

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Docket No. CWA-08-2007-0025  
Docket No. CWA-08-2007-0026

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IN THE MATTER OF: )  
)  
Burke Oil Company, Inc., d/b/a )  
Presho Oil Company )  
)  
Burke Oil Company, Inc. )  
)  
Respondent. )

**SETTLEMENT STATUS REPORT**

Complainant United States Environmental Protection Agency, Region 8 (EPA), by and through its undersigned attorney, provides the following Settlement Status Report in the above-referenced consolidated matter pursuant to the Order Postponing Hearing issued by the Honorable Barbara A. Gunning, Administrative Law Judge, dated September 26, 2008.

1. The Regional Judicial Officer for EPA Region 8 approved and incorporated by reference into a Final Order a fully-executed Consent Agreement resolving In the Matter of Burke Oil Company, Inc., Docket No. CWA-08-2007-0026, on September 29, 2008.

2. Mr. Robert Burke on behalf of the Respondent committed to addressing the outstanding Spill Prevention, Control, and Countermeasure (SPCC) compliance issues EPA communicated electronically to the Respondent on September 23, 2008, pertaining to the Presho Oil facility as a precursor to commencing settlement discussions.

3. Respondent's Counsel, in a letter to EPA and related attachments sent September 23, 2008, communicated Respondent's plans to update the SPCC plan for, upgrade the secondary containment berms at, and remove the 2000 gallon above ground storage tank

from the Presho facility.

4. Respondent has not provided EPA with an updated SPCC plan or notified EPA that the noncompliance referenced in paragraph 3 above or otherwise listed in the September 23, 2008 e-mail from EPA has been performed.

5. EPA contacted Respondent's Counsel on November 4, 2008, requesting a compliance update.

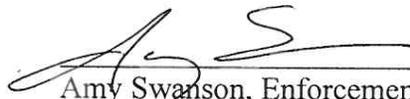
6. EPA received a phone call from Respondent's Counsel's Office on November 5, 2008, stating that no report had been received yet from the Professional Engineer, but that the Respondent would provide EPA with a copy upon receipt.

7. EPA provided Respondent's Counsel with proposed Joint Stipulations of Facts, Exhibits, and Testimony for review and input on November 6, 2008, to facilitate satisfying the Judge's deadline of December 30, 2008, as set forth in the Order Postponing Hearing.

8. The Parties plan will file a follow-up Settlement Status Report with the Administrative Law Judge on December 11, 2008, should the parties have not settled the matter and filed a fully-executed Consent Agreement and Final Order by that date.

Respectfully submitted this 6<sup>th</sup> day of November, 2008.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant.

  
\_\_\_\_\_  
Amy Swanson, Enforcement Attorney  
Dana J. Stotsky, Enforcement Attorney

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the SETTLEMENT STATUS REPORT was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent as follows:

Via facsimile and pouch mail to:

The Honorable Barbara A. Gunning  
Administrative Law Judge  
Office of Administrative Law Judges (Mail Code 1900L)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Via facsimile and regular mail to:

Steve Fox, Esquire  
Larson, Sundall, Larson, Schaub & Fox, P.C.  
P.O. Box 547  
Chamberlain, SD 57325  
Facsimile: (605) 734-5669

11/6/08  
Date

Judith McTernan  
Judith McTernan