

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 JAN 17 PM 2:46

IN THE MATTER OF:)	Proceeding under Section 311
)	of the Clean Water Act,
Burke Oil Company, Inc.)	33 U.S.C. § 1321
1200 East King Street)	
Chamberlain, SD 57325-2103)	Docket No. CWA-08-2007-0026
Chamberlain, Bulk Plant Facility)	Docket No. CWA-08-2007-0025
)	
AND)	
)	
Burke Oil Company, Inc.)	
d/b/a Presho Oil Company)	
1200 East King Street)	
Chamberlain, SD 57325-2103)	
Presho Oil Facility)	
)	
<u>Respondents.</u>)	

ORDER ON MOTION TO CONSOLIDATE

On January 10, 2008, Complainant, United States Environmental Protection Agency (“EPA”) filed a Motion to Consolidate in the above referenced cases. Respondent, through its attorney, concurred on the Motion. The parties seek to combine the subpart I case, presently pending before the Regional Judicial Officer in EPA Region 8, and the Class II penalty action filed with the Office of Administrative Law Judges for adjudication.


Pursuant to 40 C.F.R. § 22.12(a), “[t]he Presiding Officer may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law...” The Consolidated Rules of Practice also make clear that “[w]here a proceeding subject to the provisions of subpart I of this part is consolidated with a proceeding to which subpart I of this part does not apply, the procedures of subpart I of this part shall not apply to the

consolidated proceeding.” Therefore, if the two proceedings are to be consolidated they must be adjudicated by an Administrative Law Judge presiding over the Class II penalty proceeding. Furthermore, all the parties must approve the consolidation when a subpart I matter is involved.

As stated in its Memorandum in Support of Motion to Consolidate (Memorandum), Complainant has explained that both parties to the proceedings approve the consolidation. In addition, the parties and issues satisfy the standard for consolidating and the consolidation does not unduly prejudice any other parties. The Memorandum also indicates that the parties are engaging in Alternative Dispute Resolution (ADR) and consolidating the proceedings would expedite any resolution.

Pursuant to 40 C.F.R. § 22.16(c), and for the foregoing reasons, the Motion to Consolidate is **GRANTED**.

So ordered this 17th day of January, 2008.


Elyana R. Sutin
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ORDER ON MOTION TO CONSOLIDATE** in the matters of **BURKE OIL COMPANY, INC., CHAMBERLAIN, BULK PLANT FACILITY; BURKE OIL COMPANY, INC., PRESHO OIL FACILITY, DOCKET NO.: CWA-08-2007-0025 and CWA-08-2007-0026** was filed with the Regional Hearing Clerk was filed on January 17, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on January 17, 2008, to:

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


Pouch Mailed to:

Honorable Spencer T. Nissen
Administrative Law Judge
Office of Administrative Law Judges (1900L)
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Hand-carried to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U. S. Environmental Protection Agency – Region 8
1595 Wynkoop Street
Denver, CO 80202-1159

January 17, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk

