

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

2008 SEP 23 PM 11:10

1544 10/2/08

IN THE MATTER OF:)

Burke Oil Company, Inc., d/b/a)
Presho Oil Company)

Burke Oil Company, Inc.)

Respondent.)

**JOINT MOTION FOR
CONTINUANCE**

COMES NOW the Complainant, United States Environmental Protection Agency Region 8 (“EPA”), by and through its attorneys, Dana J. Stotsky and Amy Swanson, and Burke Oil Company, Inc., by and through its attorney, Albert Steven Fox, who jointly move the Presiding Officer to grant the parties a sixty-day continuance of the hearing previously scheduled by the Presiding Officer to occur on October 21, 2008.

As grounds therefore, the parties assert the following:

GROUND FOR MOTION

This motion is made pursuant to 40 C.F.R. section 22.7(b) and 40 C.F.R. section 22.16 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Rules of Practice),” 40 C.F.R. part 22 (“CROP.”) Under CROP, a motion must be in writing, state the grounds for the motion with particularity, set forth the relief or order sought, and be accompanied by any evidence or legal memorandum relied upon.

This consolidated matter involves claims occurring at two of Respondent’s oil facilities: one in Chamberlain, South Dakota and one in Presho, South Dakota. The parties just this week have been able to reach a settlement on all claims involving the

Chamberlain facility. Complainant has forwarded to Respondent a "*Partial Consent Agreement*" which will comprise the settlement. Complainant expects Respondent to execute the "*Partial Consent Agreement*" within the next few days. Once in hand, Complainant should be able to obtain all necessary signatures within three days, and then forward the completed "*Partial Consent Agreement*" to the Regional Judicial Officer for review, and assuming approval, a Final Order.

Regarding the remaining claims which involve Respondent's Presho facility, Respondent this week has committed to finalizing any operational changes within two weeks (likely less), and then having its Professional Engineer perform a site evaluation and review resulting in an up-to-date Spill Prevention, Control and Countermeasure ("SPCC") Plan. This will establish a point-in-time when Respondent's current compliance status can be determined without question. EPA's settlement policy requires first and foremost that any Respondent must be in compliance with any and all applicable requirements before EPA can engage in settlement negotiations. Respondent's commitment to engage in these positive actions means that good faith settlement negotiations can likely take place within the next thirty to forty-five days.

Because this motion is jointly made, neither party will be subjected to prejudice. Further, given the current commitments made by the parties, should a hearing be required to resolve any unsettled claims, it is likely that such a hearing will require much less time since the current commitments will clarify and simplify many facts that are presently at issue.

Finally, the parties would offer to attend a telephone status conference for the purpose of supporting this motion and providing additional information to the Presiding Officer.

REQUESTED RELIEF

The parties jointly move the Presiding Officer and request a continuance of the previously set hearing from October 21, 2008 to occur on or after January 12, 2008.

FOR COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Date: Sept. 25, 2008

By:



Dana J. Stotsky
Amy Swanson
U.S. EPA Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado 80202-1129

FOR RESPONDENT:
BURKE OIL COMPANY, INC.

Date: _____

By:

Alfred Steven Fox, Esq.
Larson, Sundall, Larson, Schaub,
& Fox, P.C.

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-08-2007-0026

FOR COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Date: _____


By: _____

Dana J. Stotsky
Amy Swanson
U.S. EPA Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado 80202-1129

FOR RESPONDENT:
BURKE OIL COMPANY, INC.

Date: 9-25-09

By: _____


Alfred Steven Fox, Esq.
Larson, Sundall, Larson, Schaub,
& Fox, P.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 25, 2008, the original and one copy of the JOINT MOTION FOR CONTINUANCE were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was delivered as follows:

Via pouch mail to:

The Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges (Mail Code 1900L)
U.S. EPA
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

And via regular mail to:

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

And via telefax transmission to:

The Honorable Barbara A. Gunning
Administrative Law Judge
202.565.0044



Date: September 25, 2008

By: _____