

RCRA SECTION 3013(a) and CWA SECTION 308(a) ORDER
REQUIRING MONITORING, TESTING, ANALYSIS AND REPORTING

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RCRA SECTION 3013(a) and CWA SECTION 308(a) ORDER
REQUIRING MONITORING, TESTING, ANALYSIS AND REPORTING

I. JURISDICTION

1. This Administrative Order ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Section 308(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1318(a), and by Section 3013(a) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6934(a). These authorities were delegated by the Administrator to the Regional Administrators of EPA by Delegation Nos. R7-2-13, dated May 2, 1996, and R7-8-20 dated January 1, 1995.
2. This Order is issued to WOLCO, Inc., ("WOLCO" or "Respondent"), a corporation doing business in the State of Missouri. WOLCO owns and operates the bulk petroleum storage and transfer facility located at 11360 Larimore Road, in St. Louis, Missouri (the "WOLCO Facility").
3. Complainant, having been presented with information from which a determination has been made that the presence of hazardous wastes, as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), at the WOLCO Facility may present a substantial hazard to human health or the environment, hereby orders Respondent to conduct monitoring, testing, analysis and reporting to ascertain the nature and extent of such hazard.
4. Complainant, having been presented with information that the structural integrity of one or more above-ground storage tanks at the WOLCO Facility may be compromised and thus creating a threat to waters of the United States, hereby orders Respondent install, use, and maintain such monitoring equipment or methods discussed herein to ensure the integrity of such tanks.
5. This Order is based on the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by the Respondent and the public at EPA's Regional Office located at 901 North Fifth Street, Kansas City, Kansas 66101 from the hours of 9:00 a.m. until 4:00 p.m. Monday through Friday.
6. As of December 4, 1985, pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), EPA has authorized the State of Missouri to operate a hazardous waste program in lieu of the federal program, as stated at 50 Federal Register 47740. Under RCRA, EPA retains its authority to issue orders pursuant to Sections 3013(a), regardless of whether a State has been authorized to operate a hazardous waste program.

II. PARTIES BOUND

7. The provisions of this Order shall apply to and be binding on Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.

8. No change in ownership, corporate, or partnership status relating to the WOLCO Facility described in this Order will in any way alter the status or responsibility of Respondent under this Order. Any conveyance by Respondent of title, easement, or other interest in the WOLCO Facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by this Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.

9. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within seven (7) calendar days of the Effective Date of this Order, or on the date of such retention, and Respondent shall condition all such contracts on compliance with the terms of this Order.

10. Any documents transferring ownership or operation of the WOLCO Facility from Respondent to a successor-in-interest shall include written notice of this Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the WOLCO Facility, provide written notice of this Order to its successor-in-interest, and written notice of said transfer of ownership or operation to EPA.

III. FINDINGS OF FACT

11. The Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Clean Water Act, 33 U.S.C. §1321(a)(6), and 40 C.F.R. § 260.10 of a bulk storage and wholesale petroleum distribution facility located at 11360 Larimore Road, St. Louis, Missouri 63138. The WOLCO Facility is adjacent to, and upgradient of a drainage ditch that is a tributary to an unnamed intermittent stream that is a tributary of Watkins Creek, which is in turn a tributary of the Mississippi River. Further, drainage of the facility is facilitated by a storm drain that discharges to the adjacent drainage ditch.

12. The WOLCO Facility is a regulated substance bulk storage facility. The WOLCO Facility is a storm water contaminant source and is by definition a point source of water pollution and therefore is required to have a National Pollution Discharge Elimination System permit. The WOLCO Facility operates under permit number MO-G350176.

13. On or about July 18-19, 2000, EPA conducted a Spill Prevention Control and Countermeasure ("SPCC") inspection of the WOLCO Facility. At the time of the Inspection, the facility had a storage capacity of approximately 413,420 gallons and the largest above ground

storage tank was approximately 20,000 gallons. During the Inspection, the following conditions, among others, existed at the facility:

- (1) secondary containment areas were saturated with oil;
- (2) there were numerous oil stains at the facility indicating poor housekeeping;
- (3) there were spills from drums outside the containment area;
- (4) there were no records of inspections;
- (5) there were no records of training;
- (6) no containment in loading/unloading areas; and
- (7) facility personnel were unaware of the location or the existence of a SPCC Plan for the facility.

14. On April 6, 2001, EPA issued an information request pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318, to the Respondent. The information request informed the Respondent of the violations identified at the WOLCO Facility on July 18-19, 2000, including, among other things, that secondary containment areas were saturated with oil.

15. On May 11, 2001, Respondent responded to EPA's information request and stated, among other things, that a construction firm had been retained to remove any stained soil, rocks, and leaves from the secondary containment areas.

16. On August 13, 2001, EPA issued an Administrative Complaint and Opportunity to Request a Hearing to Respondent. The Complaint alleges that Respondent failed to prepare and implement an SPCC Plan.

17. On May 15-16, 2002, EPA conducted a follow-up SPCC inspection of the WOLCO Facility.

18. During the May 2002 inspection EPA inspectors investigated the condition of the secondary containment structures at the WOLCO Facility. Inspectors found that the secondary containment structures contained what appeared to be a relatively fresh layer of gravel. EPA inspectors dug through the gravel and found what appeared to be clear petroleum waste within and under the gravel. It appeared that no efforts had been taken by the Respondent to remove the contaminated soil from the containment area. In addition to the presence of clear petroleum waste in the gravel, the soil beneath the gravel was still saturated with oil.

19. The secondary containment structure did not have an impervious bottom to prevent the possible migration of petroleum into the soil and groundwater at the time of the July 2000 and May 2002 inspections.

20. On September 20, 1994, Missouri Department of Natural Resources ("MDNR") inspectors identified free phase petroleum product seeping from the bank of the drainage ditch adjacent to the WOLCO Facility. This past release evidences a possible hydraulic connection

between the soil beneath the WOLCO Facility and surface water and groundwater.

21. EPA has determined that the petroleum release/waste identified at the WOLCO Facility may pose a substantial present or potential hazard to human health or the environment.

IV. DETERMINATIONS AND CONCLUSIONS OF LAW

22. The WOLCO Facility is a “facility or site” within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and a “point source” within the meaning of Section 308(a) of CWA, 33 U.S.C. § 1318(a).

23. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and as defined in Section 311(a)(7) of CWA, 33 U.S.C. § 1321(a)(7).

24. Respondent is an “owner or operator” of the WOLCO Facility within the meaning of Sections 3013(a) of RCRA, 42 U.S.C. § 6934(a), and as defined in Section 311(a)(6) of CWA, 33 U.S.C. § 1321(a)(6).

25. Section 1004(27) of RCRA, 42 U.S.C. § 6905(27), defines the term “solid waste” to mean “any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations” The petroleum material in the soil and possibly in the groundwater at the WOLCO Facility is a “solid waste,” as defined in Section 1004(27) of RCRA.

26. The petroleum material in the soil and possibly in the groundwater at the WOLCO Facility is a “hazardous waste” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), which defines the term “hazardous waste” to mean:

a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may-

(A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

27. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), defines the term “disposal” to mean “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any

waters, including ground waters.” The petroleum material within the secondary containment structure and in the soil meet the definition of disposal.

28. Section 311(a)(2) of CWA, 33 U.S.C. § 1321(a)(2), defines the term “discharge” to include, but not be limited to, “any spilling, leaking, pumping, pouring, emitting, emptying or dumping” The petroleum material in the soil and potentially in groundwater that is hydraulically connected to surface water may be the result of a “discharge,” as defined in Section 311(a)(2) of CWA.

29. The drainage ditch adjacent to the WOLCO facility and the storm drain are “navigable waters,” as defined by 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

30. The petroleum material within the secondary containment structure and in the soil at the WOLCO Facility is an “oil,” as defined in Section 311(a)(1) of CWA, 33 U.S.C. § 1321(a)(1).

31. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that the WOLCO Facility, owned and operated by Respondent, is a facility at which hazardous wastes are present and at which hazardous wastes have been generated, treated, stored and disposed, and that there may be a substantial hazard to human health or the environment due to the presence of hazardous wastes and constituents and potential releases of hazardous wastes and constituents from the WOLCO Facility.

32. Based on the foregoing Findings of Fact, and pursuant to Section 308(a), 33 U.S.C. § 1318(a), EPA has hereby determined that the WOLCO Facility is a point source of contamination and therefore whenever required to carry out the objective of the Clean Water Act EPA shall require the owner or operator of a point source to install, use and maintain monitoring equipment.

33. EPA has further determined that Respondent, as owner and operator of the WOLCO Facility, is the party responsible for conducting the actions ordered herein, which are necessary to ascertain and abate the source, nature and extent of the hazard to human health or the environment.

V. ORDER

34. Based on the Findings of Fact and Determinations and Conclusions of Law, and pursuant to Section 308(a) of CWA, 33 U.S.C. § 1318(a), and Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), Respondent is hereby ordered to immediately commence pressure testing of all above ground tanks, pipelines and pumps at the WOLCO Facility and to submit pressure-test results authenticated by a Registered Professional Engineer’s signature and accompanying registration state and number within thirty (30) days of the Effective Date of this Order. Further, Respondent is ordered to submit within thirty (30) days of the Effective Date of this Order three (3) copies of a written proposal to EPA, subject to review as set forth in Section VIII, for carrying out the

activities listed below. Respondent is hereby ordered to implement such proposal once approved, or modified and approved, by EPA. Such written proposal shall be specific and shall include, but is not limited to, the following:

A. A soil sampling and analysis work plan, which shall provide for monthly progress reports, to collect and analyze representative soil samples for constituents likely to be present in the petroleum material to determine the source, nature and extent of any soil contamination in, around and from the WOLCO Facility. The samples shall include near surface soils and extend to the full depth or extent of contamination. The work plan shall include the number, location and depth of samples, the parameters of the analyses, and quality assurance measures.

B. A groundwater monitoring work plan and timetable to characterize the groundwater quality and the extent of any groundwater contamination, both vertically and horizontally, which may exist in, around and from the WOLCO Facility, and which may be migrating from the WOLCO Facility. The work plan shall include the number, location, and depth of monitoring wells, the number and frequency of samples to be taken, and the parameters of the analyses.

35. Each work plan described in sub-paragraphs A-B in paragraph 34 of this Order shall be designed to define the source, nature, location, extent, direction and rate of movement of any hazardous wastes or hazardous constituents that are present at or have been released from the WOLCO Facility. In addition to the specific requirements of each work plan described in paragraph 34, each work plan shall document the procedures that the Respondent shall use to conduct the investigations necessary to: (1) characterize the potential pathways of migration of hazardous waste or hazardous constituents; (2) characterize the sources of hazardous waste or hazardous constituent contamination; (3) define the source, degree and extent of hazardous waste or hazardous constituent contamination; (4) identify actual or potential receptors.

36. Within fifteen (15) days of the Effective Date of this Order, Respondent shall submit to EPA a written summary of any work done prior to this Order regarding responses to the discharge of oil at or from the WOLCO Facility, including but not limited to, any such work performed after the August 2000 SPCC inspection. This summary shall include, but not be limited to, maintenance programs and procedures, all analysis and data obtained from subsurface sampling of soils or groundwater, all analysis and data obtained from all pipeline leak detection tests, all analysis and data obtained from all above ground tank leak detection tests, and all maps and diagrams developed in the course of such sampling or tests, which should identify the specific location and methodology for each sample or test.

37. Within forty-five (45) days of completion of the work conducted pursuant to the work plans, and any additional work required pursuant to Section VI, Respondent shall submit to EPA a final report. Such final report shall delineate the source, nature, location, extent, direction, rate of movement of contamination at or from the WOLCO Facility. The final report also shall summarize all other actions taken to comply with this Order.

38. The written proposal and all reports or documents required to be submitted under this Order shall be mailed to the following EPA representative:

Brian Mitchell
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

39. Any variance from the approved terms and schedules in the approved work plans, or any monitoring, testing, analysis, reporting or removal conducted by Respondent without an approved work plan may be determined to be unsatisfactory by EPA, and subject Respondent to the potential consequences identified in Section XXIII.

VI. ADDITIONAL WORK

40. In addition to the work performed under the work plans described above, EPA may determine that additional monitoring, testing, analysis, reporting or removal is necessary to ascertain the nature and extent of or abate any hazard to human health and the environment, which may exist because of the presence or release of hazardous wastes or hazardous constituents at or from the WOLCO Facility. If EPA determines that such additional work is necessary, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a work plan for the additional work. EPA will specify the scope of such work plan. Such work plan shall be submitted by Respondent within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA. On approval by EPA, Respondent shall implement such work plan.

VII. MINIMUM QUALIFICATIONS FOR PERSONNEL

41. All work performed by the Respondent pursuant to this Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. Before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors Respondent wishes to use in carrying out the terms of this Order within twenty-one (21) days prior to such retention. Additionally, the Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Order. The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondent shall be subject to EPA review and approval.

42. If EPA disapproves of any individual's or contractor's technical or work-experience qualifications, EPA shall notify the Respondent in writing. Respondent shall, within ten (10) days of Respondent's receipt of EPA's written disapproval, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondent shall be deemed to have failed to comply with the Order.

VIII. SUBMISSIONS/EPA REVIEW

43. EPA will review all work plans, draft and final reports, and any other documents required to be submitted under this Order ("submissions"). EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the work. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in (a) or (b) of this paragraph.

44. Prior to approval in writing, or approval with modifications in writing, no work plan, report, or other submission shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute approval, nor shall any oral approval or oral assurance of approval be considered as binding.

45. On receipt of a notice of disapproval pursuant to paragraph 43 above, or a request for a modification, Respondent shall, within fifteen (15) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the work plan, report, schedule, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

46. Following EPA approval, or approval with modifications of a work plan, Respondent shall implement the approved document in accordance with the schedule therein.

47. All work plans, reports, or other submissions required by this Order are, on approval or approval with modifications by EPA, incorporated into this Order. Any noncompliance with such EPA-approved work plans, reports, specifications, schedules, and attachments shall constitute noncompliance with this Order. Oral advice or approvals given by EPA representatives shall not relieve Respondent of its obligation to obtain any formal, written approvals required by this Order.

48. In all instances in which this Order requires written submissions to be submitted to EPA, each submission must be signed by a "responsible official" with authority to bind the Respondent to the commitment or statement contained in each respective submission. Examples of a responsible official include the Respondent's president, vice president, secretary, or any other person authorized by the Respondent as stated above.

49. In all instances in which this Order requires written submissions to EPA, each submission must be accompanied by the following certification by a responsible official:

I certify that the information contained in and accompanying this submission is true, accurate, and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the facility official having supervisory responsibility for the person who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

The certification pursuant to this paragraph shall be followed by the name, title and signature of the responsible official.

IX. QUALITY ASSURANCE/QUALITY CONTROL

50. Respondent shall follow EPA guidance for sampling and analysis. Respondent shall develop a Quality Assurance Project Plan (QAPP) for all sampling and analysis conducted pursuant to this Order. Work plans shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved work plans must be approved by EPA prior to implementation, must be documented (including reasons for the deviations), and must be reported in the applicable report.

51. The contact person(s), name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable work plan(s).

52. All work plans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

53. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA approval in the work plan. EPA may reject any data that does not meet the requirements of the approved work plan or EPA analytical methods and may require resampling and additional analysis.

54. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of the laboratories chosen by Respondent before, during, or after sample analyses. On request by EPA, Respondent shall have its laboratory perform analyses of samples provided

by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required.

55. Respondent shall notify EPA's Project Coordinator, as identified in Section X, at least seven (7) days prior to commencement of any field work pursuant to this Order or any work plan approved in accordance with this Order.

X. PROJECT COORDINATOR

56. EPA hereby designates as its Project Coordinator:

Brian Mitchell
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101
913-551-7633

57. Within ten (10) calendar days of Respondent's receipt of this Order, Respondent shall designate a Project Coordinator and submit the designated Project Coordinator's name, address, and telephone number in writing to EPA. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval.

58. Each Project Coordinator shall, on behalf of the party that designated the Project Coordinator, oversee the implementation of this Order and function as the principal project contact. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

59. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided at least seven (7) calendar days prior to the change in Project Coordinator.

XI. THREATS TO PUBLIC HEALTH OR THE ENVIRONMENT

60. If EPA determines that activities in compliance with this Order have or may cause a release of hazardous waste or hazardous constituents, or a threat to the public health or the environment, EPA may require that Respondent stop further implementation of this Order for such a period of time as may be needed to abate any such release or threat and/or undertake any action which EPA determines is necessary to abate such release or threat; and may subsequently require Respondent to resume implementation of this Order.

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

61. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondent pursuant to this Order.

62. On request, Respondent shall submit to EPA the results of all sampling or tests or other data generated by, or on behalf of, the Respondent in implementing the requirements of this Order.

XIII. ON-SITE AND OFF-SITE ACCESS

63. Respondent shall provide access at all reasonable times to the WOLCO Facility and to all records and documentation relating to conditions at the WOLCO Facility and the activities conducted pursuant to this Order to EPA and its employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the WOLCO Facility in order to conduct activities that EPA determines to be necessary.

64. To the extent that activities required by this Order, or by any approved work plans prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts, as used in this paragraph, shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements.

65. Nothing in this Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA, CWA and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

XIV. RECORD PRESERVATION

66. Respondent shall retain, during the pendency of this Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Order. Respondent shall notify EPA, in writing, at least ninety (90) days in advance of the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the caption, docket number and date of issuance of this Order and shall be addressed as follows unless EPA provides notice to Respondent stating otherwise:

Brian Mitchell
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

Additionally, Respondent shall provide copies of data, records and documents retained under this section at any time before the expiration of the five (5) year period at the written request of EPA.

XV. INFORMATION SUBMITTED TO EPA

67. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

68. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Order. In accordance with 40 C.F.R. § 2.204(e)(4), any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made. Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to the Respondent. Respondent shall not assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

XVI. RESERVATION OF RIGHTS

69. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Order, and to order that Respondent perform additional tasks.

70. EPA expressly reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Order, including, without limitation, the right to commence a civil action against Respondent seeking an order requiring compliance with this Order or the assessment of penalties under Sections 3013(e) of RCRA, 42 U.S.C. §§ 6934(e), and Section 309(a) of the CWA, 33 U.S.C. §1319(a). This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers or authorities, civil or criminal, which EPA has under RCRA, CERCLA, CWA, the Safe Drinking Water Act (SDWA), the Clean Air Act (CAA), or any other statutory, regulatory, or common law enforcement authority of the United States.

XVII. OTHER APPLICABLE LAWS

71. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.

72. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, the CWA or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

73. This Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state or local law. This Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XVIII. OTHER CLAIMS

74. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any solid wastes, hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from the WOLCO Facility.

75. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts of omissions of Respondent or its agents, contractors, subcontractors or other representatives.

76. Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the WOLCO Facility or be liable for any claim or cause of action arising from, or on account of, any act or omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

XIX. SUBSEQUENT MODIFICATION OF ORDER

77. This Order may only be modified by written amendment signed by the undersigned EPA Region VII Director of the Air, RCRA or Toxics Division and Director of the Water, Wetlands, and Pesticides Division. Modifications in any schedule adopted pursuant to this Order may be made in writing by the EPA Project Coordinator.

78. No informal advice, guidance, suggestions, or comments by EPA shall be construed to modify the requirements of this Order. Routine communications exchanged verbally, in person, by telephone or by electronic mail between the parties to facilitate the orderly conduct of work contemplated by this Order shall not alter or waive any rights or obligations of the parties under this Order.

XX. SEVERABILITY

79. If any provision or authority of this Order, or the application of this Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Order shall not be affected thereby and shall remain in full force and affect.

XXI. TERMINATION AND SATISFACTION

80. Respondent may seek termination of this Order by submitting to EPA a written document that indicates Respondent's compliance with all requirements of this Order, and the associated dates of approval correspondence from EPA. The provisions of this Order shall be deemed satisfied on Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement for Record Preservation and Reservation of Rights" ("Acknowledgment"). The Acknowledgment shall specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed.

81. The provisions of this Order shall be deemed satisfied on Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Such notice shall not be unreasonably withheld. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to, Section XIV (Record Preservation), Section XVI (Reservation of Rights), Section XVII (Other Applicable Laws), and Section XVIII (Other Claims).

XXII. OPPORTUNITY TO CONFER

82. In accordance with Section 3013(c) of RCRA, 42 U.S.C. § 6934(c), Respondent or its representative may confer in person or by telephone with EPA regarding the Respondent's proposal. The opportunity to confer with EPA may be pursued by the Respondent either before or after the proposal is due, but not later than sixty (60) days after the issuance of this Order.

83. The scheduling of a conference with EPA does not relieve Respondent of the obligation to submit the written proposal required under Section V of this Order within thirty (30) days of the date of issuance of this Order, or to implement the proposal once approved, or approved with

modifications, by EPA.

84. At the conference described above, Respondent may appear in person or by attorney or other representative.

85. Any request for a conference with EPA, and other questions regarding this Order should be directed to:

J. Daniel Breedlove
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas
(913) 551-7172

If Respondent fails to request a conference within the time periods specified in this section, or fails to agree on a date to schedule such conference within the time periods specified in this section, Respondent shall be deemed to have waived the opportunity under Section 3013(c) of RCRA to confer with EPA.

XXIII. POTENTIAL CONSEQUENCES OF FAILURE TO COMPLY

86. If EPA determines that Respondent is not able to conduct the activities required by this Order in a satisfactory manner, or if actions carried out by Respondent are deemed unsatisfactory, then EPA or its representatives may conduct such monitoring, testing and analysis deemed reasonable by EPA to ascertain the source, nature and extent of the hazard at the property or facility of Respondent, or to authorize the State or any other person to conduct such actions. Respondent may then be ordered to reimburse EPA or its representatives, or the State or other person authorized by EPA, for the costs of such activity pursuant to Section 3013(d) of RCRA, 42 U.S.C. § 6934(d).

87. In the event Respondent fails or refuses to comply with the terms and provisions of this Order, EPA may commence a civil action in accordance with Sections 3013(e) of RCRA, 42 U.S.C. § 6934(e), and/or Section 309(b) of CWA, 33 U.S.C. § 1319(b), to require compliance with such Order and to assess a civil penalty for such failure or refusal.

XXIV. NOTICE OF INTENT TO COMPLY

88. Respondent shall, within five (5) days of the Effective Date of this Order, provide written notice to EPA of Respondent's irrevocable intent to comply with this Order. EPA shall deem a failure to respond or a failure to agree to comply with this Order as a refusal to comply with this Order.

U.S. Environmental Protection Agency ~~XXX~~ EFFECTIVE DATE
Region 7

By: 
Leo Alderman, Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region 7

7/15/02
Date

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing ORDER REQUIRING MONITORING, TESTING, ANALYSIS AND REPORTING was filed with the Regional Hearing Clerk, EPA Region VII, 901 North Fifth Street, Kansas City, Kansas 66101 and that a true copy of the same was sent by Federal Express Overnight Mail and Certified Mail, Return

Receipt Requested to:

Respondent
WOLCO, Inc.
11360 Larimore Road
St. Louis, Missouri

and to:

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

7/22/02
Date


Eileen Gendreau
Legal Assistant