



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

MAY 05 2020

Certified Article Number

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SENDER'S RECORD

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

RE: BAE Systems Ordnance Systems Inc.
File ID. 37-0028
Case No. APC19-0197

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,

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.)

RESPONDENT

**DIVISION OF AIR POLLUTION
CONTROL**

CASE NO. APC19-0197

**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 number 568188 ("Permit 568188"), emission source reference number 37-0028, to Respondent for the manufacturing of explosives. On May 28, 2019, the Technical Secretary issued Significant Modification #1 to Permit 568188.

IX.

Condition E66-1 of Permit 568188 states, in pertinent part:

These existing emergency engines (RICE) located at a major source of HAP emissions are subject to the requirements of 40 CFR Part 63, Subpart ZZZZ and Subpart A, General Provisions 40 CFR §63.6590.

X.

40 CFR § 63.6640(f)(3) states:

Emergency stationary RICE located at major sources of HAP may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing and emergency demand response provided in paragraph (f)(2) of this section. The 50 hours per year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

XI.

Condition E66-11 of Permit 568188 states, in pertinent part:

Pursuant to 40 CFR §63.6590(a)(1)(iii), this emission source is “an existing stationary RICE located at a major source of HAP emissions.” These engines shall comply with the following requirements in this condition and Conditions E66-2, thru E66-17[.]

XII.

Condition E66-11(b) of Permit 568188 states, in pertinent part:

Comply with the following management practice requirements: 40 CFR §63.6603(a)-Table 2d-Item 4 as shown in table below:

For each	Meet the following requirements
Emergency CI ²	Change oil and filter every 500 hours of operation or annually, whichever comes first; ¹ Inspect air cleaner every 1,000 hours of operation or annually, whichever comes first, and replace as necessary; and Inspect all hoses and belts every 500 hours of operation or annually, whichever comes first, and replace as necessary.

XIII.

On November 14 and 15, 2019, Division personnel conducted an inspection of Respondent's facility for the time period from February 23, 2017, to November 15, 2019. During this inspection, the following violations were discovered:

- Logs of the hours of operation were reviewed for each of the emergency stationary RICE (the “emergency engines”), and it was observed that the four emergency air compressors

(engine ID # 1080, 911, 913, and 909) all ran in excess of 500 hours during calendar year 2019. The log identified this run time as emergency use, but little explanation was available concerning the nature of the emergency. Based on additional information provided by Respondent via e-mail on December 12, 2019, the four emergency air compressors were used to provide compressed air for Respondent to operate continuously through the mechanical problems experienced from April 22, 2019, to September 9, 2019. Providing air to continue normal operation does not meet the requirements for emergency use as stated in 40 CFR § 63.6640(f)(2). Therefore, the hours the four emergency air compressors operated for this purpose are deemed non-emergency hours and are subject to the limit of 50 hours per calendar year as stated in 40 CFR § 63.6640(f)(3). The following chart contains the number of hours that each of these emergency compressors operated for non-emergency purposes during the 2019 calendar year and violated condition E66-1 of Permit 568188:

Engine ID #	Non-emergency Run Hours
1080	1,030.9
911	1,182.3
913	1,674.6
909	586.9

- The maintenance records for all the emergency engines revealed the four emergency air compressors operated in excess of 500 hours between oil changes during the inspection timeframe, in violation of E66-11 of Permit 568188:

Engine ID #	Date of Most Recent Oil Change	Date of Previous Oil Change	Run Hours Elapsed
1080	September 30, 2019	April 1, 2019	1,076
911	September 11, 2019	April 1, 2019	1,224.2
913	August 1, 2019	April 1, 2019	1,472
909	September 10, 2019	September 26, 2018	621

- In addition, the records did not sufficiently document that the air cleaner was inspected every 1,000 hours of operation or that the hoses and belts were checked every 500 hours of operation as required by condition E66-11(b) of Permit 568188.

XIV.

On December 20, 2019, the Division issued a Notice of Violation (NOV) to Respondent for the violations discussed in paragraph **XIII**. As a means of corrective action, the NOV required Respondent to update the emergency engine run logs with the run hours discussed above and submit the updated logs to APC within 20 days of the receipt of the NOV. On or about January 9, 2020, Respondent submitted the updated logs.

VIOLATIONS

XV.

By failing to comply with conditions of the operating permit, 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.

RELIEF

XVI.

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 **\$6,750** 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, **APC19-0197**, 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).

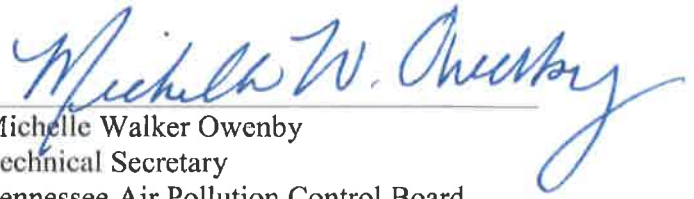
If an appeal is filed, an initial hearing of this appeal will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 68-201-108(a), Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. 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. 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, APC19-0197, 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 5th day of May, 2020.


Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



Grant LeMaster Ruhl

BPR # 036182

Assistant General Counsel

Department of Environment & Conservation

312 Rosa L. Parks Avenue, 2nd Floor

Nashville, Tennessee 37243

(615) 313-5682

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