



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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

SEP 28 2011

Ref: ENF - L

**SENT VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Denley Vennes, Registered Agent  
Farmers Union Oil Company of McLaughlin  
101 North Main Street  
McLaughlin, SD 57642

Re: In the Matter of Farmers Union Oil Company of McLaughlin  
Docket No. **RCRA-08-2011-0004**  
Complaint and Notice of Opportunity for Hearing

Dear Registered Agent Vennes:

The U.S. Environmental Protection Agency Region 8 (EPA) is issuing Farmers Union Oil Company of McLaughlin, the enclosed Complaint and Notice of Opportunity for Hearing (Complaint) for alleged underground storage tank (UST) violations at the Farmers Union Oil Company facility (facility) in McLaughlin, South Dakota. The Complaint is issued pursuant to section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e.

EPA alleges in the Complaint the facility, failed to comply with the federal UST regulations codified at 40 C.F.R. Part 280, subpart D, for four USTs located at the facility in violation of RCRA § 9003, 42 U.S.C. § 6991b. Specifically, the Complaint alleges failure to conduct an annual tightness test on the pressurized piping as required by 40 C.F.R. § 280.41(b)(1)(ii). EPA proposes a total penalty of \$39,070.18 for the violations alleged.

The facility has the right to a hearing to contest the factual allegations in the Complaint. If the facility admits the allegations, or the allegations are found to be true after it has had an opportunity for a hearing, the facility has the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for the facilities review. Please note the requirements for an Answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If the facility wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, the facility representative must file a written Answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

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

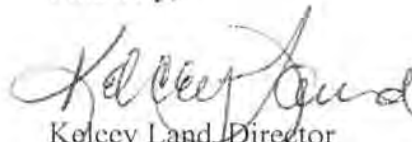
If the facility does not file an Answer by the applicable deadline, it will have defaulted and each allegation in the Complaint may be deemed to be admitted as true. The facility will have waived its right to appear in this action for any purpose and will also have waived its right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, the presiding officer may then find the facility liable and assess against the facility a civil penalty of up to \$11,000 for each tank for each day of violation.

Whether or not the facility requests a hearing, its representative may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. The facility has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing the Answer and/or requesting a hearing.

If the facility representative has any questions, the most knowledgeable people on my staff regarding this matter are Jean Belille and Francisca Chambus. Ms. Belille is in our Legal Enforcement Program and can be reached at (303) 312-6556. Ms. Chambus is in our Underground Storage Tank Program and can be reached at (303) 312-6782.

We urge your prompt attention to this matter.

Sincerely,



Kelsey Land, Director  
RCRA/CERCLA Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures:

Consolidated Rules of Civil Practice, 40 C.F.R. Part 22  
Complaint and Notice of Opportunity for Hearing, with Exhibits 1 and 2

cc w/ all enclosures:

The Honorable Charles W. Murphy, Chairman  
Troy Davis, Standing Rock Sioux Tribe Environmental Director  
Janet Frazier, Standing Rock Sioux Tribe UST/LUST Coordinator  
Mark Hohle, Farmers Union Oil Company of McLaughlin

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2011 SEP 28 AM 8:32

IN THE MATTER OF: )  
 )  
Farmers Union Oil of McLaughlin, )  
 )  
101 Main Street )  
McLaughlin, SD 57642 )  
 )  
EPA ID Number 4040020 )  
 )  
Respondent. )

Docket No. RCRA-08-2011-0004  
**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

FILED  
EPA REGION VIII  
RECEIVED CLERK

**AUTHORITY**

This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. Part 22, a copy of which is enclosed.

**GENERAL ALLEGATIONS**

1. Subtitle I of RCRA, RCRA §§ 9001 - 9010, 42 U.S.C. §§ 6991 - 6991i, authorizes EPA to regulate the installation and use of "underground storage tanks" ("USTs" or "tanks") which contain "regulated substances."
2. EPA has jurisdiction over this matter pursuant to RCRA § 9006, 42 U.S.C. § 6991e.

3. Section 9003(c)(1) of RCRA, 42 U.S.C. § 6991b(c)(1), authorizes EPA to promulgate regulations setting forth requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. EPA has promulgated such regulations at 40 C.F.R. Part 280, subpart D.

4. Petroleum, and any fraction thereof, is a regulated substance as defined at RCRA § 9001(2), 42 U.S.C. § 6991(2).

5. EPA is the "implementing agency" as that term is used at 40 C.F.R. § 280.12.

6. Respondent, Farmers Union Oil ("Respondent") owns and/or operates two 10,000 gallon, one 6,000 gallon and one 2,000 gallon, STIP3 underground storage tanks at the facility (facility), located at 101 Main Street, McLaughlin, South Dakota, within the exterior boundaries of the Standing Rock Sioux Reservation. One tank contains unleaded gasoline, a second tank contains clear diesel, a third tank contains super unleaded gasoline, and a fourth tank contains dyed diesel. All four tanks were installed in 1990.

7. Respondent owns and/or operates the facility, including the tanks, as a for-profit gas station, maintenance shop and convenience store. The Respondent is "person" as defined by section 9001(5) of RCRA, 42 U.S.C. § 6991(5).

8. 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.

9. Respondents' UST systems meet the performance standards for new USTs described in 40 C.F.R. § 280.20.

10. Respondent was provided advance notice of a planned UST inspection at the facility by Janet Frazier UST Technician for the Standing Rock Sioux Tribe. Janet Frazier phoned the facility owner/operator and representative Mark Hohle and informed him that an inspection would be taking place on April 27, 2011. The facility representative was provided a list of documents that needed to be available on site for the inspection, including but not limited to the annual leak detection for piping records.

11. On April 27, 2011, EPA inspector Tricia Pfeiffer (the inspector), accompanied by Janet Frazier (Tribal Environmental Department), arrived at the facility to conduct an inspection to determine compliance with RCRA Subtitle I and the EPA regulations relating to USTs.

12. The UST inspection was conducted with the consent of the facility representative.

13. At the time of the inspection, the facility representative stated that the Respondent had four STIP3 underground storage tanks installed on April 9, 1990. One 10,000 gallon tank contained unleaded gasoline, one 10,000 tank contained clear diesel, one 6,000 gallon tank contained super unleaded gasoline, and one 2,000 gallon tank contained dyed diesel.

14. At the time of the inspection, the facility representative stated that the pressurized fiberglass reinforced plastic piping had an electronic line leak detection system connected to the Gilbarco/Veeder-Root EMC-J system which typically performs a 3.0, 0.2 and 0.1 gallon per hour test. Upon inspection of the system set-up it was determined that the 0.2 and 0.1 gallon per hour test and alarms had been disabled. The last 3.0 gallons per hour test passed on April 27, 2011.

17. The last passing 0.2 gallon per hour test passed in July 2005 and last 0.1 gallon per hour test passed in April of 2008.

18. The facility was not conducting proper line leak detection since 2008.

19. At the conclusion of the inspection, the inspector informed the facility representative that the facility was out of compliance and explained the violation. The inspector completed a "Notice of inspection" form which was signed by and left with the facility operator.

20. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), states in pertinent part that any owner or operator of an UST who fails to comply with any requirement or standard promulgated by the Administrator under section 6991b of this title shall be subject to a civil penalty not to exceed \$11,000 for each tank for each day of violation.

21. As alleged herein and pursuant to section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties up to \$11,000 per day per tank for the period during which the violation continues.

22. Paragraphs 1 through 21 are incorporated by reference in the count listed below.

**COUNT 1**  
**Failure to Conduct Annual Line Tightness Tests**

23. In accordance with 40 C.F.R. § 280.41(b), owners and operators of petroleum UST systems that have underground pressurized piping that routinely contains regulated substances must be tested for line tightness annually, such testing must be conducted in accordance with 40 C.F.R. §280.44 (b).

24. Since, Respondent's leak detectors were disabled the required line tightness testing had not been performed from 2008 until the present. Respondents have notified EPA that they have enabled the leak detectors since our inspection.

25. Respondents' failure to have an annual line tightness test conducted in accordance with 40 C.F.R. §280.44 (b) since 2008 constitutes a violation of 40 C.F.R. § 280.41(b) and section 9003(c) of RCRA, 42 U.S.C. § 6991b(c).

**PROPOSED CIVIL PENALTY**

RCRA § 9006(d)(2)(C), 42 U.S.C. § 6991e(d)(2)(C), authorizes the assessment of a civil penalty of up to \$11,000 for each UST for each day of violation. Based upon the facts alleged in this Complaint and taking into account the factors set forth in RCRA § 9006(c), 42 U.S.C. § 6991(c), i.e., the seriousness of the violations and any good faith effort by Respondent to comply with the applicable requirements, Complainant proposes to assess a civil penalty of **\$39,070.18** as follows:

COUNT	VIOLATION	PROPOSED PENALTY
Count 1	Failure to Conduct Annual Line Tightness Tests for tanks 1, 2, 3 and 4, 40 C.F.R. § 280.41(b)	\$39,070.18

The proposed civil administrative penalty above has been calculated in accordance with the U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990) (Exhibit 1). This policy is used by EPA to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. The Penalty Calculation Worksheets for the alleged RCRA UST violation in support of the assessment of civil penalties proposed in this Complaint are attached hereto (Exhibit 2).

**TERMS OF PAYMENT**

If the Respondent does not contest the findings and penalty proposal set forth above, this action may be resolved by paying the proposed penalty in full. If such payment is made within thirty (30) calendar days of receipt of this Complaint, then no Answer need be filed. For more time for payment, within thirty (30) days of receipt of the Complaint the Respondent may file a statement agreeing to pay the penalty, and then pay the money within sixty (60) days of such

receipt. Payment is to be made by sending a certified or cashier's check payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

A copy of the check must be mailed simultaneously to:

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

Payment of the penalty in this manner shall constitute consent by the Respondent to the assessment of the proposed penalty and a waiver of Respondents' rights to a hearing on this matter.

#### **OPPORTUNITY TO REQUEST A HEARING**

As provided in RCRA § 9006(b), 42 U.S.C. § 6991e(b), a respondent has the right to request a public hearing within thirty (30) calendar days after the Complaint is served. If you (1) contest the factual claims made in this Complaint; (2) wish to contest the appropriateness of the proposed penalty; or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with 40 C.F.R §§ 22.15 and 22.37 within thirty (30) calendar days after this Complaint is received. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state all facts and circumstances, if any, which constitute grounds for defense; (3) state the facts intended to be placed at issue; and (4) specifically request an administrative hearing, if desired. The denial of any material fact or the



raising of any affirmative defense in your Answer shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes an admission of the undenied allegations.

The Answer and one copy must be sent to the EPA Region 8 Regional Hearing Clerk (8RC), 1595 Wynkoop Street, Denver, Colorado 80202-1129, and a copy must be sent to the attorney named above in the "Terms of Payment" section.

**IF YOU FAIL TO REQUEST A HEARING, YOU MAY WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.**

**IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.**

#### **SETTLEMENT CONFERENCE**

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an Answer and request for hearing as set forth above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference or any questions that you may have regarding this Complaint should be directed to the attorney listed below.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant.

Date: 9/26/11

By: David Roche for MC  
Matthew Cohn, Director  
Legal Enforcement Program

Date: 9/26/11

By: Kelcey Land  
Kelcey Land, Director  
RCRA/CERCLA Technical Enforcement Program

Date: 9/26/11

By: Jean Belille  
Jean Belille, Enforcement Attorney  
U.S. EPA, Region 8  
1595 Wynkoop St. (8ENF-L)  
Denver, CO 80202-1129  
Telephone: 303/312-6556  
Facsimile: 303/312-7519

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that true copies of the same were sent to the following addresses by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Denley Vennes, Registered Agent  
Farmers Union Oil Company of McLaughlin  
101 North Main Street  
McLaughlin, SD  
Certified mail, return receipt requested  
No.

Date: 9/28/11

By: Judith McTernan  
Judith McTernan

## § 21.13

approve or disapprove the State issued statement, in accordance with the requirements of § 21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

### § 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

1st Reg. Only  
40 CFR Ch. I (7-1-08 Edition)

## PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

### Subpart A—General

#### Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 *Ex parte* discussion of proceeding.
- 22.9 Examination of documents filed.

### Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

### Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

### Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

### Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

1st 2 Pages Only :-

United States  
Environmental Protection  
Agency

Office of  
Solid Waste and  
Emergency Response

9610.11



DIRECTIVE NUMBER: 9610.12

TITLE: U.S. EPA Penalty Guidance for Violations of  
UST Regulations

APPROVAL DATE: NOV 14 1990

EFFECTIVE DATE: NOV 14 1990

ORIGINATING OFFICE: Office of Underground Storage  
Tanks (OUST)

FINAL

DRAFT

STATUS:

REFERENCE (other documents):

OSWER Directive 9610.11 "UST/LUST Enforcement  
Procedures Guidance Manual"



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Lotus h/ent/master 2

COMPLAINANT'S  
EXHIBIT NO. 1

7/20  
4/2/98

**U.S. EPA PENALTY GUIDANCE  
FOR VIOLATIONS OF  
UST REGULATIONS**

November 1990

Office of Underground Storage Tanks  
U.S. Environmental Protection Agency

RESPONDENT: Mark Hohle FACILITY NAME: Farmers Union  
 ADDRESS: Indian Country UST NAME/NO.: Oil 4040020  
 CITY, STATE: Region 8  
 COUNT ID: 1 Unit Assessment: By Piping 4 Piping Runs  
 VIOLATION: 280.44(b) Failure to conduct annual line tightness tests

1. ECONOMIC BENEFIT COMPONENT

Avoided Expense: \$200  
 Delayed Expense: \$0  
 Interest Rate: 0.074  
 Marginal Tax Rate: 0.15  
 Days of Violation: 364

Net Avoided Costs: \$183  
 Net Delayed Costs: \$0

Total Economic Benefit: \$183

2. GRAVITY BASED COMPONENT

Potential for Harm: Major  
 Extent of Deviation: Major  
 Matrix Value: \$2,130  
 Cooperation (-25%/+50%): 0.00  
 Willfulness (-25%/+50%): 0.10  
 History (+50%): 0.10  
 Unique Factors (-25%/+50%): 0.00

Adjusted Matrix Value: \$2,556  
 DNM: 2.5  
 ESM: 1.5

Total Gravity Based Component: \$9,585

UNADJUSTED PENALTY: \$9,768  
 ABILITY TO PAY REDUCTION: \$0  
 TOTAL PROPOSED PENALTY: \$9,768 Times 4 runs  
 \$39,070.18

EXPLANATIONS:

Violation Start Date: 04/28/10 Violation End Date: 04/27/11  
 Avoided Costs: 200 - 4 runs at 200 each  
 Delayed Costs: None

ESM: 1.5, because facility is in Indian Country. DNM: 364 Days

Cooperat'n: No change

Willfulness: .1 - Previous Violation

History: .1 - Previous Violation

Unique: No change

Ability to Pay: Not evaluated

COMPLAINANT'S  
EXHIBIT NO.