

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

2008 SEP 30 PM 3:22

BEFORE THE ADMINISTRATOR

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )  
 )  
Burke Oil Company, Inc., )  
d/b/a Presho Oil Company, )  
Presho Oil Facility )  
 )  
and )  
 )  
Burke Oil Company, Inc., )  
Chamberlain Bulk Plant Facility )  
 )  
Respondents. )

Docket Nos. CWA-08-2007-0025 and  
CWA-08-2007-0026

**COMPLAINANT'S SUPPLEMENTAL PREHEARING EXCHANGE**

Complainant, United States Environmental Protection Agency, Region 8 (EPA), files this  
COMPLAINANT'S SUPPLEMENTAL PREHEARING EXCHANGE pursuant to 40 C.F.R.  
section 22.19(a) and ORDER GRANTING MOTION TO CONSOLIDATE PROCEEDINGS  
AND PREHEARING ORDER of the Administrative Law Judge issued April 23, 2008.

**ADDITIONAL POTENTIAL FEDERAL WITNESS**

1. Mr. Peter Stokely  
U.S. EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Mr. Stokely is employed by the United States EPA. Mr. Stokely assists the Clean Water  
Act Programs by routinely making determinations whether a discharge from a facility can  
reasonably be expected to impact a water of the U.S. or adjoining shoreline in harmful quantities  
based on an assessment of aerial and topographic information relating to a facility's location and

proximity to surface waters. Mr. Stokely may be called to testify regarding the likelihood of discharges from the facilities reaching navigable waters of the U.S. based on his consideration of the facilities' locations and spill pathways, and review of relevant aerial data and topographic maps. Mr. Stokely may establish, through testimony, the basis for admitting into evidence Complainant's Exhibits 12 through 21, and 41 through 50.

#### ADDITIONAL EXHIBITS

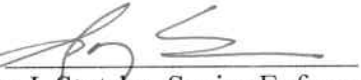
Complainant may introduce the following nine (9) documents as exhibits in addition to those documents previously listed in Complainant's Prehearing Exchange. Copies of the exhibits are attached hereto.

42. Spill Prevention, Control, and Countermeasures Plan for Presho Oil, 934 East 9<sup>th</sup> Street, prepared by RESPEC, April 10, 2003.
43. Letter from GeoTek Engineering and Testing Services, Inc., to Burke Oil Company, re: Spill Containment Area-Presho Oil Co., dated February 22, 2008.
44. Color copy of three topographic maps combined, depicting area 7 kilometres west of Presho, South Dakota; 3 kilometres northeast of Presho, South Dakota; and 4 kilometres west of Kennebec, South Dakota, on 8.5 x 11 inch sheets of paper, image courtesy of US Geological Survey, <http://terraserver-usa.com>, dated September 11, 2008.
45. Approved Jurisdictional Determination Form, U.S. Army Corps of Engineers, prepared for Medicine Creek, report completion date December 28, 2007.
46. Project Summary Sheet for Medicine Creek Watershed Project.
47. Phase I Watershed Assessment Final Report and TMDL, Brakke Dam, Lyman County, South Dakota, prepared by South Dakota Water Resources Assistance Program, Division of Financial and Technical Assistance, South Dakota Department of Environment and Natural Resources, April 2004.
48. Total Maximum Daily Load for Ammonia in Medicine Creek near Kennebec, South Dakota, developed in accordance with Section 303(d) of the federal Clean Water Act, prepared by South Dakota Department of Environment and Natural Resources, 2006.
49. Water Quality Monitoring Station for South Dakota Department of Environment and Natural Resources, Surface Water, Page 13 of 23, September 24, 2008.

Respectfully submitted,

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Date: 9/30/08

By:   
Dana J. Stotsky, Senior Enforcement Attorney  
Amy Swanson, Senior Enforcement Attorney  
Legal Enforcement Program  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true copy of the COMPLAINANT'S SUPPLEMENTAL PREHEARING EXCHANGE and all exhibits 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 Pouch Mail to:

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

and via first class U.S. mail to:

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

Date: 10/1/08

By: *Judith M. McTernan*