

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

ALLIANT TECHSYSTEMS, INC.,

Appellant,

v.

Appeal Nos. 08-23-EQB/08-24-EQB

**LISA MCCLUNG, DIRECTOR, DIVISION
OF WATER AND WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Appellee.

AGREED ORDER

This day came the Appellant, Alliant Techsystems, Inc. ("ATK"), and the Appellee, Lisa McClung, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection ("WVDEP"), by counsel, and represented to the West Virginia Environmental Quality Board (the "Board") that they have reviewed the issues appealed, conferred, and now have resolved all issues raised in the above-styled appeal. The parties agree that settlement is in the best interests of both ATK and the State of West Virginia. This settlement is specific to the parties and permit herein, and does not bind other permits either currently in place or future permits. This appeal arises out of WVDEP's reissuance of WV/NPDES Permit No. WV0020371 (the "Permit") on July 3, 2008, and its contemporaneous issuance of Order No. 6481 on the same date. The parties presented to the Board this Agreed Order as embodying the agreement of the parties.

Upon due consideration of the oral and written submissions of counsel, the Board hereby **APPROVES** the agreement reached by the parties and **ORDERS** the following:



- (1) ATK has withdrawn its objection to the jurisdiction of WVDEP to impose permit limits and monitoring requirements that are based on compliance with West Virginia water quality standards.
- (2) With regard to the discharge limitations for Aluminum at Outlets 001, 002 and 316, the parties agree that ATK may perform a translator study in accordance with EPA guidelines relating to translator studies, as set forth in Exhibit 1 attached hereto. ATK may submit the results of this translator study to WVDEP. Upon receipt of the results of the translator study, WVDEP shall process the study in a timely manner and, if requested by ATK through a permit modification application, WVDEP shall modify the Permit if necessary to include revised discharge limitations for Aluminum at these outlets consistent with the results of the study. Further, ATK has withdrawn its objection to the imposition of effluent limitations for Iron at Outlets 001 and 002, as specified on pages 4 of 34 and 6 of 34, respectively.
- (3) With regard to the discharge limitations for Aluminum at Outlets 003, 006 and 315, WVDEP agrees to modify the Permit at pages 7 of 34, 13 of 34 and 24 of 34, respectively, to include a two-year compliance schedule. The parties further agree that ATK may perform a translator study in accordance with EPA guidelines relating to translator studies, as set forth in Exhibit 1 attached hereto. ATK may submit the results of this translator study to WVDEP. Upon receipt of the results of the translator study, WVDEP shall process the study in a timely manner and, if requested by ATK through a permit modification application,

WVDEP shall modify the Permit if necessary to include revised discharge limitations for Aluminum at these outlets consistent with the results of the study.

- (4) ATK has withdrawn its objection to the monitoring frequency for perchlorate at Outlet 004, and therefore the condition remains as specified on pages 9 of 34 and 11 of 34.
- (5) ATK has withdrawn its objection to the discharge limitations for perchlorate at Outlet 004, and therefore these conditions remain as specified on page 11 of 34. WVDEP shall modify the Permit on page 11 of 34 to extend the compliance period to three years, with the final compliance date of September 3, 2011.
- (6) ATK has withdrawn its objection to the monitoring requirements for perchlorate at Outlet 005, and therefore these conditions remain as specified on page 12 of 34.
- (7) With respect to ATK's objections to the monitoring requirements for Outlets 104, 304 and 287, as specified on pages 15 of 34, 23 of 34 and 20 of 34, respectively, the parties have resolved the issues as follows:
 - (a) WVDEP shall delete all monitoring requirements for Outlet 104 in their entirety from page 15 of 34 and the related reference to Outlet 104 in condition C.23 on page 32 of 34.
 - (b) WVDEP shall modify condition C.23 on page 32 of 34 to state the following:

“At Internal Outlet 304 (formerly Outlet 282), the permittee shall collect a composite sample by collecting and combining multiple, equal-time, equal-volume aliquots during the course of the batch discharge from each outfall. Aliquots at Outlet 304 will be collected at 10 minute intervals over the duration of the discharge.” On the outfall page for Outlet 304 on page 23 of

34, WVDEP shall insert a corresponding reference to condition C.23 and delete the references to conditions C.22 and C.30.

(c) WVDEP shall delete condition C.17 on page 31 of 34 and delete the corresponding reference to C.17 from the outfall page for Outlet 287 on page 20 of 34. WVDEP shall revise all monitoring requirements other than "Flow" for Outlet 287 on page 20 of 34 to 24-hour composite samples, and reduce the monitoring frequency for Total Suspended Solids ("TSS"), pH and Chemical Oxygen Demand ("COD") to once per quarter.

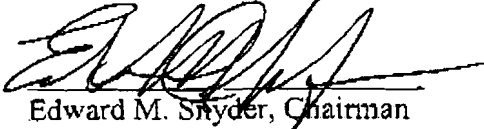
(8) With regard to the discharge limitations for Acute Toxicity at Outlet 287 set forth on page 20 of 34, the last two sentences of condition C.26.d on page 32 of 34 shall be deleted and the following language shall be inserted in lieu thereof:

- i. When the effluent demonstrates no toxicity at 100% effluent (no organisms die), the permittee may report zero (0) TUa.
- ii. An effluent that causes some mortality but less than 50% mortality at 100% effluent on a species is still deemed to have some toxicity. As such, the permittee shall not report zero (0) in this case, but shall report the result as less than one (1) TUa.
- iii. When averaging values of analytical results for DMR reporting purposes for monthly averages, the permittee shall use actual toxicity results when these results are greater than or equal to one (1) TUa and shall use zero (0) when these results are less than one (1) TUa. If all analytical results are less than one (1) TUa, then the permittee shall report the average monthly result as less than one (1) TUa.
- iv. Any result reported as less than one (1) TUA shall be deemed compliant with both the average monthly and maximum daily toxicity effluent limitations prescribed in Section A of this permit.


(9) WVDEP shall revise pages 2 of 34 and 28 of 34 of the Permit to reflect the relocated sampling location for SSL-9 at Latitude 39-33-43.52, Longitude 78-49-31.39.

- (10) WVDEP shall modify the Schedule of Compliance contained in Section B of the Permit in accordance with the dates set forth in Exhibit 2, attached hereto.
- (11) ATK has withdrawn its objection to the frequency of in-stream sampling upstream of Outlet 004, as specified in condition C.24 on page 32 of 34.
- (12) Order No. 6481 shall be revised as reflected in Exhibit 3, attached hereto, with the effective date to be the date on which this Agreed Order is entered by the Board.

ENTERED this 4th day of February, ²⁰⁰⁹~~2008~~.



Edward M. Snyder, Chairman

This Order was prepared by:


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Counsel for Appellee Lisa McClung

EXHIBIT 1

**SAMPLING PLAN FOR
SITE-SPECIFIC METALS TRANSLATOR**

*Alliant Techsystems, Inc.
Rocket Center, West Virginia
NPDES Permit No. WV0020371*

Prepared for:

Alliant Techsystems, Inc.
210 SR 956
Rocket Center, WV 26726

Prepared by:

Potesta & Associates, Inc.
7012 MacCorkle Avenue, SE
Charleston, West Virginia 25304
Phone: (304) 342-1400 Fax: (304) 343-9031
E-mail: potesta@potesta.com

Project No. 0101-08-0577

December 10, 2008

SAMPLING PLAN FOR SITE-SPECIFIC METALS TRANSLATOR

Alliant Techsystems, Inc.
Rocket Center, WV
WV/NPDES Permit No. 0020371

1.0 INTRODUCTION

Alliant Techsystems, Inc, (ATK) has contracted Potesta & Associates, Inc. (POTESTA) to develop a site-specific metals translator for their facility in Rocket Center, West Virginia. The purpose of the study is determine if a site-specific translator will show that the dissolved fractions of aluminum in the North Branch Potomac River may be lower than those assumed by the default translators. This study is based on methods discussed in the United States Environmental Protection Agency's guidance document, "The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit from a Dissolved Criterion" (EPA 823-B-96-007) [hereinafter referred to as "EPA Guidance"].

2.0 SAMPLING

2.1 Sampling Schedule

This study is designed to develop translators for use under conditions that are most likely to be considered "critical flow" conditions. In accordance with the EPA Guidance, "In the absence of data to the contrary, the normal assumption will be that low flow (limited dilution capacity) is the critical flow for metals." Therefore, samples will be collected during low-flow conditions on the North Branch Potomac River. Low-flow conditions are typically observed from June through October. As sampling will be conducted during months that are not typically considered "low flow", ATK will sample on days when the river gage height (as recorded for the USGS Station Number 01603000) corresponds with previous low-flow days. Additionally, samples will not be collected for three days (72 hours) following a significant rain event (i.e. greater than 0.1 inch).

The recommended minimum number of samples for a low-flow sampling program is 12. Weather permitting; weekly sampling will begin upon West Virginia Department of Environmental Protection (WVDEP) approval of this plan. It is our intention to collect twelve usable samples. However, should laboratory data from the first five sampling events indicate that a site-specific translator is not feasible, sampling may be terminated.

2.2 Sampling Locations

ATK's facility is adjacent to approximately two miles of the North Branch Potomac River. Throughout this stretch of river, two small streams enter the North Branch Potomac River. Because of potential influences from the entry of these streams, the translator at the downstream edge of the site may or may not be comparable to the translator at the upstream edge of the site. Therefore, ATK proposes to establish three translator sampling transects. These transects are separated by the two previously mentioned tributary streams.

ATK proposes to establish a sampling transect downstream from Outlet 001, the most downstream outlet at the facility. Ideally, the location of a translator sampling station should be at the edge of a delineated mixing zone, but upstream of other influences. The WVDEP Mixing Zone guidance identifies the edge of a regulatory mixing zone to be at a location equal to five times of the river width. The river width in the area of ATK's facility is approximately 250 feet. Therefore ATK proposes to locate a transect 1,250 feet downstream of Outlet 001. Review of topographic and aerial mapping does not exhibit other influences within 1,250 feet downstream of Outlet 001. This transect is considered applicable to outlets located downstream of the influence from the previously mentioned tributary streams (i.e. Outlets 001, 002, 003, 004 and 005).

ATK proposes to establish a second sampling transect downstream from Outlets 287, 297 and 288. These outlets are located between the entrances of the two unnamed tributaries of the North Branch Potomac River. As previously discussed, the location of a translator sampling station should be at the edge of a delineated mixing zone, but upstream of other influences. The location of this transect is limited by the entrance of the most downstream Unnamed Tributary on the left descending bank of the North Branch Potomac River. Therefore ATK proposes to locate the second transect upstream of the tributary mouth, approximately 400 feet downstream of Outlet 287. This transect is considered applicable to Outlets 287, 297 and 288.

ATK proposes to establish a third sampling transect downstream from Outlets 006, 007, 315 and 316, the most upstream outlets at the facility. Although the edge of a regulatory mixing zone for Outlet 006 would be at a location equal to five times of the river width, the location of this transect is limited by the entrance of the upstream Unnamed Tributary on the left descending bank of the North Branch Potomac River. Therefore ATK proposes to locate the third transect upstream of the mouth of the Unnamed Tributary, approximately 600 feet downstream of Outlet 006. This transect is considered applicable to Outlets 006, 007, 315 and 316.

The data will be reviewed from each transect as it is received from the laboratory. Should the laboratory data from the first five sampling events demonstrate the translators are comparable at the

various transects, sampling at the two upstream transects may be terminated. ATK will provide the data to WVDEP for concurrence prior to termination of the upstream sampling transects.

The coordinates of the sampling locations will be measured using a hand-held Global Positioning System (GPS) unit and recorded during the first sampling event. A GPS unit may be used during subsequent sampling events to ensure that samples are consistently obtained from the same locations.

2.3 Sampling Procedure

As per discussions with the WVDEP, the sample will be a width- integrated composite made up of three grab samples. The three width sampling locations will be the quarter points of the river transect; 1/3 river width, half point, and 2/3 of the river width. The North Branch Potomac River is fairly shallow (i.e. less than 15 feet in depth) throughout the reach adjacent to ATK. Therefore, depth integrated sampling is not believed necessary. Grab samples will be collected in the mid-point of the water column. This procedure will result in one composite sample for each sampling transect.

Grab samples will be collected with a decontaminated Kemmerer sampler and composited in a decontaminated reusable plastic container. The composite sample will then be transferred to pre-preserved containers provided by the laboratory. The dissolved metals samples will be field-filtered with disposable syringes and filters as they are put into the preserved laboratory container. The pH and conductivity of the composite sample will also be tested in the field.

Stream flow will be recorded from the USGS' webpage for the North Branch Potomac River near Cumberland, MD gaging station (USGS Station Number 01603000).

3.0 LABORATORY ANALYSIS

The samples will be analyzed by a commercial laboratory certified by WVDEP's Laboratory Quality Assurance Program. Samples will be analyzed for the parameters listed in the following table, using the specified EPA-approved methods.

| Parameter | Method |
|-----------------------------|----------|
| Aluminum, Dissolved | E200.7 |
| Aluminum, Total Recoverable | E200.7 |
| Total Suspended Solids | SM 2540D |

As ATK intends to calculate the translators from direct measurements of the dissolved fractions, samples will not be analyzed for parameters used to calculate a partitioning coefficient (TOC, POC, etc.). Total suspended solids are being analyzed to demonstrate that samples were collected under conditions consistent with a non-storm flow state.

4.0 QUALITY ASSURANCE/QUALITY CONTROL

Following collection, samples will be stored on ice and/or refrigerated to 4° C from the time they are collected until delivery to the laboratory. Sample containers will be labeled in the field and will be checked for accuracy by field personnel prior to sample collection. Chain-of-custody sheets will also be completed and maintained.

Field notebooks will be kept to document weather conditions, field observations, photographs taken, and deviations from the protocol contained herein. A field blank sample will be collected in conjunction with each sampling event. These samples will be submitted to the laboratory for blind analysis of one or more parameters.

At the laboratory, the samples will be logged in, checked against the chain-of-custody form, assigned a unique sample identification number, and placed in appropriate sample holding facilities. Samples will be analyzed within approved holding times, using EPA-approved methods. Matrix spikes and duplicates appropriate to the EPA method will be analyzed by the laboratory.

5.0 DATA MANAGEMENT

Data from the laboratory will be reviewed upon receipt and entered into a dedicated Microsoft Excel[®] spreadsheet. These data will be reviewed as they are received in an attempt to discover possible anomalies early in the fieldwork so that programmatic adjustments can be made, if necessary. Manual data entry will be subjected to a QA/QC review to ensure proper data transfer. Additionally, the results of the duplicate analyses will be compared to the original sample results as a quality control check. Evidence of contamination of the field blank samples will result in an investigation of the sampling procedure and potential disqualification of the results.

Analytical methods have been selected with extremely low method detection levels in an attempt to avoid excessive analytical variability. However, it is likely that some of the data generated will be reported as non-detect at the method detection level. In accordance with the EPA Guidance, if both total recoverable and dissolved concentrations are non-detects, the data pair will be discarded. If only the dissolved concentration is non-detect, it will be assumed to equal one-half the detection level.

Once the data have been evaluated, the dissolved fraction (f_D) for each metal will be calculated for each data pair using the following formula: $f_D = C_D/C_T$. The f_D data set will then be tested for normality using the Shapiro Wilk Normality Test. If the data are normal, the geometric mean will be calculated and used as the translator value. If the data are not normal, the data may be transformed or an alternative measure of central tendency may be used to calculate the translator value.

EXHIBIT 2

Page No.: 29 of 34

Permit No.: WV0020371

Revised Date: December 2, 2008

B. SCHEDULE OF COMPLIANCE

1. The permittee shall achieve compliance with the provisions for waste treatment and the monitoring requirements specified in the permit in accordance with the following schedule :

| | |
|---------------------------------------|--|
| Date of Order + 90 days [March 2009]: | The permittee shall submit a Plan of Action on obtaining compliance with Outlets 001 & 002 (final effluent limitations for aluminum and iron), Outlet 004 (final effluent limitations for perchlorate), Outlets 003, 006 & 315 (final effluent limitations for aluminum), and Outlet 316 (final effluent limitations for aluminum and chloride). |
| End of 2d qtr, 2009: | The permittee shall submit a quarterly progress report on achieving compliance with final limitations for Outlets 001, 002, 003, 004, 006, 315 and 316. |
| End of 3d qtr, 2009: | The permittee shall submit a quarterly progress report on achieving compliance with final limitations for Outlets 001, 002, 003, 004, 006, 315 and 316. |
| October 19, 2009: | The permittee shall submit a final design of the necessary wastewater treatment plant upgrades in order to achieve compliance with the final WQBELs for perchlorate at Outlet 004. |
| End of 4th qtr, 2009: | The permittee shall submit a quarterly progress report on achieving compliance with final limitations for Outlets 001, 002, 003, 004, 006, 315 and 316. |
| End of 1st qtr, 2010: | The permittee shall submit a quarterly progress report on achieving compliance with final limitations for Outlets 001, 002, 003, 004, 006, 315 and 316. |
| End of 2d qtr, 2010: | The permittee shall submit a quarterly progress report on achieving compliance with final limitations for Outlets 001, 002, 003, 004, 006, 315 and 316. |
| September 3, 2010: | Final aluminum and iron limits at Outlets 001 and 002, final aluminum limits at Outlets 003, 006 and 315, and final aluminum and chloride limits at Outlet 316 become effective. |
| End of 3d qtr, 2010: | The permittee shall submit a quarterly progress report on achieving compliance with final perchlorate limits for Outlet 004. |
| October 05, 2010: | The permittee shall begin construction of the upgrades of the wastewater treatment plant in order to achieve the final perchlorate limits at Outlet 004. |
| End of 4th qtr, 2010: | The permittee shall submit a quarterly progress report of the upgrades of the wastewater treatment plant in order to achieve the final perchlorate limits at Outlet 004. |
| End of 1st qtr, 2011: | The permittee shall submit a quarterly progress report of the upgrades of the wastewater treatment plant in order to achieve the final perchlorate limits at Outlet 004. |
| End of 2d qtr, 2011: | The permittee shall submit a quarterly progress report of the upgrades of the wastewater treatment plant in order to achieve the final perchlorate limits at Outlet 004. |
| September 3, 2011: | The permittee shall have all construction of the wastewater treatment plant completed. Final perchlorate limits at Outlet 004 become effective. |

2. Reports of compliance or non-compliance with, and progress reports on interim and final requirements contained in the above compliance schedule, if any, shall be postmarked no later than 14 days following each schedule date.

EXHIBIT 3



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

**ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Naval Sea Systems Command
PO Box 956/Alliant Techsystems
Rocket Center, WV 26726

DATE:

ORDER NO.: 6481

AND

Alliant Techsystems Inc.
Allegheny Ballistics Lab
210 SR 956
Rocket Center, WV 26726

INTRODUCTION

The following findings are made and Order issued to Alliant Techsystems Inc. Allegheny Ballistics Lab (hereafter referred to as "permittee") pursuant to the authority vested in the Director of the Division of Water and Waste Management under Chapter 22, Article 11, Section 1 et seq. of the Code of West Virginia.

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. The permittee owns and operates a facility, which is located in Mineral County. This facility is permitted (WV/NPDES Permit No. WV0020371 issued the 3rd day of July 2008) to discharge untreated storm water via Outlet Nos. 001 and 002 into the North Branch of the Potomac River.
2. Monitoring from the previous permit indicates that the permittee has frequently exceeded benchmark values at storm water Outlets 001 and 002 for the pollutants aluminum and iron.

Promoting a healthy environment.



3. The previous permit issued December 2, 2003 required the permittee to review and revise storm water pollution prevention measures if benchmarks were exceeded. The agency uses benchmark values to determine the effectiveness of a Storm Water Pollution Prevention Plan (SWPPP). In general, a facility that meets benchmark values, is deemed to have an effective SWPPP. While exceeding benchmark values does not constitute a violation of the permit, failure to revise and implement changes to the SWPPP in order to achieve benchmark values is a violation of the permit.

ORDER FOR COMPLIANCE

And now, this ___ day of _____, 200_ the permittee is hereby ORDERED by the Director as follows:

1. The permittee shall immediately take measures to initiate compliance with all terms and conditions of WV/NPDES Permit No. WV0020371 and Order No. 6481.
2. Within 90 days of the effective date of this Order, the permittee shall submit a proposed corrective action plan and schedule which identifies the deficiencies in the SWPPP, what actions have been taken in the past to revise the SWPPP, and what revisions to the SWPPP will be made in order to demonstrate an effective SWPPP.
3. The permittee shall review, revise, and implement the SWPPP as required by its WV/NPDES Permit.

OTHER PROVISIONS

1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving the permittee of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject the permittee to additional enforcement action in accordance with the applicable law.
2. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
3. This Order is binding on the permittee, its successors and assigns.
4. This Order shall terminate upon the permittee's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this Order which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after receipt of this Order.

This Order shall become effective upon receipt.

Scott G. Mandirola, Acting Director
Division of Water and Waste Management

revised January 2007

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

ALLIANT TECHSYSTEMS, INC.

Appellant,

v.

Appeal Nos. 08-23-EQB
08-24-EQB

LISA A. MCCLUNG, DIRECTOR, DIVISION
OF WATER AND WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.

CERTIFICATE OF SERVICE

This is to certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 5th day of February, 2009, served a true copy of the foregoing "Agreed Order" to all parties in Appeal Nos. 08-23-EQB and 08-24-EQB, by mailing the same via United States Mail, with sufficient postage, to the following address:

via certified first-class mail:

M. Ann Bradley, Esquire
Spilman Thomas & Battle, PLLC
300 Kanawha Boulevard, East
Charleston, WV 25301

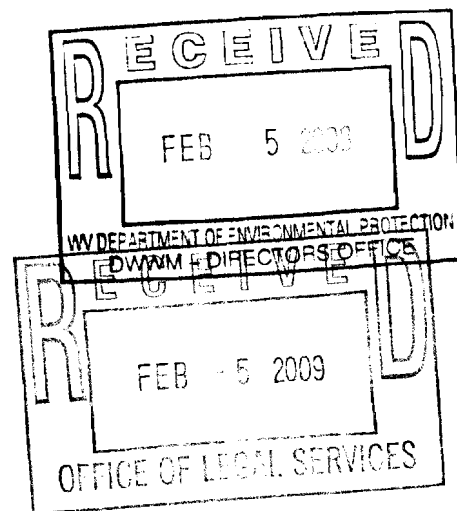
Certified Mail #

91 7108 2133 3936 2965 7698

via personal service:

Scott Mandirola, Director
Division of Water and Waste Management
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston WV 25304

Laura G. Swingle, Esquire
Office of Legal Services
WV Department of Environmental Protection
601 57th Street, S.E.
Charleston WV 25304



Jackie D. Shultz
Jackie D. Shultz, Clerk