

**ENFORCEMENT ACTION AGAINST DONALD D. MCCALLUM, SOLE PROPRIETOR (OPERATOR NO. 538761) FOR VIOLATIONS OF STATEWIDE RULES ON THE MITCHELL, SUE FARMOUT LEASE, WELL NO. 1 (DRILLING PERMIT NO. 532969), K-M-A (1300), K-M-A (1600) FIELD, WICHITA COUNTY; AND MITCHELL, SUE FARMOUT LEASE, WELL NO. 2 (DRILLING PERMIT NO. 534927), K-M-A (1300), K-M-A (1600) FIELD, WICHITA COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR MOVANT:**

Reese B. Copeland

**MOVANT:**

Enforcement Section  
Office of General Counsel

**FOR RESPONDENT:**

James G. Bradberry, Consultant  
Eric W. Nolen, Agent

**RESPONDENT:**

Donald D. McCallum

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE COMPLAINT FILED:</b>	June 10, 2005
<b>DATE OF NOTICE OF HEARING:</b>	May 14, 2010
<b>DATE OF HEARING:</b>	June 17, 2010
<b>HEARD BY:</b>	Marshall Enquist, Hearings Examiner
<b>DATE RECORD CLOSED:</b>	August 4, 2010
<b>DATE PFD CIRCULATED:</b>	October 27, 2011

**STATEMENT OF THE CASE**

This proceeding was called by the Commission on the recommendation of the District Office to determine the following:

1. Whether Donald D. McCallum ("McCallum") violated Statewide Rules 3(1) and 3(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3] on the Sue Mitchell Farmout Lease, Well Nos. 1 & 2 (Drilling Permit Nos. 532969 & 534927, respectively), by failing to maintain legible signs or identification as required;

2. Whether McCallum violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] on the Sue Mitchell Farmout Lease Well Nos. 1 & 2 (Drilling Permit Nos. 532969 & 534927, respectively);
3. Whether McCallum violated Statewide Rule 8(d)(4)(G)(i)(I) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8] on the Sue Mitchell Farmout Lease Well Nos. 1 & 2 (Drilling Permit Nos. 532969 & 534927, respectively), by failing to dewater, backfill and compact reserve pits used in conjunction with drilling a well as required within one year of the cessation of drilling operations;
4. Whether McCallum violated Statewide Rule 8(d)(4)(G)(i)(III) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8] on the Sue Mitchell Farmout Lease Well Nos. 1 & 2 (Drilling Permit Nos. 532969 & 534927, respectively), by failing to dewater, backfill and compact a completion or workover pit used in conjunction with completing or working over a well within 120 days of completion of the well; and
5. Whether McCallum violated Statewide Rule 16(b) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.16(b)] on the Sue Mitchell Farmout Lease Well Nos. 1 & 2 (Drilling Permit Nos. 532969 & 534927, respectively) by not filing a completion report with the Commission.

A hearing was held on June 17, 2010 regarding the foregoing docket. Reese B. Copeland, Staff Attorney, appeared to represent the Enforcement Section of the Office of General Counsel ("Enforcement"). James G. Bradberry, Consultant and Eric W. Nolen, Agent appeared to represent McCallum. Enforcement's certified hearing files were admitted into evidence. Marshall Enquist, Hearings Examiner, left the docket open subject to supplementation.

An examiner's letter dated August 4, 2010 addressed to the Respondent and his representatives indicated that neither the Respondent nor his representatives timely filed any late-filed exhibits into evidence, that Enforcement's July 2, 2010 trial amendments were granted, and that the hearing was closed.

#### **APPLICABLE LAW**

Statewide Rule 3 requires the posting of signs and identification in English, which display clearly legible and correct information, with letters and numbers at least one inch in height. Statewide Rule 3(1) requires the posting of such a sign at the principal entrance of the property. Statewide Rule 3(2) requires posting of signs at each well site and/or tank battery, satellite tank or approved crude oil measuring facility where tanks are not utilized.

Statewide Rule 14(b)(2) requires that a well be plugged after 12 months of inactivity, unless a plugging extension has been obtained. A plugging extension will be approved for a well only if, among other things, the well is in compliance with all Commission rules and the operator has a good faith claim of right to operate the well.

Statewide Rule 8(d)(4)(G)(i)(I) requires a person who maintains or uses a reserve or mud

circulation pit in conjunction with drilling a well to dewater the pit and backfill and compact the pit within one year of cessation of drilling operations.

Statewide Rule 8(d)(4)(G)(i)(III) requires a person who maintains or uses a completion or workover pit in conjunction with completing or working over a well to dewater the pit within 30 days and backfill and compact the pit within 120 days of completion of the well.

Statewide Rule 16(b) requires the operator of a well to file a plugging report within thirty days of plugging a dry hole. The rule also requires the owner or operator of a well to file a completion report within thirty days of completing a well. Finally, the rule requires that amended completion reports be filed within thirty days of the recompletion of a well.

### **DISCUSSION OF THE EVIDENCE**

#### **Matters Officially Noted**

The Examiner has taken official notice of 5 other dockets against Donald D. McCallum heard on the same day as this docket. Those dockets are Nos. 09-0243234, 09-0244293, 09-0245977, 09-0246043, and 09-0255209.

The most recent Form P-5 (Organization Report) shows that McCallum, Donald D. is a sole proprietorship, with Donald D. McCallum as the owner. Eric W. Nolen is the registered agent for Donald D. McCallum. The Form P-5 (Organization Report) of McCallum, Donald D. is delinquent.

#### **Enforcement**

Respondent designated itself as the operator of the Mitchell, Sue Farmout Lease, Well No. 1 (Drilling Permit No. 532969), by filing a Commission Form W-1 (Application to Drill, Deepen, Plug Back, or Re-Enter), effective June 10, 2003, approved June 10, 2003. Respondent designated itself as the operator of the Mitchell, Sue Farmout Lease, Well No. 2 (Drilling Permit No. 534927), by filing a Commission Form W-1 (Application to Drill, Deepen, Plug Back, or Re-Enter), effective August 4, 2003, approved August 4, 2003.

The Commission Mainframe "P-4 Inquiry" screen for District 09, Lease Number 30651 shows the P-4 naming McCallum the operator of the lease became effective October 24, 2003, having been approved September 7, 2006.

#### **Statewide Rule 3**

Commission District Office inspection reports dated July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005 for the Sue Mitchell Farmout (30651) Lease, Well No. 1 (Drilling Permit No. 532969) show that the sign or identification required by Statewide Rule 3(1) to be posted at the lease entrance was missing.

Commission District Office inspection reports made on July 1, 2004, August 6, 2004,

November 8, 2004, January 11, 2005, and March 23, 2005 for the Sue Mitchell Farmout (30651) Lease, Well No. 2 (Drilling Permit No. 534927) show that the sign or identification required by Statewide Rule 3(1) to be posted at the lease entrance was missing.

Commission District Office inspection reports made on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005 for the Sue Mitchell Farmout (30651) Lease, Well No.1 (Drilling Permit No. 532969) show that the sign or identification required by Statewide Rule 3(2) to be posted at the well was missing.

Commission District Office inspection reports made on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005 for the Sue Mitchell Farmout (30651) Lease, Well No.2 (Drilling Permit No. 534927) show that the sign or identification required by Statewide Rule 3(2) to be posted at the well was missing.

Enforcement noted that, as of April 1, 2010, the lease is shown without severances and the wells shut-in without plugging extensions. The wells were shown to be in compliance with Commission rules on or before February 21, 2008, presumably including Statewide Rule 3.

Respondent's violation was serious and threatened the public health and safety. An affidavit in Enforcement's hearing file of Ramon Fernandez, P.E., Field Operations, dated June 17, 2010 states that failing to maintain a sign or identification as required under Statewide Rule 3 may prevent the Commission from contacting the responsible operator in the event of a pollution or safety violation or other emergency. Such confusion will cause delays in containing and remediating the violation or emergency.

### **Statewide Rule 14(b)(2)**

Commission District Office inspection reports made on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005, and reports filed by Respondent with the Commission (reflecting zero production) showed that the Sue Mitchell Farmout (30651) Lease, Well No. 1 (Drilling Permit No. 532969) has been inactive for a period of greater than one year. The subject well has never produced.

Commission District Office inspection reports made on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005, and reports filed by Respondent with the Commission (reflecting zero production) showed that the Sue Mitchell Farmout (30651) Lease, Well No. 2 (Drilling Permit No. 534927) has been inactive for a period greater than one year. The subject well has never produced.

The Statewide Rule 14(b)(2) violations were corrected on July 26, 2007. At this time, the two wells received plugging extensions.

An affidavit dated June 16, 2010 in the file, from Rachel Hampton, Secretary of the Railroad Commission of Texas, states that either Respondent failed to file production reports for, or that zero production has been reported on, the Sue Mitchell Farmout Lease.

No workovers, re-entries, or subsequent operations have taken place on any of the subject wells in this complaint within the last 12 months; none of the subject wells have been plugged; the plugging extensions for all of the subject wells as allowed by Statewide Rule 14 were denied based on McCallum's failure to file completion reports and McCallum did not request a hearing on the matter.

The lease and wells were transferred from McCallum to V S Oil Company by P-4 transfer with an effective date of January 31, 2008 and an approval date of February 21, 2008. The wells were subsequently transferred to Advantage Oil Company by P-4 transfer with an effective date of February 3, 2010 and an approval date of April 20, 2010. The wells currently have approved Statewide Rule 14(b)(2) plugging extensions.

Respondent's violation was serious and threatened the public health and safety. An affidavit in Enforcement's hearing file of Ramon Fernandez, P.E., Field Operations, dated June 17, 2010 states that any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

### **Statewide Rule 8**

Commission District Office inspection reports dated July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005 for the Sue Mitchell Farmout (30651) Lease, Well No. 1 (Drilling Permit No. 532969) indicated that Respondent had a reserve pit at Well No. 1.

Commission District Office inspection reports dated July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005 for the Sue Mitchell Farmout (30651) Lease, Well No. 2 (Drilling Permit No. 534927) indicated that Respondent had a reserve pit at Well No. 2.

Commission District Office inspection reports dated July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005 for the Sue Mitchell Farmout (30651) Lease, Well No. 1 (Drilling Permit No. 532969) indicated that Respondent had a wet workover pit at Well No. 1.

Commission District Office inspection reports dated July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005 for the Sue Mitchell Farmout (30651) Lease, Well No. 2 (Drilling Permit No. 534927) indicated that Respondent had a wet workover pit at Well No. 2.

Statewide Rule 8(d)(4)(G)(i)(I) requires a person who maintains or uses a reserve or mud circulation pit in conjunction with drilling a well to dewater the pit and backfill and compact the pit within one year of the cessation of drilling operations.

Well No. 1 (Drilling Permit No. 532969) was completed on November 21, 2003. One year later, on November 21, 2004, it went out of compliance with Statewide Rule 8(d)(4)(G)(i)(I). Thus,

the well was out of compliance from November 21, 2004 to at least the time of the District Office inspection report on March 23, 2005, a period in violation of 4 months.

Well No. 2 (Drilling Permit No. 534927) was completed on October 24, 2003. One year later, on October 24, 2004, it went out of compliance with Statewide Rule 8(d)(4)(G)(i)(I). Thus, the well was out of compliance from October 24, 2004 to at least the time of the District Office inspection report on March 23, 2005, a period in violation of 5 months.

Statewide Rule 8(d)(4)(G)(i)(III) requires a person who maintains or uses a completion or workover pit in conjunction with completing or working over a well to dewater the pit within 30 days and backfill and compact the pit within 120 days of completion of the well.

Well No. 1 (Drilling Permit No. 532969) was completed on November 21, 2003. 120 days later, on March 20, 2004, it went out of compliance with Statewide Rule 8(d)(4)(G)(i)(III). Thus, the well was out of compliance from March 20, 2004 to at least the time of the District Office inspection report on March 23, 2005, a period in violation of 12 months.

Well No. 2 (Drilling Permit No. 534927) was completed on October 24, 2003. 120 days later, on February 21, 2004, it went out of compliance with Statewide Rule 8(d)(4)(G)(i)(III). Thus, the well was out of compliance from February 21, 2004 to at least the time of the District Office inspection report on March 23, 2005, a period in violation of 13 months.

A District Office Inspection Report dated April 3, 2007 indicated that pits at the subject wells had been backfilled. This reflected correction of the violations of Statewide Rule 8(d)(4)(G)(i)(I) and 8(d)(4)(G)(i)(III) with respect to the subject wells.

Respondent's violation was serious and threatened the public health and safety. An affidavit in Enforcement's hearing file of Ramon Fernandez, P.E., Field Operations, dated June 17, 2010 states that open reserve pits are considered a hazard because they could become convenient sites for illegal dumping of wastes and also because they become containers for surface run-off that increases the potential for seepage to subsurface waters.

### **Statewide Rule 16(b)**

Commission District Office inspection reports made on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005 on the Sue Mitchell Farmout (30651) Lease showed that Well No. 1 (Drilling Permit No. 532969) had been completed with casing, but Respondent had not filed the required completion report.

Commission District Office inspection reports made on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005 on the Sue Mitchell Farmout (30651) Lease showed that Well No. 2 (Drilling Permit No. 534927) had been completed with casing, but Respondent had not filed the required completion report.

On July 2, 2010, Enforcement filed a Trial Amendment pursuant to 16 TEX.ADMIN.CODE §1.29, noting that completion reports for the subject wells were filed in the District Office on June 23, 2006 and received in the Austin office on September 5, 2006. Well No. 1 (Drilling Permit No. 532969) was completed on November 21, 2003. Well No. 2 (Drilling Permit No. 534927) was completed on October 24, 2003.

Respondent's violation was serious and threatened the public health and safety. An affidavit in Enforcement's hearing file of Ramon Fernandez, P.E., Field Operations, dated June 17, 2010 states that without a completion report, the Commission is without sufficient information to determine if a wellbore has been properly cased and cemented to protect usable waters from oil and salt water present in the wellbore.

### **Enforcement's Recommended Penalty**

In its Original Complaint, Enforcement asked that McCallum be assessed an administrative penalty of \$12,00.00, consisting of four violations of Statewide Rule 3(1) and (2) at \$250.00 each; two violations of Statewide Rule 14(b)(2) at \$2,000.00 each; two violations of Statewide Rule 8(d)(4)(G)(i)(I) at \$2,000.00 each; two violations of Statewide Rule 8(d)(4)(G)(i)(III) at \$1,000.00 each; and two violations of Statewide Rule 16(b) at \$500.00 each.

On April 5, 2010, Enforcement filed its "Supplement to the Original Complaint" seeking an administrative penalty of \$4,400.00 "or such other amount as may be established by the evidence", consisting of time out of compliance at \$100.00 per month for 44 months. Enforcement asserted that the subject wells were out of compliance from at least December 21, 2003 to July 21, 2007, a period in violation of approximately 44 months.

### **McCallum**

At hearing, the agent for McCallum, Mr. Nolen, and the consultant for McCallum, Mr. Bradberry, testified that the completion reports for the subject wells were timely filed. In light of this, the Examiner left open the record subject to supplementation by Enforcement or the Respondent to determine the filing date.

Mr. Nolen and Mr. Bradberry discussed how they continually attempted to maintain signs and markings on the subject leases. Mr. Nolen and Mr. Bradberry stated that some of the signs were "stickers" and that markers were used to print some of the signs. The agents also asserted that it was difficult to move a bulldozer to the area where the pits were located due to rain and poor terrain.

### **EXAMINER'S OPINION**

The original complaint in this docket did not allege a Statewide Rule 16(b) violation for Well No. 2 (Drilling Permit No.534927), but Enforcement's oral presentation did. Mr. Nolen and Mr. Bradberry heard Enforcement's presentation but did not object, i.e., the issue was tried by consent. The Examiner construed Enforcement's oral presentation as a trial amendment. Furthermore, District

Office inspection reports dated July 1, 2004, July 6, 2004, November 8, 2004, January 11, 2005, and March 11, 2005 support the allegation that Well No. 2 was completed with casing.

Mr. McCallum sent a letter to Enforcement dated August 15, 2005, admitting that he filled out the Form P-5 organization report which identified him as the operator. However, Mr. McCallum stated that he did not belong in that position because he did not have the knowledge of “forms and rules and regulations, etc.” He also stated that he had never acted as operator because he lives in California.

### **Statewide Rule 3**

The evidence shows that the lease entrance on the Sue Mitchell Farmout (30651) Lease lacked or showed the wrong operator or well number on the signs or identification required by Statewide Rule 3(1) when inspected by the District Office on July 1, 2004, July 6, 2004, July 8, 2004, November 8, 2004, January 11, 2005 and March 23, 2005, a period in violation of at least 9 months. However, Statewide Rule 3(1) violations documented by the same District Office inspection reports during the same time period and on the same lease were alleged in Docket No. 09-0243234<sup>1</sup>, which related to Well Nos. 3 and 4 on the Sue Mitchell Farmout (30651) Lease. The violations alleged in the two dockets appear to be the same because they all involve the same lease entrance. Statewide Rule 3(1) specifically applies to “...the principal entrance...” to a lease property. There is no evidence in the record that the Sue Mitchell Farmout (30651) Lease has more than one principal entrance. A penalty for a violation of Statewide Rule 3(1) has already been assessed in Oil & Gas Docket 09-0243234 and the examiner believes it would be improper to assess a penalty for the identical violation in this docket.

The evidence shows that Well. No. 1 (Drilling Permit No. 532969) on the Sue Mitchell Farmout (30651) Lease lacked or showed the wrong operator or well number on the signs or identification required by Statewide Rule 3(2) when inspected by the District Office on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005 and March 23, 2005, a period in violation of at least 9 months.

The evidence shows that Well. No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease lacked or showed the wrong operator or well number on the signs or identification required by Statewide Rule 3(2) when inspected by the District Office on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005 and March 23, 2005, a period in violation of at least 9 months.

Thus, time out of compliance with Statewide Rule 3(2) on the Sue Mitchell Farmout (30651) Lease totaled at least 18 months: 9 months for each of two Statewide Rule 3(2) violations.

McCallum did not act in good faith. Specifically, the District Office sent letters to McCallum

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<sup>1</sup> Oil & Gas Docket No. 09-0243234: Enforcement Action Against Donald D. McCallum, Sole Proprietor (Operator No. 538761) for Violations of Statewide Rules on the Mitchell, Sue Farmout Lease, Well No. 3 (Drilling Permit No. 536807), K-M-A (1300), K-M-A (1600) Field, Wichita County; and Mitchell, Sue Farmout Lease, Well No. 4 (Drilling Permit No. 538917), K-M-A (1300), K-M-A (1600) Field, Wichita County, Texas.



dated July 6, 2004, October 5, 2004, November 16, 2004, and January 14, 2005 describing the violations and requesting they be corrected. The violations were not timely corrected.

**Statewide Rule 14(b)(2)**

The evidence shows that Well No. 1 (Drilling Permit No. 532969) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 14(b)(2). According to the Commission Mainframe Screen "W-2/G-1 Record," Well No. 1 was completed on November 21, 2003. Under Statewide Rule 14(b)(2), the well should have been plugged after 12 months, or by November 21, 2004. But a plugging extension was not approved until July 26, 2007. Thus, the well was out of compliance from November 21, 2004 to July 26, 2007, a period in violation of approximately 32 months.

The evidence shows that Well No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 14(b)(2). According to the Commission Mainframe Screen "W-2/G-1 Record," Well No. 2 was completed on October 24, 2003. Under Statewide Rule 14(b)(2), the well should have been plugged after 12 months, or by October 24, 2004. But a plugging extension was not approved until July 26, 2007. Thus, the well was out of compliance from October 24, 2004 to July 26, 2007, a period in violation of approximately 33 months.

Thus, the subject wells were out of compliance for a combined time of 65 months: 32 months for Well No. 1 and 33 months for Well No. 2.

McCallum did not act in good faith. Specifically, the District Office sent letters to McCallum dated July 6, 2004, July 8, 2004, October 5, 2004, November 16, 2004, and January 14, 2005 describing the violations at Well Nos. 1 and 2, requesting they be corrected. The violations were not timely corrected.

**Statewide Rule 8**

The evidence shows that Well No. 1 (Drilling Permit No. 532969) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 8(d)(4)(G)(i)(I). Well No. 1 was completed on November 21, 2003. Statewide Rule 8(d)(4)(G)(i)(I) requires reserve pits to be backfilled within one year of the cessation of drilling operations. Thus, reserve pits at the well should have been backfilled by November 21, 2004. The well had reserve pits when inspected by the District Office on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005. However, a District Office inspection reports dated April 3, 2007 indicated that the pits had been backfilled. Thus, the well was out of compliance from November 21, 2004 to at least March 23, 2005, a period in violation of 4 months.

The evidence shows that Well No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 8(d)(4)(G)(i)(I). Well No. 2 was completed on October 24, 2003. Statewide Rule 8(d)(4)(G)(i)(I) requires reserve pits to be backfilled within one year of the cessation of drilling operations. Thus, reserve pits at the well should have been backfilled by October 24, 2004. The well had reserve pits when inspected by the District Office on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005. However, a District

Office inspection report dated April 3, 2007 indicated that the pits had been backfilled. Thus, the well was out of compliance from October 24, 2004 to at least March 23, 2005, a period in violation of 5 months.

The two subject wells were out of compliance with Statewide Rule 8(d)(4)(G)(i)(I) for a total of 9 months: 4 months for Well No. 1 and 5 months for Well No. 2.

McCallum did not act in good faith with respect to Statewide Rule 8(d)(4)(G)(i)(I). Specifically, the District Office sent letters to McCallum dated July 6, 2004, October 5, 2004, November 16, 2004, and January 14, 2005 describing the Statewide Rule 8(d)(4)(G)(i)(I) violations and requesting that the pits be backfilled. The violations were not timely corrected.

The evidence shows that Well No. 1 (Drilling Permit No. 532969) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 8(d)(4)(G)(i)(III). Well No. 1 was completed on November 21, 2003. Statewide Rule 8(d)(4)(G)(i)(III) requires wet workover pits to be backfilled within 120 days of the completion of the well. Thus, the wet workover pit at the well should have been backfilled by March 21, 2004. The well had a wet workover pit when inspected by the District Office on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005. However, a District Office inspection report dated April 3, 2007 indicated that the pit had been backfilled. Thus, the well was out of compliance from March 21, 2004 to at least March 23, 2005, a period in violation of 12 months.

The evidence shows that Well No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 8(d)(4)(G)(i)(III). Well No. 2 was completed on October 24, 2003. Statewide Rule 8(d)(4)(G)(i)(III) requires wet workover pits to be backfilled within 120 days of the completion of the well. Thus, the wet workover pit at the well should have been backfilled by February 24, 2004. The well had a wet workover pit when inspected by the District Office on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005. However, a District Office inspection report dated April 3, 2007 indicated that the pit had been backfilled. Thus, the well was out of compliance from February 24, 2004 to at least March 23, 2005, a period in violation of 13 months.

The two subject wells were out of compliance with Statewide Rule 8(d)(4)(G)(i)(III) for a total of 25 months: 12 months for Well No. 1 and 13 months for Well No. 2.

McCallum did not act in good faith with respect to Statewide Rule 8(d)(4)(G)(i)(III). Specifically, the District Office sent letters to McCallum dated July 6, 2004, October 5, 2004, November 16, 2004, and January 14, 2005 describing the Statewide Rule 8(d)(4)(G)(i)(III) violations and requesting that the pits be backfilled. The violations were not timely corrected.

**Statewide Rule 16(b)**

The evidence shows that Well No. 1 (Drilling Permit No. 532969) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 16(b) [formerly Statewide Rule 16(a)]. Well No. 1 was completed on November 21, 2003. Statewide Rule 16(b) requires a completion report to be filed within 30 days of completing a well. A completion report for Well No. 1 should have been

filed by December 21, 2003. However, a completion report for Well No. 1 was not filed until June 23, 2006. Thus, Well No. 1 was out of compliance from December 21, 2003 to June 23, 2006, a period of approximately 30 months.

The evidence shows that Well No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 16(b). Well No. 2 was completed on October 24, 2003. Statewide Rule 16(b) requires a completion report to be filed within 30 days of completing a well. A completion report for Well No. 2 should have been filed by November 24, 2003. However, a completion report for Well No. 2 was not filed until June 23, 2006. Thus, Well No. 2 was out of compliance from November 24, 2003 to June 23, 2006, a period of approximately 31 months.

Well Nos. 1 and 2 were out of compliance with Statewide Rule 16(b) for a total of 61 months: 30 months for Well No.1 and 31 months for Well No. 2.

McCallum did not act in good faith with respect to Statewide Rule 16(b). Specifically, the District Office sent letters to McCallum dated July 6, 2004, October 5, 2004, November 16, 2004, and January 14, 2005 describing the Statewide Rule 16(b) violations and requesting that completion reports be filed. The violations were not timely corrected.

### **Penalty Calculations**

The involved violations are serious and presented a hazard to the health and safety of the public. Specifically, failure to post legible signs displaying correct information may cause the Commission to be unable to contact the proper party in the event of an emergency; failure to plug wells is likely to cause pollution of usable quality ground water and surface water; failure to empty and backfill pits may result in discharges which may contaminate surface or subsurface water; failure to file plugging and completion reports leaves the Commission without sufficient information to determine if a wellbore has been properly cased and cemented to protect usable waters from oil and saltwater present in the wellbore.

In its Original Complaint, Enforcement requested that McCallum be assessed an administrative penalty of \$12,000.00, which the examiner determined should be reduced to \$11,500.00 as two of the Statewide Rule 3 violations had been pled in a previous docket. Subsequently, in a Supplement to the Original Complaint, Enforcement requested an administrative penalty of \$4,400.00 for time out of compliance at \$100 per month for 44 months. Completion reports for the subject wells were due on or before December 21, 2003 and the Statewide Rule 14(b)(2) violations were corrected on July 26, 2007. Enforcement asserts that the wells were out of compliance from at least December 21, 2003 through July 26, 2007, a period of 44 months.

The examiner notes that the Commissioners have a great deal of latitude in assessing penalty amounts. However, the Penalty Guidelines indicate that time out of compliance is an enhancement for severe violations and not a substitute for the standard penalties.

Applying standard Penalty Guidelines, in this docket there are two violations of Statewide

Rule 3(2) at \$250 per violation or \$500.00; two violations of Statewide Rule 14(b)(2) at \$2,000 per violation or \$4,000.00; two violations of Statewide Rule 8(d)(4)(G)(i)(I) at \$2,000 per violation or \$4,000.00, two violations of Statewide Rule 8(d)(4)(G)(i)(III) at \$1,000 per violation or \$2,000; and two violations of Statewide Rule 16(b) at \$500 per violation, or \$1,000.00, for a total of \$11,500.00.

The Examiner notes that all violations were resolved before the Notice of Hearing was sent out and that the penalty guidelines state that “the final amount of any actual administrative penalty imposed and enhancement for prior violations will be determined by the action of a majority of the Commissioners at Conference.”

Donald D. McCallum has no history of Final Orders relating to violations of Commission rules, but the Examiner notes that this docket, heard June 17, 2010, was heard with 5 other dockets against McCallum. Those dockets are Nos. 09-0243234, 09-0244293, 09-0245977, 09-0246043, and 09-0255209.

### **Penalty**

The examiner recommends that McCallum be assessed an administrative penalty of \$11,500.00, consisting of two violations of Statewide Rule 3(2) at \$250 per violation or \$500.00; two violations of Statewide Rule 14(b)(2) at \$2,000 per violation or \$4,000.00; two violations of Statewide Rule 8(d)(4)(G)(i)(I) at \$2,000 per violation or \$4,000.00, two violations of Statewide Rule 8(d)(4)(G)(i)(III) at \$1,000 per violation or \$2,000; and two violations of Statewide Rule 16(b) at \$500 per violation, or \$1,000.00.

Based on the record in this case, the examiner recommends adoption of the following findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. Donald D. McCallum (“McCallum”) was given at least ten (10) days notice of this hearing by certified mail addressed to McCallum’s most recent Form P-5 organization report address. McCallum’s agent appeared at the hearing and presented evidence.
2. McCallum is a sole proprietorship. Its owner is Donald D. McCallum.
3. McCallum’s P-5 organization report is delinquent.
4. Respondent designated himself as the operator of the Sue Mitchell Farmout (30651) Lease, Well No. 1 (Drilling Permit No. 532969) by filing a Commission Form W-1 (Application for permit to Drill, Deepen, Plug Back or Re-Enter), effective June 10, 2003, approved June 10, 2003. Respondent also designated himself as the operator of the Sue Mitchell Farmout (30651) Lease, Well No. 2 (Drilling Permit No. 534927) by filing a Commission Form W-1 effective August 4, 2003, approved August 4, 2003.
5. Commission inspections show that the lease entrance on the Sue Mitchell Farmout (30651)

Lease lacked the signs or identification required by Statewide Rule 3(1). Specifically, Commission District Office inspection reports indicate the lease entrance lacked proper identification on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005, a period in violation of at least 9 months. However, the same violation was noted in Oil & Gas Docket No. 09-0243234 in District Office inspection reports of the same dates. A penalty for the violation was assessed in Oil & Gas Docket No. 09-0243234. It would be improper to assess the same penalty for the same violation in this docket.

6. Commission inspections show that the Sue Mitchell Farmout (30651) Lease Well No. 1 (Drilling Permit No. 532969) lacked the signs or identification required by Statewide Rule 3(2). Specifically, Commission District Office inspection reports indicate that the subject well lacked proper identification on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005 and March 23, 2005, a period in violation of at least 33 months.
7. Commission inspections show that the Sue Mitchell Farmout (30651) Lease Well No. 2 (Drilling Permit No. 534927) lacked the signs or identification required by Statewide Rule 3(2). Specifically, Commission District Office inspection reports indicate that the subject well lacked proper identification on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005 and March 23, 2005, a period in violation of at least 33 months.
8. The District Office sent letters to McCallum dated July 6, 2004, October 5, 2004, November 16, 2004, and January 14, 2005 describing the violations and requesting they be corrected. The Statewide Rule 3 violations were not timely corrected.
9. Commission District Office inspections conducted on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005, and March 23, 2005 show that the Sue Mitchell Farmout Lease Well No. 1 (Drilling Permit No. 532969) was inactive for more than one year.
  - a. The subject well has never produced.
  - b. Well No. 1 was completed on November 21, 2003.
  - c. Under Statewide Rule 14(b)(2), a plugging extension was required for Well No. 3 after 12 months—by November 21, 2004.
  - d. A plugging extension was not approved until July 26, 2007.
  - e. Well No. 1 was out of compliance with Statewide Rule 14(b)(2) from November 21, 2004 to July 26, 2007, a period in violation of 32 months.
10. Commission District Office inspections conducted on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005 show that the Sue Mitchell Farmout Lease Well No. 2 (Drilling Permit No. 534927) was inactive for more than one year.
  - a. The subject well has never produced.

- b. Well No. 2 was completed on October 24, 2003.
  - c. Under Statewide Rule 14(b)(2), a plugging extension was required for Well No. 4 after 12 months – by October 24, 2004.
  - d. A plugging extension was not approved until July 26, 2007.
  - e. Well No. 4 was out of compliance with Statewide Rule 14(b)(2) from October 24, 2004 to July 26, 2007, a period in violation of 33 months.
11. The District Office sent letters to McCallum dated October 5, 2004, October 6, 2004, November 16, 2004, and January 14, 2005 describing the Statewide Rule 14(b)(2) violations and requesting they be corrected. The violations were not timely corrected.
12. The Sue Mitchell Farmout (30651) Lease Well No. 1 (Drilling Permit Nos. 532969) had an open reserve pit in violation of Statewide Rule 8(d)(4)(G)(i)(I).
- a. Well No. 1 was completed on November 21, 2003.
  - b. Under Statewide Rule 8(d)(4)(G)(i)(I), the pits should have been backfilled within one year – on or before November 21, 2004.
  - c. The subject well had a reserve pit when inspected by the District Office on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005 and March 23, 2005.
  - d. A District Office inspection made on April 3, 2007 found the pit had been backfilled.
  - e. Well No. 1 was out of compliance with Statewide Rule 8(d)(4)(G)(i)(I) from November 21, 2004 to March 23, 2005, a period in violation of four months.
13. The Sue Mitchell Farmout (30651) Lease Well No. 2 (Drilling Permit No. 534927) had an open reserve pit in violation of Statewide Rule 8(d)(4)(G)(i)(I).
- a. Well No. 2 was completed on October 24, 2003.
  - b. Under Statewide Rule 8(d)(4)(G)(i)(I), the pit should have been backfilled within one year – on or before October 24, 2004.
  - c. The subject well had an open reserve pit when inspected by the District Office on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005 and March 23, 2005.
  - d. A District Office inspection made on April 3, 2007 found the pit had been backfilled.
  - e. Well No. 2 was out of compliance with Statewide Rule 8(d)(4)(G)(i)(I) from October

24, 2004 to March 23, 2005, a period in violation of five months.

14. The District Office sent letters to McCallum dated July 6, 2004, October 5, 2004, November 16, 2004, and January 14, 2005 describing the Statewide Rule 8(d)(4)(G)(i)(I) violations and requesting that the pits be backfilled. The violations were not timely corrected.
15. The Sue Mitchell Farmout (30651) Lease Well No. 1 (Drilling Permit Nos. 532969) had an open wet workover pit in violation of Statewide Rule 8(d)(4)(G)(i)(III).
  - a. Well No. 1 was completed on November 21, 2003.
  - b. Under Statewide Rule 8(d)(4)(G)(i)(III), the wet workover pit should have been backfilled within 120 days – on or before March 21, 2004.
  - c. The subject well had a wet workover pit when inspected by the District Office on July 1, 2004, July 6, 2004, July 8, 2004, January 11, 2005 and March 23, 2005.
  - d. A District Office inspection made on April 3, 2007 found the pit had been backfilled.
  - e. Well No. 1 was out of compliance with Statewide Rule 8(d)(4)(G)(i)(III) from March 21, 2004 to March 23, 2005, a period in violation of twelve months.
16. The Sue Mitchell Farmout (30651) Lease Well No. 2 (Drilling Permit No. 534927) had a wet workover pit in violation of Statewide Rule 8(d)(4)(G)(i)(III).
  - a. Well No. 2 was completed on October 24, 2003.
  - b. Under Statewide Rule 8(d)(4)(G)(i)(III), the pit should have been backfilled within 120 days – on or before February 24, 2004.
  - c. The subject well had a wet workover pit when inspected by the District Office on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005 and March 23, 2005.
  - d. A District Office inspection made on April 3, 2007 found the pit had been backfilled.
  - e. Well No. 2 was out of compliance with Statewide Rule 8(d)(4)(G)(i)(III) from February 24, 2004 to March 23, 2005, a period in violation of thirteen months.
17. McCallum failed to timely file completion reports for Sue Mitchell Farmout (30651) Lease Well Nos. 1 & 2 (Drilling Permit Nos. 532969 & 534927, respectively).
  - a. Well No. 1 was completed on November 21, 2003. Well No. 2 was completed on October 24, 2003.

- b. Under Statewide Rule 16(b), completion reports for the subject wells should have been filed within 30 days of completion. Thus, a completion report for Well No. 1 was due by December 21, 2003, and a completion report for Well No. 2 was due by November 24, 2003.
  - c. Completion reports for the subject wells were not filed until June 23, 2006.
  - d. Well No. 1 was out of compliance with Statewide Rule 16(b) from December 21, 2003 to June 23, 2006, a period in violation of 30 months. Well No. 2 was out of compliance with Statewide Rule 16(b) from November 24, 2003 to June 23, 2006, a period in violation of 31 months.
- 18. The District Office sent letters to McCallum dated July 6, 2004, October 5, 2004, November 16, 2004, and January 14, 2005 describing the Statewide Rule 16(b) violations and requesting they be corrected. The violations were not timely corrected.
  - 19. No prior Final Orders have been entered against Donald D. McCallum for violations of Commission rules.
  - 20. McCallum's failure to respond to the District Office letters requesting compliance demonstrates a lack of good faith.
  - 21. The violations involved in this docket are violations of Commission rules related to safety and the prevention or control of pollution.
  - 22. The Commission's mainframe "P-4 Certificate of Compliance Inquiry Menu" shows that the District 09, Lease ID 30651 Lease transferred from McCallum to V S Oil Company effective January 31, 2008, and was approved February 21, 2008.
  - 23. Respondent, Donald D. McCallum was the person responsible for the captioned lease and wells under TEX. NAT. RES. CODE ANN. §91.113 at the time the violations occurred.

#### **CONCLUSIONS OF LAW**

- 1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
- 2. All things necessary to the Commission attaining jurisdiction have occurred.
- 3. At the time the violations occurred, Respondent was the operator of the Sue Mitchell Farmout (30651) Lease, Well No. 1 (Drilling Permit No. 532969) and Sue Mitchell Farmout (30651) Lease, Well No. 2 (Drilling Permit No. 534927) as defined by Statewide Rules 14, 58, and 79 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
- 4. As the operator at the time the violations occurred, Respondent has the primary responsibility



for complying with Statewide Rules 3(1) and (2), 14(b)(2), 8(d)(4)(G)(i)(I), 8(d)(4)(G)(i)(III), 16(b), and other applicable statutes and Commission rules respecting the subject leases and wells.

5. McCallum violated Statewide Rule 3(1) by failing to post required identification signs at the lease entrance on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 3(1) from July 1, 2004 to March 23, 2005, a period in violation of 9 months. However, the same violation was noted in a prior docket, Oil & Gas Docket No. 09-0243234, and a penalty was assessed. No penalty for the violation is assessed in the present docket.
6. McCallum violated Statewide Rule 3(2) by failing to post required identification signs at Well No. 1 (Drilling Permit No. 532969) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 3(2) from July 1, 2004 to April 3, 2007, a period in violation of 33 months.
7. McCallum violated Statewide Rule 3(2) by failing to post required identification signs at Well No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 3(2) from July 1, 2004 to April 3, 2007, a period in violation of 33 months.
8. McCallum violated Statewide Rule 14(b)(2) by failing to timely plug or otherwise place into compliance Well No. 1 (Drilling Permit No. 532969) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 14(b)(2) from November 21, 2004 to July 26, 2007, a period in violation of 32 months.
9. McCallum violated Statewide Rule 14(b)(2) by failing to timely plug or otherwise place into compliance Well No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 14(b)(2) from October 24, 2004 to July 26, 2007, a period in violation of 33 months.
10. McCallum violated Statewide Rule 8(d)(4)(G)(i)(I) by failing to backfill a reserve pit at Well No. 1 (Drilling Permit No. 532969) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 8(d)(4)(G)(i)(I) from November 21, 2004 to March 23, 2005, a period in violation of four months.
11. McCallum violated Statewide Rule 8(d)(4)(G)(i)(I) by failing to backfill a reserve pit at Well No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 8(d)(4)(G)(i)(I) from October 24, 2004 to March 23, 2005, a period in violation of five months.
12. McCallum violated Statewide Rule 8(d)(4)(G)(i)(III) by failing to backfill a wet workover pit at Well No. 1 (Drilling Permit No. 532969) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 8(d)(4)(G)(i)(III) from March 21, 2004 to March 23, 2005, a period in violation of twelve

months.

13. McCallum violated Statewide Rule 8(d)(4)(G)(i)(III) by failing to backfill a wet workover pit at Well No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 8(d)(4)(G)(i)(III) from February 24, 2004 to March 23, 2005, a period in violation of thirteen months.
14. McCallum violated Statewide Rule 16(b) by failing to timely file completion reports for Well No. 1 (Drilling Permit Nos. 532969) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 16(b) from December 21, 2003 to June 23, 2006 a period in violation of 30 months.
15. McCallum violated Statewide Rule 16(b) by failing to timely file completion reports for Well No. 2 (Drilling Permit No. 534927) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 16(b) from November 24, 2003 to June 23, 2006, a period in violation of 31 months.
16. The documented violations committed by McCallum constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
17. McCallum did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
18. As the owner of Donald D. McCallum at the time McCallum violated Commission rules related to safety and the prevention or control of pollution, Donald D. McCallum and any organization subject to the Commission's jurisdiction in which he may hold a position of ownership or control, are subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

### **RECOMMENDATION**

The Examiner recommends that Donald D. McCallum be assessed an administrative penalty of \$11,500.00 and be made subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,

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Marshall Enquist, Hearings Examiner