

ENFORCEMENT ACTION AGAINST DONALD D. MCCALLUM, SOLE PROPRIETOR (OPERATOR NO. 538761) FOR VIOLATIONS OF STATEWIDE RULES ON THE MITCHELL, SUE (21723) LEASE, WELL NOS. 3, 4, 5 & 6W, K-M-A (1300) 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

DATE COMPLAINT FILED:	March 31, 2010
DATE OF NOTICE OF HEARING:	May 14, 2010
DATE OF HEARING:	June 17, 2010
HEARD BY:	Marshall Enquist, Hearings Examiner
WRITTEN BY:	Gordon Griffin, Law Clerk
DATE RECORD CLOSED:	August 4, 2010
DATE PFD CIRCULATED:	August 26, 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 Rule 3(2) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.3(2)] on the Mitchell, Sue (“Sue Mitchell”) (21723) Lease, Well Nos. 3, 4, 5 & 6W, by failing to maintain legible signs or identification as required.
2. Whether Donald D. McCallum (“McCallum”) violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] on the Mitchell, Sue (“Sue Mitchell”)

(21723) Lease, Well No. 4, by leaving casing open to the atmosphere.

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.

On July 2, 2010, Enforcement filed a Trial Amendment pursuant to 16 TEX. ADMIN. CODE §1.29, noting that a joint inspection conducted on June 30, 2010 found Well No. 4 on the Mitchell, Sue (21723) Lease was capped off and the well head controlled. Enforcement subsequently withdrew the Statewide Rule 13(b)(1)(B) allegation.

APPLICABLE LAW

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.

DISCUSSION OF THE EVIDENCE

Matters Officially Noted

The Examiner has taken official notice of the Commission mainframe “P-4 Certificate of Compliance Inquiry Menu” screen to determine the Form P-4 (Certificate of Compliance and Transportation Authority) status of the Sue Mitchell (21723) Lease. The Examiner has also taken official notice of 5 other dockets against Donald D. McCallum heard on the same day as this docket. Those dockets are Nos. 09-0243232, 09-0243234, 09-0244293, 09-0246043, and 09-0255209.

Enforcement

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

Respondent designated himself as the operator of the Sue Mitchell (21723) Lease, Well Nos. 3, 4, 5 & 6W, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective January 1, 2005, approved January 4, 2005.

Commission District Office inspection reports dated September 19, 2005, October 17, 2005, and November 15, 2005 for the Sue Mitchell (21723) Lease, indicate 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 the wells were either missing or failed to display the requisite information. A Commission District Office inspection report made on February 13, 2006, revealed identification posted at all of the subject wells. However, an inspection on June 16, 2010 showed a sign reading “Advantage Oil” at Well No. 6W while Well Nos. 3, 4, and 5 lacked signs. Taken together, Enforcement determined

that the time out of compliance under Statewide Rule 3 was five months.

Respondent's violation is serious and threatens 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.

McCallum

At hearing, 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.

EXAMINER'S OPINION

The Examiner has taken official notice of five additional dockets against Donald D. McCallum heard on the same day as the present docket. Among those dockets is Oil & Gas Docket No. 09-0255209¹, which is also on the Sue Mitchell (21723) Lease, and also requests assessment of an administrative penalty for a Statewide Rule 3 sign violation. The present docket is for a Statewide Rule 3 violation noted by the District Office during inspections on September 19, 2005, October 17, 2005, and November 15, 2005. The Statewide Rule 3 violation in Oil & Gas Docket No. 09-0255209 involves a separate enforcement referral from the District Office on the Sue Mitchell (21723) Lease, which found Statewide Rule 3(2) violations on August 9, 2007 and October 16, 2007.

McCallum's explanation that "stickers" and markers were used to print some signs, and thereby identify wells, is not credible. Statewide Rule 3(5) states "...the signs and identification required by this section shall be in the English language, clearly legible, and in the case of the signs required by paragraphs (1), (2), and (3) of this section shall be in letters and numbers at least one inch in height." While it is possible such a sign or sticker might be affixed to Well No. 3, the remaining wells, Well Nos. 4, 5, & 6W, are little more than rusted pipe, to which a sticker could not be attached and on which a marker could not write. Photographs of the subject wells are attached as Attachments I & II.

The evidence in the record shows that Well Nos. 3, 4, 5 & 6W on the Sue Mitchell (21723) Lease lacked the signs or identification required by Statewide Rule 3(2) when inspected by the District Office on September 19, 2005, October 17, 2005, and November 15, 2005 but had the required signs when inspected on February 13, 2006. There is no evidence in the record showing the date between November 15, 2005 and February 13, 2006 on which the signs were posted, failing to establish Enforcement's asserted 5 months out of compliance for each well. However, there is no

¹ Enforcement Action Against Donald D. McCallum, Sole Proprietor (Operator NO. 538761) for Violations of Statewide Rules on the Mitchell, Sue (21723) Lease, Well Nos. 4 & 6W, K-M-A (1300) Field, Wichita County, Texas.

dispute that the evidence establishes that the signs were not posted for at least the period from September 19, 2005 through November 15, 2005, a period slightly less than 2 months for each of the four wells.

Regarding the June 16, 2010 inspection report that found a sign reading “Advantage Oil,” on Well No. 6W on the Sue Mitchell (21723) Lease, the Commission’s mainframe “P-4 Certificate of Compliance Inquiry Menu” shows that the Lease transferred from McCallum to Advantage Oil Company effective May 1, 2010, a month and a half prior to the June 16, 2010 inspection.

McCallum did not act in good faith. The District Office sent letters to McCallum dated September 21, 2005 and October 25, 2005 describing the violations and requesting they be corrected. The District Office inspection conducted on November 15, 2005 found “...no changes to lease are visible since last inspection, proper identification signs have not been posted at Well Nos. 3, 4, 5 or 6W.”

The Examiner recommends that McCallum be assessed an administrative penalty in the amount of \$1,000 calculated on the basis of four violations of Statewide Rule 3(2) at \$250.00. The recommended penalty conforms to the standard penalty guidelines for violations of Statewide Rule 3. In determining the penalty amount, the examiner has considered the penalty standards in Texas Natural Resources Code §81.0531. The involved violations are serious, and presented a hazard to the health and safety of the public because the Commission would be unable to contact the proper party in the event of an emergency.

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, 09-0243234, 09-0244293, 09-0246043, and 09-0255209.

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.

3. McCallum's P-5 organization report is delinquent.
4. Respondent designated himself as the operator of the Sue Mitchell (21723) Lease, Well Nos. 3, 4, 5 & 6W, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective January 1, 2005, approved January 4, 2005.
5. Commission inspections reveal that the Sue Mitchell (21723) Lease, Well Nos. 3, 4, 5 & 6W, lacked signs or identification required by Statewide Rule 3. Specifically, Commission District Office inspection reports reveal that the subject wells lacked proper identification on September 19, 2005, October 17, 2005, and November 15, 2005, a period of slightly less than 2 months for each of the four wells.
6. The District Office sent letters to McCallum dated September 21, 2005 and October 25, 2005 describing the violations and requesting they be corrected. A District Office inspection on November 15, 2005 found no change in the violations on the lease.
7. No prior Final Orders have been entered against Donald D. McCallum for violations of Commission rules.
8. McCallum's failure to respond to the District Office letters requesting compliance, for a period of at least two months, demonstrates a lack of good faith.
9. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.
10. The Commission's mainframe "P-4 Certificate of Compliance Inquiry Menu" shows that the Sue Mitchell (21723) Lease transferred from McCallum to Advantage Oil Company effective May 1, 2010.
11. Respondent, David 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. Respondent, McCallum, was the operator of the Sue Mitchell (21723) Lease, Well Nos. 3, 4, 5 & 6W 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 from January 1, 2005 to May 1, 2010.
4. As the operator at the time the violations occurred, Respondent has the primary responsibility for complying with Statewide Rule 3(2) and other applicable statutes and Commission rules

respecting the subject leases and wells.

5. McCallum violated Statewide Rule 3(2) by failing to post required identification signs at Well Nos. 3, 4, 5 & 6W on the Sue Mitchell (21723) Lease, Wichita County, Texas.
6. 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.
7. McCallum did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
8. 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 ordered to pay an administrative penalty of \$1,000.00 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