

The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



April 19, 2013

BAE Systems Information and Electronic
Systems Integration, Inc.
Douglas Garner, VP
Safety, Health and Environment
65 Spit Brook Road
Nashua, NH 03061

Re: Docket No. AF 13-013 – Administrative Fine by Consent Agreement

Dear Mr. Garner,

Enclosed for your records is a copy of the fully-executed Administrative Fine by Consent Agreement in the above-captioned matter. We are in receipt of your payment pursuant to Section V 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,

Brenda Higgins
COPY

Brenda Higgins
Executive Secretary
DES Legal Unit

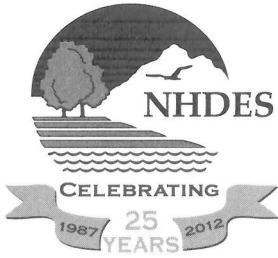
Enclosure: AFC 13-013

cc: DES Legal Unit

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

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964



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

Re: 95 Canal Street, Nashua, NH
EPA ID# NHD000791889

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 13-013

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 (the “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.
3. BAE Systems is a hazardous waste generator that notified the United States Environmental Protection Agency (“EPA”) of its activities at 95 Canal Street in Nashua, New Hampshire through DES on August 28, 1981. EPA Identification Number NHD000791889 was assigned to BAE Systems' site located at 95 Canal Street in Nashua, New Hampshire (the “Facility”).

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4. On May 24th, 25th, and 26th, 2011, 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 the inspections, DES issued Letter of Deficiency (“LOD”) No. WMD 12-008 to BAE Systems on February 7, 2012. Based on the violations observed during the inspection, DES believes that administrative fines are appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. BAE Systems violated RSA 147-A:4, I, and Env-Hw 304.04, by treating and disposing of hazardous waste spent palladium through its waste water treatment system and failing to include such hazardous waste spent palladium in its Limited Permit application (“Violation 1”). DES proposes a fine of \$2,000 for this violation.
2. BAE Systems violated Env-Hw 502.01 by failing to conduct an adequate hazardous waste determination for spent gold cyanide plating bath filters, spent palladium bath, NH01 waste oil, and spent potassium cyanide bath (“Violation 2”). Following the receipt of BAE System’s response to LOD No. WMD 12-008 on March 30, 2012, the hazardous waste determination for the NH01 waste oil was determined to be correct; therefore, DES will not seek a penalty for this waste stream. DES proposes a fine of \$2,000 per determination not made, for a potential fine of \$6,000 for these violations.
3. BAE Systems violated Env-Hw 507.03(a)(1)d., by failing to mark one 1-gallon container of hazardous waste with the EPA or state waste number (“Violation 3”). DES proposes a fine of \$50 for this violation.
4. BAE Systems violated Env-Hw 509.02(a)(3) by failing to manage incompatible wastes (i.e., cyanide and acid waste) to ensure that these wastes are separated or protected from other wastes (“Violation 4”). DES proposes a fine of \$2,000 for this violation.
5. BAE Systems violated Env-Hw 510.01 by failing to use a hazardous waste manifest to ship two containers of hazardous waste spent potassium cyanide bath off-site (“Violation 5”). DES proposes a fine of \$2,000 for this violation.
6. BAE Systems violated Env-Hw 511.01(a)(2) by failing to use a New Hampshire registered hazardous waste transporter to ship the two containers of hazardous waste spent potassium cyanide bath off-site (“Violation 6”). DES proposes a fine of \$2,000 for this violation.

V. PAYMENT, WAIVER OF HEARING

1. For purposes of settlement of this action, DES agrees not to seek the potential fines associated with Violations 1 and 3 because they are not Class I violations.
2. BAE Systems agrees to pay a fine in the amount of \$6,000 as itemized below for Violation 2 and Violations 4 through 6, which are Class I violations, upon execution of this Administrative Fine by Consent by an authorized representative of BAE Systems:

- a. \$2,000 for the portion of Violation 2 pertaining to BAE Systems' failure to perform an adequate hazardous waste determination on the spent potassium cyanide bath which is a Class I violation. BAE Systems' failure to perform an adequate hazardous waste determination on the spent gold cyanide plating bath filters and the spent palladium bath are Class II violations. Thus, for settlement purposes, DES will not seek a fine for BAE Systems' failure to perform an adequate hazardous waste determination on the spent gold cyanide plating bath filters and the spent palladium bath;
 - b. \$2,000 for Violation 4; and
 - c. For Violations 5 and 6, DES originally proposed penalties of \$2,000 per violation, for a total of \$4,000. DES has determined that the following mitigating factors should be applied to the base penalty of \$4,000:
 - i. A 25% reduction for BAE Systems cooperation in providing information subsequent to the inspection;
 - ii. A 20% reduction for BAE Systems' good faith effort to comply with the Hazardous Waste Rules. BAE Systems has a comprehensive environmental management system, as a result BAE Systems was found to be in compliance with the major elements of a hazardous waste management program (e.g., training, contingency plan, inspections). BAE Systems 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; and
 - iii. A 5% reduction for other circumstances. Although the hazardous waste was shipped without a manifest and not by a registered transporter, the hazardous waste was sent to a facility authorized to receive the waste (Colt Refining, Inc.).
- Thus, for settlement purposes, DES is seeking a total fine of \$2,000 (\$4,000 (base penalty) × .50 (50% reduction)) for Violations 5 and 6.

3. 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.**

4. 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.


5. 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.

6. 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.

7. 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: Douglas Garner, Vice President
of Safety, Health and Environment
Duly Authorized

15 APR 2013
Date

Department of Environmental Services

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

4/12/13
Date

 **COPY**
Thomas S. Burack, Commissioner

4/19/2013
Date

cc: DES Legal Unit
RCRA/DB/AF

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