



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

OIL & GAS DOCKET NO. 09-0244293

ENFORCEMENT ACTION AGAINST DONALD D. MCCALLUM, SOLE PROPRIETOR (OPERATOR NO. 538761), FOR VIOLATIONS OF STATEWIDE RULES ON THE WAGGONER, W. T., ESTATE (06712) LEASE, WELL NOS. 1, 3, 5, 9, 11, 12, 14, 15, 16 & 18, WILBARGER COUNTY REGULAR FIELD, WILBARGER COUNTY; WAGGONER-WATSON (19865) LEASE, WELL NOS. 1 & 2, WILBARGER COUNTY REGULAR FIELD, WILBARGER COUNTY; AND FELDMAN "A" (23291) LEASE, WELL NOS. 1 & 2, WILBARGER COUNTY REGULAR FIELD, WILBARGER COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Reese B. Copeland

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

James G. Bradberry, Consultant
Eric W. Nolen, Agent

RESPONDENT:

Donald D. McCallum

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:

September 8, 2005

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:

November 17, 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” or “Respondent”) violated Statewide Rule 3(2) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.3(2)] on the Waggoner-Watson (19865) Lease, Well Nos. 1 & 2, and the Feldman “A” (23291) Lease, Well No. 1, by failing to maintain legible signs or identification as required;
2. Whether Donald D. McCallum violated Statewide Rule 9(9)(B) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.9(9)(B)] on the Waggoner-Watson (19865) Lease, Well No. 2, by failing to equip the wellhead of a disposal well with an operable pressure observation valve on the tubing and each annulus of the well;
3. Whether Donald D. McCallum violated Statewide Rule 9(12)(A) & (B) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.9(12)(A) & (B)] on the Waggoner-Watson (19865) Lease, Well No. 2, by failing to conduct the required Disposal/Injection Well Pressure Test and report the test results to the Commission on a Form H-5;
4. Whether Donald D. McCallum violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] on the Waggoner, W.T., Estate (06712) Lease, Well No. 12, by leaving casing open to the atmosphere;
5. Whether Donald D. McCallum violated Statewide Rule 14(b)(1) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.14] on the Waggoner, W.T., Estate (06712) Lease, Well No. 3, by failing to file a plugging report, on a Commission Form W-3, within 30 days after plugging operations were completed, or, in the case of a dry hole, an electric log status report;
6. Whether Donald D. McCallum violated Statewide Rule 14(b)(2) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.14(b)(2)] on the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16 and 18; the Waggoner-Watson (19865) Lease, Well No. 1; the Waggoner-Watson (19865) Lease, Well No. 2 (disposal well); and the Feldman “A” (23291) Lease, Well Nos. 1 and 2, by failing to plug the wells after 12 months of inactivity and in the absence of plugging extensions;
7. Whether pursuant to Texas Natural Resources Code §81.0531, Donald D. McCallum should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16 and 18; the Waggoner-Watson (19865) Lease, Well Nos. 1 and 2; and the Feldman “A” (23291) Lease, Well Nos. 1 and 2; and
8. Whether any violations of Statewide Rules 3(2), 9(9)(B), 9(12)(A) & (B), 13(b)(1)(B), 14(b)(1) and 14(b)(2) by Donald D. McCallum should be referred to the Office of the

Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0543.

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 Railroad Commission (“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 indicated 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 3 requires the posting of signs and identification in English, which display clearly legible and correct information; with letters and numbers at least one inch in height. Statewide Rule 3(1) requires the posting of such a sign at the principal entrance of the property. Statewide Rule 3(2) requires posting of signs at each well site and/or tank battery, satellite tank or approved crude oil measuring facility where tanks are not utilized.

Statewide Rule 9(9)(B) [formerly Statewide Rule 9(a)(8)(B)] requires that wells drilled or converted for disposal shall have a wellhead equipped with a pressure observation valve on the tubing and each annulus of the well.

Statewide Rule 9(12)(A) and (B) requires that the mechanical integrity of a disposal well be evaluated by pressure tests to determine whether the well tubing, packer, or casing have sufficient mechanical integrity to meet the performance standards of Statewide Rule 9, and that each well be tested according to the requirements of subparagraph (D) and (E) of this section prior to initial use of the well and tested according to subparagraph (C) thereafter.

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)(1) requires that an operator file in the district office a plugging record, on the appropriate Commission form, within 30 days after plugging operations are completed. A cementing report shall be attached and made a part of the plugging report, and, if the operator is plugging a dry hole, an electric log status report shall be filed with the plugging record.

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.

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, 09-0243232, 09-0245977, 09-0246043, and 09-0255209. In addition, the examiner has taken Official Notice of Commission Mainframe screens "UIC Monitor Detail", "EXIM" and "P-4 Inquiry", as well as the Production Data Query screens for the three subject leases.

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 Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16 and 18 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective May 1, 2002, approved May 21, 2002. Respondent designated itself as the operator of the Waggoner-Watson (19865) Lease, Well Nos. 1 & 2 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective May 1, 2002, approved May 21, 2002. Respondent designated itself the operator of the the Feldman "A" (23291) Lease, Well Nos. 1 & 2 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective May 1, 2002, approved May 21, 2002.

Statewide Rule 3

Commission District Office inspection reports made on May 18, 2005 and July 15, 2005 for the Waggoner-Watson (19865) Lease showed that the signs or identification required to be posted at Well Nos. 1 & 2 were missing.

Commission District office inspection reports made on May 18, 2005 and June 20, 2005 on the Feldman "A" (23291) Lease showed that the sign or identification required to be posted at Well No. 1 was missing.

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 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 9(9)(B)

A Commission District Office inspection report made on July 15, 2005 on the Waggoner-Watson (19865) Lease, Well No. 2, found inoperable tubing and production casing observation valves on the wellhead.

Respondent's violation of Statewide Rule 9(9)(B) is serious and a hazard to 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 pressure on the annulus of an injection/disposal well indicates a possible pollution hazard to usable water if leaks in the wellbore allow communication between the injected saltwater and usable water. Without observation valves, pressure on the annulus cannot be detected.

Statewide Rule 9(12)(A) and (B)

Commission records reflect that the Respondent was scheduled to perform an annual mechanical integrity (pressure) test as a permit condition for the Waggoner-Watson (19865) Lease, Well No. 2. Respondent became responsible for the subject well by P-4 transfer on May 1, 2002, but failed to conduct the required test and report the results on Commission Form H-5, thereby violating Statewide Rule 9(12)(A) and (B) and the terms of Saltwater Disposal Permit No. 02111 dated October 7, 1980.

Respondent's violation of Statewide Rule 9(12)(A) and (B) is serious and a hazard to 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 injection or disposal of fluid down a wellbore could be a potential source of pollution. Under Statewide Rule 9(12)(A) and (B), operators must pressure test each disposal 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 quality water zones are properly isolated from possible contamination."

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

Commission District Office inspection reports made on May 18, 2005 and June 20, 2005, for the Waggoner, W.T., Estate (06712) Lease, Well No. 12 showed that the well had casing open to atmosphere, a violation of Statewide Rule 13(b)(1)(B).

Respondent's violation of Statewide Rule 13(b)(1)(B) is serious and a hazard to the public health and safety. An affidavit in Enforcement's hearing file of Ramon Fernandez, P.E., Field Operations, dated June 17, 2010 states "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)(1)

Commission District Office inspection reports made on May 18, 2005 and June 20, 2005 on

the Waggoner, W.T., Estate (06712) lease, Well No. 3 showed that Well No. 3 could not be located using operator plats, Commission maps or GPS coordinates and may have been plugged. However, no plugging report had been filed, nor, in the case of a dry hole, had an electric log status report been filed with a plugging report, a violation of Statewide Rule 14(b)(1).

Respondent's violation of Statewide Rule 14(b)(1) is serious and a hazard to the public health and safety. An affidavit in Enforcement's hearing file of Ramon Fernandez, P.E., Field Operations, dated June 17, 2010 states the "Without the plugging record, the Commission is without sufficient information to determine whether the plugging procedures used will prevent pollution of surface waters or usable quality subsurface waters."

Statewide Rule 14(b)(2)

Commission District Office inspection reports made on May 18, 2005 and July 15, 2005 and reports filed by Respondent with the Commission (reflecting zero production) since July 2004, showed that the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16 and 18 have been inactive for a period greater than one year. Production from the subject wells ceased in June 2004.

Commission District Office inspection reports made on May 18, 2005; July 15, 2005 and March 26, 2010 and reports filed by Respondent with the Commission (reflecting zero production) since July 2004, showed that the Waggoner-Watson (19865) Lease, Well No. 1, has been inactive for a period greater than one year. Production from the well ceased in June 2004.

Well No. 2 on the Waggoner-Watson (19865) Lease is a permitted saltwater disposal well. Commission District Office inspection reports made on May 18, 2005; July 15, 2005 and March 25, 2010 and the absence of injection reports (Form H-10) filed with the Commission (as required under Rule 9) since April 2002, showed that the Waggoner-Watson (19865) Lease, Well No. 2 has been inactive for a period greater than one year. The Waggoner-Watson (19865) Lease, Well No. 2 lost its plugging extension in 2003 due to a delinquent H-5 test which remains unresolved.

Commission District Office inspection reports made on May 18, 2005; July 15, 2005 and June 16, 2010 and reports filed by Respondent with the Commission (reflecting zero production) since September 2004, showed that the Feldman "A" (23291) Lease, Well Nos. 1 and 2 have been inactive for a period greater than one year. Production from the subject wells ceased in August 2004.

A legal hold was place on all three subject leases as of September 1, 2005, preventing approval of applications for plugging extensions for all the wells (save the Waggoner-Watson Well No. 2). The wells did not receive plugging extensions prior to their P-4 transfer to Advantage Oil Company in 2010. The legal hold on the Waggoner, W.T., Estate (06712) Lease was not lifted until May 24, 2010. The legal hold on the Waggoner-Watson (19865) Lease was not lifted until July 12, 2010. The legal hold on the Feldman "A" (23291) Lease was not lifted until May 24, 2010.

None of the subject wells have been plugged as evidenced by the filing of a Form W-3 plugging report and the plugging extensions for all of the subject wells as allowed by Statewide Rule

14 were cancelled in 2005 for all the wells, except the Waggoner-Watson Well No. 2, due to Respondent's P-5 being delinquent.

The Waggoner-Watson Well No. 2 lost its plugging extension in 2003 due to a delinquent H-5 test requirement which remained unsatisfied until a successful H-5 was conducted on March 26, 2010. A legal hold in place since September 1, 2005 for all the leases had prevented approval of applications for plugging extensions for all the wells, notwithstanding that approved H-15 tests were performed in 2009 on the following wells: (1) the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 11, 14, 15, 16 and 18; (2) the Waggoner-Watson (19865) Lease, Well No. 1; and (3) the Feldman "A" (23291) lease, Well Nos. 1 and 2. Currently, Well Nos. 1, 3, 11, 14, 15, 16 and 18 on the Waggoner, W.T., Estate (06712) Lease have approved plugging extensions.

By failing to timely plug the subject wells or obtain an extension of the plugging deadline, Respondent has violated Statewide Rule 14(b)(2). Respondent's violation of Statewide Rule 14(b)(2) 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 passage of oil, gas, saltwater and other substances from one stratum or formation to another or to the surface or from the surface downward.

An affidavit dated June 17, 2010 in the file, from Rachel Hampton, Secretary of the Railroad Commission of Texas, states that either Respondent failed to file production reports for, or that zero production has been reported on, the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 14, 16 & 18, Wilbarger County Regular Field, Wilbarger County since August 2004; the Waggoner-Watson (19865) Lease, Well Nos. 1 and 2, Wilbarger County Regular Field, Wilbarger County since June 2004; and the Feldman "A" (23291) Lease, Well Nos. 1 and 2, Wilbarger County Regular Field, Wilbarger County, Texas since August 2004.

Pursuant to calculations by Commission District Office personnel, the total estimated cost to the State for plugging the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16, and 18 is \$15,000; for the Waggoner-Watson (19865) Lease, Well Nos. 1 and 2, the plugging cost is \$4,000.00; and for the Feldman (23291) Lease, Well Nos. 1 and 2, the plugging cost is \$8,000.00. The estimated total cost to plug all three leases is \$27,000.00.

Respondent's violations were 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.

Enforcement's Requested Penalty Amount

Enforcement requests that McCallum be assessed an administrative penalty of \$33,750.00, consisting of three Rule 3(2) violations at \$250.00 each; one Rule 9(9)(B) violation at \$1,000.00; one Rule 9(12)(A) and (B) violation at \$2,000.00; one violation of Rule 13(b)(1)(B) at \$1,000.00; one Rule 14(b)(1) violation at \$1,000.00 and fourteen Rule 14(b)(2) violations at \$2,000.00 each, and any other relief to which, under the pleadings and evidence, Enforcement may be entitled.

McCallum

At hearing, the agent for McCallum, Mr. Nolen, and the consultant for McCallum, Mr. Bradberry, testified that McCallum had attempted to stay in compliance with Commission rules. As to the Statewide Rule 13(b)(1)(B) violation, Mr. Bradberry asserted that some other party must have been responsible. Regarding the sign violations, Mr. Bradberry stated that someone must have stolen the signs or they might have blown away. Mr. Bradberry stated that McCallum tried to stay in compliance with Statewide Rule 9(9)(B), but that brass gauges and valves are often stolen from oilfield equipment.

Mr. Nolen and Mr. Bradberry discussed how they continually attempted to maintain signs and markings on the subject leases. Mr. Nolen and Mr. Bradberry stated that some of the signs were "stickers" and that markers were used to print some of the signs.

EXAMINER'S OPINION

Mr. McCallum sent a letter to Enforcement dated August 15, 2005, admitting that he filled out the Form P-5 organization report which identified him as the operator. However, Mr. McCallum stated that he did not belong in that position because he did not have the knowledge of "forms and rules and regulations, etc." He also stated that he had never acted as operator because he lives in California.

The examiner notes that the leases have transferred from McCallum to Advantage Oil Company. The Waggoner, W.T., Estate (06712) Lease transferred to Advantage Oil Company effective February 3, 2010, approved May 5, 2010. The Waggoner-Watson (19865) Lease transferred to Advantage Oil Company effective February 3, 2010, approved July 15, 2010. The Feldman "A" (23291) Lease transferred to Advantage Oil Company effective February 3, 2010, approved May 24, 2011.

Statewide Rule 3

Commission District Office inspection reports made on May 18, 2005 and July 15, 2005 on the Waggoner-Watson (19865) Lease showed that the signs required to be posted at Well Nos. 1 and 2 were missing, a period in violation of at least two months. Commission District Office inspection reports made on May 18, 2005 and June 20, 2005 on the Feldman "A" (23291) Lease showed that the sign required to be posted at Well No. 1 was missing, a period in violation of at least one month.

McCallum did not act in good faith. Specifically, the District Office sent letters to McCallum dated June 3, 2005 and August 3, 2005 describing the violations and requesting they be corrected. The violations were not timely corrected.

Statewide Rule 9(9)(B)

A Commission District Office inspection report made on July 15, 2005 on the Waggoner-Watson (19865) Lease, Well No. 2, found inoperable tubing and production casing observation valves. The valves were not in operating condition, but were present, contrary to Mr. Bradberry's defense that brass fittings were often stolen.

McCallum did not act in good faith. The District Office sent letters to McCallum dated June 1, 2005 and August 3, 2005 describing the violation and requesting that it be corrected. The violation was not timely corrected.

Statewide Rule 9(12)(A) and (B)

Commission records reflected that McCallum was required by permit to perform an annual Mechanical Integrity Test on the Waggoner-Watson (19865) Lease, Well No. 2. District Office inspection reports made on May 18, 2005 and June 15, 2005 noted that the last MIT performed on the well was on February 5, 1996. On March 26, 2010, a successful pressure test was conducted on the well, after it had been acquired by Advantage Oil Company. McCallum never conducted a successful mechanical integrity test on the subject well. Well No. 2 on the Waggoner-Watson (19865) Lease was out of compliance with Statewide Rule 9(12)(A) and (B) from May 1, 2002 through February 3, 2010, a period out of compliance of approximately nine years and eight months.

McCallum did not act in good faith. The District Office sent letters to McCallum dated June 1, 2005 and August 3, 2005 which described the violation and requested that it be corrected. The violation was not timely corrected.

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

Commission District Office inspection reports made on May 18, 2005 and June 20, 2005 found that Well No. 12 on the Waggoner, W.T., Estate (06712) Lease had casing open to atmosphere, a period in violation of roughly one month.

McCallum did not act in good faith. The District Office sent a letter to McCallum dated June 1, 2005 describing the violation and requesting that it be corrected. The violation was not timely corrected.

Statewide Rule 14(b)(1)

Commission District Office inspection reports made on May 18, 2005 and June 20, 2005 on the Waggoner, W.T., Estate (06712) Lease found that Well No. 3 could not be located and may have been plugged. McCallum had not filed a plugging report, nor, in the case of a dry hole, had an

electric log status report been filed, a violation of Statewide Rule 14(b)(1).

McCallum did not act in good faith. The District Office sent a letter to McCallum dated August 12, 2005 describing the violation and requested that it be corrected. The violation was not timely corrected.

Statewide Rule 14(b)(2)

Commission District Office inspection reports made on May 18, 2005 and July 15, 2005 and reports filed by Respondent with the Commission (reflecting zero production) since July 2004, showed that the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16 and 18 have been inactive for a period greater than one year. Production from the subject wells ceased in June 2004. A legal hold was placed on the wells on September 1, 2005, preventing approval of plugging extensions for the wells. The legal hold was lifted on May 24, 2010, and the lease transferred to Advantage Oil Company with an effective date of February 3, 2010. The wells were in violation of Statewide Rule 14(b)(2) from at least September 1, 2005 through February 3, 2010, a period in violation of approximately four years and five months.

Commission District Office inspection reports made on May 18, 2005, July 15, 2005 and March 26, 2010 and reports filed by Respondent with the Commission (reflecting zero production) since July 2004, showed that the Waggoner-Watson (19865) Lease, Well No. 1, has been inactive for a period greater than one year. Production from the well ceased in June 2004. A legal hold was placed on the well on September 1, 2005, preventing approval of plugging extensions for the well. The legal hold was lifted on July 12, 2010, and the lease was transferred to Advantage Oil Company with an effective date of February 3, 2010. The well was in violation of Statewide Rule 14(b)(2) from at least September 1, 2005 through February 3, 2010, a period in violation of approximately four years and five months.

Well No. 2 on the Waggoner-Watson (19865) Lease is a permitted saltwater disposal well. Commission District Office inspection reports made on May 18, 2005, July 15, 2005 and March 25, 2010 and the absence of injection reports (Form H-10) filed with the Commission (as required under Rule 9) since April 2002, showed that the Waggoner-Watson (19865) Lease, Well No. 2 has been inactive for a period greater than one year. The Waggoner-Watson (19865) Lease, Well No. 2 lost its plugging extension on July 23, 2003, due to a delinquent H-5 test which remains unresolved. A legal hold was placed on the lease on September 1, 2005. The legal hold was lifted on May 24, 2010 and the lease transferred to Advantage Oil Company with an effective date of February 3, 2010. The well was in violation of Statewide Rule 14 from July 23, 2003 through February 3, 2010, a period in violation of six years and six months.

Commission District Office inspection reports made on May 18, 2005, July 15, 2005 and June 16, 2010 and reports filed by Respondent with the Commission (reflecting zero production) since September 2004, showed that the Feldman "A" (23291) Lease, Well Nos. 1 and 2 have been inactive for a period greater than one year. A legal hold was placed on the wells on September 1, 2005, preventing approval of plugging extensions for the wells. The legal hold was lifted on May 24, 2010 and the lease transferred to Advantage Oil Company with an effective date of February 3,

2010. The subject wells were in violation of Statewide Rule 14(b)(2) from at least September 1, 2005 through February 3, 2010, a period in violation of approximately four years and five months.

McCallum did not act in good faith. Specifically, the District Office sent letters to McCallum dated May 27, 2005, June 1, 2005, August 3, 2005, August 11, 2005 and August 12, 2005, describing the Statewide Rule 14(b)(2) violations on the three leases, requesting they be corrected. The violations were not timely corrected.

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, 09-0243232, 09-0245977, 09-0246043, and 09-0255209.

Penalty

The examiner agrees with Enforcement's recommended penalty amount of \$33,750.00, consisting of three Rule 3(2) violations at \$250.00 each; one Rule 9(9)(B) violation at \$1,000.00; one Rule 9(12)(A) and (B) violation at \$2,000.00; one violation of Rule 13(b)(1)(B) at \$1,000.00; one Rule 14(b)(1) violation at \$1,000.00 and fourteen Rule 14(b)(2) violations at \$2,000.00 each. The examiner also recommends that McCallum be made subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

Based on the record in this case, the examiner recommends adoption of the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Donald D. McCallum ("McCallum") was given at least ten (10) days notice of this hearing by certified mail addressed to McCallum's most recent Form P-5 organization report address. McCallum's agent appeared at the hearing and presented evidence.
2. McCallum is a sole proprietorship. Its owner is Donald D. McCallum.
3. McCallum's P-5 organization report is delinquent.
4. Respondent designated himself as the operator of the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16 and 18 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective May 1, 2002, approved May 21, 2002. Respondent designated itself as the operator of the Waggoner-Watson (19865) Lease, Well Nos. 1 & 2 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective May 1, 2002, approved May 21, 2002. Respondent designated itself the operator of the the Feldman "A" (23291) Lease, Well Nos. 1 & 2 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective May 1, 2002, approved May 21, 2002.

5. Commission District Office inspection reports made on May 18, 2005 and July 15, 2005 for the Waggoner-Watson (19865) Lease showed that the signs or identification required to be posted at Well Nos. 1 & 2 by Statewide Rule 3(2) were missing, a period in violation of two months.
6. Commission District Office inspection reports made on May 18, 2005 and June 20, 2005 on the Feldman "A" (23291) Lease showed that the signs or identification required to be posted at Well No. 1 by Statewide Rule 3(2) was missing, a period in violation of one month.
7. McCallum did not act in good faith. Specifically, the District Office sent letters to McCallum dated June 3, 2005 and August 3, 2005 describing the Statewide Rule 3(2) violations and requesting they be corrected. The violations were not timely corrected.
8. The violations of Statewide Rule 3(2) committed by McCallum were serious and related to public health and safety.
9. A Commission District Office inspection report made on July 15, 2005 on the Waggoner-Watson (19865) Lease, Well No. 2, found inoperable tubing and production casing observation valves on the wellhead, a violation of Statewide Rule 9(9)(B).
10. McCallum did not act in good faith. The District Office sent letters to McCallum dated June 1, 2005 and August 3, 2005 describing the violation of Statewide Rule 9(9)(B) and requesting that it be corrected. The violation was not timely corrected.
11. The violation of Statewide Rule 9(9)(B) committed by McCallum was serious and related to public health and safety.
12. The last Commission annual mechanical integrity (pressure) test on the Waggoner-Watson (19865) Lease, Well No. 2, was made on February 5, 1996. After taking the lease by P-4 transfer on May 1, 2002, Respondent failed to conduct the required annual test and report the results on Commission Form H-5, thereby violating Statewide Rule 9(12)(A) and (B) and the terms of Saltwater Disposal Permit No. 02111 dated October 7, 1980. McCallum was out of compliance from May 1, 2002 through February 3, 2010, a period out of compliance of approximately nine years and eight months.
13. McCallum did not act in good faith. The District Office sent letters to McCallum dated June 1, 2005 and August 3, 2005 which described the violation of Statewide Rule 9(12)(A) and (B) and requested that it be corrected. The violation was not timely corrected.
14. The violation of Statewide Rule 9(12)(A) and (B) committed by McCallum was serious and related to public health and safety.
15. Commission District Office inspection reports made on May 18, 2005 and June 20, 2005, for the Waggoner, W.T., Estate (06712) Lease, Well No. 12 showed that the well had casing open to atmosphere, a violation of Statewide Rule 13(b)(1)(B).

16. McCallum did not act in good faith. The District Office sent a letter to McCallum dated June 1, 2005 describing the violation of Statewide Rule 13(b)(1)(B) and requesting that it be corrected. The violation was not timely corrected.
17. The violation of Statewide Rule 13(b)(1)(B) committed by McCallum was serious and related to public health and safety.
18. Commission District Office inspection reports made on May 18, 2005 and June 20, 2005 on the Waggoner, W.T., Estate (06712) Lease, Well No. 3 showed that Well No. 3 could not be located using operator plats, Commission maps or GPS coordinates and may have been plugged. However, no plugging report had been filed, nor, in the case of a dry hole, had an electric log status report been filed, a violation of Statewide Rule 14(b)(1).
19. McCallum did not act in good faith. The District Office sent a letter to McCallum dated August 12, 2005 describing the violation of Statewide Rule 14(b)(1) and requesting that it be corrected. The violation was not timely corrected.
20. The violation of Statewide Rule 14(b)(1) committed by McCallum was serious and related to public health and safety.
21. Commission District Office inspection reports made on May 18, 2005 and July 15, 2005 and reports filed by Respondent with the Commission (reflecting zero production) since July 2004, showed that the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16 and 18 have been inactive for a period greater than one year.
 - a. Production from the subject wells ceased in June 2004.
 - b. A legal hold was placed on the wells on September 1, 2005, preventing approval of plugging extensions for the wells.
 - c. The legal hold was lifted on May 24, 2010, and the lease transferred to Advantage Oil Company with an effective date of February 3, 2010.
 - d. The wells were in violation of Statewide Rule 14(b)(2) from at least September 1, 2005 through February 3, 2010, a period in violation of approximately four years and five months.
22. Commission District Office inspection reports made on May 18, 2005, July 15, 2005 and March 26, 2010 and reports filed by Respondent with the Commission (reflecting zero production) since July 2004, showed that the Waggoner-Watson (19865) Lease, Well No. 1, has been inactive for a period greater than one year.
 - a. Production from the well ceased in June 2004.
 - b. A legal hold was placed on the well on September 1, 2005, preventing approval of

- plugging extensions for the well.
- c. The legal hold was lifted on July 12, 2010, and the lease transferred to Advantage Oil Company effective February 3, 2010.
 - d. The well was in violation of Statewide Rule 14(b)(2) from at least September 1, 2005 through February 3, 2010, a period in violation of approximately four years and five months.
23. Well No. 2 on the Waggoner-Watson (19865) Lease is a permitted saltwater disposal well. Commission District Office inspection reports made on May 18, 2005, July 15, 2005 and March 25, 2010 and the absence of injection reports (Form H-10) filed with the Commission (as required under Rule 9) since April 2002, showed that the Waggoner-Watson (19865) Lease, Well No. 2 has been inactive for a period greater than one year.
- a. A review of injection reports on the Mainframe "UIC Monitor Detail" screen for the well shows that it was inactive from April of 2002 through January, 2010.
 - b. The Waggoner-Watson (19865) Lease, Well No. 2 lost its plugging extension on July 23, 2003, due to a delinquent H-5 test which remains unresolved.
 - c. A legal hold was placed on the lease on September 1, 2005. The legal hold was lifted May 24, 2010 and the lease transferred to Advantage Oil Company with an effective date of February 3, 2010.
 - d. The well was in violation of Statewide Rule 14(b)(2) from July 23, 2003 through February 3, 2010, a period in violation of six years and six months.
24. Commission District Office inspection reports made on May 18, 2005, July 15, 2005 and June 16, 2010 and reports filed by Respondent with the Commission (reflecting zero production) since September 2004, showed that the Feldman "A" (23291) Lease, Well Nos. 1 and 2 have been inactive for a period greater than one year.
- a. A legal hold was placed on the wells on September 1, 2005, preventing approval of plugging extensions for the wells.
 - b. The legal hold was lifted on May 24, 2010, and the lease transferred to Advantage Oil Company with an effective date of February 3, 2010.
 - c. The subject wells were in violation of Statewide Rule 14(b)(2) from at least September 1, 2005 through August of 2008, a period in violation of approximately four years and five months.
25. McCallum did not act in good faith. Specifically, the District Office sent letters to McCallum dated May 27, 2005, June 1, 2005, August 3, 2005, August 11, 2005 and August 12, 2005,

describing the Statewide Rule 14(b)(2) violations on the three leases, requesting they be corrected. The violations were not timely corrected.

26. McCallum's violations of Statewide Rule 14(b)(2) on the Waggoner, W.T., Estate (06712) Lease, Waggoner-Watson (19865) Lease and Feldman "A" (23291) Lease were serious and a threat to the public health and safety.
27. McCallum's failure to respond to the District Office letters requesting compliance demonstrates a lack of good faith.
28. The violations involved in this docket are violations of Commission rules related to safety and the prevention or control of pollution.

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 Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16 and 18; the Waggoner-Watson (19865) Lease, Well Nos. 1 & 2; and the Feldman "A" (23291) Lease, Well Nos. 1 & 2 as defined by Statewide Rules 14, 58, and 79 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As the operator at the time the violations occurred, Respondent has the primary responsibility for complying with Statewide Rules 3(2), 9(9)(B), 9(12)(A) and (B), 13(b)(1)(B), 14(b)(1) and 14(b)(2), and other applicable statutes and Commission rules respecting the subject leases and wells.
5. McCallum violated Statewide Rule 3(2) by failing to post required identification signs at Well Nos. 1 and 2 on the Waggoner-Watson (19865) Lease, Wilbarger County, Texas. McCallum was out of compliance with Statewide Rule 3(2) from May 18, 2005 to July 15, 2005, a period in violation of two months.
6. McCallum violated Statewide Rule 3(2) by failing to post required identification signs at Well No. 1 on the Feldman "A" (23291) Lease, Wilbarger County, Texas. McCallum was out of compliance with Statewide Rule 3(2) from May 18, 2005 to June 20, 2005, a period in violation of one month.
7. McCallum violated Statewide Rule 9(9)(B) by failing to install and maintain operable tubing and production casing observation valves on the wellhead of Well No. 2 on the Waggoner-Watson (19865) Lease, Wilbarger County, Texas.
8. McCallum violated Statewide Rule 9(12)(A) and (B), and permit conditions, by failing to

perform annual mechanical integrity tests on Well No. 2 on the Waggoner-Watson (19865) Lease, Wilbarger County, Texas. McCallum was out of compliance from May 1, 2002 through February 3, 2010, a period out of compliance of approximately nine years and eight months.

9. McCallum violated Statewide Rule 13(b)(1)(B) by leaving casing open to atmosphere on Well No. 12 on the Waggoner, W.T., Estate (06712) Lease from May 18, 2005 to June 20, 2005, a period in violation of one month.
10. McCallum violated Statewide Rule 14(b)(1) by failing to file a plugging report, or in the case of a dry hole, an electric log status report, on the Waggoner, W.T., Estate (06712) Lease, Well No. 3. McCallum was out of compliance with Statewide Rule 14(b)(1) from May 18, 2005 to the time the well was transferred to Advantage Oil Company on February 3, 2010, a period in violation of four years and nine months.
11. McCallum violated Statewide Rule 14(b)(2) on the Waggoner, W.T., Estate (06712) Lease, Well Nos. 1, 3, 5, 9, 11, 12, 14, 15, 16 and 18 from at least September 1, 2005 to February 3, 2010, a period in violation of four years and five months.
12. McCallum violated Statewide Rule 14(b)(2) on the Waggoner-Watson (19865) Lease, Well No. 1 from at least September 1, 2005 to February 3, 2010, a period in violation of approximately four years and five months.
13. McCallum violated Statewide Rule 14(b)(2) on the Waggoner-Watson (19865) Lease, Well No. 2 by losing its plugging extension on July 23, 2003, which remained unresolved until P-4 transfer of the well to Advantage Oil Company effective February 3, 2010, thus violating Rule 14(b)(2) from at least July 23, 2003 through February 3, 2010, a period in violation of six years and six months.
14. McCallum violated Statewide Rule 14(b)(2) on the Feldman "A" (23291) Lease, Well Nos. 1 and 2, from at least September 1, 2005 through February 3, 2010, a period in violation of four and five months.
15. 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.
16. McCallum did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
17. 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 \$33,750.00 and be made subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,



Marshall Enquist, Hearings Examiner