

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL AND GAS DOCKET NO. 10-0301016**

---

**ENFORCEMENT ACTION AGAINST T K & B TRUCKING COMPANY, INC. (OPERATOR NO. 833958) FOR VIOLATION OF A STATEWIDE RULE ON THE TRI-STATE WASHOUT PIT (PIT APPLICATION NO. CN-012096), SEC. 65, BLK. GM5, GM SURVEY, OLDHAM COUNTY, TEXAS**

---

**FINAL ORDER**

The Railroad Commission of Texas (“Commission”) finds that after statutory notice the captioned enforcement proceeding was heard by a Commission Administrative Law Judge on October 20, 2016 and that the respondent, T K & B Trucking Company, Inc., 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, 16 TEX. ADMIN. CODE § 1.49, and after being duly submitted to the Commission at a conference held in its offices in Austin, Texas, the Commission makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. T K & B Trucking Company, Inc. (“Respondent”), Operator No. 833958, was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to the most recent Commission Form P-5 (Organization Report) (“Form P-5”) address. Respondent’s officer as identified on the Form P-5, Kem Carr, was sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to his last known address.
2. The certified mail envelope containing the Original Complaint and Notice of Opportunity for Hearing addressed to Respondent was returned to the Commission on October 12, 2016. The certified mail envelope addressed to Kem Carr was received on September 12, 2016. No first class mail was returned. Record of the delivery and return of certified mail has been on file with the Commission for more than 15 days, exclusive of the day of receipt and day of issuance. Respondent was given more than 30 days’ notice of the Original Complaint and Notice of Opportunity for Hearing. Respondent has not entered into an agreed settlement order, filed an answer, or requested a hearing.
3. On September 19, 2013, Respondent, a corporation, filed a Form P-5 with the Commission reporting that its officers consist of the following individual: Kem Carr, President.

4. Kem Carr was in a position of ownership or control of Respondent, as defined in section 91.114 of the Texas Natural Resources Code, during the time period of the violations of Commission rules committed by Respondent.
5. Respondent's Form P-5 is delinquent.
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 the Tri-State Washout Pit by filing a Form H-11 (Pit Application No. CN-012096) on February 4, 2014.
8. Commission inspection reports made on March 11, 2014 through June 21, 2016, for the Tri-State Washout Pit show Respondent was using and maintaining an unauthorized pit. Respondent's Form H-11 was not approved. Respondent received several notifications from Commission staff stating that more information was needed to approve Respondent's permit. On July 2, 2015, staff sent Respondent a letter denying Respondent's Form H-11 application and instructing Respondent to backfill the pit within 120 days. As of the last inspection, dated June 21, 2016, Respondent has not backfilled the pit.
9. Continued maintenance of unpermitted pits, in violation of Statewide Rule 8(d)(2), may result in unpermitted discharges of oil and gas waste which can contaminate the land surface, affect the health of humans and animals, and may be discharged to surface or subsurface waters, causing pollution.
10. Respondent has no prior history of violations of Commission rules.

#### **CONCLUSIONS OF LAW**

1. Proper notice was issued by the 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 have been performed or have occurred.
3. Respondent is responsible for maintaining the subject lease in compliance with all applicable Commission rules and chapters 89 and 91 of the Texas Natural Resources Code.
4. Respondent is in violation of Statewide Rule 8(d)(2). 16 TEX. ADMIN. CODE § 3.8(d)(2).

5. The documented violations committed by 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 § 81.0531(c).
6. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 8(d)(2), which requires that pits not otherwise authorized by rule, be permitted.
7. Pursuant to TEX. NAT. RES. CODE § 81.0531, the Commission may assess administrative penalties against Respondent for the subject violations of up to \$10,000 per day for each violation, with each day such violations continued constituting a separate violation.
8. An assessed administrative penalty in the amount of EIGHTEEN THOUSAND ONE HUNDRED SEVENTY-EIGHT DOLLARS (\$18,178.00) is justified considering the facts and violations at issue.
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, Kem Carr, and any other organization in which he may hold a position of ownership or control, are subject to the restriction in section 91.114(a)(2) of the Texas Natural Resources Code.

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

1. T K & B Trucking Company, Inc. shall place the Tri-State Washout Pit in compliance with Statewide Rule 8(d)(2) and any other applicable Commission rules and statutes.
2. T K & B Trucking Company, Inc. shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **EIGHTEEN THOUSAND ONE HUNDRED SEVENTY-EIGHT DOLLARS (\$18,178.00)**.

It is further **ORDERED** that 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, Kem Carr and any other organization in which he may hold a position of ownership or control, shall be subject to the restriction in section 91.114(a)(2) of the Texas Natural Resources Code 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.

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 the notice is 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 this order in accordance with TEX. GOV'T CODE § 2001.144.

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 6<sup>th</sup> day of December, 2016.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order  
dated December 6, 2016)

JNC/rnf