

**Berks Products Corporation**  
965 Berkshire Blvd  
Reading, PA 19610

Total Gallons spilled: 200

As more fully described in the attached Findings and Alleged Civil Violations Form, which is incorporated herein by reference, Respondent had a spill from its Facility which reached a navigable water or its adjoining shoreline. This spill of oil was in a harmful quantity as defined by 40 C.F.R. §110.3, and is a violation of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. §1321 (b)(3), and may be subject to a penalty pursuant to 33 U.S.C. §1321 (b)(6)(B)(i).

The parties are authorized to enter into this Expedited Settlement under the authority vested in the Administrator of EPA by Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. § 1321(b) (6) (B) (i), as amended by the Oil Pollution Act of 1990, and by 40 CFR § 22.13(b). The parties enter into this Expedited Settlement in order to settle the civil violations described in the Form for a penalty of \$500.00.

The settlement is subject to the following terms and conditions.

The Respondent consents to the assessment of the penalty stated above. Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the violations set forth in the Findings, Alleged Violations and Proposed Penalty Form have been corrected. The Respondent agrees that it shall, within 15 calendar days of receipt of an executed copy of this Expedited Penalty Action, make payment of **\$500.00** in one of two forms: 1) electronic funds transfer (EFT) or 2) a cashier's check or certified check payable to the "Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Expedited Penalty Action, and "Oil Spill Liability Trust Fund - 311" referenced on the check.

Federal Reserve Bank of New York

ABA = 021030004  
Account - 68010727  
SWIFT address = FRNYUS33  
33 Liberty Avenue  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" Mellon Bank

Payment of the penalty amount by regular US Postal Service shall be sent via certified mail to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis MO 63197-9000

Payment of the penalty amount by FedEx or other non-US Postal Service express mail shall be sent to:

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

Contact: Natalie Pearson  
(314) 418-4087

The Respondent shall also send a copy of the EFT confirmation or check via certified mail to:

**Paula Curtin**, Spill Enforcement Coordinator  
U.S. Environmental Protection Agency, Region III  
Oil & Prevention Branch (3HS61)  
1060 Chapline Street  
Wheeling, WV 26003-2996

Lydia Guy, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street (3RC00)  
Philadelphia, PA 19103-2029

The payment made pursuant to this Expedited Penalty Action is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f), and, therefore, Respondent shall not claim it as a tax deductible expenditure for purposes of federal, state or local law.

EPA specifically reserves the right, without limitation to any of the rights reserved herein, to bring any administrative, civil, or criminal action seeking imposition of further civil penalties, criminal sanctions, and/or injunctive relief in the event Respondent fails to correct the violations identified in the Form within the time allowed for in this Expedited Penalty Action.

Respondent neither admits nor denies the allegations set forth in the Form, but agrees that jurisdiction has been established for this Expedited

Penalty Action. Also, upon EPA's final approval of the Expedited Penalty Action, Respondent expressly waives its right to contest the allegations, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and to appeal this Order under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Expedited Penalty Action.

If Respondent does not sign and return this Expedited Settlement as presented within 30 days of the date of its receipt, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

**ACCEPT THE PROPOSED PENALTY**

I/we consent to the proposed penalty.

**DECLINE THE PROPOSED PENALTY**

I/we decline the proposed penalty. If you choose to decline this proposed penalty, check the box. You may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

**EFFECTIVE DATE**

This Expedited Penalty Action will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Expedited Penalty Action and to legally bind the party whom he or she represents to this Expedited Penalty Action.

COMPANY NAME Burke Products Corporation

Signature [Signature] Date: 6-9-08

Name and Title (print) Jeffrey M Nielsen  
Chairman of Board

The estimated cost of the clean-up and corrective actions was \$ 30,000.

**SIGNATURE BY COMPLAINANT:**

[Signature] Date 6/25/08

James J. Burke, Director  
Hazardous Site Cleanup Division

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is Ordered and agrees to pay the civil penalty set forth above and to comply with the terms of the referenced Consent Agreement.

**FINAL ORDER:**

[Signature] Date: 6/25/08

Renee Sarajian,  
Regional Judicial Officer

## FINDINGS AND ALLEGED CIVIL VIOLATIONS

1. Berks Products Corporation is a corporation organized under the laws of the Commonwealth of Pennsylvania. Respondent is a person within the meaning of Section 311(a)(7) of the Clean Water Act, as amended, (CWA), 33 U.S.C. § 1321(a)(7).
2. Respondent is the owner and operator of 88 Ford Model C8000 delivery truck ("Facility"), which was located at the intersection of Lancaster Avenue and Grace Street in Reading, Berks County, Pennsylvania. The truck is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).
3. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or its adjoining shorelines in such quantities that have been determined may be harmful to the public health, welfare or environment of the United States.
4. For purposes of Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health, welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines.
5. On December 21, 2007, Respondent discharged approximately 200 gallons of No. 2 heating oil, as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its Facility into or upon the Schuylkill River.
6. The Schuylkill River is a navigable water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.
7. Respondent's December 21, 2007, discharge of oil from its Facility caused a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3.
8. Respondent's December 21, 2007 discharge of oil from its Facility into or upon the Schuylkill River and the adjoining shorelines in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). Pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$11,000 per violation, up to a maximum of \$27,500.