



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

BAE Systems Ordnance Systems Inc.
c/o United Agent Group Inc.
205 Powell Place
Brentwood, Tennessee 37027-7522

Certified Article Number

9414 7266 9904 2212 9419 92

SENDER'S RECORD

RE: BAE Systems Ordnance Systems Inc.
File ID. 37-0028
Case No. APC23-0214

Dear Sir or Madam:

Enclosed, please find an Order and Assessment of Civil Penalty issued by Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, Department of Environment and Conservation. Please read it carefully and pay special attention to the Notice of Rights section.

On October 27, 2023, the Division issued a Notice of Violation for failing to comply with conditions E61-1(RC1), E62-2., and E63-1. of Permit 568188, and condition 2. of Permit 977613. The Division has determined that these violations did warrant an NOV; however, after a review of the facts, the Technical Secretary has elected to take no further action for this portion of the Notice of Violation.

If you have any questions regarding this Order and Assessment of Civil Penalty, please contact Kevin McLain at air.pollution.control@tn.gov. For all other questions, please contact the Division of Air Pollution Control at (615) 532-0554 or 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:)	DIVISION OF AIR POLLUTION
)	CONTROL
)	
BAE SYSTEMS ORDNANCE)	
SYSTEMS INC.,)	
)	
RESPONDENT.)	CASE NO. APC23-0214

TECHNICAL SECRETARY'S ORDER AND
ASSESSMENT OF CIVIL PENALTY

Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, states:

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"), 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 Tennessee. The Respondent's facility address is 4509 West Stone Drive, Kingsport, Tennessee 37660. The Respondent's registered agent for service of process is United Agent Group Inc., 205 Powell Place, Brentwood, Tennessee 37027-7522.

AUTHORITY

III.

The Technical Secretary may assess a civil penalty of up to \$25,000.00 per day for each day of violation of the Tennessee Air Quality Act, Tenn. Code Ann. §§ 68-201-101 to -121 ("Act"), or Tennessee Air Pollution Control Regulations, Tenn. Comp. R. & Regs. 1200-03-01 to -36; 0400-30-01 to -39, ("Rules"). Tenn. Code Ann. § 68-201-116. The Technical Secretary may issue an order for correction to the responsible person when provisions of the Act or Rules are violated, and such person may be liable for resulting damages to the State. *Id.*

IV.

The Respondent is a “person,” Tenn. Code Ann. § 68-201-102(7), and has violated the Act and Rules.

V.

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof. Tenn. Code Ann. § 68-201-102(1).

VI.

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Tenn. Code Ann. § 68-201-102(2). The Respondent operates an air contaminant source.

FACTS

TITLE V PERMIT 568188

VII.

On June 26, 2018, the Technical Secretary issued Major Source operating permit (“Title V”) permit number 568188, (facility 37-0028), to the Respondent for the manufacturing of explosives. The Technical Secretary modified Title V permit number 568188 as follows:

Type	Issued Date
Significant Modification #1	May 28, 2019
Reopen for Cause	February 1, 2021
Significant Modification #2	January 4, 2022

VIII.

Condition E21-1. of Title V permit number 568188 states:

Visible emissions from this source shall not exhibit greater than 20% opacity, except for one six-minute period in any one-hour period and for no more than four six-minute periods in any 24-hour period. Visible emissions from this source shall be determined by EPA Method 9, as published in the current 40 CFR 60, Appendix A (six-minute average). TAPCR 1200-03-05- .03(6) and 1200-03-05-.01(1)

Compliance Method: Compliance with this standard shall be determined by the procedures of the Division's opacity Matrix dated June 18, 1996 and amended September 11, 2013 that is enclosed as Attachment 1.

If the magnitude and frequency of excursions reported by the permittee in the periodic monitoring for emissions is unsatisfactory to the Technical Secretary, this permit may be reopened to impose additional opacity monitoring requirements.

TAPCR 1200-03-09-.02(11)(e)1(iii)

The referenced opacity matrix states, in pertinent part, "Within one year prior to Title V permit expiration date, conduct another 30 minute [visible emission evaluation] VEE during normal process operation." See pg. 2 of the Opacity Matrix attached as Attachment 1 to Title V permit number 568188.

IX.

On August 29, 2023, the Division received via e-mail the Respondent's semiannual report ("Report"), dated August 29, 2023, for the reporting period of January 1, through June 30, 2023. The Report indicated that the VEE was not performed for Source 26 prior to the June 25, 2023, expiration of Title V permit number 568188. In an October 11, 2023, e-mail, the Respondent provided the VEE form completed on September 1, 2023, for source 26. Therefore, the VEE was conducted past the opacity Matrix deadline.

PERMIT 978924

X.

On August 2, 2021, the Technical Secretary issued Title V construction permit number 978924, ("Permit 978924"), (facility 37-0028, Sources 133, 134, and 135), to the Respondent for the Chemical Processing Operations for Preparation of RDX and HMX Explosives. On August 15, 2023, the Technical Secretary issued an amendment to Permit 978924 to extend the expiration date to February 28, 2025.

XI.

Condition S1-7. of Permit 978924, states, in pertinent part:

40 CFR 60 Subpart NNN

The permittee is subject to and shall comply with the requirements of 40 CFR Part 60 Subpart NNN (Standards of Performance for VOC Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations) as indicated in **Table S1-7**. The applicable requirements of 40 CFR Part 60, Subpart NNN are incorporated into this permit pursuant to TAPCR 1200-03-09-.03(8).

...

Compliance Method: Compliance shall be assured by compliance with the specific testing, monitoring, recordkeeping, and reporting requirements enumerated in Table S1-7. The permittee shall comply with the applicable General Provisions of 40 CFR 60 Subpart A that apply to Subpart NNN, as indicated in **Appendix 10**. The application states that the process vent is expected to meet the low flow exemption found at §60.660(c)(6).

XII.

Condition S1-8. of Permit 978924, states:

40 CFR 60 Subpart VVa

The permittee shall comply with the provisions of 40 CFR 60 Subpart VVa (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006) for all equipment in VOC service (contains or contacts a process fluid that is at least 10% VOC by weight).

Pursuant to §60.13(i) and the letter from U. S. EPA dated June 3, 2010, the permittee shall utilize the alternative monitoring procedure for equipment in acetic acid and acetic anhydride service (**Appendix 11**).

Compliance Method: Compliance shall be assured by compliance with the specific monitoring, recordkeeping, and reporting requirements enumerated in **Appendix 11**. The permittee shall comply with the applicable General Provisions of 40 CFR 60 Subpart A that apply to Subpart VVa, as indicated in **Appendix 9**.

XIII.

Condition S1-9. of Permit 978924, states, in pertinent part:

40 CFR 60 Subpart Kb

The permittee is subject to and shall comply with the requirements of 40 CFR Part 60 Subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984) as indicated in **Table S1-9**. The applicable requirements of 40 CFR 60 Subpart Kb are incorporated into this permit pursuant to TAPCR 1200-03- 09-.03(8).

...

Compliance Method: Compliance shall be assured by compliance with the specific recordkeeping requirements enumerated in **Table S1-9**. The permittee shall comply with the applicable General Provisions of 40 CFR 60 Subpart A that apply to Subpart Kb, as indicated in **Appendix 8**.

XIV.

The referenced General Provisions table in Permit 978924 indicates that the Respondent is subject to the notification and recordkeeping requirements of 40 CFR §60.7. Specifically, the Respondent is subject to 40 CFR §60.7(a)(1), which states, in pertinent part:

Any owner or operator subject to the provisions of this part shall furnish the Administrator written notification or, if acceptable to both the Administrator and the owner or operator of a source, electronic notification, as follows:

A notification of the date construction (or reconstruction as defined under § 60.15) of an affected facility is commenced postmarked no later than 30 days after such date.

XV.

The August 29, 2023, Report for the reporting period of January 1, through June 30, 2023, indicated that the construction start notification, as required by 40 CFR §60.7(a)(1), was not submitted within 30 days of starting construction of source 133. The Report indicated that construction of the source began in October of 2022, and was noted in the e-mailed permit extension request dated July 14, 2023. Based on 40 CFR §60.7(a)(1), the notification should have been submitted in November 2022. Therefore, the notification of construction commencing was approximately 255 days late.

XVI.

On August 2, 2021, the Technical Secretary issued Title V construction permit number 974192, ("Permit 974192"), (facility 37-0028, Sources 120, 121, 122, 123, 124, 125, 126, and 127), to the Respondent for a Chemical Processing Operations for Preparation of RDX and HMX Explosives. The Technical Secretary issued amendments to Permit 974192 on August 19, 2021, March 3, 2023, and August 22, 2023, to extend the expiration date.

XVII.

Condition S1-6B. of Permit 974192, states, in pertinent part:

40 CFR Part 63 Subpart DDDDD

The permittee shall comply with the requirements of 40 CFR Part 63 Subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters), as indicated in **Table 6**, upon startup.

XVIII.

40 CFR §63.7540(a)(10) states, in pertinent part:

If your boiler or process heater has a heat input capacity of 10 million Btu per hour or greater, you must conduct an annual tune-up of the boiler or process heater to demonstrate continuous compliance as specified in paragraphs (a)(10)(i) through (vi) of this section.

XIX.

40 CFR §63.7515(d) states, in pertinent part:

If you are required to meet an applicable tune-up work practice standard, you must conduct an annual, biennial, or 5-year performance tune-up according to § 63.7540(a)(10), (11), or (12), respectively. Each annual tune-up specified in § 63.7540(a)(10) must be no more than 13 months after the previous tune-up.

XX.

On October 10, 2023, the Division received an e-mail from the Respondent that included the previous two tune-ups for sources 120-123, natural gas boilers. These records indicated that the most recent boiler tune-ups were performed greater than 13 months after the previous tune-up for all four boilers as indicated in the table below.

	Boiler 1	Boiler 2	Boiler 3	Boiler 4
2022 tune-up	7/20/2022	7/21/2022	7/22/2022	7/23/2022
2023 tune-up	9/13/2023	9/15/2023	9/14/2023	9/15/2023
Number of days late	24	25	23	23

XXI.

On October 27, 2023, the Division issued a Notice of Violation (“NOV”) to the Respondent for the violations identified in paragraphs **IX**, **XV**, and **XX**. As corrective action, the NOV required the Respondent to submit a written or electronic notice within 30 days from receipt of the NOV indicating the start date of construction for the NSPS, NNN, and VVa affected facilities identified in conditions S1-7. and S1-8. of Permit 978924. As of the date of this Technical Secretary’s Order, the Division has not received this information.

VIOLATIONS

XXII.

By failing to comply with condition E21-1., of Title V permit number 568188, the 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.

XXIII.

By failing to comply with condition S1-6B. of Permit 974192, and conditions S1-7., S1-8., and S1-9. of Permit 978924, the 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[.]

ORDER AND ASSESSMENT OF CIVIL PENALTY

XXIV.

1. The Respondent is assessed a civil penalty of \$4,500.00 for violation of the Act and Rules, to be paid to the Department at the following address:

Treasurer, State of Tennessee
Division of Fiscal Services - Consolidated Fees Section
Department of Environment and Conservation

William R. Snodgrass Tennessee Tower, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

The civil penalty shall be delivered to the Department on or before the thirty-first day after receipt of this Order and Assessment of Civil Penalty. The case number, APC23-0214, should be clearly written on all correspondence.

2. The Respondent shall submit the information requested in Paragraph **XXI**. within 30 days of receipt of this Order and Assessment of Civil Penalty. Failure to submit this information may lead to additional enforcement action.

RESERVATION OF RIGHTS

In issuing this Order and Assessment of Civil Penalty, the Department does not implicitly or expressly waive any provision of the Act or Rules 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.

NOTICE OF RIGHTS

The Respondent may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b). To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Technical Secretary within 30 days of the date the Respondent received this Order and Assessment or this Order and Assessment becomes final. Any petition for review must be directed to:

Commissioner of the Department of Environment and Conservation
c/o Jenny L. Howard, General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

The petition may be mailed or delivered to this address, or it may be sent to TDEC.Appeals@tn.gov. If an appeal is filed, an initial hearing of this matter will be conducted by

an Administrative Judge as a contested case hearing. Tenn. Code Ann. § 68-201-108(a); Tenn. Code Ann. § 4-5-301 to -326; Tenn. Comp. R. & Regs. 1360-04-01. 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 (*e.g.*, 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.

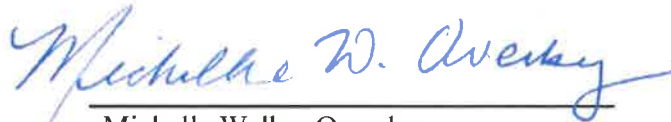
At the conclusion of any initial hearing, the Administrative Judge has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The Administrative Judge, on behalf of the Board, has 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 Administrative Judge and a court reporter.

Technical questions and other correspondence involving compliance issues should be sent to:

Kevin McLain, Division of Air Pollution Control
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 15th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

Attorneys should contact the undersigned counsel of record. The case number, APC23-0214, 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 February 1, 2024



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



Austin M. Moore
BPR # 035258
Associate Counsel
Department of Environment and Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(629) 250-1158
austin.moore@tn.gov

WALZ
CERTIFIED
MAILER®

FROM

WALZ

FORM #45663 VERSION: E0822

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

USPS® ARTICLE NUMBER

9414 7266 9904 2212 9419 92

Certified Mail Fee \$
Return Receipt (Hardcopy) \$ 4.35
Return Receipt (Electronic) \$ 3.55
Certified Mail Restricted Delivery \$ 0.00
Postage \$ 0.00
Total Postage and Fees \$ 0.63

Postmark
Here

Sent to: 8.53
BAE Systems Ordnance Systems Inc.
c/o United Agent Group Inc.
205 Powell Place
Brentwood, TN 37027-7522

Reference Information

APC23-0214 / vom

PS Form 3800, Facsimile, July 2015

Label #7 - Certified Mail Article Number

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL®



9414 7266 9904 2212 9419 92

RETURN RECEIPT REQUESTED

Label #1
BAE Systems Ordnance Systems Inc.
c/o United Agent Group Inc.
205 Powell Place
Brentwood, TN 37027-7522

Label #2

BAE Systems Ordnance Systems Inc.
c/o United Agent Group Inc.
205 Powell Place
Brentwood, TN 37027-7522

Label #3

TN Dept. of Environment & Conservation
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN 37243

TEAR ALONG THIS LINE

FOLD AND TEAR THIS WAY → OPTIONAL

Label #5 (OPTIONAL)

TN Dept. of Environment & Conservation
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN 37243

Label #6 - Return Receipt Barcode (Sender's Record)



9590 9266 9904 2212 9419 95

FOLD AND TEAR THIS WAY →

FOLD AND TEAR THIS WAY →

Return Receipt (Form 3811) Barcode



9590 9266 9904 2212 9419 95

1. Article Addressed to:
BAE Systems Ordnance Systems Inc.
c/o United Agent Group Inc.
205 Powell Place
Brentwood, TN 37027-7522

2. Certified Mail (Form 3800) Article Number

9414 7266 9904 2212 9419 92

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent
☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type:

☒ Certified Mail

Reference Information

APC23-0214 / vom

PS Form 3811, Facsimile, July 2015

Domestic Return Receipt

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

Thank you for using Return Receipt Service