



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

February 28, 2023

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

Certified Article Number

9414 7266 9904 2204 3651 26

SENDER'S RECORD

RE: BAE Systems Ordnance Systems Inc.  
File ID. 37-0028  
Case No. APC22-0062

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, Tennessee Department of Environment and Conservation (TDEC), 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 and Assessment of Civil Penalty, please contact William F. Miller at 615-532-0136 or via e-mail at [william.f.miller@tn.gov](mailto:william.f.miller@tn.gov). For all other questions, please contact the TDEC Division of Air Pollution Control at (615) 532-0554 or via e-mail at [air.pollution.control@tn.gov](mailto:air.pollution.control@tn.gov).

Sincerely,

A handwritten signature in blue ink, reading "Kevin McLain", is positioned above the typed name.

Kevin McLain  
Section Manager, Enforcement  
Division of Air Pollution Control

vom

Enclosure

**TENNESSEE AIR POLLUTION CONTROL BOARD**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF AIR POLLUTION</b>
	)	<b>CONTROL</b>
	)	
<b>BAE SYSTEMS ORDNANCE</b>	)	
<b>SYSTEMS INC.,</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NO. APC22-0062</b>

**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"), 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.**

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, 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.**

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). Respondent operates an air contaminant source.

**FACTS**

**VII.**

On June 26, 2018, the Technical Secretary issued Title V Major Source operating permit number 568188, (“Permit 568188”), (facility 37-0028), to Respondent, for the manufacturing of explosives. On May 28, 2019, the Technical Secretary issued a modification to Permit 568188. On February 1, 2021, the Technical Secretary issued a reopen for cause to Permit 568188. On October 8, 2018, the Technical Secretary issued Title V construction permit number 974192 (“Permit 974192”). On August 19, 2021, the Technical Secretary issued an amendment to Permit 974192.

**VIII.**

Condition S-10(a) of Permit 974192 states, in pertinent part:

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Submit a monitoring plan describing how actual emissions will be measured or calculated for each pollutant. The monitoring plan must be received at least 30 days prior to initial operation of emission sources 37-0028-120, 121, 122, or 123.

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## **IX.**

On or about March 1, 2022, the Division received Respondent's Title V semiannual report ("Report"), dated March 1, 2022, for the period of July 1, 2021, through December 31, 2021. The Report indicated that the monitoring plan was not submitted as required by condition S-10(a) of Permit 974192. The monitoring plan was required to be submitted for the period when the coal and natural gas fired boilers operated simultaneously. This simultaneous operation occurred from start-up of the natural gas boilers on September 20, 2021, to the shutdown of the final coal fired boiler on October 4, 2021. On October 5, 2021, the Division received Respondent's start-up certification for emission sources 37-0028-120, 121, 122, and 123.

## **X.**

On April 4, 2022, the Division issued a Notice of Violation (NOV) to Respondent for the violation identified in paragraph IX. As corrective action, the NOV required Respondent to calculate and submit the emission logs required by condition S1-10(a) of Permit 974192 for the period of September 20, 2021, through October 4, 2021, and submit it to the Division within 30 days of receipt of the NOV. On May 4, 2022, Respondent submitted via e-mail the emission logs required by condition S1-10(a) of Permit 974192 for the period of September 20, 2021, through October 4, 2021.

## **VIOLATIONS**

### **XI.**

By failing to comply with condition S-10(a) of Permit 974192, 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**

### **XII.**

Respondent is assessed a civil penalty of \$1,500 for violation of the Act and Rules, to be paid to the Department at the following address:

Division of Fiscal Services - Consolidated Fees Section  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower, 10<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

The civil penalty shall be delivered to the Department on or before the 31<sup>st</sup> day after receipt of this Order and Assessment of Civil Penalty. The case number, APC22-0062, should be clearly written on all correspondence.

### **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(s). 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 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 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, 2<sup>nd</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

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. § 68-201-108(a); Tenn. Code Ann. § 4-5-301 to -325; 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.

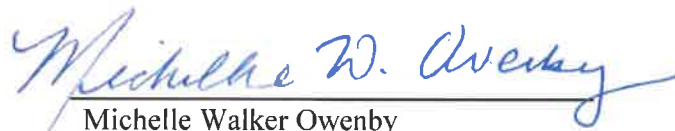
At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The ALJ, on behalf of the Board, has the authority to assess additional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

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, 15<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

Attorneys should contact the undersigned counsel of record. The case number, APC22-0062, 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 28, 2023.



Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:



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William Freeman Miller  
BPR # 028826  
Senior Associate Counsel  
Department of Environment & Conservation  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
(615) 532-0136  
william.f.miller@tn.gov