

RAILROAD COMMISSION OF TEXAS  
OFFICE OF GENERAL COUNSEL  
HEARINGS SECTION

**OIL AND GAS DOCKET NO. 09-0253790**

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**ENFORCEMENT ACTION FOR ALLEGED VIOLATIONS COMMITTED BY MCCALLUM, DONALD D., SOLE PROPRIETOR (538761), AS TO THE FLUSCHE -A- (18471) LEASE, WELL NO. 2, WICHITA COUNTY REGULAR FIELD, WICHITA COUNTY, TEXAS**

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**FINAL ORDER**

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiner on January 3, 2008, and that the respondent, McCallum, Donald D., Sole Proprietor (538761), failed to appear or respond to the Notice of Opportunity for Hearing. Pursuant to § 1.49 of the Commission's General Rules of Practice and Procedure [Tex. R. R. Comm'n, 16 TEX. ADMIN. CODE § 1.49] and after being duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas, the Commission makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. McCallum, Donald D., Sole Proprietor (538761), ("Respondent") was given Notice of Opportunity for Hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report, which was signed and returned to the Commission.
2. The returned certified receipt (green card) that was attached to the Original Complaint and the Notice of Opportunity for Hearing mailed to Respondent's most recent P-5 address was signed and returned to the Commission on November 5, 2007. The certified receipt has been on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. Donald D. McCallum, as sole proprietor, was a person in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.
4. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
5. Respondent designated itself to the Commission as the operator of Well No. 2 on the Flusche -A- (18471) Lease ("subject well"/"subject lease") by filing a Form P-4 (Producers Transportation of Authority and Certificate of Compliance) with the Commission effective on May 1, 2002.
6. According to Commission records the Respondent's Form P-5 (Organization Report) is active. Respondent has \$50,000.00 cash as its financial assurance.
7. Commission District inspections were conducted on March 7, 2007, May 29, 2007, June 25,

2007, July 9, 2007 and August 6, 2007 for the Flusche -A- (18471) Lease. Respondent had two open workover pits, one at the storage facility and one at Well No. 2.

8. Unfilled pits constitute a hazard to public health and safety because of the potential for illegal dumping in the pits and the potential for surface run-off to collect in the pit and seep into subsurface waters.
9. A Commission District inspection conducted on November 29, 2007, indicated that Respondent had backfilled and placed the Flusche -A- (18471) Lease in compliance.
10. The Respondent did not demonstrate good faith since it failed to place the subject lease in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.

### **CONCLUSIONS OF LAW**

1. Proper notice was issued by the Railroad Commission to respondent and to all other appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Respondent was in violation of Commission Statewide Rule 8(d)(4)(G)(i)(III).
4. Respondent was responsible for maintaining the subject lease in compliance with Statewide Rule 8(d)(4)(G)(i)(III), which requires workover pits to be dewatered, filled and compacted within 120 days from completion of workover operations.
5. Respondent was responsible for maintaining the subject lease in compliance with all applicable Commission rules according to Statewide Rules 14, 58, and 79 and Chapters 89 and 91 of the Texas Natural Resources Code.
6. The documented violations committed by the respondent constitute acts deemed serious, a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).
  
7. As a person in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, Donald D. McCallum, and any other organization in which he may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resource Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or until the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and

all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed, whichever is earlier.

**IT IS ORDERED THAT** within 30 days from the day immediately following the date this order becomes final:

1. McCallum, Donald D., Sole Proprietor (538761), shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)**.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Noncompliance with the provisions of this order is subject to enforcement by the Attorney General and subject to civil penalties of up to \$10,000.00 per day per violation.

Done this 24th day of April 2008.

**RAILROAD COMMISSION OF TEXAS**

(Signatures affixed by Default Master Order dated April 24, 2008)

ME/sa