

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In The Matter Of:

SHAW INDUSTRIES

Valleyhead, Dekalb County, Alabama

CONSENT ORDER NO. 98-107-CAP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended, the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended, and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties hereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS OF FACT:

1. Shaw Industries – Valleyhead Plant (herinafter, "Shaw Industries") operates a textile manufacturing plant (Air Facility ID No. 703-0029) Highway 117 East, located in Valleyhead, Dekalb County, Alabama, operating under authority of ADEM Air Facility I.D. No. 703-0029.

2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, as amended, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C.

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7401 through 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, §§ 22-28-1 through 22-28-23, Code of Alabama 1975, as amended.

4. On November 6, 1996, a Department inspector noted visible emissions from stacks which exhaust the Suessen Heatsetting machines. A Visible Emissions Observation was not conducted due to the weather conditions.

5. On December 2, 1996, the Department sent a letter to Shaw Industries citing the smoke noted from the Suessen Heatsetting exhaust during the inspection conducted on November 6, 1996.

6. In a written response to the December 2, 1996, warning letter, dated December 18, 1996, Shaw Industries stated that the increased visible emission were due to the finish lubricants applied by the supplier and by the plant being flashed off in the Suessen Heatsetting machines and emitted from the stacks. Shaw Industries also stated that the plant had begun to explore ways to reduce the amount of finish lubricants applied in an effort to reduce smoke emissions from the process.

7. In a letter dated March 6, 1997, Shaw Industries informed the Department that the yarn fiber cross-section has been re-designed which had further reduced the amount of finish lubricants required in the Suessen Heat Setting Process.

8. ADEM Administrative Code R. 335-3-4-.01(a) states, "no person shall discharge into the atmosphere from any source of emission, particulate of an opacity greater than that designated as twenty percent (20%) opacity, as determined by a six (6) minute average."

9. ADEM Administrative Code R. 335-3-4-.01(b) states, "that during one six (6) minute average in any sixty (60) minute period, a person may discharge into the atmosphere from

any source of emission, particulate of an opacity not greater than designated as forty percent (40%) opacity.”

10. On January 2, 1997, and March 19, 1997, a Department inspector noted visible emissions of fifty percent (50%) and forty-four percent (44%), opacity, respectively, as determined by a six minute average, from a stack which exhausts one of the Suessen Heatsetting machines, in violation of ADEM Admin. Code R. 335-3-4-.01(a) & (b).

11. On May 20, 1997, the Department issued a Notice of Violation to Shaw Industries citing violations of the conditions of ADEM Admin. Code R. 335-3-4-.01(a) & (b), which were noted during the Visible Emissions Observation conducted on January 2, 1997, and March 19, 1997.

12. In a written response to the May 20, 1997, Notice of Violation, dated June 13, 1997, Shaw Industries stated that new chemicals would continue to be tested and Shaw Industries was considering installing a single stack to exhaust all of the Suessen Heatsetting machines in an attempt to reduce smoke emissions.

13. In a letter dated March 13, 1998, Shaw Industries informed the Department that the single stack installed to reduce emissions from the Suessen Heatsetting machines had been completed.

14. On March 25, 1998, a Department inspector noted visible emissions of sixty - two percent (62%) and forty percent (40%) opacity, as determined by a six minute average, from the single stack which exhausts the Suessen Heatsetting machines, in violation of ADEM Admin. Code R. 335-3-4-.01(a) & (b).

15. On April 14, 1998, the Department issued a Notice of Violation to Shaw Industries citing violations of the conditions of ADEM Admin. Code R. 335-3-4-.01(a) & (b), which were noted during the Visible Emissions Observation conducted on March 25, 1998.

16. In a written response to the April 14, 1998, Notice of Violation, dated April 28, 1998, Shaw Industries proposed to completely install an emission control program for the Suessen Heatsetting exhaust.

17. Shaw Industries neither admits nor denies the Findings contained in this consent order. However, in an effort to cooperate with the Department and to resolve the allegations cited above, Shaw Industries consents to the terms of this Order.

18. The Department agrees to this Consent Order upon a determination that the terms are in the best interests of the citizens of Alabama in resolving the alleged violations cited hereinabove.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama 1975, as amended, and with the consent of Shaw Industries is hereby ORDERED:

A. That there is assessed a civil penalty against Shaw Industries in the amount of Twelve Thousand Five Hundred Dollars (\$12,500) to be paid to the Alabama Department of Environmental Management within thirty (30) days of issuance of this Order.

B. That not later than January 31, 1999, the emission control system, as approved by the Department, for the Suessen Heatsetting exhaust must be installed and operational.

C. During its term, this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them, except that no director, officer, person, or entity acting under or for Shaw Industries shall be personally liable for any civil penalty issued under this Consent Order. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

D. That subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Order.

E. That Shaw Industries is not relieved from any liability if it fails to comply with any provision of the Consent Order.

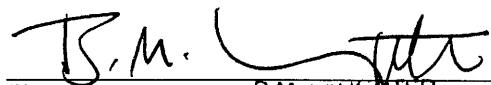
F. That for purposes of this Order only, Shaw Industries agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. Shaw Industries also agrees that in any action brought by the Department to compel compliance with the terms of this Order, Shaw Industries shall be limited to the defenses of Force Majeure, compliance with this Order and physical impossibility.

G. That this Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning Shaw Industries, which would constitute possible violations not addressed in this Order, then such future violations shall be addressed in Orders or litigation initiated by the Department, or such other enforcement action as

may be appropriate, and Shaw Industries shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

H. That by agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Shaw Industries does hereby waive any hearing on the terms and conditions of same.


ORDERED and ISSUED this 20th day of August, 1998.


(Signature) B.M. LAUGHTER
VICE PRESIDENT

(Please Print Name and Title of Authorized Officer)

Shaw Industries

Shaw Industries, Inc.
Dalton, GA 30722-2128


James W. Warr, Director
Alabama Department of
Environmental Management