

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

In re:

Order to Show Cause as to why Blue Ox
Spirits, Inc.'s Distilled Spirits Plant Basic
Permit IA-S-20039 should not be annulled

Respondent:

Blue Ox Spirits, Inc.
1631 NE. 55th Avenue
Des Moines, Iowa 50313

Docket No. AF-100,869-AA-ANNUL

INITIAL DECISION

On or about November 30, 2023, the Deputy Assistant Administrator, Field Operations (DAA-FO), of the Alcohol and Tobacco Tax and Trade Bureau (TTB) issued an Order to Show Cause (OTSC) (Form TTB F 5000.6) as to why Blue Ox Spirits, Inc.'s (Blue Ox), distilled spirits plant (DSP) basic permit (IA-S-20039) should not be annulled.

The DAA-FO, alleged in the OTSC, that Blue Ox procured its basic permit through misrepresentation, or concealment of material fact. As such the DAA-FO believed that basic permit IA-S-20039 should be annulled pursuant to 27 U.S.C. § 204(e)(3).

The specific bases for issuance of the OTSC are set forth in the OTSC and the attachment thereto. Blue Ox denied the allegations in the OTSC but agreed not to contest the specific findings made by the DAA-FO, detailed below, and further agreed to a stipulated suspension, in lieu of annulment, of Blue Ox's basic permit.

Given Blue Ox's acquiescence to the proposed suspension of its basic permit, TTB is treating Blue Ox's actions consistent with 27 C.F.R. § 71.63. Therefore, under the authority of 27 C.F.R. § 71.79(b), TTB makes the following Findings and Decision.

EVIDENCE PRESENTED BY THE GOVERNMENT

1. The OTSC, and attachment thereto, issued November 30, 2023, which is hereby incorporated by reference with the same force and effect as if fully set forth herein; and
2. Stipulated Suspension Agreement, executed on October 3, 2024 which is hereby incorporated by reference with the same force and effect as if fully set forth herein, wherein Blue Ox agrees not to contest the specific violations alleged in the OTSC, discussed below, and agrees to a three-day permit suspension.

FINDINGS AND CONCLUSIONS

1. Blue Ox was afforded due notice, opportunity for a hearing, and opportunity to file an answer.
2. Blue Ox knowingly and voluntarily waived its rights to a hearing.
3. Blue Ox has agreed not to contest the specific violations alleged in the OTSC discussed below.
4. Based on the foregoing, Blue Ox's authority to operate under basic permit IA-S-20039 may and should be suspended for a period of three days.

DECISION AND ORDER

1. In pertinent part, basic permits issued pursuant to the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 201-211, are subject to annulment

when procured through fraud, or misrepresentation, or concealment of material fact. 27 U.S.C. § 204(e)(3).

2. Blue Ox is a TTB-permitted DSP located in Des Moines, Iowa.
3. As a result of an investigation conducted by TTB's Trade Investigations Division, TTB alleges that Blue Ox procured its basic permit through means prohibited under 27 U.S.C. § 204(e)(3), in that in its application:
 - a. Blue Ox indicated that it would be conducting distilling operations at its licensed premise. TTB's investigation uncovered that it was not possible, from a legal standpoint, for Blue Ox to conduct these operations at its licensed premise due to zoning restrictions. Blue Ox was aware of these restrictions as evidenced by the fact that, contrary to what it stated on its application, Blue Ox made representations to State and local authorities to the effect that it would not be conducting distilling operations at its licensed premise.
 - b. Blue Ox detailed a step-by-step production procedure for its spirits. This information is required as part of an application when distilling operations are indicated.

During the course of TTB's investigation, TTB Investigators conducted site visits at Blue Ox's licensed premise. During an initial site visit to Blue Ox's licensed premise, on or about March 22, 2022, TTB Investigators uncovered that Blue Ox was not producing spirits through distillation. Moreover, TTB Investigators determined that Blue Ox's business model did not include distilling operations.

TTB Investigators also determined that equipment required for distilling operations, as listed on Blue Ox's application, was not on site.

- c. Blue Ox included a list of equipment to be installed at its licensed premise. The equipment listed on the Application included: (A) still, serial number 001, stated capacity "65", (B) processing tank, serial number 002, (C) production tank, serial number 003, and (D) storage tank, serial number 004. During the course of their investigation, TTB Investigators did not find any evidence that this equipment was ever installed at Blue Ox's licensed premise.

TTB's investigation uncovered that Blue Ox did not have any permanent tanks at its licensed premise.

- d. Blue Ox failed to accurately describe and identify the use of its licensed premise. Blue Ox represented, in the "DSP information" section of its Application, that the entire premise would be used for DSP operations. That same section of the Application asks whether other businesses will be conducted on the premises, and to include a description of the business, a list of buildings and/or equipment that will be used and a statement of the relationship of the business to the distilled spirits plant, if there is any. Blue Ox responded with "N/A."

During the course of their investigation, TTB Investigators uncovered that Blue Ox is co-located with [REDACTED], which is a TTB-permitted wholesaler of alcoholic beverages. TTB

Investigators observed [REDACTED] storing product on Blue Ox's premise. Moreover, TTB's investigation uncovered that the floor plan submitted to the State licensing agency did not match what was provided to TTB in that it included [REDACTED].

Based on the foregoing, the DAA-FO finds that Blue Ox procured its basic permit through means prohibited under 27 U.S.C. § 204(e)(3). However, in order to avoid the uncertainties inherent to litigation, the DAA-FO has agreed to accept a stipulated suspension offered by Blue Ox in lieu of annulling its basic permit. Accordingly, Blue Ox's authority to operate under basic permit IA-S-20039 is to be suspended for a period of three days. It is, therefore, **ORDERED** that the period of suspension will and shall be December 23, 26, and 27, 2024.

Date: October 4, 2024

[REDACTED] [REDACTED]
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Ronald Hancock
Deputy Assistant Administrator
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