



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Phone 800-227-8917  
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**SEP 16 2008**

Ref: 8RC

Honorable Barbara A. Gunning  
Administrative Law Judge (1900L)  
U. S. Environmental Protection Agency  
Aerial Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: Burke Oil Company, Inc., d/b/a Presho Oil  
Co. and Burke Oil Company, Inc.  
Docket Nos.: CWA-08-2007-0025  
CWA-08-2007-0026

Dear Judge Gunning:

The hearing in the above matter is scheduled for Tuesday, October 21, 2008 through Thursday, October 24, 2008. The hearing will begin at 9:30 a.m. The hearing will take place at the Brule & Buffalo Counties Court; 300 S. Courtland, Suite 111, Chamberlain, SD. The contact person is Doris Juhnke who can be reached at 605-734-4581.

The services of Carol Bachand at Capital Court Reporting Services, 605-224-7611 will be present during these proceedings. The EPA will not provide copies of the transcript to the Respondent therefore, Respondent must make arrangements with the court reporter or the EPA to obtain a copy of the transcript when it becomes available. If the EPA provides a copy the cost will be \$.15 per page.

If you require any additional information, please feel free to contact me at 303-312-6765.

Sincerely,

A handwritten signature in cursive script that reads "Tina Artemis".

Tina Artemis  
Paralegal/Regional Hearing Clerk

cc: Dana Stotsky, EPA (8ENF-L)  
Albert Steven Fox, Esq.



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

EPA REGION VIII HEARING CLERK

IN THE MATTER OF )
Burke Oil Company, Inc., d/b/a ) DOCKET NO. CWA-08-2007-0025
Presho Oil Company )
Burke Oil Company, Inc. ) DOCKET NO. CWA-08-2007-0026
RESPONDENTS )

ORDER SCHEDULING HEARING

This proceeding arises under the authority of Section 311(b)(6)(i)-(ii) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(i)-(ii). Complainant seeks a civil administrative penalty in the total amount of \$54,221 against Respondent.1/

The parties have filed their prehearing exchange in this matter pursuant to the undersigned's Prehearing Order entered on April 23, 2008. The parties state that they reserve the right to supplement their prehearing exchange.

The parties are reminded that this proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or

1/ As previously noted in the Prehearing Order, "Respondent" refers to Burke Oil Company, Inc., who is identified as the respondent in both proceedings (Presho Oil Facility and Chamberlain Bulk Facility). Although the two proceedings concern two separate facilities owned and operated by Respondent, neither party has indicated that Respondent should be treated as two separate respondents. If such question or concern should arise, the respondents shall be individually identified for evidentiary purposes, as well as for purposes of establishing liability and the appropriateness of a penalty, if any.

Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. Sections 22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses whose names have not been exchanged at least fifteen (15) days before the hearing date shall not be admitted into evidence or allowed to testify unless good cause is shown for failing to exchange the required information.

Further, the parties are advised that every motion filed in this proceeding must be served in sufficient time to permit the filing of a response by the other party and to permit the issuance of an order on the motion before the deadlines set by this order or any subsequent order. Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b), allows a fifteen-day (15) period for responses to motions and Section 22.7(c), 40 C.F.R. § 22.7(c), provides for an additional five (5) days to be added thereto when the motion is served by mail. The parties are hereby notified that the undersigned will not entertain last minute motions to amend or supplement the prehearing exchange absent extraordinary circumstances.

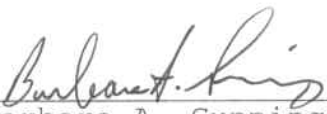
As previously noted in the Prehearing Order, United States Environmental Protection Agency ("EPA") policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. However, the pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the requirements or schedule set forth in this Order.

As the parties have not reached a settlement in this matter, they shall strictly comply with the requirements of this order and prepare for a hearing. In connection therewith, on or before **September 26, 2008**, the parties shall file a joint set of stipulated facts, exhibits, and testimony. See Section 22.19(b)(2) of the Rules of Practice, 40 C.F.R. § 22.19(b)(2). The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate, as much as possible, to matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters which can only be resolved after a hearing.

The Hearing in this matter will be held beginning at 9:30 a.m. on Tuesday, **October 21, 2008** in Chamberlain, South Dakota,

continuing if necessary on October 22, 23, and 24, 2008.<sup>2/</sup> The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. The parties will be notified of the exact location and of other procedures pertinent to the hearing when those arrangements are complete. Individuals requiring special accommodation at this hearing, including wheelchair access, should contact the Regional Hearing Clerk at least five business days prior to the hearing so that appropriate arrangements can be made.

IF EITHER PARTY DOES NOT INTEND TO ATTEND THE HEARING OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

  
\_\_\_\_\_  
Barbara A. Gunning  
Administrative Law Judge

Dated: August 20, 2008  
Washington, DC

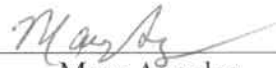
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<sup>2/</sup> The designation of Chamberlain as the site of the hearing depends upon the availability of a courtroom.

In *Burke Oil Company, Inc., d/b/a Presho Oil Company & Presho Oil Facility*, Docket No. CWA-08-2007-0025; *Burke Oil Company, Inc., d/b/a Chamberlain Bulk Plant Facility*, Docket No. CWA-08-2007-0026, Respondents.

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Scheduling Hearing**, dated August 20, 2008, was sent this day in the following manner to the addressees listed below.



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Mary Angeles  
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Tina Artemis  
Regional Hearing Clerk  
U.S. EPA / Region VIII  
1595 Wynkoop Street  
Denver, CO 80202-2466

One Copy by Pouch Mail:

Amy L. Swanson, Esq.  
Enforcement Attorney (MC 8ENF-L)  
1595 Wynkoop Street  
Denver, CO 80202-1129

One Copy by Regular Mail to:

Albert Steven Fox, Esq.  
Larson, Sundall, Larson, Schaub & Fox, PC  
P.O. Box 547  
Chamberlain, SD 57325

**Dated: August 20, 2008**  
**Washington, D.C.**