

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

DEPARTMENT OF PLANNING)	
NATURAL RESOURCES)	ACTION NO. T-02-0001
COMMISSIONER DEAN C. PLASKETT, ESQ.,)	
COMPLAINANT,)	
)	
v.)	NOTICE OF VIOLATION,
)	ORDER FOR
DEPARTMENT OF PUBLIC WORKS)	CORRECTIVE ACTION
C/O WAYNE CALLWOOD, COMMISSIONER)	NOTICE OF
6002 ANNA'S HOPE)	ASSESSMENT OF CIVIL
ST. CROIX, VIRGIN ISLANDS)	PENALTY, NOTICE
RESPONDENT.)	OF OPPORTUNITY FOR
)	HEARING

**NOTICE OF VIOLATION AND ADMINISTRATIVE ORDER FOR CORRECTIVE
ACTION**

PROCEEDING UNDER TITLE 19 V.I.C., CHAPTER 56, THE SOLID AND HAZARDOUS WASTE MANAGEMENT ACT (S&HWMA), AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

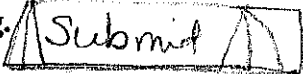
I. STATUTORY AUTHORITY

Pursuant to Title 19 VIC, Section 1553(f), of the S&HWMA and the rules and regulations promulgated thereunder, authority is granted to the Commissioner of the Department of Planning and Natural Resources to issue a Notice of Violation whenever on the basis of any information available to him, he has reason to believe that a violation of any provision of the S&HWMA, or of any rule or regulation or of any order of the Commissioner pursuant thereto has occurred. The standards for management of used oil as set forth in 40 CFR 279, have been adopted by reference in Title 19, Chapter 56, VIRR, Section 1560-503.

II. FINDINGS OF FACT

On April 12, 2001, the Department of Planning and Natural Resources Division of Environmental Protection (DPNR-DEP), pursuant to 19 V.I.C. §1561(c), issued a Notice of Violation and Administrative Order for Corrective Action (NOV) to the Department of Public Works for violations of the Solid and Hazardous Waste Management Act discovered at the solid waste disposal facility located at Estate Bovoni in St. Thomas. Between January 15 and March 14, 2002, the DEP inspectors performed weekly Compliance Evaluation Inspections (CEI) at the Bovoni Facility, and observed many of the same violations that resulted in the

aforementioned NOV. During the inspections, DEP inspectors observed the following deficiencies:

- (1) There is no water available on site for fire fighting. 
- (2) ✓ Respondent could produce no procedures for, nor was there water available on site for dust control.
- (3) ✓ Wild dogs roamed the site at will.
- (4) There are no clearly marked areas for the unloading of waste and no attendant to direct unloading operations.
- (5) ✓ Uncontrolled wind scattered dust, paper and other debris were observed throughout the facility.
- (6) Scavengers were observed sorting and salvaging waste at will.
- (7) Respondent could produce no records of inspections.
- (8) Lateral expansion of the landfill consisting of deposits of garbage fill, auto parts, scrap metal and tires has impacted the wetlands and waters located at the eastern and southern boundaries of the Bovoni Facility.
- (9) Respondent could produce no procedures for the control of on-site populations of vectors.
- (10) Smoke was observed emanating from three blow holes located in the southeastern section of the facility, evidencing high concentrations of methane gas.
- (11) Respondent has no measures in place to control public access to the facility, nor are hours of operation posted at the gate.
- (12) There are no run-on/run-off control systems in place at the facility.
- (13) The facility is causing a discharge of pollutants into the waters of the territory. Specifically, bulk metal and tires have been deposited into the bay at the eastern, southern and western portions of the facility.
- X(14) The Bovoni Facility is being operated without the requisite site permit.

III. STATEMENT OF LAW

1) 19 V.I.R.R. § 1560-1 states:

- (j) "Disposal Site" means all contiguous land and structures, other appurtenances and improvements on the land for the disposal of solid waste, or any sanitary landfill, incinerator, baling or resource recovery facility or any other site authorized and designated by the Commissioner including those having received a permit for the operation thereof, as the final resting place of solid or hazardous wastes.**
- (1) "Facility" means all contiguous land, structures, other appurtenances and improvements on the land used for the disposal of solid waste.**
- (u) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.**
- (aa) "Operator" means the person(s) responsible for the overall operation of the facility.**
- (ab) "Owner" means the person (s) who owns a facility or part of a facility.**
- (af) "RCRA" means the Federal Resource Conservation Recovery Act.**
- (ag) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.**
- (ah) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of the facility.**
- (am) "Solid Waste" means any garbage, refuse, sludge from a wastewater treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water and Pollution Control Act, as amended, or source, special nuclear, or by product material as defined by the Atomic Energy Act of 1954 as amended (68 Stat. 923).**

- 2) 19 VIRR §1560-391.10 states:
 - (a) There shall be an adequate, suitable water supply for firefighting and dust control.
 - (b) No pigs, goats, cattle, donkeys, dogs, chickens, peacocks, or other domestic animals shall be permitted on site.
 - (c) Unloading of waste shall be in a clearly marked area with an attendant to direct the operation.
 - (d) Blowing dust, paper, and other debris shall be controlled.
 - (e) Paper, plastic bags, and other loose material shall be cleaned up from the site at least weekly.
- 3) 40 CFR Part 258, Subpart B states:

§ 258.12 Wetlands.

- (a) New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:
 - (1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;
 - (2) The construction and operation of the MSWLF unit will not:
 - (i) Cause or contribute to violations of any applicable State water quality standard.
 - (ii) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act.
 - (iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973, and
 - (iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;
 - (3) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:
 - (i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the MSWLF unit:
 - (ii) Erosion, stability, and migration potential of dredged and fill materials used to

support the MSWLF unit;

(iii) The volume and chemical nature of the of the waste managed in the MSWLF unit.

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a) (1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, wetlands means those areas that are defined in 40 CFR 232.2(r).

4) 40 CFR Part 258, Subpart C states:

§ 258.20 Procedures for excluding the receipt of hazardous waste.

(a) Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in part 261 of this chapter and polychlorinated biphenyls (PCB) wastes as defined in part 761 of this chapter. This program must include, at a minimum.

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(4) Notification of State Director of authorized States under Subtitle C of RCRA or the EPA Regional Administrator if in an unauthorized State if a regulated hazardous waste or PCB waste is discovered at the facility.

(b) For purposes of this section, regulated hazardous waste means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4 (b) or was not generated by a conditionally exempt small quantity generator as defined in § 261.5 of this chapter.

§258.22 Disease vector control.

(a) Owners or operators of all MSWLF units must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(b) For purposes of this section, disease vectors means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

§258.23 Explosive gases control.

(a) Owners or operators of all MSWLF units must ensure that: (1) The concentration of methane gas generated by the facility does exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(b) Owners or operators of all MSWLF unit must implement a routine methane monitoring program to ensure that the standards of paragraph (a) of this section are met.

(1) The type and frequency of monitoring must be determined based on the following factors:

(i) Soil conditions;

(ii) The hydrogeologic conditions surrounding the facility;

(iii) The hydraulic conditions surrounding the facility; and

(iv) The location of facility structures and property boundaries.

(2) The minimum frequency of monitoring shall be quarterly.

(C) If methane gas levels exceeding the limits specified in paragraph (a) of this section are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the State Director;

(2) within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and

(3) Within 60 days of detection, implement a remediation plan for the methane gas release, place a copy of the plan in the operating record, and notify the State Director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(4)The Director of an approved State may establish alternative schedules for demonstrating compliance with paragraphs (c) (2) and (3) of this section.

(5) For purposes of this section, lower explosive limit means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25° C and atmospheric pressure.

§ 258.24 Air criteria.

(a) Owners or operators of all MSWLFs must ensure that the units not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act, as amended.

(b) Open burning of solid waste, except for the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency cleanup operations is prohibited at all MSWLF units.

§ 258.25 Access requirements.

Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the Environment.

§ 258.26 Run-on/run-off control systems.

(a) Owners or operators of all MSWLF units must design, construct, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(2) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the landfill must be handled in accordance with § 258.27 (a) of this part.

§ 258.27 Surface water requirements.

MSWLF units shall not:

(a) Cause the discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutants Discharge Elimination System (NPDES) requirements, pursuant to section 402.

(b) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirements of an area-wide or State-wide water quality management plan that has been approved under section 208 or 319 of the Clean Water Act, as amended.

§ 258.29 Recordkeeping requirements.

(a) The owner or operator of a MSWLF unit must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under subpart B of this part;

(2) Inspection records, training procedures, and notification procedures required in §258.20 of this part.

- (3) Gas monitoring results from monitoring and any remediation plans required by §258.23 of this part;
 - (4) Any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit as required under § 258.28 (a)(2) of this part.
 - (5) Any demonstration, certification, finding, monitoring, testing, or analytical data required by subpart E of this part;
 - (6) Closure and post-closure care plans and any monitoring, testing, or analytical data as required by §§258.60 and 258.61 of this part; and
 - (7) Any cost estimates and financial assurance documentation required by subpart G of this part.
 - (8) Any information demonstrating compliance with small community Exemption as required by §258.1 (f)(2).
- (b) The owner/operator must notify the State Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating must be furnished upon request to the State Director or be made available at all reasonable times for inspection by the State Director.
- (c) The director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a) and (b) of this section, except for the notification requirements in § 258.10(b) and § 258.55(g)(1)(iii).

IV. CONCLUSIONS OF LAW

- 1) The Government of the United States Virgin Islands Department of Public Works ("Respondent") is a person under 19 V.I.C., §1552 (r).
- 2) Respondent owns and operates a solid waste disposal facility located at Estate Bovoni.
- 3) The failure to provide water for firefighting and dust control violates 19 V.I.R.R., § 1560-391.10(c).
- 4) The failure to prevent dogs at the facility 19 V.I.R.R., § 1560-391.10(d).
- 5) The lack of procedures to insure that sewage, sludge, liquids, and hazardous waste, as defined in Title 40, CFR § 258.2, are not disposed of at the facility violates 19 V.I.R.R., § 1560-301.10(f).
- 6) Respondent's failure to control dust, paper and other debris at the facility violates 19 V.I.R.R., § 1560-301.10(j).

- 7) The failure to control on-site populations of vectors at the facility violates 19 V.I.R.R., § 1560-301.22 (b).
- 8) The failure to keep records of inspection violates 19 V.I.R.R., § 1560-303(b)(2).
- 9) The Respondent's failure to monitor the concentration levels of methane gas at the facility violates 19 V.I.R.R., § 1560-301.23(b).
- 10) The failure to implement a Run-On/Run-Off Control System at the facility violates 19 V.I.R.R. § 1560-301.26.
- 11) The Respondent's discharge of pollutants into the waters of the territory as a result of the lateral expansion of the facility, violates 19 V.I.R.R. § 1560-301.27.
- 12) The Respondent's failure to obtain a site permit violates 19 V.I.R.R. § 1560-300(h).
- 13) The Respondent's failure to have clearly marked areas to unload waste nor an attendant to direct such operations violates 19 V.I.R.R. § 1560-301.10(e).
- 14) Respondent has willfully non-complied with the Notice of Violation and Order for Corrective Action issued April 12, 2001, by failing to take the corrective action ordered within the NOV.

V. DETERMINATION

The Division of Environmental Protection has determined that the Department of Public Works has violated the provisions of 19 V.I.R.R. § 1560-301. 10 and 40 CFR Part 258 subpart B and C by operating the Bovoni Facility in its current state.

VI. ORDER FOR CORRECTIVE ACTION

In consideration of the foregoing Findings of Fact and Conclusions of Law, you are hereby ordered to:

- 1) Have water available on site for firefighting in the event of an emergency. *Submit*
- 2) ✓ Have water available on site for dust control.
- 3) ✓ Institute measures to prevent stray dogs from entering the facility.

- 4) ✓ Institute procedures to insure that sewage, sludge, liquids, and hazardous waste, as defined in Title 40, CFR Part 258, are not disposed of at the facility.
- 5) ✓ Control dust, paper and other debris and institute a weekly clean-up of loose paper and plastic shopping bags.
- 6) ✓ Institute measures to prevent scavengers from accessing the site.
Litter officer stationed at EDDON 4/25/03
- 7) Stop the lateral expansion of the facility into the wetlands and remove all debris that has been deposited into the sea adjacent to the facility. *lmao —*
- copy
- 8) ✓ Keep record of inspections as required by 40 CFR § 258.29.
- 9) ✓ Institute a program or procedure to control the on-site population of disease vectors.

VII. NOTICE OF PENALTY ASSESSMENT

19 V.I.C. §1562(b), authorizes the assessment of a civil administrative penalties of an amount not to exceed \$5,000 for each day of non-compliance with any notice or compliance order issued pursuant to §1561(c) or (d) of this chapter for the first offense, and \$10,000 for a second or subsequent offense. The offenses detailed in Section II above have been determined to constitute second or subsequent offenses. Therefore, in view of the seriousness of the violations involved, and in accordance with the authority of 19 V.I.C. §1562, the Commissioner intends to assess a civil penalty in the amount of \$6,552,000.00 against the Respondent for the aforementioned violations outlined in Section II of Notice of Violation and Order for Corrective Action.

VIII. OPPORTUNITY TO REQUEST A HEARING

DPNR intends to assess the total proposed penalty in accordance with Title 19 V.I.C. § 1562 . You may request a Formal Hearing to contest any allegation(s) set forth in the Notice of Violation and Order or to contest the appropriateness of the penalty amount. To avoid having the above-cited penalty assessed without further proceedings, you must submit a written Answer to this Notice of Violation, including a request for a Formal Hearing to Dean C. Plaskett, Esq., Commissioner of the Department of Planning and Natural Resources, #45 Mars Hill, Fredriksted, St. Croix, Virgin Islands 00840, within thirty (30) days after receipt of this notice.

Your Answer should clearly and directly admit, deny, or explain each of the factual allegations in the Notice of Violation of which you have knowledge. In addition, your Answer should contain (1) a definite statement of the facts that constitute the grounds for your defense, and (2) concise statement of the facts that you intend to place in issue at the Hearing. The denial of any material fact or the raising of any affirmative defense constitutes a request for a Hearing.

Should you decline to file a written Answer within thirty (30) days of receipt of this Notice, such inaction will be construed to constitute an admission of all facts alleged in the Notice of Violation, a waiver of your right to a Formal Hearing and grounds for imposition of the assessed penalty without any further proceedings.

IX. INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a Formal Hearing it is the policy of DPNR to promote early resolution of environmental problems through settlement. An informal conference provides a forum in which you may comment on the allegations made in the Notice of Violation and you may also proffer any additional information that you Consider relevant to the disposition of this matter, including actions you have taken to mitigate the violation, and any special circumstances you care to raise. DPNR is empowered to modify the amount of the assessed penalty under appropriate circumstances to reflect any settlement agreement reached in an informal settlement conference. Any request for an informal settlement conference or any questions you may have relative to this Notice and Order may be directed to Hollis L. Griffin, Director, Division of Environmental Protection at 45 Mars Hill Frederiksted, St. Croix, U.S.V.I. 00840-4474 Telephone (340) 773-0565.

Please take notice that a request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and request for a Hearing must be submitted. The informal conference procedure may be pursued either as an alternative to or simultaneously with the adjudicatory hearing procedures. Please take further notice that participation in a settlement conference Does not constitute assurance of penalty remission. Any settlement that may be reached as a result of the conference will be memorialized in a Consent Order to be issued by the Commissioner of DPNR. The signing of a Consent Order constitutes a waiver of the right to request a hearing on any matter stipulated therein.

X. CAVEAT

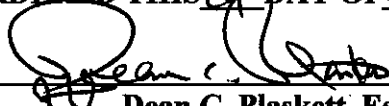
Failure to comply with any of the terms of this order will subject you to additional enforcement action. Compliance with the terms of this order does not constitute a

waiver of your responsibility to comply with all other applicable territorial and federal laws and regulations.

XI. CONTACT

Any questions you may have concerning this action may be directed to Hollis L. Griffin, Director, DEP at (340) 773-1082.

SO ORDERED THIS 7th DAY OF July 2002



Dean C. Plaskett, Esq.

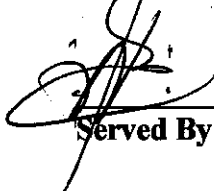
Commissioner, Department of Planning and Natural Resources



Received By

7/31/02

Date



Served By

7/31/02

Date

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

**DEPARTMENT OF PLANNING
NATURAL RESOURCES
COMMISSIONER DEAN C. PLASKETT, ESQ.,
COMPLAINANT,**

v.

**DEPARTMENT OF PUBLIC WORKS
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6002 ANNA'S HOPE
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**NOTICE OF VIOLATION AND ADMINISTRATIVE ORDER FOR CORRECTIVE
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**PROCEEDING UNDER TITLE 19 V.I.C., CHAPTER 56, THE SOLID AND HAZARDOUS
WASTE MANAGEMENT ACT (S&HWMA), AND THE RULES AND REGULATIONS
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I. STATUTORY AUTHORITY

Pursuant to Title 19 VIC, Section 1553(f), of the S&HWMA and the rules and regulations promulgated thereunder, authority is granted to the Commissioner of the Department of Planning and Natural Resources to issue a Notice of Violation whenever on the basis of any information available to him, he has reason to believe that a violation of any provision of the S&HWMA, or of any rule or regulation or of any order of the Commissioner pursuant thereto. The standards for management of used oil as set forth in 40 CFR 279, have been adopted by reference in Title 19, Chapter 56, VIRR, Section 1560-503.

II. FINDINGS OF FACT

On April 11, 2001, the Department of Planning and Natural Resources Division of Environmental Protection (DPNR-DEP), pursuant to 19 V.I.C. §1561(c), issued a Notice of Violation and Administrative Order for Corrective Action (NOV) to the Department of Public Works for violations of the Solid and Hazardous Waste Management Act discovered at the solid waste disposal facility located at Estate Anguilla in St. Croix. On February 25, 2002, the DEP inspectors performed a Compliance Evaluation Inspection (CEI) at the Anguilla Facility, and observed many of the same violations that resulted in the aforementioned NOV. A follow-

up inspection was conducted on March, 2002. During the inspections, DEP inspectors observed the following deficiencies:

- (1) There are large portions of the chain-link fence missing on the northeastern side of the facility.**
- (2) There is no water available on site for fire fighting.**
- (3) Respondent could produce no procedures for, nor was there water available on site for dust control.**
- (4) Wild dogs roamed the site at will.**
- (1) There are no clearly marked areas for the unloading of waste and no attendant to direct unloading operations.**
- (6) Uncontrolled wind scattered dust, paper and other debris were observed throughout the facility.**
- (7) Scavengers were observed sorting and salvaging waste at will.**
- (8) Respondent could produce no records of inspections.**
- (9) Lateral expansion of the landfill consisting of deposits of garbage fill, auto parts, scrap metal and tires has impacted the wetlands and waters located at the eastern and southern boundaries of the Anguilla Facility.**
- (10) Respondent could produce no procedures for the control of on-site populations of vectors.**
- (11) Smoke was observed emanating from three blow holes located in the southeastern section of the facility, evidencing high concentrations of methane gas.**
- (12) Respondent could produce no procedures to insure, nor was there any evidence to indicate that wastes are deposited in two-foot layers or lifts and compacted on a daily basis with at least six inches of dirt or alternative materials.**
- (13) Respondent has no measures in place to control public access to the facility, nor are hours of operation posted at the gate.**

- (14) There are no run-on/run-off control systems in place at the facility.
- (15) The facility is causing a discharge of pollutants into the waters of the territory. Specifically, bulk metal and tires have been deposited into the bay at the eastern, southern and western portions of the facility.
- (16) The Anguilla Facility, due to its location less than 10,000 feet from the runway, poses a potential bird threat to in coming and outgoing aircraft at the Henry A. Rohlsen Airport.
- (17) The Anguilla Facility is being operated without the requisite site permit.

III. STATEMENT OF LAW

(1) 19 V.I.R.R. § 1560-1 states:

- (j) "Disposal Site" means all contiguous land and structures, other appurtenances and improvements on the land for the disposal of solid waste, or any sanitary landfill, incinerator, baling or resource recovery facility or any other site authorized and designated by the Commissioner including those having received a permit for the operation thereof, as the final resting place of solid or hazardous wastes.
- (l) "Facility" means all contiguous land, structures, other appurtenances and improvements on the land used for the disposal of solid waste.
- (u) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.
- (aa) "Operator" means the person(s) responsible for the overall operation of the facility.
- (ab) "Owner" means the person (s) who owns a facility or part of a facility.
- (af) "RCRA" means the Federal Resource Conservation Recovery Act.
- (ag) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.
- (ah) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of the facility.

(am) "Solid Waste" means any garbage, refuse, sludge from a wastewater treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water and Pollution Control Act, as amended, or source, special nuclear, or by product material as defined by the Atomic Energy Act of 1954 as amended (68 Stat. 923).

1. 19 VIRR §1560-391.10 states:

- (a) The disposal site shall be fenced with a gate which shall be locked when the site is closed. Operating hours shall be posted at the gate.
- (c) There shall be an adequate, suitable water supply for firefighting and dust control.
- (d) No pigs, goats, cattle, donkeys, dogs, chickens, peacocks, or other domestic animals shall be permitted on site.
- (e) Unloading of waste shall be in a clearly marked area with an attendant to direct the operation.
- (i) Wastes shall be deposited in two-foot layers or lifts and compacted. A daily cover of at least six inches of compacted earth or alternative materials, as described in Section 1560-301.21 (b) shall be placed over compacted waste.
- (j) Blowing dust, paper, and other debris shall be controlled.
- (k) Paper, plastic bags, and other loose material shall be cleaned up from the site at least weekly.

2. 40 CFR Part 258, Subpart B states:

§ 258.10 Airport Safety

(a) Owners or operators of new MSWLF units, existing units, and lateral expansions that are located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by only piston-type aircraft must demonstrate that the units are designed and operated so

that the MSWLF unit does not pose a bird hazard to aircraft.

§ 258.12 Wetlands.

(a) New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the MSWLF unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard.
(ii) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act.

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973, and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the MSWLF unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

(iii) The volume and chemical nature of the waste managed in the MSWLF unit.

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a) (1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, wetlands means those areas that are defined in 40 CFR 232.2(r).

3. 40 CFR Part 258, Subpart C states:

§ 258.20 Procedures for excluding the receipt of hazardous waste.

(a) Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in part 261 of this chapter and polychlorinated biphenyls (PCB) wastes as defined in part 761 of this chapter. This program must include, at a minimum.

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(4) Notification of State Director of authorized States under Subtitle C of RCRA or the EPA Regional Administrator if in an unauthorized State if a regulated hazardous waste or PCB waste is discovered at the facility.

(b) For purposes of this section, regulated hazardous waste means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4 (b) or was not generated by a conditionally exempt small quantity generator as defined in § 261.5 of this chapter.

§ 258.21 Cover materials requirements.

(a) Except as provided in paragraph (b) of this section, owners or operators of all MSWLF units must cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(b) Alternative materials of an alternative thickness (other than at least six inches of earthen material) may be approved by the Director of an approved State if the owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

(c) The Director of an approved state may grant a temporary waiver from the requirements of paragraph (a) and (b) of this section if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

§258.22 Disease vector control.

(a) Owners or operators of all MSWLF units must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(b) For purposes of this section, disease vectors means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

§258.23 Explosive gases control.

(a) Owners or operators of all MSWLF units must ensure that: (1)
The concentration of methane gas generated by the facility does exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(b) Owners or operators of all MSWLF unit must implement a routine methane monitoring program to ensure that the standards of paragraph (a) of this section are met.

(1) The type and frequency of monitoring must be determined based on the following factors:

- (i) Soil conditions;
- (ii) The hydrogeologic conditions surrounding the facility;
- (iii) The hydraulic conditions surrounding the facility; and
- (iv) The location of facility structures and property boundaries.

(2) The minimum frequency of monitoring shall be quarterly.

(C) If methane gas levels exceeding the limits specified in paragraph (a) of this section are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the State Director;

(2) within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and

(3) Within 60 days of detection, implement a remediation plan for the methane gas release, place a copy of the plan in the operating record, and notify the State Director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(4) The Director of an approved State may establish alternative schedules for demonstrating compliance with paragraphs (c) (2) and (3) of this section.

(5) For purposes of this section, lower explosive limit means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25° C and atmospheric pressure.

§ 258.24 Air criteria.

(a) Owners or operators of all MSWLFs must ensure that the units not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act, as amended.

(b) Open burning of solid waste, except for the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency cleanup operations is prohibited at all MSWLF units.

§ 258.25 Access requirements.

Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the Environment.

§ 258.26 Run-on/run-off control systems.

(a) Owners or operators of all MSWLF units must design, construct, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(2) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the landfill must be handled in accordance with § 258.27 (a) of this part.

§ 258.27 Surface water requirements.

MSWLF units shall not:

(a) Cause the discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutants Discharge Elimination System (NPDES) requirements, pursuant to section 402.

(b) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirements of an area-wide or State-wide water quality management plan that has been approved under section 208 or 319 of the Clean Water Act, as amended.

§ 258.29 Recordkeeping requirements.

(a) The owner or operator of a MSWLF unit must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under subpart B of this part;

(2) Inspection records, training procedures, and notification procedures required in

§258.20 of this part.

(3) Gas monitoring results from monitoring and any remediation plans required by §258.23 of this part;

(4) Any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit as required under § 258.28 (a)(2) of this part.

(5) Any demonstration, certification, finding, monitoring, testing, or analytical data required by subpart E of this part;

(6) Closure and post-closure care plans and any monitoring, testing, or analytical data as required by §§258.60 and 258.61 of this part; and

(7) Any cost estimates and financial assurance documentation required by subpart G of this part.

(8) Any information demonstrating compliance with small community Exemption as required by §258.1 (f)(2).

(b) The owner/operator must notify the State Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating must be furnished upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a) and (b) of this section, except for the notification requirements in § 258.10(b) and § 258.55(g)(1)(iii).

IV. CONCLUSIONS OF LAW

- 1) The Government of the United States Virgin Islands Department of Public Works ("Respondent") is a person under 19 V.I.C., §1552 (r).
- 2) Respondent owns and operates a solid waste disposal facility located at Estate Anguilla.
- 3) The failure to repair the fence around the facility and post the operating hours violates 19 V.I.R.R., § 1560-391.10.
- 4) The failure to provide water for firefighting and dust control violates 19 V.I.R.R., § 1560-391.10(c).
- 5) The failure to prevent dogs at site facility 19 V.I.R.R., § 1560-391.10(d).
- 6) The lack of procedures to insure that sewage, sludge, liquids, and hazardous waste, as defined in Title 40, CFR § 258.2, are not disposed of at the facility

violates 19 V.I.R.R., § 1560-301.10(f).

- 7) Respondent's failure to control dust, paper and other debris at the facility violates 19 V.I.R.R., § 1560-301.10(j).
- 8) The failure to control on-site populations of vectors at the facility violates 19 V.I.R.R., § 1560-301.22 (b).
- 9) The failure to keep records of inspection violates 19 V.I.R.R., § 1560-303(b)(2).
- 10) The Respondent's failure to monitor the concentration levels of methane gas at the facility violates 19 V.I.R.R., § 1560-301.23(b).
- 11) The failure to implement a Run-On/Run-Off Control System at the facility violates 19 V.I.R.R. § 1560-301.26.
- 12) The Respondent's discharge of pollutants into the waters of the territory as a result of the lateral expansion of the facility, violates 19 V.I.R.R. § 1560-301.27.
- 13) The Respondent's failure to obtain a site permit violates 19 V.I.R.R. § 1560-300(h).
- 14) The Respondent's failure to have clearly marked areas to unload waste nor an attendant to direct such operations violates 19 V.I.R.R. § 1560-301.10(e).
- 15) The Respondent's failure to deposit wastes in two-foot layers or lifts, and compacted with a daily cover of compacted earth or alternative materials, violates 19 V.I.R.R. § 1560-391.10(i).
- 16) Respondent has willfully non-complied with the Notice of Violation and Order for Corrective Action issued April 11, 2001, by failing to take the corrective action ordered within the NOV.

V. DETERMINATION

The Division of Environmental Protection has determined that the Department of Public Works has violated the provisions of 19 V.I.R.R. § 1560-301. 10 and 40 CFR Part 258 subpart B and C by operating the Anguilla Facility in its current state.

VI. ORDER FOR CORRECTIVE ACTION

In consideration of the foregoing Findings of Fact and Conclusions of Law, you are hereby ordered to:

- 1) Repair the chain-link fence at the northeastern side of the facility that abuts the race track.
- 2) Have water available on site for firefighting in the event of an emergency.
- 3) Have water available on site for dust control.
- 4) Institute measures to prevent stray dogs from entering the landfill.
- 5) Institute procedures to insure that sewage, sludge, liquids, and hazardous waste, as defined in Title 40, CFR Part 258, are not disposed of at the landfill.
- 6) Control dust, paper and other debris and institute a weekly clean-up of loose paper and plastic shopping bags.
- 7) Institute measures to prevent scavengers from accessing the site.
- 8) Stop the lateral expansion of the landfill into the wetlands and remove all debris that has been deposited into the sea adjacent to the facility.
- 9) Keep record of inspections as required by 40 CFR § 258.29.
- 10) Institute a program or procedure to control the on-site population of disease vectors.
- 11) Have waste deposited waste in two-foot layers or lifts and compacted. Additionally, have a daily cover of at least 6 inches of compacted earth placed over compacted waste, unless an alternative materials are otherwise approved.

VII. NOTICE OF PENALTY ASSESSMENT

19 V.I.C. §1562(b), authorizes the assessment of a civil administrative penalties of an amount not to exceed \$5,000 for each day of non-compliance with any notice or compliance order issued pursuant to §1561(c) or (d) of this chapter for the first offense, and \$10,000 for a second or subsequent offense. The offenses detailed in Section II above have been determined to constitute second or subsequent offenses. Therefore, in view of the seriousness of the violations involved, and in accordance with the authority of 19 V.I.C. §1562, the Commissioner intends to assess a civil penalty in the

amount of \$7,956,000.00 against the Respondent for the aforementioned violations outlined in Section II of Notice of Violation and Order for Corrective Action.

VIII. OPPORTUNITY TO REQUEST A HEARING

DPNR intends to assess the total proposed penalty in accordance with Title 19 V.I.C. § 1562. You may request a Formal Hearing to contest any allegation(s) set forth in the Notice of Violation and Order or to contest the appropriateness of the penalty amount. To avoid having the above-cited penalty assessed without further proceedings, you must submit a written Answer to this Notice of Violation, including a request for a Formal Hearing to Dean C. Plaskett, Esq., Commissioner of the Department of Planning and Natural Resources, #45 Mars Hill, Fredriksted, St. Croix, Virgin Islands 00840, within thirty (30) days after receipt of this notice.

Your Answer should clearly and directly admit, deny, or explain each of the factual allegations in the Notice of Violation of which you have knowledge. In addition, your Answer should contain (1) a definite statement of the facts that constitute the grounds for your defense, and (2) concise statement of the facts that you intend to place in issue at the Hearing. The denial of any material fact or the raising of any affirmative defense constitutes a request for a Hearing.

Should you decline to file a written Answer within thirty (30) days of receipt of this Notice, such inaction will be construed to constitute an admission of all facts alleged in the Notice of Violation, a waiver of your right to a Formal Hearing and grounds for imposition of the assessed penalty without any further proceedings.

IX. INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a Formal Hearing it is the policy of DPNR to promote early resolution of environmental problems through settlement. An informal conference provides a forum in which you may comment on the allegations made in the Notice of Violation and you may also proffer any additional information that you consider relevant to the disposition of this matter, including actions you have taken to mitigate the violation, and any special circumstances you care to raise. DPNR is empowered to modify the amount of the assessed penalty under appropriate circumstances to reflect any settlement agreement reached in an informal settlement conference. Any request for an informal settlement conference or any questions you may have relative to this Notice and Order may be directed to Hollis L. Griffin, Director, Division of Environmental Protection at 45 Mars Hill Frederiksted, St. Croix, U.S.V.I. 00840-4474 Telephone (340) 773-0565.

Please take notice that a request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and request for a Hearing must be submitted. The informal conference procedure may be pursued either as an alternative to or simultaneously with the adjudicatory hearing procedures. Please take further notice that participation in a settlement conference Does not constitute assurance of penalty remission. Any settlement that may be reached as a result of the conference will be memorialized in a Consent Order to be issued by the Commissioner of DPNR. The signing of a Consent Order constitutes a waiver of the right to request a hearing on any matter stipulated therein.

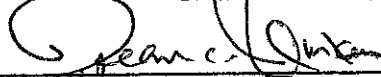
X. CAVEAT

Failure to comply with any of the terms of this order will subject you to additional enforcement action. Compliance with the terms of this order does not constitute a waiver of your responsibility to comply with all other applicable territorial and federal laws and regulations.

XI. CONTACT

Any questions you may have concerning this action may be directed to Hollis L. Griffin, Director, DEP at (340) 773-1082.

SO ORDERED THIS 24 DAY OF July 2002




Dean C. Plaskett, Esq.

Commissioner, Department of Planning and Natural Resources


Received By

7/26/02
Date


Served By

7/26/02
Date