

**Amended Virgin Islands Water Pollution Control Program
Territorial Pollutant Discharge Elimination System
Rules and Regulations
Title 12, Chapter 7, Subchapter 184**



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

DEPARTMENT OF PLANNING AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
WATER POLLUTION CONTROL
VIRGIN ISLANDS TERRITORIAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM PROGRAM

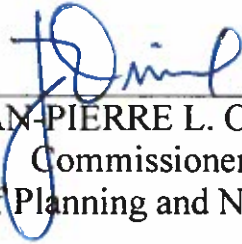
AMENDED RULES AND REGULATIONS

Submitted this 20th day of December, 2019

to

GOVERNOR ALBERT BRYAN, JR

by



JEAN-PIERRE L. ORIOL
Commissioner

Department of Planning and Natural Resources

Copy below is hereby certified to be a true and correct copy of the Regulations adopted pursuant to authority granted in Title 3 V.I.C., Chapter 22 Section 401(b)(16), Title 3 V.I.C., Chapter 35, Section 940, and Title 12 V.I.C., Chapter 7, Section 184.

The Department of Planning and Natural Resources (“DPNR”), “shall have and may exercise the following powers and duties:

“(a) To exercise general supervision of the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder, and to perform any and all acts necessary to carry out the purposes and requirements of this chapter and of the Federal Water Pollution Control Act, as amended, relating to the United States Virgin Islands participation in the National Pollutant Discharge Elimination System;

“(b) To develop comprehensive programs including participation in the National Pollutant Discharge Elimination System, for the prevention, control and abatement of all existing or potential pollution of the waters of the United States Virgin Islands and to develop, propose, promulgate and amend such rules and regulations as are necessary to carry out the purposes of this chapter;

* * * *

“(p) To exercise all incidental powers necessary to carry out the purposes of this chapter;

“(q) To administer and enforce the provisions of this chapter as it relates to participation in the National Pollution Discharge Elimination System, and all rules, regulations, orders, effluent limitations, water quality standards and permits promulgated, issued or effective hereunder;

* * * *

“(s) to establish by regulation and collect reasonable fees sufficient to defray costs incurred in developing and administering the permit program requirements of this chapter.” [[12 V.I.C. § 184](#)].

It is the duty of DPNR, and DPNR is empowered, with the approval of the Governor, to “issue rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or appropriate for the implementation and effectuation of its powers, duties and functions.” [3 V.I.C. § 401(b)(16)].

VI - CODE OF U.S. VIRGIN ISLAND RULES (“CVIR”)

TITLE 12. CONSERVATION

CHAPTER 7. WATER POLLUTION CONTROL

**SUBCHAPTER 184. TERRITORIAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM**

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CURRENT CODE AND AMENDMENTS REDLINED:

CVIR 12-007-000, Subchapter 184

Sec. 184-25(a)(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 paid all applicable fees as provided for by § 184-35; and

Sec. 184-31(o)(5)

Permit applications for new permits or renewals must include payment of application fees as provided for by § 184-35(b), Table 1.

Sec. 184-31(o)(6)

Permit applications for modifications must include payment of special fees as provided for by § 184-35(b), Table 3.

Sec. 184-35. TPDES Fees

(a) The following definitions are provided for the purposes of this section:

- (1) “Flow-through discharge” means discharge of water from a facility, drawn from surrounding waterbodies and used in passive activities that are expected to have negligible effects on pollutant characteristics of that water or surrounding waterbodies with no treatment processes applied.
- (2) “Municipality” means a single urban administrative division having corporate status and powers of self-government or jurisdiction as granted by Territorial laws to which it is subordinate;
- (3) “Permit Cycle” means the fixed term for the effective length of a TPDES permit as set in the permit;
- (4) “VI CGP” or “Virgin Islands Construction General Permit” means a TPDES General Permit issued to regulate stormwater discharges associated with construction activity as defined by Section 184-2(a)(87) and required by Section 184-45(b);

- (5) “VI MSGP” or “Virgin Islands Multi-Sector General Permit” means a TPDES General Permit issued to regulate stormwater discharges associated with industrial activity as defined by Section 184-2(a)(86) and required by Section 184-45(b);
- (6) “VI PGP” or “Virgin Islands Pesticides General Permit” means a TPDES General Permit issued to regulate discharges associated with the application of pesticides on or near waters of the USVI in accordance with Section 184-46.

(b) Fee Schedules. Permit applicants and permittees must pay application, annual and special fees as follows:

- (1) When submitting a permit application for a new permit or a renewal, the permit applicant shall pay an application fee in the amount specified in Table 1.
- (2) After a permit or permit coverage under a TPDES general permit has been issued to the permittee, each calendar year the permit is in effect, the permittee shall pay an annual fee in the amount specified in Table 2 by March 31 of that calendar year, except that, for the first year a permit issued after March 31 is in effect, payment is due by the date 60 days after the effective date of the permit. Notwithstanding the preceding sentence, for permits in effect in 2020, the annual fee due date shall be October 1, 2020. For years in which the permit is in effect for only a portion of the year, the annual fee shall be prorated.
- (3) When submitting an application to modify a permit, the permittee shall pay a special fee in the amount specified in Table 3.
- (4) Notwithstanding paragraphs (1) through (3) of this subsection,
 - (i) For public schools, no fees shall be charged; and
 - (ii) For private schools, municipalities, and churches or other religious organizations, the fees shall be fifteen percent (15%) of the relevant fees listed in Tables 1, 2 and 3.

TABLE 1. APPLICATION FEE

PERMIT TYPE	FACILITY TYPE	APPLICATION FEE (USD)
Individual Industrial / Municipal Permit or any General Permit not identified in this table	MAXIMUM DAILY DISCHARGE FLOW ¹ (Gallons Per Day)	
	<u>0-1,000</u>	<u>\$50</u>
	1,001-10,000	\$100
	10,001 to 50,000	\$500
	50,001 to 100,000	\$1,100
	100,001 to 1,000,000	\$2,200
	1,000,001 to 5,000,000	\$3,300
	5,000,001 to 10,000,000	\$4,400
	10,000,001 to 40,000,000	\$5,500
	40,000,001 to 100,000,000	\$6,600
greater than 100,000,000	\$7,700	
	Inclusion of a Mixing Zone ²	\$500

VI CGP Coverage	TOTAL CLEARED ACREAGE	
	Small Construction (1 - 5 acres)	\$150
	Large Construction (> 5 acres)	\$500
VI MSGP Coverage	TOTAL EXPOSED ACREAGE	
	Small Exposure (< 5 acres)	\$150
	Large Exposure (> 5 acres)	\$500
	No Exposure Exception	\$250
VI PGP Coverage	TOTAL APPLICATION ACREAGE	
	Not Exceeding Permit Threshold	\$0
	Exceeding Permit Threshold	\$250
VIGWA0000 Coverage	ALL APPLICANTS	\$50

Footnotes:

¹ Maximum Daily Discharge Flow is the maximum design flow or estimated engineered maximum flow that is capable of being discharged from the system. It shall be based on the permit application and permitted levels.

² The Mixing Zone application fee is in addition to application fees based on Maximum Daily Discharge Flow.

TABLE 2. ANNUAL FEE

PERMIT TYPE	ACTIVITY TYPE	PERMIT FEE (USD)
Individual Industrial / Municipal Permit or any General Permit not identified in this table	AVERAGE DAILY DISCHARGE FLOW¹ (Gallons per Day)	
	<u>0-1,000 discharged</u>	<u>\$250</u>
	1,001-10,000 discharged	\$500
	10,001 to 50,000 discharged	\$1,000
	50,001 to 100,000 discharged	\$1,400
	100,001 to 250,000 discharged	\$1,700
	250,001 to 500,000 discharged	\$2,250
	500,001 to 1,000,000 discharged	\$5,500
	1,000,001 to 2,000,000 discharged	\$7,250
	2,000,001 to 5,000,000 discharged	\$10,000
	5,000,001 to 10,000,000 discharged	\$15,500
	10,000,001 to 20,000,000 discharged	\$22,250
	20,000,001 to 40,000,000 discharged	\$31,500
	40,000,001 to 100,000,000 discharged	\$42,250
greater than 100,000,000 discharged	\$55,000	
Inclusion of a Mixing Zone ²	\$500	

VI CGP Coverage	TOTAL CLEARED ACREAGE	
	Small Construction (1 - 5 acres)	\$100 per acre
	Large Construction (> 5 acres)	\$100 per acre
VI MSGP Coverage	TOTAL EXPOSED ACREAGE	
	Small Exposure (< 5 acres)	\$500
	Large Exposure (> 5 acres)	\$1,000
	No Exposure Exception	N/A
VI PGP Coverage	TOTAL APPLICATION ACREAGE	
	Not Exceeding Permit Threshold	\$0
	Exceeding Permit Threshold	\$500
VIGWA0000 Coverage	ALL APPLICANTS	\$250

Footnotes:

¹ The Average Daily Discharge Flow for a given calendar year is the average daily discharge flow from the permitted facility in the prior calendar year based on reported data, except for new facilities or facilities with anticipated changes to average flow for the given calendar year. For new facilities and for facilities with anticipated changes to average flow for the given calendar year, Average Daily Discharge Flow shall be based on estimated flows and will be subject to review and approval by DPNR. In calculating the Average Daily Discharge Flow, deduct: (a) 50 percent of the wastewater discharged through approved irrigation or land application infrastructure; (b) 50 percent of the wastewater from systems producing potable water; (c) 75 percent of the wastewater used as once-through non-contact cooling water; (d) 99 percent of the wastewater determined by DPNR to be flow-through discharge; and (e) 100 percent of storm water (which is covered by the VI MSGP and VICGP permits and fees).

² The Mixing Zone annual fee is in addition to annual fees based on discharge amounts.

TABLE 3. SPECIAL FEES

PERMIT MODIFICATION FEES	FEE (USD)
Modifications ¹ submitted any time during the life of the permit other than during scheduled renewal submittal, involving antidegradation determinations or increases in permitted capacity.	100% of Application Fee
Modifications ¹ submitted any time during the life of the permit other than during scheduled renewal submittal, but not involving antidegradation determinations or increases in permitted capacity.	50% of Application Fee
Modifications ¹ submitted during renewal	N/A
Minor Modifications ²	N/A
Footnotes:	
¹ A Modification means any change to a permit except for those defined as minor modifications under 12 V.I. R. & Regs. § 184-75. No fee is required when the modification is due to a DPNR decision to reopen the permit.	
² A Minor Modification as defined in 12 V.I. R. & Regs. § 184-75.	

(c) Limitation on fees.

- (1) Application, annual and special fees combined shall be capped at five hundred thousand dollars (\$500,000) per permit for a permit cycle.
- (2) Notwithstanding the preceding sentence, for public utilities, government agencies and quasi-government agencies, application, annual and special fees combined shall be capped at fifty thousand dollars (\$50,000) per permit for a permit cycle.

(d) Reduction of Fees. A permit applicant or permittee may petition the Commissioner for a reduction in any of the fees in this section based on an inability to pay. As part of this petition process, the permit applicant or permittee will be required to submit financial information requested by the Commissioner to prove its inability to pay. The determination of whether and how much to reduce fees shall be at the sole discretion of the Commissioner.

Sec. 184-45(k)

Application fees. The permittee shall pay application fees as provided for by § 184-35(b), Table 1.

Sec. 184-51(r)

Payment of annual fees. The permittee shall pay annual fees as provided for by § 184-35(b), Table 2.

Sec. 184-74(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 (including the payment of special fees, as provided for by § 184-35(b), Table 3). In the case of revoked and reissued permits, the Commissioner shall require the submission of a new application, which shall necessitate the payment of application fees as provided for by § 184-35(b), Table 1.

AMENDMENTS:

CVIR 12-007-000, Subchapter 184

Pursuant to authority granted in Title 3 V.I.C., Chapter 22, Section 401(b)(16) and Title 12 V.I.C., Chapter 7, Section 184, DPNR amends the specified provisions in rules and regulations promulgated in CVIR 12-007-000, Subchapter 184 as follows:

Sec. 184-25(a)(1) is amended to read as follows:

The permittee has submitted a timely application under § 184-31 which is a complete (under § 184-31(d)) application for a new permit and paid all applicable fees as provided for by § 184-35;

Sec. 184-31 is amended by adding the following language as new paragraphs (o)(5) and (6):

(5) Permit applications for new permits or renewals must include payment of applications fees as provided for by § 184-35(b), Table 1.

(6) Permit applications for modifications must include payment of special fees as provided for by § 184-35(b), Table 3.

Sec. 184-35 is amended to read as follows:

184-35. TPDES Fees.

(a) The following definitions are provided for the purposes of this section:

(1) "Flow-through discharge" means discharge of water from a facility, drawn from surrounding waterbodies and used in passive activities that are expected to have negligible effects on pollutant characteristics of that water or surrounding waterbodies with no treatment processes applied.

- (2) “Municipality” means a single urban administrative division having corporate status and powers of self-government or jurisdiction as granted by Territorial laws to which it is subordinate;
- (3) “Permit Cycle” means the fixed term for the effective length of a TPDES permit as set in the permit;
- (4) “VI CGP” or “Virgin Islands Construction General Permit” means a TPDES General Permit issued to regulate stormwater discharges associated with construction activity as defined by Section 184-2(a)(87) and required by Section 184-45(b);
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(b) Fee Schedules. Permit applicants and permittees must pay application, annual and special fees as follows:

- (1) When submitting a permit application for a new permit or a renewal, the permit applicant shall pay an application fee in the amount specified in Table 1.
- (2) After a permit or permit coverage under a TPDES general permit has been issued to the permittee, each calendar year the permit is in effect, the permittee shall pay an annual fee in the amount specified in Table 2 by March 31 of that calendar year, except that, for the first year a permit issued after March 31 is in effect, payment is due by the date 60 days after the effective date of the permit. Notwithstanding the preceding sentence, for permits in effect in 2020, the annual fee due date shall be October 1, 2020. For years in

which the permit is in effect for only a portion of the year, the annual fee shall be prorated.

(3) When submitting an application to modify a permit, the permittee shall pay a special fee in the amount specified in Table 3.

(4) Notwithstanding paragraphs (1) through (3) of this subsection,

(i) For public schools, no fees shall be charged; and

(ii) For private schools, municipalities, and churches or other religious organizations, the fees shall be fifteen percent (15%) of the relevant fees listed in Tables 1, 2 and 3.

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	50,001 to 100,000	\$1,100
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	1,000,001 to 5,000,000	\$3,300
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	10,000,001 to 40,000,000	\$5,500
	40,000,001 to 100,000,000	\$6,600
greater than 100,000,000	\$7,700	
	Inclusion of a Mixing Zone ²	\$500
VI CGP Coverage	TOTAL CLEARED ACREAGE	
	Small Construction (1 - 5 acres)	\$150
	Large Construction (> 5 acres)	\$500

VI MSGP Coverage	TOTAL EXPOSED ACREAGE	
	Small Exposure (< 5 acres)	\$150
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	No Exposure Exception	\$250
VI PGP Coverage	TOTAL APPLICATION ACREAGE	
	Not Exceeding Permit Threshold	\$0
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VIGWA0000 Coverage	ALL APPLICANTS	\$50
Footnotes:		
<p>¹ Maximum Daily Discharge Flow is the maximum design flow or estimated engineered maximum flow that is capable of being discharged from the system. It shall be based on the permit application and permitted levels.</p> <p>² The Mixing Zone application fee is in addition to application fees based on Maximum Daily Discharge Flow.</p>		

TABLE 2. ANNUAL FEE

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	1,000,001 to 2,000,000 discharged	\$7,250
	2,000,001 to 5,000,000 discharged	\$10,000
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	Exceeding Permit Threshold	\$500
VIGWA0000 Coverage	ALL APPLICANTS	\$250

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¹ The Average Daily Discharge Flow for a given calendar year is the average daily discharge flow from the permitted facility in the prior calendar year based on reported data, except for new facilities or facilities with anticipated changes to average flow for the given calendar year. For new facilities and for facilities with anticipated changes to average flow for the given calendar year, Average Daily Discharge Flow shall be based on estimated flows and will be subject to review and approval by DPNR. In calculating the Average Daily Discharge Flow, deduct: (a) 50 percent of the wastewater discharged through approved irrigation or land application infrastructure; (b) 50 percent of the wastewater from systems producing potable water; (c) 75 percent of the wastewater used as once-through non-contact cooling water; (d) 99 percent of the wastewater determined by DPNR to be flow-through discharge; and (e) 100 percent of storm water (which is covered by VI MSGP and VI CGP permits and fees).

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TABLE 3. SPECIAL FEES

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Modifications ¹ submitted during renewal	N/A
Minor Modifications ²	N/A

Footnotes:

¹ A Modification means any change to a permit except for those defined as minor modifications under 12 V.I. R. & Regs. § 184-75. No fee is required when the modification is due to a DPNR decision to reopen the permit.

²A Minor Modification as defined in 12 V.I. R. & Regs. § 184-75.

(c) Limitation on fees.

- (1) Application, annual and special fees combined shall be capped at five hundred thousand dollars (\$500,000) per permit for a permit cycle.
- (2) Notwithstanding the preceding sentence, for public utilities, government agencies and quasi-government agencies, application, annual and special fees combined shall be capped at fifty thousand dollars (\$50,000) per permit for a permit cycle.

(d) Reduction of Fees. A permit applicant or permittee may petition the Commissioner for a reduction in any of the fees in this section based on an inability to pay. As part of this petition process, the permit applicant or permittee will be required to submit financial information requested by the Commissioner to prove its inability to pay. The determination of whether and how much to reduce fees shall be at the sole discretion of the Commissioner.

Sec. 184-45 is amended by adding the following language as a new subsection (k):

(k) Application fees. The permittee shall pay application fees as provided for by § 184-35(b), Table 1.

Sec. 184-51 is amended by adding the following language as a new subsection (r):

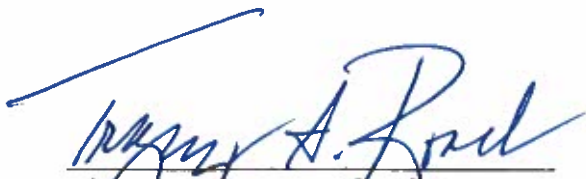
(r) Payment of annual fees. The permittee shall pay annual fees as provided for by § 184-35(b), Table 2.

Sec. 184-74(b)(1) is amended to read as follows:

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 (including the payment of special fees, as provided for by §184-35(b), Table 3). In the case of revoked and reissued permits, the Commissioner shall require the submission of a new application, which shall necessitate the payment of application fees as provided for by § 184-35(b), Table 1.

CERTIFICATION OF PUBLICATION AND CONFORMITY IN FORMATTING

In my capacity as Lieutenant Governor of the United States Virgin Islands, I have reviewed the foregoing Rules and Regulations from the Virgin Islands Department of Planning and Natural Resources and find them to be in compliance with Title 3, Chapter 25, and the Amended Rules and Regulations for Filing and Publication of Regulations in the Territory of the United States Virgin Islands and hereby approve the same in accordance with 3 V.I.C. § 936.


TREGENZA A. ROACH, ESQ.
Lieutenant Governor
United States Virgin Islands

12/16/2019
Date


GOVERNOR'S APPROVAL & LIEUTENANT GOVERNOR'S ATTEST

Pursuant to the powers vested in me by Section 11 of the Revised Organic Act of 1954, the above Amended Rules and Regulations for the Territorial Pollutant Discharge Elimination System, issued by the United States Virgin Islands Department of Planning and Natural Resources, which were duly published for public commentary in the Virgin Islands Daily News on October 28, 2016, are hereby approved.


ALBERT BRYAN, JR.
Governor
United States Virgin Islands

12/13/19
Date


Attest:


TREGENZA A. ROACH, ESQ.
Lieutenant Governor
United States Virgin Islands

12/16/2019
Date

GOVERNOR'S CERTIFICATE OF COMPELLING CIRCUMSTANCES

Pursuant to the authority granted under Section 938 of Title 3 of the Virgin Islands Code, in my capacity as Governor of the United States Virgin Islands, I certify that because of compelling circumstances, including lengthy delays before publication, the public interest requires that the attached *Amended Rules and Regulations for the Territorial Pollutant Discharge Elimination System* become effective immediately on the date noted below.


ALBERT BRYAN, JR.
Governor
United States Virgin Islands

Date 12/13/19

CERTIFICATION OF TRANSMITTAL TO LEGISLATURE

I hereby certify that the above approved Amended Rules and Regulations for the Territorial Pollutant Discharge Elimination System in the Territory of the United States Virgin Islands, issued by Virgin Islands Department of Planning and Natural Resources, were transmitted to the Legislature of the United States Virgin Islands pursuant to 3 V.I.C. § 913(a) on the date noted below.


Governor/Governor's Designee
Chief Legal Counsel

Date 12/17/2019