



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

October 12, 2011

Thomas A. Arseneault, President
BAE Systems Information and Electronic Systems Integration, Inc.
65 Spit Brook Road
Nashua, NH 03061


Re: Docket No. AF 11-042 - Administrative Fine by Consent Agreement

Dear Mr. Arseneault:

Enclosed for your records is a copy of the fully accepted and executed Administrative Fine by Consent Agreement in the above mentioned matter. We are in receipt of your payment pursuant to Section V, Paragraph 4 of the agreement.

On behalf of the Department of Environmental Services, thank you for your cooperation in this matter. This letter does not provide relief against any existing or future violations.

Sincerely,

COPY

Jane Murray
Executive Secretary
DES Legal Unit

cc: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
DES Public Information Officer
Nashua City Council
Robert Bishop, DES

cc: DES Legal Unit



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

BAE Systems Information and Electronic
Systems Integration, Inc.
65 Spit Brook Road
Nashua, NH 03061

Re: EPA ID# NH001079219

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 11-042

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and BAE Systems Information and Electronic Systems Integration, Inc., pursuant to RSA 147-A. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES") is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive in Concord, New Hampshire.
2. BAE Systems Information and Electronic Systems Integration, Inc. ("BAE Systems") is a corporation registered to do business in New Hampshire having a mailing address of 65 Spit Brook Road, Nashua, NH 03061.

III. BACKGROUND

1. Pursuant to RSA 147-A, the Department of Environmental Services regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Hw 100-1100 [was Env-Wm 100-1100] ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner previously adopted NH CODE ADMIN. RULES Env-C 612 to establish a schedule of fines for such violations. While the schedule of fines has expired, DES uses the schedule as guidance when determining an appropriate fine amount.
3. BAE Systems is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities in Nashua, New Hampshire through DES on August 18, 1980. EPA Identification Number NHD001079219 was assigned to BAE Systems' site located at 65 Spit Brook Road in Nashua, New Hampshire (the "Facility").

4. On August 6th and 10th, 2009, DES personnel inspected the Facility for compliance with RSA 147-A and its implementing regulations, the Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued a Notice of Past Violation to BAE Systems on May 20, 2010. Based on the violations observed during the inspection, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. BAE Systems failed to conduct an adequate hazardous waste determination, as required by Env-Hw 502.01, for hazardous waste solder paste ("Violation 1"). For this violation, Env-C 612.05(a), which referenced Env-Wm 502.01 [now Env-Hw 502.01], authorized a fine of \$1,500 per determination not made.
2. BAE Systems failed to close, as required by Env-Hw 507.01(a)(3), one (1) 5-gallon container of hazardous waste stored in the Failure Engineering Laboratory ("Violation 2"). For this violation, Env-C 612.06(c)(3), which referenced Env-Wm 507.01(a)(3) [now Env-Hw 507.01(a)(3)], authorized a fine of \$100 for each container that is 5-gallons or less.
3. BAE Systems failed to use a uniform hazardous waste manifest, as required by Env-Hw 510.01, for fifteen (15) shipments of hazardous waste solder paste ("Violation 3"). Five (5) of the fifteen shipments were to Alpha Frye Technology ("Alpha Frye") of Altoona, Pennsylvania and ten (10) of the shipments were to Colt Refining, Incorporated ("Colt Refining") of Merrimack, New Hampshire. For these violations, Env-C 612.04(a) which referenced Env-Wm 510.01 [now Env-Hw 510.01], authorized a fine of \$2,000 per shipment, for a potential fine of \$30,000.
4. BAE Systems failed to deliver, as required by Env-Hw 511.01(b), the hazardous waste solder paste to a facility that was authorized to accept D008 hazardous waste ("Violation 4"). The hazardous waste solder paste was delivered on ten (10) separate occasions to Colt Refining. Colt Refining is a precious metal recycling facility. Colt Refining is not a permitted treatment, storage, or disposal facility authorized to accept D008 hazardous waste. For these violations, Env-C 612.04(d) which referenced Env-Wm 511.01(b) [now Env-Hw 511.01(b)], authorized a fine of \$2,000 per load delivered to an unauthorized facility, for a potential fine of \$20,000.

V. PAYMENT, WAIVER OF HEARING

1. For settlement purposes only, DES agrees not to seek the potential fine associated with Violation 2 because it is not a Class I violation.
2. DES asserts that the following fines are appropriate for Violations 1, 3 and 4:
 - a. Violation 1 is a Class I violation. No penalty reduction is recommended. DES is thus seeking a fine of \$1,500;
 - b. Violation 3 is a Class I violation. For settlement purposes, DES agrees not to seek a fine for the ten (10) shipments to Colt Refining as these violations are addressed in the penalty for Violation 4. DES does seek a fine for the five (5) shipments to Alpha Frye, for a potential fine of \$10,000. Additionally, DES has determined that the following reductions should be applied to the gravity portion of the penalty:

- i. 25% due to BAE Systems' high level of cooperation in providing information and its effort to correct the violation; and
- ii. 20% due to other circumstances (i.e., Alpha Frye is authorized by the State of Pennsylvania to accept hazardous waste solder paste).

DES is thus seeking a fine of \$5,500 [$\$10,000 \times .55$ (45% reduction)] for Violation 3.

c. Violation 4 is a Class I violation. For settlement purposes, DES has determined that the following reductions should be applied to the gravity portion of the penalty:

- i. 25% due to BAE Systems' high level of cooperation in providing information and its effort to correct the violation; and
- ii. 10% due to other circumstances. (i.e., the hazardous waste solder paste was ultimately recycled, at a facility authorized by the State of Pennsylvania to recycle hazardous waste).

DES is thus seeking a fine of \$13,865 [$\$2,470$ (economic benefit) + $\$11,395$ (gravity)] for Violation 4. Gravity calculation: $\$20,000 - \$2,470$ (economic benefit) = $\$17,530$ (gravity) $\times .65$ (35% reduction) = $\$11,395$.

3. For settlement purposes only, DES will apply an additional 20% reduction to the gravity portion of the penalty, based on BAE's good faith effort to comply. BAE has a comprehensive environmental management system and was a charter member of EPA's National Environmental Performance Track program; participating in the program from 2001 to the program's end in 2009. DES is thus seeking a total fine of \$17,186 [$\$20,865$ (penalty) - $\$2,470$ (economic benefit) = $\$18,395$ (gravity); $\$18,395$ (gravity) $\times .80$ (20% reduction) + $\$2,470$ (economic benefit) = $\$17,186$].

4. BAE Systems agrees to pay a total fine in the amount of \$17,200¹ upon execution of this Administrative Fine by Consent by an authorized representative of BAE Systems.

5. Payment under the preceding paragraph shall be paid by certified or corporate check made payable to "Treasurer, State of New Hampshire" and mailed to: **DES Legal Unit, Attn: Compliance Attorney, P.O. Box 95, Concord, NH 03302-0095.**

6. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

7. By executing this Administrative Fine by Consent, BAE Systems waives its right to a hearing on or any appeal of the administrative fines identified in this Administrative Fine by Consent, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

8. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of BAE Systems, the Director of the Waste Management Division, and the Commissioner of DES.

¹ Rounded to the nearest unit of \$100 pursuant to the RCRA Civil Penalty Policy.

9. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

BAE Systems Information and Electronic Systems Integration, Inc.

COPY

By: Thomas A. Arseneault, President
Duly Authorized

9/13/11
Date

Department of Environmental Services

COPY

Michael J. Wimsatt, P.G., Director
Waste Management Division

10/10/11
Date

COPY

Thomas S. Burack, Commissioner

10/10/11
Date

cc: DES Legal Unit
RCRA/DB/AF

cc: Public Information Officer, DES PIP Office
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Robert Bishop, Enforcement Manager, HWMB/DES
Nashua City Council