



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN 37243

July 28, 2021

C T Corporation System
300 Montvue Road
Knoxville, Tennessee 37919-5546

Certified Article Number

9414 7266 9904 2170 0983 49

SENDER'S RECORD

RE: BAE Systems Ordnance Systems Inc.
File ID. 37-0028
Case No. APC21-0004

Dear Sir or Madam:

Enclosed please find an Order issued by Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, Tennessee Department of Environment and Conservation, in the above-referenced matter. Please read it carefully and pay special attention to the NOTICE OF RIGHTS section.

If you have any questions regarding this Order, please contact attorney Grant Ruhl at (615) 313-5682 or via e-mail at Grant.Ruhl@tn.gov. For all other questions, please contact the Division at (615) 532-0554 or via e-mail to air.pollution.control@tn.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kevin McLain".

Kevin McLain
Section Manager, Enforcement
Division of Air Pollution Control

vom

Enclosure

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
BAE SYSTEMS ORDNANCE SYSTEMS INC.)	DIVISION OF AIR POLLUTION CONTROL
)	
RESPONDENT)	CASE NO. APC21-0004

TECHNICAL SECRETARY’S ORDER AND ASSESSMENT OF CIVIL PENALTY

Comes now, Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, and states that:

PARTIES

I.

Michelle Walker Owenby is the Technical Secretary of the Air Pollution Control Board (“Board”) and Director of the Division of Air Pollution Control (“Division”), Tennessee Department of Environment and Conservation (“Department”).

II.

BAE Systems Ordnance Systems Inc. (“Respondent”) is a foreign corporation formed in Delaware and authorized to do business in the State of Tennessee. Respondent’s facility address is 4509 West Stone Drive, Kingsport, Tennessee. Respondent’s registered agent for service of process is C T Corporation System, 300 Montvue Road, Knoxville, Tennessee 37919-5546.

AUTHORITY

III.

Pursuant to Tennessee Code Annotated (“Tenn. Code Ann.”) § 68-201-116, the Technical Secretary may assess a civil penalty of up to \$25,000 per day for each day of violation of the Tennessee Air Quality Act (“Act”) or any rules or regulations promulgated thereunder (“Division Rules”) against any person who violates said Act or Division Rules, and/or the Technical Secretary may issue an order for correction to the responsible person when provisions of the Act or Division

Rules are violated. In addition, such person may also be liable for any damages to the State resulting therefrom.

IV.

Respondent is a “person” within the meaning of Tenn. Code Ann. § 68-201-102 and has violated the Division Rules as hereinafter stated.

V.

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof, as stated in Tenn. Code Ann. § 68-201-102.

VI.

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated, as stated in Tenn. Code Ann. § 68-201-102.

VII.

Respondent operates an “air contaminant source” within the meaning of Tenn. Code Ann. § 68-201-102.

FACTS

VIII.

On June 26, 2018, the Technical Secretary issued Title V operating permit 568188 (“Permit 568188”), identified as emission source reference number 37-0028, to Respondent for the manufacturing of explosives. On May 28, 2019, the Technical Secretary issued a modification to Permit 568188.

IX.

Condition E62-12 of Permit 568188 states:

The micro steam generating units are subject to 40 CFR Part 60, Subpart Dc and 40 CFR Part 63, Subpart DDDDD (see Attachments 17 and 19).

Attachment 17 of Permit 568188 references 40 CFR Part 63, Subpart DDDDD and states, in pertinent part:

Conduct annual performance tune-up according to §63.7540(a)(10). First tune-up must be conducted no later than 13 months after the initial start-up. Subsequent tune-ups must be conducted no later than 13 months after the previous tune-up.

X.

On January 20, 2020, the Technical Secretary issued Title V construction permit 977613 (“Permit 977613”), identified as emission source reference number 37-0028-119, for the installation of a temporary scrubber in series with the existing tank farm scrubber.

XI.

Condition 10(b) of Permit 977613 states:

The permittee shall monitor and record the pH or acid concentration in the recirculation liquid at least once per shift. Appropriate indicators for pH or acid concentration shall be established using engineering assessments or manufacturer's recommendations to verify proper operation of the scrubber.

XII.

Condition 10(c) of Permit 977613 states:

The permittee shall inspect the recirculation pump at least once per shift to verify that the recirculation pump is operating properly and shall record the results of each inspection.

XIII.

On December 8, 2020, the Division conducted an inspection at Respondent’s facility. Based on this inspection and subsequent discussions with Respondent, the following violations were discovered:

- During the inspection, it was noted that the previous tune-up was performed on each of the six Miura Boilers on September 5, 2019. Based on condition E62-12, Attachment 17 of Permit 568188 and the previous tune-up, the next tune-up was due to be performed no later than October

5, 2020. As of the December 8, 2020 inspection, Miura Boilers #1, #5, and #6 had operated since the October 5, 2020 deadline, but a tune-up had not been performed on these boilers.

- On January 6, 2021, a WebEx meeting was conducted to complete the inspection. During this meeting, the requirements for the temporary scrubber that control emissions from the NAC/SAC tank farm were discussed, and the records required to demonstrate compliance were requested. Those records were submitted to the Division by e-mail on January 12, 2021, and a review of those records indicated monitoring had not been performed as required by condition 10(b) of Permit 977613. The caustic percentage was tested and recorded ten times between permit issuance on January 20, 2020, and the tanks being emptied on November 24, 2020.
- In the e-mail sent to the Division on January 12, 2021, Respondent noted that pump inspections were part of the daily duties of personnel assigned to this source. However, no records of the required inspections were logged to demonstrate compliance as required by condition 10(c) of Permit 977613.

XIV.

On January 15, 2021, the Division issued a Notice of Violation to Respondent for the violations discussed in paragraph **XIII**.

VIOLATIONS

XV.

By failing to comply with condition E62-12 of Permit 568188, as discussed herein, Respondent violated Division Rule 1200-03-09-.02(6), which states, in pertinent part:

Operation of each air contaminant source shall be in accordance with the provisions and stipulations set forth in the operating permit, all provisions of these regulations, and all provisions of the Tennessee Air Quality Act.

XVI.

By failing to comply with conditions 10(b) and 10(c) of Permit 977613, Respondent violated Division Rule 1200-03-09-.01(1)(d), which states, in pertinent part:

Construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants must be

in accordance with the approved construction permit application or notice of intent; the provisions and stipulations set forth in the construction permit, notice of coverage, or notice of authorization[.]

RELIEF

XVII.

WHEREFORE, PREMISES CONSIDERED, I, Michelle Walker Owenby, Technical Secretary, under the authority vested in me, hereby order as follows:

1. Respondent is assessed a Civil Penalty in the amount of **\$4,500** for the violation of Division Rules, as discussed herein.

2. Respondent shall pay the assessed Civil Penalty in full as follows: Payments of the civil penalty and/or damages shall be made payable to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. The case number, **APC21-0004**, should be clearly shown on the check or money order to ensure that the payment is properly credited. Payment shall be made on or before the 31st day after receipt of this Order and Assessment.

DEPARTMENT’S RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b), allow Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for

requesting a hearing must be RECEIVED by the Technical Secretary within 30 DAYS of the date Respondent received this Order and Assessment or this Order and Assessment becomes final (not subject to review).

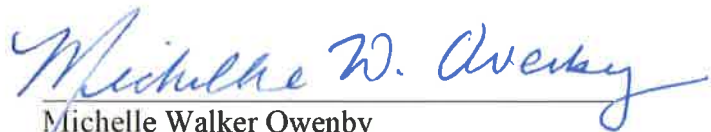
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the Department of State’s Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. **Artificial respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee.** Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny this Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory confines of Tenn. Code Ann. § 68-201-116 (up to \$25,000 per day per violation). Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review (appeal) must be directed to the Technical Secretary, Tennessee Division of Air Pollution Control, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. An appeal may also be filed by sending the petition to the following email address: TDEC.Appeals@tn.gov. Payments of the civil penalty and/or damages shall be made payable to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Attn: Tammy Gambill, Division of Air Pollution Control, William R.

Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243 or via e-mail to air.pollution.control@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, APC21-0004, should be written on all correspondence regarding this matter.**

Issued by the Technical Secretary, Tennessee Air Pollution Control Board, Department of Environment and Conservation, on this 28th day of July, 2021.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



Grant LeMaster Ruhl
BPR # 036182
Assistant Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 313-5682
Grant.Ruhl@tn.gov