

October 10, 2006

OIL AND GAS DOCKET NO. 03-0241675

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**ENFORCEMENT ACTION AGAINST SHOREHAM OIL & GAS COMPANY, INC. (OPERATOR NO. 778499) FOR VIOLATIONS OF STATEWIDE RULES ON THE STATE TRACT 288 LEASE, REDFISH REEF, SW (VICKSBURG) FIELD, CHAMBERS COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR THE RRC:**

Reese Copeland	Attorney, Enforcement Section
Sheila Weigand	Programs Specialist

**FOR RESPONDENT:**

Thomas Sieh	President, Shoreham Oil & Gas Company, Inc.
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**OBSERVER:**

Jim Irwin	General Land Office
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**AMENDED PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>COMPLAINT FILED:</b>	January 28, 2005
<b>CORRECTED NOTICE OF HEARING:</b>	April 17, 2006
<b>DATE CASE HEARD:</b>	June 1, 2006
<b>HEARING CLOSED:</b>	June 26, 2006
<b>PFD PREPARED BY:</b>	Marshall Enquist, Hearings Examiner Thomas H. Richter, Technical Examiner
<b>AMENDED PFD CIRCULATION DATE:</b>	October 10, 2006
<b>CURRENT STATUS:</b>	Contested

**STATEMENT OF THE CASE**

This is an Enforcement action against Shoreham Oil & Gas Company, Inc. ("Shoreham") for an alleged violation of Statewide Rule 8(d)(1). A hearing in this docket was scheduled to be held June 1, 2006, but was rescheduled for May 4, 2006. Notice of the new hearing date was given to Shoreham and a signed green card was returned to the Commission indicating receipt of the notice

by Shoreham. Shoreham did not appear at that hearing and it proceeded as a default case. However, prior to issuance of a Default Order, Shoreham, by letter dated May 23, 2004, insisted on its “day in court” and stated it would appear to present its case on the previously scheduled hearing date of June 1. The hearing went forward as a contested case on June 1.

Thomas Sieh, President of Shoreham, appeared at the hearing and represented his company. Reese Copeland, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section (“Enforcement”).

The hearing was held open until June 15, 2006 in order for both parties to late-file exhibits. Upon the request of Enforcement, an extension of time in which to late-file was granted, extending the due date to June 26, 2006.

#### AUTHORITY

Statewide Rule 8(d)(1) requires persons disposing of oil and gas wastes by any method to have a permit to do so. Oil and gas wastes are defined in Statewide Rule 8(a)(26) as those generated in connection with activities associated with the exploration, development and production of oil or gas. These wastes are defined to include saltwater. “To dispose” is defined in Statewide Rule 8(a)(24) to include “conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming or allowing to seep, or cause or allow any such acts of disposal.”

#### ENFORCEMENT’S POSITION

Shoreham became responsible for the captioned lease, and its Well No. 1, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective April 30, 1996, with an approved date of May 22, 1996. The last Commission Form P-5 Organization Report filed by Shoreham Oil & Gas Company, Inc. was filed on July 8, 2004. The officers in the company were listed as Thomas W. Sieh, President; Melissa Sieh, Secretary and Nancy J. Sieh, Vice-President.

A Commission District Office inspection, conducted on November 1, 2004, found that produced saltwater was being discharged from Respondent’s liquids platform into Galveston Bay. The discharge was from a 4" pipe directly into Galveston Bay and a chloride field test indicated the discharge contained 75,000 ppm chlorides. Respondent did not have a permit for said discharge, nor was the discharge authorized under Statewide Rule 8(d)(3) or under Statewide Rules 9, 46 or 98.

Shoreham did have an EPA permit to discharge saltwater into Galveston Bay after it acquired the subject lease and well in 1996, but this permit expired in 1999 (to the best of Mr. Sieh’s recollection) and could not be renewed. Enforcement’s Exhibit # 2, a spreadsheet, showed daily production from the State Tract 288 Well No. 1 over a period of months from January, 2004 through January 2005, exclusive of the month of October, 2004. Enforcement requested that Shoreham late-file a copy of the October, 2004 spreadsheet to complete the record. Shoreham stated that its records

are in the hands of various attorneys involved in different aspects of litigation surrounding the State Tract 288 lease and well, but agreed to attempt to locate the missing spreadsheet and late-file it. The missing spreadsheet was never submitted.

The spreadsheet not only recorded the production of gas and condensate, but also the production of water. As an example, the spreadsheet for the month of August generally shows production of 450 to 490 barrels of produced water per day. Enforcement elicited testimony from Shoreham that it piped this water to its onshore facility where it was loaded onto tank trucks and taken to disposal wells. Enforcement further elicited testimony from Shoreham that the cost to haul the saltwater varied from \$1 to \$2 per barrel, depending on which hauler was used.

Enforcement asked Shoreham if it still had the tickets from the salt water haulers showing the amounts taken, which could be compared to the amounts produced to see if there was a rough equivalence in the figures. Enforcement suggested that the high cost of salt water disposal may have motivated Shoreham to attempt illegal disposal directly into Galveston Bay, and that a discrepancy between the amount of salt water produced daily from the subject well and the amount hauled away from Shoreham's onshore facility would indicate whether or not Shoreham had been dumping salt water into the bay over a period of time. Shoreham stated that it would try to locate the salt water hauling tickets, but might have difficulty doing so as many of its records were in the hands of various attorneys handling different aspects of litigation that Shoreham is currently involved in. Shoreham stated that some of its records were in the hands of an attorney who no longer represented Shoreham, but had not yet returned the case file. Enforcement asked Shoreham if it would make an effort to find the salt water hauling tickets and late-file them. Shoreham agreed to make the attempt, and late-file the salt water hauling tickets if it could find them. However, Shoreham did not submit any late-filed exhibits.

The respondent has no previous history of violations of Commission rules. Enforcement requests an administrative penalty of \$16,000, consisting of one violation of Statewide Rule 8(d)(1) at \$3,000, with an enhancement of \$5,000 for actual pollution of Galveston Bay, raising the penalty to \$8,000, and then doubling that amount to \$16,000 because the conduct was reckless<sup>1</sup>.

#### **SHOREHAM'S POSITION**

Shoreham does not contest the fact that a 4" line was found dumping saltwater into Galveston Bay from the liquids platform of its State Tract 288, Well No. 1. Instead, Shoreham argues that this problem was caused by the deliberate acts of outside parties motivated to tarnish Shoreham's reputation, make its existence a "living hell" and facilitate transfer of State Tract 288 Well No. 1 to a particular operator.

Shoreham was involved in a dispute over underpaid royalty with its Lessor, the Texas

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<sup>1</sup> Commission penalty guidelines recommend an administrative penalty of from \$500 to \$6,000 for a violation of Statewide Rule 8(d)(1). An enhancement is recommended ranging from \$5,000 to \$25,000 for pollution, whether threatened or actual, of Bay, Estuary or Marine Habitat. The penalty guidelines regarding severity of the violation contemplate doubling the total penalty for the "Reckless Conduct of the Operator".

General Land Office (“GLO”), just prior to the time of the subject complaint. Shoreham was in negotiations with another operator, Layton Energy (“Layton”), to take over the well and operations. The negotiations failed as of October 1, 2004 and the GLO terminated Shoreham’s lease as of October 8, 2004. Shoreham contends that it was told by the GLO that the lease could be reinstated if it would transfer the lease to Layton.

John Cantu, an employee of the GLO and a paid consultant to Layton, visited the platform on October 25, 2004. At that time, Mr. Cantu photographed at least three separate discharges of produced water from open valves and lines on the Shoreham liquids platform<sup>2</sup>. Shoreham asserts that Mr. Cantu opened the valves in order to create a violation that would facilitate the transfer of the State Tract 288 lease to his client, Layton. Shoreham presented several documents establishing the relationship between Mr. Cantu and Layton, including a GLO form confirming Mr. Cantu’s outside employment, a check reflecting payment from Layton to Cantu, excerpts from deposition testimony of Mr. Cantu and Mr. Layton, and a letter from Mr. Cantu to the General Counsel of the GLO announcing his resignation due to an investigation into his non-GLO employment<sup>3</sup>.

Shoreham showed that photographs taken by Mr. Cantu of the salt water discharges on the State Tract 288 liquids platform were sent by email attachment from the GLO to the RRC Houston District Office on October 29, 2004. This resulted in the RRC inspection on November 1, 2004 that found the discharge that is the subject of the hearing.

In summary, Shoreham does not dispute the fact that there was a discharge of produced water from its platform into Galveston Bay. However, Shoreham asserts that this was a one time occurrence under suspicious circumstances. Shoreham notes that it was the operator of the subject lease and well from 1996 through 2004 and that no unpermitted discharges occurred during that time. Shoreham further states that its employees immediately corrected the problem upon notification by closing the relevant valve and placing a lock on it. Shoreham reiterated its position that the discharge was the deliberate act of third parties not associated with Shoreham, committed with the intent of causing Shoreham harm.

### EXAMINERS’ OPINION

Shoreham does not deny that the discharge of produced water from its platform into Galveston Bay occurred. Shoreham’s disputed exhibits have been admitted into the record. Shoreham’s exhibits provide some circumstantial evidence in support of its claim that it was victimized, but there is no direct evidence as to whether Shoreham, Cantu, or some other third party

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<sup>2</sup> Two of the photographed discharges are from small pipe and valves attached to larger fittings. The openings are of unknown diameter, but appear to be between 3/4" and 1". Those discharges are roughly equivalent to that of a common garden hose on full stream. The third discharge is from a 4" water leg from a saltwater storage tank.

<sup>3</sup> At hearing, Shoreham (appearing *pro se*) offered several exhibits that were objected to by Enforcement on the basis of foundation and relevance. The offer of the exhibits was taken under advisement to be ruled on in the PFD. Shoreham Exhibits 3, 4, 5, 6, 7 and 8 are hereby admitted into the record.

opened the valves to release produced water from the tank into Galveston Bay.

Although Shoreham was given the chance to late-file exhibits, such as tickets from salt water haulers, that would have helped demonstrate that the volume of produced water from the subject well was equivalent to the amount hauled away from its onshore facility, Shoreham failed to late-file any such exhibits, nor did it file a letter explaining why it could not comply with the request for saltwater hauling records. Only one inspection found an ongoing discharge. The record is thus devoid of any evidence, provided either by Enforcement or Shoreham, proving or disproving that the produced water discharge from the State Tract 288 Well No. 1 liquids platform was a recurrent or longstanding method of disposal used by Shoreham.

The November 1, 2004 District Office inspection report documents the unpermitted discharge of produced water from State Tract 288 Well No. 1 into Galveston Bay. The District Office inspection states:

Boat ride-Masters Resources- 15 mile ride in Galveston Bay to State Tract 288-inspect platform for reported produced water being disposed directly into bay- found produced water coming out of 4" water leg flowing directly into bay from approx. 250 bbls fiberglass tank on top of platform-four inch steel line from water leg to bottom of platform in partially concealed open top and bottom 6" pipe that blocked view of flow of water at various angles-took samples of water on outlet side water leg-clean water-observed no sheen in sample jars-chloride field test showed water to be 75,000 ppm-water flow appears to be coming from Well #01-no legible signs-laying upside down on top of platform-left side.

Two of the three discharging lines reported by the GLO are not mentioned in the inspection report. It is unlikely that the District Office inspector would have missed those open lines. Unfortunately, the record is silent as to events on the Shoreham liquids platform between October 25 and November 1, 2004.

Commission policy regarding Statewide Rule 8 violations is one of strict liability. The unpermitted discharge from the 4" water leg of the salt water storage tank on the State Tract 288 Lease was a violation of Commission Statewide Rule 8(d)(1). The examiners recommend that Shoreham be required to pay an administrative penalty of \$3,000 for the violation of Statewide Rule 8(d)(1) and that the penalty amount be enhanced by \$5,000 because the discharge was directly into Galveston Bay. The examiners also recommend that the officers of Shoreham at the time of the violation, Thomas W. Sieh, President; Melissa Sieh, Secretary; and Nancy J. Sieh, Vice-President, be made subject to the provisions of Texas Natural Resources Code §91.114(a)(2).

There is insufficient evidence in the record to support doubling the administrative penalty for reckless conduct. "Recklessly" is defined as follows; "A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation." (emphasis added) Black's Law Dictionary, Sixth Edition, 1990. The single District Office inspection in the record supports the finding of a Statewide Rule 8(d)(1) violation, but does not establish a pattern of conduct. There is also no showing that Shoreham deviated from the normal standard of conduct for operators of bay wells in

configuring, supervising or securing its platform. It has not been established by a preponderance of the evidence who opened the valves and caused this discharge and there is no evidence in the record of previous discharges from this platform. It is undisputed that Shoreham stopped this discharge immediately after it was notified of the problem by the District Office. The examiners cannot conclude that Shoreham's actions have been shown to be reckless.

Based on the record in this docket, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Respondent Shoreham Oil & Gas Company, Inc. ("Shoreham") was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Shoreham appeared through its President, Thomas Sieh, and presented evidence at the hearing.
2. The most recent Organization Report renewal for Shoreham was filed on July 8, 2004. of The officers of Shoreham were identified as Thomas Sieh, President; Melissa Sieh, Secretary; and Nancy J. Sieh, Vice-President.
3. Shoreham was recognized as the operator of State Tract 288, Well No. 1("subject lease" and/or "subject well") after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was approved by the Commission on May 22, 1996 and effective April 30, 1996.
4. On October 25, 2004, the Texas General Land Office ("GLO"), lessor of State Tract 288, through its employee John Cantu, visited the platform of the subject well and photographed several leaks and discharges occurring on the platform. In particular, a 4" line from a salt water storage tank was observed to be flowing produced water directly into Galveston Bay.
5. On October 29, 2004, the GLO notified the Houston District Office (RRC District 3) of violations on the liquids platform of State Tract 288 Well No. 1, resulting in the RRC District 3 Office dispatching an inspector to the site.
6. A District Office inspection conducted on November 1, 2004 documented produced water being discharged through a 4" line from the respondent's liquids platform into Galveston Bay.
7. Shoreham did not have a permit for the discharge of produced water into Galveston Bay, nor was the discharge authorized under Statewide Rule 8(d)(3) or 8(e), or under Statewide Rules 9, 46 or 98.
8. Thomas Sieh, as President; Melissa Sieh, as Secretary, and Nancy J. Sieh, as Vice-President of Shoreham Oil & Gas Company, Inc. (Operator # 778499), were in a position of ownership and control of Shoreham at the time of Shoreham's unpermitted discharge of salt water into

Galveston Bay.

9. Shoreham corrected the problem and stopped the discharge immediately after being notified of the discharge by the District Office.

#### **CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Shoreham Oil & Gas Company, Inc. ("Shoreham") was the operator of Well No. 1 (RRC ID# 148811), State Tract 288, Galveston County, as shown by a P-4 in Shoreham's name approved by the Commission on May 22, 1996 and effective April 30, 1996, at the time of the documented violation on November 1, 2004.
4. Shoreham had the primary responsibility for complying with Commission Statewide Rule 8, as well as other applicable statutes and Commission rules relating to the State Tract 288 Lease, Well No. 1.
5. Shoreham Oil & Gas Company, Inc. violated Statewide Rule 8(d)(1) on State Tract 288, Well No. 1.
6. The violation of Commission Statewide Rule 8 by Shoreham on State Tract 288, Well No. 1 is related to safety and the control of pollution.
7. As officers of Shoreham at the time of the violation of a Commission rule related to safety and the control of pollution, Thomas Sieh, President; Melissa Sieh, Secretary; and Nancy J. Sieh, Vice-President, and any other organization in which any of them may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resources Code 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 sooner, if the conditions that constituted the violation 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.
8. The documented violation committed by Respondent is a hazard to the public health and demonstrates a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).

#### **RECOMMENDATION**

The examiners recommend that the above findings of fact and conclusions of law be adopted and that Shoreham be assessed an administrative penalty of \$3,000 for one violation of Statewide

Rule 8(d)(1) with an enhancement of \$5,000 for the pollution of Bay Habitat, for a total administrative penalty of \$8,000.

The examiners also recommend that the officers of Shoreham Oil & Gas Company, Inc., consisting of Thomas W. Sieh, President, Melissa Sieh, Secretary; and Nancy J. Sieh, Vice-President, be made subject to the provisions of Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,

Marshall Enquist  
Hearings Examiner

Thomas H. Richter  
Technical Examiner