COMMONWEALTH *of* VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO ALLIANT AMMUNITION & POWDER COMPANY, LLC. AND THE UNITED STATES ARMY, RADFORD ARMY AMMUNITION PLANT

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board, Alliant Ammunition & Powder Company, LLC. and the United States Army, for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

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

1. "Va. Code" means the Code of Virginia (1950), as amended.

2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Order.

6. "ATK" means Alliant Ammunition & Powder Company, LLC, the limited liability company certified to do business in Delaware and its affiliates, partners, subsidiaries, and parents.

7. "RFAAP" means the Radford Army Ammunitions Plant, which manufactures explosives and is owned by the US Army and operated by ATK located on Rt. 114 in Radford, Virginia.

8. "United States Army" or "US Army" means the United States Government affiliation owning the RFAAP.

9. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

10. "Permit" means the Title V Operating Permit, which became effective January 15, 2004 and expires January 14, 2009.

11. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. The US Army owns and leases RFAAP to ATK. RFAAP is subject to the Virginia State Air Pollution Control Board Laws and Regulations and to the January 15, 2004 Title V Permit.

2. Prior to November 2004, ATK began construction of a modification to the TNT production area at RFAAP. ATK has tentatively scheduled TNT production to begin by March of 2005.

3. On Monday, November 8, 2004, DEQ staff conducted a meeting with ATK and US Army representatives to discuss the pending construction/permitting issues at RFAAP. During this meeting, ATK representatives described site activities that the DEQ concluded constituted the beginning of actual construction of the modification to RFAAP's TNT production area. This disclosure prompted a request for a site visit of RFAAP.

4. On Tuesday, November 9, 2004, DEQ staff conducted a site visit of RFAAP. Upon inspection of the TNT production area, DEQ staff observed that construction had begun. This construction has occurred without ATK or the US Army first obtaining a stationary source permit to modify and operate from DEQ. DEQ staff informed the ATK and US Army representatives that enforcement would follow this inspection.

5. On November 15, 2004, DEQ issued a Notice Of Violation to ATK and the US Army for violations of Virginia Air Pollution Control Board Laws and Regulations. The violations above are cited under the following regulation:

   Failure to comply with Section 9 VAC 5-80-1120 A. of the State Air Pollution Control Board Regulations, which states that no owner or other person shall begin actual construction, reconstruction, or modification of any stationary source, without first obtaining from the Board a permit to construct and operate or to modify and operate such source.

6. On November 10, 2004, ATK representatives supplied DEQ staff with a draft interim construction schedule for the TNT production area.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, orders ATK and the US Army, and ATK and the US Army agree, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders ATK and the US Army, and ATK and the US Army voluntarily agree that ATK will pay a civil charge of **$7,000.00** in settlement of the violations cited in this Order.

1. **$7,000.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

   Receipts Control
   Department of Environmental Quality
   Post Office Box 10150
   Richmond, Virginia 23240

The payment shall include ATK's and/or the US Army's Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. ATK and the US Army shall be allowed to continue construction of the new TNT process in accordance to the schedule set forth in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of ATK and/or the US Army, for good cause shown by ATK and/or the US Army, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice Of Violation issued to ATK and the US Army by DEQ on November 15, 2004. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein. ATK and the US Army do not waive any rights it may have to object to enforcement actions by other federal, state, or local authorities arising out of the same or similar facts alleged in this Order.

3. For purposes of this Order and subsequent actions with respect to this Order, ATK and the US Army admit the jurisdictional allegations but do not admit the factual findings and conclusions of law contained herein.

4. ATK and the US Army consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. ATK and the US Army declare that they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law, Va. Code §§ 10.1-1300 *et seq.*, and they waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein except that ATK and the US Army reserve their right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments to this Order issued without the consent of ATK and the US Army. Nothing herein shall be construed as a waiver of the right to any administrative proceeding, or to judicial review of, any action taken by the Board or the Director to enforce this Order.

6. Failure by ATK and/or the US Army 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. ATK and the US Army do not waive any rights they may have to object to enforcement actions by other federal, state, or local authorities arising out of the same or similar facts alleged in this Order.

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. ATK and the US Army 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 occurrence. ATK

and/or the US Army shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ATK and/or the US Army shall notify the DEQ Regional Director in writing 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 within 24 hours 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, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by the Director or his designee and designees from ATK and the US Army. Notwithstanding the foregoing, ATK and the US Army agree to be bound by any compliance date, which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to ATK and/or the US Army. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ATK and/or the US Army from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signatures below, ATK and the US Army voluntarily agree to the issuance of this Order.

And it is so ORDERED this 16th day of NOVEMBER, 2004.

Steven A. Dietrich
for Robert G. Burnley, Director
Department of Environmental Quality

Alliant Ammunition & Powder Company, LLC. voluntarily agrees to the issuance of this Order.

By: [signature]

Date: 11-16-2004

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

By: [signature]

Date: 11/16/04

Commonwealth of Virginia
City/County of Montgomery

The foregoing document was signed and acknowledged before me this 16th day of November, 2004, by Wayne C. Farley (name), who is President (title) of Alliant Ammunition & Powder Company, LLC., on behalf of the Company and by Douglas M. Day (name), who is Safety Risk Mgr. (title) of United States Army., on behalf of the United States Army.

Lisa Y. Epperly
Notary Public

My commission expires: 8-31-07.

APPENDIX A

Alliant Ammunition & Powder Company, LLC. and the United States Army shall:

1. From the effective date of the Order, the RFAAP shall be allowed to construct under the following interim schedule:

ID	Task Name	Time Table
1.	**N&P Operation (Bldg 9501)**	11/04 to 3/05
2.	Acid piping rough-in	11/04 to 2/05
3.	Cooling Water piping rough-in	11/04 to 1/05
4.	Process Steam piping rough-in	11/04 to 1/05
5.	Hot Water piping rough-in	11/04 to 1/05
6.	ONT piping system installation	11/04 to 1/05
7.	Crystallization Tank modifications	11/04
8.	Crystallization Tank placement	11/04
9.	Crystallization Heat Exchanger & Pump placement	11/04 to 12/04
10.	Crystallization piping rough-in	11/04 to 2/05
11.	Hot Water unit placement	12/04
12.	PLC Panel placement	12/04 to 1/05
13.	Conduit rough-in	11/04 to 12/04
14.	**Denitration-Fume Abatement (Bldg 9501D)**	11/04 to 1/05
15.	Foundation preparation	11/04
16.	Foundation pours	11/04
17.	Bldg Steel Erection	11/04 to 1/05
18.	**Cooling/Chiller System**	11/04 to 12/04
19.	Header piping installation	11/04 to 12/04
20.	Pump Connections	11/04
21.	Chiller anchoring	11/04
22.	**Isotrioll Operations (Bldg 9505)**	11/04 to 3/05
23.	Place Heat Exchangers/Pumps & Tanks	11/04 to 12/04
24.	Process piping rough-in	12/04 to 1/05
25.	Utilities piping rough-in	12/04 to 1/05

2. From the effective date of the Order, ATK or the US Army shall provide DEQ with written verification of completion or progress reports of the TNT modification project by providing project completion or progress reports verifications. These reports must be submitted to the DEQ within thirty (30) days from the effective date of the Order on a quarterly basis, due the 10th day of each quarter.

3. In no event shall ATK or the US Army operate the modified TNT process equipment without first obtaining a permit pursuant to 9 VAC 5-80-1100 *et seq.* from DEQ. Continued construction shall be allowed pursuant to the schedule set forth in this Appendix until permit issuance or for the period ending February 28, 2005, whichever occurs first.