COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
UNITED STATES ARMY (OWNER)
AND
ALLIANT TECHSYSTEMS, INC. (OPERATOR)
FOR
RADFORD ARMY AMMUNITION PLANT
VPDES Permit No. VA0000248

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the United States Army, RAAP (Owner) and Alliant Techsystems, Inc. (Operator), regarding the Radford Army Ammunition Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

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

1. "Alliant" means Alliant Techsystems, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Alliant is a "person" within the meaning of Va. Code § 62.1-44.3.

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. "BRRO" means the Blue Ridge Regional Office of DEQ located in Roanoke, Virginia.

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

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "DMR" means Discharge Monitoring Report.

7. "Facility" or "RAAP" means the Radford Army Ammunition Plant, a manufacturing facility near Radford, Virginia owned by the United States Army, RAAP and operated by Alliant Techsystems, Inc.

8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

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

10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

11. "The Parties" means the United States Army, RFAAP (Owner) and Alliant Techsystems, Inc. (Operator).

12. "Permit" means VPDES Permit No. VA0000248, which was issued under the State Water Control Law and the Regulation to the Parties on June 10, 2005 and which expires on June 10, 2010.

13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)

contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

18. "U.S. Army" means the United States Army. U.S. Army is a "person" within the meaning of Va. Code § 62.1-44.3.

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

20. "VAC" means the Virginia Administrative Code.

21. "VPDES" means Virginia Pollutant Discharge Elimination System.

22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. RAAP is a federal facility owned by the federal government and administered by the Department of Defense, U. S. Army. The Facility is operated by a contract operator, Alliant. The Facility is permitted by VPDES Permit No. VA0000248 most recently re-issued on June 10, 2005 The Permit allows the Parties to discharge treated sewage and industrial wastes from the Facility to the New River, in strict compliance with the terms and conditions of the Permit.

2. The New River is located in the New River Basin. The New River is listed in DEQ's 303(d) report as impaired for PCBs. The source of the impairment is unknown.

3. In submitting its DMRs, as required by the Permit, the Parties have indicated that they exceeded discharge limitations contained in Part I.A.1 of the Permit, Outfall 005, for pH, Quality or Concentration, Minimum and Maximum, for the month of April 2009.

4. In submitting its DMRs, as required by the Permit, the Parties have indicated that they exceeded discharge limitations contained in Part I.A.1 of the Permit, Outfall 007, for pH, Quality or Concentration, Minimum, for the month of August 2009.

5. In submitting its DMRs, as required by the Permit, the Parties have indicated that they exceeded discharge limitations contained in Part I.A.1 of the Permit, Outfall 006, for pH, Quality or Concentration, Minimum, for the month of September 2009. In the transmittal letter dated October 9, 2009 that accompanied the DMR for September 2009, Alliant indicated that it believed the exceedance was related to a spill of sulfuric acid inside the Nitric/Sulfuric Acid Concentrator ("NAC/SAC") building.

6. The Department issued Notice of Violation ("NOV") No. W2009-11-W-001 to Alliant on November 10, 2009 for the pH effluent violation at Outfall 006, reported in the September 2009 DMR.

7. Alliant responded to the Notice of Violation by phone on November 12, 2009. Alliant submitted a follow-up letter to the Department on November 19, 2009. In the November 19, 2009 and the transmittal letter that accompanied the September 2009 DMR dated October 9, 2009, Alliant asserts the sulfuric acid spill in the NAC/SAC building migrated beyond the building because concrete surrounding a drain located on the outside south side of the building had deteriorated and allowed acid to infiltrate a nearby abandoned acid sewer line. The abandoned sewer line runs approximately five hundred yards and enters the Outfall 006 sewer system.

8. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

9. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

11. The Department has issued no permits or certificates to the Parties other than VPDES Permit No. VA0000248.

12. The New River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

13. Based on the DMRs and documentation submitted on October 9, 2009 and the documentation submitted on November 19, 2009, the Board concludes that the Parties have violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging wastewater while failing to comply with the conditions of the Permit, as described in paragraphs C3 through C7, above.

14. The Parties assert that they continue to operate the Facility in a workmanlike manner to prevent future effluent limit violations like the violations in paragraphs C3 and C4.

15. The Parties have submitted documentation that they have completed repairs to the drain at the NAC/SAC building to prevent entry of spilled acid in the abandoned sewer line. In addition, the abandoned sewer line is being permanently plugged with concrete to assure that this pathway to Outfall 006 is blocked. Alliant asserts that these repairs will correct the violation as described in paragraphs C5 through C7, above.

16. In order for the Parties to insure future compliance, DEQ staff and representatives of the Parties have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

17. By signing this Order, the U.S. Army does not waive sovereign immunity.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Parties, and the Parties agree to:

1. Perform the actions described in Appendix A of this Order; and

2. Alliant will pay a civil charge of $3,300 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

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

Alliant shall include its Federal Employer Identification Number (FEIN) **(41-1672694)** with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Parties for good cause shown by the Parties, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, the Parties admit to the jurisdictional allegations, and agree not to contest, but neither admit nor deny, the findings of fact and conclusions of law in this Order.

4. Alliant 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. The Parties declare that they have received fair and due process under the Administrative Process Act and the State Water Control Law and waive 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 modify, rewrite, amend, or enforce this Order.

6. Failure by the Parties 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. The Parties 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. The Parties shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The Parties shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 verbally within 24 hours and in writing within three business days, 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 Alliant hereto, its 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 the Parties. Nevertheless, the Parties agree to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Parties petition the Director or his designee to terminate the Order after they have completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    b. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Parties.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Parties from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. In accordance with the Federal Anti-Deficiency Act, the obligations of the U.S. Army under this section are expressly conditioned on the availability of Congressional appropriations, which the U.S. Army agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the U.S. Army will promptly inform the DEQ Regional Director. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with U.S. Army consent or in accordance with the Administrative Process Act.

13. Any plans, reports, schedules or specifications attached hereto or submitted by the Parties and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

14. The undersigned representatives of the Parties certify that they are a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Parties to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Parties.

15. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

16. By their signatures below, the Parties voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Steven A. Dietrich, Regional Director
Department of Environmental Quality

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

Date: 10 March 10 By: _____
Antonio Munera
Lieutenant Colonel, U.S. Army Commanding

Commonwealth of Virginia
County of Montgomery

The foregoing document was signed and acknowledged before me this 10 day of March, 2010, by Antonio Munera who is the Commander of Radford Army Ammunition Plant, United States Army.

_____
Notary Public

_____
Registration No.

My commission expires: _____

Notary seal:

Lisa Y. Epperly
Notary Public
Commonwealth of Virginia
My Commission Expires Aug 31, 2011
Notary Registration # 218415

Alliant Techsystems, Inc. voluntarily agrees to the issuance of this Order.

Date: March 9, 2010 By: _____

Kent Holiday, Vice President and General Manger
Alliant Techsystems, Inc.

Commonwealth of Virginia
County of Montgomery

The foregoing document was signed and acknowledged before me this 9th day of March 2010, by Kent Holiday who is Vice President and General Manger of Alliant Techsystems, Inc., on behalf of the corporation.

Lisa Y. Epperly
Notary Public

_____
Registration No.

My commission expires: _____

Notary Seal:

Lisa Y. Epperly
Notary Public
Commonwealth of Virginia
My Commission Expires Aug 31, 2011
Notary Registration # 218415

APPENDIX A
SCHEDULE OF COMPLIANCE

The Parties shall:

1. Review the operation and maintenance documents related to the operation of the NAC/SAC process. The review shall focus on the policies and procedures associated with spill prevention and spill control and determine if the current procedures are sufficient to prevent spills and facilitate sufficient spill response. This review shall be completed no later than March 31, 2010.

2. Submit to the Department the results of the review required in Paragraph 1 of this Appendix no later than April 14, 2010. If the Parties propose any revisions to the spill control or spill response policies and procedures, the revisions will require approval by the Department.

3. Complete construction and place into service the new NAC/SAC process building no later than December 31, 2010. The Parties shall notify the Department no later than 10 days after the completion of this item.

4. Take the current NAC/SAC process building permanently out of service no later than December 31, 2011. The Parties shall notify the Department no later than 10 days after the completion of this item.

5. Provide the Department with quarterly progress reports on the status of the items listed in Paragraphs 3 and 4 of this Appendix. The quarterly progress reports shall be submitted no later than April 10, 2010, July 10, 2010, October 10, 2010, January 10, 2011, April 10, 2011, July 10, 2011, and October 2011.

6. Unless otherwise specified in this Order, the Parties shall submit all requirements of Appendix A of this Order to:

   Jerry Ford, Jr.
   Enforcement Specialist Senior
   Virginia DEQ –Blue Ridge Regional Office]
   3019 Peters Creek Road
   Roanoke, VA 24019
   540/562-6817
   540/562-6725
   Jerry.Ford@deq.virginia.gov