

PUBLIC NOTICE
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4
ENFORCEMENT AND COMPLIANCE ASSURANCE DIVISION
WATER ENFORCEMENT BRANCH
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, S.W.
ATLANTA, GEORGIA 30303

DATE: May 9, 2019

PUBLIC NOTICE No.: CWA-04-2019-4501(b)

**Notice of Proposed Issuance of
Consent Agreement and Final Order**

The U.S. Environmental Protection Agency (EPA), Region 4, proposes to issue a Consent Agreement and Final Order (CAFO), Docket No. CWA-04-2019-4501(b), that assesses an administrative penalty of \$55,000.00 to Phoenix Chemical Company, Inc. (Respondent), 202 Gee Road, Calhoun, Gordon County, Georgia under the authority of Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B).

The CAFO will settle the EPA allegations that the Respondent has made unauthorized discharges of Industrial User wastewater to the City of Calhoun, Georgia's Publicly Owned Treatment Works (POTW) in violation of Section 307 of the CWA, 33 U.S.C. § 1317. The unauthorized activity occurred at 202 Gee Road, Calhoun, Gordon County, Georgia.

Any person wishing to comment on any aspect of the proposed CAFO may submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. Comments must be submitted within thirty (30) days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

Because this matter involves a CWA Section 309(g) proceeding that is proposed to be simultaneously commenced and settled under 40 C.F.R. § 22.13(b), the EPA cannot resolve or settle this CAFO until ten (10) days after the close of the public comment period in accordance with 40 C.F.R. § 22.45(b) and (c).

FOR FURTHER INFORMATION: Persons wishing to receive a copy of 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, which apply to this matter, or comment upon the proposed penalty assessment, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for this action is located in the EPA Region Office at 61 Forsyth Street, S.W., Atlanta, Georgia, and the file will be open for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
PHOENIX CHEMICAL CO., INC.)	FINAL ORDER
CALHOUN, GEORGIA,)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2019-4501(b)
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CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40,176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, of the EPA, Region 4 ("Complainant").

II. EPA's Allegations

3. To accomplish the objective of the CWA, as defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into a Publicly Owned Treatment Works ("POTW") except as in compliance with Pretreatment Standards outlined in Section 307 of the CWA, 33 U.S.C. § 1317 and its implementing regulations.

4. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, the EPA has established standards that govern discharges into POTWs that discharge to navigable waters. The General Pretreatment Regulations, found at 40 C.F.R. Part 403, are designed to ensure that each POTW can comply with its National Pollutant Discharge Elimination System ("NPDES") permit.

5. EPA has promulgated pretreatment standards for specified categories of industrial users pursuant to Section 307(b) of the CWA. These categories of industrial users, or

“categorical” industrial users, are subject to specific pretreatment requirements set forth at 40 C.F.R. Parts 405-471.

6. The Liquid Detergent manufacturing industry is one of the specified industries subject to categorical pretreatment standards. *See* 40 C.F.R. Part 417, Subpart P. The Organic Chemicals, Plastics and Synthetic Fibers (“OCPSF”) manufacturing industry is another of the specified industries subject to categorical pretreatment standards. *See* 40 C.F.R. Part 414.

7. Pursuant to Section 307(d) of the CWA, it is unlawful to operate any source in violation of applicable effluent standards or prohibitions or pretreatment standards. 33 U.S.C. § 1317(d)..

8. Phoenix Chemical Company, Inc. (“Phoenix Chemical” or “Respondent”) is a corporation duly organized and existing under the laws of the State of Georgia and is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and is thus subject to applicable CWA requirements.

9. From June 1996 to February 1, 2018, Respondent owned and operated a miscellaneous chemical blending, distribution, and manufacturing facility (“Facility”) located at 202 Gee Road, Calhoun, Gordon County, Georgia 30701, which primarily serviced the varying needs of the surrounding denim and carpet industries.

10. Respondent discharged from its Facility “pollutants” subject to “pretreatment standards” and “prohibitions” within the meaning of Sections 307(b), (c) and (d) of the CWA, 33 U.S.C. § 1317(b), (c) and (d). Such pollutants were discharged from the Facility to the Calhoun Wastewater Treatment Plant (“WWTP”), located at 205 Kirby Road, Calhoun, Georgia, and its conveyances, which comprise a “POTW” and “municipality” within the meaning of Sections 212(2) and 502(4) of the CWA, 33 U.S.C. §§ 1292(2) and 1362(4). This POTW is owned and operated by the City of Calhoun, Georgia (“Calhoun”).

11. The Facility was a “significant industrial user,” as defined in 40 C.F.R. § 403.3(v), and a “new source,” as defined at 40 C.F.R. § 403.3(m).

12. Pursuant to 40 C.F.R. § 403.6(b), “new sources” shall install and have in operating condition all pollution control equipment required to meet any applicable Pretreatment Standard prior to beginning discharge to a POTW.

13. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a state may establish its own pretreatment program by receiving approval of the program by the Administrator of the EPA.

14. The Georgia Environmental Protection Division (“GAEPD”) is the state agency with the authority to administer the Pretreatment Program in Georgia pursuant to 33 U.S.C. § 1342(b), implementing regulations, and a Memorandum of Agreement dated October 24, 2007. As such, GAEPD is the Approval Authority as defined by 40 C.F.R. § 403.3(c).

15. The GAEPD issued Calhoun an NPDES permit, No. GA0030333, for the POTW, effective on March 1, 2016, which includes, inter alia, effluent limitations for the discharge of certain pollutants to Oostanaula River, a navigable water, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

16. Pursuant to 40 C.F.R. § 403.8, Calhoun has developed an approved pretreatment program. As such, Calhoun is the Control Authority as defined by 40 C.F.R. § 403.3(f) and is authorized to issue pretreatment permits.

17. In states authorized to implement their own pretreatment programs, the EPA retains authority concurrent with the authorized state pretreatment program to enforce state- and POTW-issued permits, pursuant to 33 U.S.C. §§ 1319(a)(3) and 1342(i).

18. In June 1996, in coordination with Calhoun, the Facility started discharging process wastewater to the Calhoun POTW. At various times during its course of operation by Respondent, the Facility discharged different types of process wastewaters to the Calhoun POTW based primarily on the needs of the Facility's customers.

19. On March 1, 2016, an EPA contractor conducted a Pretreatment Reconnaissance Inspection ("Inspection") of the Facility in order to assess Respondent's compliance with the pretreatment standards and the CWA.

20. On November 1, 2016, Calhoun issued a Categorical Industrial User ("CIU") permit ("Permit") to Respondent for the Facility. Pursuant to its authority as the Control Authority, Calhoun issued the Permit based on the OCPSF category found at 40 C.F.R. Part 414.

21. On January 20, 2017, the EPA sent an Information Request Letter, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to Respondent requesting information related to pretreatment standards compliance and the business information related to the Facility. A copy of the March 1, 2016 Inspection Report was enclosed with this Information Request Letter, which indicated the EPA's belief that Respondent is likely subject to the Liquid Detergents categorical standards found at 40 C.F.R. § 417.166.

22. On June 19, 2017, the EPA sent a Supplemental Information Request Letter, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to Respondent requesting information related to production-based measures and other pretreatment standards compliance matters.

23. Pursuant to 40 C.F.R. § 417.166(a), a new source subject to Part 417, Subpart P may not discharge process wastewater streams in which both the COD/BOD₇ ratio exceeds 10.0 and the COD exceeds 1.10 kg/kg of anhydrous product.

24. Pursuant to 40 C.F.R. § 417.166(b), a new source subject to Part 417, Subpart P may discharge process wastewater streams in which either the COD/BOD₇ ratio exceeds 10.0 or the COD exceeds 1.10 kg/kg of anhydrous product.

25. Neither the Respondent nor Calhoun conducted any BOD₇ sampling.

26. On October 5, 2017, the EPA issued a Notice of Violation (NOV) pursuant to Section 309 of the CWA, 33 U.S.C. § 1319 to Respondent. This NOV cited the alleged violations cited in Paragraph 29 below, as well as other alleged violations.

27. On January 24, 2018, Respondent, GAEPD, and the EPA held a compliance status conference call. During this call, Respondent outlined steps it had taken and was willing to take to limit the volume of discharges to the POTW. Specifically, Respondent had installed a cooling tower and was taking steps to limit non-process wastewater discharges to the POTW.

28. On February 1, 2018, Respondent sold its assets and entered a lease, as landlord, authorizing Phoenix Chemical Company, LLC to continue to use the Facility. Also, on February 1, 2018, Calhoun issued Phoenix Chemical Company, LLC a CIU Permit, citing the OCPSF category, found at 40 C.F.R. § 414. Calhoun was aware of EPA's assertion and belief that the Facility was subject to the Liquid Detergent category, when it issued the CIU Permit to Phoenix Chemical Company, LLC

29. Based on observations made during its Inspection and its subsequent review of information obtained from Respondent, the EPA alleges that the Respondent has violated Section 307 of the CWA, 33 U.S.C. § 1317, due to Respondent's failure to comply with pretreatment standards and requirements, as defined by 40 C.F.R. §§ 403.3(l) and 403.3(t). Specifically, the EPA alleges the following violations:

A. Significant Industrial User discharge without a permit. Respondent was a significant industrial user, as defined by 40 C.F.R. § 403.3(v), and was therefore required, pursuant to 40 C.F.R. § 403.8(f)(1)(iii), to obtain a valid permit prior to discharging to a POTW. Respondent discharged to the POTW without a valid permit from June 1996 to November 1, 2016.

B. Failure to submit monitoring and reporting in accordance with regulatory requirements. At least 90 days prior to commencement of discharge, a new source is required to submit to the Control Authority a report which contains the information listed in 40 C.F.R. § 403.12(b)(1)–(5), as well as information on the method of pretreatment the source intends to use to meet applicable pretreatment standards and to maintain record of the report, per 40 C.F.R. §§ 403.12(d), 403.12(g), 403.12(l) and 403.12(o). Within 90 days after commencing a discharge to a POTW, a new source is required to report to the Control Authority and maintain record of the self-monitoring information on its compliance with standards, per 40 C.F.R. §§ 403.12(d), 403.12(g), 403.12(l) and 403.12(o). Pursuant to 40 C.F.R. §§ 403.12(e), 403.12(g), 403.12(l) and 403.12(o), any industrial user subject to categorical pretreatment standards must submit to the Control Authority, and maintain records of, additional periodic compliance reports at least twice a year on compliance with categorical standards and other information. Respondent did not maintain records indicating compliance with the above monitoring and reporting requirements.

III. Stipulations and Findings

30. The Complainant and the 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 (“CA/FO”) will simultaneously commence and conclude this matter.

31. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above, but neither admits nor denies the factual allegations set out above.

32. The Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

33. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

34. By signing this CA/FO, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, truthful, accurate, and complete for each such submission, response and statement. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

35. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

36. The Complainant and the Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

37. Pursuant to Section 309(g)(2)(B) and (3) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (3), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that fifty-five thousand dollars (\$55,000) is an appropriate civil penalty to settle this action.

38. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier’s or certified check, payable to the order of “Treasurer, United States of America.” The check shall reference on its face the name of the Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

39. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

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

and

Ms. Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
NPDES Permitting and Enforcement Branch
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

40. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

41. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorneys' fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

42. Full payment of the civil penalty, as provided in Section IV above, 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. Full payment of the civil penalty, as provided in Section IV above, shall only resolve the Respondent's liability for Federal civil penalties for the violations alleged in this CA/FO.

43. This CA/FO does not waive, extinguish, or otherwise affect the Respondent's obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

44. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

45. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

46. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

47. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CA/FO.

48. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service related to this proceeding:

For Complainant:

Suzanne K. Armor
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9701

For Respondent:

Phoenix Chemical Company, Inc.
C/O: Mr. Byron Kirkpatrick, Esq.
Troutman Sanders
600 Peachtree St., N.E.
Suite 3000
Atlanta, Georgia 30308
(404) 885-3387

49. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a proposed CA/FO based on comments received during the public comment period.

50. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), the Complainant represents that the State of Georgia was provided a prior opportunity to consult with the Complainant regarding this matter.

51. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

52. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For the RESPONDENT PHOENIX CHEMICAL CO., INC.:

John E. Bryant, Pres.
John E. Bryant
President

Date: May 2, 2019

**For the COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION 4:**

Suzanne G. Rubini, Acting Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 4

Date: _____

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
PHOENIX CHEMICAL CO., INC.)	FINAL ORDER
CALHOUN, GEORGIA,)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2019-4501(b)
_____)	

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits* 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.18(b), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Mary S. Walker
Acting Regional Administrator

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Phoenix Chemical Co., Inc., Docket No. CWA-04-2019-4501(b)** (filed with the Regional Hearing Clerk on _____, 2019) was served on _____, 2019, in the manner specified to each of the persons listed below.

By hand-delivery: Suzanne K. Armor, Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested: Phoenix Chemical Company, Inc.
C/O: Mr. Byron Kirkpatrick, Esq.
Troutman Sanders
600 Peachtree St., N.E., Suite 3000
Atlanta, Georgia 30308

Mr. Lewis Hays
Watershed Compliance Program
Watershed Protection Branch
Georgia Environmental Protection Division
2 Martin Luther King, Jr. Dr.
Suite 1152 East
Atlanta, Georgia 30334

Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511