

**U.S. EPA REGION 7
HEARING CLERK**

3. The objective of the Clean Water Act, 33 U.S. Section 1251 et seq., is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. Section 311(b)(1) of the Clean Water Act, 33 U.S.C. Section 1321(b)(1), declares it a national policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines.

5. Section 311(b)(3) of the Clean Water Act, 33 U.S.C. Section 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. Section 311(a)(1) of the Clean Water Act, 33 U.S.C. Section 1321(a)(1), and 40 C.F.R. Section 112.2 define “oil” as “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse...”

7. Section 311(a)(2) of the Clean Water Act, 33 U.S.C. Section 1321(a)(1) and 40 C.F.R. Section 112.2, define “discharge” to include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, or dumping except under very limited conditions.

8. Section 311(b)(4) of the Clean Water Act, 33 U.S.C. Section 1321(b)(4), authorizes the EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States.

9. 40 C.F.R. Part 110.3 defines discharges of oil that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States to include discharges of oil that: (a) violate applicable water quality standards, or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

10. Section 311(j)(1)(C) of the Clean Water Act, 33 U.S.C. Section 1321(j)(1)(C), provides, in part, that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

11. To implement Section 311(j)(1)(C), the EPA promulgated the regulations to prevent oil pollution found at 40 C.F.R. Part 112 which set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (“SPCC Plans”). The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater, engaged in gathering, storing, transferring, distributing, using or consuming oil or oil products, which due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

12. Section 311(e) of the Clean Water Act, 33 U.S.C. Section 1321(e), provides the EPA the authority to issue “administrative orders that may be necessary to protect the public

health and welfare” due to an “actual or threatened discharge of oil . . . from a . . . facility in violation of [Section 311(b) of the Clean Water Act]” if “the President determines that there may be an imminent and substantial threat to the public health or welfare.”

EPA’s Allegations of Fact and Conclusions of Law

13. Respondent, Nebraska-Iowa Supply Company, is and was at all relevant times a Nebraska corporation authorized to conduct business in the state of Nebraska.

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

15. At all times relevant to this action, Respondent was the owner and/or operator, within the meaning of Section 311(a)(6) of the Clean Water Act and 40 C.F.R. Part 112.2, of the fuel and lubricating oil bulk station/jobber facility located in and/or around 3341 South 66th Street, Omaha, NE 68106 (the “Facility”).

16. The Facility has a total storage capacity of approximately 303,000 gallons of refined fuels, motor oils, used oils, hydraulic oils, transmission oil, and soy oil.

17. A discharge from the Facility would flow to Little Papillion Creek.

18. Little Papillion Creek is a perennial tributary of the Missouri River.

19. The Missouri River is a traditional navigable water.

20. Little Papillion Creek is a relatively permanent water connected to the Missouri River, a traditional navigable water, and thus both are navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. Section 1362(7).

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

22. The Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. Part 112 Appendix A, as incorporated by reference within 40 C.F.R. Part 112.2.

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

24. 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 and, therefore, is an SPCC-regulated facility pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777, and 40 C.F.R. Part 112.1.

25. Pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777, and 40

C.F.R. Part 112.1, Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations at all times relevant to this action.

26. Respondent has an SPCC Plan for the Facility.

27. On March 7, 2024, a petroleum-based sheen was observed in Little Papillion Creek that appeared to be emanating from the subsurface approximately 130 feet East of the Facility. Representatives from the EPA and the Nebraska Department of Environment and Energy ("NDEE") responded to the discharge.

28. On April 29, 2024, representatives of the EPA inspected the Facility to determine compliance with the SPCC regulations of 40 C.F.R. Part 112 and obtain information about the Facility.

29. On June 2, 2024, there was a discharge, as defined by Section 311(a)(2) of the Clean Water Act and 40 C.F.R. Part 112.2, of approximately 3,500 gallons of diesel fuel at the Facility that was due to operator error while filling a tank. An NDEE representative who responded to this discharge observed fuel accumulation within the soil both inside and outside of secondary containment and oil staining on concrete near the property line of the Facility.

30. Since the June 2, 2024, discharge described in Paragraph 29, there have been multiple instances, most recently in February of 2025, of oil sheen observed on Little Papillion Creek.

31. The EPA's observations and findings about the Facility were documented in an inspection report. The EPA transmitted a copy of this inspection report to Respondent on July 5, 2024.

Findings of Violation

Count 1: Failure to Fully Prepare and Implement an SPCC Plan

32. The factual allegations stated above are herein incorporated by reference.

33. 40 C.F.R. Part 112.3 requires the owner or operator of a subject facility to fully prepare in writing and implement an SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

34. The EPA's inspection and review of Respondent's Plan revealed violations of 40 C.F.R. Part 112.3. Specifically, the Respondent failed to:

- a. Amend the Plan or indicate whether the Plan required an amendment after conducting plan reviews and making technical changes to the Facility, in violation of 40 C.F.R. Parts 112.5(a) & (b).

- b. Have a professional engineer certify technical amendments that were made to the Plan, in violation of 40 C.F.R. Part 112.5(c).
- c. Fully describe the physical layout of the Facility to reflect the current configuration of the Facility's tanks and containers, the contents of the tanks, the portable container storage areas, and connecting piping, in violation of 40 C.F.R. Part 112.7(a)(3).
- d. Identify the type of oil stored in each fixed container and its storage capacity in the Plan, in violation of 40 C.F.R. Part 112.7(a)(3)(i).
- e. Address discharge prevention measures for the routine handling of products in the Plan, in violation of 40 C.F.R. Part 112.7(a)(3)(ii).
- f. Fully address all structures, equipment, and procedures for the control of a discharge in the Plan, in violation of 40 C.F.R. Part 112.7(a)(3)(iii).
- g. Provide appropriate containment, diversionary structures, and/or equipment at the Facility to prevent a discharge and fully describe them in the Plan, in violation of 40 C.F.R. Part 112.7(c).
- h. Maintain a record of required inspections and tests with the Plan, in violation of 40 C.F.R. Part 112.7(e).
- i. Train all oil handling personnel pursuant to, and in violation of, 40 C.F.R. Part 112.7(f)(1).
- j. Schedule and conduct discharge prevention briefings pursuant to, and in violation of, 40 C.F.R. Part 112.7(f)(3).
- k. Address in the Plan how the brake interlock system is designed to prevent vehicles from departing before complete disconnection, in violation of 40 C.F.R. Part 112.7(h)(2).
- l. Address in the Plan how uncontaminated stormwater is inspected before it is drained and retain records of drainage events of the water released from the lined pond to Little Papillion Creek, in violation of 40 C.F.R. Parts 112.8(b)(2) & (c)(3)(iv).
- m. Construct all bulk storage tank installations to provide adequate secondary containment for the entire capacity of the largest single container, in violation of

40 C.F.R. Part 112.8(c)(2).

- n. Test or inspect each aboveground container for integrity pursuant to an industry standard described in the Plan, in violation of 40 C.F.R. Part 112.8(c)(6).
- o. Fully address in the Plan and implement overfill prevention as required by, and in violation of, 40 C.F.R. Part 112.8(c)(8).
- p. Address in the Plan the dates of installation of all buried piping; whether buried piping that is exposed for any reason is inspected for deterioration and whether corrective action is taken based on the results of those inspections; and provide records of any such inspections, in violation of 40 C.F.R. Part 112.8(d)(1).
- q. Address in the Plan, and maintain records of, whether integrity and leak testing of buried piping was conducted at the time of installation, modification, construction, relocation, or replacement of the piping, in violation of 40 C.F.R. Part 112.8(d)(4).
- r. Complete a Certification of the Applicability of the Substantial Harm Criteria, in violation of 40 C.F.R. Part 112.20(e).

35. Respondent's failure to fully prepare and implement an SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112 is a violation of 40 C.F.R. Parts 112.3 and 112.7.

Continuing Threat

36. The factual allegations stated above are herein incorporated by reference.

37. Based on the Respondent's ongoing violations of Section 311 of the Clean Water Act and 40 C.F.R. Part 112, including but not limited to, evidence of prior "discharges" as defined by Section 311(a)(2) of the Clean Water Act, 33 U.S.C. Section 1321(a)(2), and 40 C.F.R. Part 112.2 of oil, the lack of overfill protection and training required by 40 C.F.R. Section 112, and the inadequate secondary containment as required by 40 C.F.R. Parts 112.7(c) and 112.8(c)(2), the EPA finds that there exists a continuing threat of a discharge of oil from Respondent's Facility into the navigable waters of the United States that would violate Section 311(b) of the Clean Water Act, 33 U.S.C. Section 1321(b).

38. The quantity of oil which may be discharged from the Facility is a harmful quantity within the meaning of Section 311(b)(3) of the Clean Water Act, 33 U.S.C. Section 1321(b)(3), and 40 C.F.R. Part 110.3 because such a discharge may: (a) violate applicable water quality standards; and/or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines.

39. The threat of a discharge of oil from the Facility may pose an imminent and substantial threat to public health or welfare of the United States, including drinking water, fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

40. The actions agreed to by Respondent and required by this Order are necessary to protect the public health and welfare of the United States, including threats and/or potential threats to drinking water, fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

41. The actions agreed to by Respondent and required by this Order are in accordance with the National Contingency Plan ("NCP") and are authorized by the EPA pursuant to the authority granted in Section 311(e) of the Clean Water Act, 33 U.S.C. Section 1321(e).

42. The EPA has notified the state of Nebraska of this action pursuant to Section 311(e)(1)(B) of the Clean Water Act, 33 U.S.C. Section 1321(e)(1)(B).

Order

43. Based on the foregoing allegations of fact, conclusions of law, findings of violations, and pursuant to the authority of Section 311(e) of the Clean Water Act, 33 U.S.C. Sections 1321(e), the EPA hereby ORDERS and the Respondent hereby AGREES to take the actions described below.

44. In accordance with this Order, the Respondent shall take all necessary actions to correct the deficiencies and prevent recurrence of the violations cited above, and to come into compliance with all the requirements of Section 311 of the Clean Water Act, 33 U.S.C. Section 1321, and the regulations found at 40 C.F.R. Part 112.

45. Respondent shall also submit a copy of the Facility's revised SPCC Plan within thirty (30) days of the Effective Date of this Order.

46. **Compliance Plan and Schedule.** Within sixty (60) calendar days of the Effective Date of this Order, Respondent shall develop and submit to the EPA a Compliance Plan that describes the procedures and implementation timetable for the Facility to achieve compliance with the requirements of Section 311 of the Clean Water Act, 33 U.S.C. Section 1321, and 40 C.F.R. Part 112 as soon as possible, but no later than November 30, 2025. The Compliance Plan shall:

- a. Describe in detail the actions to be taken or work to be completed, and how such actions or work will enable Respondent to achieve compliance.
- b. Include a schedule identifying key dates in the Compliance Plan with a final completion date no later than November 30, 2025.
- c. Identify the party who has created the plan to achieve compliance.

- d. Identify the party who has approved the plan and will implement the required changes at the Facility.

47. Respondent shall implement the Compliance Plan in accordance with the proposed schedule.

48. If Respondent believes it needs additional time to complete, prepare, revise, or implement the Compliance Plan, it shall submit a request by mail or email to the EPA contact at the address identified below, indicating the basis for the request and the period of additional time requested. Any decision made by the EPA to grant such request shall be in writing and delivered to Respondent by mail or email.

49. **Reporting to the EPA.** Within thirty (30) days of the Effective Date of this Order, and on the first working day of each month thereafter until termination of this Order, Respondent shall submit completed work orders, signed receipts, or other documentation of all actions taken. Respondent shall also include a summary narrative documenting work completed during the prior month.

50. **Compliance Plan Completion.** Within thirty (30) days of completion of the final scheduled corrective action, Respondent shall submit a written certification to the EPA that it has completed all actions required pursuant to this Order on Consent, and achieved compliance with Section 311 of the Clean Water Act, 33 U.S.C. Section 1321 and 40 C.F.R. Part 112. Respondent shall also submit a copy of the Facility's SPCC Plan.

51. The EPA will promptly review submittals from Respondent. If, after review of Respondent's submittals pursuant to this Order on Consent, the EPA determines that additional corrective measures or alternative deadlines are appropriate, the EPA may seek to modify this Order on Consent pursuant to the provisions of the Modification section below or terminate this Order on Consent and initiate a separate enforcement action, as appropriate.

Submittals

52. All submittals to the EPA that are required of Respondent by this Order shall be made by electronic submission to:

Mark Aaron
Compliance Officer
U.S. Environmental Protection Agency
Chemical Branch
Enforcement & Compliance Assurance Division
11201 Renner Boulevard
Email: aaron.mark@epa.gov

53. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that

cannot be submitted electronically to the EPA shall be submitted in hard copy to the address provided above.

General Provisions

54. The EPA and Respondent (the "Parties") acknowledge that this Order has been negotiated in good faith and that neither consenting to the terms of this Order, nor the actions undertaken by Respondent in accordance with this Order, constitute an admission of liability. By signing this Order, Respondent neither admits nor denies the specific factual allegations or Findings of Violations in this Order on Consent, except that Respondent admits the jurisdictional allegations herein.

55. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein.

56. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited, any right of judicial review of this Order under the Clean Water Act, or under the Administrative Procedure Act, 5 U.S.C. Sections 701-706.

Signatories

57. The undersigned for each party has the authority to bind its respective party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each party.

Parties Bound

58. This Order 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 Order.

Effect of Compliance with the Terms of this Order

59. Nothing in this Order shall be construed to relieve Respondent of the requirements of the Clean Water Act or any other applicable requirements under federal, state or local law. The EPA reserves the right to take, direct, and/or order all actions as authorized by law for any violation of this Order, and for other future or past violations of the Clean Water Act.

60. This Order shall not constitute a permit under the Clean Water Act. Compliance with the terms of this Order shall not relieve Respondent of liability for its responsibility to obtain and comply with any required local, state and/or federal permits.

61. Failure to comply with the terms of this Order may result in Respondent's liability for significant statutory civil penalties for each violation pursuant to Section 311(b)(7)(B) of the Clean Water Act, 33 U.S.C. Sections 1321(b)(7)(B). Upon suit by the EPA, the United States District Court for the District of Nebraska may impose such penalties if, after notice and opportunity for a hearing, the court determines that Respondent has violated the Clean Water Act as described above and failed to comply with the terms of this Order. In determining the amount of any penalty, the court will consider the seriousness of violation, the economic benefit resulting from the violations, any history of such violations, any good faith efforts made to comply with legal requirements, the economic impact a penalty may have, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the Clean Water Act and for any violations of this Order.

Modification

62. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the Parties pursuant to a written amendment signed by each party.

Access and Requests for Information

63. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect the facility, and/or to request additional information from Respondent, pursuant to the authority of Sections 308 and 311(m) of the Clean Water Act, 33 U.S.C. Sections 1318 and 1321(m), and/or any other authority. Respondent must provide and/or obtain access to the facility, to off-site areas where access is necessary to implement this Order, and to all documents related to conditions at the facility and work conducted under this Order as necessary to implement this Order. If necessary to implement this Order, Respondent must provide this access to the EPA and the EPA's contractors and representatives, upon presentation of verifiable documentation of identity and authorization. If necessary to implement this Order, Respondent must notify the EPA promptly of any denial of access to areas that Respondent does not own or control.

64. Respondent must retain all documents and information relating to the work performed and the implementation of this Order and relating to the oil and/or hazardous substances found on or discharged from the facility for five years after completing actions required by this Order. Before destroying any documents or information within one year after that time, Respondent must notify the EPA that the documents and/or information are available to the EPA for inspection and, upon request, must provide the documents and/or information to the EPA. In addition, Respondent must provide these documents and/or this information at any time before the five-year period expires at the written request of the EPA.

Severability

65. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the remainder of the Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

66. This Order shall become effective and enforceable on the date that the Order is signed by the EPA. Any amendments shall become effective and enforceable on the date that the amendment is signed by all Parties. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Electronic Service

67. Respondent agrees to receipt and service of this Order electronically at the following email address: *bhansen@neiasupply.com* with a copy to: *hzetzsche@bairdholm.com*

Termination

68. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

For the Respondent, Nebraska-Iowa Supply Company:

Signature: Brian Hansen Date: 7/22/25

Name: Brian Hansen Title: VP of Finance

For the Complainant, U.S. Environmental Protection Agency:

Date: _____

DAVID COZAD

Digitally signed by DAVID
COZAD

Date: 2025.08.05 14:09:18
-05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Date: _____

**SAMANTHA
PAPPAS**

Digitally signed by
SAMANTHA PAPPAS

Date: 2025.07.31 14:08:31
-05'00'

Samantha Pappas
Attorney
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Administrative Order for Compliance on Consent was sent this day in the following manner to the addressees:

Copy emailed to Regional Hearing Clerk:

R7_Hearing_Clerk_Filings@epa.gov

Copy emailed to Respondent:

Brian Hansen
Vice President of Finance, Nebraska-Iowa Supply Company
bhansen@neiasupply.com

Hannes Zetzsche
Attorney for Respondent
hzetzsche@bairdholm.com

Copy emailed to representatives of the EPA:

Samantha Pappas
EPA Region 7 Office of Regional Counsel
pappas.samantha@epa.gov

Mark Aaron
EPA Region 7 Enforcement and Compliance Assurance Division
aaron.mark@epa.gov

Date: _____

Signature