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

IN THE MATTER OF )  
)  
Carla Nissen ) ADMINISTRATIVE ORDER ON  
(d/b/a Indian Country Mini-Mart) ) CONSENT  
20330 U.S. Highway 75 )  
Holton, Kansas 66436 )  
)  
)  
) Docket No. CWA-07-2014-0073  
)  
Respondent. )  
\_\_\_\_\_)

1. This Order is issued pursuant to the authority vested in the U. S. Environmental Protection Agency (“EPA”) by Sections 311(c), (e) and (m) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1321(c), (e) and (m). This Order pertains to a substantial threat posed by the improper storage of oil at the Indian Country Mini Mart Facility (“Facility”) owned and operated by Respondent Carla Nissen. Respondent is engaged in storing, processing, and distributing “oil” or oil products at the Facility.

2. EPA has notified the state of Kansas of this action pursuant to Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B).

**PARTIES**

3. The authority to take action under Sections 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e) is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority to the Directors of the Superfund and Air and Waste Management Divisions of EPA, Region 7 (Complainants).

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

## **STATUTORY AND REGULATORY FRAMEWORK**

### **Section 311 of the CWA**

5. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 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.”

6. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, 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.

7. Section 311(c) of the CWA provides authority, delegated to EPA, to “direct ... private actions to remove the discharge or to mitigate or prevent the threat of the discharge...” of oil. Section 311(e) of the CWA also provides authority, delegated to EPA, to issue “administrative orders that may be necessary to protect the public health and welfare.” Section 311(m) of the CWA provides authority, in pertinent part, for EPA to require the owner/operator of a regulated facility “to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the Administrator or Secretary, as the case may be, may require to carry out the objectives of this section.”

## **FINDINGS OF FACT**

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 (gasoline, and/or diesel fuel).

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

12. The Facility is located directly up-gradient and within an estimated 600 feet of Bill’s Creek.

13. 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.

14. 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. Part 112.

15. A copy of EPA's inspection report documenting EPA's findings of potential violations of the SPCC regulations was mailed to Respondent in December 2012.

16. 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).

17. Respondent's bulk storage tanks do not meet recognized specific engineering standards for above ground storage tanks (due to lack of venting, and deficient structural design features).

18. Respondent's above ground storage of oil in tanks designed for underground storage is incompatible with the design of these tanks and poses a substantial threat to human health (explosion) and the environment, due to the potential impact on navigable waters if these tanks fail.

19. In May 2013, EPA contacted Respondent and was informed that Respondent had still not prepared an SPCC plan for the facility, in violation of 40 C.F.R 112.3; and had failed to implement other SPCC requirements of 40 C.F.R. Part 112 at the facility that were identified in EPA's December 2012 transmittal, in violation of 40 C.F.R. 112.7(a)(2).

20. In late 2013, a SPCC plan was submitted to EPA that did not address Respondent's above ground storage of oil in tanks designed for underground storage.

#### **EPA's CONCLUSIONS OF LAW**

21. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR §112.2.

22. 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).

23. 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.

24. 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.

25. The facility is a “non-transportation-related facility” as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2, 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 (“a SPCC-regulated facility”).

26. The gasoline and/or diesel fuel stored at the facility are forms of oil as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

27. The deficient design of the facility’s current above ground storage tank poses a threat of failure, explosion and/or rupture of the tanks.

28. A discharge of oil, as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2, from Indian Country Mini Mart facility into navigable waters (Bill’s Creek) of the United States would be in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

29. A potential discharge from the facility poses an imminent and substantial threat to public health or welfare of the United States, including 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.

30. The actions required by this Order are necessary to protect the public health and welfare of the United States, including 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.

31. The actions required by this Order are authorized by EPA pursuant to the authority granted in Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e).

### **ORDER**

32. Based upon the Findings of Fact and Conclusions of Law set forth above, and pursuant to the authority of Sections 311(c), (e) and (m) of the CWA; 33 U.S.C. §§ 1321(c), (e) and (m); EPA hereby ORDERS and Respondent hereby agrees to take the following actions and provide the following information in accordance with the schedules, terms and conditions of this Order:

- a. Within 6 months of the effective date of this Order, Respondent shall complete the replacement of all five of the tanks at the Facility that are currently used for the above ground storage of oil, with tanks that are compatible for this use and purpose, and that meet the specific recognized industry standards for the construction of above ground storage tanks, in compliance with 40 C.F.R. § 112.8(c)(1).
- b. Within 30 days of completion of the replacement of the tanks at the Facility, but no later than six months from the effective date of this Order, Respondent shall take all actions necessary to address and correct all other identified deficiencies and/or non-compliance with 40 C.F.R. Part 112 (See, Attachment 1).
- c. Within 30 days of completion of the replacement of the tanks at the Facility, but no later than six months from the effective date of this Order, Respondent shall submit an amended SPCC plan, certified by a Professional Engineer, as required 40 C.F.R. § 112.3(d), to EPA that fully describes the actions taken by Respondent to correct the identified deficiencies and/or non-compliance with 40 C.F.R. Part 112 (See, Attachment 1).

#### **SUBMITTALS**

33. All submittals required by Respondent pursuant to Paragraph 26, above, shall be submitted to Mr. Mark Aaron: address - U.S. EPA, Region 7, AWMD/STOP, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone (913) 551-7205; e-mail, aaron.mark@epa.gov.

#### **MODIFICATIONS**

34. If Respondent seeks permission to deviate from the requirements and schedules set forth in this Order, Respondent shall submit a written request to EPA for approval, outlining the proposed modification and its basis. Such written request may be submitted by fax to Mr. Aaron at 913-551-9028. Such written request must also be mailed to the address in Paragraph 32, above.

35. Approval of non-material modifications (including extension of dates for submittals) to any portion of this Order may be made in writing under signature of the Branch Chief, Storage Tanks and Oil Pollution Branch; Air and Waste Management Division, Region 7.

#### **PENALTIES FOR NONCOMPLIANCE**

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

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37. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

38. Failure to comply with the terms of this Order on Consent may result in Respondent's liability for civil penalties for each violation of significant statutory civil penalties under Section 311(b)(7) of the Act, 33 U.S.C. § 1321(b)(7), as modified by 40 C.F.R. Part 19, or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund.

39. Upon suit by EPA, the United States District Court for the state of Kansas may impose such penalties if, after notice and opportunity for a hearing, the court determines that Respondent has violated the 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 Respondent's violations, Respondent's economic benefit (if any) resulting from the violations, any history Respondent may have of such violations, any good faith efforts Respondent has made to comply with legal requirements, the economic impact a penalty may have upon the Respondent, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the Act and for any violations of this Order.

#### EFFECTIVE DATE


40. This Order shall be effective upon signatures by the Parties.

#### SIGNATORIES

41. Respondent agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Order.

42. The undersigned representative of the Respondent is fully authorized to bind Respondent to the terms and conditions of this Order.

**Respondent Carla Nissen (d/b/a Indian Country Mini Mart):**

  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

9-23-14  
Date

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**For the United States Environmental Protection Agency:**



Howard C. Bunch  
Sr. Assistant Regional Counsel

10/28/2014  
Date



Becky Weber  
Director  
Air and Waste Management Division

10/29/14  
Date



Cecelia Tapia  
Director  
Superfund Division

10-29-14  
Date

## Attachment 1:

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).



CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Administrative Order on Consent (Order) were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219, on this date. A true and correct copy Order was both emailed and mailed to counsel for Respondent, Mr. Nicholas Jefferson, and a copy was sent to Respondent (Ms. Carla Nissen, d/b/a Indian Country Mini Mart) by email and private postal service on this date:

**Nicholas H. Jefferson, J.D., P.E.**

Alderson, Alderson, Weiler, Conklin, Burghart, & Crow, L.L.C.

2101 SW 21<sup>st</sup> Street

Topeka, Kansas 66604

(785) 232-0753

[nhjefferson@aldersonlaw.com](mailto:nhjefferson@aldersonlaw.com)

Ms. Carla Nissen

Owner

Indian Country Mini-Mart

20330 U.S. Highway 75

Holton, Kansas 66436

10/24/2014  
Date

  
Howard C. Bunch

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency

Region VII

901 N. 5<sup>th</sup> Street

Kansas City, Kansas 66101