

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

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IN THE MATTER OF	)	CWA SECTION 311 CLASS II
	)	CONSENT AGREEMENT AND
J. Follace Oil Company, Inc.	)	FINAL ORDER
833 Hazard Road	)	
Whitesburg, Kentucky 14858	)	UNDER 40 C.F.R. § 22.13(b)
	)	
Respondent	)	Docket No. CWA-04-2010-5127(b)
_____	)	

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities to the Director, RCRA Division pursuant to EPA Region 4 Clean Water Act Delegation 2-52-A ("Complainant").

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent, J. Follace Oil Company, Inc., is a corporation formed under the laws of the Commonwealth of Kentucky and doing business in the Commonwealth of Kentucky. The Respondent 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).

2. The Respondent is the owner and operator of a facility within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), which is a tanker truck located on Kentucky Highway 15 at times relevant to this Consent Agreement and Final Order, four miles north of Whitesburg, Kentucky (“Facility”).

3. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Smoot Creek is a navigable water 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.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil 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 or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or the environment of the United States are defined in 40 C.F.R. § 110.3(b) to include discharges of oil that (1) violate applicable water quality standards or (2) 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 the adjoining shorelines.

7. Solely for purposes of this Consent Agreement and Final Order, Respondent admits the jurisdictional statements contained herein.

**Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

8. On July 23, 2008, Respondent discharged approximately 176 barrels of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321 (a)(1), and 40 C.F.R. § 110.1, from its Facility that entered into or upon Smoot Creek and/or its adjoining shorelines.

9. Respondent's July 23, 2008, discharge of oil from its Facility caused a sheen upon or discoloration of the surface of Smoot Creek and the adjoining shoreline, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

**Waiver of Rights**

10. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

**Penalty**

11. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Sixteen Thousand, Eight Hundred and Thirty Nine Dollars (\$16,839).

**Payment Terms**

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

12. Respondent shall pay the amount of Sixteen Thousand, Eight Hundred and Thirty Nine Dollars (\$16,839) in twelve quarterly payments of \$1,461.63, which includes interest at 3 percent. The first payment of \$1,461.63 is due no later than 30 days after the effective date

of the Final Order. The eleven remaining payments of \$1,461.63 each will be due no later than 90 days after the due date of the previous payment.

13. Respondent shall remit each payment by means of a corporate cashier's or certified check, by electronic funds transfer (EFT), or on-line. If paying by check, the Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
33 Liberty St.  
New York, New York 10045

Field tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency." In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

If Respondent chooses the On-Line Payment option, available through the Department of Treasury, this payment option can be accessed from the information below.

[WWW.PAY.GOV](http://WWW.PAY.GOV)  
Enter sfo 1.1 in the search field

Open form and complete required fields.

14. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of each check (or, in the case of an EFT transfer or on-line payment, copies of the EFT or on-line confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

Doug McCurry, Chief  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

15. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### **General Provisions**

16. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c) (4) (iii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c) (4) (ii), that the Regional

Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

17. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

18. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

19. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement.

20. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Bonnie Sawyer  
Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-9539  
[Sawyer.Bonnie@epa.gov](mailto:Sawyer.Bonnie@epa.gov)

The following person represents Respondent in this matter and is authorized to receive service for Respondent in the proceeding:

James Follace Fields, President  
J. Follace Oil Company, Inc.  
833 Hazard Road  
Whitesburg, Kentucky 41858

**Effective Date**

21. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

For J. Follace Oil Company Inc.:

Date: 12-1-09

Signature: James Follace Fields, President  
James Follace Fields, President  
J. Follace Oil Company, Inc.

For U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 12/11/09

Signature: Alan Farmer  
G. Alan Farmer  
Director  
RCRA Division

Respondent \_\_\_\_\_ ) UNDER 40 C.F.R. § 22.13(b)  
)  
) No. CWA-04-2010-5127(b)  
)

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

J. Follace Oil Company, Inc., the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2010-5127(b).

Date: 2/03/10

Signature: A. Stanley Meiburg  
A. Stanley Meiburg  
Acting Regional Administrator

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of J. Follace Oil Company, Inc., Docket No. CWA-04-2010-5127(b), on the parties listed below in the manner indicated:

Bonnie Sawyer  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

(Via EPA's internal mail)

Alan Newman  
RCRA & OPA Enforcement and Compliance Branch  
U.S. EPA - Region 4  
61 Forsyth St., S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's internal mail)

James Follace Fields, President  
J. Follace Oil Company, Inc.  
833 Hazard Road  
Whitesburg, Kentucky 41858

(Via Certified Mail)

Dated this 9 day of February 2010.



Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960