

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



**VIRGIN ISLANDS PESTICIDE GENERAL PERMIT (PGP) FOR POINT  
SOURCE DISCHARGES TO WATERS OF THE UNITED STATES  
VIRGIN ISLANDS FROM THE APPLICATION OF PESTICIDES**

**GENERAL PERMIT NUMBER VIPGP0000**

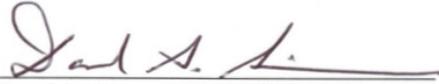
**AUTHORIZATION TO DISCHARGE UNDER THE  
TERRITORIAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, 33 USC §1251 et. seq., (hereafter referred to as the CWA or the Act), as amended by the Water Quality Act of 1987, P.L. 100-4, and the Virgin Islands Water Pollution Control Act, 12 V.I. CODE ANN. §184 (1998 & Supp. 2004) et. seq., any "Operator", defined within this permit as a "Decision-maker" or "Applicator," of a point source discharge of pollutants which is associated with the application of pesticides and is eligible for coverage under Part 1.1 of this permit, is authorized to discharge in accordance with its requirements.

This permit is conditioned upon the submittal of a complete Notice of Intent (NOI) application form and written approval of coverage from the Director of Division of Environmental Protection of the Virgin Islands Department of Planning and Natural Resources (VIDPNR), in accordance with 12 V.I. CODE ANN. §185 (1998 & Supp. 2004).

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

This permit and authorization to discharge shall expire at midnight on **October 31, 2017**.

  
\_\_\_\_\_  
David Alvaro Simon, P.E.  
Director

10/9/12  
Date

  
\_\_\_\_\_  
Alicia V. Barnes  
Commissioner

10/15/2012  
Date

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## 1. Coverage under This Permit.

This permit covers any Operator who meets the eligibility requirements identified in Part 1.1 and if so required, has submitted a Notice of Intent (NOI) in accordance with Part 1.2.

For the purpose of this permit, “Operator” is defined in Appendix A to mean any entity associated with the application of pesticides which results in a discharge into or near Waters of the USVI that meets either of the following two criteria: (1) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or (2) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions. Operators identified in (1) above are referred to in this permit as Applicators while Operators identified in (2) are referred to in this permit as Decision-makers. As defined, more than one Operator may be responsible for complying with this permit for any single discharge from the application of pesticides.

For purposes of this permit, all Operators are defined as either an Applicator or a Decision-maker or both an Applicator and a Decision-maker.

When an Operator is both an Applicator and a Decision-maker, the Operator must comply with all applicable requirements imposed on both Applicators and Decision-makers. When the permit references all “Operators,” both Applicators and Decision-makers must comply.

### 1.1 Eligibility

#### 1.1.1 Activities Covered.

This permit is available to operators who discharge into or near Waters of the USVI from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (hereinafter collectively “pesticides”), when the pesticide application is for one of the following pesticide use patterns:

- a. **Mosquito and Other Flying Insect Pest Control** – to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include but are not limited to mosquitoes and black flies.
- b. **Aquatic Weed and Algae Control** – to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches and/or irrigation canals.
- c. **Aquatic Nuisance Animal Control** – to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance

animals in this use category include, but are not limited to fish, lampreys, and mollusks.

- d. **Forest Canopy Pest Control** - aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to water.

## 1.1.2 Limitations on coverage

**1.1.2.1 Discharges to Water Quality Impaired Waters.** You are not eligible for coverage under this permit for any discharges from a pesticide application to Waters of the USVI if the water is identified as impaired by that pesticide or its degradates. For purposes of this permit, impaired waters are those that have been identified by VIDPNR pursuant to Section 303(d) of the CWA as not meeting applicable Territorial water quality standards. Impaired waters for the purposes of this permit include both waters with VIDPNR-approved or VIDPNR-established Total Maximum Daily Loads (TMDLs) and waters for which VIDPNR has not yet approved or established a TMDL. You can obtain a list of these waters by either visiting <http://www.dpnr.gov.vi/> to download, or contacting VIDPNR using the contact information found in Section 8.1. If your discharge would not be eligible under this permit because the water is listed as impaired for that specific pesticide, but you have evidence that shows the water is no longer impaired, you may submit this information to VIDPNR and request that coverage be allowed under this permit.

**1.1.2.2 Discharges to Waters Designated as Class A for Antidegradation Purposes.** You are not eligible for coverage under this permit for discharges from a pesticide application to waters designated by VIDPNR as Class A Waters (as defined in 12 V.I.R.R. §186) for anti-degradation purposes under 12 V.I.R.R. §186-7.

**1.1.2.3 Discharges Currently or Previously Covered by another Permit.** You are not eligible for coverage under this permit if any of the following circumstances apply:

- a. The discharges are covered by another TPDES permit; or
- b. The discharges were included in a permit that within the last five years has been or is in the process of being denied, terminated, or revoked by VIDPNR (this does not apply to the routine reissuance of permits every five years).

**1.1.2.4 Endangered and Threatened Species and Critical Habitat Protection.** Coverage under this permit is available only for discharges and discharge-related activities that are not likely to adversely affect species that are federally- or locally listed as endangered or threatened ("listed") under the Endangered Species Act (ESA) or the USVI Indigenous and Endangered Species Act (IESA) of 1990, or habitat that is federally designated as critical under the ESA or IESA ("critical habitat"), except as provided in Criterion B, C, and, for 60 days, D, below. As one of the provision in this permit that help limit adverse effects to these resources, the six criteria (A-F) below relate to the impacts a prospective discharger's activities may have on a subset of these listed species and critical habitat.

Specifically, the conditions below relate to potential impacts on National Marine Fisheries Service (NMFS) Listed Resource of Concern, as defined in Appendix A. These are resources that have been identified through consultation with NMFS as having potential vulnerability that warrants the additional protections entailed in compliance with A-F. Other provisions that protect listed species more broadly include Section 1.6, which requires compliance with any conditions resulting from an ESA Section 7 consultation or ESA Section 10 permit, and the waiting period between NOI submittal and authorization to discharge, which provides an opportunity for NMFS, VIDPNR – Fish & Wildlife, and the U.S. Fish and Wildlife Service, EPA, VIDPNR and members of the public to identify any potential impacts on listed species and for VIDPNR to notify the permittee if further conditions or an individual permit are necessary.

A step-by-step guide for determining eligibility with these conditions relating to the protection of NMFS Listed Resources of Concern, as defined in Appendix A, is provided in Appendix H of the permit. To demonstrate eligibility, Decision-makers must meet one or more of the following six criteria (A-F) for the entire term of coverage under the permit:

Criterion A. Pesticide application activities will not result in a point source discharge to one or more Waters of the USVI containing NMFS Listed Resources of Concern, as defined in Appendix A, for this permit.

Criterion B. Pesticide application activities for which permit coverage is being requested will discharge to one or more receiving Waters of the USVI containing NMFS Listed

Resources of Concern, as defined in Appendix A, but consultation with NMFS under section 7 of the ESA has been concluded for pesticide application activities covered under this permit. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action. The consultation addressed the effects of pesticide discharges and discharge-related activities on federally-listed threatened or endangered species and federally-designated critical habitat, and must have resulted in either:

- i. A biological opinion from NMFS finding no jeopardy to federally-listed species and no destruction/adverse modification of federally-designated critical habitat; or
- ii. Written concurrence from NMFS with a finding that the pesticide discharges and discharge-related activities are not likely to adversely affect federally-listed species or federally-designated critical habitat.

Criterion C. Pesticide application activities for which permit coverage is being requested will discharge to one or more Waters of the USVI containing NMFS Listed Resources of Concern, as defined in Appendix A, but all “take” of these resources associated with such pesticide application activities has been authorized through NMFS’ issuance of a permit under section 10 of the ESA, and such authorization addresses the effects of the pesticide discharges and discharge-related activities on federally- and locally listed species and federally and locally designated critical habitat. (The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. See Section 3 of the Endangered Species Act, 16 U.S.C. § 1532(19).)

Criterion D. Pesticide application activities were, or will be, discharged to one or more Waters of the USVI containing NMFS Listed Resources of Concern, as defined in Appendix A, but only in response to a Declared Pest Emergency Situation. Decision-makers must provide VIDPNR with their rationale supporting the determination whether the discharge is likely to adversely affect NMFS Listed Resources of Concern, including the description of appropriate measures to be undertaken to avoid or eliminate the likelihood of adverse effects

Criterion E. Pesticide application activities for which permit coverage is being requested in the NOI will discharge to one or

more Waters of the USVI containing NMFS Listed Resources of Concern, as defined in Appendix A. Eligible discharges include those where the Decision-maker includes in the NOI written correspondence from NMFS that pesticide application activities performed consistent with appropriate measures will avoid or eliminate the likelihood of adverse effects to Listed Resources of Concern. Eligibility under this criterion is contingent upon the Decision-maker following the measures described in correspondence from NMFS designed to avoid or eliminate the likelihood of adverse effects.

Criterion F. Pesticide application activities for which permit coverage is being requested in the NOI will discharge to one or more Waters of the USVI containing NMFS Listed Resources of Concern, as defined in Appendix A. Eligible discharges include those from pesticide application activities that are demonstrated by the Decision-maker as not likely to adversely affect NMFS Listed Resources of Concern or that the pest poses a greater threat to the NMFS Listed Resources of Concern than does the discharge of the pesticide. Decision-makers must provide VIDPNR with their documentation demonstrating the basis for their finding.

## **1.2 Authorization to Discharge under This Permit**

### **1.2.1 How to Obtain Authorization.**

The following discharges, consistent with the permit eligibility provisions in Part 1.1, are automatically authorized by this permit beginning November 1, 2012:

- Eligible discharges made prior to the Notice of Intent submission deadline. See Table 1-2 in Part 1.2.3;
- Eligible discharges that result from the application of a pesticide as part of pesticide research and development, as defined in Appendix A;
- Eligible discharges for which submission of an NOI is not required. See Parts 1.2.2 and 1.2.3.

To obtain authorization under this permit for all other eligible discharges, a Decision-maker must submit a timely, complete, and accurate NOI consistent with the requirements of Parts 1.2.2 and 1.2.3.

### **1.2.2 Decision-maker Required to Submit a Notice of Intent (NOI).**

Decision-makers required to submit NOIs are identified in Table 1-1.

For calculating annual treatment area totals for purposes of determining if an NOI must be submitted, see Appendix A, Definitions, “annual treatment area threshold.”

An NOI provides notice to VIDPNR that a Decision-maker intends to discharge to Waters of the USVI from pesticide application activities eligible for coverage under this permit. Information required to be included in an NOI is provided in Appendix D. The NOI must identify the pest management area where the Decision-maker will conduct activities resulting in discharges to Waters of the USVI to be covered under this permit.

If required to submit an NOI, a Decision-maker must submit the NOI once, in accordance with the deadlines in Part 1.2.3, Table 1-2. The Decision-maker must submit an updated NOI if the criteria in Part 1.2.3 are met. Late NOIs will be accepted, but authorization to discharge will not be retroactive.

Coverage will be available for the duration of the permit for Decision-makers who file an NOI, including the Decision-makers’ employees, contractors, subcontractors, and other agents, for all activities identified on the NOI unless coverage is terminated pursuant to Parts 1.2.5 or 1.3. If a submitted NOI is not timely, accurate, or complete, any employee, contractor, subcontractor or other entity that discharges without the required NOI is not covered by this permit.

Applicators who are not also Decision-makers do not need to submit an NOI.

<b>Table 1-1. Decision-makers Required to Submit NOIs</b>		
<b>PGP Part/ Pesticide Use</b>	<b>Which Decision-makers Must Submit NOIs?</b>	<b>For Which Pesticide Application Activities?</b>
<b>All four use patterns identified in Part 1.1.1</b>	Any Decision-maker with an eligible discharge to Waters of the USVI containing NMFS Listed Resources of Concern, as defined in Appendix A.	Activities resulting in a discharge to Waters of the USVI containing NMFS Listed Resources of Concern, as defined in Appendix A
1.1.1(a) - Mosquito and Other Flying Insect Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization’s operations.	All mosquito and other flying insect pest control activities resulting in a discharge to Waters of the USVI.
	Mosquito control districts, or similar pest control districts	All mosquito and other flying insect pest control activities resulting in a discharge to Waters of the USVI.
	Other entities that exceed the annual treatment area threshold identified here	Decision to treat with adulticide during a calendar year more than 640 acres
1.1.1(b) - Weed and Algae	Any Agency for which pest management for land resource stewardship is an	All weed and algae pest control activities resulting in a discharge to

Pest Control	integral part of the organization's operations.	Waters of the USVI.
	Irrigation and weed control districts, or similar pest control district	All weed and algae pest control activities resulting in a discharge to Waters of the USVI.
	Other entities that exceed the <i>annual treatment area threshold</i> identified here	Decision to treat during a calendar year more than either: 10 linear miles OR 40 acres of water (i.e., surface area)
1.1.1(c) - Animal Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.	All animal pest control activities resulting in a discharge to Waters of the USVI.
	Other entities that exceed the <i>annual treatment area threshold</i> identified here	Decision to treat during a calendar year more than either: 10 linear miles OR 40 acres of water (i.e., surface area)
1.1.1(d) - Forest Canopy Pest Control	Any Agency for which pest management for land resource stewardship is an integral part of the organization's operations.	All forest canopy pest control activities resulting in a discharge to the Waters of the USVI.
	Other entities that exceed the <i>annual treatment area threshold</i> identified here	Decision to treat during a calendar year more than 640 acres

**1.2.3 Discharge Authorization Date.**

Beginning November 1, 2012, discharges to Waters of the USVI as a result of pesticide applications must be authorized under a TPDES permit. Except in response to a declared pest emergency situation, operators that are eligible for coverage under Part 1.1 are authorized to discharge under this permit consistent with the NOI submission and discharge authorization dates identified in Table 1-2. Decision-makers eligible for coverage under Part 1.1 that discharge as the result of a declared pest emergency situation are authorized to discharge under this permit immediately upon commencing discharge, but must submit an NOI no later than 30 days after beginning discharge.

Any Decision-makers requiring permit coverage for a treatment area not within the pest management area identified on a previously submitted NOI, and wishing to remain authorized, must submit NOI changes at least 14 days before beginning to discharge in that newly identified area unless discharges are in response to a declared pest emergency in which case no later than 30 days after beginning discharge. The Decision-maker must then receive a letter from VIDPNR approving the NOI and issuing coverage under the PGP before discharge in that newly identified area may begin.

On the basis of a review of an NOI or other information, VIDPNR may delay authorization to discharge, determine that additional technology-based and/or water quality-based effluent limitations are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Part 1.3.

<b>Table 1-2. Original NOI Submittal Deadlines and Discharge Authorization Dates</b>		
Beginning November 1, 2012, any eligible discharge for which an NOI is required must submit an NOI consistent with the earliest due date identified below. If VIDPNR receives an NOI on or before November 1, 2012 (or on or before October 1, 2012, for discharges to Waters of the USVI containing NMFS Listed Resources of Concern), uninterrupted coverage continues <sup>1</sup> . NOI due dates for any discharges occurring on or after November 1, 2012 are as follows:		
<b>Operator Type</b>	<b>NOI Submittal Deadline</b>	<b>Discharge Authorization Date<sup>1</sup></b>
Any Operator not required to submit an NOI.	Not applicable.	Immediately upon beginning to discharge.
Any Decision-maker with any discharge to Waters of the USIV containing NMFS Listed Resources of Concern, except for those discharges in response to a Declared Pest Emergency Situation, as defined in Appendix A.	At least 30 days before any discharge to Waters of the United States containing NMFS Listed Resources of Concern, as defined in Appendix A. <sup>4</sup>	Date of the coverage letter from DPNR to the Decision-maker issuing coverage under the PGP. <sup>2,4</sup>
Any Decision-maker with a discharge in response to a Declared Pest Emergency for which that activity triggers the NOI requirement identified in Part 1.2.2, except for any discharges to Waters of the USVI containing NMFS Listed Resources of Concern.	At least 30 days after beginning discharge.	Immediately upon beginning to discharge for activities conducted in response to a Declared Pest Emergency Situation
Any Decision-maker with any discharge to Waters of the USVI containing NMFS Listed Resources of Concern, in response to a Declared Pest Emergency Situation, as defined in Appendix A.	Within 15 days after beginning to discharge in response to a Declared Pest Emergency Situation.	Immediately upon beginning to discharge for activities conducted in response to a Declared Pest Emergency Situation for a period of at least 60 days. <sup>3</sup>
Any Decision-maker that exceeds any annual treatment area threshold.	At least 10 days before exceeding an annual treatment area threshold.	Date of the coverage letter from DPNR to the Decision-maker issuing coverage under the PGP. <sup>2,4</sup>
Any Decision-maker otherwise required to submit an NOI as identified in Table 1-1.	At least 10 days before any discharge for which an NOI is required.	Date of the coverage letter from DPNR to the Decision-maker issuing coverage under the PGP. <sup>2,4</sup>

<sup>1</sup>On the basis of a review of an NOI or other information, VIDPNR may delay authorization to discharge beyond any timeframe identified in Table 1-2, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual TPDES permit, as detailed in Part 1.3.

<sup>2</sup>For those areas with NMFS Listed Resources of Concern, as defined in Appendix A, NMFS will provide VIDPNR with a determination as to whether it believes the eligibility criterion of “not likely to adversely affect listed species or

designated critical habitat” has been met, could be met with conditions that NMFS identifies, or has not been met. VIDPNR expects to rely on NMFS’s determination in deciding whether to withhold authorization. If NMFS does not provide VIDPNR with this information within 30 days of VIDPNR’s receipt of a complete and accurate NOI, the discharges will be authorized 30 days after VIDPNR’s receipt of a complete NOI.

<sup>3</sup>In any Declared Pest Emergency Situation in areas with Waters of the USVI containing NMFS Listed Resources of Concern, NMFS will have 30 days after submission of an NOI to provide VIDPNR with a determination as to whether it believes the eligibility criteria of “not likely to adversely affect listed species or designated critical habitat” has been met, could be met with conditions that NMFS identifies, or has not been met. VIDPNR expects to rely on NMFS’s determination in deciding whether to disallow continued permit coverage or if additional conditions are necessary. If NMFS does not provide VIDPNR with a recommendation within 30 days of VIDPNR’s receipt of a complete and accurate NOI, authorization for these discharges will continue. If VIDPNR identifies additional permit conditions or prohibitions, or includes additional permit conditions or prohibitions recommended by NMFS, as necessary to qualify discharges for particular Operators as eligible for coverage beyond 60 days under the PGP, those conditions remain in effect for the life of the permit.

<sup>4</sup>VIDPNR may authorize certain discharges in less than 30 days, but no fewer than 10 days, for any discharges authorized under Criterion B, C, or E of Part 1.1.2.4 (for which NMFS has already evaluated the effects of these discharges).

#### **1.2.4 Continuation of this Permit.**

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 12 V.I.R.R. §184-25 and 40 CFR 122.6 and remain in force and effect. If an Operator was authorized to discharge under this permit before the expiration date, any discharges authorized under this permit will automatically remain covered by this permit until the earliest of the following:

- a. A Decision-maker is authorized for coverage under a reissued permit or a replacement of this permit, following the timely and appropriate submittal of a complete NOI requesting authorization to discharge under the new permit and in compliance with the requirements of the NOI;
- b. A Decision-maker submits a Notice of Termination and that notice is processed consistent with Part 1.2.5.1;
- c. A TPDES individual permit for a discharge resulting from application of a pesticide that would otherwise be covered under this permit is issued or denied;
- d. VIDPNR issues a formal permit decision not to reissue this general permit, at which time VIDPNR will identify a reasonable period for covered dischargers to seek coverage under an alternative TPDES general permit or a TPDES individual permit. Coverage under this permit will cease when coverage under another permit is granted/authorized; or
- e. VIDPNR has informed the Operator that its discharge is no longer covered under this permit.

#### **1.2.5 Terminating Coverage**

##### **1.2.5.1 Submitting a Notice of Termination.**

To terminate permit coverage, an operator who is required to submit an NOI as identified in Part 1.2.2, must submit a

complete and accurate Notice of Termination. Information required to be included in a Notice of Termination is provided in Appendix E. Operators required to submit a Notice of Termination should submit that information to VIDPNR at the address found in Part 8.1. Your authorization to discharge under this permit terminates at 11:59 p.m. of the day that a complete Notice of Termination is processed and approved by VIDPNR. If you submit a Notice of Termination without meeting one or more of the conditions identified in Part 1.2.5.2, then your Notice of Termination is not valid. Decision-makers are responsible for complying with the terms of this permit until your authorization is terminated. If you met the annual treatment area threshold for having to submit annual reports pursuant to Part 7, you must file an annual report for the portion of the year up through the date of your termination. The annual report is due no later than 45 days after your termination date.

**1.2.5.2 When to Submit a Notice of Termination.**

A Decision-maker who is required to submit an NOI as identified in Part 1.2.2 must submit a Notice of Termination within 30 days after one or more of the following conditions have been met:

- a. A new Decision-maker has taken over responsibility of the pest control activities covered under an existing NOI;
- b. The Decision-maker has ceased all discharges from the application of pesticides for which permit coverage was obtained and does not expect to discharge during the remainder of the permit term for any of the use patterns as identified in Part 1.1.1; or
- c. The Decision-maker has obtained coverage under a TPDES individual permit or an alternative TPDES general permit for all discharges required to be covered by a TPDES permit, unless coverage was obtained consistent with Part 1.3, in which case coverage under this permit will terminate automatically.

**1.2.5.3 Termination for Operators not required to submit an NOI.**

Operators covered under this permit that are not required to submit an NOI are terminated from permit coverage when they no longer have a discharge from the application of pesticides or their discharges are covered under a TPDES individual permit or alternative TPDES general permit.

**1.3 Alternative Permits**

**1.3.1 VIDPNR Requiring Coverage under an Alternative Permit.**

VIDPNR may require you to apply for and/or obtain authorization to discharge under either an individual TPDES permit or an alternative TPDES general permit in accordance with 12 V.I.R.R. §184-46(b)(3), 40 CFR 122.64 and 124.5.

If VIDPNR requires an Operator to apply for a TPDES individual permit, VIDPNR will notify the Operator in writing that a permit application is required. Such a notification will include a brief statement of the reasons for the decision and will provide application information. In addition, for Operators whose discharges are authorized under this permit, any notice will set a deadline to file the permit application and will include a statement that on the effective date of the TPDES individual permit, coverage under this general permit will terminate. VIDPNR may grant additional time to submit the application if an Operator submits a request setting forth reasonable grounds for additional time. If covered under this permit and the Operator fails to submit a TPDES individual permit application as required by VIDPNR, the applicability of this permit to such Operator is terminated at the end of the day specified by VIDPNR as the deadline for application submittal. VIDPNR may take enforcement action for any unpermitted discharge or violation of any permit requirement.

**1.3.2 Operator Requesting Coverage under an Alternative Permit.**

If an Operator does not want to be covered by this general permit, but need permit coverage, the Operator can apply for an individual permit. In such a case, the Operator must submit an individual permit application in accordance with the requirements of 12 V.I.R.R. §184-46(b)(3)(i)(G)(4)(ii) and 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to VIDPNR at the address found in Part 8.1. The request may be granted by issuance of an individual permit or authorization of coverage under an alternative general permit.

When an individual TPDES permit is issued, or the Operator is authorized under an alternative TPDES general permit to discharge a pollutant to Waters of the USVI as a result of a pesticide application, authorization to discharge under this permit is terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit.

**1.4 Severability.**

Invalidation of a portion of this permit does not render the whole permit invalid. VIDPNR's intent is that the permit will remain in effect to the extent possible; in

the event that any part of this permit is invalidated, the remaining parts of the permit will remain in effect unless VIDPNR issues a written statement otherwise.

**1.5 Other Federal and Territorial Laws.**

You must comply with all other applicable federal and territorial laws and regulations that pertain to your application of pesticides. For example, this permit does not negate the requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its implementing regulations to use registered pesticides consistent with the product's labeling. Additionally, there are other laws and regulations that may apply to certain activities that are also covered under this permit (e.g., United States Coast Guard regulations).

**1.6 Federally-Listed and Locally-Listed Endangered and Threatened Species and Designated Critical Habitat.**

Operators must comply with all conditions and/or requirements that address discharges from activities also covered under this permit resulting from any of the following preexisting situations:

- a. ESA Section 7 consultation that Operators have completed with FWS and/or NMFS, and/or
- b. ESA Section 10 permit issued to the Operator by FWS and/or NMFS.

## **2. Technology-Based Effluent Limitations**

This Part includes technology-based effluent limitations applicable to all Operators, as defined in Appendix A, for any discharges authorized under this permit, with compliance required upon beginning such discharge. All Operators are classified as either “Applicators” or “Decision-makers,” as defined in Appendix A, or both. Applicators must perform the tasks identified in Part 2.1 – Applicators’ Responsibilities. Decision-makers must perform the tasks identified in Part 2.2 – Decision-makers’ Responsibilities. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

If an Operator’s discharge of pollutants results from the application of pesticide that is being used solely for the purpose of “pesticide research and development,” as defined in Appendix A, the Operator must use such pesticide consistent with any applicable research plan and experimental use permit.

As stated in Part 1.5, this permit requires all Operators to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides by the Operator.

### **2.1 Applicators’ Responsibilities**

To meet the effluent limitations of this permit, all Applicators must implement Part 2.1 to minimize the discharge of pesticides to Waters of the USVI from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.

**2.1.1** To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.

**2.1.2** Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.

**2.1.3** Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal and VI Pesticide Code requirements.

### **2.2 Decision-makers’ Responsibilities: For All Decision-makers**

To meet the effluent limitations in Part 2.2, all Decision-makers must minimize the discharge of pesticides to Waters of the USVI from the application of pesticides, through the use of Pest Management Measures, as defined in Appendix A.

To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.

### **Decision-Maker's Responsibilities: For Decision-makers Required to Submit NOIs**

To meet the effluent limitations of this permit, prior to pesticide application, all Decision-makers who are required to submit an NOI as required in Part 1.2.2 must also implement Parts 2.2.1 - 2.2.4 to minimize the discharge of pesticides to Waters of the USVI from the application of pesticides, through the use of Pesticide Management Measures, as defined in Appendix A.

#### **2.2.1 Mosquito and Other Flying Insect Pest Control**

This part applies to discharges from the application of pesticides for mosquito and other flying insect pest control as defined in Part 1.1.1.

2.2.1.1 **Identify the Problem.** Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the USVI, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, Decision-makers required to submit NOIs must do the following for each pest management area, as defined in Appendix A:

1. Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data, to serve as action threshold(s) for implementing Pest Management Measures;
2. Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
3. Identify known breeding sites for source reduction, larval control program, and habitat management;
4. Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems; and

5. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.1.1.

2.2.1.2 **Pest Management Options.** Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the USVI, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, Decision-makers required to submit NOIs select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control mosquitoes or other flying insect pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical or physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

2.2.1.3 **Pesticide Use.** If a pesticide is selected to manage mosquitoes or flying insect pests and application of the pesticide will result in a discharge to a Waters of the USVI, Decision-makers that are required to submit NOIs must:

1. Conduct larval and/or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent area prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met;

2. Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold(s) has been met;
3. In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when the larval action threshold(s) has been met; and
4. In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when the adult action threshold(s) has been met.

## **2.2.2 Weed and Algae Pest Control.**

This part applies to discharges from the application of pesticides for control of weeds, algae, and pathogens as defined in Part 1.1.1.

### **2.2.2.1 Identify the Problem.**

Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the USVI, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, Decision-makers required to submit NOIs must do the following for each pest management area, as defined in Appendix A:

1. Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
2. Identify target pest(s);
3. Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc);
4. Establish any pest- and site-specific action threshold, as defined in Appendix A, for implementing Part 2.2.2.2; and
5. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.2.1.

### **2.2.2.2 Pest Management Options.**

Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the USVI, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, Decision-makers required to submit NOIs must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these pest management strategies, you must evaluate the following management options, considering impact to water quality, impact to non-target organisms, pest resistance, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical or physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

2.2.2.3 **Pesticide Use.** If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to Waters of the USVI, Decision-makers that are required to submit NOIs must:

1. Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met; and
2. Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.

### 2.2.3 **Animal Pest Control.**

This part applies to discharges from the application of pesticides for control of animal pests as defined in Part 1.1.1.

**2.2.3.1 Identify the Problem.**

Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the USVI, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, Decision-makers required to submit NOIs must do the following for each pest management area, as defined in Appendix A:

1. Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
2. Identify target pest(s);
3. Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species);
4. Establish any pest-specific and site-specific action threshold, as defined in Appendix A, for implementing Part 2.2.3.2; and
5. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.3.1.

**2.2.3.2 Pest Management Options.**

Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the USVI, and at least once each year thereafter prior to the first pesticide application during that calendar year, Decision-makers required to submit NOIs must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical or physical methods

4. Biological control agents

5. Pesticides

2.2.3.3 **Pesticide Use.** If a pesticide is selected to manage pests and application of the pesticide will result in a discharge to Waters of the USVI, Decision-makers that are required to submit NOIs must:

1. Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the action threshold(s) is met; and
2. Reduce the impact on the environment and non-target organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold(s) has been met.

#### 2.2.4 Forest Canopy Pest Control.

This part applies to discharges from the application of pesticides for forest canopy pest control as defined in Part 1.1.1.

##### 2.2.4.1 Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the USVI, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, Decision-makers required to submit NOIs must do the following for each pest management area, as defined in Appendix A:

1. Establish any pest-specific and site-specific action threshold, as defined in Appendix A, for implementing Part 2.2.4.2;
2. Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
3. Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and

4. In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in Part 2.2.4.1.

2.2.4.2 **Pest Management Options.** Prior to the first pesticide application covered under this permit that will result in a discharge to Waters of the USVI, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, Decision-makers required to submit NOIs must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

1. No action
2. Prevention
3. Mechanical/physical methods
4. Cultural methods
5. Biological control agents
6. Pesticides

2.2.4.3 **Pesticide Use.**

If a pesticide is selected to manage forestry pests, and application of the pesticide will result in a discharge to Waters of the USVI Decision-makers that are required to submit NOIs must:

1. Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the pest action threshold is met;
2. Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action threshold(s) has been met; and

3. Evaluate using pesticides against the most susceptible developmental stage.

### 3. **Water Quality-Based Effluent Limitations**

All Operators must control discharges as necessary to meet applicable numeric and narrative USVI Water Quality Standards, for any discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time an Operator becomes aware, either through self-monitoring or by notification from VIDPNR or USEPA, that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in Part 6 and Appendix B, Section B.3, up to and including the ceasing of the discharge, if necessary.

### 4. **Monitoring**

#### 4.1 **Visual Monitoring Requirements for Pesticide Applicators.**

During any pesticide application with discharges authorized under this permit, all applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in Appendix A, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

#### 4.2 **Visual Monitoring Requirements for all Operators.**

During any Operator post-application surveillance of any pesticide application with discharges authorized under this permit, all Operators must visually assess the area to and around where pesticides were applied for possible and observable adverse incidents, as defined in Appendix A, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

### 5. **Pesticide Discharge Management Plan**

Except for any application made in response to a declared pest emergency situation, as defined in Appendix A, any Decision-maker who is required to submit an NOI, as required in Part 1.2.2, and is a large entity, as defined in Appendix A, must prepare a Pesticide Discharge Management Plan (PDMP) by the time the NOI is filed. The PDMP does not contain effluent limitations; the effluent limitations are specified in Parts 2 and 3 of the permit. The PDMP documents how Decision-makers will implement the effluent limitations in Parts 2 and 3 of the permit, including the evaluation and selection of Pest Management

Measures to meet those effluent limitations in order to minimize discharges. In the PDMP, Decision-makers may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If Decision-makers rely upon other documents to comply with the effluent limitations in this permit, such as a pre-existing pest management plan, the Decision-maker must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.

## **5.1 Contents of the Pesticide Discharge Management Plan.**

The PDMP must include the following elements:

1. Pesticide Discharge Management Team
2. Problem Identification
3. Pest Management Options Evaluation
4. Response Procedures
  1. Spill Response Procedures
  2. Adverse Incident Response Procedures
5. Documentation to support eligibility considerations under other federal laws
6. Signature Requirements.

### **5.1.1 PDMP Team.**

Decision-makers must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:

- a. Person(s) responsible for managing pests in relation to the pest management area
- b. Person(s) responsible for developing and revising the PDMP; and
- c. Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements;

### **5.1.2 Problem Identification.**

Decision-makers must document the following:

- a. Pest problem description. Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem in Parts 2.2.1, 2.2.2, 2.2.3, and 2.2.4;
- b. Action Threshold(s). Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met;
- c. General location map. In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of the Waters of the USVI; and
- d. Water quality standards. Document any Class A Waters, and any water(s) identified as impaired by a substance which either is an active ingredient or a degradate of such an active ingredient.

### **5.1.3 Pest Management Options Evaluation.**

Decision-makers must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Decision-makers must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.

### **5.1.4 Response Procedures.**

Decision-makers must document the following procedures in the PDMP:

#### **5.1.4.1 Spill Response Procedures**

At a minimum, Decision-makers must have:

1. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to Waters of the USVI. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

2. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

#### 5.1.4.2 **Adverse Incident Response Procedures.**

At a minimum, Decision-makers must have:

1. Procedures for responding to any adverse incident resulting from pesticide applications;
2. Procedures for notification of the adverse incident, both internal to the Decision-maker's agency/organization and external. Contact information for state/federal permitting agency, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

#### 5.1.5 **Signature Requirements.**

Decision-makers must sign, date and certify the PDMP in accordance with Appendix B, Subsection B.11.

### 5.2 **Pesticide Discharge Management Plan Modifications.**

Decision-makers must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part 6.1, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with Appendix B, Subsection B.11.

### 5.3 **Pesticide Discharge Management Plan Availability.**

Decision-makers must retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided in Section C of the NOI. The PDMP and all supporting documents must be readily available, upon request, and copies of any of these documents provided, upon request, to VIDPNR, EPA, and/or representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS). VIDPNR may provide copies of the PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR Part 2, may be withheld from the public provided that a claim of confidentiality is properly asserted and documented in accordance with 40 CFR Part 2; however, CBI must be submitted to VIDPNR, if requested, and may not be withheld from those staff within VIDPNR, USFWS, and NMFS cleared for CBI review.

## **6. Corrective Action**

All Operators must comply with the provisions of Part 6 for any discharges authorized under this permit, with compliance required upon beginning such discharge.

### **6.1 Situations Requiring Revision of Pest Management Measures.**

Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures consistent with Part 2.1 and 2.2 for the following situations:

- a. An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge not authorized by this or another TPDES permit) occurs;
- b. Operators become aware, or VIDPNR concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards;
- b. Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in Part 2.
- c. An inspection or evaluation of your activities by a VIDPNR or EPA official reveals that modifications to the Pest Management Measures are necessary to meet the effluent limitations in this permit, or
- d. Any Operator observes or is otherwise made aware of an adverse incident as defined in Appendix A.

### **6.2 Corrective Action Deadlines.**

If an Operator determines that changes to Pest Management Measures are necessary to eliminate any situation identified in Part 6.1, such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.

### **6.3 Effect of Corrective Action.**

The occurrence of a situation identified in Part 6.1 may constitute a violation of the permit. Correcting any situation identified in Part 6.1 does not absolve Operators of liability for any original violation. However, failure to comply with Part 6.2 constitutes an additional permit violation. VIDPNR will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations. VIDPNR may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements

and schedules will supersede those of Part 6.1 and 6.2 if such requirements conflict.

## **6.4 Adverse Incident Documentation and Reporting**

### **6.4.1 Twenty-Four (24) Hour Adverse Incident Notification**

#### **6.4.1.1 Adverse Incident Notification Required**

Except as provided for in Part 6.4.4, if an Operator observes or is otherwise made aware of an adverse incident, as defined in Appendix A, that may have resulted from a discharge from a pesticide application, the Operator must immediately notify VIDPNR of the incident.

This notification must be made by telephone within 24 hours of the Operator becoming aware of the adverse incident and must include at least the following information:

- a. The caller's name and telephone number;
- b. Operator name and mailing address;
- c. If covered under an NOI, the NOI TPDES permit tracking number assigned by VIDPNR;
- d. The name and telephone number of a contact person, if different than the person providing the 24-hour notice;
- e. How and when the Operator became aware of the adverse incident;
- f. Description of the location of the adverse incident;
- g. Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, for each product applied in the area of the adverse incident;
- h. Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and
- i. If known, the identity of any other Operators authorized for coverage under this permit for discharges from the pesticide application activities that resulted in the adverse incident.

If an Operator is unable to notify VIDPNR within 24 hours, the Operator must do so as soon as possible and also provide an appropriate rationale for why the Operator was unable to provide such notification within 24 hours.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

#### **6.4.1.2 Adverse Incident Notification Required**

Reporting of adverse incidents is not required under this permit in the following situations:

- a. An Operator is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application;
- b. An Operator has been notified by VIDPNR, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents;
- c. An Operator receives information of an adverse incident, but that information is clearly erroneous; or
- d. An adverse incident occurs to pests that are similar in kind to potential target pests identified on the FIFRA label.

#### **6.4.2 Thirty (30)-Day Adverse Incident Written Report.**

Except as provided for in Part 6.4.4, within 30 days of a reportable adverse incident pursuant to Part 6.4.1, Operators must provide a written report of the adverse incident to VIDPNR, both to the TPDES and Pesticides Control Programs. The adverse incident report must include at least the following information:

- a. Information required to be provided in Part 6.4.1;
- b. Date and time the Operator contacted VIDPNR notifying the Department of the adverse incident, who the Operator spoke with at VIDPNR, and any instructions received from VIDPNR;
- c. Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);
- d. A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
- e. Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);
- f. Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application; and the name of pesticide product and EPA registration number;
- g. Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- h. If laboratory tests were performed, an indication of which test(s) were performed, and when; additionally, a summary of the test results must be provided within 5 days after they become available if not available at the time of submission of the 30-day report;
- i. Description of actions to be taken to prevent recurrence of adverse incidents; and

- j. Signature, date, and certification in accordance with Appendix B, Subsection B.11.

You must report adverse incidents even for those instances when the pesticide labeling states that adverse effects may occur.

#### **6.4.3 Adverse Incident to Threatened or Endangered Species or Critical Habitat**

Notwithstanding any of the other adverse incident notification requirements of this section, if you become aware of an adverse incident to a federally or locally listed threatened or endangered species or its federally or locally designated critical habitat, that may have resulted from a discharge from your pesticide application, you must immediately notify the VIDPNR-Division of Fish & Wildlife at 340-773-1082 in St. Croix and 340-774-3320 in St. Thomas or St. John and the National Marine Fisheries Service (NMFS) at (727) 824-5301 in the case of an anadromous or marine species, or the VIDPNR-Division of Fish & Wildlife at 340-773-1082 in St. Croix and 340-774-3320 in St. Thomas or St. John and the U.S. Fish and Wildlife Service (FWS) at (850) 539-1684 in the case of a terrestrial or freshwater species. This notification must be made by telephone immediately upon your becoming aware of the adverse incident and must include at least the following information:

- a. The caller's name and telephone number;
- b. Operator name and mailing address;
- c. The name of the affected species;
- d. How and when you became aware of the adverse incident;
- e. Description of the location of the adverse incident;
- f. Description of the adverse incident, including the EPA pesticide registration number for each product you applied in the area of the adverse incident; and
- g. Description of any steps you have taken or will take to alleviate the adverse impact to the species.

Additional information on federally-listed threatened or endangered species and federally-designated critical habitat is available from NMFS ([www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)) for anadromous or marine species or FWS ([www.fws.gov](http://www.fws.gov)) for terrestrial or freshwater species. Additional information on locally-listed threatened or endangered species and locally-designated critical habitat is available from VIDPNR-F&W (<http://www.dpnr.gov.vi>).

#### **6.4.4 Notifications and Reporting for Adverse Incidents Involving Multiple Operators.**

Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of the written report required in Part 6.4.2 is also provided to all of the other authorized Operators within 30 days of the reportable adverse incident.

## **6.5 Reportable Spills and Leaks**

### **6.5.1 Spill, Leak, or Other Unpermitted Discharge Notification**

Where a leak, spill, or other release into Waters of the USVI 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 in any 24-hour period, an Operator must notify the National Response Center immediately at (800) 424-8802 or, in the Washington, DC, metropolitan area, call (202) 267-2675 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as the Operator has knowledge of the release. Contact information must be in locations that are readily accessible and available in the area where the spill, leak, or other unpermitted discharge may occur.

### **6.5.2 Thirty-Day Spill, Leak, or Other Unpermitted Discharge Documentation**

If an Operator becomes aware of a spill, leak, or other unpermitted discharge which triggers the notification in Part 6.5.1 and results in an adverse incident, then the Operator must report the incident per the guidelines in Part 6.4.1 and 6.4.2. If the spill, leak, or other unpermitted discharge triggers the notification in Part 6.5.1, but does not result in an adverse incident, then the Operator must document and retain the following information within 30 days of becoming aware of the situation:

- a. Information required to be provided in Part 6.5.1;
- b. Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
- c. Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

## **6.6 Other Corrective Action Documentation.**

For situations identified in Part 6.1, other than for adverse incidents (addressed in Part 6.4), or reportable spills or leaks (addressed in Part 6.5), Operators must document the situation triggering corrective action and planned corrective action within 30 days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

- a. Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;
- b. Brief description of the situation;
- c. Date the problem was identified;
- d. Brief description of how the problem was identified, how the Operator learned of the situation, and date the Operator learned of the situation;
- e. Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- f. Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

## 7. Recordkeeping and Annual Reporting

The recordkeeping and annual reporting requirements vary depending on the type of Operator and whether a Decision-maker is a small or large entity. Table 7-1 references applicable requirements for the range of Operators covered under this permit.

PGP Part	Applicable Type of Operator
7.1	All Operators
7.2	All Operators who are For-Hire applicators, as defined in Appendix A
7.3	Any Decision-maker required to submit an NOI and who is a <i>small entity</i> <sup>1</sup>
7.4	Any Decision-maker required to submit an NOI and who is a <i>large entity</i> <sup>2</sup>
7.5	All Operators
7.6	Any Decision-maker required to submit an NOI and who is a <i>large entity</i> <sup>2</sup>
<sup>1</sup> Small Entity – As defined in Appendix A, is any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified at: <a href="http://www.sbaonline.sba.gov/contractingopportunities/officials/size/table/index.html">http://www.sbaonline.sba.gov/contractingopportunities/officials/size/table/index.html</a> . <sup>2</sup> Large Entity – As defined in Appendix A, is any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified at: <a href="http://www.sbaonline.sba.gov/contractingopportunities/officials/size/table/index.html">http://www.sbaonline.sba.gov/contractingopportunities/officials/size/table/index.html</a> .	

Operators must keep written records as required in this permit for all discharges covered under this permit. These records must be accurate and complete to demonstrate the Operator’s compliance with the conditions of this permit. Operators may rely on records and documents developed for other obligations, such as requirements under FIFRA and VIDPNR’s Pesticide Control Program, provided that all requirements of this permit are satisfied.

VIDPNR recommends that all decision-makers, who are or may be required to submit an NOI based on their annual treatment area, keep records of acres or linear miles treated for all applicable use patterns covered under this general permit. The records should be kept up-to-date to help Decision-makers determine

if the annual treatment area threshold, as identified in Part 1.2.2, is met during any calendar year.

### **7.1 All Operators**

All Operators must keep the following records:

- a. A copy of any Adverse Incident Reports (See Part 6.4.2);
- b. Rationale for any determination that reporting of an identified adverse incident is not required, consistent with allowances identified in Part 6.4.1.2;
- c. A copy of any corrective action documentation (See Part 6.6); and,
- d. A copy of any spill and leak or other unpermitted discharge documentation (See Part. 6.5.2)

### **7.2 All Operators who are For-Hire Applicators**

Any Operator who is a For-Hire Applicator, as defined in Appendix A, must retain the following records:

- a. Documentation of equipment calibration; and
- b. Information on each treatment area to which pesticides are discharged, including:
  1. Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;
  2. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
  3. Target pest(s);
  4. Name of each pesticide product used including the EPA registration number;
  5. Quantity of each pesticide product applied to each treatment area;
  6. Pesticide application date(s); and
  7. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

### **7.3 Decision-maker Required to Submit an NOI and Who is a Small Entity**

Any Decision-maker required to submit an NOI that is defined as a small entity, must retain the following records at the address provided on the NOI:

- c. Copy of the NOI submitted to VIDPNR, any correspondence exchanged between the Decision-maker and VIDPNR specific to coverage under this

- permit, and a copy of the VIDPNR coverage letter with the assigned permit tracking number;
- d. Documentation of equipment calibration (only if Decision-maker is also the Applicator);
  - e. Information on each treatment area to which pesticides are discharged, including:
    1. Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any Waters of the USVI, either by name or by location, to which pesticide(s) are discharged;
    2. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
    3. Target pest(s) and explanation of need for pest control;
    4. Description of pest management measure(s) implemented prior to the first pesticide application;
    5. Company name and contact information for pesticide applicator;
    6. Name of each pesticide product used including the EPA registration number;
    7. Quantity of each pesticide product applied to each treatment area;
    8. Pesticide Application Start Date;
    9. Pesticide Application End Date; and
    10. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

#### **7.4 Decision-maker Required to Submit an NOI and Who is a Large Entity**

Any Decision-maker required to submit an NOI that is defined as a large entity must retain the following records at the address provided on the NOI:

- a. Copy of the NOI submitted to VIDPNR, any correspondence exchanged between the Decision-maker and VIDPNR specific to coverage under this permit, and a copy of the VIDPNR coverage letter with the assigned permit tracking number;
- b. A copy of the PDMP, including any modifications made to the PDMP during the term of this permit;
- c. Copy of annual reports submitted to VIDPNR;
- d. Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- e. Information on each treatment area to which pesticides are discharged, including:
  1. Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any Waters of the USVI, either by name or by location, to which pesticide(s) are discharged;

2. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
3. Target pest(s) and explanation of need for pest control;
4. Action Thresholds;
5. Method and/or data used to determine that action threshold(s) has been met;
6. Description of pest management measure(s) implemented prior to the first pesticide application;
7. Company name and contact information for pesticide applicator;
8. Name of each pesticide product used including the EPA registration number;
9. Quantity of each pesticide product applied to each treatment area;
10. Pesticide application date(s); and
11. Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

#### **7.5 Additional Recordkeeping Requirements for All Operators**

All required records must be documented as soon as possible but no later than 14 days following completion of each pesticide application. Operators must retain any records required under this permit for at least 3 years from the date that the Operator's coverage under this permit expires or is terminated. Operators must make available to VIDPNR, including an authorized representative of VIDPNR, all records kept under this permit upon request and provide copies of such records, upon request.

#### **7.6 Decision-maker Required to Submit an NOI and Who is a Large Entity**

Decision-makers who are required to submit an NOI and are defined as a large entity in Appendix A, must submit an annual report to VIDPNR. Once a Decision-maker meets the obligation to submit an annual report, the Decision-maker must submit the annual report each calendar year thereafter for the duration of coverage under this general permit, whether or not the Decision-maker has discharges from the application of pesticides in any subsequent calendar year. The annual report must be submitted to VIDPNR no later than February 15 of the following year for all pesticide activities covered under this permit occurring during the previous calendar year. Decision-makers who are required to submit an NOI based on an annual treatment area threshold must include information for the calendar year, with the first annual report required to include activities for the portion of the calendar year after the point at which Decision-makers exceeded the annual treatment area threshold. If the Decision-maker first exceeds an annual treatment area threshold after December 1, an annual report is not required for that first partial year but an annual report is required thereafter, with the first

annual report submitted also including information from the first partial year. When Decision-makers terminate permit coverage, as specified in Part 1.2.5, an annual report must be submitted for the portion of the year up through the date of termination. The annual report is due no later than February 15 of the next year. The annual report must contain the following information:

- a. Decision-maker's name and contact information;
- b. TPDES permit tracking number(s);
- c. Contact person name, title, e-mail address (if any), and phone number; and
- d. For each treatment area, report the following information:
  1. Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any Waters of the USVI, either by name or by location, to which pesticide(s) are discharged;
  2. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy) and target pest(s);
  3. Company name(s) and contact information for pesticide applicator(s), if different from the Decision-maker;
  4. Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
  5. Whether this pest control activity was addressed in the PDMP prior to pesticide application;
  6. If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in Part 6.4.1; and
  7. If applicable, description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s).

#### **7.7 Decision-maker with Discharges to Waters of the USVI containing NMFS Listed Resources of Concern Who is a Small Entity**

Any Decision-maker required to submit an NOI for discharges to Waters of the USVI containing NMFS Listed Resources of Concern, as defined in Appendix A, and is a small entity, as defined in Appendix A, must submit an annual report to VIDPNR. Once a Decision-maker meets the obligation to submit an annual report, the Decision-maker must submit the annual report each calendar year thereafter for the duration of coverage under this general permit, whether or not the Decision-maker has discharges from the application of pesticides in any subsequent calendar year. Decision-makers must submit the annual report to VIDPNR no later than February 15 of the following year for all pesticide activities covered under this permit occurring during the previous calendar year. Annual reporting requirements begin with those discharges occurring during calendar year 2012.

When Decision-makers terminate permit coverage, as specified in Part 1.2.5, an annual report must be submitted for the portion of the year up through the date of termination. The annual report is due no later than February 15 of the next year.

The annual report must contain the following information for any discharges to Waters of the USVI containing NMFS Listed Resources of Concern:

- a. Decision-maker's name and contact information;
- b. NPDES permit tracking number(s);
- c. Contact person name, title, e-mail address (if any), and phone number; and
- d. For each treatment area, report the following information:
  1. Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any Waters of the USVI, either by name or by location, to which pesticide(s) are discharged;
  2. Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy) and target pest(s);
  3. Company name(s) and contact information for pesticide applicator(s), if different from the Decision-maker;
  4. Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
  5. The approximate date(s) of any discharge;
  6. If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in Part 6.4.1; and
  7. If applicable, description of any corrective action(s), including spill responses, resulting from pesticide application activities and the rationale for such action(s).

## **8. VIDPNR Contact Information and Mailing Addresses**

Decision-makers must submit any Notice of Intent, Notice of Termination, and annual report, as appropriate, to VIDPNR at the address specified in Part 8.1.

Within 30 days of becoming aware of an adverse incident, Operators must send all incident reports under Part 6.4 to VIDPNR offices at the address specified in Part 8.1.

All other written correspondence concerning discharges, including individual permit applications, must be sent to the address specified in Part 8.1.

Note: If VIDPNR notifies Operators (either directly, by public notice, or by making information available on the Internet) of other reporting options that become available at a later date (e.g., electronic submission), Operators may take advantage of those options, in accordance with the instructions provided by VIDPNR, to satisfy the reporting requirements of this permit.

## 8.1 VIDPNR Addresses

Via U.S. mail:

ST. CROIX:

Virgin Islands Department of Planning and Natural Resources  
Division of Environmental Protection  
Water Pollution Control Program  
ATTN: TPDES Program  
45 Mars Hill  
Frederiksted, VI 00840  
Phone: (340) 773-1082  
Fax: (340) 773-9310

ST. THOMAS & ST. JOHN:

Virgin Islands Department of Planning and Natural Resources  
Division of Environmental Protection  
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  
Fax: (340) 714-9549

## **Appendix A**

### **Definitions, Abbreviations, and Acronyms**

#### **A.1. DEFINITIONS**

**Act** – the Virgin Islands Water Pollution Control Act, 12 V.I.C., section 181 et seq.

**Action Threshold** – the point at which pest populations or environmental conditions can no longer be tolerated necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. Sighting a single pest does not always mean control is needed. Action thresholds help determine both the need for control actions and the proper timing of such actions.

**Active Ingredient** – any substance (or group of structurally similar substances if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a). [40 CFR 152.3] Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. [40 CFR 174.3]

**Adverse Incident** – means an incident that you have observed upon inspection or of which you otherwise become aware, in which:

- (1) A person or non-target organism may have been exposed to a pesticide residue, and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase “toxic or adverse effects” includes effects that occur within Waters of the USVI on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include:

- Distressed or dead juvenile and small fishes
- Washed up or floating fish
- Fish swimming abnormally or erratically
- Fish lying lethargically at water surface or in shallow water
- Fish that are listless or nonresponsive to disturbance
- Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants
- Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.)

The phrase, “toxic or adverse effects,” also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either directly or indirectly from a discharge to Waters of the USVI that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

**Annual Treatment Area Threshold** – an area (in acres) or linear distance (in miles) in a calendar year to which a Decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under this permit.

For calculating annual treatment areas for Mosquitoes and Other Flying Insect Pest Control and Forest Canopy Pest for comparing with any threshold in Table 1-1, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same 3,000 acre site should be counted as 9,000 acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. The treatment area for these two pesticide use patterns is additive over the calendar year.

For calculating annual treatment areas for Weed and Algae Control and Animal Pest Control for comparing with any threshold in Table 1-1, calculations should include either the linear extent of or the surface area of waters for applications made to Waters of the USVI or at water’s edge adjacent to Waters of the USVI. For calculating the annual treatment area, count each treatment area only once, regardless of the number of pesticide application activities performed on that area in a given year. Also, for linear features (e.g., a canal or ditch), use the length of the linear feature whether treating in or adjacent to the feature, regardless of the number of applications made to that feature during the calendar year. For example, whether treating the bank on one side of a ten-mile long ditch, banks on both sides of the ditch, and/or water in that ditch, the total treatment area is ten miles for purposes of determining if an NOI is required to be submitted. Additionally, if the same 10 miles area is treated more than once in a calendar year, the total area treated is still 10 miles for purposes of comparing with any threshold in Table 1-1. The treatment area for these two pesticide use patterns is not additive over the calendar year.

**Applicator** – any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to Waters of the USVI.

**Best Management Practices (BMPs)** – are examples of control measures that may be implemented to meet effluent limitations. These include schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to minimize the discharge of pollutants to Waters of the USVI BMPs also include treatment requirements, operating procedures, and practices to control spillage or leaks, waste disposal, or drainage from raw material storage. [12 VIRR §184]

**Biological Control Agents** – These agents are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. [Source: US FWS IPM Guidance, 2004]

**Biological Pesticides (also called biopesticides)** - include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). Microbial pesticide means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or (3) is a parasitically replicating microscopic element, including but not limited to, viruses. [40 CFR 158.2100(b)] Biochemical pesticide mean a pesticide that (1) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and (3) Has a non-toxic mode of action to the target pest(s). [40 CFR 158.2000(a)(1)] Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. [40 CFR 174.3]

**Chemical Pesticides** – all pesticides not otherwise classified as biological pesticides.

**Commissioner** – means the Commissioner of the Department of Planning and Natural Resources, or his designee.

**Control Measure** – refers to any BMP or other method used to meet the effluent limitations. Control measures must comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, and relevant legal requirements. Additionally, control measures could include other actions that a prudent operator would implement to reduce and/or eliminate pesticide discharges to Waters of the USVI to comply with the effluent limitations in Parts 2 and 3 of this permit.

**Cultural Methods** - manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

**Decision-maker** – any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to Waters of the USVI.

**Declared Pest Emergency Situation** – An event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control

through application of a pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on:

- (1) Significant risk to human health;
- (2) Significant economic loss; or
- (3) Significant risk to:
  - (i) Endangered species,
  - (ii) Threatened species,
  - (iii) Beneficial organisms, or
  - (iv) The environment.

[40 CFR 166]

**Discharge** – when used without qualification, means the "discharge of a pollutant." [12 VIRR §184]

**Discharge of a pollutant** – means:

- (i) Any addition of any "pollutant" or combination of pollutants to "waters of the United States Virgin Islands" from any "point source," or
- (ii) 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 definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." [excerpted from 12 VIRR §184]

**Establishment** – generally a single physical location where business is conducted or where services or industrial operations are performed (e.g., factory, mill, store, hotel, movie theater, mine, farm, airline terminal, sales office, warehouse, or central administrative office).

**Facility or Activity** – any TPDES "point source" (including land or appurtenances thereto) that is subject to regulation under the TPDES program. [12 VIRR §184]

**Federal Facility** – any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

**Federal Water Pollution Control Act (FWPCA)** – also called the Federal Clean Water Act (CWA); refers to 33 U.S.C., section 1251 et seq as amended, and the rules and regulations promulgated there under.

**For-Hire Applicator** - Includes persons who make contractual pesticide applications for which they or their employer receives compensation (e.g., lawn care firms, pest control companies).

**Impaired Water** (or “Water Quality Impaired Water” or “Water Quality Limited Segment”) – A water is impaired for purposes of this permit if it has been identified by VIDPNR or EPA pursuant to Section 303(d) of the Clean Water Act as not meeting applicable water quality standards (these waters are called “water quality limited segments” under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

**Inert Ingredient** - any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, that is intentionally included in a pesticide product,. [40 CFR 152.3] Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient. [40 CFR 174.3]

**Integrated Pest Management** – is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

**Large Entity** - any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified at 13 CFR 121.201.

**Mechanical/Physical Methods** - mechanical tools or physical alterations of the environment, for pest prevention or removal.

**Minimize** - to reduce and/or eliminate pesticide discharges to Waters of the USVI through the use of “control measures” to the extent technologically available and economically practicable and achievable.

**NMFS Listed Resources of Concern** – federally-listed endangered and threatened species and federally-listed critical habitat for which NMFS’ 2011 *Endangered Species Act Section 7 Consultation Biological Opinion on the U.S. Environmental Protection Agency’s Proposed Pesticides General Permit* concluded the interim final permit, absent any additional mitigating measures, would either jeopardize the continued existence of such species or destroy or adversely modify such critical habitat. The Biological Opinion

included a Reasonable and Prudent Alternative, implemented through this permit, to avoid likely jeopardy to listed species or adverse modification of critical habitat. Additional information, including maps noting where these resources overlap with PGP areas of coverage is available at [www.epa.gov/npdes/pesticides](http://www.epa.gov/npdes/pesticides).

**Non-target Organisms** – includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

**North American Industry Classification System (NAICS)** – developed under the direction and guidance of the U.S. Office of Management and Budget (OMB) as the standard for use by Federal statistical agencies in classifying business establishments for the collection, tabulation, presentation, and analysis of statistical data describing the U.S. economy. NAICS is scheduled to be reviewed every 5 years for potential revisions with the most recent version being completed in 2007. Under NAICS, an establishment is generally a single physical location where business is conducted or where services or industrial operations are performed (e.g., factory, mill, store, hotel, movie theater, mine, farm, airline terminal, sales office, warehouse, or central administrative office). An enterprise, on the other hand, may consist of more than one location performing the same or different types of economic activities. Each establishment of that enterprise is assigned a NAICS code based on its own primary business activity. Ideally, the primary business activity of an establishment is determined by relative share of production costs and/or capital investment. In practice, other variables, such as revenue, value of shipments, or employment, are used as proxies. For this permit, VIDPNR uses revenue or value of shipments to determine an establishment's primary business activity. Details of NAICS are available on the Internet at <http://www.census.gov/eos/www/naics/index.html>.

**Operator** – any entity involved in the application of a pesticide that results in a discharge to Waters of the USVI that meets either or both of the following two criteria:

- (i) The entity has control over the financing for, or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or
- (ii) The entity has day-to-day control of or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).

**Person** – an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

**Pest** – Consistent with 40 CFR 152.5, any organism under circumstances that make it deleterious to man or the environment, if it is:

- (a) Any vertebrate animal other than man;

(b) Any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals;

(c) Any plant growing where not wanted, including any moss, alga, liverwort, or other plant of any higher order, and any plant part such as a root; or

(d) Any fungus, bacterium, virus, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA sec. 201(g)(1)) and cosmetics (as defined in FFDCA sec. 201(i)).

**Pest Management Area** – The area of land, including any water, for which you are conducting pest management activities covered by this permit.

**Pest Management Measure** – any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to Waters of the USVI.

**Pesticide** – means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). For purposes of the preceding sentence, the term “critical device” includes any device that introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device that contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. [FIFRA Section 2(u)]

The term “pesticide” applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

Note: drugs used to control diseases of humans or animals (such as livestock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

*This permit uses the term “pesticide” when referring to the “pesticide, as applied.” When referring to the chemical in the pesticide product with pesticidal qualities, the permit uses the term “active ingredient.”*

**Pesticide Product** – a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

**Pesticide Research and Development** – Activities undertaken on a systematic basis to gain new knowledge (research) and/or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development). These types of activities are generally categorized under the four-digit code of 5417 under the 2007 NAICS.

**Pesticide Residue** – includes that portion of a pesticide application that is discharged from a point source to waters of the USVI and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

**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. [12 VIRR §184]

**Pollutant** – dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. For purposes of this definition, a “biological pesticide” is considered a “biological material,” and any “pesticide residue” resulting from use of a “chemical pesticide” is considered a “chemical waste.” [excerpted from 40 CFR 122.2]

**Pollution** – means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of any Waters of the USVI.

**Small Entity** - any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201.

**Target Pest** – the organism toward which pest control measures are being directed.

**Territorial Pollutant Discharge Elimination System or TPDES** – means the territorial system of water pollution control established by 12 V.I.C., Chapter 7, Act No.1979, as amended.

**Territory** – means the Territory of the United States Virgin Islands.

**Total Maximum Daily Loads (TMDLs)** – A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. [See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7]

**Treatment Area** – The area of land including any waters, or the linear distance along water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single “pest management area.”

The “treatment area” includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Treatment area calculations for pesticide applications that occur “at water's edge”, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied. For example, treating both sides of a five mile long river, stream, or ditch is equal to ten miles of treatment area. Treating five miles of shoreline or coast would equal a five mile treatment area.

**VIDPNR Approved or Established Total Maximum Daily Loads (TMDLs)** – “VIDPNR Approved TMDLs” are those that are developed by a qualified agency such as EPA and approved by VIDPNR. “VIDPNR Established TMDLs” are those that are developed by VIDPNR.

**Waters of the United States Virgin Islands or Waters of the USVI** – means 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.

**Water Quality Impaired** – See ‘Impaired Water’.

**Water Quality Standards** – means 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.

**Wetlands** - means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. [40 CFR 122.2]

**“You” and “Your”** – as used in this permit are intended to refer to the operator as the context indicates and that party’s activities or responsibilities.

## **A.2. ABBREVIATIONS AND ACRONYMS**

BAT – Best Available Technology Economically Achievable

BMP – Best Management Practice

BPJ – Best Professional Judgment

BPT – Best Practicable Control Technology Currently Available

CERCLA – Comprehensive Environmental Response, Compensation and Liability Act

CWA – Clean Water Act (or the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq*)

eNOI – electronic NOI system

EPA – U. S. Environmental Protection Agency

ESA – Endangered Species Act

FIFRA – Federal Insecticide, Fungicide, and Rodenticide Act, 7 USC 136 *et seq*.

FWS – U. S. Fish and Wildlife Service

F&W – VIDPNR-Division of Fish and Wildlife

IPM – Integrated Pest Management

NAICS – North American Industry Classification System

NEPA – National Environmental Policy Act

NHPA – National Historic Preservation Act

NMFS – U. S. National Marine Fisheries Service

NOI – Notice of Intent

NOT – Notice of Termination

NPDES – National Pollutant Discharge Elimination System

NRC – National Response Center  
NRHP – National Register of Historic Places  
ONRW – Outstanding National Resource Water  
PDMP – Pesticide Discharge Management Plan  
SARA – Superfund Amendments and Reauthorization Act  
SHPO – State Historic Preservation Officer  
THPO – Tribal Historic Preservation Officer  
TMDL – Total Maximum Daily Load  
TPDES – Territorial Pollutant Discharge Elimination System  
VIDPNR – Virgin Islands Department of Planning and Natural Resources  
VIWPCA – Virgin Islands Water Pollution Control Act  
WQS – Water Quality Standard

## **Appendix B**

### **Standard Permit Conditions**

Standard permit conditions in Appendix B are consistent with the general permit provisions required under 12 V.I.R.&Regs. §184-51 but are modified to reflect the nature of discharges covered under this general permit.

#### 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. Except as otherwise provided for in Part 1.2.4 of the permit, 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. You must retain records of all reports required by this permit, and records of all data used to complete the Notice of Intent for this permit, for a period of at least three years from the date the permit expires or the date the operator's authorization is terminated. This period may be extended by request of VIDPNR at any time.

[As written, this permit does not require most operators to perform the type of sample collection and monitoring described in the following sections of this appendix, 10.B through 10.F. However, when required, the sample collection and monitoring requirements in 10.B –10.F of this appendix apply to those operators that collect samples.]

- B. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.
- C. You must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, for a period of at least three years from the date the permit expires or the date the operator's authorization is terminated. This period may be extended by request of VIDPNR at any time.
- D. Records of monitoring information must include:
  - 1. The date, exact place, and time of sampling or measurements;
  - 2. The individual(s) who performed the sampling or measurements;
  - 3. The date(s) analyses were performed
  - 2. The individual(s) who performed the analyses;
  - 3. The analytical techniques or methods used; and
  - 4. The results of such analyses.

- E. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.
- F. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

#### 11. Signatory Requirements

- A. All applications, including NOIs, must be signed as follows:
  - 1. For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - 2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
  - 3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency (e.g., Regional Administrator of EPA).
- B. Your Pesticide Discharge Management Plan (PDMP), including changes to your PDMP to document any corrective actions taken as required by Part 6, and all reports submitted to VIDPNR, must be signed by a person described in Appendix

- B, Subsection 11.A above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
1. The authorization is made in writing by a person described in Appendix B, Subsection 11.A;
  2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
  3. The signed and dated written authorization is included in the PDMP. A copy must be submitted to VIDPNR, if requested.
- C. All other changes to your PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.
- D. Changes to Authorization. If an authorization under Appendix B, Subsection 11.A is no longer accurate because the application activities have been purchased by a different entity, a new NOI satisfying the requirements of Subsection 11.A must be submitted to VIDPNR. However, if the only change that is occurring is a change in contact information or a change in the operator's address, the operator need only make a modification to the existing NOI submitted for authorization.
- E. Any person signing documents in accordance with Appendix B, Subsections 11.A or 11.B above must include the following certification:
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained 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.”
- F. 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 this 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 maybe modified to reflect the automatic transfer after its effective date.

- D. Pesticide Monitoring Reports. This permit does not require operators to report monitoring results on a routine basis; however, VIDPNR may, pursuant to Part 1.2.3, require certain operators to monitor and report such results.
1. When required, monitoring data must be submitted to VIDPNR to the address found in Part 8.1 on a Discharge Monitoring Report (DMR) form, available at [www.epa.gov/npdes](http://www.epa.gov/npdes).
  2. If you monitor any pollutant more frequently than required using test procedures approved under 40 CFR Part 136 or as otherwise specified by VIDPNR, the results of this monitoring must be included in the calculation and reporting of the data submitted to VIDPNR.
  3. Calculations for all limitations which require averaging of measurements must use an arithmetic mean unless otherwise specified by VIDPNR.
- 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 upset which exceeds any effluent limitation in the permit (See Subsection 13).
    2. 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. Upset

- A. Definition. 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 40 CFR 122.41(n)(1).
- B. 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 Appendix B, Subsection 13.C 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. See 40 CFR 122.41(n)(2).
- C. Conditions necessary for a demonstration of upset. See 40 CFR 122.41(n)(3). An operator who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
1. An upset occurred and that you can identify the cause(s) of the upset;
  2. The permitted activity was at the time being properly operated;
  3. You submitted notice of the upset as required in Appendix B, Subsection 12.E.2 (24 hour notice); and

4. You complied with any remedial measures required under Appendix B, Subsection 4.

D. Burden of proof. In any enforcement proceeding, you, as the one seeking to establish the occurrence of an upset, have the burden of proof. See 40 CFR 122.41(n)(4).

#### 14. 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.

15. 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.

16. 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.

17. 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 C**  
**Notice of Intent Form**

[See Separate NOI Form]

**Appendix D**  
**Notice of Termination Form**

[See Separate NOT Form]

**Appendix E**  
**Pesticide Discharge Evaluation Worksheet**  
[See Separate PDEW Form]

**Appendix F**  
**Annual Report Template**  
[See Separate Annual Report Form]

**Appendix G**  
**30 Day Adverse Incident Template**  
[See Separate Adverse Incident Form]

## **Appendix H**

### **Endangered Species Procedures**

#### *Assessing the Effects of Your Discharge and Discharge-Related Activities*

You must meet at least one of the criteria in Part 1.1.2.4 of the permit to be eligible for coverage under this permit. You must follow the procedures in this appendix to certify eligibility to discharge to Waters of the USVI containing NMFS Listed Resources of Concern, as defined in Appendix A of the permit, and determine under which of the eligibility criteria, if any, you qualify. NMFS Listed Resources of Concern for the PGP are provided at [www.epa.gov/npdes/pesticides](http://www.epa.gov/npdes/pesticides). When evaluating the potential effects of your activities, you must consider effects to NMFS Listed Resources of Concern within each treatment area identified in your NOI that contains such Resources. Discharges not meeting at least one of these criteria are not eligible for coverage under this permit. No discharges to Waters of the USVI containing NMFS Listed Resources of Concern are eligible for coverage under the PGP unless those discharges are specifically identified and certified on a complete and accurate NOI form submitted to VIDPNR. These discharges will be authorized 30 days after VIDPNR issues coverage under the PGP, unless VIDPNR notifies you otherwise within the 30-day period, or unless the discharges are in response to a Declared Pest Emergency Situation in which case the discharges are authorized immediately for a period of at least 60 days from the date this discharge began.

#### *Step One: Determine if NMFS Listed Resources of Concern are Present in the Treatment Area*

First, you should determine whether any discharges from your pesticide application activities in any treatment areas included under your NOI are likely to overlap directly with any NMFS Listed Resources of Concern, as identified at [www.epa.gov/npdes/pesticides](http://www.epa.gov/npdes/pesticides). The website provides maps and lists of Waters of the United States where the NMFS Listed Resources of Concern are present and contact information for regional NMFS offices in those areas. If you determine that any of your discharges are to Waters of the USVI containing NMFS Listed Resources of Concern, you should proceed to Step Two. If you determine that no discharges from your pesticide application activities are to Waters of the USVI containing NMFS Listed Resources of Concern, you can certify that the activity meets Criterion A (check box A on the NOI corresponding to Criterion A). In this case, you do not have to further consider any requirements related to Criteria B-F. Note that if you are not otherwise required to submit an NOI, you do not need to submit an NOI merely to document that you meet Criterion A. However, if you are required to submit an NOI anyway, you should document on the NOI that you meet Criterion A.

#### *Step Two: Determine if a Previous ESA-Related Action has Already been Completed for your Activities*

For each discharge to Waters of the USVI containing NMFS Listed Resources of Concern, Decision-makers should determine whether they are eligible under either Criterion B or C because of a previously completed ESA Section 7 consultation, or a previously issued ESA Section 10 permit, respectively as follows:

- The effects of your activities have been addressed in a consultation under ESA Section 7 on a separate Federal action and the consultation resulted in a concurrence by NMFS that the discharge was not likely to adversely affect listed species or critical habitat or NMFS concluded in a biological opinion that the discharge or discharges were not likely to jeopardize listed species or destroy or adversely modify critical habitat, either as part of your activities as planned or as modified with a reasonable and prudent alternative (check box B corresponding to Criterion B). For example, most federal agencies that apply pesticides have already consulted with NMFS, as required under 50 C.F.R. § 402.01(a), and can therefore certify under this criterion.
- The effects of your activities have been addressed through approval of a Habitat Conservation Plan under Section 10 of the ESA (check box C corresponding to Criterion C). Your pesticide discharges may be authorized by this PGP if some activity is authorized through the issuance of a permit under section 10 of the ESA and that authorization addressed the effects of your pesticide discharges on federally- or locally-listed species and designated critical habitat. You must follow NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR 222.22). Application instructions for section 10 permits for NMFS can be obtained by accessing the NMFS website ([www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)) or by contacting the appropriate NMFS regional office.

If you believe an existing ESA-related action may have already been completed for your planned pesticide application activities but you are uncertain of the details, you should contact your regional NMFS office (contact information available at [www.epa.gov/npdes/pesticides](http://www.epa.gov/npdes/pesticides)). If an existing ESA-related action has not already been completed for your activities, proceed to Step Three.

*Step Three: Determine if the Pesticide Application is in Response to a Declared Pest Emergency Situation*

Determine if all the discharges to Waters of the USVI containing NMFS Listed Resources of Concern and that are to be included in the NOI are being performed in response to a Declared Pest Emergency Situation, as defined in Appendix A of the permit (check box D corresponding to Criterion D). In such a case, an NOI must be filed no later than 15 days after beginning to discharge with that NOI identifying:

1. The location of the pest management area in detail or include a map of the location;
2. Pest(s) to be controlled;
3. Pesticide product(s) to be discharged and method of application;

4. Planned quantity and rate of discharge(s) for each method of application;
5. Number of planned discharges;
6. Approximate date(s) of planned discharge(s); and
7. The rationale supporting the determination whether the discharge is likely to adversely affect NMFS Listed Resources of Concern, including the description of appropriate measures to be undertaken to avoid or eliminate the likelihood of adverse effects.

Information provided for items 1 through 6 above must also include any discharges that have already occurred in the days (up to 15) prior to NOI submission. The discharge or discharges to address these Declared Pest Emergency Situations are authorized under the general permit for at least 60 days after beginning to discharge. You may continue to discharge after 60 days unless VIDPNR advises the Operator that additional conditions or an individual permit are necessary. NMFS will, within 30 days of submission of the NOI, advise VIDPNR whether the past and planned future discharges meet the eligibility criterion of not likely to adversely affect NMFS Listed Resources of Concern; whether the eligibility criterion could be met with additional conditions; or whether the eligibility criterion is not met. VIDPNR will advise the Decision-maker within 15 days after receiving notification from NMFS whether the discharge or discharges qualify for coverage beyond the 60-day authorization provided under the permit. If VIDPNR identifies additional conditions to qualify discharges as eligible for coverage beyond 60 days under the permit, those conditions remain in effect for the life of the permit. VIDPNR expects to rely on NMFS' determination in identifying eligibility for continuing authorization, either with or without additional conditions. If you do not hear from VIDPNR within 45 days of submitting your NOI, you may assume that your authorization to discharge continues unless and until notified otherwise by VIDPNR.

If your pesticide application is not in response to a Declared Pest Emergency Situation, proceed to Step Four.

*Step Four: Determine if the Pesticide Application is not likely to adversely affect NMFS Listed Resources of Concern.*

The PGP provides two options for Decision-makers to demonstrate that discharges from pesticide applications to Waters of the USVI containing NMFS Listed Resources of Concern are not likely to adversely affect those resources for the activities for which the Decision-maker is seeking permit coverage. These options include: (1) obtaining confirmation from a NMFS Regional Office prior to NOI submission that discharges are not likely to adversely affect NMFS Listed Resources of Concern, or (2) self-certifying in the NOI that based on your analysis, you have concluded that discharges are not likely to adversely affect NMFS Listed Resources of Concern. Descriptions of procedures that are to be followed for these two options are described below.

– Option 1 (Criterion E): For each treatment area that will include discharges to Waters of the USVI containing NMFS Listed Resources of Concern, you may contact your Regional NMFS Office and request input regarding your planned discharges. If NMFS

determines that your planned discharges are found to meet eligibility criteria for use (i.e., not likely to adversely affect NMFS Listed Resources of Concern), you have satisfied your eligibility obligations under Criterion E and you may submit your NOI for coverage under the PGP (check box E corresponding to Criterion E). As part of certifying your compliance with Criterion E, you must submit information received from NMFS acknowledging the discharges that they have determined are not likely to adversely affect NMFS Listed Resources of Concern and establishing any additional requirements for your permit eligibility. To maintain eligibility under the permit for those discharges, you must abide by those additional requirements for the duration of your coverage under the PGP.

– Option 2 (Criterion F): You must self-certify in your NOI that your discharge is not likely to adversely affect NMFS Listed Resources of Concern. To do so, you will have to take appropriate measures to avoid or eliminate the likelihood of adverse effects prior to applying for PGP coverage. These measures may be relatively simple, such as applying pesticides to waters at concentrations below those found to cause adverse effects, or during seasons when species of concern are not present.

Provided you are able to implement appropriate measures, you may proceed with submitting your NOI for coverage under the PGP (check box F corresponding to Criterion F). As part of certifying your compliance with Criterion F, you must submit information to support your findings, including:

1. The location of the pest management area in detail or include a map of the location;
2. Pest(s) to be controlled;
3. Pesticide product(s) to be discharged and method of application;
4. Planned quantity and rate of discharge(s) for each method of application;
5. Number of planned discharges;
6. Approximate date(s) of planned discharge(s); and
7. The rationale supporting the determination that the criterion for which the NOI is submitted is being met, including the description of appropriate measures to be undertaken to avoid or eliminate the likelihood of adverse effects.

This information will be posted online and also will be sent to NMFS for their review. NMFS will, within 30 days of submission of the NOI, advise VIDPNR whether it believes the planned discharges meet the eligibility criteria of not likely to adversely affect NMFS Listed Resources of Concern, whether the eligibility criterion could be met with additional conditions; or whether the eligibility criterion is not met. VIDPNR will advise the Decision-maker as to whether the intended discharges qualify to proceed under the General Permit or whether an individual permit will be required. VIDPNR expects to rely on NMFS' determination in identifying eligibility for authorization, either with or without additional conditions. If you do not hear from VIDPNR within 30 days, you may assume that your discharge is authorized without further conditions.

You must comply with any terms and conditions imposed under the eligibility requirements to ensure that your pesticide discharges and discharge-related activities are protective of listed species and/or critical habitat. If the eligibility requirements cannot be met and maintained, then you are not eligible for coverage under this PGP. In these instances, you may consider applying to VIDPNR for an individual permit, or revising

your pesticide application activities so as to comply with these eligibility conditions and resubmitting an NOI to VIDPNR that documents this revised eligibility.