



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 09-0294017

ENFORCEMENT ACTION AGAINST VERNON SMITH, JR., SOLE PROPRIETORSHIP, V S OIL COMPANY (OPERATOR NO. 881120) FOR VIOLATIONS OF STATEWIDE RULES ON THE MASON (16922) LEASE, WELL NOS. 2B AND 2M, WICHITA COUNTY REGULAR FIELD, WICHITA COUNTY, TEXAS.

OIL & GAS DOCKET NO. 09-0294012

ENFORCEMENT ACTION AGAINST VERNON SMITH, JR., SOLE PROPRIETORSHIP, 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:

Vernon Smith, Jr., Sole Proprietor

RESPONDENT:

V S Oil Company

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF ORIGINAL COMPLAINTS:

December 30, 2014 (09-0294017)

DATE OF NOTICE OF HEARING:

December 30, 2014 (09-0294012)

February 10, 2015 (09-0294017)

February 10, 2015 (09-0294012)

DATE OF HEARING:

May 14, 2015

HEARD BY:

Marshall Enquist, ALJ

PFD WRITTEN BY: Marshall Enquist, ALJ
DATE RECORD CLOSED: October 6, 2016
DATE PFD CIRCULATED: January 5, 2017

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)] on the Mason (16922) Lease, Well Nos. 2B and 2M; Wichita County Regular Field, Wichita County, Texas;
2. 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)] on 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 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 Mason (16922) Lease, Well Nos. 2B and 2M; Wichita County Regular Field, Wichita County, Texas;
4. 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 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;
5. 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 Mason (16922) Lease, Well Nos. 2B and 2M; Regular Field, Wichita County, Texas;
6. 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 and the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7, and 20, Wichita County Regular Field, Wichita County, Texas;
7. 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) and 46(j);

8. 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
9. 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 14, 2015. Reese B. Copeland, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Vernon Smith, Jr., sole proprietor of V S Oil Company, appeared to represent V S and presented evidence. Enforcement’s certified hearing files were admitted into evidence.

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 46(j) provides that the mechanical integrity of an injection well shall be evaluated at least once every five years 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 ALJ 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 had financial assurance in the amount of \$50,000 in the form of a bond, which expired August 31, 2014. The ALJ 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) extensions for the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 13, 16, 17, 18, 19 and 20; and the W.T. Waggoner “TB” (13395) Lease, Well Nos. 568 and 570 were canceled. Finally, the examiner has taken Official Notice of the Mainframe Oil and Gas W-2/G-1 Record screen to determine which wells remain on schedule on the Waggoner -E- (04988) Lease.

Enforcement

DOCKET NO. 09-0294017

The most recent Form P-5 organization report shows that V S is a sole proprietorship, with Vernon Smith, Jr., as the owner. Vernon Smith, Jr. has been the sole officer of V S Oil Company since April 29, 1987.

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 9, 1991, effective December 1, 1990. District Office inspection reports made on October 11, 2012 and December 3, 2014 and the absence of injection reports filed by respondent since June 1999 show 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 in May 1999. V S remains the operator of Well Nos. 2B and 2M.

Statewide Rule 14(b)(2)

Commission District Office Inspection Reports made on October 11, 2012 and December 3, 2014 and reports filed by V S with the Commission reflecting zero injection since June, 1999, demonstrate that the Mason (16922) Lease, Well Nos. 2B and 2M have been inactive for a period greater than one year. Both Inspection Reports demonstrate that Well Nos. 2B and 2M were open to atmosphere. Injection into the subject wells ceased on or before June 1999. Injection into the subject wells ceased in October 1994 for Well No. 2B and May 1999 for Well No. 2M. 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. No plugging extensions are in effect for the subject wells as allowed by Statewide Rule 14.

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 Clay Woodul, 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)

Commission records indicate Well Nos. 2B and 2M on the Mason (16922) Lease were permitted as injection wells under Commission Permit No. 09250. Permit No. 09250 requires a mechanical integrity test be performed on each well every five years. The last MIT test conducted on Well No. 2B on the Mason (16922) Lease was on April 13, 1998. The last MIT test conducted on Well No. 2M on the Mason (16922) Lease was on January 3, 1997.

Well No. 2B on the Mason (16922) Lease has been out of compliance since April 13, 2003 to at least the date of the hearing on May 14, 2015. Well No. 2M on the Mason (16922) Lease has been out of compliance since January 3, 2002 to at least the date of the hearing on May 14, 2015.

An affidavit by Clay Woodul, 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 mechanical integrity tests on 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.”

Enforcement’s Recommended Penalty

In Oil & Gas Docket No. 09-0294017, Enforcement requests that V S be assessed a total administrative penalty of \$8,000, consisting of two Statewide Rule 14(b)(2) violations at \$2,000 each (\$4,000) and two Statewide Rule 46(j) violations at \$2,000 each (\$4,000).

DOCKET NO. 09-0294012

The most recent Form P-5 Organization Report shows that V S is a sole proprietorship, with Vernon Smith, Jr., as the owner. Vernon Smith, Jr. has been the sole officer of V S Oil Company since April 29, 1987.

V S designated itself operator of the Waggoner -E- (04988) Lease and Well Nos. 1, 2, 4, 5, 6, 7, 8, 11, 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.

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 11, 2014 and December 4, 2014 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.

The District Office Inspection Reports made on October 11, 2012 and December 4, 2014 show the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7 and 20 were inactive. Injection into the subject wells ceased prior to June 1998. Well Nos. 1, 2, 7 and 20 are secondary recovery injection wells permitted under the authority of Statewide Rule 46.

Commission District Office Inspection Reports made on October 11, 2014 and December 4, 2014 and either reports filed by Respondent with the Commission reflecting zero production, or the absence of production reports being filed by the Respondent with the Commission since becoming the P-4 operator in August 2008, show that the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 have been inactive for a period greater than one year.

No work-overs, re-entries or subsequent operations have taken place on any of the subject wells in this docket within the last 12 months and none of the subject wells have been plugged. No plugging extensions are in effect for any of the subject wells as allowed by Statewide Rule 14.

By failing to timely plug the subject wells or to obtain an extension of the plugging deadline, Respondent 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.

Pursuant to calculations by Commission 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, 13, 16, 17, 18, 19 and 20 is \$52,100.00 (one well at \$3,100.00; one well at \$2,300.00; two wells at \$3,000.00 each and eleven wells at \$3,700.00 each); and for the W.T. Wagoner "TB" (13395) Lease, Well Nos. 568 and 570 is \$7,400.00 (\$3,700 each well).

An affidavit by Clay Woodul, 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)

Well No. 1 on the Waggoner -E- (04988) Lease was permitted as an injection well by Permit No. 08491 on May 19, 1981. Permit No. 08491 requires a 5 year mechanical integrity pressure test, with the last approved H-5 performed on May 17, 2000 for Well No. 1.

Well No. 2 on the Waggoner -E- (04988) Lease was permitted as an injection well by Permit No. 08044 on December 10, 1979. Permit No. 08044 requires an annual mechanical integrity pressure test, with the last approved H-5 performed on April 13, 1998 for Well No. 2.

Well No. 7 on the Wagoner -E- (04988) Lease was permitted as an injection well by Permit No. 02710 on December 21, 1979. Permit No. 02710 requires a 5 year mechanical integrity pressure test, The last approved H-5 performed on Well No. 7 was on September 26, 1997.

Well No. 20 on the Waggoner -E- (04988) Lease was permitted as an injection well by Permit No. 02710 on May 19, 1981. Permit No. 02710 requires a 5 year mechanical integrity pressure test. The last approved H-5 performed on Well No. 20 was on April 13, 1998.

By failing to timely test the subject wells, Respondent violated Statewide Rule 46(j) and the terms and conditions set forth in the injection permits. 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) as the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, and 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. 09-0294012, Enforcement asks that V S be assessed an administrative penalty of \$40,000.00 [sixteen Statewide Rule 14(b)(2) violations at \$2,000 each and four Statewide Rule 46(j) violations at \$2,000 each]. Enforcement also asks that Respondent be ordered to place the subject leases and wells in compliance with Commission Statewide Rules.

V S Oil Company

DOCKET NO. 09-0294017

Vernon Smith, Jr. appeared representing V S in Oil & Gas Docket No. 09-0294017, Mr. Smith argues that the Mason (16922) Lease would transfer within a couple of weeks of the hearing to either L.C. Smith Operating or Last Chance Oil Company. Mr. Smith stated his belief that a successful transfer of the lease would lead to a settlement agreement and reduced penalties in that docket.

DOCKET NO. 09-0294012

In Oil & Gas Docket No. 09-0294012, Mr. Smith offered into evidence his Exhibits No. 1 and No. 2, both Commission Forms P-4, by which Mr. Smith acquired the W.T. Waggoner (13395) Lease and the Waggoner -E- (04988) Lease, respectively. Mr. Smith argues that he is not responsible for either lease because the signatures on the Form P-4s are not his signature. In the case of the Waggoner -E- (04988) Lease, the signature on the Form P-4 is "Vernon D. Smith". Mr. Smith asserts that he does not have a middle name, and although he is known by the nickname "Dude", as in Vernon "Dude" Smith, he never signs his name with a "D" as a middle initial. In the case of the Form P-4 for the W.T. Waggoner "TB" (13395) Lease, also signed by "Vernon D. Smith", Mr. Smith again asserts that the signature on the Form P-4 is not his.

V S does not 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. In 2012, V S arranged for a plugger named Sissom to go on the Waggoner -E- (04988) Lease to plug Well No. 16 and then spot a bottom plug in Well No. 1. V S offered no further evidence or testimony regarding those wells.

EXAMINER'S OPINION

I. OIL & GAS DOCKET NO. 09-0294017

At hearing, V S alleged that the Mason (16922) Lease would soon transfer to another operator, and that the impending transfer might result in reduced penalties in Oil & Gas Docket No.

09-0294017. A quick review of the P-4 screens on the Mainframe show that, as of December 19, 2016, the Mason (16922) Lease remains in the name of V S Oil Company, but with only one well, Well No. 4, remaining on-schedule. Obviously, a complete lease transfer did not occur, and V S is still the Commission recognized operator of the Mason (16922) Lease, Well No. 4. with its single well.

The two wells that are the subject of Oil & Gas Docket No. 09-0294017, Well Nos. 2B and 2M, are no longer part of the Mason (16922) Lease. The two wells transferred to LC Operating, LLC ("LC Operating") by a Form P-4 operator change and are now part of LC Operating's Lease ID No. 33223, with a transfer effective date of May 29, 2015, approved by the Commission on June 15, 2015. The effective date of the transfer is just two weeks after the date of the hearing in this docket.

Statewide Rule 14(b)(2)

Commission District Office Inspection Reports made on October 11, 2012 and December 4, 2014, show that the Mason (16922) Lease, Well Nos. 2B and 2M have been inactive for a period greater than one year. Both inspections found the wells were open to atmosphere and inactive. 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. Relying on the District Office Inspection Reports, Well Nos. 2B and 2M were out of compliance with Statewide Rule 14(b)(2) from at least October 11, 2012 through at least December 4, 2014, a period of approximately two years and two months.

Statewide Rule 46(j)

Well Nos. 2B and 2M on the Mason (16922) Lease were injection wells under Commission Permit No. 09250. Permit No. 09250 requires a mechanical integrity test be performed on each well every five years. District office inspection reports made on October 11, 2012 and December 4, 2014 on the Mason (16922) Lease indicate Well Nos. 2B and 2M were open to atmosphere.

The last approved MIT test conducted on Well No. 2B on the Mason (16922) Lease was on January 15, 2015. The last approved MIT test before that for Well No. 2B was conducted on April 13, 1998. Well No. 2B was compliant for a five year period from April 13, 1998 through April 13, 2003. The well was out of compliance from April 14, 2003 through January, 2015, a period of approximately ten years and ten months.

The last MIT test conducted on the Well No. 2M on the Mason (16922) Lease was on January 3, 1997. Well No. 2M was compliant for a five year period from January 3, 1997 through January 3, 2002. Well No. 2M was non-compliant from January 4, 2002 through the date of the hearing in this docket on May 14, 2015, a period of non-compliance of approximately thirteen years and three months.

Examiner's Recommendation

Violations of Statewide Rules 14(b)(2) and 46(j) present a threat to public safety and a threat of pollution of usable quality water and are thus deemed serious. The ALJ recommends V S Oil Company be assessed an administrative penalty of \$8,000.00 in Docket No. 09-0294017 for time out of compliance for two Statewide Rule 14(b)(2) violations at \$2,000.00 each, and two Statewide Rule 46(j) violations at \$2,000.00 each.

II. OIL & GAS DOCKET NO. 09-0294012

In this docket, Mr. Smith alleged that the signatures on the Forms P-4 through which V S acquired the W.T. Waggoner -E- (04988) Lease and the W.T. Waggoner "TB" (13395) Lease were not his. Comparing Mr. Smith's signature on his Appearance Slip to the signatures on the Forms P-4, the ALJ agrees that the signatures do not appear to match. However, the ALJ also notices that both Forms P-4, signed in 2008, have Eric W. Nolen signing as agent for the prior operator, Donald D. McCallum. It is also evident that Mr. Smith listed Eric W. Nolen as his agent on a Form P-5 Organization Report renewal received by the Commission on July 14, 2011. The ALJ believes Mr. Smith when he says the signatures on the Forms P-4 were not written by him. This does not relieve Mr. Smith of responsibility as the signatures appear to have been made by his agent, Eric Nolen.

After the hearing, by Motion dated November 16, 2015, Enforcement Attorney Reese Copeland requested that the hearing be re-opened for the limited purpose of receiving into the record a letter dated October 12, 2015 from Vernon Smith relevant to Oil & Gas Docket No. 09-0294012. By letter dated September 21, 2016, Vernon Smith was sent the motion and a copy of his letter providing him an opportunity, within 14 days, to object to the letter's admission into evidence. No objection was received and the letter was admitted into evidence on October 6, 2016.

In the letter, Mr. Smith offers his account of how he came to be involved in the Waggoner Ranch leases, and makes several admissions against interest:

After the fact I learned that each time a P-4 is issued on Waggoner Estate property, the Waggoner Ranch must approve and enter into an Operating Agreement with each new operator before a new lease to operate is approved. There has not been in fact a good lease in effect on the Waggoner properties since the late 1980's. My contention is I did my due diligence on lease and would never have signed the transfer to my proration had I known in fact the previous operator did not have a good P-4 and no lease either. I felt since the lease had transferred many times since that date I would only have to get the lease in compliance as outlined by Texas Railroad Commission guidelines. How would I as operator know that there was a problem when lease had transferred time and time again when in fact there was no lease. I was not even told there was a problem until I did major road work and lease clean-up and called Southwest Rural electric from Tipton, Oklahoma to run new electric service to the property only to have them told to get off the property by the Waggoner Ranch office. I feel it is completely unfair that I was stuck with this lease

after the fact when I was only trying to do what was right. (emphasis added)

[October 12, 2015 letter from Vernon Smith to Reese Copeland, Director of the Enforcement Section of the office of General Counsel] The above language indicates that V S Oil Company and Vernon Smith intended to take over operations on the Waggoner leases, filled out the Forms P-4 to take over the leases and conducted work on the leases before being told by the Waggoner Ranch Estate that V S was not the successor to any viable lease.

Mr. Smith's testimony in the hearing indicated he had previously worked with Todd Thomas, the Leasing Agent with the Waggoner Ranch Estate, had a good relationship with Mr. Thomas, and hoped to negotiate a new lease. However, when Mr. Smith approached Mr. Thomas about taking a new lease, Mr. Thomas asked Mr. Smith if he had any involvement with Jim Bradberry. Evidently, Mr. Thomas had previously been involved in unsatisfactory dealings with Mr. Bradberry. When Mr. Smith replied that he had worked with Mr. Bradberry, Mr. Thomas told Mr. Smith that he would not be granted a lease.

It seems evident that Mr. Smith did not conduct due diligence to the extent he should have and is now the most recent Form P-4 operator of two Waggoner leases as a result of misplaced faith in the prior operator of those leases.

The ALJ agrees with Enforcement that V S was the last Form P-4 operator of the W.T. Waggoner -E- (04988) Lease and the W.T. Waggoner "TB" (13395) Lease and is the operator responsible for violations of Statewide Rules 14(b)(2) and 46(j) on the subject leases and wells.

Violations of Statewide Rule 14(b)(2)

Commission District Office Inspection Reports made on October 11, 2012 and December 4, 2014, and reports filed with the Commission reflecting zero production, or the absence of production reports filed with the Commission, demonstrate 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. The documented time out of compliance is for a period of approximately two years and 2 months.

The Wagoner -E- (04988) Lease, Well Nos. 1, 2, 7, and 20 are secondary recovery injection wells permitted under the authority of Statewide Rule 46. District Office inspection reports made on October 11, 2012 and December 4, 2014, show the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7, and 20 were inactive. Well Nos. 2 and 7 were equipped to inject. Well No. 1 was equipped with rods and tubing, but was open to the atmosphere. Well No. 20 was equipped with casing and tubing, both open to atmosphere. The last injection activity in Well No. 1 was May 1998 and in Well Nos. 2, 7 and 20 was May 2004. Well Nos. 1, 2, 7, and 20 have been inactive for a period greater than one year. The documented time out of compliance, from October 11, 2012 through December 4, 2014, is for a period of approximately two years and 2 months.

V S stated at hearing, on May 14, 2015, that Well No. 16 on the Waggoner -E- (04988) Lease was in process of being plugged on the very morning of the hearing, that the bottom plug of Well

No. 1 would be spotted and that Well No. 13 would be plugged after financial arrangements were made. A check of the Commission's mainframe shows that Well Nos. 1, 13 and 16 are still on schedule for the lease. The fact that the wells are still on-schedule does not mean that plugging work has not been conducted on the wells.

According to a District Office Inspection Report made on November 29, 2012, the Waggoner -E- (04988) Lease, Well No. 16 was plugged to surface as to both casing and tubing. This was a "Must Witness" plugging. The fact that the well is still on schedule may mean that the District Office never received the Form W-3 Plugging Report for the well, something a plugger often withholds if he has not been paid.

A District Office Inspection Report made on November 29, 2012, shows the Waggoner -E- (04988) Lease, Well No. 1 had a bottom plug set with a calculated top of cement at 1500 feet and cement circulated to surface on the outside of the casing. The District Office field inspector noted on the inspection form, "Btm. plug only". The well is not completely plugged, but has had cement in the casing run to 1500 feet, very likely in preparation to perforate into another field slightly above that depth.

A District Office Inspection Report made on November 29, 2012, records information in a cryptic manner about work done on the Waggoner -E- (04988) Lease, Well No. 13. In this case, plugging was not witnessed by the District Office Inspector, even though this was listed as a "Must Witness" inspection. One notation is "W3-A Thursday 11-29-12 12:00 PM 900'-800' 250 sax Sissom Oil 200-perf & SQZ in & out to Surf 60 sax+". The second notation on the inspection form is "Not Wit.". There is no further evidence in the record regarding this well. One interpretation is that this records the depths required to be plugged and/or squeezed on the District Office-approved Form W-3A but does not reflect an actual observation of a plugging by the District Office inspector. Well No. 13 was still on-schedule as of December 19, 2016.

V S remains responsible for the wells on the W.T. Waggoner "TB" (13395) Lease. Commission District Office Inspection Reports made on October 11, 2012, and December 4, 2014 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. The District Office Inspection Reports found the wells open to atmosphere. 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 documented time out of compliance, based on the two District Office Inspection Reports, is for a period of approximately two years and 2 months.

Violations of Statewide Rule 46(j)

Statewide Rule 46(j) requires that each injection well shall be pressure-tested at least once every five years. Well Nos. 1, 2, 7, and 20 on the Waggoner -E- (04988) Lease were permitted as injection wells. No required H-5 tests for the subject wells were filed with the Commission within the required time frame for the subject wells.

Commission District Office Inspection Reports made on October 11, 2012 and December 4, 2014, indicate that the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7, and 20 were inactive and that the wells were open to atmosphere. Permit No. 08491, 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. Well No. 1 was in compliance from May 17, 2000 through May 17, 2005. The well has been out of compliance from May 17, 2005 through the date of the hearing on May 14, 2015. V S has been the operator of the well since July, 2008. Under V S, Well No. 1 has been out of compliance from July, 2008 (the date of P-4 transfer into V S) through the date of the hearing on May 14, 2015, a period of approximately seven years.

Permit No. 08044, dated December 10, 1979, requires Well No. 2 to have a mechanical integrity test annually: the last test occurred April 13, 1998. Under V S, Well No. 2 has been out of compliance from July, 2008 through the date of the hearing on May 14, 2015, a period of approximately seven years.

Permit No. 02710, dated December 21, 1979, requires Well Nos. 7 and 20 to have a mechanical integrity test every five years. The last test on Well No. 7 occurred on September 26, 1997. Well No. 7 has been out of compliance under V S since July, 2008 through the date of the hearing, a period of approximately seven years. The last test for Well No. 20 occurred April 13, 1998. Well No. 20 has been out of compliance under V S since July, 2008 through the date of the hearing on May 14, 2015, a period of approximately seven years.

ALJ's Recommendation

Violations of Statewide Rules 14(b)(2) and 46(j) present a threat to public safety and a threat of pollution of usable quality water and are thus deemed serious. The ALJ recommends V S Oil Company be assessed an administrative penalty of \$40,000.00 in Docket No. 09-0294012 for time out of compliance for sixteen Statewide Rule 14(b)(2) violations on the Waggoner -E- (04988) Lease and the W.T. Waggoner "TB" (13395) Lease, at \$2,000.00 per violation, and \$8,000 for four Statewide Rule 46(j) violations on the Waggoner -E- (04988) Lease at \$2,000.00 each, for a total administrative penalty in Docket 09-0294012 of \$40,000.

Based on the record in this case, the ALJ 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. Vernon Smith Jr., sole proprietor of V S Oil Company appeared and testified.
2. V S Oil Company is a Sole Proprietorship. Vernon Smith, Jr. is the only 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 Oil Company was delinquent at the time of the hearing. The last Form P-5 filed by V S Oil Company was filed on June 26, 2013.
5. V S Oil Company had approved financial assurance in the form of a bond for \$50,000.00, which expired on August 31, 2014.
6. V S Oil Company 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.
7. V S Oil Company 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.
8. V S Oil Company 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.
9. A Commission District Office Inspection Report made on December 3, 2014 and reports filed by V S Oil Company with the Commission reflecting zero injection since June 1999, show that the Mason (16922) Lease and Well Nos. 2B and 2M have been inactive for more than one year, a violation of Statewide Rule 14(b)(2).
 - a. Injection into Well No. 2B ceased in October 1994.
 - b. Injection into Well No. 2M ceased in May 1999.
 - c. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the well as of the date of the hearing on May 14, 2015.
 - d. District Office Inspection Reports made on October 11, 2012 and December 4, 2014 demonstrated that Well Nos. 2B and 2M were both open to atmosphere and inactive.
 - e. Well Nos. 2B and 2M were inactive from at least October 11, 2012 through at least December 4, 2012, a period of approximately two years and two months.
10. V S Oil Company transferred Well Nos. 2B and 2M on the Mason (16922) Lease to LC Operating, LLC (Operator No. 491548) effective May 29, 2015. VS is still the operator of the Mason (16922) Lease, Well No. 4. LC Operating, LLC operates Well Nos. 2B and 2M under Lease ID No. 33223.

11. An affidavit by Clay Woodul, 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.”
12. Commission records indicate Well Nos. 2B and 2M on the Mason (16922) Lease were permitted as injection wells under Commission Permit No. 09250. Permit No. 09250 requires a mechanical integrity test be performed on each well every five years.
 - a. The last MIT test conducted on Well No. 2B on the Mason (16922) Lease was on April 13, 1998.
 - b. The last MIT test conducted on Well No. 2M on the Mason (16922) Lease was on January 3, 1997.
 - c. Well No. 2B on the Mason (16922) Lease has been out of compliance since April 13, 2003 to at least the date of the hearing on May 14, 2015, in violation of Statewide Rule 46(j), for a period of time of approximately ten years and ten months.
 - d. Well No. 2M on the Mason (16922) Lease has been out of compliance since January 4, 2002 to at least the date of the hearing on May 14, 2015, in violation of Statewide Rule 46(j), a period of approximately thirteen years and three months.
13. An affidavit by Clay Woodul, 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.”
14. Commission District Office Inspection Reports made on October 11, 2012 and December 4, 2014, and reports filed with the Commission reflecting zero production, or the absence of production reports filed with the Commission, demonstrate 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. The documented time out of compliance, from October 11, 2012 through December 4, 2014, is for a period of approximately two years and 2 months.
15. The Wagoner -E- (04988) Lease, Well Nos. 1, 2, 7, and 20 are secondary recovery injection wells permitted under the authority of Statewide Rule 46. District Office inspection reports made on October 11, 2012 and December 4, 2014, show the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7, and 20 were inactive.

- a. Well No. 1 was equipped with rods and tubing, but was open to the atmosphere. The last injection activity in Well No. 1 was May 1998.
 - b. Well Nos. 2, 7, and 20 were equipped to inject. The last injection activity in Well Nos. 2, 7, and 20 was May 2004.
 - c. Well No. 20 was open to atmosphere.
 - d. Well Nos. 1, 2, 7, and 20 have been inactive for a period greater than one year. The documented time out of compliance is for a period of approximately two years and 2 months, a violation of Statewide Rule 14(b)(2).
16. V S Oil Company is the operator of the wells on the W.T. Waggoner "TB" (13395) Lease. Commission District Office Inspection Reports made on October 11, 2012, and December 4, 2014 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.
- a. The District Office Inspection Reports found Well Nos. 568 and 570 open to atmosphere.
 - b. 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.
 - c. The documented time out of compliance for Well Nos. 568 and 570 on the W.T. Waggoner "TB" (13395) lease is for a period of approximately two years and 2 months.
17. Statewide Rule 46(j) requires that each injection well shall be pressure-tested at least once every five years. Well Nos. 1, 2, 7, and 20 on the Waggoner -E- (04988) Lease were permitted as injection wells. No required H-5 tests for the subject wells were filed with the Commission within the required time frame for the subject wells.
- a. Commission District Office Inspection Reports made on October 11, 2012 and December 4, 2014, indicate that the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7, and 20 were inactive and that the wells were open to atmosphere.
 - b. Permit No. 08491, 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. Well No. 1 was in compliance from May 17, 2000 through May 17, 2005. The well has been out of compliance from May 17, 2005 through the date of the hearing on May 14, 2015. V S has been the operator of the well since July, 2008. Under V S, Well No. 1 has been out of compliance from July, 2008 (the date of P-4 transfer into V S) through

the date of the hearing on May 14, 2015, a period of approximately seven years.

- c. Permit No. 08044, dated December 10, 1979, requires Well No. 2 to have a mechanical integrity test annually; the last test occurred April 13, 1998. Under V S, Well No. 2 has been out of compliance from July, 2008 through the date of the hearing on May 14, 2015, a period of approximately seven years.
 - d. Permit No. 02710, dated December 21, 1979, requires Well Nos. 7 and 20 to have a mechanical integrity test every five years. The last test on Well No. 7 occurred on September 26, 1997. Well No. 7 has been out of compliance under V S since July, 2008 through the date of the hearing, a period of approximately seven years. The last test for Well No. 20 occurred April 13, 1998. Well No. 20 has been out of compliance under V S since July, 2008 through the date of the hearing on May 14, 2015, a period of approximately seven years.
18. 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).
 19. 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).
 20. Pursuant to calculations by the District Office personnel, the total estimated cost to the State for plugging the W.T. Waggoner "TB" (13395) Lease, Well Nos. 568 and 570 is \$7,400.00 (\$3,700 for each well).
 21. The violations involved in these dockets were violations of Commission rules related to safety and the prevention or control of pollution.
 22. 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.

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 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, until P-4 transfer of the wells with an effective date of May 29, 2015 to LC Operating, LLC. V S remains the operator of the Mason (16922) Lease, Well No. 4.
4. V S Oil Company 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; 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 Oil Company had the primary responsibility for complying with Statewide Rules 14(b)(2) and 46(j) [Tex. R.R. Comm’n., 16 TEX. ADMIN. CODE §§ 3.14(b)(2) 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.
6. V S Oil Company 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 Mason (16922) Lease, Well Nos. 2B and 2M from at least October 11, 2012 through December 4, 2014, a period of approximately two years and two months.
7. V S Oil Company 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. 4, 5, 6, 8, 11, 13, 16, 17, 18, and 19 from at least October 11, 2012 through at least December 4, 2014, a period of approximately two years and two months.
8. V S Oil Company 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, 7 and 20 from at least October 11, 2012 through at least December 4, 2014, a period of approximately two years and two months.
9. V S Oil Company 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 W.T. Waggoner “TB” (13395) Lease, Well Nos. 568 and 570 from at least October 11, 2012 through at least December 4, 2014, a period of approximately two years and two months.
10. V S Oil Company 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 Mason (16922) Lease, Well Nos. 2B and 2M. Well No. 2B was out of compliance from April 13, 2003 to at least the date of the hearing on May 14, 2015, for a period of approximately ten years and ten months.
11. V S Oil Company 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 Mason (16922) Lease, Well Nos. 2B and 2M. Well No. 2m was out of compliance from January 4, 2002 through at least the date of the hearing on May 14, 2015, for a period of approximately thirteen years and three months.
 12. V S Oil Company 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 on the Waggoner -E- (04988) Lease, Well Nos. 1, 2, 7 and 20.
 - a. Well No. 1 has been out of compliance from July 2008 through the date of the hearing on May 14, 2015, a period of approximately seven years.
 - b. Well No. 2 has been out of compliance from July, 2008 through at least the date of the hearing on May 14, 2015, a period of approximately seven years.
 - c. Well Nos. 7 and 20 have been out of compliance from July 8, 2008 through at least the date of the hearing on May 14, 2015, a period of seven years.
 13. V S Oil Company 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) and 46(j).
 14. The documented violations committed by V S Oil Company 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.
 15. As officer of V S Oil Company 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 ALJ recommends that the Commission adopt the attached Final Orders providing:

1. In Oil & Gas Docket No. 09-0294017, that V S Oil Company shall be assessed an administrative penalty of \$8,000 for time out of compliance with Statewide Rules 14(b)(2) and 46(j) on the Mason (16922) Lease, Well Nos. 2B and 2M, Wichita County Regular Field, Wichita County, Texas;
2. In Oil & Gas Docket No. 09-0294012, 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. In Oil & Gas Docket No. 09-0294012, that V S Oil Company be assessed an administrative penalty of \$40,000.00 for sixteen Statewide Rule 14(b)(2) violations at \$2,000 each and four Statewide Rule 46(j) violations at \$2,000 each.
4. 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,



Marshall Enquist, ALJ