

September 30, 2008

OIL AND GAS DOCKET NO. 03-0252920

ENFORCEMENT ACTION AGAINST SHOREHAM OIL & GAS COMPANY, INC. (OPERATOR NO. 778499) FOR VIOLATIONS OF STATEWIDE RULES ON THE STATE TRACT 288 LEASE, WELL NO. 8 (RRC #112492), RED FISH REEF, SW. (F-11B) FIELD, CHAMBERS COUNTY; STATE TRACT 288 LEASE, WELL NO. 13 (RRC # 138413), RED FISH REEF, SW. (F-11B) FIELD, CHAMBERS COUNTY; AND STATE TRACT 288 (21644) LEASE, WELL NO. 12, RED FISH REEF, SW.(F-15-D SD.) FIELD, CHAMBERS COUNTY, TEXAS.

APPEARANCES:

FOR THE RRC:

Reese Copeland

Attorney, Enforcement Section

For Respondent:

Thomas W. Sieh

President, Shoreham Oil & Gas Company, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	August 7, 2007
NOTICE OF HEARING:	September 27, 2007
DATE CASE HEARD:	November 8, 2007
HEARING CLOSED:	November 8, 2007
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
CURRENT STATUS:	Contested
PFD CIRCULATION DATE:	August 28, 2008
PFD RE-CIRCULATION DATE:	September 30, 2008

STATEMENT OF THE CASE

This is an Enforcement action against Shoreham Oil & Gas Company, Inc. ("Shoreham") for alleged violations of Statewide Rules 3(2), 14(b)(2) and 14(b)(3). Thomas W. 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”).

AUTHORITY

Statewide Rule 3 [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.3] 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), [Tex. R.R. Comm’n, TEX. ADMIN. CODE §3.3(1)], requires the posting of such a sign at the principal entrance of the property, which must show the name of the property as carried on the records of the Commission, the name of the operator and the number of acres in the property. Statewide Rule 3(2), [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.3(2)], requires the posting of such sign at each well site, which must show the name of the property, the name of the operator and the well number. Statewide Rule 3(3) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.3(3)], requires the posting of such a sign or painted identification at each tank battery, satellite tank or approved crude oil measuring facility where tanks are not utilized, which must show the name of the property as carried on the records of the Commission, the name of the operator, the number of acres in the property, the Commission lease number for the formation from which the oil or gas is produced, and if applicable, the number of the Commission permit which authorizes commingling of the well.

Statewide Rule 14(b)(2) [16 Tex. Admin. Code §3.14] requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2).

Statewide Rule 14(b)(3) [16 Tex. Admin. Code §3.14] requires the operator of any well more than 25 years old that becomes inactive and subject to the provisions of this subsection or the operator of any well for which a plugging extension is sought under the terms of subparagraph (A) of paragraph (2) of this subsection to plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

ENFORCEMENT’S POSITION

Shoreham became responsible for the State Tract 288 Lease, Well No. 8 (RRC ID# 112492) by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective April 30, 1996, approved May 22, 1996. Shoreham became responsible for the State Tract 288 Lease, Well No. 13 (RRC ID# 138413) by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective April 30, 1996, approved May 22, 1996. Shoreham became responsible for the State Tract 288 (21644) Lease, Well No. 12 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective April 30, 1996, approved May 21, 1996.

Statewide Rule 3

A Commission District Office inspection report made on July 12, 2007 for the State Tract 288 Lease, Well No. 8 (RRC ID# 112492) showed that the sign or identification required by Statewide Rule 3(2) to be posted at the well was missing.

A Commission District Office inspection report made on July 12, 2007 for the State Tract 288 Lease, Well No. 13 (RRC ID# 138413) showed that the sign or identification required by Statewide Rule 3(2) to be posted at the well was missing.

A Commission District Office inspection report made on July 12, 2007 for the State Tract 288 (21644) Lease, Well No. 12, showed that the sign or identification required by Statewide Rule 3(2) to be posted at the well was missing.

By failing to maintain legible signs or identification as required, Shoreham has violated Statewide Rule 3. These violations are serious and threaten the public health and safety. In the event of a pollution or safety violation or other emergency, the lack of legible signs and identification displaying correct information may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency. Such confusion will cause delays in containing and remediating the violation or emergency.

Statewide Rule 14(b)(2)

A Commission District Office inspection report made on July 12, 2007, and no reports filed by Respondent with the Commission since April, 1996, showed that the State Tract 288 Lease, Well No. 8 (RRC ID# 112492) has been inactive for a period greater than one year. Production from the well ceased on or before 1993.

A Commission District Office inspection report made on July 12, 2007, and reports filed by Respondent with the Commission (reflecting zero production) since April, 1998, showed that the State Tract 288 Lease, Well No. 13 (RRC ID# 138413) has been inactive for a period greater than one year. Production from the well ceased on or before April, 1998.

A Commission District Office inspection report made on July 12, 2007, and reports filed by Respondent with the Commission (reflecting zero production) since June, 2005, showed that the State Tract 288 (21644) Lease, Well No. 12 has been inactive for a period greater than one year. Production from the well ceased on or before June, 2005.

No workovers, re-entries, or subsequent operations have taken place on any of the subject wells in this complaint within the last 12 months; none of the subject wells have been plugged; and 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, Shoreham has violated Statewide Rule 14(b)(2).

Shoreham's violation of Statewide Rule 14(B)(2) is serious and threatens the public health and safety. Unplugged wellbores have the potential to cause pollution of usable quality ground water and surface water, as defined in Statewide Rule 8(a)(28), 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.

Pursuant to calculations by Commission District Office personnel, the total estimated cost to the State for plugging the State Tract 288 Lease, Well No. 8 (RRC ID# 112492) is \$100,000; for the State Tract 288 Lease, Well No. 13 (RRC ID# 138413) the estimated plugging cost is \$100,000; and for State Tract 228 (21644) Lease, Well No. 12, the estimated plugging cost is \$100,000.

Statewide Rule 14(b)(3)

Commission records indicate no Form H-15 (Test on an Inactive Well More Than 25 Years Old) has been filed and approved for the State Tract 288 Lease, Well No. 8 (RRC ID# 112492). Commission records show that the State Tract 288 Lease, Well No. 8 was completed in June, 1959, that an H-15 test was due in May, 2005, and that the well has not been plugged.

Commission records indicate no Form H-15 (Test on an Inactive Well More Than 25 Years Old) has been filed and approved for the State Tract 288 Lease, Well No. 13 (RRC ID# 138413). Commission records show that the State Tract 288 Lease, Well No. 8, was completed in June 1959, that an H-15 test was due in May, 2005, and that the well has not been plugged.

Commission records indicate no Form H-15 (Test on an Inactive Well More Than 25 years Old) has been filed and approved for the State Tract 288 (21644) Lease, Well No. 12. Commission records show that the State Tract 288 (21644) Lease, Well No. 12 was completed on June 16, 1980, that an H-15 test was due in May, 2006, and that the well has not been plugged.

By failing to test and file the required H-15 test results with the Commission, or plug the subject wells, Shoreham violated Statewide Rule 14(b)(3). Shoreham's violations of Statewide Rule 14(b)(3) are serious and a hazard to the public health and safety because wells over 25 years old may develop holes or leaks in the casing, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface.

Prior Dockets

Shoreham has the following prior violations of Commission rules: Oil & Gas Docket No. 01-0249370, Final Order entered May 30, 2007 and a \$4,000 penalty assessed; Oil & Gas Docket No. 03-0241675, Final Order entered November 14, 2006 and a \$16,000 penalty assessed. Under the current penalty guidelines, Enforcement requests an Enhancement of \$2,500.

Summary

Enforcement believes it has demonstrated Shoreham's violations of Statewide Rules 3,

14(b)(2) and 14(b)(3). Enforcement notes that Shoreham's P-5 is delinquent and that Shoreham is 639'd, meaning that under the provisions of Section 91.114(a)(2) of the Texas Natural Resources Code, the Commission is barred from accepting a new P-5 or issuing a P-4 Certificate of Compliance and Transportation Authority to Shoreham unless it complies with the Final Order in Docket No. 01-0249370. Shoreham has not complied with this Final Order. Therefore, there is no plugging extension in effect for any of the subject wells nor can Shoreham obtain a plugging extension for any of the wells.

At the time of the hearing, Shoreham presented evidence of a currently valid lease from the State of Texas regarding the State Tract 288 (21644) Lease, Well No. 12 (Oil & Gas Lease No. M-103729). Enforcement stated it would not seek a Plug-Only Order for that well.

Although Shoreham represented that it would like to restore the wells to production, Enforcement emphasizes that Shoreham is not in a position to conduct any operations on the wells because it has no current P-5 and no financial assurance. Because Shoreham is subject to §91.114(a)(2) of the Texas Natural Resources Code, it cannot obtain a P-5 from the Commission.

Shoreham has indicated waste will occur if the subject wells are plugged. Enforcement notes that Shoreham has not attempted to produce the hypothetical reserves in the subject wells and no other operator has taken over the wells to produce those reserves.

Enforcement requests that an Order be entered assessing Shoreham a penalty of \$39,250, consisting of three violations of Statewide Rule 3(2) at \$250 each; three violations of Statewide Rule 14(b)(2) at \$10,000 each for bay wells; three violations of Statewide Rule 14(b)(3) at \$2,000 each; and a \$2,500 enhancement for prior dockets. Enforcement further requests a Plug-Only Order for State Tract 288 Lease, Well No. 8 (RRC ID# 112492) and State Tract 288 Lease, Well No. 13 (RRC ID# 138413). Enforcement requests that Shoreham be Ordered to bring the State Tract 288 (21644) Lease, Well No. 12, into compliance with all Commission rules and regulations.

SHOREHAM'S POSITION

Shoreham has been an operator since 1985 and asserts that it has a good record. Shoreham would like to restore the subject wells to production or transfer them to another operator.

Shoreham states that its problems began when it was notified on October 8, 2004, by the General Land Office, that its lease on State Tract 288 (Mineral Lease M-039237) was forfeited. After that date, Shoreham was prohibited from any further operations on State Tract 288 and believes that this means it is not the operator responsible for the subject wells at the present time. In support of this, it cites Railroad Commission of Texas v. American Petrofina Co. of Texas, 576 S.W.2d 658 (Tex. Civ. App.-- Austin, 1978, no pet.). Shoreham interprets this case to mean that American Petrofina was found not to be the operator of a well because it did not maintain actual physical control over the operations of the well. Under this interpretation, Shoreham should not be held responsible for the subject wells because, after forfeiture of its lease, it did not maintain actual physical control over the operations of the subject wells.

According to Shoreham, the wells should not be plugged. Portions of State Tract 288, which contain all of the subject wells, are currently under lease to various operators and Shoreham notes that it currently holds a valid lease to State Tract 288 Well No. 12. Shoreham estimates that there are recoverable reserves behind-pipe in all three wells, which would be wasted if the wells were plugged. Shoreham estimates there are 125,000 mcf of recoverable gas in the State Tract 288 Well No. 8 with a value of \$625,000; 500,000 mcf of recoverable gas in the State Tract 288 Well No. 12 with a value of \$2,500,000; and 1,000,000 mcf of recoverable gas in the State Tract 288 Well No. 13 with a value of \$5,000,000. Shoreham believes it would be better if this gas was produced, so that tax revenue would be generated for the State of Texas and royalty paid to the General Land Office for the benefit of the schoolchildren of Texas.

Shoreham believes the RRC's estimate of a \$100,000 plugging cost for each well is overstated. Shoreham presented a bid by Suard Workover, Inc. dated August 31, 2004, that estimated the turnkey cost to plug State Tract 288 Well No. 8 at \$46,000. If the wells are ordered plugged, Shoreham suggests that Suard be given the job.

Shoreham also requests that the penalty amount in this docket be reduced to \$10,000. It would use the money saved to conduct H-15 tests on other wells held in Shoreham's name.

EXAMINERS' OPINION

A review of Commission P-4 Inquiry screens on the mainframe shows that as of August 7, 2008, Shoreham is still the Commission-recognized operator of the three subject wells. State Tract 288 Well No. 8 is sealed, State Tract 288 Well No. 13 is sealed and State Tract 288 (21644) Lease, Well No. 12 is severed.

Shoreham's reliance upon the American Petrofina case for its belief that Shoreham is no longer the responsible operator of the subject wells is misplaced. At the time that case was decided, and at the time Shoreham became the P-4 operator of the subject wells, the Commission defined "Operator" as "a person who is responsible for the physical operation and control of a well at the time the well is about to be abandoned or ceases operation." Tex. Nat. Res. Code Ann. §89.002(a)(2) (1978). Under the facts of the American Petrofina case, the court found that;

"At the time appellee acquired the Lentz lease, the well involved had long ceased producing and been abandoned by its operator. Appellee has never used this well, has no intention of doing so, and in fact did not even know it was on the Lentz lease at the time of the acquisition. It would strain the English language as well as the statute defining an operator to conclude that appellee is the operator of the well....We hold that appellee is not the operator of the well involved." Railroad Commission v. American Petrofina Company of Texas, 576 S.W. 2d, 658, 659 (Tex. Civ. App. - Austin, 1978, no pet.)

In that case, the court found that American Petrofina was not responsible for a well on a lease that it had taken because it had never used the well and did not even know the well was there. Shoreham filed P-4s for of all three subject wells in this case and specifically accepted responsibility for the subject wells by doing so. Shoreham actually operated at least two of the wells. American Petrofina

does not stand for the proposition that an operator is no longer responsible for the wells on leased land after the contractual lease terminates.

Shoreham's estimates of recoverable reserves behind pipe in the subject wells are speculative and unsupported by any engineering calculations. Enforcement's observation that neither Shoreham nor any other operator has tried to produce these hypothetical reserves is well taken.

Among the evidence offered by Shoreham is the October 8, 2004 letter from the General Land Office notifying Shoreham that its Mineral Lease M-039237 on State Tract 288 was forfeited. The letter states the forfeiture was due to the fact that Shoreham had not paid any royalty on oil and gas production from State Tract 288 since 1996. This contradicts Shoreham's assertion that it is a good operator. It also indicates Shoreham's concerns that any behind-pipe reserves be produced to generate royalty for the benefit of the school children of Texas are disingenuous.

The examiner agrees with Enforcement's recommended penalties, including the Enhancement, and the requirement that Shoreham plug Well Nos. 8 and 13 on State Tract 288 and place Well No. 12 on the State Tract 288 (21644) Lease in compliance with Commission rules. Based on the record in this docket, the examiner recommends 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 W. Sieh, and presented evidence at the hearing.
2. The most recent Organization Report renewal for Shoreham was filed on July 8, 2004. Thomas W. Sieh was identified as the President of Shoreham. The P-5 Organization Report of Shoreham Oil & Gas Company is currently delinquent.
3. Shoreham was recognized as the operator of State Tract 288, Well No. 8 (RRC ID# 112492) 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. Shoreham was recognized as the operator of State Tract 288, Well No. 13 (RRC ID# 138413) 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.
5. Shoreham was recognized as the operator of State Tract 288 (21644) Lease, Well No. 12 after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was approved by the Commission on May 21, 1996 and effective April 30,

1996.

6. A Commission District Office inspection made on July 12, 2007 on State Tract 288, Well No. 8 (RRC ID# 112492); State Tract 288 Well No. 13 (RRC ID# 138413) and State Tract 288 (21644) Lease, Well No. 12, showed that the signs or identifications required by Statewide Rule 3(2) to be posted at the wells were missing.
7. A Commission District Office inspection made on July 12, 2007, and reports filed by Respondent with the Commission (reflecting zero production) since April, 1996, showed that the State Tract 288 Lease, Well No. 8 (RRC ID# 112492) has been inactive for a period greater than one year. Production from the well ceased on or before 1993.
8. A Commission District Office inspection report made on July 12, 2007, and reports filed by Respondent with the Commission (reflecting zero production) since April, 1998, showed that the State Tract 288 Lease, Well No. 13 (RRC ID# 138413) has been inactive for a period greater than one year. Production from the well ceased on or before April, 1998.
9. A Commission District Office inspection report made on July 12, 2007, and reports filed by Respondent with the Commission (reflecting zero production) since June 2005, showed that the State Tract 288 (21644) Lease, Well No. 12 has been inactive for a period greater than one year. Production from the well ceased on or before June 2005.
10. Commission records indicate no Form H-15 (Test on an Inactive Well More Than 25 Years Old) has been filed and approved for the State Tract 288 Lease, Well No. 8 (RRC ID# 112492).
 - a. The State Tract 288 Lease, Well No. 8 was completed in June 1959.
 - b. An H-15 test was due for the State Tract 288 Lease, Well No. 8 in May, 2005.
 - c. The State Tract 288 Lease, Well No. 8 has not been plugged.
11. Commission records indicate no Form H-15 (Test on an Inactive Well More Than 25 Years Old) has been filed and approved for the State Tract 288 Lease, Well No. 13 (RRC ID# 138413).
 - a. The State Tract 288 Lease, Well No.13 was completed in June 1959.
 - b. An H-15 test was due for the State Tract 288 Lease, Well No. 13 in May, 2005.
 - c. The State Tract 288 lease, Well No. 13 has not been plugged.
12. Commission records indicate no Form H-15 (Test on an Inactive Well More Than 25 Years Old) has been filed and approved for the State Tract 288 (21644) Lease, Well No. 12.

- a. The State Tract 288 (21644) Lease, Well No. 12 was completed on June 16, 1980.
 - b. An H-15 test was due for the State Tract 288 (21644) Lease, Well No. 12 in May, 2006.
 - c. The State Tract 288 (21644) Lease, Well No. 12 has not been plugged.
13. Shoreham has the following prior violations of Commission rules: Oil & Gas Docket No. 01-0249370, Final Order entered May 30, 2007 and a \$4,000 penalty assessed; Oil & Gas Docket No. 03-0241675, Final Order entered November 14, 2006 and a \$16,000 penalty assessed.
 14. Violations of Statewide Rules 3 and 14 are serious and threaten the public health and safety.
 15. The estimated cost to the State of plugging the subject wells is \$300,000.

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. is the operator of the State Tract 288 Lease, Well No. 8 (RRC ID# 112492); the State Tract 288 Lease, Well No. 13 (RRC ID# 138413); and the State Tract 228 (21644) Lease, Well No. 12, and has the primary responsibility for complying with Commission rules.
4. Shoreham Oil & Gas Company, Inc. is in violation of Statewide Rule 3(2) on the State Tract 288 Lease, Well No. 8 (RRC ID# 112492); the State Tract 288 Lease, Well No. 13 (RRC ID# 138413); and the State Tract 228 (21644) Lease, Well No. 12.
5. Shoreham Oil & Gas Company, Inc. is in violation of Statewide Rule 14(b)(2) on the State Tract 288 Lease, Well No. 8 (RRC ID# 112492); the State Tract 288 Lease, Well No. 13 (RRC ID# 138413); and the State Tract 228 (21644) Lease, Well No. 12.
6. Shoreham Oil & Gas Company, Inc. is in violation of Statewide Rule 14(b)(3) on the State Tract 288 Lease, Well No. 8 (RRC ID# 112492); the State Tract 288 Lease, Well No. 13 (RRC ID# 138413); and the State Tract 228 (21644) Lease, Well No. 12.
7. The violations of Commission rules committed by Shoreham Oil & Gas Company, Inc. are related to safety and the control of pollution.
8. The documented violations committed by Respondent are a hazard to the public health and demonstrate a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings of fact and conclusions of law be adopted and that Shoreham Oil & Gas Company, Inc. (1) be required to plug the State Tract 288 Lease, Well No. 8 (RRC ID# 112492) and the State Tract 288 Lease, Well No. 13 (RRC ID# 138413); (2) be required to bring the State Tract 228 (21644) Lease, Well No. 12, into compliance with all Commission rules and regulations; and (3) be assessed an administrative penalty of \$39,250.00.

Respectfully submitted,

Marshall Enquist
Hearings Examiner