

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

In the Matter of:

Whitaker Oil Company

Respondent.

Docket No. TSCA-04-2021-3005(b)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a) and Sections 22.13(b) and 22.18 of 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 Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
5. Respondent is Whitaker Oil Company, a corporation doing business in the State of Georgia. This proceeding pertains to Respondent's facility, located at 1557 Marietta Road NW, Atlanta, Georgia 30318 (Facility).

III. GOVERNING LAW

6. Section 8(b) of TSCA requires the EPA to compile, keep current and publish a list of each chemical substance that is manufactured or processed, including imports, in the United States for uses under TSCA. The list is also known as the “TSCA Inventory.”
7. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to fail to establish or maintain records, submit reports, notices or other information, or permit access to or allow copying of records, including, but not limited to records and reports, as required by Section 8 of TSCA or any regulation thereunder.
8. The term “person” is defined in 40 C.F.R. § 704.3, to include any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.
9. The term “importer” is defined in 40 C.F.R. § 704.3, to mean any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States.
10. The term “import” is defined in 40 C.F.R. § 704.3, to mean to import for commercial purposes.
11. The term “import for commercial purposes” is defined in 40 C.F.R. § 704.3, to mean to import with the purpose of obtaining an immediate or eventual commercial advantage for the importer and includes the importation of any amount of a chemical substance or mixture.
12. The term “manufacturer” is defined in 40 C.F.R. § 704.3, to mean a person who imports, produces, or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substance is a manufacturer of that component chemical substance.
13. The term “manufacture” is defined in 40 C.F.R. § 704.3, to mean manufacture for commercial purposes.
14. Pursuant to 40 C.F.R. § 711.8(a), 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, in any of the calendar years 2016, 2017, 2018 or 2019 is subject to the Chemical Data Reporting (CDR) requirements in 40 C.F.R. Part 711 for the 2020 submission period.
15. Pursuant to 40 C.F.R. § 711.9, a person described in 40 C.F.R. § 711.8 is not subject to the CDR requirements in Part 711 if that person qualifies as a small manufacturer or small government as those terms are defined in 40 C.F.R. § 704.3. Notwithstanding this exclusion, a person who qualifies as a small manufacturer or small government is subject to this part with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA Sections 4, 5(b)(4), or 6, or is the subject of an order in effect under TSCA Sections 4 or 5(e), or is the subject of relief that has been granted under a civil action under TSCA Sections 5 or 7.

16. The term “small manufacturer or importer” is defined in 40 C.F.R. § 704.3, to mean a manufacturer or importer that meets either of the following standards: (1) First standard. A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$120 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on the production or importation of that substance at that site, unless the manufacturer or importer qualifies as small under standard (2) of this definition; and (2) Second standard. A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$12 million, regardless of the quantity of substances produced or imported by that manufacturer or importer.
17. Pursuant to 40 C.F.R. § 711.20, the 2020 submission period ran from June 1, 2020, to January 29, 2021. The 2020 CDR reports were required to be submitted to the EPA during this period of time.
18. Pursuant to 40 C.F.R. § 711.5, any chemical substance that is in the TSCA Master Inventory File at the beginning of a submission period described in 40 C.F.R. § 711.20 must be reported pursuant to the CDR requirements under Section 8(a) of TSCA and 40 C.F.R. Part 711, unless the chemical substance is specifically excluded by 40 C.F.R. § 711.6.

IV. FINDINGS OF FACTS

19. On July 28, 2021, an authorized agent of the EPA, conducted an inspection at Respondent’s Facility pursuant to Section 11(a) of TSCA, 15 U.S.C. § 2610(a).
20. On August 10, 2021, Respondent submitted certain records to the EPA regarding Respondent’s annual sales, including for the calendar year 2019.
21. Records submitted to the EPA by the Respondent show that Respondent’s annual sales in 2019 were between \$12 million and \$120 million. Although Respondent met the total annual sales limit for being a small manufacturer (less than \$120 million), it exceeded the volume limit of 100,000 pounds and therefore did not qualify for being considered a small manufacturer under the first standard in the definition of “small manufacturer” in 40 C.F.R. 711.3. Additionally, because Respondent’s sales exceeded \$12 million, it did not qualify as a small manufacturer under the second standard. Therefore, Respondent was subject to the CDR reporting requirements for the 2020 reporting period.
22. A review of Respondent’s 2016 to 2019 import records revealed that Respondent imported a reportable quantity (greater than 100,000 pounds) of Chemical A to its Facility for commercial purposes in any of the calendar years 2016, 2017, 2018 or 2019.
23. Pursuant to 40 C.F.R. § 711.15, Respondent was required to submit to the EPA its CDR report for any reportable chemical substance that was manufactured (including imported) for commercial purposes in quantities greater than 100,000 pounds in any of the calendar years 2016, 2017, 2018 or 2019 by no later than the end of the 2020 CDR submission period, which was January 29, 2021. Because Respondent imported greater than 100,000 pounds of Chemical A in 2019, Respondent was required to report Chemical A in a 2020 CDR. However, Respondent

did not submit a 2020 CDR report for Chemical A within the submission period. Respondent submitted its 2020 CDR for Chemical A on July 2, 2021.

V. ALLEGED VIOLATIONS

24. Based on the EPA's investigation, including a review of the Respondent's records as noted above, the EPA alleges that the Respondent failed to submit a CDR report for Chemical A by January 29, 2021, in violation of 40 C.F.R. §§ 711.8 and 711.15 and Section 15 of TSCA, 15 U.S.C. § 2614.

VI. STIPULATIONS

25. Pursuant to 40 C.F.R. § 22.13(b), the issuance of this CAFO simultaneously commences and concludes this proceeding.

26. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

27. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any rights it may possess at or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or

communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and

- f. agrees to comply with the terms of the CAFO.
28. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

29. Respondent is assessed a civil penalty of **TWENTY-THREE THOUSAND, FOUR-HUNDRED, FIFTY-THREE DOLLARS (\$23,453)**, which shall be paid within thirty (30) days of the effective date.
30. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Code: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact number: (314) 425-1819

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

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

31. Respondent shall send proof of each payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

Gopal Timsina
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
timsina.gopal@epa.gov

32. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Facility name and “Docket No. TSCA-04-2021-3005(b).”
33. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 90 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 90 days of the Effective Date of this CAFO interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the

Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).

- b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
 - c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
34. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:
- a. refer the debt to a credit reporting agency or a collection agency 40 C.F.R. §§ 13.13 and 13.14;
 - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
 - c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
 - d. request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review. Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
35. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

36. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
37. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
38. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 16(a) of the Act, 42 U.S.C. § 2615(a), as well as criminal sanctions as provided in

Section 16(b) of the Act, 42 U.S.C. § 2615(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

39. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
40. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
41. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
42. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
43. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
44. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential information under Section 14 of TSCA, 42 U.S.C. § 2613, and 40 C.F.R. Part 2 and the Freedom of Information Act (FOIA) or personally identifiable information.
45. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
46. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
47. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
48. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all

civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

49. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
50. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

51. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

[Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement In the Matter of **Whitaker Oil Company**, Docket No. **TSCA-04-2021-3005(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Victoria R. Whitaker
Signature

11/3/21
Date

Printed Name: VICTORIA R. Whitaker

Title: Treasurer

Address: 1557 Marietta Rd NW, Atlanta, Ga 30318

The foregoing Consent Agreement In the Matter of **Whitaker Oil Company**, Docket No. **TSCA-04-2021-3005(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Whitaker Oil Company

Respondent.

Docket No. TSCA-04-2021-3005(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **Whitaker Oil Company**, Docket No. **TSCA-04-2021-3005(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent:

Kelly N. Garson
Associate
Bergeson & Campbell PC
2200 Pennsylvania Avenue, Suite 100
Washington, DC 20037
kgarson@lawbc.com
(202) 557-3822

Lynn L. Bergeson
Managing Partner
Bergeson & Campbell PC
2200 Pennsylvania Avenue, Suite 100
Washington, DC 20037
lbergeson@lawbc.com
(202) 557-3801

To EPA:

Gopal Timsina, Environmental Engineer
timsina.gopal@epa.gov
(404) 562-9017

Lynda Crum, Attorney
crum.lynda@epa.gov
(404) 562-9524

Robert Caplan, Senior Attorney
caplan.robert@epa.gov
(404) 562-9520

U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Shannon L. Richardson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4