

ENFORCEMENT ACTION AGAINST DONALD D. MCCALLUM, SOLE PROPRIETOR (OPERATOR NO. 538761) FOR VIOLATIONS OF STATEWIDE RULES ON THE WARREN “B” LEASE, WELL NO. 1 (DRILLING PERMIT NO. 540152), WICHITA COUNTY REGULAR FIELD, WICHITA COUNTY; WARREN “B” LEASE, WELL NO. 2 (DRILLING PERMIT NO. 540153), WICHITA COUNTY REGULAR FIELD, WICHITA COUNTY; AND WARREN FARMOUT LEASE, WELL NO. 3 (DRILLING PERMIT NO. 539517), WICHITA COUNTY REGULAR 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:	January 27, 2006
DATE OF NOTICE OF HEARING:	May 14, 2010
DATE OF HEARING:	June 17, 2010
HEARD BY:	Marshall Enquist, Hearings Examiner
DATE RECORD CLOSED:	August 4, 2010
DATE PFD CIRCULATED:	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 Rule 13(b)(1)(B) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] by failing to use a wellhead assembly to maintain surface control of a well on the Warren Farmout (30601) lease;

2. Whether McCallum violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] on the Warren "B" (30752) Lease, Well No. 1 (Drilling Permit No. 540152); the Warren "B" (30752) Lease, Well No. 2 (Drilling Permit No. 540153); and the Warren Farmout (30601) Lease, Well No. 3 (Drilling Permit No. 539517), by failing to plug the wells after one year of inactivity;
3. Whether McCallum violated Statewide Rule 16(b) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.16(b)] on the Warren "B" (30752) Lease, Well No. 1 (Drilling Permit No. 540152); the Warren "B" (30752) Lease, Well No. 2 (Drilling Permit No. 540153); and the Warren Farmout (30601) Lease, Well No. 3 (Drilling Permit No. 539517) 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 stated 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 13(b)(1)(B) requires that wellhead assemblies shall be used on wells to maintain surface control of the well. Maintenance of surface control is necessary not only to prevent fluids from being discharged from the wellbore onto the ground surface, but also to prevent any oil and gas wastes present in the wellbore from being displaced to the surface by influxes of surface water into the open wellbore.

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 16(b) [formerly Statewide Rule 16(a)] 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, 09-0243232, 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 Warren "B" (30752) Lease, Well No. 1 (Drilling Permit No. 540152), by filing a Commission Form W-1 (Application to Drill, Deepen, Plug Back, or Re-Enter), filed December 29, 2003. Respondent designated itself as the operator of the Warren "B" (30752) Lease, Well No. 2 (Drilling Permit No. 540153) by filing a Commission Form W-1 (Application to Drill, Deepen, Plug Back, or Re-Enter), filed December 29, 2003. Respondent designated itself as the operator of the Warren Farmout (30601) Lease, Well No. 3 (Drilling Permit No. 539517) by filing a Commission Form W-1 (Application to Drill, Deepen, Plug Back, or Re-Enter), filed December 10, 2003.

Statewide Rule 13(b)(1)(B)

Commission District Office inspection reports made on October 13, 2005 and November 14, 2005 on the Warren Farmout (30601) Lease showed that Well No. 3 (Drilling Permit No. 539517) had casing open to atmosphere. By leaving a well open to the atmosphere, McCallum violated Statewide Rule 13(b)(1)(B).

Respondent's violation was serious and threatened the public health and safety because wells left uncontrolled or open to atmosphere may discharge oil and gas waste onto the land surface and affect the health of humans and animals; these discharges may eventually make their way to surface or subsurface waters, causing pollution.

An affidavit in Enforcement's hearing file of Ramon Fernandez, P.E., Field Operations, dated June 16, 2010 states that "Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution/safety hazards due to the possibility of surface run-off entering the wellbore and the possibility of well fluids flowing out of the wellbore."

Statewide Rule 14(b)(2)

Commission District Office inspection reports made on October 13, 2005 and November 21, 2005, and reports filed by Respondent with the Commission (reflecting zero production) showed that the Warren "B" (30752) Lease, Well No. 1 (Drilling Permit No. 540152) has been inactive for a period of greater than one year. The subject well has never produced.

Commission District Office inspection reports made on October 13, 2005 and November 21, 2005, and reports filed by Respondent with the Commission (reflecting zero production) showed

that the Warren “B” (30752) Lease, Well No. 2 (Drilling Permit No. 540153) has been inactive for a period of greater than one year. The subject well has never produced.

Commission District Office inspection reports made on October 13, 2005 and November 14, 2005, and reports filed by Respondent with the Commission (reflecting zero production) showed that the Warren Farmout (30601) Lease, Well No. 3 (Drilling Permit No. 539517) has been inactive for a period of greater than one year. The subject well has never produced.

Completion reports for the Warren “B” (30752) Lease, Well Nos. 1 and 2, were filed on or about May 22, 2007, reflecting completion dates of August 18, 2004 for Well No. 1 and October 6, 2004 for Well No. 2. A completion report for the Warren Farmout (30601) Lease, Well No. 3 was filed on or about September 14, 2006, reflecting a completion date of October 8, 2004 for Well No. 3.

Plugging extensions for the Warren “B” (30752) Lease, Well Nos. 1 and 2, were approved on September 20, 2007. Effective August 8, 2008, V S Oil Company became the P-4 operator of the lease and wells. A plugging extension for the Warren Farmout (30601) Lease, Well No. 3 was approved on February 22, 2007. Effective August 8, 2008, V S Oil Company became the P-4 operator of the lease and well.

An affidavit dated June 16, 2010 in the file, from Rachel Hampton, Secretary of the Railroad Commission of Texas, states that Respondent failed to file production reports for, or that zero production has been reported on the Warren “B” (30752) Lease, Well Nos. 1 and 2, and the Warren Farmout (30601) Lease, Well No. 3, as they had never produced.

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 a well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged in accordance with the technical requirements of Statewide Rule 14 in order to prevent pollution of usable quality surface or subsurface waters. 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 16(b)

Commission District Office inspection reports made on October 13, 2005 and November 21, 2005 on the Warren “B” (30752) Lease showed that Well No. 1 (Drilling Permit 540152) had been completed with casing. Commission records show Respondent did not file the required completion report with the District Office until October 17, 2006, which was received by the Austin office on May 22, 2007. The completion report reflected a completion date for Well No. 1 of August 18, 2004.

Commission District Office inspection reports made on October 13, 2005 and November 21, 2005 on the Warren "B" (30752) Lease showed that Well No. 2 (Drilling Permit 540153) had been completed with casing. Commission records show Respondent did not file the required completion report with the District office until October 17, 2006, which was received by the Austin office on May 22, 2007. The completion report reflected a completion date for Well No. 2 of October 6, 2004.

Commission District Office inspection reports made on October 13, 2005 and November 21, 2005 on the Warren Farmout (30601) Lease showed that Well No. 3 (Drilling Permit 539517) had been completed with casing. Commission records show Respondent did not file the required completion report with the District Office until March 23, 2006, which was received by the Austin office on September 14, 2006. The completion report reflected a completion date for Well No. 3 of October 8, 2004.

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 \$8,500.00 for time out of compliance, consisting of one violation of Statewide Rule 13(b)(1)(B) at \$1,000.00; three Statewide Rule 14(b)(2) violations at \$2,000.00 each and three Statewide Rule 16(b) violations at \$500.00 each.

McCallum

At hearing, the agent for McCallum, Mr. Nolen, testified that all reports had been sent in and must have been lost. Mr. Nolen suggested that he might still have copies of the reports and would late-file them to show the correct file-stamped dates of receipt by the Commission. In light of this, the Examiner left the record open for supplementation by Enforcement or the Respondent to determine the filing dates.

EXAMINER'S OPINION

The hearing was left open in this docket to allow both McCallum and Enforcement an opportunity to clarify completion dates of the subject wells and any other records that McCallum's agent and consultant might have in their files demonstrating when such records were filed stamped by the District office. Subsequently, Enforcement late-filed a Trial Amendment clarifying completion dates and dates of receipt of records in the District Office and the Austin office. The Trial Amendment was entered into the record by examiner's letter dated August 4, 2010. Neither McCallum nor either of his representatives timely filed any exhibits.

The examiner finds that Enforcement has proved its case and agrees with the suggested penalty.

Statewide Rule 13(b)(1)(B)

District Office inspection reports dated October 13, 2005 and November 14, 2005 show that Well No. 3 (Drilling Permit No. 539517) had casing open to atmosphere. A photograph attached to the October 13, 2005 District Office inspection report documents the violation and is attached as Appendix I. Well No. 3 was in violation of Statewide Rule 13(b)(1)(B) for at least the period of time between the inspections, or one month.

McCallum did not act in good faith. Specifically, the District Office sent a letter to McCallum dated October 20, 2005 describing the violations on the lease, including the Statewide Rule 13(b)(1)(B) violation, and requesting they be corrected. The violations were not timely corrected.

Respondent's violation was serious and threatened the public health and safety because wells left uncontrolled or open to atmosphere may discharge oil and gas waste onto the land surface and affect the health of humans and animals; these discharges may eventually make their way to surface or subsurface waters, causing pollution.

An affidavit in Enforcement's hearing file of Ramon Fernandez, P.E., Field Operations, dated June 16, 2010 states that "Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution/safety hazards due to the possibility of surface run-off entering the wellbore and the possibility of well fluids flowing out of the wellbore."

Statewide Rule 14(b)(2)

The evidence shows that Well No. 1 (Drilling Permit No. 540152) on the Warren "B" (30752) Lease violated Statewide Rule 14(b)(2). The well was completed on August 16, 2004. Under Statewide Rule 14(b)(2), the well should have been plugged after 12 months of inactivity, or by August 16, 2005. A plugging extension was not approved until May 22, 2007. Thus, the well was out of compliance from August 16, 2005 to May 22, 2007, a period in violation of approximately 21 months.

The evidence shows that Well No. 2 (Drilling Permit No. 540153) on the Warren "B" (30752) Lease violated Statewide Rule 14(b)(2). The well was completed on October 6, 2004. Under Statewide Rule 14(b)(2), the well should have been plugged after 12 months of inactivity, or by October 6, 2005. A plugging extension was not approved until May 22, 2007. Thus, the well was out of compliance from October 6, 2005 to May 22, 2007, a period in violation of approximately 19 months.

McCallum is no longer the operator of Well Nos. 1 and 2 on the Warren "B" (30752) Lease. Effective August 8, 2008, V S Oil Company became the P-4 operator of the lease and wells.

The evidence shows that Well No. 3 (Drilling Permit No. 539517) on the Warren Farmout (30601) Lease violated Statewide Rule 14(b)(2). The well was completed on October 8, 2004. Under Statewide Rule 14(b)(2), the well should have been plugged after 12 months of inactivity, or by

October 8, 2005. A plugging extension was not approved until February 22, 2007. Thus, the well was out of compliance from October 8, 2005 to February 22, 2007, a period in violation of approximately 16 months.

McCallum is no longer the operator of the Warren Farmout (30601) Lease, Well No. 3. Effective August 8, 2008, V S Oil Company became the P-4 operator of the lease and well.

McCallum did not act in good faith. Specifically, the District Office sent a letter to McCallum dated October 20, 2005 describing the violations on the subject leases and wells, including the violations of Statewide Rule 14(b)(2), requesting they be corrected. The violations were not timely corrected.

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 16(b)

The evidence shows that Well No. 1 (Drilling Permit No. 540152) on the Warren "B" (30752) Lease violated Statewide Rule 16(b) [formerly Statewide Rule 16(a)]. Well No. 1 was completed on August 18, 2004. 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 September 18, 2004. However, a completion report for Well No. 1 was not filed until October 17, 2006. Thus, Well No. 1 was out of compliance from September 18, 2004 to October 17, 2006, a period of approximately 25 months.

The evidence shows that Well No. 2 (Drilling Permit No. 540153) on the Warren "B" (30752) Lease violated Statewide Rule 16(b). Well No. 2 was completed on October 6, 2004. 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 6, 2004. However, a completion report for Well No. 2 was not filed until October 17, 2006. Thus, Well No. 2 was out of compliance from November 6, 2004 to October 17, 2006, a period of approximately 23 months.

The evidence shows that Well No. 3 (Drilling Permit No. 539517) on the Warren Farmout (30601) Lease violated Statewide Rule 16(b). Well No. 3 was completed on October 8, 2004. Statewide Rule 16(b) requires a completion report to be filed within 30 days of completing a well. A completion report for Well No. 3 should have been filed by November 8, 2004. However, a completion report for Well No. 3 was not filed until March 23, 2006. Thus, Well No. 2 was out of compliance from November 8, 2004 to March 23, 2006, a period of approximately 16 months.

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.

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.

Recommended Penalty

Enforcement asks that McCallum be assessed an administrative penalty of \$8,500.00 for time out of compliance, consisting of one violation of Statewide Rule 13(b)(1)(B) at \$1,000.00; three Statewide Rule 14(b)(2) violations at \$2,000.00 each and three Statewide Rule 16(b) violations at \$500.00 each. The examiner agrees with the requested penalty amount.

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, 09-0243232, 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. Its owner is Donald D. McCallum.
3. McCallum's P-5 organization report is delinquent.
4. Respondent designated itself as the operator of the Warren "B" (30752) Lease, Well No. 1 (Drilling Permit No. 540152), by filing a Commission Form W-1 (Application to Drill, Deepen, Plug Back, or Re-Enter), filed December 29, 2003. Respondent designated itself as the operator of the Warren "B" (30752) Lease, Well No. 2 (Drilling Permit No. 540153) by filing a Commission Form W-1 (Application to Drill, Deepen, Plug Back, or Re-Enter), filed December 29, 2003. Respondent designated itself as the operator of the Warren Farmout (30601) Lease, Well No. 3 (Drilling Permit No. 539517) by filing a Commission Form W-1 (Application to Drill, Deepen, Plug Back, or Re-Enter), filed December 10, 2003.
5. Commission District Office inspection reports made on October 13, 2005 and November 14,

2005 on the Warren Farmout (30601) Lease showed that Well No. 3 (Drilling Permit No. 539517) had casing open to atmosphere, in violation of Statewide Rule 13(b)(1)(B).

6. McCallum did not act in good faith. Specifically, the District Office sent a letter to McCallum dated October 20, 2005 describing the violations on the lease, including the Statewide Rule 13(b)(1)(B) violation, and requesting they be corrected. The violations were not timely corrected.
7. Respondent's violation was serious and threatened the public health and safety because wells left uncontrolled or open to atmosphere may discharge oil and gas waste onto the land surface and affect the health of humans and animals; these discharges may eventually make their way to surface or subsurface waters, causing pollution. An affidavit in Enforcement's hearing file of Ramon Fernandez, P.E., Field Operations, dated June 16, 2010 states that "Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution/safety hazards due to the possibility of surface run-off entering the wellbore and the possibility of well fluids flowing out of the wellbore."
8. Commission District Office inspection reports made on October 13, 2005 and November 21, 2005, and reports filed by Respondent with the Commission (reflecting zero production) showed that the Warren "B" (30752) Lease, Well No. 1 (Drilling Permit No. 540152) has been inactive for a period of greater than one year.
 - a. The subject well has never produced.
 - b. Well No. 1 was completed on August 14, 2004.
 - c. Under Statewide Rule 14(b)(2), a plugging extension was required for Well No. 1 after 12 months – by August 14, 2005.
 - d. A plugging extension was not approved until May 22, 2007.
 - e. Well No. 1 was out of compliance with Statewide Rule 14(b)(2) from August 14, 2005 to May 22, 2007, a period in violation of 21 months.
9. Commission District Office inspection reports made on October 13, 2005 and November 21, 2005, and reports filed by Respondent with the Commission (reflecting zero production) showed that the Warren "B" (30752) Lease, Well No. 2 (Drilling Permit No. 540153) has been inactive for a period of greater than one year.
 - a. The subject well has never produced.
 - b. Well No. 2 was completed on October 6, 2004.
 - c. Under Statewide Rule 14(b)(2), a plugging extension was required for Well No. 2 after 12 months – by October 6, 2005.

- d. A plugging extension was not approved until May 22, 2007.
 - e. Well No. 2 was out of compliance with Statewide Rule 14(b)(2) from October 6, 2005 to May 22, 2007, a period in violation of 19 months.
10. Commission District Office inspection reports made on October 13, 2005 and November 14, 2005, and reports filed by Respondent with the Commission (reflecting zero production) showed that the Warren Farmout (30601) Lease, Well No. 3 (Drilling Permit No. 539517) has been inactive for a period of greater than one year.
 - a. The subject well has never produced.
 - b. Well No. 3 was completed on October 8, 2004.
 - c. Under Statewide Rule 14(b)(2), a plugging extension was required for Well No. 3 after 12 months – by October 8, 2005.
 - d. A plugging extension was not approved until February 22, 2007.
 - e. Well No. 3 was out of compliance with Statewide Rule 14(b)(2) from October 8, 2005 to February 22, 2007, a period in violation of 16 months.
11. McCallum did not act in good faith. Specifically, the District Office sent a letter to McCallum dated October 20, 2005 describing the violations on the subject leases and wells, including the violations of Statewide Rule 14(b)(2), requesting they be corrected. The violations were not timely corrected.
12. 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.
13. McCallum failed to timely file completion reports for the Warren "B" (30752) Lease, Well Nos. 1 & 2 (Drilling Permit Nos. 540152 & 540153, respectively).
 - a. Well No. 1 was completed on August 18, 2004. Well No. 2 was completed on October 6, 2004.
 - b. Under Statewide Rule 16(b) [formerly Statewide Rule (a)], 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 September 18, 2004, and a completion report for Well No. 2 was due by November 6, 2004.

- c. Completion reports for Well Nos. 1 and 2 were not filed until October 17, 2006.
 - d. Well No. 1 was out of compliance with Statewide Rule 16(b) from September 18, 2004 to October 17, 2006, a period in violation of 25 months. Well No. 2 was out of compliance with Statewide Rule 16(b) from November 6, 2004 to October 17, 2006, a period in violation of 23 months.
14. McCallum failed to timely file a completion report for the Warren Farmout (30601) Lease, Well No. 3 (Drilling Permit No. 539517).
 - a. Well No. 3 was completed on October 8, 2004.
 - b. Under Statewide Rule 16(b), a completion report for Well No. 3 should have been filed within 30 days of completion. Thus, a completion report for Well No. 3 was due by November 8, 2004.
 - c. A completion report for the subject well was not filed until March 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.
15. McCallum did not act in good faith. Specifically, the District Office sent a letter to McCallum dated October 20, 2005 describing the violations on the subject leases and wells, including the violations of Statewide Rule 16(b), requesting they be corrected. The violations were not timely corrected.
16. 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.
17. No prior Final Orders have been entered against Donald D. McCallum for violations of Commission rules.
18. The violations involved in this docket are violations of Commission rules related to safety and the prevention or control of pollution.
19. The Commission's mainframe "P-4 Certificate of Compliance Inquiry Menu" shows that the Warren "B" (30752) Lease transferred from McCallum to V S Oil Company effective August 8, 2008.
20. The Commission's mainframe "P-4 Certificate of Compliance Inquiry Menu" shows that

the Warren Farmout (30601) Lease transferred from McCallum to V S Oil Company effective August 8, 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 Warren "B" (30752) Lease, Well No. 1 (Drilling Permit No. 540152), the Warren "B" (30752) Lease, Well No. 2 (Drilling Permit No. 540153), and the Warren Farmout (30601) lease, Well No. 3, 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 had the primary responsibility for complying with Statewide Rules 13(b)(1)(B), 14(b)(2) and 16(b), and other applicable statutes and Commission rules respecting the subject leases and wells.
5. McCallum violated Statewide Rule 13(b)(1)(B) by failing to maintain wellhead control over Well No. 3 on the Warren Farmout (30601) Lease (Drilling Permit No. 539517), Wichita County, Texas, from October 13, 2005 through November 14, 2005, a period in violation of one month.
6. McCallum violated Statewide Rule 14(b)(2) by failing to timely plug or otherwise place into compliance Well No. 1 (Drilling Permit No. 540152) on the Warren "B" (30752) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 14(b)(2) from August 16, 2005 to May 22, 2007, a period in violation of 21 months.
7. McCallum violated Statewide Rule 14(b)(2) by failing to timely plug or otherwise place into compliance Well No. 2 (Drilling Permit No. 540153) on the Warren "B" (30752) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 14(b)(2) from October 6, 2005 to May 22, 2007, a period in violation of 19 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. 539517) on the Warren Farmout (30601) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 14(b)(2) from October 8, 2005 to February 22, 2007, a period in violation of 16 months.
9. McCallum violated Statewide Rule 16(b) by failing to timely file completion reports for Well No. 1 (Drilling Permit No. 540152) on the Warren "B" (30752) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 16(b) from September 18,

2004 to October 17, 2006 a period in violation of 25 months.

10. McCallum violated Statewide Rule 16(b) by failing to timely file completion reports for Well No. 2 (Drilling Permit No. 540153) on the Warren "B" (30752) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 16(b) from November 6, 2004 to October 17, 2006 a period in violation of 23 months.
11. McCallum violated Statewide Rule 16(b) by failing to timely file completion reports for Well No. 3 (Drilling Permit No. 539517) on the Warren Farmout (30601) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 16(b) from November 8, 2004 to March 23, 2006 a period in violation of 16 months.
12. 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.
13. McCallum did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
14. 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 \$8,500.00 for time out of compliance, consisting of one violation of Statewide Rule 13(b)(1)(B) at \$1,000.00; three Statewide Rule 14(b)(2) violations at \$2,000.00 each and three Statewide Rule 16(b) violations at \$500.00 each and be made subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,

Marshall Enquist, Hearings Examiner