

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL AND GAS DOCKET NO. 02-0301721**

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**ENFORCEMENT ACTION AGAINST NAC SERVICES, LLC (OPERATOR NO. 598783) FOR VIOLATIONS OF STATEWIDE RULES ON KENEDY SERVICE YARD, EAGLEVILLE (EAGLE FORD-2) FIELD, KARNES COUNTY, TEXAS**

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**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 November 3, 2016, and that the respondent, NAC Services, LLC, 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. NAC Services, LLC (“Respondent”), Operator No. 598783, 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 officers and agents as identified on the Form P-5—Armando Gutierrez, Jr. and Terri Gutierrez—were each sent the Original Complaint and Notice of Opportunity for Hearing by certified and first class mail, addressed to their last known address.
2. The certified mail envelopes containing the Original Complaint and Notice of Opportunity for Hearing addressed to Respondent and Respondent’s officers were returned to the Commission between October 18, 2016 and October 25, 2016. The first class mail was not returned. Record of the 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 January 22, 2015, Respondent, a limited liability company, filed a Form P-5 with the Commission reporting that its officers consist of the following individuals: Armando Gutierrez, Jr. and Terri Gutierrez.
4. Armando Gutierrez, Jr. 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. Terri Gutierrez. 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.

6. Respondent's Form P-5 is delinquent.
7. The violations of Commission rules committed by Respondent are related to safety and the control of pollution.
8. Respondent designated itself to the Commission as the operator of the Kenedy Service Yard by undergoing and performing oil and gas business activities regulated by the Texas Railroad Commission.
9. Commission inspection reports made between February 5, 2016 and April 28, 2016 for the Kenedy Service Yard show there were two large disposal pits with an area measuring approximately 150' x 75' each, as well as multiple smaller areas of contaminated soil located around the service yard.
10. Respondent did not have a permit for said discharges, nor were they authorized under Statewide Rules 8(d)(3), 8(e), 9, 46 or 98.
11. Unpermitted discharges of oil and gas waste, in violation of Statewide Rule 8(d)(1), can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.
12. Commission inspection reports made between February 5, 2016 and April 28, 2016 for the Kenedy Service Yard show there were two large disposal pits with an area measuring approximately 150' x 75' each. These pits were not permitted for use by the Railroad Commission and were operating illegally.
13. 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.
14. Commission inspection reports made between February 5, 2016 and April 28, 2016 for the Kenedy Service Yard show that the pits in place were swamped and sagging and ineffective at protecting birds.
15. Failing to properly screen or take other protective measures, as set forth in Statewide Rule 22(b), regarding open-top tanks, skimming pits, and/or collecting pits can cause harm to birds.
16. 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 Rules 8(d)(1), 8(d)(2), and 22(b). 16 TEX. ADMIN. CODE §§ 3.8(d)(1), 3.8(d)(2), and 3.22(b).
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 leases in compliance with Statewide Rule 8(d)(1), which prohibits the discharge of oil and gas waste without a permit.
7. 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.
8. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 22(b), which requires open-top tanks, skimming pits, and collecting pits to be screened or otherwise rendered harmless to birds.
9. 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.
10. An assessed administrative penalty in the amount of FIFTY THOUSAND SIX HUNDRED FIFTY-SIX DOLLARS AND TWENTY-FIVE CENTS (\$50,656.25) is justified considering the facts and violations at issue.
11. As persons in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Armando Gutierrez, Jr. and Terri Gutierrez, and any other organization in which either or both 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. NAC Services, LLC shall place the Kenedy Service Yard in compliance with Statewide Rules 8(d)(1), 8(d)(2), and 22(b), and any other applicable Commission rules and statutes.
2. NAC Services, LLC shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **FIFTY THOUSAND SIX HUNDRED FIFTY-SIX DOLLARS AND TWENTY-FIVE CENTS (\$50,656.25)**.

It is further **ORDERED** that as persons in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Armando Gutierrez, Jr. and Terri Gutierrez, and any other organization in which either or both 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 the Commission's order is signed, unless the time for filing a motion for rehearing has been extended under TEX. GOV'T CODE § 2001.142, by agreement under TEX. GOV'T CODE § 2001.147, or by written Commission Order issued pursuant to TEX. GOV'T CODE § 2001.146(e). 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 24<sup>th</sup> day of January, 2017.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order  
dated January 24, 2017)

JNC/rnf