



5. Respondent, a corporation in good standing under the laws of the state of Iowa, is located at 203 West Oak Street, Red Oak, Iowa (Respondent's Facility).

### **Statutory and Regulatory Framework**

6. The objective of the CWA, 33 U.S.C. § 1251 et seq., is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
7. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), into or upon the navigable waters of the United States or adjoining shorelines in such quantities as may be harmful, as determined under Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).
8. Section 311(b)(4) of the CWA, 33 U.S.C. § 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. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, EPA has determined that an oil discharge “may be harmful” to the public health or welfare or the environment of the United States if it causes either: (1) a violation of applicable water quality standards; (2) a film or 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 (“harmful quantity”).
9. Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i), provides for the assessment of penalties for owners, operators, or persons in charge of onshore facilities from which oil or a hazardous substance is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).
10. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides 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 onshore and offshore facilities, and to contain discharges...”
11. Under the authority of Section 311(j)(1) of the CWA, the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112, establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b).
12. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful

quantities unto or upon the navigable waters of the United States must prepare and fully implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in accordance with 40 C.F.R. § 112.7.

13. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define “oil” as “oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil...”

14. To implement Section 311(j)(1)(C), the EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of 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 who are 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.

15. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), provides for the assessment of penalties for violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112.

### **Factual Allegations**

16. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines “person” to include “an individual, firm, corporation, association, [or] partnership.” Respondent is therefore a “person” under the Act.

17. At all times relevant to this action, Respondent was the owner and/or 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 an oil storage facility.

18. The Red Oak facility includes tanks and mobile or portable storage containers with an estimated above-ground storage capacity of 211,325 gallons of oil.

19. The East Nishnabotna River is a “water of the United States” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and is therefore subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321.

20. The Red Oak facility is adjacent to the East Nishnabotna River.

21. At all times relevant to this action, Respondent was engaged in the storage of oil or oil products located at this facility.

22. The Red Oak 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. § 112.2.

23. The Red Oak 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.

24. The Red Oak 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 is, therefore, is an “SPCC-regulated facility.”

25. Pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent is the owner and/or operator of an SPCC-regulated facility and was subject to the SPCC regulations at all times relevant to this action.

26. On May 1, 2024, the EPA conducted an inspection of the Red Oak facility to determine Respondent’s compliance with the SPCC regulations of 40 C.F.R. Part 112 (“EPA’s Inspection”).

### **Allegations of Violation**

#### **Failure to Maintain and Fully Implement an SPCC Plan**

27. EPA’s Inspection documented Respondent’s failure to fully prepare and implement an SPCC Plan at the Red Oak facility (as required by 40 C.F.R. 112.3). Specifically, Respondent failed to:

- a. Fully describe the physical layout of the facility and include accurate information in the SPCC Plan’s facility diagrams, including the location and contents of all fixed oil storage tanks and containers, the portable container storage areas, transfer stations, and connecting pipes, in violation of 40 C.F.R. § 112.7(a)(3);
- b. Amend the SPCC Plan to reflect the current container capacities and contents, in violations of 40 C.F.R. § 112.5(a);
- c. Review and evaluate the SPCC Plan at least once every five years, in violation of 40 C.F.R. § 112.5(b);
- d. Provide appropriate containment, diversionary structures, and/or equipment to prevent a discharge as described in 40 C.F.R. § 112.1(b) and fully describe them in the SPCC Plan, in violation of 40 C.F.R. § 112.7(c);
- e. Design a containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility in violation of 40 C.F.R. § 112.7(h)(1);
- f. Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks or vehicle brake interlock system in the area adjacent to the loading/unloading rack, to prevent vehicles from departing before complete

disconnection of flexible or fixed oil transfer lines in violation of 40 C.F.R. § 112.7(h)(2);

- g. Test or inspect each aboveground container for integrity pursuant to an industry standard described in the Plan, in violation of 40 C.F.R. § 112.8(c)(6);
- h. Position or locate mobile or portable oil storage containers to prevent a discharge as described in 40 C.F.R. § 112.1(b), in violation of 40 C.F.R. § 112.8(c)(11);
- i. Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations, in violation of 40 C.F.R. § 112.8(d)(5); and
- j. Fully address in the Plan and implement overfill prevention as required by, and in violation of 40 C.F.R. § 112.8(c)(8).

28. Respondent's failure to maintain and fully implement its SPCC Plan is a violation of 311(j) of the CWA, 33 U.S.C. § 1321(j). In accordance with Section 311(b)(6)(B)(i) of CWA, 33 U.S.C. § 1321(b)(6)(B)(i), the EPA may assess a civil penalty to 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).

### **Consent Agreement**

29. Respondent and the EPA agree to the terms of this Consent Agreement and Final Order.

30. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

31. Respondent neither admits nor denies the factual allegations asserted by the EPA in this Consent Agreement and Final Order.

32. By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

33. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

34. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

35. Respondent understands and agrees that this Consent Agreement and Final 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 Consent Agreement and Final Order.

36. Respondent certifies by the signing of this Consent Agreement and Final Order that Respondent's Facility has returned to compliance with the CWA, and applicable regulations.

### **Penalty**

37. Pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$23,647 per day for each day during which the violation continues, up to a maximum of \$59,114.

38. The EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$39,193 for the violations of Section 311(b)(3) and (j) of the CWA, 33 U.S.C. § 1321(b)(3) and (j), alleged in this Consent Agreement and Final Order.

39. In agreeing to the penalty, the EPA has considered the statutory penalty factors at Sections 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

40. Respondent agrees to pay a civil penalty in the amount of **\$39,193** ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

### **Penalty Payment**

41. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>.

For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

When making a payment, Respondent shall:

a. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-07-2026-0176.

b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Amy Gonzales  
Regional Hearing Clerk  
U.S. Environmental Protection Agency Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
R7\_Hearing\_Clerk\_Filings@epa.gov

and

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Via electronic mail to:  
CINWD\_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

42. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts:

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

43. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with the EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

44. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal, that is the outstanding Assessed Penalty amount.

45. Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

a. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide the EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable.

i. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>

ii. Respondent shall certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

iii. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at sherrer.dana@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, or within 7 days should the order become effective between December 15 and December 31 of the calendar year. The EPA recommends encrypting IRS Form W-9 email correspondence; and

iv. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN then Respondent shall provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email with Respondent's TIN within 5 days of Respondent's receipt of a TIN issued by the IRS.

### **Effect of Settlement and Reservation of Rights**

46. Respondent's payment of the entire penalty pursuant to this Consent Agreement and Final Order resolves all civil and administrative claims pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, for violations alleged in this Consent Agreement and Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

47. The effect of settlement described above is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Consent Agreement and Final Order.

48. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

49. Notwithstanding any other provision of this Consent Agreement and Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to 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.

50. With respect to matters not addressed in this Consent Agreement and Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

### **General Provisions**

51. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement and Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement and Final Order.

52. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

53. Respondent consents to service of this Consent Agreement and Final Order via electronic mail.

54. Respondent and Complainant agree that this Consent Agreement and Final Order may be signed in part and counterpart.

**For the Respondent, NEW Cooperative, Inc.:**

Signature: 

Date: 4.6.2026

Name: Jon Wells

Title: Safety & Risk Manager

**For the Complainant, U.S. Environmental Protection Agency, Region 7:**

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Alyse Stoy  
Acting Director  
Enforcement and Compliance Assurance Division

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Elizabeth Huston  
Attorney-Advisor  
Office of Regional Counsel

**Final Order**

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. § 22.45(b), the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## 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:

Regional Hearing Clerk:

R7\_Hearing\_Clerk\_Filings@epa.gov

Copy emailed to Respondent:

John Wells, New Cooperative, Inc.  
Jwells@newcoop.com

Copy emailed to representatives of EPA:

Elizabeth Huston  
EPA Region 7 Office of Regional Counsel  
Huston.liz@epa.gov

Abigail Widiker  
EPA Region 7 Enforcement and Compliance Assurance Division  
Widiker.abigail@epa.gov

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Regional Hearing Clerk