

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA**

In the Matter of: ) ) BS Opelika, LLC ) 1800 Crawford Road ) Opelika, Alabama 36804 ) ) Respondent. ) _____ )	Docket No. TSCA-04-2020-3202(b)
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**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 Enforcement and Compliance Assurance Division of EPA Region 4, who has been delegated the authority to settle civil administrative penalty proceedings under Section 16(a) of TSCA. Respondent is BS Opelika, LLC.
  
2. 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**

3. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of the EPA promulgated regulations in 40 C.F.R. Part 761 pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates Section 15 of TSCA, 15 U.S.C. § 2614 may be assessed a civil penalty in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. Part 19, as amended. Each day a violation continues may constitute a separate violation.

### III. Specific Allegations

4. Respondent is a user of PCB Items operating in the State of Alabama and is a "person" as defined in 40 C.F.R. § 761.3.
5. On or about July 9, 2019, an inspection was conducted by the Alabama Department of Environmental Management on behalf of the EPA at a facility owned and operated by Respondent, located at 1800 Crawford Road, Opelika, Alabama, to determine compliance with the PCB regulations.
6. At the time of the inspection, Respondent was storing the following PCB Items for disposal: (1) a PCB-contaminated transformer, serial number E689273B, containing 250 gallons of fluid with PCB concentrations at 289 ppm; (2) a PCB-contaminated transformer, serial number F965644C, containing 160 gallons of fluid with PCB concentrations at 83 ppm; (3) a PCB-contaminated transformer, serial number F-965644F, containing 160 gallons fluid with PCB concentrations at 72 ppm; and (4) a PCB-contaminated transformer, serial number F-965644G, containing 160 gallons of fluid with PCB concentrations at 66 ppm.
7. The four (4) PCB-contaminated transformers listed in Paragraph 6 above, had all been disconnected from power and stored on-site for disposal for greater than 1-year.
8. The term "PCB items" is defined in 40 C.F.R. § 761.3, as any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
9. The term "PCB article" is defined in 40 C.F.R. § 761.3, as any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture; (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.
10. Pursuant to 40 C.F.R. § 761.65(c)(8), PCB Items are required to be marked with the date when they are removed from service for disposal. At the time of the July 9, 2019, inspection, the PCB Items listed in Paragraph 6 above being stored on-site awaiting disposal were not marked with the dates when they were removed from service. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.65(c)(8).
11. Pursuant to 40 C.F.R. § 761.65(a)(1), any PCB waste must be disposed of as required by Subpart D of the PCB regulations within 1-year from the date it was determined to be PCB waste and the decision was made to dispose it. At the time of the inspection, the PCB-contaminated transformers listed in Paragraph 6 above had been stored for disposal on-site

for greater than 1-year. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.65(a)(1). On June 3, 2020, Respondent properly removed and disposed the PCB-contaminated transformers.

12. Pursuant to 40 C.F.R. § 761.205(c)(2), PCB generators subject to the storage requirements of 40 C.F.R. §§ 761.65(b) or (c)(7), are required to notify the EPA of their PCB waste activities by filing EPA Form 7710-53. Prior to, and at the time of the July 9, 2019, inspection, Respondent was subject to the storage requirements of 40 C.F.R. § 761.65(b); but failed to notify the EPA of the PCB waste activities by filing EPA Form 7710-53. Therefore, the EPA alleges that Respondent violated 40 C.F.R. § 761.205(c)(2).

#### IV. Consent Agreement

13. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual and legal allegations.
14. 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.
15. For the purposes of achieving a resolution by settlement, 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.
16. Respondent certifies that, to the best of its knowledge, as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
17. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or the U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect the Respondent's obligation to comply with all applicable provisions of TSCA or other applicable laws and regulations.
18. 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.
19. The parties agree to accept service of this CAFO by email to the individuals named in the Certificate of Service who are each authorized to receive service.

#### V. Terms of Payment

20. Respondent is assessed a civil penalty of **THIRTY-ONE THOUSAND AND SEVEN HUNDRED DOLLARS (\$31,700.00)**, which shall be paid within 30 days from the effective date of this CAFO.

21. Respondent 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 Respondent's 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.

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

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

If paying by EFT, 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, 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  
REX (Remittance Express): 1-866-234-5681

22. 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 SW  
Atlanta, Georgia 30303-8960  
[bullock.patricia@epa.gov](mailto:bullock.patricia@epa.gov);

and

Kris Lippert  
Chemical Safety Section  
U.S. EPA Region 4  
Enforcement and Compliance Assurance Division  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960.  
[lippert.kris@epa.gov](mailto:lippert.kris@epa.gov)


23. 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.
24. Pursuant to 31 U.S.C. § 3717, 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. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. 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.
25. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
26. This CAFO shall be binding upon the Respondent, its successors and assigns.
27. 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 legally binds that party to this CAFO.

## **VI. Effective Date**

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

The forgoing Consent Agreement In the Matter of **BS Opelika, LLC**, Docket Number **TSCA-04-2020-3202(b)** Is Hereby Stipulated, Agreed and Approved for Entry.

FOR RESPONDENT:

  
\_\_\_\_\_  
Signature

June 29<sup>th</sup>, 2020  
Date

Printed Name: Luther S. Pate, IV  
Title: Managing Member  
Address: 1301 Industrial Park Drive  
Tuscaloosa, AL 35401

The forgoing Consent Agreement In the Matter of **BS Opelika, LLC**, Docket Number **TSCA-04-2020-3202(b)** Is Hereby Stipulated, Agreed and Approved for Entry.

FOR COMPLAINANT:

By: \_\_\_\_\_

Carol L. Kemker  
Director  
Enforcement Compliance and Assurance Division  
U.S. EPA Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**BS Opelika, LLC**

Respondent.

Docket No. TSCA-04-2020-3202(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.

IT IS SO ORDERED.

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Tanya Floyd  
Regional Judicial Officer



## CERTIFICATE OF SERVICE

I certify that the foregoing “Consent Agreement” and “Final Order,” in the Matter of BS Opelika, LLC, Docket No. TSCA-04-2020-3202(b), were filed and copies of the same were emailed to the parties as indicated below.

### **Via email to all Parties:**

#### **For the Respondent:**

Alan Davis  
Director of Operations  
BS Opelika, LLC  
[adavis@patchholdings.net](mailto:adavis@patchholdings.net)

#### **For the EPA:**

Kris Lippert, Environmental Engineer  
Chemical Safety Section  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
[lippert.kris@epa.gov](mailto:lippert.kris@epa.gov)

Robert Caplan, Senior Counsel  
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Quantindra Smith  
Enforcement Compliance and Assurance Division  
U.S. EPA Region 4  
[Smith.quantindra@epa.gov](mailto:Smith.quantindra@epa.gov)

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Patricia A. Bullock, Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960