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July 1, 2008

AMY SWANSON, ENFORCEMENT ATTORNEY (8ENF-L)
U.S. EPA REGION 8, LEGAL ENFORCEMENT PROGRAM
1595 WYNKOOP STREET
DENVER CO 80202-1129

Dear Amy:

re: Burke Oil

Enclosed please find a Respondant's Pre-Hearing Exchange Concerning
Witnesses, Exhibits and Other Issues.

Respectfully yours,



Albert Steven Fox

ASF/pll

Enclosed:
Respondant's Pre-Hearing Exchange

cc:
The Honorable Barbara G. Gunning
Administrative Law Judge
Office of Administrative Law Judges (Mail Code 1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC 20460

Regional Hearing Clerk
EPA Region 8
1595 Wynkoop St.
Denver CO 80202

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)	Docket No. CWA-08-2007-0C26
)	
Burke Oil Company, Inc.)	
1200 East King Street)	CERTIFICATE OF SERVICE
Chamberlain SD 57325-2103)	
)	
(Chamberlain Bulk Plant Facility)	
1200 East King Street)	
Chamberlain SD))	Proceeding to Assess Class I Civil Penalty
)	Under Section 311 of the Clean Water Act
Respondent.)	

The undersigned certifies that he served the original and one copy of the Respondant's Pre-Hearing Exchange and all Exhibits upon the person herein next designated, on the 2nd day of July, 2008, 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 2nd day of July, 2008.



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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)	Docket Nos. CWA-08-2007-0026
)	CWA-08-2007-0025
Burke Oil Company, Inc.)	
1200 East King Street)	
Chamberlain SD 57325-2103)	
Chamberlain Bulk Plant Facility)	
)	
AND)	
)	
Burke Oil Company Inc.)	
D/b/a Presho Oil Company)	
1200 East King Street)	
Chamberlain SD 57325-2103)	
Presho Oil Facility)	
)	
Respondents.)	

RESPONDANT'S PRE-HEARING EXCHANGE

The Respondent files this Pre-Hearing Exchange as requested by the Administrative Judge.

I. WITNESSES TO BE CALLED

1. Robert Burke
Owner
802 S. Courtland St.
Chamberlain SD 57325

Mr. Burke is familiar with all aspects of the facilities and the facts in the case including the tanks that were actually on site, the use of the tanks, and will testify about communications with the EPA and concerning the penalties, including aspects of environmental impact, and all the factors of penalty.

2. Jeff Burke
24246 350th Ave.
Pukwana SD 57370

Mr. Burke is familiar with all aspects of the facilities and the facts in the case including the tanks that were actually on site, the use of the tanks, and will testify about communications with the EPA and concerning the penalties, including aspects of environmental impact, and all the factors of penalty.

3. Jerry Kotz
107 E. Hwy 16
Presho SD 57568

Jerry Kotz operates the Presho Facility and is familiar with all aspects of the tanks that are actually present, and the issues above.

4. Steve Auch
111 E. Prospect Ave.
PO Box 573
Chamberlain SD 57325

Mr. Auch is familiar with the topography of the country, the land contours, geography and drainage features in the area.

5. Jerry Toering
1007 S. Sanborn St.
Chamberlain SD 57

Jerry would be able to offer statistical evidence about any spill and would testify as to such issues.

6. Bill Adams
1014 S. Courtland St.
Chamberlain SD 57325

Bill is familiar with the topography of the area, and in particular the area that might be contaminated by a spill.

7. Gary Dominiack
304 W. 4th St.

PO Box 135
Oacoma SD 57365

Gary is familiar with the topography of the area, and in particular the area that might be contaminated by a spill.

8. Greg Powell
715 N. Main
Chamberlain SD 57325

Mr. Powell is familiar with the topography of the land, the possible land contours, geography and drainage features in the area.

9. Forest Hupp
City of Presho
Presho SD 57568

Mr. Hupp is familiar with the topography of the county, the possible land contours, geography and drainage features in the area.

II. ADDITIONAL INFORMATION REQUIRED BY ALJ'S PREHEARING ORDER

1. Respondent estimates it will take one day to put on its case and request that the hearing be held in a suitable, neutral facility in Chamberlain, South Dakota.
2. Respondent will provide through testimony its calculations of any proposed penalty after the case in chief by the Complainant.

III. RESERVATIONS

1. Respondent reserves the right to add witnesses to rebut Complainant's case, to call as hostile witness to any witness endorsed or noticed by Complainant in addition to those already offered, to subpoena any witnesses who is an employee, agent or contractor of the Complainant or is endorsed or noticed by the Complainant and to cross-examine any witnesses examined by Complainant at any time.

2. Respondent respectfully reserves its right to supplement the Pre-Hearing Exchange upon adequate notice to the Complainant.

IV. EXHIBITS

1. The exhibits the Respondents expect to offer are included in the Complainant's submission and any other evidence used would not be offered as an exhibit, but for demonstrative purposes as witness testimony only.

Dated this 2nd day of July, 2008.

Respectfully submitted,



Albert Steven Fox
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