

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL AND GAS DOCKET NO. 06-0296386**

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**THE ENFORCEMENT ACTION AGAINST DAVIS, KENNETH E., SOLE PROPRIETOR, DAVIS, KENNETH E., SOLE PROPRIETOR, K R ENVIRO SERVICE (OPERATOR NO. 448982) FOR VIOLATIONS OF STATEWIDE RULES ON THE JOAQUIN WASHOUT YARD #2 FACILITY, SHELBY 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 13, 2015 and that the respondent, Davis, Kenneth E., Sole Proprietor, Davis, Kenneth E., Sole Proprietor, K R Enviro Service (Operator No. 448982), 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. Davis, Kenneth E., Sole Proprietor, Davis, Kenneth E., Sole Proprietor, K R Enviro Service, ("Respondent"), was given Notice of Opportunity for Hearing by certified mail, addressed to the most recent Form P-5 (Organization Report) address.
2. The certified envelope containing the Original Complaint and the Notice of Opportunity for Hearing, was returned on July 21, 2015, to the Commission marked "unclaimed". The certified receipt is included in the file and has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. On September 5, 2012, Respondent, filed an Organization Report (Form P-5) with the Commission reporting that its sole proprietor consisted of the following individual(s): Kenneth E. Davis, Sole Proprietor.
4. Kenneth E. Davis, as sole proprietor, was 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. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
6. Respondent is designated responsible for the captioned facility under TEX. NAT. RES. CODE ANN. §91.133. Respondent designated itself as the operator of the Joaquin Washout Yard #2 Facility by filing an Application for Permit to Maintain and Use A Pit (Commission Form H-11), filed May 18, 2011.
7. Respondent's P-5 (Organization Report) is currently inactive. Respondent did not have financial assurance at the time.

8. Commission district office inspections conducted on August 18, 2014, January 19, 2015 and February 18, 2015 for the Joaquin Washout Yard #2 Facility show that the facility is inactive and that the four tanks at the facility are full of basic sediment and water. A Commission district inspection conducted on March 4, 2015 shows there is basic sediment and water around the base of Pit #2, a 10' x 10' area of oil-saturated oil around the base of Pit #3, a 7' x 8' area of oil-saturated soil around the base of Pit #4, and a 100' x 100' area at the back of the facility affected by oil-contaminated material that was stored on the ground. A follow up inspection conducted on June 29, 2015 show that all violations remain.
9. No permit has been issued to Respondent for the discharge of oil and gas wastes on or from the subject lease.
10. 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 soil into groundwater supplies.
11. Commission District inspection reports made on August 18, 2014, January 9, 2015, February 18, 2015, March 4, 2015, and June 29, 2015 for the Joaquin Washout Yark #2 Facility revealed four open-top pits on site containing oil and gas waste. Although Respondent had previously filed an Application for Permit to Maintain and Use a Pit at the facility, it was not approved and no other permits have been issued to Respondent for the use and maintenance of any pits at the facility.
12. 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.
13. Respondent has no prior history of violations of Commission rules.

**CONCLUSIONS OF LAW**

1. Proper notice was issued by the Railroad Commission to respondent and 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 responsible for maintaining the subject lease in compliance with all applicable Commission rules and for properly plugging the subject well according to Statewide Rules 14, 58, and 79 and Chapters 89 and 91, Texas Natural Resources Code.
4. The documented violations committed by the respondent constitute acts deemed serious, and a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c) (Vernon 1993).
5. Respondent is in violation of Statewide Rules 8 (d)(1) and 8 (d)(2).
6. Respondent is responsible for maintaining the subject lease in compliance with Rule 8 (d)(1), which prohibits the discharge of oil and gas wastes without a permit.

7. Respondent is responsible for maintaining the subject lease in compliance with Rule 8 (d)(2), which prohibits a person from maintaining or using any pit for storage of oilfield fluids without a permit.
8. As a person in a position of ownership or control of respondent at the time respondent violated Commission rule related to safety and the control of pollution, Kenneth E. Davis, and any other organization in which he, may hold a position of ownership or control, shall be subject to the restriction of Texas Natural Resources 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 sooner, if 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.

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

1. Davis, Kenneth E., Sole Proprietor, K R Enviro Service (Operator No. 448982), shall plug and place the Joaquin Washout Yard #2 Facility, Shelby, Texas in compliance with applicable Commission rules and regulations; and
2. Davis, Kenneth E., Sole Proprietor, K R Enviro Service (Operator No. 448982), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FOURTEEN THOUSAND, FIVE HUNDRED SEVENTY-EIGHT DOLLARS (\$14,578.00)**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 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 8th day of December, 2015.

LMV/rnf

**RAILROAD COMMISSION OF TEXAS  
(Signatures affixed by Default Master Order  
dated December 8, 2015)**