

---

---

**ENFORCEMENT ACTION FOR VIOLATIONS ALLEGEDLY COMMITTED BY LINDA BALL REESE, D.B.A. 5R OIL COMPANY (OPERATOR NO. 953761), ON THE POST OAK CHURCH (06695) LEASE, WELL NO. 1, EAST TEXAS (DISTRICT 6E) FIELD, GREGG COUNTY, TEXAS**

---

---

**APPEARANCES:**

**FOR MOVANT:**

Reese Copeland, Staff Attorney for the Enforcement Section of the Railroad Commission of Texas  
Carol Hardin, Witness and Employee of the Railroad Commission of Texas

**FOR RESPONDENT:**

**No Appearance by the Respondent, Linda Ball Reese d.b.a. 5R Oil Company**

**PROCEDURAL HISTORY**

<b>Date of Request for Action:</b>	September 21, 2001
<b>Hearing Held:</b>	May 16, 2002
<b>Record Closed:</b>	May 16, 2002
<b>Heard By:</b>	Scott Petry, Hearings Examiner
<b>Current Status:</b>	Default
<b>PFD Issued:</b>	July 24, 2002

**STATEMENT OF THE CASE**

This was a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether the respondent, Linda Ball Reese d.b.a. 5R Oil Company (hereinafter "5R" or "respondent") violated Statewide Rule 8 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8] on the Post Oak Church (06695) Lease, Well No. 1, East Texas (District 6E) Field, in Gregg County, Texas;
2. Whether the respondent 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 comply with said statutes and Statewide Rule 8;
3. Whether respondent should be assessed, pursuant to §91.113 of the Texas Natural Resources Code, reimbursement for such amount established by the evidence, in State funds expended to remediate and clean-up oil and other waste discharged on the subject lease and adjoining cemetery property;
4. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding such lease and well; and
5. Whether any violations of Rule 8 by the respondent should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534 (Vernon 2001).
6. Whether other orders should be entered as permitted by law.

Following service by certified mail of the First Amended Notice of Hearing and Complaint on April 11, 2002, the Commission convened a hearing on May 16, 2002 to address the violations. The respondent failed to appear at the hearing. Enforcement Staff Attorney Reese Copeland appeared representing the Railroad Commission of Texas.

Enforcement submitted both eyewitness testimony and the hearing file into the record. The Enforcement Section recommends that the respondent be ordered: 1) to reimburse the Commission in the amount of \$3,692.00, 2) to place the subject lease and well into compliance with all Commission rules, and 3) to pay an administrative penalty of \$11,000.00, consisting of \$6,000.00 for one Rule 8(d)(1) violation and \$5,000.00 as an enhancement for seven prior violations of Commission rules.

The examiner agrees with the Enforcement attorney's recommendation, but disagrees with the recommended penalty amount. The examiner believes that the requested penalty does not adequately reflect the egregious nature of this violation and recommends a higher administrative penalty of \$32,000.00, plus reimbursement in the amount of \$3,692.00. This higher recommended penalty is warranted where: 1) 5R acknowledged receipt of the complaint by certified mail but did not appear or respond; 2) the lease was out of compliance for 99 days and was only brought into compliance through Commission action; and 3) the violation was a danger to the general public.

### SUMMARY OF EVIDENCE

Enforcement presented evidence that the respondent designated herself operator of the Post Oak Church (06695) Lease, Well No. 1, in Gregg County, Texas, by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), approved by the Commission on January 31, 1995, and made effective on February 1, 1995. The respondent is currently delinquent on her Form P-5 Organization Report and last filed a Form P-5 on February 4, 2000. The respondent has seven prior Final Orders against it by the Commission.

This docket deals solely with a Statewide Rule 8 violation on the subject lease. The violation occurred on or before December 14, 2000. Enforcement submitted inspection reports dated December 14, 2000, December 15, 2000, December 16, 2000, December 18, 2000, December 22, 2000, October 22, 2001, and April 8, 2001, that documented the discharge and cleanup procedures. The initial inspection reports stated that two to three barrels of oil had been discharged, but remediation efforts later indicated that the spill amount was ten to thirteen barrels of waste and that the soil saturation ranged from one to three inches in depth. The spill covered an area approximately 150' x 20' and "sprayed" tombstones, cemetery grounds, and trees in the vicinity. *See Appendices 1 & 2.*

Given the nature of the spill, the Commission treated the situation as an emergency and immediately commenced cleanup. Records and testimony submitted by Enforcement indicate that it was also raining at the time of the spill and emergency remediation was necessary to prevent further migration of the discharge. Subsequent to the commencement of the cleanup, however, the Commission made a determination that the respondent was the responsible party and made a demand, by certified mailings, on both December 15, 2000, and December 21, 2000, for the respondent to continue the cleanup and to reimburse the Commission for funds already expended. Furthermore, the inspection report indicated that Allen Reese, a representative of Linda Ball Reese, was present at the site on December 14, 2000. The respondent did not continue the cleanup or reimburse the Commission. The cleanup was finished by a Commission contractor on March 23, 2001.

#### **I. Respondent's Position & Evidence**

While the respondent did not appear at the hearing, the inspection reports submitted by Enforcement indicated that the respondent originally asserted that the spill had come from a "chemical truck" that had driven onto the property and discharged the waste. The respondent disputed its responsibility for the spill, refused to remediate the pollution site, and failed to make an appearance at the hearing.

## **II. Enforcement's Position & Evidence**

In Enforcement's case in chief, the Staff Attorney presented expert testimony from a Commission employee, Carol Hardin. Mr. Hardin was sworn in and stated that he had been employed by the Commission since 1983, had been an inspector for 12 years, and had worked in site remediation from 1996 to the present. He testified that he was trained in the area of oilfield cleanup and that it was part of his duties to make assessments as to the source of pollution violations.

Mr. Hardin testified that there was initial confusion regarding the source of the pollution violation in this docket, but that further investigation revealed that the only possible source for the spill was the subject well. Specifically, the "plume" or spray pattern on the fence and adjoining cemetery indicated 1) that the subject well was the only logical place that the discharge could have come from, and 2) that the discharge had occurred from a spot at least three or four feet in the air and not from the ground level. This discharge from a raised height was consistent with the height of the subject well.

In response to the idea that a truck could have discharged the waste, Mr. Hardin testified that there were no tire tracks or any other evidence to show that a truck had been on the cemetery grounds. Additionally, Mr. Hardin noted that the entrance to the cemetery grounds was locked and that there was no indication of forced entry. Indeed, it was his testimony that there was no indication that anyone had been at the well location for quite some time.

To further support the position that the spill had come from the subject well, Mr. Hardin testified that the condition of the "nipple" on the well assembly was consistent with a recent discharge. The witness stated that his experience and expertise had shown that, as pressure builds up in the assembly, the gas pressure buildup is below the oil buildup. When the pressure is released, the gas and/or saltwater that follows the pressure release will "scour that nipple clean." It was his testimony that the nipple on the subject well was clean and that this was consistent with a pressure release. An inspection report dated December 14, 2000 indicated that gas was still emanating from the wellhead on the subject well.

## **EXAMINER'S OPINION**

The actions and inaction of Linda Ball Reese, d.b.a. 5R Oil Company, were done with disregard

to the environment and to the danger that this violation could have caused the general public. The evidence presented by the Enforcement Staff clearly establishes respondent's culpability for the violation of Statewide Rule 8 and clearly establishes the respondent's refusal to assume its responsibility. The respondent has exhibited a continuing lack of good faith in complying with Commission rules and regulations and should be penalized accordingly.

**I. Recommended Penalty Amount.**

When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to \$10,000 per day for each violation. In determining the amount of the penalty, the Commission is required to consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. Tex. Nat. Res. Code Ann. § 81.0531. In conjunction with each of these factors, the current Commission penalty guidelines recommend a standard penalty of \$500 to \$6,000.00 for a violation of Rule 8(d)(1). Citing the location/area impacted, the respondent's seven prior orders, and the respondent's refusal to take over the cleanup, Enforcement recommended the higher amount of \$6,000.00 for the violation of Rule 8(d)(1), a reimbursement of Commission expenses of \$3,692.00 for cleanup costs, and an enhancement of \$5,000.00 for the respondent's seven prior violations. This results in Enforcement's recommended penalty amount of \$11,000.00 plus reimbursement costs of \$3,692.00.

However, Commission penalty guidelines also provide for enhanced penalties of up to \$2,000.00 per month for each month a well is not in compliance with statewide rules and enhanced penalties of up to \$15,000.00 for a safety hazard that impacts a residential or public area. Accordingly, the examiner recommends a total administrative penalty of \$32,000.00, plus reimbursement of \$3,692.00, be assessed against Linda Ball Reese, d.b.a. 5R Oil Company.

**II. Bases for Enhanced Penalty Assessment**

Under the facts presented in this case, there are numerous reasons for assessing an enhanced penalty. Accordingly, it is my recommendation that each of the following be considered in assessing a greater penalty amount:

**A. Time Out of Compliance**

The subject well and attending violation of Rule 8(d)(1) were out of compliance from December

14, 2000, to March 23, 2001, despite the fact that the respondent had actual knowledge of the magnitude of the discharge as early as December 14, 2001. This amounts to a total of 99 days, or more than three months, that the violation remained out of compliance. The administrative penalty guidelines put forth by the Commission suggest that an additional penalty of \$100 to \$2,000.00 per month may be added to reflect the severity of the actual violation. The severity of the violation in this docket warrants the additional penalty of \$2,000.00 per month that the spill was out of compliance.

The recommended \$2,000.00 per month does not even come close to the maximum penalty that *could* be assessed in this docket. Under Section 81.0531 of the Texas Natural Resources Code, the Commission may assess an administrative penalty of up to \$10,000.00 per day per violation. Therefore, pursuant to the respondent's violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution, it is within the Commission's discretion to assess an administrative penalty in this docket of \$990,000.00. Furthermore, the Prayer in Enforcement's pleading, and acknowledged as received by the respondent, requests the Commission to enter an order that assesses "...Respondent an administrative penalty of \$11,000.00...or such other amount as may be established by the evidence" (emphasis added).

The evidence in this docket suggests that the delay in the final cleanup<sup>1</sup> stemmed from the respondent's refusal to accept responsibility for the spill and refusal to properly remediate the contamination area, despite certified mailings to the respondent stating that it was indeed the responsible party. Respondent had been notified that the subject well was in violation of Rule 8(d)(1) as early as December 14, 2000 by District personnel, but failed to take any affirmative steps toward bringing the violation into compliance with Commission rules. Accordingly, Respondent has not demonstrated good faith.

The discharge of oil and gas wastes which took place underscores the seriousness of the threat of pollution resulting from Respondent's failure to properly maintain its well. The violation affected an extensive area and required immediate attention. While the cliché "a picture is worth a thousand words" may be a tired one, it is particularly apt here, as the pictures in Appendix 1 attest. The respondent failed to remediate the violation and the penalty should reflect the time period that the violation persisted.

Therefore, given the seriousness of this violation and the recommended Commission penalty

---

<sup>1</sup> The cleanup of the freestanding oil was initiated by the Commission from December 14, 2000 to December 18, 2000 to prevent further migration of the spill. The remainder of the cleanup efforts, however, continued until March 23, 2001, and included aspects such as cleaning oil covered tombstones. The complete remediation of the site did not occur until March 23, 2001, and it is this delay that is cited as a basis for the enhancement.

enhancement guidelines of up to \$2,000.00 per month for non-compliance with statewide rules, it is my recommendation that an enhancement of an additional \$6,000.00 be added to the \$11,000.00 that was already recommended by Enforcement. This would result in a cumulative penalty of \$17,000.00.

**B. Impact to Residential or Public Areas**

The guidelines also provide for an enhancement of \$1,000.00 to \$15,000.00 for a safety hazard that impacts a residential or public area. The actions, and inactions, of Linda Ball Reese, d.b.a. 5R Oil, constituted a hazard to the health or safety of the public. Again, the respondent was aware of the spill as early as December 14, 2000, but failed to act upon the violation. It was only through Commission action that the affected area was remediated at all. By allowing the violation to remain out of compliance for such an extended period of time, the respondent created a situation that posed a hazard to the public health and safety.

A cemetery is a place of repose that allows the public to visit and grieve for the deceased. It is an inherently public place and the respondent had full knowledge of the hazards that the pollution could have caused the general public. Such a situation calls for increased vigilance, but the expert testimony put forth by Enforcement's witness indicated that there was no indication that anyone had been at the well location for quite some time. Coupled with the respondent's refusal to remedy its violation, it is the examiner's recommendation that the facts of this case warrant an enhancement of \$15,000.00 for the egregious hazard to the public safety. Added to the already recommended amount of \$17,000.00, this enhancement would result in a cumulative total penalty of \$32,000.00 against Linda Ball Reese, d.b.a. 5R Oil Company.

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. Linda Ball Reese, d.b.a. 5R Oil Company, ("respondent") was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address, the receipt for which was signed and returned to the Commission. The respondent did not answer the complaint and did not appear at the hearing.
2. The respondent designated herself operator of the Post Oak Church (06695) Lease, Well No. 1, in Gregg County, Texas, by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), approved by the Commission on January 31, 1995 and made effective on February 1, 1995.
3. The respondent is currently delinquent on her Form P-5 Organization Report. The most recent

P.F.D. for OIL AND GAS DOCKET NO. 6E-0227682

Form P-5 (Organization Report) for Linda Ball Reese, d.b.a. 5R Oil Company, was filed with the Commission on February 4, 2000.

4. The respondent has seven prior violations of Commission rules. These orders are:
  - a. Oil & Gas Docket No. 06-0211585, violation of Statewide Rules 14(b)(2), 22, and 8; final order entered March 31, 1998, with a \$10,500 penalty;
  - b. Oil & Gas Docket No. 06-0214881, violation of Statewide Rule 14(b)(2); final order entered March 31, 1998, with a \$3,000 penalty;
  - c. Oil & Gas Docket No. 6E-0213621, violation of Statewide Rule 14(b)(2); final order entered March 31, 1998, with a \$3,000 penalty;
  - d. Oil & Gas Docket No. 6E-0215554, violation of Statewide Rule 14(b)(2); final order entered May 5, 1998, with a \$2,500 penalty;
  - e. Oil & Gas Docket No. 6E-0216442, violation of Statewide Rule 8; final order entered May 5, 1998, with a \$2,500 penalty;
  - f. Oil & Gas Docket No. 6E-0219986, violation of Statewide Rules 14(b)(2) and 8(d)(1); final order entered June 29, 1999, with a \$2,500 penalty; and
  - g. Oil & Gas Docket No. 6E-0220183, violation of Statewide Rules 13, 14(b)(2) and 8(d)(1); final order entered June 29, 1999, with a \$15,000 penalty.
5. A discharge occurred on the Post Oak Church (06695) Lease on or before December 14, 2000.
6. The respondent's representative was present at the discharge area on December 14, 2000, and was notified via certified mailings that it was responsible for the discharge on December 15, 2000 and December 21, 2000.
7. The discharge occurred in a public place and sprayed an area measuring approximately 150' x 20'. This area included a portion of the lease as well as an area of the adjoining cemetery. The discharge consisted of approximately 10 to 13 barrels of oil, ranged from 1" to 3" in depth, and covered trees and some tombstones in the cemetery.
8. The area was remediated by Commission authorized personnel to prevent the immediate migration of the discharge from December 14, 2000, to December 18, 2000, but the final cleanup was not completed until March 23, 2001.
9. Commission funds in the amount of \$3,692.00 were expended to properly remediate the Post Oak Church (06695) Lease and adjoining cemetery.
10. In accordance with Section 91.113 of the Texas Natural Resources Code, the operator was

notified by certified mail dated December 15, 2000 that the subject well was polluting or threatening to pollute surface or subsurface waters and that state funded cleanup procedures could be initiated. The certified mailing also stated that, if the operator did not believe it was legally required to commence cleanup operations, it could request a hearing within 10 days of the acceptance of the notice. The operator failed to request a hearing within the 10 day period and failed or refused to control or clean up the oil and gas wastes.

11. An unauthorized discharge or disposal of oil, saltwater, basic sediment or other oil and gas waste is a potential source of pollution to surface and subsurface waters if not remediated to prevent seepage and run-off.
12. Respondent has not demonstrated good faith since she failed to assume cleanup responsibilities or to otherwise place the subject well in compliance after being notified of the violations by the District Office.
13. The three months the subject well was out of compliance with Statewide Rule 8(d)(1), prior final orders against the respondent, the impact of the violation on a public area, and the failure to timely remediate the discharge all warrant an enhanced administrative penalty for these violations pursuant to Texas Natural Resources Code §81.0531(c).

#### CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the this hearing have been performed or have occurred.
3. Respondent is the operator of the subject well as defined by Section 89.002 of the Texas Natural Resources Code and is a person as defined by Commission Statewide Rule 79 and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, respondent has the primary responsibility for complying with Rule 8 and with Chapter 89 of the Texas Natural Resources Code as well as all other applicable statutes and Commission rules relating to the subject well.
5. The subject well was placed in compliance with Commission Statewide Rule 8, and Chapters 85, 89 and 91 of the Texas Natural Resources Code through Commission authorized cleanup actions. The well was out of compliance between at least December 14, 2000, and March 23, 2001.
6. The Commission is legally entitled to reimbursement, pursuant to §91.113 of the Texas Natural Resources Code, for the State funds expended to remediate and clean-up the oil and other wastes discharged on the subject lease and adjoining cemetery property.

7. The documented violations committed by 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), and warrant an enhanced administrative penalty due to the amount of time the lease was out of compliance, the danger that was present to the general public, and the failure of the operator to remediate the discharge after being properly notified of its responsibility.

**RECOMMENDATION**

The examiner recommends that the above findings and conclusions be adopted and the attached order be approved, requiring the operator, Linda Ball Reese d.b.a. 5R Oil Company, within 30 days from the date this order becomes final, to pay an administrative penalty of THIRTY TWO THOUSAND DOLLARS (\$32,000.00) and reimbursement costs of THREE THOUSAND, SIX HUNDRED NINETY TWO DOLLARS (\$3,692.00).

Respectfully submitted,

Scott Petry  
Hearings Examiner