COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

ASSOCIATED NAVAL ARCHITECTS, INCORPORATED

VPDES Permit No. VA0087599

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Associated Naval Architects, Incorporated, for the purpose of resolving certain violations of environmental law and/or 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 Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

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 Special Order.

6. "Regulation" means 9 VAC 25-31-10 *et seq.*- the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

8. "Permit" means VPDES Permit No. VA0087599.

SECTION C: Finding of Facts and Conclusions of Law

1. Associated Naval Architects, Incorporated ("ANA") owns and operates a vessel repair and maintenance facility, located at 3400 Shipwright Street, Portsmouth ("facility").

2. The Permit, which was issued on December 1, 2003, and expires on November 30, 2008, authorizes ANA to discharge wastewater for conventional marine railway ("MRW") operations and process wastewater associated with vessel repair and/or maintenance from four permitted outfalls: Outfall 001, Outfall 002, Outfall 003 and Outfall 004. The permitted outfalls correspond to the four MRWs at the facility. An MRW is a mechanical device by which a vessel is removed from the water by means of a frame ("carriage" or "cradle") that retracts along train rails.

3. ANA was party to a Special Order by Consent issued by the Board effective June 28, 2007 ("2007 Order") that addressed, among other things, deficiencies in compliance with Permit-required Best Management Practices ("BMPs"). The 2007 Order required payment of a civil charge ($7,000.00), which was received by DEQ on June 27, 2007. Accordingly, the 2007 Order was terminated effective August 15, 2007.

4. Part I.A.1 and Part II.C of the Permit require ANA, among other things, to monitor the discharges from Outfall 003 and to submit monitoring results to DEQ quarterly on Discharge Monitoring Reports ("DMRs") by the 10th day of the month following the end of the quarter.

5. ANA did not submit the DMR for discharges from Outfall 003 during the 4th Quarter 2007 as required by Part I.A.1 and Part II.C of the Permit.

6. Part I.B.3.a of the Permit requires ANA to comply with BMPs according to requirements listed in the Permit.

7. Part I.B.7 of the Permit requires ANA to handle, dispose of, and store industrial wastes and other material in such a manner so as not to permit a discharge of such wastes or material to State waters.

8. During DEQ facility inspections on September 20, 2007 and October 26, 2007, and a subsequent review of ANA's records, DEQ staff documented the following BMP Permit compliance deficiencies:

    a. Spent materials, other debris, and trash were observed in the open without containment or covers to prevent runoff into State waters, i.e.: zinc anodes (anti-corrosive compound) in the open on the ground next to a barge on MRW #1; overflowing trash cans in the area between MRW #1 and MRW #2; metal welding rods and trash on the ground near the waterline; and metal welding rods in the water in the vicinity of MRW #4. Part I.B.3.a (3) of the Permit requires that the facility yard be cleaned on a regular basis to minimize the possibility that runoff will carry spent abrasives, paints, solvents, cleaners, anti-corrosive compounds, paint chips, scrap metal, trash, garbage, petroleum products or other debris into

the receiving water. Part I.B.3.a (22) of the Permit provides that trash receptacles are to be provided on each pier and on board each vessel and emptied as necessary to prevent trash from entering State waters. Part I.B.3.a (30) of the Permit requires that material (spent abrasives, paint chips, etc.) be cleaned up from the area in the vicinity of MRWs before the incoming tide. Part I.B.7 of the Permit requires that waste and other materials be handled, disposed of, and stored in such a manner so as not to permit a discharge of such wastes and materials to State waters.

b. Abrasive blast material ("ABM") was present throughout the facility, on the ground and on the carriages of all four MRWs. In some locations ABM was accumulated up to and over the bulkheads and hay bales intended to keep ABM from entering State waters. ABM was visible in the water under all four MRWs. There were no apparent controls in place, other than the hay bales, to prevent the ABM from entering State waters. Also, in several areas there were erosion patterns through ABM toward State waters. The report of its weekly Permit-required BMP audit for the audit conducted on October 5, 2007 provided by ANA indicated that an (unspecified) railway cradle had not been cleaned before launch, that ABM was present on MRW#2, and that the railway tidal area was not cleaned regularly. The reports for the BMP audits conducted on October 12, 2007 and October 15, 2007 contained similar entries. In addition to the requirements outlined in Part I.B.3.a (3), Part I.B.3.a (30) and Part I.B.7 cited above, the Permit, at Part I.B.3.a (4), provides that MRW carriages shall be cleaned before launching to prevent the discharge of pollutants to the waterway and cleaned on a regular basis so as to prevent rain from washing material into receiving waters. Finally, Part I.B.3.a (7) of the Permit specifies that dust and overspray from abrasive blasting and painting in yard facilities shall be controlled to minimize the spreading of wind blown materials and that these areas shall be cleaned up frequently to prevent abrasive blasting waste from being washed into storm sewers or the adjacent waterway.

c. There were paint cans and containers of apparent petroleum-based products throughout the facility open and exposed to rainfall. In addition to the requirements outlined in Part I.B.7 cited above, the Permit, at Part I.B.3.a (16), provides that solid chemicals, chemical solutions, paints, oils, solvents, acids, caustic solutions and waste materials, including used batteries, shall be stored in a manner which will prevent the entry of these materials into waters of the State, including ground waters.

9. ANA violated Permit conditions Part I.A.1 and Part II.C as noted in paragraph C.5 of this Order.

10. ANA violated Permit conditions Part I.B.3.a(3), (4), (7), (16), (22), and (30) and Part I.B.7 as noted in paragraph C.8 of this Order.

11. On February 19, 2008 DEQ issued Notice of Violation ("NOV") W2007-11-T-0002 to ANA. The NOV advised ANA of the violations of Permit conditions Part I.B.3.a(3), (4), (7), (16), (22) and (30) and Part I.B.7 revealed during the inspections conducted by DEQ staff on September 20, 2007 and October 26, 2007, and of Permit conditions Part I.A.1 and Part II.C for failing to submit the 4th Quarter 2007 DMR for Outfall 003.

12. ANA responded to the report of the compliance inspections by letter dated January 8, 2008. The letter notified DEQ that ANA had reassigned responsibility for BMP compliance from corporate counsel to the vice president for production; that ANA committed to removal of ABM from the MRW carriages and the surrounding area, to implement procedures to prevent ABM from entering State waters, and to improve overall management of ABM; that a training program on container and equipment management had been implemented; and that ANA was committed to improving its housekeeping practices.

13. In an electronic mail to DEQ on January 23, 2008, in response to the allegation that it had failed to submit a 4th Quarter 2007 DMR as noted in paragraph C.5 of this Order, ANA acknowledged that it had failed to monitor the discharge from Outfall 003 during the 4th Quarter 2007.

14. DEQ enforcement and compliance staff ("staff") conducted a site visit on March 19, 2008 and met with ANA production leadership who had recently been assigned responsibility for Permit compliance (as noted in paragraph C.12 of this Order). Staff observed considerable improvement in site conditions compared to the non-compliance observations noted in the February 19, 2008 NOV. Trash and debris were contained; no zinc anodes or welding rods were observed on the ground. Paint and other potentially hazardous materials were properly labeled and stored. New shrouds (large curtains intended to confine blast material and other airborne particles within a work area) had been installed at all four MRWs. New hay bales had been installed and repositioned to more effectively prevent ABM from entering State waters. Most significantly, ABM had been removed from the MRW carriages and the waterfront surrounding three of the four MRWs. ANA notified DEQ on May 22, 2008 that ABM had been removed from the remaining MRW.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted it by Va. Code § 62.1-44.15(8a) and (8d), orders ANA, and ANA voluntarily agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders ANA, and ANA voluntarily agrees to pay a civil charge of $28,280 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include ANA's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of ANA, for good cause shown by ANA, 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 above referenced Notice of Violation. 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.

3. For purposes of this Order and subsequent actions with respect to this Order, ANA admits the jurisdictional allegations, but neither admits nor denies the findings of fact and conclusions of law contained herein.

4. ANA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. ANA declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by ANA 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.

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. ANA 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 act of God, war, strike, or such other occurrence. ANA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ANA 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 ANA intends 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 both the Director or his designee and ANA. Notwithstanding the foregoing, ANA agrees 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 ANA. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ANA from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, ANA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 30, 2008.

Maria R Nold
~~Francis L. Daniel~~ Maria R Nold
Deputy Regional Director

Associated Naval Architects, Incorporated, voluntarily agrees to the issuance of this Order.

By: Brandt Everhart

Date: 5-27-08

Commonwealth of Virginia
City/~~County~~ of Portsmouth

The foregoing document was signed and acknowledged before me this 27th day of May, 2008, by Brandt Everhart (*name*), who is Secty-Treas (*title*) of Associated Naval Architects, Incorporated, on behalf of ANA.

Jeanne M. Collins
Notary Public

My commission expires: 12-31-09.
Reg # 216812

APPENDIX A

ANA shall:

1. Notwithstanding Part I.A.1 of the Permit, beginning with the 4th Quarter 2008 (due January 10, 2009), and continuing through the 3rd Quarter of 2009, submit to DEQ for its records, quarterly Discharge Monitoring Reports ("DMRs") for Outfall 001, Outfall 002 and Outfall 004. The DMRs shall conform to Permit requirements in all other respects.

2. Submit to DEQ for its review and approval, corrective action plans and schedules ("plans") to address Best Management Practice ("BMP") deficiencies noted during facility inspections. The plans shall be submitted to DEQ for its review and approval on a quarterly basis beginning with the 4th Quarter of 2008 (due January 10, 2009) and continuing through the 3rd Quarter of 2009. The plans shall be submitted with the quarterly reports required by Part I.B.3.b of the Permit, and shall address all BMP deficiencies, if any, noted in each quarterly report. Upon its approval, each plan shall become a part of and enforceable under the terms of this Order.

3. Comply with all conditions of the Permit, except as noted in Item 1 of this Appendix A.

4. Mail all submittals and reports required by this Appendix A to:

   Mr. Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Boulevard
   Virginia Beach, VA 23462