

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION**

**NMOCD - OGA 04- 05**

**IN THE MATTER OF BURLINGTON RESOURCES OIL AND GAS  
COMPANY LP,**

**Respondent.**

**AGREED ORDER DIRECTING COMPLIANCE  
AND ASSESSING CIVIL PENALTY**

Pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, as amended ("Act"), the Director of the Oil Conservation Division ("OCD") issues this Order to BURLINGTON RESOURCES OIL AND GAS COMPANY LP, directing compliance with the Act and the OCD Rules, and assessing a penalty for violations of the Act and OCD Rules.

**FINDINGS**

1. The OCD is the state division charged with administration and enforcement of the Act and OCD Rules.
2. OCD records show "Burlington Resources Oil and Gas Company" as the operator of record for the Middle Mesa SWD #1 well, API # 30-045-27004 and the associated tank battery located in Section 25, Township 32 North, Range 7 West, San Juan County, New Mexico. The Middle Mesa SWD #1 Tank Battery is referred to in this order as "the facility."
3. According to the records of the Public Regulation Commission, "Burlington Resources Oil and Gas Company," a foreign corporation, ceased doing business in New Mexico on December 31, 2000.
4. At all times relevant to this Order, the facility was operated by "Burlington Resources Oil and Gas Company LP" ("Burlington"), a company registered with the Secretary of State as a foreign limited partnership under number LPF2001020702. Burlington is in the process of updating OCD records to reflect that it is the current operator of record for the facility.
5. An OCD site investigation of the facility established the following facts:

- a. On October 22, 2003, Oil Conservation Division Deputy Inspector W. Bruce Martin observed water leaking from two produced water storage tanks at the facility. Tire tracks and footprints around the tanks were full of water and the ground was saturated. Green algae appeared to be growing in the water puddles.
  - b. During this investigation, Deputy Inspector Martin was approached by a trucking company employee who was unloading produced water at the facility. The driver stated that the tanks had been leaking since March 2003 and that Burlington personnel were aware of the leaks.
6. Further investigation of Burlington records by the OCD established the following facts:
  - a. On April 1, 2003, the Burlington employee operating the facility sent an e-mail reporting the tank leaks to three other Burlington employees: a field foreman, a field specialist and an environmental specialist. The operator's report stated that the leaks violated OCD rules, and that the problem should be addressed to prevent possible enforcement action by OCD.
  - b. The environmental specialist responded to the operator's e-mail the day it was received, acknowledging that Burlington would be subject to an OCD penalty for this violation.
7. Based on the amount of water observed by Deputy Inspector Martin around the leaking tanks at the facility, and the length of time the tanks had been leaking, the volume of produced water released at the facility exceeded five barrels.
8. The produced water kept in the tanks at this facility contains bicarbonate minerals from the Fruitland Coal formation.
9. Burlington did not report the releases from the leaking tanks at the facility to the OCD until after Deputy Inspector Martin's October 22, 2003 investigation.
10. Burlington did not take corrective action on the leaking tanks at the facility until after Deputy Inspector Martin's October 22, 2003 investigation.
11. OCD Rule 703.B [19.15.9.703.B NMAC] states, in relevant part:

"Injection projects, including ... all related surface facilities shall be operated and maintained at all times in such a manner as will ... prevent surface damage or pollution resulting from leaks, breaks, or spills."
12. OCD Rule 710.A. [19.15.9.710.A NMAC] states, in relevant part:

"No person, including any transporter, may dispose of produced water on the surface of the ground...."

13. OCD Rule 116.A (1) [19.15.3.116.A (1) NMAC] states, in relevant part:

"The Division shall be notified of any unauthorized release occurring during the ... storing... of ... produced water ... in the State of New Mexico in accordance with the requirements of Section 116 of 19.15.3 NMAC."

14. OCD Rule 7.R (3) [19.15.1.7.R (3) NMAC] defines "release" in relevant part as follows:

"Release shall mean all breaks, leaks, spills ... [or] releases ... involving ... produced water...."

15. A release of a volume of produced water greater than five barrels but not more than 25 barrels is a "minor release" under OCD Rule 116.B (2) [19.15.3.116.B (2) NMAC], requiring the person operating the location of the release to provide written notice within fifteen days to the Division District Office for the area within which the release takes place by completing and filing Division Form C-141. OCD Rule 116.C (2) [19.15.3.116.C (2) NMAC].

16. OCD Rule 116.D [19.15.3.116.D NMAC] provides, in relevant part:

"Corrective Action. The responsible person must complete Division approved corrective action for releases which endanger public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the Division or with an abatement plan submitted in accordance with Section 19 of 19.15.1 NMAC."

17. NMSA 1978, Section 70-2-31(A) authorizes the assessment of civil penalties of up to one thousand dollars per day per violation against any person who knowingly or willfully violates any provision of the Oil and Gas Act or any rule adopted pursuant to the Act.

18. NMSA 1978, Section 70-2-33(A)(1) defines "person" as

"any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity...."

19. On January 12, 2004, OCD mailed "Notice of Violation (3-04-01)" to Burlington, stating that Burlington was in violation of OCD Rules 703.B, 710.A, 116.C (2) and 116.D.

20. After OCD's investigation of the facility, Burlington addressed the contamination on location and took the following actions to prevent future violations:
- a. adopted a revised internal release reporting procedure, including serious consequences for failing to follow the procedure;
  - b. initiated a new one-on-one training program;
  - c. conducted an outside division environmental audit of all SWD facilities;
  - d. adopted an annual site security audit process;
  - e. initiated a formal corporate audit process;
  - f. rebuilt the facility with new tanks, a concrete pad, fences, electronic entry and a drain system; and
  - g. began construction of a transfer spill containment system to catch any releases from trucks unloading water at the facility.

### **CONCLUSIONS**

1. The OCD has jurisdiction over the parties and subject matter in this proceeding.
2. Burlington is a "person" as defined by NMSA 1978, Section 70-2-33(A) subject to civil penalties under NMSA 1978, Section 70-2-31(A) for knowing and willful violations of the Oil and Gas Act or OCD Rules.
3. Burlington is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for violating OCD Rule 703.B's requirement that the operator of an injection facility operate and maintain the facility in such a manner to prevent surface damage or pollution, because Burlington continued to operate the facility without corrective action after it became aware that tanks containing produced water were leaking. This violation occurred over a period of time exceeding six months.
4. Burlington is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for violating OCD Rule 710.A's prohibition against the disposal of produced water on the surface of the ground, because it continued to allow produced water to leak from its tanks to the surface of the ground after becoming aware that the tanks were leaking. This violation occurred over a period of time exceeding six months.
5. Burlington is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for violating OCD Rule 116.C(2)'s requirement to provide written notice to the division district office within fifteen days of an unauthorized release of produced

water exceeding five barrels, because although Burlington was aware of the unauthorized release of produced water exceeding five barrels, Burlington failed to provide the required written notice.

6. As operator of the Middle Mesa SWD #1 Tank Battery, Burlington is the "responsible person" required to take corrective action under OCD Rule 116.D for releases at that facility that endanger public health or the environment. Burlington is subject to civil penalties under NMSA 1978, Section 70-2-31(A) for violating OCD Rule 116.D because it failed to repair the leaking produced water tanks for more than six months after it became aware of the leaks.

### **ORDER AND CIVIL PENALTY**

1. Taking into consideration both aggravating and mitigating factors, the OCD hereby assesses a civil penalty totaling six thousand dollars (\$6,000) against Burlington.
2. The civil penalty shall be paid within sixty days (60 days) of receipt of this Order. Payment shall be made by certified or cashier's check made payable to the "New Mexico Oil Conservation Division," and mailed or hand-delivered to the New Mexico Oil Conservation Division, Attention: Director, 1220 South St. Francis Drive, Santa Fe, NM 87505.
3. By signing this Order, Burlington expressly:
  - a) acknowledges the correctness of the Findings and Conclusions set forth in this Order;
  - b) agrees to comply with Ordering Paragraph (2);
  - c) waives any right, pursuant to the Oil and Gas Act or otherwise, to a hearing either prior or subsequent to the entry of this Order or to an appeal from this Order; and
  - d) agrees that if it fails to comply with this Order, the Order may be enforced by suit or otherwise to the same extent and with the same effect as a final Order of the Division entered after notice and hearing in accordance with all terms and provisions of the Oil and Gas Act (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended).

Done at Santa Fe, New Mexico this 5<sup>th</sup> day of April, 2004

By: 


 Acting

Director, Oil Conservation Division

**ACCEPTANCE**

Burlington Resources Oil and Gas Company LP hereby accepts the foregoing Order, and agrees to all of the terms and provisions set forth in that Order.

BURLINGTON RESOURCES OIL AND  
GAS COMPANY LP

By:   
John F. Zent  
Title: Attorney-in-fact  
Date: March 31, 2004