



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 20 2016

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Benjamin Kacher  
Legal Counsel  
BAE Systems  
4050 Peppers Ferry Road  
Radford, Virginia 24141

Re: BAE Ordnance Systems, Inc.  
Consent Agreement and Final Order  
Docket No. TSCA-04-2016-2907(b)

Dear Mr. Kacher:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CAFO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

If you have any questions or concerns, please contact Lucia Mendez, at (404) 562-9637.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL  
2016 SEP 20 AM 9:48  
HEARING CLERK

In the Matter of: )  
)  
BAE Systems Ordnance Systems, Inc. )  
)  
)  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2016-9076

**CONSENT AGREEMENT**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Resource Conservation and Restoration Division (RCRD), United States Environmental Protection Agency, Region 4 (EPA). Respondent is BAE Systems Ordnance Systems, Inc.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and Executive Order 12088, 43 Federal Register 47707 (October 13, 1978), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has delegated this authority to the Director of RCRD by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRD has the authority to commence an enforcement action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of EPA promulgated regulations in 40 C.F.R. Part 761 pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$32,500 for each such violation occurring between March 15, 2004, and January 12, 2009, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Kris Lippert  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960  
(404) 562-8605

### **III. Specific Allegations**

6. Respondent operated Holston Army Ammunition Plant which is a government owned/contractor operated facility located at 4509 West Stone Drive, Kingsport, Tennessee 37660 (the "Facility"), in 2015.
7. Respondent is a "person" as defined in 40 C.F.R. § 761.3 as any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency or instrumentality of the federal government.
8. "PCB Article" is defined in 40 C.F.R. § 761.3 as any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs.
9. "PCB Item" is defined in 40 C.F.R. § 761.3 as any PCB Article, PCB Article Container, PCB Container, PCB Equipment or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
10. "PCB Transformer" is defined in 40 C.F.R. § 761.3 as any transformer that contains 500 parts per million (ppm) PCB or greater.
11. On or about August 13, 2015, the Tennessee Department of Environmental Conservation (TDEC) conducted an inspection at the Facility on behalf of EPA.
12. At the time of the inspection, a General Electric PCB Transformer with serial number L495603PMLB holding 82 gallons of liquid with a PCB concentration greater than 500 ppm, was stored at Plant B's Coal Fired Boiler as a standby or backup transformer. PCB Transformer L495603PMLB was de-energized in 2011, according to Respondent during the August 13, 2015, inspection. On April 21, 2016, the PCB Transformer was manifested off-site for disposal on manifest number 015722820JJK.
13. At the time of the inspection, a PCB Transformer with serial number 7146126 holding 258 gallons

of liquid with a PCB concentration greater than 500 ppm was being stored for reuse inside the electric room of the Steam Plant at Area A. PCB Transformer 7146126 was de-energized on July 8, 2013, according to Respondent during the August 13, 2015, inspection. On April 21, 2016, the PCB Transformer was manifested for off-site disposal on manifest number 015722820JJK.

14. Pursuant to 40 C.F.R. § 761.35(a)(2), owners or operators of a PCB Article are allowed to store it for reuse for no more than five years, if the owner or operator maintains records starting at the time the PCB Article is removed from use. The records must indicate:

- (i) The date the PCB Article was removed from use or August 28, 1998, if the removal date is not known;
- (ii) The projected location and the future use of the PCB Article; and
- (iii) If applicable, the date the PCB Article is scheduled for repair or servicing.

At the time of the inspection, no storage for reuse records were available for PCB Transformers L495603PMLB and 7146126. Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.35(a)(2).

15. Pursuant to 40 C.F.R. § 761.180(a)(2)(iv), a written annual document log shall include the total number of PCB Transformers and total weight in kilograms of PCBs contained in the transformers remaining in service at the end of the calendar year. PCB Transformer L495603PMLB was stored for reuse on-site on the roof of the steam plant from 2011 until 2016. PCB Transformer 7146126, was stored for reuse on-site inside the electric room of the steam plant at Area A from 2013 until 2016. Both of these transformers were identified in Respondent's written annual document logs during the times when they were stored for reuse as if they were in-service. Therefore, EPA alleges that the Respondent violated 40 C.F.R. § 761.180(a)(2)(iv).

#### IV. Consent Agreement

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
17. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
18. Respondent consents to the assessment of the civil penalty set forth in this CAFO and agrees to pay the civil penalty as set forth in this CAFO.
19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA and the PCB regulations.
20. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.
21. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

#### V. Final Order

22. Respondent is assessed a civil penalty of **FOURTEEN THOUSAND FOUR HUNDRED AND FIFTY DOLLARS (\$14,450)**, which shall be paid within 30 days from the effective date of this CAFO.
23. Respondent shall remit the civil penalty by either (1) wire transfer, in accordance with instructions

provided below, or (2) by a cashier's or certified check made payable to the "Treasurer, United States of America." If payment is made by check through the U.S. Postal Service, Respondent shall send the check to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000.

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

For payment submittal by any overnight delivery service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
(314) 425-1818

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

For payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York using the following information:

ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York NY 10045  
Beneficiary: US Environmental Protection Agency

**The wire transfer instructions shall reference the Respondent's name and address, the case name and the docket number of this CAFO.**

24. At the time of payment, Respondent shall send a written statement that the payment has been made in accordance with this CAFO (along with a copy of the check if payment is made by check, or

indicating that payment was by wire transfer and the wire transfer instructions) to each of the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960;

Kris Lippert  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960

and

Saundi Wilson  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

25. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
26. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
27. This CAFO shall be binding upon Respondent, its successors and assigns.



28. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

**VI. Effective Date**

29. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

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**AGREED AND CONSENTED TO:**

**Docket No.:** TSCA-04-2016-2907(b)


**Respondent:** BAE Systems Ordnance Systems, Inc.

By:  (Signature) Date: 8/30/2016

Name: Benjamin L. Kacher (Typed or Printed)

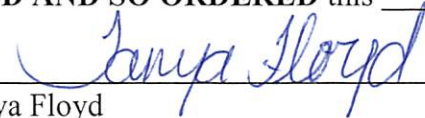
Title: Counsel (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 9/9/2016

G. Alan Farmer, Director  
Resource Conservation and Restoration Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 15<sup>th</sup> day of September, 2016.

By:   
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), for BAE Ordnance Systems, Inc., Docket Number: TSCA-04-2016-2907(b), on 9-20, and on 9-20, served the parties listed below in the manner indicated:

Lucia Mendez (Via EPA Internal Mail)  
Attorney  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

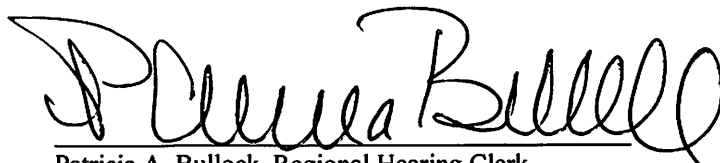
Bob Caplan (Via EPA Internal Mail)  
Senior Attorney  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

Kris Lippert (Via EPA Internal mail)  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA Internal mail)  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Mr. Benjamin Kacher (Via Certified Mail – Return Receipt Requested)  
Legal Counsel  
BAE Systems  
4050 Peppers Ferry Road  
Radford, Virginia 24141

Date: 9-20-16



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511