

6/29/2022

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>**

DOCKET NO.: RCRA-08-2022-0011

IN THE MATTER OF:)
)
FARMER'S UNION OIL COMPANY OF) **FINAL ORDER**
DEVIL'S LAKE)
)
)
)
RESPONDENT)

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS _____ DAY OF _____, 2022.

Katherin E. Hall
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF:)
Farmer's Union Oil Company of)
Devil's Lake,)
115 Main Street)
Warwick, North Dakota 58381)
Respondent.)
)
)
)

Docket No. RCRA-08-2022-0011

CONSENT AGREEMENT

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. Farmer's Union Oil Company of Devil's Lake (Respondent) owns and/or operates the Warwick Oil Gas Station (Site) located in Warwick, North Dakota.
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 9006 of the Solid Waste Disposal Act (Act), as amended by, *inter alia*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6991e (RCRA). The undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. Subchapter IX of the Act, RCRA §§ 9001-9014, 42 U.S.C. §§ 6991-6991m, authorizes EPA to regulate the installation and use of "underground storage tanks" ("USTs" or "tanks") which contain "regulated substances," as those terms are defined in section 9001 of RCRA, 42 U.S.C. § 6991.

8. Petroleum, and any fraction thereof, is a regulated substance as defined at RCRA § 9001(7), 42 U.S.C. § 6991(7).
9. EPA has jurisdiction over this matter pursuant to RCRA § 9006, 42 U.S.C. § 6991e.
10. Any owner or operator of a UST who fails to comply with any requirement or standard promulgated by the Administrator under RCRA § 6991b is subject to a civil penalty not to exceed \$26,269 for each tank for each day of violation. 42 U.S.C. § 6991e(d)(2).
11. Section 9003(h) of RCRA, 42 U.S.C. § 6991b(h), authorizes EPA to require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when EPA determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs.
12. In determining whether corrective action is needed, EPA reviews relevant standards as reference points—like federal drinking water standards and state soil and water contamination standards—even if the latter do not apply in Indian country as defined in 18 U.S.C. § 1151.
13. Section 9003(h)(2) of RCRA, 42 U.S.C. § 6991b(h)(2), requires corrective action to be in conformance with regulations promulgated by EPA. EPA has promulgated such regulations at 40 C.F.R. Part 280, subpart F.
14. In accordance with 40 C.F.R. § 280.65, owners and operators must conduct investigations of a release if there is evidence that groundwater wells have been affected by the release or if the implementing agency requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.
15. Any violator who fails to comply with a section 9006 order within the time specified in the order shall be liable for a civil penalty of not more than \$65,666 for each day of continued noncompliance. 42 U.S.C. § 6991e(a)(3).

IV. STIPULATED FACTS

16. Respondent is a commercial entity registered to do business in North Dakota.
17. Respondent is a “person” as defined by section 9001(5) of RCRA, 42 U.S.C. § 6991(5).
18. Respondent owns and operates the Site.
19. The Site is located within the exterior boundaries of the Spirit Lake Reservation.
20. Until October 21, 2021, the Site contained two USTs.
21. Each of the two USTs was a 560-gallon, single-walled STIP3 tank containing unleaded gasoline.
22. The Respondent owns and/or operates the Site, including the tanks, as a for-profit gas station and convenience store.

23. Respondent is an “operator” within the respective meanings of RCRA § 9001(3), 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12, of an “underground storage tank system” (UST system) as defined by RCRA § 9001(10), 42 U.S.C. § 6991(10), and 40 C.F.R. § 280.12.
24. In 2012, Respondent’s consultant—Prairie Consulting Group—conducted a Phase II Environmental Site Assessment Report at the Site.
25. The 2012 Phase II Environmental Site Assessment Report involved collecting soil samples and analyzing them for benzene, toluene, ethylbenzene, and total xylenes (BTEX); total petroleum hydrocarbons (TPH) gasoline range organics (GRO) and diesel range organics (DRO); and RCRA metals.
26. TPH-GRO and TPH-DRO are substances found in unleaded gasoline and diesel fuel and are constituents of petroleum.
27. Soil borings were completed in the vicinity of the USTs, dispensers, and above-ground tanks.
28. The action screening level for TPH set by the North Dakota Department of Health (NDDOH) is 100 parts per million.
29. Concentrations of TPH-GRO and TPH-DRO exceeded the NDDOH screening levels in three of the four soil samples collected at the Site.
30. If left unaddressed, these petroleum constituents could migrate into drinking water sources.
31. The State of North Dakota notified EPA of the assessment in September 2017.
32. EPA sent Respondent a letter on September 21, 2017, requiring Respondent determine the extent of the release and develop and submit a proposed corrective action plan within 60 days.
33. Respondent failed to submit the requested corrective action plan by November 21, 2017.
34. Thereafter, EPA sent Respondent numerous emails. Respondent indicated via email that it anticipated pulling the tanks, but Respondent did not provide a proposal to determine the extent of release, nor did Respondent submit a proposed corrective action plan.
35. On September 4, 2018, EPA issued Respondent an Order pursuant to section 9003(h) of RCRA.
36. The Order required Respondent to submit to EPA a Site Assessment in accordance with 40 C.F.R. § 280.65 within 45 days and submit revised submittals if required by EPA after reviewing the Site Assessment.
37. The Order required Respondent to submit to EPA a Corrective Action Plan in accordance with 40 C.F.R. § 280.66 within 30 days of receiving EPA’s approval of the Site Assessment.
38. On November 26, 2018, Respondent submitted a draft Site Assessment.

39. On January 30, 2019, EPA provided numerous comments on Respondent's draft Site Assessment and required Respondent to submit a revised submittal.
40. On February 8, 2019, Respondent submitted partial responses to EPA's comments and indicated a work plan for the additional assessment requests would be forthcoming.
41. On May 7, 2020, after numerous emails to the respondent, EPA issued a letter that required Respondent submit the final assessment within 30 days.
42. Respondent failed to submit a final Site Assessment by June 6, 2020.
43. On September 15, 2020, EPA conducted a routine site compliance inspection of the UST system. EPA found violations of 40 C.F.R. Part 280 at the time of the inspection.
44. On November 14, 2020, EPA informed Respondent of the following violations and required Respondent submit proof of compliance by December 29, 2020:
 - a. failure to meet the requirements for periodic testing and monitoring of spill prevention equipment;
 - b. failure to meet the requirements for periodic testing and monitoring of overfill prevention equipment;
 - c. failure to meet the requirements for operator training;
 - d. failure to monitor tanks at least every 30 days; and
 - e. failure to perform triennial line tightness testing.
45. On March 9, 2021, EPA again informed Respondent of the violations and required Respondent submit proof of compliance by April 23, 2021.
46. On August 10, 2021, EPA sent a Notice of Violation and Opportunity to Confer to the Respondent which detailed all of the existing violations on record for the Site.
47. On August 20, 2021, the Respondent submitted the test results for the spill and overfill prevention equipment and records of the required operator training. The results indicated that the overfill prevention equipment failed the inspection.
48. During discussions with EPA on August 30, 2021, Respondent noted the desire to remove the existing USTs at the Site in lieu of making repairs and performing additional tests.
49. On September 28, 2021, the Respondent submitted the required records for tank release detection under 40 C.F.R. § 280.41(a)(1).
50. On October 20, 2021, the EPA received an UST Removal Notification form and Closure Assessment Sampling Plan from the Respondent and approved the UST removal.

51. Respondent's contractor removed the two 560-gallon USTs from the Site on October 21, 2021.
52. Respondent had soil and groundwater samples collected for the UST Closure Assessment on October 22, 2021.
53. On December 9, 2021, EPA received the required UST Closure Assessment.
54. Soil samples collected during this Closure Assessment were below the NDDOH screening levels.
55. The North Dakota Department of Environmental Quality action levels for groundwater samples are 500 µg/L for TPH-GRO and 500 µg/L for TPH-DRO.
56. Groundwater sample analysis for the Site indicated TPH-GRO and TPH-DRO levels at 46,200 micrograms per liter (µg/L) and 17,500 µg/L, respectively.
57. NDDEQ's action level is 5 µg/L for benzene.
58. EPA's Maximum Contaminant Levels (MCLs) for drinking water are 5 µg/L for benzene, 700 µg/L for ethylbenzene, and 1,000 µg/L for toluene.
59. Groundwater sample analysis for the Site indicated benzene, ethylbenzene, and toluene concentrations at 47.4 µg/L, 1,290 µg/L, and 4,330 µg/L, respectively.
60. Respondent submitted a final Corrective Action Plan to EPA on June 15, 2022.

V. ALLEGED VIOLATIONS OF LAW

61. Respondent failed to conduct a Site Assessment, in violation of section 9003(h) of RCRA, 42 U.S.C. § 6991(h), for the period of June 6, 2020, through April 5, 2022.
62. Respondent failed to meet the requirements for periodic testing and monitoring of spill prevention equipment, in violation of 40 C.F.R. § 280.35(a)(1), for the period of October 13, 2018, through June 10, 2021.
63. Respondent failed to meet the requirements for periodic testing and monitoring of overfill prevention equipment, in violation of 40 C.F.R. § 280.35(a)(2), for the period of October 13, 2018, through June 10, 2021.
64. Respondent failed to meet the requirements for operator training, in violation of 40 C.F.R. §§ 280.240-.245, for the period of October 13, 2018, through October 14, 2020.
65. Respondent failed to perform triennial line tightness testing, in violation of 40 C.F.R. § 280.41(b)(1)(ii), for the period of July 23, 2018, through October 21, 2021.

VI. TERMS OF CONSENT AGREEMENT

66. For the purpose of this proceeding, Respondent:
 - a. admits the jurisdictional allegations in section II of this Agreement;

- b. admits to the stipulated facts stated in section IV of this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - e. waives any right to contest any final order approving this Agreement; and
 - f. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
67. Sections 9006(a)(3) and 9006(d)(2) of the Act authorize EPA to assess a civil penalty in this matter. 42 U.S.C. § 6991e(a)(3), (d)(2).
68. In determining the amount of the penalty to be assessed, EPA considered the compliance history of Respondent and other appropriate factors, in accordance with section 9006(e), 42 U.S.C. § 6991e(e).
69. Based on the Alleged Violations of Law, and after consideration of the statutory factors in paragraph 68 above, EPA has determined a civil penalty of **\$50,000** is appropriate to settle this matter.
70. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of **\$50,000** within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
 - c. identify each and every payment with the docket number that appears on the final order,
 - d. within 24 hours of payment, email proof of payment to Roberta Person and Matt Castelli at person.roberta@epa.gov and castelli.matthew@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
71. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses;

- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
72. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
73. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Site. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
74. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
75. Except as qualified by paragraph 71, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

76. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
77. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.
78. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$65,666 per day per violation, or both, as provided in section 9006 of the Act and adjusted for inflation pursuant to 40 C.F.R. part 19. EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
79. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

80. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
81. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.
82. Respondent and Complainant consent to electronic service this Agreement and the Final Order by e-mail at the following email addresses: thaahr@fuodevilslake.com and castelli.matthew@epa.gov.

VIII. EFFECTIVE DATE

83. This Agreement shall become effective on the date the final order is filed by the hearing clerk.

final order is filed by the hearing clerk.

Consent Agreement In the Matter of Farmer's Union Oil
Co. of Devil's Lake
ECN: 520.0002.2018_FarmersUnion

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.

JANICE PEARSON

Digitally signed by JANICE
PEARSON
Date: 2022.06.23 16:03:25 -06'00'

Date: _____ By: _____

Janice Pearson, Chief
RCRA and OPA Enforcement Branch

FARMER'S UNION OIL CO. OF DEVIL'S LAKE
Respondent.

Date: 6-23-22 By: Thomas Haahr
Thomas Haahr, Owner

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **FARMER'S UNION OIL COMPANY OF DEVIL'S LAKE; DOCKET NO.: RCRA-08-2022-0011** were sent via certified receipt email on to:

Respondent

Thomas Haahr
Farmer's Union Oil Company of Devil's Lake
Thaahr@fuodevilslake.com

EPA Region 8

Matt Castelli
Enforcement Attorney
Office of Regional Counsel
Castelli.Matt@epa.gov

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
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Chalifoux.Jessica@epa.gov

Kate Tribbett
Regional Hearing Clerk