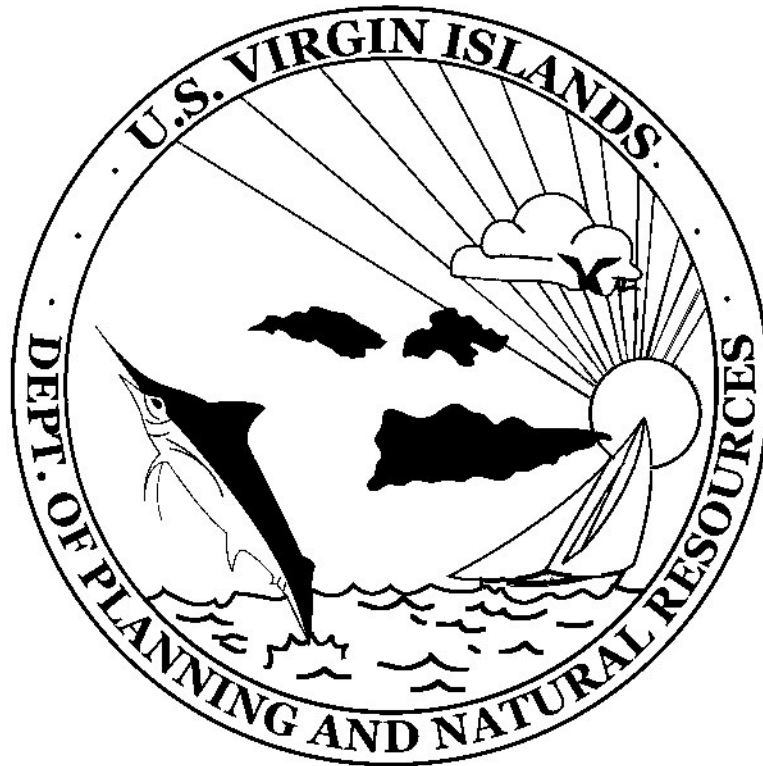


**Virgin Islands Territorial Pollutant Discharge
Elimination System Rules and Regulations
Title 12, Chapter 7, Subchapter 184**

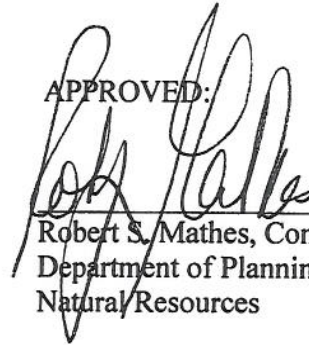


**GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF PLANNING AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION**

**Virgin Islands Rules and Regulations
Territorial Pollutant Discharge Elimination System
Title 12, Chapter 7, Subchapter 184**

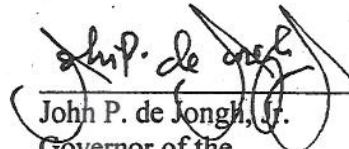
Dated: June 6th, 2007

APPROVED:


Robert S. Mathes, Commissioner
Department of Planning and
Natural Resources

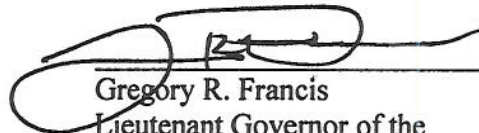
Dated: June 15,, 2007

APPROVED:


John P. de Jongh, Jr.
Governor of the
United States Virgin Islands

I, Gregory R. Francis, Lieutenant Governor of the United States Virgin Islands, have reviewed the foregoing Rules and Regulations, Title 12, Chapter 7, Subchapter 184, find them to be in compliance with Title 3, Chapter 35, Virgin Islands Rules & Regulations, and hereby approve the same in accordance with 3 V.I.C. § 936.

Dated: JUNE 20th, 2007


Gregory R. Francis
Lieutenant Governor of the
United States Virgin Islands

Title 12. Conservation
Chapter 7. Water Pollution Control
Subchapter 184. Territorial Pollutant Discharge Elimination System

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DIVISION 1. DEFINITIONS

184-1. Words Used in Singular Form

Words used in the singular form in this subchapter shall include the plural, and vice versa, as the case may require.

184-2. Definition of Words and Terms

(a) For the purposes of this subchapter, the following terms shall have the following meanings, wherever used or referred to in this subchapter, except as otherwise indicated by the text thereof.

(1) "Act" means the Virgin Islands Water Pollution Control Act, 12 V.I.C., section 181 et seq.

(2) "Administrator" and "Regional Administrator" mean, respectively, the Administrator of the EPA and the Regional Administrator for the EPA region which includes the Territory.

(3) "Animal feeding operation"

(i) Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(A) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(B) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(ii) Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(4) "Applicable water quality standards and effluent standards and limitations" means all Territorial and Federal water quality standards and effluent standards and limitations to which a discharge is subject under the Act [12 V.I.C. § 181 et seq.], or under Territorial law, including, but not limited to, water quality standards, effluent limitations, standards of performance, toxic effluent standards and prohibitions, best management practices, pretreatment standards, and ocean discharge criteria.

(5) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals. "Designated project area", as used in

this definition, means the portions of the waters of the United States Virgin Islands within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(6) “Average monthly discharge limitation” means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

(7) “Average weekly discharge limitation” means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.

(8) “Biological monitoring” means the determination of the effects on aquatic life, including accumulations of pollutants in tissue, in receiving waters due to the discharge of pollutants (i) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (ii) at appropriate frequencies and locations.

(9) “Best management practices” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(10) “BMPs” means “best management practices”.

(11) “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.

(12) “Central Office” means the principal office of the Department, located at Cyril E. King Airport, Terminal Building, 2nd Floor, St. Thomas, Virgin Islands.

(13) “CFR” means the Code of Federal Regulations.

(14) “Chapter” means 12 V.I.C., Chapter 7 (the Virgin Islands Water Pollution Control Act) and the regulations promulgated pursuant thereto.

(15) “Commissioner” means the Commissioner of the Department of Planning and

Natural Resources, or his designee.

(16) “Concentrated animal feeding operation” means an “animal feeding operation” which meets the criteria in 40 CFR part 122 appendix B, or which the Commissioner designates under 184-41(b).

(17) “Concentrated aquatic animal production facility” means a hatchery, fish farm, or other facility which meets the criteria in 40 CFR part 122 appendix C, or which the Commissioner designates under 184-42(b).

(18) “Continuous discharge” means a “discharge” which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(19) “Co-permittee” means a permittee to a TPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(20) “Daily discharge” means the “discharge of a pollutant” measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

(21) “Department” means the Department of Planning and Natural Resources.

(22) “Discharge” or “disposal” when used without qualification means the “discharge of a pollutant.”

(23) “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.”

(24) "Discharge Monitoring Report" ("DMR") means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

(25) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells and other systems.

(26) "DMR" means "Discharge Monitoring Report."

(27) "Draft permit" means a document prepared under 184-34 indicating the Commissioner's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in 184-72 through 184-74, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 184-72 through 184-74, is not a "draft permit." A "proposed permit" is not a "draft permit."

(28) "Effluent limitations" means any restrictions or prohibitions established under United States Virgin Islands and Federal law and regulations, including but not limited to standards of performance for new sources, toxic effluent standards, best management practices, and ocean discharge criteria, on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into United States Virgin Islands waters, including schedules of compliance.

(29) "EPA" means the United States Environmental Protection Agency.

(30) "Facility or activity" means any TPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the TPDES program.

(31) "Federal Water Pollution Control Act" (or "Federal Act" or "FWPCA") and "Federal Clean Water Act" (or "CWA") used interchangeably, mean the Federal Clean Water Act, 33 U.S.C., section 1251 et seq. as amended, and the rules and regulations promulgated there under.

(32) "General permit" means a TPDES "permit" issued under 184-46 authorizing a category of discharges under the CWA within a geographical area.

(33) "Hazardous substance" means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

(34) “Illicit discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a TPDES permit (other than the TPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(35) “Incorporated place” means a city, town, township, or village that is incorporated under the laws of the Territory.

(36) “Indirect discharger” means a nondomestic discharger introducing “pollutants” to a “publicly owned treatment works.”

(37) “Industrial user” means those industries identified in the Standard Industrial Classification Manual, United States Bureau of the Budget, 1967, as amended and supplemented under the category "Division D–Manufacturing" and such other classes of significant waste producers identified under regulations issued by the Commissioner or the Administrator of the United States Environmental Protection Agency.

(38) "International agency" means an agency of two or more countries (including any state or province of any such country) established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more countries, having substantial powers or duties pertaining to the control of pollution as determined by the Administrator.

(39) “Interstate agency” means an agency of two or more states established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(40) “Large municipal separate storm sewer system” means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (40 CFR part 122 Appendix F); or

(ii) Located in the counties listed in 40 CFR part 122 appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Designated by the Commissioner in accordance with 40 CFR 122.26(b)(4)(iii)-(iv).

(41) “Log sorting and log storage facilities” means facilities whose discharges result from the holding of unprocessed wood, for example, logs or round-wood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR part 429, subpart I, including the effluent limitations guidelines).

(42) “Major facility” means any TPDES facility or activity classified as such by the Regional Administrator in conjunction with the Commissioner.

(43) “Major municipal separate storm sewer outfall” (or “major outfall”) means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(44) “Major outfall” means a major municipal separate storm sewer outfall.

(45) “Maximum daily discharge limitation” means the highest allowable “daily discharge.”

(46) “Medium municipal separate storm sewer system” means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (40 CFR part 122 appendix G); or

(ii) Located in the counties listed in 40 CFR part 122 appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Designated by the Commissioner in accordance with 40 CFR 122.26(b)(7)(iii)-(iv).

(47) “MS4” means a municipal separate storm sewer system.

(48) “Municipal separate storm sewer” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by the Territory, a city, town, borough, county, parish, district, association, or other public body (created by or pursuant to Territorial law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under Territorial law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States Virgin Islands;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in this section.

(49) "Municipal separate storm sewer system" (MS4) means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to 40 CFR 122.26, or designated under 184-45(a)(1)(viii).

(50) "National Pollutant Discharge Elimination System" (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

(51) "Navigable waters" means the waters of the United States, including the Territorial seas.

(52) "New discharger" means any building, structure, facility, or installation:

(i) From which there is or may be a "discharge of pollutants;"

(ii) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(iii) Which is not a "new source;" and

(iv) Which has never received a finally effective NPDES permit for discharges at that "site." This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil

and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a “site” under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a)(1) through (10). An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a “new discharger” only for the duration of its discharge in an area of biological concern.

(53) “New source” means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:

(i) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(ii) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

(54) NPDES means “National Pollutant Discharge Elimination System.”

(55) "NPDES form" means any issued NPDES permit and any uniform national form developed for use in the NPDES program and prescribed in regulations promulgated by the Administrator, including the Refuse Act application, the NPDES application and the NPDES reporting forms.

(56) “Outfall” means a point source at the point of discharge and where a municipal separate storm sewer discharges to waters of the United States Virgin Islands. It does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States Virgin Islands and are used to convey waters of the United States Virgin Islands.

(57) “Overburden” means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(58) “Owner or operator” means the owner or operator of any “facility or activity” subject to regulation under the TPDES program.

(59) “Permit” means an authorization, license, or equivalent control document to discharge pollutants into United States Virgin Islands waters issued under 12 V.I.C., section 185 and regulations promulgated pursuant thereto.

(60) "Permittee" means the holder of a TPDES or NPDES permit.

(61) "Person" means an individual, corporation, partnership, association, municipality, territory, or territorial agency, the Government of the United States Virgin Islands, the Government of the United States, and any board, commission, authority, or independent instrumentality of the Government of the Virgin Islands and the United States Government and any officer, agent, or employee thereof, including those having regulatory authority over the discharge of pollutants.

(62) "Point source" includes but is not limited to 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, or vessel or other floating craft, or landfill leachate collection system from which pollutants are or may be discharged.

(63) "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of any waters of the United States Virgin Islands.

(64) "Pollutant" or "waste," used interchangeably, means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

(65) "Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of part 122.

(66) "Privately owned treatment works" means any device or system which is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a "POTW."

(67) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(68) "Proposed permit" means a TPDES "permit" prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the Territory. A "proposed permit" is not a "draft permit."

(69) “Publicly Owned Treatment Works” or “POTW” means a treatment works as defined by section 212 of the Federal Act, which is owned by a State or municipality (as defined by section 502(4) of the Federal Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Federal Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(70) “Recommencing discharger” means a source which recommences discharge after terminating operations.

(71) "Refuse Act" and "Refuse Act application" mean, respectively, section 13 of the Rivers and Harbors Act of March 3, 1899, and an application for a permit under the Refuse Act.

(72) "Regional Office" means the office of the Department of Planning and Natural Resources, located on an Island within the Territory other than St. Thomas.

(73) “Rock crushing and gravel washing facilities” means facilities which process crushed and broken stone, gravel, and riprap (See 40 CFR part 436, subpart B, including the effluent limitations guidelines).

(74) “Runoff coefficient” means the fraction of total rainfall that will appear at a conveyance as runoff.

(75) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of interim requirements (or operations) leading to compliance with any effluent limitation or water quality standard.

(76) “Secondary industry category” means any industry category which is not a “primary industry category.”

(77) “Septage” means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

(78) “Sewage from vessels” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, “graywater” means galley, bath, and shower water.

(79) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(80) "Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(81) "Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States Virgin Islands. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA section 404 permit (See 33 CFR 209.120 and part 233).

(82) "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

(83) "Small municipal separate storm sewer system" (small MS4) means all separate storm sewers that are:

(i) Owned or operated by the United States, Territory, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to Territorial law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under Territorial law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States Virgin Islands.

(ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to this section, or designated under 184-45(a)(1)(viii).

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(84) "Small MS4" means a small municipal separate storm sewer system.

(85) "Storm water" means storm water runoff and surface runoff and drainage.

(86) "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the TPDES program under 184-22 and 184-23. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 184-2(a)(67)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, Territorially, or municipally owned or operated that meet the description of the facilities listed in paragraphs (a)(86)(i)-(xi) of this section). include those facilities designated under the provisions of 184-45(a)(1)(viii). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (a)(86) of this section:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph (a)(86) of this section);

(ii) Heavy industry. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Mining operations. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops or equipment cleaning operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or which are otherwise identified under paragraphs (a)(86)(i)-(vii) or (ix)-(xi) of this section are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included

are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

(x) Construction activity. Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

(xi) Light industry. Facilities under Standard Industrial Classifications 20, 21, 22,23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25;

(87) “Storm water discharge associated with small construction activity” means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that resulting and disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Commissioner may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor (“R” in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket , 401 M Street S.W., Washington, DC. 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator must certify to the Commissioner that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a “total maximum daily load” (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Commissioner that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(ii) Any other construction activity designated by the Commissioner or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States Virgin Islands.

(88) “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.

(89) “Territory” means the Territory of the United States Virgin Islands.

(90) “Total dissolved solids” means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

(91) “Toxic pollutant” means any pollutant listed as toxic under section 307(a)(1) of the CWA.

(92) “TPDES application,” “form,” “permit” and “reporting form” mean, respectively, an application, form, permit and reporting form under the TPDES or NPDES.

(93) "Treatment works" means any plant or other works, used for the purpose of treating, stabilizing or holding wastes.

(94) “Treatment works treating domestic sewage” means a POTW or any other waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage. This definition does not include septic tanks or similar devices. For purposes of this definition, “domestic sewage” includes waste and waste water from humans or

household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR part 503 as a “treatment works treating domestic sewage,” where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR part 503.

(95) “TWTDS” means “treatment works treating domestic sewage.”

(96) “Uncontrolled sanitary landfill” means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runoff or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

(97) “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(98) “Variance” means any mechanism or provision under section 301 or 316 of CWA or under 40 CFR part 125, or in the applicable “effluent limitations guidelines” which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

(99) “Waters of the United States Virgin Islands” 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.

(100) “Water quality criteria” means any criteria describing the required quality supporting a particular use of United States Virgin Islands waters, as adopted under United States Virgin Islands laws or Federal laws applicable to waters of the United States Virgin Islands.

(101) “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.

(102) “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.

(103) “Whole effluent toxicity” means the aggregate toxic effect of an effluent measured directly by a toxicity test.

184-3 Incorporation by Reference

Provisions of the United States Code of Federal Regulations (C.F.R.) that are incorporated by reference in this subchapter refer to the versions in effect as of the effective date of this rule.

DIVISION 2. PERMIT SYSTEM—GENERAL REQUIREMENTS FOR PERMITS

184-21. Requirement of a Permit

(a) Except as provided in section 184-22 of this division, a TPDES permit is required for any addition of any “pollutant” or combination of pollutants to “waters of the United States Virgin Islands.” No person shall discharge or cause a discharge of any pollutant without a TPDES permit having been issued to such person pursuant to this subchapter with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.

(b) Applications previously made to the Federal government under the Refuse Act or NPDES shall be deemed applications to the Department under this section.

(c) All permits for discharges into navigable waters issued by the Federal government pursuant to the FWPCA shall be deemed to be permits issued under this section, and shall continue in force and effect for their term unless revoked and reissued, modified, or terminated.

184-22. Exceptions

The following acts do not require a TPDES permit under the Act [12 V.I.C. § 181 et seq.] or this subchapter; provided, however, these exceptions do not apply to requirements to obtain permits other than TPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of CWA.

(c) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. (See also **184-62(b)**). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in 184-2, discharges from concentrated aquatic animal production facilities as defined in 184-2, discharges to aquaculture projects as defined in 184-2, and discharges from silvicultural point sources as defined in 184-2.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Commissioner may otherwise require under 184-54(m).

184-23. Prohibitions

No TPDES permit may be issued:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of the Act [12 VIC § 181 et seq.] or CWA, or regulations promulgated under the Act or CWA;

(b) By the Commissioner where the Regional Administrator has objected to issuance of the permit in accordance with the Memorandum of Agreement (40 CFR 123.44);

(c) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States and the Territory;

(d) When, in the judgment of the Secretary of the Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States Virgin Islands would be substantially impaired by the discharge;

(e) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste or medical waste;

(f) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA;

(g) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Before the promulgation of guidelines under section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Commissioner determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

(h) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the Territorial or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Commissioner may waive the submission of information by the new source or new discharger required by paragraph (h) of this section if the Commissioner determines that the Commissioner already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (h)(2) is to be included in the fact sheet to the permit under 184-84(c)(2).

184-24. Effect of a Permit

(a) Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA, compliance with a TPDES permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, and 403 of CWA and the Act [12 V.I.C. § 181 et seq.]. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Sections 184-72 and 184-73.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

184-25. Continuation of expiring permits

(a) The conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit (see 184-51 and 184-52) if:

(1) The permittee has submitted a timely application under Sec. 184-31 which is a complete (under 184-31(d)) application for a new permit; and

(2) The Commissioner, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) Effect. Permits continued under this section remain fully effective and enforceable.

184-26. Confidential Information and Public Access to Information

(a) Except as provided in subsection (c) of this section, the following information will be available to the public for inspection and copying as provided in subsection (f) of this section:

(1) Any TPDES permit, permit application or other form, including the draft TPDES permit;

(2) Any public comments and testimony concerning a permit application or the draft permit with regard to that application; and

(3) Any information obtained pursuant to any monitoring, records, reporting or sampling requirements or as a result of sampling or other investigatory activities of the Department. The Commissioner, in his discretion, may also make available to the public from time to time any other records, reports, plans, or information obtained by the Territory pursuant to its participation in the TPDES.

(b) Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee;

(2) Permit applications, permits, and effluent data; and

(3) Information required by TPDES application forms provided by the Commissioner under Section 184-31. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(c) The Department shall protect any information (other than provided in subsection (b) of this section) contained in a TPDES form, or other records, reports, or plans as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in a TPDES form pursuant to the FWPCA, the Department shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator issues a decision to the Department that such information is not entitled to protection as a trade secret, such information shall be made available to the public by the Department. Pursuant to applicable Federal regulations, if the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection, he will request advice from the Office of the General Counsel of the United States Environmental Protection Agency, stating the reasons for his disagreement with the determination of the Commissioner. The Regional Administrator will simultaneously provide a copy of such request to the person claiming trade secrecy. The General Counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he will consider any additional information submitted to the Office of General

Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does contain trade secrets, he will so advise the Regional Administrator and will notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the Regional Administrator will communicate to the Department his decision not to concur in the withholding of such information, and the Regional Administrator will then make available to the public, upon request, that information determined not to constitute trade secrets.

(d) Any information accorded confidential status, whether or not contained in a TPDES form, shall be disclosed, upon the request of the Regional Administrator, to the Regional Administrator, or his authorized representative, who shall maintain the disclosed information as confidential.

(e) Any authorized representative of the Commissioner or the Administrator, including an authorized contractor acting as a representative of the Administrator or Commissioner, who knowingly or willfully publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by law, any information that is required to be maintained as confidential under this subsection, shall be fined not more than \$1,000 or imprisoned for not more than one year, or shall be both fined and imprisoned.

(f) Facilities for the inspection of information relating to TPDES forms are available to the public:

(1) In St. Thomas, at the Central Office, located at Cyril E. King Airport, Terminal Building, 2nd Floor.

(2) In St. Croix, at the office of the Department of Planning and Natural Resources, 45 Mars Hill, Frederiksted.

(3) In St. John, at the Office of the Administrator.

(g) All of the facilities described in subsection (f) of this section are open between the hours of 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. Copies of information will be provided at a cost commensurate with the Department's cost.

DIVISION 3. PERMIT SYSTEM–APPLICATION; DATA

184-31. Application for a Permit

(a) Duty to apply.

(1) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under Section 18446, excluded under Section 184-22, or a user of a privately owned treatment works unless the Commissioner requires otherwise under Section 184-54(m), must submit a complete TPDES application to the Commissioner in accordance with this section.

(2) Existing discharges. A person discharging pollutants under a TPDES or NPDES permit shall either:

(i) Have filed a complete TPDES application which has not been denied; or

(ii) File a complete TPDES application no later than 60 days following receipt by the applicant of notice from the Commissioner that the applicant's previously filed TPDES application is so deficient as not to have satisfied the filing requirements of this subchapter.

(3) Application Forms.

(i) Applicants for TPDES permits must use TPDES forms which must require at a minimum the information listed in the appropriate paragraphs of this section.

(ii) Forms for TPDES permit applications may be obtained from the Central Office of the Department, or any Regional office of the Department of Planning and Natural Resources on Islands other than St. Thomas. Applications shall be filed at the office specified in the instructions accompanying the application form, and shall be accompanied by such data as the Department may reasonably require for the purposes of fulfilling its responsibilities under the Act [12 V.I.C. § 181 et seq.] and the FWPCA.

(b) Who applies? When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a TPDES permit.

(c) Time to apply.

(1) Proposed discharges. Any person proposing to commence a discharge of pollutants shall file a complete TPDES application no less than 180 days in advance of the date on which it is desired to commence the discharge of pollutants or on such earlier date as may be necessary to insure compliance with the requirements of section 306 of the FWPCA, or with any applicable zoning or siting requirements established pursuant to section 208(b)(2)(C) of the FWPCA, and any other applicable water quality standards and applicable effluent standards and limitation.

(d) Completeness.

(1) The Commissioner shall not issue a permit before receiving a complete application for a permit except for TPDES general permits. An application for a permit is complete when the Commissioner receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(2) A TPDES permit application shall not be considered complete if the Department has waived application requirements under paragraphs (i) of this section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than 210 days prior to permit expiration and EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

(e) Information requirements for TPDES permits. All applicants for TPDES permits, other than POTWs and other TWTDS, must provide the following information to the Commissioner, using the TPDES application form provided by the Commissioner. Additional information required of applicants is set forth in paragraphs (f) through (j) of this section.

(1) The activities conducted by the applicant which require it to obtain a TPDES permit.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, Territorial, private, public, or other entity.

(5) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under Resource Conservation and Recovery Act (RCRA)

(ii) Underground Injection Control (UIC) program under Safe Drinking Water Act (SDWA).

(iii) NPDES and TPDES program under CWA.

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(v) Nonattainment program under the Clean Air Act.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(viii) Dredge or fill permits under section 404 of CWA.

(ix) Other relevant environmental permits, including Territory permits.

(6) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(7) A brief description of the nature of the business.

(f) Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for TPDES permits, except for those facilities subject to the requirements of paragraph (g) of this section (See 40 CFR 122.21(h)), shall provide the information required under 40 CFR 122.21(g) to the Commissioner, using TPDES application forms provided by the Commissioner.

(g) Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only non-process wastewater. Except for stormwater discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for TPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the information required under 40 CFR 122.21(h) to the Commissioner, using TPDES application forms provided by the Commissioner:

(h) Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations (defined in Section 184-2) and concentrated aquatic animal production facilities (defined in Section 184-2) shall provide the information required under 40 CFR 122.21(i) to the Commissioner, using the TPDES application form provided by the Commissioner.

(i) Application requirements for new and existing POTWs. Unless otherwise indicated, all POTWs and other dischargers designated by the Commissioner must provide, at a minimum, the information in 40 CFR 122.21(j) to the Commissioner, using a TPDES application form provided by the Commissioner. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Commissioner. The Commissioner may waive any requirement of 40 CFR 122.21(j) if he or she has access to substantially identical information. The Commissioner may also waive any requirement of 40 CFR 122.21(j) that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final Agency action, but does provide notice to the Department and permit applicant(s) that EPA may object to any TPDES permit issued in the absence of the required information.

(j) Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for TPDES permits (except for new discharges of facilities subject to the requirements of paragraph (g) of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of Section 184-45(b)(1) and this section (except as provided by Section 184-45(b)(1)(ii)) shall provide the information required under 40 CFR 122.21(k) to the Commissioner, using the application forms provided by the Commissioner.

(k) Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations in accordance with 40 CFR 122.21(m).

(l) Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

(1) Discharges into marine waters. A request for a modification under CWA section 301(h) of requirements of CWA section 301(b)(1)(B) for discharges into marine waters must be filed in accordance with the requirements of 40 CFR part 125, subpart G.

(3) Water quality based effluent limitation. A modification under CWA section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under Section 184-81 on the permit from which the modification is sought.

(m) Expedited variance procedures and time extensions.

(1) Notwithstanding the time requirements in paragraphs (k) and (l) of this section (See 40 CFR 122.21(m)-(n)), the Commissioner may notify a permit applicant before a draft permit is issued under 184-34 that the draft permit will likely contain limitations which are eligible for variances. In the notice the Commissioner may require the applicant as a

condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under 40 CFR 122.21(m)(2)(i)(B) or (m)(2)(ii) may request an extension. The extension may be granted or denied at the discretion of the Commissioner. Extensions shall be no more than 6 months in duration.

(n) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed.

(o) Additional application requirements.

(1) Any person who requires a permit under the TPDES program shall complete, sign, and submit to the Commissioner an application for each permit required under this section. Applications are not required for TPDES general permits (Section 184-46).

(2) The Commissioner shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit as set forth in this section.

(3) The Commissioner may require the submission of additional information after a TPDES application has been filed. If the Commissioner determines that site visits to the point source or outlet by representatives of the Department would be useful in evaluating the application, such site visits shall be considered a necessary part of the application.

(4) Permit applications must comply with the signature and certification requirements of Section 184-32.

184-32. Signatories to TPDES Forms, Permit Applications and Reports

(a) Applications. All TPDES permit applications shall be signed as follows:

(1) For a corporation. By a responsible corporate officer. For the purpose of this section, 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 facility 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.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in paragraph (a)(1)(i) of this section. The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Commissioner to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under paragraph (a)(1)(ii) of this section rather than to specific individuals.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) For a municipality, Territory, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, 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 of the agency (e.g., Regional Administrators of EPA).

(b) Reports. All reports required by permits, and other information requested by the Commissioner shall be signed by a person described in paragraph (a) of this section, 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 paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, 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 written authorization is submitted to the Commissioner.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Commissioner prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraph (a) or (b) of this section shall make 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 gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

184-33. Transmission of Data to the Regional Administrator

Copies of TPDES forms, regarding permits under the FWPCA or the Act received by the Department, shall be transmitted to the Regional Administrator in such manner as the Commissioner and Regional Administrator shall agree.

184-34. Draft Permits

(a) Once an application is complete, the Commissioner shall tentatively decide whether to prepare a draft TPDES permit or to deny the application.

(b) If the Commissioner tentatively decides to issue a general TPDES permit, he or she shall prepare a draft general permit under paragraph (c) of this section.

(c) If the Commissioner decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

(1) All conditions under Sections 184-51 and 184-53;

(2) All compliance schedules under Section 184-62;

(3) All monitoring requirements under Section 184-63;

(4) A brief description of any other proposed special conditions; and

(5) Effluent limitations, standards, prohibitions, and conditions under Sections 184-51, 184-52, and 184-54.

(d) Draft permits prepared by the Department shall be accompanied by a fact sheet if required under Section 184-84 and shall be publicly noticed, made available for public comment, and provided an opportunity for public hearing.

184-35. Application Fee

The Commissioner may, on such equitable basis as he may determine, impose such fees for applications for TPDES permits or for the reissuance of permits as may be necessary to cover the costs of administration of TPDES.

184-36. Transmission to Regional Administrator of Proposed TPDES Permits

In such manner as the Commissioner and Regional Administrator agree, the Department will transmit to the Regional Administrator copies of TPDES permits proposed to be issued pursuant to the Act. [12 V.I.C. § 181 et seq.].

184-37. Transmission to Regional Administrator of Issued TPDES Permits

Upon issuance of a TPDES permit pursuant to the Act [12 V.I.C. § 181 et seq.], the Department shall send a copy to the Regional Administrator along with any and all terms, conditions, requirements, or documents which are a part of such permit or which affect the authorization by the permit of the discharge of pollutants.

DIVISION 4. SPECIAL PROGRAM REQUIREMENTS

184-41. Concentrated Animal Feeding Operations

(a) Permit requirement. “Concentrated animal feeding operations” (as defined in Section 184-2) are point sources subject to the TPDES permit program.

(b) Case-by-case designation of concentrated animal feeding operations.

(1) The Commissioner may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the United States Virgin Islands. In making this designation the Commissioner shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States Virgin Islands;

(ii) The location of the animal feeding operation relative to waters of the United States Virgin Islands;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States Virgin Islands;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States Virgin Islands; and

(v) Other relevant factors.

(2) No animal feeding operation with less than the numbers of animals set forth in appendix B of 40 CFR part 122 shall be designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States Virgin Islands through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States Virgin Islands which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Commissioner has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

184-42. Concentrated Aquatic Animal Production Facilities

(a) Permit requirement. “Concentrated aquatic animal production facilities” (as defined in Section 184-2) are point sources subject to the TPDES permit program.

(b) Case-by-case designation of concentrated aquatic animal production facilities.

(1) The Commissioner may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States Virgin Islands. In making this designation the Commissioner shall consider the following factors:

(i) The location and quality of the receiving waters of the United States Virgin Islands;

(ii) The holding, feeding, and production capacities of the facility;

(iii) The quantity and nature of the pollutants reaching waters of the United States Virgin Islands; and

(iv) Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Commissioner has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

184-43. Aquaculture Projects

Permit requirement. Discharges into “aquaculture projects” (as defined in Section 184-2) are subject to the TPDES permit program through section 318 of CWA, and in accordance with 40 CFR part 125, subpart B.

184-44. Silviculture

Permit requirement. “Silvicultural point sources”(as defined in Section 184-2) are point sources subject to the TPDES permit program.

184-45. Storm Water Discharges

(a) Permit requirement.

(1) The following discharges composed entirely of storm water shall be required to obtain a TPDES permit:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity (See 184-45(a)(4));

- (iii) A discharge from a large municipal separate storm sewer system;
- (iv) A discharge from a medium municipal separate storm sewer system;
- (v) A discharge from a small MS4 required to be regulated pursuant to paragraph (a)(9)(iii)-(a)(9)(vii) of this section;
- (vi) A storm water discharge associated with small construction activity pursuant to Section 184-2(a)(87);
- (vii) A discharge for which the Commissioner or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of “total maximum daily loads” (TMDLs) that address the pollutant(s) of concern; or
- (viii) A discharge or category of discharges within a geographic area which the Commissioner or the EPA Regional Administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States Virgin Islands. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section. The Commissioner may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Commissioner may consider the following factors:
 - (A) The location of the discharge with respect to waters of the United States Virgin Islands as defined at Section 184-2.
 - (B) The size of the discharge;
 - (C) The quantity and nature of the pollutants discharged to waters of the United States Virgin Islands; and
 - (D) Other relevant factors.

(2) Mining and Oil Exploration. The Commissioner may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(3) Large and medium municipal separate storm sewer systems (MS4s). Permit requirements for large and medium MS4s (defined in 184-2) are set forth at 40 CFR 122.26(a)(3).

(4) Discharges through large and medium municipal separate storm sewer systems (MS4s). Permit requirements for storm water discharges associated with industrial activity which discharge through a large or medium MS4 are set forth at 40 CFR 122.26(a)(4).

(5) Other municipal separate storm sewers. The Commissioner may issue permits for municipal separate storm sewers that are designated under paragraph (a)(1)(viii) of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(6) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Commissioner, in his discretion, may issue: a single TPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the United States Virgin Islands; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

(i) All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the United States Virgin Islands, with each discharger to the non-municipal conveyance a co-permittee to that permit.

(ii) Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(7) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain TPDES permits in accordance with the procedures of Section 184 - 31 and are not subject to the provisions of this section.

(8) Effect on Eligibility for Federal Funding. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under title II, title III or title VI of the Clean Water Act. See 40 CFR part 35, subpart I, appendix A (b) H.2.j.

(9) Small municipal separate storm sewers (small MS4s).

(i) Operators of small MS4s designated pursuant to paragraphs (a)(1)(v), (a)(1)(vii), and (a)(1)(viii) of this section shall seek coverage under a TPDES permit in accordance with paragraphs (d), (e), and (a)(9)(viii)-(ix) of this section. Operators of non-municipal sources designated pursuant to paragraphs (a)(1)(vi), (a)(1)(vii), and (a)(1)(viii) of this section shall seek coverage under a TPDES permit in accordance with paragraph (b)(1) of this section.

(ii) Operators of storm water discharges designated pursuant to paragraphs (a)(1)(vii), and (a)(1)(viii) of this section shall apply to the Commissioner for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Commissioner (see 40 CFR 124.52(c)).

(iii) Unless a waiver is granted in accordance to paragraph (a)(9)(v) of this section, the following discharges from small MS4s (defined in 184-2), including but not limited to systems operated by federal, Territorial, and local governments, including Territory departments of transportation, must obtain TPDES permits:

(A) The small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If any portion of the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; or

(B) The small MS4 is designated by the Department, including where:

(1) The Department has designated the small MS4 based on criteria developed by the Department pursuant to 40 CFR 123.35(b)(3);

(2) The Department has determined that the system is contributing substantially to pollutant loadings of a physically-interconnected regulated MS4 (40 CFR 123.35(b)(4)); or

(3) The Department has designated the small MS4 based on a petition pursuant to paragraph (g) of this section.

(iv) Any person may petition the Department to require a TPDES permit for any discharge of storm water. If the Department determines that the small MS4 requires a permit, the small MS4 must obtain a TPDES permit and is required to comply with paragraphs (d), (e), and (a)(9)(viii)-(ix) of this section.

(v) The Department may waive the requirement to obtain a permit for small MS4s, if the small MS4 meets the criteria of paragraphs (a)(9)(vi) and (a)(9)(vii) of this section. If the Department determines that the circumstances under which a waiver was granted have changed, the MS4 must seek coverage under a TPDES permit in accordance with paragraph (d) of this section.

(vi) The Department may waive the requirement to obtain a TPDES permit if the small MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria:

(A) The small MS4 is not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4; and

(B) If the small MS4 discharges any pollutant(s) that have been identified as a cause of impairment of any water body to which the small MS4 discharges, then it must be demonstrated that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern.

(vii) The Department may waive the requirement to obtain a TPDES permit if the small MS4 serves a population under 10,000 and meets the following criteria:

(A) The Department has evaluated all waters of the U.S. Virgin Islands, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4;

(B) For all such waters, the Department has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;

(C) For the purpose of this paragraph (a)(9)(vii), the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; and

(D) The Department has determined that future discharges from the MS4 do not have the potential to result in exceedences of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(viii) The operator of a small MS4 may rely on another entity to satisfy the TPDES permit obligations to implement a minimum control measure if:

(A) The other entity, in fact, implements the control measure;

(B) The particular control measure, or component thereof, is at least as stringent as the corresponding TPDES permit requirement; and

(C) The other entity agrees to implement the control measure on behalf of the operator of the small MS4. In the reports the operator is required to submit under paragraph (e)(8)(iii) of this section, the operator must also specify that he or she is relying on another entity to satisfy some of the permit obligations. If the operator is relying on another governmental entity regulated under 40 CFR 122 to satisfy all of the permit obligations, including the obligation to file periodic reports required by paragraph (e)(8)(iii) of this section, the operator must note that fact in the NOI, but the operator is not required to file the periodic reports. The operator of a small MS4 remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages the operator of a small MS4 to enter into a legally binding agreement with that entity if the operator wants to minimize any uncertainty about compliance with the permit.

(ix) In some cases, the Department may recognize, either in the individual TPDES permit or in a TPDES general permit, that another governmental entity is responsible under a TPDES permit for implementing one or more of the minimum control measures for the small MS4 or that the Department itself is responsible. Where the Department does so, the operator of a small MS4 is not required to include such minimum control measure(s) in the MS4's storm water management program. Any TPDES permit for a MS4 may be reopened and modified to include the requirement to implement a minimum control measure if the other entity fails to implement it.

(b) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

(1) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Commissioner is evaluating for designation (see 40 CFR 124.52(c)) under paragraph (a)(1)(viii) of this section and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph (b)(2) of this section, shall submit a TPDES application in accordance with the requirements of Section 184-31 as modified and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C, and Form 2F. Applicants for new sources or new discharges (as defined in 40 CFR 122.2) composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F.

(i) Dischargers of storm water associated with industrial activity. Except as provided in paragraph (b)(1)(ii)-(iv) of this section, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(B) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these

materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(C) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a TPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(D) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(E) Quantitative data based on samples collected during storm events and collected in accordance with Section 184-31 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(1) Any pollutant limited in an effluent guideline to which the facility is subject;

(2) Any pollutant listed in the facility's TPDES permit for its process wastewater (if the facility is operating under an existing TPDES permit);

(3) Oil and grease, pH, BOD₅, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(4) Any information on the discharge required under paragraph 40 CFR 122.21(g)(7)(iii) and (iv);

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of 40 CFR 122.21 (g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(iii), (g)(7)(iv), (g)(7)(v), and (g)(7)(viii); and

(G) Operators of new sources or new discharges (as defined in 40 CFR 122.2) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph (b)(1)(i)(E) of this section instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph (b)(1)(i)(E) of this section within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the TPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of 40 CFR 122.21(k)(3)(ii), (k)(3)(iii), and (k)(5).

(ii) Dischargers of storm water associated with construction activity and small construction activity. An operator of an existing or new storm water discharge that is associated with industrial activity solely under Section 184-2(a)(86)(x) or is associated with small construction activity solely under Section 184-2(a)(87) is exempt from the requirements of 40 CFR 122.21(g) and paragraph (b)(1)(i) of this section. Such operator shall provide a narrative description of:

(A) The location (including a map) and the nature of the construction activity;

(B) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(C) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable Territory and local erosion and sediment control requirements;

(D) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable Territory or local erosion and sediment control requirements;

(E) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(F) The name of the receiving water.

(iii) Discharges of storm water associated with oil and gas exploration. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (b)(1)(i) of this section, unless the facility:

(A) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or

(B) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(C) Contributes to a violation of a water quality standard.

(iv) Discharges of storm water associated with mining activity. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(v) Additional information. Applicants shall provide such other information the Commissioner may reasonably require under 40 CFR 122.21(g)(13) to determine whether to issue a permit and may require any facility subject to paragraph (b)(1)(i) of this section to comply with paragraph (b)(1)(i) of this section.

(2) Group application for discharges associated with industrial activity. In lieu of individual applications or notice of intent to be covered by a general permit for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants (except facilities that have existing individual TPDES permits for storm water) that are part of the same subcategory (see 40 CFR subchapter N, part 405 to 471) or, where such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under Section 184-46. Group application requirements are set forth at 40 CFR 122.26(c)(2)(i)-(ii).

(c) Application requirements for large and medium municipal separate storm sewer discharges are set forth at 40 CFR 122.26(d).

(d) Application requirements for small municipal separate storm sewer discharges. The operator of a regulated small MS4 must obtain permit coverage under a TPDES General or Individual Permit as follows:

(1) General Permit Application. The operator of a small MS4 seeking coverage under a TPDES general permit must submit a Notice of Intent (NOI) that includes the information on the MS4's best management practices and measurable goals required by paragraph (e)(4)-(5) of this section. The operator of the small MS4 may file an individual NOI or the operator of the MS4 and other municipalities or governmental entities may jointly submit an NOI. If a joint NOI is filed, it must describe which minimum measures the operator of the MS4 will implement and identify the entities that will implement the other minimum measures. The TPDES general permit will explain any other steps necessary to obtain permit authorization.

(2) Individual Permit Application.

(i) The operator of a small MS4 seeking coverage under an individual TPDES permit and seeking authorization to implement a Storm Water Management Program under paragraph (e) of this section must submit an application to the Department that includes the following information:

(A) Information required under Section 184-31(e) and paragraph (e)(4)-(5) of this section. A storm sewer map that satisfies the requirement of paragraph (e)(2)(iii)(A) of this section will satisfy the map requirement in Section 184-31(e)(6);

(B) An estimate of square mileage served by the small MS4; and

(C) Any additional information the Department requests.

(ii) Operators of small MS4s seeking authorization to discharge under an individual permit and seeking to implement a program that is different from the program under paragraph (e) of this section, must comply with the permit application requirements of paragraph (c) of this section (See 40 CFR 122.26(d)). The operator must submit both Parts of the application requirements in 40 CFR 122.26(d)(1) and (2) by March 10, 2003. The applicant is exempt from submitting information required by 40 CFR 122.26(d)(1)(ii) and (d)(2) regarding legal authority, unless the applicant intends for the Department to take such information into account when developing other permit conditions.

(iii) If allowed by the Department, the operator of a small MS4 and another regulated entity may jointly apply under either paragraph (d)(2)(i) or (d)(2)(ii) of this section to be co-permittees under an individual permit.

(3) Limited co-permittees. If a small MS4 is in the same urbanized area as a medium or large MS4 with a TPDES storm water permit and the medium or large MS4 is willing to have the small MS4 participate in its storm water program, the small MS4 and the other MS4 may jointly seek a modification of the other MS4 permit to include the small MS4 as a limited co-permittee. Application requirements for limited co-permittees are set forth at 40 CFR 122.33(b)(3) and (b)(4).

(e) Storm Water Management Program Requirements for small MS4s.

(1) The operator of a small MS4 must at a minimum develop, implement, and enforce a Storm Water Management Program designed to reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The Storm Water Management Program must include the minimum control measures described in paragraph (e)(2) of this section unless application for a permit is made under paragraph (c) of this section. Note: For purposes of paragraph (e) of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this paragraph and the provisions of the permit required pursuant to paragraph (d) of this section constitutes compliance with the standard of reducing pollutants to the “maximum extent practicable.” Guidance for the implementation of minimum control measures is provided at 40 CFR 122.34(b).

(i) The Department will specify a time period of up to 5 years from the date of permit issuance for the operator of a small MS4 to develop and implement his or her program.

(2) Minimum control measures.

(i) Public education and outreach on storm water impacts.

(A) The operator of a small MS4 must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(ii) Public involvement/participation.

(A) The operator must, at a minimum, comply with Territorial and local public notice requirements when implementing a public involvement/participation program.

(iii) Illicit discharge detection and elimination.

(A) The operator must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined in 184-2) into the small MS4.

(B) The operator must:

(1) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States Virgin Islands that receive discharges from those outfalls;

(2) To the extent allowable under Territorial or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

(3) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the MS4; and

(4) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste to the MS4.

(C) The operator of the small MS4 needs to address the following categories of non-storm water discharges or flows (i.e., illicit discharges) if these discharges are identified as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States Virgin Islands).

(iv) Construction site storm water runoff control.

(A) The operator must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, including construction activity disturbing less than one acre if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Department waives requirements for storm water discharges associated with small construction activity in accordance with Section 184-2(a)(87)(i), the operator is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(B) At a minimum, the Storm Water Management Program must include the development and implementation of the following:

(1) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under Territorial or local law;

(2) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(3) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(4) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(5) Procedures for receipt and consideration of information submitted by the public; and

(6) Procedures for site inspection and enforcement of control measures.

(v) Post-construction storm water management in new development and redevelopment.

(A) The operator must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts.

(B) The operator of a small MS4 must:

(1) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the community;

(2) Use an ordinance or other regulatory mechanism to address post- construction runoff from new development and redevelopment projects to the extent allowable under Territorial, or local law; and

(3) Ensure adequate long-term operation and maintenance of BMPs.

(vi) Pollution prevention/good housekeeping for municipal operations.

(A) The operator of a small MS4 must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the Territory, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(3) If an existing qualifying local program requires the operator of a small MS4 to implement one or more of the minimum control measures of paragraph (e)(2) of this section, the Department may include conditions in the TPDES permit that direct the operator to follow that qualifying program's requirements rather than the requirements of paragraph (e)(2) of this section. A qualifying local program is a local or a Territorial municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (e)(2) of this section.

(4) In the permit application (either a notice of intent for coverage under a general permit or an individual permit application), the operator must identify and submit to the Department the following information:

- (i) The best management practices (BMPs) that the small MS4 or another entity will implement for each of the storm water minimum control measures at paragraphs (e)(2)(i) through (e)(2)(vi) of this section;
- (ii) The measurable goals for each of the BMPs including, as appropriate, the months and years in which the operator will undertake required actions, including interim milestones and the frequency of the action; and
- (iii) The person or persons responsible for implementing or coordinating the storm water management program.

(5) Under a TPDES general permit, the operator of a small MS4 is not required to meet any measurable goal(s) identified in the notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs (e)(2)(iii) through (e)(2)(vi) of this section unless, prior to submitting the NOI, EPA or the Department has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, the operator still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

(6) The operator must comply with any more stringent effluent limitations in the permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The Department may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

(7) The operator must comply with other applicable TPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of Sections 184-51 through 184-54, 184-56, and 184-61 through 184-63, as appropriate.

(8) Evaluation and assessment.

(i) Evaluation. The operator must evaluate program compliance, the appropriateness of the MS4's identified best management practices, and progress towards achieving the identified measurable goals. Note to Paragraph (e)(8)(i): The Department may determine monitoring requirements for the small MS4 in accordance with Territorial monitoring plans appropriate to the watershed. Participation in a group monitoring program is encouraged.

(ii) Recordkeeping. The operator of a small MS4 must keep records required by the TPDES permit for at least 3 years. The operator must submit the MS4's records to the Department only when specifically asked to do so. The operator must make the MS4's records, including a description of the MS4's storm water management program, available to the public at reasonable times during regular business hours (see Section 184-26 for confidentiality provision). (The operator may assess a reasonable charge for copying. The operator may require a member of the public to provide advance notice.)

(iii) Reporting. Unless the operator of a small MS4 is relying on another entity to satisfy the MS4's TPDES permit obligations under paragraph (a)(9)(viii) of this section, the operator must submit annual reports to the Department for the first permit term. For subsequent permit terms, the operator must submit reports in year two and four unless the Department requires more frequent reports. The report must include:

(A) The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

(B) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(C) A summary of the storm water activities the operator of a small MS4 plans to undertake during the next reporting cycle;

(D) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(E) Notice that the small MS4 is relying on another governmental entity to satisfy some of its permit obligations (if applicable).

(f) Application deadlines. Any operator of a point source required to obtain a permit under this section that does not have an effective TPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) Storm water discharges associated with industrial activity.

(i) Except as provided in paragraph (f)(1)(ii) of this section, for any storm water discharge associated with industrial activity identified in 184-2(a)(86), that is not part of a group application as described in paragraph (b)(2) of this section or that is not authorized by a storm water general permit, a permit application made pursuant to paragraph (b) of this section must be submitted to the Commissioner by October 1, 1992;

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power plant, or uncontrolled sanitary landfill, the permit application must be submitted to the Commissioner by March 10, 2003.

(2) Group Permit Applications. Any group application submitted in accordance with paragraph (b)(2) of this section shall comply with all Federal requirements set forth at 122.26(e)(2):

(3) For any discharge from a large municipal separate storm sewer system, application deadlines are set forth at 40 CFR 122.26(e)(3);

(4) For any discharge from a medium municipal separate storm sewer system, application deadlines are set forth at 40 CFR 122.26(e)(4);

(5) A permit application shall be submitted to the Commissioner within 180 days of notice, unless permission for a later date is granted by the Commissioner (see 40 CFR 124.52(c)), for:

(i) A storm water discharge that the Commissioner or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States Virgin Islands (see paragraph (a)(1)(viii) of this section and Section 184-2(a)(87)(ii));

(ii) A storm water discharge subject to paragraph (b)(1)(v) of this section.

(6) Facilities with existing TPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992 shall submit a new application in accordance with the requirements of 40 CFR 122.21 and 40 CFR 122.26(c) (Form 1, Form 2F, and other applicable Forms) 180 days before the expiration of such permits.

(7) The Commissioner shall issue or deny permits for discharges composed entirely of storm water under this section in accordance with the following schedule:

(i) (A) Except as provided in paragraph (f)(7)(i)(B) of this section, the Commissioner shall issue or deny permits for storm water discharges associated with industrial activity no later than October 1, 1993, or, for new sources or existing sources which fail to submit a complete permit application by October 1, 1992, one year after receipt of a complete permit application;

(B) For any municipality with a population of less than 250,000 which submits a timely Part I group application under 40 CFR 122.26(e)(2)(i)(B), the Commissioner shall issue or deny permits for storm water discharges associated with industrial activity no later than May 17, 1994, or, for any such municipality which fails to submit a complete Part II group permit application by May 17, 1993, one year after receipt of a complete permit application;

(ii) The Commissioner shall issue or deny permits for large municipal separate storm sewer systems no later than November 16, 1993, or, for new sources or existing sources which fail to submit a complete permit application by November 16, 1992, one year after receipt of a complete permit application;

(iii) The Commissioner shall issue or deny permits for medium municipal separate storm sewer systems no later than May 17, 1994, or, for new sources or existing sources which fail to submit a complete permit application by May 17, 1993, one year after receipt of a complete permit application.

(8) For any storm water discharge associated with small construction activity identified in 184-2(a)(87)(i), see 40 CFR 122.21(c)(1). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(9) For any discharge from a regulated small MS4, the permit application made under paragraph (d) of this section must be submitted to the Commissioner by:

(i) March 10, 2003, if designated under paragraph (a)(9)(iii)(A) of this section unless the MS4 serves a jurisdiction with a population under 10,000 and the Department has established a phasing schedule under 40 CFR 123.35(d)(3); or

(ii) Within 180 days of notice, unless the Department grants a later date, if designated under paragraph (a)(9)(iii)(B) of this section.

(g) Petitions.

(1) Any operator of a municipal separate storm sewer system may petition the Commissioner to require a separate TPDES permit for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Commissioner to require a TPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States Virgin Islands.

(3) The owner or operator of a municipal separate storm sewer system may petition the Commissioner to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the TPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(4) Any person may petition the Commissioner for the designation of a large, medium, or small municipal separate storm sewer system as defined by 184-2 (a)(40), (a)(46), and (a)(83).

(5) The Commissioner shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4 in which case the Commissioner shall make a final determination on the petition within 180 days after its receipt.

(h) Conditional exclusion for “no exposure” of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to rain and/or runoff, and the discharger satisfies the conditions set forth at 40 CFR 122.26(g). “No exposure” means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(i) All TPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in Clean Water Act sections 309 (b), (c), and (g) and 505, under the Act [12 V.I.C. § 181 et seq.], or under applicable Territorial or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for

purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for toxic pollutants injurious to human health. If the operator is covered as a co-permittee under an individual permit or under a general permit by means of a joint Notice of Intent the operator remains subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in his or her jurisdiction except as set forth in 184-45(a)(9)(ix).

(j) [Reserved. Placeholder for additional more stringent, storm water regulations developed for the Territory.]

184-46. General Permits

(a) Coverage. The Commissioner may issue a general permit in accordance with the following:

(1) Area. The general permit shall be written to cover one or more categories or subcategories of discharges or disposal practices or facilities described in the permit under paragraph (a)(2)(ii) of this section, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries such as:

(i) Designated planning areas under sections 208 and 303 of CWA;

(ii) Sewer districts or sewer authorities;

(iii) City, county, or Territory political boundaries;

(iv) Territorial highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

(vii) Any other appropriate division or combination of boundaries.

(2) Sources. The general permit may be written to regulate one or more categories or subcategories of discharges or disposal practices or facilities, within the area described in paragraph (a)(1) of this section, where the sources within a covered subcategory of discharges are either:

(i) Storm water point sources; or

(ii) One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of “treatment works treating domestic sewage”, if the sources or “treatment works treating domestic sewage” within each category or subcategory all:

(A) Involve the same or substantially similar types of operations;
(B) Discharge the same types of wastes or engage in the same types of disposal practices;

(C) Require the same effluent limitations, operating conditions, or standards for disposal;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Commissioner, are more appropriately controlled under a general permit than under individual permits.

(3) Water quality-based limits. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to Section 18454, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

(4) Other requirements.

(i) The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

(ii) The general permit may exclude specified sources or areas from coverage.

(b) Administration.

(1) In general. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of these regulations. Special procedures for issuance are found at 40 CFR 123.44.

(2) Authorization to discharge.

(i) Except as provided in paragraphs (b)(2)(v) and (b)(2)(vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Commissioner a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, under the terms of the general permit unless the general permit, in accordance with paragraph (b)(2)(v) of this

section, contains a provision that a notice of intent is not required or the Commissioner notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (b)(2)(vi) of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of Sections 184-25, 184-31, and 184-45.

(ii) The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with Section 184-32.

(iii) General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

(iv) General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, in accordance with the permit either upon receipt of the notice of intent by the Commissioner, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Commissioner. Coverage may be terminated or revoked in accordance with paragraph (b)(3) of this section.

(v) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Commissioner, be authorized to discharge under a general permit without submitting a notice of intent where the Commissioner finds that a notice of intent requirement would be inappropriate. In making such a finding, the Commissioner shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Commissioner shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

(vi) The Commissioner may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph (b)(3)(ii) of this section.

(3) Requiring an individual permit.

(i) The Commissioner may require any discharger authorized by a general permit to apply for and obtain an individual TPDES permit. Any interested person may petition the Commissioner to take action under this paragraph. Cases where an individual TPDES permit may be required include the following:

(A) The discharger or “treatment works treating domestic sewage” is not in compliance with the conditions of the general TPDES permit;

(B) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(C) Effluent limitation guidelines are promulgated for point sources covered by the general TPDES permit;

(D) A Water Quality Management plan containing requirements applicable to such point sources is approved;

(E) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(G) The discharge(s) is a significant contributor of pollutants. In making this determination, the Commissioner may consider the following factors:

(1) The location of the discharge with respect to waters of the United States Virgin Islands;

(2) The size of the discharge;

(3) The quantity and nature of the pollutants discharged to waters of the United States Virgin Islands; and

(4) Other relevant factors;

(ii) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under Section 184-31, with reasons supporting the request, to the Commissioner no later than 90 days after the publication by the Territory in accordance with applicable Territorial law. The request shall be processed under 40 CFR part 124 or applicable Territorial procedures. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(iii) When an individual TPDES permit is issued to an owner or operator otherwise subject to a general TPDES permit, the applicability of the general permit to the individual TPDES permittee is automatically terminated on the effective date of the individual permit.

(iv) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

DIVISION 5. PERMIT SYSTEM—CONTENTS OF PERMITS

184-51. Conditions Applicable to all TPDES Permits

The following conditions apply to all TPDES permits. Additional conditions applicable to specific categories of TPDES permits are in Section 184-52. All conditions applicable to TPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding Federal regulations) must be given in the permit.

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

(1) 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.

(2) 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.

(3) 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.], this subchapter, or the FWPCA.

(b) Duty to reapply.

(1) 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.

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

(c) Need to halt or reduce activity 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 the permit.

(d) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

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

(f) Permit actions. 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.

(g) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information.

(1) 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.

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

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

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

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

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

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

(j) Monitoring and records.

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

(2) Each effluent flow or pollutant required to be monitored pursuant to Section 184-63 shall be monitored at intervals to be determined by the Department as sufficiently frequent to yield data which reasonably characterize the nature of the discharge of the monitored flow or pollutant. Variable effluent flows and pollutant levels may be required to be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels, which may be required to be monitored at less frequent intervals.

(3) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the TPDES permit, and records of all data used to complete the application for the TPDES permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period of retention shall be extended during the course of any unresolved litigation or other proceedings regarding the discharge of pollutants by the permittee or at any time when requested by the Department or Regional Administrator.

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

(i) The date, exact place, and time of sampling or measurements;

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

(iii) The date(s) analyses were performed;

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

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

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

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

(k) Signatory requirement.

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

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

(l) Reporting requirements.

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

(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 184-52(a)(1).

(2) 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.

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

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the TPDES permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

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

(iii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(iv) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Commissioner in the permit.

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

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

(B) Any upset which exceeds any effluent limitation in the permit.

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

(iii) The Commissioner may waive the written report on a case-by-case basis for reports under paragraph (1)(6)(ii) of this section if the oral report has been received within 24 hours.

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (1)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6) of this section.

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

(m) Bypass.

(1) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(2) and (m)(3) of this section.

(2) Notice.

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

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (1)(6) of this section (24-hour notice).

(3) Prohibition of bypass.

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

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

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

(C) The permittee submitted notices as required under paragraph (m)(2) of this section.

(ii) The Commissioner may approve an anticipated bypass, after considering its adverse effects, if the Commissioner determines that it will meet the three conditions listed above in paragraph (m)(3)(i) of this section.

(n) Upset

(1) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(2) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(2) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (1)(6)(ii)(B) of this section (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

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

(o) Other TPDES conditions.

(1) All discharges authorized by the permit shall be consistent with the provisions of the permit;

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

(3) 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.

(p) Penalties.

(1) Civil Penalties. The Act [12 VIC 181 et seq.] provides any person who violates any provision of the Act, or of any permit, or limitation implementing any section of a permit, any permit filing requirement, any duty to allow or to perform an inspection or to allow the entry upon the premises of authorized persons, or any monitoring requirement, or any requirement imposed in a pretreatment program, rule, regulation, standard or order issued or promulgated hereunder, shall be subject to a civil penalty not to exceed \$50,000 per day of such violation.

(2) Criminal Penalties.

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

(ii) The Act [12 VIC 181 et seq.] provides any person who knowingly or negligently introduces into a sewer system or into a publicly owned treatment works, any pollutant or hazardous substance that the person knew, or reasonably should have known could cause personal injury or property damage or who introduces into such treatment works a pollutant or hazardous substance, other

than in compliance with all applicable laws, permits or requirements which causes the treatment works to violate any effluent limitation or condition in a permit issued to the treatment works, upon conviction shall be punished by a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment for not more than 3 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or by both imprisonment and fine.

(q) 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 VIC 188(a)(1).

(1) 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 VIC 188(b). Such request shall not act as a stay of enforcement of the Commissioner's order unless so ordered and directed by the Commissioner or by a court. On the basis of such hearing, the Commissioner shall continue such order in effect, revoke it, or modify it.

(2) 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 VIC 188.

184-52. Additional Conditions Applicable to Specified Categories of TPDES Permits

The following conditions, in addition to those set forth in Section 184-51, apply to all TPDES permits within the categories specified below:

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under Section 184-51(l), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Commissioner as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 µg/l);

(ii) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

(iv) The level established by the Commissioner in accordance with 184-54(e).

(2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:

(i) Five hundred micrograms per liter (500 µg/l);

(ii) One milligram per liter (1 mg/l) for antimony;

(iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7).

(iv) The level established by the Commissioner in accordance with Section 184-54(e).

(b) Publicly owned treatment works. All POTWs must provide adequate notice giving full particulars to the Department in advance of effecting any of the following acts:

(1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA if it were directly discharging those pollutants; and

(2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW.

(3) For purposes of this paragraph, adequate notice shall include information on

(i) the quality and quantity of effluent introduced into the POTW, and

(ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Commissioner under Section 184-45(a)(1)(viii) must submit an annual report as required under 40 CFR 122.42(c).

(d) Storm water discharges. The initial permits for discharges composed entirely of storm water issued pursuant to Section 184-45(f)(7) shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

184-53. Establishing Permit Conditions

(a) In addition to conditions required in all permits (Sections 184-51 and 184-52), the Commissioner shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of CWA, the Act [12 VIC § 181 et seq.], and regulations. These shall include conditions under Sections 184-61 (duration of permits), 184-62 (schedules of compliance), and 184-63 (monitoring).

(b) An applicable requirement is a Territorial statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Section 184-72.

(c) New or reissued permits, and to the extent allowed under Section 184-72 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Sections 184-54 and 184-56.

(d) Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

184-54. Establishing Limitations, Standards, and Other Permit Conditions

In addition to the conditions established under Section 184-53(a), each TPDES permit shall include conditions meeting the following requirements when applicable.

(a) (1) Technology-based effluent limitations and standards based on: effluent limitations and standards promulgated under section 301 of the CWA, or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three, in accordance with 40 CFR 125.3. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of 40 CFR 122.29(d) (protection period).

(2) Monitoring waivers for certain guideline-listed pollutants.

(i) The Commissioner may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a TPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N of this chapter if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(ii) This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

(iii) Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(iv) Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

(v) This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

(b) Other effluent limitations and standards under sections 301, 302, 303, 307, and 318 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Commissioner shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also Section 184-51(a).

(c) Water quality standards and Territorial requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, and 318 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.

(i) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Commissioner determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Territorial water quality standard, including Territorial narrative criteria for water quality.

(ii) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Territorial water quality standard, the Department shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(iii) When the Department determines, using the procedures in paragraph (c)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Territorial numeric criteria within a Territorial water quality standard for an individual pollutant, the TPDES permit must contain effluent limits for that pollutant.

(iv) When the Department determines, using the procedures in paragraph (c)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the TPDES permit must contain effluent limits for whole effluent toxicity.

(v) Except as provided in this subparagraph, when the Department determines, using the procedures in paragraph (c)(1)(ii) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Territorial water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Department demonstrates in the fact sheet or statement of basis of the TPDES permit, using the procedures in paragraph (c)(1)(ii) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Territorial water quality standards.

(vi) Where the Territory has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Territorial water quality standard, the Department must establish effluent limits using one or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Territorial criterion, or an explicit Territorial policy or regulation interpreting its narrative water quality criterion, supplemented with other

relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(1) The TPDES permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(2) The fact sheet required by Section 184-84 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(3) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(4) The permit contains a reopener clause allowing the Department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(vii) When developing water quality-based effluent limits under this paragraph the Department shall ensure that:

(A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the Territory and approved by EPA pursuant to 40 CFR 130.7.

- (2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;
 - (3) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State, other than the certifying State;
 - (4) Incorporate any more stringent limitations, including those:
 - (i) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any Federal or Territorial law or regulation consistent with section 305(b)(1)(c) of the FWPCA, or necessary to implement total maximum daily loads established pursuant to section 303(d) of the FWPCA and incorporated in the continuing planning process approved under section 303(e) of the FWPCA or any regulations and guidelines issued pursuant thereto; and
 - (ii) Necessary to meet any other Territorial or Federal law or regulation.
 - (5) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;
 - (6) Incorporate ocean discharge criteria pursuant to section 403(c) of the CWA under 40 CFR part 125, subpart M.
 - (7) Incorporate alternative effluent limitations or standards where warranted by “fundamentally different factors,” under 40 CFR part 125, subpart D;
 - (8) Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306 and 307 of the FWPCA, such conditions as the Commissioner determines are necessary to carry out the provisions of the FWPCA; and
 - (9) Incorporate any other appropriate requirements, conditions, or limitations (other than effluent limitations) into a new source permit to the extent allowed by the National Environmental Policy Act, 42 U.S.C. 4321 et seq. and section 511 of the CWA, when EPA is the permit issuing authority. (See 40 CFR 122.29(c)).
- (d) Technology-based controls for toxic pollutants. Limitations established under paragraphs (a), (b), or (c) of this section, to control pollutants meeting the criteria listed in paragraph (d)(1) of this section. Limitations will be established in accordance with paragraph (d)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under Section 184-84(c)(2)(i).

(1) Limitations must control all toxic pollutants which the Commissioner determines (based on information reported in a permit application under 184-31 or in a notification under Section 184-52(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3; or

(2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (d)(1) of this section will be satisfied by:

(i) Limitations on those pollutants; or

(ii) Limitations on other pollutants which, in the judgment of the Commissioner, will provide treatment of the pollutants under paragraph (d)(1) of this section to the levels required by 40 CFR 125.3(c).

(e) Notification level. A “notification level” which exceeds the notification level of Section 184-52(a)(1)(i), (ii), or (iii), upon a petition from the permittee or on the Commissioner’s initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c).

(f) Twenty-four hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under Section 184-51(l)(6)(ii)(C) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(g) Durations for permits, as set forth in Section 184-61.

(h) Monitoring requirements. In addition to Section 184-63, the following monitoring requirements:

(1) To assure compliance with permit limitations, requirements to monitor:

(i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as appropriate including pollutants in internal waste streams under Section 184-56(h); pollutants in intake water for net limitations under Section 184-56(g); frequency, rate of discharge, etc., for noncontinuous discharges under Section 184-56(e); pollutants subject to notification requirements under Section 184-52(a); and

(iv) According to test procedures approved under 40 CFR part 136 for the analyses of pollutants having approved methods under that part, and according to a test procedure specified in the permit for pollutants with no approved methods.

(2) Except as provided in paragraphs (h)(4) and (h)(5) of this section, any results obtained by a permittee pursuant to monitoring requirements in a TPDES permit shall be submitted by the 10th day of the subsequent month, unless otherwise specified by the Department. Such results shall be reported on a Discharge Monitoring Report (DMR). In addition to a DMR, the Commissioner in his discretion may require the submittal of such other information regarding monitoring results as he determines to be reasonably necessary to achieve the purposes of this subchapter or the FWPCA. In no event shall reports required by this section be submitted at a frequency of less than once per year.

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (h)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(i) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(ii) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(iii) Such report and certification be signed in accordance with Section 184-32;and

(iv) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under Section 184-51(1)(1), (4), (5), and (6) at least annually.

(i) Pretreatment program for POTWs. Requirements for POTWs to:

(1) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of CWA and 40 CFR part 403.

(2) Require any industrial user of such treatment works to comply with the requirements of sections 204(b), 307 and 308 of the FWPCA. As a means of insuring such compliance, the permittee shall require that each industrial user subject to the requirements of section 307 of the FWPCA prepare periodic notice (over intervals not to exceed 9 months) of progress toward full compliance with section 307 requirements. The permittee, upon receiving each such report, shall transmit a copy promptly to the Commissioner.

(3) (i) Submit a local program when required by and in accordance with 40 CFR part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR part 403. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR part 403.

(ii) Provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance.

(j) Persons discharging industrial waste into a publicly-owned treatment works shall comply with toxic effluent standards and pretreatment standards and with monitoring, reporting, recording, sampling and entry requirements provided by the FWPCA or the Act [12 V.I.C. § 181 et seq.].

(k) Best management practices (BMPs) to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Authorized under section 402(p) of the CWA for the control of storm water discharges;

(3) Numeric effluent limitations are infeasible; or

(4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA and the Act [12 VIC § 181 et seq.].

(l) Reissued permits.

(1) Except as provided in paragraph (1)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Section 184-72).

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions—A permit with respect to which paragraph (1)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B) (1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b) of the CWA;

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) Limitations. In no event may a permit with respect to which paragraph (1)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 of the CWA applicable to such waters.

(m) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Commissioner may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Commissioner's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(n) Grants. Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

(o) Coast Guard. If the TPDES permit is for the discharge of pollutants into the navigable waters of the Territory from a vessel or other floating craft, any applicable regulations promulgated by the Secretary of the Department under which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(p) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 40 CFR 124.59.

(q) Qualifying Territorial or local programs.

(1) For storm water discharges associated with small construction activity identified in Section 184-2(a)(87), the Commissioner may include permit conditions that incorporate qualifying Territorial or local erosion and sediment control program requirements by reference. Where a qualifying Territorial or local program does not include one or more of the elements in this paragraph (q)(1), then the Commissioner must include those elements as conditions in the permit. A qualifying Territorial or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved Territorial or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in Section 184-2(a)(86)(x)), the Commissioner may include permit conditions that incorporate qualifying Territorial or local erosion and sediment control program requirements by reference. A qualifying Territorial or local erosion and sediment control program is one that includes the elements listed in paragraph (q)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of “best available technology” and “best conventional technology” based on the best professional judgment of the permit writer.

(r) In any case in which an issued TPDES permit contains provisions applicable pursuant to this division, such permit shall state that on the basis of a submitted application, plans, or other available information, a determination has been made that compliance with the specified permit provisions will reasonably assure compliance with applicable water quality standards. The TPDES permit shall further state that satisfaction of permit provisions notwithstanding, if operation pursuant to the permit causes or contributes to a condition in contravention of Territorial water quality standards the Department may require abatement action to be taken by the permittee and may modify the permit pursuant to 12 V.I.C. § 185(i).

184-55. Criteria and Standards for the Territorial Pollutant Discharge Elimination System

In addition to the requirements set forth in 184-51 through 184-54, each TPDES permit shall include conditions pursuant to the following regulations whenever applicable:

- (a) 40 CFR 125 Subpart A (Technology-based treatment requirements);
- (b) 40 CFR 125 Subpart B (Criteria for issuance of Permits to Aquaculture Projects);
- (c) 40 CFR 125 Subpart D (Criteria and Standards for Determinant Fundamentally Different Factors);
- (d) 40 CFR 125 Subpart H (Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act);
- (e) 40 CFR 129 (Toxic Pollutant Effluent Standards and Prohibitions);
- (f) 40 CFR 133 (Secondary Treatment Regulation); and
- (g) 40 CFR Subchapter N (Effluent Guidelines and Standards).
- (h) [Reserved. Placeholder for Performance-Based Water Quality Standards for Privately Owned Treatment Works].

184-56. Calculating TPDES Permit Conditions

(a) Outfalls and discharge points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under Section 184-54(k) (BMPs where limitations are infeasible) and paragraph (h) of this section (limitations on internal waste streams).

(b) Production-based limitations.

(1) In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

(2) (i) Except in the case of POTWs or as provided in paragraph (b)(2)(ii) of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(ii)(A) (1) The Commissioner may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(2) For the automotive manufacturing industry only, the Regional Administrator shall, and the Commissioner may establish a condition under paragraph (b)(2)(ii)(A)(1) of this section if the applicant satisfactorily demonstrates to the Commissioner at the time the application is submitted that its actual production, as indicated in paragraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(B) If the Commissioner establishes permit conditions under paragraph (b)(2)(ii)(A) of this section:

(1) The permit shall require the permittee to notify the Commissioner at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(2) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Commissioner under paragraph (b)(2)(ii)(B)(1) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(3) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(c) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of “total recoverable metal” as defined in 40 CFR part 136 unless:

- (1) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or
- (2) In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA; or
- (3) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(d) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

- (1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and
- (2) Average weekly and average monthly discharge limitations for POTWs.

(e) Non-continuous discharges. Discharges which are not continuous, as defined in 40 CFR 122.2, shall be particularly described and limited, considering the following factors, as appropriate:

- (1) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);
- (2) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);
- (3) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and
- (4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (1/4 kilogram) of zinc in any discharge).

(f) Mass limitations.

- (1) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

(i) For flow, pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

(ii) When applicable standards and limitations are expressed in terms of other units of measurement; or

(iii) If in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(g) Pollutants in intake water.

(1) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

(i) The applicable effluent limitations and standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(4) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Commissioner may waive this requirement if he finds that no environmental degradation will result.

(5) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(h) Internal waste streams.

(1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 184-63 shall also be applied to the internal waste streams.

(2) Limits on internal waste streams will be imposed only when the fact sheet under Section 184-84 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(i) Disposal of pollutants into wells, into POTWs, or by land application. Permit limitations and standards shall be calculated as provided in Section 184-64.

DIVISION 6. PERMIT SYSTEM—CONTENTS OF PERMIT

184-61. Duration of Permits

(a) TPDES permits shall be issued with appropriate time limitations consistent with guidelines, standards, and criteria set forth by the Federal Government and the Territory, and shall be effective for a fixed term not to exceed 5 years.

(b) Except as provided in 184-25, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Commissioner may issue any permit for a duration that is less than the full allowable term under this section.

(d) A permit may be issued to expire on or after the statutory deadline set forth in section 301(b)(2) (A), (C), and (E), if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

(e) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

184-62. Schedules of Compliance

(a) General. The TPDES permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations and the Act [12 V.I.C. § 181 et seq].

(1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA and the Act [12 V.I.C. § 181 et seq.].

(2) The first TPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(3) Interim dates. Except as provided in 184-62(b)(1)(ii), if a permit establishes a schedule of compliance which exceeds 9 months from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 9 months.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control or treatment facility) is more than 9 months and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

Note: Examples of interim requirements include: (a) Submit a complete Step 1 construction grant (for POTWs); (b) let a contract for construction of required facilities; (c) commence construction of required facilities; (d) complete construction of required facilities.

(4) For each TPDES permit compliance schedule, interim dates and the final date for compliance will, to the extent practicable, fall on the last day of the months of March, June, September and December.

(5) Reporting. The TPDES permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Commissioner in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(3)(ii) is applicable.

(b) Alternative schedules of compliance. A TPDES permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for TPDES sources) rather than continuing to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before non-compliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Commissioner may issue or modify a permit to contain two schedules as follows: (i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Commissioner, such as a resolution of the board of directors of a corporation.

(c) On the last day of the months of January, April, July and October, the Commissioner shall transmit to the Regional Administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement, as required pursuant to paragraph (a)(4) of this section. Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(1) Name and address of each noncomplying permittee;

(2) A short description of each instance of noncompliance;

(3) A short description of any actions or proposed actions by the permittee or the Commissioner to comply or enforce compliance with the interim or final requirement;
and

(4) Any details which tend to explain or mitigate an instance of noncompliance.

184-63. Monitoring, Recording and Reporting

All TPDES permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Section 184-54. Reporting shall be no less frequent than specified in the above regulation.

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

(e) The permittee shall monitor each discharge pursuant to paragraph (d) of this section for at least the following:

(1) Flow (in gallons per day); and

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

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

(ii) Pollutants which the Commissioner finds, on the basis of information available to him, could have a significant impact on the quality of the waters of the Territory;

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

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

(f) Each effluent flow or pollutant required to be monitored pursuant to paragraphs (d) and (e) of this section shall be monitored at intervals to be determined by the Department as sufficiently frequent to yield data which reasonably characterize the nature of the discharge of the monitored flow or pollutant. Variable effluent flows and pollutant levels may be required to be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be required to be monitored at less frequent intervals.

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

184-64. Disposal of Pollutants into Wells, into Publicly Owned Treatment Works, or by Land Application

(a) When part of a discharger's process wastewater is not being discharged into waters of the United States Virgin Islands or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States Virgin Islands, applicable effluent standards and limitations for the discharge in a TPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States Virgin Islands, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(2) In all cases other than those described in paragraph (a)(1) of this section, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States Virgin Islands, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR part 125, subpart D to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = (E \times N)/T$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States Virgin Islands, and T is the total wastewater flow.

(b) Paragraph (a) of this section does not apply to the extent that promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(c) Paragraph (a) of this section does not alter a discharger's obligation to meet any more stringent requirements established under Sections 184-51, 184-52, 184-53, 184-54, 184-55, and 184-56.

DIVISION 7. TRANSFER, MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION OF PERMITS

184-71. Transfer of Permits

Any permittee who intends to transfer a TPDES permit is required to notify the Department in advance of the transfer as set forth in paragraphs (a) and (b) of this section.

(a) Transfers by modification.

(1) Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under Section 184-72(b)(2)), or a minor modification made (under 184-75(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

(2) In the case of an ownership change accompanied by a change or proposed change in wastewater characteristics a minimum of 180 days notice to the Department is required.

(b) Automatic transfers. As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Commissioner at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees 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 subparagraph may also be a minor modification under 184-75. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

184-72. Modification or Revocation and Reissuance of Permits

When the Commissioner receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, see Section 184-51), receives a request for modification or revocation and reissuance under Section 184-74, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, after notice and opportunity for a hearing, the Commissioner may modify or revoke and reissue the permit accordingly, subject to the limitations of Section 184-74(b), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See Section 184-74(b)(2). If cause does not exist under this section or 184-75 (Minor Modifications of Permits),

the Commissioner shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in 184-75 for “minor modifications” the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and procedures in the TPDES program and pursuant to the Act [12 VIC 181 et seq] must be followed. The Commissioner may modify, revoke and reissue, or make “minor modifications” in an issued TPDES permit if cause exists and if within 30 days following receipt of notice from the Commissioner, the Regional Administrator does not object in writing.

(a) Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit. Note: Certain reconstruction activities may cause the new source provisions of 40 CFR 122.29 to be applicable.

(2) Information. The Commissioner has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For TPDES general permits (Section 184-46) this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger TPDES permits (Section 184-31 and 40 CFR 122.29), this cause shall include any significant information derived from effluent testing required under 40 CFR 122.21(k)(5)(vi) or 40 CFR 122.21(h)(4)(iii) after issuance of the permit.

(3) Notice. If the Department determines, on the basis of a notice provided pursuant to Section 184-52(b) or 184-51(l)(1) and any related investigation, inspection or sampling, that a modification of the permit is necessary to assure maintenance of water quality standards or compliance with other provisions of this subchapter or the FWPCA Act, the Department may require such a modification and may prohibit the noticed act until the permit has been modified pursuant to Division 7 of this subchapter.

(4) New regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR part 133; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a Territorial action with regard to a water quality standard on which the permit condition was based; and

(C) A permittee requests modification in accordance with Section 184-74 within ninety (90) days after Federal Register notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Section 184-74 within ninety (90) days of judicial remand.

(5) Compliance schedules.

(i) The Commissioner determines good cause exists for modification of a compliance schedule in an issued TPDES permit, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy and if within 30 days following receipt of notice from the Commissioner, the Regional Administrator does not object in writing. However, in no case may a TPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also 184-75(c) (minor modifications) and paragraph (a)(14) of this section (NPDES innovative technology).

(ii) All revisions or modifications made to schedules of compliance in TPDES permits issued pursuant to the Act [12 V.I.C. § 181 et seq.] shall be included in the list prepared by the Commissioner pursuant to Section 184-62 of this subchapter.

(6) When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for “fundamentally different factors” within the time specified in Section 184-31.

(7) 307(a) toxics. When required to incorporate an applicable 307(a) toxic effluent standard or prohibition (See Section 184-54(b)).

(8) Reopener. When required by the “reopener” conditions in a permit, which are established in the permit under Section 184-54(b) (for CWA toxic effluent limitations) or 40 CFR Sec. 403.10(e) (pretreatment program).

(9) (i) Net limits. Upon request of a permittee who qualifies for effluent limitations on a net basis under Section 184-56(g).

(ii) When a discharger is no longer eligible for net limitations, as provided in Section 184-56(g)(1)(ii).

(10) Pretreatment. As necessary under 40 CFR 403.8(e) (compliance schedule for development of pretreatment program).

(11) Failure to notify. Upon failure of the Territory to notify, as required by 402(b)(3) of the CWA, another State, province, or country whose waters may be affected by a discharge from the approved State.

(12) Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c).

(13) Notification levels. To establish a “notification level” as provided in Section 184-54(e).

(14) Compliance schedules. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2) of CWA. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(15) For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in Section 184-45(e)(2) when:

(i) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and

(ii) The other entity fails to implement measure(s) that satisfy the requirement(s).

(16) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(17) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(18) Land application plans. When required by a permit condition to revise an existing land application plan, or to add a land application plan.

(b) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under Section 184-73 and the Commissioner determines that modification or revocation and reissuance is appropriate.

(2) The Commissioner has received notification (as required in the permit, see Section 184-51(1)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Section 184-71(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

184-73. Termination of Permits

(a) After notice and opportunity for a hearing, a permit may be terminated for cause. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Failure or refusal of the permittee to carry out the requirements of Section 184-51(i) of this subchapter.

(2) Noncompliance by the permittee with any condition of the permit;

(3) 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;

(4) Materially false or inaccurate statements or information in the TPDES application or the permit;

(5) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(6) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge (for example, plant closure or termination of discharge by connection to a POTW), including but not limited to:

(i) standards for construction or operation of the discharging facility,

(ii) the characteristics of the waters into which such discharge is made

(iii) the water quality criteria applicable to such waters,

- (iv) the classification of such waters, or
- (v) effluent limitations or other requirements applicable pursuant to the FWPCA or Territorial law.

(b) The Commissioner shall follow the applicable procedures in this division, as appropriate in terminating any TPDES permit, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Commissioner may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within 15 days. If the permittee objects during that 15-day period, the Commissioner shall follow applicable Territorial procedures for termination. Expedited permit termination procedures are not available to permittees that are subject to pending Territorial and/or Federal enforcement actions including citizen suits brought under Territorial or Federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending Territorial or Federal enforcement actions including citizen suits brought under Territorial or Federal law.

184-74. Modification, Revocation and Reissuance, or Termination Procedures

(a) After notice and opportunity for a hearing, permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Commissioner's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in Sections 184-72 and 184-73. All requests shall be in writing and shall contain facts or reasons supporting the request.

- (b)
 - (1) If the Commissioner tentatively decides to modify or revoke and reissue a permit under Section 184-72, he or she shall prepare a draft permit under Section 184-34 incorporating the proposed changes. The Commissioner may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Commissioner shall require the submission of a new application.
 - (2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
 - (3) "Minor modifications" as defined in 184-75 are not subject to the requirements of this section.

(c) If the Commissioner tentatively decides to terminate a permit under Section 184-73(a) or a permit under Section 184-73(b) where the permittee objects, the Commissioner shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 184-34.

184-75. Minor Modifications of Permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Division 3 of these regulations. Any permit modification not processed as a minor modification under this section must be made for cause and with Division 3 draft permit and public notice as required in 184-72 of the Department's regulations. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

(e) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(f) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR 403.18) as enforceable conditions of the POTW's permits.

DIVISION 8. PUBLIC NOTICE AND PARTICIPATION

184-81. Public Notice of Permit Actions and Public Comment Period

(a) Scope.

(1) The Commissioner shall give public notice that the following actions have occurred:

(i) A draft permit (including a notice of intent to deny a permit application) has been prepared under Section 184-34(c); and

(ii) A hearing has been scheduled under Section 184-91.

(2) The applicant shall give public notice of draft permit and hearing as set forth in paragraph (d) of this section.

(b) Timing.

(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 30 days for public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined).

(c) **Methods for Commissioner Notice.** The Commissioner shall give public notice of activities described in paragraph (a) of this section by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits).

(i) The applicant (except for TPDES general permits when there is no applicant);

(ii) Any other agency which the Commissioner knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Research Protection and Sanctuaries Act for the same facility or activity (including EPA);

(iii) Federal and Territorial agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, Territory Historic Preservation Officers, including any affected States;

(iv) Any Territorial agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

(v) Any user identified in the permit application of a privately owned treatment works; and

(vi) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list, including any person or group who request to receive copies of all TPDES notices within the Territory or within a certain geographical area. Such requests shall be made to the Central Office of the Department of Planning and Natural Resources;

(B) Soliciting persons for “area lists” from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and Territory funded newsletters, environmental bulletins, or Territory law journals. (The Commissioner may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Commissioner may delete from the list the name of any person who fails to respond to such a request.)

(vii) (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(B) To each Territorial agency having any authority under Territorial law with respect to the construction or operation of such facility.

(2) For major permits and TPDES general permits, public notice shall be given through publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity. Note: The Commissioner is encouraged to provide as much notice as possible of the TPDES draft general permit to the facilities or activities to be covered by the general permit.

(3) Public notice shall be given in a manner constituting legal notice to the public under Territorial law.

(4) Public notice shall be given by any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases, or any other forum or medium to elicit public participation.

(5) Public notice of any hearing held pursuant to section 184-91 shall be circulated at least as widely as was the notice of the TPDES draft permit.

(6) Public notice of hearing shall be sent to all persons and Government agencies which received a copy of the notice of draft permit or the fact sheet for the TPDES application.

(d) Methods for Applicant Notice. The applicant shall give public notice for draft permits and public hearings as follows:

(1) The applicant shall give public notice for every TPDES draft permit by publishing it in a newspaper of general circulation on the Island affected by the facility or activity. The notice shall be in the form and contain the information specified by the Department, as more specifically denoted in subsection (e) of this section, and shall be published for two consecutive days. Where the Commissioner determines that such newspaper publication is not feasible or will not give adequate notice to interested and potentially interested persons, he may require one or more other forms of notice, in addition to newspaper publication, including but not limited to, the following:

(i) posting in all the appropriate Island's post offices, or

(ii) posting near the entrance to the applicant's premises and in nearby places.

(2) The applicant shall give public notice of hearing by publishing it in at least one newspaper of general circulation on the Island of the discharge.

(3) Public notice of a hearing may be given at the time of the notice of TPDES draft permit pursuant to this section. Any such notice may be combined with other notices required of the applicant under this subchapter, the Act [12 V.I.C. § 181 et seq.], or other appropriate laws.

(e) Contents.

(1) All public notices. All public notices issued under this division shall contain the following minimum information:

(i) Name, address, and phone number of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of draft general permits;

(iii) A brief description of the business conducted at the facility or activity or operations described in the permit application (e.g., publicly-run waste treatment plant, steel manufacturing plant) or the draft permit;

(iv) Name, address and telephone number of a person at the Regional and Central Offices of the Department from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application and its supporting documents;

(v) A brief description of the comment procedures required by Sections 184-82, 184-83, and 184-91 and the time and place of any hearing that will be held including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(vii) A general description of the location of each existing or proposed discharge point and the name of the receiving water;

(viii) A short description of the quantity, character, location of and responsibility for each discharge on the waterway; and

(ix) Any additional information considered necessary or proper.

(2) Public notices for draft permits. In addition to the information required under paragraph (d)(1) of this section, public notice of a TPDES draft permit shall include:

(i) Date of application and end of public comment period; the public comment period shall be specified by the Department but in no event shall be less than thirty days from the date of publication; and

(ii) A statement of the tentative determination to issue or deny a TPDES permit for the discharge described in the application.

(3) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under Section 184-91 shall contain the following information:

(i) Reference to the date of previous public notices relating to the permit; including TPDES Permit Number;

(ii) Date, time, and place of the hearing;

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

(iv) A concise statement of the issues raised by the persons requesting the hearing.

(f) In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1) (i), (ii), (iii), and (iv) of this section and in Section 184-82 shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

(g) Section 316(a) requests. In addition to the information required under paragraph (d)(1) of this section, public notice of a TPDES draft permit for a discharge where a CWA section 316(a) request has been filed under 184-31 shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under CWA section 301 or 306 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 or 306;

(2) A statement that a section 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

(3) If the applicant has filed an early screening request under 40 CFR 125.72 for a section 316(a) variance, a statement that the applicant has submitted such a plan.

184-82. Notice to Other Government Agencies

In addition to the notice described in Section 184-81, the Department shall provide notice of each draft TPDES permit, an opportunity to submit written views and recommendations thereon to other appropriate government agencies. The procedure for such notification shall include the following:

(a) At the time of issuance of public notice of a draft TPDES permit, the Department will transmit a fact sheet, if required by section 184-84, to any other state, country or province whose waters may be affected by the issuance of a TPDES permit, any interstate or international agency having water quality control authority over waters which may be affected by the issuance of a permit and, upon request, providing such states or interstate or international agency with a copy of the TPDES application and a copy of the draft permit prepared pursuant to Section 184-26. Each affected state, country or province shall be afforded an opportunity to submit written recommendations to the Commissioner and to the Regional Administrator, which the Commissioner may incorporate into the permit, if issued. If the Commissioner determines not to so incorporate any such written recommendations, he shall provide the affected state or states, country or province, and the Regional Administrator with a written explanation of such determination.

(b) Unless otherwise provided by agreement between the Commissioner and any District Engineer of the U.S. Army Corps of Engineers, the Department shall, at the time of issuance of public notice pursuant to section 184-81 of a draft TPDES permit, transmit the public notice or, if prepared pursuant to section 184-84 a fact sheet to the appropriate District Engineer of the U.S. Army Corps of Engineers with respect to a TPDES application for discharges into navigable waters. A copy of any written agreement between the Commissioner and such a District Engineer will be forwarded to the Regional Administrator and will be made available to the public for inspection and copying.

(c) The Department shall mail copies of the public notice or, upon specific request, copies of the fact sheet, if any, to any other federal, state, or local agency, or any affected country or province, upon request, and will provide such parties an opportunity to respond, comment, or request a public hearing as otherwise provided under this division.

184-83. Written Comments and Requests for Hearings

(a) During the public comment period provided under Section 184-81, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. For the purpose of this paragraph, “any interested person” includes the applicant, any person or group of persons, any affected governmental agency, any affected interstate agency, any affected country, or province, or agency, or political subdivision thereof, or the Regional Administrator. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All written comments submitted during the comment period shall be retained by the Commissioner. All comments shall be considered in making the final decision and shall be answered as provided in Section 184-93. The period for written comment may be extended at the discretion of the Commissioner.

(b) Any person who is denied a permit by the Commissioner or who has a permit modified, revoked and reissued, or terminated may request a hearing as provided in Section 184-94 and in accordance with the Act [12 VIC 181 et seq]. Such requests shall be made in writing within 15 days of notice from the Commissioner of denial, modification, revocation and reissuance, or termination of the permit.

184-84. Fact Sheet

(a) A fact sheet shall be prepared for every draft permit for a major facility or activity, for every discharge which has or is proposed to have a total volume of more than 500,000 gallons on any day of a year, for every general permit, for every draft permit that incorporates a variance or requires an explanation under paragraph (c)(2)-(3) of this section, and for every draft permit which the Commissioner finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Commissioner shall send this fact sheet to the applicant and, on request, to any other person. Upon request the Department shall add the name of any person or group to a mailing list which shall receive copies of fact sheets.

(b) The fact sheet shall include, when applicable:

- (1) Name and address of applicant or applicants;
- (2) The tentative determinations required under Section 184-81;
- (3) A brief description of the type of facility, or activity, or operation which is the subject of the TPDES draft permit (e.g., publicly run treatment plant, steel manufacturing plant);
- (4) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
- (5) A short description of the character, location of and responsibility for each discharge on the waterway;
- (6) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions:
 - (i)-(ii) [Reserved. Placeholder for TMDL Fact Sheet Requirements at 40 CFR 122.48]
- (7) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (8) A description of the procedures for reaching a final decision on the draft permit including:
 - (i) The date of application, the beginning and ending dates of the comment period under Section 184-81 and the address where comments will be received; the public comment period shall be specified by the Department but in no event shall be less than thirty days from the date of publication;
 - (ii) Procedures for requesting a hearing and the nature of that hearing; and
 - (iii) Any other procedures by which the public may participate in the final decision.
- (9) Name, address, and telephone number of a person at the relevant Regional and Central Offices of the Department from whom interested persons may obtain further information, request a copy of the draft permit and the fact sheet, if any, and inspect and copy the application and its supporting documents;

(10) Provisions satisfying the requirements of paragraph (c) of this section; and

(11) Justification for waiver of any application requirements under Section 184-31(i).

(c) In addition to meeting the requirements of paragraphs (a) and (b) of this section, TPDES fact sheets shall contain the following:

(1) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard, as required by Section 184-54 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(2) When the draft permit contains any of the following conditions, an explanation of the reasons that such conditions are applicable:

(i) Limitations to control toxic pollutants under Section 184-54(d);

(ii) Limitations on internal waste streams under Section 184-56(h);

(iii) Limitations on indicator pollutants under 40 CFR 125.3(g);

(iv) Limitations set on a case-by-case basis under 40 CFR 125.3(c)(2) or (c)(3);

(v) Limitations to meet the criteria for permit issuance under 40 CFR 122.4(i), or

(vi) Waivers from monitoring requirements granted under Section 184-54(a).

(3) For every permit to be issued to a treatment works owned by a person other than a Territory or municipality, an explanation of the Commissioner's decision on regulation of users under Section 184-54(m).

(4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applicable to the proposed discharge; and

(5) A quantitative description of the discharge, which includes at least the following:

(i) The rate or frequency of the proposed discharge, and, if the discharge is continuous, the average daily flow in gallons per day;

(ii) For thermal discharges subject to limitation under the Act [12 V.I.C. § 181 et seq.], the average summer and winter temperatures in degrees Fahrenheit of the discharge; and

(iii) The average daily discharge in pounds per day of any pollutants which are subject to limitations or prohibitions under sections 301, 302, 306 or 307 of the FWPCA and regulations thereunder and any other pollutants which may be specified by the Commissioner.

(6) A sketch or detailed description of the location of the discharge described in the TPDES application.

DIVISION 9. PUBLIC HEARINGS AND RESPONSE TO COMMENTS

184-91. Public hearings

(a) The Commissioner shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s). In making such determination, he or she shall consider such expressions of public interest as the filing of requests or petitions for such hearing. Instances of doubt should be resolved in favor of holding a hearing.

(b) The Commissioner may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in a permit decision.

(c) Public notice of the hearing shall be given as specified in Section 184-81.

(d) Any hearing held pursuant to this section shall be held on the Island of the proposed discharge or other appropriate area, in the discretion of the Commissioner, and may, as appropriate, consider related groups of permit applications.

184-92. Hearing Procedures

(a) At a public hearing held with regard to a draft permit (including tentative determination) or to a permit action, any person shall be afforded the opportunity to present oral or written statements, arguments or data, Provided, however, that the Department shall have the discretion to fix reasonable time limits on the presentation of oral statements and when time and scheduling considerations necessitate, may require the submission of statements in writing.

(b) The hearing shall be conducted by a hearing officer [who] shall cause a record of the hearing to be made, which shall include any public comments or statements received, and shall render a report to the Commissioner setting forth the appearances and relevant facts and arguments presented at the hearing. The hearing officer is empowered to:

(1) Provide for the taking of written and oral statements, testimony under oath, and documentary evidence; and

(2) Regulate the course of the hearing, fix the time for the filing of written statements and data, provide for the scheduling and preservation of oral statements, testimony under oath and documentary evidence, and set the time and place for continued hearings.

(c) Any materials, including records and documents, in the possession of the Department of which it desires to avail itself, may be offered by the Department and made part of the record. Such materials may be relied upon by the Commissioner in making a final decision or other disposition.

(d) Cross-examination of witnesses shall be permitted and the strict procedural rules of evidence may be modified at the discretion of the hearing officer. The determination of the hearing officer shall be founded upon the record of the hearing and upon competent relevant material evidence which is substantial in view of the entire record.

184-93. Response to Comments

(a) At the time a final permit is issued, the Commissioner shall issue a response to comments. The Department is only required to issue a response to comments when a final permit is issued. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) The response to comments shall be available to the public.

184-94. Comments from Government Agencies

(a) If during the comment period for a TPDES draft permit, the District Engineer advises the Commissioner in writing that anchorage and navigation of any of the waters of the United States Virgin Islands would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advised the Commissioner that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Commissioner shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the TPDES permit for the duration of that stay.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State, Territory, or Federal agency with jurisdiction over fish, wildlife, or public health advises the Commissioner in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Commissioner may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of 40 CFR 122.49 and of the CWA.

(c) In appropriate cases the Commissioner may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

184-95. Decision on Variances

(a) The Commissioner may grant or deny requests for the following variances (subject to EPA objection under 40 CFR 123.44 for TPDES permits):

- (1) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;
- (2) After consultation with the Regional Administrator, extensions under CWA section 301(k) based on the use of innovative technology; or
- (3) Variances under CWA section 316(a) for thermal pollution.

(b) The Commissioner may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

- (1) A variance based on the economic capability of the applicant under CWA section 301(c); or
- (2) A variance based on water quality related effluent limitations under CWA section 302(b)(2).

(c) The Regional Administrator may deny, forward, or submit to the EPA Office Director for Water Enforcement and Permits with a recommendation for approval, a request for a variance listed in paragraph (b) of this section that is forwarded by the Commissioner.

(d) The EPA Office Director for Water Enforcement and Permits may approve or deny any variance request submitted under paragraph (c) of this section. If the Office Director approves the variance, the Commissioner may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under 40 CFR 124.64.

(e) The Commissioner may deny or forward to the Administrator (or his delegate) with a written concurrence a completed request for:

- (1) A variance based on the presence of “fundamentally different factors” from those on which an effluent limitations guideline was based;
- (2) A variance based upon certain water quality factors under CWA section 301(g).

(f) The Administrator (or his delegate) may grant or deny a request for a variance listed in paragraph (e) of this section that is forwarded by the Commissioner. If the Administrator (or his delegate) approves the variance, the Commissioner or Regional Administrator may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under 40 CFR 124.64.

DIVISION 10. TPDES PROGRAM

184-101. Conflicts of Interest

Pursuant to 12 V.I.C. § 196, the Commissioner or his designee responsible for issuance of TPDES permits, is prohibited from receiving, or from having received during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. For the purposes of this section:

- (a) "significant portion of his income" shall mean 10 percent of gross personal income for a calendar year, except that it shall mean 50 percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement;
- (b) "income" includes retirement benefits, consultant fees, and stock dividends; and
- (c) income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual-fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

184-102. Continuing Planning Process

The Department shall establish and maintain an EPA-approved continuing planning process under 40 CFR 130.5. The Department shall assure that the approved planning process is at all times consistent with the CWA.