
DEPARTMENT OF PLANNING AND NATURAL RESOURCES



DIVISION OF ENVIRONMENTAL PROTECTION

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2023 VIRGIN ISLANDS CONDOMINIUM, HOTEL, AND APARTMENT COMPLEX GENERAL PERMIT (VICHAGP)

GENERAL PERMIT NUMBER VICH A00000

FACT SHEET

This Fact Sheet sets forth the principal facts and technical rational that serve as the legal basis for the requirements of the accompanying draft permit. The draft permit was prepared in accordance with Clean Water Act (CWA) section 402 and its implementing regulations at Title 40 of the Code of Federal Regulations (CFR), Part 122 through 124. This Territorial Pollutant Discharge Elimination System (TPDES) permit is issued in compliance with Title 12 of the Virgin Islands Code (VIC), Chapter 7, Section 185, and its implementing regulations at Title 12 of the US Virgin Islands Rules and Regulations (VIRR), Chapter 7, Part 184 and 186 in accordance with the provisions of the Federal Water Pollution Control Act, as amended, (33 U.S. Code 1251 et seq.)

PART I. ELIGIBILITY

A. Facility Eligibility

Part 1.1 details the criteria your facility must meet in order to be eligible for coverage under the VICHAGP. To be eligible to discharge under the VICHAGP, your facility must meet the following criteria:

- 1) Be a condominium, hotel, or apartment complex in the United State Virgin Islands Territory (SIC Code 6531, 7011, 6513 or NAICS Code 721110, 721120, 721191, 721199, 531110);
- 2) Discharge to a Class B receiving water, as defined in the USVI WQS (see list of Class B wasters in 12 VIRR §186); and
- 3) Be classified as a minor discharger by US Virgin Islands Department of Planning and Natural Resources (VIDPNR).
- 4) Be able to demonstrate that the facility meets one of the criteria in the Endangered Species Protection section of the Notice of Intent (NOI) that you submit for coverage under this permit, per Part 1.1.7 and Appendix B , with respect to the protection of species that are either locally-listed under the USVI Indigenous and Endangered Species Act (IESA) of 1990 and will not result in adverse modification or destruction of habitat that is locally designated as “critical habitat” under the IESA or Federally listed as endangered or threatened species (“listed”) and will not result in the adverse modification or destruction of habitat that is Federally designated critical habitat under the Endangered Species Act (ESA)¹.

¹ DPNR-Division Environmental Protection will forward your application documents to the appropriate internal agencies (DPNR-Division of Fish Wildlife) for review and determination.

- 5) Complete the screening process in Appendix C relating the protection of historic properties and be able to demonstrate that the facility meets one of the criteria in the National Historic Preservation section of the NOI that you submit for coverage under this permit, per Part 1.1.8.²

B. Discharge Eligibility

- 1) Part 1.1.2 details the allowable wastewater discharges eligible for coverage under the permit. The following discharges are eligible for coverage under the VICHAGP:

- a) **Discharges of wastewater from a secondary treatment system to surface waters**

Part 1.1.2.1 states that discharges of treated wastewater from secondary treatment systems at minor condominium, hotel, and apartment complex facilities to Class B receiving waters, as defined by the USVI WQS.

- b) **Discharges of wastewater from a secondary treatment system to irrigation and/or land application**

Part 1.1.2.2 states that discharges of treatment domestic wastewater from a secondary or better treatment system or treated wastewater from a drinking water purification system at minor condominium, hotel, or apartment complex facilities for the purpose of irrigation and/or land application with eventual discharge to Class B receiving waters, as defined by the USVI WQS.

- c) **Discharges of drinking water purification concentrate to surface waters or to irrigation and/or land application**

Part 1.1.2.3 states that discharges of treated wastewater from drinking water purification systems at minor condominium, hotel and apartment complex facilities to a Class B receiving water, as defined by the USVI WQS, or to irrigation and/or land application with eventual discharge to a Class B receiving water, as defined by the USVI WQS.

C. Non-Allowable Discharges

Part 1.1.3 details the discharges that are not allowed under the VICHAGP. All other discharges requiring TPDES permit coverage, except those specifically listed above, are not authorized by the VICHAGP. If there are stormwater or non-stormwater discharges requiring TPDES permit coverage other than those listed above, they must either be eliminated or covered under another TPDES permit.

D. Limitations on Coverage

Part 1.1.4 details the limitations on coverage under the VICHAGP. Any discharge not expressly authorized in this permit cannot become authorized or shielded from liability under Clean Water Act (CWA) section 402(k) by disclosure to EPA, territorial, or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, any Operation & Maintenance (O&M) Plan, or during inspection.

- 1) **Discharges mixed with Other Discharges**

² DPNR-Division Environmental Protection will forward your application documents to the appropriate internal agencies (DPNR-State Historic Preservation Office, DPNR-Division of Fish Wildlife) for review and determination.

Part 1.1.4.1 states that wastewater discharges that are mixed with stormwater discharge or mixed with a discharge authorized by a different TPDES permit, and/or discharges that do not require TPDES permit authorization, are not eligible for coverage under this permit.

2) Discharges currently or Previously Covered by Another Permit

Part 1.1.4.2 states that discharges from facilities where any TPDES permit has been or is in the process of being denied, terminated, or revoked by VIDPNR are not eligible for coverage under this permit unless the facility has received written notification from VIDPNR specifically allowing the discharge to be covered under this permit. This does not apply to the routine reissuance of permits.

E. Eligibility for New Dischargers and New Sources Based on Water Quality Standards

Part 1.1.5 details the eligibility for new dischargers and new sources based on water quality standards. If the facility is a new discharger or a new source, as defined in Part 10 of the VICHAGP, they are ineligible for coverage under this permit if VIDPNR determines, prior to authorization to discharge, that the facility's discharges will not meet an applicable water quality standard (i.e., discharges that will cause, have the reasonable potential to cause, or contribute to an exceedance of a water quality standard) or if any discharge will lower the water quality of the applicable water. In such cases, VIDPNR may notify the facility that an individual permit application is necessary per Part 1.1.5 of the VICHAGP, or alternatively, VIDPNR may authorize coverage under this permit after the implementation of additional control measures so that all of the facility's discharges will meet water quality standards.

F. Eligibility for New Dischargers and New Sources to Water-Quality Impaired Waters

Part 1.1.6 details the eligibility for new dischargers and new sources to water-quality impaired waters. If the facility is a new discharger or a new source (as defined by Part 10 of the VICHAGP) they are ineligible for coverage under this permit to discharge to an impaired water (as defined by Part 10 of the VICHAGP) unless the facility does one of the following:³

- 1) Prior to submitting the NOI, the facility provides to the appropriate VIDPNR office technical information or other documentation to support the claim that the pollutant(s) for which the waterbody is impaired is not present at the facility, and retain such documentation with the permit file; or

³ Note: For the purposes of the VICHAGP, the facility is considered to discharge to an impaired water if the first water of the USVI to which the facility discharges is identified by VIDPNR as not meeting an applicable water quality standard, and:

- Requires development of a TMDL (pursuant to CWA Section 303(d));
- Is addressed by a VIDPNR approved or established TMDL; or
- Is not in either of the above categories but the waterbody is covered by pollution control requirements that meet the requirements of 40 CFR §130.7(b)(1).

For dischargers that enter a gut, swale, storm sewer system or other water conveyance channels after discharge, the first water of the USVI to which the facility discharges is the waterbody that receives the discharge from the gut, swale, storm sewer systems, or other water conveyances channels.

- 2) Prior to submitting the NOI, the facility provides VIDPNR either data or other technical documentation to support a conclusion that the discharge is expected to meet applicable water quality standards (i.e., discharges that will cause, have the reasonable potential to cause, or contribute to an exceedance of a water quality standard) and retain such information with the permit file. The information submitted to VIDPNR must be sufficient to demonstrate:
 - a) For discharges to waters without a VIDPNR approved or established Total Maximum Daily Load (TMDL), that the discharger of the pollutant for which the water is impaired will meet water quality standards at the point of discharge to the waterbody; or
 - b) For dischargers to waters with a VIDPNR approved or established TMDL, that there are, in accordance with 40 CFR §122.41(i), sufficient remaining wasteload allocations in the TMDL to allow your discharge, and that existing dischargers to the waterbody are subject to compliance schedules designed to bring into attainment with water quality standards (e.g., a reserve allocation for future growth).

The facility is eligible for coverage if they receive a determination from VIDPNR that all discharges will meet applicable water quality standards (i.e., discharges that will not cause, have the reasonable potential to cause, or contribute to an exceedance of a water quality standard). If the VIDPNR fails to respond within 30 days of submission of data to VIDPNR, the facility is considered eligible for coverage.

The most updated list of impaired waterbodies in the USVI Territory can be found at <https://dpnr.vi.gov/environmental-protection/water-quality-management-program/> under the Water Quality Management Program's most recent Integrated Water Quality Monitoring & Assessment Report for the United States Virgin Islands. The list can be found in the Report appendices.

G. Eligibility Related to Endangered Species Act (ESA) Listed Species and Critical Habitat Protection

Part 1.1.7 details the eligibility for coverage under the VICHAGP in relation to Endangered Species Act (ESA) Listed Species and critical habitat protection. The process for assessing your eligibility is outlined in Appendix A.

The Endangered Species Act (ESA) requires federal agencies to consult with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS) if their actions could beneficially or adversely affect any threatened or endangered species.

- 1) VIDPNR is not required to consult with these federal agencies regarding permitting actions. However, VIDPNR values input from these agencies as well as other local agencies and reserves the right to voluntarily contact the agencies to notify them of a facility that discharges to a "discharge area" under this permit and to obtain a list of threatened and endangered species near the discharge as well as a list of concerns from these agencies. DPNR-DEP will share your application with DPNR-DFW for review and determination. DPNR-DFW shall be provided all available reports, documents, and resources on the discharge area and shall assign one of the following criteria to your facility and discharge(s):

a. Criterion A.

No ESA-listed species and/or designated critical habitat present in discharge area. Federal and/or local agencies will certify that ESA-listed species and designated critical habitat(s) under the jurisdiction of the USFWS or NMFS are not likely to occur in your facility's "discharge area" as defined above.

b. Criterion B.

Discharges are not likely to adversely affect ESA-listed species and/or designated critical habitat. ESA-listed species and/or designated critical habitat(s) under the jurisdiction of the USFWS and/or NMFS are likely to occur in or near your facility's "discharge area," and federal and/or local agencies certify that your facility's discharges and discharge-related activities are not likely to adversely affect ESA-listed threatened or endangered species and/or designated critical habitat. This certification may include consideration of any wastewater controls and/or management practices you will adopt to ensure that your discharges and discharge-related activities are not likely to adversely affect ESA-listed species and/or designated critical habitat. To certify your eligibility under this criterion, federal and/or local agencies shall determine and identify 1) the ESA-listed species and/or designated habitat located in your "discharge area"; 2) the distance between the facility and the listed species and/or designated critical habitat in the discharge area (in feet); and 3) a rationale describing specifically how adverse effects to ESA-listed species will be avoided from the discharges and discharge-related activities.

c. Criterion C.

Discharges are likely to adversely affect ESA-listed species and/or designated critical habitat. If federal and/or local agencies make a preliminary determination in review of the facility and the proposed discharge that adverse effects from your facility's discharges or discharge-related activities are likely to occur, you can still receive coverage under eligibility Criterion C if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to receiving coverage under this permit.

These measures may involve relatively simple changes to operational or discharge activities such as reducing the volume of a waste stream, re-routing discharge to bypass an area where species are located, or by modifying the "footprint" of the discharge area. If you are unable to ascertain which measures to implement to avoid the likelihood of adverse effects, you must coordinate or enter into consultation with VIDPNR and the federal or local agencies to determine acceptable correction measures and how to implement them.

If the facility's activities in the action area where endangered and threatened species are located, the facility operator must ensure that they are protected from potential takings liability under ESA Section 9 by obtaining an ESA Section 10 permit or by requesting formal consultation under ESA Section 7 which will require contacting DPNR and the corresponding federal agencies.

You may use the information from the USFWS Information for Planning and Consultation (IPaC) (<https://ecos.fws.gov/ipac/location/index>), and National NMFS ESA Critical Habitat Mapper

(<https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=68d8df16b39c48fe9f60640692d0e318>) when determining the presence of ESA listed species and critical habitat. Attaching aerial image(s) of the site to this NOI is helpful to DPNR, USFWS, and NMFS in confirming eligibility under this criterion.

If you are able to install and implement appropriate measures to avoid the likelihood of adverse effects, then the measures you adopt to avoid or eliminate adverse effects must be implemented for the duration of your coverage under this permit.

If you are unable to install and implement appropriate measures to avoid the likelihood of adverse effects, you are ineligible for coverage under this permit, and shall seek coverage under an individual permit.

You must comply with any applicable terms, conditions, or other requirements developed in the process of meeting the eligibility criteria in this section to remain eligible for coverage under this permit.

2) **Additional Resources**

- a) For National Marine Fisheries Service species and critical habitat information, use the following webpages, which provide up-to-date information on listed species (<http://www.nmfs.noaa.gov/pr/species/esa/>) and critical habitat (<http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>).
- b) To determine the field office that corresponds to your site, go to <http://www.nmfs.noaa.gov/> (under the left tab for “Regions”).
 - o For National Marine Fisheries Service species in the Greater Atlantic Region, go to <https://www.greateratlantic.fisheries.noaa.gov/protected/index.html>.
- c) For Fish and Wildlife Service species information, use the on-line mapping tool IPaC (the Information, Planning, and Consultation System) located at <http://ecos.fws.gov/ipac/>, and follow these steps:
 - o Select Get Started
 - o Select Enter Project Location
 - o Use an address, city name or other location to zoom into your project area
 - o Use the zoom feature to see the entire extent of your action area on the screen
 - o Use one of the mapping features (e.g., Polygon or line feature) to draw your action
 - o When you are done, press Continue.
 - o Select Request an Official Species List
 - o Complete the fields on the Official Species List Request page and include “(VICHAGP)” at the end of the project description. – For Classification, select “Water Quality Modification”.
 - o Select the appropriate requesting agency/organization type (for most dischargers, this should be “Other”).
 - o Submit the request to acquire an Official Species List, which should show both listed species as well as any designated critical habitat that are present in the action area in the previous step.

- Note: If a link to an Official Species List is not available on the page, follow the web link of the office(s) indicated, or contact the office directly by mail or phone if a web link is not shown.

H. Eligibility Related to National Historic Preservation Act (NHPA) Protected Properties

Part 1.1.8 details the eligibility for coverage under the VICHAGP in relation to National Historic Preservation Act Protected Properties. The process for assessing your eligibility is outlined in Appendix C.

DPNR-DEP will share your application with DPNR- SHPO for review and determination. DPNR- SHPO shall be provided all available reports, documents, and resources on the property and issue a determination, if necessary.

I. Coastal Zone Management Act (CZMA) Consultation

The USVI Coastal Zone Management Act (CZMA) was approved in 1979. The Virgin Islands coastal program, under the purview of VIDPNR's Division of Coastal Zone Management (CZM), works to protect coastal land and waters, such as beaches, bays, lagoons, wetlands, dunes, and bluffs, out to the limit of the territorial sea. Through planning, permitting, public education, and other management techniques, the program reduces conflict among competing uses for the territory's coastal land and water resources, including coral reefs.

As noted in Part 1.1.9, DPNR's TPDES Program is not required to consult with CZM regarding permitting actions. However, VIDPNR's TPDES Program values input from CZM and reserves the right to voluntarily contact CZM to notify them of a facility that discharges to a "discharge area" under this permit and to obtain a list of concerns under the CZMA near the subject discharge(s).

- a) Discharge Area.** The definition of "discharge area," for the purposes of this section, is as follows:

***"Discharge Area"** – all areas to be affected directly or indirectly by a facility's discharge and not merely the immediate area involved in the action. For the purposes of this permit and for application of the Endangered Species Act and Magnuson-Stevens Fishery Conservation and Management Act requirements, the following areas are included in the definition of discharge area:*

- *The areas on the Permittee's property where discharges occur and flow toward the point of discharge into the receiving waters*
- *The areas where discharges flow from the facility to the point of discharge into receiving waters. (Example: a gut, ditch, swale, or gully that leads to receiving waters and where listed species (such as listed amphibians) are found in the gut, ditch, swale, or gully.)*
- *The areas where effluent discharges into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where effluent discharges into a bay that is known to harbor listed aquatic species.)*

J. Essential Fish Habitat (EFH) Review

Essential fish habitat (EFH) includes the waters and substrate (sediments, etc.) necessary for fish species to spawn, breed, feed, or grow to maturity. The Magnuson-Stevens Fishery Conservation and Management Act (January 21, 1999) requires federal agencies to consult with NOAA when a proposed discharge has the potential to adversely affect (reduce quality and/or quantity of) EFH.

VIDPNR is not required to consult with NOAA regarding permitting actions. However, VIDPNR values input from NOAA and reserves the right to voluntarily contact NOAA to notify them of a facility that discharges to a “discharge area” under this permit and to obtain a list of EFH near the subject discharge(s) as well as a list of concerns from NOAA.

PART II. HOW TO OBTAIN PERMIT COVERAGE

Part 1.2 details the criteria required to obtain permit coverage.

A. Submitting the Notice of Intent (NOI)

Part 1.2.2 of the permit carries out the fundamental requirements that discharges are not authorized until permit coverage is obtained, an NOI is submitted, and official notification has been received from VIDPNR that the facility is covered under the VICHAGP.

1) How to submit the NOI

Part 1.2.3 clarifies that method by which operators are to submit their NOIs for permit coverage. Due to the expansion of Internet availability, greater efficiency in administrative processing, and reductions in cost to manage the system as compared to paper NOIS, it is required the EPA’s NPDES eReporting Tool (NeT) be the primary mechanism by which coverage under the VICHAGP is obtained. If it is not possible for a permittee to use NeT, the facility may submit a waiver request to DPNR and an explanation as to why use of NeT is infeasible. Facilities must receive affirmative confirmation from DPNR to then use a paper NOI.

2) Waiver from Electronic Reporting

Part 1.2.4 specifies the conditions in which waivers from electronic reporting can be granted in accordance with the NPDES Electronic Reporting rule (40 CFR Part 127).

3) Deadlines for submitting your NOI and your Official Date of Permit Coverage

Part 1.2.4 specifies the deadlines for submitting NOIs for permit coverage and official state dates for permit coverage in Table 1-2. NOI submittal deadlines vary depending on when the operator commences construction activity. Table 1-2 summarizes the deadline and permit coverage start dates based on the circumstances of the facility.

Table 1-2. NOI Submittal Deadlines/Discharge Authorization Dates		
Category	NOI Submission Deadline⁴	Discharge Authorization Date⁵
Operators of a condominium, hotel, or apartment complex that falls under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110 that currently discharging under individual permits.	A minimum of 180 days after the issuance of the VICHAGP.	Upon receipt of official notification from VIDPNR that the facility is covered under the VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.
New operators of an existing condominium, hotel, or apartment complex that falls under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110 with discharges previously authorized under the 2023 VICHAGP.	A minimum of 180 days prior to commencement of discharge.	Upon receipt of official notification from VIDPNR that the facility is covered under the VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.
Other eligible operators – Operators of a condominium, hotel, or apartment complex that falls under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110 that commenced discharging prior to the effective date of this permit, but not covered under the 2023 VICHAGP or another TPDES permit.	Immediately, to minimize the time discharges from the facility will continue to be unauthorized.	Upon receipt of official notification from VIDPNR that the facility is covered under the VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.
New condominium, hotel, or apartment complexes that fall under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110.	A minimum of 90 days prior to the commencement of the discharge.	Upon receipt of official notification from VIDPNR that the facility is covered under the VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.

The submittal deadlines in Table 1 for new facilities and new operators of new or existing facilities provides the Fish & Wildlife Service, DPNR Fish & Wildlife Division (DPNR F7W), and the National Marine Fisheries Service (the “Services”), the state historic preservation office, and the public, with an opportunity to review these submissions and to inform DPNR if they believe that more time is needed to

⁴ If you miss the deadline to submit your NOI, any and all discharges from your facility will be unauthorized under the CWA until they are covered by this or a different TPDES permit. VIDPNR may take enforcement action for any unpermitted discharges.

⁵ Discharges are not authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage.

review the potential impacts from the project. The time between NOI Submission Deadline and the Discharge Authorization Date is known as the “waiting period”.

During the waiting period, where one or all of the Services or the historic preservation office request that they or DPNR need to further explore whether a particular facility is eligible for permit coverages, DPNR can delay authorization to allow such an assessment to take place. DPNR may also use the waiting period to determine whether more stringent control measures are necessary to ensure that discharges will meet applicable water quality standards, to be consistent with an applicable wasteload allocation (WLA), or to comply with Territorial antidegradation requirements.

Additionally, during this waiting period, the public has an opportunity to review the NOIs. Anyone wishing to provide feedback to DPNR can send information to DPNR offices for consideration. DPNR clarifies that this waiting period is not a public notices and comment period. DPNR will consider any information provided to it during the waiting period but does not plan to provide specific responses to comments received. Where appropriate, DPNR will address concerns raised. Depending on the nature of the issue and the timing of the comments, DPNR will take appropriate action either prior to or following discharge authorization. In addition, DPNR may delay authorization if warranted, or may determine that the discharge is not eligible for authorization under this permit.

If the facility requests a waiver and submits a paper NOI, the waiting period is the same as described above, however, this period only commences after DPNR completes manual entry of the paper NOI information into NeT. Note that if the paper NOI contains errors or is incomplete, this will result in delaying the commencement of the waiting period. The facility will be able to tell if the waiting period has begun by checking for their NOI in NeT.

4) Modifying your NOI

NOIs can be modified through NeT.

5) Your Official End Date of Permit Coverage

If the VIHCAGP is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with section 558(c) of the Administrative Procedures Act (see 40 CFR 122.6 and 12 VIRR 184-25) and remain in force and effect for dischargers that were covered prior to its expiration. All facilities granted permit coverage prior to the expiration date of this permit will automatically remain covered by the VICHAGP until the earliest of:

- a) The authorization for coverage under a reissued or replacement version of the permit following a timely submittal of a complete and accurate NOI requesting coverage under the new permit. If a timely NOI for coverage under the reissued or replacement permit is not submitted, coverage will be terminated on the date that the NOI was due; or
- b) The date of the submittal of an NOT; or
- c) Issuance or denial of an individual permit for the facility’s discharges’ or
- d) A final permit decision by DPNR not to reissue the VICHAGP at which time DPNR will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or individual permit. Coverage under this permit will terminate at the end of this time period.

DPNR reserve the right to modify or revoke and reissue the VICHAGP under 40 CFR 122.62 & 63 and 12 VIRR 184-72 & 74, in which case the operator will be notified of any relevant changes or procedures to which operators may be subject.

B. Coverage Under an Alternative Permits

VIDPNR may require the facility to apply for and/or obtain authorization to discharge under an alternative permit, i.e., either an individual TPDES permit or an alternative TPDES general permit, in accordance with 12 VIRR §184-46(b)(3), 40 CFR §122.64 and §124.5. If VIDPNR requires the facility to apply for an alternative permit, the Department will notify them in writing that a permit application or NOI is required. This notification will include a brief statement of the reasons for this decision and will contain alternative permit application or NOI requirements, including deadlines for completing your application or NOI.

PART III. HOW TO TERMINATE PERMIT COVERAGE

A. Submitting a Notice of Termination (NOT)

Part 1.3 details the requirements that must be met before an operator of a condominium, hotel, or apartment complex may be authorized to terminate coverage under the permit. Part 1.3.1 reminds the operator that until permit coverage is terminated, the operator must comply with all conditions and effluent limitations in the permit. Permit coverage is not terminated until DPNR has received a complete and accurate NOT, certifying that the requirements for termination in Part 1.4.2 are met.

B. Minimum Information Required in NOT

Part 1.3.2 lists the minimum information that must be provided in the NOT. These requirements inform facilities of the information that must be included in the NOT. The required information facilitates prompt processing of NOTs and provides assurance that operators have valid basis for terminating. DPNR notes that the TPDES permit tracking number is not the same number that was reported on the NOI form. The NOI contains the “TPDES permit number” as identified in the VICHAGP (e.g., VI3456789) while the “TPDES permit tracking number” is that number provided by DPNR’s TPDES eReporting Tool (NeT) acknowledging receipt of a complete NOI. The permit tracking numbers are assigned sequentially as NOIs are received by NeT (e.g., xxxxxx1, xxxxxx2, etc).

C. How to Submit your NOT

Part 1.3.3 describes the process for submitting an NOT. This section also provides information about DPNR’s TPDES eReporting Tool, or “NeT”. In Part 13.1, DPNR requires that operators file an electronic NOT to notify DPNR that it has met the conditions for terminating permit coverage under Part 1.4. It is required that the NeT system be the primary mechanism by which operators of hotels, condominiums, and apartments obtain permit coverage and submit an NOT. If the facility operator requests a waiver from electronic reporting as specified in Part 1.2.4 and DPNR grants approval to use a paper NOT in Appendix E, then facilities may submit a paper NOT to the Regional Office.

D. Conditions for Terminating Permit Coverage

The requirements in Part 1.4 provide operators a list of all the conditions for terminating permit coverage. These conditions must be satisfied before an NOT can be filed and permit coverage terminated.

E. Deadline for Submitting the NOT

Part 1.5 provides the deadlines for submitting NOTs. The purpose of requiring a deadline to submit an NOT is to ensure a facility does not remain covered under the VICHAGP for a long time after discharge has ceased.

F. Effective Date of Termination of Coverage

Part 1.5.1 specifies when a facility's permit termination will become effective and therefore they will no longer be responsible for complying with the permit. If DPNR requires that the NOT is incomplete or the facility has not satisfied one or more of the conditions in Part 1.4 for being able to submit an NOT, then the NOT will not be valid and the facility must continue to comply with the permit conditions.

PART IV. RATIONALE FOR EFFLUENT LIMITS, MONITORING AND REPORTING REQUIREMENTS

A. Receiving Water Classification

The VICHAGP authorizes discharges to Class B receiving waters of the United States Virgin Islands.

As indicated in the USVI Water Quality Standards (WQS) Regulations at 12 VIRR 186, the designated uses for Class B receiving waters include:

- 1) Maintenance and propagation of desirable species of aquatic life (including threatened, endangered species listed pursuant to section 4 of the Federal Endangered Species Act and threatened, endangered and indigenous species listed pursuant to Title 12, Chapter 2 of the Virgin Islands Code; and
- 2) Primary contact recreation (swimming, water skiing, etc.).
- 3) This class allows minimal changes in structure of the biotic community and minimal changes in ecosystem function. Virtually all native taxa are maintained with some changes in biomes and/or abundance; ecosystem function are fully maintained within the range of natural variability.

CWA Section 303(d) requires the USVI to develop a list of impaired waters, establish priority rankings for waters on the list, and develop TMDLs for those waters. As described above, discharges to Class B receiving waters with water quality impairments are eligible for coverage under the VICHAGP, provided they meet the necessary criteria.

B. Mixing Zone(s)/Dilution Allowance(s)

The VICHAGP does not authorize a mixing zone or dilution allowance for any discharger.

C. Compliance Orders/Consent Decrees

The VICHAGP does not incorporate any compliance orders or consent decrees for any facilities.

D. Effluent Limitation Development

- 1) CWA section 301(b), 40 CFR §122.44(d), and 12 VIRR 184-54 require that permits include limitations more stringent than applicable technology-based requirements where necessary to achieve applicable water quality standards. In additions, 40 CFR §122.44(d)(1)(i) and 12 VIRR 184-54(c)(1)(i) require that

permits include effluent limitations for all pollutants that are or may be discharged at levels that cause, have the reasonable potential to cause, or contribute to an exceedance of water quality criterion, including narrative criterion. The process for determining reasonable potential and calculating water quality-based effluent limits (WQBELs) is intended to protect the designated uses of the receiving water and achieve applicable water quality criteria. Where reasonable potential has been established for a pollutant, but there is no numeric criterion for the pollutant, WQBELs must be established using (1) EPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or a policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in 12 VIRR 184-54(c)(1)(vi). The effluent limitations and permit condition in the permit were developed to ensure compliance with all federal and state regulations, including USVI WQS. The basis for each limitation or condition is discussed below.

- 2) The Clean Water Act (CWA) requires that the permit limits for a particular pollutant be the more stringent of either technology-based effluent limits (TBELS) or water quality-based effluent limits (WQBEL). A TBEL is set according to the level of treatment that is achievable using available technology. A WQBEL is designed to ensure that the water quality standards (WQS) of a water body are met. A WQBEL may be more stringent than a TBEL.

This permit requires both TBELS and WQBELs. The Department first determines if TBELS are required to be incorporated into the permit. For pollutants of concern with no associated TBELS but that have reasonable potential to cause or contribute to an exceedance of water quality criteria, WQBELs are established to be protective of designated uses of the receiving water. In cases where both TBELS and WQBELs are calculated, the more stringent limit is retained as the final permit effluent limit.

E. Summary of Basis for Effluent Limitations and Permit Conditions - General

The effluent limitations and permit conditions in the permit have been developed to ensure compliance with the following, as applicable:

- 1) NPDES Regulations (40 CFR Part 122)
- 2) TPDES Regulations (12 VIRR Part 184)
- 3) USVI WQS (2015) (12 VIRR Part 186)
- 4) Secondary Treatment Requirements (40 CFR 133)
- 5) EPA's Guidelines for Water Reuse (600R-12618, September 2012)

F. Basis for Effluent Limitations for Discharges of Wastewater from a Secondary Treatment System to Surface Waters

The permit establishes effluent limitation for several pollutants for discharges of wastewater from a secondary treatment system to surface waters. The basis for these limits is discussed below.

- 1) **Flow** – An effluent limitation for flow has been established based on the information provided in the facility's Notice of Intent. Monitoring conditions are applied pursuant to 40 CFR §122.21(j)(4)(ii).
- 2) **5-day Biochemical Oxygen Demand (BOD₅)** – The effluent concentration and percent removal limitations are based on technology-based secondary treatment standards for publicly owned treatment works (POTWs) specified in 40 CFR §133.102(a). The permit also requires influent monitoring and

reporting in accordance with 40 CFR §122.44(i) to meet the requirement of the percent removal limitations.

- 3) **Color.** The narrative effluent limit for color is based on the water quality standard for Class B waters at 12 VIRR §186-5(a)(1)(E).
- 4) **Dissolved Oxygen** – The effluent limitation for dissolved oxygen is based on the water quality standard for Class B waters at 12 VIRR §186-4(b)(2)(B)(ii)(b).
- 5) **Enterococci** – The discharge consists of domestic sewage that is a source of bacteria. To ensure that the recreational use of the water body is met, effluent limitation for enterococci are established in the permit and are based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(e).

Consistent with the expression of the water quality criteria for enterococci, USVI DPNR establishes a minimum monitoring frequency of 2 grab samples per month to calculate a geometric mean and to monitor and report the single sample result of each of the 2 or more samples to comply with the effluent limitation of that no single sample shall exceed a maximum of 104 per 100 ml at any time.

- 6) **Oil and Grease** – The effluent limitation for oil and grease is based on the water quality standard at 12 VIRR §1286-5(a)(1)(G) which states that “All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows: Oil and Floating Substances – visible oil film or globules of grease.” The Permittee shall verify by grab samples and observation so that the discharge meets this regulatory requirement.
- 7) **pH** – The technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(c) require the pH of the effluent be 6-9 SU at all times. The USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(c) specify that the pH for discharges to Class B receiving waters be 7.0-8.3 SU at all times. As the water quality-based effluent limitations for pH are more stringent, these limitations have been established in the permit.
- 8) **Temperature** – The effluent limitation for temperature is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(d).
- 9) **Total Dissolved Solids & Salinity** - The effluent limit for total dissolved solids and salinity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-5(b)(1)(E).
- 10) **Total Nitrogen** – The effluent limitation for total ammonia nitrogen is based on the water quality standard at 12 VIRR §186-4(b)(2)(B)(ii)(g).
- 11) **Total Phosphorus** – The effluent limitation for total phosphorus is based on the water quality standard for discharges for marine and coastal Class B waters at 12 VIRR §186-4(b)(2)(B)(ii)(f).
- 12) **Total Residual Chlorine** – Total residual chlorine has been identified as a contaminant of concern since some facilities use chlorination to disinfect the effluent to meet water quality criteria for pathogens. The effluent limitation for total residual chlorine is based on the water quality criterion for Class B waters as specified in the USVI WQS at 12 VIRR §186-5(b)(1)(A).
- 13) **Total Suspended Solids (TSS)** - The effluent concentration and percent removal limitations are based on technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(b). The permit also requires influent monitoring and reporting in accordance with 40 CFR 122.44(i) to meet the

requirement of the percent removal limitation (see section B.1.—Monitoring Requirements— of this Fact Sheet).

- 14) **Turbidity** – The effluent limitation for turbidity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(j).

G. Basis for Control Measures and Effluent Limitations for Discharges of Wastewater from a Secondary Treatment System to Irrigation / Land Application

The permit establishes effluent limitation for several pollutants for discharges of wastewater from a secondary treatment system to irrigation / land application. The basis for these limits is discussed below.

- 1) **Flow** – An effluent limitation for flow has been established based on the information provided in the facility's Notice of Intent. Monitoring conditions are applied pursuant to 40 CFR §122.21(j)(4)(ii).
- 2) **5-day Biochemical Oxygen Demand (BOD₅)** – The effluent concentration and percent removal limitations are based on technology-based secondary treatment standards for publicly owned treatment works (POTWs) specified in 40 CFR §133.102(a). The permit also requires influent monitoring and reporting in accordance with 40 CFR §122.44(i) to meet the requirement of the percent removal limitations.
- 3) **Enterococci** - The discharge consists of domestic sewage that is a source of bacteria. To ensure that the recreational use of the water body is met, effluent limitation for enterococci are established in the permit and are based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(e).

Consistent with the expression of the water quality criteria for enterococci, USVI DPNR establishes a minimum monitoring frequency of 2 grab samples per month to calculate a geometric mean and to monitor and report the single sample result of each of the 2 or more samples to comply with the effluent limitation that no more than 10% of the samples collected in the same 30 days shall exceed 110 per 100 ml.

- 4) **Oil and Grease** – The effluent limitation for oil and grease is based on the water quality standard at 12 VIRR §1286-5(a)(1)(G) which states that “All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows: Oil and Floating Substances – visible oil film or globules of grease.” The Permittee shall verify by grab samples and observation so that the discharge meets this regulatory requirement.
- 5) **pH** – The technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(c) require the pH of the effluent be 6-9 SU at all times. The USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(c) specify that the pH for discharges to Class B receiving waters be 7.0-8.3 SU at all times. As the water quality-based effluent limitations for pH are more stringent, these limitations have been established in the permit.
- 6) **Temperature** – The effluent limitation for temperature is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(d).
- 7) **Total Dissolved Solids & Salinity** - The effluent limit for total dissolved solids and salinity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-5(b)(1)(E).
- 8) **Total Nitrogen** – The effluent limitation for total ammonia nitrogen is based on the water quality standard at 12 VIRR §186-4(b)(2)(B)(ii)(g).

- 9) **Total Phosphorus** – The effluent limitation for total phosphorus is based on the water quality standard for discharges for marine and coastal Class B waters at 12 VIRR §186-4(b)(2)(B)(ii)(f).
- 10) **Total Residual Chlorine** – Total residual chlorine has been identified as a contaminant of concern since some facilities use chlorination to disinfect the effluent to meet water quality criteria for pathogens. The water quality standard for total residual chlorine in Class B waters is specified at 12 VIRR §186-5(b)(1)(A). The Urban Reuse; Restricted Category (Table 4-4) of EPA's 2012 Guidelines for Water Reuse (600R-12618, September 2012) provides a more stringent guidance value of 1.0 mg/l for total residual chlorine. As it is more stringent than the WQS, the effluent limitation is based on the guidance value.
- 11) **Total Suspended Solids (TSS)** - The effluent concentration and percent removal limitations are based on technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(b). The permit also requires influent monitoring and reporting in accordance with 40 CFR 122.44(i) to meet the requirement of the percent removal limitation (see section B.1.—Monitoring Requirements— of this Fact Sheet).

The permit establishes control measures for discharges of wastewater from a secondary treatment system to irrigation / land application. The basis for these control measures is discussed below.

- 1) **Setback Requirement** – The setback requirements for discharges via spray irrigation and land application are based on the Urban Reuse; Restricted Category (Table 4-4) of EPA's 2012 Guidelines for Water Reuse (600R-12618, September 2012).
- 2) **Public Signage Requirements** – The public signage requirements are based on the Urban Reuse; Restricted Category (Table 4-4) of EPA's 2012 Guidelines for Water Reuse (600R-12618, September 2012).

H. Basis for Effluent Limitations for Discharges of Drinking Water Purification Concentrate to Surface Waters or to Irrigation / Land Application

The permit establishes effluent limitation for several pollutants for discharges of wastewater from a drinking water purification concentrate to surface waters or to irrigation / land application.

- 1) **Flow** – An effluent limitation for flow has not been established. Monitoring conditions are applied pursuant to 40 CFR §122.21(j)(4)(ii).
- 2) **Dissolved Oxygen** – The effluent limitation for dissolved oxygen is based on the water quality standard for Class B waters as specified in the USV WQS at 12 VIRR §186-4(b)(2)(B)(ii)(b).
- 3) **Oil and Grease** – The effluent limitation for oil and grease is based on the water quality standard at 12 VIRR §1286-5(a)(1)(G) which states that “All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows: Oil and Floating Substances – visible oil film or globules of grease.” The Permittee shall verify by grab samples and observation so that the discharge meets this regulatory requirement.
- 4) **pH** – The technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(c) require the pH of the effluent be 6-9 SU at all times. The USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(c) specify that the pH for discharges to Class B receiving waters be 7.0-8.3 SU at all times. As the water quality-based effluent limitations for pH are more stringent, these limitations have been established in the permit.

- 5) **Temperature** – The effluent limitation for temperature is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(d).
- 6) **Total Dissolved Solids & Salinity** – The effluent limit for total dissolved solids and salinity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-5(b)(1)(E).
- 7) **Turbidity** – The effluent limitation for turbidity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(j).

I. Narrative Water Quality Criteria and Biocriteria

- 1) **Narrative Criteria** - The USVI WQS at 12 VIRR §186-5(a) requires that all Territorial Waters shall meet generally accepted aesthetic qualifications and shall be capable of supporting diversified aquatic life.
- 2) **Biocriteria** – The USVI WQS at 12 VIRR §186-4(b)(2)(B)(i)(a) requires that the biological conditions of Class B waters shall reflect no more than a minimal departure from reference condition for biological integrity within Class B waters. Class B allows minimal changes in structure of the biotic community and minimal changes in ecosystem function. Virtually all native taxa are maintained with some changes in biomass and/or abundance; ecosystem functions are fully maintained within the range of natural variability.

J. Compliance with USVI's Anti-Degradation Policy and Federal Anti-backsliding Requirements

Federal regulations at 40 CFR 131.12 require that state water quality standards include an anti-degradation policy consistent with the federal policy. The discharge is consistent with the anti-degradation provision of 40 CFR 131.12, 72 *Federal Register* 238 (December 12, 2007, pages 70517-70526) and the *Anti-Degradation Regulations* in 12 VIRR 186-7 of USVI WQS.

In addition, CWA sections 402(o)(2) and 303(d)(4) and federal regulations at 40 CFR 122.44(l) prohibit backsliding in TPDES permits. This anti-backsliding provision require effluent limitations in a reissued permit to be as stringent as those in the previous permit with some exceptions where limitations may be relaxed.

Based on a September 2022 analysis of the current USVI TPDES individual permits that are expected to seek coverage under the VICHAGP, the effluent limitations established in the general permit are equally or more stringent than the effluent limitations established in the individual permits.

K. Monitoring Requirements

NPDES regulations at 40 CFR 122.48 and 12 VIRR 186-63 require that all permits specify requirements for recording and reporting monitoring results. Monitoring in a permit is required to determine compliance with effluent limits. Monitoring may also be required to gather effluent and receiving water body data to determine if additional effluent limits are required and/or to monitor effluent impact on the receiving water body quality. The permittee is responsible to conduct the monitoring and report results on DMRs or as otherwise required, as appropriate. The following provides the rationale for the monitoring and reporting requirements for this facility.

1) Monitoring Frequency and Sample Type

Part 6.1 details the monitoring frequency and sample type for all required pollutants which have been established in accordance with the requirements of 40 CFR 122.44(i) and recommendations in EPA's TSD.

The required monitoring frequency and sample type is specified for each parameter, based on the average gallons per day discharge of the facility, in the table below.

Parameter	Average Discharge Volume (GPD)			Sample Type
	≤ 19,999	20,000 – 99,999	≥ 100,000	
Flow	Daily	Daily	Daily	Continuous
BOD ₅ , Effluent	Quarterly	Monthly	Weekly	24-hour Composite ¹
BOD ₅ , Influent	Quarterly	Monthly	Weekly	24-hour Composite ¹
BOD ₅ , Percent Removal	Quarterly	Monthly	Weekly	Calculated
Color	Quarterly	Monthly	Weekly	Grab
Dissolved Oxygen	Quarterly	Monthly	Weekly	Grab
Enterococci	Quarterly	Monthly	Weekly	Grab
Oil & Grease	Monthly	Weekly	2x / Week	Grab
pH	Monthly	Weekly	2x / Week	Grab or Continuous
Temperature	Monthly	Weekly	2x / Week	Grab or Continuous
Total Dissolved Solids & Salinity	Annually	Quarterly	Quarterly	Grab
Total Nitrogen	Annually	Quarterly	Monthly	Grab
Total Phosphorous	Annually	Quarterly	Monthly	Grab
Total Residual Chlorine	Monthly	Weekly	2x / Week	Grab
TSS, Effluent	Quarterly	Monthly	Weekly	24-hour Composite ¹
TSS, Influent	Quarterly	Monthly	Weekly	24-hour Composite ¹
TSS, Percent Removal	Quarterly	Monthly	Weekly	Calculated
Turbidity	Quarterly	Monthly	Weekly	Grab

3) Facilities with Average Discharge Volume of ≤ 19,999 GPD may substitute grab samples instead of 24-hour composite samples.

2) Monitoring Locations

Part 6.2 details the monitoring locations. The VICHAGP requires influent monitoring for discharges from secondary treatment facilities to surface waters and for discharges from secondary treatment

facilities to irrigation / land application to determine compliance with the BOD5 and TSS percent removal effluent limitations, as specified by 40 CFR §133.102(a). All other parameters are monitoring at the effluent.

3) Monitoring Location Signage.

Part 6.3 requires that all monitoring locations be clearly labeled as such.

4) Sludge Monitoring

Part 6.4 requires sludge inventory data be submitted as part of the monthly Discharge Monitoring Report (DMR).

L. Reporting Requirements

Part 7.1 details the reporting frequency for facility's based on the average discharge volume. Part 7.2 details the requirements for the monthly submission of Discharge Monitoring Reports (DMRs) to DPNR and EPA through the NeTDMR website at <https://netdmr.epa.gov>. As specified in Part 7.2.2., hard copy DMRs can be submitted if the facility has received a waiver from electronic reporting from DPNR.

Part 7.2.5 specifies the laboratory minimum quality assurance practices. You must show the validity of your data by requiring the laboratory analyzing your samples to adhere to the specific minimum quality assurance practices.

Parts 7.3 and 7.4 specify instances in which additional reporting is required. For example, violations of a maximum daily discharge limitations must be reported verbally within 24 hours and in writing within 5 days. There are also reporting requirements if toxic pollutants are expected to be discharged at levels which exceed with specified notification levels.

M. Rational for Special Conditions and Other Legal Requirements

1) Standard Conditions

In accordance with 40 CFR 122.41 and 12 VIRR 184-51, standard conditions that apply to all TPDES permits have been incorporated expressly in Part IV of the permit. You must comply with all standard conditions, including those additional standard conditions that are applicable to specified categories of permits under 40 CFR 122.42 and 12 VIRR 184-52, as specified in Part 9 of the permit.

2) Operation and Maintenance Plan (OMP)

Part 8.2 requires you to develop and implement an Operation and Maintenance Plan (OMP). The objectives of the OMP are to control influent, control operations, and ensure the proper evaluation of those operations. The OMP may include specific Best Management Practices (BMPs) to meet the stated objectives.

3) Compliance Schedules

The VICHAGP does not authorize a compliance schedule for any pollutant or parameter in the permit on the basis of 40 CFR §122.47.

4) Biosolids (Sewage Sludge) Requirements

Part 8.3 requires that you ensure all biosolids generated at your facility are disposed of in compliance with applicable regulations. As noted in Part 8.4, you must give prior notice to VIDPNR before any planned changes to your sludge disposal practices.

5) Chemical Additives

Part 8.5 specifies that all chemical additives present in the wastestream be approved by VIDPNR and added at the manufacture's specified rate.

6) 40 CFR §136

Part 8.6 details that all sample collection, preservation, and analysis shall be conducted in accordance with the most recent version of EPA's Guidelines for Establishing Test Procedures for the Analysis of Pollutants (40 CFR §136).

7) Repair Work

If any publicly or privately owned facility shuts down any portion of the sewer system servicing the permitted facility for longer than 2 hours, the Permittee must inform VIDPNR at least 24 hours before any scheduled repair work and within 24 hours of an emergency repair.

8) Leaks, Spills & Overflows

Any leaks, spills, or overflows must be reported to the individuals listed in Part 8.8.

N. Rational for Standard Conditions

In accordance with 40 CFR 122.41 and 12 VIRR 184-51, standard conditions that apply to all TPDES permits have been incorporated expressly in Part IV of the permit. You must comply with all standard conditions, including those additional standard conditions that are applicable to specified categories of permits under 40 CFR 122.42 and 12 VIRR 184-52, as specified in Part 9 of the permit.

PART V. PUBLIC PARTICIPATION

The procedures for reaching a final decision on the draft permit are set forth in 40 CFR Part 124 and are described in the public notice for the draft permit, which is published online at <http://dpr.vi.gov/public-notice>. Included in the public notice are requirements for the submission of comments by a specified date, procedures for requesting a hearing and the nature of the hearing, and other procedures for participation in the final agency decision. The Department will consider and respond in writing to all significant comments received during the public comment period in reaching a final decision on the draft permit. Requests for information or questions regarding the draft permit should be directed to:

Dylante DeHaarte
USVI DPNR-DEP, Water Pollution Control Program
340-774-3320, ext. 5161
Dylante.dehaarte@dpr.vi.gov

PART VI. APPENDICES

A. APPENDIX A: Definitions and Acronyms.

Appendix A provides definitions and a reference tool for terms and acronyms used through the permit.

B. APPENDIX B: Eligibility Procedures Relating to Threatened and Endangered Species Protection

Appendix B specifies the eligibility criteria related to the protection of endangered and threatened species and critical habitat. Each facility must certify that they have met one of the 6 eligibility criteria.

Operators who cannot certify to one of the endangered species eligibility criteria are not eligible to submit an NOI to gain coverage under the VICHAGP; instead, they must apply to DPNR for an individual TPDES permit. As appropriate, DPNR will conduct ESA section 7 consultations when issuing individual permits. If there are concerns that VICHAGP coverage for a particular facility may result in adverse effects to listed species or critical habitat, DPNR may hold up discharge authorization until such concerns are adequately addressed. Regardless of an operator's eligibility certification under one of the six criteria, DPNR may require an application for an individual permit on the basis of adverse effects to species or habitat.

Consistent with Section 7(a)(2) of the Endangered Species Act (ESA), DPNR consulted with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), both collectively known as the "Services," regarding the VICHAGP and ESA eligibility criteria. See, 50 CFR Part 402. Appendix D provides the eligibility language for determining which criterion operators may meet to ensure eligibility under the ESA-related provisions of the permit.

The FWS and NMFS are responsible for developing and maintaining the list of protected species and critical habitat. Once listed as endangered or threatened, a species is afforded the full range of protections available under the ESA, including prohibitions on killing, harming or otherwise taking a species. In certain instances, the FWS or NMFS may establish a critical habitat for a threatened or endangered species as a means to further protect those species. Critical habitat is an area determined to be essential for the conservation of a species and need not be in an area currently occupied by the species. Some, but not all, listed species have designated critical habitat. Exact locations of such designated critical habitat are provided in the Services regulations at 50 CFR Parts 17 and 226.

Facilities have an independent ESA obligation to ensure that any of their activities do not result in prohibited "take" of listed species. Section 9 of the ESA prohibits any person from "taking" a listed species, e.g., harassing or harming it, with limited exceptions. See ESA Sec 9; 16 U.S.C. §1538. This prohibition generally applies to "any person," including private individuals, businesses and government entities. Many of the requirements and procedures in the VICHAGP to protect species may also assist facilities in ensuring that their activities do not result in a prohibited take of species in violation of section 9 of the ESA. Facilities who intend to operate in areas that harbor endangered and threatened species may seek protection from potential "take" liability under ESA section 9 either by obtaining an ESA section 10 permit or by requesting coverage under an individual permit and participating in the section 7 consultation process with the appropriate FWS or NMFS office. Facilities unsure of what is needed for such liability protection should confer with the appropriate Services.

Note that facilities are required to comply with other applicable federal laws, including the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act.

C. APPENDIX C: HISTORIC PROPERTY SCREENING PROCESS

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal “undertakings” on historic properties that are listed on, or eligible for listing on, the National Register of Historic Places. The term Federal “undertaking” is defined in the NHPA regulations to include a project, activity, or program under the direct or indirect jurisdiction of a Federal agency including those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 800.16(l).

DPNR’s issuance of the permit is a Federal undertaking within the meaning of the NHPA. To address any issues relating to historic properties in connection with issuance of the final permit, DPNR has included a screening process in Appendix E for all prospective dischargers to follow to ensure that potential impacts of their covered activities on historic properties have been appropriately considered and addressed. Although individual applications for coverage under the general permit do not constitute Federal undertakings, the screening process and related NOI questions provide an appropriate site-specific means of addressing historic property issues in connection with DPNR’s issuance of the final permit.

Under the NHPA regulations, a determination that a Federal undertaking has no potential to cause effect on historic properties fulfills an agency’s obligations under section 106 of the NHPA. See 36 CFR 800.3(a)(1). DPNR has reason to believe that the vast majority of activities that will be authorized under the VICHAGP will have no potential to cause effects on historic properties. DPNR does not anticipate effects on historic properties from the pollutants in hotel, condominium, and apartment wastewater discharges that will be covered under the permit. Thus, to the extent DPNR’s issuance of the general permit will authorized discharges of pollutants to existing waterbodies, the final permitting action does not have the potential to cause effects on historic properties.

It is DPNR’ judgement that the permit may have some potential to cause effects on historic properties where the permit authorizes the installation of control measures that involve subsurface disturbance. Where the facility has to disturb the land through the construction and/or installation of such controls, there is a possibility that artifacts, records, or remains associated with historic properties could be impacted. Therefore, if the facility is installing new treatment controls to manage its wastewater that will involve subsurface ground disturbance, the facility must consider the potential for effects to historic properties and may need to contact the applicable State Historic Preservation Officer (SHPO), Tribal Historic Preservation Office (THPO), or other tribal representative, to determine the likelihood that these controls will impact historic properties. Refer to Appendix B, Steps 2 through 5.

D. APPENDIX D: NOI Form and Instructions

The VICHAGP requires facilities to use DPNR’s eReporting Tool (NeT) to prepare and submit NOIs. However, when a facility requests and receives approval from his/her DPNR Regional Office, the facility will be authorized to use the paper NOI form included in the Appendix D.

E. APPENDIX E: NOT Form and Instructions

The VICHAGP requires facilities to use DPNR’s eReporting Tool (NeT) to prepare and submit NOIs. However, when a facility requests and receives approval from his/her DPNR Regional Office, the facility will be authorized to use the paper NOI form included in the Appendix E.

Appendix E also provides potential operators with an idea of what types of questions to anticipate when completing the NOT.

**UNITED STATES VIRGIN ISLANDS
DEPARTMENT OF PLANNING AND NATURAL RESOURCES**



**2023 VIRGIN ISLANDS CONDOMINIUM, HOTEL, AND APARTMENT
COMPLEX GENERAL PERMIT (VICHAGP)**

GENERAL PERMIT NUMBER VICH00000

**AUTHORIZATION TO DISCHARGE UNDER THE
TERRITORIAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, 33 USC §1251 et. seq., (hereafter referred to as the CWA or the Act), as amended by the Water Quality Act of 1987, P.L. 100-4, and the Virgin Islands Water Pollution Control Act, 12 V.I. CODE ANN. §184 (1998 & Supp. 2004) et. seq., operators of condominium, hotel, and apartment complexes with discharges associated with standard sewage treatment plants or drinking water purification systems located in the United States Virgin Islands Territory are authorized to discharge to Waters of the United States Virgin Islands in accordance with the eligibility and Notice of Intent (NOI) requirements, effluent limitations, inspection requirements, and all other conditions set forth in this permit.

This permit is conditioned upon payment of applicable fees, submittal of a complete Notice of Intent (NOI) application form and written approval of coverage from the director of Division of Environmental Protection of VIDPNR, in accordance with 12 V.I. CODE ANN. §185 (1998 & Supp. 2004).

This permit shall become effective on **TBD**.

This permit and authorization to discharge shall expire at midnight on **TBD**.

Jean-Pierre L. Oriol
Commissioner

Date

**2023 TPDES
CONDOMINIUM, HOTEL, AND APARTMENT COMPLEX GENERAL PERMIT
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COVERAGE UNDER THIS PERMIT.

1.1 Eligibility.

1.1.1 Facilities Covered.

To be eligible to discharge under this permit, the facility must meet the following criteria:

- 1.1.1.1 Be a condominium, hotel, or apartment complex in the United State Virgin Islands Territory (SIC Code 6531, 7011, 6513 or NAICS Code 721110, 721120, 721191, 721199, 531110);
- 1.1.1.2 Discharge to a Class B receiving water, as defined in the USVI WQS (See a list of Class B waters in 12VIRR§186);
- 1.1.1.3 Be classified as a minor discharger by the US Virgin Island Department of Planning & Natural Resources (VIDPNR);
- 1.1.1.4 Be able to demonstrate that the facility meets one of the criteria in the Endangered Species Protection section of the Notice of Intent (NOI) that you submit for coverage under this permit, per Part 1.1.7 and Appendix B , with respect to the protection of species that are either locally-listed under the USVI Indigenous and Endangered Species Act (IESA) of 1990 and will not result in adverse modification or destruction of habitat that is locally designated as “critical habitat” under the IESA or Federally listed as endangered or threatened species (“listed”) and will not result in the adverse modification or destruction of habitat that is Federally designated critical habitat under the Endangered Species Act (ESA)¹.
- 1.1.1.5 Complete the screening process in Appendix C relating the protection of historic properties and be able to demonstrate that the facility meets one of the criteria in the National Historic Preservation section of the NOI that you submit for coverage under this permit, per Part 1.1.8. ²

1.1.2 Allowable Wastewater Discharges.

The following discharges are eligible for coverage under this permit:

1.1.2.1 Discharges of wastewater from a secondary treatment system to surface water

¹ DPNR-Division Environmental Protection will forward your application documents to the appropriate internal agencies (DPNR-Division of Fish Wildlife) for review and determination.

² DPNR-Division Environmental Protection will forward your application documents to the appropriate internal agencies (DPNR-State Historic Preservation Office, DPNR-Division of Fish Wildlife) for review and determination.

Discharges of treated domestic wastewater from secondary or advanced treatment systems at minor condominium, hotel, and apartment complex facilities to Class B surface waters of the USVI, as defined in the USVI WQS, are eligible for coverage under this permit.

1.1.2.2 Discharges of wastewater from a secondary treatment system to irrigation and/or land application

Discharges of treated domestic wastewater from a secondary or advanced treatment systems at minor condominium, hotel, and apartment complex facilities for the purpose of irrigation and/or land application with eventual discharge to Class B receiving waters, as defined in the USVI WQS, are eligible for coverage under this permit.

1.1.2.3 Discharges of drinking water purification concentrate to surface waters or to irrigation/land application

Discharges of treated wastewater from drinking water purification systems at minor condominium, hotel, and apartment complex facilities to Class B surface waters of the USVI, as defined in the USVI WQS, are eligible for coverage under this permit.

1.1.3 Non-Allowable Discharges.

All other discharges requiring TPDES permit coverage, except those specifically listed in Part 1.1.2, are not authorized by this permit. If there are stormwater or non-stormwater discharges requiring TPDES permit coverage other than those listed in Part 1.1.2, they must either be eliminated or covered under another TPDES permit.

1.1.4 Limitations on Coverage.

Any discharges not expressly authorized in this permit cannot become authorized or shielded from liability under Clean Water Act (CWA) section 402(k) by disclosure to EPA, state, or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, any Operations & Maintenance (O&M) Plan, or during an inspection.

1.1.4.1 Discharges Mixed with Other Discharges

Wastewater discharges that are mixed with stormwater discharge or mixed with a discharge authorized by a different TPDES permit, and/or discharges that do not require a TPDES authorization, are not eligible for coverage under this permit.

1.1.4.2 Discharges Currently or Previously Covered by Another Permit

Discharges from facilities where any TPDES permit has been or is in the process of being denied, terminated, or revoked by VIDPNR are not eligible for coverage under this permit unless the facility has received written notification from VIDPNR specifically allowing the discharge to be covered under this permit. This does not apply to the routine reissuance of this permit.

1.1.5 Eligibility for New Dischargers and New Sources Based on Water Quality Standards.

If the facility is a new discharger or a new source (as defined in Appendix A), they are ineligible for coverage under this permit if VIDPNR determines, prior to authorization to discharge, that the facility's discharges will not meet an applicable water quality standard i.e., that pollutants of concern will be discharged at levels that meet the necessary limitations to not exceed water quality standards) or if any discharge will lower the water quality of the applicable water. In such case, VIDPNR may notify the facility that an individual permit application is necessary per Part 1.2.8, or, alternatively, VIDPNR may authorize coverage under this permit after the implementation of additional control measures so that all of the facility's discharges will meet water quality standards.

1.1.6 Eligibility for New Dischargers and New Sources to Water-Quality Impaired Waters.

If the facility is a new discharger or a new source (as defined in Appendix A), they are ineligible for coverage under this permit to discharge to an "impaired water" (as defined in Appendix A) unless the facility does one of the following:

- 1.1.6.1 Prior to submitting the NOI, the facility provides to the appropriate VIDPNR office technical information or other documentation to support the claim that the pollutant(s) for which the waterbody is impaired is not present at the facility, and retain such documentation with the permit file; or
- 1.1.6.2 Prior to submitting the NOI, the facility provides to VIDPNR either data or other technical documentation to support a conclusion that the discharge is expected to meet applicable water quality standards (i.e., that pollutants of concern will be discharged at levels that meet the necessary limitations to not exceed water quality standards), and retain such information with the permit file. The information to be submitted to VIDPNR must be sufficient to demonstrate:
 - 1.1.6.2.1 For discharges to waters without a VIDPNR approved or established Total Maximum Daily Load (TMDL), that the discharge of the pollutant for which the water is impaired will meet water quality standards at the point of discharge to the waterbody; or
 - 1.1.6.2.2 For discharges to waters with a VIDPNR approved or established TMDL, that there are, in accordance with 40 CFR 122.4(i), sufficient remaining wasteload allocations in the TMDL to allow your discharge, and that existing dischargers to the waterbody are subject to compliance schedules designed to bring the waterbody into attainment with water quality standards (e.g., a reserve allocation for future growth).

The facility is eligible under Part 1.1.6.2 if they receive a determination from VIDPNR that all discharges will meet applicable water quality standards (i.e., that pollutants of concern will be discharged at levels that meet the necessary limitations to not exceed water quality standards).

To obtain the most updated list of impaired water bodies in the USVI Territory, go to <https://dpr.vi.gov/environmental-protection/water-quality-management-program/>, and scroll down to the Water Quality Management Program's most recent Integrated Water Quality Monitoring & Assessment Report for the United States Virgin Islands. The list can be found in the Appendices.

Note: For the purposes of this permit, the facility is considered to discharge to an impaired water if the first water of the USVI to which the facility discharges is identified by VIDPNR as not meeting an applicable water quality standard, and:

- *Requires development of a TMDL (pursuant to section 303(d) of the CWA);*
- *Is addressed by a VIDPNR-approved or established TMDL; or*
- *Is not in either of the above categories but the waterbody is covered by pollution control requirements that meet the requirements of 40 CFR 130.7(b)(1).*

For discharges that enter a gut, swale, storm sewer system or other water conveyance channels after discharge, the first water of the USVI to which the facility discharges is the waterbody that receives the discharge from the gut, swale, storm sewer system or other water conveyance channels.

1.1.7 Eligibility Related to Endangered Species Act (ESA) Listed Species and Critical Habitat Protection.

Operators must comply with all conditions and/or requirements that address discharges from activities also covered under this permit resulting in an Endangered Species Act (ESA) consultation or an ESA section 10 permit, or if your discharge are not likely to adversely affect any species that are either locally-listed under the USVI Indigenous and Endangered Species Act (IESA) of 1990 and will not result in the adverse modification or destruction of habitat that is locally-designated as "critical habitat" under the IESA, or federally-listed as endangered or threatened ("listed") under the Endangered Species Act (ESA) and will not result in the adverse modification or destruction of habitat that is federally-designated as "critical habitat" under the ESA following the procedures in Appendix B.

1.1.8 Eligibility related to National Historic Preservation Act (NHPA)-Protected Properties.

Operators must comply with all conditions and/or requirements that address discharges from activities also covered under this permit for the National Historical Preservation Act (NHPA). The operator must meet one of the eligibility criteria in Appendix C relating to the protection of historic properties.

1.1.9 USVI Coastal Zone Management Act (CZMA) Consultation

VIDPNR's Water Pollution Control Unit may consult with VIDPNR's Division of Coastal Zone Management, which works to protect coastal land and waters, such as beaches, bays, lagoons, wetlands, dunes, and bluff, out to the limit of the territorial sea, to obtain a list of concerns under the Coastal Zone Management Act (CZMA) near the subject discharge.

1.1.10 Essential Fish Habitat (EFH) Consultation

VIDPNR may consult with NOAA regarding whether the discharge has the potential to adversely affect (reduce quality and/or quantity) of Essential Fish Habitat, as required by the Magnuson-Stevens Fishery Conservation and Management Act.

1.2 Authorization under this Permit.

1.2.1 How to Obtain Authorization.

To obtain authorization under this permit, the facility must:

- Be a condominium, hotel, or apartment complex in the United State Virgin Islands Territory (SIC Code 6531, 7011, 6513 or NAICS Code 721110, 721120, 721191, 721199, 531110);
- Discharge to a Class B receiving water, as defined in the USVI WQS (See a list of Class B waters in 12VIRR§186); and
- Be classified as a minor discharger by the US Virgin Island Department of Planning & Natural Resources (VIDPNR).
- Discharge wastewater associated with the normal operation of a wastewater treatment plant with a secondary or advanced treatment system and/or a drinking water purification system (in accordance with Part 1.1.2).
- Be able to demonstrate that the facility meets one of the criteria in the Endangered Species Protection section of the Notice of Intent (NOI) that you submit for coverage under this permit, per Part 1.1.7 and Appendix B , with respect to the protection of species that are either locally-listed under the USVI Indigenous and Endangered Species Act (IESA) of 1990 and will not result in adverse modification or destruction of habitat that is locally designated as "critical habitat" under the IESA or Federally listed as endangered or threatened species ("listed") and will not result in the adverse modification or destruction

of habitat that is Federally designated critical habitat under the Endangered Species Act (ESA)³.

- 1.2.1.1 Complete the screening process in Appendix C relating the protection of historic properties and be able to demonstrate that the facility meets one of the criteria in the National Historic Preservation section of the NOI that you submit for coverage under this permit, per Part 1.1.8.⁴

1.2.2 Submitting the Notice of Intent (NOI).

To be covered under this permit, the facility must submit to VIDPNR a complete and accurate NOI in accordance with the deadlines in Table 1-2 prior to the commencement of the discharge. The NOI certifies to VIDPNR that the facility is eligible for coverage according to Part 1.1 and provides information on the facility's operational activities and related discharges.

1.2.3 How to Submit the NOI.

1.2.3.1 Electronic NOI

You must use VIDPNR's NOI system (accessible at <https://cdx.epa.gov/cdx>) to prepare and submit your NOI electronically. However, if the VIDPNR grants you a waiver, as specified in Part 1.2.4, to use a paper NOI form, and you elect to use it, you must complete and submit the NOI form found in Appendix D.

1.2.3.2 Hard Copy NOI

If pursuant to 1.2.4, you are submitting a paper NOI form, you must submit the form to one of the following VIDPNR offices, corresponding with the island on which the construction activity covered is located:

ST. CROIX

Virgin Islands Department of Planning and Natural Resources
Water Pollution Control Program
ATTN: TPDES Program
45 Estate Mars Hill
Frederiksted, VI 00840

ST. THOMAS & ST. JOHN

Virgin Islands Department of Planning and Natural Resources
Water Pollution Control Program
ATTN: TPDES Program
4611 Tutu Park Mall, Suite 300, Second Floor

³ DPNR-Division Environmental Protection will forward your application documents to the appropriate internal agencies (DPNR-Division of Fish Wildlife) for review and determination.

⁴ DPNR-Division Environmental Protection will forward your application documents to the appropriate internal agencies (DPNR-State Historic Preservation Office, DPNR-Division of Fish Wildlife) for review and determination.

St. Thomas, VI 00802

1.2.4 Waiver From Electronic Reporting

1.2.4.1 Waivers from electronic reporting may be granted based on one of the following conditions:

- If your operational headquarters is physically located in a geographic area (i.e., ZIP code or census tract) that is identified as under-served for broadband internet access in the most recent report from the Federal Communications Commission; or
- If you have limitations regarding available computer access or computer compatibility.

To apply for a waiver from electronic reporting, you must submit a request to VIDPNR-DEP which includes the following information, at minimum:

- Facility name,
- **NPDES permit number (if applicable),**
- **Facility address,**
- **Name, address, and contact information for the owner, operator, or duly authorized facility representative, and**
- **Brief written statement regarding the basis for claiming such a temporary waiver.**

If DPNR-DEP grants your approval to use a paper NOI and you elect to use it, you must complete the form in Appendix D and follow the other instructions in the permit for submitting hard copy forms and reports.

1.2.5 Deadline for NOI Submittal and Official Date of Permit Coverage.

Table 1-2 provides the deadlines for submitting the NOI and official start date of permit coverage. Late NOIs will be accepted but authorization to discharge will not be retroactive.

Table 1-2. NOI Submittal Deadlines/Discharge Authorization Dates		
Category	NOI Submission Deadline⁵	Discharge Authorization Date⁶
Operators of a condominium, hotel, or apartment complex that falls under the SIC Code 6531, 7011, or 6513 or NAICS Code	A minimum of 180 days after the	Upon receipt of official notification from VIDPNR that the facility is covered under the

⁵ If you miss the deadline to submit your NOI, any and all discharges from your facility will be unauthorized under the CWA until they are covered by this or a different TPDES permit. VIDPNR may take enforcement action for any unpermitted discharges.

⁶ Discharges are not authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage.

721110, 721120, 721191, 721199, or 531110 that are currently discharging under individual permits.	issuance of the VI CHAGP.	VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.
New operators of an existing condominium, hotel, or apartment complex that falls under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110 with discharges previously authorized under the 2023 VICHAGP.	A minimum of 180 days prior commencement of discharge	Upon receipt of official notification from VIDPNR that the facility is covered under the VI CHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.
Other eligible operators – Operators of a condominium, hotel, or apartment complex that falls under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110 that commenced discharging prior to the effective date of this permit but not covered under the 2023 VICHAGP or another TPDES permit.	Immediately, to minimize the time discharges from the facility will continue to be unauthorized.	Upon receipt of official notification from VIDPNR that the facility is covered under the VI CHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.
New condominium, hotel, or apartment complexes that fall under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110.	A minimum of 90 days prior to the commencement of discharge.	Upon receipt of official notification from VIDPNR that the facility is covered under the VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.

1.2.6 Modifying the NOI.

If after submitting the NOI a correction or update to any field is needed, you may do so by submitting a “Change NOI” form using NeT. Waivers from electronic reporting may be granted as specified in Part 1.2.4. If VIDPNR has granted you approval to submit a paper NOI modification, you may indicate any NOI changes on the same NOI form in Appendix F, or follow the procedures specified by VIDPNR if VIDPNR has provided notice that electronic submission of NOIs is required under Part 1.2.3.

When the facility is under new ownership, the new owner must submit a new NOI, and the previous owner must submit a Notice of Termination (NOT) form as specified in Part 1.3.

The following modifications to an NOI will result in a 30-day review process:

- Changes to the name of a facility owner and/or operator;
- Changes to the facility name;
- Changes to the discharge;

- Changes to the name of the receiving water⁷, or additions to the applicable receiving water;
- Changes to the eligibility information related to endangered species protection or historic preservation; and
- Changes to the information provided related to the use of chemical treatment at the facility.

During the 30-day review process, you may continue to operate based on the information provided in your original NOI but you must wait until the review period has ended before you commence or continue activities at your facility that would be affected by any of the above modifications, unless VIDPNR notifies you that the authorization is denied or delayed.

1.2.7 Official End Date of Permit Coverage.

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 12 V.I.R.R. §184-25, the Administrative Procedure Act and 40 CFR §122.6 and remain in force and effect for discharges that were covered prior to the expiration. If authorization to discharge under this permit is obtained prior to the expiration date and this permit is administratively continued, any discharges authorized under this permit will automatically remain covered by this permit after its expiration date until the earliest of:

- Authorization for coverage under a reissued permit or a replacement version of this permit following the facility's timely and appropriate submittal of a complete and accurate NOI requesting authorization to discharge under the new permit and compliance with the requirements of the new permit; or
- Submittal of a Notice of Termination (NOT); or
- Issuance of an individual permit for the facility's discharges;
- A formal permit decision by VIDPNR not to reissue this general permit, at which time VIDPNR will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit. Coverage under this permit will cease at the end of this time period; or
- VIDPNR has informed the Operator that its discharge is no longer covered under this permit.

Note: If the Permittee fails to submit a timely NOI for coverage under the reissued or replacement permit, coverage will terminate on the date that the NOI was due.

1.2.8 Coverage Under Alternative Permits.

⁷ As defined in Appendix A, a "receiving water" is "a "Water of the United States Virgin Islands" as defined in 12 V.I.R.R. §184-2 into which the discharge enters.

VIDPNR may require the facility to apply for and/or obtain authorization to discharge under an alternative permit, i.e., either an individual TPDES permit or an alternative TPDES general permit, in accordance with 12 VIRR §184-46(b)(3), 40 CFR §122.64 and §124.5. If VIDPNR requires the facility to apply for an alternative permit, the Department will notify them in writing that a permit application or NOI is required. This notification will include a brief statement of the reasons for this decision and will contain alternative permit application or NOI requirements, including deadlines for completing your application or NOI.

1.2.8.1 Denial of Coverage for New or Previously Unpermitted Facilities.

For new or previously unpermitted facilities, following the submittal of an NOI, coverage may be denied under this general permit and application for and/or obtaining authorization to discharge under an alternative permit, per Part 1.2.8 will be required.

1.2.8.2 Loss of Authorization Under this General Permit for Existing Permitted Facilities.

If the facility's discharges are no longer eligible for coverage under this permit, they may receive a written notification to either apply for coverage under an individual TPDES permit or submit an NOI for coverage under an alternative general TPDES permit, per Part 1.2.8. In addition to the reason(s) for the decision and alternative permit application or NOI deadlines, the notice will include a statement that on the effective date of alternative permit coverage, coverage under this general permit will terminate. VIDPNR may grant additional time to submit the application or NOI if requested by the facility. If you fail to submit the application or NOI as required by VIDPNR, then authorization to discharge under this general permit is terminated at the end of the day that VIDPNR required the facility to submit an alternative permit application or NOI. VIDPNR may take appropriate enforcement action for any unpermitted discharge(s).

1.2.8.3 Operator Requesting Coverage Under an Alternative Permit.

The facility may request to be covered under an individual permit. In such a case, an individual permit application shall be submitted in accordance with the requirements of 12 VIRR §184-46(b)(3)(i)(G)(4)(ii) and 40 CFR §122.28(b)(3)(iii), with reasons supporting the request, to VIDPNR. The request may be granted by issuance of an individual permit if given reasons are adequate to support the request. When the facility is authorized to discharge under an alternative permit, authorization to discharge under this general permit is terminated on the effective date of the alternative permit.

1.3 Terminating Coverage.

1.3.1 Submitting a Notice of Termination (NOT).

Until you terminate coverage under this permit, you must comply with all conditions and effluent limitations in the permit. To terminate permit coverage, you must submit to VIDPRN a complete and accurate Notice of Termination (NOT) in NeT, which certifies that you have met the requirements for terminating in Part 1.4.

1.3.2 Minimum Information Required in NOT

- *TPDES ID* (i.e., permit tracking number) provided by VIDPNR when you received coverage under the permit;
- *Termination Basis*. Basis for submission of the NOT (see Part 1.4);
- *Contact Information*. Operator contact information;
- *Facility Name and Address*. Name of the facility and address; and
- *Signature and Certification*. NOT certification.

1.3.3 How to submit your NOT

- 1.3.3.1 You must use VIDPNR's NOT system (accessible at <http://dpnr.vi.gov/public-notices>) to prepare and submit your NOT electronically. However, if the VIDPNR grants you a waiver to use a paper NOT form as specified in Part 1.2.4, and you elect to use it, you must complete and submit the NOT form found in Appendix E.
- 1.3.3.2 If pursuant to Part 1.2., you are submitting a paper NOT form, you must submit the form to one of the following VIDPNR offices, corresponding with the island on which the facility is located.

ST. CROIX

Virgin Islands Department of Planning and Natural Resources
Water Pollution Control Program
ATTN: TPDES Program
45 Estate Mars Hill
Frederiksted, VI 00840

ST. THOMAS & ST. JOHN

Virgin Islands Department of Planning and Natural Resources
Water Pollution Control Program
ATTN: TPDES Program
4611 Tutu Park Mall, Suite 300
St. Thomas, VI 00802

1.4 Conditions for Termination VICHAGP Coverage

You may terminate VICHAGP coverage only if one or more of the conditions listed below apply. Until your termination is effective consistent with Part 1.5.1., you must continue to comply with the conditions of this permit.

1.4.1 Discharge terminated.

This facility no longer discharges pollutants from a point source to a Water of the USVI.

1.4.2 Transfer of Ownership / Change of Operator.

You have transferred control of all areas of the facility for you are responsible under this permit to another operating, and that operator has submitted an NOI and obtained coverage under this permit; or

1.4.3 Transfer to Alternate Permit.

Coverage under an individual or alternate general TPDES permit has been obtained.

1.5 Deadline for Submitting the NOT

You must submit an NOT within 30 calendar days after any one of the conditions in Part 1.4 occurs.

1.5.1 Effective Date of Termination of Coverage

Your authorization to discharge under this permit terminates at midnight of the date of the NOT approval letter sent to you by VIDPRN (after NOT processing).

1.6 Permit Compliance.

Any noncompliance with any of the requirements of this permit constitutes a violation of this permit, and thus is a violation of the CWA. Failure to take any required corrective actions for that violation constitutes an independent, additional violation of this permit, in addition to any original violation that triggered the need for corrective action. As such, any actions and time periods specified for remedying non-compliance do not absolve parties of the initial underlying non-compliance.

1.7 Severability.

Invalidation of a portion of this permit does not necessarily render the whole permit invalid. VIDPNR's intent is that the permit is to remain in effect to the extent possible; in the event that any part of this permit is invalidated, VIDPNR will advise the regulated community as to the effect of such invalidation.

EFFLUENT LIMITS FOR DISCHARGES OF WASTEWATER FROM A SECONDARY TREATMENT SYSTEM TO SURFACE WATERS.

1.8 Technology-based and Water Quality-based Effluent Limitations.

Parameter	Unit	Discharge Limitation					Footnote
		Maximum Daily	Average Weekly	Average Monthly	Minimum	Maximum	
Flow	GPD	See footnote	--	See footnote	--	--	1,2
Influent BOD ₅	mg/l	--	M/R	M/R	--	--	1
Effluent BOD ₅	mg/l	--	45	30	--	--	--
BOD ₅ Percent Removal	%	--	--	85	--	--	3
Color	Pt-Co	All Territorial Waters shall be virtually free from substances producing objectionable color for aesthetic purposes					--
Dissolved Oxygen	mg/l	--	--	--	5.5	--	4
Enterococci	colonies/100ml	110	--	30	--	--	5
Oil and Grease	presence/absence	Non-detect	--	--	--	--	6
pH	SU	--	--	--	7.0	8.3	7
Temperature	°C	32	--	--	--	--	8
Total Dissolved Solids and Salinity	mg/l	250	--	--	--	--	--
Total Nitrogen	mg/l	0.207	--	--	--	--	9
Total Phosphorous	mg/l	0.05	--	--	--	--	10
Total Residual Chlorine	µg/l	--	--	--	--	--	11
Influent TSS	mg/l	--	M/R	M/R	--	--	1
Effluent TSS	mg/l	--	45	30	--	--	--
TSS Percent Removal	%	--	--	85	--	--	3
Turbidity	NTU	--	--	--	--	3	12

- 1) **M/R:** Monitor and report only.
- 2) **Flow:** The flow shall not exceed the maximum daily and average monthly volume, as reported on your facility's NOI.
- 3) **Percent Removal:** Percent removal is calculated as follows:

$$\% \text{ removal efficiency} = \frac{\text{influent (mg/L)} - \text{effluent (mg/L)}}{\text{influent (mg/L)}} \times 100\%$$

- 4) **Dissolved Oxygen:** Not less than 5.5 mg/l except when due to natural forces.
- 5) **Enterococci.** The 30-day geometric mean for enterococci shall not exceed 30 CFU/100ml and not more than 10 percent of the samples collected in the same 30 days shall exceed 110 CFU/100ml. Consistent with the expression of the water quality criteria for enterococci bacteria, VIDPNR establishes a monitoring frequency of 2 grab samples per month to calculate the geometric mean. One grab sample shall be taken in the A.M. and the other in the P.M. to account for varying treatment conditions throughout a typical day.
For waters actually used as sources of potable water (not just having the potential to be used as such), concentration of total coliforms shall be sufficient to meet applicable USVI Drinking Water Regulations (19 VIRR §1303) after available treatment.
- 6) **Oil and Grease:** This shall be a qualitative limitation and is based on 12 VIRR §186-5(a)(1)(G) as follows: "All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows: Oil and Floating Substances – visible oil film or globules of grease." The Permittee shall verify by grab sample and observation so that the discharge meets this regulatory requirement.
- 7) **pH:** Normal range of pH must not be extended at any location by more than ± 0.1 pH unit.
- 8) **Temperature:** Not to exceed 32°C at any time, nor as a result of waste discharge to be greater than 1.0°C above natural conditions. Areas where coral reef ecosystems are located shall not exceed 29°C at any time, nor as a result of waste discharge to be greater than 1.0°C above natural conditions.
- 9) **Nitrogen:** Nitrogen as total N shall not exceed concentration of 207 ug/l (0.207 mg/l) in more than 10 percent of samples over a three-year period in estuarine, marine, and coastal waters.
- 10) **Phosphorus:** Phosphorus as total P shall not exceed 50 ug/l (0.050 mg/l) in marine and coastal waters.
- 11) **Total Residual Chlorine:** Limit only applies if chlorine is used in the disinfection process. The 4-day average concentration of chlorine shall not exceed 7.5 µg/l. The 1-hour average concentration of chlorine shall not exceed 13 µg/l. This limit is derived from the Aquatic Life Criteria Table in 12 VIRR 186-5(b)(1)(A), derived from the USEPA Gold Book, and is as follows: saltwater aquatic organisms and their uses should not be affected unacceptably if the 4-day average concentration of chlorine-produced oxidants does not exceed 7.5 µg/L more than once every 3 years on the average and if the one-hour average concentration does not exceed 13 µg/L more than once every 3 years on the average. Once per month, a set of a minimum of 4 samples of Total Residual Chlorine (TRC) shall be sampled over the course of 4 days on a consistent frequency in order to calculate the 4-day average. Additionally, a set of a minimum of 4 samples of TRC shall be sampled over the course of 1 hour on a consistent frequency in order to calculate the 1-hour average.

- 12) **Turbidity:** For areas where coral reefs are locations, a maximum of 1 NTU is allowable. Turbidity effluent limits are applicable to all Class B waters except those listed below:
- a. St. Thomas waters – Mandahl Bay (Marina), Vessup Bay, Water Bay, Benner Bay, and the Mangrove Lagoon.
 - b. St. Croix waters – Carlton Beach, Good Hope Beach, Salt River Lagoon (Marina), Salt River Lagoon (Sugar Bay), Estate Anguilla Beach, Buccaneer Beach, Tamarind Reef Lagoon, Green Cay Beach, and Enfield Green Beach.

CONTROL MEASURES AND EFFLUENT LIMITS FOR DISCHARGES OF WASTEWATER FROM A SECONDARY TREATMENT SYSTEM TO IRRIGATION / LAND APPLICATION.

1.9 Technology-based and Water Quality-based Effluent Limitations.

Parameter	Unit	Discharge Limitation					Footnote
		Maximum Daily	Average Weekly	Average Monthly	Minimum	Maximum	
Flow	GPD	See footnote	--	See footnote	--	--	1, 2
Influent BOD ₅	mg/l	--	M/R	M/R	--	--	1
Effluent BOD ₅	mg/l	--	45	30	--	--	
BOD ₅ Percent Removal	%	--	--	85%	--	--	3
Enterococci	colonies/100ml	110	--	30	--	--	4
Oil and Grease	presence/absence	Non-detect	--	--	--	--	5
pH	SU	--	--	--	7.0	8.3	6
Temperature	°C	32	--	--	--	--	7
Total Dissolved Solids and Salinity	mg/l	250	--	--	--	--	
Total Nitrogen	mg/l	0.207	--	--	--	--	8
Total Phosphorous	mg/l	0.050	--	--	--	--	9
Total Residual Chlorine	mg/l	1.0	--	--	--	--	10
Influent TSS	mg/l	--	M/R	M/R	--	--	1
Effluent TSS	mg/l	--	45	30	--	--	
TSS Percent Removal	%	--	--	85%	--	--	3

- 1) **M/R:** Monitor and report only.
- 2) **Flow:** The flow shall not exceed the maximum daily and average monthly volume, as reported on your facility's NOI.
- 3) **Percent Removal:** Percent removal is calculated as follows:

$$\% \text{ removal efficiency} = \frac{\text{influent (mg/L)} - \text{effluent (mg/L)}}{\text{influent (mg/L)}} \times 100\%$$

- 4) **Enterococci.** The 30-day geometric mean for enterococci shall not exceed 30 CFU/100ml and not more than 10 percent of the samples collected in the same 30 days shall exceed 110 CFU/100ml. Consistent with the expression of the water quality criteria for enterococci bacteria, VIDPNR establishes a monitoring frequency of 2 grab samples per month to calculate the geometric mean. One grab sample shall be taken in the A.M. and the other in the P.M. to account for varying treatment conditions throughout a typical day.
For waters actually used as sources of potable water (not just having the potential to be used as such), concentration of total coliforms shall be sufficient to meet applicable USVI Drinking Water Regulations (19 VIRR §1303) after available treatment.
- 5) **Oil and Grease:** This shall be a qualitative limitation and is based on 12 VIRR §186-5(a)(1)(G) as follows: “All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows: Oil and Floating Substances – visible oil film or globules of grease.” The Permittee shall verify by grab sample and observation so that the discharge meets this regulatory requirement.
- 6) **pH:** Normal range of pH must not be extended at any location by more than ± 0.1 pH unit.
- 7) **Temperature:** Not to exceed 32°C at any time, nor as a result of waste discharge to be greater than 1.0°C above natural conditions. Areas where coral reef ecosystems are located shall not exceed 29°C at any time, nor as a result of waste discharger to be greater than 1.0°C above natural conditions.
- 8) **Nitrogen:** Nitrogen as total N shall not exceed concentration of 207 ug/l (0.207 mg/l) in more than 10 percent of samples over a three-year period in estuarine, marine, and coastal waters.
- 9) **Phosphorus:** Phosphorus as total P shall not exceed 50 ug/l (0.050 mg/l) in marine and coastal waters.
- 10) **Total Residual Chlorine:** Applies only if chlorine is used in the disinfection process.

1.10 Control Measures

1.10.1 Setback Requirements.

- 1.10.1.1 Discharges to spray irrigation may not occur within 100 feet (30 meters) of areas accessible to the public unless spray irrigation is done between the hours of 12:00am and 4:00am or when human traffic is at a minimum.
- 1.10.1.2 Discharges to land application may not occur within 300 feet (90 meters) of potable water supply wells and surface waters.

1.11 Public Signage Requirements.

The Permittee is required to minimize human exposure to the discharge by posting appropriate signs notifying the public that the water is reuse water.

EFFLUENT LIMITS FOR DISCHARGES OF DRINKING WATER PURIFICATION CONCENTRATE TO SURFACE WATERS OR TO IRRIGATION / LAND APPLICATION.

1.12 Technology-based and Water Quality-based Effluent Limitations.

Parameter	Unit	Discharge Limitation					Footnote
		Maximum Daily	Average Weekly	Average Monthly	Minimum	Maximum	
Flow	GPD	See footnote	--	See footnote	--	--	1
Dissolved Oxygen	Mg/l	--	--	--	5.5	--	2
Oil and Grease	presence/absence	Non-detect	--	--	--	--	3
pH	SU	--	--	--	7.0	8.3	4
Temperature	°C	32	--	--	--	--	5
Total Dissolved Solids and Salinity	mg/l	250	--	--	--	--	
Turbidity	NTU	--	--	--	--	3	2, 6

- 1) **Flow:** The flow shall not exceed the maximum daily and average monthly volume, as reported on your facility's NOI.
- 2) **Surface Water Discharges:** This limit only applies to discharges of drinking water purification concentrate to surface waters.
- 3) **Oil and Grease:** This shall be a qualitative limitation and is based on 12 VIRR §186-5(a)(1)(G) as follows: "All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows: Oil and Floating Substances – visible oil film or globules of grease." The Permittee shall verify by grab sample and observation so that the discharge meets this regulatory requirement.
- 4) **pH:** Normal range of pH must not be extended to any location by more than ±0.1 pH unit.
- 5) **Temperature:** Not to exceed 32°C at any time, nor as a result of waste discharge to be greater than 1.0°C above natural conditions. Areas where coral reef ecosystems are located shall not exceed 29°C at any time, nor as a result of waste discharger to be greater than 1.0°C above natural conditions.

- 6) **Turbidity:** For areas where coral reefs are locations, a maximum of 1 NTU is allowable. Turbidity effluent limits are applicable to all Class B waters except those listed below:
- a. St. Thomas waters – Mandahl Bay (Marina), Vessup Bay, Water Bay, Benner Bay, and the Mangrove Lagoon.
 - b. St. Croix waters – Carlton Beach, Good Hope Beach, Salt River Lagoon (Marina), Salt River Lagoon (Sugar Bay), Estate Anguilla Beach, Buccaneer Beach, Tamarind Reef Lagoon, Green Cay Beach, and Enfield Green Beach.

NARRATIVE WATER QUALITY CRITERIA AND BIOCRITERIA.

1.13 Narrative Water Quality Criteria.

All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows:

- 1.13.1 **Deposits.** Materials that will settle to form objectionable deposits.
- 1.13.2 **Matter.** floating debris, oils, scum, and other nuisance matter.
- 1.13.3 **Turbidity.** substances producing objectionable turbidity, such as sediment, floating debris, scum, and other floating materials attributable to discharges in amounts sufficient to be unsightly, deleterious, create a nuisance, or be detrimental to the existing or designated uses of the waterbody.
- 1.13.4 **Materials.** Including radionuclides, in concentrations or combinations which are toxic or which produce undesirable physiological responses in human, fish, and other animal life, and plants.
- 1.13.5 **Color.** Virtually free from all substances producing objectionable color for aesthetic purposes.
- 1.13.6 **Suspended, colloidal or settleable solids.** From wastewater sources which will cause disposition or be detrimental to existing or designated uses.
- 1.13.7 **Oil and floating substances.** Residue attributable to wastewater or visible oil film or globules of grease.
- 1.13.8 **Taste and odor producing substances.** In amounts that will interfere with the use for primary contact recreation, potable water supply or will render any undesirable taste or odor to edible aquatic life, except where these substances are primarily the result of natural conditions, states, or forces, (e.g., decomposition) rather than anthropogenic factors or processes.
- 1.13.9 **Substances and/or condition.** In concentrations which produce undesirable aquatic life.
- 1.13.10 **Nuisance species.** Exotic or aquatic.

1.14 Biocriteria.

The biological condition shall reflect no more than a minimal departure from reference condition for biological integrity within Class B waters. Class B allows minimal changes in structure of the biotic community and minimal changes in ecosystem function. Virtually all native taxa are maintained with some changes in

biomass and/or abundance; ecosystem functions are fully maintained within the range of natural variability.

MONITORING REQUIREMENTS

1.15 Monitoring Frequency and Sample Type

The required monitoring frequency and sample type is specified for each parameter, based on the average gallons per day discharge of the facility, in the table below.

Parameter	Average Discharge Volume (GPD)			Sample Type
	≤ 19,999	20,000 – 99,999	≥ 100,000	
Flow	Daily	Daily	Daily	Continuous
Effluent BOD ₅	Quarterly	Monthly	Weekly	24-hour Composite ¹
Influent BOD ₅	Quarterly	Monthly	Weekly	24-hour Composite ¹
BOD ₅ , Percent Removal	Quarterly	Monthly	Weekly	Calculated
Color	Quarterly	Monthly	Weekly	Grab
Dissolved Oxygen	Quarterly	Monthly	Weekly	Grab
Enterococci	Quarterly	Monthly	Weekly	Grab
Oil & Grease	Monthly	Weekly	2x / Week	Grab
pH	Monthly	Weekly	2x / Week	Grab or Continuous
Temperature	Monthly	Weekly	2x / Week	Grab or Continuous
Total Dissolved Solids & Salinity	Annually	Quarterly	Quarterly	Grab
Total Nitrogen	Annually	Quarterly	Monthly	Grab
Total Phosphorous	Annually	Quarterly	Monthly	Grab
Total Residual Chlorine	Monthly	Weekly	2x / Week	Grab
TSS, Effluent	Quarterly	Monthly	Weekly	24-hour Composite ¹
TSS, Influent	Quarterly	Monthly	Weekly	24-hour Composite ¹
TSS, Percent Removal	Quarterly	Monthly	Weekly	Calculated
Turbidity	Quarterly	Monthly	Weekly	Grab

1) Facilities with Average Discharge Volume of ≤ 19,999 GPD may substitute grab samples instead of 24-hour composite samples

1.16 Monitoring Locations

The monitoring location for all parameters shall be taken at any point after the treatment process has commenced but prior to being discharged into the receiving water or to irrigation/land application with the exception of Influent BOD₅ and Influent TSS.

The monitoring location for Influent BOD₅ and Influent TSS shall be at the influent after the bar screen.

1.17 Monitoring Location Signage

All monitoring locations for the purpose of compliance must be clearly labeled as such.

1.18 Sludge Monitoring

The Permittee shall provide EPA and VIDPNR with sludge inventory data as part of EPA and VIDPNR sludge inventory updates. These sludge inventory updates shall be submitted to VIDPNR along with every Electronic Discharge Monitoring Report (DMR) required per Part 7.2 below.

REPORTING REQUIREMENTS

1.19 Reporting Frequency

The required reporting frequency is based on the average gallons per day discharge of the facility and is specified in the table below.

Average Discharge Volume (GPD)	Reporting Frequency
≤ 19,999	Quarterly
20,000 – 99,999	Monthly
≥ 100,000	Monthly

1.20 Electronic Discharge Monitoring Reports (DMRs).

1.20.1 Submittal of Discharge Monitoring Reports (DMRs) to USVI and EPA electronically.

As specified in Part 9.12, “Monitoring Reports”, monitoring results must be reported to VIDPNR and the USEPA on a DMR. Monitoring results obtained during the previous month shall be submitted through the USEPA NetDMR website (<https://netdmr.epa.gov>) via an authorized Permittee User account, no later than the 28th day of the month following the completed reporting period.

1.20.2 Submittal of Other Reports to USVI as Hard Copy.

In the case where the Permittee has obtained an approved waiver for submittal of electronic reports, and can submit a physical copy instead, the Permittee shall submit such reports to the Commissioner of the Department at the following address:

St. Thomas/St. John Permittees/Facilities:
Dept. of Planning & Natural Resources

Division of Environmental Protection
Water Pollution Control Program
4611 Tutu Park Mall
Suite 300, 2nd Floor
St. Thomas, VI 00802
340-774-3320

St. Croix Permittees/Facilities:
Dept. of Planning & Natural Resources
Division of Environmental Protection
Water Pollution Control Program
45 Mars Hill
Frederiksted, VI 00840
340-773-1082

1.20.3 Submittal of Reports to US EPA as a Hard Copy

In the case where the Permittee has obtained an approved waiver for submittal of electronic reports as specified in Part 1.2.4, and can submit a physical copy instead, the Permittee shall submit such reports to the Regional Administrator at the following address:

Regional Administrator
Attn: Compliance Assurance & Program Support Branch
USEPA Region II
290 Broadway, Floor 21st
New York, NY 10007-1866

1.20.4 Annual Reporting.

By authority of 12 VIRR 189(a)(2), the Permittee shall submit annual reports beginning no later than 30 days after 1 year from the effective date of this permit. At a minimum, this report shall provide a summary of all process control data and an evaluation of the treatment process including use of process chemicals and back-up systems in the operation of the facility, as well as the following:

- Any and all mechanical or computer malfunctions.
- Any and all transportation of waste from another POTW.
- Any and all bypasses or exceedances of effluent limitations.
- Any and all uses of chlorine or lime.
- Any and all scheduled or completed construction of pump stations and pipelines leading to the facility.
- Any and all accidents or OSHA safety violations at the plant.
- Any use of back-up generators other than regularly scheduled maintenance.

- Any updated emergency plans including a revised contacts list in the event of flooding due to heavy rains or hurricanes.
- Any inspections of equipment failures at pump stations which are part of the plant's collection system and any follow-up corrective actions taken.
- Any WET testing conducted showing appreciable 96-hr acute toxicity, including cause and reduction evaluation.

1.20.5 Quality Assurance Practices.

The Permittee is required to show the validity of all data by requiring its laboratory to adhere to the following minimum quality assurance practices outlined in Parts 7.2.5(a) to 7.2.5.9.

1.20.5.1 Duplicate and Spiked Samples.

Duplicate⁸ and spiked⁹ samples must be run for each constituent analyzed for permit compliance on 5% of the samples, or at least on one (1) sample per month, whichever is greater. If analysis frequency is less than one (1) sample per month, duplicate and spiked samples must be run for each analysis.

1.20.5.2 Spiked Samples.

For spiked samples, a known amount of each constituent is to be added to the discharge samples. The amount of constituent is to be added to the discharge samples. The amount of constituent added should be approximately the same amount present in the unspiked sample or must be approximately that stated as maximum or average in the discharge permit.

1.20.5.3 Precision formula.

Precision for each parameter shall be calculated by the formula, standard deviation $s = \sqrt{\sum D^2 / 2K}$, where "D" is the difference between duplicate results, and "K" is the number of duplicate pairs used in the calculation.

1.20.5.4 Percent Recovery Formula.

Percent recovery for each parameter shall be calculated by the formula $R = 100 (F - I) / A$, where "F" is the analytical result of the spiked sample, and "I" is the result before spiking the sample, and "A" is the amount of constituent added to the sample.

1.20.5.5 Percent Recovery Annual Summary.

⁸ Duplicate samples are not required for the following parameters: Color, Temperature, Turbidity.

⁹ Spiked samples are not required for the following parameters listed in Table 1 of 40 CFR 136: Acidity, Alkalinity, Bacteriological, Benzidine, Chlorine, Color, Dissolved Oxygen, Hardness, pH, Oil and Grease, Radiological, Residues, Temperature, Turbidity. Procedures for spiking sample requirements for parameters not listed on the above referenced table are available through EPA's Regional Quality Assurance Coordinator.

The percent recovery, “R”, for each applicable parameter in Parts 2, 3 and 4 shall be summarized yearly in terms of mean percent recovery and standard deviation from the mean. The formula, $s = [\sum (x_m - x)^2 / (n - 1)]^{1/2}$, where “s” is the standard deviation around the mean “ x_m ”, “x” is an individual recovery value, and “n” is the number of data points which shall be applied.

1.20.5.6 External Quality Control Reference.

The Permittee or contract laboratory is required to annually analyze an external quality control reference sample for each pollutant. These are available through the Regional Quality Assurance Coordinator, Region II, Environmental Protection Agency, Edison Environmental Laboratory, Edison, NJ 08817.

1.20.5.7 Laboratory Records.

The Permittee and/or contract laboratory is required to maintain records of the specific analytical methods used, including options employed, if any, within a particular method, and of reagent standardization and equipment calibration operations.

1.20.5.8 Contract Laboratory.

If a contract laboratory is utilized, the Permittee shall submit the name and address of the laboratory and the parameters analyzed at the time it submits its discharge monitoring reports. Any change in the contract laboratory being used or the parameters analyzed shall be reported prior to or together with the monitoring report covering the period during which the change was made.

1.20.5.9 Annual Report.

The data obtained in Parts 7.2.5.1 through 7.2.5.8 above shall be summarized, in an annual report submitted at the end of the fourth quarter of reporting, in terms of precision, percent recovery, and the number of duplicate and spiked samples run.

1.21 Twenty-four-hour reporting.

The Permittee must report violations of maximum daily discharge limitations in accordance with the reporting requirements set forth in Part 9.12.6 (twenty-four (24) hour verbal reporting followed by written submission within five (5) days).

1.22 Additional reporting requirements.

The Permittee shall notify the Regional Administration and Commissioner as soon as it is known, or has reason to believe, as follows:

1.22.1 Notification Levels – Exceedance on a Routine or Frequent Basis.

That an activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any “toxic pollutant” (as defined in Appendix A) for which limitations are not explicitly established in this permit, if that discharge will exceed the highest of the following “notification levels”:

- One hundred micrograms per liter (100 µg/l); or
- Two hundred microgram per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony; or
- Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
- The notification level, if any, established by the Commissioner in the permit.

1.22.2 Notification Level – Exceedance on a Non-Routine or Infrequent Basis.

- Five hundred micrograms per liter (500 µg/l); or
- One milligram per liter (1 mg/l) for antimony; or
- Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
- The notification level, if any, established by the Commissioner in the permit.

SPECIAL CONDITIONS.

1.23 Alterations.

If there are material and substantial changes or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit, the Permittee shall promptly submit such details and information to VIDPNR.

1.24 Operation & Maintenance Plan.

The Permittee must develop and implement an Operation & Maintenance Plan (OMP) that achieves the objectives and the specific requirements listed below. A copy of the plan must be submitted to the addresses in Part 7.2.2 of this permit within six months of receiving coverage under this permit. The plan must be implemented as soon as possible but no later than nine months of receiving coverage under this permit. The Permittee shall update and amend the plan as needed, but shall review the OMP in accordance with Parts 8.2.3.6 and 8.2.3.7 below.

1.24.1 Purpose.

Through the implementation of the OMP, the Permittee shall prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the US Virgin Islands through normal operations and ancillary activities.

1.24.2 Objectives.

The Permittee shall develop and amend the OMP consistent with the following objectives for the control of pollutants:

1.24.2.1 **Control of Influent:** The number and quantity of pollutants and the toxicity of effluent generated, discharged, or potentially discharged at the facility must be minimized by the Permittee to the extent feasible by managing each influent waste stream in the most appropriate manner.

1.24.2.2 **Control of Operations:** Under the OMP, and any Standard Operating Procedures (SOPs) included in the plan, the Permittee shall ensure proper operation and maintenance of the treatment facility as required by 40 CFR 122.41(e).

1.24.2.3 **Proper Evaluation of those Operations:** The Permittee shall establish specific objectives for the control of pollutants by conducting the following evaluations:

1.24.2.3.1 Each facility component or system must be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to waters of the US Virgin Islands because of equipment failure, improper operation, and natural phenomena such as rain, etc. The examination must include all normal operations and ancillary activities including; wastewater and material collection and storage areas, plant site runoff, in-plant transfer, wastewater treatment stages and process and material handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal or reuse, or drainage from raw material storage.

1.24.2.3.2 Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances that could result in significant amounts of pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow, and total quantity of pollutants that could be discharged from the facility as a result of each condition or circumstance.

1.24.3 Requirements.

The OMP shall be consistent with the objectives in Part 8.2.2 above and the general guidance contained in the publication titled Onsite Wastewater Treatment Systems Manual (EPA/625/R-00/008, February 2002) or any subsequent revisions to the guidance document.

- 1.24.3.1 OMP shall be documented in narrative form, include any necessary plot plans, drawings, or maps, and be developed in accordance with good engineering practices. The OMP shall be organized and written with the following structure:
- 1.24.3.1.1 Name and location of the facility.
 - 1.24.3.1.2 Statement of OMP policy.
 - 1.24.3.1.3 Structure, functions, and procedures of the OMP Committee.
 - 1.24.3.1.4 Specific management practices and standard operating procedures to achieve the above objectives, including modifying equipment, facilities, technology, processes, and procedures; reformulating or redesigning products; substituting materials; and improving management, inventory control, materials handling, or general operational phases of the facility.
 - 1.24.3.1.5 Risk identification and assessment.
 - 1.24.3.1.6 Reporting of OMP incidents.
 - 1.24.3.1.7 Materials compatibility.
 - 1.24.3.1.8 Good housekeeping.
 - 1.24.3.1.9 Preventative maintenance.
 - 1.24.3.1.10 Inspections and records.
 - 1.24.3.1.11 Security.
 - 1.24.3.1.12 Employee training.
- 1.24.3.2 The OMP shall include the following provisions concerning OMP review:
- 1.24.3.2.1 Review by plant engineering staff and the plant manager.
 - 1.24.3.2.2 Review and endorsement by the Permittee.
 - 1.24.3.2.3 A statement that the above reviews have been completed and that the OMP fulfills the requirements set forth in this permit. The statement must include the dated signature(s) of the Permittee as certification of the reviews.
 - 1.24.3.3 The OMP shall establish specific Best Management Practices (BMPs) to meet the objectives identified in Part 8.2.2 above, addressing each component or system capable of generating or causing a release of significant amounts of pollutants, and identifying specific preventive or remedial measures to be implemented.
 - 1.24.3.4 The OMP shall establish specific BMPs or other measures that ensure that the following specific requirements are met:

- 1.24.3.4.1 Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA). Management practices required under RCRA regulations must be referenced in the BMP plan.
- 1.24.3.4.2 Reflect requirements for Spill Prevention, Control, and Countermeasure (SPCC) plans under CWA section 311 and 40 CFR Part 112 and may incorporate any part of such plans into the OMP by reference.
- 1.24.3.4.3 If applicable, reflect requirements for stormwater control under CWA section 402(p) and the regulations at 40 CFR 122.26 & 12 VIRR 184-2(87) as well as 40 CFR 122.44 & 12 VIRR 184-54, and otherwise eliminate to the extent practicable, contamination of stormwater runoff.
- 1.24.3.5 *Documentation to Support Eligibility Pertaining to Other Federal Laws*
 - 1.23.3.5.1 *Documentation Regarding Endangered Species Act-Listed Threatened and Endangered Species and Critical Habitat Protection.* You must keep with your OMP the documentation supporting your determination with regard to Part 1.1.7.
 - 1.23.3.5.2 *Documentation Regarding National Historic Preservation Act Historic Properties.* You must keep with your OMP the documentation supporting your determination with regard to Part 1.1.8.
- 1.24.3.6 *Documentation.* The Permittee shall maintain a copy of the OMP at the facility and must make the plan available to VIDPNR & EPA upon request.
- 1.24.3.7 *OMP Modification.* The Permittee shall amend the OMP whenever there is a change in the facility or in the operation of the facility that materially increases the generation of pollutants or their release or potential release to the receiving waters. The Permittee shall also amend the plan, as appropriate, when plant operations covered by the OMP change. Any such changes to the OMP must be consistent with the objectives and specific requirements listed above. All changes in the OMP must be reported to VIDPNR in writing.
- 1.24.3.8 *Modification for Ineffectiveness.* If at any time the OMP proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or the specific requirements above, the permittee shall promptly modify the OMP to incorporate revised BMP requirements and submit to VIDPNR in writing for review and approval.

1.25 Biosolids (Sewage Sludge) Requirements.

1.25.1 General Biosolids Requirements.

- 1.25.1.1 All biosolids generated by the Permittee shall be used or disposed of in compliance with the applicable portions of the following:
 - 1.25.1.1.1 40 CFR Part 503—for biosolids that are land applied, placed in a surface disposal site (dedicated land disposal site, monofill, or sludge-only parcel at a municipal landfill), or incinerated.
 - 1.25.1.1.2 40 CFR Part 258—for biosolids disposed of in a municipal solid waste landfill (with other material).
 - 1.25.1.1.3 40 CFR Part 257—for all biosolids use and disposal practices not covered under 40 CFR Parts 258 or 503.
- 1.25.1.2 The regulation at 40 CFR Part 503, Subpart B (land application) sets requirements for biosolids that are applied for the purpose of enhancing plant growth or for land reclamation. The regulation at 40 CFR Part 503, Subpart C (surface disposal) sets requirements for biosolids that are placed on the land for the purpose of disposal, and 40 CFR Part 503, Subpart E, sets requirements for biosolids incinerated in a biosolids incinerator.
- 1.25.1.3 The Permittee shall be responsible for ensuring that all biosolids produced at its facility are used or disposed of in accordance with these rules, whether the Permittee uses or disposes of the biosolids itself or transfers the biosolids to another party for further treatment, use, or disposal. The Permittee shall be responsible for informing subsequent preparers, applicators, and disposers of the requirements that they must meet requirements under these rules.
- 1.25.1.4 The Permittee shall ensure that haulers transporting biosolids off site for treatment, storage, use, or disposal take all necessary measures to keep the biosolids contained. All haulers must have spill cleanup procedures. If a spill of biosolids on land or into a body of water occurs, the Permittee shall notify by telephone the US EPA's Caribbean Environmental Protection Division (CEPD) at (787) 977-5865 and VIDPNR at (340) 773-1082 no longer than 24 hours after the spill occurred.
- 1.25.1.5 The permittee shall notify by letter, no longer than 5 days after the spill, which must include the spill material, spill volume, and measures taken to prevent the spill material to gain access to any body of water. This special condition does not relieve the Permittee from its responsibility to obtain the corresponding permits from other state and federal agencies, if any.

1.26 Notice of Change in Sludge Disposal Practice.

The Permittee shall give prior notice to the VIDPNR of planned changes in the Permittee's sludge disposal practice.

1.27 Chemical Additives

In accordance with best-professional judgment (BPJ) derived in support of 12 VIRR 186-5, all chemical additives which could be present in the waste streams shall be approved by VIDPNR and added at the manufacture's specified rate.

1.28 40 CFR §136

All sample collection, preservation, and analysis shall be carried out in accordance with the most current version of 40CFR §136 unless otherwise stated.

1.29 Repair Work

In the event that any publicly/private owned permitted facility shuts down any section of the sewer system serving the permitted facility, to include but not limited to any pump station, force main, gravity line, or manhole for longer than a two (2) hour period, the Permittee shall inform VIDPNR of the required work at least 24-hours before any scheduled repair work, and within 24-hours of any emergency repair work.

1.30 Leaks, Spills or Overflows

In the event of leaks, spills or overflows at a permitted facility, the following individuals must be included in any and all notifications:

- Dylante DeHaarte, TPDES Permit Writer at 340-774-3320 ext. 5161 or dylante.dehaarte@dpnr.vi.gov,
- Mary Stiehler, TPDES Program Manager at 340-773-1082 ext. 2274 or mary.stiehler@dpnr.vi.gov,
- Courtney Dickenson, TPDES Compliance Inspector at 340-773-1082 ext. 2278 or courtney.dickenson@dpnr.vi.gov,
- Antonio Farchette, TPDES Compliance Inspector at 340-774-3320 ext. 5162 or antonio.farchette@dpnr.vi.gov,
- Jim Casey, EPA/CEPD, VI Coordinator at 340-714-2333 or casey.jim@epa.gov.

STANDARD CONDITIONS.

The following standard conditions apply to all TPDES permits covered under the VICHAGP.

1.31 Duty to comply. [12 VIRR 184-51(a), 40 CFR 122.41 (a)(1)]

The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act and the Act [12 V.I.C. 181 et seq.] and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; and/or denial of a permit renewal application.

1.31.1 Non-Compliance.

If the permittee fails or refuses to comply with an interim or final requirement in a TPDES permit, such noncompliance shall constitute a violation of the permit for which the Commissioner may modify, revoke and reissue, or terminate the permit and/or take direct enforcement action pursuant to law. When, at any time during or prior to a period for compliance, the permittee states or otherwise lets it be known, or the Commissioner on reasonable cause determines, that the permittee will not make the requisite efforts to achieve compliance with an interim or final requirement, the Commissioner may modify, revoke and reissue, or terminate the permit without waiting for expiration of the period for compliance with such requirement.

1.31.2 Toxic Pollutants.

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

1.31.3 General Requirements.

The permittee shall comply with such other terms, provisions, requirements, or conditions as may be necessary to meet the requirements of the Act [12 V.I.C. 181 et seq.], 12 V.I.C. 184, or the FWPCA.

1.32 Duty to reapply. [12 VIRR 184-51(b)]

1.32.1 Renewal Requirement.

If the permittee wishes to continue an activity regulated by a TPDES permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

1.32.2 Deadline & Filing Requirement.

Any permittee who intends to continue to discharge beyond the period of time covered in their TPDES permit must file for reissuance of their permit at least 180 days prior to its expiration. Filing for reissuance shall be made by the permittee on forms authorized by the Commissioner.

1.33 Need to halt or reduce activity not a defense. [12 VIRR 184-51(c)]

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

1.34 Duty to mitigate. [12 VIRR 184-51(d), 40 CFR 122.41(d)]

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

1.35 Proper operation and maintenance. [12 VIRR 184-51(e)]

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 the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

1.36 Permit actions. [12 VIRR 184-51(f)]

After notice and opportunity for a hearing, the permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

1.37 Property rights. [12 VIRR 184-51(g)]

The permit does not convey any property rights of any sort, or any exclusive privilege.

1.38 Duty to provide information. [12 VIRR 184-51(h)]

1.38.1 General Requirement.

The permittee shall furnish to the Commissioner, within a reasonable time, any information which the Commissioner may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Commissioner, upon request, copies of records required to be kept by the permit.

1.38.2 Other Requirements.

Every permittee under this subchapter shall file such other information at such times and in such form as the Department may reasonably require to achieve the purposes of the Act [12 V.I.C. 181 et seq.] or the FWPCA.

1.39 Inspection and entry. [12 VIRR 184-51(i)]

The permittee shall allow the Commissioner, employees of the Department, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

1.39.1 Entry.

Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit or Territorial law;

1.39.2 Record Access.

Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

1.39.3 Inspections.

Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

1.39.4 Sampling & Monitoring.

Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act or the Act [12 V.I.C. 181 et seq.], any substances or parameters at any location.

1.40 Monitoring and records. [12 VIRR 184-51(j) and 184-63, 40 CFR 122.41(j)(2)]

1.40.1 Representative Sampling.

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

1.40.2 Monitoring Intervals.

Each effluent flow or pollutant required to be monitored shall be monitored at intervals to be determined by the Department as sufficiently frequent to yield data which reasonably characterize the nature of the discharge of the monitored flow or pollutant. Variable effluent flows and pollutant levels may be required to be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels, which may be required to be monitored at less frequent intervals.

1.40.3 Record Retention.

Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the TPDES permit, and records of all data used to complete the application for the TPDES permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period of retention shall be extended during the course of any unresolved litigation or other proceedings regarding the discharge of pollutants by the permittee or at any time when requested by the Department or Regional Administrator.

1.40.4 Information Inclusion.

Records of monitoring information shall include for all samples and measurements:

1.40.4.1 The date, exact place, and time of sampling or measurements;

1.40.4.2 The individual(s) who performed the sampling or measurements;

1.40.4.3 The date(s) analyses were performed;

1.40.4.4 The individual(s) who performed the analyses; result in noncompliance with permit requirements.

1.40.4.5 The analytical techniques or methods used; and

1.40.4.6 The results of such analyses.

1.40.5 Test Procedures.

Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.

1.40.6 Falsification of Records.

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of each person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

1.40.7 Monitoring Methods & Equipment.

Any discharge authorized by a TPDES permit may be subject to such monitoring requirements as may be reasonably required by the Department, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

1.40.8 Minimum Data Monitoring Requirements.

The permittee shall monitor each discharge for at least the following:

1.40.8.1 Flow (in gallons per day); and

1.40.8.2 All of the following pollutants (upon notification to the permittee):

1.40.8.3 Pollutants (measured either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the provisions of the permit;

1.40.8.4 Pollutants which the Commissioner finds, on the basis of information available, could have a significant impact on the quality of the waters of the Territory;

1.40.8.5 Pollutants specified by the Administrator, in regulations issued pursuant to the Act [12 V.I.C 181 et seq.], as subject to monitoring; and

1.40.8.6 Any pollutants in addition to the above which the Regional Administrator requests, in writing, be monitored.

1.40.9 General Recording, Reporting, Monitoring and Sampling Requirements.

The permittee shall comply with all recording, reporting, monitoring and sampling requirements under the Act [12 V.I.C 181 et seq.], this subchapter or the FWPCA.

1.41 Signatory requirement. [12 VIRR 184-51(k)]

1.41.1 Submission Requirements.

All applications, reports, or information submitted to the Commissioner shall be signed and certified (See 12 VIRR§184-32).

1.41.2 False Statements, Representation, or Certification.

The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or non-compliance shall upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

1.42 Reporting requirements. [12 VIRR 184-51(l), 40 CFR 122.41(l)(1)(iii) and (4)(i) and (ii)]

1.42.1 Planned Changes.

The permittee shall give notice giving full particulars to the Department as soon as possible of any planned physical alterations, production increases, process modifications, or additions to the permitted facility. Notice is required only when:

1.42.1.1 The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

1.42.1.2 The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 12 VIRR§184-52(a)(1).

1.42.1.3 The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

1.42.2 Anticipated Non-compliance.

The permittee shall give advance notice to the Commissioner of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

1.42.3 Transfers.

The permit is not transferable to any person except after notice to the Commissioner. The Commissioner may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act or the Act [12 V.I.C. § 181 et seq.]. (See Section 184-71; in some cases, modification or revocation and reissuance is mandatory.)

1.42.4 Monitoring reports.

Monitoring results shall be reported at the intervals specified above.

- 1.42.4.1 Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
- 1.42.4.2 Every Permittee under this subchapter shall file such other information at such times and in such form as the Department may reasonably require to achieve the purposes of the Act [12 V.I.C. 181 et seq.] or the FWPCA.
- 1.42.4.3 If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
- 1.42.4.4 Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Commissioner in the permit.

1.42.5 Compliance schedules.

Written reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

1.42.6 Twenty-four-hour reporting.

- 1.42.6.1 The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of

the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

1.42.6.2 The following shall be included as information which must be reported within 24 hours under this paragraph.

1.42.6.3 Any unanticipated bypass which exceeds any effluent limitation in the permit. (See Section 184-51(m))

1.42.6.4 Any upset which exceeds any effluent limitation in the permit.

1.42.6.5 Violation of a maximum daily discharge limitation for any of the pollutants listed by the Commissioner in the permit to be reported within 24 hours. (See Section 184-54(f))

1.42.6.6 The Commissioner may waive the written report on a case-by-case basis for reports under Part 9.12.6.2 of this section if the oral report has been received within 24 hours.

1.42.7 Other Non-compliance.

The permittee shall report all instances of noncompliance not reported under Parts 9.12.4, 9.5 and 9.6 of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Part 9.12.6.2 of this section.

1.42.8 Other Information.

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Commissioner, it shall promptly submit such facts or information.

1.43 Bypass. [12 VIRR 184-51(m)]

1.43.1 Bypass not Exceeding Limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts 9.13.2 and 9.13.3 of this section.

1.43.2 Notice.

1.43.2.1 Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.

1.43.2.2 Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part 9.12.6 above (24-hour notice).

1.43.3 Prohibition of Bypass.

1.43.3.1 Bypass is prohibited, and the Commissioner may take enforcement action against a permittee for bypass, unless:

1.43.3.2 Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);

1.43.3.3 There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

1.43.3.4 The permittee submitted notices as required under Part 9.13.2 of this section.

1.43.3.5 The Commissioner may approve an anticipated bypass, after considering its adverse effects, if the Commissioner determines that it will meet the three conditions listed above in Part 9.13.3.1 of this section.

1.44 Upset. [12 VIRR 184-51(n)]

1.44.1 Effect of an Upset.

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part 9.14.2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

1.44.2 Conditions necessary for a Demonstration of Upset.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- 1.44.2.1 An upset occurred, and that the permittee can identify the cause(s) of the upset;
- 1.44.2.2 The permitted facility was at the time being properly operated; and
- 1.44.2.3 The permittee submitted notice of the upset as required in Part 9.12.6.2.2 above (24-hour notice).
- 1.44.2.4 The permittee complied with any remedial measures required under Part 9.4 of this section.

1.44.3 Burden of Proof.

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

1.45 Other TPDES conditions. [12 VIRR 184-51(o)]

1.45.1 Consistency.

All discharges authorized by this permit shall be consistent with the provisions of this permit.

1.45.2 Exceedances.

The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the provisions of the permit.

1.45.3 Construction.

The permit shall state that no construction of facilities covered in the permit shall occur except in accordance with plans approved in advance by the Department.

1.46 Penalties. [12 VIRR 184-51(p)]

1.46.1 Civil Penalties.

The Act [12 V.I.C 181 et seq.] provides any person who violates any provision of the Act, or of any permit, or limitation implementing any section of a permit, any permit filing requirement, any duty to allow or to perform an inspection or to allow the entry upon the premises of authorized persons, or any monitoring requirement, or any requirement imposed in a pretreatment program, rule,

regulation, standard or order issued or promulgated hereunder, shall be subject to a civil penalty not to exceed \$50,000 per day of such violation.

1.46.2 Criminal Penalties.

1.46.2.1 The Act [12 V.I.C 181 et seq.] provides any person who knowingly or negligently violates any provision of the Act, any rule or regulation promulgated hereunder, any order of the Commissioner or any permit or permit condition or limitation implementing any such sections in a permit issued under the Act, or any requirement imposed in a pretreatment program or in any other permit issued by the Commissioner pursuant to the requirements of this chapter, upon conviction shall be punished by a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment for not more than 3 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or by both imprisonment and fine.

1.46.2.2 The Act [12 V.I.C 181 et seq.] provides any person who knowingly or negligently introduces into a sewer system or into a publicly owned treatment works, any pollutant or hazardous substance that the person knew, or reasonably should have known could cause personal injury or property damage or who introduces into such treatment works a pollutant or hazardous substance, other than in compliance with all applicable laws, permits or requirements which causes the treatment works to violate any effluent limitation or condition in a permit issued to the treatment works, upon conviction shall be punished by a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment for not more than 3 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or by both imprisonment and fine.

1.47 Violations. [12 V.I.C 184-51(q)]

Whenever, on the basis of any information available, the Commissioner has reason to believe that a violation of any provision of the Act, of these regulations, of any order of the Commissioner, any water quality standards, effluent limitations, or TPDES permit condition has occurred, the Commissioner may cause a written complaint and order for corrective action to be served upon the alleged violator(s) pursuant to 12 V.I.C 188(a)(1).

1.47.1 Request for a Hearing.

Within 15 days after the date such complaint and order is served, any person or persons named therein may request in writing a hearing before the Commissioner pursuant to 12 V.I.C 188(b). Such request shall not act as a stay of enforcement of

the Commissioner's order unless so ordered and directed by the Commissioner or by a court. On the basis of such hearing, the Commissioner shall continue such order in effect, revoke it, or modify it.

1.47.2 Alternate Meeting Location.

In lieu of such order, the Commissioner may require that the alleged violator appear at a time and place specified in the notice and answer the charges specified in the complaint. The notice shall be delivered to the alleged violator or violators not less than 10 days before the time set for the hearing pursuant to 12 V.I.C 188.

APPENDIX A – DEFINITIONS, ABBREVIATIONS, AND ACRONYMS

ABBREVIATIONS & ACRONYMS

%	Percent
Σ	Sum
°C	Degrees Celsius
µg/l	Micrograms per Liter
BMP	Best-management practice(s)
BOD5	Five (5) day biochemical oxygen demand
BPJ	Best-professional judgment
CEPD	United States EPA Region 2's Caribbean Environmental Protection Division
CFR	Code of Federal Regulations
CFU/100ml	Colony forming units per 100 milliliters
colonies/100ml	Colonies per 100 milliliters
CWA	Federal Clean Water Act or Federal Water Pollution Control Act or Federal Act or FWPCA
CZM	VIDPNR Division of Coastal Zone Management
CZMA	USVI Coastal Zone Management Act
DMR	Discharge Monitoring Report
EFH	Essential fish habitat
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
ESF	Essential Fish Habitat
F&W	VIDPNR Division of Fish and Wildlife
FWPCA	Federal Clean Water Act or Federal Water Pollution Control Act or Federal Act or CWA
GPD	Gallons per day
IPaC	Information, Planning, and Consultation System
LAs	Load allocations
M/R	Monitor and report
mg/l	Milligrams per Liter
MGD	Millions of Gallons Per Day
NAICS	North American Industry Classification System
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NOT	Notice of Termination
O&M	Operations & Maintenance
OSHA	Occupational Safety and Health Administration
pH	Potential Hydrogen
POTW	Publicly owned treatment works
RCRA	Resource Conservation and Recovery Act
SIC	Standard Industrial Classification
SPCC	Spill Prevention, Control, and Countermeasure

SU	Standard unit
TMDL	Total Maximum Daily Load
TPDES	Territorial Pollutant Discharge Elimination System
TRC	Total Residual Chlorine
TSS	Total suspended solids
USC	United States Code
USFWS	United States Fish and Wildlife Service
USVI WQS	United States Virgin Islands Water Quality Standards
USVI	United States Virgin Islands
V.I.C	United States Virgin Islands Code
VIDPNR (Department)	United States Virgin Islands Department of Planning & Natural Resources
VIRR	United States Virgin Islands Rules and Regulations
WET	Whole Effluent Toxicity
WLA	Wasteload Allocation

DEFINITIONS

For the purposes of this permit, the following terms shall have the following meanings, wherever used or referred to in this subchapter, except as otherwise indicated by the text thereof. [12 V.I.R.R. 184-2]

1. "Act" means the Virgin Islands Water Pollution Control Act, 12 V.I.C 181 et seq.
2. "Action Area" – all areas to be affected directly or indirectly by the Territorial and/or Federal action and not merely the immediate area involved in the action. See 50 CFR 402. For the purposes of this permit and for application of the Threatened and Endangered Species protection eligibility requirements, the following areas are included in the definition of action area:
 - a. The areas where effluent discharges originate and flow from the wastewater facility to the point of discharge into receiving waters. (Example: Where a discharge flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as listed amphibians) are found in the ditch, swale, or gully.) The areas where effluent from the wastewater activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where effluent from wastewater activities discharges into a stream segment that is known to harbor listed aquatic species.)
 - b. The areas where effluent from the wastewater activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where effluent from wastewater activities discharges into a stream segment that is known to harbor listed aquatic species.)
3. "Administrator" and "Regional Administrator" mean, respectively, the Administrator of the EPA and the Regional Administrator for the EPA region which includes the Territory.
4. "Applicable water quality standards and effluent standards and limitations" means all Territorial and Federal water quality standards and effluent standards and limitations to which a discharge is subject under the Act [12 V.I.C 181 et seq.], or under Territorial law, including, but not limited to, water quality standards, effluent limitations, standards of performance, toxic effluent standards and prohibitions, best management practices, pretreatment standards, and ocean discharge criteria.
5. "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.
6. "Average weekly discharge limitation" means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily

- discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
7. “Biological monitoring” means the determination of the effects on aquatic life, including accumulations of pollutants in tissue, in receiving waters due to the discharge of pollutants (i) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (ii) at appropriate frequencies and locations.
 8. “Best management practices” and “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
 9. “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility. See 40 CFR 122.41(m)(1)(i).
 10. “CFR” means the Code of Federal Regulations.
 11. “Chapter” means 12 V.I.C, Chapter 7 (the Virgin Islands Water Pollution Control Act) and the regulations promulgated pursuant thereto.
 12. “Class B Waters” means marine and coastal waters designated for maintenance and propagation of desirable species of aquatic life and for primary contact recreation.
 13. “Commissioner” means the Commissioner of the Department of Planning and Natural Resources, or designee.
 14. “Composite” means a combination of individual (or continuously taken) samples obtained at regular intervals over the entire discharge day. The volume of each sample shall be proportional to the discharge flow rate. For a continuous discharge, a minimum of twenty-four (24) individual grab samples (at hourly intervals) shall be collected and combined to constitute a 24-hour composite sample. For intermittent discharges of more minute intervals, flow-proportioned and time-proportioned composite samples may be taken in order to provide valid results.
 15. “Chronic Toxicity Test” means any toxicity test designed to determine the concentration in which a response to a stimulus, such as a total effluent, a specific substance, or combination of these, has sufficient severity to induce a long-term adverse effect on a group of test organisms. A chronic effect could include lethality, reduction of growth rate, and reduction of reproduction rate.

16. "CWA" means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.
17. "Daily discharge" means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.
18. "Department" or "VIDPNR" means the U.S Virgin Islands Department of Planning and Natural Resources.
19. "Discharge" or "disposal" when used without qualification means the "discharge of a pollutant."
20. "Discharge Monitoring Report" ("DMR") means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.
21. "Discharge to an Impaired Water", for the purposes of this permit, means a discharge to an impaired water occurs if the first water of the USVI to which you discharge is identified by VIDPNR pursuant to Section 303(d) of the Clean Water Act as not meeting an applicable water quality standard, or is included in an VIDPNR-approved or established total maximum daily load (TMDL).
22. "Effluent limitations" means any restrictions or prohibitions established under United States Virgin Islands and Federal law and regulations, including but not limited to standards of performance for new sources, toxic effluent standards, best management practices, and ocean discharge criteria, on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into United States Virgin Islands waters, including schedules of compliance.
23. "Endangered Species" – as defined in the Endangered Species Act at 16 U.S.C. 1531 as any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man; or as defined in the USVI Indigenous and Endangered Species Act (IESA) of 1990 as any species of animal life or plants which have been listed by the Federal or Territorial

- governments as “endangered”. See also “Critical Habitat” and “Threatened Species”.
- ”.
24. “EPA” or “USEPA” means the United States Environmental Protection Agency.
 25. “Essential Fish Habitat” means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity, as defined by the Magnuson-Stevens Fishery Conservation and Management Act (January 21, 1999).
 26. “Facility” means any TPDES point source or any other facility that is subject to regulation under the TPDES Program.
 27. “Grab” means an individual sample collected in less than fifteen (15) minutes.
 28. “Gross” means the weight or concentration contained in the discharge. (Unless a limitation is specified as a net limitation, the limitation contained in this permit is a gross limitation).
 29. “Hazardous substance” means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.
 30. “Impaired Water” or “Water Quality Impaired Water” or “Water Quality Limited Segment” – for the purposes of this permit, waters identified as impaired on the CWA Section 303(d) list, or waters with an VIDPNR-approved or established TMDL. Your construction site will be considered to discharge to an impaired water if the first water of the USVI to which you discharge is identified by VIDPNR pursuant to Section 303(d) of the CWA as not meeting an applicable water quality standard, or is included in a VIDPNR-approved or established total maximum daily load (TMDL).
 31. “Indirect discharger” means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”
 32. “Maximum daily discharge limitation” means the highest allowable “daily discharge.”
 33. “Minor Source” means a facility that, based on the facility’s SIC code, discharge characteristics, volume of discharge, and other guiding factors evaluated in the NPDES Permit Rating Work Sheet (Feb. 13, 1990), is determined to be in a “minor” category.
 34. “Monthly” means one day of each month (the same day of each month) and a normal operating day (e.g., the 2nd Tuesday of each month).
 35. “New Discharger” means a facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not

- a new source, and which has never received a finally effective TPDES permit for discharges at that site. See 40 CFR 122.2.
36. "New Source" means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:
- (a) after promulgation of standards of performance under section 306 of the CWA which are applicable to such source, or
 - (b) after proposal of standards of performance in accordance with section 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal. See 40 CFR 122.2.
37. "Net" means the amount of a pollutant contained in the discharge measured in appropriate units as specified herein, less the amount contained in the surface water body intake source, measured in the same units, over the same period of time, provided:
- a. The intake water source must be drawn from the same body of water into which the discharge is made; and
 - b. In cases where the surface water body intake source is pretreated for the removal of pollutants, the intake level of a pollutant to be used in calculating the net is that level contained after the pretreatment steps.
38. "Normal range" means current ambient range of conditions of receiving waters.
39. "Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.
40. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of interim requirements (or operations) leading to compliance with any effluent limitation or water quality standard.
41. "Secondary Treatment System" means the treatment process for wastewater to achieve a certain degree of effluent quality by using a sewage treatment plant with physical phase separation to remove settleable solids and a biological process to remove dissolved and suspended organic compounds.
42. "State Historic Preservation Office" or "SHPO" means the Virgin Islands State Historic Preservation Office.
43. "Total Maximum Daily Load" or "TMDL" means the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If receiving water has only one point

source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.


44. "Toxic pollutant" means any pollutant listed as toxic under section 307(a)(1) of the CWA.
45. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 12 VIRR §184-2 and 40 CFR 122.41(n)(1).
46. "Wasteload Allocation (WLA)" is the portion of a receiving water's assimilative capacity that is allocated to one of its existing or future point sources of pollution. WLAs establish water quality-based effluent limits for point source discharge facilities.
47. "Water Quality-Based Effluent Limitations (WQBEL)" are specific limits set in a TPDES permit and based on and defined by Territorial Water Quality Standards found in 12 VIRR §186.
48. "Water Quality Standards", is defined in 12 VIRR §184-2 as any water quality standards adopted and effective under United States Virgin Islands or Federal laws applicable to waters of the United States Virgin Islands, including the beneficial use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an antidegradation policy.
49. "Waters of the United States Virgin Islands", is defined in 12 VIRR §184-2 as all waters within the jurisdiction of the United States Virgin Islands including all harbors, streams, lakes, ponds, impounding reservoirs, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the United States Virgin Islands, including the Territorial seas, contiguous zone, and oceans.
50. "Wetland" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. On-site evaluations are typically required to confirm the presence and boundaries of wetlands.

51. “Weekly” means every seventh day (the same day of each week) and a normal operating day.
52. “Whole effluent toxicity” means the aggregate toxic effect of an effluent measured directly by a toxicity test.

APPENDIX B – Eligibility Procedures Relating to Threatened and Endangered Species Protection

B.1 Introduction

This appendix provides a printable worksheet that can be helpful in selecting and documenting your eligibility criteria with respect to the protection of locally listed endangered species and locally designated “critical habitat” under the Virgin Islands’ Indigenous and Endangered Species Act (IESA) of 1990 [hereinafter “locally-listed species and designated critical habitat(s)”] or Federally listed threatened or endangered species and Federally designated “critical habitat” under the Endangered Species Act (ESA) [hereinafter “ESA-listed species and designated critical habitat(s)”] from discharges and discharge-related activities authorized under this permit. This is important because Section 9 of the ESA prohibits all persons and agencies from “taking” threatened and endangered species (16 U.S.C. § 1532(19)).

While coordination between you and the  DPNR Division of Fish and Wildlife (F&W) or the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) (together, referred to as the “Services”) may not be required in all cases, VIDPNR encourages you to coordinate with either or both F&W and the Services, to document that coordination, and to do so early in the planning process prior to submitting your NOI.

B.2 Certifying ESA Eligibility Criterion for the VICHAGP

To be eligible for coverage under the VICHAGP, you must certify that you meet one of the criteria listed in this worksheet (Section B.5), which is then submitted with your NOI for coverage under this permit. If you do not meet one of the eligibility criteria outlined in the worksheet below, you are not eligible for coverage under this permit. These criteria ensure that coverage is available only for discharges and discharge-related activities that (1) avoid or eliminate any short- or long-term adverse effects to locally- and ESA-listed species and designated critical habitat(s), or (2) may result in any short- or long-term adverse effects that result in incidental take addressed under the incidental take statement of a biological opinion or permit for take issued under Section 10 of the ESA.

As part of your determination of eligibility, VIDPNR has developed a worksheet that assists operators in arriving at the correct criterion. The following requirements apply to the completion of the worksheet depending on how you are submitting your NOI for permit coverage:

1. You must **complete your eligibility criteria selection outlined in the Endangered Species Protection section of the electronic NOI** and provide all information as required on your NOI that supports the eligibility criterion you qualify under per Part 1.1.7 of the permit. The printable worksheet in this

appendix may be helpful to you in preparing to submit your NOI, but you do not have to use it.

2. If DPNR has granted you a waiver from electronic reporting, you must complete the worksheet in section B.5 of this appendix to provide all information as required on your NOI that supports the eligibility criterion you qualify under per Part 1.1.7 of the permit. You must submit the worksheet to DPNR with your NOI. If you do not submit the worksheet with your NOI, your NOI will be considered incomplete.

B.3 What to Expect Once You Submit Your NOI

After you submit your NOI and before your NOI is authorized, VIDPNR may notify you if any additional controls are necessary to ensure your discharges are not likely to result in any short- or long-term adverse effects on locally- and/or ESA-listed species and critical habitat.

F&W and the Services have the opportunity to advise VIDPNR whether the agency believes the planned discharges meet the selected eligibility criterion; whether the eligibility criterion could be met with additional conditions; or whether the eligibility criterion is not met. With respect to IESA and ESA issues, VIDPNR recognizes F&W and the Services' expertise and will carefully consider their conclusion(s) in identifying eligibility for authorization, either with or without additional conditions. In the event VIDPNR has placed a hold on your NOI based on F&W, NMFS, or USFWS' recommendation, VIDPNR will notify you as to whether your discharges are authorized or whether an individual permit will be required.

B.4 Worksheet Instructions

Follow the instructions within the worksheet below to determine which criterion you are eligible for coverage under this permit. Check only one (1) criterion, answer the required questions, and include the required information.

Please keep the following in mind as you complete the worksheet:

- The worksheet requires that you answer questions in a sequential order so that you can select the correct eligibility criterion. The worksheet does not go through each criterion alphabetically, but rather is organized in a way that allows you to eliminate those criteria that do not apply to your facility's discharge. For instance, Step 1 of the worksheet requires you to determine whether criterion B, E, or F applies first, in that order, before proceeding to determining whether criterion A applies in Step 2.
- You must consider locally-listed species and/or designated critical habitat under the jurisdiction of F&W and ESA-listed species and/or designated critical habitat(s) under the jurisdiction of both USFWS and NMFS and select the criterion that best applies to your facility's discharge. You must comply with any applicable terms, conditions, or other requirements developed in the process of meeting one of the eligibility criteria in this section to remain eligible for coverage under this permit.

- When evaluating the potential effects of your activities, you must consider effects to listed species or critical habitats within the “action area” of your facility’s discharge, as identified by the USFWS IPaC and/or the NOAA website resources in Part B. Step 3 of this appendix. Please Note: *NMFS’ jurisdiction includes ESA-listed marine and estuarine species that spawn in inland rivers.* The definition of “action area,” which is contained in Appendix A, is repeated below for convenience.

“Action Area” – all areas to be affected directly or indirectly by the Territorial and/or Federal action and not merely the immediate area involved in the action. See 50 CFR 402. For the purposes of this permit and for application of the Threatened and Endangered Species protection eligibility requirements, the following areas are included in the definition of action area:

- The areas where effluent discharges originate and flow from the wastewater facility to the point of discharge into receiving waters. (Example: Where a discharge flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as listed amphibians) are found in the ditch, swale, or gully.)
- The areas where effluent from the wastewater activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where effluent from wastewater activities discharges into a stream segment that is known to harbor listed aquatic species.)
- The areas upstream and/or downstream from the wastewater discharge into a stream segment that may be affected by these discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

B.5 Worksheet

Step 1 – Determine if You Meet the Eligibility Requirements of Criterion B, E, or F

- I. You should first determine whether you are eligible under criterion B (because another operator has accounted for your action area in their valid certification of eligibility under the VICHAGP), criterion D (because of a previously completed ESA section 7 consultation), or criterion E (because of a previously issued ESA section 10 permit).
- II. If you determine that your facility does not meet criterion B, D, or E (e.g., due to difference in action area described, lack of analysis of appropriate effects, new listings or designation of critical habitat), proceed to Step 2 below.

Criterion B Eligibility Requirements

If your wastewater activities were already addressed in another operator’s valid certification of eligibility under a current permit, you may be eligible for coverage under

criterion B.¹⁰ In order to be eligible for coverage under criterion B, you must confirm that all three of the following are true:

- ☐ You have confirmed that the other operator's certification of eligibility accounted for your action area and that the eligibility determination was valid.
- ☐ There has been no lapse of TPDES permit coverage in the other operator's certification.
- ☐ You will comply with all measures that formed the basis of the other operator's valid certification of eligibility. Provide the operator's TPDES permit number and list any measures that you must comply with in the box below (or enter "N/A" if none exist):

Provide response:

- **If all three of the above are true, you may select criterion B on your NOI.** You must include in your NOI the TPDES ID assigned to the other operator's authorization under this permit, and a description of the basis for the criterion selected on your NOI form, including the eligibility criterion selected in the other operator's NOI. You must include this completed Worksheet in your BMP.
- **If any of the above are not true, you may not select criterion B and must proceed to Step 2.** For example, if there are any listed species in your action area that were not addressed in the other operator's certification, you are not eligible under criterion B.

Criterion D Eligibility Requirements

If consultation under section 7 of the ESA has concluded, you may be eligible for coverage under criterion D. In order to be eligible for coverage under criterion D, you must confirm that all two of the following are true:

¹⁰ If your facility has a current individual TPDES permit authorizing the discharge of the same wastewater streams that you are seeking coverage for under this general permit, that does not satisfy the requirements for Criterion B.

- ☐ A consultation between the F&W and the USFWS and/or the NMFS under section 7 of the ESA has concluded. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action (e.g., during application for an individual wastewater discharge permit or the issuance of a wetlands dredge and fill permit), and the consultation must have addressed the effects of your wastewater activity's discharges and discharge-related activities on all ESA-listed threatened or endangered species and all designated critical habitat in your action area. The result of this consultation must be either:
- i. A biological opinion currently in effect that concludes that the action in question (taking into account the effects of your facility's discharges and discharge-related activities) is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The biological opinion must have included the effects of your facility's discharges¹¹ and discharge-related activities on all the listed species and designated critical habitat in your action area. To be eligible under (i), any reasonable and prudent measures specified in the incidental take statement must be implemented;
 - ii. Written concurrence (e.g., letter of concurrence) from the applicable Service(s) with a finding that your facility's discharges and discharge-related activities are not likely to adversely affect ESA-listed species and/or designated critical habitat. The concurrence letter must have included the effects of your facility's discharges and discharge-related activities on all the ESA-listed species and/or designated critical habitat on your species list(s) acquired from the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service as part of this worksheet.
- ☐ The consultation does not warrant reinitiation under 50 CFR §402.16; or, if reinitiation of consultation is required (e.g., due to a new species listing or critical habitat designation; new information), you have reinitiated the consultation and the result of the consultation is consistent with the statements above. Attach a copy of any reinitiation documentation from the Services or other consulting federal agency.
- **If both of the above are true, you may select criterion D on your NOI.**
You must also provide a description of the basis for the criterion selected on your NOI form. In your NOI you must also provide the Biological Opinion (or

¹¹ Effects of discharge includes, but is not limited to, the analysis of the hydrological, chemical, and biological effects of the discharge on listed species, their prey, and their habitat, as well as critical habitat, where designated. For example, the effects analysis would have evaluated whether the various pollutants in the discharge (e.g., TSS, metals) would adversely affect listed species through exposure to pollutants, of to their prey or habitat. Effects that look only at short-term effects unrelated to the wastewater discharge effects to listed species are not sufficient for these purposes.

the tracking number from the Environmental Consultation Organizer (ECO) which is NOAA's information management application for consultations) or concurrence letter and any other documentation supporting your eligibility determination.

- **If any of the above are not true, you may not select criterion D and must proceed to Step 2.** For example, if the biological opinion or written concurrence did not include the effects of the discharge or discharge-related activities as described above (e.g., the previous consultation covered some but not all of the species or critical habitat in your action area as shown on your species list), or if the consultation is no longer valid (e.g., due to new species listings), you are not eligible under criterion D.

Criterion E Eligibility Requirements

If your wastewater activities are the subject of a permit under section 10 of the ESA, and this authorization addresses the effects of your facility's discharges and discharge-related activities on ESA-listed species and designated critical habitat in your action area, you may be eligible for coverage under criterion E. In order to be eligible for coverage under criterion E, you must confirm that the following is true:

- ☐ A permit has been issued under section 10 of the ESA. The permit authorization specifically addresses the effects of your facility's discharges and discharge-related activities (if applicable) on all federally-listed species and designated critical habitat in your action area.
- **If the above is true, you may select criterion E on your NOI.** You must also provide a description of the basis for the criterion selected on your NOI form. In your NOI you must provide a copy of the section 10 permit issued by the Services.
- **If the above is not true, you may not select criterion E and must proceed to Step 2.** For example, if a permit has been issued under section 10 of the ESA, but the permit authorization did not address the effects of your facility's discharges and/or discharge-related activities on all federally-listed species and designated critical habitat in your action area, you are not eligible under criterion E.

STEP 2: DETERMINE THE EXTENT OF YOUR ACTION AREA

You must determine whether species listed as either threatened or endangered, or their critical habitat(s) are located in your facility's action area (i.e., all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action, including areas beyond the footprint of the facility that are likely to be affected by wastewater discharges and discharge-related activities). Consider the following in determining the action area for your facility:

- Discharges of pollutants into downstream areas can expand the action area well beyond the footprint of your facility and the discharge point(s). Take into account the controls you will be implementing to minimize pollutants and the receiving waterbody characteristics (e.g., perennial, intermittent, ephemeral) in determining the extent of physical, chemical, and/or biotic effects of the discharges. All receiving waterbodies that could receive pollutants from your facility must be included in your action area.
- Discharge-related activities must also be accounted for in determining your action area. Discharge-related activities are any activities that cause, contribute to, or result in wastewater point source discharges, and measures such as the siting, construction, and operation of treatment controls to control, reduce, or prevent pollutants from being discharged. For example, any new or modified treatment controls that will have noise or other similar effects, and any disturbances associated with construction of controls, are part of your action area.

If you have any questions about determining the extent of your action area, you may contact F&W, or the Services for assistance.

You must include a **map and a written description** of the action area of your facility in Attachment 1 of this appendix. You may choose to include the map that is generated from the USFWS' on-line mapping tool IPaC (the *Information, Planning, and Consultation System*) located at <http://ecos.fws.gov/ipac/> (see Step 3 for information about using this tool).

You must proceed to Step 3 below.

STEP 3: DETERMINE IF LISTED THREATENED OR ENDANGERED SPECIES AND/OR CRITICAL HABITAT ARE PRESENT IN YOUR ACTION AREA.

You must determine, to the best of your ability, whether species listed as either threatened or endangered under the Endangered Species Act, and/or their designated critical habitat(s) (as defined in Appendix A), are located in your facility's action area. ESA listed species and designated critical habitat are under the purview of the F&W, NMFS and the USFWS, and in many cases, you will need to acquire species and critical habitat lists from these Services. Contact F&W to obtain lists of locally-listed species and locally-designated critical habitat.

- For NMFS species and critical habitat information, use the following webpages, which provide up-to-date information on listed species (<https://www.fisheries.noaa.gov/species-directory/threatened-endangered>) and critical habitat (<https://www.fisheries.noaa.gov/national/endangered-species-conservation/critical-habitat>). To determine the field office that corresponds to your facility, go to <https://www.fisheries.noaa.gov/regions>. Choose the Region

where the project is based from the left-hand column and the office from the “About Us” on the right-hand column.

- For USFWS species information, use the on-line mapping tool IPaC (the Information, Planning, and Consultation System) located at <http://ecos.fws.gov/ipac/>, and follow these steps:
 - Select Get Started.
 - Search or zoom to find your location: Use an address, city name or other location to find your facility then use the zoom in/out feature to see the entire extent of your action area on the screen.
 - Define you action area: Use one of the mapping features (e.g., sketch, polygon or line drawing tool) to draw your entire action area.
 - For the aquatic portion of your action area, trace the waterbody(ies) with the tool to characterize your action area.
 - If your proposal will include any upland activities (i.e., discharge-related activities), or if there is some aspect of your discharge that would potentially result in effects to terrestrial species, include the corresponding upland areas within your action area.
 - When you are done, go to confirm and press Continue.
 - Select Define Project to request an Official Species List.
 - Complete the fields on the Official Species List Request page and include “(VICHAGP)” at the end of the project description.
 - For Classification, select “Water Quality Modification”.
 - Select the appropriate requesting agency/organization type (for most operators, this should be “Other”).
 - Submit the request to acquire an Official Species List, which should show both listed species as well as any designated critical habitat that are present in the action area in the previous step.

Note: If a link to an Official Species List is not available on the page, follow the web link of the office(s) indicated, or contact the office directly by mail or phone if a web link is not shown.

The principle authority for critical habitat designations and associated requirements is found at 50 CFR Parts 17 and 226.

Attach a copy of the species and critical habitat list(s) from F&W and the Service(s) to Attachment 2 of this appendix and use the list(s) to complete the rest of this worksheet. For USFWS species, include the full printout from your IPaC query/Official Species List in Attachment 2. You can include the map from your IPaC query in Attachment 1. For NMFS species, include the full printout from the Species Directory with the correct Region selected.

If after following the steps you have determined that there are no listed species and/or designated critical habitat in your action area, you may be eligible for coverage under criterion A.

If you have determined that there are or may be listed species and/or designated critical habitat in your action area, you are not eligible under criterion A and must proceed to Step 4 below.

Criterion A Eligibility Requirements

In order to be eligible for coverage under criterion A, you must confirm that the following is true:

- ☐ I have confirmed there to be no ESA-listed species and no critical habitat in my action area.
- **If the above is true, you may select criterion A on your NOI form.** You must also provide a description of the that have previously obtained basis for the criterion selected on your NOI form. You must include this completed worksheet in your BMP Plan. *If your Official Species List from the USFWS indicated no species or critical habitat were present in your action area, include the full consultation tracking code at the top of your Official Species List in your NOI in the statement of basis for Criterion A. If an Official Species List was not available on IPaC, list the contact date and name of the Service staff with whom you corresponded to verify no USFWS species or critical habitat were present in your action area.*

Note: For existing dischargers that have previously obtained coverage under criterion A, you must verify whether ESA-protected species and/or critical habitat are expected to exist in your action area, as described above. Please note that if you now find that your action area overlaps with ESA-protected species or critical habitat, you must proceed to Step 4.

- If the above is not true, you may not select criterion A and must proceed to Step 4 to determine if you can become eligible under criterion C.

STEP 4: DETERMINE IF YOUR WASTERWATER FACILITY'S DISCHARGES OR DISCHARGE-RELATED ACTIVITIES ARE LIKELY TO ADVERSELY AFFECT LISTED THREATENED OR ENDANGERED SPECIES OR

DESIGNATED CRITICAL HABITAT AND ANY MEASURES THAT MUST BE IMPLEMENTED TO AVOID ADVERSE EFFECTS

If in Step 3 you determined that listed species and/or designated critical habitat could exist in your action area, you must next assess whether your discharges and discharge-related activities are likely to adversely affect ESA-listed threatened or endangered species or designated critical habitat, and whether any additional measures are necessary to ensure no likely adverse effects. In order to make a determination of your facility's likelihood of adverse effects, you must complete additional questions in the Endangered Species Protection section of the NOI in NeT-VICHAGP, unless the VIDPNR Office grants you a waiver from electronic reporting (as specified in Part 1.2.4), in which case you must complete the attached Criterion C3 Eligibility Form and must submit this form to VIDPNR F&W a minimum of 30 days prior to filing your NOI for permit coverage. After you submit your NOI containing Criterion C3 information or your Criterion C3 Eligibility Form, you may be contacted by VIDPNR with additional measures that you must implement in order to ensure your eligibility under criterion C3.

Criterion C3 Eligibility Form

Instructions:

In order to be eligible for coverage under criterion C3, **you must complete the Endangered Species Protection section of the Notice of Intent in the NPDES eReporting Tool (NeT-VICHAGP)**. Per Part 1.2.3, you must submit your NOI electronically via NeT- VICHAGP, unless the VI DPNR Office grants you a waiver from electronic reporting as noted in Part 1.2.4, in which case you may use this paper Criterion C3 form. If using the paper form, you must complete the following form and you must submit it to VI DPNR following the instructions in Section VII a **minimum of 30 days prior to filing your NOI for permit coverage**. After you submit your form, you may be contacted by EPA with additional measures (e.g., additional stormwater controls or modifications to your discharge-related activities) that you must implement in order to ensure your eligibility under criterion C3.

If after completing this worksheet you cannot make a determination that your discharges and discharge-related activities are not likely to adversely affect ESA listed threatened or endangered species or designated critical habitat, you must submit this completed worksheet to VIDPNR F&W, and you may not file your NOI for permit coverage until you receive a determination from VIDPNR that your discharges and/or discharge-related activities are not likely to adversely affect ESA-protected species and critical habitat.

SECTION I. OPERATOR, FACILITY, AND SITE LOCATION INFORMATION.

1) Operator Information

a) Operator Name:

b) Point of Contact

First Name: _____ **Last Name:** _____

Phone Number: _____

E-mail: _____

2) Facility Information

a) Facility Name: _____

b) Check which of the following applies:

- ☐ I am seeking coverage under the VICHAGP as a new discharger or as a new source
- ☐ I am seeking coverage under the VICHAGP as an existing discharger and my facility has modifications to its discharge characteristics (e.g., changes in discharge flow or area drained, different pollutants) and/or discharge-related activities (e.g., stormwater controls)

Indicate the number of years the facility has been in operation:
_____ years.

Provide your TPDES ID (i.e., permit tracking number) from your previous permit coverage: _____.

- ☐ I am seeking coverage under the VICHAGP as an existing discharger and there are no modifications to my facility.

Indicate the number of year(s) the facility has been in operation: _____ year(s)

Provide your TPDES ID (i.e., permit tracking number) from your previous permit coverage: _____

c) Facility Address:

Address 1: _____

Address 2: _____

City: _____ **State:** _____ **Zip Code:** _____

d) Identify the treatment facility to be covered under the VICHAGP:

- ☐ **Wastewater Treatment**

☐ **Water Desalinization**

e) Provide a general description of the treatment activities that are taking place at this facility:

Answer:

3) Receiving Waters Information

List all the wastewater outfalls from your facility.				For each outfall, provide the following receiving water information:*	
Discharge Point ID	Design Capacity (if known)	Latitude (decimal degrees)	Longitude (decimal degrees)	Name of the receiving water that receives wastewater from the discharge point.	Type of Waterbody (e.g., lake, pond, river/stream/creek, estuarine/marine water)
		---.-----	---.-----		
		---.-----	---.-----		
		---.-----	---.-----		
		---.-----	---.-----		
		---.-----	---.-----		

* If wastewater discharge is to land application or irrigation, please indicate that within this section.

SECTION II. ACTION AREA

As required in [Step 2](#), You must include a map and a written description of the action area of your facility in Attachment 1 of this appendix.

SECTION III. LISTED SPECIES AND CRITICAL HABITAT LIST

As required in [Step 3](#), attach a copy of the species and critical habitat list(s) from the F&W and Service(s) to [Attachment 2](#) of this appendix and use the list(s) to complete the rest of this worksheet. For USFWS species, include the full printout from your IPaC query/Official Species List in Attachment 2. You can include the map from your IPaC query in Attachment 1.

Review your species list in Attachment 2, choose one of the following three statements, and follow the corresponding instructions:

Note: For the purposes of this permit, “terrestrial species” would not include animal or plant species that 1) spends any portion of its life cycle in a waterbody or wetland, or 2) if an animal, depends on prey or habitat that occurs in a waterbody or wetland. For example, shorebirds, wading birds, amphibians, and certain reptiles would not be considered terrestrial species under this definition. Please also be aware that some terrestrial animals (e.g., certain insects, amphibians) may have an aquatic egg or larval/juvenile phase.

☐ The species list includes only terrestrial species and/or their designated critical habitat. No aquatic or aquatic-dependent species or their critical habitat are present in the action area. **You may skip to [Section IV](#) of this form. You are not required to fill out [Section V](#).**

☐ The species list includes only aquatic and/or aquatic-dependent species and/or their designated critical habitat. No terrestrial species or their critical habitat are present in the action area. **You may skip to [Section V](#) of this form and are not required to fill out [Section IV](#).**

☐ The species list includes both terrestrial and aquatic or aquatic-dependent species and/or their designated critical habitat. **You must fill out both [Sections IV](#) and [V](#) of this form.**

SECTION IV. EVALUATION OF DISCHARGE-RELATED ACTIVITIES EFFECTS

Note: You are only required to fill out this section if your facility's action area contains terrestrial species and/or their designated critical habitat. If your action area only contains aquatic and/or aquatic-dependent species and/or their designated critical habitat, you can skip directly to [Section V](#).

Most of the potential effects related to coverage under the VICHAGP are assumed to occur to aquatic and/or aquatic-dependent species. However, in some cases, potential effects to terrestrial species and/or their critical habitat should be considered as well from any discharge-related activities that occur during coverage under the VICHAGP. Examples of discharge-related activities that could have potential effects on listed terrestrial species or their critical habitat include the storage of materials and land disturbances associated with wastewater management-related activities (e.g., the installation or placement of treatment control measures).

A. Select the applicable statement(s) below and follow the corresponding instructions:

- ☐ There are no discharge-related activities that are planned to occur during my coverage under the VICHAGP. You can conclude that your discharge-related activities will have no likely adverse effects, and:
 - If there are any aquatic or aquatic-dependent species and/or their critical habitat in your action area, you must skip to [Section V](#), *Evaluation of Discharge Effects*, below.
 - If there are no aquatic or aquatic-dependent species, you may skip to [Section VI](#) and verify that your activities will have no likely adverse effects. You must submit this form to VIDPNR as specified

in [Section VII](#) of this form. You may select criterion C on your NOI form and may submit your NOI for permit coverage 30 days after you have submitted this *Criterion C Eligibility Form*. You must also provide a description of the basis for the criterion you selected on your NOI form, **including the species and critical habitat list(s) in your action area**, as well as any other documentation supporting your eligibility.

- ☐ There are discharge-related activities planned as part of the proposal. Describe your discharge-related activities in the following box and continue to (b) below.

B. In order to ensure any discharge-related activities will have no likely adverse effects on ESA-listed threatened and endangered species and/or their designated critical habitat, you must certify that all the following are true:

- ☐ Discharge-related activities will occur:
- on previously cleared/developed areas of the site where maintenance and operation of the facility are currently occurring or where existing conditions of the area(s) in which the discharge-related activities will occur precludes its use by listed species (e.g., work on existing impervious surfaces, work occurring inside buildings, area is not used by species), and
 - if discharge-related activities will include the establishment of structures (including, but not limited to, infiltration ponds and other controls) or any related disturbances, these structures and/or disturbances will be sited in areas that will not result in isolation or degradation of nesting, breeding, or foraging habitat or other habitat functions for listed animal species (or their designated critical habitat), and will avoid the destruction of native vegetation (including listed plant species).
- ☐ If vegetation removal (e.g., brush clearing) or other similar activities will occur, no terrestrial listed species that use these areas for habitat would be expected to be present during vegetation removal and these activities will not occur within critical habitat.

If all the above are true, you can conclude that your discharge-related activities will have no likely adverse effects, and:

- If there are any aquatic or aquatic-dependent species and/or critical habitat in your action area, you must skip to [Section V](#), *Evaluation of Discharge Effects*, below.
- If there are no aquatic or aquatic-dependent species, you may skip to [Section VI](#) and verify that your activities will have no likely adverse effects. You must submit this form to VIDPNR as specified in [Section VII](#) of this form. You may select criterion C on your NOI and may submit your NOI for permit coverage 30 days after you have submitted this completed form. You must also provide a description of the basis for the criterion you selected on your NOI form, **including the species and critical habitat list(s)**, and any other documentation supporting your eligibility. You must also include this completed *Criterion C Eligibility Form* in your BMP Plan.
- **If any of the above are not true**, you cannot conclude that your discharge-related activities will have no likely adverse effects. You must complete the rest of this form (if applicable) and must submit the form to VIDPNR for assistance in determining your eligibility for coverage.

SECTION V. EVALUATION OF DISCHARGE EFFECTS

Note: You are only required to fill out this section if your facility's action area includes aquatic and/or aquatic-dependent species and/or their critical habitat.

In this section, you will evaluate the likelihood of adverse effects from your facility's discharges. The scope of effects to consider will vary with each facility and species/critical habitat characteristics. The following are examples of discharge effects you should consider:

- *Hydrological Effects.* Wastewater discharges may adversely affect receiving waters by causing changes in water quality parameters such as bacteria, turbidity, temperature, salinity, or pH. Wastewater discharges may adversely affect the immediate vicinity of the discharge point through streambank erosion and scour. These effects will vary with the amount of wastewater discharged and the volume and condition of the receiving water. Where a wastewater discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.
- *Toxicity of Pollutants.* Pollutants in wastewater may have toxic effects on listed species and may adversely affect critical habitat. Exceedances of effluent limitation guidelines, or state water quality requirements may be indicative of potential adverse effects on listed species or critical habitat. However, some listed species may be adversely affected at pollutant concentrations below effluent limitation guidelines, and state water quality standards due to exposures to multiple stressors at the same time. In addition, wastewater pollutants identified in Parts 2, 3, and 4 of this general permit, but not monitored as effluent limitation guidelines, may also adversely affect listed species and critical habitat.

As these effects are difficult to analyze for listed species, their prey, habitat, and designated critical habitat, this form helps you to analyze your discharges to make a determination of whether your discharges will likely have adverse effects and whether there are any additional controls you can implement to ensure no likely adverse effects.

A. Evaluation of Pollutants and Controls to Avoid Adverse Effects. In this section, you must document <u>all</u> of your pollutant sources and pollutants expected to be discharged in wastewater (see Parts 2, 3, and 4). You must also document the controls you will implement to avoid adverse effects on listed aquatic and aquatic-dependent species and critical habitat. You must include specific details about the expected effectiveness of the controls in avoiding adverse effects to the listed aquatic-and aquatic-dependent species and critical habitat. Attach additional pages if needed.		
Potential Pollutant Source	Potential Pollutants	Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species and Critical Habitat. Include information supporting why the control(s) will ensure no adverse effects, including any data you have about the effectiveness of the control(s) in reducing pollutant concentrations. You may also attach photos of
e.g., equipment fueling	e.g., <ul style="list-style-type: none"> • Oil & grease • Diesel • Gasoline • TSS • Antifreeze 	e.g., <ul style="list-style-type: none"> • Fueling operators (including the transfer of fuel from tank trucks) will be conducted on an impervious or contained pad or under cover • Drip pans will be used where leaks or spills of fuel can occur and where making and breaking hose connections • Spill kit will be kept on-site in close proximity to potential spill areas • Any spills will be cleaned-up immediately using dry clean-up methods
Potential Pollutant Source	Potential Pollutants	Controls to Avoid Adverse Effects on Listed Aquatic and Aquatic-Dependent Species and Critical Habitat.

☐ Check if you are not able to make a preliminary determination that any of your pollutants will be controlled to a level necessary to avoid adverse effects on aquatic and/or aquatic-dependent listed species and their designated critical habitat. You must check in [Section VI](#) that you are unable to make a determination of no likely adverse effects and must complete the rest of the form. You must submit your completed form to VIDPNR for assistance in determining your eligibility for coverage.

B. Analysis of Effects Based on Past Monitoring Data. Select which of the following applies to your facility:

☐ I have no previous monitoring data for my facility because there are no applicable monitoring requirements for my facility

☐ I have no previous monitoring data for my facility because I am a new discharger or a new source, but I am subject to monitoring under the 2023 VICHAGP. You must provide information to support a conclusion that your facility's discharges are not expected to result in numeric effluent limit exceedances that will adversely affect listed species or their critical habitat:

☐ My facility has not had any exceedances under the individual TPDES permit of any required numeric effluent limits. I comply with the applicable monitoring requirements and have not had any exceedances.

☐ My facility has had exceedances of one or more numeric effluent limits under the individual TPDES permit, but I have addressed them during my coverage under the individual TPDES permit, or in my evaluation of controls to avoid

adverse effects in (A) above. Describe all actions (including specific controls) that you will implement to ensure that the pollutants in your discharge(s) will not result in likely adverse effects from future exceedances.

--

- ☐ Check if your facility has had exceedances of one or more numeric effluent limits under the individual TPDES permit and you have not been able to address them to avoid adverse effects from future exceedances, or if you are a new discharger or a new source but you are not sure if you can avoid adverse effects from possible exceedances. You must check in [Section VI](#) that you are unable to make a determination of no likely adverse effects. You must submit your completed form to VIDPNR for assistance in determining your eligibility for coverage. You may not file your NOI for permit coverage until you are able to make a determination that your discharges will avoid adverse effects on listed species and designated critical habitat.

SECTION VI VERIFICATION OF PRELIMINARY EFFECTS DETERMINATION

Based on Steps I – V of this form, you must verify your preliminary determination of effects on listed species and designated critical habitat from your discharges and/or discharge-related activities:

- ☐ Following the applicable Steps in I – V above, I have provided information supporting a preliminary determination that my discharges and/or discharge-related activities are not likely to adversely affect listed species and designated critical habitats.
- ☐ Following the applicable Steps in I – V above, I am not able to provide information supporting a preliminary determination that my discharges and/or discharge-related activities are not likely to adversely affect listed species and designated critical habitats.

Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

First Name, Middle
initial, Last Name

[illegible]

[illegible][illegible]

The action area for the (name of your facility)'s wastewater discharges extends downstream from the outfall(s) in (name of receiving waterbody) (# of meters/feet/kilometers/miles). The downstream limit of

the action area reflects the approximate distance at which the discharge waters and any pollutants would be expected to cause potential adverse effects to listed species and/or critical habitat because (insert rationale). The action area does/does not extend to the (name of receiving waterbody)'s confluence with (name of confluence waterbody) because (insert rationale).

Note that your action area written description will be highly site-specific, depending on the expected effects of your facility's discharges and discharge-related activities, receiving waterbody characteristics, etc.

Attachment 2

List or attach the list(s) of species and critical habitat in your action area on this sheet, as required in [Step 3](#). You must include a list for applicable listed F&W, NMFS and USFWS species and critical habitat. If there are listed species and/or critical habitat for only one of the Services, you must include a statement confirming there are no listed species and/or critical habitat for the other Services. For USFWS species, include the USFWS Official Species List full printout from your IPaC query (including the consultation code and event code at the top of the USFWS printout). *Note: If your Official Species List from the USFWS indicated no species or critical habitat were present in your action area, include the consultation code and event code that can be found at the top of your Official Species List in your NOI basis statement. If an Official Species List was not available on IPaC, list the contact date, the ecological services field office and the name of the Service staff with whom you corresponded to identify the existence of any USFWS species or critical habitat present in your action area.*

APPENDIX C – Historic Property Screening Process

Background

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal “undertakings”, such as the issuance of this permit, on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places.

Historic properties include, but are not limited to, historic roadways, earthen embankments, earthen features, historic structures, cemeteries, sacred sites, unmarked human burial sites, ossuaries, objects, artifacts, and areas of value in archaeology, history, architecture, engineering, and culture of the Virgin Islands. Historic properties also include submerged sites, shipwrecks, and other underwater cultural features.

The term Federal “undertaking” is defined in the NHPA regulations to include a project, activity, or program of a Federal agency including those carried out by or on behalf of a Federal agency, those carried out with Federal financial assistance, and those requiring a Federal permit, license or approval. See 36 CFR §800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. See 36 CFR §800.16(1)

Sites that are either listed on, or eligible for listing on, the Virgin Islands Register of Historic Places are also protected under the Antiquities and Cultural Properties Act of 1998 (Title 29, Chapter 17, of the Virgin Islands Code, which established a Historic Preservation Commission that regulates all of the development in any of the defined Historic Districts. Their consultation would also be required if the proposed undertaking had the potential to directly or indirectly impact any structure, feature, property, or building residing within the boundaries of the Historic Districts.

Before an operator is eligible for coverage under the 2023 VICHAGP (unless otherwise noted, all references to “eligible” or “eligibility” refer only to coverage under the 2023 VICHAGP), the operator must meet one of the certification criteria related to historic properties included in the permit. In the event an operator cannot meet any of the certification criteria included in the permit relating to historic properties, the operator must apply for an individual permit.

You must meet one or more of the four criteria (A-D), as required in Part 1.1.8, to be eligible for coverage under this permit.

Key Terms

Historic Property – Prehistoric or historic districts, sites, buildings, structures, or objects that are included in or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and remains that are related to and located within such properties.

ACHP – Advisory Council on Historic Preservation; an independent Federal agency.

SHPO – The State Historic Preservation Officer for a particular state.

Area of Potential Effects (APE) – The geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Activities with No Potential to Have an Effect on Historic Properties

A determination that a Federal undertaking has no potential to have an effect on historic properties fulfills an agency's obligations under the NHPA. VIDPNR has reason to believe that the vast majority of activities authorized under the VICHAGP have no potential to have effects on historic properties. The purpose of this permit is to control pollutants that may be discharged in wastewater effluent from wastewater and water treatment facilities. VIDPNR does not anticipate effects on historic properties from the pollutants in the allowable discharges from these facilities. Thus, to the extent VIDPNR's issuance of this general permit authorizes discharges of from condominium, hotel, and apartment complex facilities the permitting action does not have the potential to cause effects on historic properties.

In addition, the overwhelming majority of sources covered under this permit will be facilities that are seeking renewal of previous permit coverage. These existing dischargers should have already addressed NHPA issues in their individual TPDES permit. Both existing and new dischargers must follow the historic property screening procedures to determine their eligibility. VIDPNR is not aware of any impacts on historic properties from activities covered under individual TPDES permit, or, for that matter, any need for a written agreement. Therefore, to the extent this permit authorizes renewal of prior coverage without relevant changes in operations, it has no potential to have an effect on historic properties.

Activities with Potential to Have an Effect on Historic Properties

VIDPNR believes this permit may have some potential to have an effect on historic properties where permittees construct and/or install treatment systems or wastewater control measures that involve subsurface disturbance and impact less than one (1) acre of land to comply with this permit. (Ground disturbances of one (1) acre or more require coverage under a different permit, the VI Construction General Permit No. VIGSA0000.) Where you have to disturb the land through the construction and/or installation of control measures, there is a possibility that artifacts, records, or remains associated with historic properties could be impacted. Therefore, if you are establishing new or altering existing control measures to manage your treatment system and/or wastewater facility that will involve subsurface ground disturbance of less than one (1) acre, you will need to ensure: (1) that historic properties will not be impacted by your activities or (2) that you have consulted with the appropriate SHPO representative regarding measures that would mitigate or prevent any adverse effects on historic properties.

Examples of Control Measures Which Involve Subsurface Disturbance

VIDPNR reviewed typical control measures currently employed to determine which practices involve some level of earth disturbance. The types of control measures that are presumptively expected to cause subsurface ground disturbance include:

- Dikes

- Berms
- Catch Basins
- Ponds
- Ditches
- Trenches
- Culverts
- Land manipulation: contouring, sloping, and grading
- Channels
- Perimeter Drains
- Swales

VIDPNR cautions dischargers that this list is non-inclusive. Other control measures that involve earth disturbing activities that are not on this list must also be examined for the potential to affect historic properties.

Historic Property Screening Process

You should follow the following screening process in order to certify your compliance with historic property eligibility requirements under this permit (see Part 1.1.8). The following four steps describe how applicants can meet the permit eligibility criteria for protection of historic properties under this permit:

Step One: Are you an existing facility covered under an individual TPDES permit that is applying for certification under the 2023 VICHAGP?

If you are an existing facility you should have already addressed NHPA issues. To obtain coverage under the individual TPDES permit you were required to certify that you were either not affecting historic properties or had obtained written agreement from the relevant SHPO regarding methods of mitigating potential impacts. As long as you are **not** constructing or installing any new treatment system or wastewater control measures then you have met eligibility Criterion A of the VICHAGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO representative may review your NOI. The SHPO representative may request that VIDPNR hold up authorization based on concerns about potential adverse impacts to historic properties. VIDPNR will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If you are an existing facility and will construct or install treatment system or wastewater control measures that require subsurface disturbance of less than one (1) acre then you should proceed to Step Three. (Note: Construction activities disturbing one (1) acre or more are **not** eligible for coverage under this permit.)

If you are a new facility, then you should proceed to Step Two.

Step Two: Are you constructing or installing any treatment system or wastewater control measures that require subsurface disturbance of less than one (1) acre?

If, as part of your coverage under this permit, you are not building or installing a treatment system or wastewater control measures on your site that cause less than one (1) acre of subsurface disturbance, then your discharge-related activities do not have the potential to have an effect on historic properties. You have no further obligations relating to historic properties. You have met eligibility Criterion A of the VICHAGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO representative may review your NOI. The SHPO representative may request that VIDPNR hold up authorization based on concerns about potential adverse impacts to historic properties. VIDPNR will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If the answer to the Step Two question is yes, then you should proceed to Step Three.

Step Three: *Have prior earth disturbances determined that historic properties do not exist, or have prior disturbances precluded the existence of historic properties?*

If previous construction either revealed the absence of historic properties or prior disturbances preclude the existence of historic properties, then you have no further obligations relating to historic properties. You have met eligibility Criterion B of the VICHAGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO representative may review your NOI. The SHPO representative may request that VIDPNR hold up authorization based on concerns about potential adverse impacts to historic properties. VIDPNR will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If the answer to the Step Three question is no, then you should proceed to Step Four.

Step Four: *Contact the appropriate historic preservation authorities*

Where you are building and/or installing treatment system or wastewater control measures affecting less than one (1) acre of land to control stormwater or allowable non-stormwater discharges associated with this permit, and the answer to Step Three is no, then you should contact the relevant SHPO representative to determine the likelihood that artifacts, records, or remains are potentially present on your site. This may involve examining local records to determine if historic artifacts have been found in nearby areas, as well as limited surface and subsurface examination carried out by qualified professionals.

If through this process it is determined that such historic properties potentially exist and may be impacted by your construction or installation of treatment system or wastewater control measures, you should contact the relevant SHPO representative in writing and request to discuss mitigation or prevention of any adverse effects. The letter should describe your facility, the nature and location of subsurface disturbance activities that are contemplated, any known or suspected

historic properties in the area, and any anticipated effects on such properties. The letter should state that if the SHPO representative does not respond within 30 days of receiving your letter, you may submit your NOI without further consultation. VIDPNR encourages applicants to contact the appropriate authorities as soon as possible in the event of a potential adverse effect to an historic property.

If the SHPO representative sent you a response within 30 days of receiving your letter and you enter into, and comply with, a written agreement with the SHPO representative regarding how to address any adverse impacts on historic properties, you have met eligibility Criterion C. In this case, you should retain a copy of the written agreement consistent with Part 1.1.8 of the VICHAGP. After you submit your NOI, there is a 30-day waiting period during which the SHPO representative may review your NOI. The SHPO representative may request that VIDPNR delay authorization based on concerns about potential adverse impacts to historic properties. However, VIDPNR would generally accept any written agreement as fully addressing such concerns unless new information was brought to the Agency's attention that was not considered in your previous discussions with the SHPO representative.

If you receive a response within 30 days after the SHPO representative received your letter and you consult with the SHPO representative regarding adverse impacts to historic properties and measures to mitigate them but an agreement cannot be reached between you and the SHPO representative, you have still met the eligibility for Criterion C. In this case you should include in your BMP Plan a brief description of potential effects to historic properties, the consultation process, any measures you will adopt to address the potential adverse impacts, and any significant remaining disagreements between you and the SHPO representative. After you submit your NOI, there is a 30-day waiting period during which the SHPO representative may review your NOI. The SHPO representative may request that VIDPNR delay authorization based on concerns about potential adverse impacts to historic properties. VIDPNR will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If you have contacted the SHPO representative in writing regarding your potential to have an effect on historic properties and the SHPO representative did not respond within 30 days of receiving your letter, you have met eligibility Criterion D. You are advised to get a receipt from the post office or other carrier confirming the date on which your letter was received. In this case, you should submit a copy of your letter notifying the SHPO representative of potential impacts with your NOI. After you submit your NOI, there is a 30-day waiting period during which the SHPO representative may review your NOI. The SHPO representative may request that VIDPNR hold up authorization based on concerns about potential adverse impacts to historic properties. VIDPNR will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

Addresses for State Historic Preservation Officers may be found on the Advisory Council on Historic Preservation's website (www.achp.gov/programs.html).

APPENDIX D: NOI Form and Instructions

NOTE: Will pull paper form from NeT once system setup completed.

APPENDIX E: NOT Form and Instructions

NOTE: Will pull paper form from NeT once system setup completed.

APPENDIX F: Annual Reporting Form

NOTE: Will pull paper form from NeT once system set up completed.