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CALL FOR FAX

October 19, 2007

TINA ARTEMIS, REGIONAL HEARING CLERK (SRC)
U.S. EPA REGION 8
1595 WYNKOOP STREET
DENVER CO. 80202-1129

Dear Ms. Artemis:

re: In the Matter of Burke Oil Company, Inc., d/b/a Presho Oil Company
CWA-08-2007-0025

Enclosed please find our Request for Hearing and a Request for Settlement Conference in the above-entitled matter. If we have in any way failed to adequately prepare these documents we would appreciate your consideration in advising us of any details we need to correct.

We appreciate your attention to the matter.

Respectfully yours,



Albert Steven Fox

ASF/pll

Enclosed:
Request for Hearing
Request for Settlement Conference

cc:
Amy Swanson, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver CO 80202-1129

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 OCT 23 AM 10:23
2007 OCT 23 AM 10:23
2007 OCT 23 AM 10:23

IN THE MATTER OF:) Docket No. CWA-08-2007-0C25
)
)
Burke Oil Company, Inc., d/b/a)
Presho Oil Company)
1200 East King Street) CERTIFICATE OF SERVICE
Chamberlain SD 57325-2103)
)
)
(Presho Oil Facility)
500 East Highway 16)
Presho SD))
) Proceeding to Assess Class II Civil Penalty
) Under Section 311 of the Clean Water Act
)
Respondent.)

The undersigned certifies that he served a copy of Request for Hearing and Settlement Conference upon the person herein next designated, on the 19th day of October, 2007, by depositing a copy hereof in the United States mail at Chamberlain, South Dakota, first class postage prepaid, in an envelope addressed to said addressee, to-wit:

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

Amy Swanson
Enforcement Attorney (8ENF-L)
US EPA Region 8, Law Enforcement Program
1595 Wynkoop Street
Denver CO 80202-1129

Which address is the last address of the addressee known to the subscriber.

Dated this 19th day of October, 2007.


Albert Steven Fox
LARSON, SUNDALL, LARSON, SCHAUB &
FOX, P.C.
P.O. Box 547
Chamberlain, SD 57325-0547
605 734 6515

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2007 OCT 23 AM 10:26
REGION 8

IN THE MATTER OF:) Docket No. CWA-08-2007-0C25
)
)
Burke Oil Company, Inc., d/b/a)
Presho Oil Company) REQUEST FOR HEARING
1200 East King Street) and SETTLEMENT CONFERENCE
Chamberlain SD 57325-2103)
)
)
Presho Oil Facility)
500 East Highway 16)
Presho SD) Proceeding to Assess Class II Civil Penalty
)
)
) Under Section 311 of the Clean Water Act
Respondent.)

COMES NOW, Albert Steven Fox, Larson, Sundall, Larson, Schaub & Fox, P.C., PO Box 547, Chamberlain, South Dakota 57325, attorney for the above-entitled Burke Oil Company, Inc. and they hereby specifically request that a hearing be held in the above-entitled matter concerning all issues and penalties and that a settlement conference also be held in the matter.

We would set forth the following corrections or objections for consideration by the hearing or settlement entities.

1. Paragraph 5—there is only one 2,000 gallon tank, the one 500 gallon tank containing kerosene has been removed, the 265 gallon tank of unknown product has also been removed from the facility. That has changed the total storage capacity at the facility. In general, the list of tanks under Section 5 is incorrect and confused with other tanks not located at the Presho Facility.

2. Paragraph 10—We disagree that the ditch and/or the unnamed tributary are “navigable waters or” waters of the United States as defined under the appropriate sections of the law.

3. We dispute that due to its location there could be any reasonable expectation that a discharge of oil could reach navigable waters or shorelines in quantities that would either violate applicable water quality standards or cause a film or sheen or discoloration of the surface water adjoining the shorelines or cause a sludge or a motion to be deposited beneath the surface of the water or upon adjoining shorelines.

4. Under Section 19—the response respectfully notes:
- a. that a secondary containment for the loading/unloading rack is in place.
 - b. A secondary containment for the only 2,000-gallon tank has been prepared and that secondary containment for all the other tanks have been prepared and/or the oil drums located inside the storage building have been removed or otherwise now conform under the law.
 - c. That there is adequate secondary containment for both tanks number one through six in accordance with the required statutes.
 - d. That there is a physical barrier or signage at the loading rack to prevent vehicle departure before completing disconnect of the transfer lines while fueling vehicles in accordance with the statutes.
 - e. That the facility does have fencing in accordance with the statute.
 - f. That the drainage or dikage is in accordance with the statute.
 - g. That there is written documentation of inspections maintained.
 - h. That any visible discharge of oil are promptly corrected and/or removed in accordance with the statutes, but we haven't had any.
 - i. That the master flow valve and drain valves are locked as required by law.
 - j. That the pipe supports are in accordance with the statute.
 - k. That there is written documentation of training or annual briefings in accordance with the statute.
 - l. That if any spill reports have been necessary they have filed any required and adequate information, although we believe we have had no spills that are applicable.

5. Under 20A—we have inside oil storage containers and plan diagrams and narrative in accordance with the statute as set out under the statute.

6. Under 21—The respondent did prepare and implement a SPCC plan for the facility in accordance with the statute.

7. Under 22—The respondent did prepare and implement that plan in accordance with other regulations and completed that documentation as allowed under the law.

8. That we believe the proposed penalties under each and every matter are excessive considering the seriousness of the violations, the economic benefit to the violator resulting from those violations, the degree of culpability involved, the history of prior violations, the nature, extent and degree of success of efforts of us to minimize or mitigate any discharges, the economic impact of the penalty on the violator and all other factors. The proposed penalty is excessive specially based upon the actions taken by Burke Oil Company, Inc.

9. We respectfully request a hearing to contest each and every one of the factual claims made in the Complaint, to contest the appropriateness of the proposed penalty, and to assert that we are entitled to judgment as a matter of law under the appropriate sections. We deny each and every act not specifically admitted to.

10. That we have taken actions quickly and as effectively as we could considering weather and the lack of local, sometimes specialized, contractors to do much of the work and we have on file the plans as necessary under statute.

11. We specifically request an informal settlement conference be held at or before any formal hearing.

Dated this 19th day of October, 2007.

Burke Oil Company, Inc.


By: Robert Burke
Robert Burke


Albert Steven Fox
LARSON, SUNDALL, LARSON,
SCHAUB & FOX, P.C.
P.O. Box 547
Chamberlain, SD 57325
605 734 6515

STATE OF SOUTH DAKOTA :
:SS
COUNTY OF BRULE :

On this the 19th day of October, 2007, before me, the undersigned officer personally appeared Robert Burke who acknowledged himself to be the President of Burke Oil Company, Inc., d/b/a Presho Oil Company, a corporation and that he as such officer being authorized so to do, executed the above and foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.


(Notary Seal)


Notary Public, South Dakota
My Comm. Exp. 6/18/11

STATE OF SOUTH DAKOTA :
:SS
COUNTY OF BRULE :

On this the 19th day of October, 2007, before me, the undersigned officer personally appeared Albert Steven Fox known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

(Notary Seal)


Notary Public, South Dakota
My Comm. Exp. 6/18/11