16 TEX. ADMIN. CODE § 1.49] and after being duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. David Thalmann Vac Service, Inc. (851060), ("Respondent") was given Notice of Opportunity for Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report, which was signed and returned to the Commission.
2. The returned certified receipt (green card) that was attached to the Original Complaint and the Notice of Opportunity for Hearing mailed to Respondent's most recent P-5 address was signed and returned to the Commission on December 21, 2007. The certified receipt has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On September 29, 2006, Respondent, a Corporation, filed an Organization Report (Form P-5) with the Commission reporting that its officers consisted of the following individual(s): Sandra Thalmann, President; and David Thalmann, Vice-President.
4. Sandra Thalmann, was a person in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.

5. David Thalmann, was a person in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.
6. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
7. Respondent designated itself to the Commission as the operator of Reclamation Plant by filing an R-9 Reclamation Permit with the Commission on August 2, 1995.
8. According to Commission records the Respondent's Form P-5 (Organization Report) is delinquent as of September 1, 2007. Respondent had a \$50,000.00 Letter of Credit as its financial assurance at the time of its last P-5 renewal.
9. A Commission District inspection conducted on January 22, 2007 for the Reclamation Plant (R-9 Permit No. 01-0688) Lease indicated that the field inspector was called out to the facility and discovered a tank truck with a valve open 1/4 of the way, spilling salt water all over the yard. The saltwater was tested at 6211 ppm of chlorides. The inspector noticed several spills, which seemed to be violative in nature. Another inspection was scheduled for January 30, 2007.
10. A Commission District inspection conducted on January 30, 2007 for the Reclamation Plant (R-9 Permit No. 01-0688) Lease indicated that there was approximately 4 barrels of "live oil" in the firewall area.
11. A Commission District inspection conducted on March 1, 2007 for the Reclamation Plant (R-9 Permit No. 01-0688) Lease indicated that approximately 4 barrels of "live oil" was still in the firewall area. Additionally, salt water had been sprayed over the yard, allowing it to soak into the ground. Salt crystals were visible around the edges of the pools in the yard.
12. A Commission District inspection conducted on April 5, 2007 for the Reclamation Plant (R-9 Permit No. 01-0688) Lease indicated that there were no material changes in the firewall area as approximately 3-4 barrels of "live oil" were still in the firewall area.
13. A Commission District inspection conducted on July 12, 2007 for the Reclamation Plant (R-9 Permit No. 01-0688) Lease indicating that there were several spills on the facility. In the Tanks 1-7 area, there was approximately 5 barrels of freestanding oil in the firewall ditch and between the tanks. The soil both behind and in front of the tanks was saturated with oil. In the area around tanks 9-18, there was approximately 8 barrels of freestanding oil around the tanks and firewall ditch. The soil behind the tanks was saturated with oil. In the area around tanks 23-27, the tanks were sitting in a shallow pit, approximately 15' by 45' by 1' deep. The pit and tank area contained rainwater and oil. There was approximately 120 barrels of oil in this pit. Two of the tanks, Nos. 23 and 24, were sitting outside of the pit area, but were still surrounded by oil-saturated soil. In the area around tanks 21-22 there was oil-saturated soil running the length of the 2500 barrel bolted tanks on the backside. In the area around tank 28, there was an open top mud tank with a 200 barrel capacity, which was about 3/4 full. It was adjacent to the pit on the south side. Tanks 19-28 are not tied in with each other, or other tanks on the site. All other tanks on the site are plumbed together and are used to on and off load fluids.

14. A Commission District inspection conducted on July 31, 2007 for the Reclamation Plant (R-9 Permit No. 01-0688) Lease indicated that there was no material changes from the previous inspection. Pictures were taken at this and most of the other inspections and are in the file.
15. No permit has been issued to Respondent for the discharge of oil and gas wastes on or from the subject lease.
16. The unpermitted discharges of oil and gas wastes or other substances or materials on the subject lease constitute a hazard to public health and safety because leaks and spills of oil and produced waters onto soils can migrate into surface water bodies causing contamination or can leach into the ground and percolate through soils into groundwater supplies.
17. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject lease and subject well in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.
18. The Respondent has a prior history of Commission rule violations including the following docket(s):

Docket No. 01-0250793; Final Order Served: June 27, 2007;
Docket No. 01-0249625; Final Order Served: January 29, 2008;
Docket No. 01-0249611; Final Order Served: January 29, 2008;
Docket No. 01-0252521; Final Order Served: January 29, 2008 ; and
Docket No. 01-0249377; Final Order Served: January 29, 2008.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Railroad Commission to respondent and to all other appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Respondent is in violation of Commission Statewide Rule 8(d)(1).
4. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 8(d)(1), which prohibits the discharge of oil and gas wastes without a permit.
5. Respondent is responsible for maintaining the subject lease in compliance with all applicable Commission rules according to Statewide Rules 14, 58, and 79 and Chapters 89 and 91 of the Texas Natural Resources Code.

6. The documented violations committed by the respondent constitute acts deemed serious, a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).
7. As a person in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, Sandra Thalmann, and any other organization in which she may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resource Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or until the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed, whichever is earlier.
8. As a person in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, David Thalmann, and any other organization in which he may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resource Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or until the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed, whichever is earlier.

IT IS ORDERED THAT within 30 days from the day immediately following the date this order becomes final:

1. David Thalmann Vac Service, Inc. (851060), shall place the Reclamation Plant (R-9 Permit No. 01-0688) Lease, Dimmit County, Texas in compliance with applicable Commission rules and regulations;
2. David Thalmann Vac Service, Inc. (851060), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **ELEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$11,800.00)**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Noncompliance with the provisions of this order is subject to enforcement by the Attorney General and subject to civil penalties of up to \$10,000.00 per day per violation.

Done this 29th day of May 2008.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order dated May 29, 2008)

MH/sa