COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
QUEST T & C APARTMENTS, LLC
FOR
TOWN & COUNTRY APARTMENTS
Unpermitted Discharge

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 Quest T & C Apartments, LLC regarding the Quest T & C Apartments, LLC, Town & Country Apartments, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "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, as described in Va. Code § 10.1-1185.

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

6. "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.

7. "DMR" means Discharge Monitoring Report.

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

9. "Facility" means the Town & Country Apartments located at 1402 Barriedale Road, Richmond, Virginia owned by Quest T & C Apartments, LLC, which includes a sanitary sewer collection system for the apartment residents, that discharges to the City of Richmond's sewer collection system.

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

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

12. "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.

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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

16. "Quest" means Quest T & C Apartments, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Quest is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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

19. "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.

20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

21. "TMDL" means total maximum daily load.

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

23. "VAC" means the Virginia Administrative Code.

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

25. "VPDES Permit" means a Virginia Pollutant Discharge Elimination System General or Individual Permit which is issued under the State Water Control Law and the Regulation.

26. "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. Quest owns and operates the Facility in Richmond, Virginia. The Facility is located in close proximity to Pocoshock Creek.

2. Pocoshock Creek, unnamed tributary, is the receiving body and located in the James River Basin (Lower). During the 2012 305(b)/303(d) Integrated Water Quality Assessment, the unnamed tributary was assessed as fully supporting with observed effects for the Fish Consumption Use due to the VDH advisory for kepone. The other designated uses were not assessed. It was not addressed in the James River and Tributaries – City of Richmond Bacterial TMDL, which was approved by the EPA on 11/4/2010 and by the State Water Control Board on 6/29/2012. The Facility was also not included in the Chesapeake Bay TMDL, which was approved by the EPA on 12/29/2010. The TMDL addresses dissolved oxygen and SAV impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The unnamed tributary is intermittent and is therefore considered a Tier 1 water. During the 2012 305(b)/303(d) Integrated Water Quality Assessment, Pocoshock Creek was listed as impaired due to the presence of E.coli, with one of the contamination sources listed as municipal point sources.

3. On January 10, 2014, DEQ staff received notification from the City of Richmond Department of Public Utilities ("RDPU") of an actively overflowing sewage manhole at the Facility. RDPU staff attempted to clear the blockage in the sewer line that was the cause of the overflow on January 9, 2014, but were unable to due to the severity of the blockage. RDPU issued a Uniform Notice of Violation to Quest. Quest did not notify DEQ of the discharge.

4. On January 10, 2014, DEQ staff inspected the Facility and found evidence of an unpermitted discharge of sewage from the overflowing manhole to an unnamed tributary to Pocoshock Creek. Based upon the amount of solids within the vicinity of the manhole, DEQ staff believed the overflow had been occurring for at least several months. DEQ staff spoke with Quest staff during the site visit.

5. On January 10, 2014, Quest staff hired a plumbing contractor that came out that day and cleared the sewer line.

6. On January 14, 2014, DEQ staff conducted a site visit and met with Quest representatives to discuss clean-up of the overflow.

7. On January 28, 2014, remedial activity by a contractor hired by Quest began at the Facility. Contaminated soils were removed and properly disposed of. Remediation at the Facility was completed on January 31, 2014.

8. On February 18, 2014, PRO issued NOV No. W2014-02-PRO-201 to Quest for the unauthorized discharge described above.

9. On March 4, 2014, DEQ staff discussed the NOV with Quest representatives.

10. Va. Code § 62.1-44.5(A) 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."

11. Va. Code § 62.1-44.5(B) states that "[a]ny person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours . . . the Director of the Department of Environmental Quality . . .." Written notice to the Director of the Department of Environmental Quality shall follow initial notice . . .."

12. 9 VAC 25-31-50 (A) provides that "[e]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . .."

13. 9 VAC 25-31-50 (B) states that "[a]ny person in violation of 9 VAC 25-31-50 (A), who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge . . .."

14. 9 VAC 25-260-20(A) states "[s]tate waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

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

16. DEQ has not issued any VPDES permits or certificates to Quest which authorize the discharge of wastewater.

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

18. Based on the results of the inspections on January 10, 2014, and January 14, 2014, and information from RDPU and the contractor hired by Quest, the Board concludes that Quest has violated Va. Code § 62.1-44.5, 9 VAC 25-31-50 and 9 VAC 25-260-20(A) by discharging untreated domestic sewage from the Facility, and failing to report such discharges as described above.

19. In order for Quest to completely return to compliance, DEQ staff and representatives of Quest have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

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

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

2. Pay a civil charge of $15,194 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

Quest 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, Quest 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 the consent of Quest for good cause shown by Quest, or on their 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, Quest admits to the jurisdictional allegations, findings of fact and conclusions of law contained herein.

4. Quest 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. Quest 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 Quest 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. Quest 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Quest shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Quest 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 the parties hereto and any 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 Quest. Nevertheless, Quest 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 Quest has completed all of the requirements of the Order;

    b. Quest 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 Quest.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Quest 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 Quest 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 Quest 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 Quest to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Quest.

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, Quest voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12th day of August, 2014.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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Quest T & C Apartments, LLC voluntarily agrees to the issuance of this Order.

Date: 8/12/14 By: _____, VP
(Person) (Title)
Quest T & C Apartments, LLC

Commonwealth of Virginia
City/County of Richmond

The foregoing document was signed and acknowledged before me this 12 day of August, 2014, by Ivana Christman, who is VP of Property Management of Quest T & C Apartments, LLC, on behalf of the company.

_____
Notary Public

_____
Registration No.

My commission expires: Feb 6 2016

Notary seal:

COREY CHARLES ARMSTRONG
Notary Public, State of Texas
My Commission Expires
February 06, 2016

RECEIVED PRO
AUG 15 2014

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Unpermitted Discharge**

   a. Within 60 days of the effective date of this Order, Quest shall submit to DEQ for review and approval standard operating procedures for preventing, reporting and resolving sewer overflows, to be kept at the Facility and implemented immediately upon approval.

2. **DEQ Contact**

   Unless otherwise specified in this Order, Quest shall submit all requirements of Appendix A of this Order to:

   Gina Pisoni
   Enforcement Specialist
   VA DEQ – Piedmont Regional Office
   4949-A Cox Road
   Glen Allen, Virginia 23060
   804-527-5156
   804-527-5106 (fax)
   Gina.Pisoni@deq.virginia.gov