

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**OIL AND GAS DOCKET No. 8A-0305020**

---

**ENFORCEMENT ACTION AGAINST TKP PETROLEUM, INC. (OPERATOR No. 860891) FOR VIOLATIONS OF STATEWIDE RULES ON THE PITCHFORK UNIT (68878) LEASE, GIRARD, N. (TANNEHILL) FIELD, DICKENS COUNTY, TEXAS; AND PITCHFORK UNIT (68878) LEASE, GIRARD, N. (TANNEHILL) FIELD, DICKENS 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 January 25, 2018, and that the respondent, TKP Petroleum, Inc., failed to appear or respond to the **First Amended Notice of Opportunity for Hearing**. Pursuant to § 1.25 of the Commission's General Rules of Practice and Procedure, 16 TEX. ADMIN. CODE § 1.25, 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. TKP Petroleum, Inc. ("Respondent"), Operator No. 860891, was sent the First Amended Original Complaint and First Amended 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—Thomas K. Payne—was sent the First Amended Original Complaint and First Amended Notice of Opportunity for Hearing by certified and first-class mail, addressed to the last known addresses.
2. The certified mail envelope containing the First Amended Original Complaint and First Amended Notice of Opportunity for Hearing addressed to the Respondent was delivered on October 14, 2017. The certified mail envelope addressed to Thomas K. Payne on 93rd was delivered on October 13, 2017. The certified mail envelope addressed to Thomas K. Payne on Slide Road was returned to the Commission unopened on November 2, 2017. None of the 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 First Amended Original Complaint and First Amended Notice of Opportunity for Hearing. Respondent has not entered into an agreed settlement order, filed an answer or requested a hearing.
3. On July 28, 2017, Respondent, a corporation, filed a Form P-5 with the Commission reporting that its officers consist of the following individuals: Thomas K. Payne, President/Sec/Tres.
4. Thomas K. Payne was in a position of ownership or control of Respondent, as defined in TEX. NAT. RES. CODE § 91.114, during the time period of the violations of Commission rules committed by Respondent.
5. Respondent's Form P-5 is active. Respondent had a \$50,000.00 letter of credit as its financial assurance at the time of the last Form P-5 annual renewal submission.

6. Respondent designated itself to the Commission as the operator of the Pitchfork Unit (68878) Lease, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective October 25, 2007, approved October 29, 2007.
7. Commission inspection reports made on August 17, 2016, November 8, 2016, December 20, 2016, January 24, 2017, March 7, 2017, on the Pitchfork Unit (68878) Lease showed that there is currently no firewall around two of the tanks. Because these tanks are located in a sensitive area, next to a ravine, they require an adequate firewall to contain any potential spills. A recent follow up inspection dated May 26, 2017, showed that no work had been done to construct a proper firewall.
8. Failing to erect a dike or fire wall as required by Statewide Rule 21(j) can cause fires.
9. The 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 TEX. NAT. RES. CODE, chs. 89 and 91.
4. 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.
5. Respondent is in violation of Statewide Rule 21(j). 16 TEX. ADMIN. CODE § 3.21(j).
6. 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).
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 **TWO-THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** 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, Thomas K. Payne, and any other organization in which this individual may hold a position of ownership or control, is subject to the restriction in TEX. NAT. RES. CODE § 91.114(a)(2).

## ORDERING PROVISIONS

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

1. TKP Petroleum, Inc. (Operator No. 860891) shall place the Pitchfork Unit (68878) Lease, in compliance with Statewide Rule 21(j), and any other applicable Commission rules and statutes.
2. TKP Petroleum, Inc. (Operator No. 860891) shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWO-THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)**.

It is further **ORDERED** that as persons in positions of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Thomas K. Payne, and any other organization in which this individual may hold a position of ownership or control, **shall be subject to the restriction in TEX. NAT. RES. CODE § 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.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after the 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 of an application 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 100 days from the date the Commission order is signed.

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 per day per violation.

Done this 10<sup>th</sup> day of April 2018.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order dated April 10, 2018)

RLM/rnf