

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2014 FEB -3 AM 9:42

IN THE MATTER OF:)
)
Margaret Eagle, Owner/Operator,)
)
Belle Isle Store)
818 Belle Isle Street)
St. Michael, ND 58370,)
)
Respondent.)

Docket No. RCRA-08-2012-0003

FILED
EPA REGION VIII
HEARING CLERK

COMPLAINANT'S STATUS REPORT

Complainant United States Environmental Protection Agency, Region 8 (EPA), by and through its undersigned attorney, provides the following Status Report in the above-referenced matter pursuant to the ORDER TO FILE STATUS REPORT issued by the Honorable Elyana R. Sutin, Presiding Officer, on January 8, 2014.¹ This Status Report responds to the Presiding Officer's request for (1) a statement concerning whether the Complainant intends to file a motion for default and the expected filing date, if applicable; (2) the Complainant's position on any further action in this matter if it does not intend to file a default motion; (3) a summary of recent contacts with the Respondent; (4) an assessment of settlement potential; (5) notification whether a settlement in principle has been reached; and (6) an anticipated date for filing a consent agreement and final order, if applicable.

1. Default

The Complainant does not intend to file default motion at this time. The Respondent, who operated a single underground storage tank (UST) from 1995-1999 at the former Belle Isle Store, has an assumed inability to pay claim. The EPA initially delayed filing a default motion after the July 19, 2012 answer deadline to pursue the possibility of the Spirit Lake Nation's UST Program removing the tank on the Respondent's behalf. After this effort was unsuccessful, the EPA began speaking with the State of

¹ Please note that although the Status Report was due Friday, January 31, 2014, the undersigned waited until Monday, February 3, 2014, to finalize and file the Report after verifying the accuracy of its content, in particular the status of the State of North Dakota's plans to pull the underground storage tank, with Francisca Chambus of EPA Region 8's UST Program.

North Dakota about pulling the Respondent's tank. For the next 14 months, the UST Program pursued the possibility of the State pulling the tank with the UST Program Manager for the North Dakota Department of Health, Division of Waste Management. In October 2013, the State agreed to pull the Respondent's tank. As of the date of this Status Report, the State continues to pursue using Leaking Underground Storage Tank Fund money to pull the tank. The EPA is awaiting an update from the State prior to determining whether to move for default or pursue other options within EPA's discretion to resolve the matter.

2. Further Action

As stated above, the EPA currently understands that the State will pull the Respondent's tank which has been unused and in temporary closure status since approximately 2001. Because compliance is required prior to settling the penalty action proposed against the Respondent and the Respondent's costs of compliance are dependent on whether the State pulls the tank and/or a petroleum release is discovered, the EPA prefers to postpone negotiating a settlement or filing a default motion until after the State has pulled the tank and performed an initial site assessment. The EPA is planning to inspect the facility in April 2014.

3. Recent Contacts

The undersigned has not had any contact with the Respondent or legal counsel acting on her behalf. The Respondent did not respond to the Complaint. The UST Program staff attempted without success to reach the Respondent by phone in August 2012 and November 2013. The EPA anticipates either meeting with the Respondent this spring during the planned facility or having a representative

from the Spirit Lake Nation UST Program meet with the Respondent on its behalf to discuss the status of this action and options for resolving the matter.

4. Settlement Potential

There is little potential of settlement unless the Respondent asserts a legitimate inability to pay claim and the compliance costs associated with removing the tank and performing remediation, if required, are borne by someone else. This requires that the Respondent communicate with the EPA about her financial condition and provide the EPA with the requisite financial information needed for the EPA to make an inability to pay determination. The EPA included the ability to pay forms in the letter accompanying the Complaint to facilitate an inability to pay claim but never received either an inability to pay claim or financial documentation from the Respondent. In addition, this requires that the State remove the Respondent's UST and perform the related site assessment and remediation, if warranted, on account of the Respondent's assumed financial condition. As stated in the "Recent Contact" section above, the EPA believes that discussing the resolution of this matter, including the information the Respondent needs to provide in support of an inability to pay claim, has the most chance of success if done in person. The EPA, or the Spirit Lake Nation UST Program, plans to have that discussion with the Respondent in April 2014, the exact date yet to be determined.

5. Settlement in Principle

No settlement in principle has been reached.

6. Consent Agreement and Final Order

No date is anticipated for filing a consent agreement and final order.

Respectfully submitted,

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: 2/3/2014

By: 

Amy Swanson, Senior Attorney

Legal Enforcement Program

EPA Region 8

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CERTIFICATE OF SERVICE

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

By hand-delivery:

The Honorable Elyana R. Sutin
Regional Judicial Officer
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

By certified mail to:

Ms. Margaret Eagle
P.O. Box 180
St. Michael, ND 58370

Date: 2/3/2014

By:  _____