

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

OIL AND GAS DOCKET NO. 09-0245973

ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY WIGINGTON, FLOYD M., SOLE PROPRIETOR, DOC'S TANK TRUCKS (221875), AS TO THE JERMYN FACILITY, JACKSBORO YARD, JACK COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on July 13, 2006, and that the respondent, Wigington, Floyd M., Sole Proprietor, Doc's Tank Trucks (221875), failed to appear or respond to the notice. 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. Wigington, Floyd M., Sole Proprietor, Doc's Tank Trucks (221875), ("Respondent") was given a Notice of Opportunity for Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report, 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 May 22, 2006. The certified receipt has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. Wigington, Floyd M., as sole proprietor, 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.
4. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
5. Respondent designated itself to the Commission as the operator of Jermyn Facility, Jacksboro Yard Washout Pit by filing a Form H-11 (Application for Permit to Maintain and Use a Pit) (Application No. 009722), with the Commission filed on January 9, 1990.

6. According to Commission records the Respondent's Form P-5 (Organization Report) is active. Respondent has a \$25,000.00 Letter of Credit as its financial assurance.
7. Commission district office inspections were conducted on August 2, 2005, August 26, 2005, October 27, 2005 and March 29, 2006 for the Jermyn Facility, Jacksboro Yard. There was approximately a 18' x 15' area inside the dike covered with freestanding oil. Also, the entire diked area was covered in soil soaked with oil, produced water and salt crystals.
8. No permit has been issued to the Respondent for the discharge of oil and gas wastes on or from the subject lease.
9. 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 onto the ground and percolate through soils into groundwater supplies.
10. On July 28, 2005, the Commission denied Respondent's request to maintain and use a washout pit at the Jermyn Facility, Jacksboro Yard, and directed Respondent to empty, backfill and compact the pit on or before October 26, 2005. Commission district office inspections were conducted on August 26, 2005, October 27, 2005 and March 29, 2005 for the Jermyn Facility, Jacksboro Yard. There was an unpermitted, unlined earthen washout pit containing basic sediment and water.
11. Respondent did not have a permit to dispose of or store oilfield fluids or oil and gas wastes in a pit on the subject lease.
12. The Respondent has not demonstrated good faith since it failed to place the subject facility and subject yard in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.
13. Respondent has a history of Commission rule violations including the following docket(s):

Docket No. 7B-0242579; Rules 8 and 46; Final Order Served: October 26, 2005.

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 Rules 8(d)(1) and 8(d)(2).
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 Statewide Rule 8(d)(2), which prohibits a person from maintaining or using any pit for storage of oilfield fluids without a permit.
6. Respondent is responsible for maintaining the subject facility and subject yard in compliance with applicable Commission rules according to Statewide Rules 8, 14, 58, and 79 and Chapters 89 and 91 of the Texas Natural Resources Code.
7. 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).
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, Wigington, Floyd M., 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. Wigington, Floyd M., Sole Proprietor, Doc's Tank Trucks (221875) , shall place the Jermyn Facility, Jacksboro Yard, Jack County, Texas in compliance with Commission rules and regulations;
2. Wigington, Floyd M., Sole Proprietor, Doc's Tank Trucks (221875), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWO THOUSAND SIX HUNDRED DOLLARS (\$2,600.00)**.

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 30th day of October 2006.

RAILROAD COMMISSION OF TEXAS

(Signatures affixed by Default Master Order
dated October 30, 2006)

ME/sa