OIL & GAS DOCKET NO. 6E-0229239

ENFORCEMENT ACTION AGAINST JOHN ALLEN REESE D/B/A A J A COMPANIES FOR VIOLATIONS OF STATEWIDE RULES ON THE RICHEY, E. G. -A- (07598) LEASE, EAST TEXAS FIELD, GREGG COUNTY, TEXAS; FLOYD JONES (08471) LEASE, EAST TEXAS FIELD, GREGG COUNTY, TEXAS; AND CHRISTIAN, ARTHUR -B- (07508) LEASE, EAST TEXAS FIELD, GREGG COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:	**MOVANT:**
Reese B. Copeland Staff Attorney	Enforcement Section of the Railroad Commission
FOR RESPONDENT:	**RESPONDENT:**
J. Allen Reese Sole Proprietor	John Allen Reese D/B/A A J A Companies

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	February 6, 2002
DATE CASE HEARD:	May 13, 2002
HEARD BY:	James M. Doherty, Hearings Examiner
RECORD CLOSED:	May 28, 2002
PFD CIRCULATION DATE:	July 24, 2002
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

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

1. Whether the respondent John Allen Reese D/B/A A J A Companies ("A J A") has violated provisions of Statewide Rules 3(a), 8(b) and 8(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.3(a), 3.8(b), and 3.8(d)(1)] on the Richey, E. G. -A- (07598) Lease, the Floyd Jones (08471) Lease, and the Christian, Arthur -B- (07508) Lease, East Texas Field, Gregg County, Texas ("subject leases") and should be required to place the leases in compliance with Commission Statewide Rules;

2. Whether the respondent has 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 or laws pertaining to safety or prevention or control of pollution by failing to maintain the subject leases in compliance with Statewide Rules 3(a), 8(b), and 8(d)(1).

3. Whether the respondent should be assessed administrative penalties of not more than $10,000.00 per day for each offense committed regarding the subject leases;

4. Whether any violations of Statewide Rules 3(a), 8(b), and 8(d)(1) 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).

Respondent appeared through its representative J. Allen Reese, sole proprietor, who presented testimony at the hearing. Reese B. Copeland, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section.

A Notice of Opportunity for Hearing, including a copy of the Original Complaint, was forwarded to respondent on February 6, 2002, at the addresses given on his then most recently filed Form P-5 Organization Report, by certified mail and regular mail. One certified envelope was returned, marked "Unclaimed" and no green card was returned. Enforcement represented that none of the regular mail envelopes were returned. Respondent did not answer or file a request for hearing in response to the Notice of Opportunity for Hearing, and the matter went to a default hearing on March 18, 2002.

On March 20, 2002, Enforcement filed a motion seeking permission to submit certain late-filed exhibits, and served a copy on respondent at the same addresses which had been used for the purpose of the Notice of Opportunity for Hearing. On April 10, 2002, respondent corresponded with Scott Petry, the hearing examiner who had presided at the default hearing, requesting a hearing in this docket and two other dockets. On April 23, 2002, Enforcement corresponded with examiner Petry, with a copy to respondent, stating that since a final default order had not issued, notices of hearing would issue the same day scheduling a hearing for May 13, 2002. A Notice of Hearing was served on respondent on April 23, 2002.

On May 8, 2002, respondent filed a motion for continuance of the May 13, 2002, hearing, based on a representation that respondent had not had sufficient time to prepare for the hearing. This motion was opposed by Enforcement. On May 9, 2002, the undersigned examiner forwarded a letter to respondent and counsel for Enforcement via facsimile transmission and regular mail denying the requested continuance.

At the hearing on May 13, 2002, respondent again requested that this docket be continued, on this occasion basing the request on the representation that respondent needed more time to employ an attorney. This request was denied because the request was not timely under 16 TEX. ADMIN. CODE §1.124, respondent's previous written request for continuance had said nothing about

respondent's intent or need to employ an attorney, and regardless of whether respondent had received Enforcement's settlement offer and Notice of Opportunity for Hearing sent to respondent in January and February 2002, respondent had notice of the complaint and that a hearing would be held at least by early April 2002, as evidenced by respondent's letter dated April 10, 2002, requesting that a hearing be scheduled.

At the May 13, 2002, hearing, the Enforcement Section's hearing file for this docket was admitted into evidence. Dennis Elliott, a field inspector in the Commission's Kilgore District Office, and respondent gave testimony. With the agreement of the parties, the record was held open until May 28, 2002, to permit the parties to file written closing statements on the issue of what penalty, if any, should be assessed in the event respondent were found to have committed the violations alleged in the complaint. Enforcement filed the requested written closing statement, but respondent did not.

Enforcement staff recommends that a $34,550.00 penalty, including enhancements, be assessed against respondent. The examiner recommends that a $34,750.00 penalty, including enhancements, be assessed and that respondent be ordered to place the subject leases into compliance with Statewide Rules 3, 8 and 91.

BACKGROUND

Statewide Rule 3(a) provides that each property that produces oil, gas, or geothermal resources and each oil, gas, or geothermal resource well and tank shall at all times be clearly identified as follows:

(1) A sign shall be posted at the principal entrance to each such property which shall show the name by which the property is commonly known and is carried on the records of the Commission, the name of the operator, and the number of acres in the property.

(2) A sign shall be posted at each well site which shall show the name of the property, the name of the operator, and the well number.

(3) A sign shall be posted at or painted on each oil stock tank and on each remotely located satellite tank showing the information provided for in paragraph (1) and certain additional information not relevant here.

Statewide Rule 8(b) provides that no person conducting activities subject to regulation by the Commission may cause or allow pollution of surface or subsurface water in the state. Surface or subsurface water is defined by Statewide Rule 8(a) as groundwater, percolating or otherwise, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside

or bordering the state or inside the jurisdiction of the state.

With certain exceptions not relevant here, Statewide Rule 8(d)(1) prohibits any person from disposing of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes.

If a person violates provisions of Title 3 of the Texas Natural Resources Code or a Commission rule pertaining to safety or the prevention or control of pollution, the person may be assessed a civil penalty by the Commission not to exceed $10,000.00 a day for each violation. In determining the amount of the penalty, the Commission must consider the respondent's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. *See* TEX. NAT. RES. CODE ANN. §81.0531.

DISCUSSION OF THE EVIDENCE

Enforcement's Position and Evidence

Form P-5 records presented by Enforcement reflect that respondent A J A is a sole proprietorship, and that John Allen Reese is proprietor. The examiner has officially noticed that A J A first filed a Form P-5 Organization Report on February 22, 2001, and A J A's Organization Report is now delinquent. Form P-4 records showed that A J A was designated operator of the subject leases by the filing of Forms P-4 which were effective February 20, 2001. The Form P-4 change of operator to A J A for the Richey, E. G. -A- (07598) Lease ("Richey Lease") and the Christian, Arthur -B- (07508) Lease ("Christian Lease") was approved February 22, 2001. The Form P-4 change of operator to A J A for the Floyd Jones (08471) Lease ("Jones Lease") was approved March 21, 2001. The Form P-4 records presented by Enforcement show that the previous operator of the subject leases was 5R Oil Company. The examiner has officially noticed from Commission P-5 records that 5R Oil Company is a sole proprietorship, of which Linda Ball Reese is proprietor. Enforcement elicited testimony from John Allen Reese that 5R Oil Company is his wife's sole proprietorship and that he is primarily responsible for making "field decisions" for 5R.

Rule 3(a)

Enforcement presented a District Office inspection report dated June 15, 2001, reflecting that the identification signs posted at Well Nos. 1 and 2 and at the tank battery and lease entrance on the Richey Lease were incorrect in that they did not show the name of A J A as operator. A further District Office inspection report dated February 20, 2002, for the Richey Lease reflected that these alleged sign violations were continuing.

Enforcement also presented District Office inspection reports dated June 15, 2001, reflecting identical sign deficiencies at Well Nos. 1, 2, 3, 4, and 5, and at the tank battery and lease entrance on the Jones Lease and at Well Nos. 2, 3, 4, and 5, and at the tank battery and lease entrance on the Christian Lease.

Although this evidence relates to 17 alleged violations of the identification sign requirements of Statewide Rule 3(a), the complaint prays for relief for only 15, to which Enforcement agreed to be limited.

Rule 8 (b)

(a) Jones Lease

A District Office inspection report dated February 17, 2001, reported the inspector's observations that oil had flowed within and over the firewall at the tank battery on the Jones Lease. The inspector reported that an estimated 5-10 barrels of oil had spread in two different directions from the firewall and that the spill area covered no less than 150 yards. The oil had flowed downhill and entered a branch of Campbell's Creek. The inspection report reflects that John Allen Reese was contacted. Reese reportedly stated that he was aware of the spill, and that it was too wet to work on it when the spill occurred the previous Friday. The inspection report stated that Reese claimed that the spill outside the firewall was of about one barrel of oil and the oil did not reach the creek. Reese reportedly stated further that he would begin the cleanup on February 17, 2001, and intensify the cleanup on Monday, February 19, 2001.

A February 18, 2001, District Office inspection report stated that the spill had resulted from a water leg malfunction that caused saltwater to overflow the oil tanks. It stated also that in addition to flowing over a "low spot" in the firewall, there was evidence that fluid had flowed from a valve on the north side of the firewall and it appeared to the inspector that the valve was opened after the firewall filled and started to overflow. Fluid was estimated to have traveled 700 feet from the tank battery. It was confirmed in this inspection report that fluid had entered an unnamed branch of Campbell's Creek.

Further District Office inspection reports dated February 19, 20, 21, 23 and 27, 2001, reported attempted cleanup activity under the supervision of John Allen Reese. It was reported that as of February 19, soil was being tilled around the tank battery, but no free oil had been removed and no boom or containment dikes were in place. From 1 to 3 gallons of oil remained in the creek and there were an estimated 10 barrels of oil on the ground. On February 20, it was reported that tilling activity continued. Several areas of live oil were observed, and oil remained in the creek. No boom had been placed in the creek. Reportedly, there was an area 300' x 200' of oil saturated and stained soil and 1-2 barrels of oil remained within the firewall. The February 20 inspection report states that Reese was advised by the inspector to place a boom in the creek, put absorbent material on live oil to prevent runoff, and use fertilizer to expedite remediation.

On February 21, 2001, it was reported that two bales of hay had been placed on top of the oil in the creek, and more tilling had been done. On February 23, it was reported that oil was being pumped out of the firewall into the tanks and a majority of the spill area had been tilled. Some spots of live oil (less than 1 barrel) remained, and the soil remained oil saturated and stained. No fertilizer had been used in the tilled area. Some hay remained in the creek and no live oil was observed there.

On February 27, it was reported that an estimated ½ barrel of live oil remained downhill from the spill site. A lot of tilling work had been done at the spill site, but oil saturated and stained soil remained. No application of fertilizer was observed. Some traces of oil were seen in the creek, with a rainbow running down the creek. No hay boom was then in place. An estimated ½ to 1 barrel of oil remained within the firewall.

Enforcement presented additional inspection reports dated March 6, 2001, through June 15, 2001, pertaining to conditions observed on the lease by District Office inspectors. The March 6 inspection report was the last such report of observation of oil in the creek. This report was to the effect that rains were washing over the spill area causing a slight rainbow in the creek.

Enforcement asserts that there were two violations of Statewide Rule 8(b) on the Jones Lease, consisting of the initial spill first reported in the inspection report dated February 17, 2001, and the subseqent runoff event caused by rains washing over the unremediated spill area reported in the inspection report dated March 6, 2001, both of which caused oil to enter the creek.

(b) Christian Lease

Enforcement presented a District Office inspection report dated February 26, 2001, which reported the inspector's observation that an oil spill had occurred at the tank battery on this lease. It was estimated that 10 barrels of oil were inside the firewall as a result of a tank overflow. In addition, the inspection report stated that oil was being discharged from a drain in the firewall by slight seepage and the inspector could not close the drain. Reportedly, oil had run downhill over a path estimated to be 300'-400' long by 6' wide and had entered Hawkins Creek. The oil entering the creek had run down the creek about 1/4 mile where it had been stopped by a natural boom of trees and brush. The inspector estimated the total spill to involve 25-30 barrels of oil.

Two inspection reports dated February 27, 2001, reported that John Allen Reese was at the location, booms had been placed in the creek, and a vacuum truck had picked up most of the oil in the creek. A further inspection report dated March 1, 2001, stated that the creek "remains clear".

Additional inspection reports for the lease presented for the period March 5, 2001, through June 15, 2001, although referencing continued soil pollution, made no further reference to pollution of the creek.

Enforcement asserts one violation of Statewide Rule 8(b) on the Christian Lease.

Rule 8(d)(1)

(a) Richey Lease

Enforcement presented a District Office inspection report for the Richey Lease, dated

February 20, 2001, which stated that a saltwater tank next to a header had leaked and that there was live oil and oil stained dirt inside and outside the firewall. A further inspection report dated June 11, 2001, indicated that these conditions persisted. Subsequent inspection reports dated June 15, 2001, and February 20, 2002, reported observation of oil stained dirt near the header.

Enforcement asserts one violation of Statewide Rule 8(d)(1) on the Richey Lease.

(b) Jones Lease

Enforcement presented District Office inspection reports and digital photographs of an oil spill inside the firewall on the Jones Lease. An inspection report dated June 5, 2001, stated that it appeared that a new spill of an estimated 2-3 barrels of oil had occurred inside the firewall, and an inspection report dated June 15, 2001, and attached photographs taken by the inspector, described and depicted this spill.

Enforcement asserts one violation of Statewide Rule 8(d)(1) on the Jones Lease.

(c) Christian Lease

The February 26, 2001, District Office inspection report for the Christian Lease stated that an estimated 10 barrels of oil stood inside the firewall at the tank battery from a tank overflow. This is the same discharge which reached Hawkins Creek and which forms the basis of Enforcement's assertion of a Statewide Rule 8(b) violation on the Christian Lease, and Enforcement asserts that the discharge to the ground inside the firewall and between the firewall and the creek constitutes a separate violation of Statewide Rule 8(d)(1). The February 26 inspection report reflects that oil was discharged by slight seepage from a drain in the firewall and ran downhill along a path estimated to be 300'-400' long by 6' wide. The inspector estimated that the total spill was of 25-30 barrels of oil.

Additional inspection reports presented by Enforcement dated March 1, 2001, through June 15, 2001, reflected that the effects of this spill persisted. As of the date of a March 5, 2001, report, the inspector stated that live oil and oil saturated dirt remained below the tank battery and downhill toward the creek. The inspector estimated that 15 barrels of oil remained on the ground and inside the firewall. In a March 19, 2001, inspection report, the inspector reported that live oil, saturated dirt, and oil stained vegetation remained in an area 10'-15' wide by 200'-300' long and while most of the oil had been recovered from the firewall, some live oil and oil saturated dirt remained inside the firewall. Some absorbent material had been spread within the firewall.

Inspection reports dated April 9 and April 17, 2001, stated that some discing and tilling had been done along the spill pathway. At least some patches of live oil continued to be reported in inspection reports through May 3, 2001, and the inspection reports reflect that the oil saturated soil and vegetation conditions persisted through at least June 15, 2001. The June 15 inspection report and attached photographs depict oil saturated soil inside the firewall, at the firewall drain exit, east

of the firewall, and along the spill pathway.

The examiner has officially noticed from Commission P-4 records that the operator of the Christian Lease was changed from A J A to CNS Energy, Inc., by Form P-4 approved January 18, 2002, effective November 1, 2001. A January 24, 2002, District Office inspection report stated that CNS had posted signs on the lease and had remediated, disced, tilled, and fertilized past the spill area.

Enforcement asserts one violation of Statewide Rule 8(d)(1) on the Christian Lease.

Affidavits and Certification

Enforcement submitted as evidence the affidavit of Ramon Fernandez, Jr., P.E., Staff Engineer, which stated that: (1) 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; (2) such confusion will cause delays in containing and remediating the violation or emergency, which is serious and may threaten the public health and safety; (3) discharge or disposal of oil, saltwater, or other oil and gas waste will cause pollution if allowed to come into contact with zones of fresh or usable quality surface or subsurface waters; and (4) any 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 water if not remediated to prevent seepage and runoff.

Enforcement also submitted a certification from the Commission's Secretary to the effect that Commission records reveal that no permit was issued to respondent to discharge oil and/or gas wastes from or onto the subject leases.

Enforcement's Penalty Recommendation

Enforcement recommended that an administrative penalty in the amount of $34,550.00 be assessed against respondent, consisting of 15 Rule 3(a) violations at $250.00 each, two Rule 8(b) violations (Jones Lease) at $1,000.00 plus a $3,000.00 enhancement each, one Rule 8(b) violation (Christian Lease) at $1,000.00 plus a $5,000.00 enhancement, one Rule 8(d)(1) violation (Richey Lease) at $6,000.00, one Rule 8(d)(1) violation (Jones Lease) at $3,000.00, and one Rule 8(d)(1) violation (Christian Lease) at $6,000.00 plus a $1,800.00 enhancement.

Respondent's Position and Evidence

J. Allen Reese, A J A's sole proprietor, testified that he has no denial of the violations alleged by Enforcement, but he objects to Enforcement's penalty recommendation which he believes is punitive. He stated his opinion that A J A had been sufficiently penalized by the cost of the cleanup of the pollution events alleged by Enforcement.

Mr. Reese gave testimony directed particularly to the oil spill on the Christian Lease which reached Hawkins Creek. He stated that the spill was caused by a gauger who closed a 4" valve on a separator and caused a tank to overflow, which he characterized as an unfortunate accident. According to Mr. Reese, most of the oil flowed over the firewall, rather than through the firewall drain. Mr. Reese stated that the spill was found at about 4:00 p.m. and that he immediately got heavy equipment out to the location and built a berm along the creek to prevent additional oil from entering the creek. Arrangements were made for men and equipment to be present the next morning. Mr. Reese testified that two days were spent cleaning up the creek and all the oil was recovered. He claimed that he worked on the spill path in a wet area for a considerable period of time and eventually cleaned up the spill path.

Otherwise, Mr. Reese stated that he would rely on documents in Enforcement's hearing file as evidence of his cleanup activities.

EXAMINER'S OPINION

A J A does not dispute that the violations alleged by Enforcement occurred, nor does A J A challenge Enforcement's assertion that A J A is the operator responsible for the violations.

The District Office inspection reports presented by Enforcement prove 17 violations of the identification sign requirements of Statewide Rule 3(a), although Enforcement's complaint prayed for the assessment of a penalty on only 15 and Enforcement counsel agreed to be so limited.

The District Office inspection reports presented by Enforcement also prove 3 violations of Statewide Rule 8(b), including the spill on the Jones Lease first reported in the inspection report dated February 17, 2001, which entered a branch of Campbell's Creek; the runoff event on the Jones Lease first reported in the inspection report dated March 6, 2001, which was caused by rains washing over a spill area and which resulted in oil entering the same branch of Campbell's Creek; and the spill on the Christian Lease first reported in the inspection report dated Febraury 26, 2001, which entered Hawkins Creek.

The District Office inspection reports presented by Enforcement further prove 3 violations of Statewide Rule 8(d)(1), including the saltwater/oil discharge near the saltwater tank and header on the Richey Lease first reported in the inspection report dated February 20, 2001; the oil discharge inside the firewall on the Jones Lease first reported in the inspection report dated June 5, 2001; and the discharge over the firewall along an extensive spill path on the Christian Lease first reported in the inspection report dated February 26, 2001. This latter unpermitted discharge on the Christian Lease resulted in a violation of Statewide Rule 8(d)(1), as well as a violation of Statewide Rule 8(b) triggered by the fact that the spill polluted Hawkins Creek.

The only remaining issue concerns the amount of the penalties, if any, which should be assessed for the violations proved by Enforcement. In determining the amount of the penalty, the Commission must consider the respondent's history of previous violations, the seriousness of the

violation, any hazard to the health and safety of the public, and the demonstrated good faith of the respondent. *See* TEX. NAT. RES. CODE ANN. §81.0531.

Enforcement's complaint states that A J A has no history of previous violations, and there is no evidence of previous orders issued against A J A for violations of Commission rules. However, the weight to be afforded this factor is diminished by the fact that A J A first filed a Form P-5 Organization Report on February 22, 2001, and thus has limited history as a P-5 operator.

A J A cannot be said to have demonstrated good faith. With respect to the various spill events which form the basis of the violations proved by Enforcement, A J A appears to have acted with reasonable diligence to clean up the resulting pollution only as to the oil which entered Hawkins Creek on the Christian Lease. The oil which entered the branch of Campbell's Creek on the Jones Lease eventually was cleaned up, but the inspection reports reflect that respondent at first denied that oil had entered the creek, and oil remained in the creek for at least five days.

A J A appears to have been much slower to clean up live oil and oil saturated soil resulting from the spills on the subject leases. The inspection reports reflect that live oil and oil stained dirt on the Richey Lease, first reported in the inspection report dated February 20, 2001, remained there through at least June 11, 2001, and oil stained dirt was still existing there as of February 20, 2002. With respect to the substantial spill as a result of tank and firewall overflow on the Jones Lease, first reported in the inspection report dated February 17, 2001, live oil continued to be observed inside and outside the firewall through at least June 5, 2001, and oil saturated soil and vegetation were observed through at least June 15, 2001. One result of this was the runoff event reported in the inspection report dated March 6, 2001, when rains washing over the spill area caused more oil to enter the branch of Campbell's Creek. On the Christian Lease, although Hawkins Creek appears to have been cleaned up with reasonable diligence, live oil remained on the ground inside and outside the firewall through at least May 3, 2001, and oil saturated soil and oil stained vegetation persisted on the lease through at least June 15, 2001. In fact, the Christian Lease does not appear to have been completely cleaned up and remediated until after the lease was transferred to another operator.

The evidence shows that discharge or disposal of oil, saltwater, or other oil and gas waste will cause pollution if allowed to come into contact with zones of fresh or usable quality surface or subsurface waters and is a potential source of pollution if not remediated to prevent seepage and runoff. A J A did not demonstrate good faith by acting with reasonable diligence to clean up and remediate pollution resulting from unauthorized discharges of oil and gas wastes on the subject leases.

(a) Rule 3(a) Penalty Recommendation

Enforcement recommended a penalty of $250.00 each for 15 violations of the identification sign requirements of Statewide Rule 3(a). The evidence establishes that these violations are serious and may threaten the public health and safety, in that failure to post correct identification signs may cause confusion and delay in responding to, containing or remediating a violation or emergency.

The recommended penalty conforms to the recommended standard penalty schedule for enforcement cases (penalty schedule), and is reasonable and appropriate in this case. The total penalty recommended by the examiner for the Statewide Rule 3(a) violations is $3,750.00.

(b) Rule 8(b) Penalty Recommendation - Jones Lease

For the violation of Statewide Rule 8(b) on the Jones Lease consisting of the spill over the firewall that entered and polluted a branch of Campbell's Creek, Enforcement recommends a basic penalty of $1,000.00 and an enhancement of $3,000.00. Enforcement asserts that the enhancement is appropriate in that the penalty schedule contemplates enhancement of $2,500.00 to $7,500.00 where there is threatened or actual pollution of a minor freshwater source, including a seasonal watercourse. The standard penalty in the penalty schedule for a Statewide Rule 8(b) violation is $1,000.00, which conforms to Enforcement's recommendation. However, the examiner disagrees with the amount of the recommended enhancement. The pollution of the branch of Campbell's Creek was "actual," not merely threatened. A J A's clean up response was not adequate, and oil remained in the branch of the creek for at least five days. For this violation, the examiner recommends a penalty of $1,000.00 with an enhancement of $5,000.00. The recommended enhancement of the standard penalty provided in the penalty schedule is based on the enhancement guideline pertaining to actual pollution of a minor freshwater source.

For the second Statewide Rule 8(b) violation on the Jones Lease, that is, the runoff event first reported in the District Office inspection report dated March 6, 2001, Enforcement recommended a penalty of $1,000.00, with an enhancement of $3,000.00, based on the same rationale used for the penalty recommendation respecting the previous Jones Lease Rule 8(b) violation. In this case too, Enforcement's recommended enhancement is insufficient. The second violation of Rule 8(b) on the Jones Lease involved rains washing over the spill area causing additional oil to enter the branch of Campbell's Creek. Actual, rather than merely threatened, water pollution was the result, and it was an avoidable result. The runoff event occurred some three weeks after the overflow of oil from the firewall at the tank battery on the Jones Lease which created a 300' x 200' oil saturated spill area. The inspection report dated March 6, 2001, stated that patches of live oil remained on the lease. Even though A J A tilled the spill area, more effective steps should have been taken to remove the live oil and to prevent runoff over the oil saturated spill area into the branch of Campbell's Creek. For this second Rule 8(b) violation on the Jones Lease, the examiner recommends a penalty of $1,000.00 with an enhancement of $5,000.00. The enhancement of the standard penalty provided in the penalty schedule is based on the enhancement guideline pertaining to actual pollution of a minor freshwater source.

(c) Rule 8(b) Penalty Recommendation - Christian Lease

For the violation of Statewide Rule 8(b) on the Christian Lease, Enforcement recommended a penalty of $1,000.00, with an enhancement of $5,000.00. The examiner declines to adopt this recommendation for the following reasons. This violation arose from the overflow of the firewall at the tank battery on the Christian Lease, which caused oil to run downhill and enter Hawkins

Creek. Enforcement asserted that the enhancement was appropriate under the penalty schedule providing an enhancement range of $5,000.00 to $25,000.00 for pollution of a major freshwater source, including creeks. With respect to this spill, Enforcement alleged violations of both Rule 8(b) and Rule 8(d)(1) and sought *two* penalties, each with an enhancement. The examiner agrees with Enforcement's position that the Christian Lease spill violated both subsections (b) and (d)(1) of Statewide Rule 8, in that there was an unpermitted discharge *and* pollution of surface water, but this does not necessarily mean that two penalties are justified for a single spill event. The examiner notes that Enforcement did *not* charge respondent with violations of both Rule 8(b) and 8(d)(1), and seek two separate penalties, respecting the Jones Lease firewall discharge, which appears to be indistinguishable from the Christian Lease discharge.

Statewide Rule 8(d)(1) plainly prohibits, among other things, an unpermitted discharge of oil and gas waste to a creek. The penalty schedule pertaining to Rule 8(d)(1) violations provides a range of penalties which appears appropriate to the circumstances of the Christian Lease discharge, and there appears to be no reason why the enhancement guidelines for pollution of major freshwater sources cannot be applied to Rule 8(d)(1) penalty determinations in the case where an unpermitted discharge results in pollution of a creek. Accordingly, without deciding the question of whether it legally is permissible to assess two separate penalties for violations of Rule 8(b) and 8(d)(1) arising from a single discharge, the examiner recommends a single penalty for the Christian Lease discharge under penalty guidelines relating to Rule 8(d)(1) violations.

(d) Rule 8(d)(1) Penalty Recommendation - Christian Lease

For the Rule 8(d)(1) violation on the Christian Lease, Enforcement recommended a penalty of $6,000.00 with an enhancement of $1,800.00. Enforcement justified the enhancement recommendation by referral to the penalty schedule enhancement guidelines for "affected areas in excess of 100 square feet". These guidelines permit an enhancement of $10.00 per square foot, and Enforcement asserted that its recommended enhancement of $1,800.00 was one-tenth of the permissible enhancement under the guidelines. Given the circumstances of the Christian Lease discharge, the examiner disagrees with Enforcement's enhancement recommendation.

By almost any standard, the Christian Lease discharge was a major spill. District Office inspection reports showed that the total spill was of 25-30 barrels of oil. Oil ran downhill and entered Hawkins Creek where it spread down the creek for approximately 1/4 mile until stopped by a natural boom of trees and brush. The spill pathway on the ground was substantial, estimated in one inspection report to be 300'-400' long by 6' wide. A J A's clean up of the creek was reasonably prompt, but clean up of live oil and oil saturated soil on the lease was less responsive. The spill was first reported in an inspection report dated February 26, 2001; yet patches of live oil remained outside the firewall as of the date of inspections conducted in early May 2001, more than two months later. Oil saturated soil and vegetation was still on the lease as of an inspection on June 15, 2001, and it does not appear that the lease was properly cleaned up and remediated until there was a change of operator approved January 18, 2002. Pollution of the creek continued for at least two days, and pollution of the soil and vegetation continued for a period of at least several months. The

penalty schedule provides for a range of standard penalties for Rule 8(d)(1) violations of $1,000.00 to $6,000.00 and enhancement guidelines in the penalty schedule provide for enhancements of $5,000.00 to $25,000.00 for threatened or actual pollution of major freshwater sources, including creeks. The penalty schedule also provides for enhancements ranging from $100.00 to $2,000.00 per month for time out of compliance and $10.00 per square foot for affected areas in excess of 100 square feet.

Considering the magnitude and seriousness of the Christian Lease spill, the actual pollution of Hawkins Creek, the lack of good faith of respondent to be inferred from failure adequately to clean up the spill, and the duration of the spill effects, the examiner recommends a penalty of $6,000.00 with an enhancement of $4,000.00. The enhancement is authorized primarily by penalty schedule enhancement guidelines pertaining to actual pollution of a major freshwater source, although components of the enhancement are also within enhancement guidelines pertaining to time out of compliance and affected areas in excess of 100 square feet.

(e) Rule 8(d)(1) Penalty Recommendation - Richey and Jones Leases

For the Statewide Rule 8(d)(1) violations on the Richey and Jones Leases, Enforcement recommended penalties of $6,000.00 and $3,000.00, respectively. The examiner agrees with these recommended penalties.

The violation on the Richey Lease involved a leak from a saltwater tank and live oil and oil stained dirt inside and outside the firewall at the tank battery. This discharge was first reported in an inspection report dated February 20, 2001, and the resulting pollution still had not been cleaned up completely as of a further inspection report dated February 20, 2002. The maximum penalty provided by the penalty schedule for the Rule 8(d)(1) violation on the Richey Lease is justified by the nature of the spill and the failure of A J A to timely and effectively clean up and remediate the pollution.

The violation on the Jones Lease, reported in an inspection report dated June 5, 2001, involved a spill of 2-3 barrels of oil inside the firewall at the tank battery, a repetition of a similar, although larger, discharge only four months earlier. The mid-range penalty recommended by Enforcement for the Rule 8(d)(1) violation on the Jones Lease is deemed to be appropriate in that the evidence submitted by Enforcement indicates that the spill was contained inside the firewall, and the last inspection report indicating that the pollution conditions persisted was dated June 15, 2001. No enhancements of the penalties for the Rule 8(d)(1) violations on the Richey and Jones Leases were sought by Enforcement, and none are recommended.

(f) Total Penalty Recommendation

The total administrative penalty recommended by the examiner for all violations is $34,750.00. In addition, the examiner recommends that respondent be ordered to place the Richey and Jones Leases in compliance with Statewide Rules 3, 8 and 91.

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. John Allen Reese D/B/A A J A Companies ("A J A") was given at least 10 days notice of this proceeding by certified mail, addressed to his most recent Form P-5 (Organization Report) address. In addition, John Allen Reese ("Reese") appeared and participated at the hearing.

2. A J A is a sole proprietorship, of which Reese is the sole proprietor. A J A's P-5 Organization Report is delinquent, A J A having last filed a Form P-5 on February 22, 2001.

3. A J A designated itself to the Commission as the operator of the Richey, E. G. -A- (07598) Lease ("Richey Lease"), East Texas Field, Gregg County, Texas; the Floyd Jones (08471) Lease ("Jones Lease"), East Texas Field, Gregg County, Texas; and the Christian, Arthur -B- (07508) Lease ("Christian Lease"), East Texas Field, Gregg County, Texas ("subject leases") by filing Forms P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective February 20, 2001.

4. The previous operator of the subject leases was 5R Oil Company, of which Reese's wife is sole proprietor. Reese is the person primarily responsible for making field decisions for 5R.

5. As of June 15, 2001, and February 20, 2002, identification signs posted at Well Nos. 1 and 2 and at the tank battery and lease entrance on the Richey Lease displayed incorrect information in that they did not show the name of A J A as operator.

6. As of June 15, 2001, the identification signs posted at Well Nos. 1,2,3,4, and 5, and at the tank battery and lease entrance on the Jones Lease displayed incorrect information in that they did not show the name of A J A as operator.

7. As of June 15, 2001, the identification signs posted at Well Nos. 2,3,4, and 5, and at the tank battery and lease entrance on the Christian Lease displayed incorrect information in that they did not show the name of A J A as operator.

8. On or before February 17, 2001, a water leg malfunction caused oil tanks on the Jones Lease to overflow. An estimated 5-10 barrels of oil flowed over the firewall at the tank battery and spread in two directions. Oil flowed downhill and entered and polluted surface water in a branch of Campbell's Creek.

9. The spill area of oil saturated and stained soil on the Jones Lease resulting from the tank

overflow measured an estimated 300' x 200'. As of February 20, 2001, from 1 to 3 gallons of oil remained in the branch of Campbell's Creek, and no boom or containment dike was in place. Bales of hay had been placed in the creek by February 21, 2001, but traces of oil remained in the creek as of February 27, 2001. Patches of live oil remained within the spill area on the Jones Lease as of February 27, 2001.

10. As of March 6, 2001, rains were washing over the spill area on the Jones Lease causing a slight rainbow of oil in the branch of Campbell's Creek.

11. On or before June 5, 2001, there was an additional discharge of 2-3 barrels of oil inside the firewall at the tank battery on the Jones Lease, and this oil remained there as of June 15, 2001.

12. On or before February 26, 2001, a gauger closed a valve on a separator causing an oil tank on the Christian Lease to overflow. Oil was discharged outside the firewall from a drain in the firewall which could not be closed by a Railroad Commission inspector, and also flowed over the firewall. An estimated 25-30 barrels of oil were discharged inside and outside the firewall. Oil flowed downhill over a spill path estimated to be 300'-400' long by 6' wide and entered and polluted surface water in Hawkins Creek. Oil flowed down the creek for about 1/4 mile before being stopped by a natural boom of trees and brush.

13. A J A recovered most of the oil that had entered Hawkins Creek by February 27, 2001, and by March 1, 2001, the creek was clear of oil. As of March 5, 2001, an estimated 15 barrels of oil remained on the ground and inside the firewall as a result of the Christian Lease tank overflow. Live oil and saturated dirt remained below the tank battery and downhill toward the creek. At least some patches of live oil remained on the lease through at least May 3, 2001, and a large area of oil saturated soil and vegetation remained there through at least June 15, 2001.

14. As of January 18, 2002, the Commission approved a change of operator on the Christian Lease, effective November 1, 2001, from A J A to CNS Energy, Inc. By January 24, 2002, CNS had posted signs on the lease and had remediated, disced, tilled, and fertilized past the spill area.

15. On or before February 20, 2001, a saltwater tank on the Richey Lease leaked and oil was discharged inside and outside the firewall at the tank battery. Live oil and oil stained dirt were observed on the lease as of that date. Oil stained dirt remained there as of February 20, 2002.

16. No permit was issued by the Commission to A J A to discharge oil and/or gas wastes from or onto the Richey, Jones and/or Christian leases.

17. Failure to properly identify the subject leases, wells, and tank batteries by the posting of

identification signs required by Statewide Rule 3(a) has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.

18. Discharge or disposal of oil, saltwater, or other oil and gas waste will cause pollution if allowed to come into contact with zones of fresh or usable quality surface or subsurface waters. Any 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 runoff. Such unauthorized discharges and/or pollution of surface and subsurface waters pose a threat to the public health and safety.

19. A J A first filed a Form P-5 Organization Report on February 22, 2001, and has no history of previous orders issued against it for violations of Commission rules.

20. A J A has not demonstrated good faith since it failed to cure violations of Statewide Rules 3(a), 8(b) and/or 8(d)(1) on the Richey, Jones, and Christian Leases.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to 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. John Allen Reese D/B/A A J A Companies is the operator of the Richey, E. G. -A- (07598) Lease ("Richey Lease"), East Texas Field, Gregg County, Texas; the Floyd Jones (08471) Lease ("Jones Lease"), East Texas Field, Gregg County, Texas; and the Christian, Arthur -B- (07508) Lease ("Christian Lease"), East Texas Field, Gregg County, Texas ("subject leases"), as defined by Commission Statewide Rules 58 and 79 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.58 and 3.69] and Chapter 85 of the Texas Natural Resources Code.

4. As operator, John Allen Reese D/B/A A J A Companies has the primary responsibility for complying with Statewide Rules 3(a), 8(b), 8(d)(1) and 91 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.3(a), 3.8(b), 3.8(d)(1) and 3.91], Chapter 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules, respecting the subject leases.

5. By failing to post, at all times, an identification sign correctly identifying the name of the operator at the lease entrance, wells and tank batteries on the subject leases, John Allen Reese D/B/A A J A Companies violated Statewide Rule 3(a) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3(a)]. A J A was out of compliance with Statewide Rule 3(a) on the

Richey Lease as of June 15, 2001, and February 20, 2002, and on the Jones and Christian Lease on June 15, 2001.

6. By causing or allowing the unpermitted discharge or disposal of oil and/or gas wastes on the Richey, Jones and Christian Leases, John Allen Reese D/B/A A J A Companies violated Statewide Rule 8(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(d)(1)] and Chapter 91 of the Texas Natural Resources Code. John Allen Reese D/B/A A J A Companies was out of compliance with Statewide Rule 8 on the Richey Lease from at least February 20, 2001, through at least February 20, 2002; on the Jones Lease from at least June 5, 2001, through at least June 15, 2001; and on the Christian Lease from at least February 26, 2001, through at least June 15, 2001.

7. By causing or allowing the pollution of surface or subsurface water in this state, more particularly a branch of Campbell's Creek on the Jones Lease and Hawkins Creek on the Christian Lease, John Allen Reese D/B/A A J A Companies violated Statewide Rule 8(b) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(b)] and Chapter 91 of the Texas Natural Resources Code. John Allen Reese D/B/A A J A Companies was out of compliance with Statewide Rule 8(b) on the Jones Lease from at least February 17, 2001, through at least February 27, 2001, and on March 6, 2001, and on the Christian Lease from at least February 26, 2001, through at least February 27, 2001.

8. The documented violations committed by John Allen Reese D/B/A A J A Companies constitute acts deemed serious and a hazard to the public health, and demonstrate a lack of good faith as provided by TEX. NAT. RES. CODE ANN. §81.0531(c) (Vernon 2001).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring the operator John Allen Reese D/B/A A J A Companies to:

1. Clean up and place in compliance with Statewide Rules 3, 8 and 91 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.3, 3.8 and 3.91] the Richey, E. G. -A- (07598) Lease, East Texas Field, Gregg County, Texas;

2. Clean up and place in compliance with Statewide Rules 3, 8 and 91 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.3, 3.8 and 3.91] the Floyd Jones (08471) Lease, East Texas Field, Gregg County, Texas; and

3. Pay an administrative penalty in the amount of THIRTY-FOUR THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS ($34,750.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner