

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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REGION VIII
HEARING CLERK

IN THE MATTER OF:) Docket No. CWA-08-2007-0026
)
Burke Oil Company Inc.)
1200 East King Street)
Chamberlain, SD 57325-2103) **SETTLEMENT STATUS REPORT**
)
(Chamberlain Bulk Plant Facility)
1200 East King Street)
Chamberlain, SD)
)
Respondent.)

COMES NOW, Complainant United States Environmental Protection Agency, Region 8 (EPA), by and through its undersigned counsel, and provides the following Settlement Status Report in the above-referenced 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.

1. EPA filed a Class II administrative action against Burke Oil Company Inc. (doing business as Presho Oil Company) under section 311(b)(6)(B)(ii) of the Clean Water Act (Act), as amended by the Oil Pollution Act of 1990, 33 U.S.C. § 1321(b)(6)(B)(ii), on September 27, 2007 (hereafter referred to as "Class II action"). EPA alleged that the Presho Oil facility owned and/or operated by Burke Oil Company Inc. (d/b/a/ Presho Oil Company) was in noncompliance with the Spill Prevention, Control and Countermeasure (SPCC) regulations set forth in 40 C.F.R. Part 112.

2. Also on September 27, 2007, EPA filed a Class I administrative action against Burke Oil Company Inc. under section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), for alleged SPCC violations at the Chamberlain Bulk Plant facility owned and/or operated by

Burke Oil Company Inc. (hereafter referred to as "Class I action").

3. Whereas the Class II action was provided to the Office of the Administrative Law Judges for assignment, the Class I action is before the EPA Region 8 Regional Judicial Officer.

4. On or before November 13, 2007, EPA and Burke Oil Company Inc. (collectively referred to as "the parties") accepted the Office of Administrative Law Judges' offer to participate in Alternative Dispute Resolution (ADR) for *In the Matter of Burke Oil Company Inc., d/b/a Presho Oil Company, (Presho Oil Facility)*, Docket No. CWA-08-2007-0025.

5. The parties are attempting prior to commencing ADR to resolve both the Class I and II actions through informal settlement negotiations. The parties participated in an informal settlement discussion on December 10, 2007. A follow-up informal settlement discussion scheduled for December 12, 2007, was cancelled due to Respondent's health and will likely be rescheduled for next week.

6. The parties tentatively plan to participate in ADR between January 2 and 4, 2008, if unable to resolve this matter through informal settlement negotiations.

7. The parties plan to file a Stipulated Motion to Consolidate no later than December 19, 2007, requesting that the Class I and Class II actions be heard by the Office of Administrative Law Judges to allow for collective resolution or, alternatively, litigation of both proceedings.

Respectfully submitted this 20th day of December 2007.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.



Amy Swanson, Enforcement Attorney

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the SETTLEMENT STATUS REPORT was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent as follows:

Via hand delivery to:

The Honorable Elyana R. Sutin
Regional Judicial Officer
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1159

Via pouch mail to:

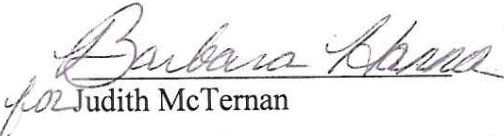
The Honorable Spencer T. Nissen
Administrative Law Judge
Office of Administrative Law Judges (Mail Code 1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Via regular mail to:

Steve Fox, Esquire
Larson, Sundall, Larson, Schaub & Fox, P.C.
P.O. Box 547
Chamberlain, SD 57325
Facsimile: (605) 734-5669

DEC 21 2007

Date


for Judith McTernan