



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

April 9, 2021

VIA EMAIL ONLY

Mr. Stephen J. Axtell  
Attorney for Americas International, Inc.  
Thompson Hine LLP  
Austin Landing I  
10050 Innovation Drive, Suite 400  
Dayton, Ohio 45342

[Steve.Axtell@ThompsonHine.com](mailto:Steve.Axtell@ThompsonHine.com)

Consent Agreement and Final Order  
In the Matter of Americas International, Inc.  
Docket Number TSCA-05-2021-0004

Mr. Axtell:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on April 9, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$140,158 is to be paid in the manner described in paragraphs 49-50 of the CAFO. The payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,  
**CLAUDIA  
NIESS**

Digitally signed by  
CLAUDIA NIESS  
Date: 2021.03.30 10:37:50  
-05'00'

Claudia Niess  
Enforcement Officer  
Pesticides and Toxics Compliance Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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|--|---|--|
| <b>In the Matter of:</b>   | ) | <b>Docket No. TSCA-05-2020-0005</b>  |
|  | ) |  |
| <b>Americas International, Inc.,<br/>3517 Embassy Parkway<br/>Suite 100<br/>Akron, Ohio 44333,</b> | ) | <b>Proceeding to Assess a Civil Penalty<br/>Under Section 16(a) of the Toxic Substances<br/>Control Act, 15 U.S.C. § 2615(a)</b> |
|  | ) |  |
| <b>Respondent.</b>   | ) |  |
|  | ) |  |

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 5 (“EPA”).

3. Respondent is Americas International, Inc. (“Americas Int’l.”), a corporation organized under the laws of the State of Ohio and doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. The term “chemical substance” is defined to mean “any organic or inorganic substance of a particular molecular identity including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature and any element or uncombined radical.” 15 U.S.C. § 2602(2)(A) and 40 C.F.R. § 720.3(e).

10. The term “mixture” means, in part, “any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction.” 15 U.S.C. § 2602(8).

11. The term “manufacture” is defined to mean “to import into the customs territory of the United States ..., produce, or manufacture.” 15 U.S.C. § 2602(7) and 40 C.F.R. § 720.3(q).

12. For purposes of Section 5 of TSCA, the terms “manufacture” and “process” mean manufacturing or processing for commercial purposes. 15 U.S.C. § 2604(i).

13. The term “manufacture for a commercial purpose” is defined to mean “to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer or importer, and includes, among other things ‘manufacture’ of any amount of a chemical substance or mixture for commercial distribution, including for test

marketing, and for use by the manufacturer, including use for product research and development or as an intermediate.” 40 C.F.R. § 720.3(r).

14. Section 8(a) of TSCA, 15 U.S.C. § 2607(a), states, in pertinent part, that the Administrator shall promulgate rules under which each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance shall maintain records, and shall submit to the Administrator such reports, as the Administrator may reasonably require. Section 8(a) of TSCA authorizes the Administrator to require reporting of information necessary for the administration of TSCA, including issuing regulations for the purpose of compiling and keeping current the TSCA Chemical Substance Inventory (TSCA Inventory) as required by Section 8(b) of TSCA, 15 U.S.C. § 2607(b).

15. Section 8(b) of TSCA, 15 U.S.C. § 2607(b), states that the Administrator shall compile, keep current, and publish a list (TSCA Inventory) of each chemical substance which is manufactured or processed in the United States.

16. Under the authority of Section 8(a) of TSCA, 15 U.S.C. § 2607(a), EPA promulgated the Chemical Data Reporting regulations at 40 C.F.R. Part 711, which specify reporting and recordkeeping procedures for certain manufacturers (including importers) of chemical substances.

17. The term “master inventory file” means “EPA’s comprehensive list of chemical substances which constitutes the TSCA inventory compiled under TSCA Section 8(b).” 40 C.F.R. § 711.3.

18. The term “site” means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. More than one manufacturing plant may be located on a single site. The site for an importer who imports a chemical substance described in 40 C.F.R. §

711.5 is the U.S. site of the operating unit within the person's organization that is directly responsible for importing the chemical substance. The import site, in some cases, may be the organization's headquarters in the United States. If there is no such operating unit or headquarters in the United States, the site address for the importer is the U.S. address of an agent acting on behalf of the importer who is authorized to accept service of process for the importer. 40 C.F.R. § 711.3.

19. The term "submission period" means "the period in which the manufacturing, processing, and use data are submitted to EPA." 40 C.F.R. § 711.3.

20. The regulation at 40 C.F.R. § 711.5 provides that information must be reported for any chemical substance that is in the master inventory file at the beginning of a submission period described in 40 C.F.R. § 711.20, unless the chemical substance is specifically excluded by 40 C.F.R. § 711.6.

21. For the 2016 submission period, any person who manufactured, including imported, for commercial purposes 25,000 pounds or more of a chemical substance described in 40 C.F.R. § 711.5 at any single site owned or controlled by that person during any calendar year since the previous submission period (*e.g.*, during 2012, 2013, 2014, and 2015) is subject to the Chemical Data Reporting Requirements. 40 C.F.R. § 711.8.

22. The 2016 Chemical Data Reporting submission period ran from June 1, 2016 to October 31, 2016. 40 C.F.R. § 711.20.

23. The regulation at 40 C.F.R. § 711.15 requires that any person subject to the Chemical Data Reporting Requirements must submit a "Form U" for each chemical substance described in 40 C.F.R. § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lbs. or more at any one site during any calendar

year since the last principal reporting year (*e.g.*, the principal reporting year for the 2016 submission period was calendar year 2015). The regulation further requires that, for all submission periods, a separate report must be submitted for each chemical substance at each site for which the submitter is required to report.

24. Any person subject to the Chemical Data Reporting requirements must submit the “Form U” during the applicable submission period. 40 C.F.R. § 711.20.

25. Information that must be included on each “Form U” includes, *inter alia*, a certification statement signed and dated by an authorized official of the submitter company, company and plant site information, chemical-specific information (*e.g.*, the Chemical Abstract Index name as used to list the chemical substance on the TSCA Inventory and the correct corresponding CASRN for each reportable chemical substance at each site), and chemical-specific information related to processing and use. 40 C.F.R. § 711.15.

26. Section 13 of TSCA, 15 U.S.C. § 2612, states that the Secretary of the Treasury shall refuse entry to any chemical substance, mixture or article containing a chemical substance or mixture, offered for entry into the customs territory of the United States if it is in violation of the regulations promulgated under TSCA.

27. Section 13(b) of TSCA, 15 U.S.C. § 2612, states, in pertinent part, that the Secretary of the Treasury, after consultation with the Administrator, shall issue rules for the administration of Section 13 of TSCA. The Secretary of the Treasury promulgated this “TSCA Section 13 Rule” at 19 C.F.R. Sections 12.118 through 12.127 and 127.28.

28. The TSCA Section 13 rule implements the requirement of Section 13 of TSCA that chemical substances, mixtures, or articles not in compliance with TSCA, or whose importation is not in compliance with TSCA, shall be denied entry into the customs territory of the United

States. This regulation requires that importers certify by a statement, on the entry document or invoice, that any shipment of a chemical substance subject to TSCA, imported in bulk or as part of a mixture, complies with TSCA, and that it is not offered for entry in violation of TSCA or any rule or order under TSCA, or that the chemicals imported are not subject to TSCA. 40 C.F.R. § 707.20(c)(1)(i).

29. The TSCA Section 13 regulations at 19 C.F.R. § 12.121(a)(1) and 40 C.F.R. § 707.20(b)(2)(i) require all importers to sign the following statement for each import of chemical substances subject to TSCA: “I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order under TSCA” (positive certification).

30. The regulations at 19 C.F.R. § 12.121(a)(2) and 40 C.F.R. § 707.20(b)(2)(ii) require importers of chemicals not subject to TSCA to certify that compliance with TSCA is not required by signing a statement with the following language: “I certify that all chemicals in this shipment are not subject to TSCA” (negative certification).

31. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), among other things, makes it unlawful for any person to fail to comply with any requirement of TSCA, or any rule promulgated under TSCA.

32. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), makes it unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or any rule promulgated thereunder.

33. Section 16 of TSCA, 15 U.S.C. § 2615, states that any person who violates a provision of Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty.

### **General Allegations**

34. Respondent is a North American distributor of chemicals, polymers and rubber additives to chemical and polymer manufacturers. Chemical substances provided by Americas Int'l. include antioxidants, asphalt modifiers, heat-transfer fluids, natural rubber, rubber additives, latex, specialty chemicals, stabilizers, sulphur, synthetic rubber and tackifying resins. Respondent imports several types of chemical substances into the United States.

35. At all times relevant to this CAFO, Respondent was a person, as defined at 40 C.F.R. § 710.3.

36. At all times relevant to this CAFO, Respondent owned or controlled a site at 3517 Embassy Parkway, Akron, Ohio (the facility).

### **Chemical Data Reporting**

37. During calendar years 2012 through 2015, Respondent manufactured (*i.e.*, imported) for a commercial purpose at least the following four (4) chemical substances, identified by CAS Number, in the following amounts at the facility:

**Table 1**

Pounds per Calendar Year

| <b>CAS Number</b> | <b>2012</b> | <b>2013</b> | <b>2014</b> | <b>2015</b> |
|-------------------|-------------|-------------|-------------|-------------|
| 120-78-5          | 139,947     | 221,671     | 228,662     | 160,846     |
| 149-30-4          | 60,363      | 151,854     | 206,285     | 121,826     |
| 95-33-0           | 113,538     | 148,812     | 156,526     |             |
| 96-69-5           | 222,663     |             | 26,456      | 158,730     |

38. The chemical substances identified in Table 1, above, are listed on EPA's master inventory file and as such are included in the TSCA Inventory.



39. The amounts of the chemical substances Respondent manufactured (*i.e.*, imported) at the facility subjected Respondent to the Chemical Data Reporting requirements for the 2016 submission period.

**Alleged Failure to Submit Required “Form U’s” for Imported Chemical Substances**

40. Between 2012 and 2015, Respondent manufactured (*i.e.*, imported) for a commercial purpose the four (4) chemical substances listed in Table 1, above, at its facility.

41. The annual importation volume of each of the four (4) chemical substances listed in Table 1, above, exceeded 25,000 pounds, and exceeded 100,000 pounds, during at least one of the calendar years between 2012 and 2015, as set forth in Table 1, above.

42. Respondent was required to submit a “Form U” during the applicable submission period from June 1, 2016 to October 31, 2016, for the four (4) chemical substances manufactured (*i.e.*, imported) at the facility in calendar years 2012 through 2015. 40 C.F.R. § 711.20.

43. Respondent did not submit a Form U during the applicable submission period from June 1, 2016 to October 31, 2016, for the four (4) chemical substances identified in Table 1, above, that were manufactured (*i.e.*, imported) at its facility in calendar years 2012 through 2015, in violation of 40 C.F.R. § 711.20.

44. Respondent’s failure to submit a Form U during the applicable submission period from June 1, 2016 to October 31, 2016, for the manufacture (*i.e.*, importation) of the four (4) chemical substances identified in Table 1, above, at the facility constitutes four (4) separate violations of 40 C.F.R. § 711.20 and Sections 15(1) and 15(3)(B) of TSCA, 15 U.S.C. §§ 2614(1) and (3)(B).

**Alleged Failure to Provide Required TSCA Import Certifications**

45. During calendar years 2017 and 2018, Respondent imported the following chemical substances, imported in bulk or as part of a mixture, into the Customs' territory of the United States on seventeen (17) individual dates, as follows:

**Table 2**

| <b>Date of Import</b> | <b>Entry Number</b> | <b>Product Name(s)</b>  |
|-----------------------|---------------------|---|
| 2/14/2017             | JCI-0002316-2       | HVA Powder  |
| 2/15/2017             | JCI-0002319-6       | TMBC Powder   |
| 4/4/2017              | JCI-0002421-0       | DTDM, HVA Oiled Powder, ZBPD-75   |
| 4/7/2017              | JCI-0002386-5       | HVA-2 Oiled Powder  |
| 4/30/2017             | JCI-0002470-7       | CBS Granular, PVI Powder, MBT Oiled Powder, MBT Oiled Powder, TBBS Oiled Powder, ZBPD-75                                |
| 6/6/2017              | JCI-0002535-7       | CBS Oiled Granular, CBS Granular, PVI Granular, MBT Oiled Powder, MBT Powder, OBTS Granular, MBTS Oiled Powder, ZBPD-75 |
| 6/17/2017             | JCI-0002563-9       | MBTS Oiled Powder   |
| 6/26/2017             | JCI-0002568-8       | HVA-2 Oiled Powder, MBTS Oiled Powder   |
| 7/17/2017             | JCI-0002639-7       | Pilcure MBTS  |
| 7/25/2017             | JCI-0002640-5       | MBT Powder, ZBPD-75   |
| 8/18/2017             | JCI-0002696-7       | MBTS Oiled Powder, TBBS Oiled Powder  |
| 8/21/2017             | JCI-0002713-0       | MBTS Oiled Powder   |
| 10/4/2017             | JCI-0002795-7       | Pilcure MBTS  |
| 11/1/2017             | JCI-0002854-2       | HVA-2 Oiled Powder, ZBPD-75   |
| 11/19/2017            | JCI-0002875-7       | HVA-2 Oiled Powder, MBT Oiled Powder  |
| 11/28/2017            | JCI-0002919-3       | NDBC Powder   |
| 1/14/2018             | JCI-0002979-7       | HVA-2 Oiled Powder, MBTS Oiled Powder, NDBC Powder  |

46. Respondent did not provide U.S. Customs and Border Protection with either a positive or negative TSCA import certification with its importation of the chemical substances

identified in Table 2, above, on the seventeen (17) occasions in calendar years 2017 and 2018 identified in Table 2, above, in violation of 19 C.F.R. § 12.121(a) and 40 C.F.R. § 707.20(b)(2).

47. Respondent's failure to provide a TSCA import certification at the time of importation of the chemical substances identified in Table 2, above, on the seventeen (17) occasions identified in Table 2, above, constitutes seventeen (17) separate violations of 19 C.F.R. § 12.121(a) and 40 C.F.R. § 707.20 and Sections 15(1) and 15(3)(B) of TSCA, 15 U.S.C. §§ 2614(1) and (3)(B).

### **Civil Penalty**

48. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$140,158. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered EPA's *Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13*.

49. Within thirty (30) days after the effective date of this CAFO, Respondent shall pay the \$140,158 civil penalty for the TSCA violations identified above by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "Americas

International, Inc.” and provide the docket number of this CAFO.

50. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Claudia Niess (ECP-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
niess.claudia@epa.gov

James J. Cha (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
cha.james@epa.gov

51. This civil penalty is not deductible for federal tax purposes.

52. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

53. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

54. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [cha.james@epa.gov](mailto:cha.james@epa.gov) (for Complainant), and [Steve.Axtell@ThompsonHine.com](mailto:Steve.Axtell@ThompsonHine.com) (for Respondent).

55. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

56. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

57. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state and local laws.

58. Respondent certifies that it is complying with TSCA.

59. The terms of this CAFO bind Respondent, and its successors and assigns.

60. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

61. Each party agrees to bear its own costs and attorneys' fees in this action.

62. This CAFO constitutes the entire agreement between the parties.

**Consent Agreement and Final Order**  
**In re: Americas International, Inc., Respondent**  
**Docket No. TSCA-05-2021-0005**

**Americas International, Inc., Respondent**

March 29, 2021

Date



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Wayne Stair  
President  
Americas International, Inc.

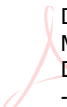
**Consent Agreement and Final Order**  
**In re: Americas International, Inc., Respondent**  
**Docket No. TSCA-05-2020-0005**

**United States Environmental Protection Agency, Complainant**

4/1/21

\_\_\_\_\_  
Date

**MICHAEL  
HARRIS**

 Digitally signed by  
MICHAEL HARRIS  
Date: 2021.04.01 09:34:01  
-05'00'

\_\_\_\_\_  
Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division

**Consent Agreement and Final Order**  
**In re: Americas International, Inc.**  
**Docket No. TSCA-05-2020-0005**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2021.04.08 14:51:29  
-05'00'

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5



**Consent Agreement and Final Order**  
**In the Matter of: Americas International, Inc.**  
**Docket Number: TSCA-05-2020-0005**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number TSCA-05-2020-0005, which was filed on April 9, 2021, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Complainant: Mr. James J. Cha  
[cha.james@epa.gov](mailto:cha.james@epa.gov)

Copy by E-mail to  
Attorney for Respondent: Mr. Stephen Axtell  
[Steve.Axtell@ThompsonHine.com](mailto:Steve.Axtell@ThompsonHine.com)

Copy by E-mail to  
Regional Judicial Officer: Ms. Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_

\_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5