

**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.**

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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>	March 31, 2010
<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>	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 Sue Mitchell (21723) Lease, Well No. 4, by failing to maintain legible signs or identification as required;
2. Whether McCallum should be required to plug or otherwise place into compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.14(b)(2)] the Sue Mitchell (21723) Lease, Well Nos. 4 and 6W;

3. Whether 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.
4. Whether McCallum violated Statewide Rule 46(g)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.46(g)(2)] by failing to maintain working pressure observation on the wellhead for the Sue Mitchell (21723) Lease, Well No. 6W;
5. Whether McCallum violated Statewide Rule 46(j) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.46(j)] by failing to timely conduct required Mechanical Integrity Tests (H-5/H-15) on the Sue Mitchell (21723) Lease, Well No. 6W.

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 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.

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, inter alia, 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 46(g)(2) requires an operator of a well to equip any fluid injection well, drilled or converted, with a pressure observation valve on the tubing and for each annulus of the well.

Statewide Rule 46(j) provides that the mechanical integrity of an injection well shall be evaluated to determine whether the well tubing, packer, or casing have sufficient mechanical integrity to meet the performance standards of this rule and that each injection well shall be pressure-tested at least once every five years to determine if there are leaks in the casing, tubing, or packer, unless the permit issued under this section requires pressure testing more frequently than once every five years.

**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, 09-0245977, and 09-0246043.

**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.

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

**Statewide Rule 3(2)**

Commission District Office inspection reports made on August 9, 2007 and October 16, 2007 for the Sue Mitchell (21723) 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 failed to display the requisite information. Specifically, on August 9, 2007, the sign showed the wrong operator name, and on October 16, 2007, the sign did not show the lease name or well number. In addition, a Commission District Office inspection report on June 16, 2010 showed that Well No. 4 lacked a sign.

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.

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

Commission District Office inspection reports made on August 9, 2007, October 16, 2007, and June 16, 2010, and reports filed by McCallum with the Commission reflecting zero production from Well No. 4 since May 2004, show that the Sue Mitchell (21723) Lease, Well No. 4 has been inactive for a period greater than one year. Production from the subject well ceased on or before May

2004.

Well No. 6W is a permitted saltwater disposal well. Commission District inspection reports made on August 9, 2007, October 16, 2007, and June 16, 2010, and the absence of Injection Reports (Form H-10) filed with the Commission (as required under Statewide Rule 46) since April 2005, show that the Sue Mitchell (21723) Lease, Well No. 6W has been inactive for a period greater than one year. Injection into the subject well ceased on or before April 2005.

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 Commission denied the plugging extensions for these wells as allowed by Statewide Rule 14 based on Respondent's violations of statewide rules (Statewide Rule 3 sign violation for Well No. 4) and lack of a mechanical integrity test (Statewide Rule 46; H-15 violation for Well No. 6W). McCallum has not requested a hearing to contest these rule violations.

A certification by the Commission's Secretary dated June 16, 2010 states that no plugging record (Form W-3) or Cementing Affidavit (Form W-15) have been filed or approved, and no plugging extensions are in effect, for either well located on the Sue Mitchell (21723) Lease. Furthermore, the certification states that diligent search conducted by the Commission indicates that records show either that Respondent failed to file production reports for or that zero production has been reported on the Sue Mitchell (21723) Lease since May 2004.

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 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 46(g)(2)**

Commission District Office inspection reports for the Sue Mitchell (21723) Lease dated August 9, 2007 and October 16, 2007 indicate that Well No. 6W was not equipped with a tubing/production casing pressure observation valve that is exposed to the ground surface. In addition, a Commission District Office inspection report on June 16, 2010 indicates that Well No. 6W was not equipped with an observation valve.

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 without working pressure observation valves on a well, pressure on the annulus cannot be detected, with resulting potential for leaks or discharges which may be a source of pollution to surface and subsurface waters.

**Statewide Rule 46(j)**

A Commission District Office inspection report dated October 16, 2007 for the Sue Mitchell (21723) Lease indicates that Well No. 6W had not been pressure tested. The injection well permit requires Well No. 6W to be pressure tested annually; the last test occurred in October 2003. The H-5 test was due by January 30, 2005.

On April 28, 2010, a pressure test was conducted by the District Office. Later, it was determined (noted in June 16, 2010 inspection report) that a wrong spring was used, invalidating the test. A joint inspection report dated June 30, 2010 indicates that the operator had the well pretested twice with the proper spring and the well still did not pass.

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 any injection or disposal of fluid down a wellbore could be a potential source of pollution. Under Statewide Rules 46(j)(1)-(4), operators must pressure test each injection well at least once in every five years to show that the well is not leaking and that waste is being confined to the permitted injection interval and that usable water zones are properly isolated from possible contamination.

**Enforcement's Recommended Penalty**

Enforcement asks that McCallum be assessed an administrative penalty of \$7,250.00 for one Statewide Rule 3(2) violation at \$250.00, two Statewide Rule 14(b)(2) violations at \$2,000.00 each, one Statewide Rule 46(g)(2) violation at \$1,000.00, and for one Rule 46(j) violation at \$2,000.00.

**McCallum**

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. They also claimed that properly placed signs may be blown away in high winds. Mr. Bradberry stated that a common trick in this area is for a competing operator to remove another operator's signs in an attempt to sully the reputation of the innocent operator. Furthermore, they claimed that the wells in question are currently marked by conforming markers or signs.

**EXAMINER'S OPINION**

**Statewide Rule 3(2)**

The evidence in the record shows that Well No. 4 on the Sue Mitchell (21723) Lease

lacked a sign or identification required by Statewide Rule 3(2) when inspected by the District Office on August 9, 2007 and October 16, 2007 but had the required signs when inspected on June 30, 2010. The evidence in the record indicates signs were not posted from August 9, 2007 through at least October 16, 2007, a period slightly more than 2 months. The Examiner notes that the violation of Statewide Rule 3(2) in this docket is distinct from the violation pled in Docket No.09-0245977<sup>1</sup>, which involved violations of Statewide Rule 3(2) on the same lease from September 2005 to November 2005.

Regarding the June 16, 2010 inspection report that did not find a sign on Well No. 4 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. Specifically, the District Office sent a letter to McCallum on September 28, 2007 describing the violation and requesting that it be corrected, but the October 16, 2007 inspection report indicated that Well No. 4 was still not in compliance with Statewide Rule 3.

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

Well No. 4 on the Sue Mitchell (21723) Lease was out of compliance with Statewide Rule 14(b)(2) beginning one year after it stopped producing. The well stopped producing in May 2004. Therefore, it was out of compliance from May 2005 to the effective date of the P-4 transfer to Advantage Oil on May 1, 2010, a period of approximately 5 years.

Well No. 6W on the Sue Mitchell (21723) Lease was out of compliance with Statewide Rule 14(b)(2) beginning one year after it stopped injecting. The well stopped injecting in April 2005. Therefore, it was out of compliance from April 2006 to the effective date of the P-4 transfer to Advantage Oil on May 1, 2010, a period of approximately 4 years.

McCallum did not act in good faith. Regarding Well No. 4, the District Office sent a letter to McCallum on December 18, 2007 requesting compliance. Regarding Well. No. 6W, the District Office sent letters to McCallum on September 28, 2007, October 3, 2007, and December 18, 2007, requesting compliance. The violations were not corrected.

#### **Statewide Rule 46(g)(2)**

Well No. 6W on the Sue Mitchell (21723) Lease was out of compliance with Statewide Rule 46(g)(2), which requires that the wellhead be equipped with a tubing/production casing pressure observation valve, from the time of the District Office inspection report on August 9,

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<sup>1</sup>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.

2007 to the time of the District Office inspection report on April 28, 2010, a period of approximately 2 years and 4 months.

McCallum did not act in good faith. Specifically, the District Office sent a letter to McCallum on September 28, 2007, requesting compliance. The April 28, 2010 inspection demonstrated that the violation was not corrected.

### **Statewide Rule 46(j)**

Well No. 6W on the Sue Mitchell (21723) Lease was out of compliance with Statewide Rule 46(j), which requires performance of a Mechanical Integrity Test, from January 30, 2005 to the time the Lease transferred to Advantage Oil on May 1, 2010, a period of approximately 5 years and 3 months.

McCallum did not act in good faith. Specifically, the District Office sent a letter to McCallum on September 28, 2007, requesting compliance. The violation was not corrected.

### **Recommended Penalty**

The examiner recommends that McCallum be assessed an administrative penalty in the amount of \$7,250.00 calculated on the basis of one violation of Statewide Rule 3(2) at \$250.00, two violations of Statewide Rule 14(b)(2) at \$2,000.00 each, one violation of Statewide Rule 46(g)(2) at \$1,000.00, and one violation of Statewide Rule 46(j) at \$2,000.00. This total is \$1,000.00 less than the total amount requested in the Original Complaint because Enforcement withdrew the Statewide Rule 13(b)(1)(B) allegation following the hearing. The recommended penalty conforms to the standard penalty guidelines for enforcement cases. In determining the amount of recommended penalty, 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 of the threat of pollution of usable quality water presented by the inactive wells and lack of required mechanical integrity testing. The Statewide Rule 3 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, 09-0245977, and 09-0246043.

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. McCallum was given at least ten (10) days notice of this hearing by certified mail sent to its most recent Form P-5 organization report address. Registered agents representing McCallum 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. 4 & 6W, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective January 1, 2005, approved January 4, 2005.
5. Repeated inspections reveal that Sue Mitchell (21723) Lease Well No. 4 lacked a sign with proper identification as required by Statewide Rule 3(2). Specifically, on August 9, 2007, the sign showed the wrong operator name, and on October 16, 2007, the sign did not show the lease name or well number.
6. The District Office sent a letter to McCallum on September 28, 2007 describing the Statewide Rule 3 violation and requesting that it be corrected, but the October 16, 2007 inspection report indicated that Well No. 4 was not in compliance with Statewide Rule 3(2).
7. The Sue Mitchell (21723) Lease, Well Nos. 4 & 6W have been inactive for more than one year.
  - a. Well No. 4 has been inactive since May 2004. Well No. 6W has been inactive since April 2005.
  - b. The Commission denied the plugging extensions for these wells as allowed by Statewide Rule 14 based on Respondent's violations of Statewide Rules (Statewide Rule 3 sign violation for Well No. 4) and lack of a mechanical integrity test (Statewide Rule 46; H-15 violation for Well No. 6W).
  - c. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) had been filed or approved for Well Nos. 4 & 6W as of June 16, 2010.
8. Regarding Well No. 4, the District Office sent a letter to McCallum on December 18, 2007, requesting compliance with Statewide Rule 14(b)(2). Regarding Well No. 6W, the District Office sent letters to McCallum on September 28, 2007, October 3, 2007, and December 18, 2007, requesting compliance with Statewide Rule 14(b)(2). The violations of Statewide Rule 14(b)(2) were not corrected.

9. Respondent failed to maintain a working pressure observation valve on the wellhead of Well No. 6W on the Sue Mitchell (21723) Lease in violation of Statewide Rule 46(g)(2). Specifically, Commission District inspection reports dated August 9, 2007, October 16, 2007, and April 28, 2010 indicated that Well No. 6W lacked a proper working pressure observation valve.
10. The District Office sent a letter to McCallum on September 28, 2007, requesting compliance with Statewide Rule 46(g)(2). The violation of Statewide Rule 46(g)(2) was not corrected.
11. Respondent failed to conduct annual pressure tests on Well No. 6W on the Sue Mitchell (21723) Lease in violation of Statewide Rule 46(j). Specifically, a Commission District inspection dated October 16, 2007 revealed that the subject well had not been pressure tested.
12. The District Office sent a letter to McCallum on September 28, 2007, requesting compliance with Statewide Rule 46(j), which requires mechanical integrity testing. The violation of Statewide Rule 46(j) was not corrected.
13. No prior enforcement orders have been entered against Donald D. McCallum for violations of Commission rules.
14. McCallum's failure to respond to the District Office letters requesting compliance demonstrates a lack of good faith.
15. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.
16. 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.
17. 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 the 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 (21723) Lease Well Nos. 4 & 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.
4. As operator, Respondent has the primary responsibility for complying with Statewide Rules

- 3(2), 14(b)(2), 46(g)(2), 46(j), Chapters 89 and 91 of the Texas Natural Resources Code, 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 No. 4 on the Sue Mitchell (21723) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 3(2) from August 9, 2007 to October 16, 2007.
  6. McCallum violated Statewide Rule 14(b)(2) by failing to plug or otherwise place into compliance Well Nos. 4 & 6W on the Sue Mitchell (21723) Lease, Wichita County, Texas. Regarding Well No. 4, McCallum was out of compliance with Statewide Rule 14(b)(2) from May 2005 to May 1, 2010. Regarding Well No. 6W, McCallum was out of compliance with Statewide Rule 14(b)(2) from April 2006 to May 1, 2010.
  7. McCallum violated Statewide Rule 46(g)(2) by failing to maintain working pressure observation on the wellhead at Well No. 6W on the Sue Mitchell (21723) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 46(g)(2) from August 9, 2007 to April 28, 2010.
  8. McCallum violated Statewide Rule 46(j) by failing to timely conduct required Mechanical Integrity Tests (H-5/H-15) Well No. 6W on the Sue Mitchell (21723) Lease, Wichita County, Texas. McCallum was out of compliance with Statewide Rule 46(j) from January 30, 2005 to May 1, 2010.
  9. The documented violations committed by McCallum constituted acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
  10. McCallum did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
  11. 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 \$7,250.00 and be made subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,

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Gordon Griffin, Law Clerk

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Marshall Enquist, Hearings Examiner