

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

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BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Burke Oil Company Inc.,) Docket No. CWA-08-2007-0025
d/b/a Presho Oil Company,)
Presho Oil Facility)
)
Burke Oil Company Inc.) Docket No. CWA-08-2007-0026
Chamberlain Bulk Plant Facility)
)
Respondents.)

COMPLAINANT'S PUBLIC NOTICE STATEMENT

Complainant United States Environmental Protection Agency, Region 8 (EPA), by and through its undersigned counsel, provides the following Public Notice Statement in the above-referenced consolidated proceedings in response to the Order Granting Motion to Consolidate Proceedings and Prehearing Order (Order) issued by the Honorable Barbara A. Gunning, Administrative Law Judge, on April 23, 2008.

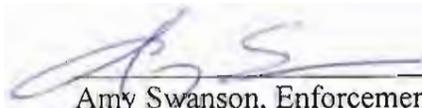
Footnote 5 of the Order, page 8, states that the file for the Presho Oil facility class II civil administrative penalty proceeding contains no documentary proof of the publication of public notice. The purpose of this Statement, in part, is to notify the Administrative Law Judge that public notice in the Presho action was published on October 1, 2007, in accordance with 40 C.F.R. § 22.45. Specifically, EPA posted "Public Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment on CWA Complaint" In the Matter of Burke Oil Company, Presho Oil Facility, by electronically posting public notice at <http://www.epa.gov/region8/compliance/publicnotice>. Attachment 1. A copy of the public

notice was attached to the complaint filed on September 27, 2007. To ensure that the public notice is included in the file of the Administrative Law Judge, an additional copy is attached as Attachment 2 to this Statement. The e-mail correspondence documenting both the request for and confirmation of public notice posting is attached as Attachment 3. No public comments were submitted concerning the Presho action within the thirty-day time period after issuance of the notice.

As noted by the Administrative Law Judge in the Order, 40 C.F.R. §§ 22.13(a) and 22.45 now require public notice for the Chamberlain Bulk Plant facility administrative proceeding based on its consolidation with the Presho Oil facility class II administrative action. Attachment 4, "Public Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment on CWA Complaint," In the Matter of Burke Oil Company, Chamberlain Bulk Plant, was posted on the EPA website referenced above on or about May 1, 2008, inviting public comment for thirty days after issuance of the notice.

Respectfully submitted this 1st day of May, 2008.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.



Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop Street (8ENF-L)
Denver, CO 80202-1129
Colorado Atty. Reg. No. 26488
Telephone: 303/312-6906
Facsimile: 303/312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINANT'S PUBLIC NOTICE STATEMENT and four attachments 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 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 regular mail to:

Steve Fox, Esquire
Larson, Sundall, Larson, Schaub & Fox, P.C.
P.O. Box 547
Chamberlain, SD 57325

May 1, 2008
Date

Judith M. Ternan
Title



<http://www.epa.gov/region8/compliance/publicnotice/>

Last updated on Thursday, April 24th, 2008.

Region 8 - Mountains & Plains

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PUBLIC NOTICES OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENTS

Some federal laws require that the public be given notice prior to the assessment of civil administrative penalties for violations of environmental requirements. This web site serves for such public notice. To view the regulations that govern such proceedings, see [40 C.F.R. Part 22](#).

Note: most of the following are Adobe Acrobat PDF files
[About PDF files](#)

Opportunity for public comment on proposed compliance order, penalty complaint, and notice of opportunity for hearing against Colton Redi-Mix, Inc., for failure to comply with Underground Injection Control regulations

[Colton Redi-Mix, Inc.: docket #SDWA-08-2008-0043 - April 24, 2008](#)

Opportunity for public comment on proposed compliance order, penalty complaint, and notice of opportunity for hearing against Professional Auto Body and Frame, Inc., for failure to comply with Underground Injection Control regulations

[Professional Auto Body and Frame, Inc.: docket #SDWA-08-2008-0042 - April 24, 2008](#)

Opportunity for Public Comment on a penalty action (Administrative Penalty Order) against Slowey Construction, Inc., for violations of the Safe Drinking Water Act (SDWA).

[Slowey Construction, Inc.: docket #SDWA-08-2008-0035 - March 25, 2008](#)

Opportunity for Public Comment on a penalty action (Administrative Penalty Order) against Ed Swisher for violations of the Safe Drinking Water Act (SDWA).

[Ed Swisher: docket #SDWA-08-2008-0037 - March 25, 2008](#)

Opportunity for Public Comment on a Complaint with Notice of Opportunity for Hearing between EPA and the Town of Springfield, Colorado, for violations of the Safe Drinking Water Act (SDWA).

[Springfield: docket #SDWA-08-2008-0021 - March 3, 2007](#)

Opportunity for Public Comment on a Complaint with Notice of Opportunity for Hearing between EPA and Burke Oil d/b/a Presho Oil for violations of the Clean Water Act (CWA).

[Presho Oil: docket #CWA-08-2007-0025 - October 1, 2007](#)

Opportunity for Public Comment on a proposed administrative penalty assessment against Chevron Pipe Line Company for alleged violations of the Clean Water Act

[Chevron Pipe Line Co. : docket #CWA-08-2007-0012 - July 9, 2007](#)

ATTACHMENT 1

Opportunity for Public Comment on a proposed administrative penalty assessment against Flannery Oil Company and MG Oil Co. for alleged violations of the Clean Water Act

[Flannery Oil Company and MG Oil Co.](#) : docket #CWA-08-2007-0011 - July 3, 2007

Public notice of proposed administrative penalty assessment and opportunity to comment on Clean Water Act violations against Chevron USA, Inc.

[Chevron public notice](#) - October 6, 2006

Public notice of proposed administrative penalty assessment and opportunity to comment on Clean Water Act violations against AGRIDYNE, LLC

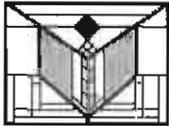
[Agridyne, LLC public notice](#) - October 2, 2006

The public is invited to comment on the proposed penalty assessment, alleged violations, or any other aspect of the matter. Persons wishing to receive a copy of the Complaint, 40 C.F.R. Part 22, or other documents in the proceeding, or to comment on the matter, should contact the person named below:

Tina Artemis

Regional Hearing Clerk (8RC)
EPA Region 8
1595 Wynkoop St
Denver CO 80202-1129
Telephone: (303) 312-6765
artemis.tina@epa.gov

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Tim
Davis/TMS/R8/USEPA/US
10/01/2007 04:04 PM

To Donnak Inman/ENF/R8/USEPA/US@EPA
cc Amy Swanson/ENF/R8/USEPA/US@EPA, Tina
Artemis/RC/R8/USEPA/US@EPA
bcc
Subject Re: Public Notice for a Class II penalty 

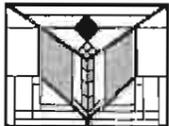
Hi Donna,

Tis published - thanks!

<http://www.epa.gov/region8/compliance/publicnotice>

--Tim

Donnak Inman/ENF/R8/USEPA/US



Donnak
Inman/ENF/R8/USEPA/US
10/01/2007 02:36 PM

To Tim Davis/TMS/R8/USEPA/US@EPA
cc Amy Swanson/ENF/R8/USEPA/US@EPA, Tina
Artemis/RC/R8/USEPA/US@EPA
Subject Public Notice for a Class II penalty

Attached is the public notice for the Class 2 CWA penalty order issued to Burke Oil d/b/a Presho Oil;
Docket Number CWA-08-2007-0025. Please post it for 30 days.

[attachment "Presho Oil PubNotice.pdf" deleted by Tim Davis/TMS/R8/USEPA/US]

Donna K. Inman
USEPA Region 8 ENF-UFO
OPA/SPCC Enforcement Program
e-mail: inman.donnak@epa.gov
Phone: 303-312-6201
Fax: 303-312-6409

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

**PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND
OPPORTUNITY TO COMMENT ON CWA COMPLAINT**

Action: EPA is providing notice of a proposed administrative penalty assessment and the opportunity to comment on the proposed assessment (complaint) for alleged violations of the Clean Water Act.

Summary: The Burke Oil Company Inc.- Chamberlain Bulk Plant Class I civil administrative penalty proceeding has been consolidated with the Burke Oil Company Inc.- Presho Oil Company Class II civil administrative penalty proceeding, therefore the penalty for the Class I proceeding must be public noticed. The Presho Oil Company Class II civil administrative penalty proceeding was public noticed in October 2007. EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the CWA and implementing regulations, after providing the person subject to the penalty notice and opportunity for a hearing, and after providing the public with notice of the proposed penalty, opportunity to submit written comments and to participate in a Class II penalty proceeding, if any. The deadline for submitting public comment is thirty days after issuance of this notice.

On September 27, 2007, EPA commenced a civil administrative action by filing a complaint against the Respondent identified below, alleging a violation of the CWA and its regulations. Pursuant to Section 311(b)(6)(C) of the CWA, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of: Burke Oil Company Inc.
 Chamberlain Bulk Plant
 1200 East King Street
 Chamberlain, SD 57325

EPA Docket Number: CWA-08-2007-0026
Proposed penalty in the Complaint: \$19,273.00

Alleged violations: Failure to prepare and implement a Spill Prevention Control and Countermeasure Plan in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3, regulations issued under Section 311(j) of the CWA.

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 Consolidated Rules, the Complaint, or other documents in this proceeding, or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. The administrative record for the proceeding is located in the EPA Region 8 Hearing Clerk Office identified above and the file will be open for public inspection during normal business hours. No action will be taken by EPA to finalize a settlement in this matter until 30 days after this public notice.

ATTACHMENT 4