

**TENNESSEE AIR POLLUTION CONTROL BOARD**

---

|   |   |  |
|---|---|--|
| <b>IN THE MATTER OF:</b>                  | ) | <b>DIVISION OF AIR POLLUTION CONTROL</b> |
|   | ) |  |
|   | ) |  |
| <b>BAE SYSTEMS ORDNANCE SYSTEMS INC.,</b> | ) |  |
|   | ) |  |
|   | ) |  |
| <b>RESPONDENT.</b>                        | ) | <b>CASE NO. APC23-0024</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. The Respondent's facility address is 4509 West Stone Drive, Kingsport, Tennessee 37660. The 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.**

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**

**VII.**

On October 8, 2018, the Technical Secretary issued Major Source construction permit (“Title V”) permit number 974192, (facility 37-0028), to the Respondent for Chemical Processing Operations for Preparation of RDX and HMX Explosives. On August 19, 2021, the Technical Secretary amended Title V permit number 974192.

**VIII.**

Condition S1-8 of Title V permit 974192 states:

The permittee shall comply with the applicable provisions of Tenn. Comp. R. & Regs. 1200-03-27-.12 (NOx SIP Call Requirements for Stationary Boilers and Combustion Turbines).

**IX.**

On January 27, 2021, the Respondent requested NOx allowances for four natural gas-fired boilers (sources 120, 121, 122, and 123) in accordance with Division Rule 1200-03-27-.12 (NOx SIP Call Requirements).

**X.**

On February 1, 2021, the Division replied to the request and established an allotment of 226 tons for each control period as a total for all boilers. In this reply, the Division also notified the Respondent of the requirement to complete a certificate of representation for the Environmental Protection Agency's (EPA's) Clean Air Markets Division (CAMD) as required by Title 40 Code of Federal Regulations, Part 72, Subpart B, Section 72.24 (40 C.F.R. §72.24) for the four boilers.

**XI.**

In an application dated September 15, 2022, the Respondent indicated that the facility did not complete the registration in EPA's CAMD system, nor did the facility upload the data from the boiler operations during the ozone season control period (May 1 through September 30) as required by 40 C.F.R. §72.24. The application indicated that the registration and data logging were not completed due to a delay in the performance testing of the boilers and subsequent issues related to the continuous emission monitoring systems (CEMS) associated with the boilers. However, performance testing of the boilers was conducted from April 5 through 7, 2022, and the final performance test report was submitted to the Division on June 24, 2022. The Division reviewed and approved your performance test report on August 3, 2022.

**XII.**

On February 8, 2023, the Division issued a Notice of Violation to the Respondent for the violations identified in paragraphs **X** and **XI**. On March 1, 2023, the Division received via e-mail, the Respondent's confirmation of registration and data reports for the four boilers.

**VIOLATIONS**

**XIII.**

By failing to comply with condition S1-8 of Title V permit number 974192, 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**

**XIV.**

The 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  
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 thirty-first day after receipt of this Order and Assessment of Civil Penalty. The case number, APC23-0024, 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. 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, 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 Judge 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 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, 15<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

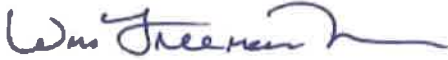
Attorneys should contact the undersigned counsel of record. The case number, APC23-0024, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Air Pollution Control Board, Department of Environment and Conservation, on May 5, 2023.



Michelle Walker Owenby  
Technical Secretary  
Air Pollution Control Board

Reviewed by:



---

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