

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2014 SEP 24 PM 1:54

IN THE MATTER OF: ) Docket No. RCRA-08-2012-0003  
)  
Margaret Eagle, Owner/Operator, )  
)  
Belle Isle Store )  
818 Belle Isle Street )  
St. Michael, ND 58370, )  
)  
Respondent. )

FILED  
EPA REGION VIII  
HEARING CLERK

**MOTION TO WITHDRAW COMPLAINT**

The United States Environmental Protection Agency, Region 8 (EPA), by and through undersigned counsel and in accordance with 40 C.F.R. § 22.14(d) and 40 C.F.R. § 22.(16), moves to withdraw the Complaint and Notice of Opportunity (Complaint) filed in this matter on June 15, 2012. In support of this motion, EPA states:

1. Pursuant to 40 C.F.R. § 22.14(d), the complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.
2. 40 C.F.R. § 22.16(a) provides all motions shall be in writing, state the grounds therefore, set forth the relief sought and be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.
3. On June 15, 2014, EPA issued the Complaint to Respondent Margaret Eagle (Respondent) pursuant to section 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6991e, alleging violations of the underground storage tank (UST) regulations set forth in subtitle I of RCRA, 42 U.S.C. § 6991 – 6991i, at the Belle Isle Store Facility (Facility),

located at 818 Belle Isle Street, St. Michaels, North Dakota, within the exterior boundaries of the Spirit Lake Reservation.

4. Respondent's answer was due July 19, 2012, based on the receipt-of-service date of June 19, 2012. Respondent did not file an answer by the deadline of July 19, 2012, or any time thereafter.

5. EPA named Margaret Eagle as the sole Respondent in the Complaint based on Ms. Eagle's status as "owner" within the meaning of section 9001(3) of RCRA, 42 U.S.C. § 6991(3) and "operator" within the meaning of section 9001(3) of RCRA, 42 U.S.C. § 6991(3), of one 1,000 gallon double-walled STIP 3 UST. Respondent installed the UST to store and dispense unleaded gasoline at the Facility's for-profit gas station until October 22, 1999, at which time she placed the UST in temporary closure. Respondent continued to own the Facility and the UST until April 4, 2014.

6. On August 26, 2014, Nicole Eagle, the Respondent's daughter, notified the undersigned that Ms. Margaret Eagle passed away on April 4, 2014. The undersigned was told that Respondent's assets, including the Facility, currently are involved in probate.

7. EPA cannot satisfy its burdens of presentations and persuasion required by 40 C.F.R. § 22.24 that the UST violation alleged against Respondent occurred as set forth in the Complaint and that the relief sought is appropriate based on Respondent's demise.

8. Following the outcome of the probate proceeding and designation of a Facility and UST successor/heir owner, whether liability under RCRA assigns to the successor/heir UST owner depends on several factors including, but not limited to, whether the successor/heir owner has

knowledge of the UST, intends to use the UST for the sale of petroleum and fails to comply with the UST regulations. *See* G. J. Leasing, et al., v. Union Electric, 825 F. Supp. 1363, 1383, 1393 U.S. Dist. Lexis 9519 (S.D. Ill. 1993). EPA will address UST compliance separate and apart from this matter with the successor/heir UST owner as appropriate.

9. EPA will inform the probate court to the extent appropriate of the UST's status so that the Facility and UST successor/heir owner has knowledge of the UST and related compliance requirements.

WHEREFORE, EPA requests that the Presiding Officer grant its motion to withdraw the Complaint with prejudice and dismiss this matter. EPA reserves the right to pursue additional injunctive relief against the successor/heir UST owner as necessary to protect health and the environment.

Respectfully submitted this 24<sup>th</sup> day of September 2014.

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

By:   
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the MOTION TO WITHDRAW COMPLAINANT 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 mail to:

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

Date:

9/24/2014

By:

  
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