



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2008 SEP 29 PM 12:18

**1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08**

FILED
EPA REGION VIII
HEARING CLERK

**DOCKET NO.: CWA-08-2008-0025
CWA-08-2008-0026**

IN THE MATTER OF:

**BURKE OIL COMPANY, INC. d/b/a
PRESHO OIL COMPANY**

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 29th **DAY OF** September, 2008.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

EPA REGION 8
HEARING CLERK

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

PARTIAL CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Burke Oil Company, Inc., by their undersigned representatives, hereby consent and agree as follows:

1. On September 27, 2007, Complainant issued an Administrative Complaint and Notice of Opportunity for Hearing (Complaint), a Class I penalty proceeding, alleging certain violations of Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j), as amended by the Oil Pollution Act, and the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112, involving Respondent's Chamberlain, South Dakota oil facility. The Complaint proposed a civil penalty for the violations alleged therein.
2. Pursuant to the Order Granting Motion to Consolidate Proceedings and Prehearing Order issued by the Honorable Barbara A. Gunning, Administrative Law Judge, on April 23, 2008, this matter and *In the Matter of Burke Oil Company, Inc., d/b/a Presho Oil Company, Presho Oil Facility* (Docket No. CWA-08-2007-0025), a Class II penalty proceeding, were consolidated to expedite and simplify consideration of the issues.
3. Simultaneous to proceeding toward litigation, the parties have engaged in settlement discussions informally and in Alternative Dispute Resolution to settle one or both administrative actions without the necessity of a formal hearing as encouraged by the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b). This Partial Consent Agreement sets forth the terms and conditions to resolve the violations alleged in the Complaint filed in Docket No. CWA-08-2007-0026, and which concerns Respondent's Chamberlain facility. The Parties hereto acknowledge they are otherwise subject to "The Prehearing Order, and the Order Scheduling Hearing" issued by the Honorable Barbara A. Gunning in this consolidated proceeding on August 20, 2008, as it pertains to the proceeding

entitled *In the Matter of Burke Oil Company, Inc., d/b/a Presho Oil Company*, Docket No. CWA-08-2008-0025.

4. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
5. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.
6. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.
7. Respondent consents and agrees to pay a civil penalty in the amount of **FIVE THOUSAND DOLLARS (\$5,000.00)**, in the manner described below in this paragraph:
 - a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
 - b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case, and "Oil Spill Liability Trust Fund-311," for this amount, payable to "**Environmental Protection Agency**," to:

**US checks by regular
US postal service mail:**

US EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
or other commercial carrier:**

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

Wire transfers:

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 "

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Donna K. Inman
U.S. EPA Region 8 (8ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202-1129

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

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment 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 the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in paragraph 16 of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the final order, and each subsequent 30-day

period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
- 8. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
- 9. Failure by Respondent to comply with any of the terms of this Partial Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this Partial Consent Agreement and for such other relief as may be appropriate in federal district court.
- 10. Nothing in this Partial Consent Agreement shall be construed as a waiver by the EPA 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 the Consent Agreement.
- 11. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into and bind the Respondent to the terms and conditions of this Consent Agreement.
- 12. The parties agree to submit this Partial Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
- 13. Each party shall bear its own costs and attorney fees in connection with this matter.
- 14. This Partial Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Complainant.

Date: 9/25/08

By: Mark Chalfant
Mark Chalfant, Director
Technical Enforcement Program

Date: 9/25/08

By: David J. Janik
David J. Janik, Director
Matthew D. Cohn, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 9/25/08

By: Dana J. Stotsky
Dana J. Stotsky, Senior Enforcement Attorney
Legal Enforcement Program (8LEP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

BURKE OIL COMPANY, INC.

Respondent.

Date: _____

By: _____
Robert Burke, Owner

In the Matter Of: Burke Oil Company, Inc., d/b/a Presho Oil Company and Burke Oil Company, Inc.,
Docket Nos. CWA-08-2007-0025 and CWA-08-2007-0025

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Complainant.

Date: _____

By: _____
Mark Chalfant, Director
Technical Enforcement Program

Date: _____

By: _____
David J. Janik, Director
Matthew D. Cohn, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: _____

By: _____
Dana J. Stotsky, Senior Enforcement Attorney
Legal Enforcement Program (8LEP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

BURKE OIL COMPANY, INC.

Respondent.

Date: 9-24-08

By: Robert Burke
Robert Burke, Owner

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **PARTIAL CONSENT AGREEMENT/FINAL ORDER, DOCKET NO.: CWA-08-2008-0025/CWA-08-2008-0026** was filed with the Regional Hearing Clerk on September 29, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana J. Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on September 29, 2008, to:

Albert Steven Fox
Larson, Sundall, Larson, Schaub & Fox, P.C.
POB 547
Chamberlain, SD 57325-0547

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MSD-0002)
Cincinnati, OH 45268

September 29, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk

