COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director


# STATE WATER CONTROL BOARD
# ENFORCEMENT ACTION - ORDER BY CONSENT
# ISSUED TO
# COLCHESTER UTILITIES, INC.
# FOR
# HARBOR VIEW
# WASTEWATER TREATMENT PLANT
# VPDES PERMIT NO. VA0029416

## 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 Colchester Utilities, Inc., regarding the Harbor View Wastewater Treatment Plant for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulation.

## SECTION B: Definitions

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

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. "CBOD5" means 5 day carbonaceous biochemical oxygen demand.

4. "CCT" means chlorine contact tank.

5. "COC" means chain of custody.

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

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

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

9. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.

10. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:

    a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

    b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

11. "DMR" means Discharge Monitoring Report.

12. "D.O." means dissolved oxygen.

13. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

14. "Facility" or "Plant" means Harbor View Wastewater Treatment Plant located at 10609 Greene Drive, Lorton, Fairfax County, Virginia, which treats and discharges treated sewage and other domestic wastes for the Harbor View subdivision consisting of 170 homes.

15. "MGD" means million gallons per day.

16. "mL" means milliliter.

17. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

18. "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.

19. "PCBs" means Polychlorinated Biphenyl.

20. "Permit" means VPDES Permit No. VA0029416, which was issued under the State Water Control Law and the Regulation to Colchester Utilities, Inc. on August 30, 2013, and which expires on August 29, 2018.

21. "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.

22. "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.

23. "QL" means quantification Levels.

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

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

26. "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.

27. "TRC" means total residual chlorine.

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

29. "VAC" means the Virginia Administrative Code.

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

## SECTION C: Findings of Fact and Conclusions of Law

1. Colchester owns and operates the Plant located in Fairfax County, Virginia. The Permit authorizes Colchester to discharge treated sewage and other domestic wastes from the Plant, to an unnamed tributary to Massey Creek, in strict compliance with the terms and conditions of the Permit. The design flow of the Plant is 0.080 MGD.

2. Massey Creek is located within the Potomac River Basin. This segment is listed in DEQ's 2012 305(b)/303(d) Integrated Report for impairments to fish consumption, due to PCBs.

3. In submitting the DMR for the May 2013 monitoring period, Colchester reported that it exceeded the discharge limitation contained in Part I, Section A, Number 1, Page 1 of the Permit for the weekly concentration average maximum for ammonia.

4. On September 24, 2013, DEQ inspected the Facility. During the inspection, DEQ observed multiple deficiencies related to operation, sampling, and record keeping. The deficiencies were as follows:

    a. Failure to calibrate the final effluent flow meter within the required time frame, in violation of Permit No. VA0029416, Part II.A.3 and Part II.Q.
    b. The dechlorination tank was "lapping" dechlorinated water back into the CCT and the dechlorinated water was discharging when the facility was in a "No-Discharge" mode, in violation of Permit No. VA0029416, Part II.Q.
    c. During the inspection, the TRC samples for the CCT were collected after the first "bend" in the baffling series of the tank, and not at the outlet of the CCT, as required by Permit No. VA0029416, Part I.B.1.
    d. During the inspection, the operations logbook did not contain the required information, and logbook and monthly operating report were last filled on September 19, 2013. The operator had been recording the data in a spiral notebook, which was not maintained on-site during the inspection, the operator failed to record the sampling times in the spiral notebook, as required by Permit No. VA0029416, Part II.B.1.
    e. During the inspection, operations staff could not provide documentation to DEQ of analysis of the pH, D.O. and TRC samples within the 15 minute holding time of a grab sample. The COCs for September 2013 and October 2013 that DEQ reviewed did not document the sample collection start and stop times, as required by Permit No. VA0029416, Part II.A.2 and Part II.B.1.
    f. After review of the DMRs from June – August 2013 the monthly averages and weekly maximum averages were not calculated correctly as required by Permit No. VA0029416, Part I.B.3.

5. Permit Condition Part II.A.3 states "The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements."

6. Permit Condition Part II.A.2 states "Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit."

7. Permit Condition Part II.Q states "Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."

8. Permit Condition Part II.B.1, states: "Records of monitoring information shall include: a. The date, exact place and time of sampling or measurements; b. The individual(s) who performed the sampling or measurements; c. The date(s) and time(s) analyses were performed; d. The individual(s) who performed the analyses; e. The analytical techniques or methods used; and f. The results of such analyses."

9. Permit Condition Part I.A., states: "8H-C = A flow proportional composite sample collected manually or automatically, and discretely or continuously, for the entire discharge of the monitored 8-hour period. Where discrete sampling is employed, the permittee shall collect a minimum of eight (8) aliquots for compositing. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. Time composite samples consisting of a minimum of eight (8) grab samples obtained at hourly or smaller intervals may be collected where the permittee demonstrates that the discharge flow rate (gallons per minute) does not vary by 10% or more during the monitored discharge."

10. Permit Condition Part I.B states "Additional Monitoring Requirements, Quantification Levels and Compliance Reporting. Additional Total Residual Chlorine (TRC) limitations and Monitoring Requirements. a. The permittee shall monitor the TRC at the outlet of the chlorine contact tank three per day at four hour intervals by grab sample."

11. Permit Condition Part I.B.3 states "Compliance Reporting for parameters in Part I.A. a. Monthly Average -Compliance with the monthly average limitations and/or reporting requirements for the parameters listed in Part I.B.2.a of this permit condition shall be determined as follows: All concentration data below the QL used for the analysis (QL must be less than or equal to the QL listed in Part I.B.2.a above) shall be treated as zero. All concentration data equal to or above the QL used for the analysis (QL must be less than or equal to the QL listed in Part I.B.2.a above) shall be treated as it is reported. An arithmetic average shall be calculated using all reported data for the month, including the defined zeros. This arithmetic average shall be reported on the Discharge Monitoring Report (DMR) as calculated. If all data are below the QL used for the analysis (QL must

be less than or equal to the QL listed in Part I.B.2.a above), then the average shall be reported as "<QL". If reporting for quantity is required on the DMR and the reported monthly average concentration is <QL, then report "<QL" for the quantity. Otherwise use the reported concentration data (including the defined zeros) and flow data for each sample day to determine the daily quantity and report the monthly average of the calculated daily quantities. b. Maximum Weekly Average –Compliance with the weekly average limitations and/or reporting requirements for the parameters listed in Part I.B.2.a of this permit condition shall be determined as follows: All concentration data below the QL used for the analysis (QL must be less than or equal to the QL listed in Part I.B.2.a above) shall be treated as zero. All concentration data equal to or above the QL used for the analysis (QL must be less than or equal to the QL listed in Part I.B.2.a above) shall be treated as reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, collected within each complete calendar week and entirely contained within the reporting month. The maximum value of the weekly averages thus determined shall be reported on the DMR. If all data are below the QL used for the analysis (QL must be less than or equal to the QL listed in Part I.B.2.a above), then the weekly average shall be reported as "<QL". If reporting for quantity is required on the DMR and the reported weekly average concentration is <QL, then report "<QL" for the quantity. Otherwise use the reported concentration data (including the defined zeros) and flow data for each sample day to determine the daily quantity and report the maximum weekly average of the calculated daily quantities. c. Single Datum - Any single datum required shall be reported as "<QL" if it is less than the QL used in the analysis (QL must be less than or equal to the QL listed in Part I.B.2.a above). Otherwise the numerical value shall be reported."

12. On October 7, 2013, Mr. Sharp, the Regional Manager for Colchester, met with DEQ. At the meeting, he stated that that when he is onsite at the Facility, he is completely "hands-off" and does not operate the facility. Mr. Sharp said he leaves that to the onsite operators, Mr. O'Dell and Mr. Baker, who at the time of the meeting were not holding a Virginia Wastewater Operators License), as required by Permit No. VA0029416, Part I. C.5. Mr. O'Dell holds a Class 5 License in the state of Maryland.

13. Permit Condition Part I.C.5, states: "Licensed Operator Requirement. The permittee shall employ or contract at least one Class III licensed wastewater works operator for this facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators. The permittee shall notify the Department in writing whenever he is not complying, or has grounds for anticipating he will not comply with this requirement. The notification shall include a statement of reasons and a prompt schedule for achieving compliance."

14. On October 16, 2013, DEQ inspected the Facility. During the inspection, DEQ observed continued multiple deficiencies related to operation, sampling, and record keeping. The deficiencies were as follows:

a. During the inspection, DEQ asked if the final effluent samples were collected based on flow proportioned composite sampling, as required by Permit No. VA0029416, Part I.A. After the inspection, the Operator stated he did not and that he collected approximately 200 milliliter (mL) every hour for 8 hours.
b. The dechlorination tank was "lapping" dechlorinated water back into the CCT and the dechlorinated water was discharging when the facility was in a "No-Discharge" mode, in violation of Permit No. VA0029416, Part II.Q.
c. After reviewing the COC's, DEQ found final effluent samples were collected between the hours of 0100 – 0900. Since the facility discharges very little or at times does not discharge during the hours of 0100 and 0900, DEQ reminded the Operator about collecting a representative sample when the flow is more representative of what is actually discharging into the receiving stream, as required by Permit No. VA0029416, Part II.A.1.
d. Operations staff could not provide documentation of analyzing the pH, D.O. and TRC samples within the 15 minute holding time of a grab sample as required by Permit No. VA0029416, Part II.A.2. The chain of custodies for October 2013 that DEQ reviewed did not document the sample collection start and stop times, as required by Permit No. VA0029416, Part II B.1.
e. Colchester failed to employ or contract at least one Class III licensed wastewater works operator for this facility, as required by Permit No. VA0029416 Part I.C.5.
f. On October 16, 2013, the samples for the CCT were collected after the first "bend" in the baffling series of the tank. DEQ reminded the Operator during this inspection and the previous September 2013 inspection, that he is required to sample at the outlet of the CCT, as required by Permit No. VA0029416, Part I.B.

15. Permit Condition Part II.A.1 states "Samples and measurements taken as required by this permit shall be representative of the monitored activity."

16. In submitting the DMR for the October 2013 monitoring period, Colchester reported that it exceeded the weekly concentration average maximum and monthly concentration average limit for CBOD5 and the TRC maximum limit for Chlorine.

17. On November 4, 2013, DEQ inspected the Facility. During the inspection, DEQ observed continued multiple deficiencies related to operation, sampling, and record keeping. The deficiencies were as follows:

a. The clarifier trough was leaking, in violation of Permit No. VA0029416, Part II.Q.
b. After reviewing the COC's, DEQ found final effluent samples were collected between the hours of 0100 – 0900. Since the facility discharges very little or at times does not discharge during the hours of 0100 and 0900, DEQ reminded the Operator about collecting a representative sample when the flow is more representative of what is actually discharging into the receiving stream, as required by Permit No. VA0029416, Part II.A.1.
c. Colchester failed to employ or contract at least one Class III licensed wastewater works operator for this facility, as required by Permit No. VA0029416 Part I.C.5.

18. On November 7, 2013, DEQ sent out an inspection report with a list of corrective actions to Colchester. On December 5, 2013, Colchester responded.

19. In submitting its DMRs for the November 2013 monitoring period, Colchester reported that it failed to meet the requirements contained in Part I, Section A, Number 1, Page 1 of the Permit, for daily concentration minimum limit for pH.

20. On December 20, 2013, as a result of the reported exceedances for the May 2013 and October 2013 monitoring periods, and the September and October inspection deficiencies, DEQ issued a Warning Letter (WL) to Colchester.

21. As a result of the reported pH exceedance in the November 2013 monitoring period and the November inspection deficiencies, noted above, DEQ issued a Notice of Violation to Colchester, dated January 23, 2014.

22. On March 5, 2014, representatives of Colchester and DEQ met to discuss the violations at the Facility. As of the date of the meeting, Colchester had addressed all of the violations cited above.

23. Colchester's operating logs indicate that it discharged treated wastewater from the Plant every day from May 1, 2013 through November 30, 2013.

24. 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."

25. 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.

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

27. Massey Creek is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.

28. The Department has issued no permits or certificates to Colchester other than VPDES Permit No. VA0029416.

29. Based on the DMRs, inspection reports, and submitted documents, the Board concludes that Colchester has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and domestic wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) - C(19) above.

30. Colchester has submitted documentation that verifies that the violations as described in paragraph C(3) - C(19), above, have been corrected.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Colchester, and Colchester agrees to pay a civil charge of $8,837.50 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

Colchester shall include its Federal Employer Identification Number (FEIN) 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Colchester shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with consent of Colchester for good cause shown by Colchester, 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, Colchester admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Colchester 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. Colchester declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.

6. Failure by Colchester 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. Colchester 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. Colchester shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Colchester 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 Colchester 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 Colchester. Nevertheless, Colchester agrees 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 Director or his designee terminates the Order after Colchester has completed all of the requirements of the Order;

    b. Colchester petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

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

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

12. Any plans, reports, schedules or specifications attached hereto or submitted by Colchester 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.

13. The undersigned representative of Colchester certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Colchester to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Colchester.

14. 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.

15. By its signature below, Colchester agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

_____
Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Colchester Utilities, Inc. voluntarily agrees to the issuance of this Order.

Date: 11/19/14 By: Tony L Sharp, Regional Manager
(Person) (Title)
Colchester Utilities, Inc.

Commonwealth of Virginia
City/County of Prince William

The foregoing document was signed and acknowledged before me this 19th day of

November, 2014, by Tony Sharp who is

Regional Manager of Colchester Utilities, Inc., on behalf of the Corporation.

Wanda Chasson
Notary Public

128744
Registration No.

My commission expires: 7/31/17

Notary seal:

WANDA CH. ASSON ★ COMMONWEALTH OF VIRGINIA ★ NOTARY PUBLIC