

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 01-0286022

ENFORCEMENT ACTION AGAINST SD OPERATING F/K/A SALTY DOG OILFIELD SERVICES, LP (OPERATOR NO. 740163) FOR VIOLATIONS OF STATEWIDE RULES ON DIMMIT COUNTY FACILITY, DIMMIT 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 August 18, 2016, and that the respondent, SD Operating F/K/A Salty Dog Oilfield Services, LP, 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. SD Operating F/K/A Salty Dog Oilfield Services, LP ("Respondent"), Operator No. 740763, 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. Respondents' officers and agents as identified on the Form P-5—Michael G. Macs and Thomas J. Kelly—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 was received by the Respondent and Thomas J. Kelly on August 1, 2016. The first class mail was not returned. The certified mail envelopes containing the Original Complaint and Notice of Opportunity for Hearing addressed to Michael G. Macs was returned to the Commission. Record of the delivery and return of 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 July 14, 2015, Respondent, a Limited Liability Company, filed a Form P-5 with the Commission reporting that its officers consist of the following individual(s): Michael G. Macs, Manager, and Thomas J. Kelly, Manager.

4. Michael G. Macs, 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. Thomas J. Kelly, 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 inactive. Respondent had a \$25,000 cash deposit as its financial assurance at the time of the last Form P-5 annual renewal submission.
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 Dimmit County Facility because it is the person responsible for the physical operation and control of the facility.
9. A Commission District inspection report made on October 14, 2013, for the Dimmit County Facility, indicated that a lightning strike had occurred at the facility causing a release of an estimated 200 barrels of oil, which flowed out of the facility into the bar ditch of the nearby Farm to Market Road 468, across the road and into a nearby pond. The oil plum covered approximately 175,000 square feet of the ground, plus approximately 10,890 square feet of the pond.
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 District inspection reports made on October 14, 2013, October 15, 2013, October 18, 2013, October 25, 2013, and April 18, 2016, for the Dimmit County Facility Lease indicated Respondent was using and maintaining three unauthorized pits for oil and gas waste storage.
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. A Commission District inspection report made on October 14, 2013, for the Dimmit

County Facility indicated that a fire had occurred and that oil had spilled off the facility, along the Farm to market Road 468 bar ditch, across the road, and into a nearby pond. The inspection report indicates that the District was notified by a third party that the fire started on October 13, 2013. Respondent failed to immediately report the spill to Commission District Office personnel.

15. Commission inspection reports made on October 14, 2013, October 15, 2013, October 18, 2013, October 25, 2013, and April 18, 2016, on the Dimmit County Facility showed that the tank battery was not provided with a firewall as required.
16. Failing to erect a dike or fire wall as required by Statewide Rule 21(j) may cause fires.
17. 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), 20(a)(1), and 21(j). 16 TEX. ADMIN. CODE §§ 3.8(d)(1), 3.8(d)(2), 3.20(a)(1), and 3.21(j).
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)(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 20(a), which requires that operators immediately provide notice to the appropriate Commission District Office by telephone or telegraph of a fire, leak, spill or break. A leak of crude oil can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.

9. Respondent is responsible for maintaining the subject lease in compliance with Statewide Rule 21(j), which requires that dikes or fire walls be erected and kept around all permanent oil tanks or battery of tanks that are within the corporate limits of any city, town or village or where such tanks are closer than 500 feet to any highway or inhabited dwelling or closer than 1,000 feet to any school or church, or where such tanks are located as to be deemed by the Commission to be an objectionable hazard.
10. 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.
11. An assessed administrative penalty in the amount of **THREE HUNDRED, FOUR THOUSAND, ONE HUNDRED SEVENTY-THREE DOLLARS (\$304,173.00)** is justified considering the facts and violations at issue.
12. 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, Michael G. Macs and Thomas J. Kelly, and any other organization in which they 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. SD Operating F/K/A Salty Dog Oilfield Services, LP, (Operator No. 740763) shall place the Dimmit County Facility in compliance with all Commission Statewide Rules and statutes.
2. SD Operating F/K/A Salty Dog Oilfield Services, LP, (Operator No. 740763) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **THREE HUNDRED FOUR THOUSAND, ONE HUNDRED SEVENTY-THREE DOLLARS (\$304,173.00)**.

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, Michael G. Macs and Thomas J. Kelly and any other organization in which they 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 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 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 24th day of January, 2017.

RAILROAD COMMISSION OF TEXAS

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

DAL/pbm