

08-21-2003



102530936
RECORDATION FORM
TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)
Tab settings ⇨ ⇨ ⇨ ▼ ▼ ▼ ▼ ▼ ▼ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

<p>1. Name of conveying party(ies): Thornton Oil Corporation</p> <p style="text-align: right; font-size: 2em; font-family: cursive;">8.18.03</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State <input type="checkbox"/> Other _____</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies)</p> <p>Name: <u>Thorntons Inc.</u> Internal Address: <u>Suite 200</u></p> <p>Street Address: <u>10101 Linn Station Road</u> City: <u>Louisville</u> State: <u>KY</u> Zip: <u>40223</u></p> <p><input type="checkbox"/> Individual(s) citizenship _____ <input type="checkbox"/> Association _____ <input type="checkbox"/> General Partnership _____ <input type="checkbox"/> Limited Partnership _____ <input checked="" type="checkbox"/> Corporation-State <u>Delaware</u> <input type="checkbox"/> Other _____</p> <p><small>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</small></p>
---	---

<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input checked="" type="checkbox"/> Change of Name <input type="checkbox"/> Other _____</p> <p>Execution Date: <u>02/20/2003</u></p>	
---	--

<p>4. Application number(s) or registration number(s):</p> <p>A. Trademark Application No.(s) <u>76/424908</u> _____</p>	<p>B. Trademark Registration No.(s) _____ _____</p> <p>Additional number(s) attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
---	---

<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Steven L. Snyder</u> Internal Address: <u>Wyatt, Tarrant & Combs</u> <u>Suite 2800</u> _____</p> <p>Street Address: <u>PNC Plaza</u> <u>500 W. Jefferson Street</u> _____</p> <p>City: <u>Louisville</u> State: <u>KY</u> Zip: <u>40202-2898</u></p>	<p>6. Total number of applications and registrations involved: 9</p> <p>7. Total fee (37 CFR 3.41).....\$ <u>240</u></p> <p><input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number: _____</p>
--	--

DO NOT USE THIS SPACE

<p>9. Signature.</p> <p><u>08/20/2003</u> GTON11 00000141 76424908</p> <p style="text-align: right;">40.00 OP 200.00 OP</p> <p><u>Steven L. Snyder</u> Name of Person Signing</p>	<p>Signature</p>	<p><u>August 18, 2003</u> Date</p> <p style="text-align: center;">13</p> <p><small>Total number of pages including cover sheet, attachments, and document:</small></p>
---	------------------	---

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

2003 AUG 18 AM 8:25
OPR/FINANCE

RECORDATION FORM COVER SHEET

(Recordation of Name Change of Thornton Oil Corporation to Thorntons Inc.)

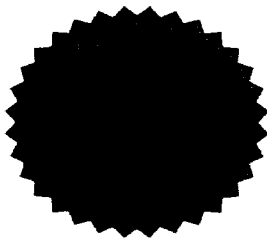
4. Application number(s) or registration number(s) (<i>continued</i>):	
A. Trademark Application No.(s)	B. Trademark Registration No.(s)
76/346712	1258180
	2189518
	2228955
	2259374
	2262856
	2315604
	2705405

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE SAID "THORNTON OIL CORPORATION", FILED A RESTATED CERTIFICATE, CHANGING ITS NAME TO "THORNTONS INC.", THE TWENTIETH DAY OF FEBRUARY, A.D. 2003, AT 12:36 O'CLOCK P.M.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

0776093 8320

AUTHENTICATION: 2294610

030149325

DATE: 03-07-03
REEL: 002806 FRAME: 0302

TRADEMARK

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
THORNTON OIL CORPORATION

Thornton Oil Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: The name of the corporation is Thornton Oil Corporation (the "Corporation"). The Corporation was originally incorporated under the name Thornton Corporation. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 29, 1971.

SECOND: Pursuant to Section 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates the Certificate of Incorporation of the Corporation, as amended or supplemented, and further amends said Certificate of Incorporation.

THIRD: The Board of Directors of the Corporation, acting by unanimous written consent, adopted a resolution proposing and declaring advisable the amendment and restatement of the Certificate of Incorporation of the Corporation.

FOURTH: Thereafter, upon the recommendation of the Board of Directors and in accordance with Section 228 of the General Corporation Law of the State of Delaware, the stockholders of the Corporation, acting by unanimous written consent, adopted this Amended and Restated Certificate of Incorporation;

FIFTH: This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

SIXTH: The Corporation's Certificate of Incorporation, with all amendments thereto, is amended and restated in its entirety to read as follows:

ARTICLE I.

The name of the Corporation shall be THORNTONS INC.

ARTICLE II.

The purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE III.

The duration of the Corporation shall be perpetual.

ARTICLE IV.

The registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The registered agent of the Corporation is The Corporation Trust Company whose business address is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, in the county of New Castle.

ARTICLE V.

The total number of shares that may be issued by the Corporation is 1,000 shares of Class A Common Stock, par value \$1.00 per share, which shall be entitled to one vote per share, and 1,000 shares of Class B Common Stock, par value \$1.00 per share, which shall have no voting rights.

The following provisions of this Article shall apply only with respect to periods in which the Corporation has in effect an election to be taxed under Subchapter S of the Internal Revenue Code of 1986, as amended (the "Code") and corresponding state or local law (the "Subchapter S Election"):

1. Upon request by the Corporation, the stockholders shall promptly execute and transmit to the Corporation for filing all documents to effect the Subchapter S Election prepared by it for that purpose. Each stockholder agrees that if, following the submission of such an election form to such stockholder, the stockholder fails to return the form within fifteen (15) days prior to the due date (determined without regard to extensions of that date that may be available), the Corporation is authorized as the stockholder's agent to execute the form in the stockholder's stead prior to such filing.

2. The Corporation shall distribute, by the forty-fifth (45th) day after the end of each fiscal quarter of the Corporation, an aggregate amount of Available Cash sufficient, in the opinion of the Board of Directors of the Corporation after consultation with the Corporation's tax advisors, to defray the federal, state and local income tax and estimated federal, state and local income tax obligations of the stockholders (as a group) with respect to the group's aggregate distributive share of taxable income, gain, loss, deduction and credit of the Corporation, assuming that the stockholders are subject to tax thereon as a group at the highest rate at which any of the stockholders is subject to tax on the attributed income and taking into account cumulative taxable income, gain, loss, deduction and credit of the Corporation in relation to previous distributions hereunder. The Board of Directors, in consultation with the Corporation's tax advisors, may adjust such assumed rate from time to time to reflect any relevant legislative changes or changes in circumstances of one or more stockholders after October 1, 1997. If Available Cash is insufficient for any such distribution, the Corporation shall seek to borrow such funds. If any such distributions are not made by reason of a lack of Available Cash or legally available funds therefor, the distributions not made shall be made as soon thereafter as is possible. The term "Available Cash" means the amount of cash, cash

equivalents, and other temporary investments on hand from time to time in excess of amounts required, in the opinion of the Board of Directors, to pay for current and future estimated operating expenses, obligations, debt service, capital expenditures, and acquisitions and to provide a reasonable reserve for working capital and contingencies.

3. No stockholder of the Corporation shall transfer shares of the Corporation by sale, exchange, assignment, gift, pledge or other voluntary disposition or encumbrance unless the stockholder shall have provided to the Corporation, at least fifteen (15) days prior to the proposed transfer [i] a commitment by the proposed transferee or his legal guardian (in form and substance satisfactory to counsel for the Corporation) not to file, upon becoming a stockholder of the Corporation, an affirmative refusal to consent to the Subchapter S Election and [ii] a statement regarding the proposed transferee sufficient to satisfy the Corporation that such proposed transferee is and will be permitted to hold the shares of stock in the Corporation without jeopardizing the Subchapter S Election.

4. The Corporation shall [i] not issue more than one class of stock or two classes of stock provided that the two classes differ only as to voting rights, [ii] use its best efforts to avoid a termination of the Subchapter S Election, and [iii] in the event of the termination of the Subchapter S Election, use its best efforts to distribute to each stockholder the stockholder's net share of its undistributed taxable income, to the extent permitted by law and consistent with its obligations to creditors, within the period when such a distribution would be considered a non-dividend distribution under the Code.

5. Stockholders owning a majority of the issued and outstanding shares of Class A Common Stock may at any time and from time to time agree in writing: [i] to authorize or ratify any transfer of stock that would otherwise not be permitted hereby, in which event the

transfer shall be deemed for all purposes to comply herewith; [ii] to direct all stockholders to consent to a revocation of the Subchapter S Election, in which event every stockholder shall within thirty (30) days thereafter execute and deliver to the Corporation a consent to the revocation of the Subchapter S Election in a form meeting the requirements of the Code; and [iii] to authorize the Corporation to act (or to refrain from acting) in a manner that would otherwise violate the preceding section 4 hereof, in which event the action (or failure to act) shall be deemed for all purposes to comply herewith.

ARTICLE VI.

There shall be no limitations upon the debts which the Corporation may incur.

ARTICLE VII.

The affairs of the Corporation are to be conducted by a Board of Directors of not fewer than three (3) nor more than eleven (11) members, the number to be set by the directors as provided in the bylaws. The Board of Directors shall have the power to increase or decrease the number of directors on the Board of Directors last approved by the stockholders pursuant to and in accordance with the limitations provided by Delaware law; provided, however, that at no time shall the number of directors be fewer than three (3) nor more than eleven (11) without amendment of this Article.

ARTICLE VIII.

Unless and except to the extent that the bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

ARTICLE IX.

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability [i] for any breach of the director's duty of loyalty to the Corporation or its stockholders,

[ii] for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, [iii] under Section 174 of the General Corporation Law of the State of Delaware, or [iv] for any transaction from which the director derived an improper personal benefit. If the General Corporation Law of the State of Delaware is amended after the filing of the Certificate of Incorporation of which this Article is a part to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended. Any repeal or modification of this Article by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE X.

1. The Corporation shall indemnify any person who was or is a defendant or respondent or is threatened to be made a defendant or respondent to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation or an action or claim, including any direct claim, counterclaim or crossclaim, by or in the right of such person against the Corporation unless authorized by the Board of Directors of the Corporation) by reason of his or her actions or omissions in his or her capacity as a director or officer of the Corporation, or in his or her capacity as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise at the request of the Corporation, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in defense of such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable

cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

2. The Corporation shall indemnify any person who was or is a defendant or respondent or is threatened to be made a defendant or respondent to any threatened, pending or completed action or suit purportedly in the right of the Corporation to procure a judgment in its favor by reason of by reason of his or her actions or omissions in his or her capacity as a director or officer of the Corporation, or in his or her capacity as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise at the request of the Corporation, against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, he or she is fairly and reasonably entitled to indemnity for such expenses that the court shall deem proper.

3. Any indemnification under sections 1 and 2 of this Article shall (unless ordered by a court) be made by the Corporation only as authorized in the specific case upon a

determination that indemnification of the present or former director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in sections 1 and 2 of this Article. Such determination shall be made (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders.

4. The Corporation may pay expenses (including attorneys' fees) incurred by a present or former director or officer in defending or responding to any civil, criminal, administrative or investigative action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article. Such expenses may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate. Any determination under this section shall be made (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders.

5. The indemnification and advancement of expenses provided by, or granted pursuant to, other sections of this Article shall not be deemed exclusive of any other rights to which any person (including without limitation present and former directors and officers and other persons, including employees and agents, who are not eligible for indemnification or

advancement of expenses under other sections of this Article) seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

6. For purposes of this Article, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article.

7. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE XI.

The bylaws for the Corporation may be adopted, amended and repealed by the Board of Directors, subject to repeal or amendment by action of the stockholders.

IN WITNESS WHEREOF, the undersigned duly authorized officer of the Corporation has executed this Amended and Restated Certificate of Incorporation as of the 12th day of February, 2003.



Matthew A. Thornton, President and CEO

15119297.1