

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:
Constellium Muscle Shoals LLC
Muscle Shoals Facility
4805 Second Street
Muscle Shoals, Alabama 35661
ALD095687679

and

Sheffield Facility
510 West 20th Avenue Sheffield
Alabama 35660
ALD053365169

Respondent.

Docket No. **TSCA-04-2022-3201(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, Region 4, 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 Constellium Muscle Shoals LLC. Respondent's headquarters is located at 4805 East 2nd Street, Muscle Shoals, Alabama 35661.

6. Respondent has two facilities operating in the State of Alabama: the Sheffield Plant, located at 510 West 20th Avenue, Sheffield, Alabama with EPA Identification Number: ALD053365169 (“Sheffield Facility”) and the Muscle Shoals Plant, located at 4805 Second Street, Muscle Shoals, Alabama with EPA Identification Number: ALD095687679 (“Muscle Shoals Facility”).
7. The Sheffield Facility produces aluminum coil for use as aluminum can tab stock.
8. The Muscle Shoals facility is a secondary aluminum processing facility. It manufactures aluminum rolled products for can and automotive use and also includes an aluminum recycling facility known as E-13.

III. GOVERNING LAW

9. 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 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. Each day a violation continues may constitute a separate violation.
10. The term “Facility” is defined in 40 C.F.R. § 761.3, as all contiguous land, and structures, other appurtenances, and improvements on the land, used for the treatment, storage, or disposal of PCB waste. A facility may consist of one or more treatment, storage, or disposal units.
11. The term “PCB(s)” is defined in 40 C.F.R. § 761.3, as any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.
12. The term “PCB Transformer” is defined in 40 C.F.R. § 761.3, as any transformer that contains ≥ 500 parts per million (ppm) PCBs.
13. The term “PCB Equipment” is defined in 40 C.F.R. § 761.3, as any manufactured item, other than a PCB Container or a PCB Article Container which contains a PCB Article or other PCB Equipment, and includes microwave ovens, electronic equipment, and fluorescent light ballast and fixtures.
14. The term “Leak or Leaking” is defined in 40 C.F.R. § 761.3, as any instance in which a PCB Article, PCB Container, or PCB Equipment has any PCBs on any portion of its external surface.
15. Pursuant to 40 C.F.R. § 761.30(a)(1)(x), a PCB Transformer is required to be repaired or replaced to eliminate the source of the leak if a PCB Transformer is found to have a leak which results in any quantity of PCBs running off or about to run off the external surface of the transformer. In all cases any leaking material must be cleaned up and properly disposed of according to disposal requirements of subpart D of this part. Cleanup of the released PCBs must be initiated as soon as possible, but in no case later than 48 hours of its discovery. Until appropriate action is completed, any active leak of

PCBs must be contained to prevent exposure to humans or the environment and inspected daily to verify containment of the leak.

IV. FINDINGS OF FACTS

Muscle Shoals Facility

16. Pursuant to 40 C.F.R. §761.30(a)(1)(vi)(A), the Muscle Shoals Facility notified EPA on December 22, 1998, as having forty-four (44) PCB Transformers on-site.
17. On August 19, 2020, the Alabama Department of Environmental Management (ADEM), acting in its capacity as an authorized agent of the EPA, conducted an inspection at the Muscle Shoals Facility pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, to determine the Facility's compliance with the PCB regulations.
18. During the inspection at the Muscles Shoals Facility, the ADEM inspector observed that the following PCB Transformers were leaking:
 - a. PCB Transformer #41, located in the Five Stand Motor Room;
 - b. PCB Transformer #11, located in the Sheet Finishing Area; and
 - c. PCB Transformer C, located in Building 141.
19. Respondent's transformer inspection logs reviewed by the ADEM inspector showed that PCB Transformers #41, #11 and C had been leaking since at least September 2019.
20. During a November 10, 2021, show cause meeting, Respondent confirmed that PCB Transformers # 41, # 11 and C had been inspected daily by the Respondent since September 2019, and that Transformers #11 and #41 were replaced with non-PCB transformers on May 11, 2021, while Transformer C was expected to be replaced soon. Respondent also asserted that the leaked PCB fluids were managed in a secondary containment area and properly disposed off-site.
21. Respondent notified the EPA in or around May 2022 that Transformer C had been replaced on April 12, 2022.
22. At the time of ADEM's inspection of the Muscle Shoals Facility, the Respondent had failed to repair or replace leaking PCB Transformers, #41, #11, and C to eliminate the sources of the leaks as required by 40 C.F.R. § 761.30(a)(1)(x).

Sheffield Facility Inspection

23. Pursuant to 40 C.F.R. §761.30(a)(1)(vi)(A), the Sheffield Facility notified the EPA on December 22, 1998, as having two (2) PCB Transformers on-site.
24. On August 20, 2020, ADEM, acting in its capacity as an authorized agent of the EPA, conducted an inspection at the Sheffield Facility pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, to determine the Facility's compliance with the PCB regulations.
25. At the time of the inspection at the Sheffield Facility, the ADEM inspector observed that PCB Transformer #1 located in Substation #1 at the east end of the facility was leaking.

26. Respondent's transformer inspection logs reviewed by the ADEM inspector showed that PCB Transformer #1 had been leaking since at least September 2019.
27. During a November 10, 2021, show cause meeting, Respondent confirmed that PCB Transformer #1 had been inspected daily by the Respondent since September 2019, and that the leaked PCB fluids was managed in a secondary containment area. Respondent also asserted that the leaked fluids was properly disposed offsite.
28. As of the date of the ADEM inspection of the Sheffield Facility, the Respondent had failed to repair or replace leaking PCB Transformer #1 to eliminate the source of the leak as required by 40 C.F.R. § 761.30(a)(1)(x).
29. Respondent advised the EPA in an email dated December 14, 2021, that PCB Transformer #1 had been replaced with a non-PCB transformer on December 7, 2021.

V. ALLEGED VIOLATIONS

30. The EPA alleges that Respondent failed to timely repair or replace the leaking Muscle Shoals Facility PCB Transformers #11, #41 and C to eliminate the sources of the leaks in violation of 40 C.F.R. § 761.30(a)(1)(x).
31. The EPA alleges that Respondent failed to timely repair or replace the leaking Sheffield Facility PCB Transformer #1 to eliminate the source of the leak in violation of 40 C.F.R. § 761.30(a)(1)(x).

VI. STIPULATIONS

32. The issuance of this CAFO simultaneously commences and concludes this proceeding pursuant to 40 C.F.R. § 22.13(b).
33. 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.
34. 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 agree 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.

35. Respondent reserves its rights to dispute the findings of fact and alleged violations in any future proceedings other than enforcement of this CAFO.

36. 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

37. Respondent is assessed a civil penalty of **THIRTEEN THOUSAND, THREE HUNDRED DOLLARS (\$13,300.00)** for the alleged violations associated with the Respondent's Muscle Shoals Facility.

38. Respondent is assessed a civil penalty of **FOUR THOUSAND, FOUR HUNDRED DOLLARS (\$4,400.00)** for the alleged violations associated with Respondent's Sheffield Facility.

39. The total penalty is **SEVENTEEN THOUSAND, SEVEN HUNDRED DOLLARS (\$17,700.00)**, which shall be paid within thirty (30) calendar days of the Effective Date of this CAFO.

40. Payment 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(s) send(s) 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

41. Respondent shall send proof of 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

Kris Lippert
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

lippert.kristin@epa.gov

42. "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-04-2022-3201(b)."
43. 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 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 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 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.
44. 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, the 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).

45. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

46. This CAFO constitutes a settlement by the EPA of all claims for federal civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged herein.

47. 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).

48. 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.

49. 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.

50. 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.

51. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both (the) Parties, and approval of the Regional Judicial Officer.

52. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns, and Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.

53. Any change in the legal status of 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.

54. 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.

55. By signing this Consent Agreement, 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.
56. 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.
57. 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.
58. 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.
59. 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.
60. 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

61. 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.

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Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement In the Matter of **Constellium Muscle Shoals LLC**, Docket No. **TSCA-04-2022-3201(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:

Constellium Muscle Shoals LLC

Muscle Shoals Facility

4805 Second Street

Muscle Shoals, Alabama 35661

ALD095687679

and

Sheffield Facility

510 West 20th Avenue Sheffield,

Alabama 35660

ALD053365169

Respondent.

Docket No. **TSCA-04-2022-3201(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 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 **Constellium Muscle Shoals LLC**, Docket No. **TSCA-04-2022-3201(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: Chris Smith
President
Constellium Muscle Shoals LLC
300 East Lombard Street, Suite 1710
Baltimore, Maryland 21202
(270) 715-9405
Chris.smith@constellium.com

To EPA: Kris Lippert
Senior Enforcement Officer
lippert.kristin@epa.gov

Lynda Crum
Attorney Advisor
crum.lynda@epa.gov

Robert Caplan
Senior Attorney
caplan.robert@epa.gov

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