



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2012 FEB 28 AM 11:09

FILED  
EPA REGION VIII  
HEARINGS DIVISION

DOCKET NO.: RCRA-08-2011-0004

|                                  |   |                    |
|----------------------------------|---|--------------------|
| IN THE MATTER OF:                | ) |                    |
|                                  | ) |                    |
| <b>FARMERS UNION OIL CO., OF</b> | ) | <b>FINAL ORDER</b> |
| <b>MCLAUGHLIN</b>                | ) |                    |
|                                  | ) |                    |
|                                  | ) |                    |
| <b>RESPONDENT</b>                | ) |                    |

Pursuant to 40 C.F.R. §22.18, 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 receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 28<sup>th</sup> DAY OF February, 2012.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 FEB 28 AM 11:09

FILED  
2012 REGION VIII  
HEARINGS CLERK

IN THE MATTER OF )  
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Farmers Union Oil Co. of McLaughlin )  
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)  
Respondent. )  
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Docket No. RCRA-08-2011-0004  
**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Farmers Union Oil Co. of McLaughlin, by their undersigned representatives, hereby consent and agree as follows:

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On September 28, 2011, Complainant issued the Respondent a Complaint and Notice of Opportunity for Hearing (Complaint) alleging certain violations of Section 9003(c)(1) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991b(c)(1), and the underground storage tank (UST) regulations set forth at 40 C.F.R. Part 280, subpart D. The Complaint proposes a civil penalty for the violations alleged therein.
2. The Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. The Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or the Consent Agreement.
4. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, this Consent Agreement applies to and is binding

upon the Respondent, their officers, directors, employees, agents and all persons acting under or for the Respondent, until such time as the civil penalty required under paragraph no. 6 has been paid. This Consent Agreement upon incorporation into a final order shall constitute full civil settlement of the violations alleged in the Complaint.

5. The facility currently is in compliance with the statutory and regulatory violations alleged in the Complaint.

6. Pursuant to RCRA § 9006(d)(2)(c), 42 U.S.C. § 6991e(d)(2)(c), consistent with the factors set forth in RCRA 9006(c), 42 U.S.C. § 6991(c), i.e. the seriousness of the violation and good faith efforts by Respondent to comply with the applicable requirements, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **Sixteen Thousand, Seven Hundred Dollars (\$16,700.00.)**

#### **TERMS OF SETTLEMENT**

7. The Respondent consents and agrees to pay a civil penalty of \$16,700 in the manner described below in this paragraph in **four (4)** penalty installment payments of **Four Thousand One Hundred Seventy Five Dollars (\$4,175)** each:

- a. The first payment of \$4,175 is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, adopting this Consent Agreement. The second payment is due within 30 calendar days after the first payment is due. The third penalty payment is due within 30 calendar days after the second payment is due. The final penalty payment is due 30 calendar days after the third payment is due. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.

- b. The payments shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case for this amount, payable to "**US Environmental Protection Agency**," to:

**US checks by regular**

**US postal service mail:**

US Environmental Protection  
Agency  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**Overnight Mail:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

**Wire transfers:**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire  
message should read "D 68010727  
Environmental Protection Agency"

**On Line Payment:**

WWW.PAY.GOV  
Enter sfo 1.1 in the search field

Open form and complete required  
fields.

**ACH (also known as  
REX or remittance express):**

Automated Clearinghouse (ACH) for  
receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact-Jesse White 301-887-6548  
ABA=051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format

Copies of the check or wire transfer shall be simultaneously sent to:

Jean Belille, Enforcement Attorney  
U.S. EPA Region 8 (8ENF-L)  
1595 Wynkoop Street  
Denver, CO 80202-1129

Tina Artemis, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in paragraph 5(c) of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31<sup>st</sup> day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within 90 days of the due date (i.e., the 121<sup>st</sup> day from the date the Final Order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. The Respondent agrees that the penalty shall never be claimed as a Federal or other tax deduction or credit.

#### **GENERAL PROVISIONS**

- 8. This Consent Agreement shall not relieve the Respondent of its obligation to comply with the Act and its implementing regulations.
- 9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action

instituted as a result of the Respondent failing to perform pursuant to the terms of the Consent Agreement.

10. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

11. The parties agree to submit this Consent Agreement to the presiding officer with a request that it be incorporated into a final order.

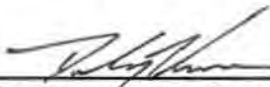
12. Each party shall bear its own costs and attorney fees in connection with this matter.

13. Failure by the Respondent to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.


14. The Consent Agreement, upon incorporation into a final order by the presiding officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

15. This Consent Agreement shall become effective upon filing with the presiding officer.


Date: 1/17/2012

By: , GENERAL MANAGER  
Denley Vennes, Registered Agent  
Farmers Union Oil of McLaughlin,  
Respondent.

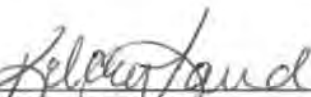
Date: 2/21/12

By:   
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice  
Complainant.


Date: 2/8/12

By:   
Matthew Cohn, Director  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 2/8/12

By:   
Kelcey Land, Director  
RCRA/CERCLA  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 1/30/2012

By:   
Jean Belille, Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **FARMERS UNION OIL CO. OF MCLAUGHLIN; DOCKET NO.: RCRA-08-2011-0004** was filed with the Regional Hearing Clerk on February 28, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Jean Belille, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on February 28, 2012.

Denley Vennes, General Manager  
CENEX Farmers Union Oil Company  
101 Main Street/P. O. Box 260  
McLaughlin, SD 57642

E-mailed to:

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

Elizabeth Whitsel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

February 28, 2012



Tina Artemis  
Paralegal/Regional Hearing Clerk

