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January 14, 2000

OIL CONSERVATION DIV.
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HAND DELIVERED

Ms. Lori Wrotenbery, Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Case 12033 (De Novo) Application of Public Service Company of New Mexico for review of Oil Conservation Division directive dated March 13, 1998, directing applicant to perform additional remediation for hydrocarbon contamination, San Juan County, New Mexico.

Dear Ms. Wrotenbery:

Pursuant to your directive at the conclusion of the hearing on the above-referenced application, enclosed for filing is Burlington Resources Oil & Gas Company's Proposed Order of the Commission and the Closing Statement of Burlington Resources Oil & Gas Company.

Very truly yours,

William F. Carr

WFC/md

cc: Richard L. Alvidrez, Esq.
Rand L. Carroll, Esq.
Marilyn Hebert, Esq.
John H. Bemis, Esq.

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 12033 (De Novo)
ORDER NO. R-_____

APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR REVIEW OF OIL CONSERVATION DIVISION DIRECTIVE DATED MARCH 13, 1998, DIRECTING APPLICANT TO PERFORM ADDITIONAL REMEDIATION FOR HYDROCARBON CONTAMINATION, SAN JUAN COUNTY, NEW MEXICO.

BURLINGTON RESOURCES OIL & GAS COMPANY'S PROPOSED ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on August 26, 1999, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission".

NOW, on this ____ day of _____, 2000, the Commission, a quorum being present, having considered the record,

FINDS THAT:

(1) Due public notice has been given and the Commission has jurisdiction of this case and its subject matter.

(2) The applicant, Public Service Company of New Mexico ("PNM"), seeks an order from the Commission nullifying the March 13, 1998 Oil Conservation Division ("Division") directive to PNM requiring it to perform additional remediation for hydrocarbon contamination located in the area of the Burlington Resources Oil & Gas Company Hampton

Well No. 4 M Well ("the Hampton well") located in Unit N, Section 13, Township 30 North, Range 11 West, NMPM, San Juan County, New Mexico. PNM also seeks a determination by the Commission that, after March 13, 1998, PNM is not a "responsible person" for purposes of further investigation and remediation of contamination at this location.

(3) Burlington Resources Oil & Gas Company ("Burlington") appeared at the hearing and presented testimony in opposition to the application of PNM. Burlington admits that it is a "responsible person" for contamination at the Hampton 4M Well site but contends that PNM is also a "responsible person" for contamination at this site. (Rosasco Direct at 4).

BACKGROUND:

(4) In 1984, the Hampton well was completed in the Dakota and Mesaverde formations by Southland Royalty Company. Burlington is a successor operator to Southland Royalty Company. (Hasely Direct at 3-4).

(5) Production from the Hampton well has been sold pursuant to a Gas Purchase Agreement dated March 1, 1990 between Southland Royalty Company and Gas Company of New Mexico ("the Gas Purchase Agreement"). PNM, successor to Gas Company of New Mexico, purchased natural gas produced from the Hampton 4M Well pursuant to this agreement. (Hasely Direct at 4; Burlington Exhibit 1; PNM Exhibit 12).

(6) In April 1996, PNM discovered contaminated groundwater at an unlined surface dehydration pit it had operated at the Hampton well site. (Hasely Direct at 6; Gannon Direct at 8-9; PNM Exhibit 13; *See* Burlington Exhibit 2).

(7) On April 24, 1996, PNM excavated the site of its unlined surface pit to a depth of approximately 12 feet. When it completed this excavation it left contaminated soils below the base of its excavation with a Photo Ionization Detector ("PID") reading at the base of the excavation above 1000 ppm. (Hasely Direct at 6; Gannon Direct at 10-11; Gannon at Tr. 135-136; Olson at Tr. 696; Burlington Exhibit 14).

(8) In December 1996, PNM performed a soil boring at the location of its unlined surface disposal pit. PNM bored to approximately 27.8 feet and encountered ground water with two inches of free-phase product in the bailer at that depth. (Gannon Direct at 18-20).

(9) In January 1997, additional monitor wells were installed. In February 1997, PNM discovered dissolved phase groundwater contamination upgradient from its disposal pit at the Hampton well site. (Gannon Direct at 20-21).

(10) On April 8, 1997, Burlington was advised by the Division that PNM had identified groundwater impacts at the Hampton well site related to activities of Burlington. The Division directed Burlington to address the cause and extent of the groundwater impact related to its activities at this well site. (Hasely Direct at 6; *See* Olson Direct at 4; Burlington Exhibit 4).

(11) In response to the Division's April 8, 1997 directive, Burlington investigated the conditions at this well site and, on April 14, 1997, reported a hydrocarbon seep along the northwestern edge of the well pad adjacent to the location of the PNM pit. On April 15, 1997, Burlington submitted to the Division a Plan of Action for the Hampton 4M well site and on April 17, 1997, conducted excavations around the northwest perimeter of the well pad and constructed a collection trench. (Hasely Direct at 7; Burlington Exhibit 6). Thereafter, Burlington attempted to excavate an area where it had previously maintained a tank battery and conducted additional investigations of the site. (Hasely Direct at 8).

(12) On August 1, 1997, the Division wrote to both PNM and Burlington concerning the contamination at the Hampton well site. Burlington was directed to submit a Soil and Groundwater Investigation Work Plan for the portion of the site upgradient of the PNM disposal pit and PNM was directed to address the contamination downgradient of its pit. (Olson Direct at 5; Burlington Exhibit 8).

(13) In response to the Division's August 1 directive, on September 19, 1997, Burlington met with Division personnel and filed a Soil and Groundwater Work Plan identifying additional activity to remediate the site. (Hasely Direct at 8; Burlington Exhibits 8, 9, 10).

(14) The Burlington Work Plan was approved by the Division subject to certain conditions on November 24, 1997. Pursuant to this plan, on December 3, 1997, Burlington commenced additional excavation in the southeast portion of the Hampton well site. Hasely Direct at 10-11; Olson Direct at 6; Burlington Exhibits 10, 11. Division representatives were present at various times during this remediation in which approximately 1000 cubic yards of soil were excavated. (Hasely Direct at 8-9; Burlington Exhibit 11).

(15) From June to November 1997, additional monitor wells were installed at the Hampton well site and, on January 12, 1998, PNM commenced free product recovery at the Hampton well site. (Gannon Direct at 26, 28-29; PNM Exhibit 13).

(16) On February 23, 1998, Mr. J. Burton Everett, the owner of the property immediately downgradient of the Hampton well site, wrote the Division stating his concern about the migration of hydrocarbon contamination onto his property. (Olson Direct at 6).

(17) Because a plume of contamination was moving from the well site toward the Burton property, on March 13, 1998 the Division wrote to PNM and directed it to remove remaining source areas with free phase hydrocarbons in the vicinity of and downgradient from the Hampton Well site. (Hasely Direct at 12; Olson at Tr. 683-684; Burlington Exhibit 13).

(18) PNM appealed the Division's March 13, 1998 directive and sought a stay of this action pending a decision on its appeal. (Burlington Exhibit 16). The Division denied PNM's request for stay on August 20, 1998.

(19) PNM took no new actions in response to the Division's March 13, 1998 directive but continued to conduct quarterly ground water sampling and water level measurements and to operate a free product recovery pump in a monitor well at this site. (Hasely Direct at 12).

(20) In April and May 1998, free product was discovered upgradient from the dehydration pit and Burlington installed two additional monitor wells at the site. (Hasely Direct at 13; Gannon Direct at 30).

(21) On September 1, 1998, the OCD wrote PNM and Burlington and requested that they cooperatively work together and conduct additional investigation to determine the complete downgradient extent of contamination at the Hampton well site. (Burlington Exhibit 27; PNM Exhibit 18).

(22) Burlington set up meetings with PNM to discuss additional investigation and remediation at the Hampton 4M site, but no agreement was reached for a cooperative effort to address this matter because PNM refused to pay its share of the costs of the additional investigation and remediation. (Hasely Direct at 13-14).

(23) On October 26, 1998, Burlington advised PNM that contamination from the PNM unlined pit was a continuing active source at this site which made efforts to remediate the site ineffective and demanded that PNM immediately undertake remediation. PNM declined to remediate the site but encouraged Burlington to "immediately proceed with remediation." (Ristau at Tr. 54-55; Gannon at Tr. 157-163; Hasely Direct at 14; Burlington Exhibits 19, 20).

(24) Burlington has proceeded with the remediation of the Hampton well site despite PNM's refusal to undertake remediation. (Hasely Direct at 15-20).

(25) Burlington's remediation includes activities from November 10, 1998 through February 2, 1999. (Hasely Direct at 16). During this remediation of the Hampton well site, Burlington excavated approximately 6440 cubic yards of soil, excavating to an approximate depth of 27 feet below the ground surface, with water encountered at approximately 25 feet. Burlington excavated contaminated soils beneath the PNM pit where heavy amounts of hydrocarbon impacted soils were encountered at a depth of 12 feet below ground surface--the depth at which PNM stopped its prior excavation–and continued to groundwater. (Hasely Direct at 17). This excavation established that there was no indication of contamination caused by sources from the Hampton 4M well bore. (Hasely Direct at 20, Burlington Exhibits 26-32).

(26) The contaminated soils which were removed from the site during Burlington's excavation are being land farmed and Burlington has rebuilt the location. (Hasely Direct at 20).

(27) PNM could have remediated, or participated in the 1998-1999 remediation of the Hampton 4M well site, but did not. However, PNM now complains about the methods used by Burlington to investigate and remediate this contamination. (Gannon Direct at 45; Gannon at Tr. 170-172, 206-207; Sikelianos Direct at 16-17, Sikelianos Rebuttal at 1-10).

(28) The Burlington remediation activities have been reasonable and adequately documented (Rosasco Direct at 6-7; Rosasco Rebuttal at 15-17) and have been witnessed by the Division. (Olson Direct at 9).

(29) Groundwater contamination remains at the Hampton 4M well site and a plume of contamination extends approximately 1000 feet downgradient from the site. (Ristau at Tr. 47). Burlington is continuing to investigate and remediate this site without participation

from PNM. (Hasely Direct at 14-15).

PNM IS A RESPONSIBLE PERSON FOR FURTHER INVESTIGATION AND REMEDIATION OF CONTAMINATION AT THE HAMPTON 4M WELL SITE:

(30) Oil Conservation Division Environmental Rules and Regulations define "Responsible Person" as "the owner or operator who must complete Division approved corrective action for pollution from releases." 19 NMAC 15.8.7

A. PNM OWNED AND OPERATED A DEHYDRATOR AND AN UNLINED SURFACE DISPOSAL PIT INTO WHICH IT DISPOSED OF HYDROCARBONS AT THE HAMPTON 4M WELL SITE:

(31) Gas produced from Mesaverde and Dakota formation wells in the San Juan Basin contain liquids including liquid hydrocarbons. (*See* Rhodes Rebuttal at 1).

(32) The Gas Purchase Agreement between Burlington and PNM provides that PNM had the right to reject gas which is not free of objectionable liquids, including hydrocarbons. (Ristau at Tr. 64-65).

(33) Instead of rejecting gas which contained water and hydrocarbons, PNM, at its sole discretion, installed, maintained, owned and operated dehydration equipment and an unlined surface disposal pit at the Hampton well site and accepted the gas delivered by Burlington from the Hampton 4M Well. (Ristau at Tr. 45, 66-67).

(34) The purpose of the dehydration equipment at the Hampton well site was to remove liquids from the gas stream produced from the Hampton well. (Ristau Direct at 65-66; *See* Heath Direct at 7-12).

(35) PNM was not required by the Gas Purchase Agreement to install or operate dehydration equipment or use an unlined surface disposal pit at the Hampton well site. (Burlington Exhibit 12; PNM Exhibit 1).

(36) PNM owned and operated dehydration equipment at the Hampton well site until June 1995. (Ristau at Tr. 66-67).

FINDING: PNM owned and operated dehydration equipment and an unlined earthen

surface disposal pit at the Hampton 4M Well site.

B. PNM DISCHARGED HYDROCARBONS INTO ITS PIT AT THE HAMPTON WELL SITE:

(37) Purchasers place dehydrators on the wells connected to their systems to prevent liquids delivered with natural gas from entering and damaging their pipelines. (Heath Direct at 9; Rhodes Rebuttal at 1).

(38) While PNM purchased gas from the Hampton well, there were two sets of dehydration equipment at this site. The working efficiency of this equipment is unknown. (Heath at Tr. 240-242).

(39) On the PNM operated dehydrator at the Hampton 4M well site, there is a small inlet separator which extracted liquids from the gas stream and discharged these liquids, including free phase hydrocarbons, for more than 12 years, into the unlined PNM surface pit. (*See* Ristau at Tr. 46-48; Terauds Direct at 20).

(40) PNM controlled the production stream from the Hampton well when it was in the dehydrator and was responsible for discharges of hydrocarbons from its dehydration unit onto the ground. *(See* Ristau at Tr. 69-70, 71; Heath at Tr. 238).

(41) Purchasers expect free product to periodically be sent from the well to the purchaser's dehydrator. For this reason, the PNM dehydrator was equipped with a sensing element which, depending on how it is adjusted, would shut in the well if excessive volumes of free product come into the dehydration unit. (Ristau at Tr. 69; Heath Direct at 8, 10; Rhodes Rebuttal at 1).

(42) The volume of liquids discharged into the PNM pit from the PNM operated equipment prior to the Hampton well being shut in by the sensing element depended on how the valves on this equipment were set. (Heath at TR. 232-233). At this time, it is not known how these valves were set during the time the equipment was operated by PNM nor is the working history of the PNM operated equipment at this site now known. (Heath at TR. 239, 242).

(43) The PNM equipment, when properly functioning, could dump the entire liquid production of the Hampton 4M well onto the ground without the sensing element shutting

in the well. (Rhodes Direct at 3-5, Rhodes Rebuttal at 4-5).

(44) There is no evidence that the Hampton 4M well was ever shut in by the sensing element device. (Ristau at Tr.67).

(45) PNM could have refused to accept the gas tendered to it by Burlington from the Hampton well. PNM never refused to accept this gas. (Ristau at Tr. 67). Instead, PNM accepted the gas stream into its dehydration equipment, extracted liquids from this gas and discharged water and liquid hydrocarbons into an unlined earthen pit. (Ristau at Tr. 46).

(46) PNM admits that its dehydrator discharged hydrocarbons into the unlined pit at the Hampton well and that the PNM pit was a source of contamination at this site. (Ristau at Tr. 48; Gannon at Tr. 205; Terauds Direct at 25; *See* Rosasco Rebuttal at 10-11).

FINDING: Hydrocarbons were released to the environment while under the management and control of PNM at the Hampton 4M well site.

C. PNM CONTAMINATED SOIL AND GROUND WATER AT THE HAMPTON WELL SITE.

(47) Prior to Burlington's remediation of the site, the greatest accumulation of free product was immediately beneath the former PNM unlined surface pit PNM. (Gannon Direct at 157; Rosasco Direct at 4; Olson at Tr. 639, 662).

(48) The greatest concentrations of product generally occur closest to the source of the contamination. (Rosasco Direct at 5; Olson at Tr. 640, 699-700).

(49) Free product present on the groundwater surface beneath the PNM pit at the Hampton well site originated in part from releases of hydrocarbons by PNM to its disposal pit. These hydrocarbons migrated downward resulting in extensive soil contamination, accumulations of free product and dissolved phase groundwater contamination. (Rosasco Direct at 6; Rosasco Rebuttal at 1, 9; Olson at Tr. 697).

(50) A plume of groundwater contamination resulting from the releases by PNM and Burlington extends offsite and downgradient of the Hampton well site and will remain for some period of time as the contaminated groundwater beneath the location flows offsite.

(Ristau at Tr. 67).

(51) The contamination in the downgradient portion of the plume must be addressed as part of the efforts to investigate and remediate the contamination at the Hampton well site. *(See* Terauds at Tr. 299).

(52) PNM's discharge of hydrocarbons into PNM's unlined disposal pit was a source of hydrocarbon contamination to the subsurface soil and groundwater beneath the Hampton well site, and has contributed to the groundwater contamination downgradient of this location. (Rosasco Direct at 6; Roscaso Rebuttal at 1,12; Terauds Direct at 25; Terauds at Tr. 284).

(53) PNM contributed to the dissolved phase hydrocarbons on the groundwater and in the plume of dissolved phase contamination which extends off the well site and onto offsetting properties. (*See* Terauds at Tr. 296; Olson at Tr. 683).

(54) The Division has encountered other similar sites where unlined dehydration pits have resulted in free phase product contamination as a result of disposal of hydrocarbon wastes. (Olson Direct at 7).

FINDING: PNM's activities contaminated soil and ground water at the Hampton well site.

(55) PNM contends that the contamination which remains at this site is the result of leaks from the Hampton 4M wellbore. In support of this theory, PNM cited a period of time when there were changes in the well's gas-oil ratio. (Heath Direct at 20-22; Heath Rebuttal at 6; Terauds Direct at 19; PNM Exhibits 43-45).

(56) Burlington's evidence showed that the well records for the Hampton well establish the integrity of the wellbore and contained no evidence of leaks. Dillon Rebuttal at 3. Burlington's evidence also showed that the well's oil production tracked its gas production from first deliveries of hydrocarbons until 1995 when oil production declined. In 1996, plunger lift was installed on the well and again its oil rate returned to prior levels and tracked the gas production. Had there been a leak in the well, this would not have occurred. (Dillon Rebuttal at 2).

(57) PNM also contends that the contamination at the location of its disposal pit at

the Hampton 4M well was not from PNM's operations at this site. Instead, PNM contends that the contamination under their pit originated from free product discharged at an upgradient source which flowed downgradient to the location of the PNM pit. (Terauds Direct at 17).

(58) Hydrocarbon releases by Burlington could not have been the source of contamination found beneath the PNM pit because:

A. contaminants could not migrate downgradient from the Burlington operations to the PNM pit for the results of soil borings and site excavations show that a continuous zone of hydrocarbon or contaminant occurances in the unsaturated zone was not present and never existed between the locations of the former Burlington and PNM surface pits (Rosasco Direct at 5), and

B. if contaminants had migrated from the Burlington operations at this site, these contaminants would not "skip" the area immediately downgradient of the Burlington impoundment only to "rise up" beneath the PNM pit (Rosasco Direct at 5), and

(59) The data available shows that hydrocarbon releases occurred at the facilities of both PNM and Burlington and each is a source of contamination at this well site. (Rosasco Direct at 4; Olson Direct at 5-6, 11).

D. PNM FAILED TO REMEDIATE CONTAMINATION IT CAUSED AT THE HAMPTON WELL SITE:

(60) Though PNM claims that it "fully remediated the soil contamination" in the area of its dehydration pit (Ristau at Tr. 75), the evidence shows that PNM only partially excavated the area of its disposal pit at this well location. (Rosasco Rebuttal at 8-10).

(61) When PNM completed its partial excavation in the area of its disposal pit, hydrocarbon contamination remained in place from the base of their excavation to the water table at depths ranging from approximately 12 feet to 25 feet below ground surface. (Rosasco Direct at 6; Rosasco Rebuttal at 8-10; Olson at Tr. 696; Burlington Exhibits 14, 15; PNM Exhibit 22).

(62) By excavating the soils under its disposal pit to a depth of only 12 feet, PNM left soils at the bottom of its excavation with PID readings in excess of 1000 ppm. (Burlington Exhibit 14; PNM Exhibit 22).

(63) When PNM closed its pit, the PID readings from soil samples from the bottom of its excavation were eight to twelve times greater than the Oil Conservation Division recommended soil remediation levels. (Ristau at Tr. 59; Gannon Direct at 12; *See* Terauds at 283, Rosasco Rebuttal at 8, Burlington Exhibit 41).

(64) Because of the high PID readings, the Division directed PNM to conduct vertical profiling at the location of their pit. The boring log from this vertical extent drilling showed hydrocarbon contaminated soils from 12 feet below ground surface to groundwater with approximately 2 inches of free product on the water surface. (Gannon Direct at 18).

(65) The characteristics of the soil from the base of the PNM pit excavation to the water table as well as other data from PID readings and laboratory analysis confirm free product migration through this interval. (Rosasco Rebuttal at 3; Olson at Tr. 687-688).

(66) The contamination under the PNM dehydration pit is not a unique occurrence. Division records establish that there are numerous sites where there is free phase product contamination from discharges to dehydrator pits. (Olson Direct at 7-8; Olson at Tr. 689-690, 707-710).

(67) At the time of the March 13, 1998 directive from the Oil Conservation Division, there existed documented contamination from 12 feet below ground surface to groundwater at the base of the PNM excavation at its dehydration pit that could be a continuing source of contamination at the Hampton 4M well site. (Rosasco Direct at 6; Burlington Exhibit 14; PNM Exhibit 22).

FINDING: PNM failed to remediate the contamination which resulted from its actions at this site.

(68) While PNM contends that the contaminated soil it left at the location of its dehydration pit was not a continuing source of contamination, it asserts that a source of the contamination at the Hampton well site is a one foot layer of contaminated soil which was left at the base of the Burlington excavation in the southeast corner of the well pad under a

former Burlington tank battery. *(See* Burlington Exhibit 14, PNM Exhibit 22).

(69) The evidence shows that Burlington excavated the area in the southeast corner of the well pad to a depth of 17 feet and there were clean samples taken at the base of the pit. (Hasely Direct at 9; Burlington Exhibit 11).

E. PNM MUST COMPLETE DIVISION APPROVED CORRECTIVE ACTION:

(70) By letter dated March 13, 1998 the OCD required PNM take additional remedial action within 30 days to remove the remaining source areas with free-phase hydrocarbons in the vicinity of and immediately downgradient of the dehydration pit at the Hampton well site. (Hasely Direct at 12; Olson Tr. 683-684; Burlington Exhibit 13).

(71) PNM sought a stay of the March 13 directive which was denied by the Division on August 20, 1998. *(See* Burlington Exhibit 16).

(72) In response to the Division's March 13, 1998 letter, PNM undertook no new actions. Instead, PNM only continued to operate its free product recovery well located in the area of the PNM pit and to continue its monitoring activities. (Hasely Direct at 12, Ristau at Tr. 52).

(73) PNM admits that its free product recovery well was not effectively remediating the contamination at this well site (Ristau at Tr. 50), and that free product recovery would never have removed the remaining contamination source areas in the vicinity of and immediately downgradient of the dehydration pit at the Hampton Well well site. *(See* Gannon at Tr. 165, 169).

(74) PNM also admits that its remediation efforts did not address the continued migration of contamination from the well site. (Ristau at Tr.73-74; *See* Olson Direct at 10).

(75) PNM further admits that it is not in compliance with the Division's March 13, 1998 directive. (Gannon at Tr. 155).

FINDING: PNM has failed and refused to complete Division approved corrective action for pollution from releases at the Hampton well site pursuant to the Division's March 13, 1998 directive.

(76) On September 1, 1998, the Division directed PNM and Burlington to conduct additional investigation to determine the complete downgradient extent of groundwater contamination at the Hampton 4M well site. (Hasely Direct at 13; Burlington Exhibit 18; PNM Exhibit 27).

(77) In response to the Division's September 1, 1998 directive, PNM has done nothing other than what it had been doing prior to receipt of this directive and has refused to pay its share of the costs of additional investigation or remediation at the Hampton well site. (Hasely Direct at 12, 13).

FINDING: PNM has failed and refused to complete Division approved corrective action for pollution from releases at the Hampton well site pursuant to the Division's September 1, 1998 directive.

F. CONTAMINATION AT THE HAMPTON WELL SITE WAS A THREAT TO PUBLIC HEALTH AND SAFETY:

(78) The Oil Conservation Division has power "to regulate the disposition of non-domestic wastes resulting from the exploration, development and production or storage of crude oil or natural gas to protect the public health and the environment." NMSA 1978, § 70-1-12 (21) (1989).

(79) The dissolved phase contamination plume from the Hampton well site is moving downgradient at a rate of as much as 500 feet per year (Gannon at Tr. 168; Olson at Tr. 682-683) and was perhaps 1000 feet long at the time of the Examiner hearing in this case. (Ristau at Tr. 47).

(80) A water well and home are located approximately 1000 feet downgradient from the Hampton well site. (Olson at Tr. 683; PNM Exhibit 57).

(81) The Division's principal concern in requesting additional investigation and remediation at the Hampton well site was the downgradient migration of the contamination plume toward the offsetting water well. (Olson at Tr. 684).

FINDING: The contamination at the Hampton 4M well site was a potential threat to public health and safety.

FINDING: Immediate remediation of the Hampton well site was necessary to protect public health and safety.

FINDING: PNM is a responsible person for the contamination at the Hampton Well site.

FINDING: PNM is an owner and operator who must complete Division Approved corrective action for pollution from releases at the Hampton well site after March 13,1998.

G. ALLOCATION OF RESPONSIBILITY:

(82) In response to the Division's September 1, 1998 directive, Burlington conducted additional investigations to determine the extent of contamination at the Hampton well site. (Hasely Direct at 13-14). Burlington has also undertaken remediation of this site without participation from PNM. Burlington's efforts have been witnessed by the OCD. (Hasely Direct at 16-20; Olson Direct at 9; Olson at Tr. 648-657).

(83) The Oil Conservation Division determines who are the responsible persons for contamination as a result of exploration, development and production or storage of crude oil or natural gas operations. (Olson at Tr. 624-648).

(84) The Oil Conservation Division has determined regulatory responsibility for this contamination and directed both PNM and Burlington to undertake investigation and remediation of the site. (Olson Direct at 4-6; *See* Burlington Exhibits 4, 8; *See*, 19 NMAC 15.8.7).

(85) The Division has determined that Burlington and PNM are both responsible parties for groundwater contamination at this site, that Burlington is responsible for investigation and remediation south and upgradient of a line drawn south of the PNM equipment on this well site, and that PNM is responsible for investigation and remediation north and downgradient of this line. (Olson at Tr. 624, 635-641).

FINDING: PNM and Burlington equally share the regulatory responsibility for the contamination at the Hampton well site.

IT IS THEREFORE ORDERED THAT:

(1) The application of the Public Service Company of New Mexico ("PNM"), for an order nullifying the Division directive to PNM dated March 13, 1998 requiring it to perform additional remediation for hydrocarbon contamination located in the area of the Burlington Resources Oil & Gas Company Hampton No. 4-M Well located in Unit N, Section 13, Township 30 North, Range 11 West, NMPM, San Juan County, New Mexico, is denied.

(2) The application of the Public Service Company of New Mexico for a determination that it is not a responsible person for purposes of any further investigation or remediation of contamination of soil and groundwater at and downgradient from the Hampton 4M well site is denied.

(3) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

(4) DONE at Santa Fe, New Mexico, on the day and year hereinbefore designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JAMI BAILEY, Member

ROBERT L. LEE, Member

LORI WROTENBERY, Chairman

S E A L

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CASE 12203

NEW MEXICO OIL CONSERVATION COMMISSION

CLOSING STATEMENT OF
BURLINGTON RESOURCES OIL & GAS COMPANY

In this case, the Public Service Company of New Mexico asks the Oil Conservation Commission to determine that, after March 13, 1998, it is no longer a "responsible person" for the further investigation and remediation of contamination at the Hampton 4M well in San Juan County, New Mexico. It also asks the Commission to nullify the Oil Conservation Division's March 13, 1998 directive requiring PNM to perform additional remediation for hydrocarbon contamination at this site.

It is important to remember exactly what the Commission is being asked to decide in this case because the evidence presented to the Commission at the August 1999 hearing, strayed far from the issues framed by PNM's application.

At the conclusion of this hearing, the reasons for PNM's application still remain unclear. PNM testified about the substantial costs it has incurred in its efforts to avoid its responsibilities at this site. For some reason, PNM is spending more in an attempt to avoid responsibility for cleaning up its contamination than it would cost to pay its share of the expenses associated with this remediation. Perhaps PNM thinks it can get a decision from the Commission which it can then cite as a precedent in other situations with other producers.

Perhaps PNM thought that it could run this case past the Division without opposition and quickly obtain an order which would enable it pass to someone else the costs of remediating the contamination it caused. However, once Burlington opposed this application, PNM could no longer prevail by focusing only on what it had done at the site. Instead PNM has had to attempt to convert this case into a review of Burlington's efforts to investigate and remediate the contamination at the Hampton 4M Well. An effort in which PNM could have participated, but instead refused.

Burlington and PNM stand before the Commission in two very different postures. Burlington admits that it is a "responsible person" for contamination at this site. Burlington has worked, and will continue to work, with the Oil Conservation Division to investigate and remediate this contamination.

Unlike Burlington, PNM stands before the Commission asserting that it is not responsible for the remediation of its own contamination. It has refused to comply with directives from the Division's Environmental Bureau and asks the Commission to excuse it from further responsibility. PNM seeks to be excused before the remediation of this site is completed. In fact, PNM seeks to be excused before the scope of the contamination is even fully defined.

IS PNM A "RESPONSIBLE PERSON" FOR CONTAMINATION

AT THE HAMPTON 4M WELL SITE?

The central question before the Commission is whether PNM is a "responsible person" for contamination at this well site. It is a question which is easily answered. The answer is clearly yes.

The Oil Conservation Commission is a creature of statute. Its powers are expressly defined and limited by law and by rules. The rules of the Oil Conservation Division define the term "responsible person" and, in so doing, identify those matters which must be considered by the Commission in evaluating PNM's application and the evidence presented in this case.

These rules define the term "responsible person" as "the owner or operator who must complete Division approved corrective action for pollution releases."

IS PNM AN OWNER AND OPERATOR?

To discharge its duty in this case, the Commission must first determine if PNM was an owner or operator at the Hampton 4M well site. On this point there is no dispute. At the hearing, Ms. Toni Ristau, PNM's Director of Environmental Services, admitted that PNM owned and operated dehydration equipment and an unlined surface disposal pit at the Hampton 4M well site. PNM was not required to operate this equipment. However, PNM used this equipment to extract liquids, including hydrocarbons, from the gas stream delivered to it and then it disposed of these liquids by dumping them into an unlined surface disposal pit at this site.

IS PNM REQUIRED TO COMPLETE DIVISION-APPROVED CORRECTIVE ACTION FOR POLLUTION RELEASES?

There is also no dispute that the Oil Conservation Division has twice directed PNM to undertake corrective action for pollution releases. On March 13, 1998, the Division directed PNM to "remove remaining source areas with free phase hydrocarbons in the vicinity of and downgradient from the Hampton Well site." Maureen Gannon, the project manager of PNM's Pit Remediation Project, admits that PNM is not in compliance with the Division's March 13, 1998 directive. Again on September 1, 1999, the Division wrote to PNM and required "that both PNM and BR conduct additional investigations to determine the complete downgradient extent of groundwater contamination at the site." Again PNM failed and refused to comply with this directive.

The question for the Commission therefore is whether or not PNM must comply with the Division's directives. PNM admits that it discharged hydrocarbons into the unlined surface pit at this location and that these discharges resulted in contamination at this site. While it admits that it has refused to comply with directives from the Division and complete Division approved corrective action, it argues that it should not have to comply with these directives. In an attempt to bolster its argument, PNM has developed several unusual theories upon which it bases its argument.

THE "CONTRACT" ARGUMENT: PNM's first argument goes something like this: Since the liquid hydrocarbons that entered the PNM dehydrator were owned by Burlington, PNM could dump them on the ground and the resulting contamination would be the responsibility of Burlington. Under its theory, Burlington was the owner of the hydrocarbons would be responsible instead of PNM, who actually discharged them onto the ground.

In making this argument, PNM ignores the fact that the release point for the contamination under PNM's pit, was the discharge valve on PNM's dehydration unit which PNM owned and operated and over which PNM had exclusive control. PNM also ignores the Testimony of Ms. Ristau where she admits that what comes out of PNM's dehydrators is PNM's responsibility.

It is important to remember that PNM was not required to install a dehydrator on this well. PNM could have just refused to accept gas which failed to meet the contract quality specifications. However, PNM elected to accept the gas, and then elected to dump onto the ground the liquids which it extracted from the gas stream.

THE "EQUIPMENT" ARGUMENT: PNM's second argument is that its dehydrator and related equipment would only permit a very small volume of liquid to be discharged and that it has recovered more hydrocarbons from the site than it could have released to the environment. Simply stated: we removed more than we put in, so we are not

responsible.

There are some very fundamental problems with PNM's argument. First, no one knows how much was discharged from the PNM dehydration unit. PNM's witness, Rodney Heath, although never at the site during the time that PNM operated its equipment, calculated the maximum volume which could have been discharge from this dehydrator. However, Mr. Heath acknowledges the volume of hydrocarbons discharged by this dehydration unit would have depended on how the valves on this equipment were set. He admits that no one knows how these valves were set while PNM operated the equipment. Mr. Heath also acknowledges that there were two dehydration units on this site while PNM purchased this gas and no one knows the working history of either of these units.

Burlington's witness, Jim Rhodes, presented a more complete picture of how this equipment works. He testified that this equipment, when working properly, could have dumped the entire liquid production from this well onto the ground and never have shut in this well. He ran a performance analysis on the PNM equipment, and concluded it could have discharged from 120 to 140 barrels of hydrocarbons per day without shutting in the well.

The evidence of both parties shows that no one knows what volume of hydrocarbons was actually discharged from the PNM dehydration unit. PNM, however, took Mr. Heath's estimates of the volumes of hydrocarbons discharged to their pit and subtracted the volume

of free phase that it recovered in its free phase recovery well. By subtraction, PNM concluded that it has recovered more than it released and its work is done.

However, Burlington's witness, Paul Rosasco, showed that the discharges by PNM into its unlined pit contributed to both free phase and dissolved phase contamination and that the effects of the discharges into the PNM unlined surface disposal pit remain today in the plume of contamination which extends offsite and downgradient for as much as 1000 feet toward the well owned by Mr. Burton.

PNM may have recovered some free product–but they have not remediated the hydrocarbons which they released to the environment. As Mr. Olson observed, the initial recovery of contaminants is the easiest. Surely the easy recovery of some free phase hydrocarbons in a recovery well does not excuse PNM from remediating the dissolved phase contamination which it caused and which remains at the site..

THE "WE DIDN'T DO IT" ARGUMENT: PNM contends that it did not contribute to the groundwater contamination at this site. In support of this position, it argues that it did not release free phase hydrocarbons to its pit and that data from borings and samples obtained from beneath the site of PNM's disposal pit shows no evidence of migration of product from the pit to the groundwater.

To reach this conclusion, PNM ignores the facts. It ignores the high PID readings in the soil at the base of its excavation at the location of their pit. PNM ignores the

hydrocarbon odors and stained soil in the interval between the base of PNM's excavation and the groundwater as shown in the soil borings and data from monitor wells at the location of its pit. PNM also ignores the results of laboratory analyses on the soils under the pit.

Mr. Rosasco reviewed the data which PNM wants to ignore and concluded it showed an interval between the base of the original PNM pit excavation and groundwater through which light end hydrocarbons can quickly move and leave little staining behind. William Olson, the Oil Conservation Division's expert witness agreed. He made visual observations of the soil under the PNM pit and concluded "that we have had free-product migration down through the PNM pit area."

PNM paid a lot of people to say it did not contribute to this contamination. The evidence says PNM did.

THE "VICTIM" ARGUMENT: PNM suggests that the fact that the greatest concentration of free product was located directly under PNM's pit is the result of "unfortunate geology" whereby discharges from elsewhere are migrating down to and "puddling" under PNM's pit. The Division's witness, William Olson, testified that he did not believe that to be the case. He observed that where there have been discharges of free product to an unlined pit over a period of years, the greatest concentration of free phase product is generally located directly under that pit. He rejected the suggestion that PNM

was the victim of "bad luck", and instead based his conclusions on his years of experience, observations from monitor well MW-2, and his inspection of the location during the excavation of the site by Burlington.

PNM IS A "RESPONSIBLE PARTY"

PNM seeks to escape responsibility for Division approved corrective action for pollution releases. It has crafted unusual arguments to achieve its goal. These arguments are based on conjecture and selective and inaccurate use of the data available on this site. However, when all the work and data collection at this site is considered, when all the expert testimony and all the technical arguments and theories are reviewed, the fact remains that there is still much about the contamination at the Hampton well site which we do not know. Among other things, we do not know the volume of hydrocarbon released. We do not know the number or location of the release points. We do not know how the valves on the PNM equipment at the site were set, and therefore do not know the volume of hydrocarbons actually released into the PNM pit.

Nonetheless, there are certain things we do know. We know that PNM operated a dehydrator and unlined surface pit at the Hampton 4M Well site. We know that hydrocarbons were discharged by PNM into its unlined pit at this site. We know that these discharges occurred over a long period of time. We know that the greatest concentration of free phase contamination was found directly under the location of PNM's disposal pit. We

know that there is a plume of dissolved phase hydrocarbon contamination extending offsite and downgradient from the location of the PNM pit. We know that the Oil Conservation Division has directed PNM to complete corrective action for pollution releases. We know that PNM has refused to comply with the directive of the Division.

The Division is charged by statute with the responsibility of regulating "the disposition of non-domestic wastes resulting from the exploration, development and production or storage of crude oil or natural gas to protect the public health and the environment." It has been given this responsibility because of its special expertise and competence in this technical area. In fulfilling these responsibilities, the Division has directed PNM to complete corrective action for pollution releases. The Commission is now asked to decide if PNM, like Burlington, is a "responsible person" for contamination at this site. The Commission is asked to decide if the Division's March 13, 1998 directive to PNM should be upheld or declared null and void.

If the Commission grants PNM's application, the Commission will ignore the fact that PNM contributed to the contamination at the Hampton 4M Well site and will declare that PNM is not responsible for corrective action approved by the Division to remediate its pollution releases.

If the Commission denies the application of PNM, it upholds the decisions of the Oil

Conservation Division and requires that PNM participate in the remediation of the contamination to which it has contributed.

The application of PNM must be denied.

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 12033

APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR REVIEW OF OIL CONSERVATION DIVISION DIRECTIVE DATED MARCH 13, 1998. DIRECTING APPLICANT TO PERFORM ADDITIONAL REMEDIATION FOR HYDROCARBON CONTAMINATION, SAN JUAN COUNTY, NEW MEXICO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Burlington Resources Oil & Gas Company's Proposed Order of the Commission and Closing Statement of Burlington Resources Oil & Gas Company were served via the U.S. mail or hand delivery to the following counsel of record this 14th day of January, 2000.

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