

December 18, 2008

OIL & GAS DOCKET NO. 7C-0253320

COMMISSION CALLED HEARING TO CONSIDER THE COMPLAINT OF BILL CHRANE THAT HE HAS BEEN IMPROPERLY IDENTIFIED AS THE PRESIDENT OF FOUR SWD, INC.

APPEARANCES:

FOR BILL CHRANE:

Barry Bishop
Bill Chrane
Pamela Rogers

Attorney

FOR THE RRC:

Reese Copeland

Attorney, Enforcement Section

AMENDED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:	August 28, 2007
DATE OF NOTICE OF HEARING:	September 11, 2007
DATE OF HEARING:	October 5, 2007
HEARD BY:	Marshall Enquist, Hearings Examiner
DATE RECORD CLOSED:	October 5, 2007
DATE ORIGINAL PFD CIRCULATED:	September 22, 2008
DATE RECORD RE-OPENED:	December 16, 2008
DATE AMENDED PFD CIRCULATED:	December 18, 2008

STATEMENT OF THE CASE

This hearing was called in response to the complaint of Bill Chrane (Complaint No. 2003-028) that he is improperly listed as an officer in Four SWD, Inc. (hereinafter "Four SWD") on the Form P-5 Organization Report of that company.

A hearing was held on October 5, 2007, at which time Bill Chrane appeared and presented evidence. Reese Copeland appeared representing the Enforcement Section of the RRC and cross-examined Mr. Chrane.

The examiner circulated a PFD on September 22, 2008. Counsel for Chrane filed its Motion to Re-Open, for the purpose of filing additional evidence, on October 1, 2008, which was granted.

BACKGROUND

On May 22, 2003, the Commission received the complaint of Bill Chrane that he was incorrectly listed as the President of Four SWD on its annual P-5 renewal, which was received at the Commission on March 27, 2003. Under Complaint File 2003-028, an inquiry was sent to Four SWD, Inc., which responded by letter dated July 21, 2003, received at the Commission on July 28, 2003. The response, on the letterhead of Four SWD and signed by Rebecca Perez, the new Secretary/Treasurer of Four SWD, stated in full:

Mr. Bill Chrane furnished a notice resigning his position as president of Four SWD, Inc. prior to the filing of the most recent Organization Report (annual P-5). At the time of filing due date, no response, vote of a new president or acceptance of resignation from other shareholders/officers had occurred. Therefore, I filed the P-5 in accordance with previous years done. Should you have any questions, please do not hesitate to contact me.

On July 31, 2003, a letter was sent to counsel for Bill Chrane and Four SWD, stating that the P-5 appeared to be accurate at the time of filing, and that Four SWD had made a good faith claim to have acted properly. The letter further advised that a final decision interpreting the parties' rights or obligations should be settled by agreement of the parties or a court of competent jurisdiction. The Complaint File was then closed.

On May 8, 2007, Barry Bishop, counsel for Bill Chrane, requested that the Commission set an appropriate proceeding to allow Mr. Chrane the opportunity to show that he is not President of Four SWD. Mr. Bishop noted that this is a matter of some urgency, as Bill Chrane has received notice from the Commission of Oil & Gas Docket No. 7C-0242134, an Enforcement action against Four SWD filed on March 9, 2005, almost two years after Mr. Chrane sought to disassociate himself from the company. The case is still pending. In the Enforcement case, Bill Chrane is listed as a responsible party as President of Four SWD.

APPLICABLE LAW

Under Statewide Rule 1(a)(4)(C), the Form P-5 Organization Report of an organization must contain the name of "...each officer, director, general partner, owner of more than 25% ownership interest, or trustee (hereinafter controlling entity) of the organization."

Under Texas Natural Resources Code §91.114, regardless of whether a person's name

appears or is required to appear on an organization report, the person holds a position of ownership or control in an organization if: (1) the person is an officer or director of the organization, a general partner of the organization, the owner of an organization which is a sole proprietorship, the owner of at least 25% beneficial interest in the organization, or a trustee of the organization; or (2) the person has been determined by a final judgment or final administrative order to have exerted actual control over the organization.

MATTERS OFFICIALLY NOTICED

The examiner has taken Official Notice of Four SWD's Form P-5 filings with the Commission from 1994 through 2004. The examiner has also taken Official Notice of Commission documents contained in Enforcement Docket No. 7C-0242134, the docket alluded to by counsel for Bill Chrane. The documents from the Enforcement file officially noticed are 1.) a January 1, 1994 Permit (P010526) granting Four SWD authority to use a lined collecting pit for its commercial disposal facility on the Yocham & Whitley Lease, 2.) an August 16, 2001 District Office inspection report noting excessive NORM¹ readings at the Yocham & Whitley Lease, 3.) a November 4, 2002 Commission letter to Four SWD informing it that an additional \$183,000 in financial security for closure costs must be provided for the Yocham & Whitley Lease in view of the NORM problem, 4.) a December 12, 2002 Commission letter requesting additional documentation of Four SWD's claim to have cleaned up all NORM waste, and 5.) a February 14, 2003 Commission letter advising Four SWD that no documentation had been received by the Commission regarding NORM cleanup and further advising that additional financial security in the amount of \$183,000 must be filed or Four SWD's pit permit would be cancelled and Enforcement proceedings initiated. The examiner has also taken Official Notice of Four SWD's most recent Form P-5 filing, received by the Commission on March 10, 2008.

ADDITIONAL EVIDENCE FILED IN THE RE-OPENED HEARING

By motion dated October 1, 2008, Counsel for Chrane requested the hearing be re-opened for the limited purpose of entering additional evidence. The motion was granted December 16, 2008.

The additional evidence consisted of an affidavit signed by Bill Chrane stating that he never owned 25% of the shares of Four SWD, Inc. and a set of IRS Forms purporting to show that Mr. Chrane had a 24.24242% interest in Four SWD, Inc. The affidavit and IRS forms were admitted into evidence as Chrane Exhibit 7.

DISCUSSION OF THE EVIDENCE

In a letter dated February 26, 2003, and sent by Certified Mail, Bill Chrane attempted to resign as President of Four SWD. The letter was sent to Four SWD at its P-5 address in San Angelo,

¹ NORM is the acronym for "naturally occurring radioactive material".

and a signed green card, stamped March 4, 2003, was returned to Mr. Chrane. The green card was signed by Juanita Yocham, Vice-President of Four SWD. The letter simply stated:

“Dear Shareholders: This is my resignation as president of Four SWD, Inc., effective immediately. I do not wish, nor will I hold, any office in Four SWD, Inc. Sincerely, Bill Chrane”.

Mr. Chrane stated that he and three partners created Four SWD. The three partners were Russell Yocham, Wayne Whitley and M.S. Machen. By 2003, his three partners had all died. Each of the original partners had an equal share, a 25% interest, in Four SWD. At the time he tried to resign, Mr. Chrane attempted to sell his shares in Four SWD to Tony Smith for \$12,000. However, Tony Smith was unable to raise the money to buy the shares. Mr. Chrane asserts that he mailed the shares to Tony Smith in early 2003, essentially giving the shares away.

Tony Smith is not a stranger to Bill Chrane. Tony Smith was paid to operate Four SWD’s salt water disposal facility. He is married to Evelyn Smith, who is the daughter of Juanita Yocham, the wife of deceased Four SWD partner Russell Yocham. Russell Yocham was listed as Vice-President of Four SWD on its 1994 P-5 but there was an officer change to Juanita Yocham as Vice-President in 1995. Juanita Yocham remained in that office through at least 2004.

The officially noticed Form P-5s of Four SWD show Bill Chrane, of 10600 Yucca Drive in Austin, as President of Four SWD from 1994 through 2004. The street address of the organization is consistently 4241 Commissioners Lane, San Angelo, Texas. Apparently, Four SWD was delinquent in its P-5 filings for several years, until 2008. The 2008 Form P-5 filing lists Tony R. Smith and James Russell Smith as President and Vice-President of Four SWD. The new P-5 address is P.O. Box 192 (or P.O. Box 811), Big Lake, Texas, 76932. The new street address is 701 Ohio Street, Big Lake, Texas, 76932. In the 2008 P-5 filing, Bill Chrane is no longer listed as an officer in Four SWD.

In response to questioning by RRC Enforcement Attorney Reese Copeland, Mr. Chrane stated that he had never served as President of Four SWD, made no decisions about company operations, attended no meetings, did not write any checks for the company and has no knowledge of the company’s operations. Mr. Chrane admitted his role as one of the original investors in the company and that, at one time, he had 25% of the shares in the company, but divested himself of those shares in early 2003. In response to further questioning by Mr. Copeland, Mr. Chrane admitted that he did not have the corporate minutes of Four SWD nor any documentation that Four SWD had accepted his resignation. Mr. Chrane also admitted that he had no documentation showing that he had divested himself of his 25% share in Four SWD.

The hearing was re-opened December 16, 2008, to accept into evidence Chrane Exhibit 7, consisting of an affidavit signed by Mr. Chrane stating that he never had a 25% interest in Four SWD, Inc. and also consisting of IRS Schedules K-1 or Forms 1120S (Shareholder’s Share of Income, Credits, Deductions, etc.). The IRS forms indicate Mr. Chrane’s percentage of stock

ownership in Four SWD, Inc. for 2001 was 24.24242%.

EXAMINER'S OPINION

The officially noticed Commission documents indicate that Four SWD operated a commercial disposal facility on the Yocham and Whitley (13975) Lease beginning in February, 1994. The Form P-5s filed by Four SWD consistently show Bill Chrane as President of the company from 1994 through 2004.

Other Commission documents show that a NORM problem was discovered at the Yocham & Whitley Lease disposal facility by the District Office on August 16, 2001. On November 4, 2002, the Commission advised Four SWD that it must post additional financial security for facility closure costs in the amount of \$183,000. By letter dated February 14, 2003, the Commission advised Four SWD that it must either post the additional \$183,000 in security for closure costs or risk losing its pit permit and face legal Enforcement action.

Very shortly after Four SWD was advised by the Commission that loss of its permit and Enforcement action were pending, Mr. Chrane attempted to resign as President of Four SWD by letter dated February 26, 2003. The letter stated "...This is my resignation as president of Four SWD, Inc., effective immediately.....". This indicates that Mr. Chrane was resigning as President of Four SWD from February 26, 2003 forward. In the letter, Mr. Chrane did not dispute that he had been President of Four SWD since at least 1994.

It appears that Mr. Chrane's attempts to disassociate himself from any connection to Four SWD (as of February, 2003) in his 2003 complaint to the Commission was motivated by a desire to avoid any negative consequences to himself as a result of Four SWD's NORM problem. If so, the attempted resignation would not have achieved its intent. Even if Four SWD had accepted Bill Chrane's February, 2003 resignation as President, he would still have been an officer at the time the NORM violation was discovered in August 2001 and for almost two years after that. As such, any subsequent Enforcement proceeding would properly list him as an officer at the time of the violation.

In the present hearing, Mr. Chrane attempts a more universal remedy and asserts that he was never an officer in Four SWD. Mr. Chrane appears to believe if he could prove this, it would relieve him of any involvement in Four SWD's NORM problem discovered on the Yocham & Whitley Lease in 2001. It would not. By his own testimony, Mr. Chrane held a 25% interest in Four SWD from its inception through at least early 2003. Under Tex. Nat. Res. Code 91.114(c)(1)(D), Mr. Chrane was "the owner of at least 25 percent of the beneficial interest in the organization" during the time period the NORM was deposited, at the time the problem was identified and at least part of the time the NORM problem continued to exist.

The hearing was re-opened December 16, 2008 to accept into evidence Mr. Chrane's affidavit stating that he never owned 25% of the shares in Four SWD, Inc. IRS forms were also accepted into evidence purporting to demonstrate conclusively that Mr. Chrane, in 2001, owned only 24.24242% of the shares in Four SWD, Inc.

Mr. Chrane's affidavit contradicts his own statements made four separate times in the course of testifying at hearing:

Copeland (Enforcement): How did you get involved with Four SWD?
Chrane: I bought stock. There was four of us. At 25 percent each.

(Tape of hearing at 401)

Copeland: Well, going back to the beginning...You took a 25 percent stock ownership in the company.

Chrane: Yeah.

(Tape of hearing at 437)

Copeland: Let's just go back to the beginning. Originally, you took 25 percent ownership in the company, right?

Chrane: Yes.

Copeland: Did any other member of your family acquire an ownership interest in that company?

Chrane: No.

(Tape of hearing at 443)

Chrane: Russell and Wayne bought Machen's shares, so they ended up with 37.....37 and I still had the 25.

(Tape of hearing at 528)

Chrane's affidavit stating that he never had a 25% share in Four SWD, Inc. is contradicted by his sworn testimony at the hearing. Further, the IRS forms purporting to show conclusively that Chrane owned only a 24.24242% share in Four SWD, Inc. show no such thing. They merely show that Chrane reported ownership of 24.24242% of Four SWD to the IRS. They do not explain the difference between Mr. Chrane's stated ownership in Four SWD at hearing and Mr. Chrane's stated ownership as reported to the IRS.

The examiner recommends that Bill Chrane's complaint that he is improperly listed as President of Four SWD, Inc. and his request to be removed as President from the P-5 filings of Four SWD be denied.

FINDINGS OF FACT

1. At least ten (10) days notice of the hearing in this docket was sent to all parties entitled to notice. Complainant Bill Chrane appeared at the hearing and presented evidence and testimony. Reese Copeland appeared on behalf of the Enforcement Section of the RRC and cross-examined Mr. Chrane

2. Form P-5 filings by Four SWD, Inc. from at least 1994 through at least 2004 show Bill Chrane as President of Four SWD.
3. On January 31, 1994, the Commission granted Four SWD, Inc. a permit for Pit No. P010526 for Four SWD's commercial disposal facility on the Yocham & Whitley Lease.
4. Bill Chrane was one of four owners in Four SWD, Inc., each with an equal 25% share.
5. On August 16, 2001, a Commission District office inspection found high levels of NORM ("Naturally Occurring Radioactive Material") at the commercial disposal facility on the Yocham & Whitley Lease. The inspector estimated the NORM cleanup cost at \$207,704.00.
6. On November 4, 2002, the Commission advised Four SWD that it must post an additional \$183,000 in security for closure costs of the commercial disposal facility on the Yocham & Whitley Lease.
7. On February 14, 2003, the Commission advised Four SWD that the Commission had received no documentation showing that NORM cleanup had occurred on the Yocham & Whitley Lease and that an additional \$183,000 in security for closure costs must be posted or Four SWD's pit permit could be cancelled and Enforcement action initiated.
8. By letter dated February 26, 2003, Bill Chrane wrote Four SWD that he resigned as President of that company, effective immediately. Bill Chrane continued to be listed as President of Four SWD on subsequent P-5 filings through at least 2004.
9. Bill Chrane is not listed as an owner or officer on the most recently filed Form P-5 for Four SWD, Inc.
10. Bill Chrane was listed as President of Four SWD, Inc. on its Form P-5 filings with the Commission from 1994 through 2004.
11. Bill Chrane owned at least 25% beneficial ownership interest in Four SWD, Inc. from 1994 until divesting himself of that ownership interest at some time in 2003.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.
3. Bill Chrane did not demonstrate that his name should be removed as President of Four SWD, Inc. in its Commission P-5 filings.

4. Bill Chrane was listed as President of Four SWD, Inc. in its Commission Form P-5 filings from 1994 through 2004.
5. Bill Chrane held a position of ownership or control in Four SWD, Inc. from 1994 until at least sometime after February 26, 2003 and is subject to the restrictions in Tex. Nat. Res. Code 91.114 for any violations committed by Four SWD, Inc. during that period.

RECOMMENDATION

The examiner recommends that the complaint of Bill Chrane that he is improperly identified as President of Four SWD, Inc. and his request that his name be removed from the P-5 filings of Four SWD, Inc. be **DENIED**.

Respectfully submitted,

Marshall Enquist
Hearings Examiner