

ENFORCEMENT ACTION AGAINST V S OIL COMPANY (OPERATOR NO. 881120) FOR VIOLATIONS OF STATEWIDE RULES ON THE BURNETT-GULF (05549) LEASE, WELL NOS. 9W, 11W AND 15W, WICHITA COUNTY REGULAR FIELD, WICHITA COUNTY; AND MASON (16922) LEASE, WELL NOS. 2B AND 2M, WICHITA COUNTY REGULAR FIELD, WICHITA COUNTY, TEXAS

ENFORCEMENT ACTION AGAINST V S OIL COMPANY (OPERATOR NO. 881120) FOR VIOLATIONS OF STATEWIDE RULES ON THE WAGGONER -E- (04988) LEASE, WELL NOS. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19, AND 20, WICHITA COUNTY REGULAR FIELD, WICHITA COUNTY; AND W.T. WAGGONER "TB" (13395) LEASE, WELL NOS. 568 AND 570, WICHITA COUNTY REGULAR FIELD, WICHITA COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Reese B. Copeland

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Eric W. Nolen, R.A.
James G. Bradberry

RESPONDENT:

V S Oil Company

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF ORIGINAL COMPLAINTS:	May 14, 2010 and May 21, 2010
DATE OF NOTICE OF HEARING:	April 05, 2011
DATE OF HEARING:	May 05, 2011
HEARD BY:	Marshall Enquist, Hearings Examiner
PFD WRITTEN BY:	Shanna Barnes, Law Clerk
DATE RECORD CLOSED:	May 17, 2011
DATE PFD CIRCULATED:	June 29, 2011

STATEMENT OF THE CASES

These proceedings were called by the Commission on the recommendation of the District Office to determine the following:

1. Whether the respondent V S Oil Company ("V S") violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] the Burnett-Gulf (05549) Lease, Well Nos. 9W, 11W and 15W; the Mason (16922) Lease, Well Nos. 2B and 2M; the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20; and the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570, Wichita County Regular Field, Wichita county, Texas;
2. Whether V S should be required to plug or otherwise place in compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] the Burnett-Gulf (05549) Lease, Well Nos. 9W, 11W and 15W; the Mason (16922) Lease, Well Nos. 2B and 2M; the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20; and

the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570, Wichita County Regular Field, Wichita county, Texas;

3. Whether V S violated Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(3)] by failing to perform a required H-15 test (Test on an Inactive Well More than 25 Years Old) on the Waggoner -E- (04988) Lease, Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18, and 19 and for the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570, Wichita County Regular Field, Wichita county, Texas;
4. Whether V S violated Statewide Rule 46(j) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.46(j)] by failing to conduct a mechanical integrity test on the Burnett-Gulf (05549) Lease, Well Nos. 9W, 11W and 15W; the Mason (16922) Lease, Well Nos. 2B and 2M; and the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7, 12 and 20, Wichita County Regular Field, Wichita county, Texas;
5. Whether V S has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to plug the subject wells or otherwise place the subject leases and wells in compliance with Statewide Rules 14(b)(2), 14(b)(3) and 46(j);
6. Whether, pursuant to Texas Natural Resources Code §81.0531, V S should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject leases and wells; and
7. Whether any violations of Statewide Rules 14(b)(2), 14(b)(3) and 46(j) by V S should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A hearing in the captioned dockets was held on May 05, 2011. Reese B. Copeland, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel ("Enforcement"). Eric W. Nolen, Registered Agent, and James G. Bradberry, Consultant, appeared to represent V S and presented evidence. Enforcement's certified hearing file was admitted into evidence. The record was held open until May 15, 2011 to receive the signed and recorded Assignment, Overriding Royalty Interest and the Purchase Agreement for the Burnett-Gulf (05549) Lease, Well Nos. 4, 5, 7, 11W, 12, 13, 18 and 20. Signed documents were received May 11, 2011 and copies of the recorded documents were received on May 17, 2011.

APPLICABLE LAW

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 14(b)(3) provides that the operator of any well more than 25 years old that becomes inactive shall plug or test such well to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

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.

DISCUSSION OF THE EVIDENCE

Matters Officially Noticed

The Examiner has officially noticed Commission P-5 Organization Report and financial assurance databases showing that V S has a delinquent Form P-5 Organization Report and financial assurance in the amount of \$50,000 in the form of a letter of credit, which expires August 31, 2011. The Examiner has taken official notice of Forms W-3 (Plugging Record) for the Burnett-Gulf (05549) Lease, Well Nos. 9W and 15W, filed with the Commission on January 04, 2011. The Examiner has taken official notice of the Forms P-4 (Certificate of Compliance and Transportation Authority) for the Waggoner -E- (04988) Lease to establish the dates when V S was responsible for Well No. 12 being out of compliance. Finally, the Examiner has taken official notice of the mainframe ("Statewide Rule 14(b)(2) Well History Inquiry") screen to determine when the Statewide Rule 14(b)(2) extension for the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20; and the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 were canceled.

Enforcement

The most recent Form P-5 organization report shows that V S is a corporation, with Vernon Smith, Jr., as the sole officer. Eric W. Nolen is the registered agent for V S. Vernon Smith, Jr. has been the sole officer of V S Oil Company since April 29, 1987.

DOCKET NO. 09-0264162

V S designated itself operator of the Burnett-Gulf (05549) Lease and Well Nos. 4, 5, 7, 9W, 11W, 12, 13, 15W, 18 and 20, by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved June 08, 2007, effective April 01, 2007. American Eagle Operating, LLC (Operator No. 881120) ("American") was later named successor operator of the Burnett-Gulf (05549) Lease and Well Nos. 4, 5, 7, 11W, 12, 13, 18 and 20, by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved January 14, 2011, effective January 01, 2011.

V S designated itself operator of the Mason (16922) Lease and Well Nos. 2B and 2M, by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved April 09, 1991, effective December 01, 1990.

Statewide Rule 14(b)(2)

A Commission District Office inspection report made on October 27, 2009, and reports filed by V S with the Commission reflecting zero injection since April 2009, show that the Burnett-Gulf (05549) Lease, Well Nos. 9W, 11W and 15W have been inactive for a period greater than one year. Injection into the subject wells ceased on or before June 2004. The plugging extensions for the subject wells as allowed by Statewide Rule 14 were denied on May 16, 2009 based on Respondent's failure to perform H-5 tests. V S has not requested a hearing on this matter. Well No. 9W was plugged and abandoned on December 14, 2010 and Well No. 15W was plugged and abandoned on February 16, 2010.

A successful H-5 test was conducted on November 08, 2010 on the Burnett-Gulf (05549) Lease Well No 11W. On January 04, 2011 the legal hold was lifted on the Burnett-Gulf (05549) Lease and the subject wells were transferred to American, making time out of compliance for Well No. 11W from April 01, 2007 to January 01, 2011.

Commission District Office inspection reports made on August 20, 2009 and December 29, 2010, and reports filed by V S with the Commission reflecting zero injection since April 2009, show that the Mason (16922) Lease, Well Nos. 2B and 2M have been inactive for a period greater than one year. Injection into the subject wells ceased on or before June 1999. No workovers, re-entries, or subsequent operations have taken place on Well Nos. 2B and 2M within the last twelve months and the subject wells have not been plugged. The plugging extensions for the subject wells as allowed by Statewide Rule 14 were denied on May 16, 2009 based on Respondent's failure to perform H-5 tests.

Pursuant to calculations by the District Office personnel, the total estimated cost to the State for plugging the Mason (16922) Lease, Well Nos. 2B and 2M is \$7,400.00 (\$3,700.00 each).

An affidavit by Mark England, Engineering Specialist, Field Operations, states "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."

By failing to timely plug the subject wells or to obtain an extension of the plugging deadline, V S has violated Statewide Rule 14(b)(2). Respondent's violation of Statewide Rule 14 is serious and threatens the public health and safety. Unplugged wellbores are likely to cause pollution of usable quality groundwater and surface water by serving as a conduit for the migration of oil, gas, saltwater and other substances from one stratum or formation to another or to the surface or from the surface downward.

Statewide Rule 46(j)

A Commission District Office inspection report made on October 27, 2009 indicates that Well Nos. 9W, 11W and 15W on the Burnett-Gulf (05549) Lease were equipped to inject. Statewide Rule 46(j) provides 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. The last mechanical integrity test for the subject wells occurred on November 13, 1999. Three days after the transfer to American, a Commission District Office inspection report made on January 04, 2011 indicates Well Nos. 9W and 15W have been plugged and 11W is active. Well No. 9W was plugged and abandoned on December 14, 2010 and Well No. 15W was plugged and abandoned on February 16, 2010. A successful H-5 test was conducted on November 08, 2010 on Well No. 11W and it is now active.

Commission District inspection reports made on August 20, 2009 and December 29, 2010 indicate that the Mason (16922) Lease, Well No. 2B was inactive with no wellhead equipment and the Well No. 2M had no wellhead equipment. Statewide Rule 46(j) provides 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. The last mechanical integrity test for Well No. 2B occurred on April 13, 1998 and the last mechanical integrity test for Well No. 2M occurred on January 03, 1997.

An affidavit by Mark England, Engineering Specialist, Field Operations, states "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 conduct a mechanical integrity 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.”

By failing to timely conduct a mechanical integrity test on the Burnett-Gulf (05549) Lease, Well Nos. 9W, 11W and 15W; the Mason (16922) Lease, Well Nos. 2B and 2M, V S violated Statewide Rule 46(j).

Respondent’s violation of Statewide Rule 46(j) is serious and a hazard to the public health and safety because a failure to test an injection well may lead to leaks of fluid and cause pollution. “Pollution” is defined in Statewide Rule 8(a)(28) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE § 3.8(a)(28)] as the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

DOCKET NO. 09-0264159

V S designated itself operator of the Waggoner -E- (04988) Lease and Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20, by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved August 05, 2008, effective July 30, 2008. Double L Operating, LLC (Operator No. 224868) (“Double L”) was later named successor operator of Well No. 12 by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved August 18, 2010, effective April 01, 2010.

V S designated itself operator of the W.T. Waggoner “TB” (13395) Lease and Well Nos. 568 and 570, by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved August 05, 2008, effective August 01, 2008.

Statewide Rule 14(b)(2)

Commission District Office inspection reports made on October 19, 2009 and December 29, 2010, and reports filed by V S with the Commission reflecting zero production since September 2004, show that the Waggoner -E- (04988) Lease, Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18 and 19 have been inactive for a period greater than one year. Production from the subject wells ceased in August 2004.

Well Nos. 1, 2, 7, 12 and 20 are secondary recovery injection wells permitted under the authority of Statewide Rule 46. The inspection reports made on October 19, 2009 and December 29, 2010, show the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7, 12 and 20 were inactive. Well No. 1 was equipped with rods and tubing open to the atmosphere. Well Nos. 2, 7 and 12 were equipped to inject. Well No. 20 was not located. The last injection activity in Well No. 1 was May 1998 and in Well Nos. 2, 7 and 20 was May 2004. Well No. 12 had no reported injection.

The Statewide Rule 14(b)(2) plugging extensions for the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20 were denied on May 16, 2009 based on Respondent’s failure to perform H-5 tests and H-15 tests, as well as having a delinquent P-5.

Commission District Office inspection reports made on October 20, 2009 and December 16, 2010, and reports filed by V S with the Commission reflecting zero production since September 2004, show that the W.T. Waggoner “TB” (13395) Lease, Well Nos. 568 and 570 have been inactive for a period greater than one year. Production from the subject wells ceased in August 2004. No workovers,

reentries, or subsequent operations have taken place on the subject wells within the last twelve months and the subject wells have not been plugged.

The Statewide Rule 14(b)(2) plugging extensions for the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 were denied on May 16, 2009 based on Respondent's failure to perform H-5 tests and H-15 tests, as well as having a delinquent P-5.

Pursuant to calculations by the District Office personnel, the total estimated cost to the State for plugging the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20 is \$52,100.00 (one at \$3,100.00; one at \$2,300.00; two at \$3,000.00 and eleven at \$3,700.00); and for the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 is \$7,400.00 (\$3,700.00 each).

An affidavit by Mark England, Engineering Specialist, Field Operations, states "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."

By failing to timely plug the subject wells or to obtain an extension of the plugging deadline, V S has violated Statewide Rule 14(b)(2). Respondent's violation of Statewide Rule 14 is serious and threatens the public health and safety. Unplugged wellbores are likely to cause pollution of usable quality groundwater and surface water by serving as a conduit for the migration of oil, gas, saltwater and other substances from one stratum or formation to another or to the surface or from the surface downward.

Statewide Rule 14(b)(3)

Commission records indicated no Form H-15 (Test On An Inactive Well More than 25 Years Old) had been filed and approved for the Waggoner -E- (04988) Lease, Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18 and 19. Commission records further showed that the Waggoner -E- (04988) Lease, Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18 and 19 were completed prior to January 12, 1984, and an H-15 test was due on each well in July 2009.

Commission records indicated no Form H-15 (Test On An Inactive Well More than 25 Years Old) had been filed and approved for the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 were completed prior to January 12, 1984, and an H-15 test was due on each well in July 2009. None of the subject wells have been plugged.

Commission records now indicate testing was conducted and approved in June 2010 for all wells on the Waggoner -E- (04988) Lease and the W.T. Waggoner "TB" (13395) Lease.

By failing to timely test and file the required H-15 test results with the Commission, or plug the Waggoner -E- (04988) Lease, Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18, and 19 as well as the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570, V S violated Statewide Rule 14(b)(3).

Respondent's violation of Statewide Rule 14(b)(3) is serious and a hazard to the public health and safety because wells over twenty-five years old may develop holes or leaks in the casing, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface.

Statewide Rule 46(j)

A Commission District Office inspection report made on October 19, 2009 indicates that the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7, 12 and 20 were inactive.

Commission records further reflect that the permit dated May 19, 1981 requires Well No. 1 to have a mechanical integrity test every five years: the last test occurred on May 17, 2000. The permit dated December 10, 1979, requires Well No. 2 to have a mechanical integrity test annually: the last test occurred April 13, 1998. The permit dated December 21, 1979, requires Well No. 7 to have a mechanical integrity test every five years: the last test occurred September 26, 1997. The permit dated January 24, 1980, requires Well No. 12 to have a mechanical integrity test every five years: the last test occurred April 13, 1998. The permit dated May 19, 1981, requires Well No. 20 to have a mechanical integrity test every five years: the last test occurred April 13, 1998. No required H-15 tests for the subject wells were filed with the Commission within the required time frame for the subject wells.

An affidavit by Mark England, Engineering Specialist, Field Operations, states “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 conduct a mechanical integrity test on 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.”

By failing to timely test the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7, 12 and 20, V S violated Statewide Rule 46(j).

Respondent’s violation of Statewide Rule 46(j) is serious and a hazard to the public health and safety because a failure to test an injection well may lead to leaks of fluid and cause pollution. “Pollution” is defined in Statewide Rule 8(a)(28) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE § 3.8(a)(28)] as the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Enforcement’s Recommended Penalty

In Docket No. 09-0264162, Enforcement asks that V S be assessed \$20,000.00 for time out of compliance of five Statewide Rule 14(b)(2) violations at \$2,000.00 each, and five Statewide Rule 46(j) violations at \$2,000.00 each.

In Docket No. 09-0264159, Enforcement asks that V S be assessed \$68,000.00 for time out of compliance of seventeen Statewide Rule 14(b)(2) violations at \$2,000.00 each, twelve Statewide Rule 14(b)(3) [formerly Statewide Rule 14(b)(2)(E)] violations at \$2,000.00 each, and five Statewide Rule 46(j) violations at \$2,000.00 each.

V S

V S transferred the Burnett-Gulf (05549) Lease to American Eagle Operating, LLC November 03, 2009, who allegedly agreed that they would pay some of the fines and accept all responsibility. American was to immediately send the P-4s into the Commission, but waited four months to submit the first P-4 to the Commission and about a year to send the remaining P-4s. Mr. Smith, owner of V S, allowed American to use his equipment to assist in plugging the Burnett-Gulf (05549) Lease, Well Nos. 9W and 15W.

V S does not dispute that from 2007 up until the transfer to American that the Burnett-Gulf (05549) Lease wells were not in compliance nor does it dispute that wells on the Mason (16922) Lease, the Waggoner -E- (04988) Lease and the W.T. Waggoner "TB" (13395) Lease are currently not in compliance.

EXAMINER'S OPINION

The Examiner agrees with Enforcement that V S has violated Statewide Rules 14(b)(2), 14(b)(3) and 46(j) on the subject leases and wells. V S did not dispute the violations of Statewide Rules 14(b)(2), 14(b)(3) and 46(j) alleged by Enforcement.

DOCKET NO. 09-0264162

The Burnett-Gulf (05549) Lease, Well No. 9W was out of compliance with Statewide Rule 14(b)(2) from the time its plugging extension was canceled on May 16, 2009 through the date it was plugged on December 14, 2010, a period of approximately one and a half years. Well No. 15W was out of compliance with Statewide Rule 14(b)(2) from the time its plugging extension was canceled on May 16, 2009 through the date it was plugged on February 16, 2010, a period of approximately nine months. Well No. 11W was out of compliance with Statewide Rule 14(b)(2) from the time its plugging extension was canceled on May 16, 2009 through the date of its successful H-5 test on November 08, 2010, a period of approximately one and a half years.

As to V S, the Burnett-Gulf (05549) Lease, Well No. 9W was out of compliance with Statewide Rule 46(j) from the effective date of the Form P-4 transfer on April 01, 2007 through the date it was plugged on December 14, 2010, a period of approximately three years and nine months. Well No. 15W was out of compliance with Statewide Rule 46(j) from the effective date of the Form P-4 transfer on April 01, 2007 through the date it was plugged on February 16, 2010, a period of almost three years. Well No. 11W was out of compliance with Statewide Rule 46(j) from the effective date of the Form P-4 transfer on April 01, 2007 through the date of its successful H-5 test on November 08, 2010, a period of approximately three years and seven months.

The Mason (16922) Lease, Well Nos. 2B and 2M were out of compliance with Statewide Rule 14(b)(2) from the time their plugging extension were canceled on May 16, 2009 through at least the date of the hearing on May 05, 2011, a period of approximately two years.

The Mason (16922) Lease, Well Nos. 2B and 2M were out of compliance with Statewide Rule 46(j) from five years after the date of their last H-5 test, respectively April 13, 2003 and January 03, 2002, to at least the date of the hearing on May 05, 2011, periods of approximately eight years and nine years and four months.

Violations of Statewide Rules 14(b)(2), 14(b)(3) and 46(j) present a threat to public safety and a threat of pollution of usable quality water and are thus deemed serious. According to Enforcement's complaint, no prior final Commission orders have been entered against V S for violations of Commission rules. However, V S cannot be said to have acted in good faith, because it failed to respond to requests in May of 2009 and in October of 2009 from the District Office to resolve the violations that are the subject of these dockets.

The Examiner agrees with Enforcement's administrative penalty assessment of \$20,000.00 in Docket No. 09-0264162 for time out of compliance of five Statewide Rule 14(b)(2) violations at \$2,000.00 each, and five Statewide Rule 46(j) violations at \$2,000.00 each.

DOCKET NO. 09-0264159

The Waggoner -E- (04988) Lease, Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18, and 19 were out of compliance with Statewide Rule 14(b)(2) from the time its plugging extension was canceled on May 16, 2009 through at least the date of the hearing on May 05, 2011, a period of approximately two years. The Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7 and 20 were out of compliance with Statewide Rule 14(b)(2) from the time its plugging extension was canceled on May 16, 2009 through at least the date of the hearing on May 05, 2011, a period of approximately two years. Well No. 12 was out of compliance with Statewide Rule 14(b)(2) from the time its plugging extension was canceled on May 16, 2009 through at least the effective date of the transfer to Double L on April 01, 2010, a period slightly less than a year.

The Waggoner -E- (04988) Lease, Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18, and 19 were out of compliance with Statewide Rule 14(b)(3) from the date an H-15 test was due for each well on July 2009 through the H-15 testing on the wells filed June 2010, a period of approximately eleven months.

As to V S, the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7 and 20 were out of compliance with Statewide Rule 46(j) from the effective date of the Form P-4 transfer on July 30, 2008 through at least the date of the hearing on May 05, 2011, a period slightly less than three years. Well No. 12 was out of compliance with Statewide Rule 46(j) from the effective date of the Form P-4 transfer on July 30, 2008 through at least the effective date of the transfer to Double L on April 01, 2010, a period slightly less than two years.

As to V S, the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 were out of compliance with Statewide Rule 14(b)(2) from the effective date of filing the Form P-4 transfer on August 01, 2008 through at least the date of the hearing on May 05, 2011, a period slightly less than three years.

The W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 were out of compliance with Statewide Rule 14(b)(3) from the date an H-15 test was due for each well on July 2009 through the H-15 testing on the wells filed June 2010, a period of approximately eleven months.

The Examiner agrees with Enforcement's administrative penalty assessment of \$68,000.00 in Docket No. 09-0264159 for time out of compliance of seventeen Statewide Rule 14(b)(2) violations at \$2,000.00 each, twelve Statewide Rule 14(b)(3) [formerly Statewide Rule 14(b)(2)(E)] violations at \$2,000.00 each, and five Statewide Rule 46(j) violations at \$2,000.00 each.

Violations of Statewide Rules 14(b)(2), 14(b)(3) and 46(j) present a threat to public safety and a threat of pollution of usable quality water and are thus deemed serious. According to Enforcement's complaint, no prior final Commission orders have been entered against V S for violations of Commission rules. However, V S cannot be said to have acted in good faith, because it failed to respond to requests in May of 2009 and in October of 2009 from the District Office to resolve the violations that are the subject of these dockets.

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. V S Oil Company (“V S”) was given at least ten (10) days notice of this proceeding. Eric W. Nolen, Registered Agent, and James G. Bradberry, Consultant, appeared at the hearing representing V S and presented evidence.
2. V S is a corporation. Vernon Smith, Jr. is the sole officer. Eric W. Nolen is the registered agent.
3. Commission records show that Vernon Smith, Jr. has been the owner of V S Oil Company since April 29, 1987.
4. The P-5 Organization Report of V S was delinquent at the time of the hearing, having become delinquent on April 01, 2011.
5. V S has approved financial assurance in the form of a bond for \$50,000.00, which expires on August 31, 2011.
6. V S designated itself to the Commission as the operator of the Burnett-Gulf (05549) Lease, Well Nos. 4, 5, 7, 9W, 11W, 12, 13, 15W, 18 and 20 by filing a Form P-4, approved June 08, 2007, effective April 01, 2007.
7. V S transferred the Burnett-Gulf (05549) Lease and Well Nos. 4, 5, 7, 11W, 12, 13, 18 and 20 in an Assignment and Bill of Sale to American Eagle Operating, LLC (“American”). American was named operator of the Burnett-Gulf (05549) Lease and Well Nos. 4, 5, 7, 11W, 12, 13, 18 and 20, by filing a Form P-4 (Certificate of Compliance and Transportation Authority), approved January 14, 2011, effective January 01, 2011.
8. V S designated itself to the Commission as the operator of the Mason (16922) Lease and Well Nos. 2B and 2M by filing a Form P-4, approved April 09, 1991, effective December 01, 1990.
9. V S designated itself to the Commission as the operator of the Waggoner -E- (04988) Lease and Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20 by filing a Form P-4, approved August 05, 2008, effective July 30, 2008.
10. V S designated itself to the Commission as the operator of the W.T. Waggoner “TB” (13395) Lease and Well Nos. 568 and 570 by filing a Form P-4, approved August 05, 2008, effective August 01, 2008.
11. A Commission District Office inspection report made on October 27, 2009 show that the Burnett-Gulf (05549) Lease, Well Nos. 9W, 11W and 15W have been inactive for more than one year.
 - a. Injection into the subject wells ceased on or before June 2004.
 - b. The plugging extensions for Well Nos. 9W and 15W as allowed by Statewide Rule 14(b)(2) were denied for the subject wells on May 16, 2009 based on Respondent’s failure to perform H-5 tests.
 - c. A successful H-5 test was conducted on November 08, 2010 on Well No. 11W and it is now active.
 - d. Well No. 9W was plugged and abandoned on December 14, 2010 and Well No. 15W was plugged and abandoned on February 16, 2010.

12. Commission District Office inspection reports made on August 20, 2009 and December 29, 2010 show that the Mason (16922) Lease and Well Nos. 2B and 2M have been inactive for more than one year.
 - a. Injection into the subject wells ceased on or before June 1999.
 - b. The plugging extensions for Well Nos. 2B and 2M as allowed by Statewide Rule 14(b)(2) were denied for the subject wells on May 16, 2009 based on Respondent's failure to perform H-5 tests.
 - c. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the well as of the hearing on May 05, 2011.

13. A Commission District Office inspection report made on October 27, 2009 show that the Burnett-Gulf (05549) Lease, Well Nos. 9W, 11W and 15W were equipped to inject.
 - a. The last mechanical integrity test for the subject wells occurred on November 13, 1999.
 - b. Mechanical integrity tests for Well Nos. 9W, 11W and 15W were due after five years on November 13, 2004.
 - c. V S assumed plugging liability for Well Nos. 9W, 11W and 15W by P-4 transfer, effective April 01, 2007.
 - d. A successful H-5 test was conducted on November 08, 2010 on Well No. 11W and it is now active.
 - e. Well No. 9W was plugged and abandoned on December 14, 2010 and Well No. 15W was plugged and abandoned on February 16, 2010.

14. A Commission District Office inspection report made on October 27, 2009 show that the Mason (16922) Lease and Well Nos. 2B and 2M were inactive with no wellhead equipment.
 - a. The last mechanical integrity test for Well No. 2B occurred on April 13, 1998. The last mechanical integrity test for Well No. 2M occurred on January 03, 1997.
 - b. Mechanical integrity tests for Well Nos. 2B and 2M were due after five years, respectively April 13, 2003 and January 03, 2002.
 - c. No H-5 tests have been filed for Well Nos. 2B and 2M as of the hearing date on May 05, 2009.

15. Commission District Office inspection reports made on October 19, 2009 and December 29, 2010 show that the Waggoner -E- (04988) Lease, Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18, and 19 have been inactive for more than one year.
 - a. No production has been reported to the Commission for the subject wells since August 2004.

- b. The plugging extensions for Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18, and 19 as allowed by Statewide Rule 14(b)(2) were denied for the subject wells on May 16, 2009 based on Respondent's failure to perform H-5 tests and H-15 tests, as well as having a delinquent P-5.
 - c. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the well as of the hearing on May 05, 2011.
16. Commission District Office inspection reports made on October 19, 2009 and December 29, 2010 show that the Waggoner -E- (04988) Lease, (Secondary Recovery Injection) Well Nos. 1, 2, 7, 12 and 20 have been inactive for more than one year.
- a. The last injection in Well No. 1 occurred May 1998; The last injection in Well Nos. 2, 7 and 20 occurred in May 2004; Well No. 12 has no reported injection.
 - b. The plugging extensions for Well Nos. 1, 2, 7, 12 and 20 as allowed by Statewide Rule 14(b)(2) were denied for the subject wells on May 16, 2009 based on Respondent's failure to perform H-5 tests and H-15 tests, as well as having a delinquent P-5.
 - c. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the well as of the hearing on May 05, 2011.
 - d. Well No. 12 was transferred to Double L Operating, LLC, effective April 01, 2010.
17. Commission District Office inspection reports made on October 20, 2009 and December 16, 2010 show that the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 have been inactive for more than one year.
- a. No production has been reported to the Commission for the subject wells since August 2004.
 - b. The plugging extensions for Well Nos. 568 and 570 as allowed by Statewide Rule 14(b)(2) were denied for the subject wells on May 16, 2009 based on Respondent's failure to perform H-5 tests and H-15 tests, as well as having a delinquent P-5.
 - c. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the well as of the hearing on May 05, 2011.
18. Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18 and 19 on the Waggoner -E- (04988) Lease were completed prior to January 12, 1984. The H-15 test was due on each well in July 2009. Commission records now indicate testing was conducted and approved in June 2010.
19. Well Nos. 568 and 570 on the W.T. Waggoner "TB" (13395) Lease were completed prior to January 12, 1984. An H-15 test was due on each well in July 2009. Commission records now indicate testing was conducted and approved in June 2010.
20. A Commission District Office inspection report made on October 19, 2009 showed that the Waggoner -E- (04988) Lease, (Secondary Recovery Injection) Well Nos. 1, 2, 7, 12 and 20 were inactive.

- a. An injection permit dated May 19, 1981 requires Well No. 1 to have a mechanical integrity test every five years. The last test occurred on May 17, 2000. An H-5 test was due May 17, 2005.
 - b. An injection permit dated December 10, 1979, requires Well No. 2 to have a mechanical integrity test annually. The last test occurred April 13, 1998. An H-5 test was due April 13, 1999.
 - c. An injection permit dated December 21, 1979, requires Well No. 7 to have a mechanical integrity test every five years. The last test occurred September 26, 1997. An H-5 test was due September 26, 2002.
 - d. An injection permit dated January 24, 1980, requires Well No. 12 to have a mechanical integrity test every five years, the last test occurred April 13, 1998. An H-5 test was due April 13, 2003.
 - e. An injection permit dated May 19, 1981, requires Well No. 20 to have a mechanical integrity test every five years, the last test occurred April 13, 1998. An H-5 test was due April 13, 2003.
 - f. V S assumed mechanical integrity testing liability for Well Nos. 1, 2, 7, 12 and 20 by P-4 transfer, effective July 30, 2008.
21. Pursuant to calculations by the District Office personnel, the total estimated cost to the State for plugging the Mason (16922) Lease, Well Nos. 2B and 2M is \$7,400.00 (\$3,700.00 each).
 22. Pursuant to calculations by the District Office personnel, the total estimated cost to the State for plugging the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20 is \$52,100.00 (one at \$3,100.00; one at \$2,300.00; two at \$3,000.00 and eleven at \$3,700.00); and for the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 is \$7,400.00 (\$3,700.00 each), or \$59,500.
 23. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.
 24. Inactive wellbores must be plugged in order to prevent pollution of usable quality surface and 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 water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.
 25. V S has not demonstrated good faith in that it failed to respond to the following requests from the District Office to resolve the violations that are the subject of these dockets:
 - a. May 28, 2009 - Notice of Violation and Intent to Request Legal Enforcement Action for the Burnett-Gulf (05549) Lease, Well Nos. 2B and 2M.

- b. May 29, 2009 - Notice of Violation and Intent to Request Legal Enforcement Action for the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20 and the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570.
 - c. October 29, 2009 - Notice of Violation and Intent to Request Legal Enforcement Action for the Burnett-Gulf (05549) Lease, Well Nos. 9W, 11W and 15W.
26. The Commission finds that wells that have been inactive more than four years are not likely to become active again and should be plugged.
- a. Injection into Well Nos. 2B and 2M on the Mason (16922) Lease ceased on or before June 1999.
 - b. Injection into Well Nos. 1, 2, 7, 12 and 20 on the Waggoner -E- (04988) Lease ceased on or before May 2004.
 - c. No production has been reported to the Commission for Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18, and 19 on the Waggoner -E- (04988) Lease since August 2004.
 - d. No production has been reported to the Commission for Well Nos. 568 and 570 on the W.T. Waggoner "TB" (13395) Lease since August 2004.

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. V S Oil Company ("V S") was the operator of the Burnett-Gulf (05549) Lease, Well Nos. 4, 5, 7, 11W, 12, 13, 18 and 20; and was, and is, the operator of the Mason (16922) Lease, Well Nos. 2B and 2M, Wichita County Regular Field, Wichita County, Texas, as defined by Commission 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. V S was, and is, the operator of the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 13, 16, 17, 18, 19 and 20 (V S was the operator of Well No. 12); and was and is the operator of the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570, Wichita County Regular Field, Wichita County, Texas, as defined by Commission 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.
- 5. As operator, V S had the primary responsibility for complying with Statewide Rules 14(b)(2), 14(b)(3) and 46(j) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §§ 3.14(b)(2), 3.14(b)(3) and 3.46(j)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject leases and wells. Subsequent to the transfer of the Burnett-Gulf (05549) Lease, Well Nos. 4, 5, 7, 11W, 12, 13, 18 and 20 to American, and the transfer of the Waggoner -E- (04988) Lease, Well No. 12 to Double L, V S remains liable for all violations and penalties accrued by the subject wells during its operatorship.
- 6. V S violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §§3.14(b)(2)] by failing to timely plug the subject wells. V S was out of compliance with Statewide Rule

- 14(b)(2) on the Burnett-Gulf (05549) Lease, Well No. 9W from May 16, 2009 through December 14, 2010; Well No. 15W from May 16, 2009 through February 16, 2010; Well No. 11W from May 16, 2009 to November 08, 2010; and the Mason (16922) Lease, Well Nos. 2B and 2M from May 16, 2009 through at least the date of the hearing on May 05, 2011.
7. V S violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §§3.14(b)(2)] by failing to timely plug the subject wells. V S was out of compliance with Statewide Rule 14(b)(2) on the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 13, 16, 17, 18, 19 and 20 from May 16, 2009 through at least the date of the hearing on May 05, 2011; Well No. 12 from May 16, 2009 through at least the effective date of the transfer to Double L on April 01, 2010; and the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 from May 16, 2009 through at least the date of the hearing on May 05, 2011.
 8. V S violated Statewide Rule 14(b)(3) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(3)] by failing to perform a required H-15 test (Test on an Inactive Well More than 25 Years Old) within a timely manner on the Waggoner -E- (04988) Lease, Well Nos. 4, 5, 6, 8, 11, 13, 16, 17, 18, and 19 and the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570. Testing was conducted and approved in June 2010 for all subject wells, making time out of compliance from July 2009 to June 2010.
 9. V S violated Statewide Rule 46(j) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.46(j)] by failing to conduct a mechanical integrity test on the subject wells. V S was out of compliance with Statewide Rule 46(j) on the Burnett-Gulf (05549) Lease, Well No. 9W from April 01, 2007 through December 14, 2010; Well No. 15W from April 01, 2007 through February 16, 2010; Well No. 11W from April 01, 2007 to January 01, 2011; and the Mason (16922) Lease, Well Nos. 2B and 2M from, respectively April 13, 2003 and January 03, 2002, through at least the date of the hearing on May 05, 2011.
 10. V S violated Statewide Rule 46(j) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.46(j)] by failing to conduct a mechanical integrity test on the subject wells. V S was out of compliance with Statewide Rule 46(j) on the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7 and 20 from July 30, 2008 through at least the date of the hearing on May 05, 2011; and Well No. 12 from July 30, 2008 through at least the effective date of the transfer to Double L on April 01, 2010.
 11. V S has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to plug the subject wells or otherwise place the subject leases and wells in compliance with Statewide Rules 14(b)(2), 14(b)(3) and 14(j).
 12. The documented violations committed by V S constitute acts deemed serious and a hazard to the public health, and demonstrate a lack of good faith within the meaning of Texas Natural Resources Code §81.0531.
 13. As officer of V S at the time V S violated Commission rules related to safety and the prevention or control of pollution, Vernon Smith, Jr., and any organization in which he may hold a position of ownership or control, is subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

RECOMMENDATION

The examiner recommends that the Commission adopt the attached final order providing:

1. That V S Oil Company shall plug in compliance with Commission rules the Mason (16922) Lease, Well Nos. 2B and 2M, Wichita County Regular Field, Wichita County, Texas;
2. That V S Oil Company shall plug in compliance with Commission rules the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, 19 and 20; and the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570, Wichita County Regular Field, Wichita County, Texas;
3. That an administrative penalty in the amount of \$20,000.00 be assessed against V S Oil Company in Docket No. 09-0264162 for time out of compliance of five Statewide Rule 14(b)(2) violations at \$2,000.00 each, and five Statewide Rule 46(j) violations at \$2,000.00 each.
4. That an administrative penalty in the amount of \$68,000.00 be assessed against V S Oil Company in Docket No. 09-0264159 for time out of compliance of seventeen Statewide Rule 14(b)(2) violations at \$2,000.00 each, twelve Statewide Rule 14(b)(3) [formerly Statewide Rule 14(b)(2)(E)] violations at \$2,000.00 each, and five Statewide Rule 46(j) violations at \$2,000.00 each.
5. That Vernon Smith, Jr., as owner of V S Oil Company during the time of the described violations, be made subject to the restrictions of the Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,

Shanna Barnes, Law Clerk

Marshall Enquist, Hearings Examiner