BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

IN THE MATTER OF	)	
	)	
VersaCold Corporation	)	
2115 Commissioner Street	)	Docket No. CWA-HQ-2005-8002
Vancouver, BC V5L 1AG	)	
	)	
Respondent	)	

FINAL ORDER

Whereas Complainant, the United States Environmental Protection Agency, and Respondent, VersaCold Corporation, the Parties herein, represented by counsel, have consented to the entry of this Final Order, and agree to comply with the Consent Agreement signed by the parties and incorporated herein; and

Whereas EPA caused a Notice for Public Comment on the proposed issuance of this Final Order to be published in the Federal Register on _____, as required by the Clean Water Act § 311(b)(6), 33 U.S.C. § 1321(b)(6), the public notice and comment period required has closed, and no comments have been received;

The Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

SO ORDERED.

By: _____

Date: 8/14/07
Environmental Appeals Judge
Environmental Appeals Board
US EPA

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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CONSENT AGREEMENT

I. Preliminary Statement

A. Complainant, the United States Environmental Protection Agency (EPA) and VersaCold Corporation (VersaCold), having consented to the terms of this Consent Agreement (Agreement), and before the taking of any testimony and without the adjudication of issues of law or fact herein, agree to comply with the terms of this Agreement and attached proposed Final Order hereby incorporated by reference.

B. In April 2005, pursuant to EPA's Policy on Incentives for Self-Policing (Audit Policy), 65 Fed. Reg. 19,618 (April 11, 2000), Respondent submitted its initial voluntary disclosure to EPA regarding potential violations of:

1. Clean Water Act (CWA) § 311, 33 U.S.C. § 1321; and

2. CWA § 301, 33 U.S.C. §1311.

C. Respondent continued to submit additional and periodic disclosures for the above statutes. Such disclosures have resulted in a final list of disclosed violations, which are the subject of this Agreement.

II. Jurisdiction

A. The parties agree to the commencement and conclusion of this cause of action by issuance of this Agreement, as prescribed by EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, and more specifically by 40 C.F.R. § 22.18(b).

B. Respondent agrees that Complainant has the jurisdiction to bring an administrative action, based upon the facts which Respondents disclosed, for these violations and for the assessment of civil penalties pursuant to CWA § 311, 33 U.S.C. § 1321 and CWA §309, 33 U.S.C. §1319.

C. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this Agreement and its right to appeal the proposed Final Order accompanying this Agreement.

D. For purposes of this proceeding, Respondents admit that EPA has jurisdiction over the subject matter which is the basis of this Agreement.

E. Respondent neither admits nor denies the conclusions of law as set forth in this Agreement.

III. Statements of Fact

A. Respondent is VersaCold Corporation, a refrigerated warehouse company, incorporated in Vancouver, British Columbia, Canada. Respondent owns and/or operates facilities in the United States.

B. Pursuant to the EPA's Audit Policy, Respondent hereby certifies and warrants as true the facts referenced in this Section, and EPA accepts Respondent's certification. As such, Respondent specifically certifies to the following facts upon which this Agreement is based:

1. the violations were discovered through an audit or through a compliance management system reflecting due diligence in preventing, detecting and correcting violations;

2. the violations were discovered voluntarily;

3. the initial violations were disclosed to EPA promptly and in writing; subsequent disclosures were also prompt and in writing;

4. the violations were disclosed prior to commencement of an agency inspection or investigation, notice of a citizen suit, filing of a complaint by a third party, reporting of the violations by a "whistle blower" employee, or imminent discovery by a regulatory agency;

5. the violations have been corrected and the Respondent is, to the best of its knowledge and belief, in full compliance with the CWA § 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), and the CWA § 301, 33 U.S.C. § 1311 and the implementing regulations, with respect to the violations set forth in this Agreement;

6. appropriate steps have been taken to prevent a recurrence of the violations;

7. the specific violations (or closely related violations), identified

in this Agreement, have not occurred within three years of the date of disclosure identified in Paragraphs I(B) and (C) above, at the same facilities that are the subject of this Agreement, and have not occurred within five years of the date of disclosure identified in Paragraph I(B) and (C) above, as part of a pattern at multiple facilities owned or operated by the Respondent. For the purposes of subparagraph 7, a violation is:

(a) any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or

(b) any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency; Respondent has no knowledge that violations other than those covered in this Agreement (or closely related violations), have occurred within the past three years at the same facilities; nor are the specific violations that are the subject of this Agreement part of a pattern of violations by the entity's parent organization which have occurred over the past five years;

8. the violations have not resulted in serious actual harm nor presented an imminent and substantial endangerment to human health or the environment and they did not violate the specific terms of any judicial or administrative Final Order or Agreement; and

9. Respondent has cooperated as requested by EPA.

IV. Conclusions of Law

CWA – Spill Prevention and Countermeasure (SPCC)

A. For purposes of this Agreement, Respondent is a person within the meaning of CWA § 311(a)(7), 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, and is the owner or operator, as defined by CWA § 311(a)(6), 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of two (2) facilities, located at Geneva Lakes, W8876 County Highway X, Darien, Wisconsin 53114-0039 and VersaCold Cascade, 406 Second Street, Lynden, Washington 98264.

B. The regulations at 40 C.F.R. § 112.3 through § 112.7, which implement § 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), set forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that by regulation have been

determined may be harmful to the public health or welfare or environment of the United States by owners or operators who are engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products.

C. 40 C.F.R. § 112.3(a) requires owners and operators of onshore and offshore facilities that have discharged or, due to their location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare a Spill Prevention Control and Countermeasure (SPCC) Plan.

D. Respondent is engaged in storing or consuming oil or oil products at its two (2) facilities, described in IV.A, in quantities that "may be harmful," as defined by 40 C.F.R. § 110.3.

E. Two (2) of Respondent's facilities, described in IV.A, are onshore facilities within the meaning of § 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, which, due to their location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by § 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen 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.

F. Based on the above, and pursuant to § 311(j)(1)(C) and its implementing regulations, Respondents are subject to the requirements of 40 C.F.R. § 112.3 through § 112.7, at its two (2) facilities listed in IV.A.

G. For purposes of this Agreement, Complainant hereby states and alleges that, based on the information supplied by Respondent to EPA, Respondent has violated the CWA at its two (2) facilities identified in IV.A by failing to prepare and implement an SPCC Plan, as required by CWA § 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), and the regulations found at 40 C.F.R. § 112.3 through § 112.7.

H. For purposes of this Agreement, Complainant hereby states and alleges that, based on the information supplied by Respondent to EPA, Respondent has violated the CWA at its VersaCold Cascade facility in Lynden, Washington by failing to install adequate secondary containment, as required by CWA § 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), and the regulations found at 40 C.F.R. § 112.3 through § 112.7.

<u>CWA – National Pollutant Discharge Elimination System (NPDES)</u>

A. Section 402(a) of the CWA, 33 U.S.C. §1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (NPDES) program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

B. For purposes of this Agreement, Respondent is a person, as defined by § 502(5) of the CWA, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2.

C. For purposes of this Agreement, Respondent is an owner or operator, as defined by 40 C.F.R. § 122.2 of its Geneva Lakes and VersaCold Cascade facilities.

D. At all relevant times, the Geneva Lakes and VersaCold Cascade facilities are point sources subject to discharges of pollutants in its storm water, to the receiving waters, which are waters of the United States, as defined by § 502 of the CWA, 33 U.S.C. §1362, and 40 C.F.R. §122.2.

E. Section 301(a) of the CWA, 33 U.S.C. §1311(a) prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

F. Section 402(p) of the CWA, 33 U.S.C. §1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities that have storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under § 402(a) of the CWA, 33 U.S.C. §1342(a).

G. Under 40 C.F.R. § 122.26(b)(14), the following category of facilities are among those considered to be engaging in industrial activity for purposes of § 402(p) of the CWA, 33 U.S.C. §1342(p), and 40 C.F.R. § 122.26(b)(14)(xi): Refrigerated Warehousing and Storage facilities (SIC Code 4222).

H. Pursuant to §§ 402(a) and 402(p) of the CWA, 33 U.S.C. §§ 1342(a) and (p), the Wisconsin Department of Natural Resources issued a General Permit (Permit No. WI-0044938-5) which authorizes storm water discharges associated with industrial activities to waters of the United States (including discharges to or through municipal separate storm water sewer systems), but only in accordance with the conditions of the permit. The General Permit requires the permittee to, among other things, develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"). A SWPPP sets out measures to reduce and eliminate the discharge of contaminated storm water. General Permits are not required when a facility can show "no exposure" of industrial activities and materials to storm water. Facilities must submit a "no exposure certification" to qualify for this exclusion.

I. Respondent's NPDES permits, and/or the applicable regulatory provisions, as described above, for its Geneva Lakes facility, include requirements to prepare and implement a SWPPP. Based on information provided by the Respondent, Respondent failed to prepare and implement a SWPPP at its Geneva Lakes facility, in violation of § 301(a) of the CWA, 33 U.S.C. § 1311(a).

J. Respondent's NPDES permit, and/or the applicable regulatory provisions, as described above, for its Geneva Lakes facility, includes requirements to obtain a permit for discharging non-contact cooling water to a surface water. Based on information provided by Respondent, Respondent failed to obtain a permit or submit a Notice of Intent to discharge, in violation of §301(a) of the CWA, 33 U.S.C. §1311(a).

K. Respondent's NPDES permit, and/or the applicable regulatory provisions, as described above, for its VersaCold Cascade, Washington facility, includes requirements to submit a No Exposure Certification to the Washington Department of Ecology. Based on information provided by Respondent, Respondent failed to submit a No Exposure Certification, in violation of §301(a) of the CWA, 33 U.S.C. §1311(a) and the regulations found at 40 C.F.R. § 122.26(g)(1)(ii)

V. Civil Penalty

A. EPA agrees, based upon the facts and information submitted by Respondent and upon Respondent's certification herein to the veracity of this information, that Respondent has satisfied all of the conditions set forth in the Audit Policy and thereby qualifies for a 100% reduction of the gravity component of the civil penalty. Complainant alleges that the gravity component of the civil penalty is $139,000. Of that penalty, $23,000 is attributable to CWA § 311(j) violations and $116,000 is attributable to CWA § 402 violations. EPA alleges that this gravity component is assessable against Respondent for the violations that are the basis of this Agreement.

B. Under the Audit Policy, EPA has discretion to assess a penalty equivalent to the economic benefit Respondent gained as a result of its noncompliance. Based on information provided by Respondent and use of the Economic Benefit ("BEN") computer model, EPA has determined that Respondent obtained an economic benefit of $6,431 as a result of its noncompliance in this matter. Of this amount, $6,431 is attributable to the CWA § 311(j) violations. Accordingly, the civil penalty agreed upon by the parties for settlement purposes is $6,431.

VI. Terms of Settlement

A. Respondent agrees to pay SIX THOUSAND, FOUR HUNDRED AND THIRTY-ONE DOLLARS ($6,431), in satisfaction of the civil penalty.

B. In payment of the civil penalty related to the CWA violations, Respondents shall, within thirty (30) days of issuance of the Final Order, forward a cashier's or certified check, in the amount of SIX THOUSAND, FOUR HUNDRED AND THIRTY-ONE DOLLARS, ($6,431), made payable to the "Oil Spill Liability Trust Fund" to:

Commander, National Pollution Funds Center
United States Coast Guard
Ballston Common Office Building Suite 1000
4200 Wilson Boulevard
Arlington, VA 22203

The check should indicate that it is for In re: VersaCold Corporation, Docket No. CWA-HQ-2005-8002.

Alternatively, Respondents shall pay SIX THOUSAND, FOUR HUNDRED AND THIRTY-ONE DOLLARS, ($6,431), by wire transfer with a notation of "VersaCold Corporation, Docket No. CWA-HQ-2005-8002" by using the following instructions:

Bank's ABA Number:	021030004 Treas NYC
Coast Guard Beneficiary Number:	69025102
Type/Subtype Code:	10 00

C. Respondent shall forward copies of these checks or evidence of wire transfer to EPA, within five (5) days of payment, to the attention of:

Beth Cavalier
Special Litigation and Projects Division (2248-A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Ariel Rios Building, Room 3119A
Washington, DC 20460

D. Respondent's obligation under this Agreement shall end when it has paid the civil penalties as required by this Agreement and the Final Order, and in accordance with Section VI(B), and complied with its obligations under Section VI(C), in this Agreement.

E. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to the Final Order. Any attempt by Respondent to deduct any such payments shall constitute a violation of the Agreement.

F. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of the Final Order, if the penalty is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of twelve (12) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

VII. Public Notice

A. The parties acknowledge that the settlement portions of this Agreement which pertain to the CWA violations are, pursuant to CWA § 311(b)(6)(C)(i), 33 U.S.C. § 1321(b)(6)(C)(i),

subject to public notice and comment requirements. Should EPA receive comments regarding the issuance of the Final Order assessing the civil penalty agreed to in Section VI, EPA shall forward such comments to Respondent within ten (10) days of the receipt of the public comments.

B. As part of this Agreement, and in satisfaction of the requirements of the Audit Policy, Respondent has certified to certain material facts. The parties agree that should EPA receive, through public comments or in any way, information that proves or demonstrates that these material facts are other than as certified by Respondent, the portion of this Agreement pertaining to the affected facility or facilities, including mitigation of the proposed penalty, may be voided, or this entire agreement may be declared null and void at EPA's election prior to the issuance of the final order, and EPA may proceed with an enforcement action.

C. The parties agree that the Respondent preserves all of its rights should this Agreement be voided in whole or in part. The parties further agree that Respondent's obligations under this Agreement will cease should this Agreement be rejected by the Environmental Appeals Board (EAB).

VIII. Reservation of Rights and Settlement

A. This Agreement and the Final Order, when issued by the EAB, and upon payment by Respondent of civil penalties in accordance with Section VI shall resolve only the civil claims specified in this Agreement and shall constitute a final and complete settlement of all federal civil and administrative claims and causes of action arising from the violations specified in this Agreement. Nothing in this Agreement and the Final Order shall be construed to limit the authority of EPA and/or the United States to undertake any action against Respondent, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. Furthermore, issuance of the Final Order does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against Respondent for any other violation of any federal or state statute, regulation or permit.

IX. Other Matters

A. Each party shall bear its own costs and attorney fees in this matter.

B. The provisions of this Agreement and the Final Order, when issued by the EAB, shall apply to and be binding on the Complainant, and the Respondent, as well as Respondent's officers, agents, successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement, including the obligation to pay the civil penalty referred to in Section VI.

C. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CWA or other federal state or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit.

D. Except as provided in Section VII(C), Respondent waives any rights it may have to contest the allegations contained herein and their right to appeal the proposed Final Order accompanying this Agreement by reference.

E. The undersigned representatives of each party to this Agreement certify that each is duly authorized by the party whom he represents to enter into these terms and bind that party to it.

FOR Respondent:	FOR Complainant:
Susan C. Haley, 12/28/06	Robert A. Kaplan, 1/12/07
Name Susan C. Haley / Date	Robert A. Kaplan / Date
Title SVP HR & Risk Mgmt.	Director, Special Litigation and Projects Division
VersaCold Corporation	Office of Regulatory Enforcement U. S. Environmental Protection Agency

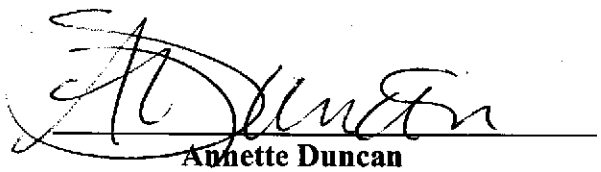
CERTIFICATE OF SERVICE

I hereby certify that the Final Order *in the Matter of VersaCold Corporation,* Docket No. CWA-HQ-2005-8002, were sent to the following persons in the manner indicated:

By Certified Mail:

Sue Haley
Senior Vice President for Human Resources and Risk Management
VersaCold Group, Head Office
2115 Commissioner Street
Vancouver, BC V5L 1A6

Dated: AUG 2 1 2007



Annette Duncan
Secretary