

2023 Virgin Islands Construction General Permit (VI CGP) – Fact Sheet

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I. Background

Congress passed the Federal Water Pollution Control Act of 1972 (Public Law 92-500, October 18, 1972) (hereinafter the "Clean Water Act" or "CWA"), 33 U.S.C. 1251 et seq., with the stated objectives to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the CWA provides that "the discharge of any pollutant by any person shall be unlawful" except in compliance with other provisions of the statute. CWA section 301(a), 33 U.S.C. 1311. The CWA defines "discharge of a pollutant" broadly to include "any addition of any pollutant to navigable waters from any point source." CWA section 502(12), 33 U.S.C. 1362(12). EPA is authorized under CWA section 402(a) to issue a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of any pollutant from a point source. These NPDES permits are issued by EPA regional offices or NPDES-authorized State or Tribal agencies. Since 1972, EPA and the authorized States have issued NPDES permits to thousands of dischargers, including industrial (e.g., manufacturing, energy and mining facilities) and municipal (e.g., sewage treatment plants) facilities. As required under Title III of the CWA, EPA has promulgated Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for many industrial point source categories, and these requirements must be incorporated into NPDES permits. 33 U.S.C. 1311(b). The Water Quality Act (WQA) of 1987 (Public Law 100-4, February 4, 1987) amended the CWA, adding CWA section 402(p), requiring implementation of a comprehensive program for addressing stormwater discharges. 33 U.S.C. 1342(p).

A. Clean Water Act Stormwater Program

Prior to the Water Quality Act of 1987, there were numerous questions regarding the appropriate means of regulating stormwater discharges within the NPDES program due to the serious water quality impacts of stormwater discharges, the variable nature of stormwater, and the large number of stormwater point sources. EPA undertook multiple regulatory actions to address these unique discharges. Congress, with the addition of section 402(p), established a structured and phased approach to address stormwater discharges and fundamentally altered the way stormwater is addressed under the CWA as compared with other point source discharges of pollutants. Section 402(p)(1) created a temporary moratorium on NPDES permits for point source stormwater discharges, except for those listed in section 402(p)(2), including dischargers already required to have a permit and discharges associated with industrial activity. In 1990, pursuant to section 402(p)(4), EPA promulgated the Phase I stormwater regulations for those stormwater discharges listed in 402(p)(2). See 55 FR 47990 (November 16, 1990). The Phase I regulations required NPDES permit coverage for discharges associated with industrial activity and from "large" and "medium" municipal separate storm sewer systems (MS4s). CWA section 402(p)(2). As part of that rulemaking, EPA interpreted stormwater "discharges associated with industrial activity" to include stormwater discharges associated with "construction activity" as defined at 40 CFR 122.26(b)(14)(x). See 55 FR 48033-34. As described in the Phase I regulations, dischargers must obtain authorization to discharge (or "permit coverage"), including discharges associated with construction activity, including clearing, grading, and excavation, if the construction activity:

- will result in the disturbance of five acres or greater; or
- will result in the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or greater.

See 40 CFR 122.26(b)(14)(x) and (c)(1).

Section 402(p)(5) and (6) establish a process for EPA to evaluate potential sources of stormwater discharges not included in the Phase I regulations and to designate discharges for

regulation to protect water quality. Section 402(p)(6) instructs EPA to “issue regulations...which designate stormwater discharges, other than those discharges described in [section 402(p)(2)], to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources.” In 1999, pursuant to the broad discretion granted to the Agency under section 402(p)(6), and in response to a court remand in *Natural Resources Defense Council v. EPA*, 966 F.2d 1292, 1306 (9th Cir. 1992) (holding that EPA had failed to explain in its 1990 Phase 1 stormwater rule why stormwater discharges from construction sites disturbing less than five acres were not industrial in nature), EPA promulgated the Phase II stormwater regulations that designated discharges associated with “small” construction activity and “small” MS4s. 64 FR 68722 (December 8, 1999). NPDES permit coverage is required for discharges associated with “small” construction activity, including clearing, grading, and excavation, if the construction activity:

- will result in land disturbance of equal to or greater than one acre and less than five acres; or
- will result in 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.

See 40 CFR 122.26(b)(15).

EPA continues to have discretionary authority under section 402(p)(6) to designate additional stormwater discharges for regulation under the CWA to protect water quality. The NPDES regulations establish a process for exercising discretion to designate and require NPDES permits for unregulated stormwater discharges. See 40 CFR 122.26(a)(9)(i)(C)-(D); see also *Env't Defense Ctr. v. EPA*, 344 F.3d 832, 873-76 (9th Cir. 2003).

B. TPDES Permits for Stormwater Discharges Associated with Construction Activity within the USVI Territory

EPA has authorized the United States Virgin Islands (USVI) Government's Department of Planning and Natural Resources (VIDPNR) to run the Territorial Pollutant Discharge Elimination System (TPDES) Program, and issue TPDES permits following the appropriate promulgated regulation. The TPDES regulations that were promulgated provide two options for obtaining authorization to discharge or “permit coverage”: general permits and individual permits. A brief description of these types of permits as they apply to construction and development (C&D) sites follows:

1. **USVI Construction General Permit (VI CGP).** Since 2007, VIDPNR has issued a Construction General Permit (VI CGP) that covers stormwater discharges associated with construction activity within the USVI Territory. The 2012 VI CGP became effective on December 1, 2012 and expired at midnight on November 30, 2017. The 2023 VI CGP replaces the 2012 VI CGP for construction sites still covered under this administratively continued permit.
2. **Individual NPDES Permits.** A permitting authority may require any construction site to apply for an individual permit rather than using the general permit. Likewise, any discharger may apply to be covered under an individual permit rather than seek coverage under an otherwise applicable general permit. See 12 V.I.R.R. §184-46(b)(3)(ii) (2007). Unlike a general permit, an individual permit is intended to be issued to one permittee, or a few co-permittees. Individual permits for stormwater discharges from construction sites are rarely used, but when they are, they are most often used for very large projects or projects located in sensitive watersheds.

C. Technology-Based Effluent Limitations Guidelines and Standards in TPDES Permits

Effluent limitations guidelines (ELGs) and new source performance standards (NSPSs) dictate technology-based effluent limitations in permits under CWA sections 301 and 306 for categories of point source discharges. These ELGs and NSPSs, which can be either numeric or non-numeric, must be incorporated into TPDES permits, as appropriate, along with water quality-based effluent limitations, if necessary. ELGs and NSPSs are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Title III of the CWA and summarized as follows:

1. **Best Practicable Control Technology Currently Available (BPT).** The CWA requires EPA to specify BPT effluent limitations for conventional, toxic, and nonconventional pollutants. In doing so, EPA must determine what level of control is technologically available and economically practicable. CWA section 301(b)(1)(A). In specifying BPT, EPA must look at a number of factors. EPA considers the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application. The Agency also considers the age of the equipment and facilities, the process employed and any required process changes, engineering aspects of the application of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(1)(B).
2. **Best Available Technology Economically Achievable (BAT).** BAT effluent limitations are applicable to toxic (priority) and nonconventional pollutants. EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific pollutants have been designated priority toxic pollutants. See 40 CFR 401.15 and 40 CFR part 423, Appendix A. In general, BAT represents the best available performance of facilities through application of the best control measures and practices economically achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives within the point source category. CWA section 304(b)(2)(A). The factors EPA considers in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, the engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. CWA section 304(b)(2)(B).
3. **Best Conventional Pollutant Control Technology (BCT).** The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT for discharges from existing point sources. BCT is not an additional limitation but replaces Best Available Technology (BAT) for control of conventional pollutants. In addition to other factors specified in CWA section 304(b)(4)(B), the Act requires that EPA establish BCT limitations after consideration of a two-part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986. 51 FR 24974 (July 9, 1986). Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD₅), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. See 40 CFR 401.16. The Administrator has designated oil and grease as an additional conventional pollutant. 44 FR 44501 (July 30, 1979). CWA section 304(b)(4)(B).
4. **Best Available Demonstrated Control Technology (BADT) for New Source Performance Standards (NSPS).** NSPS apply to all pollutants and reflect effluent reductions that are achievable based on the BADT. New sources, as defined in CWA section 306, can install the best and most efficient production processes and wastewater treatment

technologies. As a result, NSPS should represent the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology. In establishing NSPS, CWA section 306 directs EPA to take into consideration similar factors that EPA considers when establishing BAT, namely the cost of achieving the effluent reduction and any non-water quality, environmental impacts and energy requirements. CWA section 306(1)(B).

TPDES permits are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based ELGs established under Section 301 and, where applicable, any NSPS established under Section 306. Once an ELG or NSPS is promulgated in accordance with these sections, TPDES permits must incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of territorial ELGs and/or NSPS, VIDPNR must establish and include in TPDES permits technology-based effluent limitations on a case-by-case basis based on their best professional judgment. See CWA section 402(a)(1)(B); 125.3(a)(2)(ii)(B).

D. EPA's Construction and Development Effluent Limitations Guidelines and New Source Performance Standards

On December 1, 2009, EPA promulgated ELGs and NSPSs to control the discharge of pollutants from construction sites. See 74 Fed. Reg. 62996, and 40 CFR 450.21. These requirements, known as the "Construction and Development Rule" or "C&D rule," became effective on February 1, 2010. Following the promulgation of the C&D rule in 2009, several parties filed petitions for review of the final rule, identifying potential deficiencies with the dataset that EPA used to support its decision to adopt a technology-based numeric turbidity limitation as well as other issues. On March 6, 2014, pursuant to a settlement agreement to resolve the litigation, EPA finalized amendments to the C&D rule that withdrew the technology-based numeric turbidity limitation and monitoring requirements and provided clarification regarding several other requirements of the rule. See 79 Fed. Reg. 12661 and 80 Fed. Reg. 25235. Because the 2023 VI CGP is being issued after the effective date of the 2014 C&D rule amendments, VIDPNR must incorporate these requirements into this permit. Therefore, the 2023 VI CGP includes significant revisions to the 2012 VI CGP to reflect the C&D rule amendments. A summary of the C&D rule requirements is included in Section II below.

II. Summary of C&D Rule Requirements

The C&D rule requirements include non-numeric effluent limitations that apply to all permitted discharges from construction sites (40 CFR 450.21). The effluent limitations are structured to require construction operators to first prevent the discharge of sediment and other pollutants through the use of effective planning and erosion controls; and second, to control discharges that do occur through the use of effective sediment controls. Operators must implement a range of pollution control and prevention measures to limit or prevent discharges of pollutants, including those from dry weather discharges as well as wet weather (i.e., stormwater).

The non-numeric effluent limitations are designed to prevent or minimize the mobilization and stormwater discharge of sediment and sediment-bound pollutants, such as metals and nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris and other sources of pollutants on construction sites. In addition, these non-numeric effluent limitations limit the generation of dissolved pollutants, such as nutrients, organics, pesticides, herbicides and metals that may be present naturally in the soil on construction sites, such as arsenic or selenium, or may have been contributed by previous activities on the site such as agriculture or industrial activity. These pollutants, once mobilized by rainfall and stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants

would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants.

The C&D rule's non-numeric effluent limits are as follows (see 40 CFR 450.21):

A. Erosion and Sediment Controls

Operators must design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:

1. Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
2. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
3. Minimize the amount of soil exposed during construction activity;
4. Minimize the disturbance of steep slopes;
5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater discharge, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
6. Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;
7. Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and
8. Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

B. Soil Stabilization Requirements

Operators must, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

C. Dewatering Requirements

Operators must minimize the discharge of pollutants from dewatering activities, including discharges from dewatering of trenches and excavations. Discharges are prohibited unless managed by appropriate controls.

D. Pollution Prevention Measures

Operators must design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

- i. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
- ii. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and
- iii. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

E. Prohibited Discharges

The following discharges from C&D sites are prohibited:

- Wastewater from washout of concrete, unless managed by an appropriate control;
- Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
- Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
- Soaps or solvents used in vehicle and equipment washing.

F. Surface Outlets

When discharging from basins and impoundments, operators must utilize outlet structures that withdraw water from the surface, unless infeasible.

This fact sheet discusses in the sections below how VIDPNR has incorporated these requirements into its 2023 VI CGP. The discussion will include a summary of each provision and the VIDPNR's rationale for articulating the provision in this way. VIDPNR notes that most of the 2012 VI CGP provisions are retained in the 2023 VI CGP.

III. Summary of Significant Changes to the 2023 VI CGP

The final permit includes several new or modified requirements, many of which are related to the implementation of the 2014 C&D rule amendments, and thus differ from the 2012 VI CGP.

The following table summarizes the significant changes made in the final 2023 VI CGP and groups each potential revision into one of two categories: Changes to Clarify Permit and Added Specificity. The table also identifies where each change is found in the final permit.

	Summary of Permit Change	Part(s) Where Change Appears
Changes to Clarify Permit	Update permit language related to water quality to reflect changes made to same provision in EPA's Multi-Sector General Permit (MSGP)	1.1.6, 1.1.7, 2.2.13.g, 7.2.6.b.vi.c
	Include polychlorinated biphenyl (PCB) related requirements, and requirements related to discharging to waters impaired for PCBs in accordance with EPA's 2022 Construction General Permit (EPA CGP)	1.2.2g, 3.2a, 7.2.3g,
	Clarify that uncontaminated dewatering discharges in compliance with Part 2.4 are authorized	1.2.2.l
	Clarify that operators of an existing site are given continued coverage under the 2012 VI CGP as long as an NOI for coverage under the 2023 VI CGP is submitted no later than 90 days following the permit effective date	Table 1
	Include list of NOI modifications that result in a 14-day review process	1.4.4
	State clearly that VIDPNR does not recommend or endorse specific stormwater control or SWPPP products or vendors	2.1, 7.1
	Include suggested stormwater control design considerations if the site has previously experienced major storms, and clarified that stormwater controls must be designed using the most recent precipitation data available	2.1.1
	More clearly differentiate between routine maintenance fixes and corrective actions	2.1.4.b, c, and d, 4.6.1.c, 5.1.1
	Include considerations for when stormwater infiltration may be inadvisable	2.2.2
	Clarify that perimeter controls are required in addition to establishing a natural buffer between construction activities and receiving waters, where applicable	2.2.3.a
	Specify that soil stockpile requirements do not apply to rock piles	2.2.5
	Clarify that inlet protection measures are not required for storm drain inlets that are conveyed to a sediment basin or similar control	2.2.10, 7.2.4.g, 7.2.6.b.iv
	Provide additional considerations regarding the use of erosion control netting for site stabilization	2.2.14
	Clarify when waste containers with lids must be closed	2.3.3.e.ii
Clarify how liquid wastes must be handled for washing of certain applicators or containers	2.3.4.b	
Provide clarifications to further explain when inspections are required for rain storms	4.2.2	

	Summary of Permit Change	Part(s) Where Change Appears
	Clarify that the SWPPP site map must be updated following site inspection to reflect any changes to stormwater controls, where applicable	4.6.4
	Clarify that inspection reports and SWPPPs may be kept in electronic form as long as they are accessible in the same way as a paper report	4.7.3, 5.4.3, 7.3
	Streamline corrective action documentation	5.4
	Consolidate stormwater team and training requirements	6.1, 6.2
	Reformat Appendix C requirements for the determination of eligibility related to endangered species protection so that what is included is streamlined down to a worksheet	1.1.4, Appendix C
Added Specificity	More specifically describe where perimeter controls are needed, how to install them to ensure effectiveness, and when to conduct repairs	2.2.3
	Specify what types of pollution prevention requirements apply to petroleum and chemical containers based on the volume of the container	2.3.3.c, 7.2.6.b.ix
	Specify that waste containers are not required for the waste remnant of certain non-polluting construction materials or products	2.3.3.e, 7.2.4.i, 7.2.6.b.ix
	Add specificity to dewatering discharge requirements: <ul style="list-style-type: none"> • Improve clarity of required controls for sediment and other pollutant discharges from dewatering activities • Establish turbidity benchmark monitoring requirements for dewatering discharges to surface waters • Include more detailed inspection requirements for dewatering activities, including: <ul style="list-style-type: none"> - Indicate on NOI if dewatering will occur on site and whether dewatering will occur on a current or former remediation site - More frequent inspections for ground water dewatering - Specify areas of dewatering operation that must be inspected, and what to look for - Operators required to record date, names of personnel making the inspection, times, estimated rate, visual qualities of discharge, and whether there are visual signs of sediment deposition, and to take and keep photos of dewatering controls and discharge 	2.4, 3.3, 4.3.2, 4.6.3, 5.1.5, 5.2.2, 7.2.4, 7.2.8, Appendix K

	Summary of Permit Change	Part(s) Where Change Appears
	<ul style="list-style-type: none"> • Specify what corrective action is required based on benchmark exceedances or visual signs of turbid discharges or sediment deposition • Include paper turbidity monitoring form for operators subject to benchmark monitoring requirements 	
	Specify the options for obtaining the necessary training for personnel conducting site inspections, including providing an EPA-developed inspector training program	4.1, 6.3
	Specify that inspections include checking for signs of sedimentation and other pollutants that are visible from points of discharge from the site	4.6.1.e, 4.6.2.b
	Require photo documentation of stabilized site as part of permit termination	8.2.1.a, Appendix I
	Add question to the NOI for operators to indicate if other operators involved in the same project are also covered under the VI CGP	Appendix H

The permit includes several new or modified requirements. The following summarizes the significant changes to the 2023 VI CGP permit.

A. Changes to Clarity of the Permit

The following summarizes the significant changes to the 2023 VI CGP.

- *Approved stormwater control and stormwater pollution prevention plan products* – VIDPNR includes new language in the permit to clearly state that the department does not endorse specific stormwater control or stormwater pollution prevention plan (SWPPP) products or vendors. Industry stakeholders commenting on EPA's 2022 CGP suggested that the permit include such language to help discourage some vendors from misleadingly suggesting that the permitting authority or the permit approves of specific products. See footnotes 13 and 78 in Parts 2.1 and 7.1, respectively, of the permit.
- *Differentiate between routine maintenance and corrective action* – VIDPNR defines routine maintenance as minor repairs or other upkeep performed to ensure the site's stormwater controls remain in effective operating condition, not including significant repairs or the need to install a new or replacement control. If a stormwater control needs a significant repair or a new or replacement control is needed, the permit requires that it be treated as a corrective action. This change addresses feedback provided by industry stakeholders on EPA's 2022 CGP who observed that there is considerable confusion about which maintenance repairs are considered routine versus those that should be treated as corrective actions. VIDPNR is providing flexibility for routine maintenance, which cannot be completed by the close of the next business day after the condition requiring maintenance is discovered, by enabling operators to have up to seven days to complete this work. The additional time is conditioned on the operator documenting in the site inspection report why it would be infeasible to finish the work by the close of the next business, and why the repairs or other upkeep should still be treated as routine maintenance. Where the operator finds that the same routine maintenance fix must be repeatedly (i.e., three or more times) made to the same stormwater control at the same location, the operator must complete the work for any subsequent occurrences of the same problem under the corrective action procedures in Part 5 of the permit, or document in the site inspection report why the specific reoccurrence of the problem should still be addressed as a routine maintenance fix. See Parts 2.1.4.b, c, and d, and 5.1.1 of the permit.
- *Include additional stormwater control design considerations* – The VI CGP requires operators to take into account several factors in designing stormwater controls that comply with permit conditions. The factors include the expected amount, frequency, intensity, and duration of precipitation. See Part 2.1.1 of the permit. VIDPNR clarifies that the relevant data used must be the most recent data available to account for recent precipitation patterns and trends. VIDPNR also suggests that operators include consideration and contingencies for the implementation of structural improvements, enhanced or resilient stormwater controls, and other mitigation measures to help minimize the stormwater discharge impacts from major storms (e.g., hurricanes, storm surges, extreme precipitation, or flood events) where the site has been exposed to or previously experienced such storms.
- *Clarify factors where infiltration would be infeasible or inadvisable* – The VI CGP requires that operators direct stormwater to vegetated areas and maximize stormwater infiltration and filtering to reduce pollutant discharges, unless infiltration would be inadvisable due to the underlying geology and groundwater concerns, or infeasible due to site constraints. VIDPNR suggests some of the considerations operators should take into account in determining whether infiltration at a particular site is infeasible or inadvisable, such as factors relating to the underlying soils or geology, hydrology, depth to the groundwater table, proximity to

source water protection area(s), or specific contaminant concerns. See Part 2.2.2 and footnote 19 in the permit.

- *Clarify application of perimeter control and natural buffer requirements* – VIDPNR understands that there may be confusion about whether perimeter controls are necessary on the site when the operator is already providing a natural buffer pursuant to the requirements of the permit. VIDPNR clarifies that perimeter controls must be installed upgradient of any natural buffers except in situations where the perimeter control is being used by the operator to fulfill one of the buffer alternative requirements, in which case the operator would not be required to install a second perimeter control. See Part 2.2.3.a of the permit.
- *Clarify pollution prevention requirements for construction waste* – The 2023 VI CGP extends existing pollution control flexibilities that apply to building materials and products in Part 2.3.3.a to certain types of construction wastes in Part 2.3.3.e. Waste containers are not required for the waste remnant or unused portions of any construction materials or final products where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination, provided that these wastes are stored separately from other construction or domestic wastes that do not meet these criteria, are stored in designated areas of the site, and are described in the SWPPP. See Parts 2.3.3.e, 7.2.4.i, and 7.2.6.b.ix of the permit.
- *Clarify proper handling of washing applicators and containers used for stucco, paint, concrete, form release oils, curing compounds, or other materials* – The permit includes some additional details based on feedback provided in the public comments regarding how operators should handle washout or cleanout wastes. This includes not allowing liquid wastes to enter site drainage features, not allowing such wastes to be disposed of through infiltration or to otherwise be disposed of on the ground, and complying with applicable Territorial requirements for disposal. See Part 2.3.4.b of the permit.
- *Clarify requirements for inspections during storm events* – For inspections required in response to storm events producing 0.25 inches of rain within a 24-hour period, VIDPNR provided additional text explaining when inspections are required under different storm length scenarios. See Part 4.2.2.a.
- *Include information on availability of stormwater pollution prevention plan (SWPPP), inspection reports, and corrective action log in electronic form* – The 2012 VI CGP enabled operators to keep their SWPPP, inspection reports, and corrective action records in electronic form, as long as they could be accessed and read by the operator and by any EPA, territorial, or local inspection authorities in the same manner as a paper copy. The final 2023 VI CGP includes text to clarify that electronic versions of the SWPPP, inspection reports, and corrective action logs may be used as long as they meet certain minimum requirements. See footnotes 71, 73, and 84 to Parts 4.7.3, 5.4.3, and 7.3, respectively, of the permit.
- *Update process for Threatened and Endangered Species Protection eligibility determinations* – VIDPNR updated Appendix C of the VI CGP, which establishes procedures for operators to follow in determining their eligibility for coverage with respect to the protection of endangered and threatened species. The changes to Appendix C are primarily in the form of clarifications to existing procedures or updates to resources that operators can use to determine whether species or critical habitats are located in the “action area” of the construction site. VIDPNR included protection of locally listed endangered species and locally designated critical habitat under the Virgin Islands’ Indigenous and Endangered Species Act (IESA) of 1990 and reformatted Appendix C into a worksheet-style format that

breaks apart the procedures, criterion selection, and required supporting documentation into a series of individual questions and fillable answers, rather than long narrative instructions. It follows EPA's format and presents procedures in a more dynamic, structured way to help the operator arrive at the correct ESA/IESA criterion selection by eliminating ones that do not apply to their site and ensures that all required supporting documentation is included when submitting the NOI. See Appendix C of the permit, and related information from EPA at <https://www.epa.gov/npdes/construction-general-permit-threatened-and-endangered-species>.

B. Added Specificity to Permit Requirements

VIDPNR finalized select modifications to the permit in accordance with EPA's updated 2022 Construction General Permit (EPA CGP). These changes incorporate enhancements that reflect current best practices and are narrowly focused on specific topics. The following is a summary of these changes:

- *Include additional perimeter control installation and maintenance requirements* – Due to the vital role that sediment controls installed along the downslope side of the construction site perimeter play in minimizing sediment discharges, it is important for the VI CGP requirements related to these controls to reflect best practices that are available, effective, and practicable. EPA reviewed a number of state permits and best management practice manuals during the development of the 2022 EPA CGP and concluded that some targeted changes to the permit perimeter control requirements are appropriate and warranted. For this reason, VIDPNR incorporated additional perimeter control installation and maintenance requirements that are focused on ensuring that these controls continue to work effectively. For example, under the new provision, if there is evidence of stormwater circumventing or undercutting the perimeter control after a storm event, the operator is required to extend the length of the perimeter control or repair any undercut areas, whichever applies. This change is intended to ensure that maintenance of these controls is focused on fixing problems as soon as they are found and making sure they work effectively before the next storm event occurs. See Part 2.2.3 of the permit.
- *Update pollution prevention requirements for chemicals used and stored on site* – VIDPNR finalized changes to the pollution prevention requirements for diesel fuel, oil, hydraulic fluids, or other petroleum products, and other chemicals. These changes ensure requirements are proportionate to the volume of chemicals being used and stored on the site, and relative to the risk of a spill or leak. VIDPNR improved requirements in this section by strengthening the linkage between the type of pollution prevention control needed and the volume of chemical containers kept on site. Consistent with this principle, the final permit establishes control requirements that are appropriate for chemical containers with a storage capacity of less than 55 gallons by requiring that the operator use water-tight containers, place them on a spill containment pallet (or similar device) if kept outside, and have a spill kit available at all times and in good working condition, and personnel available to respond quickly to a spill or leak. These controls will be effective at preventing a discharge from a spill or leak, while also having the added advantage of being moved more easily around the site. The final permit also includes controls that are more suitable to larger chemical containers with a storage capacity of 55 gallons or more, such as requiring a temporary roof or secondary containment to prevent a discharge from a leak or spill. VIDPNR modified the requirements so that they are applied based on the volume of container at the site (i.e., containers with a storage capacity of less than 55 gallons, or 55 gallons or more). VIDPNR also added some additional specificity to the final provisions to require that all containers be closed, sealed, and secured when not being actively used. VIDPNR also added an additional flexibility to allow operators with certain site constraints to store larger volume containers as far away

from receiving waters, site drainage features, and stormwater inlets as possible if it is infeasible to store them at least 50 feet away. See Part 2.3.3.c of the permit.

- *Specify new clarified dewatering discharge requirements* – VIDPNR finalized several changes to the permit's dewatering requirements to improve compliance and further reduce pollutant loads to receiving waters. VIDPNR, in concurrence with EPA, notes that there are common compliance issues with VI CGP dewatering requirements at sites with controls that are improperly installed and maintained, resulting in significant discharges of sediment and other pollutants to receiving waters. Given the high rate at which dewatered water may be discharged, EPA and VIDPNR inspection personnel have observed that it is possible that a site may discharge more sediment in several hours of poorly managed dewatering activities than might otherwise be discharged from a site via stormwater discharges over the entire course of the construction project. Additionally, VIDPNR has found there to be good example provisions from other state construction stormwater permits and standalone NPDES dewatering permits that can be used to strengthen the VI CGP's dewatering conditions.

The final dewatering revisions to the permit add clarity to the existing pollutant control provisions, increase the number of inspections required while the dewatering discharge is occurring, establish a tailored checklist of problems to review during the inspection, and identify specific triggers for when corrective action is required. For example, one new dewatering-related inspection provision requires the operator to check whether a sediment plume, foam, and/or other evidence of pollutants such as a visible sheen or oily deposit on the bottom or shoreline of the receiving water was observed during the inspection at the point of discharge to any receiving water flowing through or immediately adjacent to the site and/or to drainage features. If such pollutant indicators are observed, the permit requires the operator to, among other things, take immediate steps to minimize the discharge of pollutants, including the possibility of shutting off the dewatering discharge depending on the severity of the condition and to ensure that the dewatering controls being used are operating effectively. During an inspection of the dewatering operation, the operator would also be required to take photographs of (1) the dewatering water prior to treatment by a control(s) and the final discharge after treatment; (2) the dewatering control(s); and (3) the point of discharge to any receiving waters flowing through or immediately adjacent to the site and/or to site drainage features, storm drain inlets, and other conveyances to receiving waters. This documentation will help demonstrate how well the dewatering controls are working and will show where adaptations made after any problems have been found have resulted in improved pollutant control. See Parts 2.4, 4.3.2, 4.6.3, 5.1.5, and 5.2.2 of the permit.

- *Require turbidity benchmark monitoring for sites discharging dewatering water to surface waters* – The 2023 VI CGP requires targeted sampling of dewatering discharges to all surface waters. Under this new requirement, operators must collect at least one turbidity sample of the dewatering discharge each day a discharge occurs and compare the weekly average of the results with a benchmark turbidity value of 1, 3, or 50 Nephelometric Turbidity Units (NTU), as applicable.
 - The turbidity benchmark is 1 NTU for dewatering discharges to marine and coastal waters where coral reef systems are located and the effective turbidity water quality criterion is 1 NTU under 12 V.I.R.R. §186-4(b).
 - The turbidity benchmark is 3 NTU for dewatering discharges to marine and coastal waters where coral reef systems are not located and the effective turbidity water quality criterion is 3 NTU under 12 V.I.R.R. §186-4(b).

- The turbidity benchmark is 50 NTU for dewatering discharges to all other surface waters not subject to Part 3.3.2a or b.
- VIDPNR derived these benchmark thresholds based on the USVI water quality standards, a review of turbidity thresholds and water quality standards for states and other territories, EPA's 2022 CGP turbidity benchmark requirements, other NPDES dewatering permit conditions, literature related to the effects of turbidity on aquatic life, and public comments received during the comment period on the 2022 EPA CGP. USVI marine and coastal waters (Class A, B, and C Waters) have turbidity criteria of 1 and 3 NTU except for select Class B waters for St. Thomas and St. Croix per 12 V.I.R.R. § 186-4(b). All Territorial Waters, including inland waters, are subject to the narrative turbidity criterion at 12 V.I.R.R. § 186-5(a)(1)(C) and required to be free of "substances producing objectionable turbidity, such as sediment, floating debris, scum and other floating materials attributable to discharges in amounts sufficient to be unsightly, deleterious, create a nuisance, or be detrimental to the existing or designated uses of the waterbody."

For clarity, VIDPNR emphasizes that the benchmark threshold for turbidity is not an effluent limit. As such, an exceedance of the benchmark threshold does not itself constitute a permit violation. Rather, the benchmark threshold acts as a warning sign to the operator that changes may be needed in the dewatering controls to improve pollutant removal and protect water quality. Accordingly, if the weekly average of the turbidity samples exceeds the benchmark, the operator is required to conduct follow-up corrective action designed to lower the turbidity levels in the discharge. The new corrective action provisions for a benchmark exceedance require the operator to immediately take all reasonable steps to minimize or prevent the discharge of pollutants until a solution can be implemented, including safely shutting off the dewatering discharge depending on the severity of the condition; determining whether the dewatering controls are operating effectively and whether they are causing the conditions; and making any necessary adjustments, repairs, or replacements to the dewatering controls to lower the turbidity levels or remove the visible plume or sheen. Operators are also required to report their weekly average turbidity results to VIDPNR on a quarterly basis using the paper form in Appendix K, until VIDPNR provides notice that electronic submission is required.

For the 2023 VI CGP, VIDPNR includes turbidity monitoring for surface waters because these waters are sensitive to turbidity and have turbidity water quality and/or narrative criteria. The monitoring requirements for dewatering discharges will help ensure that such discharges do not further contribute excess pollutants to these waters and that existing uses are maintained and protected. Turbidity monitoring will provide operators with a baseline and comparable understanding of dewatering discharge quality, potential water quality problems, and dewatering control measure effectiveness. These data will supplement information provided through the daily inspections during dewatering activities and allow VIDPNR to review the pollutant concentrations in dewatering discharges. See Part 3.3, 5.1.5, and 5.2.2 of the permit.

EPA includes an extensive discussion of the rationale behind the decision to include benchmark monitoring for dewatering discharges to sensitive waters in the 2022 EPA CGP in Section VI, Part 3.3 of the EPA CGP fact sheet. EPA has also provided additional technical assistance resources for operators to use in implementing these provisions. For example, EPA has developed a Monitoring and Inspection Guide for Construction Dewatering, available on EPA's website at <https://www.epa.gov/npdes/construction-general-permit-resources-tools-and-templates-which-provides-guidelines> on how to correctly monitor for turbidity, determine if the weekly average exceeds the benchmark, and, if so, how to proceed with

corrective action, as well as how to comply with the permit's dewatering inspection requirements.

- *Update training requirements for personnel conducting site inspections* – VIDPNR finalized modifications to the training requirements for personnel conducting site inspections. These changes address problems found during many construction site inspections, where permittees are not properly conducting inspections or documenting their findings in accordance with the permit. VIDPNR strengthened the training requirements for inspection personnel to ensure their competency to conduct such inspections. For this reason, the permit specifies that a qualified person carrying out inspections must either (1) have completed the new EPA construction inspection course developed for this permit and passed the exam, or (2) hold a current valid construction inspection certification or license from a program that covers essentially the same core material as EPA's inspection course. These new requirements are an extension of what the 2012 VI CGP already required for the "qualified person" to conduct inspections and can be found on EPA's 2022 CGP webpage (<https://www.epa.gov/npdes/2022-construction-general-permit-cgp>). Documentation that the relevant personnel has completed the EPA course and passed the exam will serve as proof that the operator has met the new inspection training requirements. Alternatively, if the relevant personnel elect to obtain the required training through a different program that covers the same basic principles, the operator will need to provide documentation that these personnel have successfully completed the program and are in possession of a current, valid certification or license. See Parts 4.1, 6.3, and 7.2.2 of the permit.
- *Specify requirements for documenting signs of sedimentation attributable to construction site discharges* – VIDPNR specifies in the permit that during an inspection, operators must check for signs of sediment deposition that are visible from the site and attributable to the operator's discharge, for example sand bars with no vegetation growing on top in adjacent receiving waters or in other constructed or natural site drainage features, or the buildup of sediment deposits on nearby streets, curbs, or open conveyance channels. This change is intended to address a frequent problem observed during compliance inspections that the permittee does not document obvious signs of sedimentation in the receiving water or in drainage features that convey to receiving waters. The intent of this addition is to emphasize that the site inspection is an ideal time to examine whether there are any obvious signs of sedimentation attributable to the site's discharges, and to require documentation of such sedimentation. VIDPNR notes that the VI CGP already requires operators to check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the operator's discharge at points of discharge and, if applicable, on the banks of any receiving waters. flowing within or immediately adjacent to the site. See Part 4.6.1.e of the permit.
- *Require photo documentation of adequate site stabilization* –The final permit adds a new provision requiring operators as part of their Notice of Termination (NOT) to take and submit photographs showing the stabilized areas of the site following completion of construction. VIDPNR includes this requirement primarily as an additional level of documented evidence that operators are complying with the stabilization requirements prior to terminating coverage. Given the importance of stabilization to preventing continuing erosion and sedimentation, VIDPNR views the additional photo documentation requirement to be a relatively inexpensive, effective, and straightforward way for the operator to show the agency that it has complied with the permit's final stabilization requirements. See Part 8.2.1.a of the permit. Related to this new requirement, VIDPNR added a check box to the NOT form to confirm that the operator has attached photographs as required by Part 8.2.1.a, including the date each photograph was taken, and a brief description of the area of the site captured by the photograph.

- *Add new Notice of Intent (NOI) questions* – VIDPNR added new questions to the NOI form that construction operators will use to obtain coverage under the 2023 VI CGP. One question asks operators if dewatering water will be discharged during the course of their permit coverage. While VIDPNR suspects that most VI CGP-covered projects discharge dewatering water during construction, it is useful to the department to know what the prevalence of this practice is at its permitted sites. This question will provide a straightforward way of compiling information broadly about permittees and enable VIDPNR to know which operators may be affected by the permit's new dewatering requirements. A follow-up question asks operators who indicate that there will be a dewatering discharge to identify if their site is located on a current or former remediation site. This question is intended to provide VIDPNR with additional information regarding sites and their potential for contaminated discharge. Another question asks the operator completing the NOI whether there are other operators who are also covered by the VIDPNR at the same site and, if so, what their TPDES ID numbers are. Because the 2012 VI CGP NOI did not ask the operator to indicate whether there are multiple operators permitted for the same site, VIDPNR is often unable to easily determine who all the permitted entities are at larger projects and whether there may be some parties that should have obtained permit coverage as operators but have yet to do so. The NOI form also includes a new question that requires the operator to confirm that any personnel conducting inspections at the site will meet the modified training requirements in Part 6 of the permit. VIDPNR also finalized clarifying edits to better explain the types of documentation that are needed for several of the eligibility criteria. As mentioned in Section III.A in the summary of the "Update process for Threatened and Endangered Species Protection eligibility determinations," VIDPNR has also reformatted the Threatened and Endangered Species Protection section of the NOI, which now consists of questions that were previously contained in narrative instructions in Appendix C along with updated links to available mapping tools to assist operators in determining whether any listed or threatened species are known to occur in the action area of their site.

IV. Categories of Facilities That Can Be Covered Under This Permit

This permit covers stormwater discharges associated with construction activities located in the Territory of the United States Virgin Islands, which disturb one or more acres of land, or will disturb less than one acre but are part of a common plan of development or sale that will ultimately disturb one acre or more. See 40 CFR 122.26(b)(14)(x) and (15), and Part 1.1 of the permit. The table below summarizes which construction activities may be covered by this permit:

Categories of facilities that can be covered under this permit

Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Construction site operators disturbing one or more acres of land, or less than one acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more, and performing the following activities:	
Construction of Buildings	236
Heavy and Civil Engineering Construction	237

Note that this list of NAICS codes covers those industry segments most likely to make use of this permit, but any construction operator that meets the eligibility requirements established for coverage is eligible. Eligibility for coverage by the permit is available to operators of "new sites," operators of "existing sites," "new operators of permitted sites," and operators of "emergency-related projects," as discussed in Part 1.2 and defined in Appendix A.