



GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS
-----0-----
DEPARTMENT OF PLANNING AND NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

4611 Tutu Park Mall
Suite 300, 2nd Floor
St. Thomas, VI 00802
(340) 774-3320

45 Mars Hill, Frederiksted
St. Croix, VI 00840
(340) 773-1082
dpr.vi.gov



November 16, 2023

Mr. Andrew Dubuque
VIGL Operations, LLC
1044 Queen Cross Street
Christiansted, VI 00820

Mr. Fred Bible
Eleven Construction, LLC
9010 Estate Cottage, Ste. 2
Christiansted, VI 00820

Mr. Dubuque and Mr. Bible:

The Department of Planning and Natural Resources, Division of Environmental Protection (DPR-DEP) has received and reviewed your application for Territorial Pollutant Discharge Elimination System (TPDES) permit coverage for Stormwater for the VIGL Randall "Doc" James Racetrack Redevelopment Project, located at Section 5, Alexander Hamilton Field, Estate Mannings Bay, Prince Quarter, St. Croix, USVI. Based on the information provided in your application, you have met the eligibility requirements for coverage as the Operator for this project under TPDES General Permit VIGSA0000.

This project's TPDES Permit Tracking Number shall be VIGSU0204. You are required to adhere to the conditions within TPDES General Permit VIGSA0000 to avoid enforcement actions by DPR-DEP for failure to hold a valid TPDES permit, as explained in Commissioner Oriol's June 24, 2020 CGP No Action Assurance Policy Memorandum (See Attached). Your obligations and requirements include:

- Installation of perimeter and stormwater run-on controls into the construction site;
- Installation of all BMPs, especially swales, gutters, and other drainage-controlling measures;
- Implementation of the project-specific SWPPP;
- Training of new personnel in accordance with the SWPPP;
- Identification of a qualified person to inspect the site; and
- Performance and documentation of site inspections.

Any changes or amendments to the approved SWPPP must be submitted to DPR-DEP in accordance with TPDES Permit VIGSA0000.

DPR is the process of updating the CGP and will send a notice when the revised CGP is final. If construction activity at this project site continues after DPR issues the final revised CGP, you will be required to submit a new NOI to obtain coverage under the new CGP to meet your obligation to

have a TPDES permit. Failure to do so could result in an enforcement action for failure to have a TPDES permit.

Please note you are still required to obtain all other applicable DPNR permits.

Upon completion of the project, you are required to submit a Notice of Termination (NOT) in accordance with the General Permit.

Please contact Mary Stiehler, Environmental Program Manager, at (340) 774-3320 or via email at mary.stiehler@dpr.vi.gov should you have any questions.

Sincerely,



Austin F. Callwood
Director

Atts: No Action Assurance Policy Memorandum, 6/24/2020
USVI Construction General Permit VIGSA0000, 12/1/2012

cc: Andrea Elizondo, EPA Region 2
Jim Casey, EPA Region 2
Mary Stiehler, DPNR-DEP-WPC/WQM



GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

-----0-----

DEPARTMENT OF PLANNING AND NATURAL RESOURCES

Charles W. Turnbull Regional Public Library

4607 Tutu Park Mall

St. Thomas, U.S. Virgin Islands 00802

Telephone: (340) 774-3320

MEMORANDUM

TO: Austin F. Callwood
Director, Division of Environmental Protection

Marlon Hibbert
Director, Division of Coastal Zone Management

Douglas Hodge
Director, Division of Building Permits

FROM: Jean-Pierre L. Oriol
Commissioner

DATE: June 24, 2020

SUBJECT: No Action Assurance Policy: TPDES General Permit for Stormwater Discharges
Associated with Construction Activity

This memorandum is to inform you of the Department of Planning and Natural Resources' (DPNR or Department) current approach to addressing a gap in permit coverage due to the lack of a current TPDES General Permit for Stormwater Discharges from Construction Activity (CGP). Obtaining coverage under the CGP is the mechanism operators of regulated construction activities use to meet their obligation to obtain a TPDES permit under the Water Pollution Control Act for stormwater discharges from construction activity and small construction activity. The CGP issued in 2012 under the Territorial Pollutant Discharge Elimination System (TPDES) Water Pollution Control Program expired on November 30, 2017. The Division of Environmental Protection (DEP) is in the process of re-issuing the CGP, which will take approximately six (6) more months. Operators that obtained coverage for construction projects under the 2012 CGP prior to its expiration date have been automatically granted an administrative continuance of permit coverage and are required to continue to comply with the 2012 CGP until they submit a Notice of Termination (NOT) or DPNR issues a new CGP. Any operator that begins or began discharging

storm water associated with construction activity and/or small construction activity after November 30, 2017 (a "New Project") will not be able to obtain general permit coverage until DPNR issues a new CGP.

Because a new construction general permit has not yet been promulgated, I have determined that, to address this gap in coverage, it is appropriate to exercise my enforcement discretion and issue this temporary No Action Assurance Policy. Specifically, DPNR will not pursue administrative or civil judicial enforcement actions for lack of TPDES permit coverage against operators of new regulated construction activities that began or begin discharging storm water associated with construction activity and small construction activity after November 30, 2017, provided that these New Projects meet the following criteria:

1. Eligibility: For coverage under this No Action Assurance policy, any New Project and its operator must meet and document the 2012 CGP eligibility criteria.
2. Prior Notification: Prior to discharge of storm water from a New Project, the operator must notify DPNR of both their operator status and intention to operate in accordance with the 2012 CGP. This prior notification requirement can be met by timely submission of a complete and accurate Notice of Intent (NOI) form to obtain coverage under the 2012 CGP, together with a signed, dated and certified copy of the Stormwater Pollution Prevention Plan (SWPPP) developed for the New Project. All of the information required to apply for coverage under the 2012 CGP must be provided, including identification of the stormwater team and documentation that the required personnel were trained in accordance with the SWPPP requirements.
3. Compliance: The operator of any New Project must comply with the same obligations and requirements in or related to the 2012 CGP as if coverage had been granted under the general permit. These obligations and requirements include:
 - a. Installation of perimeter and stormwater run-on controls into the construction site;
 - b. Implementation of the project-specific SWPPP;
 - c. Identification of a qualified person to inspect the site;
 - d. Performance and documentation of site inspections; and
 - e. Submission of a timely and complete Notice of Termination (NOT) when construction activity at the site is completed.

If construction activities at a New Project continue after the Department issues the revised CGP, an operator discharging storm water under this Policy must provide DPNR with notice that its construction activities are continuing after the re-issuance of the CGP. Submittal of a complete and accurate NOI form within the timeframe included in the re-issued CGP will meet this notification requirement.

For purposes of issuing other permits or determining economic development zone benefit eligibility, DPNR shall treat operators of New Projects that meet these criteria as if they had met

the obligation to obtain a TPDES permit for their stormwater discharges associated with construction activity or small construction activity. This No Action Assurance Policy does not apply to criminal violations or to situations where egregious circumstances exist which may cause serious harm or which may present an imminent and substantial endangerment to public health or the environment, or where neither best management practices nor storm water pollution prevention controls are in place to protect public health or the environment. DPNR also reserves the right, at any time, to exercise its discretion to address a specific discharge should circumstances warrant.

This No Action Assurance Policy for operators with New Projects will terminate 60 days after DPNR issues a revised CGP or such later time as specified in the CGP. DPNR also reserves the right to withdraw or revise this No Action Assurance Policy at any time.

If you have any questions about this matter, please contact Austin Callwood, Director of the Division of Environmental Protection, via email at austin.callwood@vi.gov.

CC: Mary Stiehler, Water Program Manager, DEP

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



TERRITORIAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

GENERAL PERMIT NUMBER VIGSA0000


**AUTHORIZATION FOR STORM WATER DISCHARGES ASSOCIATED WITH
CONSTRUCTION ACTIVITY**

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 large and small construction activities that are described in Part I.B of this Territorial Pollutant Discharge Elimination System (TPDES) general permit, except for those activities excluded from authorization of discharge in Part I.B.2 of this permit, are authorized by the Virgin Islands Department of Planning And Natural Resources, hereafter referred to as VIDPNR, to discharge pollutants to waters of the United States Virgin Islands in accordance with the conditions and requirements set forth herein. Permit coverage is required from the “commencement of construction activities” (see Appendix A) until final stabilization (see Part 2.2).

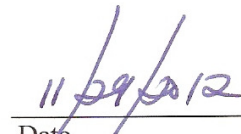
This permit is conditioned upon payment of applicable fees, submittal of a complete Notice of Intent (NOI) application form and written approval of coverage from the director of Division of Environmental Protection of VIDPNR, in accordance with 12 V.I. CODE ANN. §185 (1998 & Supp. 2004).

This permit shall become effective on **December 1, 2012**.

This permit and authorization to discharge shall expire at midnight on **November 30, 2017**.



Alicia V. Barnes
Commissioner



Date

TABLE OF CONTENTS

1. HOW TO OBTAIN PERMIT COVERAGE UNDER THE VI CGP	5
1.1. ELIGIBILITY CONDITIONS REQUIRED OF ALL PROJECTS	5
1.2. ELIGIBILITY CONDITIONS THAT APPLY DEPENDING ON TYPE OF PROJECT.....	6
1.2.1. <i>Eligibility for Emergency-Related Construction Activities</i>	6
1.2.2. <i>Water Quality Standards – Eligibility for New Sources</i>	7
1.2.3. <i>Discharging to Waters with High Water Quality – Eligibility for New Sources</i>	7
1.2.4. <i>Use of Cationic Treatment Chemicals</i>	7
1.3. TYPES OF DISCHARGES AUTHORIZED UNDER THE VI CGP.....	8
1.4. SUBMITTING YOUR NOTICE OF INTENT (NOI).....	9
1.4.1. <i>How to Submit Your NOI</i>	9
1.4.2. <i>Deadlines for Submitting Your NOI and Your Official Date of Permit Coverage</i>	10
1.4.3. <i>Your Official End Date of Permit Coverage</i>	11
1.4.4. <i>Continuation of Coverage for Existing Permittees After the Permit Expires</i>	11
1.4.5. <i>Procedures for Denial of Coverage</i>	12
1.5. REQUIREMENT TO POST A NOTICE OF YOUR PERMIT COVERAGE.....	13
2. EFFLUENT LIMITATIONS APPLICABLE TO ALL DISCHARGES FROM CONSTRUCTION SITES.....	13
2.1. EROSION AND SEDIMENT CONTROL REQUIREMENTS.....	13
2.1.1. <i>General Requirements Applicable to All Construction Sites</i>	13
2.1.2. <i>Erosion and Sediment Control Requirements Applicable to All Sites</i>	16
2.1.3. <i>Requirements Applicable Only to Sites Using These Specific Stormwater Controls</i>	22
2.2. STABILIZATION REQUIREMENTS.....	26
2.2.1. <i>Deadlines for Initiating and Completing Stabilization</i>	26
2.2.2. <i>Criteria for Stabilization</i>	28
2.3. POLLUTION PREVENTION REQUIREMENTS.....	29
2.3.1. <i>Prohibited Discharges</i>	29
2.3.2. <i>General Maintenance Requirements</i>	30
2.3.3. <i>Pollution Prevention Standards</i>	30
2.3.4. <i>Emergency Spill Notification</i>	34
2.3.5. <i>Fertilizer Discharge Restrictions</i>	35
3. WATER QUALITY-BASED EFFLUENT LIMITATIONS.....	35
3.1. GENERAL EFFLUENT LIMITATION TO MEET APPLICABLE WATER QUALITY STANDARDS.....	35
3.2. DISCHARGE LIMITATIONS FOR IMPAIRED WATERS	36
3.2.1. <i>Identify If You Discharge To An Impaired Water</i>	36
3.2.2. <i>Requirements for Discharges to Sediment or Nutrient-Impaired Waters</i>	36
3.3. DISCHARGES TO WATERS IDENTIFIED AS CLASS A.....	37
3.3.1. <i>Identify if You Discharge to a Class A</i>	37
3.3.2. <i>Requirements for New Projects Discharging to Class A waters</i>	37
4. INSPECTIONS.....	37
4.1. SITE INSPECTIONS	37
4.1.1. <i>Person(s) Responsible for Inspecting Site</i>	38
4.1.2. <i>Frequency of Inspections</i>	38
4.1.3. <i>Increase in Inspection Frequency for Sites Discharging to Sensitive Waters</i>	38
4.1.4. <i>Reductions in Inspection Frequency</i>	39
4.1.5. <i>Areas that Need to Be Inspected</i>	39
4.1.6. <i>Requirements for Inspections</i>	40
4.1.7. <i>Inspection Report</i>	41
4.2. INSPECTIONS BY VIDPNR.....	42
4.2.1. <i>Site Entry</i>	42
4.2.2. <i>Record Access</i>	42
4.2.3. <i>Site Inspection</i>	42

4.2.4.	<i>Sampling</i>	42
5.	CORRECTIVE ACTIONS	42
5.1.	“CORRECTIVE ACTIONS” DEFINED.....	42
5.2.	REQUIREMENTS FOR TAKING CORRECTIVE ACTION.....	42
5.2.1.	<i>Triggering Conditions</i>	43
5.2.2.	<i>Required Modifications</i>	43
5.3.	CORRECTIVE ACTION REQUIRED BY VIDPNR.....	43
5.4.	CORRECTIVE ACTION REPORT.....	43
5.4.1.	<i>24 Hour Response to Triggering Conditions</i>	43
5.4.2.	<i>7 Day Response to Triggering Conditions</i>	44
5.4.3.	<i>Signature Requirements</i>	44
5.4.4.	<i>Recordkeeping Requirements</i>	44
6.	STAFF TRAINING REQUIREMENTS	44
7.	STORMWATER POLLUTION PREVENTION PLAN (SWPPP)	46
7.1.	GENERAL REQUIREMENTS.....	46
7.1.1.	<i>Requirement to Develop a SWPPP Prior to Submitting Your NOI</i>	46
7.2.	SWPPP CONTENTS.....	46
7.2.1.	<i>Stormwater Team</i>	46
7.2.2.	<i>Nature of Construction Activities</i>	47
7.2.3.	<i>Emergency-Related Projects</i>	47
7.2.4.	<i>Identification of Other Site Operators</i>	47
7.2.5.	<i>Sequence and Estimated Dates of Construction Activities</i>	47
7.2.6.	<i>Site Map</i>	48
7.2.7.	<i>Construction Site Pollutants</i>	49
7.2.8.	<i>Non-Stormwater Discharges</i>	50
7.2.9.	<i>Buffer Documentation</i>	50
7.2.10.	<i>Description of Stormwater Control Measures</i>	50
7.2.11.	<i>Pollution Prevention Procedures</i>	52
7.2.12.	<i>Procedures for Inspection, Maintenance, and Corrective Action</i>	52
7.2.13.	<i>Staff Training</i>	53
7.2.14.	<i>Documentation of Compliance with Other Federal Requirements</i>	53
7.2.15.	<i>SWPPP Certification</i>	54
7.2.16.	<i>Post-Authorization Additions to the SWPPP</i>	54
7.3.	ON-SITE AVAILABILITY OF YOUR SWPPP.....	54
7.4.	REQUIRED SWPPP MODIFICATION.....	55
7.4.1.	<i>List of Conditions Requiring SWPPP Modification</i>	55
7.4.2.	<i>Deadlines for SWPPP Modifications</i>	55
7.4.3.	<i>SWPPP Modification Records</i>	56
7.4.4.	<i>Certification Requirements</i>	56
7.4.5.	<i>Required Notice to Other Operators</i>	56
8.	HOW TO TERMINATE COVERAGE	56
8.1.	MINIMUM INFORMATION REQUIRED IN NOT.....	56
8.1.1.	<i>TPDES Permit Tracking Number</i>	56
8.1.2.	<i>Termination Basis</i>	56
8.1.3.	<i>Contact Information</i>	56
8.1.4.	<i>Project Name and Address</i>	56
8.1.5.	<i>Signature and Certification</i>	56
8.2.	CONDITIONS FOR TERMINATING PERMIT COVERAGE.....	56
8.2.1.	<i>Completion of Earth-Disturbing Activities</i>	57
8.2.2.	<i>Transfer of Site Control / Change of Operator</i>	57
8.2.3.	<i>Transfer to Alternate Permitting</i>	57
8.3.	HOW TO SUBMIT YOUR NOT.....	57
8.4.	DEADLINE FOR SUBMITTING NOTS.....	58
8.5.	EFFECTIVE DATE OF TERMINATION OF COVERAGE.....	58

APPENDIX A - DEFINITIONS AND ACRONYMS..... 59

APPENDIX B - SMALL CONSTRUCTION WAIVERS AND INSTRUCTIONS 72

APPENDIX C - ENDANGERED SPECIES ACT REQUIREMENTS 77

APPENDIX D – HISTORIC PROPERTY SCREENING PROCESS 86

APPENDIX E - LIST OF CLASS A WATERS 91

APPENDIX F – BUFFER GUIDANCE. 92

APPENDIX G – 2-YEAR, 24-HOUR STORM FREQUENCIES 113

APPENDIX H - STANDARD PERMIT CONDITIONS 114

APPENDIX J - NOTICE OF INTENT (NOI) FORM AND INSTRUCTIONS..... 128

APPENDIX K - NOTICE OF TERMINATION (NOT) FORM AND INSTRUCTIONS 129

1. HOW TO OBTAIN PERMIT COVERAGE UNDER THE VI CGP

This Virgin Islands Construction General Permit (VI CGP) applies to the entire Territory of the United States Virgin Islands. To be covered under this permit, you must meet the eligibility conditions and follow the requirements for applying for permit coverage in this Part.

1.1. Eligibility Conditions Required of all Projects.

Only those projects that meet all of the following eligibility conditions may be covered under this permit:

- A. You are an “operator” of the construction project for which discharges will be covered under this permit;

Note: For the purposes of this permit, an “operator” is any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).

Subcontractors generally are not considered operators for the purposes of this permit.

Note: Where there are multiple operators associated with the same project, all operators are required to obtain permit coverage. The following applies in these situations:

1. If one operator has control over plans and specifications and a different operator has control over activities at the project site, they may divide responsibility for compliance with the terms of this permit as long as they develop a group SWPPP (see Part 7.1.1), which documents which operator has responsibility for each requirement of the permit.
2. If an operator only has operational control over a portion of a larger project (e.g., one of four homebuilders in a subdivision), the operator is responsible for compliance with all applicable effluent limits, terms, and conditions of this permit as it relates to the activities on their portion of the construction site, including protection of endangered species, critical habitat, and historic properties, and implementation of control measures described in the SWPPP in the areas under their control.
3. You must ensure either directly or through coordination with other permittees, that your activities do not render another party’s pollutant discharge controls ineffective.

4. If the operator of a “construction support activity” (see Part 1.3.c) is different than the operator of the main construction site, that operator is also required to obtain permit coverage.

B. Your project:

- i) Will disturb 1 or more acres of land, or will disturb less than 1 acre of land but is part of a common plan of development or sale that will ultimately disturb 1 or more acres of land; or
- ii) Your project’s discharges have been designated by DPNR-DEP as needing a permit under 12 V.I.R.R. 184-45(a)(1)(viii) or 40 CFR 122.26(b)(15)(ii);

C. Discharges from your project are not:

- i) Already covered by a different TPDES permit for the same discharge; or
- ii) In the process of having coverage under a different TPDES permit for the same discharge denied, terminated, or revoked.^{1,2}

D. You are able to demonstrate that you meet one of the criteria listed in Appendix C 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 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; and

E. You have completed the screening process in Appendix D relating to the protection of historic properties and places.

1.2. Eligibility Conditions that Apply Depending on Type of Project.

You must also satisfy, if applicable, the conditions in Parts 1.2.1 through 1.2.4 in order to obtain coverage under this permit.

1.2.1. *Eligibility for Emergency-Related Construction Activities.*

If you are conducting earth-disturbing activities in response to a public emergency (e.g., natural disaster, widespread disruption in essential public services), and the related work requires immediate authorization to avoid

¹ Parts 1.1.C.i and 1.1.C.ii do not include sites currently covered under the previous CGP, which are in the process of obtaining coverage under this permit, and sites covered under this permit, which are transferring coverage to a different operator.

² Notwithstanding a project being made ineligible for coverage under this permit because it falls under the description of Parts 1.1.C.i or 1.1.C.ii, above, DPNR-DEP may waive the applicable requirement after specific review if it determines that coverage under this permit is appropriate.

imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services, you are authorized to discharge on the condition that a complete and accurate NOI is submitted within 30 calendar days after commencing earth-disturbing activities (see Table 1) establishing that you are eligible under this permit. You are also required to provide documentation in your SWPPP to substantiate the occurrence of the public emergency.

1.2.2. Water Quality Standards – Eligibility for New Sources.

If you are a “new source” (as defined in Appendix A), you are not eligible for coverage under this permit for discharges that VIDPNR, prior to authorization under this permit, determines will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard. Where such a determination is made prior to authorization, VIDPNR may notify you that an individual permit application is necessary in accordance with Part 1.4.5. However, VIDPNR may authorize your coverage under this permit after you have included appropriate controls and implementation procedures designed to bring your discharge into compliance with water quality standards. In the absence of information demonstrating otherwise, VIDPNR expects that compliance with the stormwater control requirements of this permit, including the requirements applicable to such discharges in Part 3.2, will result in discharges that will not cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard.

1.2.3. Discharging to Waters with High Water Quality – Eligibility for New Sources.

If you are a “new source” (as defined in Appendix A), you are eligible to discharge to a Class A water only if your discharge will not lower the water quality of the applicable water. In the absence of information demonstrating otherwise, VIDPNR expects that compliance with the stormwater control requirements of this permit, including the requirements applicable to such discharges in Part 3.3.2, will result in discharges that will not lower the water quality of the applicable water. See a list of Class A waters in Appendix E.

Note: Your project will be considered to discharge to Class A water if the first surface water to which you discharge is identified by VIDPNR as a Class A water. For discharges that enter a storm sewer system prior to discharge, the first surface water to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

1.2.4. Use of Cationic Treatment Chemicals.

If you plan to use cationic treatment chemicals (as defined in Appendix A), you are ineligible for coverage under this permit, unless you notify VIDPNR in advance and VIDPNR authorizes coverage under this permit after you have included appropriate controls and implementation procedures designed to

ensure that your use of cationic treatment chemicals will not lead to a violation of water quality standards.

1.3. Types of Discharges Authorized Under the VI CGP.

The following is a list of discharges that are allowed under the permit provided that appropriate stormwater controls are designed, installed, and maintained:

- a. Stormwater discharges, including stormwater runoff, surface runoff and drainage, associated with construction activity under 12 V.I.R.R. § 184-45(b)(1)(ii);
- b. Stormwater discharges designated by VIDPNR as needing a permit under 12 V.I.R.R. § 184-45(a)(1)(viii) or § 122.26(b)(15)(ii);
- c. Stormwater discharges from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:
 - i. The support activity is directly related to the construction site required to have permit coverage for stormwater discharges;
 - ii. The support activity is not a commercial operation, nor does it serve multiple unrelated construction projects;
 - iii. The support activity does not continue to operate beyond the completion of the construction activity at the project it supports; and
 - iv. Stormwater controls are implemented in accordance with Part 2 and, if applicable, Part 3, for discharges from the support activity areas.
- d. The following non-stormwater discharges from your construction activity, provided that, with the exception of water used to control dust and to irrigate areas to be vegetatively stabilized, these discharges are not routed to areas of exposed soil on your site and you comply with any applicable requirements for these discharges in Part 2:
 - i. Discharges from emergency fire-fighting activities;
 - ii. Fire hydrant flushings;
 - iii. Landscape irrigation;
 - iv. Water used to wash vehicles and equipment, provided that there is no discharge of soaps, solvents, or detergents used for such purposes;
 - v. Water used to control dust;
 - vi. Potable water including uncontaminated water line flushings;
 - vii. Routine external building washdown that does not use detergents;
 - viii. Pavement wash waters provided spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents are not used. You are prohibited from directing pavement wash waters directly into any surface water, storm drain inlet, or stormwater conveyance, unless the conveyance is connected to a sediment basin, sediment trap, or similarly effective control;

- ix. Uncontaminated air conditioning or compressor condensate;
 - x. Uncontaminated, non-turbid discharges of ground water or spring water;
 - xi. Foundation or footing drains where flows are not contaminated with process materials such as solvents or contaminated ground water; and
 - xii. Construction dewatering water that has been treated by an appropriate control under Part 2.1.3.4; and
- e. Discharges of stormwater listed above in Parts a, b, and c, or authorized non-stormwater discharges in Part d above, commingled with a discharge authorized by a different TPDES permit and/or a discharge that does not require TPDES permit authorization.

1.4. Submitting Your Notice of Intent (NOI).

To be covered under this permit, you must submit to VIDPNR a complete and accurate NOI prior to commencing construction activities. The NOI certifies to VIDPNR that you are eligible for coverage according to Part 1.1 and 1.2, and provides information on your construction operation and discharge.

Note: All “operators” (as defined in Appendix A) associated with your construction project, who meet the Part 1.1 eligibility requirements, and who elect to seek coverage under this permit, are required to submit an NOI.

Note: There is one exception to the requirement to submit the NOI prior to the commencement of construction activities: for emergency-related projects. For this type of project, the NOI must be submitted within 30 calendar days after the commencement of earth-disturbing activities (see Part 1.4.2).

Note: You must complete the development of a Stormwater Pollution Prevention Plan (SWPPP) consistent with Part 7 prior to submitting your NOI for coverage under this permit.

1.4.1. How to Submit Your NOI.

You are required to fill out VIDPNR’s NOI form specific to this permit, found in Appendix I, and submit the form to the address to one of the following addresses, 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 Mars Hill
Frederiksted, VI 00840

ST. THOMAS & ST. JOHN:

Virgin Islands Department of Planning and Natural Resources
Water Pollution Control Program

ATTN: TPDES Program
8100 Lindberg Bay, Suite #61
Cyril E King Airport, Terminal Building, Second Floor
St. Thomas VI 00802

1.4.2. Deadlines for Submitting Your NOI and Your Official Date of Permit Coverage.

Table 1 provides the deadlines for submitting your NOI and your official start date of permit coverage, which differ depending on when you commence construction activities. The following terms are used in Table 1 to establish NOI deadlines:

- a. New project – a construction project that commences construction activities on or after December 1, 2012.
- b. Existing project – a construction project that commenced construction activities prior to December 1, 2012.
- c. New operator of a new or existing project – an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction project.

Table 1. NOI Submittal Deadlines and Official Start Date for Permit Coverage.

Type of Construction Project	Deadlines for Operators to Submit NOI	Official Start Date for Permit Coverage
New project	<p>You must submit your NOI at least 14 calendar days prior to commencing earth-disturbing activities.</p> <p><u>Exception:</u> If your project qualifies as an “emergency-related project” under Part 1.2.1, you must submit your NOI by no later than 30 calendar days after commencing earth-disturbing activities.</p>	<p>You are considered covered under this permit 14 calendar days after VIDPNR has acknowledged receipt of your NOI, unless VIDPNR notifies you that your authorization has been delayed or denied.</p> <p><u>Exception:</u> If your project qualifies as an “emergency-related project” under Part 1.2.1, you are considered provisionally covered under the terms and conditions of this permit immediately, and fully covered 14 calendar days after VIDPNR has acknowledged receipt of your NOI, unless VIDPNR notifies you that your authorization has been delayed or denied.</p>
Existing project	<p>You must submit your NOI by no later than March 1, 2013.³ However, if you have</p>	<p>You are considered covered under this permit 14 calendar days after VIDPNR has acknowledged receipt of your NOI, unless VIDPNR</p>

³ Existing projects covered under the previous CGP shall have 90 calendar days to submit an NOI with the intent to retain coverage, uninterrupted.

	not previously obtained coverage under a TPDES permit, you must submit your NOI immediately.	notifies you that your authorization has been delayed or denied. ⁴
New operator of a new or existing project	You must submit your NOI at least 14 calendar days before the date the transfer to the new operator will take place.	You are considered covered under this permit 14 calendar days after VIDPNR has acknowledged receipt of your NOI, unless VIDPNR notifies you that your authorization has been delayed or denied.

Note: If you have missed the deadline to submit your NOI, any and all discharges from your construction activities will continue to be unauthorized under the Clean Water Act until they are covered by this or a different TPDES permit. VIDPNR may take enforcement action for any unpermitted discharges that occur between the commencement of earth-disturbing activities and discharge authorization.

Note: Discharges are not authorized if your NOI is incomplete or inaccurate or if you were never eligible for permit coverage.

1.4.3. Your Official End Date of Permit Coverage

Once covered under this permit, your coverage will last until the date that:

- You terminate permit coverage consistent with Part 8; or
- Your discharges are permitted under a different TPDES permit or a reissued or replacement version of this permit after expiring on November 30, 2017; or
- For existing projects that continue after this permit has expired, the deadline has passed for the submission of an NOI for coverage under a reissued or replacement version of this permit and you have failed to submit an NOI by the required deadline.

1.4.4. Continuation of Coverage for Existing Permittees After the Permit Expires.

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedure Act and remain in force and effect for discharges that were covered prior to expiration. If you were granted permit coverage prior to the expiration date, you will automatically remain covered by this permit until the earliest of:

⁴ Note that if you are currently covered under the 2007 VIGSA0000, this coverage continues until your coverage under this permit begins, provided you have submitted an NOI by the deadline.

- Your authorization for coverage under a reissued or replacement version of this permit following your timely submittal of a complete and accurate NOI requesting coverage under the new permit; or

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

- Your submittal of a Notice of Termination; or
- Issuance or denial of an individual permit for the project's discharges; or
- A final permit decision by VIDPNR not to reissue a 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 terminate at the end of this time period.

VIDPNR reserves the right to modify or revoke and reissue this permit under 12 V.I.R.R. § 184-72, 74, and 75, in which case you will be notified of any relevant changes or procedures to which you may be subject.

1.4.5. Procedures for Denial of Coverage.

Following your submittal of a complete and accurate NOI, you may be notified in writing by VIDPNR that you are not covered, and that you must either apply for and/or obtain coverage under an individual TPDES permit or an alternate general TPDES permit. This notification will include a brief statement of the reasons for this decision and will provide application information. Any interested person may request that VIDPNR consider requiring an individual permit under this paragraph.

If you are already a permittee with coverage under this permit, the notice will set a deadline to file the permit application, and will include a statement that on the effective date of the individual TPDES permit or alternate general TPDES permit, as it applies to you, coverage under this general permit will terminate. VIDPNR may grant additional time to submit the application if you request it. If you are covered under this permit and fail to submit an individual TPDES permit application or an NOI for an alternate general TPDES permit as required by VIDPNR, then the applicability of this permit to you is terminated at the end of the day specified by VIDPNR as the deadline for application submittal. VIDPNR may take appropriate enforcement action for any unpermitted discharge. If you submit a timely permit application, then when an individual TPDES permit is issued to you or you are provided with coverage under an alternate general TPDES permit, your coverage under this permit is terminated on the effective date of the individual permit or date of coverage under the alternate general permit.

1.5. Requirement to Post a Notice of Your Permit Coverage.

You must post a sign or other notice conspicuously at a safe, publicly accessible location in close proximity to the project site. At a minimum, the notice must include the TPDES Permit tracking number and a contact name and phone number for obtaining additional project information. The notice must be located so that it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way.

2. EFFLUENT LIMITATIONS APPLICABLE TO ALL DISCHARGES FROM CONSTRUCTION SITES.

You are required to comply with the following effluent limitations in this Part for discharges from your site and/or from construction support activities (see Part 1.3.c).

Note: If your project is an “existing project” (see Part 1.4.2.b) or if you are a “new operator of an existing project” (see Part 1.4.2.c), and it is infeasible for you to comply with a specific requirement in this Part because (1) the requirement was not part of the permit you were previously covered under (i.e., the 2007 VI CGP), and (2) because you are prevented from compliance due to the nature or location of earth disturbances that commenced prior to December 1, 2012, or because you are unable to comply with the requirement due to the manner in which stormwater controls have already been installed or were already designed prior to December 1, 2012, you are required to document this fact in your SWPPP and are waived from complying with that requirement. This flexibility applies only to the requirements in Parts 2.1, and 2.3.3 through 2.3.5 (except for Parts 2.3.3.1, 2.3.3.2b, 2.3.3.3c.i, and 2.3.3.4). This only applies to those portions of your site that have already commenced earth-disturbing activities or where stormwater controls implemented in compliance with the previous permit have already been installed.

Part 2 includes the following types of requirements:

- Erosion and Sediment Control Requirements (Part 2.1)
- Stabilization Requirements (Part 2.2)
- Pollution Prevention Requirements (Part 2.3)

2.1. Erosion and Sediment Control Requirements.

You must design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants from earth-disturbing activities. To meet this requirement, you must comply with the following provisions.

2.1.1. General Requirements Applicable to All Construction Sites.

2.1.1.1 Area of Disturbance. You are required to minimize the amount of soil exposed during construction activities. You are also subject to

the deadlines for temporarily and/or permanently stabilizing exposed portions of your site pursuant to Part 2.2.

2.1.1.2 Design Requirements.

- a. You must account for the following factors in designing your stormwater controls:
 - i. The expected amount, frequency, intensity, and duration of precipitation;
 - ii. The nature of stormwater runoff and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. If any stormwater flow will be channelized at your site, you must design stormwater controls to control both peak flowrates and total stormwater volume to minimize erosion at outlets and to minimize downstream channel and streambank erosion; and
 - iii. The range of soil particle sizes expected to be present on the site.
- b. You must direct discharges from your stormwater controls to vegetated areas of your site to increase sediment removal and maximize stormwater infiltration, including any natural buffers established under Part 2.1.2.1, unless infeasible. Use velocity dissipation devices if necessary to prevent erosion when directing stormwater to vegetated areas.

2.1.1.3 Installation Requirements.

- a. **Complete installation of stormwater controls by the time each phase of earth-disturbance has begun, unless infeasible.** By the time earth-disturbing activities in any given portion of your site have begun, unless infeasible, you must install and make operational any downgradient sediment controls (e.g., buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other land-disturbing activities.

Note: Where it is infeasible to install stormwater controls prior to the initial earth disturbance, it is VIDPNR's expectation that it will be a rare circumstance that will prevent the operator from installing such controls immediately following the initial earth disturbance.

Following the installation of these initial controls, all other stormwater controls planned for this portion of your site and

described in your SWPPP must be installed and made operational as soon as conditions on the site allow.

Note: The requirement to install stormwater controls prior to earth-disturbance for each phase of the project does not apply to the earth disturbance associated with the actual installation of these controls.

- b. **Use good engineering practices and follow manufacturer's specifications.** You must install all stormwater controls in accordance with good engineering practices, including applicable design specifications.

Note: Design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect good engineering practice and must be explained in your SWPPP.

For the purposes of this permit, VIDPNR considers “good engineering practices” and “applicable design specifications” to mean being able to meet the minimum requirements found in the most recent version of the Virgin Islands Environmental Protection Handbook (VIEPH), unless the manufacturer's specifications are more stringent, in which case you must follow the more stringent design and installation requirements.

2.1.1.4 Maintenance Requirements.

- a. You must ensure that all erosion and sediment controls required in this Part remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.
- b. You must inspect all erosion and sediment controls in accordance with the applicable requirements in Part 4.1, and document your findings in accordance with Part 4.1.7. If you find a problem (e.g., erosion and sediment controls need to be replaced, repaired, or maintained), you must make the necessary repairs or modifications in accordance with the following schedule:
 - i. Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.
 - ii. When installation of a new erosion or sediment control or a significant repair is needed, you must install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of

discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, you must document in your records why it is infeasible to complete the installation or repair within the 7-day timeframe and document your schedule for installing the stormwater control(s) and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the stormwater controls or procedures documented in your SWPPP, you must modify your SWPPP accordingly within 7 calendar days of completing this work.

2.1.2. Erosion and Sediment Control Requirements Applicable to All Sites.

2.1.2.1 Provide Natural Buffers or Equivalent Sediment Controls. (These requirements only apply when a surface water is located within 50 feet of your project's earth disturbances).

Note: VIDPNR does not consider stormwater control features (e.g., stormwater conveyance channels, storm drain inlets, sediment basins) to constitute "surface waters" for the purposes of triggering the requirement to comply with this Part.

Note: Areas that you do not own or that are otherwise outside your operational control may be considered areas of undisturbed natural buffer for purposes of compliance with this part.

You must ensure that any discharges to surface waters through the area between the disturbed portions of the property and any surface waters located within 50 feet of your site are treated by an area of undisturbed natural buffer and/or additional erosion and sediment controls in order to achieve a reduction in sediment load equivalent to that achieved by a 50-foot natural buffer. Refer to Appendix F (Buffer Guidance) for information to assist you in complying with this requirement, and to Part 2.1.2.1e for exceptions to this requirement.

a. **Compliance Alternatives.** You can comply with this requirement in one of the following ways:

i. Provide and maintain a 50-foot undisturbed natural buffer; or

Note: If your earth disturbances are located 50 feet or further from a surface water, then you have complied with this alternative.

ii. Provide and maintain an undisturbed natural buffer that is less than 50 feet and is supplemented by additional erosion and sediment controls, which in combination achieves the sediment load reduction equivalent to a 50-foot undisturbed natural buffer; or

- iii. If it is infeasible to provide and maintain an undisturbed natural buffer of any size, you must implement erosion and sediment controls that achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer.

Note: For the compliance alternatives in Parts 2.1.2.1a.i and 2.1.2.1a.ii, you are not required to enhance the quality of the vegetation that already exists in the buffer, or provide vegetation if none exists (e.g., arid and semi-arid areas). You only need to retain and protect from disturbance the natural buffer that existed prior to the commencement of construction. Any preexisting structures or impervious surfaces are allowed in the natural buffer provided you retain and protect from disturbance the natural buffer area outside the preexisting disturbance. Similarly, for alternatives 2.1.2.1a.ii and 2.1.2.1a.iii, you are required to implement and maintain sediment controls that achieve the sediment load reduction equivalent to the undisturbed natural buffer that existed on the site prior to the commencement of construction. In determining equivalent sediment load reductions, you may consider naturally non-vegetated areas and prior disturbances. See Appendix F for a discussion of how to determine equivalent reductions.

You must document the compliance alternative you have selected in your SWPPP, and comply with the applicable additional requirements described in Parts 2.1.2.1b and 2.1.2.1c below.

The compliance alternative selected above must be maintained throughout the duration of permit coverage, except that you may select a different compliance alternative during your period of permit coverage, in which case you must modify your SWPPP to reflect this change.

- b. **Additional Requirements for the Compliance Alternatives in Parts 2.1.2.1a.i and 2.1.2.1a.ii.** If you choose either of the compliance alternatives in Parts 2.1.2.1a.i or 2.1.2.1a.ii above, throughout your period of coverage under this permit, you must comply with the following additional requirements:
 - i. Ensure that all discharges from the area of earth disturbance to the natural buffer are first treated by the site's erosion and sediment controls, and use velocity dissipation devices if necessary to prevent erosion caused by stormwater within the buffer;
 - ii. Document in your SWPPP the natural buffer width retained on the property, and show the buffer boundary on your site plan; and

- iii. Delineate, and clearly mark off, with flags, tape, or other similar marking device all natural buffer areas.
- c. **Additional Requirements for the Compliance Alternatives in Parts 2.1.2.1a.ii and 2.1.2.1a.iii.** If you choose either of the compliance alternatives in Parts 2.1.2.1a.ii and 2.1.2.1a.iii, you must document in your SWPPP the erosion and sediment control(s) you will use to achieve an equivalent sediment reduction, and any information you relied upon to demonstrate the equivalency.
 - d. **Additional Requirement for the Compliance Alternative in Part 2.1.2.1a.iii.** If you choose the compliance alternative in Part 2.1.2.1a.iii, you must also include in your SWPPP a description of why it is infeasible for you to provide and maintain an undisturbed natural buffer of any size.
 - e. **Exceptions.**
 - i. If there is no discharge of stormwater to surface waters through the area between your site and any surface waters located within 50 feet of your site, you are not required to comply with the requirements in this Part. This includes situations where you have implemented control measures, such as a berm or other barrier that will prevent such discharges.
 - ii. Where no natural buffer exists due to preexisting development disturbances (e.g., structures, impervious surfaces) that occurred prior to the initiation of planning for the current development of the site, you are not required to comply with the requirements in this Part, unless you will remove portions of the preexisting development. Where some natural buffer exists but portions of the area within 50 feet of the surface water are occupied by preexisting development disturbances, you are required to comply with the requirements in this Part. For the purposes of calculating the sediment load reduction for either Part 2.1.2.1a.ii or 2.1.2.1a.iii above, you are not expected to compensate for the reduction in buffer function from the area covered by these preexisting disturbances. See Appendix F for further information on how to comply with the compliance alternatives in Part 2.1.2.1a.ii or 2.1.2.1a.iii above.

If during your project, you will disturb any portion of these preexisting disturbances, the area disturbed will be deducted from the area treated as natural buffer.

- iii. For “linear construction projects” (see Appendix A), you are not required to comply with the requirements in this Part if site constraints (e.g., limited right-of-way) prevent you from meeting any of the compliance alternatives in Part 2.1.2.1a, provided that, to the extent practicable, you limit disturbances within 50 feet of the surface water and/or you provide supplemental erosion and sediment controls to treat stormwater discharges from earth disturbances within 50 feet of the surface water. You must also document in your SWPPP your rationale as to why it is infeasible for you to comply with the requirements in Part 2.1.2.1a, and describe any buffer width retained and/or supplemental erosion and sediment controls installed.
- iv. For “small residential lot” construction (i.e., a lot being developed for residential purposes that will disturb less than 1 acre of land, but is part of a larger residential project that will ultimately disturb greater than or equal to 1 acre), you have the option of complying with the requirements in Appendix F (Part F.2.3).
- v. The following disturbances within 50 feet of a surface water are exempt from the requirements in this Part:
 - Construction approved under a CWA Section 404 permit; or
 - Construction of a water-dependent structure or water access area (e.g., pier, boat ramp, trail).

You must document in your SWPPP if any of the above disturbances will occur within the buffer area on your site.

2.1.2.2 *Install Perimeter Controls.*

- a. **Installation Requirements:** You must install sediment controls along those perimeter areas of your site that will receive stormwater from earth-disturbing activities.⁵

For linear projects with rights-of-way that restrict or prevent the use of such perimeter controls, you must maximize the use of these controls where practicable and document in your SWPPP why it is impracticable in other areas of the project.

⁵ Examples of perimeter controls include, but are not limited to, filter berms, silt fences, and temporary diversion dikes.

- b. **Maintenance Requirements:** You must remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control.

2.1.2.3 *Minimize Sediment Track-Out.* You must minimize the track-out of sediment onto off-site streets, other paved areas, and sidewalks from vehicles exiting your construction site. To comply with this requirement, you must:

- a. Restrict vehicle use to properly designated exit points;
- b. Use appropriate stabilization techniques⁶ at all points that exit onto paved roads so that sediment removal occurs prior to vehicle exit;
- c. Where necessary, use additional controls⁷ to remove sediment from vehicle tires prior to exit; and
- d. Where sediment has been tracked-out from your site onto the surface of off-site streets, other paved areas, and sidewalks, you must remove the deposited sediment by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs on a non-work day. You must remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. You are prohibited from hosing or sweeping tracked-out sediment into any stormwater conveyance (unless it is connected to a sediment basin, sediment trap, or similarly effective control), storm drain inlet, or surface water.

Note: VIDPNR recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after you have implemented sediment removal practices. Such “staining” is not a violation of Part 2.1.2.3.

2.1.2.4 *Control Discharges from Stockpiled Sediment or Soil.* For any stockpiles or land clearing debris composed, in whole or in part, of sediment or soil, you must comply with the following requirements:

Note: For the purposes of this permit, sediment or soil stockpiles are defined as the storage for multiple days of soil or other sediment material to be used in the construction project.

⁶ Examples of appropriate stabilization techniques include the use of aggregate stone with an underlying geotextile or non-woven filter fabric, or turf mats.

⁷ Examples of additional controls to remove sediment from vehicle tires include, but are not limited to, wheel washing, rumble strips, and rattle plates.

- a. Locate the piles outside of any natural buffers established under Part 2.1.2.1a and physically separated from other stormwater controls implemented in accordance with Part 2.1;
- b. Protect from contact with stormwater (including run-on) using a temporary perimeter sediment barrier;⁸
- c. Where practicable, provide cover or appropriate temporary stabilization to avoid direct contact with precipitation or to minimize sediment discharge;
- d. Do not hose down or sweep soil or sediment accumulated on pavement or other impervious surfaces into any stormwater conveyance (unless connected to a sediment basin, sediment trap, or similarly effective control), storm drain inlet, or surface water; and
- e. Unless infeasible, contain and securely protect from wind.

2.1.2.5 *Minimize Dust.* In order to avoid pollutants from being discharged into surface waters, to the extent feasible, you must minimize the generation of dust through the appropriate application of water or other dust suppression techniques.

2.1.2.6 *Minimize the Disturbance of Steep Slopes.* You must minimize the disturbance of “steep slopes” (see definition in Appendix A).

Note: The permit does not prevent or prohibit disturbance on steep slopes. For some projects, disturbance on steep slopes may be necessary for construction (e.g., a road cut in mountainous terrain). If a disturbance to steep slopes is required for the project, VIDPNR would recognize that it is not economically achievable to avoid the disturbance to steep slopes. However, in cases where steep slope disturbances are required, minimizing the disturbances to steep slopes consistent with this requirement can be accomplished through the implementation of a number of standard erosion and sediment control practices, such as by phasing disturbances to these areas and using stabilization practices designed to be used on steep grades.

2.1.2.7 *Preserve Topsoil.* You must preserve native topsoil on your site, unless infeasible.

Note: Some projects may be designed to be highly impervious after construction, and therefore little or no vegetation is intended to remain. In these cases, preserving topsoil at the site would not be feasible. Some sites may not have space to stockpile topsoil on site for later use, in which case, it may also not be feasible to preserve topsoil.

⁸ Examples include berms, dikes, fiber rolls, silt fences, sandbag, gravel bags, or straw bale.

Note: Stockpiling of topsoil at off-site locations, or transfer of topsoil to other locations, is an example of a practice that is consistent with the requirements in this Part.

2.1.2.8 Minimize Soil Compaction. In areas of your site where final vegetative stabilization will occur or where infiltration practices will be installed, you must either:

- a. **Restrict vehicle/equipment use.** Restrict vehicle and equipment use in these locations to avoid soil compaction; or
- b. **Use soil conditioning techniques.** Prior to seeding or planting areas of exposed soil that have been compacted, use techniques that condition the soils to support vegetative growth, if necessary and feasible.

2.1.2.9 Protect Storm Drain Inlets. If you discharge to any storm drain inlet that carries stormwater flow from your site directly to a surface water (and it is not first directed to a sediment basin, sediment trap, or similarly effective control), and you have authority to access the storm drain inlet, you must:

- a. **Installation Requirements.** Install inlet protection measures⁹ that remove sediment from your discharge prior to entry into the storm drain inlet.

Note: Inlet protection measures can be removed in the event of flood conditions or to prevent erosion.

- b. **Maintenance Requirements.** Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, you must remove the deposited sediment by the end of the same work day in which it is found or by the end of the following work day if removal by the same work day is not feasible.

2.1.3. Requirements Applicable Only to Sites Using These Specific Stormwater Controls.

You are required to comply with the following requirements if you will install any of the following stormwater controls at your site:

2.1.3.1 Constructed Stormwater Conveyance Channels. Design stormwater conveyance channels to avoid unstabilized areas on the site and to

⁹ Examples of inlet protection measures include fabric filters, sandbags, concrete blocks, and gravel barriers.

reduce erosion, unless infeasible. Minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters during discharge conditions through the use of erosion controls and velocity dissipation devices¹⁰ within and along the length of any constructed stormwater conveyance channel, and at any outlet to provide a non-erosive flow velocity.

2.1.3.2 *Sediment Basins*. If you install a sediment basin, you must comply with the following:

a. **Design requirements.**

- i. Provide storage for either (1) the calculated volume of runoff from a 2-year, 24-hour storm (see Appendix G), or (2) 3,600 cubic feet per acre drained;
- ii. When discharging from the sediment basin, utilize outlet structures that withdraw water from the surface in order to minimize the discharge of pollutants, unless infeasible;

Note: VIDPNR believes that the circumstances in which it is infeasible to design outlet structures in this manner are rare. If you have determined that it is infeasible to meet this requirement, you must provide documentation in your SWPPP to support your determination.

- iii. Prevent erosion of (1) the sediment basin using stabilization controls (e.g., erosion control blankets), and (2) the inlet and outlet using erosion controls and velocity dissipation devices; and
- iv. Sediment basins must be situated outside of surface waters and any natural buffers established under Part 2.1.2.1a, and must be designed to avoid collecting water from wetlands.

b. **Maintenance requirements.** Keep in effective operating condition and remove accumulated sediment to maintain at least ½ of the design capacity of the sediment basin at all times.

2.1.3.3 *Use of Treatment Chemicals*. If you are using polymers, flocculants, or other treatment chemicals at your site, you must comply with the following minimum requirements:

a. **Use conventional erosion and sediment controls prior to and after the application of treatment chemicals.** Use conventional erosion and sediment controls prior to chemical addition to

¹⁰ Examples of velocity dissipation devices include check dams, sediment traps, riprap, or grouted riprap at outlets.

ensure effective treatment. Chemicals may only be applied where treated stormwater is directed to a sediment control (e.g., sediment basin, perimeter control) prior to discharge.

- b. **Select appropriate treatment chemicals.** Chemicals must be selected that are appropriately suited to the types of soils likely to be exposed during construction and discharged to locations where chemicals will be applied, and to the expected turbidity, pH, and flow rate of stormwater flowing into the chemical treatment system or area.
- c. **Minimize discharge risk from stored chemicals.** Store all treatment chemicals in leak-proof containers that are kept under storm-resistant cover and surrounded by secondary containment structures (e.g., spill berms, decks, spill containment pallets), or provide equivalent measures, designed and maintained to minimize the potential discharge of treatment chemicals in stormwater or by any other means (e.g., storing chemicals in covered area or having a spill kit available on site).
- d. **Comply with other relevant federal or territorial requirements.** Comply with other (i.e. non-TPDES related) relevant federal or territorial requirements affecting the use of treatment chemicals.
- e. **Use chemicals in accordance with good engineering practices and specifications of the chemical provider/supplier.** You must also use treatment chemicals and chemical treatment systems in accordance with good engineering practices, and with dosing specifications and sediment removal design specifications provided by the provider/supplier of the applicable chemicals, or document specific departures from these practices or specifications and how they reflect good engineering practice.
- f. **Ensure proper training.** Ensure that all persons who handle and use treatment chemicals at the construction site are provided with appropriate, product-specific training. Among other things, the training must cover proper dosing requirements.
- g. **Comply with additional requirements for the approved use of cationic chemicals.** If you have been authorized to use cationic chemicals at your site pursuant to Part 1.2.4, and the authorization is conditioned on your compliance with additional requirements necessary to ensure that the use of such chemicals will not cause an exceedance of water quality standards, you are required to comply with all such requirements.

- h. **Provide proper SWPPP documentation.** You must include documentation in your SWPPP consistent with Parts 7.2.6.9 and 7.2.10.2 on the specific chemicals and chemical treatment systems you will use, and how you will comply with the requirements in this Part.

2.1.3.4 *Dewatering Practices.* You are prohibited from discharging ground water or accumulated stormwater that is removed from excavations, trenches, foundations, vaults, or other similar points of accumulation, unless such waters are first effectively managed by appropriate controls.¹¹ Uncontaminated, non-turbid dewatering water can be discharged without being routed to a control.

You must also meet the following requirements for dewatering activities:

a. **Discharge requirements.**

- i. Do not discharge visible floating solids or foam;
- ii. Use an oil-water separator or suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if dewatering water is found to contain these materials;
- iii. To the extent feasible, utilize vegetated, upland areas of the site to infiltrate dewatering water before discharge. In no case will surface waters be considered part of the treatment area;
- iv. At all points where dewatering water is discharged, comply with the velocity dissipation requirements of Part 2.1.3.1;
- v. With backwash water, either haul it away for disposal or return it to the beginning of the treatment process; and
- vi. Replace and clean the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications.

- b. **Treatment chemical restrictions.** If you are using polymers, flocculants, or other treatment chemicals to treat dewatering water, you must comply with the requirements in Parts 2.1.3.3.

¹¹ Examples of appropriate controls include, but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, or filtration systems (e.g., bag or sand filters) that are designed to remove sediment.

2.2. Stabilization Requirements.

You are required to stabilize exposed portions of your site in accordance with the requirements of this Part.

Note: For the purposes of this permit, “exposed portions of your site” means areas of exposed soil that are required to be stabilized. Note that VIDPNR does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left unvegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials).

2.2.1. Deadlines for Initiating and Completing Stabilization.

2.2.1.1 Deadline to Initiate Stabilization. You must initiate soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site.

Note: Earth-disturbing activities have permanently ceased when clearing and excavation within any area of your construction site that will not include permanent structures has been completed.

Note: Earth-disturbing activities have temporarily ceased when clearing, grading, and excavation within any area of the site that will not include permanent structures will not resume (i.e., the land will be idle) for a period of 14 or more calendar days, but such activities will resume in the future.

The 14 calendar day timeframe above begins counting as soon as you know that construction work on a portion of your site will be temporarily ceased. In circumstances where you experience unplanned or unanticipated delays in construction due to circumstances beyond your control (e.g., sudden work stoppage due to unanticipated problems associated with construction labor, funding, or other issues related to the ability to work on the site; weather conditions rendering the site unsuitable for the continuation of construction work) and you do not know at first how long the work stoppage will continue, your requirement to immediately initiate stabilization is triggered as soon as you know with reasonable certainty that work will be stopped for 14 or more additional calendar days. At that point, you must comply with Parts 2.2.1.1 and 2.2.1.2.

Note: For the purposes of this permit, VIDPNR will consider any of the following types of activities to constitute the initiation of stabilization:

1. prepping the soil for vegetative or non-vegetative stabilization;
2. applying mulch or other non-vegetative product to the exposed area;
3. seeding or planting the exposed area;
4. starting any of the activities in #1 – 3 on a portion of the area to be stabilized, but not on the entire area; and
5. finalizing arrangements to have stabilization product fully installed in compliance with the applicable deadline for completing stabilization in Parts 2.2.1.2 and 2.2.1.3.

This list of examples is not exhaustive.

Note: The term “immediately” is used to define the deadline for initiating stabilization measures. In the context of this provision, “immediately” means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.

2.2.1.2 Deadline to Complete Stabilization Activities. As soon as practicable, but no later than 14 calendar days after the initiation of soil stabilization measures consistent with Part 2.2.1.1¹², you are required to have completed:

- a. For vegetative stabilization, all activities¹³ necessary to initially seed or plant the area to be stabilized; and/or
- b. For non-vegetative stabilization, the installation or application of all such non-vegetative measures.

2.2.1.3 Exceptions to the Deadlines for Initiating and Completing Stabilization.

- a. **Deadlines for projects that are affected by circumstances beyond the control of the permittee that delay the initiation and/or completion of vegetative stabilization as required in Parts 2.2.1.1 and/or 2.2.1.2.** If you are unable to meet the deadlines in Parts 2.2.1.1 and/or 2.2.1.2 due to circumstances beyond your control¹⁴, and you are using vegetative cover for temporary or permanent stabilization, you may comply with the following stabilization deadlines instead:
 - i. Immediately initiate, and within 14 calendar days complete, the installation of temporary non-vegetative stabilization measures to prevent erosion;
 - ii. Complete all soil conditioning, seeding, watering or irrigation installation, mulching, and other required activities related to the planting and initial establishment of vegetation as soon as conditions or circumstances allow it on your site; and

¹² VIDPNR may determine, based on an inspection carried out under Part 4.2 and corrective actions required under Part 5.3, that the level of sediment discharge on the site makes it necessary to require a faster schedule for completing stabilization. For instance, if sediment discharges from an area of exposed soil that is required to be stabilized are compromising the performance of existing stormwater controls, VIDPNR may require stabilization to correct this problem.

¹³ For example, such activities might include, but are not limited to, soil conditioning, application of seed or sod, planting of seedlings or other vegetation, application of fertilizer, and, as deemed appropriate, watering.

¹⁴ Examples include problems with the supply of seed stock or with the availability of specialized equipment, unsuitability of soil conditions due to excessive precipitation and/or flooding.

Note: You are required to have stabilized the exposed portions of your site consistent with Part 2.2.2 prior to terminating permit coverage under Part 8.2.

iii. Document the circumstances that prevent you from meeting the deadlines required in Parts 2.2.1.1 and/or 2.2.1.2 and the schedule you will follow for initiating and completing stabilization.

b. **Deadlines for sites discharging to sensitive waters.** For any portion of the site that discharges to a sediment or nutrient-impaired water (see Part 3.2) or to a water that is identified by VIDPNR as Class A for antidegradation purposes (see Part 3.3), you are required to complete the stabilization activities specified in Parts 2.2.1.2a and/or 2.2.1.2b within 7 calendar days after the temporary or permanent cessation of earth-disturbing activities.

Note: If you qualify for the deadlines for initiating and completing stabilization in Part 2.2.1.3a, you may comply with the stabilization deadlines in Part 2.2.1.3a for any portion of your site that discharges to a sensitive water.

2.2.2. Criteria for Stabilization.

To be considered adequately stabilized, you must meet the criteria below depending on the type of cover you are using, either vegetative or non-vegetative.

2.2.2.1 Vegetative Stabilization.

a. For all sites, except those located on agricultural lands.

- i. If you are vegetatively stabilizing any exposed portion of your site through the use of seed or planted vegetation, you must provide established uniform vegetation (e.g., evenly distributed without large bare areas), which provides 70 percent or more of the density of coverage that was provided by vegetation prior to commencing earth-disturbing activities. You should avoid the use of invasive species;
- ii. For final stabilization, vegetative cover must be perennial; and
- iii. Immediately after seeding or planting the area to be vegetatively stabilized, to the extent necessary to prevent erosion on the seeded or planted area, you must select, design, and install non-vegetative erosion controls that provide cover (e.g., mulch, rolled erosion control products) to the area while vegetation is becoming established.

- b. **For sites located on land used for agriculture.** Disturbed areas on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction) that are restored to their pre-construction agricultural use are not subject to these final stabilization criteria. Areas disturbed that were not previously used for agricultural activities, and areas that are not being returned to preconstruction agricultural use, must meet the conditions for stabilization in this Part.

2.2.2.2 *Non-Vegetative Stabilization.* If you are using non-vegetative controls to stabilize exposed portions of your site, or if you are using such controls to temporarily protect areas that are being vegetatively stabilized, you must provide effective non-vegetative cover¹⁵ to stabilize any such exposed portions of your site.

2.3. Pollution Prevention Requirements.

You are required to design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants. Consistent with this requirement, you must:

- Eliminate certain pollutant discharges from your site (see Part 2.3.1);
- Properly maintain all pollution prevention controls (see Part 2.3.2); and
- Comply with pollution prevention standards for pollutant-generating activities that occur at your site (see Part 2.3.3).

These requirements apply to all areas of your construction site and any and all support activities covered by this permit consistent with Part 1.3.c.

2.3.1. *Prohibited Discharges.*

You are prohibited from discharging the following from your construction site:

- 2.3.1.1 Wastewater from washout of concrete, unless managed by an appropriate control as described in Part 2.3.3.4;
- 2.3.1.2 Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials, unless managed by an appropriate control as described in Part 2.3.3.4;

¹⁵ For temporary stabilization, examples of temporary non-vegetative stabilization methods include, but are not limited to, hydromulch and erosion control blankets. For final stabilization, examples of permanent non-vegetative stabilization methods include, but are not limited to, riprap, gabions, and geotextiles.

- 2.3.1.3 Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- 2.3.1.4 Soaps, solvents, or detergents used in vehicle and equipment washing; and
- 2.3.1.5 Toxic or hazardous substances from a spill or other release.

2.3.2. *General Maintenance Requirements.*

You must ensure that all pollution prevention controls installed in accordance with this Part remain in effective operating condition and are protected from activities that would reduce their effectiveness. You must inspect all pollutant-generating activities and pollution prevention controls in accordance with your inspection frequency requirements in Parts 4.1.2 or 3.2.2.1 to avoid situations that may result in leaks, spills, and other releases of pollutants in stormwater discharges to receiving waters, and must document your findings in accordance with Part 4.1.7. If you find that controls need to be replaced, repaired, or maintained, you must make the necessary repairs or modifications in accordance with the following:

- 2.3.2.1 Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.
- 2.3.2.2 When installation of a new pollution prevention control or a significant repair is needed, you must install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery. If it is infeasible to complete the installation or repair within 7 calendar days, you must document in your records why it is infeasible to complete the installation or repair within the 7 calendar day timeframe and document your schedule for installing the stormwater control(s) and making it operational as soon as practicable after the 7 calendar day timeframe. Where these actions result in changes to any of the pollution prevention controls or procedures documented in your SWPPP, you must modify your SWPPP accordingly within 7 calendar days of completing this work.

2.3.3. *Pollution Prevention Standards.*

You are required to comply with the pollution prevention standards in this Part if you conduct any of the following activities at your site or at any construction support activity areas covered by this permit (see Part 1.3.c):

- Fueling and maintenance of equipment or vehicles;

- Washing of equipment and vehicles;
- Storage, handling, and disposal of construction materials, products, and wastes; and
- Washing of applicators and containers used for paint, concrete, or other materials.

The pollution prevention standards are as follows:

2.3.3.1 *Fueling and Maintenance of Equipment or Vehicles.* If you conduct fueling and/or maintenance of equipment or vehicles at your site, you must provide an effective means of eliminating the discharge of spilled or leaked chemicals, including fuel, from the area where these activities will take place.¹⁶

To comply with the prohibition in Part 2.3.1.3, you must:

- a. If applicable, comply with the Spill Prevention Control and Countermeasures (SPCC) requirements in 40 CFR 112 and Section 311 of the CWA;
- b. Ensure adequate supplies are available at all times to handle spills, leaks, and disposal of used liquids;
- c. Use drip pans and absorbents under or around leaky vehicles;
- d. Dispose of or recycle oil and oily wastes in accordance with other federal, state, tribal, or local requirements;
- e. Clean up spills or contaminated surfaces immediately, using dry clean up measures where possible, and eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge; and
- f. Do not clean surfaces by hosing the area down.

2.3.3.2 *Washing of Equipment and Vehicles.*

- a. You must provide an effective means of minimizing the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other types of washing;¹⁷ and

¹⁶ Examples of effective controls include, but are not limited to, locating activities away from surface waters and stormwater inlets or conveyances, providing secondary containment (e.g., spill berms, decks, spill containment pallets) and cover where appropriate, and/or having spill kits readily available.

¹⁷ Examples of effective controls include, but are not limited to, locating activities away from surface waters and stormwater inlets or conveyances and directing wash waters to a sediment basin or sediment trap, using filtration devices, such as filter bags or sand filters, or using other similarly effective controls.

- b. To comply with the prohibition in Part 2.3.1.4, for storage of soaps, detergents, or solvents, you must provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these detergents from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas.

2.3.3.3 *Storage, Handling, and Disposal of Construction Products, Materials, and Wastes.* You must minimize the exposure to stormwater of any of the products, materials, or wastes specified below that are present at your site by complying with the requirements in this Part.

Note: These requirements do not apply to those products, materials, or wastes that are not a source of stormwater contamination or that are designed to be exposed to stormwater.

To ensure you meet this requirement, you must:

- a. For building products¹⁸: In storage areas, provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these products from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas.
- b. For pesticides, herbicides, insecticides, fertilizers, and landscape materials:
 - i. In storage areas, provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these chemicals from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas; and
 - ii. Comply with all application and disposal requirements included on the registered pesticide, herbicide, insecticide, and fertilizer label.
- c. For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:
 - i. To comply with the prohibition in Part 2.3.1.3, store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent

¹⁸ Some examples of building products that are typically stored at construction sites include, but are not limited to, asphalt sealants, copper flashing, roofing materials, adhesives, concrete admixtures.

- these containers from coming into contact with rainwater, or
- (2) a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., spill kits), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and
- ii. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.
- d. For hazardous or toxic waste¹⁹:
- i. Separate hazardous or toxic waste from construction and domestic waste;
 - ii. Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal or territorial requirements;
 - iii. Store all containers that will be stored outside within appropriately-sized secondary containment (e.g., spill berms, decks, spill containment pallets) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., storing chemicals in covered area or having a spill kit available on site);
 - iv. Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with federal and territorial requirements; and
 - v. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.
- e. For construction and domestic waste²⁰: Provide waste containers (e.g., dumpster or trash receptacle) of sufficient size and number

¹⁹ Examples of hazardous or toxic waste that may be present at construction sites include, but are not limited to, paints, solvents, petroleum-based products, wood preservatives, additives, curing compounds, acids.

to contain construction and domestic wastes. In addition, you must:

- (1) On work days, clean up and dispose of waste in designated waste containers; and
- (2) Clean up immediately if containers overflow.

f. For sanitary waste: Position portable toilets so that they are secure and will not be tipped or knocked over.

2.3.3.4 *Washing of Applicators and Containers used for Paint, Concrete, or Other Materials.* To comply with the prohibition in Parts 2.3.1.1 and 2.3.1.2, you must provide an effective means of eliminating the discharge of water from the washout and cleanout of stucco, paint, concrete, form release oils, curing compounds, and other construction materials. To comply with this requirement, you must:

- a. Direct all washwater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation;
- b. Handle washout or cleanout wastes as follows:
 - i. Do not dump liquid wastes in storm sewers;
 - ii. Dispose of liquid wastes in accordance with applicable requirements in Part 2.3.3.3; and
 - iii. Remove and dispose of hardened concrete waste consistent with your handling of other construction wastes in Part 2.3.3.3; and
- c. Locate any washout or cleanout activities as far away as possible from surface waters and stormwater inlets or conveyances, and, to the extent practicable, designate areas to be used for these activities and conduct such activities only in these areas.

2.3.4. *Emergency Spill Notification.*

You are prohibited from discharging toxic or hazardous substances from a spill or other release, consistent with Part 2.3.1.5. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period, you must notify VIDPNR at the phone contact in Part 1.4.1 and the National Response Center (NRC) at (800) 424-8802 as soon as you have knowledge of the

²⁰ Examples of construction and domestic waste include, but are not limited to, packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, styrofoam, concrete, and other trash or building materials.

discharge. You must also, within 7 calendar days of knowledge of the release, provide a description of the release, the circumstances leading to the release, and the date of the release.

2.3.5. Fertilizer Discharge Restrictions.

You are required to minimize discharges of fertilizers containing nitrogen or phosphorus.

To meet this requirement, you must comply with the following requirements:

- 2.3.5.1 Apply at a rate and in amounts consistent with manufacturer's specifications, or document departures from the manufacturer specifications where appropriate in Part 7.2.7.3 of the SWPPP;
- 2.3.5.2 Apply at the appropriate time of year for your location, and preferably timed to coincide as closely as possible to the period of maximum vegetation uptake and growth;
- 2.3.5.3 Avoid applying before heavy rains that could cause excess nutrients to be discharged;
- 2.3.5.4 Never apply to stormwater conveyance channels with flowing water; and
- 2.3.5.5 Follow all other federal and territorial requirements regarding fertilizer application.

3. WATER QUALITY-BASED EFFLUENT LIMITATIONS.

3.1. General Effluent Limitation to Meet Applicable Water Quality Standards

Your discharge must be controlled as necessary to meet applicable water quality standards.

In the absence of information demonstrating otherwise, VIDPNR expects that compliance with the conditions in this permit will result in stormwater discharges being controlled as necessary to meet applicable water quality standards. If at any time you become aware, or VIDPNR determines, that your discharge is not being controlled as necessary to meet applicable water quality standards, you must take corrective action as required in Part 5.2.1, and document the corrective actions as required in Part 5.2.2 and Part 5.4.

VIDPNR will also impose additional water quality-based limitations on a site-specific basis, or require you to obtain coverage under an individual permit, if information in your NOI or from other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards. This

includes situations where additional controls are necessary to comply with a wasteload allocation in a VIDPNR established or approved TMDL.

3.2. Discharge Limitations for Impaired Waters

If you discharge to a surface water that is impaired for (1) sediment or a sediment-related parameter, such as total suspended solids (TSS) or turbidity, and/or (2) nutrients, including impairments for nitrogen and/or phosphorus, you are required to comply with the requirements in Part 3.2.2.

Note: For the purposes of this Part, “impaired waters” are waters identified as impaired on the appropriate CWA Section 303(d) list, or waters with a VIDPNR-approved or established TMDL. Your construction site will be considered to discharge to an impaired water if the first surface water to which you discharge is identified 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). For discharges that enter a storm sewer system prior to discharge, the first surface water to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

If you discharge to an impaired water that is impaired for a parameter other than a sediment-related parameter or nutrients, VIDPNR will inform you if any additional limits or controls are necessary for your discharge to be controlled as necessary to meet water quality standards, including for it to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL, or if coverage under an individual permit is necessary in accordance with Part 1.4.5.

If during your coverage under a previous permit, you were required to install and maintain stormwater controls specifically to meet the assumptions and requirements of a VIDPNR-approved or established TMDL (for any parameter) or to otherwise control your discharge to meet water quality standards, you must continue to implement such controls as part of this permit.

3.2.1. Identify If You Discharge To An Impaired Water.

If you discharge to an impaired water, you must provide the following information in your NOI:

- A list of all impaired waters to which you discharge;
- The pollutant(s) for which the surface water is impaired; and
- Whether a TMDL has been approved or established for the waters to which you discharge.

3.2.2. Requirements for Discharges to Sediment or Nutrient-Impaired Waters.

If you discharge to a surface water that is impaired for (1) sediment or a sediment-related parameter (e.g., total suspended solids (TSS) or turbidity)

and/or (2) nutrients (e.g., nitrogen and/or phosphorus), including impaired waters for which a TMDL has been approved or established for the impairment, you are required to comply with the following stormwater control requirements, which supplement the requirements applicable to your site in other corresponding parts of the permit.

3.2.2.1 Frequency of Site Inspection. You must conduct inspections at the frequency specified in Part 4.1.3.

3.2.2.2 Deadline to Complete Stabilization. You must comply with the deadlines for completing site stabilization as specified in Part 2.2.1.3b.

VIDPNR will also impose additional water quality-based limitations on a site-specific basis, or require you to obtain coverage under an individual permit, if it is determined that the controls in this Part will not be sufficient to control discharges consistent with the assumptions and requirements of an applicable wasteload allocation of an approved or established TMDL or to prevent the site from contributing to the impairment.

3.3. Discharges to Waters Identified as Class A.

3.3.1. Identify if You Discharge to a Class A.

If you discharge to a water identified by VIDPNR as Class A, you must provide on your NOI a list of waters identified as Class A to which you discharge.

Note: For the purposes of this permit, you are considered to discharge to a Class A water if the first surface water to which you discharge is identified by VIDPNR as Class A under 12 V.I.R.R. §186-2. For discharges that enter a storm sewer system prior to discharge, the surface water to which you discharge is the first surface water that receives the stormwater discharge from the storm sewer system.

3.3.2. Requirements for New Projects Discharging to Class A waters.

For new projects, if you will discharge to a Class A water, you are required to comply with the requirements in Parts 4.1.3 (inspection frequencies) and 2.2.1.3b (stabilization deadlines). In addition, on a case-by-case basis, VIDPNR may notify operators of such new projects or operators of existing projects with increased discharges that additional analyses, stormwater controls, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary in accordance with Part 1.4.5.

4. INSPECTIONS.

4.1. Site Inspections

4.1.1. *Person(s) Responsible for Inspecting Site.*

The person(s) inspecting your site may be a person on your staff or a third party you hire to conduct such inspections. You are responsible for ensuring that the person who conducts inspections is a “qualified person.”

Note: A “qualified person” is a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact stormwater quality, and the skills to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of this permit.

4.1.2. *Frequency of Inspections.*

At a minimum, you must conduct a site inspection in accordance with one of the two schedules listed below, unless you are subject to Part 4.1.3 or Part 4.1.4:

4.1.2.1 At least once every 7 calendar days; or

4.1.2.2 Once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on your site, you must either keep a properly maintained rain gauge on your site, or obtain the storm event information from a weather station that is representative of your location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, you must record the total rainfall measured for that day in accordance with Part 4.1.7.1d.

Note: Inspections are only required during the project’s normal working hours.

Note: You are required to specify in your SWPPP which schedule you will be following.

Note: “Within 24 hours of the occurrence of a storm event” means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if you have elected to inspect bi-weekly in accordance with Part 4.1.2.2 and there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

4.1.3. *Increase in Inspection Frequency for Sites Discharging to Sensitive Waters.*

For any portion of the site that discharges to a sediment or nutrient-impaired water (see Part 3.2) or to a water that is identified by VIDPNR as Class A for antidegradation purposes (see Part 3.3), instead of the inspection frequency specified in Part 4.1.2, you must conduct inspections in accordance with the following inspection frequencies:

4.1.3.1 Once every 7 calendar days; and

4.1.3.2 Within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on your site, you must either keep a properly maintained rain gauge on your site, or obtain the storm event information from a weather station that is representative of your location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, you must record the total rainfall measured for that day in accordance with Part 4.1.7.1d.

Note: Inspections are only required during the project's normal working hours.

Note: "Within 24 hours of the occurrence of a storm event" means that you are required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if there is a storm event at your site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, you are required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

Note: If you qualify for any of the reduced inspection frequencies in Part 4.1.4, you may conduct inspections in accordance with Part 4.1.4 for any portion of your site that discharges to a sensitive water.

4.1.4. Reductions in Inspection Frequency.

Your inspection frequency may be reduced as follows:

4.1.4.1 *For Stabilized Areas.* You may reduce the frequency of inspections to once per month in any area of your site where the stabilization steps in Parts 2.2.1.2a and 2.2.1.2b have been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately increases to that required in Parts 4.1.2 or 4.1.3, if applicable. You must document the beginning and ending dates of this period in your records.

4.1.5. Areas that Need to Be Inspected. During your site inspection, you must at a minimum inspect the following areas of your site:

4.1.5.1 All areas that have been cleared, graded, or excavated and that have not yet completed stabilization consistent with Part 2.2;

4.1.5.2 All stormwater controls (including pollution prevention measures) installed at the site to comply with this permit;

4.1.5.3 Material, waste, borrow, or equipment storage and maintenance areas that are covered by this permit;

- 4.1.5.4 All areas where stormwater typically flows within the site, including drainageways designed to divert, convey, and/or treat stormwater;
- 4.1.5.5 All points of discharge from the site; and
- 4.1.5.6 All locations where stabilization measures have been implemented.

You are not required to inspect areas that, at the time of the inspection, are considered unsafe to your inspection personnel.

4.1.6. Requirements for Inspections. During your site inspection, you must at a minimum:

- 4.1.6.1 Check whether all erosion and sediment controls and pollution prevention controls are installed, appear to be operational, and are working as intended to minimize pollutant discharges. Determine if any controls need to be replaced, repaired, or maintained in accordance with Parts 2.1.1.4 and 2.3.2;
- 4.1.6.2 Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site;
- 4.1.6.3 Identify any locations where new or modified stormwater controls are necessary to meet the requirements of Parts 2 and/or 3;
- 4.1.6.4 At points of discharge and, if applicable, the banks of any surface waters flowing within your property boundaries or immediately adjacent to your property, check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to your discharge; and
- 4.1.6.5 Identify any and all incidents of noncompliance observed.
- 4.1.6.6 If a discharge is occurring during your inspection, you are required to:
 - a. Identify all points of the property from which there is a discharge;
 - b. Observe and document the visual quality of the discharge, and take note of the characteristics of the stormwater discharge, including color, odor, floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollutants; and
 - c. Document whether your stormwater controls are operating effectively, and describe any such controls that are clearly not operating as intended or are in need of maintenance.

4.1.6.7 Based on the results of your inspection, initiate corrective action under Part 5.

4.1.7. Inspection Report.

4.1.7.1 **Requirement to Complete Inspection Report.** You must complete an inspection report within 24 hours of completing any site inspection. Each inspection report must include the following:

- a. The inspection date;
- b. Names and titles of personnel making the inspection;
- c. A summary of your inspection findings, covering at a minimum the observations you made in accordance with Part 4.1.6;
- d. If you are inspecting your site at the frequency specified in Part 4.1.2.2, Part 4.1.3, or Part 4.1.4.2, and you conducted an inspection because of rainfall measuring 0.25 inches or greater, you must include the applicable rain gauge or weather station readings that triggered the inspection; and
- e. If you have determined that it is unsafe to inspect a portion of your site, you must describe the reason you found it to be unsafe and specify the locations that this condition applied to.

4.1.7.2 **Signature Requirements.** Each inspection report must be signed in accordance with Appendix H, Section 11 of this permit.

4.1.7.3 **Recordkeeping Requirements.** You are required to keep a current, copy of all inspection reports at the site or at an easily accessible location, so that it can be made available at the time of an onsite inspection or upon request by VIDPNR.

For purposes of this permit, your inspection reports may be kept electronically if the records are:

- a. In a format that can be read in a similar manner as a paper record;
- b. Legally dependable with no less evidentiary value than their paper equivalent; and
- c. Accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

Note: See Appendix H, Section 11.D for requirements relating to electronic signature of these documents.

All inspection reports completed for this Part must be retained for at least 3 years from the date that your permit coverage expires or is terminated.

4.2. Inspections by VIDPNR.

You must allow VIDPNR, or an authorized representative of the VIDPNR, to conduct the following activities at reasonable times:

- 4.2.1. *Site Entry.*** Enter onto areas of your site, including any construction support activity areas covered by this permit (see Part 1.3.c), and onto locations where records are kept under the conditions of this permit;
- 4.2.2. *Record Access.*** Access and copy any records that must be kept under the conditions of this permit;
- 4.2.3. *Site Inspection.*** Inspect your construction site, including any construction support activity areas covered by this permit (see Part 1.3.c) and any stormwater controls installed and maintained at the site; and
- 4.2.4. *Sampling.*** Sample or monitor for the purpose of ensuring compliance.

5. CORRECTIVE ACTIONS.

5.1. “Corrective Actions” Defined.

Corrective actions are actions you take in compliance with this Part to:

- Repair, modify, or replace any stormwater control used at the site;
- Clean up and properly dispose of spills, releases, or other deposits; or
- Remedy a permit violation.

5.2. Requirements for Taking Corrective Action.

You must complete the following corrective actions in accordance with the deadlines specified in this Part. In all circumstances, you must immediately take all reasonable steps to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational, including cleaning up any contaminated surfaces so that the material will not discharge in subsequent storm events.

Note: In this context, the term “immediately” requires construction operators to, on the same day a condition requiring corrective action is found, take all reasonable steps to minimize

or prevent the discharge of pollutants until a permanent solution is installed and made operational. However, if the problem is identified at a time in the work day when it is too late to initiate corrective action, the initiation of corrective action must begin on the following work day.

5.2.1. Triggering Conditions. For any of the following conditions on your site, you must install a new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery. If it is infeasible to complete the installation or repair within 7 calendar days, you must document in your records why it is infeasible to complete the installation or repair within the 7 calendar day timeframe and document your schedule for installing the stormwater control(s) and making it operational as soon as practicable after the 7-day timeframe.

5.2.1.1 A required stormwater control was never installed, was installed incorrectly, or not in accordance with the requirements in Parts 2 and/or 3; or

5.2.1.2 You become aware that the stormwater controls you have installed and are maintaining are not effective enough for the discharge to meet applicable water quality standards or applicable requirements in Part 3.1. In this case, you must notify VIDPNR by the end of the next work day; or

5.2.1.3 One of the prohibited discharges in Part 2.3.1 is occurring or has occurred.

5.2.2. Required Modifications. Where your corrective actions result in changes to any of the stormwater controls or procedures documented in your SWPPP, you must modify your SWPPP accordingly within 7 calendar days of completing corrective action work.

5.3. Corrective Action Required by VIDPNR.

You must comply with any corrective actions required by VIDPNR as a result of permit violations found during an inspection carried out under Part 4.2.

5.4. Corrective Action Report.

For each corrective action taken in accordance with this Part, you must complete a corrective action report, which includes the applicable information in Parts 5.4.1 and 5.4.2. Note that these reports must be maintained in your records but do not need to be provided to VIDPNR except upon request.

5.4.1. 24 Hour Response to Triggering Conditions. Within 24 hours of discovering the occurrence of one of the triggering conditions in Part 5.2.1 at your site, you must complete a report of the following:

5.4.1.1 Which condition was identified at your site;

5.4.1.2 The nature of the condition identified; and

5.4.1.3 The date and time of the condition identified and how it was identified.

5.4.2. 7 Day Response to Triggering Conditions. Within 7 calendar days of discovering the occurrence of one of the triggering conditions in Part 5.2.1 at your site, you must complete a report of the following:

5.4.2.1 Any follow-up actions taken to review the design, installation, and maintenance of stormwater controls, including the dates such actions occurred;

5.4.2.2 A summary of stormwater control modifications taken or to be taken, including a schedule of activities necessary to implement changes, and the date the modifications are completed or expected to be completed; and

5.4.2.3 Notice of whether SWPPP modifications are required as a result of the condition identified or corrective action.

5.4.3. Signature Requirements. Each corrective action report must be signed and certified in accordance with Appendix H, Section 11 of this permit.

5.4.4. Recordkeeping Requirements. You are required to keep a current copy of all corrective action reports at the site or at an easily accessible location, so that it can be made available at the time of an onsite inspection or upon request by VIDPNR. For purposes of this permit, your corrective action reports may be kept electronically if the records are:

5.4.4.1 In a format that can be read in a similar manner as a paper record;

5.4.4.2 Legally dependable with no less evidentiary value than their paper equivalent; and

5.4.4.3 Accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

Note: See Appendix H, Section I.11.D for requirements relating to electronic signature of these documents.

All corrective action reports completed for this Part must be retained for at least 3 years from the date that your permit coverage expires or is terminated.

6. STAFF TRAINING REQUIREMENTS.

Prior to the commencement of earth-disturbing activities or pollutant-generating activities, whichever occurs first, you must ensure that the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:

- Personnel who are responsible for the design, installation, maintenance, and/or
- repair of stormwater controls (including pollution prevention measures);
- Personnel responsible for the application and storage of treatment chemicals (if applicable);
- Personnel who are responsible for conducting inspections as required in Part 4.1.1; and
- Personnel who are responsible for taking corrective actions as required in Part 5.

Notes: (1) If the person requiring training is a new employee, who starts after you commence earth-disturbing or pollutant-generating activities, you must ensure that this person has the proper understanding as required above prior to assuming particular responsibilities related to compliance with this permit.

(2) For emergency-related construction activities, the requirement to train personnel prior to commencement of earth-disturbing activities does not apply, however, such personnel must have the required training prior to NOI submission.

You are responsible for ensuring that all activities on the site comply with the requirements of this permit. You are not required to provide or document formal training for subcontractors or other outside service providers, but you must ensure that such personnel understand any requirements of the permit that may be affected by the work they are subcontracted to perform.

At a minimum, personnel must be trained to understand the following if related to the scope of their job duties (e.g., only personnel responsible for conducting inspections need to understand how to conduct inspections):

- The location of all stormwater controls on the site required by this permit, and how they are to be maintained;
- The proper procedures to follow with respect to the permit's pollution prevention requirements; and
- When and how to conduct inspections, record applicable findings, and take corrective actions.

7. STORMWATER POLLUTION PREVENTION PLAN (SWPPP).

7.1. General Requirements.

7.1.1. Requirement to Develop a SWPPP Prior to Submitting Your NOI.

All operators associated with a construction project to be covered under this permit must develop a SWPPP.

Note: You have the option of developing a group SWPPP where you are one of several operators who will be engaged in construction activities at your site. For instance, if both the owner and the general contractor of the construction site are permitted, the owner may be the party responsible for SWPPP development, and the general contractor can choose to use this same SWPPP, as long as the SWPPP addresses the general contractor's scope of construction work and obligations under this permit.

You are required to develop your site's SWPPP prior to submitting your NOI. At a minimum, your SWPPP must include the information required in Part 7.2 and as specified in other parts of the permit.²¹ You must also update the SWPPP as required in Part 7.4.

Note: If your project is an "existing project" (see Part 1.4.2.b) or if you are a new operator of an existing project" (see Part 1.4.2.c), and it is infeasible for you to comply with a specific requirement in this Part or in Parts 2.1, and 2.3.3 through 2.3.5 (except for Parts 2.3.3.1, 2.3.3.2b, 2.3.3.3c.i, and 2.3.3.4) because (1) the provision was not part of the permit you were previously covered under (i.e., the 2007 VIGSA0000), and (2) because you are prevented from compliance due to the nature or location of earth disturbances that commenced prior to December 1, 2012, or because you are unable to comply with the requirement due to the manner in which stormwater controls have already been installed or were already designed prior to December 1, 2012, you are required to include documentation of the reasons why it is infeasible for you to meet the specific requirement, and then you may be waived from complying with this requirement. You must include a separate justification why it is infeasible for you to meet each of the applicable requirements.

If you prepared a SWPPP for coverage under a previous version of this TPDES permit, you must review and update your SWPPP to ensure that this permit's requirements are addressed prior to submitting your NOI.

7.2. SWPPP Contents.

Your SWPPP must include the information found in this Part, at a minimum.

7.2.1. Stormwater Team.

²¹ The SWPPP does not establish the effluent limits that apply to your site's discharges; these limits are established in this permit in Parts 2 and 3.

Each operator, or group of multiple operators, must assemble a “stormwater team,” which is responsible for overseeing the development of the SWPPP, any later modifications to it, and for compliance with the requirements in this permit.

The SWPPP must identify the personnel (by name or position) that are part of the stormwater team, as well as their individual responsibilities. Each member of the stormwater team must have ready access to an electronic or paper copy of applicable portions of this permit, the most updated copy of your SWPPP, and other relevant documents or information that must be kept with the SWPPP.

7.2.2. Nature of Construction Activities.

The SWPPP must describe the nature of your construction activities, including the size of the property (in acres) and the total area expected to be disturbed by the construction activities (in acres), construction support activity areas covered by this permit (see Part 1.3.c), and the maximum area expected to be disturbed at any one time.

7.2.3. Emergency-Related Projects.

If you are conducting earth-disturbing activities in response to a public emergency (see Part 1.2), you must document the cause of the public emergency (e.g., natural disaster, extreme flooding conditions, etc.), information substantiating its occurrence (e.g., territorial disaster declaration or similar declaration), and a description of the construction necessary to reestablish effected public services.

7.2.4. Identification of Other Site Operators.

The SWPPP must include a list of all other operators who will be engaged in construction activities at your site, and the areas of the site over which each operator has control.

7.2.5. Sequence and Estimated Dates of Construction Activities.

The SWPPP must include a description of the intended sequence of construction activities, including a schedule of the estimated start dates and the duration of the activity, for the following activities:

- 7.2.5.1 Installation of stormwater control measures, and when they will be made operational, including an explanation of how the sequence and schedule for installation of stormwater control measures complies with Part 2.1.1.3a and of any departures from manufacturer specifications pursuant to Part 2.1.1.3b;

- 7.2.5.2 Commencement and duration of earth-disturbing activities, including clearing and grubbing, mass grading, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization;
- 7.2.5.3 Cessation, temporarily or permanently, of construction activities on the site, or in designated portions of the site;
- 7.2.5.4 Final or temporary stabilization of areas of exposed soil. The dates for stabilization must reflect the applicable deadlines to which you are subject in Part 2.2.1; and
- 7.2.5.5 Removal of temporary stormwater conveyances/channels and other stormwater control measures, removal of construction equipment and vehicles, and cessation of any pollutant-generating activities.

Note: If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of construction activities is not meant to “lock in” the operator to meeting these projections. When departures from initial projections are necessary, this should be documented in the SWPPP itself or in associated records, as appropriate.

7.2.6. Site Map.

The SWPPP must include a legible site map, or series of maps, showing the following features of your project:

Note: Included in the project site are any construction support activities covered by this permit (see Part 1.3.c).

- 7.2.6.1 Boundaries of the property and of the locations where construction activities will occur, including:
 - a. Locations where earth-disturbing activities will occur, noting any phasing of construction activities;
 - b. Approximate slopes before and after major grading activities. Note areas of steep slopes, as defined in Appendix A;
 - c. Locations where sediment, soil, or other construction materials will be stockpiled;
 - d. Locations of any crossings of surface waters;
 - e. Designated points on the site where vehicles will exit onto paved roads;

- f. Locations of structures and other impervious surfaces upon completion of construction; and
 - g. Locations of construction support activity areas covered by this permit (see Part 1.3.c).
- 7.2.6.2 Locations of all surface waters, including wetlands, that exist within or in the immediate vicinity of the site. Indicate which waterbodies are listed as impaired, and which are identified by VIDPNR as Class A waters;
- 7.2.6.3 The boundary lines of any natural buffers provided consistent with Part 2.1.2.1a;
- 7.2.6.4 Areas of federally-listed or locally-listed critical habitat for federally and locally endangered or threatened species;
- 7.2.6.5 Topography of the site, existing vegetative cover (e.g., forest, pasture, pavement, structures), and drainage pattern(s) of stormwater and authorized non-stormwater flow onto, over, and from the site property before and after major grading activities;
- 7.2.6.6 Stormwater and allowable non-stormwater discharge locations, including:
- a. Locations of any storm drain inlets on the site and in the immediate vicinity of the site; and
- Note: The requirement to show storm drain inlets in the immediate vicinity of the site on your site map only applies to those inlets that are easily identifiable from your site or from a publicly accessible area immediately adjacent to your site.
- b. Locations where stormwater or allowable non-stormwater will be discharged to surface waters (including wetlands) on or near the site.
- 7.2.6.7 Locations of all potential pollutant-generating activities identified in Part 7.2.7;
- 7.2.6.8 Locations of stormwater control measures; and
- 7.2.6.9 Locations where polymers, flocculants, or other treatment chemicals will be used and stored.

7.2.7. Construction Site Pollutants.

The SWPPP must include the following:

7.2.7.1 A list and description of all the pollutant-generating activities²² on your site.

7.2.7.2 For each pollutant-generating activity, an inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers and/or pesticides, paints, solvents, fuels) associated with that activity, which could be exposed to rainfall and could be discharged from your construction site. You must take into account where potential spills and leaks could occur that contribute pollutants to stormwater discharges. You must also document any departures from the manufacturer's specifications for applying fertilizers containing nitrogen and phosphorus, as required in Part 2.3.5.1.

7.2.8. Non-Stormwater Discharges.

The SWPPP must also identify all sources of allowable non-stormwater discharges listed in Part 1.3.d.

7.2.9. Buffer Documentation.

If you are required to comply with Part 2.1.2.1 because a surface water is located within 50 feet of your project's earth disturbances, you must describe which compliance alternative you have selected for your site, and comply with any additional requirements to provide documentation in Part 2.1.2.1.

7.2.10. Description of Stormwater Control Measures.

7.2.10.1 Stormwater Control Measures to be Used During Construction Activity. The SWPPP must describe all stormwater control measures that are or will be installed and maintained at your site to meet the requirements of Part 2. For each stormwater control measure, you must document:

- a. Information on the type of stormwater control measure to be installed and maintained, including design information;
- b. What specific sediment controls will be installed and made operational prior to conducting earth-disturbing activities in any given portion of your site to meet the requirement of Part 2.1.2.2a;
- c. For exit points on your site, document stabilization techniques you will use and any additional controls that are planned to remove sediment prior to vehicle exit consistent with Part 2.1.2.3; and

²² Examples of pollutant-generating activities include, but are not limited to: paving operations; concrete, paint, and stucco washout and waste disposal; solid waste storage and disposal; and dewatering operations.

- d. For linear projects, where you have determined that the use of perimeter controls in portions of the site is impracticable, document why you believe this to be the case (see Part 2.1.2.2a).

7.2.10.2 Use of Treatment Chemicals. If you will use polymers, flocculants, or other treatment chemicals at your site, the SWPPP must include:

- a. A listing of all soil types²³ that are expected to be exposed during construction and that will be discharged to locations where chemicals will be applied. Also include a listing of soil types expected to be found in fill material to be used in these same areas, to the extent you have this information prior to construction.
- b. A listing of all treatment chemicals to be used at the site, and why the selection of these chemicals is suited to the soil characteristics of your site;
- c. If you have been authorized by VIDPNR to use cationic treatment chemicals, include the specific controls and implementation procedures designed to ensure that your use of cationic treatment chemicals will not lead to a violation of water quality standards;
- d. The dosage of all treatment chemicals you will use at the site or the methodology you will use to determine dosage;
- e. Information from any applicable Material Safety Data Sheets (MSDS);
- f. Schematic drawings of any chemically-enhanced stormwater controls or chemical treatment systems to be used for application of the treatment chemicals;
- g. A description of how chemicals will be stored consistent with Part 2.1.3.3b;
- h. References to applicable state or local requirements affecting the use of treatment chemicals, and copies of applicable manufacturer's specifications regarding the use of your specific treatment chemicals and/or chemical treatment systems; and
- i. A description of the training that personnel who handle and apply chemicals have received prior to permit coverage, or will receive prior to use of the treatment chemicals at your site.

²³ Information on soils may be obtained at <http://websoilsurvey.nrcs.usda.gov/app/>.

7.2.10.3 Stabilization Practices. The SWPPP must describe the specific vegetative and/or non-vegetative practices that will be used to comply with the requirements in Part 2.2.

If you will be complying with the stabilization deadlines specified in Part 2.2.1.3a, you must document the circumstances that prevent you from meeting the deadlines specified in Parts 2.2.1.1 and/or 2.2.1.2.

7.2.11. Pollution Prevention Procedures.

7.2.11.1 Spill Prevention and Response Procedures. The SWPPP must describe procedures that you will follow to prevent and respond to spills and leaks consistent with Part 2.3, including:

- a. Procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases. Identify the name or position of the employee(s) responsible for detection and response of spills or leaks; and
- b. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity consistent with Part 2.3.4 and established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302, occurs during a 24-hour period. Contact information must be in locations that are readily accessible and available.

You may also reference the existence of Spill Prevention Control and Countermeasure (SPCC) plans developed for the construction activity under Part 311 of the CWA, or spill control programs otherwise required by a TPDES permit for the construction activity, provided that you keep a copy of that other plan onsite.

Note: Even if you already have an SPCC or other spill prevention plan in existence, your plans will only be considered adequate if they meet all of the requirements of this Part, either as part of your existing plan or supplemented as part of the SWPPP.

7.2.11.2 Waste Management Procedures. The SWPPP must describe procedures for how you will handle and dispose of all wastes generated at your site, including, but not limited to, clearing and demolition debris, sediment removed from the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste.

7.2.12. Procedures for Inspection, Maintenance, and Corrective Action.

The SWPPP must describe the procedures you will follow for maintaining your stormwater control measures, conducting site inspections, and, where necessary, taking corrective actions, in accordance with Part 2.1.1.4, Part 2.3.2, Part 4, and Part 5 of the permit. The following information must also be included in your SWPPP:

7.2.12.1 Personnel responsible for conducting inspections;

7.2.12.2 The inspection schedule you will be following, which is based on whether your site is subject to Part 4.1.2 or Part 4.1.3, and whether your site qualifies for any of the allowances for reduced inspection frequencies in Part 4.1.4. If you will be conducting inspections in accordance with the inspection schedule in Part 4.1.2.2 or Part 4.1.3, the location of the rain gauge on your site or the address of the weather station you will be using to obtain rainfall data; and

7.2.12.3 Any inspection or maintenance checklists or other forms that will be used.

7.2.13. Staff Training.

The SWPPP must include documentation that the required personnel were trained in accordance with Part 6.

7.2.14. Documentation of Compliance with Other Federal Requirements.

7.2.14.1 **Endangered Species Act.** The SWPPP must include documentation supporting your determination with respect to Part 1.1.e and Appendix C.

7.2.14.2 **Historic Properties.** The SWPPP must include documentation required by Appendix D in relation to potential impacts to historic properties.

7.2.14.3 **Safe Drinking Water Act Underground Injection Control (UIC) Requirements for Certain Subsurface Stormwater Controls.** If you are using any of the following stormwater controls at your site, as they are described below, you must document any contact you have had with VIDPNR and your file shall be reviewed by the EPA, as EPA is responsible for implementing the requirements for underground injection wells in the Safe Drinking Water Act and EPA's implementing regulations at 40 CFR Parts 144-147. Such controls would generally be considered Class V UIC wells:

- a. Infiltration trenches (if stormwater is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system);

- b. Commercially manufactured pre-cast or pre-built proprietary subsurface detention vaults, chambers, or other devices designed to capture and infiltrate stormwater flow; and
- c. Drywells, seepage pits, or improved sinkholes (if stormwater is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system).

7.2.15. SWPPP Certification.

You must sign and date your SWPPP in accordance with Appendix H, Section 11.

7.2.16. Post-Authorization Additions to the SWPPP.

Once you are notified of your coverage under this permit, you must include the following documents as part of your SWPPP:

- 7.2.16.1 A copy of your NOI submitted to VIDPNR along with any correspondence exchanged between you and VIDPNR related to coverage under this permit;
- 7.2.16.2 A copy of the coverage letter you receive from VIDPNR stating your coverage is effective and assigning your permit tracking number;
- 7.2.16.3 A copy of this permit (an electronic copy easily available to the stormwater team is also acceptable).

7.3. On-Site Availability of Your SWPPP.

You are required to keep a current copy of your SWPPP at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by (1) VIDPNR or EPA, (2) the operator of a storm sewer system receiving discharges from the site, or (3) representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS).

VIDPNR may provide access to portions of your SWPPP to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the public, but may not be withheld from VIDPNR, USFWS, or NMFS.

Note: Information covered by a claim of confidentiality will be disclosed by VIDPNR only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the CWA. The authorized representatives, including employees of other executive branch agencies, may review CBI during the course of reviewing draft regulations.

If an onsite location is unavailable to keep the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance of your construction site.

7.4. Required SWPPP Modification.

7.4.1. List of Conditions Requiring SWPPP Modification.

You must modify your SWPPP, including the site map(s), in response to any of the following conditions:

- 7.4.1.1 Whenever new operators become active in construction activities on your site, or you make changes to your construction plans, stormwater control measures, pollution prevention measures, or other activities at your site that are no longer accurately reflected in your SWPPP. This includes changes made in response to corrective actions triggered under Part 5. You do not need to modify your SWPPP if the estimated dates in Part 7.2.5 change during the course of construction;
- 7.4.1.2 To reflect areas on your site map where operational control has been transferred (and the date of transfer) since initiating permit coverage;
- 7.4.1.3 If inspections or investigations by site staff, or by territorial or federal officials determine that SWPPP modifications are necessary for compliance with this permit;
- 7.4.1.4 Where VIDPNR determines it is necessary to impose additional requirements on your discharge, the following must be included in your SWPPP:
 - a. A copy of any correspondence describing such requirements; and
 - b. A description of the stormwater control measures that will be used to meet such requirements.
- 7.4.1.5 To reflect any revisions to applicable federal or territorial requirements that affect the stormwater control measures implemented at the site; and
- 7.4.1.6 If applicable, if a change in chemical treatment systems or chemically-enhanced stormwater control is made, including use of a different treatment chemical, different dosage rate, or different area of application.

7.4.2. Deadlines for SWPPP Modifications.

You must complete required revisions to the SWPPP within 7 calendar days following the occurrence of any of the conditions listed in Part 7.4.1.

7.4.3. *SWPPP Modification Records.*

You are required to maintain records showing the dates of all SWPPP modifications. The records must include the name of the person authorizing each change (see Part 7.2.15 above) and a brief summary of all changes.

7.4.4. *Certification Requirements.*

All modifications made to the SWPPP consistent with Part 7.4 must be authorized by a person identified in Appendix H, Section 11.B.

7.4.5. *Required Notice to Other Operators.*

Upon determining that a modification to your SWPPP is required, if there are multiple operators covered under this permit, you must immediately notify any operators who may be impacted by the change to the SWPPP.

8. HOW TO TERMINATE COVERAGE.

Until you terminate coverage under this permit, you are required to comply with all conditions and effluent limitations in the permit. To terminate permit coverage, you must submit to VIDPNR a complete and accurate Notice of Termination (NOT), which certifies that you have met the requirements for terminating in Part 8.

8.1. Minimum Information Required in NOT.

You will be required to provide the following in your NOT:

8.1.1. *TPDES Permit Tracking Number.* TPDES permit tracking number provided by VIDPNR when you received coverage under this permit;

8.1.2. *Termination Basis.* Basis for submission of the NOT (see Part 8.2);

8.1.3. *Contact Information.* Operator contact information;

8.1.4. *Project Name and Address.* Name of project and address (or a description of location if no street address is available); and

8.1.5. *Signature and Certification.* NOT certification.

8.2. Conditions for Terminating Permit Coverage.

You may terminate permit coverage only if one of the following conditions occurs at your site:

8.2.1. Completion of Earth-Disturbing Activities. You have completed all earth-disturbing activities at your site and, if applicable, construction support activities covered by this permit (see Part 1.3.c), and you have met the following requirements:

8.2.1.1 For any areas that (1) were disturbed during construction, (2) are not covered over by permanent structures, and (3) over which you had control during the construction activities, you have met the requirements for final vegetative or non-vegetative stabilization in Part 2.2.2;

8.2.1.2 You have removed and properly disposed of all construction materials, waste and waste handling devices, and have removed all equipment and vehicles that were used during construction, unless intended for long-term use following your termination of permit coverage;

8.2.1.3 You have removed all stormwater controls that were installed and maintained during construction, except those that are intended for long-term use following your termination of permit coverage or those that are biodegradable; and

8.2.1.4 You have removed all potential pollutants and pollutant-generating activities associated with construction, unless needed for long-term use following your termination of permit coverage; or

8.2.2. Transfer of Site Control / Change of Operator. You have transferred control of all areas of the site for which you are responsible under this permit to another operator, and that operator has submitted an NOI and obtained coverage under this permit; or

8.2.3. Transfer to Alternate Permitting. Coverage under an individual or alternative general TPDES permit has been obtained.

8.3. How to Submit Your NOT.

After completing the form in Appendix J, and signing in accordance with Appendix H, Section 11, it must be sent to one of the following addresses, 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 Mars Hill
Frederiksted, VI 00840

ST. THOMAS & ST. JOHN:

Virgin Islands Department of Planning and Natural Resources
Water Pollution Control Program
ATTN: TPDES Program
8100 Lindberg Bay, Suite #61
Cyril E King Airport, Terminal Building, Second Floor
St. Thomas VI 00802

8.4. Deadline for Submitting NOTs.

You must submit your NOT within 30 calendar days after any one of the triggering conditions in Part 8.2 occur.

8.5. 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 VIDPNR (after NOT processing).

Appendix A - Definitions and Acronyms

Definitions

“Action Area” – all areas to be affected directly or indirectly by the 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 Endangered Species Act requirements, the following areas are included in the definition of action area:

- The areas on the construction site where stormwater discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, site development, or other ground disturbance activities occur) and the immediate vicinity. (Example: Where bald eagles nest in a tree that is on or bordering a construction site and could be disturbed by the construction activity or where grading causes stormwater to flow into a small wetland or other habitat that is on the site that contains listed species.)
- The areas where stormwater discharges flow from the construction site to the point of discharge into receiving waters. (Example: Where stormwater 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 stormwater from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where stormwater from construction activities discharges into a stream segment that is known to harbor listed aquatic species.)
- The areas where stormwater controls will be constructed and operated, including any areas where stormwater flows to and from the stormwater controls. (Example: Where a stormwater retention pond would be built.)
- The areas upstream and/or downstream from the stormwater 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.)

“Agricultural Land” - cropland, grassland, rangeland, pasture, and other agricultural land, on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for the production of livestock.

“Antidegradation Policy” or “Antidegradation Requirements” - the water quality standards regulation that requires VIDPNR to establish a three-tiered antidegradation program as described in 12 V.I.R.R. §186.

“Bank” (e.g., stream bank or river bank) – the rising ground bordering the channel of a water of the U.S.

“Bluff” – a steep headland, promontory, riverbank, or cliff.

“Borrow Areas” – the areas where materials are dug for use as fill, either onsite or off-site.

“Bypass” – the intentional diversion of waste streams from any portion of a treatment facility. See 40 CFR 122.41(m)(1)(i).

“Cationic Treatment Chemical” – polymers, flocculants, or other chemicals that contain an overall positive charge. Among other things, they are used to reduce turbidity in stormwater discharges by chemically bonding to the overall negative charge of suspended silts and other soil materials and causing them to bind together and settle out. Common examples of cationic treatment chemicals are chitosan and cationic PAM.

“Commencement of Earth-Disturbing Activities” - the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material).

“Commencement of Pollutant-Generating Activities” – at construction sites (for the purposes of this permit) occurs in any of the following circumstances:

- Clearing, grubbing, grading, and excavation has begun;
- Raw materials related to your construction activity, such as building materials or products, landscape materials, fertilizers, pesticides, herbicides, detergents, fuels, oils, or other chemicals have been placed at your site;
- Use of authorized non-stormwater for washout activities, or dewatering activities, have begun; or
- Any other activity has begun that causes the generation of or the potential generation of pollutants.

“Construction Activities” – earth-disturbing activities, such as the clearing, grading, and excavation of land.

“Construction and Development Effluent Limitations and New Source Performance Standards” (C&D Rule) – as published in 40 CFR §450 is the regulation requiring effluent limitations guidelines (ELG’s) and new source performance standards (NSPS) for controlling the discharge of pollutants from construction sites.

“Construction Site” – the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the

property from where the primary construction activity will take place, or on a different piece of property altogether. The construction site is often a smaller subset of the lot or parcel within which the project is taking place.

“Construction Support Activities” – a construction-related activity that specifically supports the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas.

“Construction Waste” – discarded material (such as packaging materials, scrap construction materials, masonry products, timber, steel, pipe, and electrical cuttings, plastics, and styrofoam).

“Conveyance Channel” – a temporary or permanent waterway designed and installed to safely convey stormwater flow within and out of a construction site.

“Corrective Action” – for the purposes of the permit, any action taken to (1) repair, modify, or replace any stormwater control used at the site; (2) clean up and dispose of spills, releases, or other deposits found on the site; and (3) remedy a permit violation.

“Critical Habitat” – as defined in the USVI Indigenous and Endangered Species Act (IESA) of 1990 and Endangered Species Act at 16 U.S.C. 1531 for a threatened or endangered species, (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

“CWA” – the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.

“Dewatering” – the act of draining rainwater and/or groundwater from building foundations, vaults, and trenches.

“Discharge” – when used without qualification, means the “discharge of a pollutant.”

“Discharge of a Pollutant” – any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,” or any addition of any pollutant or combination of pollutants to the waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This includes additions of pollutants into waters of the United States Virgin Islands from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. See 40 CFR 122.2 and 12 V.I.R.R. §184-2.

“Discharge Point” – for the purposes of this permit, the location where collected and concentrated stormwater flows are discharged from the construction site.

“Discharge-Related Activity” – activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged.

“Discharge to an Impaired Water” – for the purposes of this permit, 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). For discharges that enter a storm sewer system prior to discharge, the water of the USVI to which you discharge is the first water of the USVI that receives the stormwater discharge from the storm sewer system.

“Domestic Waste” – for the purposes of this permit, typical household trash, garbage or rubbish items generated by construction activities.

“Drainageway” – an open linear depression, whether constructed or natural, that functions for the collection and drainage of surface water.

“Earth-Disturbing Activity” or “Land-Disturbing Activity” – actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils.

“Effective Operating Condition” – for the purposes of this permit, a stormwater control is kept in effective operating condition if it has been implemented and maintained in such a manner that it is working as designed to minimize pollutant discharges.

“Effluent Limitations” – for the purposes of this permit, any of the Part 2 or Part 3 requirements.

“Effluent Limitations Guideline” (ELG) – defined in 40 CFR §122.2 as a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

“Eligible” – for the purposes of this permit, refers to stormwater and allowable non-stormwater discharges that are authorized for coverage under this general permit.

“Emergency-Related Project” – a project initiated in response to a public emergency (e.g., natural disaster, disruption in essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services.

“Endangered Species” – 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.

“Excursion” – a measured value that exceeds a specified limit.

“Existing Project” – a construction project that commenced construction activities prior to December 1, 2012.

“Exit Points” – any points of egress from the construction site to be used by vehicles and equipment during construction activities.

“Exposed Soils” – for the purposes of this permit, soils that as a result of earth-disturbing activities are left open to the elements.

“Federal Operator” – an entity that meets the definition of “Operator” in this permit and is either any department, agency or instrumentality of the executive, legislative, and judicial branches of the Federal government of the United States, or another entity, such as a private contractor, performing construction activity for any such department, agency, or instrumentality.

“Final Stabilization” – on areas not covered by permanent structures, either (1) vegetation has been established, or for arid or semi-arid areas, will be established that provides a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the natural background vegetative cover, or (2) non-vegetative stabilization methods have been implemented to provide effective cover for exposed portions of the site.

“Hazardous Materials” or “Hazardous Substances” or “Hazardous or Toxic Waste” – for the purposes of this permit, any liquid, solid, or contained gas that contain properties that are dangerous or potentially harmful to human health or the environment. See also 40 CFR §261.2.

“Historic Property” – as defined in the National Historic Preservation Act regulations means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties.

The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

“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). For discharges that enter a storm sewer system prior to discharge, the first water of the USVI to which you discharge is the waterbody that receives the stormwater discharge from the storm sewer system.

“Impervious Surface” – for the purpose of this permit, any land surface with a low or no capacity for soil infiltration including, but not limited to, pavement, sidewalks, parking areas and driveways, packed gravel or soil, or rooftops.

“Infeasible” – for the purpose of this permit, infeasible means not technologically possible or not economically practicable and achievable in light of best industry practices.

“Install” or “Installation” – when used in connection with stormwater controls, to connect or set in position stormwater controls to make them operational.

“Intermittent (or Seasonal) Stream” – one which flows at certain times of the year when groundwater provides water for stream flow, as well as during and immediately after some precipitation events or snowmelt.

“Jar test” – a test designed to simulate full-scale coagulation/flocculation/sedimentation water treatment processes by taking into account the possible conditions.

“Landward” – positioned or located away from a waterbody, and towards the land.

“Level Spreader” – a temporary stormwater control used to spread stormwater flow uniformly over the ground surface as sheet flow to prevent concentrated, erosive flows from occurring.

“Linear Project” – includes the construction of roads, bridges, conduits, substructures, pipelines, sewer lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area.

“Minimize” – to reduce and/or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices.

“Municipal Separate Storm Sewer System” or “MS4” – defined at 12 V.I.R.R. §184-2 as all separate storm sewers that are defined as “large” or “medium” or “small” municipal separate storm sewer systems pursuant to 40 CFR §122.26(b)(8) as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an

authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR §122.2.

“Native Topsoil” – the uppermost layer of naturally occurring soil for a particular area, and is often rich in organic matter, biological activity, and nutrients.

“Native Vegetation” – the species of plants that have developed for a particular region or ecosystem and are considered endemic to that region or ecosystem.

“Natural Buffer” – for the purposes of this permit, an area of undisturbed natural cover surrounding surface waters within which construction activities are restricted. Natural cover includes the vegetation, exposed rock, or barren ground that exists prior to commencement of earth-disturbing activities.

“Natural Vegetation” – vegetation that occurs spontaneously without regular management, maintenance or species introductions, removals, and that generally has a strong component of native species.

“New Operator of a New or Existing Project” – an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction project.

“New Project” – a construction project that commences construction activities on or after December 1, 2012.

“New Source” – for the purpose of this permit, a construction project that commenced construction activities after December 1, 2012.

“New Source Performance Standards (NSPS)” – for the purposes of this permit, NSPS are technology-based standards that apply to construction sites that are new sources under 40 CFR §450.24.

“Non-Stormwater Discharges” – discharges that do not originate from storm events. They can include, but are not limited to, discharges of process water, air conditioner condensate, non-contact cooling water, vehicle wash water, sanitary wastes, concrete washout water, paint wash water, irrigation water, or pipe testing water.

“Non-Turbid” – a discharge that does not cause or contribute to an exceedence of turbidity-related water quality standards.

“Notice of Intent” (NOI) – the form required for authorization of coverage under the VI Construction General Permit.

“Notice of Termination” (NOT) – the form required for terminating coverage under the Construction General Permit.

“Operational” – for the purpose of this permit, stormwater controls are made “operational” when they have been installed and implemented, are functioning as designed, and are properly maintained.

“Operator” – for the purpose of this permit and in the context of stormwater discharges associated with construction activity, any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).

This definition is provided to inform permittees of VIDPNR’s interpretation of how the regulatory definitions of “owner or operator” and “facility or activity” are applied to discharges of stormwater associated with construction activity.

“Ordinary High Water Mark” – the line on the shore established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, and/or the presence of litter and debris.

“Outfall” – see “Discharge Point.”

“Permitting Authority” – for the purposes of this permit, VIDPNR. However, in cases where a stormwater control is determined to fall under the requirements of the UIC Program, EPA will be considered the permitting authority. See Section 7.2.14.3.

“Point(s) of Discharge” – see “Discharge Point.”

“Point Source” – any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

“Pollutant” – defined at 12 V.I.R.R. §184-2 and 40 CFR §122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge,

chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

“Pollutant-Generating Activities” – at construction sites (for the purposes of this permit), those activities that lead to or could lead to the generation of pollutants, either as a result of earth-disturbance or a related support activity. Some of the types of pollutants that are typically found at construction sites are:

- sediment;
- nutrients;
- heavy metals;
- pesticides and herbicides;
- oil and grease;
- bacteria and viruses;
- trash, debris, and solids;
- treatment polymers; and
- any other toxic chemicals.

“Pollution Prevention Measures” – stormwater controls designed to reduce or eliminate the addition of pollutants to construction site discharges through analysis of pollutant sources, implementation of proper handling/disposal practices, employee education, and other actions.

“Polymers” – for the purposes of this permit, coagulants and flocculants used to control erosion on soil or to enhance the sediment removal capabilities of sediment traps or basins. Common construction site polymers include polyacrylamide (PAM), chitosan, alum, polyaluminum chloride, and gypsum.

“Prohibited Discharges” – discharges that are not allowed under this permit, including:

1. Wastewater from washout of concrete;
2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
4. Soaps or solvents used in vehicle and equipment washing;

5. Toxic or hazardous substances from a spill or other release; and
6. Waste, garbage, floatable debris, construction debris, and sanitary waste from pollutant-generating activities.

“Provisionally Covered Under this Permit” – for the purposes of this permit, VIDPNR provides temporary coverage under this permit for emergency-related projects prior to receipt of a complete and accurate NOI. Discharges from earth-disturbing activities associated with the emergency-related projects are subject to the terms and conditions of the permit during the period of temporary coverage.

“Receiving Water” – “Waters of the United States Virgin Islands” as defined in 12 V.I.R.R. §184-2 into which the regulated stormwater discharges.

“Run-On” – sources of stormwater that drain from land located upslope or upstream from the regulated site in question.

“Semi-Arid Areas” – areas with an average annual rainfall of 10 to 20 inches.

“Site” – for construction activities, the land or water area where earth-disturbing activities take place, including construction support activities.

“Small Construction Activity” – “Storm water discharge associated with small construction activity” as defined at 12 V.I.R.R. §184-2 and 40 CFR §122.26(b)(15) and incorporated here by reference. A small construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than one (1) acre and less than five (5) acres of land or will disturb less than one (1) acre of total land area but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one (1) acre and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site.

“Small Residential Lot” – for the purpose of this permit, a lot being developed for residential purposes that will disturb less than 1 acre of land, but is part of a larger residential project that will ultimately disturb greater than or equal to 1 acre.

“Spill” – for the purpose of this permit, the release of a hazardous or toxic substance from its container or containment.

“Stabilization” – the use of vegetative and/or non-vegetative cover to prevent erosion and sediment loss in areas exposed through the construction process.

“Steep Slopes” – steep slopes are defined as those that are 15 percent or greater in grade.

“Storm Sewer System” – a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) designed or used for collecting or conveying stormwater.

“Stormwater” – stormwater runoff, surface runoff and drainage.

“Stormwater Control Measure” - refers to any stormwater control, BMP, or other method (including narrative effluent limitations) used to prevent or reduce the discharge of pollutants to waters of the United States Virgin Islands.

“Stormwater Controls” – see “Stormwater Control measure.”

“Stormwater Discharge Associated with Construction Activity” – as used in this permit, a discharge of pollutants in stormwater to waters of the United States Virgin Islands from areas where land-disturbing activities (e.g., clearing, grading, or excavation) occur, or where construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck chute washdown, fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants), are located.

“Stormwater Inlet” – a structure placed below grade to conduct water used to collect stormwater runoff for conveyance purposes.

“Stormwater Team” – the group of individuals responsible for oversight of the development and modifications of the SWPPP, and oversight of compliance with the permit requirements. The individuals on the “Stormwater Team” must be identified in the SWPPP.

“Storm Event” – a precipitation event that results in a measurable amount of precipitation.

“Storm Sewer” – a system of pipes (separate from sanitary sewers) that carries stormwater runoff from buildings and land surfaces.

“Subcontractor” – for the purposes of this permit, an individual or company that takes a portion of a contract from the general contractor or from another subcontractor.

“Surface Water” – “Waters of the United States Virgin Islands” as defined in 12 V.I.R.R. §184-2.

“SWPPP” (Stormwater Pollution Prevention Plan) – a site-specific, written document that, among other things: (1) identifies potential sources of stormwater pollution at the construction site; (2) describes stormwater control measures to reduce or eliminate pollutants in stormwater discharges from the construction site; and (3) identifies procedures the operator will implement to comply with the terms and conditions of this general permit.

“Temporary Stabilization” – a condition where exposed soils or disturbed areas are provided a temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final

stabilization can be achieved or until further construction activities take place to re-disturb this area.

“Threatened Species” – defined in the Endangered Species Act at 16 U.S.C. 1531 as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

“Total Maximum Daily Load” or “TMDL” – 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.

“Toxic Waste” – see “Hazardous Materials.”

“Turbidity” – a condition of water quality characterized by the presence of suspended solids and/or organic material.

“Uncontaminated Discharge” – a discharge that does not cause or contribute to an exceedence of applicable water quality standards.

“Upland” - the dry land area above and ‘landward’ of the ordinary high water mark.

“Upset” – Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond your reasonable control. 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 V.I.R.R. §184-2 and 40 CFR 122.41(n)(1).

“Water-Dependent Structures” – structures or facilities that are required to be located directly adjacent to a waterbody or wetland, such as a marina, pier, boat ramp, etc.

“Water Quality Standards” – defined in 12 V.I.R.R. §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.

“Waters of the United States Virgin Islands” – defined in 12 V.I.R.R. §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.

“Wetland” – 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.

“Work day” – for the purposes of this permit, a work day is a calendar day on which construction activities will take place.

Acronyms

C&D – Construction & Development

VI CGP – Virgin Islands Construction General Permit

CFR – Code of Federal Regulations

CWA – Clean Water Act

EPA – United States Environmental Protection Agency

ESA – Endangered Species Act

FWS – United States Fish and Wildlife Service

MS4 – Municipal Separate Storm Sewer System

MSGP – Multi-Sector General Permit

NMFS – United States National Marine Fisheries Service

NOI – Notice of Intent

NOT – Notice of Termination

NRC – National Response Center

NRCS – National Resources Conservation Service

POTW – Publicly Owned Treatment Works

SHPO – State Historic Preservation Office

SPCC – Spill Prevention Control and Countermeasure

SWPPP – Stormwater Pollution Prevention Plan

TMDL – Total Maximum Daily Load

TPDES – Territorial Pollutant Discharge Elimination System

USGS – United States Geological Survey

VIDPNR – Virgin Islands Department of Planning and Natural Resources

WQS – Water Quality Standard

Appendix B - Small Construction Waivers and Instructions

These waivers are only available to stormwater discharges associated with small construction activities (i.e., 1-5 acres). As the operator of a small construction activity, you may be able to qualify for a waiver in lieu of needing to obtain coverage under this general permit based on: (A) a low rainfall erosivity factor, (B) a TMDL analysis, or (C) an equivalent analysis that determines allocations for small construction sites are not needed. Each operator, otherwise needing permit coverage, must notify VIDPNR of its intention for a waiver. It is the responsibility of those individuals wishing to obtain a waiver from coverage under this general permit to submit a complete and accurate waiver certification as described below. Where the operator changes or another is added during the construction project, the new operator must also submit a waiver certification to be waived.

B.1 Rainfall Erosivity Waiver

Under this scenario the small construction project's rainfall erosivity factor calculation ("R" in the Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity. The operator must certify to VIDPNR that construction activity will occur only when the rainfall erosivity factor is less than 5. The period of construction activity begins at initial earth disturbance and ends with final stabilization. Where vegetation will be used for final stabilization, the date of installation of a stabilization practice that will provide interim non-vegetative stabilization can be used for the end of the construction period, provided the operator commits (as a condition of waiver eligibility) to periodically inspect and properly maintain the area until the criteria for final stabilization as defined in the construction general permit have been met. If use of this interim stabilization eligibility condition was relied on to qualify for the waiver, signature on the waiver with its certification statement constitutes acceptance of and commitment to complete the final stabilization process. The operator must submit a waiver certification to VIDPNR prior to commencing construction activities.

Note: The rainfall erosivity factor "R" is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21–64, dated January 1997; United States Department of Agriculture (USDA), Agricultural Research Service.

EPA has developed an online rainfall erosivity calculator to help small construction sites determine potential eligibility for the rainfall erosivity waiver. You can access the calculator from EPA's website at: www.epa.gov/npdes/stormwater/lew. The R factor can easily be calculated by using the construction site latitude/longitude or address and estimated start and end dates of construction. This calculator may also be useful in determining the time periods during which construction activity could be waived from permit coverage. You may find that moving your construction activity by a few weeks or expediting site stabilization will allow you to qualify for the waiver. Use this online calculator or the Construction Rainfall Erosivity Waiver Fact Sheet (www.epa.gov/npdes/pubs/fact3-1.pdf) to assist in determining the R Factor for your small construction site.

Note: The EPA R calculator website references Appendix C from the 2012 EPA CGP. This should be disregarded and USVI applicants should instead refer to Appendix B of the VI CGP (this appendix).

If you are the operator of the construction activity and eligible for a waiver based on low erosivity potential, you can submit a rainfall erosivity waiver and provide the following information on the waiver certification form in order to be waived from permitting requirements:

1. Name, address and telephone number of the construction site operator(s);
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction project or site;
3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;
4. The rainfall erosivity factor calculation that applies to the active construction phase at your project site; and
5. A statement, signed and dated by an authorized representative as provided in Appendix H, Section 11, which certifies that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five.

You can access the waiver certification form from EPA's website at: (http://www.epa.gov/npdes/pubs/construction_waiver_form.pdf). Paper copies of the form must be sent to one of the addresses listed in Part B.4 of this section.

Note: VIDPNR does not use a customized form; the EPA form found at the link above is the approved form to submit when applying for this specific waiver.

Note: If the R factor is 5 or greater, you cannot apply for the rainfall erosivity waiver, and must apply for TPDES permit coverage, unless you qualify for the Water Quality Waiver as described in section B below.

If your small construction project continues beyond the projected completion date given on the waiver certification, you must recalculate the rainfall erosivity factor for the new project duration. If the R factor is below five (5), you must update all applicable information on the waiver certification and retain a copy of the revised waiver as part of your records. The new waiver certification must be submitted prior to the projected completion date listed on the original waiver form to assure your exemption from permitting requirements is uninterrupted. If the new R factor is 5 or above, you must obtain TPDES permit coverage.

B.2 TMDL Waiver

This waiver is available if VIDPNR has established or approved a TMDL that addresses the pollutant(s) of concern for the impaired water and has determined that controls on stormwater discharges from small construction activity are not needed to protect water quality. The pollutant(s) of concern include sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity.

Information on TMDLs that have been established or approved by VIDPNR is available by contacting VIDPNR at the phone number or address given in Part B.4 of this section.

If you are the operator of the construction activity and eligible for a waiver based on compliance with an VIDPNR-established or approved TMDL, you must provide the following information on the Waiver Certification form in order to be waived from permitting requirements:

1. Name, address and telephone number of the construction site operator(s);
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction project or site;
3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;
4. The name of the waterbody(s) that would be receiving stormwater discharges from your construction project;
5. The name and approval date of the TMDL;
6. A statement, signed and dated by an authorized representative as provided in Appendix H, Section 11 that certifies that the construction activity will take place and that the stormwater discharges will occur, within the drainage area addressed by the TMDL.

B.3 Equivalent Analysis Waiver

This waiver is available for non-impaired waters only. The operator can develop an equivalent analysis that determines allocations for his/her small construction site for the pollutant(s) of concern or determines that such allocations are not needed to protect water quality. This waiver requires a small construction operator to develop an equivalent analysis based on existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety.

If you are a construction operator who wants to use this waiver, you must develop your equivalent analysis and provide the following information to be waived from permitting requirements:

1. Name, address and telephone number of the construction site operator(s);
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction project or site;
3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;
4. The name of the waterbody(s) that would be receiving stormwater discharges from your construction project;
5. Your equivalent analysis;
6. A statement, signed and dated by an authorized representative as provided in Appendix H, Section 11, that certifies that the construction activity will take place and that the stormwater discharges will occur, within the drainage area addressed by the equivalent analysis.

B.4 Waiver Deadlines and Submissions

1. Waiver certifications must be submitted prior to commencement of construction activities.
2. If you submit a TMDL or equivalent analysis waiver request, you are not waived until VIDPNR approves your request. As such, you may not commence construction activities until receipt of approval from VIDPNR.
3. Late Notifications: Operators are not prohibited from submitting waiver certifications after initiating clearing, grading, excavation activities, or other construction activities. VIDPNR reserves the right to take enforcement for any unpermitted discharges that occur between the time construction commenced and waiver authorization is granted.

Submittal of a waiver certification is an optional alternative to obtaining permit coverage for discharges of stormwater associated with small construction activity, provided you qualify for the waiver. Any discharge of stormwater associated with small construction activity not covered by either a permit or a waiver may be considered an unpermitted discharge under the Clean Water Act. As mentioned above, VIDPNR reserves the right to take enforcement for any unpermitted discharges that occur between the time construction commenced and either discharge authorization is granted or a complete and accurate waiver certification is submitted.

VIDPNR may notify any operator covered by a waiver that they must apply for a permit. VIDPNR may notify any operator who has been in non-compliance with a waiver that they may no longer use the waiver for future projects. Any member of the public may petition VIDPNR to take action under this provision by submitting written notice along with supporting justification.

Complete and accurate Rainfall Erosivity waiver certifications shall be sent to one of the following addresses, 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 Mars Hill
Frederiksted, VI 00840
Phone: (340) 773-1082

ST. THOMAS & ST. JOHN:

Virgin Islands Department of Planning and Natural Resources
Water Pollution Control Program
ATTN: TPDES Program
8100 Lindberg Bay, Suite #61

Cyril E King Airport, Terminal Building, Second Floor
St. Thomas, VI 00802
Phone: (340) 774-3320

Complete and accurate TMDL or equivalent analysis waiver requests must be sent to the applicable VIDPNR office as well.

Appendix C - Endangered Species Act Requirements

The purpose of this guidance is to assist you in complying with the requirements in Part 1.1.e of the permit requiring you to demonstrate that you meet one of the criteria listed in this appendix with respect to the protection of any and all 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 in order to be eligible for coverage under this permit.

This guidance provides you information on the following:

- **Section C.1:** ESA Eligibility Criteria
- **Section C.2:** Guidance for Determining Which ESA Criteria Applies

C.1 ESA Eligibility Criteria

You must certify in your NOI that you meet one of the eligibility criteria listed below in order to be eligible for coverage under this permit. You must also specify in the NOI the basis for your selection of the applicable eligibility criterion.

Note: (1) Regardless of the criterion selected, you must provide documentation in your SWPPP that is sufficient to support your determination that you satisfy the requirements of the particular criterion. (2) While coordination between you and either the VIDPNR – Division of Fish & Wildlife (F&W) or the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (together, the “Services”) is not necessarily required in all cases, VIDPNR encourages you to coordinate with either or both F&W and the Services and to do so early in the planning process prior to submitting your NOI.

Criterion A. No federally-listed threatened or endangered species or their designated critical habitat(s) are likely to occur in your site’s “action area” as defined in Appendix A of this permit.

Criterion B. The construction site’s discharges and discharge-related activities were already addressed in another operator’s valid certification of eligibility for your action area under eligibility Criterion A, C, D, E, or F and there is no reason to believe that either locally-listed species or locally-designated critical habitat or federally-listed species or federally-designated critical habitat not considered in the prior certification may be present or located in the “action area”. To certify your eligibility under this Criterion, there must be no lapse of TPDES permit coverage in the other operator’s certification. By certifying eligibility under this Criterion, you agree to comply with any effluent limitations or conditions upon which the other operator's certification was based. You must include in your NOI the tracking number from the other operator’s notification of authorization under this permit. If your certification is

based on another operator's certification under Criterion C, you must provide VIDPNR with the relevant supporting information required of existing dischargers in Criterion C in your NOI form.

Criterion C. Either locally-listed species or locally-designated critical habitat(s) or federally-listed threatened or endangered species or their designated critical habitat(s) are likely to occur in or near your site's "action area," and your site's discharges and discharge-related activities are not likely to adversely affect listed threatened or endangered species or critical habitat. This determination may include consideration of any stormwater controls and/or management practices you will adopt to ensure that your discharges and discharge-related activities are not likely to adversely affect listed species and critical habitat. To make this certification, you must include the following in your NOI: 1) any locally-listed species or locally-designated critical habitat or federally listed species and/or designated habitat located in your "action area"; and 2) the distance between your site and the listed species or designated critical habitat (in miles). You must also include a copy of your site map with your NOI.

Criterion D. Coordination between you and F&W or the Services has been concluded. The coordination must have addressed the effects of your site's discharges and discharge-related activities on locally-listed species or locally-designated critical habitat or federally-listed threatened or endangered species and federally-designated critical habitat, and must have resulted in a written concurrence from F&W or the relevant Service(s) that your site's discharges and discharge-related activities are not likely to adversely affect listed species or critical habitat. You must include copies of the correspondence between yourself and F&W or the Services in your SWPPP and your NOI.

Criterion E. Consultation between a Federal Agency and the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service under section 7 of the ESA has been concluded. The consultation must have addressed the effects of the construction site's discharges and discharge-related activities on federally-listed threatened or endangered species and federally-designated critical habitat.

The result of this consultation must be either:

- i. a biological opinion that concludes that the action in question (taking into account the effects of your site's discharges and discharge-related activities) is not likely to jeopardize the continued existence of listed species, nor the destruction or adverse modification of critical habitat; or
- ii. written concurrence from the applicable Service(s) with a finding that the site's discharges and discharge-related activities are not

likely to adversely affect federally-listed species or federally-designated habitat.

You must include copies of the correspondence between yourself and the Services in your SWPPP and your NOI.

Note: While this Criterion requires consultation under section 7 of the ESA, VIDPNR will also require F&W review of locally-listed species or locally-designated critical habitat before final ESA Review approval is granted.

Criterion F. Your construction activities are authorized through the issuance of a permit under section 10 of the ESA, and this authorization addresses the effects of the site's discharges and discharge-related activities on federally-listed species and federally-designated critical habitat. You must include copies of the correspondence between yourself and the Services in your SWPPP and your NOI.

Note: While this Criterion requires consultation under section 10 of the ESA, VIDPNR will also require F&W review of locally-listed species or locally-designated critical habitat before final ESA Review approval is granted.

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. Documentation of these requirements must be kept as part of your SWPPP (see Part 7.2.14.1).

C.2 Guidance for Determining Which Criterion Applies

Part 1.1.5 of the permit requires that you meet one of the six criteria listed above in order to be eligible for coverage under the permit.

You must follow the procedures in Steps 1 through 6 to determine the ESA criterion under which your site is eligible for permit coverage.

C.2.1 Step 1 - Determine if Your Discharges and Discharge-Related Activities Were Already Addressed in Another Operator's Valid Certification that Included Your Action Area.

- **If your discharges and discharge-related activities were already addressed in another operator's valid certification that included your action area** (e.g., a general contractor or developer may have completed and filed an NOI for the entire action area with the necessary ESA certifications (Criterion A, C, D, E, or F)), you may select eligibility Criterion B on your Notice of Intent form.

By certifying eligibility under Criterion B, you must comply with any terms and conditions imposed under the eligibility requirements of

Criterion A, C, D, E, or F to ensure that your discharges and discharge-related activities are protective of listed species and/or critical habitat.

Note: If you are unable to meet these eligibility requirements, then you may either establish eligibility under one of the other criterion, or you may consider applying to VIDPNR for an individual permit.

Under Criterion B, you must provide documentation in your SWPPP of any of these terms and conditions, as well as the other operator's basis for establishing eligibility. You must also provide a description of the basis for your selection of Criterion B on your NOI form, including the eligibility criterion (A, C, D, E, or F) that was certified to by the previous operator, and must provide the Tracking Number from the other operator's notification of authorization under this permit.

If your certification is based on another operator's certification under criterion C, you must provide the documentation required in the NOI for criterion C, namely: 1) what federally listed species and/or designated habitat are located in your "action area"; and 2) what is the distance between your site and the listed species or designated critical habitat (in miles).

- **If discharges and discharge-related activities from your site were not addressed in another operator's valid certification that included your action area**, you must follow the applicable procedures in Steps 2 through 5 below.

C.2.2 Step 2 - Determine if Listed Threatened or Endangered Species or their Designated Critical Habitat(s) are Likely to Occur in your Site's Action Area

You must determine, to the best of your knowledge, whether species listed as either threatened or endangered, or their critical habitat(s) (see definitions of these terms in Appendix A), are located in your site's action area. To make this determination, you should first determine if listed species and/or critical habitat are expected to exist in your Estate. F&W or the local offices of the U.S. Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS) often maintain lists of both locally-listed species or locally-designated critical habitat and federally listed endangered or threatened species either on their internet sites or in their offices. For FWS terrestrial and aquatic species information, you can use FWS' on-line mapping tool, the Information, Planning, and Consultation (IPAC) System, located at <http://www.fws.gov/ipac/>.

Note: To determine the field office that corresponds to your project site, visit <http://www.fws.gov/endangered/regions/index.html> and <http://www.nmfs.noaa.gov/> (under the left tab for "Regions").

In most cases, species and/or critical habitat lists allow you to determine if any such species or habitat exists in your county or township. You can also find

critical habitat designations and associated requirements at 50 CFR Parts 17 and 226. <http://www.access.gpo.gov>.

- **If there are listed species and/or critical habitat in your Estate**, you should contact F&W or the local FWS or NMFS to determine if the listed species are known to exist in your action area and if any critical habitat areas have been designated that overlap your action area.
 - If F&W or the local FWS or NMFS indicates that these species and/or critical habitat could exist in your action area, you must:
 - Do one or more of the following:
 - Conduct visual inspections. This method may be particularly suitable for construction sites that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat, or for construction activities that discharge directly into municipal stormwater collection systems.
 - Conduct a formal biological survey. In some cases, particularly for larger construction sites with extensive stormwater discharges, biological surveys may be an appropriate way to assess whether species are located in the action area and whether there are likely to be adverse effects to such species. Biological surveys are frequently performed by environmental consulting firms. A biological survey may in some cases be useful to conduct in conjunction with Steps Two, Three, or Four of these instructions.
 - If required, conduct an environmental assessment under the National Environmental Policy Act (NEPA). Some construction activities might require review under NEPA for specific reasons, such as federal funding or other federal involvement in the project. Note: Coverage under the VI CGP does not trigger such a review for individual projects/sites. VIDPNR has complied with NEPA in the issuance of the VI CGP.

and

- Follow the instructions in Steps 3 – 5 below, as applicable. Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, meeting the eligibility requirements of this VI CGP may require measures to protect critical habitat that are separate from those to protect listed species.

- **If there are no listed species in your Estate and no critical habitat areas in your action area**, you may check eligibility criterion A on your NOI form. You must also provide a description of the basis for the criterion selected on your NOI form and provide documentation supporting the criterion selected in your SWPPP.

C.2.3 Step 3 - Determine if the Construction Activity's Discharges or Discharge-Related Activities Are Likely to Adversely Affect Listed Threatened or Endangered Species or Designated Critical Habitat

If in Step 2 you determine based on communication with F&W or your local FWS, or NMFS, or other determination, that listed species and/or critical habitat could exist in your action area, you must next assess whether your discharges or discharge-related activities are likely to adversely affect listed threatened or endangered species or designated critical habitat.

Potential adverse effects from discharges and discharge-related activities include:

- *Hydrological.* Stormwater discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of stormwater discharged and the volume and condition of the receiving water. Where a stormwater discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely. Construction activity itself may also alter drainage patterns on a site where construction occurs that can impact listed species or critical habitat.
- *Habitat.* Excavation, site development, grading, and other surface disturbance activities from construction activities, including the installation or placement of stormwater controls, may adversely affect listed species or their habitat. Stormwater may drain or inundate listed species habitat.
- *Toxicity.* In some cases, pollutants in stormwater may have toxic effects on listed species.

The scope of effects to consider will vary with each site. If you are having difficulty determining whether your project is likely to adversely affect listed species or critical habitat, or F&W or one of the Services has already raised concerns to you, you should contact the appropriate office of F&W or the FWS, or NMFS for assistance.

- **If adverse effects to listed threatened or endangered species or their critical habitat are not likely**, then you may select eligibility criterion C on the NOI form. You must provide the following specific information on your NOI form: 1) what locally listed species and/or

designated habitat and/or federally listed species and/or designated habitat are located in your “action area”; and 2) what is the distance between your site and the listed species or designated critical habitat (in miles). You must also provide a copy of your site map with your NOI.

- **If adverse effects to listed threatened or endangered species or their critical habitat are likely**, you must follow Step 4 below.

C.2.4 Step 4 - Determine if Measures Can Be Implemented to Avoid Adverse Effects

If you make a preliminary determination in Step 3 that adverse effects from your construction activity’s discharges or discharge-related activities are likely to occur, you can still receive coverage under eligibility criterion C of the VI CGP if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for VI CGP coverage.

These measures may involve relatively simple changes to construction activities such as re-routing a stormwater discharge to bypass an area where species are located, relocating stormwater controls, or by modifying the “footprint” of the construction activity. 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 F&W, the FWS and/or NMFS, in which case you would not be eligible for coverage under eligibility criterion C, but may instead be eligible for coverage under eligibility criterion D, E, or F (described in more detail in Step 5).

- **If you are able to install and implement appropriate measures to avoid the likelihood of adverse effects**, then you may check eligibility criterion C on the NOI form. The measures you adopt to avoid or eliminate adverse affects must be implemented for the duration of the construction project and your coverage under the VI CGP. You must also provide a description of the basis for the criterion selected, and the following specific information on your NOI form: 1) what locally listed species and/or designated habitat and/or federally listed species and/or designated habitat are located in your “action area”; and 2) what is the distance between your site and the listed species or designated critical habitat (in miles).
- **If you cannot ascertain which measures to implement to avoid the likelihood of adverse effects**, you must follow the procedures in Step 5.

C.2.5 Step 5 - Determine if the Eligibility Requirements of Criterion D, E, or F Can Be Met

If in Step 4 you cannot ascertain which measures to implement to avoid the likelihood of adverse effects, you must contact F&W, the FWS and/or NMFS. You may still be eligible for VI CGP coverage if any likely adverse effects can be addressed through meeting criterion D, E, or F.

- **Criterion D:** You have coordinated with F&W or the Services and have addressed the effects of your site's discharges on locally-listed species or locally-designated critical habitat or federally-listed threatened or endangered species or their designated critical habitat, which resulted in a written concurrence from F&W or the relevant Service(s) that your site's discharges are not likely to adversely affect listed species or critical habitat.

If you have met the requirements of criterion D, you may select eligibility criterion D on the NOI form. You must provide a description of the basis for the criterion selected on your NOI form and must include copies of the correspondence between you and the applicable Service in your SWPPP.

- **Criterion E:** Formal or informal ESA section 7 consultation is performed with F&W and/or the FWS and/or NMFS and that consultation addresses the effects of your discharges and discharge-related activities on locally-listed and threatened species and designated critical habitat and/or federally-listed and threatened species and designated critical habitat. In order to be eligible for coverage under this permit, consultation must result in a "no jeopardy opinion" or a written concurrence by F&W and/or the Service(s) on a finding that your stormwater discharge(s) and stormwater discharge-related activities are not likely to adversely affect listed species or critical habitat (For more information on consultation, see 50 CFR §402). If you receive a "jeopardy opinion," you may continue to work with F&W and/or the FWS and/or NMFS and VIDPNR to modify your project so that it will not jeopardize listed species or designated critical habitat.

Note that most consultations are accomplished through informal consultation. When conducting informal ESA section 7 consultation as a non-federal representative, you must follow the procedures found in 50 CFR Part 402 of the ESA regulations. You must notify F&W and/or FWS and/or NMFS of your intention and agreement to conduct consultation as a non-federal representative. Consultation may occur in the context of another federal action at the construction site (e.g., where ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project or where a NEPA review is performed for the project that incorporates a section 7 consultation). Any terms and conditions developed through consultations to protect listed species and critical habitat must be incorporated into the SWPPP. As noted above, operators may, if they wish, initiate consultation with the Services at Step Four.

Whether ESA section 7 consultation must be performed with either F&W and/or the FWS, or NMFS or both Services depends on the listed species that may be affected by the operator's activity. In general,

NMFS has jurisdiction over marine, estuarine, and anadromous species. Operators should also be aware that while formal section 7 consultation provides protection from incidental takings liability, informal consultation does not.

If you have met the requirements of criterion E, you may select eligibility criterion E on the NOI form. You must provide a description of the basis for the criterion selected on your NOI form and must include copies of the correspondence between yourself and F&W and/or the Services in your SWPPP.

- **Criterion F:** Your construction activities are authorized through the issuance of a permit under section 10 of the ESA, and that authorization addresses the effects of your discharge(s) and discharge-related activities on locally-listed and threatened species and designated critical habitat and/or federally-listed and threatened species and designated critical habitat. You must follow FWS and/or NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR §17.22(b)(1) for FWS and §222.22 for NMFS). Application instructions for section 10 permits for FWS and NMFS can be obtained by accessing the FWS and NMFS websites (<http://www.fws.gov> and <http://www.nmfs.noaa.gov>) or by contacting the appropriate FWS and NMFS regional office.

If you have met the requirements of criterion F, you may select eligibility criterion F on the NOI form. You must provide a description of the basis for the criterion selected on your NOI form and must include copies of the correspondence between yourself and the Services in your SWPPP.

Appendix D – 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). Undertakings would also be pursuant to Title Three, Chapter 22, 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.

To address any issues relating to historic properties in connection with the issuance of this permit, VIDPNR has developed the screening process in this appendix that enables construction operators to appropriately consider the potential impacts, if any, of their installation of stormwater controls on historic properties and to determine whether actions can be taken, if applicable, to mitigate any such impacts. Although the coverages of individual construction sites under this permit do not constitute separate Federal undertakings, the screening process in this appendix provides an appropriate site-specific means of addressing historic property issues in connection with VIDPNR’s issuance of the permit.

Instructions for All Construction Operators

You are required to follow the screening process in this appendix to determine if your installation of stormwater controls on your site has the potential to cause effects to historic properties, and whether or not you need to contact your SHPO representative for

further information. You may not submit your NOI until you have completed this screening process. The following four steps describe how applicants can meet the historic property requirements under this permit:

Step 1 *Are you installing any stormwater controls that require subsurface earth disturbance?*

The first step of the screening process is to determine if you will install stormwater controls that cause subsurface earth disturbance. The installation of the following types of stormwater controls require subsurface earth disturbance:

- Dikes
- Berms
- Catch Basins
- Ponds
- Ditches
- Trenches
- Culverts
- Channels
- Perimeter Drains
- Swales

Note: This list is not intended to be exhaustive. Other stormwater controls that are not on this list may involve earth-disturbing activities and must also be examined for the potential to affect historic properties.

Note: You are only required to consider earth-disturbing activities related to the installation of stormwater controls in the NHPA screening process. You are not required to consider other earth-disturbing activities at the site. If you are installing one of the above stormwater controls or another type of control that requires subsurface earth disturbance, your project has the potential to have an effect on historic properties. If this is the case, then you must proceed to Step 2.

If you are not installing one of the above stormwater controls or another type of control that requires subsurface earth disturbance, then you may indicate this on your NOI, and no further screening is necessary. During the 14-day waiting period after submitting 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.

Step 2 *Have prior professional cultural resource surveys or other evaluations determined that historic properties do not exist, or have prior disturbances precluded the existence of historic properties?*

If you are installing a stormwater control that requires subsurface earth disturbance, you must next determine if it has already been determined that no historic properties exist on your site based on prior professional cultural

resource surveys or other evaluations, or that the existence of historic properties has been precluded because of prior earth disturbances.

If prior to your project it has already been determined that no historic properties exist at your site based on available information, including information that may be provided by your SHPO representative, then you may indicate this on your NOI, and no further screening steps are necessary. Similarly, if earth disturbances that have occurred prior to your project have eliminated the possibility that historic properties exist on your site, you may indicate this on your NOI, and no further screening steps are necessary. After submitting your NOI, and during the 14-day waiting period, 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 neither of these circumstances exists for your project, you must proceed to Step 3.

Step 3 *If you are installing any stormwater controls that require subsurface earth disturbance, you must determine if these activities will have an effect on historic properties.*

If your answer to the questions in Steps 1 and 2 is “no”, then you must assess whether your earth-disturbing activities related to the installation of stormwater controls will have an effect on historic properties. This assessment may be based on historical sources, knowledge of the area, an assessment of the types of earth-disturbing activities you are engaging in, considerations of any controls and/or management practices you will adopt to ensure that your stormwater control-related earth-disturbing activities will not have an effect on historic properties, and any other relevant factors. If you determine based on this assessment that earth disturbances related to the installation of your stormwater controls will not cause effects to historic properties, you may indicate this on your NOI, and document the basis for your determination in your SWPPP and no further screening steps are necessary. In this case you must also attach a copy of your site map to your NOI. After submitting your NOI, and during the 14-day waiting period, 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 none of the circumstances in Steps 1-3 exist for your project, you must proceed to Step 4.

Step 4 *If you are installing any stormwater controls that require subsurface earth disturbance and you have not satisfied the conditions in Steps 1-3, you must contact and consult with the appropriate historic preservation authorities.*

Where you are installing stormwater controls that require subsurface earth disturbance, and you cannot determine in Step 3 that these activities will not have effects on historic properties, then you must contact the relevant SHPO representative to request their views as to the likelihood that historic properties are potentially present on your site and may be impacted by the installation of these controls.

You must submit the following minimum information in order to properly initiate your request for information:

1. Project name (i.e., the name or title most commonly associated with your project);
2. A narrative description of the project;
3. Name, address, phone and fax number, and email address (if available) of the operator;
4. Most recent U.S. Geological Survey (USGS) map section (7.5 minute quadrangle) showing actual project location and boundaries clearly indicated; and
5. Sections of SWPPP site map (see Part 7.2.6) that show locations where stormwater controls that will cause subsurface earth disturbance will be installed (see Step 1).

Without submitting this minimum information, you will not have been considered to have properly initiated your request. You will need to provide the SHPO representative a minimum of 15 calendar days after they receive these materials to respond to your request for information about your project. You are advised to get a receipt from the post office or other carrier confirming the date on which your letter was received.

If you do not receive a response within 15 calendar days after receipt by the SHPO representative of your request, then you may indicate this on your NOI, and no further screening steps are necessary. Or, if the applicable SHPO representative responds to your request with an indication that no historic properties will be affected by the installation of stormwater controls at your site, then you may indicate this on your NOI, and no further screening steps are necessary. After submitting your NOI, and during the 14-day waiting period, 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 within 15 calendar days of receipt of your request the applicable SHPO representative responds with a request for additional information or for further consultation regarding appropriate measures for treatment or mitigation of effects on historic properties caused by the installation of stormwater controls on your site, you must comply with this request and proceed to Step 5.

Step 5: *Consultation with your applicable SHPO representative.*

If, following your discussions with the appropriate historic preservation authorities in Step 4, the applicable SHPO representative requests additional information or further consultation, you must respond with such information or to consult to determine impacts to historic properties that may be caused by the installation of stormwater controls on your site and appropriate measures for treatment or mitigation of such impacts. If as a result of your discussions with the applicable SHPO representative, you enter into, and comply with, a written agreement regarding treatment and/or mitigation of impacts on your site, then you may indicate this on your NOI, and no further screening steps are necessary.

If, however, agreement on an appropriate treatment or mitigation plan cannot be reached between you and the SHPO representative within 30 days of your response to the SHPO representative's request for additional information or further consultation, you may submit your NOI, but you must indicate that you have not negotiated measures to avoid or mitigate such effects. You must also include in your SWPPP the following documentation:

1. Copies of any written correspondence between you and the SHPO representative; and
2. A description of any significant remaining disagreements as to mitigation measures between you and the SHPO representative.

After submitting your NOI, and during the 14-day waiting period, the SHPO representative may request that VIDPNR place a hold on authorization based upon concerns regarding potential adverse effects to historic properties. VIDPNR, in coordination with SHPO, will evaluate any such request and notify you if any additional measures to address adverse effects to historic properties are necessary.

Appendix E - List of Class A Waters

VIDPNR's VI CGP has special requirements for discharges to waters designated as Class A for antidegradation purposes under 12 V.I.R.R. §186-7. See Parts 1.2.3 and 3.3.

The list below is provided as a resource for operators who must determine whether they discharge to a Class A water. Only Class waters specifically identified by VIDPNR are identified in the table below. VIDPNR evaluates the existing and protected quality of the receiving water on a pollutant-by-pollutant basis and determines whether water quality is better than the applicable criteria that would be affected by a new discharge or an increase in an existing discharge of the pollutant. In instances where water quality is better, VIDPNR may choose to allow lower water quality, where lower water quality is determined to be necessary to support important social and economic development. Permittees are not required to identify those waters which are evaluated on an individual basis.

<i>Island</i>	<i>Water Class</i>	<i>Water Area Covered</i>
St. Croix	Class A	Natural Barrier Reef at Buck Island.
St. John	Class A	Under Water Trail at Trunk Bay.
St. Thomas	Class A	None.

Appendix F – Buffer Guidance.

The purpose of this guidance is to assist you in complying with the requirements in Part 2.1.2.1 of the permit regarding the establishment of natural buffers or equivalent sediment controls. This guidance is organized as follows:

F.1	Sites That Are Required to Comply with Part 2.1.2.1.....	2
<i>F.1.1</i>	Step 1 - Determine if Your Site is Within 50 Feet of a Surface Water.....	2
<i>F.1.2</i>	Step 2 - Determine if Any Exceptions to the Requirements in Part 2.1.2.1 Apply	3
F.2	COMPLIANCE ALTERNATIVES GUIDANCE	4
<i>F.2.1</i>	Guidance for Providing and Maintaining Natural Buffers	4
<i>F.2.1.1</i>	Buffer Width Measurement	5
<i>F.2.1.2</i>	Limits to Disturbance Within the Buffer	7
<i>F.2.1.3</i>	Discharges to the Buffer	7
<i>F.2.1.4</i>	SWPPP Documentation	8
<i>F.2.2</i>	Guidance for Providing the Equivalent Sediment Reduction as the 50-foot Buffer.....	8
<i>F.2.2.1</i>	Determine Whether it is Feasible to Provide a Reduced Buffer	8
<i>F.2.2.2</i>	Design Controls That Provide Equivalent Sediment Reduction as 50-foot Buffer	9
	a. Step 1 - Estimate the Sediment Reduction from the 50-foot Buffer	10
	b. Step 2 - Design Controls That Match the Sediment Removal Efficiency of the 50-foot Buffer	11
<i>F.2.3</i>	Small Residential Lot Compliance Alternatives	13
<i>F.2.3.1</i>	Step 1 – Determine if You are Eligible for the Small Residential Lot Compliance Alternatives	13
<i>F.2.3.2</i>	Step 2 – Implement the Requirements of the Small Residential Lot Compliance Alternative Selected	13
	a. Small Residential Lot Compliance Alternative 1	13
	b. Small Residential Lot Compliance Alternative 2	14

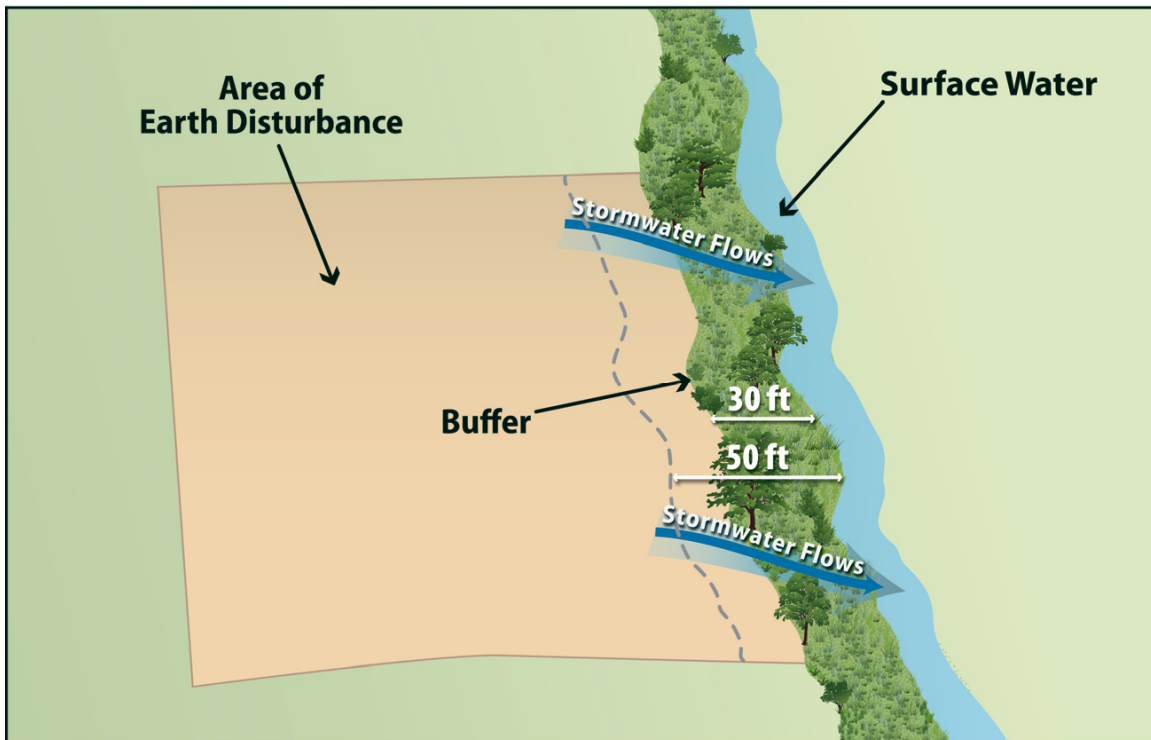
F.1 Sites That Are Required to Comply with Part 2.1.2.1

The purpose of this part is to help you determine if the requirements in Part 2.1.2.1 apply to your site.

F.1.1 Step 1 - Determine if Your Site is Within 50 Feet of a Surface Water

Part 2.1.2.1 applies to you only if your earth-disturbing activities will occur within 50 feet of a surface water that receives stormwater discharges from your site. Figure F – 1 illustrates when a site would be required to comply with the requirements in Part 2.1.2.1 due to their proximity to a surface water. If the surface water is not located within 50 feet of the earth-disturbing activities, Part 2.1.2.1 does not apply.

Figure F - 1. Example of earth-disturbing activities within 50 feet of a surface water.



If you determine that your earth-disturbing activities will occur within 50 feet of a surface water that receives stormwater discharges from your site, the requirements in Part 2.1.2.1 apply, except for certain circumstances that are described in Step 2.

Note that where some natural buffer exists but portions of the area within 50 feet of the surface water are occupied by preexisting development disturbances, or if a portion of area within 50 feet of the surface water is owned by another party and is not under your control, the buffer requirements in Part 2.1.2.1 still apply, but with some allowances.

Clarity about how to implement the compliance alternatives for these situations is provided in F.2.1.2 and F.2.2.2 below.

Note that VIDPNR does not consider designed stormwater control features (e.g., stormwater conveyance channels, storm drain inlets, stormwater basins) that direct storm water to surface waters more than 50 feet from the disturbance to constitute surface waters for the purposes of determining if the buffer requirements apply.

F.1.2 Step 2 - Determine if Any Exceptions to the Requirements in Part 2.1.2.1 Apply

The following exceptions apply to the requirements in Part 2.1.2.1:

- If there is no discharge of stormwater to surface waters through the area between the disturbed portions of the site and any surface waters located within 50 feet of your site, you are not required to comply with the requirements in this Part. This includes situations where you have implemented controls measures, such as a berm or other barrier, that will prevent such discharges.
- Where no natural buffer exists due to preexisting development disturbances (e.g., structures, impervious surfaces) that occurred prior to the initiation of planning for the current development of the site, you are not required to comply with the requirements in this Part.

Where some natural buffer exists but portions of the area within 50 feet of the surface water are occupied by preexisting development disturbances, you are required to comply with the requirements in this Part. For the purposes of calculating the sediment load reduction for either compliance alternative 2 or 3 below, you are not expected to compensate for the reduction in buffer function that would have resulted from the area covered by these preexisting disturbances. Clarity about how to implement the compliance alternatives for these situations is provided in F.2.1.2 and F.2.2.2 below.

If during your project, you will disturb any portion of these preexisting disturbances, the area removed will be deducted from the area treated as natural buffer.

- For “linear construction projects” (see Appendix A), you are not required to comply with this requirement if site constraints (e.g., limited right-of-way) prevent you from complying with the requirements of the alternatives in Part 2.1.2.1a, provided that, to the extent practicable, you limit disturbances within 50 feet of the surface water and/or you provide supplemental erosion and sediment controls to treat stormwater discharges from earth disturbances within 50 feet of the surface water. You must also document in your SWPPP your rationale for why it is infeasible for you to comply with the requirements

in Part 2.1.2.1a, and describe any buffer width retained and/or supplemental erosion and sediment controls installed.

- For “small residential lot” construction (i.e., a lot being developed for residential purposes that will disturb less than 1 acre of land, but is part of a larger residential project that will ultimately disturb greater than or equal to 1 acre), you have the option of complying with the requirements in Part F.2.3 of this appendix.
- The following disturbances within 50 feet of a surface water are exempt from the requirements in this Part:
 - Construction approved under a CWA Section 404 permit; or
 - Construction of a water-dependent structure or water access areas (e.g., pier, boat ramp, trail).

Note that you must document in your SWPPP if any disturbances related to any of the above exceptions occurs within the buffer area on your site.

F.2 COMPLIANCE ALTERNATIVES GUIDANCE

If in Part F.1 of this guidance you determine that the buffer requirements apply to your site, you have three compliance alternatives from which you can choose:

1. Provide and maintain a 50-foot buffer undisturbed natural buffer (Part 2.1.2.1a.i);²⁴ or
2. Provide and maintain an undisturbed natural buffer that is less than 50 feet and is supplemented by additional erosion and sediment controls, which in combination achieves the sediment load reduction equivalent to a 50-foot undisturbed natural buffer (Part 2.1.2.1a.ii);²⁴ or
3. If it is infeasible to provide and maintain an undisturbed natural buffer of any size, you must implement erosion and sediment controls that achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer (Part 2.1.2.1a.iii).²⁴

²⁴ For the compliance alternatives in 1 and 2, you are not required to enhance the quality of the vegetation that already exists in the buffer, or provide vegetation if none exists (e.g., arid and semi-arid areas). You only need to retain and protect from disturbance the natural buffer that existed prior to the commencement of construction. Any preexisting structures or impervious surfaces are allowed in the natural buffer provided you retain and protect from disturbance the natural buffer area outside the preexisting disturbance. Similarly, for alternatives 2 and 3, you are required to implement and maintain sediment controls that achieve the sediment load reduction equivalent to the undisturbed natural buffer that existed on the site prior to the commencement of construction. In determining equivalent sediment load reductions, you may consider naturally non-vegetated areas and prior disturbances. See Part F.2.2 of this Appendix for a discussion of how to determine equivalent reductions.

The compliance alternative selected above must be maintained throughout the duration of permit coverage.

The following provides detailed guidance for how you can comply with each of the compliance alternatives. Part F.2.1 below provides guidance on how to provide and maintain natural buffers consistent with the alternatives 1 and 2, above. Part F.2.2 below provides guidance on how to comply with the requirement to provide a 50-foot buffer equivalent through erosion and sediment controls consistent with alternatives 2 and 3, above.

F.2.1 Guidance for Providing and Maintaining Natural Buffers

The following guidance is intended to assist you in complying with the requirements to provide and maintain a natural buffer during construction. This part of the guidance applies to you if you choose either alternative 1 (50-foot buffer) or alternative 2 (a buffer of < 50 feet supplemented by additional erosion and sediment controls that achieve the equivalent sediment load reduction as the 50-foot buffer), or if you are providing a buffer in compliance with one of the small residential lot compliance alternatives in Part F.2.3 below.

F.2.1.1 Buffer Width Measurement

Where you are retaining a buffer of any size, the buffer should be measured perpendicularly from any of the following points, whichever is further landward from the water:

1. The ordinary high water mark of the water body, defined as the line on the shore established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, and/or the presence of litter and debris; or
2. The edge of the stream or river bank, bluff, or cliff, whichever is applicable.

Refer to Figure F – 2 and Figure F - 3. You may find that specifically measuring these points is challenging if the flow path of the surface water changes frequently, thereby causing the measurement line for the buffer to fluctuate continuously along the path of the waterbody. Where this is the case, VIDPNR suggests that rather than measuring each change or deviation along the water's edge, it may be easier to select regular intervals from which to conduct your measurement. For instance, you may elect to conduct your buffer measurement every 5 to 10 feet along the length of the water.

Additionally, note that if earth-disturbing activities will take place on both sides of a surface water that flows through your site, to the extent that you are establishing a buffer around this water, it must be established on both sides. For example, if you choose alternative 1 above, and your project calls for

disturbances on both sides of a small stream, you would need to retain the full 50 feet of buffer on both sides of the water. However, if your construction activities will only occur on one side of the stream, you would only need to retain the 50-foot buffer on the side of the stream where the earth-disturbance will occur.

Figure F - 2. This image shows buffer measurement from the ordinary high water mark of the water body, as indicated by a clear natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, and/or the presence of litter/debris.

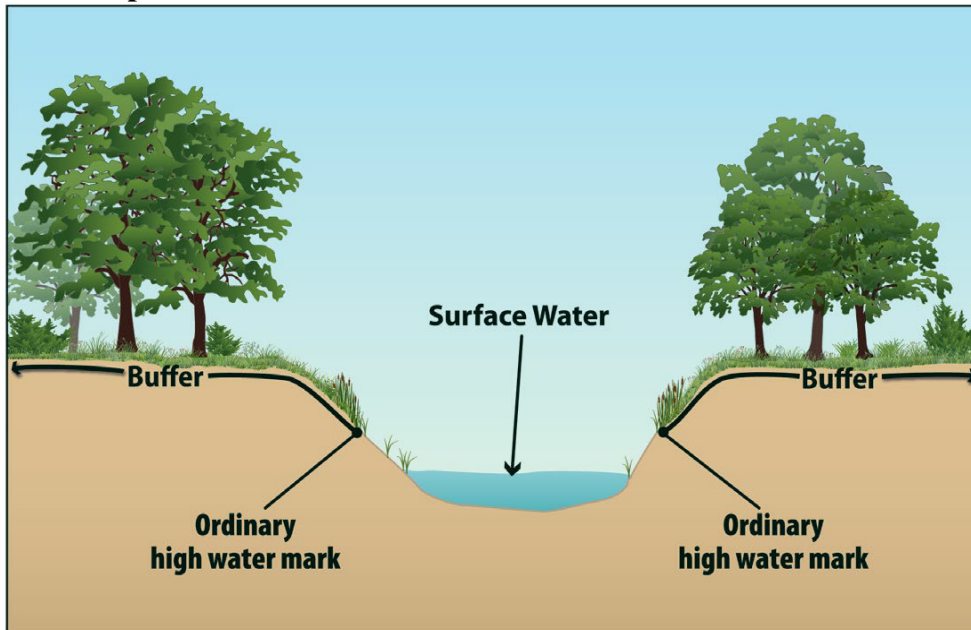
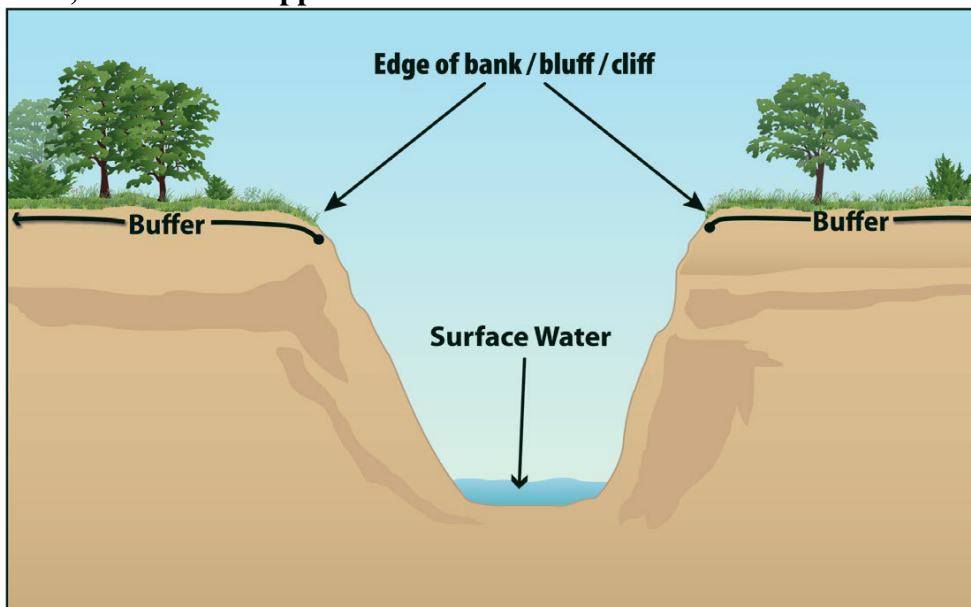


Figure F - 3. This image shows buffer measurement from the edge of the bank, bluff, or cliff, whichever is applicable.



F.2.1.2 Limits to Disturbance Within the Buffer

You are considered to be in compliance with this requirement if you retain and protect from construction activities the natural buffer that existed prior to the commencement of construction. If the buffer area contains no vegetation prior to the commencement of construction (e.g., sand or rocky surface), you are not required to plant any additional vegetation. As noted above, any preexisting structures or impervious surfaces are allowed in the buffer provided you retain and protect from disturbance the vegetation in the buffer outside the preexisting disturbance.

To ensure that the water quality protection benefits of the buffer are retained during construction, you are prohibited from conducting any earth-disturbing activities within the buffer during permit coverage. In furtherance of this requirement, prior to commencing earth-disturbing activities on your site, you must delineate, and clearly mark off, with flags, tape, or a similar marking device, the buffer area on your site. The purpose of this requirement is to make the buffer area clearly visible to the people working on your site so that unintended disturbances are avoided.

While you are not required to enhance the quality of the vegetation that already exists within the buffer, you are encouraged to do so where such improvements will enhance the water quality protection benefits of the buffer. (Note that any disturbances within the buffer related to buffer enhancement are permitted and do not constitute construction disturbances.) For instance, you may want to consider targeted plantings where limited vegetation exists, or replacement of existing vegetation where invasive or noxious plant species (see <http://plants.usda.gov/java/noxiousDriver>) have taken over. In the case of invasive or noxious species, you may want to remove and replace them with a diversity of native trees, shrubs, and herbaceous plants that are well-adapted to the climatic, soil, and hydrologic conditions on the site. You are also encouraged to limit the removal of naturally deposited leaf litter, woody debris, and other biomass, as this material contributes to the ability of the buffer to retain water and filter pollutants.

If a portion of the buffer area adjacent to the surface water is owned by another party and is not under your control, you are only required to retain and protect from construction activities the portion of the buffer area that is under your control. For example, if you elect alternative 1 above (provide and maintain a 50-foot buffer), but 10 feet of land immediately adjacent to the surface water is owned by a different party than the land on which your construction activities are taking place and you do not have control over that land, you must only retain and protect from construction activities the 40-foot buffer area that occurs on the property on which your construction activities are taking place. VIDPNR would consider you to be in compliance with this requirement regardless of the activities that are taking place in the 10-foot area that is owned by a different party than the land on which your construction activities are taking place that you have no control over.

F.2.1.3 Discharges to the Buffer

You must ensure that all discharges from the area of earth disturbance to the natural buffer are first treated by the site's erosion and sediment controls (for example, you must comply with the Part 2.1.2.2 requirement to establish sediment controls around the downslope perimeter of your site disturbances), and if necessary to prevent erosion caused by stormwater flows within the buffer, you must use velocity dissipation devices. The purpose of this requirement is to decrease the rate of stormwater flow and encourage infiltration so that the pollutant filtering functions of the buffer will be achieved. To comply with this requirement, construction operators typically will use devices that physically dissipate stormwater flows so that the discharge entering the buffer is spread out and slowed down.

F.2.1.4 SWPPP Documentation

You are required to document in your SWPPP the natural buffer width that is retained. For example, if you are complying with alternative 1, you must specify in your SWPPP that you are providing a 50-foot buffer. Or, if you will be complying with alternative 2, you must document the reduced width of the buffer you will be retaining (and you must also comply with the requirements in Part 2.1.2.1c to describe the erosion and sediment controls you will use to achieve an equivalent sediment reduction, as described in Part F.2.2 below). Note that you must also show any buffers on your site plan in your SWPPP consistent with Part 7.2.6.3. Additionally, if any disturbances related to the exceptions in Part 2.1.2.1e occur within the buffer area, you must document this in the SWPPP.

F.2.2 Guidance for Providing the Equivalent Sediment Reduction as the 50-foot Buffer

If you are selecting Alternative 2 (provide and maintain a buffer that is less than 50 feet that is supplemented by additional erosion and sediment controls that, together, achieve the equivalent sediment load reduction as the 50-foot buffer) or Alternative 3 (implement erosion and sediment controls that achieve the equivalent sediment load reduction as the 50-foot buffer), the following guidance is intended to assist you in demonstrating that you will achieve the equivalent sediment reduction as the 50-foot buffer.

F.2.2.1 Determine Whether it is Feasible to Provide a Reduced Buffer

VIDPNR recognizes that there will be a number of situations in which it will be infeasible to provide and maintain a buffer of any width. While some of these situations may exempt you from the buffer requirement entirely (see F.1.2), if you do not qualify for one of these exemptions, there still may be conditions or circumstances at your site that make it infeasible to provide a natural buffer. For example, there may be sites where a significant portion of

the property on which the earth-disturbing activities will occur is located within the buffer area, thereby precluding the retention of natural buffer areas. VIDPNR believes there are likely to be other examples of situations that make it infeasible to provide any buffer area.

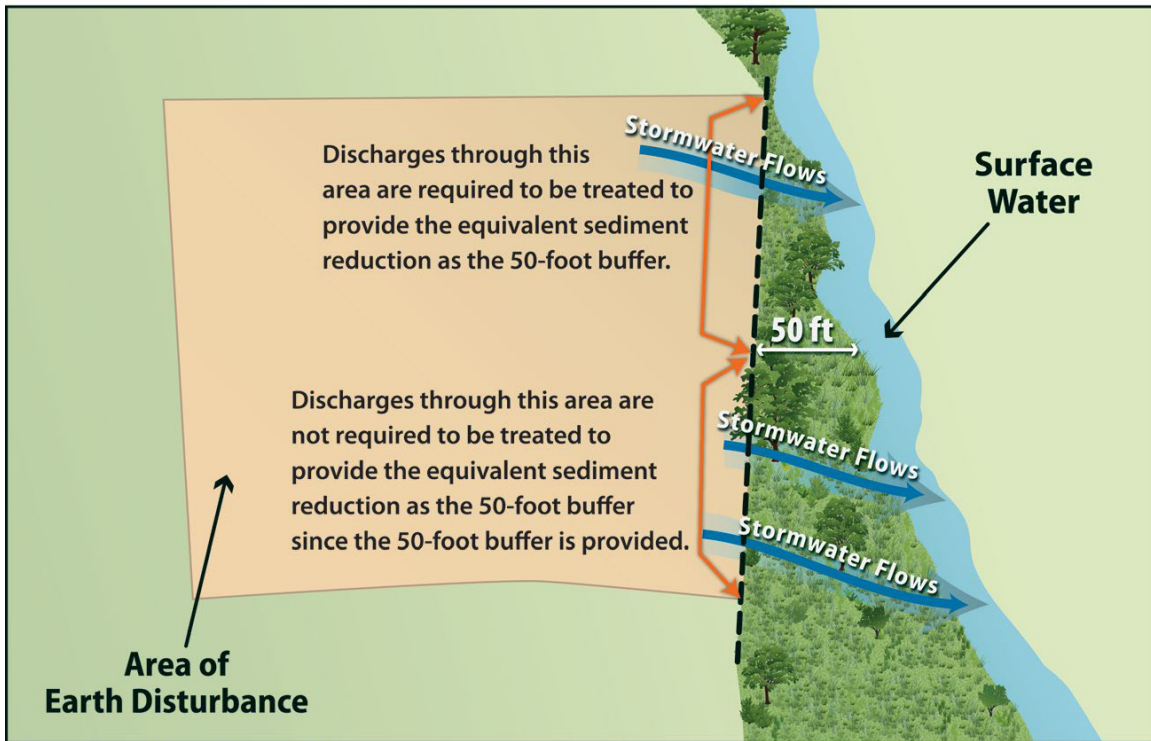
Therefore, in choosing between the 2 different compliance alternatives (Alternative 2 or 3), you should only elect to comply with Alternative 2 if it is feasible for you to retain any natural buffer on your site. (Note: For any buffer width retained, you are required to comply with the requirements in Part F.2.1, above, concerning the retention of vegetation and restricting earth disturbances.) Similarly, if you determine that it is infeasible to provide a natural buffer of any size during construction, you should elect to comply with Alternative 3. After making this determination, you should proceed to Part F.2.2.2 to determine how to provide controls that, together with any buffer areas that is being retained, if applicable, will achieve an equivalent sediment load reduction as the 50-foot buffer.

F.2.2.2 Design Controls That Provide Equivalent Sediment Reduction as 50-foot Buffer

You must next determine what additional controls must be implemented on your site that, alone or in combination with any retained natural buffer, achieve a reduction in sediment equivalent to that achieved by a 50-foot buffer.

Note that if only a portion of the natural buffer is less than 50 feet, you are only required to implement erosion and sediment controls that achieve the sediment load reduction equivalent to the 50-foot buffer for discharges through that area. You would not be required to provide treatment of stormwater discharges that flow through 50 feet or more of natural buffer. See Figure F - 4.

Figure F - 4 Example of how to comply with the requirement to provide the equivalent sediment reduction when only a portion of your earth-disturbances discharge to a buffer of less than 50-feet.



To comply with this requirement, you are required to do the following:

Step 1 - Estimate the sediment reduction expected from your site if you had retained a 50-foot natural buffer;

Step 2 - Design controls that alone or in combination with any width of buffer retained achieve the equivalent sediment removal efficiency as that expected from the 50-foot buffer; and

Step 3 - Document in your SWPPP how your controls will achieve the equivalent sediment removal efficiency of the 50-foot buffer.

Guidelines to help you work through these requirements are provided below.

a. Step 1 - Estimate the Sediment Reduction from the 50-foot Buffer

In order to design controls that match the sediment removal efficiency of a 50-foot buffer, you first need to know what this efficiency is for your site. The sediment removal efficiencies of natural buffers vary according to a number of site-specific factors, including precipitation, soil type, land cover, slope length, width, steepness, and the types of sediment controls used to reduce the discharge of sediment prior to the buffer. VIDPNR has simplified this calculation by developing buffer performance tables

covering a range of vegetation and soil types for the areas covered by the VI CGP. See Attachment 1, Table F - 4. Note: buffer performance values in Table F - 4 represent the percent of sediment captured through the use of perimeter controls (e.g., silt fences) and 50-foot buffers at disturbed sites of fixed proportions and slopes.²⁵

Using Table F - 4 (see Attachment 1), you can determine the sediment removal efficiency of a 50-foot buffer for your geographic area by matching the vegetative cover type that best describes your buffer area and the type of soils that predominate at your site. For example, if your buffer vegetation corresponds most closely with that of tall fescue grass, and the soil type at your site is best typified as sand, your site's sediment removal efficiency would be 88 percent.

In this step, you should choose the vegetation type in the tables that most closely matches the vegetation that would exist naturally in the buffer area on your site regardless of the condition of the buffer. However, because you are not required to plant any additional vegetation in the buffer area, in determining what controls are necessary to meet this sediment removal equivalency in Step 2 below, you will be able to take credit for this area as a fully vegetated "natural buffer."

²⁵ VIDPNR used the following when developing the buffer performance tables:

- The sediment removal efficiencies are based on the U.S. Department of Agriculture's RUSLE2 ("Revised Universal Soil Loss Equation 2") model for slope profiles using a 100-foot long denuded slopes.
- Sediment removal was defined as the annual sediment delivered at the downstream end of the 50-foot natural buffer (tons/yr/acre) divided by the annual yield from denuded area (tons/yr/acre).
- As perimeter controls are also required by the VI CGP, sediment removal is in part a function of the reduction due to a perimeter control (i.e., silt fence) located between the disturbed portion of the site and the upstream edge of the natural buffer and flow traveling through a 50-foot buffer of undisturbed natural vegetation.
- It was assumed that construction sites have a relatively uniform slope without topographic features that accelerate the concentration for erosive flows.
- It was assumed that vegetation has been removed from the disturbed portion of the site and a combination of cuts and fills have resulted in a smooth soil surface with limited retention of near-surface root mass

To represent the influence of soil, VIDPNR used EPA's analysis of 11 general soil texture classifications in its evaluation of buffer performance. To represent different types of buffer vegetation, VIDPNR used EPA's additional evaluation of 4 or more common vegetative types. For each vegetation type evaluated, VIDPNR considered only permanent, non-grazed and non-harvested vegetation, on the assumption that a natural buffer adjacent to the surface water will typically be undisturbed. VIDPNR also evaluated slope steepness and found that sediment removal efficiencies present in Table F - 4 are achievable for slopes that are less than nine percent.

Similarly, if a portion of the buffer area adjacent to the surface water is owned by another party and is not under your control, you can treat the area of land not under control as having the equivalent vegetative cover and soil type that predominates on the portion of the property on which your construction activities are occurring.

For example, if your earth-disturbances occur within 50 feet of a surface water, but the 10 feet of land immediately adjacent to the surface water is owned by a different party than the land on which your construction activities are taking place and you do not have control over that land, you can treat the 10 foot area adjacent to the stream as having the equivalent soil and vegetation type as predominates in the 40 foot area under your control. You would then make the same assumption in Step 2 for purposes of determining the equivalent sediment removal.

Alternatively, you may do your own calculation of the effectiveness of the 50-foot buffer based upon your site-specific conditions, and may use this number as your sediment removal equivalency standard to meet instead of using Table F - 4. This calculation must be documented in your SWPPP.

b. Step 2 - Design Controls That Match the Sediment Removal Efficiency of the 50-foot Buffer

Once you have determined the estimated sediment removal efficiency of a 50-foot buffer for your site in Step 1, you will be required to select stormwater controls that will provide an equivalent sediment load reductions. These controls can include the installation of a single designed control, such as a sediment pond, additional perimeter controls, or other type of device. Alternatively, you may elect to install a combination of stormwater controls and to retain some amount of a buffer. Whichever control(s) you select, you must demonstrate in your SWPPP that the controls will provide at a minimum the same sediment removal capabilities as the 50-foot buffer (Step 1). You are allowed to take credit for the removal efficiencies of your required perimeter controls in your calculation of equivalency, because these were included in calculating the buffer removal efficiencies Table F – 4. (Note: You are reminded that the controls must be kept in effective operating condition until you have completed final stabilization on the disturbed portions of the site discharging to the surface water.)

To make the determination that your controls and/or buffer area achieve an equivalent sediment load reduction as the 50-foot buffer, you will need to use a model or other type of calculator. As mentioned above, there are a variety of models available that can be used to support your calculation, including USDA's RUSLE-series programs and the WEPP erosion model, SEDCAD, SEDIMOT, or other models. A couple of examples are

provided in Attachment 3 to help illustrate how this determination could be made.

If you are retaining a buffer of less than 50 feet, you may take credit for the removal that will occur from the reduced buffer and only need to provide additional controls to make up the difference between the removal efficiency of a 50 foot buffer and the removal efficiency of the narrower buffer. For example, if you are retaining a 30 foot buffer, you can account for the sediment removal provided by the 30-foot buffer retained, and you will only need to design controls to make up for the additional removal provided by the 20-foot of buffer that is not being provided. To do this, you would plug the width of the buffer that is retained into RUSLE or another model, along with other stormwater controls that will together achieve a sediment reduction equivalent to a natural 50-foot buffer.

As described in Step 1 above, you can take credit for the area you have retained as a “natural buffer” as being fully vegetated, regardless of the condition of the buffer area.

For example, if your earth-disturbances occur 30 feet from a surface water, but the 10 feet of land immediately adjacent to the surface water is owned by a different party than the land on which your construction activities are taking place and you do not have control over that land, you can treat the 10-foot area as a natural buffer, regardless of the activities that are taking place in the area. Therefore, you can assume (for purposes of your equivalency calculation) that your site is providing the sediment removal equivalent of a 30-foot buffer, and you will only need to design controls to make up for the additional removal provided by the 20-foot of buffer that is not being provided.

c. Step 3 - Document How Site-Specific Controls Will Achieve the Sediment Removal Efficiency of the 50-foot Buffer

In Steps 1 and 2, you determined both the expected sediment removal efficiency of a 50-foot buffer at your site, and you used this number as a performance standard to design controls to be installed at your site, which alone or in combination with any retained natural buffer, achieves the expected sediment removal efficiency of a 50-foot buffer at your site. The final step is to document in your SWPPP the information you relied on to calculate the equivalent sediment reduction as an undisturbed natural buffer.

VIDPNR will consider your documentation to be sufficient if it generally meets the following:

- For Step 1, refer to the table in Attachment 1 that you used to derive your estimated 50-foot buffer sediment removal efficiency

performance. Include information about the buffer vegetation and soil type that predominate at your site, which you used to select the sediment load reduction value in Table F – 4. Or, if you conducted a site-specific calculation for sediment removal efficiency, provide the specific removal efficiency, and the information you relied on to make your site-specific calculation.

- For Step 2: (1) Specify the model you used to estimate sediment load reductions from your site; and (2) the results of calculations showing how your controls will meet or exceed the sediment removal efficiency from Step 1.

If you choose Alternative 3, you must also include in your SWPPP a description of why it is infeasible for you to provide and maintain an undisturbed natural buffer of any size.

F.2.3 Small Residential Lot Compliance Alternatives

In this part of Appendix F, VIDPNR provides additional compliance alternatives for operators of small residential lots. In accordance with Part 2.1.2.1e.iv, operators of small residential lots who do not provide a 50-foot buffer are not required to make the demonstration outlined in Part F.2.2.2. Instead, qualifying operators can comply with the buffer requirement by choosing to implement a set of traditional sediment and erosion controls from the menu of practices provided in Part F.2.3.2.

Note: A **small residential lot** is a lot or grouping of lots being developed for residential purposes that will disturb less than 1 acre of land, but that is part of a larger residential project that will ultimately disturb greater than or equal to 1 acre.

VIDPNR has developed two different alternatives for compliance. The following steps describe how a small residential lot operator would achieve compliance with these 2 alternatives.

F.2.3.1 Step 1 – Determine if You are Eligible for the Small Residential Lot Compliance Alternatives

In order to be eligible for the small residential lot compliance alternatives, the following conditions must be met:

- a. The lot or grouping of lots meets the definition of “small residential lot”; and
- b. The operator must comply with all other requirements in Part 2.1.2.1, including:
 - i. Ensure that all discharges from the area of earth disturbance to the natural buffer are first treated by the site’s erosion and sediment

controls, and use velocity dissipation devices if necessary to prevent erosion caused by stormwater within the buffer;

- ii. Document in the SWPPP the natural buffer width retained on the property, and show the buffer boundary on your site plan; and
- iii. Delineate, and clearly mark off, with flags, tape, or other similar marking device, all natural buffer areas.

F.2.3.2 Step 2 – Implement the Requirements of the Small Residential Lot Compliance Alternative Selected

You must next choose from one of two small residential lot compliance alternatives and implement the stormwater control practices associated with that alternative.

Note: The compliance alternatives provided below are not mandatory. Operators of small residential lots can alternatively choose to comply with the any of the options that are available to other sites in Part 2.1.2.1a, described in Parts F.2.1 and F.2.2 in this appendix.

a. Small Residential Lot Compliance Alternative 1

Alternative 1 is a straightforward tiered-technology approach that specifies the controls that a small residential lot must implement based on the buffer width retained. To achieve compliance with Alternative 1, you must implement the controls specified in Table F – 1 based on the buffer width to be retained. See footnote 26, below, for a description of the controls you must implement.

For example, if you are an operator of a small residential lot that will be retaining a 35-foot buffer and you choose Small Residential Lot Compliance Alternative 1, you must implement double perimeter controls between earth disturbances and the surface water.

In addition to implementing the applicable control, you must also document in your SWPPP how you will comply with Alternative 1.

Table F - 1. Alternative 1 Requirements²⁶

Retain 50-foot Buffer	Retain <50 and >30 foot Buffer	Retain ≤ 30 foot Buffer
No Additional Requirements	Double Perimeter Controls	Double Perimeter Controls and 7-Day Site Stabilization

b. Small Residential Lot Compliance Alternative 2

Alternative 2 specifies the controls that a builder of a small lot must implement based on both the buffer width retained and their risk of sediment discharge. By incorporating the sediment risk, this approach may result in the implementation of controls that are more appropriate for the site's specific conditions.

Step 1 – Determine Your Site's Sediment Risk Level

To meet the requirements of Alternative 2, you must first determine your site's sediment discharge "risk level" based on the site's slope and soil type. To help you to determine your site's sediment risk level, VIDPNR has developed Table F-2 below for different slope conditions. You must select the row that most closely corresponds to your site's average slope.

After you determine which row applies to your site, you must then use the row to determine the "risk level" (e.g., "low", "moderate", or "high") that corresponds to your site's location and predominant soil type.²⁷

²⁶ Description of Additional Controls Applicable to Small Residential Lot Compliance Alternatives 1 and 2:

No Additional Requirements: If you implement a buffer of 50 feet or greater, then you are not subject to any additional requirements. Note that you are required to install perimeter controls between the disturbed portions of your site and the buffer in accordance with Part 2.1.2.2.

Double Perimeter Control: In addition to the reduced buffer width retained on your site, you must provide a double row of perimeter controls between the disturbed portion of your site and the surface water spaced a minimum of 5 feet apart.

Double Perimeter Control and 7-Day Site Stabilization: In addition to the reduced buffer width retained on your site and the perimeter control implemented in accordance with Part 2.1.2.2, you must provide a double row of perimeter controls between the disturbed portion of your site and the surface water spaced a minimum of 5 feet apart, and you are required to complete the stabilization activities specified in Parts 2.2.1.2a and/or 2.2.1.2b within 7 calendar days of the temporary or permanent cessation of earth-disturbing activities.

²⁷ One source for determining your site's predominant soil type is the USDA's Web Soil Survey located at <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>.

Table F - 2. Risk Levels for Sites Depending on Slope and Soil Type in the USVI

Soil Type Average Slope	Clay	Silty Clay Loam or Clay- Loam	Sand	Sandy Clay Loam, Loamy Sand or Silty Clay	Loam, Silt, Sandy Loam or Silt Loam
≤ 3 %	Low	Moderate	Low	Moderate	Moderate
> 3% and ≤ 6 %	Moderate	Moderate	Moderate	Moderate	High
> 6% and ≤ 9 %	Moderate	Moderate	Moderate	Moderate	High
> 9% and ≤ 15 %	Moderate	High	Moderate	High	High
> 15%	High	High	High	High	High

Step 2 – Determine Which Additional Controls Apply

Once you determine your site’s “risk level”, you must next determine the additional controls you need to implement on your site, based on the width of buffer you plan to retain. Table F - 3 specifies the requirements that apply based on the “risk level” and buffer width retained. See footnote 26, above, for a description of the additional controls that are required.

For example, if you are the operator of a small residential lot that falls into the “moderate” risk level, and you decide to retain a 20-foot buffer, using Table F-3 you would determine that you need to implement double perimeter controls to achieve compliance with Part 2.1.2.1.

You must also document in your SWPPP your compliance with Alternative 2.

Table F - 3. Alternative 2 Requirements²⁵

Risk Level Based on Estimated Soil Erosion	Retain ≥ 50' Buffer	Retain <50' and >30' Buffer	Retain ≤30' and >10' Buffer	Retain ≤ 10' Buffer
Low Risk	No Additional Requirements	No Additional Requirements	Double Perimeter Control	Double Perimeter Control
Moderate Risk	No Additional Requirements	Double Perimeter Control	Double Perimeter Control	Double Perimeter Control and 7-Day Site Stabilization
High Risk	No Additional Requirements	Double Perimeter Control	Double Perimeter Control and 7-Day Site Stabilization	Double Perimeter Control and 7-Day Site Stabilization

ATTACHMENT 1**Sediment Removal Efficiency Tables²⁸**

VIDPNR recognizes that very high removal efficiencies, even where theoretically achievable by a 50-foot buffer, may be very difficult to achieve in practice using alternative controls. Therefore in the tables below, VIDPNR has limited the removal efficiencies to a maximum of 90%. Efficiencies that were calculated at greater than 90% are shown as 90%, and this is the minimum percent removal that must be achieved by alternative controls.

Table F - 4. Estimated 50-foot Buffer Performance in Virgin Islands*

Type of Buffer Vegetation**	Clay	Silty Clay Loam or Clay-Loam	Sand	Sandy Clay Loam, Loamy Sand or Silty Clay	Loam, Silt, Sandy Loam or Silt Loam
Bahiagrass (Permanent cover)	85	90	90	90	90
Warm-season Grass (i.e., Switchgrass, Lemongrass)	86	90	90	90	90
Dense Grass	85	90	90	90	90
Tall Fescue Grass	85	90	88	90	89
Medium-density Weeds	75	77	71	78	63

* Applicable for sites with less than nine percent slope

** Characterization focuses on the under-story vegetation

²⁸ The buffer performances were calculated based on a denuded slope upgradient of a 50-foot buffer and perimeter controls, as perimeter controls are a standard requirement (see Part 2.1.2.2).

ATTACHMENT 2

Using the Sediment Removal Efficiency Tables – Questions and Answers

– *What if my specific buffer vegetation is not represented in Table F - 4?*

Table F – 4 provides a wide range of factors affecting buffer performance; however, there may be instances where the specific buffer vegetation type on your site is not listed. If you do not see a description of the type of vegetation present at your site, you should choose the vegetation type that most closely matches the vegetation type on your site. You can contact the UVI Cooperative Extension Service Office (<http://rps.uvi.edu/CES>) for assistance in determining the vegetation type in Table F – 4 that most closely matches your site-specific vegetation.

– *What if there is high variability in local soils?*

VIDPNR recognizes that there may be a number of different soil type(s) on any given construction site. General soil information can be obtained from USDA soil survey reports (<http://websoilsurvey.nrcs.usda.gov>) or from individual site assessments performed by a certified soil expert. Table F – 4 presents eleven generic soil texture classes, grouping individual textures where VIDPNR has determined that performance is similar. If your site contains different soil texture classes, you should use the soil type that best approximates the predominant soil type at your site.

– *What if my site slope is greater than 9 percent after final grade is reached?*

As indicated in the buffer performance tables, the estimated sediment removal efficiencies are associated with disturbed slopes of up to 9 percent grade. Where your graded site has an average slope of greater than 9 percent, you should calculate a site-specific buffer performance.

– *How do I calculate my own estimates for sediment reduction at my specific site?*

If you determine that it is necessary to calculate your own sediment removal efficiency using site-specific conditions (e.g., slopes at your site are greater than 9 percent), you can do so by choosing from a range of available mathematical models that are available to facilitate this calculation, including USDA's RUSLE-series programs and the WEPP erosion model, SEDCAD, SEDIMOT, or other equivalent models.

– *What is my estimated buffer performance if my site location is not represented by Table F - 4?*

If your site is located in an area not represented by Table F - 4, you may either choose the best representation or conduct a site-specific calculation of the buffer performance.

– *What if only a portion of my site drains to the buffer area?*

If only a portion of your site drains to a surface water, where that water is within 50 feet of your construction activities, you are only required to meet the equivalency requirement for the stormwater flows corresponding to those portions of the site. See Example 2 below for an example of how this is expected to work.

ATTACHMENT 3

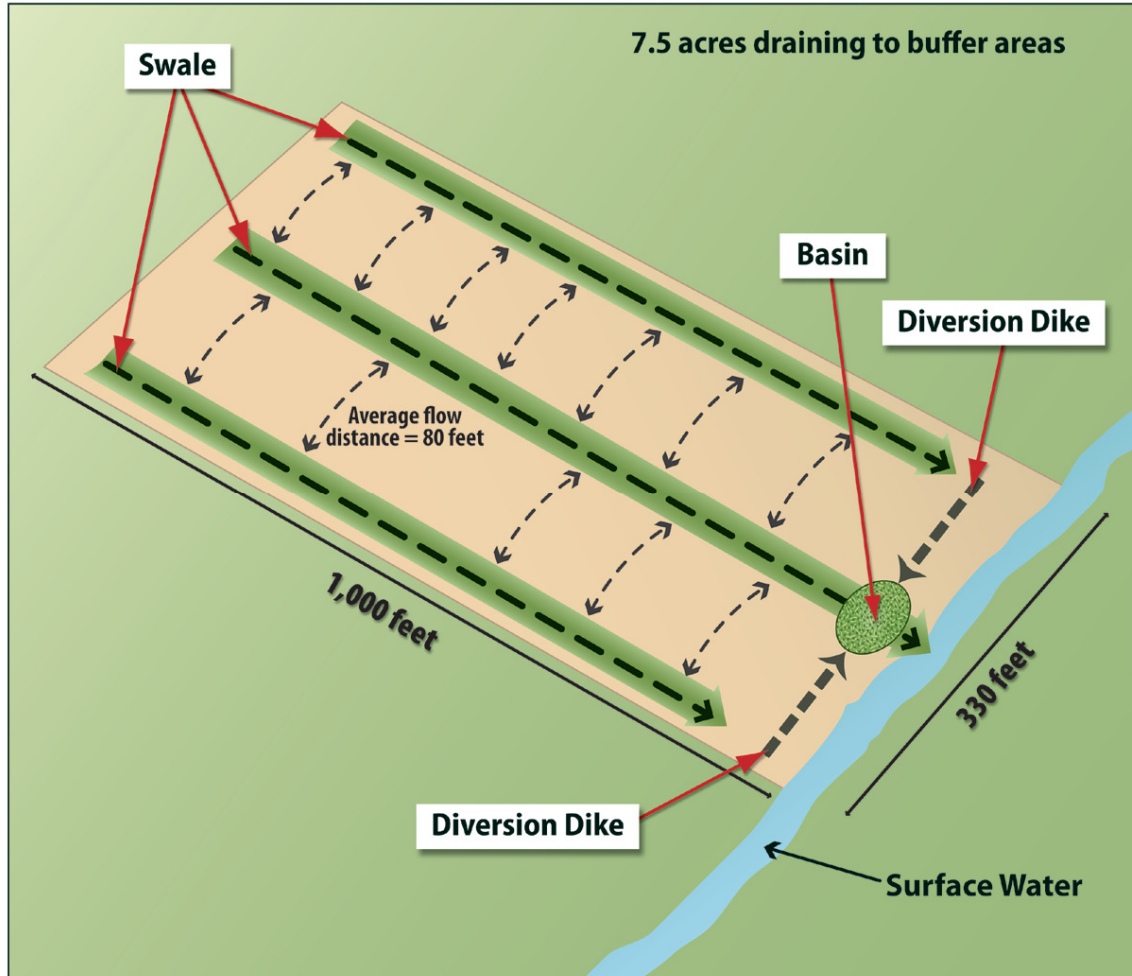
Examples of How to Use the Sediment Removal Efficiency Tables

Example: *7.5 acre site located in USVI*

The operator of a 7.5-acre construction site in the USVI has determined that it is infeasible to establish a buffer of any size on their site, and is now required to select and install controls that will achieve an equivalent sediment load reduction as that estimated in F - 9 for their site conditions. The first step is to identify what percentage of eroded sediment is estimated to be retained from a 50-foot buffer. For this example, it is assumed that the site has a relatively uniform gentle slope (3 percent), and if the site's buffer vegetation is best typified by dense grass and the underlying soil is of a type best described as loamy sand, the 50-foot buffer is projected to capture 90 percent of eroded sediment from the construction site.

The second step is to determine what sediment controls can be selected and installed in combination with the perimeter controls already required to be implemented at the site (see Part 2.1.2.2), which will achieve the 90 percent sediment removal efficiency from Table F - 9. For this example, using the RUSLE2 profile model, it was determined that installing a pair of shallow-sloped diversion ditches to convey runoff to a well-designed and maintained sediment basin provides 99 percent sediment removal. Because the estimated sediment reduction is greater than the required 90 percent that a 50-foot buffer provides, the operator will have met the buffer requirements. See Figure F - 5. The operator could also choose a different set of controls, as long as they achieve at least a 90 percent sediment removal efficiency.

Figure F - 5. Equivalent Sediment Load Reductions at a 7.5 ac Site in USVI.



Appendix G – 2-Year, 24-Hour Storm Frequencies

Part 2.1.3.2 of the permit indicates that if you install a sediment basin, one of the design requirements is to provide storage for either (1) the calculated volume of runoff from a 2-year, 24-hour storm, or (2) 3,600 cubic feet per acre drained. This appendix is intended to provide a guide to permittees to determine the volume of precipitation associated with their local 2-year, 24-hour storm event.

The permittee should start out by determining their local 2-year, 24-hour storm volume. The rainfall frequency atlases, technical papers, and the Precipitation Frequency Data Server (PFDS) developed by the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service (NWS) serve as national standards for rainfall intensity at specified frequencies and durations in the United States.

Operators of construction projects subject to the numeric effluent limits can use these standards to determine their local 2-year, 24-hour storm. VIDPNR notes that permittees may also use alternative peer-reviewed data sources not listed here to determine the 2-year, 24-hour storm for their site. The most common alternative would be to use the rainfall data maps for the 2-year, 24-hour storm found in the most recent version of the USVI Environmental Protection Handbook. PDF versions are available from VIDPNR upon request.

How to Determine Your Local 2-year, 24-hour Storm Size

Projects located in the US Virgin Islands can use the PFDS documents at http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_pr.html or use NOAA's Atlas 14 Volume 3 at <http://www.nws.noaa.gov/oh/hdsc/currentpf.htm> to determine their precipitation frequency.

The PFDS is an easy to use, point-and-click interface to official U.S. precipitation frequency estimates and intensities. The above link opens the PFDS screen to a clickable map of Puerto Rico and the USVI. From this page the user selects the following:

- A location: Either via clicking on the map or manually entering a longitude/latitude coordinate;
- Type of output: Depth-Duration Frequency (DDF) or Intensity-Duration-Frequency (IDF)
- Units: millimeters or inches; and
- Type of estimate: Point or areal.

Additionally, PFDS also serves as a tool for providing references and other information for other current precipitation frequency standards that are not yet updated.

Appendix H - Standard Permit Conditions

Standard permit conditions in Appendix H are consistent with the general permit provisions required under 12 V.I.R.&Regs. §184-51.

1. Duty to Comply

The Permittee shall 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. (1998 & Supp. 2004)] and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- A. 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 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.
- B. The Permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- C. 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. (1998 & Supp. 2004)], this subchapter, or the FWPCA.

2. Duty to Reapply.

- A. 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.

3. Need to Halt or Reduce not a Defense. 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 this permit.

4. Duty to Mitigate. The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance. The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance

with the conditions of this permit. 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, installed by the Permittee, when the operation is necessary to achieve compliance with the conditions of the permit.

6. Permit Actions.

- A. 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.
- B. Causes for modification, revocation and reissuance, and termination are set forth in 40 CFR §122.62, §122.63, §122.64 and 12 V.I.R.&Regs. §184-34(e) and §184-51 (2007).
- i) Specified causes for modification, revocation and reissuance, and termination include:
1. Noncompliance by the Permittee with any condition of the permit;
 2. The Permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the Permittee's misrepresentation of any relevant facts at any time;
 3. A determination that the permitted discharge endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
 4. A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit.
- ii) Specified causes for modification and, upon request or agreement of the Permittee, revocation and reissuance of the permit include material and substantial alterations or additions to the Permittee's operation which occurred after permit issuance and which justify the application of permit conditions that are different or absent from this permit, (e.g., production changes, relocation or combination of discharge points, changes in the nature or mix of products produced) provided the reconstruction activities do not cause the new source permit issuance provisions of 40 CFR §122.29 (2007) to be applicable.
- C. With the exception of permit modifications which satisfy the criteria in 40 CFR §122.63 (2007) and 12 V.I.R.&Regs. §184-51(c) (2007) for "minor modifications" the applicable procedures required by 40 CFR §124 (2007) and 12 V.I. CODE ANN. §188(c) (1998 & Supp. 2004) shall be followed before this permit is modified, revoked, reissued or terminated. Notice and opportunity for hearing are as provided under 12 V.I. CODE ANN. §188 (b) -(c) (1998 & Supp. 2004).

7. Property rights. The issuance of this permit does not convey any property rights or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of Territorial laws or regulations.
8. Duty to Provide Information.
 - A. 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.
 - B. 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. (1998 & Supp. 2004)] or the FWPCA.
9. Inspection and Entry. The Permittee shall allow the Commissioner, employees of DPNR, or an authorized representative (including an authorized contractor acting as a representative of the Regional Administrator), upon presentation of credentials and other documents as may be required by law, to:
 - A. 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 this permit;
 - B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit;
 - D. 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. (1998 & Supp. 2004)], any substances or parameters at any location.
10. Monitoring and Records.
 - A. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
 - B. Monitoring of Discharges. 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).
 - C. The Permittee shall monitor each discharge pursuant to paragraph (d) of this section for at least the following:

- i) Flow (in gallons per day); and
 - ii) All of the following (upon notification to the Permittee):
 - 1. 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;
 - 2. Pollutants which the Commissioner finds, on the basis of information available to him, could have a significant impact on the quality of the waters of the Territory;
 - 3. Pollutants specified by the Administrator, in regulations issued pursuant to the Act [12 V.I.C. § 181 et seq. (1998 & Supp. 2004)], as subject to monitoring; and
 - 4. Any pollutants in addition to the above that the Regional Administrator requests, in writing, be monitored.
- D. 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.
- E. 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.
- F. Records of monitoring information shall include for all samples and measurements:
- i) The date, exact place, and time of sampling or measurements;
 - ii) The individual(s) who performed the sampling or measurements;
 - iii) The date(s) analyses were performed;
 - iv) The individual(s) who performed the analyses; result in noncompliance with permit requirements.

- v) The analytical techniques or methods used; and
 - vi) The results of such analyses.
- G. Monitoring results must be conducted according to test procedures approved under the most current version of 40 CFR §136, unless other test procedures have been specified in the permit.

11. Signatory Requirements

- A. All permit applications shall be signed as follows:
- i) For a corporation, by a responsible corporate officer; or
 - ii) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
 - iii) For a municipality, State, Territory, Federal or other public agency, by either a principal executive officer or ranking elected official.
- B. All reports required by this permit, and other information requested by the Regional Administrator or Commissioner of DPNR pursuant to the terms of this permit, including DMRs and reports of noncompliance, shall be signed as follows:
- i) By a person described in subsection a, or by a duly authorized representative of that person.
 - ii) A person is a duly authorized representative only if:
 - 1. The authorization is made in writing by a person described in subsection a.;
 - 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company.
 - 3. The written authorization shall be submitted to the Commissioner at the mailing address detailed in Part II.A.2 above.
 - iii) If a written authorization pursuant to subsection b. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph b. must be submitted to the Commissioner prior to or together with any reports or information to be signed by an authorized representative.

- C. Certification. Any person signing a document under subsection a. or b. shall make the following certification: "I certify under penalty of the 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 gather and evaluate 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."
- D. For persons signing documents electronically, in addition to meeting other applicable requirements in Appendix H, Section 11, such signatures must meet the same signature, authentication, and identity-proofing standards set forth at 40 CFR § 3.2000(b) for electronic reports (including robust second-factor authentication).
- E. 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.

12. Reporting Requirements

- A. 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:
 - i) 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
 - ii) 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 Section 18(a)(1) below.
- B. Anticipated noncompliance. 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.
- C. 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. (1998 & Supp. 2004)].

- i) This permit may be automatically transferred to a new Permittee if:
 - 1. The existing Permittee notifies the Commissioner at least thirty (30) days in advance of the proposed transfer date in subparagraph (b);
 - 2. The notice contains a written agreement between the existing and new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - 3. The Commissioner does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify or revoke and reissue the permit (a modification under this paragraph may also be a minor modification under 40 CFR §122.63 (2007)). If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subparagraph (b).
- ii) If this permit is automatically transferred in accordance with the provisions of paragraph (2), the permit may be modified to reflect the automatic transfer after its effective date.

D. Monitoring Reports.

- i) Monitoring results shall be reported at the intervals specified in Part I of this permit.
- ii) Monitoring results must be reported on a Discharge Monitoring Report (DMR).
- iii) 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. (1998 & Supp. 2004)] or the FWPCA.
- iv) If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR §136 (2007), 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.
- v) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Commissioner in the permit.

E. 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 fourteen (14) days following each schedule date.

F. Twenty-four hour reporting:

- i) The Permittee shall report any noncompliance which may endanger health or the environment verbally to Commissioner at (340) 773-1082. Any information shall be provided orally within twenty-four (24) hours from the time the Permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) business 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.
 - ii) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph.
 - 1. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Section 13 - Bypass);
 - 2. Any upset which exceeds any effluent limitation in the permit.
 - 3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Commissioner in the permit to be reported within twenty-four (24) hours;
 - iii) The Commissioner may waive the written report on a case-by-case basis for reports under paragraph (1) of this section if the oral report has been received within twenty-four (24) hours.
- G. Other noncompliance. The Permittee shall report to the Commissioner all instances of noncompliance not reported under subsections d, e, and f at the time the monitoring report covering the period of noncompliance is submitted. The reports shall contain the information listed in paragraph (2) of subsection f., above.
- H. 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 to the Commissioner.

13. Bypass

A. Definitions.

- i) Bypass means the intention diversion of waste streams from any portion of a treatment facility. See 40 CFR §122.41(m)(1)(i).
- ii) 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. See 40 CFR §122.41(m)(1)(ii).

- B. 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 subsections b. and c.
- C. Notice
- i) Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass.
 - ii) Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required in subsection f. of section 12 above.
- D. Prohibition of bypass.
- i) Bypass is prohibited and the Director may take enforcement action against a Permittee for bypass, unless:
 - 1. 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.);
 - 2. 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
 - 3. The Permittee submitted notices as required under subsection 13.b.
 - ii) 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 paragraph (c)(1) of this section.

14. Upset

- A. 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 section (14)(b) 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.

- B. 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:
- i) An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - ii) The permitted facility was at the time being properly operated; and
 - iii) The Permittee submitted notice of the upset as required in subsection f. of section 12 above (24 hour notice); and
 - iv) The Permittee complied with any remedial measures required under section 4 above (duty to mitigate).
 - v) Burden of proof. In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

15. Other TPDES conditions.

- A. All discharges authorized by the permit shall be consistent with the provisions of the permit;
- B. 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; and
- C. 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.

16. Penalties

- A. Civil Penalties. The Act [12 V.I.C. 181 et seq. (1998 & Supp. 2004)] 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.
- B. Criminal Penalties

- i) The Act [12 V.I.C. 181 et seq. (1998 & Supp. 2004)] 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.
- ii) The Act [12 V.I.C. 181 et seq. (1998 & Supp. 2004)] 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.

17. Corrective Action.

Whenever, on the basis of any information available to him, 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) (1998 & Supp. 2004).

- A. 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) (1998 & Supp. 2004). 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.
- B. 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 (1998 & Supp. 2004).

- C. 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.

18. Additional Reporting Requirements. The following conditions apply to all TPDES permits within the categories specified below:

- A. Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under Section 1 (Duty to Comply), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Commissioner as soon as they know or have reason to believe:
- i) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
 1. One hundred micrograms per liter (100µg/l); or
 2. Two hundred micrograms 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
 3. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
 4. The notification level, if any, established by the Commissioner in the permit.
 - ii) That any activity has occurred or will occur which would result in any discharge, on a non-routine basis or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”.
 1. Five hundred micrograms per liter (500 µg/l); or
 2. One milligram per liter (1mg/l) for antimony; or
 3. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 4. The notification level, if any, established by the Commissioner in the permit.

- B. The Permittee shall report the quarterly maximum for Total Dissolved Solids, TDS, for all external Outfalls in units of milligrams per Liter (mg/L). DPNR-DEP will use this information to determine the efficiency of the facilities' equipment.
19. Removed substances. Solids, sludge, filter backwash or other pollutants removed in the course of treatment or control of wastewaters and/or the treatment of intake waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. The following data shall be reported together with the monitoring data required in Part II.A.2.:
- A. The sources of the materials to be disposed of;
 - B. The approximate volumes and weights;
 - C. The method by which they were removed and transported; and
 - D. Their final disposal locations.
20. Oil and Hazardous Substance Liability. The imposition of responsibilities upon or the institution of any legal action against the Permittee under section 311 of the Clean Water Act shall be in conformance with regulations promulgated pursuant to Section 311 to discharges from facilities with TPDES permits.
21. Reopener Clause for Toxic Effluent Limitations. Notwithstanding any other condition of this permit, if any applicable toxic effluent standard or prohibition is promulgated under Section 301(b)(2)(C) and (d), 304(b)(2) and 307(a)(2) of the Clean Water Act and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, this permit shall be promptly modified or revoked and reissued to conform to that effluent standard or prohibition.
22. Territorial Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable Territorial law or regulation under authority preserved by Section 510 of the Act. The issuance of this permit does not preempt any duty to obtain territorial assent required by law for the discharge.
23. Availability of Information.
- A. TPDES permits, effluent data, and information required by TPDES application forms provided by the Commissioner under 40 CFR, §122.21 (including information submitted on the forms themselves and any attachments used to supply information required by the forms) shall be available for public inspection at the offices of the Regional Administrator and the Commissioner.
 - B. In addition to the information set forth in subsection a., any other information submitted to VIDPNR in accordance with the conditions of this permit shall be made available to the public without further notice unless a claim of business

confidentiality is asserted at the time of submission in accordance with the procedures in 40 CFR, Part 2 (Public Information).

- C. If a claim of confidentiality is made for information other than that enumerated in subsection a., that information shall be treated in accordance with the procedures in 40 CFR Part 2. Only information determined to be confidential under those procedures shall not be made available by USVIDPNR for public inspection.
24. Severability. The Provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Appendix J - Notice of Intent (NOI) Form and Instructions

Part 1.7.1 requires you to complete and submit the associated Notice of Intent (NOI) form. Please contact VIDPNR to obtain a copy of the NOI Form.

Appendix K - Notice of Termination (NOT) Form and Instructions

Part 8.3 requires you to complete and submit the associated Notice of Intent (NOT) form. Please contact VIDPNR to obtain a copy of the NOT Form