

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

**TROPICAL SHIPPING CONSTRUCTION COMPANY
LIMITED, LLC.**

501 Avenue P
Riviera Beach, Florida 33404

CROWN BAY MARINE CARGO TERMINAL

4 Crown Bay Landfill
St. Thomas, Virgin Islands 00802

TPDES Tracking Number VIU009880

RESPONDENT

Proceeding pursuant to Sections 308(a) and 309(a) of the
Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a).

**ADMINISTRATIVE
COMPLIANCE ORDER AND
REQUEST FOR INFORMATION**

**DOCKET NUMBER
CWA-02-2023-3106**

I. STATUTORY AUTHORITY

1. This Administrative Compliance Order (the “Order”) and Request for Information is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Sections 308(a) and 309(a) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1318(a) and 1319(a).
2. The Administrator has delegated this 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 Act, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with [CWA § 402], the discharge of any pollutant by any person shall be unlawful.”
4. Section 402 of the Act, 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(a)(1) of the Act, 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].”

6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a NPDES permit with respect to a storm water discharge associated with industrial activity.
7. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES program.
8. 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.
9. Pursuant to 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.
10. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete NPDES permit application to EPA.
11. Pursuant to 40 C.F.R. § 122.26(b)(14), certain categories of facilities are considered to be engaging in industrial activity and are required to obtain an NPDES permit for storm water discharges associated with industrial activity.
12. Pursuant to 40 C.F.R. § 122.26(b)(14)(viii), certain transportation facilities were included in the definition of storm water discharge associated with industrial activity.
13. Pursuant to 40 C.F.R. §§ 122.21 and 122.26(b)(14)(viii), operators of certain transportation facilities are required to obtain an NPDES permit for storm water discharges associated with industrial activity.
14. Pursuant to 40 C.F.R. §§ 122.46 and 123.25, NPDES permits shall be effective for a fixed term not to exceed five (5) years, and except as provided in 40 C.F.R. § 122.6, the term of a permit shall not be extended by modification beyond the maximum duration.
15. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides, in relevant part, that, upon application by a State, the Administrator may authorize such State to administer its own permit program for discharges into waters of the United States within its jurisdiction.
16. Section 502(3) of the CWA, 33 U.S.C. § 1362(3), defines the term “State” to include the United States Virgin Islands (“USVI”).
17. Pursuant to the CWA, EPA promulgated regulations known as “State Program Requirements,” which were codified at 40 C.F.R Part 123, as amended.
18. In 1976, the Government of the USVI enacted the VI Water Pollution Control Act (“VIWPCA”). The VIWPCA was codified in Chapter 7 of Title 12 of the USVI Code, 12 V.I.C. § 181, et seq.

19. Pursuant to VIWPCA, the Government of the USVI promulgated regulations known as Territorial Pollutant Discharge Elimination System (“TPDES”), which was codified at Code of the Virgin Island Rules (“CVIR”), Title 12, Chapter 7, Subchapter 184, CVIR 12-007-000.
20. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), and 40 C.F.R Part 123, on June 30, 1976, the EPA approved the request of the Government of the USVI to administer the NPDES Permit Program and delegated responsibility for the implementation of the NPDES program under the TPDES Permit Program to regulate discharges of pollutants into waters of the United States within its territory.
21. Pursuant to 40 C.F.R § 123.24, the approval of the TPDES Permit Program was documented on a Memorandum of Agreement (“MOA”) between EPA and the Government of the USVI, which delegated the responsibility for implementation of the TPDES Permit Program to the Virgin Islands Department of Conservation and Cultural Affairs, which has since been reconstituted as the Virgin Islands Department of Planning and Natural Resources (“DPNR” or the “Department”).
22. On June 20, 2007, the Government of the VI amended the TPDES Regulations to include the issuance of general permits under TPDES Permit Program.
23. The MOA has been further amended by the parties on December 26, 2007, through which the Government of the USVI obtained the authority to issue general permits as part of its delegation under the TPDES Permit Program.
24. Section 185(a) of the VIWPCA, 12 V.I.C. §185(a), states, in part, that except as provided in Chapter 7 and any rule and regulations promulgated hereto, the discharge of pollutants without a permit into waters of the USVI by any person shall be unlawful.
25. Pursuant to Section 184-21(a) of the CVIR, no person shall discharge any pollutant into waters of the USVI without a TPDES permit.
26. Pursuant to Section 184-21(a) of the CVIR, and 40 C.F.R. § 122.26(c)(1), dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.
27. In 2012, the DPNR issued the TPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (“the “2012 MSGP”), pursuant to Subsection 184-46(a)(2)(i) of CVIR. The 2012 MSGP became effective on January 1, 2012 and expired on December 31, 2016.
28. On March 1, 2017, DPNR re-issued the MSGP (the “2017 MSGP”). The 2017 MSGP became effective on March 1, 2017 and expired on February 28, 2022.

29. The CWA and the VIWPCA, and their applicable implementing regulations contain the following definitions:
- a. “Best Management Practices” (“BMPs”) means schedules of activities (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the pollutants to the waters of the United States Virgin Islands. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. 2017 MSGP, Appendix A, and 40 C.F.R. § 122.2;
 - b. "discharge of a pollutant" as any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
 - c. “facility” as 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;
 - d. “industrial activity” as the 10 categories of industrial activities included in the definition of “storm water discharges associated with industrial activity”, as defined in 40 C.F.R. §§ 122.26(b)(14)(i)-(ix) and (xi), and 2017 MSGP, Appendix A.
 - e. "navigable waters" as 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” as any entity with a storm water discharge associated with industrial activity that meets either of the following two criteria:
 - i. the entity has operational control over industrial activities, including the ability to modify those activities; or
 - ii. the entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit). 40 C.F.R. § 122.2 and 2017 MSGP, Appendix A;
 - g. “permit” means 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. The term “permit” does not include any permit which has not been the subject of final agency action, such as a “draft permit” or a “proposed permit”. 40 C.F.R. § 122.2;
 - h. "person" as an individual, corporation, partnership, or association. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;

- i. "point source" as 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 Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;
 - j. "pollutant" as including, 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;
 - k. "storm water associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. 40 C.F.R. §§ 122.2 and 122.26(b)(14);
 - l. "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 122.2; and
 - m. "waters of the United States Virgin Islands" means all waters within the jurisdiction of the United States Virgin Islands including all harbors, streams, lakes, ponds, impoundments reservoirs, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and groundwater, natural or artificial, public or private, situated wholly or partly within or bordering upon the United States Virgin Islands, including the Territorial seas, contiguous zones, and oceans. 12 V.I.C. § 182(f).
30. The 2017 MSGP established among others, Notice of Intent ("NOI") requirements, development, and implementation of a Storm Water Pollution Prevention Plan ("SWPPP"), inspections, monitoring, reporting, recordkeeping, and other special and general conditions.
31. Part 1.3. of the 2017 MSGP required the operator of a facility who seeks permit coverage to submit to DPNR a properly filled NOI form in order to obtain authorization to discharge storm water associated with industrial activity.
32. On January 20, 2023, DPNR issued a No Action Assurance Policy ("NAAP") through which operators of regulated industrial activities that began discharging storm water associated with industrial activity after February 28, 2022 must notify DPNR and comply with the requirements for securing coverage under the expired 2017 MSGP. DPNR's NAAP continues

in effect until DPNR re-issues the MSGP. A copy of the referenced NAAP is found in **Attachment 1** of this Order.

33. Section 308(a)(A) of the Act provides that “[w]henever required to carry out the objective of . . . [CWA Section 402] the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as [the Administrator] may reasonably require.”
34. Section 309(a)(3) of the Act provides that “[w]henever on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the Act, the Administrator] shall issue an order requiring such person to comply with such section....”
35. Section 309(a)(5)(A) of the Act 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.”
36. Notwithstanding the MOA, EPA maintains oversight of the USVI TPDES Permit Program governed under the MOA. The MOA does not preclude any direct federal enforcement action in any case where EPA 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 Act, 33 U.S.C. §§ 1318 and 1319, either on his own motion or when requested to do so by the DPNR Commissioner.
37. Pursuant to Sections 308(a) and 309(a) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a), respectively, and provisions of the MOA, EPA is hereby taking appropriate action to enforce against violations of the VIWPCA and the CWA and their implementing regulations.

II. FACTUAL FINDINGS

38. Tropical Shipping Construction Company Limited, LLC. (“Tropical” or “Respondent”) is a corporation created and authorized to do business under the laws of the USVI.
39. Since the 1980s, Respondent has been in a lease agreement with the Virgin Islands Port Authority (“VIPA”) to occupy a section of the marine cargo complex, which consist of the dock bulkhead, adjacent land parcels and associated infrastructure (including, warehouses, and paved container staging and parking areas) in Crown Bay, St. Thomas, VI. The section

- of the marine cargo complex in question is established on parcels 170-4, 170-2 and Lot 5/6.
40. Respondent is the operator of the referenced section of the marine cargo terminal complex (described in paragraph 39, above) which is situated immediately east of the Crowley Caribbean Services, LLC's Marine Cargo Terminal Facility.
 41. Respondent conducts industrial activities at the Facility that include, but are not limited to:
 - a. Maritime shipping operation – receiving and transferring of inbound commercial bulk cargo and cargo containers from shipside in a designated holding area, loading of commercial bulk cargo and cargo containers (either filled with goods or empty) on ships at the marine docks, intra-Facility transport of and storage of cargo containers, transportation trailers, and vehicles;
 - b. Vehicle, equipment maintenance and general mechanical repair operations – maintenance of the company's vehicle fleet and operations support equipment; and
 - c. Business Office – commercial operations and company administrative functions housed in a series of joined office trailer units.
 42. The marine cargo terminal complex where industrial activities described in paragraphs 39 thru 41, above, is owned by VIPA.
 43. The industrial activities conducted at the Facility, and described in paragraph 41, are best classified under the Standard Industrial Classification ("SIC") Codes 4491 (Marine Cargo Handling) and 4424 (Deep Sea Domestic Transportation of Freight).
 44. On March 23, 2021, and June 17, 2021, pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1311(a), EPA issued separate formal requests for information request letters to Topical, seeking information to determine whether Respondent's operations may be subject to regulations implementing the CWA and VIWPCA, respectively.
 45. EPA's review of Topical's information submittal revealed that Respondent:
 - a. has been discharging a process waste stream in the form of effluent from an oil-water separator into the Charlotte Amalie Harbor without the appropriate TPDES permit.
 - b. has been discharging storm water associated with industrial activity into the Charlotte Amalie Harbor, which are subject to regulations implementing the CWA and the VIWPCA.
 - c. had not submitted a permit application, including a properly filled NOI, and signed and dated SWPPP to the attention of DPNR to secure coverage under the 2017

MSGP, nor an application for an individual permit for its Facility.

46. On September 8, 2022, a duly authorized EPA official conducted a NPDES Stormwater Reconnaissance Inspection (the “2022 Inspection”) at the Facility.
47. On September 13, 2022, the EPA official issued a written request¹ for records for the Agency’s information. EPA received an information submittal from Respondent on September 30, 2022.
48. The findings of the 2022 Inspection and results of EPA’s review of the September 30, 2022 Facility records submittal are detailed in an inspection report (the “2022 Inspection Report”), dated October 28, 2022, and which was transmitted to Respondent on November 9, 2022, and featured in **Attachment 2** of this Order. The 2022 Inspection and Facility records review revealed, among other things, that Respondent:
 - a. conducts industrial activity on-site that is subject to regulations implementing the CWA and VIWPCA;
 - b. failed to apply for coverage under the 2012 MSGP and the 2017 MSGP, for storm water discharges associated with industrial activity from the Facility into the Charlotte Amalie Harbor;
 - c. failed to implement proper storm water runoff management measures in the cargo container staging and storage areas;
 - d. discharges the effluent of its Oil-Water Separator unit into the Facility’s existing storm water drainage system, which in turn, drains into the Charlotte Amalie Harbor;
 - e. did not fully reflect certain features of the Facility’s existing storm water drainage infrastructure identified during the 2022 Inspection, and in the storm water management system plan and drawing submitted to EPA;
 - f. had not implemented proper measures in the vehicle and equipment maintenance operations areas to minimize the potential for leaks, spills and other releases that may be exposed to storm water;
 - g. failed to identify, document and label existing discrete conveyances through which its discharges of storm water associated with industrial activity flow into a water of the USVI and water of the United States; and

¹ An EPA electronic mail (“e-mail”) correspondence through which identified records that were not readily accessible on-site on September 8, 2022 were requested from Tropical for the Agency’s review towards completion of the 2022 Inspection Report.

- h. confirmed that the principals for Tropical’s Marine Cargo Terminal operations in the USVI are Mr. Dean Beitler, Vice President of Human Resources and Safety, and Ms. Nisha Aubain, St. Thomas Island Manager for Cargo Management Operations.
- 49. On December 1, 2022, officials from EPA and DPNR convened a meeting and discussed among other things, the status of compliance with regulations implementing the CWA, the VIWPAC and applicable TPDES permits by Tropical at its Crown Bay Marine Cargo Terminal. EPA and DPNR agreed that EPA will pursue all appropriate steps, in accordance with the MOA, including an enforcement action against Tropical for violations of regulations implementing the VIWPCA, and the CWA at the Facility.
- 50. On December 9, 2022, EPA received Tropical’s response to the 2022 Inspection Report, acknowledging the areas of non-compliance and concerns with regulations implementing the CWA, the VIWPAC and applicable TPDES permits at its Facility, and a description of the proposed actions it is committed to carry-out to come into compliance.
- 51. EPA evaluated Respondent’s response to the 2022 Inspection Report and concluded that Tropical’s proposed Plan of Action (“Tropical’s POA”) is inadequate to bring the Facility into compliance.

III. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATION

- 52. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. §362(5), and Section 182(g) of the VIWPCA, 12 VIC §182(g).
- 53. Respondent has operational control over all industrial activities, including the ability to modify those activities and the day-to-day operational control, conducted at the Facility. Respondent is therefore the “operator” of a “facility,” as defined in 12 CVIR § 184-2(30), and 40 C.F.R. § 122.2.
- 54. The Facility’s storm water collection, conveyance and discharge system is a “point source” pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14), 40 C.F.R. § 122.2, and 12 CVIR § 184-2(62).
- 55. The industrial operations conducted by Respondent are “industrial activity,” as defined by 40 C.F.R. § 122.26(b)(14)(viii), 12 CVIR § 184-52(a), and the 2017 MSGP, App. A.
- 56. Discharges of storm water containing “pollutants” associated with industrial activities conducted at the Facility reach discrete conveyances that drain into Charlotte Amalie Harbor.
- 57. Discharge of a process waste stream containing “pollutants” associated with the operation of an oil-water separator (wastewater treatment system) at the Facility. The effluent of the

oil-water separator flows into the Facility's existing stormwater management system, which in turn drains into Charlotte Amalie Harbor.

58. The Charlotte Amalie Harbor is a "water of the USVI" and a "water of the United States" pursuant to Section 184-2(99), 12 V.I.C. § 182(f) and Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 120.2 and 122.2, respectively.
59. Respondent was and is required to apply for and obtain an appropriate TPDES Permit to discharge process wastewater from treatment of waste streams and storm water containing pollutants associated with industrial activities, respectively, at the Facility pursuant to Sections 185(a) and (b), 12 V.I.C. Chapter 7 of the VIWPCA, and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and Sections 402(a) and 402(p), 33 U.S.C. § 1342(a) and 1342(p), respectively.
60. Respondent violated the requirements of CVIR 12-007-000, §§ 184-31(a)(1) and 184-45(b)(1), through its failure to apply for an individual TPDES permit or seek coverage under the 2012 MSGP, and subsequently under the 2017 MSGP, for its discharges of process wastewater and storm water associated with industrial activity, respectively, from the Facility into a water of the VI and a water of the United States.
61. As of the date of issuance of this Order, Respondent had not applied for and obtained an individual TPDES permit for its discharge of process wastewater from treatment of a process waste stream at the Facility and into waters of the VI and waters of the United States.
62. As of the date of issuance of this Order, Respondent had not applied for and obtained an individual TPDES permit or coverage under a MSGP for its discharges of storm water associated with industrial activity from the Facility into waters of the VI and waters of the United States.
63. Respondent's discharges of process wastewater and storm water associated with industrial activity containing pollutants into a "water of the USVI" and a "water of the United States" constitute a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the applicable TPDES regulations and the VIWPCA.
64. Based upon paragraphs 52 through 63, above, Respondent violated Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the applicable TPDES regulations and the VIWPCA; therefore, Respondent is subject to an enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.

VI. ORDERED PROVISIONS

In consideration of the Findings of Fact and Conclusions of Law and Findings of Violation above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), it is hereby ORDERED that:

65. **Within five (5) days upon receipt of this Order by certified mail**, an authorized representative of the Respondent shall complete the acknowledgement of receipt included as **Attachment 3** of this Order and return it via electronic mail to the EPA's VI Coordinator to the email address identified in Paragraph 85, below. Respondent shall send to the EPA's VI Coordinator, by certified mail (or its equivalent), the original of the signed acknowledgement of receipt.
66. Pursuant to Section 301(a) of the Act, 33 U.S.C. § 1311(a), Respondent shall not discharge process wastewater and storm water associated with industrial activity from the Facility into Charlotte Amalie Harbor, except with authorization under a TPDES permit issued by the Department pursuant to the delegation of authority to the Government of the USVI to administer the NPDES Permit Program under the provision of Section 402(b) of the Act, 33 U.S.C. § 1342(b).
67. **Within thirty (30) calendar days upon receipt of this Order by certified mail**, Respondent shall establish and maintain a written corporate Environmental Compliance Policy and Management Program ("ECPMP") to implement the CWA, the VIWPCA, and the TPDES program requirements at the Facility. If Respondent has such a policy in place, submit a copy of the policy document.

The ECPMP shall include at a minimum:

- a. a company environmental compliance policy and program that establishes a managerial structure with a clear chain of command, personnel responsibilities, and written procedures to implement the requirements of the CWA, the VIWPCA, and the applicable TPDES regulations;
- b. hiring and retaining a new staff (or designating an in-house employee) to undertake responsibility as the Facility's Environmental Compliance Coordinator ("ECC") who is responsible for coordination and implementation of activities to comply with the CWA, the VIWPCA, the TPDES regulations, and other environmental compliance programs impacting proper management of generated process wastewater and storm water flow through the Facility;

The ECC should be a qualified person² with extensive technical and management experience in the environmental field and can direct Respondent's employees in connection with process waste stream and storm water management compliance activities. The ECC should also be able to evaluate the effectiveness of control measures and/or BMPs designed for and implemented at the Facility; and

- c. documentation and record-keeping procedures for preparation and retention of compliance activities records (i.e., related to implementation, inspection and maintenance of control measures; visual assessment of storm water discharges; monitoring; and taking corrective actions).
68. **Within thirty (30) calendar days upon receipt of this Order by certified mail,** Respondent shall develop a Short-term Implement Plan (the "SIP"), that at a minimum, include the compliance tasks described below. These tasks shall be undertaken as quickly as possible, but that completion of the tasks shall not exceed ninety days (90) calendar days from the date of receipt of this Order by certified mail:

General Provisions

- a. development of a storm water management training syllabus and a training schedule for all individuals working in the regulated industrial operations zone of the Facility; and
- b. a list of the names of individuals and their positions identified to receive storm water management training, including members of the Pollution Prevention Team. Refer to Part 5.2.1 of the 2017 MSGP.

Process Waste Stream and Storm Water Management Provisions

- c. segregating identified process waste streams from all storm water streams;
- d. purchasing and installation of, at least, one rain gauge to be installed at a suitable location at the Facility, per manufacturer's recommendations; and
- e. development of a written Rain Gauge Standard Operating Procedure ("Rain Gauge SOP") for the rainfall data collection, management, and recordkeeping.

The Rain Gauge SOP shall at a minimum: (1) include procedures for adequate operation, maintenance and calibration (per manufacturer's specifications) of the Rain Gauge; (2) include, as an appendix, a flow chart describing the key features

² Refer to Appendix A of the 2017 MSGP. A "qualified person" is a person knowledgeable in the principles and practices of industrial storm water controls and pollution prevention and possesses the education and ability to assess conditions at the industrial facility that could impact stormwater quality, and the education and ability to assess the effectiveness of storm water controls selected and installed to meet the requirements of the permit.

of the Rain Gauge; (3) established Rain Gauge reading time in the morning (e.g., 6:00 a.m.) and the afternoon (e.g., 4:00 p.m.) and the data recording process based upon the normal business hours for the Facility; and (4) a monthly precipitation data log where precipitation data is documented at the beginning and end of normal business hours, and it is signed and certified by a representative authorized by Respondent. Respondent shall post a copy of the Rain Gauge flow chart at a suitable location at the Facility where the Rain Gauge was installed.

69. **Within forty-five (45) calendar days of receipt of this Order by certified mail,** Respondent shall submit for EPA's review and approval:
- a. a copy of the ECPMP developed pursuant to paragraph 67, above. In its review of the submitted ECMP, EPA may require Respondent to amend the ECPMP;
 - b. a copy of the SIP, for review and approval, developed pursuant to paragraph 68, above; and
 - c. evidence of the establishment of provisional storm water discharge sampling points.
70. **Within sixty (60) calendar days upon receipt of this Order by certified mail,** Respondent shall prepare a Long-Term Implementation Plan ("LIP"), including an implementation schedule and cost estimates for accomplishing the LIP. The LIP shall include at a minimum:
- a. if record of a topographical site map is not available for submittal to EPA, perform a topographical survey for the development of an up-to-date Topographical Site Map for the Facility, and for further use in the preparation of H/H Study;
 - b. if record of a H/H Study is not available for submittal to EPA, perform H/H Study covering all storm water run-on from the hydrographic areas which might entering and the storm water run-off exiting the Facility to determine the quantity of storm water runoff that may be discharged into the Charlotte Amalie Harbor. The H/H Study shall be based on the topographic survey reference in sub-paragraph 70.a above, and the Precipitation-Frequency Atlas of the United States (Volume 3, Version 4.0: Puerto Rico and the U.S. Virgin Islands), for 24-hour storm events with a return period of two (2) years, ten (10) years, twenty-five (25) years, and one hundred (100) years;
 - c. performance of an Engineering Analysis ("EA") of existing provisions and those identified as being necessary for compliance. The EA shall include at minimum:
 - i. evaluation and identification of all areas for potential pollution release sources;

- ii. identification of non-structural and structural BMPs that are in place to address proper management of process waste streams, and proper management of discharges of storm water;
 - iii. evaluation and identification of feasible structural and non-structural BMPs to be implemented;
 - iv. evaluation and identification of permanent storm water discharge sampling point locations that best represent the discharges of storm water associated with industrial activity from the Facility into the Charlotte Amalie Harbor;
 - v. development of a discharge monitoring plan for the Facility for conduct of visual assessment of storm water discharges and other monitoring; and
 - vi. development of an application to secure an appropriate TPDES permit, which entail, at a minimum, a properly filled NOI form, and preparation of a SWPPP tailored to the industrial activities taking place in the Facility prior to the submittal of the application.
- d. prepare and submit a written summary of the EA conducted by Respondent, which shall include:
- i. an implementation schedule, for identified design, permitting, bidding, construction, and reporting, for completion of all the structural and non-structural BMPs recommended by the licensed engineer admitted in the VI. The implementation schedule shall not exceed one hundred and eighty calendar day (180) from receipt of this Order by certified mail; and
 - ii. estimated costs for implementation of measures evaluated and selected.

71. **Within seventy-five (75) calendar days upon receipt of this Order by certified mail,**
Respondent shall:

- a. submit a copy of the LIP developed pursuant to paragraph 70, above for EPA's review and approval;
- b. submit to DPNR an Individual TPDES permit application for discharge of treated process wastewater into the environment. The Individual TPDES permit application shall, at a minimum, include the prepared relevant forms³, and chemical analyses of identified process waste streams and treated effluents; and
- c. submit to the DPNR a permit application for securing an appropriate TPDES permit for discharge of stormwater associated with industrial activity from the Facility.

³ Forms referenced in paragraph 82 of this Order.

The application shall be signed and dated by an authorized representative of Respondent and shall include a SWPPP tailored to the Facility.

72. The ECPMP, SIP, and LIP shall be developed and organized by a certified professional in the environmental field; preferably, an engineer licensed in the USVI with environmental consulting experience in storm water management regulations.
73. **Immediately upon receipt of EPA's approval, or partial approval of the LIP,** Respondent shall implement the compliance measures in accordance with the compliance schedule approved by EPA.
74. Once Respondent has secured approval to discharge pollutants under a TPDES individual permit or have notified DPNR pursuant to the Department's NAAP for its Facility, Respondent must immediately notify EPA pursuant to paragraph 85 of this Order and comply with the applicable TPDES permitting requirements.
75. **Beginning thirty (30) calendar days from receipt of this Order by certified mail, and continuing until Termination of this Order,** Respondent shall prepare and submit Monthly Progress Reports ("MPR") that cover the status and progress of Respondent's compliance with the Ordered Provisions contained in this Order. Respondent shall:
 - a. describe all compliance actions taken to accomplish the tasks outlined in the SIP and LIP, and related expenses incurred during the period covered in the MPR;
 - b. evidence of the installation of appropriate rain gauge(s) at suitable location(s) on the Facility (e.g., color photographs, purchased order); and
 - c. include the monthly Rain Gauge data logs referenced in sub-paragraph 68.e, above.

The submittal of each MPR is due no later than the fifteenth (15th) day of the month following the month subject to the reporting period. The first MPR is due on April 15, 2023.

VII. REQUESTED INFORMATION

Based on the Conclusion of Law and Findings of Violation, above, and pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), **within thirty (30) calendar days upon receipt of this Order by certified mail,** Respondent shall submit to EPA by email to casey.jim@epa.gov and by certified mail (or its equivalent) to the address specified in paragraphs 85, below, the following information:

76. A copy of all documents identified to be submitted in paragraphs 69, 71 and 75 of this Order.

77. A copy of all current lease agreements entered between Tropical and VIPA, dated after May 12, 2017, for use of property in the Crown Bay Landfill area.
78. A detailed description of the efforts that have been realized regarding planned permanent paving of, and storm water management installation/upgrade for land parcels in the Crown Bay Landfill area, in accordance with any established Memorandum of Understanding (the “MOU”) among Tropical, Crowley and VIPA. Respondent shall include copy of any existing MOU, and other relevant documents, such as copy of the request for proposal and bids selected by either Tropical, or VIPA, and related correspondences between Tropical and VIPA.
79. A copy of the contract(s) entered by either Tropical, or VIPA with the entity(s) selected to perform the permanent paving of, and stormwater management installation/upgrade for land parcels identified in any existing MOU, along with the related project implementation timelines.
80. A copy of permits applied for and secured by either Tropical, or VIPA that are required to implement the permanent paving, associated drainage and other property upgrades at the Facility.

VIII. GENERAL PROVISIONS

81. Any questions concerning this Order should be directed to the following EPA designated official: Jim C. Casey, Senior Environmental Engineer / EPA VI Coordinator, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, and who can be immediately reached at (202) 655-1137, or by email at casey.jim@epa.gov.
82. To apply for a TPDES individual permit, Respondent is advised to access the necessary forms at VIDPNR’s program-related website at “Directions-for-Applying-for-a-Construction-General-Permit-Stormwater.pdf (vi.gov)”, and to contact Ms. Mary Stiehler, VIDPNR’s Water Pollution Control Program Manager at (340) 774-3320 or by email at mary.stiehler@dpr.vi.gov; and/or Mr. Akil Jacobs, Environmental Engineer, Water Pollution Control Program, at (340) 774-3320, or by email at akil.jacobs@dpr.vi.gov, for further guidance.
83. For information about the storm water program, Respondent may review EPA’s web site at <http://water.epa.gov/polwaste/npdes/stormwater/>.
84. Any documents to be submitted by Respondent as part of this Order shall be sent by electronic mail and by certified mail (or its equivalent), and shall be signed by an authorized representative of the respective entity (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.”

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

Austin Callwood
Director, Division of Environmental Protection
V.I. Department of Planning & Natural Resources
4611 Tutu Park Mall, Suite 300, 2nd Floor
St. Thomas, USVI 00802
Email: austin.callwood@dpr.vi.gov

and

Jim C. Casey
Senior Environmental Engineer / V.I. Coordinator
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Tunick Building, Suite 102
1336 Beltjen Road
St. Thomas, USVI 00802
Email: casey.jim@epa.gov

86. Respondent shall have the opportunity, for a period of twenty (20) calendar days from the effective date of this Order, to confer, regarding information requested, and the Ordered Provisions, with the following designated Agency representative: Jim C. Casey, Senior Environmental Engineer, who can be reached through telephone number (202) 655-1137, and email: casey.jim@epa.gov.
87. 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.
88. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable


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 Act.

89. Notice is hereby given that failure to comply with the requirements of Section 308(a) of the CWA (Request for Information) may result in Respondent's liability for civil penalties for each violation of up to \$64,618 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that you have failed to comply with the terms of the Order and/or Information Request. Respondent may also be subject to administrative remedies for a failure to comply with the Information Request, as provided by Section 309 of the CWA, 33 U.S.C. § 1319.
90. Notice is hereby given that failure to comply with the terms of a Compliance Order issued under Section 309(a)(3) of the CWA may result in Respondent's liability for civil penalties for each violation of up to \$64,618 per day pursuant to 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, after notice and opportunity for hearing, the Court determines that Respondent has violated the CWA as described above.
91. 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.
92. This Order shall become effective upon the date of execution by the Director, Caribbean Environmental Protection Division.

Dated: February 14, 2023

Signed: _____

CARMEN
GUERRERO
PEREZ

 Digitally signed by CARMEN
GUERRERO PEREZ
Date: 2023.02.14 06:43:32 -04'00'

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

Attachment