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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

EPA REGION VIII  
HEARING CLERK

<b>IN THE MATTER OF:</b>	)	<b>COMBINED COMPLAINT AND</b>
	)	<b>CONSENT AGREEMENT</b>
<b>Burlington Resources Oil &amp; Gas</b>	)	
<b>Company LP</b>	)	Docket No. <b>CWA-08-2014-0028</b>
<b>600 N. Dairy Ashford Rd.</b>	)	
<b>Houston, Texas, 77079-1100,</b>	)	Simultaneous Commencement and
	)	Conclusion of Proceeding Pursuant to
<b>Respondent</b>	)	Section 311(b)(6) of the Clean Water Act
	)	and 40 C.F.R. § 22.13 (b)

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Burlington Resources Oil & Gas Company LP (Burlington), by their undersigned representatives, hereby consent and agree as follows:

**I. STATUTORY AUTHORITY**

1. This Combined Complaint and Consent Agreement (Agreement) is entered into pursuant to Section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.13(b). Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of the United States Environmental Protection Agency (EPA) to assess civil penalties for violations of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), which authority has been properly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region 8. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, governs such proceedings. 40 C.F.R. § 22.13(b) provides that a proceeding subject to the Consolidated Rules may be simultaneously commenced

and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

## **II. PARTIES BOUND**

2. This Agreement shall apply to and be binding upon Complainant and shall be binding upon the Respondent, its officers, directors, agents, successors, and assigns. Any change in the ownership or legal status of Burlington or the corporate organization, structure or status of Burlington, including, but not limited to, any transfer of assets or real or personal property, shall not alter its responsibilities under this Agreement.

## **III. STATEMENT OF PARTIES**

3. Respondent stipulates to EPA's jurisdiction and venue over the matters contained in this Agreement; however, Respondent neither admits nor denies the specific factual allegations contained herein.

4. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Agreement, and waives its right to appeal the Final Order.

5. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement.

6. This Agreement contains all terms of the settlement agreed to by the parties.

7. Complainant and Respondent agree that settlement of this matter is in the public interest, and that execution of this Agreement and issuance of a final order without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.

#### IV. STATUTORY AND REGULATORY FRAMEWORK

8. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

9. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits the discharge of any oil or hazardous substances into or upon the navigable waters of the United States or their adjoining shorelines in such quantities as may be harmful as determined by the President.

10. The term "discharge" is defined in Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, "any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . . ."

11. The term "oil" is defined in Section 311(a)(1) of the Act, in pertinent part, as "oil of any kind or in any form, including, but not limited to, petroleum . . . ." 33 U.S.C. § 1321(a)(1).

12. The term "navigable waters" is defined in Section 502(7) of the Act as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

13. The term "waters of the United States," as defined in 40 C.F.R. § 110.1, includes, *inter alia*: "(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (b) Interstate waters, including interstate wetlands; . . . ; (e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and (f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section . . . ."

14. In accordance with Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to the EPA, has determined, by regulation, those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the

United States. Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), and Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991). 40 C.F.R. § 110.3 defines discharges of oil in such quantities as may be harmful to include discharges of oil that: “(a) Violate applicable water quality standards; or (b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.”

15. The term “sheen” is defined in 40 C.F.R. § 110.1 as an “iridescent appearance on the surface of the water.”

16. The term “sludge” is defined in 40 C.F.R. § 110.1 as “an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water.”

17. Pursuant to Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility or offshore facility from which oil is discharged in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

18. The term “owner or operator” is defined in Section 311(a)(6) of the Act in pertinent part as “in the case of an onshore facility, . . . any person owning or operating such onshore facility . . . .” 33 U.S.C. § 1321(a)(6).

19. According to Section 311(a)(7) of the Act, “‘person’ includes an individual, firm, corporation, association, and a partnership.” 33 U.S.C. § 1321(a)(7).

20. The term “onshore facility” is defined in Section 311(a)(10) of the Act as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in,

on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

#### **V. GENERAL ALLEGATIONS**

21. Respondent is and was at all relevant times a limited partnership organized under the laws of Delaware. Respondent’s principal office is located at 600 N. Dairy Ashford Rd., Houston, Texas, 77079-1100.

22. Respondent’s General Partner is BROG GP LLC, whose Vice-President is Michael D. Hatfield. The name and address of Respondent’s registered agent, on file with the North Dakota Secretary of State, is Corporation Service Company, 316 N. 5<sup>th</sup> Street, P.O. Box 1695, Bismarck, North Dakota, 58502-1695.

23. At all relevant times, Respondent was authorized to conduct, and conducted, business in North Dakota.

24. Respondent is and was at all times relevant to the Agreement a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

#### **Flow Line to Egeland Central Tank Battery**

25. At all relevant times, Respondent owned and operated the flow line which transfers oil, natural gas, and produced water from the CHSU Buchholz 14-9NH 05 well to the Egeland Central Tank Battery (“Egeland Central Tank Battery flow line”).

26. The Egeland Central Tank Battery flow line was at all relevant times part of an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

#### **Flow Line to Erickson Tank Battery**

27. At all relevant times, Respondent owned and operated the flow line which transfers oil, natural gas, and produced water from the Williston Basin O&M CHSU 14-23 well

to the Erickson Tank Battery (“Erickson Tank Battery flow line”).

28. The Erickson Tank Battery flow line was at all relevant times part of an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

### **Horse Creek and Spring Creek**

29. Horse Creek is a perennial stream and a tributary of the Little Missouri River.

30. Spring Creek is a perennial stream and a tributary of the Little Missouri River.

31. The Little Missouri River is a traditionally navigable water and interstate water.

32. Horse Creek is and was at all relevant times a “water of the United States” within the meaning of 40 C.F.R. § 110.1, and a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

33. Spring Creek is and was at all relevant times a “water of the United States” within the meaning of 40 C.F.R. § 110.1, and a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

## **VI. SPECIFIC ALLEGATIONS**

### **August 2009 Discharge**

34. On August 8, 2009, Respondent discovered a discharge of crude oil and produced water from the Egeland Central Tank Battery flow line. The discharge was located at Section 8, T130N, R105W, in Bowman County, North Dakota, Lat/Long 46.090392 ° N, 103.828676 ° W.

35. Twelve barrels of crude oil and produced water were discharged from the flow line, some of which flowed into Horse Creek and onto the adjacent shorelines, causing a film or sheen upon or discoloration of the surface of Horse Creek and/or its adjoining shorelines and/or causing a sludge or emulsion to be deposited beneath the surface of Horse Creek and/or upon its adjoining shorelines.



### **March 2011 Discharge**

36. On March 16, 2011, Respondent discovered a discharge of crude oil and produced water from the Erickson Tank Battery flow line. The leak was located at Section 27, T131N, R105W, in Bowman County, North Dakota, Lat/Long 46.146850 ° N, 103.788450 ° W.

37. At least 117 barrels of crude oil and produced water were discharged from the flow line, some of which flowed into Spring Creek and onto the adjacent shorelines, causing a film or sheen upon or discoloration of the surface of Spring Creek and/or its adjoining shorelines and/or causing a sludge or emulsion to be deposited beneath the surface of Spring Creek and/or upon its adjoining shorelines.

## **VII. VIOLATIONS**

### **Count 1 – Violation of Section 311(b)(3) – August 2009 Discharge**

38. Paragraphs 1 through 37 of this Agreement are re-alleged and incorporated herein by reference.

39. The discharge of crude oil and produced water referenced in Paragraphs 34-35 was at all relevant times a “discharge” within the meaning of Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2).

40. The discharged crude oil and produced water referenced in Paragraphs 34-35 was at all relevant times “oil” within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

41. The oil that was discharged into Horse Creek and upon its adjoining shorelines as a result of the crude oil leak referenced in Paragraphs 34-35 was discharged in “quantities as may be harmful” within the meaning of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

42. Pursuant to Section 311(b)(6)(A) of the Act, “[a]ny owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of [Section 311(b)(3)] may be assessed a class I or class II civil penalty by the . . . Administrator.” 33 U.S.C. § 1321(b)(6)(A). Pursuant to Section 311(b)(6)(B)(ii) of the Act, and the EPA’s Civil Monetary Penalty Inflation Adjustment Rule, the amount of a class II civil penalty may not exceed \$16,000 per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty shall not exceed \$177,500, for violations occurring from January 12, 2009 through December 6, 2013. 33 U.S.C. § 1321(b)(6)(B)(ii); 40 C.F.R. § 19.4; 78 Fed. Reg. 66643.

**Count 2 – Violation of Section 311(b)(3) – March 2011 Discharge**

43. Paragraphs 1 through 42 of this Agreement are re-alleged and incorporated herein by reference.

44. The discharge of crude oil and produced water referenced in Paragraphs 36-37 was at all relevant times a “discharge” within the meaning of Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2).

45. The discharged crude oil and produced water referenced in Paragraphs 36-37 was at all relevant times “oil” within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

46. The oil that was discharged into Spring Creek and upon its adjoining shorelines as a result of the crude oil leak referenced in Paragraphs 36-37 was discharged in “quantities as may be harmful” within the meaning of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.



47. Pursuant to Section 311(b)(6)(A) of the Act, “[a]ny owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of [Section 311(b)(3)] may be assessed a class I or class II civil penalty by the . . . Administrator.” 33 U.S.C. § 1321(b)(6)(A). Pursuant to Section 311(b)(6)(B)(ii) of the Act, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, the amount of a class II civil penalty may not exceed \$16,000 per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty shall not exceed \$177,500, for violations occurring from January 12, 2009 through December 6, 2013. 33 U.S.C. § 1321(b)(6)(B)(ii); 40 C.F.R. § 19.4; 78 Fed. Reg. 66643.

#### **VIII. PAYMENT OF CIVIL PENALTY**

48. Respondent consents and agrees to pay a civil penalty in the amount of \$72,500, in the manner described below in this Section.

49. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

50. The payment shall be made by any of the methods set forth in Appendix 1 to this Agreement.

51. At the same time that payment is made, notice that payment has been made shall be provided to:

Donna K. Inman  
Environmental Scientist  
Technical Enforcement Program (8ENF-UFO)  
U.S. EPA Region 8  
1595 Wynkoop  
Denver, CO 80202-1129

and

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop  
Denver, CO 80202-1129

If payment is made by cashiers or certified check, the notice shall include a copy of the check. If payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

52. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).

53. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31<sup>st</sup> day from the date of the Final Order, and each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121<sup>st</sup> day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount. Further, Respondent shall be subject to the fees, costs, and nonpayment penalty set forth in Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H).

54. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

55. The civil penalty set forth in paragraph 48 of this Agreement was determined by Complainant after taking into account all factors identified in Section 311(b)(8) of the Act, 33

U.S.C. § 1321(b)(8), i.e., the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

#### **IX. PUBLIC NOTICE**

56. As required by Section 311(6)(C)(i) of the Act, 33 U.S.C. § 1321(6)(C)(i), and 40 C.F.R. § 22.45, Complainant will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. Complainant may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate.

57. If comments received during the public comment period do not require modification or withdrawal by Complainant from this Agreement, the parties agree to submit this Agreement to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a final order.

#### **X. OTHER TERMS AND CONDITIONS**

58. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

59. Nothing in this Agreement shall be construed as a waiver by Complainant or any other federal entity of its authority to seek costs or any appropriate penalty associated with any

collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

60. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Agreement.

61. This Agreement resolves Respondent's liability for Federal civil penalties under Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), for the alleged violations contained in this Agreement. This Agreement shall not in any case affect Complainant's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement. This Agreement shall not affect Respondent's right to assert any defense in any action by Complainant to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

62. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**  
Complainant

8/19/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice

In the Matter of Burlington Resources Oil & Gas Company LP  
Docket No.

**BURLINGTON RESOURCES OIL & GAS  
COMPANY LP**  
Respondent

By: **BROG GP LLC, its sole General Partner**

8/14/14  
Date

  
\_\_\_\_\_  
Michael D. Hatfield  
Vice-President

## **Combined Complaint and Consent Agreement - Appendix 1**

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Oil Spill Liability Trust Fund – 311," to:

Regular Mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

US Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"



3. ACH (also known as REX or remittance express):

ACH payments must indicate the name and docket number of this case and be paid in accordance with the following information:

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact - Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8  
1595 Wynkoop Street; Denver, CO 80202-1129**

**PUBLIC NOTICE AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT SETTLEMENT**

**Action:** EPA is providing notice of a Combined Complaint and Consent Agreement with penalty assessment and the opportunity for public comment on the proposed administrative penalty assessment against Burlington Resources Oil & Gas Company LP for discharges of oil into waters of the U.S.

**Summary:** EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the Act and its implementing regulations, after providing the person subject to the penalty notice an opportunity for a hearing, and after providing the public with notice of the proposed penalty, and the opportunity to submit written comments and to participate in a Class II penalty proceeding (hearing), if any. The deadline for submitting public comment is thirty (30) calendar days after issuance of this notice.

On August 20, 2014, EPA filed a Combined Complaint and Consent Agreement pursuant to Section 311(b)(6)(B)(ii) of the Act. Pursuant to Section 311(b)(6)(C) of the Act, and 40 C.F.R. § 22.45, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of: Burlington Resources Oil & Gas Company LP  
600 N. Dairy Ashford Rd.  
Houston, TX 77079-1100

EPA Docket Number: CWA-08-2014-0028

Proposed penalty in the Complaint: \$72,500.00

Alleged violations: Discharges of at least 504 gallons and 4914 gallons of crude oil and produced water, respectively, on or about August 8, 2009 into Horse Creek, and on or about March 16, 2011 into Spring Creek, tributaries of the Little Missouri River in Bowman County, North Dakota, in violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Written comments on the Combined Complaint and Consent Agreement are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public, as well as information submitted by Burlington Resources Oil & Gas Company LP, will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The Combined Complaint and Consent Agreement is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Submit written comments to: Tina Artemis  
Regional Hearing Clerk (8RC);  
EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: (303) 312-6765.

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the Combined Complaint and Consent Agreement, or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for hearings), or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by EPA to finalize a settlement in this matter until thirty (30) calendar days after this public notice.