

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
BAE SYSTEMS ORDNANCE)	
SYSTEMS INC.,)	
)	
RESPONDENT.)	CASE NO. WPC21-0093

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Jennifer Dodd, Director of the Tennessee Division of Water Resources,
and states:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources (“Division”) by the Commissioner of the Tennessee Department of Environment and Conservation (“Department”).

II.

BAE Systems Ordnance Systems Inc. (BAE, “Respondent”) is a Delaware corporation authorized to conduct business in Tennessee. The Respondent operates Holston Army Ammunition Plant (HAAP) (“Site”) and manufactures explosive materials for the U.S. Department of Defense. Service of process may be made on the Respondent through its Registered Agent, C T Corporation System, 300 Montvue Rd., Knoxville, TN 37919-5546. The principal address is 4509 W. Stone Dr., Kingsport, TN 37660-1048.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -148 (“Act”), has occurred, is occurring, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken. Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the Act, Tenn. Code Ann. § 69-3-115, and has authority to assess damages incurred by the State resulting from the violation, Tenn. Code Ann. § 69-3-116. The Board of Water Quality, Oil and Gas (“Board”) has promulgated rules governing general water quality criteria and use classifications for surface waters. Tenn. Comp. R. & Regs. Chapters 0400-40-03 and 0400-40-04. The Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act, Tenn. Code Ann. § 69-3-107(13), and has delegated such authorities to Jennifer Dodd.

IV.

The Respondent is a “person” under the Act. Tenn. Code Ann. § 69-3-103.

V.

The Holston River and Arnett Branch constitute “waters” of the state and a “stream.” Tenn. Code Ann. § 69-3-103. All streams have been classified by the Board for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. The Streams are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VI.

Any person engaged in or planning to engage in the discharge of sewage, industrial wastes, or other wastes into waters, or to a location from which it is likely that the discharged substance

will move into waters must obtain and comply with a permit from the Department. Tenn. Code Ann. § 69-3-108. Each permit requires a set of effluent limitations to indicate adequate operation of performance of treatment units used and to appropriately limit those harmful parameters present in the wastewater. Tenn. Comp. R. & Regs. 0400-40-05-.08. The permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the conditions of the permit. Tenn. Comp. R. & Regs. 0400-40-04-.07. It is unlawful for any person to violate the conditions of a discharge permit issued by the Department. Tenn. Code Ann. §§ 69-3-108(b) and -114(b).

FACTS

VII.

On August 31, 2010, the Division issued National Pollutant Discharge Elimination System (NPDES) permit TN0003671 (“Permit”) to the Respondent, which became effective October 1, 2010, expired March 31, 2014. The Permit is currently administratively continued. In pertinent part, the Permit authorized the discharge of treated industrial wastewater including coal pile runoff, landfill leachate and treated domestic wastewater overflow during peak flow conditions from Outfall 020; treated domestic wastewater from Outfall 025; and stormwater runoff from Outfalls 036 and 037.

VIII.

The Respondent has appeared on the EPA Quarterly Non-Compliance Report (QNCR) for multiple quarters for the monitoring periods of September 30, 2019, to October 1, 2021, for effluent limitation exceedances.

IX.

During the monitoring period named above, the Respondent self-reported the following effluent limitation exceedances on its Discharge Monitoring Reports:

Outfall 020 to Holston River

Parameter	Effluent Exceedances from September 30, 2019 – October 1, 2021
BOD, 5 day, 20 degrees C	6
chloroform	2
total suspended solids	2
Total	10

Outfall 025 to Holston River

Parameter	Effluent Exceedances from September 30, 2019 – October 1, 2021
total residual chlorine	1
BOD, 5 day, 20 degrees C	1
Total	2

Outfall 036 to Arnott Branch

Parameter	Effluent Exceedances from September 30, 2019 – October 1, 2021
total residual chlorine	7
Total	7

Outfall 037 to Arnott Branch

Parameter	Effluent Exceedances from September 30, 2019 – October 1, 2021
total residual chlorine	1
Total	1

VIOLATIONS

X.

By exceeding effluent limitations and violating the terms of its NPDES Permit, the Respondent has violated the Act:

Tenn. Code Ann. § 69-3-108(b)(3) and (6):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

and

- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters.

Tenn. Code Ann. § 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree that is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the Board of any permits or orders issued pursuant to this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the Board or the Commissioner under this part.

ORDER AND ASSESSMENT

XI.

Pursuant to sections 69-3-109, -115, and -116 of the Act, I, Jennifer Dodd, hereby issue the following Order and Assessment (“Order”) to the Respondent. The case number WPC21-0093, should be written on all correspondence regarding this matter. All documentation relating to corrective action items in this Order shall be received by the Division by the date(s) specified herein. Such documents should be sent electronically to DWRWater.Compliance@tn.gov **OR** in duplicate to both addresses below:

Dane Cutshaw, Manager
Johnson City Environmental Field
Office
Division of Water Resources
2305 Silverdale Rd.
Johnson City, Tennessee 37601-2162

AND

Jessica Murphy, Manager
Enforcement and Compliance Unit
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Ave., 11th Floor
Nashville, Tennessee 37243

1. The Respondent is assessed a total civil penalty of \$49,980.00 to be paid to the Division as outlined in Items 2-6 below. All payments should be sent to the following address:

Treasurer, State of Tennessee
Division of Fiscal Services – Consolidated Fees Section
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Ave., 10th Floor
Nashville, Tennessee 37243

2. **The Respondent shall pay \$9,996.00 to the Division on or before the 31st day after receipt of this Order.**
3. The Respondent shall submit a corrective action plan / engineering report (CAP/ER) no later than 90 days after receipt of this Order. The CAP/ER shall specify what steps will be taken to eliminate the violations described herein and shall include a schedule with specific dates to complete each step with final completion not to exceed 12 months. If the Division requests modifications to the CAP/ER, the Respondent shall submit the revision no later than 30 days after receipt of comments. If the Respondent fails to comply with Item 3, the Respondent shall pay \$366.00 to the Division for each day the CAP/ER is late, not to exceed a total of \$10,980.00.
4. The Respondent shall complete each step of the CAP/ER no later than the date in the Division-approved schedule. The Respondent shall submit progress reports on completion of each step to include a summary and photographs, no later than 30 days after scheduled completion date. If the Respondent fails to comply with Item 4, the Respondent shall pay \$366.00 to the Division for each day a progress report is late, not to exceed a total of \$10,980.00.
5. The Respondent shall submit a final report no later than 30 days after completion of the CAP/ER. The final report shall include an evaluation of the CAP/ER toward achieving

compliance with the Permit, including photographs. If the Respondent fails to comply with Item 5, the Respondent shall pay \$366.00 to the Division for each day the final report is late, not to exceed a total of \$10,980.00.

6. The Respondent shall maintain substantial compliance with the Permit for a period of two years after completion of the CAP/ER. If the Respondent fails to comply with Item 6, as evidenced by its reporting exceedances of effluent limitations set forth in the Permit, the Respondent shall pay \$1,761.00 to the Division for each violation (effluent limitation exceedance), not to exceed 7,044.00.

This Order shall be considered closed no later than two years after completion of the CAP/ER, provided the Respondent has complied with all of the above requirements, all penalties owed have been paid, and the facility is in substantial compliance with the Permit.

The Division may, for good cause shown, extend the compliance dates contained within this Order. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventative measures taken to minimize the delay. Any such extension by the Division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated civil penalty shall become due 30 days thereafter.

Failure to comply with any of the requirements of this Order could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery costs.

RESERVATION OF RIGHTS

In issuing this Order, 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

The Respondent may appeal this Order. Tenn. Code Ann. §§ 69-3-109, -115, and -116. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent received this Order or this Order will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 69-3-110; Tenn. Code Ann. §§ 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (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. No one may represent another person in a contested case proceeding unless they are an attorney licensed to practice law in Tennessee. Governments and artificial persons (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 a 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 the Order. 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 must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Ave., 2nd Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. An appeal may also be filed by sending the petition to the following email address: TDEC.Appeals@tn.gov.

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 9 day of December 2021.


Jennifer Dodd (Dec 9, 2021 14:54 CST)

Jennifer Dodd, Director
Division of Water Resources
TN Department of Environment and Conservation

Reviewed by:


.. (Nov 12, 2021 10:40 CST)

Patrick N. Parker (BPR#: 014981)
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