

# **COMMONWEALTH of VIRGINIA**

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Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY  
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David K. Paylor  
Director

Robert J. Weld  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
UNITED STATES ARMY (OWNER)  
AND  
BAE SYSTEMS ORDNANCE SYSTEMS, INC.  
FOR  
RADFORD ARMY AMMUNITION PLANT  
Registration No. 20656**

## **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and the United States Army (Owner) and BAE Systems Ordnance Systems, Inc., regarding the Radford Army Ammunition Plant, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

## **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Army" means the United States Army. The Army is a "person" within the meaning of Va. Code § 10.1-1300.
2. "BAE" means BAE Systems Ordnance Systems, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. BAE is a "person" within the meaning of Va. Code § 10.1-1300.

3. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
4. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
5. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Facility" or "Plant" or "RFAAP" means the Radford Army Ammunition Plant, located at State Route 114 in Montgomery and Pulaski Counties, Virginia.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
11. "The Parties" means the United States Army (Owner) and BAE Systems Ordnance Systems, Inc. (Operator).
12. "PCE" means a partial compliance evaluation by DEQ staff.
13. "Permit" means the minor New Source Review permit approved on May 2, 2017 and amended June 13, 2018. Although the relevant permit conditions did not change after the Permit was amended, the numbering of permit conditions did change, as noted in Section C below. RAAP is also subject to a Title V Federal Air Operating Permit No. VA-20656 to operate the Facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to the Army (as owner) and Alliant Ammunition & Powder Co., LLC ("Alliant")(as operator) effective January 15, 2004. On June 18, 2012, BAE submitted a Form 7 (Facility/Owner/Operator Information Update Form) application to DEQ notifying the agency that the operator for the Plant would be changing to BAE as of July 1, 2012. On August 2, 2012, BAE submitted a revised Form 7 correcting certain errors that were contained in the original submittal.
14. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.

17. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

**SECTION C: Findings of Fact and Conclusions of Law**

1. The Army owns the Facility and BAE operates the Facility. The Facility manufactures specialty munitions, propellants and chemicals for the Army and other users. The Facility is the subject of the Permit which allows operation and emissions in accordance with its terms.
2. The Permit includes conditions for the operation of package boilers used for generating steam and electricity for use at the Facility. Six package boilers, designated ECPB No. 1 through ECPB No. 6, are listed in the Permit. The Permit states that the fuels for these package boilers are natural gas and distillate oil. Operation of the boilers is also subject to 40 CFR, Part 60, Subpart Db, New Source Performance Standards for Industrial – Commercial – Institutional Steam Generating Units. The 30-day NOx emission limits for these boilers are established in the Permit while burning natural gas, burning distillate oil, and when burning both fuels within the 30-day NOx averaging period. The emission limits for NOx for each boiler is 0.011 lb/MMBtu when burning natural gas and 0.077 lb/MMBtu when burning distillate oil. For any 30-day period when both fuels are used, the limitation is calculated in accordance with 40 CFR 60.44b(b), except the emissions limitations for natural gas and distillate oil are those specified in the Permit.
3. On April 24, 2018, DEQ conducted a Partial Compliance Evaluation of the Facility record for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Records reviewed included the Fourth Quarter 2017 Excess Emission Report (“2017 4Q Report”) for Package Boilers ECPB Nos. 1 through 6 NOx Continuous Emissions Monitors (“CEMS”) submitted by BAE on April 24, 2018. Based on the evaluation and follow-up information, Department staff made the following observations:
  - a. During the period from October 1, 2017 through December 31, 2017, CEMS for emissions from Package Boiler ECPB No. 2 recorded a rolling 30-day average of 0.012 lb/MMBtu that occurred from December 25 to 29, which was 15.1 % of operating time, for a total length of time in violation of 5 days.
  - b. During the period from October 1, 2017 through December 31, 2017, CEMS for emissions from Package Boiler ECPB No. 5 recorded a rolling 30-day average of 0.015 lb/MMBtu that occurred from December 14 to 16, which was 1.7 % of operating time, for a total length of time in violation of 3 days.
  - c. During the period from October 1, 2017 through December 31, 2017, CEMS for emissions from Package Boiler ECPB No. 6 recorded a rolling 30-day average of

0.013 lb/MMBtu that occurred from December 15 to 16, which was 1.5 % of operating time, for a total length of time in violation of 2 days.

4. On May 7, 2018, DEQ conducted a Partial Compliance Evaluation of the Facility record for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Records reviewed included the First Quarter 2018 Excess Emission Report ("2018 1Q Report") for Package Boilers ECPB Nos. 1 through 6 NOx Continuous Emissions Monitors ("CEMS") submitted by BAE on May 7, 2018. Based on the evaluation and follow-up information, Department staff made the following observations:
  - a. During the period from January 1, 2018 through March 31, 2018, CEMS for emissions from Package Boiler ECPB No. 3 recorded a rolling 30-day average of 0.012 lb/MMBtu that occurred from January 16 to February 9, which was 24.33 % of operating time, for a total length of time in violation of 22 days.
  - b. During the period from January 1, 2018 through March 31, 2018, CEMS for emissions from Package Boiler ECPB No. 5 recorded a rolling 30-day average of 0.013 lb/MMBtu that occurred from January 3 to 23, which was 100 % of operating time, for a total length of time in violation of 21 days.
  - c. During the period from January 1, 2018 through March 31, 2018, CEMS for emissions from Package Boiler ECPB No. 6 recorded a rolling 30-day average of 0.013 lb/MMBtu that occurred from January 17 to February 13, which was 34.24 % of operating time, for a total length of time in violation of 15 days.
5. On June 5, 2018, based on the April 24 and May 7, 2018 PCEs and follow-up information, the Department issued Notice of Violation No. ABRRO000929 to the Army and BAE for the violations described in paragraphs C(3) and C(4), above.
6. 9 VAC 5-50-260 states that no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of emissions limitations representing best available control technology.
7. Condition 16 of the Permit that was effect during the relevant period (which is Condition 12 of the Permit as amended on June 13, 2018) requires that emissions from the operation of each large boiler (ECPB-01 through ECPB-04) shall not exceed 0.011 lb/MMBtu when burning natural gas.
8. Condition 17 of the Permit that was in effect during the relevant period (which is Condition 13 of the Permit as amended on June 13, 2018) requires that emissions from the operation of each small boiler (ECPB-05 and ECPB-06) shall not exceed 0.011 lb/MMBtu when burning natural gas.

9. Based on the results of the April 24 and May 7, 2018 evaluations, the Board concludes that the Parties have violated the Permit and 9 VAC 5-50-260, as described in paragraphs C(3) through C(8), above.
10. The Parties have submitted documentation that verifies that the violations described in this section have been corrected.
11. As it relates to the Army, settlement of this matter shall not constitute an admission of liability, nor shall evidence of this Order be admissible in any administrative or judicial proceeding to establish such liability. Settlement of this matter, to include the payment of any penalties, shall not constitute a waiver of federal sovereign immunity, or an admission of such a waiver, or an admission that the United States is liable to pay administrative or civil penalties or fines assessed by DEQ.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders BAE, and BAE agrees to pay a civil charge of \$64,287.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

BAE shall include its Federal Employer Identification Number (FEIN) (54-189-2491) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, BAE shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the Parties for good cause shown by the Parties, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2)

- seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Parties admit the jurisdictional allegations, and agree not to contest, but neither admit nor deny the findings of fact, and conclusions of law in this Order.
  4. BAE consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
  5. The Parties declare they have received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and they waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
  6. Failure by the Parties to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
  7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
  8. The Parties shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond their control and not due to a lack of good faith or diligence on their part. The Parties shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The Parties shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
    - a. the reasons for the delay or noncompliance;
    - b. the projected duration of any such delay or noncompliance;
    - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
    - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Parties.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after the Parties have completed all of the requirements of the Order;
  - b. The Parties petition the Director or his designee to terminate the Order after they have completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Parties.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Parties from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

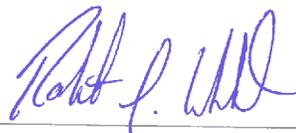
12. Nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. Any requirement for payment or obligation of funds by a particular date established by the terms of this agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. If sufficient appropriations are not available and cannot be obtained, the Army will promptly inform the DEQ Regional Director.
13. Any plans, reports, schedules or specifications attached hereto or submitted by the Parties and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
14. The undersigned representative of the Parties certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and

legally bind the Parties to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Parties.

15. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

16. By their signatures below, the Parties voluntarily agree to the issuance of this Order.

And it is so ORDERED this 30<sup>th</sup> day of October, 2018.



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Robert J. Weld, Regional Director  
Department of Environmental Quality

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The United States Army, RFAAP, voluntarily agrees to the issuance of this Order.

Date: 23 Oct 2018 By: JAMES H. SCOTT, III, LTC, COMMANDING  
(Person) (Title)

Commonwealth of Virginia  
City/County of Montgomery

The foregoing document was signed and acknowledged before me this 23<sup>rd</sup> day of October, 2018, by LTC James H. Scott who is Commander of the Radford Army Ammunition Plant, on behalf of the Army.

Rhonda L. Presley  
Notary Public

7641532

Registration No.

My commission expires: 10/31/2018 <sup>RP</sup> 2019

Notary seal:



BAE Systems Ordnance Systems, Inc, voluntarily agrees to the issuance of this Order.

Date: 23 Oct 2018 By: Angela E. Nalley, Director, Contracts - OSI  
(Person) (Title)

Commonwealth/State of Virginia

City/County of Montgomery

The foregoing document was signed and acknowledged before me this 23<sup>rd</sup> day of October, 2018, by Angela E. Nalley who is Director, Contracts, OSI on behalf of the corporation.

Rhonda L. Presley  
Notary Public

7641532  
Registration No.

My commission expires: 10/31/2018 <sup>RP</sup> 2019

Notary seal:

