

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

**OIL AND GAS DOCKET NO. 01-0249611**

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**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY DAVID THALMANN VAC SERVICE, INC. (851060), AS TO THE THALMANN YARD & CALICHE PIT LEASE, DIMMIT COUNTY, TEXAS**

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**FINAL ORDER**

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on August 30, 2007, and that the respondent, David Thalmann Vac Service, Inc. (851060), 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. David Thalmann Vac Service, Inc. (851060), ("Respondent") was given Notice of Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report, which was returned to the Commission marked "unclaimed."
2. The returned certified receipt containing the Original Complaint and the Notice of Hearing mailed to Respondent's most recent P-5 address was returned to the Commission marked "unclaimed" on August 9, 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 a Waste Hauler in District 01 by filing a Form WH-1 (Application for Oil & Gas Waste Hauler's Permit), date of the permit issuance October 6, 2006, expiration date September 30, 2007.
8. According to Commission records the Respondent's Form P-5 (Organization Report) became delinquent on 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. On or around May 11, 2006 and May 16, 2006, two separate calls were placed into the Commission's San Antonio District Office, alleging that Respondent's trucks were spreading oilfield waste on the Thalmann Yard & Caliche Pit Lease in Dimmit County, Texas. A Commission District inspection report made on May 11, 2006 for the Thalmann Yard & Caliche Pit Lease indicated that Respondent and or employees of Respondent were driving around the equipment yard spraying water mixed with crude oil over the referenced facility. The affected area was approximately 100 yards by 100 yards. Field tests indicated that the chlorides in the water were measured at 1700 parts per million. The inspection also noted that there was a dirt pit on the property that was filled with storm water that was being mixed with water being hauled in. The field test indicated that chlorides in the pit were measured at 300 parts per million.
10. A Commission District inspection report made on May 16, 2006 for the Thalmann Yard & Caliche Pit Lease indicated that Respondent had spread oil over part of the yard and that the oil was thick with puddles of oil in low spots. Two samples of oily dirt were taken at the scene to be analyzed.
11. A Commission District inspection report made on May 23, 2006 for the Thalmann Yard & Caliche Pit Lease indicated that most of the live oil had either been removed or worked into the soil. However, there remained some soil that was stained by the dumping, and salt crystals were also present.
12. Commission District inspection reports made on July 17, 2006 and August 15, 2007 for the Thalmann Yard & Caliche Pit Lease indicated that there was no recent dumping of oil on the ground, but there was still some staining from the previous dumping.
13. No permit has been issued to Respondent for the discharge of oil and gas wastes on or from the subject lease.
14. 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.

15. The Respondent has not demonstrated good faith since it failed to place the Thalmann Yard & Caliche Pit Lease in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.
16. Respondent has repeatedly violated Waste Hauler Permit No. 2574 under Permit Condition B, which authorizes disposal of oil and gas waste only at Commission approved disposal or injection systems.
17. The action taken by Respondent was intentional in nature. And constituted reckless conduct.
18. The Respondent has a prior history of Commission rule violations including the following docket(s):

Docket No. 01-0247010; Rule 8; Agreed Order Served: August 8, 2006; and  
Docket No. 01-0250793; Rules 3 and 14; Final Order Served: June 27, 2007.

### **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 8 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. An enhancement of the administrative penalty for Respondent's violation of Statewide Rule 8(d)(1) is justified by Respondent's intentional and reckless conduct.

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, 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.
9. 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 Thalmann Yard & Caliche Pit 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 **THIRTY TWO THOUSAND DOLLARS (\$32,000.00)**.

It is further **ORDERED** that Waste Hauler Permit No. 2574 issued to David Thalmann Vac Service, Inc. (851060), is hereby revoked.

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 28<sup>th</sup> day of January 2008.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order dated January 28, 2008)

JD/sa