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Lawyers and Counselors

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2007 OCT 19 10:36
HEBB C. SUNDALL
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Chamberlain, SD
M.O. Sharpe 1988-1962
JOHN W. LARSON, III
HEARING CLERK
CALL FOR FAX

October 19, 2007

TINA ARTEMIS, REGIONAL HEARING CLERK (SRC)
U.S. EPA REGION 8
1595 WYNKOOP STREET
DENVER CO. 80202-1129

Dear Ms. Artemis:

re: In the Matter of Burke Oil Company, Inc. / Chamberlain Bulk Plant Facility
CWA-08-2007-0026

Enclosed please find our Request for Hearing and a Request for Settlement Conference in the above-entitled matter. If we have in any way failed to adequately prepare these documents we would appreciate your consideration in advising us of any details we need to correct.

We appreciate your attention to the matter.

Respectfully yours,



Albert Steven Fox

ASF/pll

Enclosed:
Request for Hearing
Request for Settlement Conference

cc:
Amy Swanson, Enforcement Attorney (8ENF-1)
U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver CO 80202-1129

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 OCT 23 AM 10:36

OFFICE OF THE
HEARING CLERK

IN THE MATTER OF:) Docket No. CWA-08-2007-0C26
)
)
Burke Oil Company, Inc.)
1200 East King Street) CERTIFICATE OF SERVICE
Chamberlain SD 57325-2103)
)
(Chamberlain Bulk Plant Facility)
1200 East King Streete)
Chamberlain SD) Proceeding to Assess Class I Civil Penalty
) Under Section 311 of the Clean Water Act
)
Respondent.)

The undersigned certifies that he served a copy of Request for Hearing and Settlement Conference upon the person herein next designated, on the 19th day of October, 2007, by depositing a copy hereof in the United States mail at Chamberlain, South Dakota, first class postage prepaid, in an envelope addressed to said addressee, to-wit:

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

Amy Swanson
Enforcement Attorney (8ENF-L)
US EPA Region 8, Law Enforcement Program
1595 Wynkoop Street
Denver CO 80202-1129

Which address is the last address of the addressee known to the subscriber.

Dated this 19th day of October, 2007.


Albert Steven Fox
LARSON, SUNDALL, LARSON, SCHAUB &
FOX, P.C.
P.O. Box 547
Chamberlain, SD 57325-0547
605 734 6515

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2007 OCT 23 AM 10:36
REGION 8

2007 OCT 23 AM 10:36
CWA REGION 8
RECEIVED

IN THE MATTER OF:) Docket No. CWA-08-2007-0C26
)
)
Burke Oil Company, Inc.) REQUEST FOR HEARING
1200 East King Street) and SETTLEMENT CONFERENCE
Chamberlain SD 57325-2103)
)
(Chamberlain Bulk Plant Facility)
1200 East King Street)
Chamberlain SD) Proceeding to Assess Class I Civil Penalty
)
) Under Section 311 of the Clean Water Act
Respondent.)

COMES NOW, Albert Steven Fox, Larson, Sundall, Larson, Schaub & Fox, P.C., PO Box 547, Chamberlain, South Dakota 57325, attorney for the above-entitled Burke Oil Company, Inc. and they hereby specifically request that a hearing be held in the above-entitled matter concerning all issues and penalties and that a settlement conference also be held in the matter.

We would set forth the following corrections or objections for consideration by the hearing or settlement entities.

1. We disagree that any drainage from the facility would flow down a highway ditch into American Creek or into any navigable waters as defined under the appropriate section of the law.

2. We dispute that due to its location there could be any reasonable expectation that a discharge of oil could reach navigable waters or shorelines in quantities that would either violate applicable water quality standards or cause a film or sheen or discoloration of the surface water adjoining the shorelines or cause a sludge or a motion to be deposited beneath the surface of the water or upon adjoining shorelines.

3. The list of tanks under paragraph 5 is incorrect. There are no 2,000 gallon tanks. The underground tanks are not at this location and other tanks are listed incorrectly as to size.

4. We respectfully submit that we have complied with all necessary statutes and therefore no Class I penalties should be assessed by the Administrator.

5. We respectfully submit and note the following related Section 19:
- a. Section A of the Complaint—those storage areas referred to in A have been removed.
 - b. We have a file with written documentation necessary and in accordance with the statutes.
 - c. We do lock the master flow drain valves as required by law.
 - d. We have not had any dischargable oil, but we would promptly correct and/or remove as required by the statute.
 - e. We have properly designed pipe supports as required by law.
 - f. Under paragraph 20A—we have a plan in accordance with the statute.
 - g. Under paragraph 20B—we no longer use the inside oil storage containers, which are not allowed by law.
 - h. Under paragraph 21—we have prepared and implemented an SPCC plan for the facility as required by the law.
 - i. Under paragraph 22—we have prepared and implemented an SPCC plan in accordance with regulations as required by law.

6. That we believe the proposed penalties under each and every matter are excessive considering the seriousness of the violations, the economic benefit to the violator resulting from those violations, the degree of culpability involved, the history of prior violations, the nature, extent and degree of success of efforts of us to minimize or mitigate any discharges, the economic impact of the penalty on the violator and all other factors. The proposed penalty is excessive specially based upon the actions taken by Burke Oil Company, Inc.

7. We respectfully request a hearing to contest each and every one of the factual claims made in the Complaint, to contest the appropriateness of the proposed penalty, and to assert that we are entitled to judgment as a matter of law under the appropriate sections. We deny each and every act not specifically admitted to.

8. That we have taken actions quickly and as effectively as we could considering weather and the lack of local, sometimes specialized, contractors to do much of the work and we file the plans and other matters or documents necessary under statute.

9. We specifically request an informal settlement conference be held at or before any formal hearing.

Dated this 19th day of October, 2007.

Burke Oil Company, Inc.

By: Robert Burke
Robert Burke

Albert Steven Fox
Albert Steven Fox
LARSON, SUNDALL, LARSON,
SCHAUB & FOX, P.C.
P.O. Box 547
Chamberlain, SD 57325
605 734 6515

STATE OF SOUTH DAKOTA :
:SS
COUNTY OF BRULE :

On this the 19th day of October, 2007, before me, the undersigned officer personally appeared Robert Burke who acknowledged himself to be the President of Burke Oil Company, Inc., d/b/a Presho Oil Company, a corporation and that he as such officer being authorized so to do, executed the above and foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

