

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

2017 OCT -2 11 31 15  
U.S. Environmental Protection Agency  
Region 2

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: :  
In the Matter of : :  
: :  
Atlas Refinery, Inc. : :  
: :  
Respondent. : :  
: :  
Proceeding under the Toxic : :  
Substances Control Act, as amended. : :  
-----X

**CONSENT AGREEMENT AND**  
**FINAL ORDER**

**Docket No.**  
**TSCA-02-2017-9142**

This administrative proceeding for the assessment of a civil penalty is being instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency (EPA or Agency) under authority of TSCA, has promulgated regulations governing, *inter alia*, the manufacture and importation of chemical substances, including requirements for reporting such activities to the EPA.

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that “[a]ny person who violates a provision of section 2614 or 2689 of this title [Sections 15 and 49 of TSCA, 15 U.S.C. §§ 2614 and 2689, respectively] shall be liable to the United States for a civil penalty....” Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance (Complainant) of EPA, Region 2, has been delegated the authority to prosecute this proceeding.

Pursuant to 40 C.F.R. § 22.13(b), where parties agree to a settlement of one or more causes of action prior to the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

It has been agreed by the parties to this proceeding -- Complainant and Respondent Atlas Refinery, Inc. -- that settling this matter by entering this CAFO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3) constitutes an appropriate means of resolving the claims of EPA, Region 2, against Respondent without further litigation. This CAFO is being issued pursuant to such authority. No findings of fact or conclusions of law have been made in or by a tribunal. The following constitute EPA’s findings of fact

and conclusions of law based upon information of which Complainant has been aware as of August 24, 2017.

### **FINDINGS OF FACT**

1. Respondent is Atlas Refinery, Inc. For the period including calendar years 2011 and 2012, Respondent has been (and continues to be at present) a corporation existing under New Jersey law. For said period, Respondent owned and controlled a facility (and continues to do so at present), the address of which is 142 Lockwood Street in Newark, New Jersey.

2. For the period including calendar years 2011 and 2012, Respondent at its facility manufactured and/or imported (and continues to do so at present) oils used for the tanning of leather, and such oils contain, *inter alia*, constituents derived from fish and lard. For said period, Respondent sold and distributed into interstate commerce (and continues to do so at present) such oils.

3. On July 22, 2015, a representative of EPA conducted an inspection of Respondent's Newark, New Jersey facility pursuant to the authority of Section 11 of TSCA, 15 U.S.C. § 2610.

4. In calendar year 2011, Respondent manufactured at its facility for commercial purposes each of the following five chemical substances in quantities exceeding 100,000 pounds (each such chemical substance identified by name and Chemical Abstract Services Registry Number [CAS No.]): **(a)** bisulfited fish oil, CAS No. 61788-84-9; **(b)** sulfated lard oil, sodium salt, CAS No. 68153-10-6; **(c)** oxidated fish oil, CAS No. 68187-75-7; **(d)** sulfated castor oil, sodium salt, CAS No. 68187-76-8; and **(e)** bisulfited lard oil, sodium salt, CAS No. 68424-75-8 (hereinafter collectively referred to as the "subject chemicals").

5. Each of the five subject chemicals was on the Master Inventory File (as defined in 40 C.F.R. § 711.3) as of February 1, 2012, and none was excluded from the 40 C.F.R. Part 711 Chemical Data Reporting requirements by 40 C.F.R. § 711.6.

6. Respondent (or a third-party acting on Respondent's behalf) failed to report to EPA for any of the five subject chemicals during the period from (and including) February 1, 2012 through August 13, 2013 (hereinafter, the "submissions period"), as required by 40 C.F.R. §§ 711.8(a)(1) and 711.20.

7. On September 15, 2017, Respondent submitted financial information attesting to its financial condition and setting forth an inability to pay the proposed penalty.

### **CONCLUSIONS OF LAW**

1. This is an action pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), to assess a civil penalty against Respondent for violations of provisions of Section 15 of TSCA, 15 U.S.C. § 2614. This tribunal is vested with jurisdiction over this administrative proceeding pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), and 40 C.F.R. § 22.1(a)(5).

2. Section 15(3)(B) of TSCA, 15 U.S.C. §§ 2614(3)(B), provides that it is unlawful for any person to fail or refuse to submit any reports, notices or information required by TSCA, 15 U.S.C. § 2601 *et seq.*, or a rule promulgated thereunder. A failure or refusal to submit any such required reports, notices or information constitutes a violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

3. Each of the regulations codified in 40 C.F.R. Part 711 constitutes a rule promulgated under Section 8(a) of TSCA, 15 U.S.C. § 2607(a).

4. Any person who violates Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), shall be liable to the United States for a civil penalty pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

5. For the period including calendar years 2011 and 2012, Respondent has been (and continues to be at present) a “person” (as defined by 40 C.F.R. § 704.3).

6. For the period including calendar years 2011 and 2012, Respondent has been (and continues to be at present) a “manufacturer” (as defined by 40 C.F.R. §§ 704.3 and 711.3).

7. Each of the five subject chemicals is a “chemical substance” within the meaning of Section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A).

8. Pursuant to 40 C.F.R. §§ 704.3 and 711.8(a)(1), “for the 2012 submission period, any person who manufactured (including imported) for commercial purposes” more than 100,000 lbs “of a chemical substance described in [40 C.F.R.] §711.5 at any single site owned or controlled by that person during the principal reporting year (i.e., calendar year 2011) is subject to reporting.”

9. Forty C.F.R. § 711.5 requires that “information must be reported” for “[a]ny chemical substance that is in the Master Inventory File at the beginning of the submission period described in [40 C.F.R.] § 711.20, unless the chemical substance is specifically excluded by [40 C.F.R.] §711.6.”

10. For its manufacture of the five subject chemicals at its facility in calendar year 2011, Respondent was (and is) subject to the 40 C.F.R. Part 711 reporting requirements, *i.e.* (a) Respondent was (and is) not exempted or excluded from the 40 C.F.R. Part 711 reporting requirements under either 40 C.F.R. § 711.9 or 40 C.F.R. § 711.10, and (b) none of said chemicals was excluded or exempted from the 40 C.F.R. Part 711 reporting requirement by 40 C.F.R. § 711.6.

11. The aforementioned (paragraph 6 of the “Findings of Fact” section, above) failure of Respondent (or a third-party acting on behalf of Respondent) constitutes a failure or refusal by Respondent to comply with 40 C.F.R. § 711.20.

12. Respondent’s aforementioned (paragraph 11 of this section, above) failure or refusal to comply with 40 C.F.R. § 711.20 constitutes an unlawful act pursuant to Section 15(3) of TSCA, 15 U.S.C. § 2614(3), and thus a violation of said latter provision.

## AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22,” it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: **(a)** admits EPA, Region 2, has jurisdiction under TSCA to prosecute this proceeding; **(b)** neither admits nor denies the “Findings of Fact” or “Conclusions of Law” as set forth in this document; **(c)** consents to the assessment of the civil penalty as set forth below; **(d)** consents to the issuance of the Final Order accompanying this Consent Agreement; and **(e)** waives any right it might possess to obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order (“CA/FO”) shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the “effective date”).

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall, commencing on the date of the execution of the Final Order accompanying this Consent Agreement, maintain compliance with all applicable requirements of 40 C.F.R. Part 711 regarding the submission of Master Inventory File reports to EPA.

2. Respondent shall pay a civil penalty to EPA in the amount of **FIFTY THOUSAND (\$50,000.00) DOLLARS**, to be paid in two installments within six months (180 days<sup>1</sup>) of the date the Acting Regional Administrator of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (the “due date”), as follows:

The first installment of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS is to be received thirty (30) days from the due date; and

The second installment of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS is to be received one hundred eighty (180) days from the due date.

Each payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier’s check, certified check or by electronically via Fedwire. If payments are made by cashier’s check or by certified check, such checks shall be made payable to the “**Treasurer, United States of America,**” and shall be identified with a notation thereon listing the following: ***In re Atlas Refinery, Inc., Docket Number TSCA-02-2017-9142.*** If payments are made by either form of check, each such payment shall be mailed to the following address:

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<sup>1</sup> For purposes of this CA/FO, days shall mean calendar days.

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

Alternatively, if Respondent chooses to make payments electronically by Fedwire, Respondent shall then provide the following information to its remitter bank when each such payment in accordance with this paragraph is being made:

- a. Amount of Payment
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
- d. Federal Reserve Bank of New York ABA routing number: **021030004**
- e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
- f. Name of Respondent: **Atlas Refinery, Inc.**
- g. Case docket number: **TSCA-02-2017-9142**

3. Payment instructions:

- a. Each payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes the payments by cashier's check or certified check, then each such check is to be *received* at the above-listed address on or before the date specified. If Respondent makes payments electronically, then each such electronic payment is to be *received* on or before the date specified.
- b. Failure to pay the specified amounts in full within the time periods set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- c. Furthermore, if either of the required payments is not received on or before the date when such payment is made due under the terms of this document, interest therefor shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date such payment was to have been made through the date such payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date such payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to the principal amount that has not been received by the EPA within ninety (90) days of the date for which payment was required hereto to have been made.

4. The civil penalty provided for in this section (including any payment(s) for interest or late payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

5. By entering into this Consent Agreement, Respondent hereby certifies that, as of the date of the execution of the Final Order accompanying this Consent Agreement, it has attempted to submit the reports for the 2011 calendar year required pursuant to 40 C.F.R. Part 711 for the five subject chemicals but has been unable to do so for reasons beyond its control. Respondent has asserted that the EPA electronic filing system no longer accepts 40 C.F.R. Part 711 reports for the 2011 calendar year, and thus it is foreclosed from submitting information relating to its 2011 manufacture of the five subject chemicals.

6. By entering into this Consent Agreement, Respondent hereby certifies that, as of the date of the execution of the Final Order accompanying this Consent Agreement, Respondent, in the operations at its facility in Newark, New Jersey, is in full compliance with the applicable provisions of the 40 C.F.R. Part 711 TSCA Chemical Data Reporting requirements for the 2016 submission period.

7. Respondent hereby certifies that the information and documentation it submitted to EPA on September 15, 2017 and September 26, 2017 regarding its financial condition are accurate, complete and not misleading. EPA has relied on the accuracy of said financial information and documentation during the negotiation of this settlement. Submission of false or misleading information or documentation to the federal government may subject a person to separate criminal and/or civil liability. Nothing in this consent agreement is intended or is to be construed as limiting, waiving or otherwise compromising any authority of EPA (or the United States on behalf of EPA) to seek and obtain appropriate relief as provided under law if EPA obtains evidence that the information or documentation provided and/or representations made to EPA regarding Respondent's claim of inability to pay are false, misleading or, in any material aspect, inaccurate.

8. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed consent agreement and accompanying executed final order, and Respondent consents to service upon such representative by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2:

Thomas H. Prol, Esq.  
Laddey, Clark & Ryan, LLP  
60 Blue Heron Road, Suite 300  
Sparta, New Jersey 07871

Receipt of the fully executed consent agreement/final order ("CAFO") by said designated representative shall constitute Respondent's receipt and acceptance of said CAFO.

9. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement. Respondent further consents to making payment of the entire amount of the civil penalty in accordance with the terms and schedule set forth above.

10. Any responses, documentation and other communications submitted to EPA in connection with this Consent Agreement shall be sent to:

Mark Bean, Life Scientist  
U.S. Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue  
Edison, New Jersey 08837, and

Lee A. Spielmann  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Unless the above-named EPA contacts are subsequently advised in writing, EPA shall direct any future (*i.e.* subsequent to service of the fully executed CAFO having been made upon Respondent, as set forth in paragraph 8 of this section, above) written communications to Respondent related to this proceeding (including any communications related to failure to make payment in accordance with the provisions of this CAFO) to the following addressee:

Thomas H. Prol, Esq.  
Laddey, Clark & Ryan, LLP  
60 Blue Heron Road, Suite 300  
Sparta, New Jersey 07871

11. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit. Payment of the civil penalty in full as provided herein, together with any late payment for interest, shall not nullify, abrogate or otherwise render nugatory Respondent's obligation to comply with applicable TSCA statutory and regulatory requirement for its manufacture and importation of chemical substances, including new chemical substances, and to maintain such compliance.

12. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the administrative claims herein set forth in the "Findings of Fact" and the "Conclusions of Law" (as set forth above). Respondent making full payment of the penalty amount set forth above (*i.e.* \$50,000.00) in accordance with the terms herein as well as any interest or late payment handling charges that accrue, and subject to 40 C.F.R. § 22.31(a), shall only resolve Respondent's liability for federal civil penalties for the facts and violations described in the "Findings of Fact" and "Conclusions of Law" sections, above. Notwithstanding the above, nothing herein shall affect the authority of the EPA (or the United States on behalf of EPA) to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to, *inter alia*, Respondent's manufacture (including importation) of chemical substances for commercial purposes at Respondent's facility.

13. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent, in entering into and accepting this Consent Agreement, hereby waives any right it might possess to seek or to obtain judicial review of this CAFO (including of the "Findings of Fact" and the "Conclusions of Law" or any requirements set forth herein) under TSCA, the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, or other applicable law.

14. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by the United States on behalf of EPA: **(a)** to enforce this CAFO; or **(b)** to enforce a judgment relating to this CAFO. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CAFO, and may subject Respondent to an action, suit or proceeding by the United States to enforce the provisions of this CAFO.

15. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

16. EPA's entering into this Consent Agreement is premised upon Respondent not having misrepresented or concealed any material fact in any of its written or oral representations to the Agency. If any material fact has been misrepresented or concealed, EPA may, at its discretion, declare this Consent Agreement and accompanying Final Order null and void *ab initio*.

17. Compliance with the requirements and provisions of this CAFO shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of TSCA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

18. Nothing in this CAFO intended or is to be construed to operate to resolve or serve as a defense to any criminal liability of Respondent for any TSCA violations, whether such violations occurred prior or subsequent to the filing of the Final Order accompanying this Consent Agreement.

19. If any requirement or obligation of this CAFO is held invalid or stayed by a court of competent jurisdiction, such action is not intended, and shall not, negate, abrogate or otherwise affect the validity and Respondent's obligation to comply with, and to maintain such compliance, with the remaining requirements and provisions of this CAFO.

20. Each party shall bear its own costs and fees in connection with this proceeding.

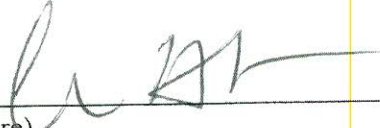
21. This CAFO is intended to, and shall, be fully binding upon the parties, their officers, directors, employees, successors and/or assigns (as applicable).

22. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and, further, that they are authorized to bind the party on whose behalf they are signing to comply with the applicable terms, conditions and requirement set forth in this Consent Agreement.



*In re Atlas Refinery, Inc.*  
Docket Number TSCA-02-2017-9142

RESPONDENT  
ATLAS REFINERY, INC.:

BY:   
(Signature)

NAME: Thomas Pro  
(Please Print)

TITLE: Legal Counsel to Atlas Refinery Inc.

DATE: 9/28/17

COMPLAINANT:



Dore F. LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2

DATE: 9/29/17

***In re Atlas Refinery, Inc.***  
**Docket Number TSCA-02-2017-9142**

**FINAL ORDER**

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Atlas Refinery, Inc.*, bearing Docket Number TSCA-02-2017-9142. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and is hereby, ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3).



\_\_\_\_\_  
**Catherine R. McCabe**  
Acting Regional Administrator  
United States Environmental Protection Agency – Region 2

DATE: \_\_\_\_\_

9/29/17

*In re Atlas Refinery, Inc.*  
Docket No. TSCA-02-2017-9142

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "CONSENT AGREEMENT AND FINAL ORDER," said Final Order having been duly executed by the Acting Regional Administrator of the United States Environmental Protection Agency (EPA), Region 2, on September 29, 2017, in the above-referenced administrative enforcement proceeding in the following manner to the addressees listed below:

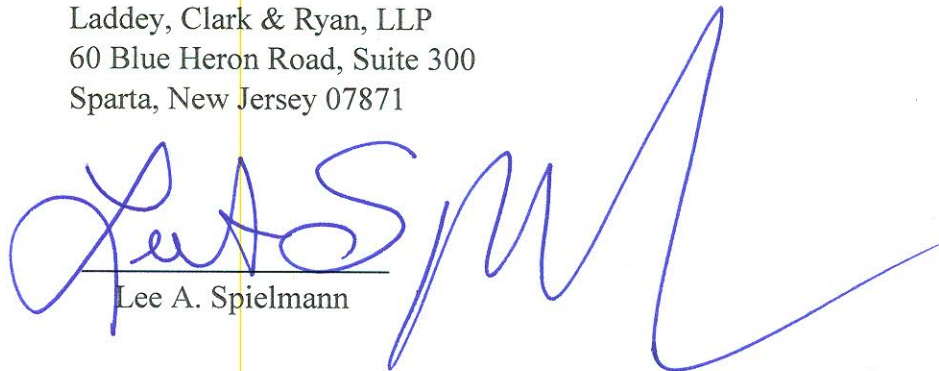
Original and One Copy  
By Inter-Office Mail:

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Copy by First Class Mail:

Thomas H. Prol, Esq.  
Laddey, Clark & Ryan, LLP  
60 Blue Heron Road, Suite 300  
Sparta, New Jersey 07871

Dated: October 3, 2017  
New York, New York

  
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Lee A. Spielmann