

**VIRGIN ISLANDS COASTAL NONPOINT PROGRAM
NOAA/EPA DECISIONS ON CONDITIONS OF APPROVAL**

FOREWORD

This document contains decisions on conditions of approval placed on the coastal nonpoint pollution control program submitted by the Government of the United States Virgin Islands (Virgin Islands) pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). The Findings for the Virgin Islands coastal nonpoint program were issued on November 18, 1997. Since that time, the Virgin Islands has undertaken a number of actions to address conditions of approval on its coastal nonpoint program. Based on those actions and on the most recent "Program Update" materials the Virgin Islands provided on June 29, 2001 to document how the conditions have been met, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) find that the Virgin Islands has satisfied all conditions of approval.

This document is organized in the same format used in the Findings for the Virgin Islands Coastal Nonpoint Program. For each condition included in the Findings, a decision regarding whether the condition has been met and a rationale for the decision have been provided. For further understanding of terms in this document and the basis for the decisions, the reader is referred to the following:

Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (EPA, January 1993)

Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance (NOAA and EPA, January 1993)

Flexibility for State Coastal Nonpoint Programs (NOAA and EPA, March 1995)

Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance for Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) (NOAA and EPA, October, 1998)

FINAL APPROVAL DECISION

NOAA and EPA find that the Virgin Islands has satisfied all conditions placed on approval of the Virgin Islands Coastal Nonpoint Pollution Control Program (VICNPCP) submitted to NOAA and EPA pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990. Therefore, the Virgin Islands coastal nonpoint program meets all program requirements and is hereby fully approved, constituting a final approval decision for the program.

Please note that the approval decision made for the Virgin Islands coastal nonpoint program does not relieve the Territory of any requirements under the Endangered Species Act.

NEW DEVELOPMENT

CONDITION: Within three years, the Virgin Islands will include in its program management measures in conformity with the 6217(g) guidance for projects that are not required to submit a major land development permit application and revise existing programs as proposed on page 46 and appendix 9 of the program submittal.

DECISION: The Virgin Islands has satisfied this condition.

RATIONALE: Previously, different procedures were required for major and minor development in the first and second tier, including separate and distinct application forms. These included: 1) the coastal zone application form, enforceable through the Virgin Islands Coastal Zone Management Act (VICZMA), as amended [Title 12, Virgin Islands Code, Chapter 21] and 2) the earth change permit enforceable through the Environmental Protection Law [Title 12, Virgin Islands Code, Chapter 13]. The Virgin Islands has revised the requirements for minor land development and made them consistent with the requirements for major land development, as follows:

- Four “Development Permit Applications and Checklists” have been developed to use in both tiers: i) Major Land Development Permit Application and Checklist, ii) Major Water Development Permit Application and Checklist, iii) Minor Land Development Permit Application and Checklist, and iv) Minor Water Development Permit Application and Checklist.
- A “Land Development Permit Policy” has been instituted by the Department of Planning and Natural Resources (DPNR) that requires a standardized permit application process for all land development in both tiers (12 March 2001 Memorandum, signed by DPNR Commissioner Dean C. Plasket, Esq).

These revisions are enforceable under the authority of the Virgin Island’s Coastal Zone Management program. The revisions require the implementation of stormwater management practices for all developments that are designed to control runoff volumes to ensure that post development peak runoff rates and average volumes are similar to pre-development levels. For selected projects, TR-55 modeling must also be used to show that post-development loadings of TSS are reduced so that the average annual TSS loadings are no greater than predevelopment loadings.

In summary, all development in the coastal zone must be consistent with the goals, policies, and permit conditions of the VICZMA and Environmental Protection Law. The CZM permit is comprehensive, and incorporates the requirements of zoning use, earth change, shoreline, alteration and submerged lands permits. An Environmental Assessment Report is requested for all water projects (minor and major) and for all major land projects in tier one. The DPNR has instituted a departmental administrative policy to ensure a more standardized consistent review procedure applicable in both tiers.

WATERSHED PROTECTION AND SITE DEVELOPMENT

CONDITION: Within two years, the Virgin Islands will complete development of a Watershed Management Plan, as described on page 50 of the program submittal (dated October 23, 1995). Within three years, the Virgin Islands will finalize the proposed revisions (included as Appendix 9 of the program submittal, dated October 23, 1995) to the rules and regulations of the Environmental Protection Program to make them consistent with the requirements, review process and applicability of the VICZMA.

DECISION: The Virgin Islands has satisfied this condition.

RATIONALE: The Virgin Islands has initiated a collaborative planning process that calls for the development and implementation of Watershed Management Plans. The Virgin Islands has developed a watershed plan for the Fish Bay Watershed in St. John. Public input was obtained in the development of this plan. The Virgin Islands envisions this plan will be used as a model to develop and implement watershed management plans in priority impaired and unimpaired watersheds. Under these plans, all development activities will be reviewed using criteria consistent with the watershed protection management measure.

The DPNR Departmental Policy provides for a standardized and uniform permit review procedure that is applicable in both tiers. As such, this policy addresses the site development condition whereby all development in the coastal zone must be consistent with the goals, policies, and permit conditions of the VICZMA and Environmental Protection Law. The CZM permit is comprehensive, and incorporates the requirements of zoning use, earth change, shoreline, alteration and submerged lands permits. The Earth Change permit requires comprehensive erosion and sediment control measures applicable to both public and private developments including the construction and maintenance of roads and streets.

NEW and OPERATING ONSITE DISPOSAL SYSTEMS (OSDS)

CONDITION: Within two years, the Virgin Islands will amend its program to include measures for alternative systems in areas unsuitable for conventional systems, appropriate performance standards for the alternative systems, and measures to assure that existing failing systems are repaired or replaced.

DECISION: The Virgin Islands has satisfied this condition.

RATIONALE: The Virgin Islands has developed rules and regulations (“rules”) for the use of Alternative Onsite Sewage Disposal Systems as set forth in V.I.R, Title 12, Chapter 21, Subchapters 902 and 910 of the Virgin Islands Coastal Zone Management Act [Appendix H, Program Update, dated June 29, 2001]. The rules: 1) mandate that alternate systems are installed in areas where conventional OSDS are unsuitable or malfunction [910-1(4) (e)(f)], 2) require proof of proper maintenance and operation of systems [910-1(10)(b)(1)(2)], 3) require routine

inspections for all systems [910-1(11)(e)], and 4) require a CZM permit for all building and plumbing permits prior to operating the system [910-1(11)(o)].

The Rules address issues such as retrofit requirements, inspection provisions and OSDS inventories. Siting of OSDS will be based on soil type and alternative system designs will be required in cases where subsurface wastewater infiltration systems are not appropriate treatment methods. Under existing CZM authority, the Territory will inspect OSDS, detect failures, issue and revoke operating permits, fine offenders and take actions such as disconnecting utilities to ensure compliance.

Public hearings were held on the rules on all three islands. Subsequently, the rules were approved by the CZM Commission, DPNR Commissioner, and signed by the Governor of the Virgin Islands on November 30, 2001.

ROADS, HIGHWAYS, AND BRIDGES

CONDITION: Within three years, the Virgin Islands will include in its program management measures in conformity with the 6217(g) guidance for operation and maintenance and runoff systems and include enforceable policies and mechanisms to ensure implementation for existing roads, highways and bridges that contribute to adverse effects in surface waters.

DECISION: The Virgin Islands has satisfied this condition.

RATIONALE: The Virgin Islands has included management measures in its coastal nonpoint pollution control program in conformity with the 6217(g) guidance for operation and maintenance and runoff systems and has identified enforceable policies and mechanisms to ensure implementation for existing roads, highways and bridges that contribute to adverse effects in surface waters.

The Virgin Islands entered into an Memorandum of Understanding (MOU) between the Department of Public Works (DPW) and the Department of Planning and Natural Resources (DPNR) [Appendix F, Program Update, dated June 29, 2001]. The MOU requires DPW and DPNR to coordinate and cooperate in the maintenance and operation of roads, highways and bridges. Specifically, DPW is charged to “Incorporate the nonpoint source pollution control management measures and practices that concern all road and bridge repair and maintenance projects.” (emphasis added) The MOU makes clear that the referenced measures and practices are those found in the 6217(g) guidance pertaining to road and bridge repair and maintenance. DPNR is responsible for enforcing rules and regulations of the VICZMA and Environmental Protection Program, including monitoring of road maintenance operations to ensure compliance.

HYDROMODIFICATION

CONDITION: Within three years, the Virgin Islands will develop a process to improve surface water quality and restore instream and riparian habitat through the operation and maintenance of existing modified channels.

DECISION: The Virgin Islands has satisfied this condition.

RATIONALE: The Virgin Islands has developed a process to improve surface water quality and restore instream and riparian habitat through the operation and maintenance of existing modified channels. This involves: i) conducting an inventory of all existing channels, ii) developing and implementing a comprehensive “Clean Channel Program”, iii) engaging in pilot projects to reduce NPS pollution from hydromodification, and iv) implementing procedures to improve the maintenance of modified channels. As previously noted, the DPNR has entered into an MOU with the DPW to coordinate and cooperate in the maintenance and operation of roads, highways and bridges.

WETLANDS, RIPARIAN AREAS and VEGETATED TREATMENT SYSTEMS

CONDITION: Within three years, the Virgin Islands will develop a process to identify and implement opportunities to remedy problems in wetlands/riparian areas that do not come up for review under existing permit authorities.

DECISION: The Virgin Islands has satisfied this condition.

RATIONALE: The Virgin Islands has developed a prioritized list of wetlands and riparian areas to be restored or enhanced, in accordance with the Clean Water Action Plan. This will be done in coordination with applicable territorial agencies.

MONITORING

CONDITION: Within one year, the Virgin Islands will develop a plan that enables the Territory to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

DECISION: The Virgin Islands has satisfied this condition.

RATIONALE: An MOA has been entered into between DPNR and the University of Virgin Islands to establish guidelines and parameters of a Water Quality Monitoring Plan. The USVI has developed a Water Quality Monitoring manual that standardizes the water quality monitoring program of the Division of Coastal Zone Management [Appendix J, Program Update, dated June 29, 2001]. The Manual was developed to meet the specific need for monitoring marine water quality impacts from nonpoint source pollution. This monitoring program is part of the process

of evaluating the efficacy of the mitigation measures and best management practices by the CZM program.