

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

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In the Matter of: )  
)  
Shawmut Mill Enterprises, LLC )  
3204 34<sup>th</sup> Street )  
Valley, Alabama 36854 )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2011-2905(b)

**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 RCRA Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Shawmut Mill Enterprises, 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. The Administrator of EPA promulgated rules in 40 C.F.R. Part 761, pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, pertaining to the proper use, handling and disposal of 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 a provision of Section 15 of TSCA may be assessed a penalty of up to \$32,500 for each such violation occurring between March 15, 2004, and January 12, 2009, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Doug McCurry, Chief  
North RCRA and OPA Enforcement & Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8649.

## **III. EPA's Specific Allegations of Violations**

6. Respondent is a "generator" of PCB waste operating in the State of Alabama and is a "person" as those terms are defined in 40 C.F.R. § 761.3.

7. On or about November 17, 2010, a joint inspection was conducted by EPA and the Alabama Department of Environmental Management (ADEM) at Respondent's facility located at 3204 34<sup>th</sup> Street, Valley, Alabama, 36854 (the facility), to determine Respondent's compliance with the PCB regulations.
8. During the inspection, EPA and ADEM observed the following out of service PCB equipment being stored on-site for disposal:
  - a. One 1,000 KVA, Westinghouse Inerteen Transformer, serial #PBV7414-02, >500 ppm PCBs, 298 gallons, out of service;
  - b. One 1,000 KVA, General Electric Pyranol Transformer, serial #8639212, >500 ppm PCBs, 470 gallons, out of service;
  - c. Fluorescent light ballasts, some of which were not marked Non-PCBs, improperly stored for disposal on the ground outside a loading dock.
  - d. A number of PCB capacitors. In 2007, when the facility was owned by a different company not affiliated with Respondent, ADEM conducted a PCB inspection at the facility and observed a total of 58 PCB capacitors.
9. In August 2011, the two PCB transformers and 28 PCB capacitors were removed from the facility by TCI of Alabama, LLC ("TCI") and transported to TCI's facility for further processing in preparation for eventual final disposal.
10. On or about September 22, 2011, Respondent discovered an additional 20 PCB capacitors being stored at the facility. As of the date of this CAFO, Respondent is conducting a further search of its facility for any remaining PCB capacitors and has agreed to properly dispose of them.
11. The two PCB transformers and the approximately 48 PCB capacitors that were visible to the inspectors were labeled "PCB" at the time of the November 17, 2010, inspection and collectively contained at least 768 gallons of PCB fluids.

12. The two PCB transformers were registered with EPA on December 15, 1998, as containing over 500 ppm PCBs.
13. 40 C.F.R. § 761.3 defines PCB Items 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.
14. 40 C.F.R. § 761.65(b) requires that PCBs and PCB Items designated for disposal must be stored in an area with an adequate roof, walls, and non-porous floor with curbing. At the time of the inspection, Respondent was storing the PCB Items listed in Paragraph 8 for disposal in areas that did not meet the requirements of 40 C.F.R. § 761.65(b). Therefore, Respondent violated 40 C.F.R. § 761.65(b).
15. Pursuant to 40 C.F.R. § 761.65(c)(5), PCB Items in storage for disposal shall be checked for leaks at least once every 30 days. Records of inspections, maintenance, cleanup and disposal must be maintained in accordance with 40 C.F.R. § 761.180(a). Respondent failed to inspect the equipment and maintain storage records for the PCB Items listed in Paragraph 8 . Therefore, Respondent violated 40 C.F.R. § 761.65(c) (5) and 40 C.F.R. § 761.180(a).
16. 40 C.F.R. § 761.65(c)(8) requires that PCB Items must be marked with the date when they were removed from service for disposal. At the time of inspection, the PCB Items listed in Paragraph 8 were not marked with the date the PCB Items were removed from service. Therefore, Respondent violated 40 C.F.R. § 761.65(c)(8).
17. 40 C.F.R. § 761.65(a) provides that any PCB waste shall 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 of it. This date is the date of removal from service for disposal and the point at which the 1-year time frame for disposal begins.

18. As of the date of this CAFO, which is more than a year after the two PCB transformers were removed from service, the PCB transformers and fluids have not been finally destroyed and disposed in accordance with the PCB disposal regulations. Therefore, Respondent is in violation of 40 C.F.R. § 761.65(a).
19. 40 C.F.R. § 761.207 requires that a generator who relinquishes control over PCB waste to a transporter for commercial off-site storage or off-site disposal shall prepare a manifest on EPA Form 8700-22, and if necessary, a continuation sheet, and must specify for each PCB Article Container or PCB container, the type of PCB waste, its unique identifying number, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste.
20. Respondent failed to properly prepare a manifest containing all required information. Therefore, Respondent violated 40 C.F.R. § 761.207.

#### **IV. Consent Agreement**

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual or legal allegations set forth above.
22. 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.
23. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.

24. It is EPA's practice to file and mail out copies of the final approved CAFO on the day it is signed by the Regional Judicial Officer or Regional Administrator. EPA will use its best efforts to email to Respondent and/or its attorney a copy of the final approved CAFO on the day that it has been filed with the Regional Hearing Officer.
25. Respondent is in the process of conducting a survey to locate all remaining out of service PCB capacitors and agrees to enter into a contract or arrangement with a licensed PCB transporter and disposal facility by November 15, 2011, to have the capacitors removed and properly disposed. Respondent shall use its best efforts in its contract negotiations with the transporter and/or disposal facility to ensure to the extent possible that pickup of the capacitors from Respondent's facility will be expedited and that final disposal of the capacitors will occur in accordance with the deadlines set forth in the applicable PCB requirements.
26. Within 15 calendar days after the capacitors have been removed from Respondent's facility, Respondent shall submit documentation to EPA, including, but not necessarily limited to a manifest, demonstrating that the capacitors have been shipped off-site for disposal. The documentation shall be submitted to Kristin Lippert, EPA, Region 4, RCRA Division, Atlanta Federal Center, 10<sup>th</sup> floor, 61 Forsyth Street, Atlanta, Georgia 30303.
27. Respondent certifies that upon the proper disposal of the remaining capacitors as set forth in paragraph 25, Respondent will be in compliance with all relevant requirements of TSCA at the facility.
28. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to

Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

29. 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.

**V. Final Order**

30. Respondent is assessed a civil penalty of FORTY THOUSAND DOLLARS (\$40,000) which shall be paid in accordance with the following payment plan. Four payments will be made to complete payment of the entire civil penalty including interest. The first installment payment of \$23,415 is due within 30 days of the effective date of this CAFO. The subsequent three installment payments in equal amounts of \$5,556 shall be due in 90 day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **FORTY THOUSAND and EIGHT-THREE DOLLARS (\$40,083.00)**. Respondent shall make payments in accordance with the following schedule:

<b><u>Payment Number</u></b>	<b><u>Payment Due Date</u></b>	<b><u>Payment Due</u></b>
1	within 30 days of filing of CAFO	\$23,415
2	within 120 days of filing of CAFO	\$ 5,556
3	within 210 days of filing of CAFO	\$ 5,556
4	within 300 days of filing of CAFO	\$ 5,556

31. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

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

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson (314) 418-4087

32. 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  
Atlanta, Georgia 30303-8960;

Doug McCurry, Chief  
RCRA and OPA Enforcement & Compliance Section  
RCRA Division  
U.S. EPA Region 4



61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

33. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) shall become immediately due and payable on the 31<sup>st</sup> day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
34. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
35. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **FORTY THOUSAND DOLLARS (\$40,000)** within 30 calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect

to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). 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.
37. 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.
38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
39. This CAFO shall be binding upon the Respondent, its successors and assigns.
40. 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 hereby legally binds that party to this CAFO.

**VI. Effective Date**

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

**AGREED AND CONSENTED TO:**

**Respondent:** Shawmut Mill Enterprises, LLC  
**Docket No.:** TSCA-04-2011-2905(b)

By: Bob Camman (Signature) Date: 30 Sept 2011

Name: Robert B. Camman Jr (Typed or Printed)

Title: owner (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By: [Signature] Date: 9-30-2011  
Alan Farmer, Director  
RCRA Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 30<sup>th</sup> day of September, 2011.

By: [Signature]  
Gwen Keyes Fleming  
Regional Administrator

In the Matter of Shawmut Mills Enterprises, LLC  
Docket No. TSCA-04-2011-2905

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2011, I filed the foregoing Complaint Order, in the Matter of Shawmut Mills Enterprises, LLC: Docket No. TSCA-04-2011-2905, and that on September 30, 2011 I served a true and correct copy of the Order on the parties listed below in the manner indicated:  
(Via EPA's internal mail)


Robert Caplan  
Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Brooke Dickerson, Esq  
Arnall Golden Gregory, LLP  
171 17<sup>th</sup> Street Northwest  
Suite 2100  
Atlanta, Georgia 30363

Quantindra Smith  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Richard Willey  
Property Manager  
202 Gordon Street  
LaGrange, Georgia 30240

(Via Certified Mail- Return Receipt Requested)

For   
Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511