UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF: WOLCO, Inc., 11360 Larimore Road St. Louis, Missouri Respondent.	))))))	Docket No. CWA-07-2001-0067 CONSENT AGREEMENT AND FINAL ORDER

A. PRELIMINARY STATEMENT

These proceedings were initiated pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. On August 7, 2001, the Complainant, the Director of the Water Wetlands and Pesticides Division of EPA, United States Environmental Protection Agency (EPA), Region VII issued an Administrative Complaint and Opportunity to Request a Hearing ("Complaint") to Wolco, Inc., ("Wolco" or "Respondent").

The Complaint charged Respondent with violations of CWA Section 311(b)(6), 33 U.S.C. § 1321, and the Spill Prevention Control and Countermeasure (SPCC) regulations promulgated pursuant to Section 311(b)(3) and (j) of the CWA and codified at 40 C.F.R. Part 112. The Complaint proposed a civil penalty of Seventy-four Thousand Two Hundred and Seventeen Dollars ($74,217).

Complainant and Respondent entered into negotiations in an attempt to settle the allegations contained in the Complaint; this Consent Agreement and Final Order are the result of such negotiations.

B. CONSENT AGREEMENT

General Provisions

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement ("Consent Agreement") and the Final Order set forth below ("Final Order" or "Order").

2. Respondent neither admits nor denies the factual allegations set forth in the Complaint.

3. Respondent agrees not to contest the terms and conditions set forth in the Final Order in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order.

4. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the Complaint.

5. Respondent agrees to the terms of this Consent Agreement and to comply with the terms of the Final Order.

6. This Consent Agreement and Final Order shall resolve all violations of the CWA directly alleged in the Complaint.

7. Respondent and EPA each agree to bear their own costs and attorneys' fees.

8. The undersigned representative of Respondent certifies he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent.

9. In settlement of this matter, Respondent agrees as follows:

   A. Respondent recognizes that EPA alleges that SPCC violations continue at the facility and Respondent agrees to amend its May 11, 2001, SPCC plan to address

all alleged inadequacies identified during the SPCC compliance inspections conducted on July 18-19, 2000, and May 15, 2002, and to update its SPCC Plan in accordance with the revised SPCC regulations published August 16, 2002, in the *Federal Register*.

B. Respondent recognizes that EPA alleges that requirements of the SPCC regulations have not been fully implemented at the facility and agrees to remedy the alleged implementation inadequacies identified during the July 18-19, 2000, and May 15, 2002, SPCC compliance inspections, in accordance with the revised SPCC regulations published August 16, 2002, in the *Federal Register*.

10. Until the completion of the requirements of Paragraph 9 of this Consent Order, Respondent agrees to submit monthly updates in writing to EPA describing, in detail, the compliance work that has occurred during the previous month and detailing the activities expected to occur during the upcoming month. The first update shall be due to EPA thirty (30) days after the effective date of this Consent Agreement and Final Order. Respondent also agrees to submit copies of documentation related to inspections, integrity testing, and SPCC plan amendments. The first submission shall be due to EPA thirty (30) days after the effective date of this Consent Agreement and Final Order and subsequent submissions shall be submitted monthly for a period of two (2) years after the initial submission. Respondent agrees the monthly updates and other submissions are within EPA's information gathering authority pursuant to Clean Water Act Section 308 and a failure to timely submit these documents may subject Respondent to penalties.

11. Any submission to EPA shall be sent certified mail to:

Robert Webber
Environmental Engineer
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

12. Respondent agrees to complete the requirements of Paragraph 9 of this Consent Agreement within one hundred and twenty (120) days of the effective date of this Consent Agreement/Final Order.

13. If deadlines established by this Consent Agreement conflict with deadlines established by other administrative orders issued to the Respondent by EPA, then the deadlines established by such orders shall have precedence.

14. The performance of the above compliance activities and the payment of a penalty as described in the Final Order shall not relieve Respondent of its responsibility to comply with all requirements of the SPCC regulations or all applicable state and/or federal statutory and regulatory requirements.

15. EPA expressly reserves the right to collect penalties, obtain injunctive relief and pursue any other remedy available under the Clean Water Act or other statutory authority in the event that EPA determines that the Wolco facility is not in compliance with the CWA and applicable regulations.

Payment of Mitigated Penalty

16. Respondent consents to the assessment and payment of the civil penalty as set forth in the Final Order.

17. Respondent understands that its failure to timely pay any portion of the mitigated civil

penalty as stated in the Final Order, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury on the unpaid balance until such civil penalty and any accrued interest are paid in full.

18. Respondent shall pay a mitigated penalty of Forty-Thousand Dollars ($40,000) in quarterly installments of Three Thousand Five Hundred Eighty-one Dollars and sixty-one cents ($3,581.61) that includes principal and accrued interest for a period of three (3) years beginning thirty (30) days after the effective date of this Consent Agreement and Final Order.

19. Respondent agrees that interest shall accrue on the outstanding balance at the rate determined by the Secretary of the Treasury (currently 5.0 percent per annum for the period January 1, 2002, through December 31, 2002), compounded daily.

20. Respondent agrees that a failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

21. The parties agree that Respondent shall not be subject to a penalty for early payment of the mitigated penalty.

22. Respondent agrees that the mitigated penalty assessed pursuant to the CAFO shall not be deductible as a business expense or in any other manner by Respondent in calculating its federal, state, or local tax liability.

Parties Bound

23. The provisions of this Consent Agreement shall apply to and be binding upon the parties to this action, their officers, directors, agents, servants, employees, successors and assigns.

Respondent shall give written notice of this Consent Agreement to any successors in interest prior to the transfer of ownership or operation of the WOLCO 11360 Larimore Road facility and shall simultaneously provide EPA a copy of such written notice.

C. FINAL ORDER

Pursuant to the provisions of Section 311 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321, as amended by the Oil Pollution Act of 1990, and based upon the information set forth in the Consent Agreement, IT IS HEREBY ORDERED THAT:

PENALTY

1. Respondent shall pay a mitigated penalty of Forty-Thousand (40,000) Dollars in quarterly installments that includes principal and accrued interest for a period of three (3) years beginning thirty (30) days after the effective date of this Final Order. Payment shall be by cashier's or certified check **made payable to the "Oil Spill Liability Trust Fund"** and remitted to:

Kathy Robinson
Regional Hearing Clerk
901 N. 5th Street
Kansas City, Kansas 66101

2. Respondent shall send a **copy** of the check to:

J. Daniel Breedlove
Office of Regional Counsel
EPA, Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees.

For the Complainant:

IN THE MATTER OF Wolco, Inc.
Docket No. CWA-07-2001-0067

The United States Environmental Protection Agency

10/17/02

Leo Alderman, Director
Water, Wetlands, and Pesticides Division

Date:

10/17/2002

J. Daniel Breedlove
Assistant Regional Counsel

Date:

For the Respondent:

WOLCO, Inc.

By:

Title: President

Date: 10/16/02

IT IS SO ORDERED. This Order is effective upon filing of a fully executed copy with EPA's Region VII, Regional Hearing Clerk.

October 18, 2002

Robert L. Patrick, Esq.
Regional Judicial Officer

Date:

IN THE MATTER OF WOLCO, Inc., Respondent
Docket No. CWA-07-2001-0067

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

D. Jeannine Kelly
Law Office of D. Jeannine Kelly
322 E. Broadway
Alton, Illinois 62002

Copy by First Class Mail to:

US. Coast Guard
Finance Center (OGR)
1430A Kristina Way
Chesapeake, VA 23326

Copy by First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

Copy by facsimile and
First Class Pouch Mail to:

The Honorable Carl C. Charneski
Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

Dated: 10/18/02

Kathy Robinson
Regional Hearing Clerk