

MEMORANDUM OF AGREEMENT
BETWEEN
THE TERRITORY OF THE VIRGIN ISLANDS
DEPARTMENT OF CONSERVATION AND CULTURAL AFFAIRS
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

WHEREAS, the Federal Water Pollution Control Act Amendments of 1972 ("the FWPCAA") expresses the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce and eliminate pollution;

WHEREAS, pursuant to the FWPCAA, the Administrator of the United States Environmental Protection Agency ("the Administrator" and the "Agency" respectively) is authorized to establish and administer a National Pollutant Discharge Elimination System ("NPDES") permit program for discharges of pollutants into navigable waters of the United States;

WHEREAS, the FWPCAA allows the Administrator to suspend the issuance of federal discharge permits within any State (defined in Section 502 (3) of the FWPCAA to include the Territory of the Virgin Islands) which desires to administer its own permit program for discharges into navigable waters within its jurisdiction in accordance with a program meeting the criteria set forth in Section 402 of the FWPCAA and regulations set forth in 40 CFR Part 124 "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System" ("the State Program Elements");

WHEREAS, the State, acting through its Governor, has submitted an application for approval by the Administrator of the State's pollutant discharge elimination system permit program;

WHEREAS, the Regional Administrator, Region II, United States Environmental Protection Agency ("the Regional Administrator") and the Commissioner, Department of Conservation and Cultural Affairs, Virgin Islands, (hereinafter the "Commissioner" and the "Department", respectively) wish to set forth their mutual understanding as to procedural and other arrangements for coordinating the administration of the State's pollutant discharge elimination system permit program with the NPDES program following approval by the Administrator of the State's program;

WHEREAS, the Administrator has promulgated regulations, the State Program Elements, which call for, among other things, the establishment, by agreement between the Regional Administrator and the appropriate State agency, of procedures for transmission of certain data and other information concerning the NPDES program to the Regional Administrator;

WHEREAS, the Department acting through the Commissioner is authorized pursuant to Chapter 7, Title 12, Virgin Islands Code ("V.I.C.") to administer an NPDES program on behalf of the State, and to enter into agreements with the Regional Administrator incidental to that authority; and

NOW THEREFORE, the parties to this agreement, in consideration of the covenants and stipulations set out herein, agree as follows:

ARTICLE I

TRANSFER OF AUTHORITY

1. After the date upon which the Administrator approves the State's permit program, all new applications for NPDES permits shall be directed to the Commissioner.
2. After the date upon which the Administrator approves the State's permit program, the Commissioner shall have sole responsibility for the issuance of NPDES permits within the Virgin Islands, and shall have primary responsibility for the enforcement of the terms and conditions of all NPDES permits within the Virgin Islands. The Regional Administrator retains the right, pursuant to Section 308 of the FWPCAA, to conduct such compliance monitoring inspections of NPDES permittees as the Regional Administrator may deem necessary. Further, all adjudicatory hearings, hearings with respect to Section 316 of the FWPCAA, citizen suits or other litigation concerning NPDES permits issued by the Regional Administrator prior to the date upon which the Administrator approves the State's permit program will be defended by the Regional Administrator with such participation by the Commissioner as may be appropriate to each specific case in dispute. Any modifications to the terms and conditions of an NPDES permit issued by the Regional Administrator which is required as the direct result of any adjudicatory hearing, Section 316 hearing, citizen suit or other litigation pending as of the date upon which the Administrator approves the State's permit program will be made by the Regional Administrator; provided, however, that the State retains its right of certification of any such modifications under Section 401 of the FWPCAA.

ARTICLE II

RECEIPT AND USE OF DATA

1. The Regional Administrator hereby agrees that no later

than thirty (30) days following the date upon which the Administrator approves the State's permit program, the Regional Administrator shall provide to the Commissioner a list of all valid NPDES or Refuse Act permits issued by him or by the United States Army Corps of Engineers for all discharges into the navigable waters of the Virgin Islands. This list shall include the permit number, the date issued, the term for which the permit is valid, the name and address of the permittee, the date the permit expires and recorded actions taken for noncompliance with all permit requirements when copies of such actions have not previously been submitted to the Department. If the Commissioner, in reviewing such list, finds that his files are incomplete with respect to such permit, he shall so notify the Regional Administrator, and the Regional Administrator shall ensure that a copy of the final permit, including all changes, modifications and corrections thereto has been furnished to the Commissioner within sixty (60) days of such notification.

2. The Regional Administrator shall provide to the Commissioner a list of all applications received together with their basic status, i.e., untouched, complete, draft permits and/or PSTs complete, in Public Notice phase, Public Notice phase complete. If the Commissioner, in reviewing such list, finds that his files are incomplete with respect to such application, he shall so notify the Regional Administrator, who shall ensure that a copy of each missing document is sent to the Commissioner within sixty (60) days of such notification.

3. All new applications received by the Regional Administrator subsequent to the effective date of the list described in paragraph 2 of this Article will be transmitted within 10 days of receipt to the Commissioner.

4. The Commissioner hereby agrees that he will provide to the Regional Administrator periodic, statistical reports on all new NPDES applications received by him, and on the progress of all NPDES permits proposed to be issued by him.

ARTICLE III

TRANSMITTAL OF DRAFT PERMITS TO THE REGIONAL ADMINISTRATOR

1. The Commissioner hereby agrees that for all permits proposed to be issued by him, the Commissioner will transmit to the Regional Administrator a copy of the application, the public notice, the draft permit and the fact sheet, if applicable, and the rationale detailing the basis for the limits appearing in the draft permit at the time of the publication of public notice for the issuance of a permit. The Regional Administrator shall be afforded a period of thirty (30) days from receipt of such documents during which to make written comments upon, objections to, or recommendations with respect to such a draft permit.

2. The Commissioner agrees that if any draft permit received by the Regional Administrator pursuant to paragraph 1 of this Article is substantially changed subsequent to the initial transmission to the Regional Administrator, the Commissioner shall so notify the Regional Administrator and shall transmit to the Regional Administrator a copy of such changed permit. The Regional Administrator shall have a period of twenty (20) days from receipt of such changed permit during which to make written comments upon, objections to, or recommendations with respect to such changes prior to the issuance of the final permit. For the purposes of this paragraph, a substantial change in a draft permit is a change which either results in the increase of any effluent load (which may be expressed as a percentage of influent allowed to be discharged) by more than 20 percent, provided, however, that such effluent load remains consistent with federal guidelines and requirements, or extension of the final date of compliance in any schedule of compliance more than 60 days after the date set forth in the original draft permit.

3. If the Regional Administrator so requests in writing, the Commissioner shall extend the period of time during which the Regional Administrator may make written comment upon, objection to, or recommendations with respect to any draft permit proposed to be issued by the Department, except that in no event will the total of time, as extended, be greater than 90 days from the original receipt of the draft permit.

4. If the Regional Administrator objects to any permit proposed to be issued pursuant to his right to object provided in Section 402(d)(2) of the FWPCA, such objection shall be in writing, shall state with particularity the provisions of the FWPCA or regulations, guidelines and national program guidance adopted thereunder upon which the objection is based, and shall set forth the terms and conditions required by the Regional Administrator as a condition to elimination of his objections to the proposed permit. Whenever the Regional Administrator objects to a permit, no permit shall be issued by the Department until all objections of the Regional Administrator have been resolved. The Regional Administrator and the Commissioner agree to seek resolution of any objections the Regional Administrator may have in as expeditious a manner as is possible. When an objection of the Regional Administrator has been resolved to his satisfaction, he shall notify the Commissioner in writing of the withdrawal of his objection.

5. The Commissioner may impose additional requirements, limitations and conditions as he deems necessary as long as such requirements, limitations and conditions are not less stringent than federal guidelines and requirements.

ARTICLE IV

RECEIPT OF PERMITS AFTER ISSUANCE

Notwithstanding any other provision of this Agreement, the Commissioner agrees to transmit a copy of every NPDES permit and modifications

thereto issued by him to the Regional Administrator no later than thirty (30) days after the issuance of such permit and modifications thereto.

ARTICLE V

MONITORING AND REPORTING

1. The Commissioner or his designee, in accordance with Section 124.61 of the State Program Elements and 12 V.I.C. Section 189, shall apply monitoring conditions in NPDES permits, and shall establish such monitoring requirements for additional pollutants in any NPDES permit, as may be required. The Commissioner shall cooperate with the Regional Administrator on the requirement that copies of all reports required of a permittee under a permit originally issued by the Regional Administrator will continue to be submitted to the Regional Administrator by the permittee.
2. The Commissioner agrees to condition all NPDES permits issued by him so as to require that copies of all reports to be submitted by the permittee to the Commissioner shall also be submitted to the Regional Administrator.
3. Whenever the Commissioner or his designee shall conduct a compliance monitoring inspection of a publicly or privately owned treatment works, the Department personnel conducting such inspection shall complete and transmit to the Regional Administrator a copy of the inspection report.
4. Whenever the Commissioner or his designee shall conduct a compliance monitoring inspection of an industrial facility, the Department personnel conducting such inspection shall complete and transmit to the Regional Administrator a copy of the inspection report.
5. The Regional Administrator shall continue to provide effluent compliance monitoring assistance to the Commissioner. Monitoring, sampling strategy and the degree of assistance to be provided shall be determined and mutually agreed upon through negotiation of the State's annual strategy and water pollution control program plan (Section 106 plan).
6. If the Regional Administrator carries out any compliance monitoring activities in the Virgin Islands, he shall transmit to the Commissioner a copy of all such inspection reports together with any other pertinent papers such as letters to the permittee.

ARTICLE VI

TRANSMITTAL OF DATA TO THE NATIONAL DATA BANK

1. Until a national repository of information is permanently established, the Regional Administrator will perform this function

with regard to NPDES permits. Therefore, transmission by the Commissioner or his designee of permit applications and final permits, and the conditioning of all NPDES permits to require direct submission of copies of self-monitoring and compliance schedule reports to the Regional Administrator as required in previous Articles shall satisfy the requirement of transmittal of data to the National Data Bank for these permits.

2. The Commissioner and the Regional Administrator shall cooperate in providing each other, in a timely manner, basic information and data needed to carry out their respective programs.

ARTICLE VII

MODIFICATIONS, SUSPENSIONS AND REVOCATIONS OF ISSUED PERMITS

1. Whenever the Commissioner intends to suspend, revoke or modify an NPDES permit (other than those previously issued by the Regional Administrator, for which authority to suspend, revoke or modify is retained by the Regional Administrator), he shall notify the Regional Administrator, and shall transmit a copy of any permit which is proposed to be modified or revised in respect to a compliance schedule, increased effluent limitation, or sampling and monitoring requirement to the Regional Administrator, together with the proposed changes.

2. The Regional Administrator shall be afforded a period of thirty (30) days following such notice or receipt of such transmitted changes, whichever shall occur later, to comment upon, make recommendations with respect to, or object to the proposed modifications and revisions. If no objections are made within the 30-day period, the Commissioner will issue the modified permit.

3. If any permit is revised or modified in any manner by court action, the Commissioner or his designee shall notify the Regional Administrator of such revision or modification and, upon request, shall transmit a copy of such permit with the changes to the Regional Administrator. If the Regional Administrator has any objections to the court ordered revisions or modifications, the Regional Administrator shall so notify the Commissioner within fifteen (15) days, and shall take such other action as may be necessary.

ARTICLE VIII

ENFORCEMENT

1. The Department shall continuously monitor compliance with all requirements contained in NPDES permits issued by the Commissioner and the Regional Administrator, including requirements that permittees submit monitoring and compliance reports.

2. On the last day of the months of May, August, November, and February the Commissioner shall send the Regional Administrator

a quarterly status report which shall contain all known instances, as of 30 days prior to the date of submission of such report, of failure to comply with permit requirements during the reporting period preceding the date of such status report or continuing to remain in noncompliance from any previous quarterly reporting period. The quarterly status report shall set forth the following information for each reported instance of noncompliance:

- a. The name and address of the permittee;
- b. The permit number;
- c. The nature of the instance of noncompliance;
- d. A short description of any actions or proposed actions by the permittee or by the Commissioner to comply or enforce compliance with the permit requirements; and
- e. Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.

3. Whenever the Regional Administrator receives any information that any permittee is in violation of any term or condition of any issued NPDES permit, he shall immediately forward a copy of such information to the Commissioner. The Commissioner will advise the Regional Administrator of the action to be taken. The Regional Administrator agrees to make available to the Commissioner appropriate assistance which may be necessary in any action, administrative or judicial, taken by the Commissioner. Such assistance may include, but is not limited to, investigative reports, laboratory analyses, and appropriate Agency personnel to provide sworn testimony.

4. The Commissioner will transmit to the Regional Administrator a copy of any order or directive, administrative or judicial, related to compliance with the terms and conditions of an NPDES permit originally issued by the Regional Administrator.

5. Nothing contained in this Agreement shall be construed to limit the authority of the Regional Administrator to take appropriate action pursuant to Sections 308 and 309 of the FWPCAA, either on his own motion or when requested to do so by the Commissioner.

ARTICLE IX

ASSISTANCE

From time to time the Commissioner and the Regional Administrator shall consult as to whether or not it will be necessary for the

Regional Administrator to assist the Commissioner in some manner to insure that the State's pollutant discharge elimination system permit program is at all times in conformance with the applicable requirements of the FWPCAA and the State Program Elements. Such assistance shall be rendered as the Commissioner and Regional Administrator may agree.

ARTICLE X

CHANGES IN STATE STATUTES, REGULATIONS, DIRECTIVES, OR STANDARD TEST METHODS

1. Prior to taking any action to propose or effect any substantial amendment, rescission, or repeal of any statute, regulation, or directives, which the Commissioner has submitted to the Regional Administrator or agreed to make use of in connection with approval of the State's program, the Commissioner shall notify the Regional Administrator by transmittal of the text of any such change to the Regional Administrator. The Regional Administrator shall have 30 days in which to determine whether the proposed change would mean that the State's permit program would not be in accordance with the FWPCAA and the State Program Elements.

2. If an amendment, rescission, or repeal of any statute, regulation or directive, described in paragraph 1 above shall occur for any reason, including action by the Virgin Islands Legislature or a court, the Commissioner shall notify the Regional Administrator by transmittal of a copy of the text of such revision to the Regional Administrator.

3. Prior to his approval of any test methods other than those specified by a standard permit form, the Commissioner shall obtain the approval of the Regional Administrator.

ARTICLE XI

FURTHER ASSURANCES

The Commissioner shall adopt such regulations, and shall take all further actions which may be needed in order to preserve and maintain, in accordance with the FWPCAA and the State Program Elements, any authorities, programs, or commitments described in this Agreement, except as any change herein may be approved by the Regional Administrator.

ARTICLE XII

ACTION THROUGH STAFF PERSONNEL

The Commissioner and the Regional Administrator may designate personnel to carry out any duty or action required or described herein.

ARTICLE XIII

EFFECT, RESCISSION, MODIFICATION

This Agreement shall take effect upon program approval by the Administrator pursuant to Section 402(b) of the FWPCA and shall remain in effect for the duration of such approved program or until this Agreement is rescinded. In the event that federal grants to the Virgin Islands to assist in administering programs for the prevention, reduction and elimination of pollution, including enforcement, should be terminated or reduced to the point that insufficient federal funds are provided to administer the federal portion of the NPDES program, or if the Legislature of the Virgin Islands should fail to authorize or appropriate sufficient State funds to provide for full implementation of this Agreement, or for other good and sufficient reasons which in the opinion of the Commissioner prevent the full accomplishment of this program, the Agreement shall be rescinded on 30 days notice in writing from the Commissioner to the Regional Administrator.

In witness whereof, the parties have executed this agreement on this 29th day of June, 1976.

TERRITORY OF THE VIRGIN ISLANDS,
DEPARTMENT OF CONSERVATION AND
CULTURAL AFFAIRS

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
REGION II

By: Viridin C. Brown
Viridin C. Brown
Commissioner

By: Gerald M. Hansler
Gerald M. Hansler
Regional Administrator

APPROVED: JUN 30 1976
(Date)

Russell E. Train
Russell E. Train, Administrator
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

DEC 26 2007

Mr. Robert S. Mathes, Commissioner
Department of Planning and Natural Resources
Cyril E. King Airport – Terminal Building, 2nd Floor
St. Thomas, Virgin Islands 00802

Dear Commissioner Mathes:

On June 30, 1976, the United States Virgin Islands (USVI) received the authority to administer the National Pollutant Discharge Elimination System (NPDES) program within its borders. Regulations implementing the Clean Water Act provide that states may be authorized to issue general permits as part of the NPDES program. The USVI has requested that EPA approve a modification of its NPDES program and provide the USVI with authority to issue general NPDES permits. You have also provided me with a letter from the USVI Attorney General dated November 5, 2007, which certifies that the laws of the USVI provide adequate authority for the USVI, through its Department of Planning and Natural Resources to carry out the general permit program.

I am pleased to inform you that the Environmental Protection Agency is approving your request for authority to issue general NPDES permits. This action is consistent with EPA's national policy that NPDES regulatory authority be administered at the state level. I am enclosing a copy of the fully executed Amendment to the NPDES Memorandum of Agreement.

In addition, I applaud your recent efforts in revising Territorial Pollutant Discharge Elimination System (TPDES) rules and regulations (July, 2007) and finalizing a general permit for stormwater runoff from construction sites (September, 2007). The implementation and enforcement of this general permit will have an immediate and significant environmental benefit, especially in those areas where development pressures are high.

I look forward to working with you in continuing the progress you have made towards improving the water quality in the United States Virgin Islands.

Sincerely,

Signed by Alan J. Steinberg

Alan J. Steinberg
Regional Administrator

Enclosure

cc: Vincent F. Frazer, Esq.
Attorney General, United States Virgin Islands (w/o enclosure)

AMENDMENT TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
THE TERRITORY OF THE VIRGIN ISLANDS
THE DEPARTMENT OF PLANNING AND NATURAL RESOURCES,
DIVISION OF ENVIRONMENTAL PROTECTION
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

GENERAL PROVISIONS

The Regional Administrator of the United States Environmental Protection Agency Region II (hereinafter "EPA"), and the Commissioner of the former United States Virgin Islands (hereinafter "Virgin Islands") Department of Conservation and Cultural Affairs¹ entered into a Memorandum of Agreement on June 29, 1976 (hereinafter "the MOA") setting forth their mutual understanding of procedural and other arrangements for coordinating the administration of the Territory's National Pollutant Discharge Elimination System (hereinafter "Territorial Pollutant Discharge Elimination System" or "TPDES") permitting program. On June 30, 1976, the Administrator approved the MOA.

The EPA and the Virgin Islands Department of Planning and Natural Resources (hereinafter "DEPARTMENT ") acknowledge that the Virgin Islands now seeks to revise its TPDES Regulations, amend the Virgin Islands Code and obtain the authority to issue TPDES general permits.

The DEPARTMENT and the EPA agree that this Amendment to the MOA does not address DEPARTMENT permits or portions of DEPARTMENT permits which do not apply to discharges of pollutants to navigable waters of the United States as defined in the Clean Water Act (hereinafter "the CWA"), 33 U.S.C. § 1251 et seq.

The DEPARTMENT agrees to administer the TPDES program in accordance with Section 402 of the CWA and the applicable federal regulations promulgated thereunder, the MOA, this Amendment to the MOA, applicable territorial legal authority and any other agreements entered into between the Virgin Islands and the EPA.

The EPA and the DEPARTMENT agree that EPA will retain the authority to administer the Pretreatment Program, under Section 307 of the CWA, and the Biosolids (Sludge) Program, under Section 405 of the CWA

The DEPARTMENT and the EPA hereby agree to continue to maintain a high level of cooperation and coordination between the Agencies to assure successful and effective administration of the TPDES program.

The MOA between the Virgin Islands and the EPA is hereby amended to include the following provisions under the respective Articles in the MOA.

¹ The Department of Conservation and Cultural Affairs has been legislatively reorganized and renamed the Department of Planning and Natural Resources.

ARTICLE I TRANSFER OF AUTHORITY

EPA and the DEPARTMENT acknowledge that the Virgin Islands included provisions with the minimum requirements of 40 CFR § 122.41(j)(5) and 40 CFR § 122.41(k)(2) in the revisions to its TPDES Regulations. The Virgin Islands Code, however, is not consistent with these provisions.² Pursuant to 40 CFR § 123.25, State and Territorial NPDES programs must have legal authority to implement and administer 40 CFR § 122.41(j)(5) and 40 CFR § 122.41(k)(2). EPA and the DEPARTMENT acknowledge that the Virgin Islands Code does not provide the Virgin Islands with the legal authority to implement and administer the minimum requirements of 40 CFR § 122.41(j)(5) and 40 CFR § 122.41(k)(2). The EPA and the DEPARTMENT acknowledge that the lack of legal authority to implement and administer the minimum requirements of 40 CFR § 122.41(j)(5) and 40 CFR § 122.41(k)(2) is considered a program deficiency. The DEPARTMENT hereby agrees to seek legislative authority to amend the Virgin Islands Code to include provisions that meet the minimum requirements of 40 CFR § 122.41(j)(5) and 40 CFR § 122.41(k)(2). EPA reserves the right to take an enforcement action consistent with the federal regulations at 40 CFR § 122.41(j)(5) and 40 CFR § 122.41(k)(2).

The Virgin Islands has the responsibility for developing and issuing TPDES general permits. After identifying dischargers appropriately regulated by a general permit, the Virgin Islands will collect sufficient effluent data to develop effluent limitations and prepare the draft permit. The DEPARTMENT will issue and administer TPDES general permits in accordance with 12 V.I. CODE ANN. § 185 (1995 & Supp. 2005) and 40 CFR § 122.28. The DEPARTMENT also has the primary responsibility for conducting compliance monitoring activities and enforcing conditions and requirements of general permits. All specific Virgin Islands commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 workplan.

² 12 V.I. CODE ANN. § 190 (2) (1998) does not meet the minimum requirements of 40 CFR § 122.41(j)(5); it provides in pertinent part that:

Any person who . . . falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter . . . shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both.

This provision of the Virgin Islands Code does not address a penalty for violation committed after a first conviction.

12 V.I. CODE ANN. § 190 (2) (1998) does not meet the minimum requirements of 40 CFR § 122.41(k)(2); it provides in pertinent part that:

Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other documents filed or required to be maintained under this chapter . . . shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both.

This provision of the Virgin Islands Code does not provide for the imposition of the penalty on a per violation basis.

**ARTICLE II
RECEIPT AND USE OF DATA**

The Commissioner hereby agrees that he will provide to the Regional Administrator, periodic statistical reports on all new applications for or notices of intent to be covered under a general permit. The Commissioner also hereby agrees to provide to the Regional Administrator, periodic progress reports on all new general permits proposed to be issued by him.

Any information obtained or used by the DEPARTMENT under the TPDES program shall be available to EPA upon request, without restriction. If the information has been submitted to the DEPARTMENT under a claim of confidentiality, the DEPARTMENT shall inform EPA of that claim. Information claimed confidential which is used to develop permit conditions will be treated in accordance with 40 CFR 2, Subpart B and 40 CFR § 122.7.

**ARTICLE III
TRANSMITTAL OF DRAFT PERMITS
TO THE REGIONAL ADMINISTRATOR**

Each draft general permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development and will be transmitted to the following EPA offices:

Director, Division of Environmental Planning and Protection
U.S. EPA Region 2
290 Broadway – 25th Floor
New York, NY 10007

Director, Office of Wastewater Management³
1200 Pennsylvania Avenue NW (4201M)
Washington, DC 20460

EPA will have up to ninety (90) days to review draft general permits and provide comments, recommendations and objections to the Virgin Islands. In the event EPA does object to a general permit, it will provide, in writing, the reasons for its objections and the actions necessary to eliminate the objection. The Virgin Islands has the right to a public hearing on the objection in accordance with 40 CFR § 123.44. Upon receipt of EPA's objection, the Virgin Islands may request a public hearing. If EPA's concerns are not satisfied and the Virgin Islands has not sought a hearing within 90 days of the objection, exclusive authority to issue the general permit passes to EPA.

³ General permits for discharges from separate storm sewers need not be sent to EPA Headquarters for review.

If EPA raises no objections to a general permit, it will be publicly noticed in accordance with 12 V.I. CODE ANN. § 194, 195 (1998 & Supp. 2005) and 40 CFR § 124.10, including publication in a daily or weekly newspaper circulated in the area to be covered by the permit.

The DEPARTMENT agrees that if any draft general permit is substantially changed subsequent to the initial transmission to the Regional Administrator, the DEPARTMENT shall so notify the Regional Administrator and shall transmit to the Regional Administrator, a copy of such changed permit. The Regional Administrator shall have twenty (20) days from receipt of such changed permit during which to make written comments upon, objections to, or recommendations with respect to such changes prior to the issuance of the final permit. For the purposes of this paragraph, a substantial change in a draft permit is a change which either results in the increase of any effluent limit by more than 20%, provided however, that such effluent load remains consistent with federal guidelines and requirements, or extension of the final date of compliance in any schedule of compliance more than 60 days after the date set forth in the original draft permit.

EPA may request to review any notice of intent to be covered under a general permit. EPA will, within ten (10) days after receipt of the notice of intent, notify the DEPARTMENT of any formal objections to the applicant's suitability for coverage under the general permit.

In addition to other general permits, the Commissioner hereby specifically agrees to issue a Multi-Sector Storm Water General Permit for Industrial Facilities and a Storm Water General Permit for Construction Activities disturbing 1 acre or more.

ARTICLE IV RECEIPT OF PERMITS AFTER ISSUANCE

Notwithstanding any other provision of this Agreement, the Commissioner agrees to transmit a copy of each final general TPDES permit and any modified final general TPDES permit to the Regional Administration no later than thirty (30) days after the issuance of such permits.

ARTICLE V MONITORING AND REPORTING

Article V remains unamended.

**ARTICLE VI
TRANSMITTAL OF DATA TO THE NATIONAL DATA BANK**

Once a discharger is covered under an applicable general permit, and the Department or EPA has not objected to coverage, the DEPARTMENT will forward to EPA Region II, and EPA Region II will enter, all the required information for the Integrated Compliance Information System (ICIS) for covered permittees.

**ARTICLE VII
MODIFICATIONS, SUSPENSIONS AND REVOCATIONS OF ISSUED PERMITS**

Article VII remains unamended.

**ARTICLE VIII
ENFORCEMENT**

The DEPARTMENT is responsible, subject to EPA's oversight and enforcement authority for taking timely and appropriate enforcement action against persons in violation of permit conditions and for discharges without a permit.

For violations where the DEPARTMENT finds that a water pollution emergency exists requiring immediate action to protect the public health or welfare, the DEPARTMENT shall take appropriate enforcement action which may include, but is not limited to, an order pursuant to 12 V.I. CODE ANN. §188(d) (1998 & Supp. 2004) to effect the immediate correction of the violation. Such orders shall be issued as soon as practicable after the DEPARTMENT makes a determination that the condition or activity is of a nature which, if not abated, will endanger or cause damage to public health, and to the environment.

The DEPARTMENT shall implement procedures for receiving and ensuring proper consideration of information about alleged violations that are submitted by the public.

The DEPARTMENT shall conduct an initial review of and make recommendations to EPA for all requests for variances. If the DEPARTMENT determines that factors exist that may warrant a variance, the request and the DEPARTMENT recommendation for approval shall be sent to EPA. If EPA denies the variance request, the DEPARTMENT shall notify the applicant. If EPA approves the variance request, the DEPARTMENT will prepare a draft permit factoring in the variance.

The EPA reserves the right to bring federal enforcement action under the CWA in response to any violation of the CWA. In particular, if the EPA determines that the DEPARTMENT has not taken a timely enforcement action against a violator and/or that the DEPARTMENT'S action has not been appropriate, the EPA may proceed with any enforcement options available to it under section 309 of the CWA. EPA generally will not proceed with federal enforcement until the DEPARTMENT has been given at least thirty (30) days written notice to take appropriate enforcement action. Notification is not necessary when the EPA is exercising its emergency power under Section 504 of the CWA.

The DEPARTMENT may request that the EPA initiate federal enforcement action when the DEPARTMENT has been unable to achieve compliance through Territorial remedies.

The Commissioner shall prepare and submit to the Regional Administrator and the EPA Region II in turn, shall submit to EPA headquarters, the Territory's report on a quarterly and annual basis as detailed below⁴.

- a. For all major permittees, a permit noncompliance report (the "Quarterly Noncompliance Report") shall be prepared and submitted within 30 days of the end of each quarter in the Federal fiscal year (i.e., within 30 days after the last day in December, March, June and September). Reports shall contain known instances of noncompliance with permit requirements during the reporting period preceding the date of such status report or continuing to remain in noncompliance from any previous quarterly reporting period. Instances of noncompliance by major dischargers shall be reported in successive reports until the noncompliance is reported as resolved (i.e., the permittee is no longer violating the permit conditions reported). All permittees under current enforcement orders for previous instances of noncompliance must be listed in the quarterly report until the orders have been satisfied in full and the permittee is in compliance with permit conditions. The quarterly status report shall set forth the following information for each reported instance of noncompliance:
 1. The name and location of the permittee;
 2. The permit number;
 3. The date and a brief description of the nature of the instance of noncompliance;
 4. The date and a short description of any actions or proposed actions by the permittee to come into compliance and any enforcement actions taken by the Commissioner; and
 5. Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.

⁴ This paragraph, including its subparts, shall replace paragraph 2 under Article VIII of the MOA

b. Summary information shall be provided twice a year on the number of major permittees with two or more violations of the same monthly average permit limitations in a six month period, including those otherwise reported under paragraph a. above. This report shall be submitted at the same time, according to the Federal fiscal year calendar, as the first and third quarterly reports.

c. For all non-major permittees, a statistical summary shall be prepared annually, within 60 days following the end of the Federal fiscal year (September 30) and shall set forth the following information:

1. The number of non-compliances;
2. The number of enforcement actions;
3. The number of extensions of compliance deadlines; and
4. A list of non-major dischargers which are one or more years behind in construction phases of a compliance schedule.

The EPA agrees to provide the DEPARTMENT with the following information in accordance with the schedule detailed below:

1. If a citizen contacts the EPA with a TPDES-based complaint, EPA will notify the DEPARTMENT regarding this complaint as soon as practicable;
2. EPA will provide notification to the DEPARTMENT of observed violations resulting from EPA oversight inspections within 30 days of inspection; and
3. EPA will provide, as soon as practicable, any enforcement-related document that is not privileged and not confidential, to the VI upon their request.

ARTICLE IX ASSISTANCE

EPA will provide training courses in compliance inspection and permit writing on an as need basis, contingent upon available EPA resources.

**ARTICLE X
CHANGES IN STATE STATUTES, REGULATIONS,
DIRECTIVES, OR STANDARD TEST METHODS**

The Commissioner shall implement the necessary steps to ensure that the TPDES regulations, the Virgin Islands Code, the Territory Program Elements (including standard test methods), and all other relevant authorities and legal directives are updated to meet the requirements of and to be consistent with the Clean Water Act, 33 U.S.C. § 1251 et seq. and EPA's implementing regulations.

The Federal and Territorial public notice and comment procedures will be followed with respect to revisions of the TPDES regulations pursuant to 40 CFR Part 123 and 12 V.I. CODE ANN. § 84(i) (1998) and 12 V.I. CODE ANN. § 194(a) (1998 & Supp 2004).⁵

**ARTICLE XI
FURTHER ASSURANCES**

The Commissioner shall take the necessary steps to meet the commitments detailed in Article I (Transfer of Authority) of the Amendment to the MOA and will notify EPA when these commitments are met.

**ARTICLE XII
ACTION THROUGH STAFF PERSONNEL**

Article XII remains unamended.

**ARTICLE XIII
EFFECT, RESCISSION, MODIFICATION**

Either the EPA or the DEPARTMENT may initiate action to modify the Amendment to the MOA. However, before the Amendment to the MOA may be modified, any proposed revisions must be put in writing, signed by the EPA and the DEPARTMENT and approved by the Administrator.

Except as expressly revised by the Amendment to the MOA, all of the terms of the MOA remain in full force and effect.

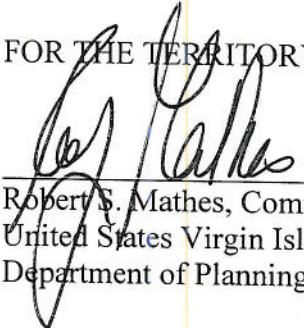
⁵ The Virgin Islands has the legal authority to incorporate by reference federal regulations pursuant to 3 V.I. CODE ANN. § 940 (1995).

**ARTICLE XIV
APPROVAL AND EFFECTIVE DATE**

The Amendment to the Memorandum of Agreement will be effective upon approval by the Regional Administrator of the Environmental Protection Agency Region 2.

In witness whereof, the parties execute this agreement.

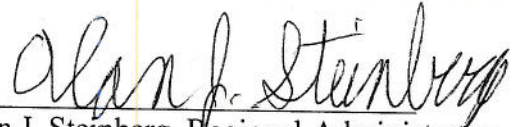
FOR THE TERRITORY OF THE UNITED STATES VIRGIN ISLANDS:



Robert S. Mathes, Commissioner
United States Virgin Islands
Department of Planning and Natural Resources

11/2/07
Date

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



Alan J. Steinberg, Regional Administrator
US EPA, Region II

12-26-07
Date