

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Docket No. CWA-08-2008-0033

IN THE MATTER OF)
)
Farmers Union Oil Company)
of Reliance, Presho, and)
Draper, South Dakota)
)
121 S. Main St.)
Reliance, SD 57569)
 Respondent.)

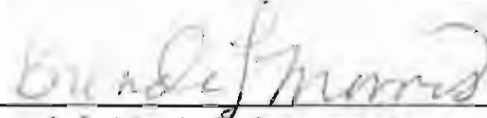
MOTION TO WITHDRAW COMPLAINT

Complainant, United States Environmental Protection Agency ("EPA"), by its undersigned attorney, hereby submits a Motion to Withdraw the Complaint. On September 30, 2008, EPA filed a Complaint in the above-referenced matter. On October 27, 2008, Respondent, Farmers Union Oil Company, filed a Request for an Extension of Time to File its Answer until December 29, 2008. An Order granting the Request for the Extension of Time to file an Answer was issued on October 28, 2008.

Complainant's request to move to withdraw the complaint is based on subsequent information which demonstrates that a potential release from the Respondent's facility would not reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shoreline. Complainant's Complaint had alleged that drainage from the facility flowed east-northeast approximately 600 yards following the railroad ditch, then proceeded north approximately 300 yards to Reliance Lake and wildlife refuge. Complainant had based its assertion upon the topographical contour maps and Respondent's engineer's statements in the Spill Prevention Control and Countermeasures Plan (SPCC Plan) reviewed during the inspection describing direction of flow, spill prediction, secondary containment, and surface water drainage. During negotiations, Respondent explained that the drainage flow from the facility would pool in a non-tributary isolated wetland. Complainant suggested that the EPA Inspector revisit the facility. On December 16, 2008, the follow up inspection occurred and confirmed that despite the contour lines and the engineer's statements, a potential release from the Respondent's facility would not reasonably be expected to discharge oil to Reliance Lake. Respondent's Counsel explained the apparent discrepancies with the engineer's SPCC Plan to the satisfaction of Complainant.

Complainant respectfully requests that Complainant's Motion to Withdraw the Complaint be granted.

Respectfully Submitted this 23th day of December, 2008.

A handwritten signature in cursive script, appearing to read "Brenda L. Morris", is written over a horizontal line.

Brenda L. Morris, Enforcement Attorney
EPA Region 8
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Denver, Colorado, 80202-2466
Telephone Nos. 303-312-6891

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true copy of the Motion to Withdraw the Complaint, was hand-carried to the Regional Hearing Clerk, LPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via first class U. S. mail to:

David Larson
Larson Law PC
131 Main St.
P.O. Box 131
Chamberlain, SD
57325

Date:

12-23-08

By:

Brenda Morris