

**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.**

---

**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>WRITTEN BY:</b>	Gordon Griffin, Law Clerk
<b>DATE RECORD CLOSED:</b>	August 4, 2010
<b>DATE PFD CIRCULATED:</b>	_____

**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 (hereinafter "McCallum") violated Statewide Rules 3(1) and 3(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3(1) and §3.3(2)] on the Sue Mitchell Farmout (30651) Lease, Well Nos. 3 & 4 (Drilling Permit Nos. 536807 & 538917, 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 (30651) Lease Well Nos. 3 & 4 (Drilling Permit Nos. 536807 & 538917, respectively);
3. Whether McCallum violated Statewide Rule 8(d)(4)(G)(i)(I) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(d)(4)(G)(i)(I)] on the Sue Mitchell Farmout (30651) Lease Well Nos. 3 & 4 (Drilling Permit Nos. 536807 & 538917, respectively), by failing to dewater and backfill and compact reserve pits as required;
4. Whether McCallum violated Statewide Rule 16(b) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.16(B)] on the Sue Mitchell Farmout (30651) Lease Well Nos. 3 & 4 (Drilling Permit Nos. 536807 & 538917, 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 Agents indicates that neither the Respondent nor Agents 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 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 McCallum, Donald D. heard on the same day as this docket. Those dockets are Nos. 09-0243232, 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 himself as the operator of the Sue Mitchell Farmout (30651) Lease, Well No. 3 (Drilling Permit No. 536807) by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective November 21, 2003, approved November 21, 2003. Respondent also designated himself as the operator of the Sue Mitchell Farmout (30651) Lease, Well No. 4 (Drilling Permit No. 538917) by filing a Commission Form P-4 effective November 21, 2003, approved November 21, 2003.

The Commission main frame "P-4 Inquiry" screen for District 09, Lease ID 30651 shows the P-4 naming the Respondent the operator of the Lease effective October 24, 2003, was approved September 7, 2006. Thereafter, a P-4 naming V S Oil Company the operator of the subject Lease effective January 31, 2008 was approved February 21, 2008. Finally, the Lease was transferred from V S Oil Company to Advantage Oil Company effective February 3, 2010, approved April 20, 2010.

### **Statewide Rule 3**

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. 3 (Drilling Permit No. 536807) and Well No. 4 (Drilling Permit No. 538917), show that the sign or identification required by Statewide Rule 3(1), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3(1)] to be posted at the lease entrance was missing.

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 show that the sign or identification required by Statewide Rule 3(2), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3(2)] to be posted at Well No. 3 (Drilling Permit No. 536807) was missing. A Commission District Office inspection report dated April 3, 2007 indicated that Well No. 3 (Drilling Permit No. 536807) was still out of compliance with Statewide Rule 3(2).

Enforcement, as of the hearing date, noted that the subject wells are currently shown on the proration schedule without severances, wells shut-in with plugging extensions. Thus, the wells are currently shown to be in compliance with Commission rules, presumably including Statewide Rule 3.

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 show that the sign or identification required by Statewide Rule 3(2), [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(2)] to be posted at Well No. 4 (Drilling Permit No. 538917) was missing. A Commission District Office inspection report dated April 3, 2007 indicated that Well No. 4 (Drilling Permit No. 538917) was still out of compliance with Statewide Rule 3(2).

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 16, 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 dated July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005 and the absence of reports and reports filed by Respondent with the Commission show that the Sue Mitchell Farmout (30651) Lease, Well No. 3 (Drilling Permit No. 536807) has been inactive for a period greater than one year. The subject well has never produced.

Commission District Office inspection reports dated July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005 and the absence of reports and reports filed by Respondent with the Commission show that the Sue Mitchell Farmout Lease, Well No. 4 (Drilling Permit No. 538917) has been inactive for a period greater than one year. The subject well has never produced.

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 within the last 12 months nor have the wells been plugged.

The plugging extensions for all of the subject wells as allowed by Statewide Rule 14 were never issued based on Respondent's failure to file completion reports and Respondent has not requested a hearing on the matter.

Plugging extensions for the subject wells were approved on July 26, 2007. This corrected the Statewide Rule 14(b)(2) violation.

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 16, 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(d)(4)(G)(i)(I)**

Commission District Office inspection reports made on July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005 indicate that there were drilling pits at Well Nos. 3 & 4 (Drilling Permit Nos. 536807 & 538917, respectively).

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. 3 (Drilling Permit No. 536807) was completed on November 25, 2003. Well No. 4 (Drilling Permit No. 538917) was completed on December 2, 2003.

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. 3 (Drilling Permit No. 536807) was completed on November 25, 2003. One year later, on November 25, 2004, it went out of compliance with Statewide Rule 8(d)(4)(G)(i)(I). Thus, the well was out of compliance from November 25, 2004 to March 23, 2005, a period of approximately 4 months.

Well No. 4 (Drilling Permit No. 538917) was completed on December 2, 2003. One year later, on December 2, 2004, it went out of compliance with Statewide Rule 8(d)(4)(G)(i)(I). Thus, the well was out of compliance from December 2, 2004 to March 23, 2005, a period of approximately 4 months.

A District Office inspection made on April 3, 2007 showed that the pits associated with Well Nos. 3 & 4 (Drilling Permit Nos. 536807 & 538917, respectively) have been backfilled. This reflected a correction of the Statewide Rule 8(d)(4)(G)(i)(I) violations.

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 16, 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 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. 3 (Drilling Permit No. 536807) showed that the well had been completed with casing, but no completion report had been filed. The Commission main frame screen titled "Oil and Gas W-2/G-1 Record" for Drilling Permit Number 536807, Well No. 3, District 09, Lease ID 30651, reflects that the well was complete on November 25, 2003.

The Commission main frame screen titled "Oil and Gas W-2/G-1 Record" for Drilling Permit Number 538917, Well No. 4, District 09, Lease ID 30651, reflects that the well was complete on

December 2, 2003.

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.

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 16, 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**

Enforcement asks that McCallum be assessed an administrative penalty of \$4,300.00 for time out of compliance at \$100.00 per month for 43 months. Specifically, completion reports for the subject wells, under Statewide Rule 16(b), were due on or before January 2004, and the Statewide Rule 14(b)(2) violations were corrected on July 26, 2007. Thus, the subject wells were out of compliance from at least January 2004 to July 2007, a period of approximately 43 months.

#### **McCallum**

At hearing, Mr. Nolen and 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 Agents to determine the filing date.

Mr. Nolen and Mr. Bradberry discussed how they continually attempt 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.

Mr. Nolen and Mr. Bradberry also discussed how it was difficult to move a bulldozer to the area where the reserve pits were located because of 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. 4 (Drilling Permit No. 538917), but Enforcement's oral presentation did. Mr. Nolen and Mr. Bradberry heard Enforcement's presentation but did not object. The Examiner construed Enforcement's oral presentation as a trial amendment. Furthermore, District Office inspection reports dated July 1, 2004, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005 support the allegation that Well No. 4 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 Well No. 3 (Drilling Permit No. 536807) 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, March 23, 2005, and April 3, 2007 a period in violation of at least 33 months.

The evidence shows that Well No. 4 (Drilling Permit No. 538917) 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, March 23, 2005, and April 3, 2007 a period in violation of at least 33 months.

The evidence shows that the lease entrance of 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, 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(1) and Statewide Rule 3(2) on the Sue Mitchell Farmout (30651) Lease totaled at least 75 months: 33 months for each of two Statewide Rule 3(2) violations and 9 months for one Statewide Rule 3(1) violation.

McCallum did not act in good faith. Specifically, 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 violations were not timely corrected.

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

The evidence shows that Well No. 3 (Drilling Permit No. 536807) 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. 3 was completed on November 25, 2003. Under Statewide Rule 14(b)(2), the well should have been plugged after 12 months—by November 25, 2004. But a plugging extension was not approved until July 26, 2007. Thus, the well was out of compliance from November 25, 2004 to July 26, 2007, a period in violation of approximately 32 months.

The evidence shows that Well No. 4 (Drilling Permit No. 538917) 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. 4 was completed on December 2, 2003. Under Statewide Rule 14(b)(2), the well should have been plugged after 12 months—by December 2, 2004. But a plugging extension was not approved until July 26, 2007. Thus, the well was out of compliance from December 2, 2004 to July 26, 2007, a period in violation of approximately 32 months.

Thus, the subject wells were out of compliance for a combined time of 64 months: 32 months for each well.

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

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

**Statewide Rule 8(d)(4)(G)(i)(I)**

The evidence shows that Well No. 3 (Drilling Permit No. 536807) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 8(d)(4)(G)(i)(I). According to the Commission Mainframe Screen "W-2/G-1 Record," Well No. 3 was completed on November 25, 2003. Statewide Rule 8(d)(4)(G)(i)(I) requires drilling pits to be backfilled within one year of the cessation of drilling operations. Thus, drilling pits at the well should have been backfilled by November 25, 2004. The well still had drilling pits when inspected by the District Office on July 1, 2004, August 6, 2004, November 8, 2004, and January 11, 2005. However, District Office inspection reports dated March 23, 2005 and April 3, 2007 indicate that the pits had been backfilled. Thus, the well was out of compliance from November 25, 2004 to at least January 11, 2005, a period in violation of more than one month.

The evidence shows that Well No. 4 (Drilling Permit No. 538917) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 8(d)(4)(G)(i)(I). According to the Commission Mainframe Screen "W-2/G-1 Record," Well No. 4 was completed on December 2, 2003. Statewide Rule 8(d)(4)(G)(i)(I) requires drilling pits to be backfilled within one year of the cessation of drilling operations. Thus, drilling pits at the well should have been backfilled by December 2, 2004. The well still had drilling pits when inspected by the District Office on July 1, 2004, August 6, 2004, November 8, 2004, and January 11, 2005. However, District Office inspection reports dated March 23, 2005 and April 3, 2007 indicate that the pits had been backfilled. Thus, the well was out of compliance from December 2, 2004 to at least January 11, 2005, a period in violation of more than one month.

Thus, the subject wells were out of compliance for a total of 2 months: one month for each of the two wells.

McCallum did not act in good faith. Specifically, 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 that the pits be backfilled. The violations were not timely corrected.

**Statewide Rule 16(b)**

The evidence shows that Well No. 3 (Drilling Permit Nos. 536807) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 16(b). According to the Commission Mainframe Screen "W-2/G-1 Record," Well No. 3 was completed on November 25, 2003. Statewide Rule 16(b) requires a completion report to be filed within 30 days of completing a well. Thus, completion reports for the subject wells should have been filed by December 25, 2003. But completion reports for the subject wells were not filed until June 23, 2006. Thus, the well was out of compliance from December 25, 2003 to June, 23 2006, a period in violation of approximately 30 months.

The evidence shows that Well Nos. 4 (Drilling Permit No. 538917) on the Sue Mitchell Farmout (30651) Lease violated Statewide Rule 16(b). According to the Commission Mainframe Screen "W-2/G-1 Record," Well No. 4 was completed on December 2, 2003. Statewide Rule 16(b) requires a completion report to be filed within 30 days of completing a well. Thus, completion



reports for the subject wells should have been filed by January 1, 2004. But completion reports for the subject wells were not filed until June 23, 2006. Thus, the well was out of compliance from January 1, 2004 to June 23, 2006, a period in violation of approximately 30 months.

Thus, the subject wells were out of compliance for a total of 60 months: 30 months for each of the two wells.

McCallum did not act in good faith. Specifically, 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 violations were not timely corrected.

### **Penalty Calculations**

Completion reports for the subject wells, under Statewide Rule 16(b), were due on or before January 2004, and the Statewide Rule 14(b)(2) violations were corrected on July 26, 2007. Thus, Enforcement asserts, the subject wells were out of compliance from at least January 2004 to July 2007, a period in violation of approximately 43 months. Enforcement recommends that McCallum be assessed an administrative penalty in the amount of \$4,300.00 calculated on the basis of time out of compliance at \$100.00 each month for 43 months. The recommended penalty conforms to the standard penalty guidelines for enforcement cases.

The Examiner presumes that Enforcement has arrived at its requested penalty amount for good cause, not necessarily reflected in the pleadings. However, time out of compliance could be calculated in two alternative ways.

First, the two wells could be treated separately. Well No. 3 (Drilling Permit No. 536807) was out of compliance from the time its completion report was due on December 25, 2003 to the time its plugging extension was approved on July 26, 2007, a period in violation of 43 months. Well No. 4 (Drilling Permit No. 538917) was out of compliance from the time its completion report was due on January 1, 2004 to the time its plugging extension was approved on July 26, 2007, a period in violation of 43 months. The two wells were out of compliance for a total of 86 months: two wells out of compliance at 43 months each. Thus, the administrative penalty would be \$8,600.00 calculated on the basis of time out of compliance at \$100.00 each month for 86 months.

Second, each rule violation on each well could be treated separately. Well No. 3 (Drilling Permit No. 536807) was out of compliance with Statewide Rule 3(2) from July 1, 2004 to April 3, 2007, a period in violation of 33 months. Well No. 4 (Drilling Permit No. 538917) was out of compliance with Statewide Rule 3(2) from July 1, 2004 to April 3, 2007, a period in violation of 33 months. The lease entrance was out of compliance with Statewide Rule 3(1) from July 1, 2004 to March 23, 2005, a period in violation of 9 months. Well No. 3 was out of compliance with Statewide Rule 14(b)(2) from November 25, 2004 to July 26, 2007, a period in violation of 32 months. Well No. 4 was out of compliance with Statewide Rule 14(b)(2) from December 2, 2004 to July 26, 2007, a period in violation of 32 months. Well No. 3 was out of compliance with Statewide Rule 8(d)(4)(G)(i)(I) from November 25, 2004 to January 11, 2005, a period in violation of 1 month. Well No. 4 was out of compliance with Statewide Rule 8(d)(4)(G)(i)(I) from December 2, 2004 to January 11, 2005, a period in violation of 1 month. Well No. 3 was out of compliance with Statewide Rule 16 (b) from December 25, 2003 to January 23, 2006, a period in violation of 30 months. Well No. 4 was out of compliance with Statewide Rule 16(b) from January 1, 2004 to June 23, 2006, a period

in violation of 30 months. Time out of compliance with Statewide Rules 3(1), 3(2), 14(b)(2), 8(d)(4)(G)(i)(I), and 16(b) at Well Nos. 3 & 4 totaled 201 months. Thus, the administrative penalty would be \$20,100.00 calculated on the basis of time out of compliance at \$100.00 each month for 201 months.

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 salt present in the wellbore.

The Examiner notes that the penalty guidelines allow for consideration of the severity of the violation and a range for time out of compliance of \$100 to \$2,000 each month. The guidelines further 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. 09-0243232, 09-0244293, 09-0245977, 09-0246043, and 09-0255209.

### **Recommended Penalty**

The Examiner adopts Enforcement’s suggested penalty, and recommends that McCallum be assessed an administrative penalty of \$4,300.00 for time out of compliance at \$100.00 per month for 43 months. The recommended penalty conforms to the standard penalty guidelines for enforcement cases.

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. 3 (Drilling Permit No. 536807) by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective November 21, 2003, approved November 21, 2003. Respondent also designated himself as the operator of the Sue Mitchell Farmout (30651) Lease, Well No. 4 (Drilling Permit No. 538917) by filing a Commission Form P-4 effective November 21, 2003, approved November 21, 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, August 6, 2004, November 8, 2004, January 11, 2005, and March 23, 2005, a period in violation of at least 9 months.
6. Commission inspections show that the Sue Mitchell Farmout (30651) Lease Well No. 3 (Drilling Permit No. 536807) 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, March 23, 2005, and April 3, 2007, a period in violation of at least 33 months.
7. Commission inspections show that the Sue Mitchell Farmout (30651) Lease Well No. 4 (Drilling Permit No. 538917) 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, March 23, 2005, and April 3, 2007, 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. A District inspection report dated March 23, 2005 found that the subject wells and the lease entrance still lacked the required signs.
9. 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. 3 (Drilling Permit No. 536807) was inactive for more than one year.

- a. The subject well has never produced.
  - b. Well No. 3 was completed on November 25, 2003.
  - c. Under Statewide Rule 14(b)(2), a plugging extension was required for Well No. 3 after 12 months—by November 25, 2004
  - d. A plugging extension was not approved until July 26, 2007.
  - e. Well No. 3 was out of compliance with Statewide Rule 14(b)(2) from November 25, 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. 4 (Drilling Permit No. 538917) was inactive for more than one year.
- a. The subject well has never produced.
  - b. Well No. 4 was completed on December 2, 2003.
  - c. Under Statewide Rule 14(b)(2), a plugging extension was required for Well No. 4 after 12 months—by December 2, 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 December 2, 2004 to July 26, 2007, a period in violation of 32 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. Sue Mitchell Farmout (30651) Lease Well No. 3 (Drilling Permit Nos. 536807) had drilling pits in violation of Statewide Rule 8(d)(4)(G)(i)(I).
- a. Well No. 3 was completed on November 25, 2003.

- b. Under Statewide Rule 8(d)(4)(G)(i)(I), the pits should have been backfilled within one year–November 25, 2004.
  - c. The subject well had drilling pits when inspected by the District Office on July 1, 2004, August 6, 2004. November 8, 2004, and January 11, 2005.
  - d. The pits were backfilled by March 23, 2005.
  - e. Well No. 3 was out of compliance with Statewide Rule 8(d)(4)(G)(i)(I) from November 25, 2004 to January 11, 2005, a period in violation of one month.
13. Sue Mitchell Farmout (30651) Lease Well No. 4 (Drilling Permit No. 538917) had drilling pits in violation of Statewide Rule 8(d)(4)(G)(i)(I).
- a. Well No. 4 was completed on December 2, 2003.
  - b. Under Statewide Rule 8(d)(4)(G)(i)(I), the pits should have been backfilled within one year–December 2, 2004.
  - b. The subject well had drilling pits when inspected by the District Office on July 1, 2004, August 6, 2004. November 8, 2004, and January 11, 2005.
  - c. The pits were backfilled by March 23, 2005.
  - e. Well No. 4 was out of compliance with Statewide Rule 8(d)(4)(G)(i)(I) from December 2, 2004 to January 11, 2005, a period in violation of one month.
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. McCallum failed to timely file completion reports for Sue Mitchell Farmout (30651) Lease Well Nos. 3 & 4 (Drilling Permit Nos. 536807 & 538917, respectively).
- a. Well No. 3 was completed on November 25, 2003. Well No. 4 was completed on December 2, 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. 3 was due by December 25, 2003, and a completion report for Well No. 4 was due by January 1, 2004.
  - c. Completion reports for the subject wells were not filed until June 23, 2006.
  - d. Well No. 3 was out of compliance with Statewide Rule 16(b) from December 25, 2003 to June 23, 2006, a period in violation of 30 months. Well No. 4 was out of compliance with Statewide Rule 16(b) from January 1, 2004 to June 23, 2006, a period in violation of 30 months.

16. 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.
17. No prior Final Orders have been entered against Donald D. McCallum for violations of Commission rules.
18. McCallum's failure to respond to the District Office letters requesting compliance demonstrates a lack of good faith.
19. The violations involved in this docket are violations of Commission rules related to safety and the prevention or control of pollution.
20. 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 was approved February 21, 2008.
21. 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. 3 (Drilling Permit No. 536807) and Sue Mitchell Farmout (30651) Lease, Well No. 4 (Drilling Permit No. 538917) 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, 14(b)(2), 8(d)(4)(G)(i)(I), 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.
6. McCallum violated Statewide Rule 3(2) by failing to post required identification signs at Well No. 3 (Drilling Permit No. 536807) 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. 4 (Drilling Permit No. 538917) 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. 3 (Drilling Permit No. 536807) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 14(b)(2) from November 25, 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. 4 (Drilling Permit No. 538917) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 14(b)(2) from December 2, 2004 to July 26, 2007, a period in violation of 32 months.
10. McCallum violated Statewide Rule 8(d)(4)(G)(i)(I) by failing to backfill drilling pits at Well No. 3 (Drilling Permit No. 536807) 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 25, 2004 to January 11, 2005, a period in violation of one month.
11. McCallum violated Statewide Rule 8(d)(4)(G)(i)(I) by failing to backfill drilling pits at Well No. 4 (Drilling Permit No. 538917) 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 December 2, 2004 to January 11, 2005, a period in violation of one month.
12. McCallum violated Statewide Rule 16(b) by failing to timely file completion reports for Well No. 3 (Drilling Permit Nos. 536807) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 16(b) from December 25, 2003 to June 23, 2006 a period in violation of 30 months.
13. McCallum violated Statewide Rule 16(b) by failing to timely file completion reports for Well No. 4 (Drilling Permit No. 538917) on the Sue Mitchell Farmout (30651) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 16(b) from January 1, 2004 to June 23, 2006, a period in violation of 30 months.
14. 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.
15. McCallum did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
16. 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 McCallum be assessed an administrative penalty of \$4,300.00 for time out of compliance at \$100.00 per month for 43 months and be made subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,

---

Gordon Griffin, Law Clerk

---

Marshall Enquist, Hearings Examiner