
DEPARTMENT OF PLANNING AND NATURAL RESOURCES



DIVISION OF ENVIRONMENTAL PROTECTION

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2023 VIRGIN ISLANDS CONDOMINIUM, HOTEL, AND APARTMENT COMPLEX GENERAL PERMIT (VICHAGP)

GENERAL PERMIT NUMBER VICH A00000

FACT SHEET

This Fact Sheet sets forth the principal facts and technical rationale that serve as the legal basis for the requirements of the accompanying draft permit. The draft permit was prepared in accordance with Clean Water Act (CWA) section 402 and its implementing regulations at Title 40 of the Code of Federal Regulations (CFR), Part 122 through 124. This Territorial Pollutant Discharge Elimination System (TPDES) permit is issued in compliance with Title 12 of the Virgin Islands Code (VIC), Chapter 7, Section 185, and its implementing regulations at Title 12 of the US Virgin Islands Rules and Regulations (VIRR), Chapter 7, Part 184 and 186 in accordance with the provisions of the Federal Water Pollution Control Act, as amended, (33 U.S. Code 1251 et seq.)

PART I. ELIGIBILITY

A. Facility Eligibility

Part 1.1 details the criteria your facility must meet in order to be eligible for coverage under the VICHAGP. To be eligible to discharge under the VICHAGP, your facility must meet the following criteria:

- 1) Be a condominium, hotel, or apartment complex in the United State Virgin Islands Territory (SIC Code 6531, 7011, 6513 or NAICS Code 721110, 721120, 721191, 721199, 531110);
- 2) Discharge to a Class B receiving water, as defined in the USVI WQS (see list of Class B waters in 12 VIRR §186); and
- 3) Be classified as a minor discharger by US Virgin Islands Department of Planning and Natural Resources (VIDPNR).
- 4) Be able to demonstrate that the facility meets one of the criteria in the Endangered Species Protection section of the Notice of Intent (NOI) that you submit for coverage under this permit, per Part 1.1.7 and Appendix B, with respect to the protection of species that are either locally-listed under the USVI Indigenous and Endangered Species Act (IESA) of 1990 and will not result in adverse modification or destruction of habitat that is locally designated as “critical habitat” under the IESA or Federally listed as endangered or threatened species (“listed”) and will not result in the adverse modification or destruction of habitat that is Federally designated critical habitat under the Endangered Species Act (ESA)¹.

¹ DPNR-Division Environmental Protection will forward your application documents to the appropriate internal agencies (DPNR-Division of Fish Wildlife) for review and determination.

- 5) Complete the screening process in Appendix C relating the protection of historic properties and be able to demonstrate that the facility meets one of the criteria in the National Historic Preservation section of the NOI that you submit for coverage under this permit, per Part 1.1.8.²

B. Discharge Eligibility

- 1) Part 1.1.2 details the allowable wastewater discharges eligible for coverage under the permit. The following discharges are eligible for coverage under the VICHAGP:

- a) **Discharges of wastewater from a secondary treatment system to surface waters**

Part 1.1.2.1 states that discharges of treated wastewater from secondary treatment systems at minor condominium, hotel, and apartment complex facilities to Class B receiving waters, as defined by the USVI WQS.

- b) **Discharges of wastewater from a secondary treatment system to irrigation and/or land application**

Part 1.1.2.2 states that discharges of treatment domestic wastewater from a secondary or better treatment system or treated wastewater from a drinking water purification system at minor condominium, hotel, or apartment complex facilities for the purpose of irrigation and/or land application with eventual discharge to Class B receiving waters, as defined by the USVI WQS.

- c) **Discharges of drinking water purification concentrate to surface waters or to irrigation and/or land application**

Part 1.1.2.3 states that discharges of treated wastewater from drinking water purification systems at minor condominium, hotel and apartment complex facilities to a Class B receiving water, as defined by the USVI WQS, or to irrigation and/or land application with eventual discharge to a Class B receiving water, as defined by the USVI WQS.

C. Non-Allowable Discharges

Part 1.1.3 details the discharges that are not allowed under the VICHAGP. All other discharges requiring TPDES permit coverage, except those specifically listed above, are not authorized by the VICHAGP. If there are stormwater or non-stormwater discharges requiring TPDES permit coverage other than those listed above, they must either be eliminated or covered under another TPDES permit.

D. Limitations on Coverage

Part 1.1.4 details the limitations on coverage under the VICHAGP. Any discharge not expressly authorized in this permit cannot become authorized or shielded from liability under Clean Water Act (CWA) section 402(k) by disclosure to EPA, territorial, or local authorities after issuance of this permit via any means, including the Notice of Intent (NOI) to be covered by the permit, any Operation & Maintenance (O&M) Plan, or during inspection.

- 1) **Discharges mixed with Other Discharges**

² DPNR-Division Environmental Protection will forward your application documents to the appropriate internal agencies (DPNR-State Historic Preservation Office, DPNR-Division of Fish Wildlife) for review and determination.

Part 1.1.4.1 states that wastewater discharges that are mixed with stormwater discharge or mixed with a discharge authorized by a different TPDES permit, and/or discharges that do not require TPDES permit authorization, are not eligible for coverage under this permit.

2) Discharges currently or Previously Covered by Another Permit

Part 1.1.4.2 states that discharges from facilities where any TPDES permit has been or is in the process of being denied, terminated, or revoked by VIDPNR are not eligible for coverage under this permit unless the facility has received written notification from VIDPNR specifically allowing the discharge to be covered under this permit. This does not apply to the routine reissuance of permits.

E. Eligibility for New Dischargers and New Sources Based on Water Quality Standards

Part 1.1.5 details the eligibility for new dischargers and new sources based on water quality standards. If the facility is a new discharger or a new source, as defined in Part 10 of the VICHAGP, they are ineligible for coverage under this permit if VIDPNR determines, prior to authorization to discharge, that the facility's discharges will not meet an applicable water quality standard (i.e., discharges that will cause, have the reasonable potential to cause, or contribute to an exceedance of a water quality standard) or if any discharge will lower the water quality of the applicable water. In such cases, VIDPNR may notify the facility that an individual permit application is necessary per Part 1.1.5 of the VICHAGP, or alternatively, VIDPNR may authorize coverage under this permit after the implementation of additional control measures so that all of the facility's discharges will meet water quality standards.

F. Eligibility for New Dischargers and New Sources to Water-Quality Impaired Waters

Part 1.1.6 details the eligibility for new dischargers and new sources to water-quality impaired waters. If the facility is a new discharger or a new source (as defined by Part 10 of the VICHAGP) they are ineligible for coverage under this permit to discharge to an impaired water (as defined by Part 10 of the VICHAGP) unless the facility does one of the following:³

- 1) Prior to submitting the NOI, the facility provides to the appropriate VIDPNR office technical information or other documentation to support the claim that the pollutant(s) for which the waterbody is impaired is not present at the facility, and retain such documentation with the permit file; or

³ Note: For the purposes of the VICHAGP, the facility is considered to discharge to an impaired water if the first water of the USVI to which the facility discharges is identified by VIDPNR as not meeting an applicable water quality standard, and:

- Requires development of a TMDL (pursuant to CWA Section 303(d));
- Is addressed by a VIDPNR approved or established TMDL; or
- Is not in either of the above categories but the waterbody is covered by pollution control requirements that meet the requirements of 40 CFR §130.7(b)(1).

For dischargers that enter a gut, swale, storm sewer system or other water conveyance channels after discharge, the first water of the USVI to which the facility discharges is the waterbody that receives the discharge from the guy, swale, storm sewer systems, or other water conveyances channels.

- 2) Prior to submitting the NOI, the facility provides VIDPNR either data or other technical documentation to support a conclusion that the discharge is expected to meet applicable water quality standards (i.e., discharges that will cause, have the reasonable potential to cause, or contribute to an exceedance of a water quality standard) and retain such information with the permit file. The information submitted to VIDPNR must be sufficient to demonstrate:
 - a) For discharges to waters without a VIDPNR approved or established Total Maximum Daily Load (TMDL), that the discharger of the pollutant for which the water is impaired will meet water quality standards at the point of discharge to the waterbody; or
 - b) For dischargers to waters with a VIDPNR approved or established TMDL, that there are, in accordance with 40 CFR §122.41(i), sufficient remaining wasteload allocations in the TMDL to allow your discharge, and that existing dischargers to the waterbody are subject to compliance schedules designed to bring into attainment with water quality standards (e.g., a reserve allocation for future growth).

The facility is eligible for coverage if they receive a determination from VIDPNR that all discharges will meet applicable water quality standards (i.e., discharges that will not cause, have the reasonable potential to cause, or contribute to an exceedance of a water quality standard). If the VIDPNR fails to respond within 30 days of submission of data to VIDPNR, the facility is considered eligible for coverage.

The most updated list of impaired waterbodies in the USVI Territory can be found at <https://dpr.vi.gov/environmental-protection/water-quality-management-program/> under the Water Quality Management Program's most recent Integrated Water Quality Monitoring & Assessment Report for the United States Virgin Islands. The list can be found in the Report appendices.

G. Eligibility Related to Endangered Species Act (ESA) Listed Species and Critical Habitat Protection

Part 1.1.7 details the eligibility for coverage under the VICHAGP in relation to Endangered Species Act (ESA) Listed Species and critical habitat protection. The process for assessing your eligibility is outlined in Appendix A.

The Endangered Species Act (ESA) requires federal agencies to consult with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS) if their actions could beneficially or adversely affect any threatened or endangered species.

- 1) VIDPNR is not required to consult with these federal agencies regarding permitting actions. However, VIDPNR values input from these agencies as well as other local agencies and reserves the right to voluntarily contact the agencies to notify them of a facility that discharges to a "discharge area" under this permit and to obtain a list of threatened and endangered species near the discharge as well as a list of concerns from these agencies. DPNR-DEP will share your application with DPNR-DFW for review and determination. DPNR-DFW shall be provided all available reports, documents, and resources on the discharge area and shall assign one of the following criteria to your facility and discharge(s):

a. Criterion A.

No ESA-listed species and/or designated critical habitat present in discharge area. Federal and/or local agencies will certify that ESA-listed species and designated critical habitat(s) under the jurisdiction of the USFWS or NMFS are not likely to occur in your facility's "discharge area" as defined above.

b. Criterion B.

Discharges are not likely to adversely affect ESA-listed species and/or designated critical habitat. ESA-listed species and/or designated critical habitat(s) under the jurisdiction of the USFWS and/or NMFS are likely to occur in or near your facility's "discharge area," and federal and/or local agencies certify that your facility's discharges and discharge-related activities are not likely to adversely affect ESA-listed threatened or endangered species and/or designated critical habitat. This certification may include consideration of any wastewater controls and/or management practices you will adopt to ensure that your discharges and discharge-related activities are not likely to adversely affect ESA-listed species and/or designated critical habitat. To certify your eligibility under this criterion, federal and/or local agencies shall determine and identify 1) the ESA-listed species and/or designated habitat located in your "discharge area"; 2) the distance between the facility and the listed species and/or designated critical habitat in the discharge area (in feet); and 3) a rationale describing specifically how adverse effects to ESA-listed species will be avoided from the discharges and discharge-related activities.

c. Criterion C.

Discharges are likely to adversely affect ESA-listed species and/or designated critical habitat. If federal and/or local agencies make a preliminary determination in review of the facility and the proposed discharge that adverse effects from your facility's discharges or discharge-related activities are likely to occur, you can still receive coverage under eligibility Criterion C if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to receiving coverage under this permit.

These measures may involve relatively simple changes to operational or discharge activities such as reducing the volume of a waste stream, re-routing discharge to bypass an area where species are located, or by modifying the "footprint" of the discharge area. If you are unable to ascertain which measures to implement to avoid the likelihood of adverse effects, you must coordinate or enter into consultation with VIDPNR and the federal or local agencies to determine acceptable correction measures and how to implement them.

If the facility's activities in the action area where endangered and threatened species are located, the facility operator must ensure that they are protected from potential takings liability under ESA Section 9 by obtaining an ESA Section 10 permit or by requesting formal consultation under ESA Section 7 which will require contacting DPNR and the corresponding federal agencies.

You may use the information from the USFWS Information for Planning and Consultation (IPaC) (<https://ecos.fws.gov/ipac/location/index>), and National NMFS ESA Critical Habitat Mapper

<https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=68d8df16b39c48fe9f60640692d0e318>) when determining the presence of ESA listed species and critical habitat. Attaching aerial image(s) of the site to this NOI is helpful to DPNR, USFWS, and NMFS in confirming eligibility under this criterion.

If you are able to install and implement appropriate measures to avoid the likelihood of adverse effects, then the measures you adopt to avoid or eliminate adverse effects must be implemented for the duration of your coverage under this permit.

If you are unable to install and implement appropriate measures to avoid the likelihood of adverse effects, you are ineligible for coverage under this permit, and shall seek coverage under an individual permit.

You must comply with any applicable terms, conditions, or other requirements developed in the process of meeting the eligibility criteria in this section to remain eligible for coverage under this permit.

2) **Additional Resources**

- a) For National Marine Fisheries Service species and critical habitat information, use the following webpages, which provide up-to-date information on listed species (<http://www.nmfs.noaa.gov/pr/species/esa/>) and critical habitat (<http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>).
- b) To determine the field office that corresponds to your site, go to <http://www.nmfs.noaa.gov/> (under the left tab for “Regions”).
 - o For National Marine Fisheries Service species in the Greater Atlantic Region, go to <https://www.greateratlantic.fisheries.noaa.gov/protected/index.html>.
- c) For Fish and Wildlife Service species information, use the on-line mapping tool IPaC (the Information, Planning, and Consultation System) located at <http://ecos.fws.gov/ipac/>, and follow these steps:
 - o Select Get Started
 - o Select Enter Project Location
 - o Use an address, city name or other location to zoom into your project area
 - o Use the zoom feature to see the entire extent of your action area on the screen
 - o Use one of the mapping features (e.g., Polygon or line feature) to draw your action
 - o When you are done, press Continue.
 - o Select Request an Official Species List
 - o Complete the fields on the Official Species List Request page and include “(VICHAGP)” at the end of the project description. – For Classification, select “Water Quality Modification”.
 - o Select the appropriate requesting agency/organization type (for most dischargers, this should be “Other”).
 - o Submit the request to acquire an Official Species List, which should show both listed species as well as any designated critical habitat that are present in the action area in the previous step.

- Note: If a link to an Official Species List is not available on the page, follow the web link of the office(s) indicated, or contact the office directly by mail or phone if a web link is not shown.

H. Eligibility Related to National Historic Preservation Act (NHPA) Protected Properties

Part 1.1.8 details the eligibility for coverage under the VICHAGP in relation to National Historic Preservation Act Protected Properties. The process for assessing your eligibility is outlined in Appendix C.

DPNR-DEP will share your application with DPNR- SHPO for review and determination. DPNR- SHPO shall be provided all available reports, documents, and resources on the property and issue a determination, if necessary.

I. Coastal Zone Management Act (CZMA) Consultation

The USVI Coastal Zone Management Act (CZMA) was approved in 1979. The Virgin Islands coastal program, under the purview of VIDPNR's Division of Coastal Zone Management (CZM), works to protect coastal land and waters, such as beaches, bays, lagoons, wetlands, dunes, and bluffs, out to the limit of the territorial sea. Through planning, permitting, public education, and other management techniques, the program reduces conflict among competing uses for the territory's coastal land and water resources, including coral reefs.

As noted in Part 1.1.9, DPNR's TPDES Program is not required to consult with CZM regarding permitting actions. However, VIDPNR's TPDES Program values input from CZM and reserves the right to voluntarily contact CZM to notify them of a facility that discharges to a "discharge area" under this permit and to obtain a list of concerns under the CZMA near the subject discharge(s).

- a) **Discharge Area.** The definition of "discharge area," for the purposes of this section, is as follows:

"Discharge Area" – all areas to be affected directly or indirectly by a facility's discharge and not merely the immediate area involved in the action. For the purposes of this permit and for application of the Endangered Species Act and Magnuson-Stevens Fishery Conservation and Management Act requirements, the following areas are included in the definition of discharge area:

- *The areas on the Permittee's property where discharges occur and flow toward the point of discharge into the receiving waters*
- *The areas where discharges flow from the facility to the point of discharge into receiving waters. (Example: a gut, ditch, swale, or gully that leads to receiving waters and where listed species (such as listed amphibians) are found in the gut, ditch, swale, or gully.)*
- *The areas where effluent discharges into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where effluent discharges into a bay that is known to harbor listed aquatic species.)*

J. Essential Fish Habitat (EFH) Review

Essential fish habitat (EFH) includes the waters and substrate (sediments, etc.) necessary for fish species to spawn, breed, feed, or grow to maturity. The Magnuson-Stevens Fishery Conservation and Management Act (January 21, 1999) requires federal agencies to consult with NOAA when a proposed discharge has the potential to adversely affect (reduce quality and/or quantity of) EFH.

VIDPNR is not required to consult with NOAA regarding permitting actions. However, VIDPNR values input from NOAA and reserves the right to voluntarily contact NOAA to notify them of a facility that discharges to a “discharge area” under this permit and to obtain a list of EFH near the subject discharge(s) as well as a list of concerns from NOAA.

PART II. HOW TO OBTAIN PERMIT COVERAGE

Part 1.2 details the criteria required to obtain permit coverage.

A. Submitting the Notice of Intent (NOI)

Part 1.2.2 of the permit carries out the fundamental requirements that discharges are not authorized until permit coverage is obtained, an NOI is submitted, and official notification has been received from VIDPNR that the facility is covered under the VICHAGP.

1) How to submit the NOI

Part 1.2.3 clarifies that method by which operators are to submit their NOIs for permit coverage. Due to the expansion of Internet availability, greater efficiency in administrative processing, and reductions in cost to manage the system as compared to paper NOIS, it is required the EPA’s NPDES eReporting Tool (NeT) be the primary mechanism by which coverage under the VICHAGP is obtained. If it is not possible for a permittee to use NeT, the facility may submit a waiver request to DPNR and an explanation as to why use of NeT is infeasible. Facilities must receive affirmative confirmation from DPNR to then use a paper NOI.

2) Waiver from Electronic Reporting

Part 1.2.4 specifies the conditions in which waivers from electronic reporting can be granted in accordance with the NPDES Electronic Reporting rule (40 CFR Part 127).

3) Deadlines for submitting your NOI and your Official Date of Permit Coverage

Part 1.2.4 specifies the deadlines for submitting NOIs for permit coverage and official state dates for permit coverage in Table 1-2. NOI submittal deadlines vary depending on when the operator commences construction activity. Table 1-2 summarizes the deadline and permit coverage start dates based on the circumstances of the facility.

Table 1-2. NOI Submittal Deadlines/Discharge Authorization Dates		
Category	NOI Submission Deadline⁴	Discharge Authorization Date⁵
Operators of a condominium, hotel, or apartment complex that falls under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110 that currently discharging under individual permits.	A minimum of 180 days after the issuance of the VICHAGP.	Upon receipt of official notification from VIDPNR that the facility is covered under the VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.
New operators of an existing condominium, hotel, or apartment complex that falls under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110 with discharges previously authorized under the 2023 VICHAGP.	A minimum of 180 days prior to commencement of discharge.	Upon receipt of official notification from VIDPNR that the facility is covered under the VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.
Other eligible operators – Operators of a condominium, hotel, or apartment complex that falls under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110 that commenced discharging prior to the effective date of this permit, but not covered under the 2023 VICHAGP or another TPDES permit.	Immediately, to minimize the time discharges from the facility will continue to be unauthorized.	Upon receipt of official notification from VIDPNR that the facility is covered under the VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.
New condominium, hotel, or apartment complexes that fall under the SIC Code 6531, 7011, or 6513 or NAICS Code 721110, 721120, 721191, 721199, or 531110.	A minimum of 90 days prior to the commencement of the discharge.	Upon receipt of official notification from VIDPNR that the facility is covered under the VICHAGP, unless VIDPNR notifies the facility that authorization has been denied or delayed.

The submittal deadlines in Table 1 for new facilities and new operators of new or existing facilities provides the Fish & Wildlife Service, DPNR Fish & Wildlife Division (DPNR F7W), and the National Marine Fisheries Service (the “Services”), the state historic preservation office, and the public, with an opportunity to review these submissions and to inform DPNR if they believe that more time is needed to

⁴ If you miss the deadline to submit your NOI, any and all discharges from your facility will be unauthorized under the CWA until they are covered by this or a different TPDES permit. VIDPNR may take enforcement action for any unpermitted discharges.

⁵ Discharges are not authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage.

review the potential impacts from the project. The time between NOI Submission Deadline and the Discharge Authorization Date is known as the “waiting period”.

During the waiting period, where one or all of the Services or the historic preservation office request that they or DPNR need to further explore whether a particular facility is eligible for permit coverages, DPNR can delay authorization to allow such an assessment to take place. DPNR may also use the waiting period to determine whether more stringent control measures are necessary to ensure that discharges will meet applicable water quality standards, to be consistent with an applicable wasteload allocation (WLA), or to comply with Territorial antidegradation requirements.

Additionally, during this waiting period, the public has an opportunity to review the NOIs. Anyone wishing to provide feedback to DPNR can send information to DPNR offices for consideration. DPNR clarifies that this waiting period is not a public notices and comment period. DPNR will consider any information provided to it during the waiting period but does not plan to provide specific responses to comments received. Where appropriate, DPNR will address concerns raised. Depending on the nature of the issue and the timing of the comments, DPNR will take appropriate action either prior to or following discharge authorization. In addition, DPNR may delay authorization if warranted, or may determine that the discharge is not eligible for authorization under this permit.

If the facility requests a waiver and submits a paper NOI, the waiting period is the same as described above, however, this period only commences after DPNR completes manual entry of the paper NOI information into NeT. Note that if the paper NOI contains errors or is incomplete, this will result in delaying the commencement of the waiting period. The facility will be able to tell if the waiting period has begun by checking for their NOI in NeT.

4) **Modifying your NOI**

NOIs can be modified through NeT.

5) **Your Official End Date of Permit Coverage**

If the VIHCAGP is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with section 558(c) of the Administrative Procedures Act (see 40 CFR 122.6 and 12 VIRR 184-25) and remain in force and effect for dischargers that were covered prior to its expiration. All facilities granted permit coverage prior to the expiration date of this permit will automatically remain covered by the VICHAGP until the earliest of:

- a) The authorization for coverage under a reissued or replacement version of the permit following a timely submittal of a complete and accurate NOI requesting coverage under the new permit. If a timely NOI for coverage under the reissued or replacement permit is not submitted, coverage will be terminated on the date that the NOI was due; or
- b) The date of the submittal of an NOT; or
- c) Issuance or denial of an individual permit for the facility’s discharges’ or
- d) A final permit decision by DPNR not to reissue the VICHAGP at which time DPNR will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or individual permit. Coverage under this permit will terminate at the end of this time period.

DPNR reserve the right to modify or revoke and reissue the VICHAGP under 40 CFR 122.62 & 63 and 12 VIRR 184-72 & 74, in which case the operator will be notified of any relevant changes or procedures to which operators may be subject.

B. Coverage Under an Alternative Permits

VIDPNR may require the facility to apply for and/or obtain authorization to discharge under an alternative permit, i.e., either an individual TPDES permit or an alternative TPDES general permit, in accordance with 12 VIRR §184-46(b)(3), 40 CFR §122.64 and §124.5. If VIDPNR requires the facility to apply for an alternative permit, the Department will notify them in writing that a permit application or NOI is required. This notification will include a brief statement of the reasons for this decision and will contain alternative permit application or NOI requirements, including deadlines for completing your application or NOI.

PART III. HOW TO TERMINATE PERMIT COVERAGE

A. Submitting a Notice of Termination (NOT)

Part 1.3 details the requirements that must be met before an operator of a condominium, hotel, or apartment complex may be authorized to terminate coverage under the permit. Part 1.3.1 reminds the operator that until permit coverage is terminated, the operator must comply with all conditions and effluent limitations in the permit. Permit coverage is not terminated until DPNR has received a complete and accurate NOT, certifying that the requirements for termination in Part 1.4.2 are met.

B. Minimum Information Required in NOT

Part 1.3.2 lists the minimum information that must be provided in the NOT. These requirements inform facilities of the information that must be included in the NOT. The required information facilitates prompt processing of NOTs and provides assurance that operators have valid basis for terminating. DPNR notes that the TPDES permit tracking number is not the same number that was reported on the NOI form. The NOI contains the “TPDES permit number” as identified in the VICHAGP (e.g., VI3456789) while the “TPDES permit tracking number” is that number provided by DPNR’s TPDES eReporting Tool (NeT) acknowledging receipt of a complete NOI. The permit tracking numbers are assigned sequentially as NOIs are received by NeT (e.g., xxxxxx1, xxxxxx2, etc).

C. How to Submit your NOT

Part 1.3.3 describes the process for submitting an NOT. This section also provides information about DPNR’s TPDES eReporting Tool, or “NeT”. In Part 1.3.1, DPNR requires that operators file an electronic NOT to notify DPNR that it has met the conditions for terminating permit coverage under Part 1.4. It is required that the NeT system be the primary mechanism by which operators of hotels, condominiums, and apartments obtain permit coverage and submit an NOT. If the facility operator requests a waiver from electronic reporting as specified in Part 1.2.4 and DPNR grants approval to use a paper NOT in Appendix E, then facilities may submit a paper NOT to the Regional Office.

D. Conditions for Terminating Permit Coverage

The requirements in Part 1.4 provide operators a list of all the conditions for terminating permit coverage. These conditions must be satisfied before an NOT can be filed and permit coverage terminated.

E. Deadline for Submitting the NOT

Part 1.5 provides the deadlines for submitting NOTs. The purpose of requiring a deadline to submit an NOT is to ensure a facility does not remain covered under the VICHAGP for a long time after discharge has ceased.

F. Effective Date of Termination of Coverage

Part 1.5.1 specifies when a facility's permit termination will become effective and therefore they will no longer be responsible for complying with the permit. If DPNR requires that the NOT is incomplete or the facility has not satisfied one or more of the conditions in Part 1.4 for being able to submit an NOT, then the NOT will not be valid and the facility must continue to comply with the permit conditions.

PART IV. RATIONALE FOR EFFLUENT LIMITS, MONITORING AND REPORTING REQUIREMENTS

A. Receiving Water Classification

The VICHAGP authorizes discharges to Class B receiving waters of the United States Virgin Islands.

As indicated in the USVI Water Quality Standards (WQS) Regulations at 12 VIRR 186, the designated uses for Class B receiving waters include:

- 1) Maintenance and propagation of desirable species of aquatic life (including threatened, endangered species listed pursuant to section 4 of the Federal Endangered Species Act and threatened, endangered and indigenous species listed pursuant to Title 12, Chapter 2 of the Virgin Islands Code; and
- 2) Primary contact recreation (swimming, water skiing, etc.).
- 3) This class allows minimal changes in structure of the biotic community and minimal changes in ecosystem function. Virtually all native taxa are maintained with some changes in biomes and/or abundance; ecosystem function are fully maintained within the range of natural variability.

CWA Section 303(d) requires the USVI to develop a list of impaired waters, establish priority rankings for waters on the list, and develop TMDLs for those waters. As described above, discharges to Class B receiving waters with water quality impairments are eligible for coverage under the VICHAGP, provided they meet the necessary criteria.

B. Mixing Zone(s)/Dilution Allowance(s)

The VICHAGP does not authorize a mixing zone or dilution allowance for any discharger.

C. Compliance Orders/Consent Decrees

The VICHAGP does not incorporate any compliance orders or consent decrees for any facilities.

D. Effluent Limitation Development

- 1) CWA section 301(b), 40 CFR §122.44(d), and 12 VIRR 184-54 require that permits include limitations more stringent than applicable technology-based requirements where necessary to achieve applicable water quality standards. In additions, 40 CFR §122.44(d)(1)(i) and 12 VIRR 184-54(c)(1)(i) require that

permits include effluent limitations for all pollutants that are or may be discharged at levels that cause, have the reasonable potential to cause, or contribute to an exceedance of water quality criterion, including narrative criterion. The process for determining reasonable potential and calculating water quality-based effluent limits (WQBELs) is intended to protect the designated uses of the receiving water and achieve applicable water quality criteria. Where reasonable potential has been established for a pollutant, but there is no numeric criterion for the pollutant, WQBELs must be established using (1) EPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or a policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in 12 VIRR 184-54(c)(1)(vi). The effluent limitations and permit condition in the permit were developed to ensure compliance with all federal and state regulations, including USVI WQS. The basis for each limitation or condition is discussed below.

- 2) The Clean Water Act (CWA) requires that the permit limits for a particular pollutant be the more stringent of either technology-based effluent limits (TBELS) or water quality-based effluent limits (WQBEL). A TBEL is set according to the level of treatment that is achievable using available technology. A WQBEL is designed to ensure that the water quality standards (WQS) of a water body are met. A WQBEL may be more stringent than a TBEL.

This permit requires both TBELS and WQBELs. The Department first determines if TBELS are required to be incorporated into the permit. For pollutants of concern with no associated TBELS but that have reasonable potential to cause or contribute to an exceedance of water quality criteria, WQBELs are established to be protective of designated uses of the receiving water. In cases where both TBELS and WQBELs are calculated, the more stringent limit is retained as the final permit effluent limit.

E. Summary of Basis for Effluent Limitations and Permit Conditions - General

The effluent limitations and permit conditions in the permit have been developed to ensure compliance with the following, as applicable:

- 1) NPDES Regulations (40 CFR Part 122)
- 2) TPDES Regulations (12 VIRR Part 184)
- 3) USVI WQS (2015) (12 VIRR Part 186)
- 4) Secondary Treatment Requirements (40 CFR 133)
- 5) EPA's Guidelines for Water Reuse (600R-12618, September 2012)

F. Basis for Effluent Limitations for Discharges of Wastewater from a Secondary Treatment System to Surface Waters

The permit establishes effluent limitation for several pollutants for discharges of wastewater from a secondary treatment system to surface waters. The basis for these limits is discussed below.

- 1) **Flow** – An effluent limitation for flow has been established based on the information provided in the facility's Notice of Intent. Monitoring conditions are applied pursuant to 40 CFR §122.21(j)(4)(ii).
- 2) **5-day Biochemical Oxygen Demand (BOD₅)** – The effluent concentration and percent removal limitations are based on technology-based secondary treatment standards for publicly owned treatment works (POTWs) specified in 40 CFR §133.102(a). The permit also requires influent monitoring and

reporting in accordance with 40 CFR §122.44(i) to meet the requirement of the percent removal limitations.

- 3) **Color.** The narrative effluent limit for color is based on the water quality standard for Class B waters at 12 VIRR §186-5(a)(1)(E).
- 4) **Dissolved Oxygen** – The effluent limitation for dissolved oxygen is based on the water quality standard for Class B waters at 12 VIRR §186-4(b)(2)(B)(ii)(b).
- 5) **Enterococci** – The discharge consists of domestic sewage that is a source of bacteria. To ensure that the recreational use of the water body is met, effluent limitation for enterococci are established in the permit and are based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(e).

Consistent with the expression of the water quality criteria for enterococci, USVI DPNR establishes a minimum monitoring frequency of 2 grab samples per month to calculate a geometric mean and to monitor and report the single sample result of each of the 2 or more samples to comply with the effluent limitation of that no single sample shall exceed a maximum of 104 per 100 ml at any time.

- 6) **Oil and Grease** – The effluent limitation for oil and grease is based on the water quality standard at 12 VIRR §1286-5(a)(1)(G) which states that “All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows: Oil and Floating Substances – visible oil film or globules of grease.” The Permittee shall verify by grab samples and observation so that the discharge meets this regulatory requirement.
- 7) **pH** – The technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(c) require the pH of the effluent be 6-9 SU at all times. The USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(c) specify that the pH for discharges to Class B receiving waters be 7.0-8.3 SU at all times. As the water quality-based effluent limitations for pH are more stringent, these limitations have been established in the permit.
- 8) **Temperature** – The effluent limitation for temperature is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(d).
- 9) **Total Dissolved Solids & Salinity** - The effluent limit for total dissolved solids and salinity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-5(b)(1)(E).
- 10) **Total Nitrogen** – The effluent limitation for total ammonia nitrogen is based on the water quality standard at 12 VIRR §186-4(b)(2)(B)(ii)(g).
- 11) **Total Phosphorus** – The effluent limitation for total phosphorus is based on the water quality standard for discharges for marine and coastal Class B waters at 12 VIRR §186-4(b)(2)(B)(ii)(f).
- 12) **Total Residual Chlorine** – Total residual chlorine has been identified as a contaminant of concern since some facilities use chlorination to disinfect the effluent to meet water quality criteria for pathogens. The effluent limitation for total residual chlorine is based on the water quality criterion for Class B waters as specified in the USVI WQS at 12 VIRR §186-5(b)(1)(A).
- 13) **Total Suspended Solids (TSS)** - The effluent concentration and percent removal limitations are based on technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(b). The permit also requires influent monitoring and reporting in accordance with 40 CFR 122.44(i) to meet the

requirement of the percent removal limitation (see section B.1.—Monitoring Requirements— of this Fact Sheet).

- 14) **Turbidity** – The effluent limitation for turbidity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(j).

G. Basis for Control Measures and Effluent Limitations for Discharges of Wastewater from a Secondary Treatment System to Irrigation / Land Application

The permit establishes effluent limitation for several pollutants for discharges of wastewater from a secondary treatment system to irrigation / land application. The basis for these limits is discussed below.

- 1) **Flow** – An effluent limitation for flow has been established based on the information provided in the facility’s Notice of Intent. Monitoring conditions are applied pursuant to 40 CFR §122.21(j)(4)(ii).
- 2) **5-day Biochemical Oxygen Demand (BOD₅)** – The effluent concentration and percent removal limitations are based on technology-based secondary treatment standards for publicly owned treatment works (POTWs) specified in 40 CFR §133.102(a). The permit also requires influent monitoring and reporting in accordance with 40 CFR §122.44(i) to meet the requirement of the percent removal limitations.
- 3) **Enterococci** - The discharge consists of domestic sewage that is a source of bacteria. To ensure that the recreational use of the water body is met, effluent limitation for enterococci are established in the permit and are based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(e).

Consistent with the expression of the water quality criteria for enterococci, USVI DPNR establishes a minimum monitoring frequency of 2 grab samples per month to calculate a geometric mean and to monitor and report the single sample result of each of the 2 or more samples to comply with the effluent limitation that no more than 10% of the samples collected in the same 30 days shall exceed 110 per 100 ml.

- 4) **Oil and Grease** – The effluent limitation for oil and grease is based on the water quality standard at 12 VIRR §1286-5(a)(1)(G) which states that “All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows: Oil and Floating Substances – visible oil film or globules of grease.” The Permittee shall verify by grab samples and observation so that the discharge meets this regulatory requirement.
- 5) **pH** – The technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(c) require the pH of the effluent be 6-9 SU at all times. The USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(c) specify that the pH for discharges to Class B receiving waters be 7.0-8.3 SU at all times. As the water quality-based effluent limitations for pH are more stringent, these limitations have been established in the permit.
- 6) **Temperature** – The effluent limitation for temperature is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(d).
- 7) **Total Dissolved Solids & Salinity** - The effluent limit for total dissolved solids and salinity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-5(b)(1)(E).
- 8) **Total Nitrogen** – The effluent limitation for total ammonia nitrogen is based on the water quality standard at 12 VIRR §186-4(b)(2)(B)(ii)(g).

- 9) **Total Phosphorus** – The effluent limitation for total phosphorus is based on the water quality standard for discharges for marine and coastal Class B waters at 12 VIRR §186-4(b)(2)(B)(ii)(f).
- 10) **Total Residual Chlorine** – Total residual chlorine has been identified as a contaminant of concern since some facilities use chlorination to disinfect the effluent to meet water quality criteria for pathogens. The water quality standard for total residual chlorine in Class B waters is specified at 12 VIRR §186-5(b)(1)(A). The Urban Reuse; Restricted Category (Table 4-4) of EPA’s 2012 Guidelines for Water Reuse (600R-12618, September 2012) provides a more stringent guidance value of 1.0 mg/l for total residual chlorine. As it is more stringent than the WQS, the effluent limitation is based on the guidance value.
- 11) **Total Suspended Solids (TSS)** - The effluent concentration and percent removal limitations are based on technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(b). The permit also requires influent monitoring and reporting in accordance with 40 CFR 122.44(i) to meet the requirement of the percent removal limitation (see section B.1.—Monitoring Requirements— of this Fact Sheet).

The permit establishes control measures for discharges of wastewater from a secondary treatment system to irrigation / land application. The basis for these control measures is discussed below.

- 1) **Setback Requirement** – The setback requirements for discharges via spray irrigation and land application are based on the Urban Reuse; Restricted Category (Table 4-4) of EPA’s 2012 Guidelines for Water Reuse (600R-12618, September 2012).
- 2) **Public Signage Requirements** – The public signage requirements are based on the Urban Reuse; Restricted Category (Table 4-4) of EPA’s 2012 Guidelines for Water Reuse (600R-12618, September 2012).

H. Basis for Effluent Limitations for Discharges of Drinking Water Purification Concentrate to Surface Waters or to Irrigation / Land Application

The permit establishes effluent limitation for several pollutants for discharges of wastewater from a drinking water purification concentrate to surface waters or to irrigation / land application.

- 1) **Flow** – An effluent limitation for flow has not been established. Monitoring conditions are applied pursuant to 40 CFR §122.21(j)(4)(ii).
- 2) **Dissolved Oxygen** – The effluent limitation for dissolved oxygen is based on the water quality standard for Class B waters as specified in the USV WQS at 12 VIRR §186-4(b)(2)(B)(ii)(b).
- 3) **Oil and Grease** – The effluent limitation for oil and grease is based on the water quality standard at 12 VIRR §1286-5(a)(1)(G) which states that “All Territorial Waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows: Oil and Floating Substances – visible oil film or globules of grease.” The Permittee shall verify by grab samples and observation so that the discharge meets this regulatory requirement.
- 4) **pH** – The technology-based secondary treatment standards for POTWs specified in 40 CFR 133.102(c) require the pH of the effluent be 6-9 SU at all times. The USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(c) specify that the pH for discharges to Class B receiving waters be 7.0-8.3 SU at all times. As the water quality-based effluent limitations for pH are more stringent, these limitations have been established in the permit.

- 5) **Temperature** – The effluent limitation for temperature is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(d).
- 6) **Total Dissolved Solids & Salinity** – The effluent limit for total dissolved solids and salinity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-5(b)(1)(E).
- 7) **Turbidity** – The effluent limitation for turbidity is based on the water quality standard for Class B waters as specified in the USVI WQS at 12 VIRR §186-4(b)(2)(B)(ii)(j).

I. Narrative Water Quality Criteria and Biocriteria

- 1) **Narrative Criteria** - The USVI WQS at 12 VIRR §186-5(a) requires that all Territorial Waters shall meet generally accepted aesthetic qualifications and shall be capable of supporting diversified aquatic life.
- 2) **Biocriteria** – The USVI WQS at 12 VIRR §186-4(b)(2)(B)(i)(a) requires that the biological conditions of Class B waters shall reflect no more than a minimal departure from reference condition for biological integrity within Class B waters. Class B allows minimal changes in structure of the biotic community and minimal changes in ecosystem function. Virtually all native taxa are maintained with some changes in biomass and/or abundance; ecosystem functions are fully maintained within the range of natural variability.

J. Compliance with USVI’s Anti-Degradation Policy and Federal Anti-backsliding Requirements

Federal regulations at 40 CFR 131.12 require that state water quality standards include an anti-degradation policy consistent with the federal policy. The discharge is consistent with the anti-degradation provision of 40 CFR 131.12, 72 *Federal Register* 238 (December 12, 2007, pages 70517-70526) and the *Anti-Degradation Regulations* in 12 VIRR 186-7 of USVI WQS.

In addition, CWA sections 402(o)(2) and 303(d)(4) and federal regulations at 40 CFR 122.44(l) prohibit backsliding in TPDES permits. This anti-backsliding provision require effluent limitations in a reissued permit to be as stringent as those in the previous permit with some exceptions where limitations may be relaxed.

Based on a September 2022 analysis of the current USVI TPDES individual permits that are expected to seek coverage under the VICHAGP, the effluent limitations established in the general permit are equally or more stringent than the effluent limitations established in the individual permits.

K. Monitoring Requirements

NPDES regulations at 40 CFR 122.48 and 12 VIRR 186-63 require that all permits specify requirements for recording and reporting monitoring results. Monitoring in a permit is required to determine compliance with effluent limits. Monitoring may also be required to gather effluent and receiving water body data to determine if additional effluent limits are required and/or to monitor effluent impact on the receiving water body quality. The permittee is responsible to conduct the monitoring and report results on DMRs or as otherwise required, as appropriate. The following provides the rationale for the monitoring and reporting requirements for this facility.

1) Monitoring Frequency and Sample Type

Part 6.1 details the monitoring frequency and sample type for all required pollutants which have been established in accordance with the requirements of 40 CFR 122.44(i) and recommendations in EPA’s TSD.

The required monitoring frequency and sample type is specified for each parameter, based on the average gallons per day discharge of the facility, in the table below.

Parameter	Average Discharge Volume (GPD)			Sample Type
	≤ 19,999	20,000 – 99,999	≥ 100,000	
Flow	Daily	Daily	Daily	Continuous
BOD ₅ , Effluent	Quarterly	Monthly	Weekly	24-hour Composite ¹
BOD ₅ , Influent	Quarterly	Monthly	Weekly	24-hour Composite ¹
BOD ₅ , Percent Removal	Quarterly	Monthly	Weekly	Calculated
Color	Quarterly	Monthly	Weekly	Grab
Dissolved Oxygen	Quarterly	Monthly	Weekly	Grab
Enterococci	Quarterly	Monthly	Weekly	Grab
Oil & Grease	Monthly	Weekly	2x / Week	Grab
pH	Monthly	Weekly	2x / Week	Grab or Continuous
Temperature	Monthly	Weekly	2x / Week	Grab or Continuous
Total Dissolved Solids & Salinity	Annually	Quarterly	Quarterly	Grab
Total Nitrogen	Annually	Quarterly	Monthly	Grab
Total Phosphorous	Annually	Quarterly	Monthly	Grab
Total Residual Chlorine	Monthly	Weekly	2x / Week	Grab
TSS, Effluent	Quarterly	Monthly	Weekly	24-hour Composite ¹
TSS, Influent	Quarterly	Monthly	Weekly	24-hour Composite ¹
TSS, Percent Removal	Quarterly	Monthly	Weekly	Calculated
Turbidity	Quarterly	Monthly	Weekly	Grab

3) Facilities with Average Discharge Volume of ≤ 19,999 GPD may substitute grab samples instead of 24-hour composite samples.

2) Monitoring Locations

Part 6.2 details the monitoring locations. The VICHAGP requires influent monitoring for discharges from secondary treatment facilities to surface waters and for discharges from secondary treatment

facilities to irrigation / land application to determine compliance with the BOD5 and TSS percent removal effluent limitations, as specified by 40 CFR §133.102(a). All other parameters are monitoring at the effluent.

3) **Monitoring Location Signage.**

Part 6.3 requires that all monitoring locations be clearly labeled as such.

4) **Sludge Monitoring**

Part 6.4 requires sludge inventory data be submitted as part of the monthly Discharge Monitoring Report (DMR).

L. Reporting Requirements

Part 7.1 details the reporting frequency for facility's based on the average discharge volume. Part 7.2 details the requirements for the monthly submission of Discharge Monitoring Reports (DMRs) to DPNR and EPA through the NeTDMR website at <https://netdmr.epa.gov>. As specified in Part 7.2.2., hard copy DMRs can be submitted if the facility has received a waiver from electronic reporting from DPNR.

Part 7.2.5 specifies the laboratory minimum quality assurance practices. You must show the validity of your data by requiring the laboratory analyzing your samples to adhere to the specific minimum quality assurance practices.

Parts 7.3 and 7.4 specify instances in which additional reporting is required. For example, violations of a maximum daily discharge limitations must be reported verbally within 24 hours and in writing within 5 days. There are also reporting requirements if toxic pollutants are expected to be discharged at levels which exceed with specified notification levels.

M. Rational for Special Conditions and Other Legal Requirements

1) **Standard Conditions**

In accordance with 40 CFR 122.41 and 12 VIRR 184-51, standard conditions that apply to all TPDES permits have been incorporated expressly in Part IV of the permit. You must comply with all standard conditions, including those additional standard conditions that are applicable to specified categories of permits under 40 CFR 122.42 and 12 VIRR 184-52, as specified in Part 9 of the permit.

2) **Operation and Maintenance Plan (OMP)**

Part 8.2 requires you to develop and implement an Operation and Maintenance Plan (OMP). The objectives of the OMP are to control influent, control operations, and ensure the proper evaluation of those operations. The OMP may include specific Best Management Practices (BMPs) to meet the stated objectives.

3) **Compliance Schedules**

The VICHAGP does not authorize a compliance schedule for any pollutant or parameter in the permit on the basis of 40 CFR §122.47.

4) **Biosolids (Sewage Sludge) Requirements**

Part 8.3 requires that you ensure all biosolids generated at your facility are disposed of in compliance with applicable regulations. As noted in Part 8.4, you must give prior notice to VIDPNR before any planned changes to your sludge disposal practices.

5) **Chemical Additives**

Part 8.5 specifies that all chemical additives present in the wastestream be approved by VIDPNR and added at the manufacture's specified rate.

6) **40 CFR §136**

Part 8.6 details that all sample collection, preservation, and analysis shall be conducted in accordance with the most recent version of EPA's Guidelines for Establishing Test Procedures for the Analysis of Pollutants (40 CFR §136).

7) **Repair Work**

If any publicly or privately owned facility shuts down any portion of the sewer system servicing the permitted facility for longer than 2 hours, the Permittee must inform VIDPNR at least 24 hours before any scheduled repair work and within 24 hours of an emergency repair.

8) **Leaks, Spills & Overflows**

Any leaks, spills, or overflows must be reported to the individuals listed in Part 8.8.

N. Rational for Standard Conditions

In accordance with 40 CFR 122.41 and 12 VIRR 184-51, standard conditions that apply to all TPDES permits have been incorporated expressly in Part IV of the permit. You must comply with all standard conditions, including those additional standard conditions that are applicable to specified categories of permits under 40 CFR 122.42 and 12 VIRR 184-52, as specified in Part 9 of the permit.

PART V. PUBLIC PARTICIPATION

The procedures for reaching a final decision on the draft permit are set forth in 40 CFR Part 124 and are described in the public notice for the draft permit, which is published online at <http://dpr.vi.gov/public-notices>. Included in the public notice are requirements for the submission of comments by a specified date, procedures for requesting a hearing and the nature of the hearing, and other procedures for participation in the final agency decision. The Department will consider and respond in writing to all significant comments received during the public comment period in reaching a final decision on the draft permit. Requests for information or questions regarding the draft permit should be directed to:

Dylante DeHaarte
USVI DPNR-DEP, Water Pollution Control Program
340-774-3320, ext. 5161
Dylante.dehaarte@dpr.vi.gov

PART VI. APPENDICES

A. APPENDIX A: Definitions and Acronyms.

Appendix A provides definitions and a reference tool for terms and acronyms used through the permit.

B. APPENDIX B: Eligibility Procedures Relating to Threatened and Endangered Species Protection

Appendix B specifies the eligibility criteria related to the protection of endangered and threatened species and critical habitat. Each facility must certify that they have met one of the 6 eligibility criteria.

Operators who cannot certify to one of the endangered species eligibility criteria are not eligible to submit an NOI to gain coverage under the VICHAGP; instead, they must apply to DPNR for an individual TPDES permit. As appropriate, DPNR will conduct ESA section 7 consultations when issuing individual permits. If there are concerns that VICHAGP coverage for a particular facility may result in adverse effects to listed species or critical habitat, DPNR may hold up discharge authorization until such concerns are adequately addressed. Regardless of an operator's eligibility certification under one of the six criteria, DPNR may require an application for an individual permit on the basis of adverse effects to species or habitat.

Consistent with Section 7(a)(2) of the Endangered Species Act (ESA), DPNR consulted with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), both collectively known as the "Services," regarding the VICHAGP and ESA eligibility criteria. See, 50 CFR Part 402. Appendix D provides the eligibility language for determining which criterion operators may meet to ensure eligibility under the ESA-related provisions of the permit.

The FWS and NMFS are responsible for developing and maintaining the list of protected species and critical habitat. Once listed as endangered or threatened, a species is afforded the full range of protections available under the ESA, including prohibitions on killing, harming or otherwise taking a species. In certain instances, the FWS or NMFS may establish a critical habitat for a threatened or endangered species as a means to further protect those species. Critical habitat is an area determined to be essential for the conservation of a species and need not be in an area currently occupied by the species. Some, but not all, listed species have designated critical habitat. Exact locations of such designated critical habitat are provided in the Services regulations at 50 CFR Parts 17 and 226.

Facilities have an independent ESA obligation to ensure that any of their activities do not result in prohibited "take" of listed species. Section 9 of the ESA prohibits any person from "taking" a listed species, e.g., harassing or harming it, with limited exceptions. See ESA Sec 9; 16 U.S.C. §1538. This prohibition generally applies to "any person," including private individuals, businesses and government entities. Many of the requirements and procedures in the VICHAGP to protect species may also assist facilities in ensuring that their activities do not result in a prohibited take of species in violation of section 9 of the ESA. Facilities who intend to operate in areas that harbor endangered and threatened species may seek protection from potential "take" liability under ESA section 9 either by obtaining an ESA section 10 permit or by requesting coverage under an individual permit and participating in the section 7 consultation process with the appropriate FWS or NMFS office. Facilities unsure of what is needed for such liability protection should confer with the appropriate Services.

Note that facilities are required to comply with other applicable federal laws, including the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act.

C. APPENDIX C: HISTORIC PROPERTY SCREENING PROCESS

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal “undertakings” on historic properties that are listed on, or eligible for listing on, the National Register of Historic Places. The term Federal “undertaking” is defined in the NHPA regulations to include a project, activity, or program under the direct or indirect jurisdiction of a Federal agency including those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 800.16(1).

DPNR’s issuance of the permit is a Federal undertaking within the meaning of the NHPA. To address any issues relating to historic properties in connection with issuance of the final permit, DPNR has included a screening process in Appendix E for all prospective dischargers to follow to ensure that potential impacts of their covered activities on historic properties have been appropriately considered and addressed. Although individual applications for coverage under the general permit do not constitute Federal undertakings, the screening process and related NOI questions provide an appropriate site-specific means of addressing historic property issues in connection with DPNR’s issuance of the final permit.

Under the NHPA regulations, a determination that a Federal undertaking has no potential to cause effect on historic properties fulfills an agency’s obligations under section 106 of the NHPA. See 36 CFR 800.3(a)(1). DPNR has reason to believe that the vast majority of activities that will be authorized under the VICHAGP will have no potential to cause effects on historic properties. DPNR does not anticipate effects on historic properties from the pollutants in hotel, condominium, and apartment wastewater discharges that will be covered under the permit. Thus, to the extent DPNR’s issuance of the general permit will authorized discharges of pollutants to existing waterbodies, the final permitting action does not have the potential to cause effects on historic properties.

It is DPNR’ judgement that the permit may have some potential to cause effects on historic properties where the permit authorizes the installation of control measures that involve subsurface disturbance. Where the facility has to disturb the land through the construction and/or installation of such controls, there is a possibility that artifacts, records, or remains associated with historic properties could be impacted. Therefore, if the facility is installing new treatment controls to manage its wastewater that will involve subsurface ground disturbance, the facility must consider the potential for effects to historic properties and may need to contact the applicable State Historic Preservation Officer (SHPO), Tribal Historic Preservation Office (THPO), or other tribal representative, to determine the likelihood that these controls will impact historic properties. Refer to Appendix B, Steps 2 through 5.

D. APPENDIX D: NOI Form and Instructions

The VIHCAGP requires facilities to use DPNR’s eReporting Tool (NeT) to prepare and submit NOIs. However, when a facility requests and receives approval from his/her DPNR Regional Office, the facility will be authorized to use the paper NOI form included in the Appendix D.

E. APPENDIX E: NOT Form and Instructions

The VIHCAGP requires facilities to use DPNR’s eReporting Tool (NeT) to prepare and submit NOIs. However, when a facility requests and receives approval from his/her DPNR Regional Office, the facility will be authorized to use the paper NOI form included in the Appendix E.

Appendix E also provides potential operators with an idea of what types of questions to anticipate when completing the NOT.