

FILED

September 29, 2025

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

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

BEFORE THE ADMINISTRATOR

In the Matter of

Nebraska-Iowa Supply Company

Respondents

Proceedings under Section 311(b)(6)(B)(ii)
of the Clean Water Act, 33 U.S.C.
Section 1321(b)(6)(B)(ii)

Docket No. CWA-07-2025-0059

COMPLAINT AND
CONSENT AGREEMENT /
FINAL ORDER

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. Section 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency Region 7 (“EPA”), and Nebraska-Iowa Supply Company (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. Parts 22.13(b) and 22.18(b)(2) and (3).

3. The authority to act under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. Section 1321(b)(6)(B)(ii), 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 the authority under Section 311(b)(6) to the Director of the Enforcement and Compliance Assurance Division (“Complainant”) with concurrence of the Regional Counsel.

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

Statutory and Regulatory Framework

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

6. 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 of the United States.

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

8. Section 311(b)(4) of the Clean Water Act, 33 U.S.C. Section 1321(b)(4), authorizes the EPA to promulgate regulations 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), says 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 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 (“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.

EPA’s Allegations of Fact and Conclusions of Law

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

13. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Clean Water Act, 33 U.S.C. Sections 1321(a)(7) and 1362(5), and 40 C.F.R. Part 112.2.
14. 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 oil retail, bulk storage, and distribution facility located in and/or around 3341 South 66th Street, Omaha, NE 68106 (the “Facility”).
15. 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.
16. A discharge from the Facility would flow to Little Papillion Creek.
17. Little Papillion Creek is a perennial tributary of the Missouri River.
18. The Missouri River is a traditional navigable water.
19. 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).
20. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the Facility.
21. 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.
22. 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.
23. 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.
24. Pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777, and 40 C.F.R. Section 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.
25. Respondent has an SPCC Plan for the Facility.
26. 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 after responding to a discharge of oil to Little Papillion Creek on March 7, 2024.

27. 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.

EPA's Allegations of Violation

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

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

29. 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.

30. 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).
31. 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.

Consent Agreement

General Provisions

32. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of this CAFO.

33. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Complaint and Consent Agreement/Final Order.

34. 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.

35. Respondent and the EPA agree to conciliate the matters set forth in this Complaint and Consent Agreement/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.

36. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$120,000.00, as set forth in the Penalty section below.

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

38. Respondent neither admits nor denies the factual allegations asserted above by the EPA.

39. Respondent certifies by the signing of this CAFO that Respondent is in compliance with the Administrative Order on Consent. (Docket No. CWA -07-2025-0060).

40. The effect of settlement is conditional upon the accuracy of Respondent's representations to the EPA in this CAFO.

41. The Effective Date of this CAFO is the date on which a copy of the fully signed and executed CAFO is filed with the Regional Hearing Clerk.

Reservation of Rights

42. This CAFO addresses all civil and administrative claims for the Clean Water Act violations alleged above. With respect to matters not addressed in this CAFO, the EPA reserves the right to take any enforcement action pursuant to the Clean Water Act and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

43. 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.

44. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of this CAFO by initiating a judicial or administrative action pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

Penalty

45. Respondent agrees to pay a civil penalty of **One Hundred and Twenty Thousand Dollars (\$120,000.00)** ("Assessed Penalty") pursuant to the authority of Section 311 of the Clean Water Act, 33 U.S.C. Section 1321, within thirty (30) days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

46. 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>.

47. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-07-2025-0059.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Amy Gonzales
Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
Via electronic mail to:

R7_Hearing_Clerk_Filings@epa.gov

Samantha Pappas
Office of Regional Counsel
U.S. Environmental Protection Agency
Via electronic mail to:

pappas.samantha@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:

CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, 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.

48. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. Section 1319(g)(9), 31 U.S.C. Section 3717, 31 C.F.R. Part 901.9, and 40 C.F.R. Part 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 EPA is authorized to recover the following amounts:

49. 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. Section 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.

- a. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.
- b. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.
- c. 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, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:
 - i. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. Parts 13.13 and 13.14.
 - ii. 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.
 - iii. Suspend or revoke Respondent’s licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs

EPA sponsors or funds, per 40 C.F.R. Part 13.17.

- iv. 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. Section 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

50. Allocation of Payments. Pursuant to 31 C.F.R. Part 901.9(f) and 40 C.F.R. Part 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.

51. Respondent understands that its failure to timely pay any portion of the civil penalty described herein may result in the commencement of a civil action in the United States District Court for the District of Nebraska to recover the full remaining balance, along with penalties and accumulated interest.

52. 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.

53. Pursuant to 26 U.S.C. Section 6050X and 26 C.F.R. Part 1.6050X-1, 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 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.” 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. Section 6723, 26 U.S.C. Section 6724(d)(3), and 26 C.F.R. Part 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. 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>;
- b. 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;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at weidner.lori@epa.gov within 30 days after the Final Order ratifying this

Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall notify EPA of this fact within 30 days after the Effective Date of this Consent Agreement and Final Order, and email EPA with Respondent's TIN within 5 days of Respondent's issuance and receipt of the TIN.

Signatories

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

Parties Bound

55. 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.

Definitions

56. Terms used in this order that are defined in the Clean Water Act or EPA regulations promulgated under the Clean Water Act have the meanings assigned to them in the Clean Water Act or those regulations, unless otherwise provided in this Order.

Executed Agreement Filed

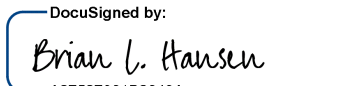
57. This executed Complaint and Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Electronic Service

58. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: *bhansen@neiasupply.com* with a copy to: *hzetzsche@bairdholm.com*

*Consent Agreement / Final Order
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For the Respondent, Nebraska-Iowa Supply Company:

Signature:  Brian L. Hansen Date: 8/15/2025 | 2:10 PM PDT

Name: Brian L. Hansen Title: Accounting and Finance Manager

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

Date: _____

David Cozad
Director
Enforcement and Compliance Assurance Division

Date: _____

Samantha Pappas
Attorney
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. Section 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. Part 22, 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. Part 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

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

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 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

Carrie Venerable
EPA Region 7 Office of Regional Counsel
Venerable.Carrie@epa.gov

Date

Signature