

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2008 JAN 21 11:05

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

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<b>IN THE MATTER OF:</b>	)	
	)	
<b>Burke Oil Company, Inc., d/b/a</b>	)	
<b>Presho Oil Company</b>	)	<b>COMPLAINANT'S MOTION</b>
	)	<b>REQUESTING A HEARING</b>
	)	
<b>Burke Oil Company, Inc.</b>	)	
	)	
<b>Respondent.</b>	)	
<hr/>	)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), by its undersigned attorney, files this COMPLAINANT'S MOTION REQUESTING A HEARING. This motion is made despite considerable collegial efforts to date, including settling claims associated with Respondent's Chamberlain facility. As described below, Respondent's actions, or lack of action, cause EPA to file this motion.

This motion is made pursuant to 40 C.F.R. Section 22.16 of the Consolidated Rules of Practice (RULES), 40 C.F.R. part 22. Under the RULES, a motion must be in writing, state the grounds for the motion with particularity, set forth the relief or order sought, and be accompanied by any evidence or legal memorandum relied upon.

**GROUND FOR MOTION**

Respondent has failed, over an almost two month period, to confer timely with Complainant regarding good faith efforts to enter into stipulations and other matters, as ORDERED by the Presiding Officer herein.

Complainant filed on December 30, 2008, a MOTION TO FILE COMPLAINANT'S PROPOSED FINDINGS OF FACT, EXHIBITS AND TESTIMONY. This motion was filed in lieu of filing joint stipulations following Complainant's good faith, but unsuccessful, efforts to engage Respondent in stipulating to undisputed facts, exhibits, and testimony as ordered by the Honorable Barbara A. Gunning, Administrative Law Judge, in the Order Postponing Hearing issued September 26, 2008.

A brief recitation of events supports this motion:

1. The undersigned's co-counsel, Ms. Amy Swanson, on behalf of the Complainant electronically provided Respondent's Counsel Steve Fox with draft Joint Stipulations of Facts, Exhibits, and Testimony for review and input on November 6, 2008. Complainant previously provided these same joint stipulations of facts, exhibits, and testimony for the Presho facility as part of a proposed stipulation document pertaining to both the Presho and Chamberlain facility, on September 23, 2008, prior to the Chamberlain matter settling.
2. On September 26, 2008, Complainant prepared, and Respondent concurred, on the filing of Stipulations of Exhibits and Testimony pertaining to the Presho facility only. The exhibits and testimony proposed in Complainant's proposed findings include the exhibits and testimony stipulated to by the parties in that document, in addition to additional exhibits identified by Complainant in its Supplemental Prehearing Exchange filed September 30, 2008.
3. Ms. Swanson, on behalf of the Complainant reminded Respondent's Counsel Steve Fox in an e-mail dated December 9, 2008, of the requirement to file Joint Stipulations on or before December 30, 2008, and requested that Mr. Fox provide EPA with suggested revisions to allow adequate time to negotiate, sign, and file the document by Tuesday, December 23, 2008, after which the undersigned would be away from the office until after the filing deadline of December 30, 2008, imposed by the Judge.
4. On December 22, 2008, The undersigned's co-counsel, Ms. Amy Swanson, phoned Mr. Fox to inquire as to the status of his review of the Joint Stipulations sent on November 6, 2008. The undersigned left a message for Mr. Fox to return her call. Mr. Fox returned Complainant's call that same afternoon and left a message. Ms. Swanson again attempted to reach Mr. Fox at approximately 11:00 am MST on December 23, 2008, leaving a message for him to phone as soon as possible.
5. As of Tuesday, December 30, 2008, Complainant had not received any electronic or telephonic communication regarding this issue from Mr. Fox. After phoning Mr. Fox at approximately 2:30 pm MST on December 30th, and learning that Mr. Fox was out of the office for the remainder of the day, Ms. Swanson opted to file the Motion and Complainant's Proposed Findings of Facts, Exhibits, and Testimony to comply with the Judge's Order Postponing Hearing.
6. As of this writing, Complainant has received no communications from

Respondent regarding any substantive or procedural aspect of this matter, including communications as required by the Presiding Officer in her ORDER dated September 26, 2008, since before December 9, 2008.

**PRAYER FOR RELIEF**

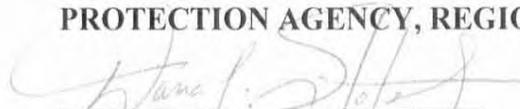
Accordingly, the Complainant respectfully requests the Administrative Law Judge to grant Complainant's Motion Requesting A Hearing and set a date to hold a hearing on all remaining outstanding counts in this matter.

Respectfully submitted,

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

Date:

Jan 20, 2009



Dana J. Stotsky,  
Senior Enforcement Attorney  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 20, 2009, the original and one copy of the COMPLAINANT'S MOTION REQUESTING A HEARING were sent via inter-office mail to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that true copies of the same were sent as follows:

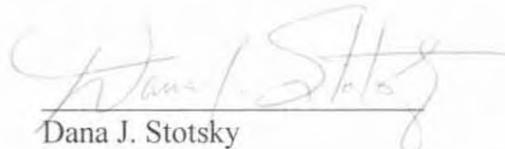
Via pouch mail and facsimile to:

The Honorable Barbara A. Gunning  
Administrative Law Judge  
Office of Administrative Law Judges (Mail Code 1900L)  
1200 Pennsylvania Avenue, N.W.  
Denver, CO 80202-1159  
Washington, DC 20460  
Facsimile: (202) 565-0044

Via regular mail, facsimile and e-mail to:

Steve Fox, Esquire  
Larson, Sundall, Larson, Schaub & Fox, P.C.  
P.O. Box 547  
Chamberlain, SD 57325  
Facsimile: (605) 734-5669  
[peglundquist@hotmail.com](mailto:peglundquist@hotmail.com) and [asfox7@gmail.com](mailto:asfox7@gmail.com)

Jan. 20, 2009  
Date

  
Dana J. Stotsky