



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAY 04 2017

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. John Bryant  
Chief Executive Officer  
Phoenix Chemical Company, Inc.  
202 Gee Road  
Calhoun, Georgia 30701

Re: Phoenix Chemical Company, Inc.  
Consent Agreement and Final Order  
Docket No. TSCA-04-2017-2514(b)

Dear Mr. Bryant:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22. Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also, enclosed please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Phoenix Chemical Company, Inc., on notice of its potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4.

Should you have any questions concerning the SEC's environmental disclosure requirements, or your compliance status in the future, please contact Mr. Gopal Timsina of the EPA Region 4 staff at (404) 562-9017. Thank you for your cooperation in reaching resolution of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Toney", with a long horizontal flourish extending to the right.

Anthony G. Toney  
Chief  
Chemical Safety and Enforcement Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

In the Matter of: )  
 )  
Phoenix Chemical Company, Inc. ) Docket No. TSCA-04-2017-2514(b)  
 )  
Respondent. )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, U. S. Environmental Protection Agency, Region 4. Respondent is Phoenix Chemical Company, Inc.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by the EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division by the EPA's Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has

the authority to commence an enforcement action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony; the making of any argument; or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to: (1) fail to maintain records, submit reports or information, or permit access to or allow copying of records including but not limited to records and reports required by Section 8 of TSCA, 15 U.S.C. § 2607; and (2) export notices required by Section 12(b) of TSCA, 15 U.S.C. § 2611(b).
5. Any person who violates a provision of Section 15 of TSCA shall be liable for a civil penalty for each such violation in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation.
6. All Confidential Business Information (CBI) in this CAFO has been redacted. To determine the identity of the chemical substances referenced in this CAFO or the CBI that was deleted (CBI deleted), Complainant and/or Respondent should refer to the show cause letter dated July 21, 2016, sent to the Respondent identifying the potential

violations of TSCA and notifying the Respondent of the opportunity to show cause why the EPA should not proceed with an enforcement action.

### **III. Specific Allegations**

7. Respondent operates a chemical importing, exporting and manufacturing business located at 202 Gee Road, Calhoun, Georgia.
8. Respondent is a manufacturer and an importer as those terms are defined in 40 C.F.R. § § 710.3 and 711.3.
9. On May 10, 2016, Respondent submitted certain records to the EPA regarding Respondent's compliance with TSCA, including manufacturing, import, and export records.

#### **Failure to Submit Chemical Data Reporting Information for 2011**

10. Pursuant to 40 C.F.R. § 711.8(a), any person who manufactured (including imported) for commercial purposes 25,000 pounds (11,340 kilogram (kg)) 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 the principal reporting year (i.e., calendar year 2011) is subject to the Chemical Data Reporting (CDR) requirements under Section 8(a) of TSCA, 15 U.S.C. § 2607(a) and 40 C.F.R. Part 711.
11. Upon review of Respondent's 2011 production records, the EPA determined that Respondent manufactured (including imported) a reportable quantity (> 25,000 pounds) of eight (8) chemical substances for commercial purposes. These chemical substances are identified as Chemicals A, B, C, D, E, F, G, and H.

12. All eight chemical substances referenced in paragraph 11 were listed on the TSCA Master Inventory File at the beginning of the CDR period (February 1, 2012, through August 13, 2012) referenced at 40 C.F.R. § 711.20.
13. Pursuant to 40 C.F.R. § 711.15, Respondent was required to submit to the EPA a CDR Report for the reportable chemical substances that were manufactured (including imported) for commercial purposes in quantities greater than 25,000 pounds in calendar year 2011 by no later than the end of the reporting period, August 13, 2012. The eight chemical substances referenced in paragraph 11 were subject to the 2012 CDR.
14. Pursuant to 40 C.F.R. §§ 711.15 and 711.35, any person who reports CDR information to the EPA must do so using the e-CDRweb reporting tool provided by the EPA at <http://www.epa.gov/iur>. The Respondent did not report CDR information for 2011 during the submission period (February 1, 2012, through August 13, 2012).
15. By not submitting the 2012 CDR Report to the EPA during the submission period for the eight chemical substances referenced in paragraph 11, Respondent failed to comply with 40 C.F.R. § 711.15.
16. As stated in 40 C.F.R. § 711.1(c), Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under 40 C.F.R. Part 711.
17. Section 16 of TSCA provides that any person who violates a provision of Section 15 of TSCA is liable to the United States for a civil penalty and may be criminally prosecuted.

**Failure to Submit Export Notifications to the EPA**

18. Pursuant to 40 C.F.R. § 721.20, persons who intend to export a chemical substance identified in 40 C.F.R. Part 721, Subpart E, or in any proposed rule which would amend Subpart E, are subject to the export notification provisions of Section 12(b) of TSCA, 15

U.S.C. § 2611, and the regulations that interpret TSCA Section 12(b), promulgated at 40 C.F.R. Part 707.

19. Pursuant to Section 12(b) of TSCA, 15 U.S.C. § 2611, as also noted in 40 C.F.R. § 707.60(a), any person who exports or intends to export a chemical substance or mixture must notify the EPA of such exportation to a particular country if any of the following actions have been taken pursuant to TSCA with respect to that chemical substance or mixture: (1) data are required under section 4 or 5(b); (2) an order has been issued under section 5; (3) a rule has been proposed or promulgated under section 5; or (4) an action is pending, or relief has been granted under section 5 or 7.
20. A review of Respondent's export records from 2014 to 2016 showed that Respondent exported Chemicals I and J to [CBI deleted].
21. As of [CBI deleted], Chemical I was subject to a final significant new use rule (SNUR) promulgated at 40 C.F.R. §721.9582, and exporters were required to submit notice of exports if they exported or intended to export Chemical I to a foreign country.
22. On [CBI deleted], the EPA published a Federal Register notice proposing a SNUR for Chemical J.
23. Pursuant to 40 C.F.R. §707.65(b), if the EPA action that prompts the requirement to submit an export notice is a proposed rule (per 40 C.F.R. § 707.60), the requirement to submit export notices to EPA shall begin thirty days after publication of the action in the Federal Register. As of October 31, 2014, exporters of Chemical J were required to submit an export notice if they exported or intended to export Chemical J to a foreign country.

24. Based on the EPA's SNUR and proposed SNUR promulgated under section 5 of TSCA, as described in paragraphs 21 and 22 above, and Respondent's export activities associated with Chemicals I and J, and pursuant to the requirements of 40 C.F.R. § 707.65(a)(3), the Respondent was required to submit export notices to the EPA for Chemicals I and J, postmarked within seven days of forming the intent to export or on the date of export for each chemical, whichever was earlier.
25. Respondent failed to postmark export notices to the EPA for Chemicals I and J within seven days of forming the intent to export or on the date of export, whichever was earlier, and failed to timely submit the export notices for Chemicals I and J.
26. By not postmarking and timely submitting export notices to the EPA for Chemicals I and J, Respondent failed to comply with 40 C.F.R. § 707.60(a).
27. Pursuant to 40 C.F.R. § 707.60(f), failure to comply with TSCA Section 12(b) as set forth in Part 707 will be considered a violation of TSCA Section 15(3), 15 U.S.C. § 2614(3), and will subject the exporter to the penalty, enforcement, and seizure provisions of TSCA Sections 16 and 17, 15 U.S.C. §§ 2615 and 2616.

#### **IV. Consent Agreement**

28. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
29. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
30. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.

31. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with the TSCA regulations referenced in this CAFO.
32. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
33. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

#### **V. Final Order**

34. Respondent is assessed a civil penalty of **ONE HUNDRED SEVENTY THOUSAND, FIVE HUNDRED-TWENTY (\$170,520)** which shall be paid within thirty (30) days of the effective date of the CAFO.
35. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America." **The Respondent shall note on the face of the check the Respondent's name and the Docket Number associated with this CAFO.** The penalty payment shall be sent by one of the methods below.

Address for standard delivery:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, Missouri 63197-9000



Address for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc.):

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
Delivery Contact Phone Number: (314) 425-1819

36. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960; and

Gopal Timsina  
Chemical Management and Emergency Planning Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

37. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30)

calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

39. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
40. This CAFO shall be binding upon the Respondent and its successors and assigns.
41. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

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**VI. Effective Date**

42. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Respondent: Phoenix Chemical Company, Inc.**

**Docket No.: TSCA-04-2017-2514(b)**

By: John E. Bryant, Pres. Date: 3/28/17  
Name: John E. Bryant  
Title: President

**Complainant: U. S. Environmental Protection Agency**

By: Carol G. Kember for Date: 4/18/17  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

**APPROVED AND SO ORDERED** this 3<sup>rd</sup> day of May, 2017.

By: Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Phoenix Chemical Company, Inc. Docket Number: TSCA-04-2017-2514(b), to the addressees listed below.

John Bryant  
Chief Executive Officer  
Phoenix Chemical Company, Inc.  
202 Gee Road  
Calhoun, Georgia 30701 USA

(via Certified Mail, Return Receipt Requested)

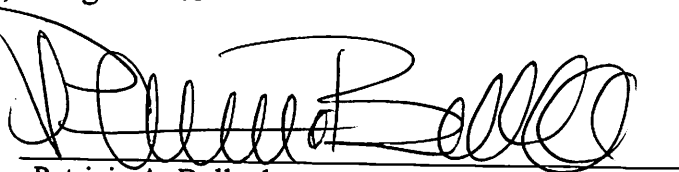
Gopal Timsina  
Chemical Management and Emergency  
Planning Section  
U.S. EPA Region 4  
61 Forsyth Street, NW  
Atlanta, Georgia 30303

(via EPA's internal mail)

Robert Caplan  
Senior Attorney  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, NW  
Atlanta, Georgia 30303

(via EPA's internal mail)

By:



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth St., S.W.  
Atlanta, Georgia 30303  
(404) 562-9511

Date:

5-4-17