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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	COMPLAINT,
	)	
	)	CONSENT AGREEMENT
	)	
Carla Nissen (d/b/a	)	
Indian Country Mini-Mart)	)	AND
20330 U.S. Highway 75	)	
Holton, Kansas 66436	)	FINAL ORDER
	)	
	)	Docket No. CWA-07-2014-0074
	)	
Respondent.	)	
_____	)	

The U.S. Environmental Protection Agency, Region 7 ("EPA" or "Complainant"), and Carla Nissen, d/b/a Indian Country Mini Mart (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of 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), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3) and Subpart I.

A. COMPLAINT

Introduction  
Jurisdiction

1. This is an administrative action for the assessment of a Class I civil penalty instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.

2. This Complaint, Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and regulations promulgated thereunder.

### Parties

3. The Respondent, is Ms. Carla Nissen, d/b/a Indian Country Mini-Mart, located at 20330 U.S. Highway 75, Holton, Kansas 66436 (the facility).

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Air and Waste Management Division of EPA, Region 7 (“Complainant” or “EPA”).

### Statutory and Regulatory Framework

5. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges . . . .”

6. EPA subsequently promulgated the Spill Prevention Control and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

7. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

### Factual Background

8. Respondent Nissen is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

9. Respondent is the owner/operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the Indian Country Mini-Mart facility addressed at 20330 U.S. Highway 75, Holton, Kansas 66436.

10. The facility has an estimated aggregate above-ground storage capacity of 42,000 gallons of oil.

11. Respondent's facility is located directly up-gradient and within an estimated 600 feet of Bill's Creek. Bill's Creek is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

12. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the facility.

13. The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

14. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

15. The facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").

16. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

17. On or about September 14, 2012, EPA conducted an inspection of Respondent's facility. At the time of EPA's inspection, Respondent did not have an SPCC plan or records of implementation of the SPCC program, as required by 40 C.F.R. § 112.3.

18. 40 C.F.R. § 112.7(a)(2) requires the owner and/or operator of a SPCC regulated facility to "comply with all applicable requirements" of 40 C.F.R. Part 112.

19. A copy of EPA's inspection report documenting EPA's findings of violations of the SPCC regulations was mailed to Respondent in December 2012. In May 2013, EPA contacted Respondent and was informed that Respondent had still not prepared an SPCC plan for the facility. To date, Respondent has failed to implement other SPCC requirements of 40 C.F.R. Part 112 at the facility.

#### Alleged Violations

20. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 19 above, as if fully set forth herein.

21. At the time of the September 2012 inspection, and thereafter, Respondent failed to fully prepare and implement an SPCC Plan, as required by 40 C.F.R. § 112.3,

22. At the time of the September 2012 inspection, and thereafter, Respondent failed to comply with the requirements of 40 C.F.R. Part 112, as required by 40 C.F.R. § 112.7(a)(2), as follows:

- a. Respondent failed to have adequate secondary containment for the transfer area at the facility, in violation of 40 C.F.R. § 112.7(c);
- b. Respondent failed to keep records of inspections or tests conducted monthly or periodically, including the outsides of above ground storage tanks, supports and foundations, or diked areas for the accumulation of oil, in violation of 40 C.F.R. § 112.7(e);
- c. Respondent failed to conduct personnel training on discharge prevention procedures, in violation of 40 C.F.R. § 112.7(f);
- d. Respondent failed to have security lighting at the facility, in violation of 40 C.F.R. § 112.7(g);
- e. Respondent failed to perform integrity testing of the facility's bulk storage tanks, in violation of 40 C.F.R. § 112.8(c)(6);
- f. Respondent failed to have any overfill protection or liquid level sensing devices on bulk storage tanks at the facility, in violation of 40 C.F.R. § 112.8(c)(8);
- g. Respondent failed to inspect aboveground valves, piping and appurtenances to assess their general operational condition, in violation of 40 C.F.R. § 112.8(d)(4);
- h. Respondent failed to cathodically protect the underground piping between the tanks and the dispensers at the facility, in violation of 40 C.F.R. § 112.8(d)(1)
- i. Respondent failed to conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement, in violation of 40 C.F.R. § 112.8(d)(4); and
- j. Respondent stored oil in five bulk storage tanks that were incompatible for above ground storage because they were designed for the underground storage of fuel or oil, in violation of 40 C.F.R. § 112.8(c)(1).

23. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 21, violated 40 C.F.R. § 112.3.

24. Respondent's violations of the cited requirements of 40 C.F.R. Part 112, as described in Paragraph 22, above, are also violations of 40 C.F.R. § 112.7(a)(2).

25. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty against any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

## **B. CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this CAFO and Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies that as of the date that it executes this Consent Agreement and Final Order, it has taken steps to address the violations cited above by entering into an administrative order on consent (Docket No. CWA-07-2014-0073) with EPA that establishes a compliance schedule for upgrades required for compliance with the SPCC program, including the replacement of tanks at the facility that are designed for underground storage with tanks that are designed and compatible with the above ground storage of oil. Respondent certifies that when these actions are taken, that to the best of its knowledge, Respondent will be in compliance with the CWA and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Failure to pay the assessed penalty may result in the referral of this matter to the U.S. Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

9. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this CAFO.

10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in Paragraph 16 of this Consent Agreement, as incorporated by the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of the CWA specifically alleged in Paragraphs A.20 to A.22 of this document, through the Effective Date of the Final Order, below.

11. The effect of the settlement described in Paragraph B.10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph B.5 above.

12. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

13. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CAFO.

14. This CAFO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

15. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas, 66219.

#### Payment Provisions

16. Respondent shall pay a civil penalty of Fourteen Thousand, Seven Hundred Dollars (\$14,700), plus applicable interest, in accordance with the terms and installment schedule set forth in Attachment A to this CAFO. Payment shall be by cashier's or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA  
Fines and Penalties  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

17. The Respondent shall reference the Docket Number CWA-07-2014-0074 and **In the Matter of Indian Country Mini-Mart** on the check. A copy of each check shall also be mailed to:

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and

Howard Bunch  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

18. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. A late payment handling charge will be imposed after thirty (30) days and an additional charge for each subsequent thirty (30) day period will be assessed. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

19. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

20. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

5/19/15  
Date

5/19/15  
Date

John J. Bunch  
For the United States Environmental Protection Agency  
Region 7

Howard Bunch  
Howard Bunch  
Sr. Assistant Regional Counsel  
Office of Regional Counsel

RESPONDENT:

Carla Nissen (d/b/a Indian Country Mini-Mart)

4-20-15  
Date

Carla D. Nissen

Printed Name Carla D. Nissen

Title owner, Indian Country Mini Mart

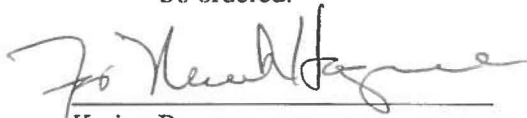


**C. FINAL ORDER**

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

So ordered.



Karina Borromeo  
Regional Judicial Officer

5-19-15

Date

ATTACHMENT A

Schedule

Payment	<u>Due</u>	<u>Amount Due</u>			<u>Outstanding</u>
	<u>Date</u>	<u>Due</u>	<u>Int.</u>	<u>Principal</u>	<u>Balance</u>
Payment	06/01/2015	\$5,000.00	\$0.00	\$5,000.00	\$9,700.00
Payment	07/01/2015	\$5,000.00	\$8.08	\$4,991.92	\$4,708.08
Payment	08/01/2015	\$4,712.00	\$3.92		\$0.00
Totals		\$14,712.00	\$12.00	\$14,700.00	

Terms

Interest will be set at the effective rate for debts to the United States as of the effective date of the Consent Agreement and Final Order (CAFO). For the calendar year 2015, the rate is 1% per annum. Upon the June 1, 2015 due date of the first installment, interest shall begin to accrue on the remaining penalty balance. Interest will not be compounded and interest will be calculated based on a 360-day year. At any time, Respondent may make advance payment of the remaining penalty balance and interest due, after obtaining a payoff figure and date from EPA. Unless excused, failure to timely pay any portion of the mitigated civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest, as stated in Paragraph 18 of the Consent Agreement. In computing time, if a due date falls on a Saturday, Sunday, or Federal Holiday, the due date shall be the next day that is not a Saturday, Sunday, or Federal Holiday.

IN THE MATTER OF Carla Nissen (d/b/a Indian Country Mini-Mart), Respondent  
Docket No. CWA-07-2014-0074

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

[bunch.howard@epa.gov](mailto:bunch.howard@epa.gov)

Copy by First Class Mail to:

Carla D. Nissen  
Indian Country Mini-Mart  
20330 U.S. Highway 75  
Holton, Kansas 66436

Dated: 5/19/15



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7