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 VA0087599, which was issued to Associated Naval Architects, Incorporated on December 1, 2003 and expires on November 30, 2008.

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. ANA is required to develop a facility Storm Water Pollution Prevention Plan ("SWP3") and comply with Best Management Practices ("BMPs"), according to requirements listed in the Permit.

3. During a DEQ facility inspection on December 15, 2006, DEQ staff documented SWP3 Permit compliance deficiencies including the following:

    a. The signed facility SWP3 was not available as required by Part I.D.3.b.(1) of the Permit.

    b. The facility SWP3 did not contain all of the facility-specific storm water conditions for Ship and Boat Building or Repairing Yards as required by Part I.D.5 of the Permit.

    c. The facility SWP3 site map did not include all of the information required by Part I.D.3.d.(2) (a) i, and Part I.D.5.a.(1) of the Permit.

    d. The facility SWP3 did not provide the inspection areas, and tracking and followup procedures were not developed or implemented as required by part I.D.3.d.(3) (d), and Part I.D.5.(b) (2) of the Permit.

4. During the DEQ facility inspection on December 15, 2006, DEQ staff documented BMP Permit compliance deficiencies including the following:

    a. Spent materials and welding rods under one marine railway ("MRW"). Zinc anodes, other debris and trash were observed in the open, including paint chips and rust on the ground next to a barge on MRW #3 and paint waste outside of enclosed boat repair building near the Outfitting Pier without containment or covers to prevent runoff into State waters. A waste oil tank containment pan had a drain plug missing and there was ground staining in the area of the pan. Part I.B.3.a (16) of the Permit specifies 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 entry of these materials into waters of the State, including ground waters. Storage shall be in a manner that will prevent entry into State waters by overfilling, tipping, rupture, or other accidents within the storage area.

    b. Abrasive blast material ("ABM") was observed deposited on two piers, one adjacent to MRW #1 and one adjacent to MRW #2. Facility records documented ABM blasting on MRW #1 on November 18, 2006 and blasting on MRW #2 on December 12, 13, and 14, 2006. The ABM on the two piers indicated lack of controls and subsequent failure to clean up the ABM from blasting (on those dates) to prevent spreading of the ABM to the environment. 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. The Permit also specifies that frequent cleanup of these areas shall be practiced to prevent abrasive blasting waste from being washed into storm sewers or the adjacent waterway.

c. A small spill/release of paint and solvent was observed next to a barge on MRW #2 and had not been stored, contained or cleaned up to prevent entry into the waterway. Part I.B.3.a (20) of the Permit specifies that paint and solvent spills shall be treated as oil spills and shall be prevented from reaching storm drains or deck drains in order to avoid a subsequent discharge into State waters.

d. Trash receptacles were not observed on each pier and on board each vessel as required. One trash receptacle provided was overflowing with trash, not emptied to prevent trash from entering State waters. Part I.B.3.a (22) of the Permit specifies that trash receptacles shall be provided on each pier and on board each vessel. The Permit also provides that these receptacles shall be emptied as necessary to prevent trash from entering State waters.

5. DEQ alleges that ANA violated Permit conditions Part I.D.3.b.(1), Part I.D.5, Part I.D.3.d.(2)(a)(i), Part I.D.5.a.(1), I.D.3.d.(3)(d), and Part I.D.5.(b)(2) as noted in #3, above.

6. DEQ alleges that ANA violated Permit conditions Part I.B.3.a(7), Part I.B.3.a(16), Part I.B.3.a(20), and Part I.B.3.a(22) as noted in paragraph C.4 of this Order.

7. On February 6, 2007, DEQ issued Notice of Violation ("NOV") W2007-02-T-0001 to ANA. The NOV advised ANA of the deficiencies revealed during the inspection conducted by staff on December 15, 2006.

8. By letter dated February 20, 2007, ANA provided a response to the NOV indicating that changes have been made to ANA procedures to resolve the SWP3 and BMP deficiencies documented during the inspection referenced in #3 and #4 above of this Order.

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 pay a civil charge of $7,000 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 only, ANA admits the jurisdictional allegations in the Order but does not admit the factual allegations or legal conclusions contained herein.

4. ANA consents to venue in the Circuit Court of the City of Norfolk 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 28th day of June, 2007.

Francis L. Daniel

Francis L. Daniel

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

By: Brandt Everhart

Date: 4-17-07

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

The foregoing document was signed and acknowledged before me this 17th day of April, 2007, by Brandt C. Everhart (*name*), who is Secty.-Treas. (*title*) of Associated Naval Architects, Incorporated, on behalf of ANA.

Joanne L. Collins
Notary Public

My commission expires: 12-31-07.