



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PUERTO RICO 00968

June 22, 2023

VIA ELECTRONIC MAIL & CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Roger E. Merritt
Executive Director
Waste Management Authority
3200 Demarara
Charlotte Amalie, V.I. 00802

**Re: Administrative Compliance Order
USVI Waste Management Authority - Wastewater Treatment Plants
Docket Number CWA-02-2023-3111**

Dear Mr. Merritt:

The United States Environmental Protection Agency (“EPA”) has made findings that Virgin Islands Waste Management Authority (“Respondent”) failed to submit Discharge Monitoring Reports in violation of Sections 301(a) and 402 of the Clean Water Act (the “Act”), 33 U.S.C. §§ 1311(a) and 1342. Enclosed please find a copy of an Administrative Compliance Order (the “Order”), Docket Number CWA-02-2023-3111, issued pursuant to Section 309(a) of the Act, 33 U.S.C. §309(a), which details the conclusions of law and findings of violation. Please return the Attachment 1 of the Order via electronic mail at geliga.jaime@epa.gov to acknowledge receipt of the Order.

We urge your prompt attention to this matter. If you have any questions concerning this order, please contact please contact Mr. Jaime Géliga, at 787-977-5840 or by electronic mail,

Sincerely,

**CARMEN
GUERRERO PEREZ**

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GUERRERO PEREZ
Date: 2023.06.22 07:47:28
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Carmen R. Guerrero Pérez
Director
Caribbean Environmental Protection Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Virgin Islands Waste Management Authority
United States Virgin Islands
3200 Demarara
Charlotte Amalie U.S.V.I. 00802

RESPONDENT

Proceeding pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a)

**ADMINISTRATIVE
COMPLIANCE ORDER**

**DOCKET NUMBER
CWA-02-2023-3111**

I. STATUTORY AUTHORITY

1. This Administrative Compliance Order (“Order”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 309(a) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(a).
2. The Administrator has delegated the authority to take these actions to the Regional Administrator of Region 2, who in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division.
3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with [CWA Section 402], the discharge of any pollutant by any person shall be unlawful.”
4. Section 402 of the CWA, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System (“NPDES”) as the national program for, among other things, issuing and enforcing discharge permits.
5. Section 402 of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
6. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that “the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant upon condition that such discharge will meet such requirements as the Administrator determines are necessary to carry out the provisions of the [CWA].”

7. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that at any time after the promulgation of the guidelines required by Section 304(i)(2) of the CWA, 33 U.S.C. § 1314(i)(2), the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact.”
8. Section 502(3) of the CWA, 33 U.S.C. § 1362(3), defines the term “State” to include the United States Virgin Islands (“USVI”).
9. Pursuant to the CWA, EPA promulgated regulations known as “EPA Administered Permit Programs: the National Pollutant Discharge Elimination System,” which was codified at 40 C.F.R. Part 122, as amended.
10. Pursuant to the NPDES regulations at 40 C.F.R. § 122.1(b)(1), the NPDES Permit Program requires permits for the discharge of any pollutant from any point source into waters of the United States.
11. The CWA and applicable implementing regulations contain the following relevant definitions and requirements implementing NPDES regulations:
 - a. *Discharge Monitoring Report* (“DMR”) means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by “approved States” as well as by EPA. 40 C.F.R. § 122.2;
 - b. *discharge of a pollutant* means any addition of any “pollutant” or combination of pollutants to “water of the United States” from any “point source”. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
 - c. *effluent limitation* means any restriction imposed by the Regional Administrator on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States,” the waters of the “contiguous zone,” or the ocean. 40 C.F.R. § 122.2;
 - d. *facility* means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2;
 - e. *navigable waters* means the waters of the United States, including the territorial seas. Section 502(7) of the CWA, 33 U.S.C. § 1362(7);
 - f. *owner or operator* means the owner or operator of any “facility or activity” subject to regulation under the NPDES program. 40 C.F.R. § 122.2;

- g. *permit* means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of 40 C.F.R. Parts 122, 123 and 124. 40 C.F.R. § 122.2;
 - h. *person* means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
 - i. *point source* means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;
 - j. *pollutant* means, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2; and
 - k. *waters of the United States* means the territorial seas, waters which are currently used, were used or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, tributaries, lakes, ponds, impoundments of jurisdictional waters and wetlands. 40 C.F.R. §§ 120.2 and 122.
12. In 1976, the Government of the USVI enacted the USVI Water Pollution Control Act (“VIWPCA”). The VIWPCA was codified in Chapter 7 of Title 12 of the USVI Code, 12 V.I.C. Ch. 7 §181, et seq.
 13. On June 30, 1976, EPA approved the request of the Government of USVI to administer the NPDES Permit Program and delegated responsibility for the implementation of the NPDES program under the Territorial Pollutant Discharge Elimination System (“TPDES”) Permit Program, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The approval of the TPDES Permit Program was documented on the Memorandum of Agreement (“MOA”) between EPA Region 2 and the Government of USVI, dated June 30, 1976.
 14. The Virgin Islands Department of Conservation and Cultural Affairs, original signatory to the MOA, has since been reconstituted as the Department of Planning and Natural Resources (hereinafter the “Department” or “VIDPNR”) of the Government of USVI.
 15. Pursuant to TPDES Rules at 12 CVIR § 184-51(1)(4), monitoring results shall be reported at the intervals specified in the TPDES permit on a DMR.
 16. The VIDPNR issues TPDES permits in compliance with Title 12 of the Virgin Islands Code, Chapter 7, Section 185 in accordance with the provisions of the CWA.

17. Notwithstanding the MOA, and regardless of the TPDES Permit Program being delegated to the VIDPNR, EPA maintains oversight of the USVI TPDES Program, and retains the authority to take any enforcement action where it has determined that a violation has occurred, and that federal enforcement proceedings are warranted.
18. Section 309(a)(2) of the CWA provides that “[w]hen, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308, 318, or 405 of this title in a permit issued by a State under an approved permit program under section 402 or 404 of this title he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.
19. Section 309(a)(3) of the CWA provides that “[w]hen on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Section 301], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this title by him or by a State or in a permit issued under section 404 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.”
20. Section 309(a)(5)(A) of the CWA provides that “[a]ny order issued under [CWA Section 309] shall state with reasonable specificity the nature of the violation and shall specify a time for compliance . . . taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”
21. Article VIII of the MOA does not preclude EPA from taking enforcement action in any case where it determines that a violation has occurred and federal enforcement proceedings are warranted; and, it does not limit the authority of EPA to take appropriate action pursuant to Sections 308 and 309 of the CWA, 33 U.S.C. §§ 1318 and 1319, either on its own motion or when requested to do so by the Commissioner of VIDPNR.
22. Pursuant to Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), and provisions of the MOA, EPA is hereby taking appropriate action to enforce against Respondent for violations of the TPDES Rules, the CWA and its implementing regulations.

II. FACTUAL FINDINGS

23. The Virgin Islands Waste Management Authority (“Respondent” or “VIWMA”) is a public corporation which administers the sewage conveyance and treatment system in the Territory of the USVI.

24. VIWMA owns and operates eight Publicly Owned Treatment Works (“POTWs”) or wastewater treatment plants (“WWTPs”) in the Territory: one WWTP on St. Croix, five WWTPs on St. Thomas, and two WWTPs on St. John. Two of the eight plants are operated under a private operator contract by VEOLIA U.S. North America.

25. The VIDPNR issued to VIWMA the following TPDES Permits to its eight (8) WWTPs:

Saint Croix District

1. Anguila WWTP (also known as Harold Thompson WWTP), TPDES Permit No. VI0020036

Saint Thomas District

2. Bordeaux WWTP, TPDES Permit No. VI0039977

3. Mangrove Lagoon WWTP, TPDES Permit No. VI0002003

4. Vessup Bay WWTP (also known as Nazareth WWTP), TPDES Permit No. VI0020133

5. Brassview WWTP, TPDES No. Permit VI0039811

6. Red Point WWTP (also known as Pedrito Francois WWTP), TPDES Permit No. VI0020044

Saint John District

7. George Simmons WWTP, TPDES Permit No. VI0040266

8. Cruz Bay WWTP, TPDES Permit No. VI0040835

26. The Anguila WWTP, and the Red Point WWTP are currently operated by VVNA Caribbean, LLC., a wholly-owned subsidiary of Veolia Water North America Operating Services Inc., a private contractor.

27. The TPDES permits for the WWTPs listed in paragraph 25 are currently expired. In accordance with applicable regulations the conditions of the expired TPDES permits remain in full force and effect until new TPDES permits are issued by the VIDPNR.

28. The TPDES permits for the WWTPs listed in paragraph 25 authorize the discharge of pollutants (treated sewage) through an authorized point source identified as outfall 001 in each permit.

29. Pollutants are discharged into navigable waters, as detailed below, from outfall 001 of each of the WWTPs listed in paragraph 25:

a. Harold Thompson WWTP – Krause Lagoon which flows into the Atlantic Ocean;

b. Bordeaux WWTP – Fortuna Bay which flows into the Atlantic Ocean;

c. Mangrove Lagoon WWTP - Staley Bay which flows into the Atlantic Ocean;

d. Vessup Bay WWTP – Red Hook which flows into the Atlantic Ocean;

e. Brassview WWTP - Hull Bay which flows into the Atlantic Ocean;

f. Red Point WWTP – Red Point which flows into the Atlantic Ocean;

- g. George Simmons WWTP - Gut Discharge that flows into Fish Bay which flows into the Atlantic Ocean; and
 - h. Cruz Bay WWTP - Atlantic Ocean.
30. The TPDES permits for the WWTPs listed in paragraph 25 require Respondent to comply with the effluent limitations, monitoring, and reporting requirements established in accordance with their respective TPDES permits.
 31. The TPDES permits for the WWTPs listed in paragraph 25 require Respondent to submit to EPA and the VIDPNR monitoring data, known as DMR, on monthly basis.
 32. Respondent is required to electronically submit the DMRs through the USEPA Network Discharge Monitoring Report (“NetDMR”) platform (<https://netdmr.epa.gov>) no later than the 28th day of the month following the completed reporting period.
 33. In November 2022, EPA reviewed the NetDMR platform which revealed that Respondent had failed to submit monthly DMRs since May 2022 for all WWTPs listed in paragraph 25.
 34. In mid-March 2023, EPA assisted VIWMA’s newly appointed Environmental, Health and Safety Officer in signing up for access to NetDMR platform to allow Respondent to submit the DMRs for all WWTPs listed in paragraph 25 as required by each TPDES permit.
 35. As of the date of issuance of this Order, Respondent has not submitted all of the DMRs it is supposed to have submitted since May 2022 for all WWTPs listed in paragraph 25.
 36. EPA consulted with DPNR before initiating this enforcement action.

III. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS

37. Respondent is subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*, the applicable NPDES regulations found at 40 C.F.R. § 122, and the TPDES Permits issued under Section 402 of the CWA, 33 U.S.C. § 1342.
38. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. 122.2.
39. At relevant times to this Order, Respondent was and is the “owner and operator”, as defined in 40 C.F.R. § 122.2, of the WWTPs listed in paragraph 25.
40. The WWTPs listed in paragraph 25 are “facilities”, as defined in 40 C.F.R. § 122.2.
41. The WWTPs listed in paragraph 25 are “point sources” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

42. At relevant times to this Order, Respondent discharged and continues to discharge “pollutants” from outfall 001 of each WWTP listed in paragraph 25 into the Atlantic Ocean.
43. The Atlantic Ocean is a “navigable water” of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
44. Based upon paragraphs 23 through 36, above, Respondent violated Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and implementing regulations, for its failure to submit the DMRs since May 2022 as required by the TPDES permits of the WWTPs listed in paragraph 25; therefore, Respondent is subject to an enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.

IV. **ORDERED PROVISIONS**

In consideration of the Findings of Fact and Conclusions of Law above, EPA has determined compliance with the following ordered provisions is consistent with the authority under Section 309 of the CWA, 33 U.S.C. § 1319.

IT IS HEREBY ORDERED:

45. **Immediately upon receipt of the originals of this Order**, Respondent shall comply with all the requirements and conditions of the TPDES Permits for all listed in paragraph 25.
46. **That within five (5) calendar days upon receipt of this Order by electronic mail** (“email”), an authorized representative of Respondent shall complete the acknowledgment of receipt included as an Attachment 1 of this Order and return it via email to Mr. Jaime Geliga at geliga.jaime@epa.gov. Also, Respondent shall mail, by certified mail (or its equivalent), the signed acknowledgement of receipt to Mr. Geliga to the address specified in paragraph 51, below.
47. **That within thirty (30) calendar days upon receipt of this Order**, Respondent shall electronically submit to EPA’s NetDMR platform the DMRs that has not yet submitted since May 2022 up to the date of issuance of this Order for all WWTPs listed in paragraph 25.
48. **For any DMR that Respondent is unable to submit as requested in paragraph 47, Respondent shall submit, within thirty (30) calendar days upon receipt of this Order**, a written response describing the measures taken to comply with the reporting requirements for outfall 001 of each WWTP listed in paragraph 25 in accordance with their respective TPDES Permits and, moving forward, how Respondent intends to ensure that all DMRs for outfalls 001 are timely submitted in the NetDMR platform.

V. **GENERAL PROVISIONS**

49. Any questions concerning this Order should be directed to Mr. Jaime Geliga at (787) 977-5840, or by email at geliga.jaime@epa.gov.
50. Any documents to be submitted by Respondent as part of this Order shall be sent by email and certified mail (or its equivalent), and shall be signed by an authorized representative (see 40 C.F.R. § 122.22), and shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

51. All information required to be submitted under this Order shall be sent by email and certified mail (or its equivalent) to the following contacts and their addresses:

Austin Callwood, Director
Division of Environmental Protection
VI Department of Planning and Natural Resources
4607 Tutu Park Mall
St. Thomas, VI 00802
austin.callwood@dpr.vi.gov

and

Jaime Geliga, Chief
Municipal Water Programs Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069
geliga.jaime@epa.gov

52. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer, regarding the requested information and the Ordered Provisions, with the following designated Agency representative:

Jaime Geliga, Chief
Municipal Water Programs Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069

53. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.
54. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, the TPDES implementing regulations, or the Permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
55. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in Respondent's liability for civil penalties not to exceed \$64,618 per day for each violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if the Court determines that Respondent has violated the CWA as described above and failed to comply with the terms of this Order. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.
56. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
57. This Order shall become effective upon the date of execution by the Director, Caribbean Environmental Protection Division.

Dated: June 22, 2023

Signed: CARMEN GUERRERO PEREZ
CARMEN R. GUERRERO PÉREZ
Director
Caribbean Environmental Protection Division
Environmental Protection Agency, Region 2

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Date: 2023.06.22 07:49:34 -04'00'