

TWENTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS
Territory of the Virgin Islands
REGULAR/SPECIAL SESSION 20____
ROLL CALL

Bill No. 23-0198

Date: 5/1/2000

Short Title: To amend Title 12, Chapte 7, Virgin Islands code, pertaining to the Water Pollution Control and for related purposes

LEGISLATIVE HISTORY

- (a) Introduced and sent to Committee on.....Date.....
(b) Reported from Committee and sent to Rules on.....
(c) Reported from Committee on Rules.....
(d) Recalled from Committee by Special Order.....
(e) Adopted on.....
(f) Rejected on.....
(g) Vetoed by Governor on.....
(h) Reconsidered by Legislature and passed or rejected
over Governor's Veto on.....

MEMBERS	YEA	NAY	NOT VOTING	ABSENT
BENNERSON, Gregory A.	1			
BERRY, Lorraine L.	2			
BRYAN, Adelbert M.		1		
COLE, Donald "Ducks"	3			
DAVID, Roosevelt St. C.	4			
DONASTORG, Adlah "Foncie"	5			
GOLDEN, Violet Anne	6			
GOMEZ, Judy M.	7			
GOODWIN, George E.	8			
HANSEN, Alicia "Chucky"	9			
JN. BAPTISTE, Norman	10			
JONES, David S.	11			
LIBURD, Almando "Rocky"	12			
PETRUS, Allie-Allison	13			
RICHARDS Vargrave A.	14			

Certified true and correct

14 1
Carine C. Hodge
CLERK

04/11/00 – AMENDED AND REPORTED OUT TO THE FLOOR
03/09/00 – HELD FOR 20 DAYS
02/24/00 – HELD UNTIL NEXT MEETING
01/28/00 – REPORTED OUT TO THE COMMITTEE ON RULES

BILL NO. 23-0198

Twenty-Third Legislature of the Virgin Islands of the United States

JANUARY 21, 2000

To amend Title 12, Chapter 7, Virgin Islands Code, pertaining to water pollution control and for related purposes

PROPOSED BY: Senator Adlah "Foncie" Donastorg

1 BE IT ENACTED by the Legislature of the Virgin Islands:

2 SECTION 1. Title 12, chapter 7, section 182 Virgin Islands Code, is amended in the
3 following instances:

4 (a) Section 182, subsections (g), (h), and (j) are amended to read as follows:

5 (g) "person" means an individual, corporation, partnership, association, territory,
6 or territorial agency, the Government of the Virgin Islands, the Government of the United
7 States, and any board, commission, authority, or independent instrumentality of the
8 Government of the Virgin Islands and the United States Government and any officer,
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agent, or employee thereof, including those having regulatory authority over the discharge of pollutants.

(h) "Commissioner" means the Commissioner of the Department of Planning and Natural Resources, or his designee.

(j) "Point source" including but not limited to any discernible, confined and discrete conveyance, any pipe ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, or landfill leachate collection system from which pollutants are or may be discharged.

(b) Section 182 is further amended by adding new definitions, subsections (r) and (s) to read:

“(r) ‘Federal Water Pollution Control Act’ and ‘Federal Clean Water Act’ used interchangeably, mean the Federal Clean Water Act, 33 U.S.C., section 1251 et seq as amended, and the rules and regulations promulgated there under.

(s) ‘Administrator’ means the Administrator of the United States Environmental Protection Agency.”

SECTION 2. Section 184 is amended in the following instances:

(a) Subsection (i) is amended by striking "due notice and hearing" and inserting in lieu thereof, "public comment or hearing on due notice", and by inserting "water" after "potential".

(b) Subsection (j) (1) is amended by inserting "or pollution" after "wastes".

(c) Subsection (n) is amended by adding at the end thereof the following:
“and general permits as prescribed by rules and regulations not inconsistent with this chapter.”

(d) Section 184 is further amended by adding subsection (s) to read:

"(s) To establish by regulation and collect reasonable fees sufficient to defray costs incurred in developing and administering the permit program requirements and of this chapter.”

SECTION 3. Section 185 is amended in the following instances:

(a) Subsection (a) is amended by inserting after “Islands”, the following: “or the causing of pollution of the waters of the Virgin Islands”.

(b) Subsection (b) is amended by inserting after “Islands”, the following: “and the issuance of any permit under this chapter shall be in accordance with section 401 of the Federal Clean Water Act and shall constitute the certification required for activities there under.

(c) Subsection (f), paragraph (1) (A) is amended by adding at the end “, and the rules and regulations promulgated there under.”

(d) Subsection (f), paragraph (2) (A) is amended by adding after “pollutants”, the phrase, “as may be required under this chapter or by the Federal Clean Water Act and the rules promulgated there under”.

(e) Subsection (g) is amended in the following instances:

(1) Paragraph (1) is amended by inserting after “ waste”, the following:
“or medical waste”; and

(2) In paragraph (3) after "discharge" insert, "any discharge that is in conflict with the Federal Clean Water Act or any discharge"

(f) Subsection (h) (3) is amended by inserting at the end of the paragraph the following: "and the Commissioner may issue permits for pretreatment of discharges of pollutants into publicly-owned treatment works."

(g) Subsection (i) is amended by striking "or suspension" in the catch line and in the first sentence by inserting "or" after Modified and striking "or suspended".

SECTION 4. Section 186 is amended in the following instances:

(a) Subsection (a) is amended by striking the last sentence and inserting in lieu thereof a new sentence to read as follows: "The Commissioner, at least once each three-year period commencing September 30, 1998, shall review applicable water quality standards and, as appropriate, amend, repeal or adopt new standards."

(b) Section 186 is amended further by adding subsection (e) to read:

"(e) (1) Within 180 days after the enactment of this section, the Commissioner shall promulgate rules a regulations designating the waters requiring greater environmental protection for the preservation or enhancement of their water quality and where the discharge from vessels of sewage, whether treated or not, shall be completely prohibited, except that no such designation shall apply until the Commissioner determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the water to which the prohibition would apply.

(2) Within 90 days of the enactment of this section, the Commissioner shall apply to the Administrator of the United States

Environmental Protection Agency, pursuant to 33 U.S.C.A §1322 (f)(4) (A) & (B), respectively, for approval of the sewage-discharge-prohibition established in paragraph (1) of this subsection and for the establishment of a drinking water intake zone where the discharge of sewage from vessels within that zone shall be completely prohibited.

SECTION 5. Section 188 (d) is amended in the second sentence after “persons” where it appears in the second instance by striking “where such endangerment is to the livelihood of such persons, such as inability to market shellfish” and by inserting in lieu thereof, “or is presenting an imminent or substantial threat to the environment.”

SECTION 6. Section 189 is amended in the following instances:

(a) Subsection (b) is amended by inserting after “ Effluent data,” the following: “permits and permit applications”

(b) Subsection (c)(1) is amended by inserting after “ representative” the following: “or authorized contractor”.

(c) Subsection (d) is amended in the following instances:

(1) by designating the existing language as paragraph (1), and by deleting “permits, permit applications” in the first proviso clause; and

(2) by adding a paragraph (2) to read:

“(2) Any authorized representative of the Commissioner or the Administrator, including an authorized contractor acting as a representative of the Administrator or Commissioner, who knowingly or willfully publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by law, any information that is required to be

maintained as confidential under this subsection, shall be fined not more than \$1,000 or imprisoned for not more than one year, or shall be both fined and imprisoned. Nothing in this subsection may prohibit the Commissioner or the Administrator or an authorized representative of the Commissioner or the Administrator, including any authorized contractor acting as representative of the Commissioner or the Administrator, from disclosing records, reports, or information to other officers, employees, or authorized representatives of the Territory or of the United States concerned with carrying out the purpose of this chapter or when relevant in any proceeding under this chapter.”

SECTION 7. Section 190 is amended in the following instances:

(a) In the first sentence of subsection (a) after “action” insert “or may intervene in a civil action”.

(b) In subsection (b) (1) after “permit”, insert “or limitation implementing any section of a permit, any permit filing requirement, any duty to allow or to perform an inspection or to allow the entry upon the premises of authorized persons, or any monitoring requirement, or any requirement imposed in a pretreatment program”.

(c) At the end of subsection (b) (2), (1) add a sentence to read as follows:

“In determining the amount of any penalty assessed under this subsection, the Commissioner shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, the violator’s ability to pay and prior history of such violations, the degree of culpability, economic benefit or savings, if any resulting from the violation, and such other matters as justice may require.”; and

(2) add paragraph (3) to read as follows:

“(3) If no petition for review is filed within the time provided for in section 191 of this chapter, the Commissioner's findings of facts and order shall be conclusive in connection with any enforcement determination or penalty assessment.”

(d) Subsection (c)(1) is amended by striking the language in subparagraphs (A), and (C) in its entirety, by repealing subparagraph (B) and by inserting new subparagraphs (A) and (B) to read as follows:

“(1) Any person who knowingly or negligently

(A) violates any provision of this chapter, any rule or regulation promulgated hereunder, any order of the Commissioner or any permit or permit condition or limitation implementing any such sections in a permit issued under this chapter, or any requirement imposed in a pretreatment program or in any other permit issued by the Commissioner pursuant to the requirements of this chapter; or

(B) introduces into a sewer system or into a publicly owned treatment works, any pollutant or hazardous substance that the person knew, or reasonably should have known could cause personal injury or property damage or who introduces into such treatment works a pollutant or hazardous substance, other than in compliance with all applicable laws, permits or requirements which causes the treatment works to violate any effluent limitation or condition in a permit issued to the treatment works, upon conviction shall be punished by a fine of not less than \$5,000 nor

more than \$75,000 per day of violation, or by imprisonment for not more than 3 year, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or by both imprisonment and fine.

(i) For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(ii) For the purpose of this subsection, the term 'person' means in addition to the definition contained in section 182 of this chapter, any responsible corporate officer."

(iii) For the purpose of this subsection, the, term 'hazardous substance' means (A) any substance designated pursuant to section 311(b) (2) (A) of the Federal Clean Water Act; (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Federal Solid Waste Disposal Act (but not including any waste the regulation of which under the Federal Solid Waste Disposal Act has been suspended by an act of Congress); (D) any toxic

pollutant listed under section 307(a) of the Federal Clean Water Act; and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section (7) of the Toxic Substances Control Act."

SECTION 8. Section 194 is amended by designating the existing language as subsection (a) and by inserting subsections (b) and (c) to read as follows:

"(b) Any person may maintain an action to compel the performance of duties specifically imposed on the Commissioner or on the Department under this chapter; except, no such action may be initiated prior to 30 days after written notice has been given to the Commissioner by complaint specifying the duties that the complainant alleges have not been performed. No bond is required for an action under this subsection.

(c) The Commissioner shall provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions, except when immediate action is necessary to protect human health and the environment adequately."

BILL SUMMARY

Section 1 of the bill amends title 12, section 182 Virgin Islands Code by either adding new definitions or by revising the definitions. The definition of "Commissioner" is amended to change the reference to Department of Conservation and Cultural Affairs and to include the Commissioner's designee within the term.

Section 2, *inter alia*, provides for the establishment of reasonable administrative fees. The fees are established for the purpose of administering the permit program.

Section 3 makes it unlawful to cause any pollution of the waters or the Virgin Islands. The law currently in effect provides that only the discharge of pollutants is unlawful. The section further requires permits to be issued in accordance with section 401 of the Federal Clean Water Act, which governs effluent limitations imposed by EPA in the national pollutant discharge elimination permits. Section 3 also adds medical wastes to the lists of pollutants for which a permit may not be issued. Under section 3 the

1 Commissioner of Planning and Natural Resources will no longer be authorized to
2 suspend the operation of permits. Under this provision, permits may be only revoked,
3 modified or revised during their terms for cause.

4 Section 4 amends section 186 by requiring the Commissioner to review water
5 quality standards every three years. That section also adds a new subsection to section
6 186 which directs the Commissioner to establish no-discharge zones where the discharge
7 of sewage from vessels in certain, specified waters of the Virgin Islands is totally
8 prohibited.

9 The intent of this section is to protect, maintain, preserve, enhance and restore
10 the water quality in certain environmentally sensitive and fragile water bodies, conserve
11 ecologically significant resource areas and to promote the best usage of the water for
12 propagation of desirable species of marine animal and plant life, contact recreation, water
13 supplies and other beneficial uses for the people of the Virgin Islands and for visitors to
14 the Territory. The discharge of sewage into certain waters of the Virgin Islands poses a
15 substantial menace to the water quality of these waters. This bill is intended to lessen the
16 risks from vessel source sewage pollution.

17 Existing law does not regulate the incidence of vessel source sewage pollution.
18 This is largely because federal law relating to the use of marine sanitation devices
19 preempts territorial law. Federal law provides that no state or political subdivision
20 thereof shall adopt or enforce any legislation with respect to the design, manufacture, or
21 installation of use of any marine sanitation device. Nonetheless, federal law does provide
22 for a state's regulation of the discharge of sewage from vessels. Under federal law, a state
23 or territory desiring to prohibit the discharge of sewage from vessels in its waters may
24 petition to Administrator of the Environmental Protection Agency for a no-discharge
25 zone. The administrator must be satisfied that adequate facilities exists for the safe and
26 sanitary removal and treatment exist before the zone will be approved.

This legislation is intended to encourage the advent of pump-out services in the
Virgin Islands and promote improved services for the marine community. Under the
Clean Vessels Act, a grant has been awarded for the establishment of a marine pump out
service.

Section 4 also mandates the Commissioner to apply for a safe drinking water
intake zone. This should protect our desalinization intake areas from the discharge of
sewage.

Section 5 amends section 188 by removing from the definition of "water
pollution emergency", the requirement that the pollution event must endanger persons'
livelihood, *e.g.*, the ability to market shellfish. Under this section, an imminent or
substantial threat to the environment, in addition to the endangerment of human health,
will constitute an emergency, which will invoke the Commissioner's emergency powers
to abate water pollution emergencies expeditiously.

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Section 6 includes permits and permit application among the data that must be made available to the public. This section also makes it unlawful for any authorized representative of the Commissioner or of the Administrator of EPA, including an authorized contractor acting as their representative to knowingly or willfully disclose information required to be kept confidential. The provision imposes a \$1,000 fine or one year's imprisonment, or both for the violation.

Section 7 empowers affected persons to intervene in civil actions brought under Virgin Islands Water and Pollution Act. The present law authorizes citizens to commence civil actions for injunctive relief, but makes no express provisions for intervention. Notwithstanding, affected persons, pursuant to Rule 24 of the Federal Rules of Civil Procedure, may have standing to intervene. Section 7 also establishes certain criteria that the Commissioner must consider in determining the amount of penalty to be assessed against violators. The section increases the penalties for willful and negligent violations.

Section 8 enlarges the requirements for public participation in the decision making and enforcement actions of the Department of Planning and Natural Resources under the Virgin Islands Water pollution control act. The section authorizes citizens to bring an action to compel the implementation of duties conferred upon the Commissioner or the Department of Planning and Natural Resources. It further grants the public an opportunity to be heard in matters concerning the settlement violations of the Water Pollution Control Act.

BR99-0823/ January 14, 1999/Reviewed by YLT

(c) all UST systems equipped with cathodic protection are inspected for proper operation by a qualified, licensed cathodic protection tester at intervals prescribed by the Department and utilizing inspection criteria in accordance with a code of practice developed by a nationally recognized or independent testing laboratory;

(d) all regulated substances stored in the UST system are compatible with the material used in the construction or lining of the tank; and

(e) all repairs to the UST system are properly made by an individual certified by the Department and

(1) performed in compliance with all territorial rules and regulations and requirements, and

(2) conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

§662. Non-operation underground storage tanks; tank closure

(a) When an UST system is temporarily closed, owners and operators shall continue operation and maintenance of corrosion protection and release detection in accordance with rules and regulations no less stringent than the corresponding federal requirements. Release detection is not required so long as the UST system is empty as defined in 40 CFR § 280.70 (7-1-98 edition), relating to temporary closure of UST systems

(b) When an UST system is temporarily closed for 3 months or more, owners and operators shall:

(1) Notify the Department at least 30 days before the temporary closure;

(2) Leave vent lines open and functioning; and

(3) Cap and secure all other lines, pumps, man ways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than 12 months, an own or operator shall permanently close the UST system if it does not meet the either the performance standards for new UST systems in 40 CFR §280.20(7-1-98 edition) for New UST systems or the

1 upgrading requirements in 40 CFR §280.21(7-1-98 edition) or the requirements for new UST
2 systems for upgrading established in the rules and regulations promulgated under this chapter which
3 shall be no less stringent than the federal requirements referenced in this subsection. An owner or
4 operator shall permanently close a substandard UST system at the end of the 12-month period
5 pursuant to regulations no less stringent than the corresponding federal requirements, unless the
6 Commissioner grants an extension of the 12-month, temporary closure period. An owner or operator
7 shall complete a site inspection before the Commissioner may consider an application for such an
8 extension.

9 (d) At least 45 days before beginning either permanent closure or a change-in-service
10 under paragraph (2) of this subsection, an owner or operator shall notify the Commissioner of the
11 intent to permanently close or make the change in service, unless such action is in response to
12 corrective action. The owner or operator shall perform the required assessment of the excavation
13 zone after notifying the Commissioner but before completion of the permanent closure or a change-
14 in-service.

15 (1) To close a tank permanently, an owner or operator shall empty and clean the
16 tank by removing all liquids and accumulated sludges. All tanks taken out of service
17 permanently must be either removed from the ground or filled with an inert, solid material.

18 (2) Continued use of an UST system to store a non-regulated substance is a
19 change-in-service. Before a change-in-service, an owner or operator shall empty and clean
20 the tank by removing all liquid and accumulated sludge and conduct a site assessment as
21 proscribed by rules and regulations no less stringent than the corresponding federal
22 requirements.

23 (3) Before permanent closure or change-in-service is completed, an owner or
24 operator shall measure for the presence of a release where contamination is most likely to
25 present at the UST site.
26

(A) In selecting sample types, sample locations, and measurement methods, an owner or operator shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for detecting the presence of a release.

(B) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under paragraph (3) of this subsection or by any other manner, the owner or operator shall begin corrective action in accordance with rules and regulations no less stringent than the corresponding federal requirements.

(e) The owner of real property on which an UST is located, except as otherwise provided, shall be responsible for performing the procedures for the temporary or permanent closure of an UST if:

(1) The Department is unable to compel the owner or operator to initiate or complete tank closure;

(2) The owner or operator is unknown or cannot be contacted or the underground storage tank is considered by the Department to be abandoned or;

(3) The real property owner refuses to allow access to the tank for purposes of tank closure by the owner or operator.

(f) The owner or operator of an UST shall maintain all records that are capable of demonstrating compliance with tank closure requirements under this chapter and the rules and regulations promulgated thereunder. An owner or operator shall retain the results of the excavation zone assessment for at least for three years after completion of the permanent closure or change-in-service by:

(1) the owner or operator who took the UST system out of service;

(2) any owner or operator of an UST site within three years of a permanent tank closure or change-in-service ; or

(3) mailing the records to the Department of Planning and Resources, if the records cannot be maintained at the closed facility.

§663. Certification; renewal; re-certification; reciprocity; fees

(a) It is unlawful for any individual to design, install, retrofit, repair, maintain, conduct any type of tank testing or analysis, decommission, or temporarily or permanently close a UST system without first complying with the certification requirements established by the Department.

(b) The Commissioner, by regulation, shall establish qualifications and procedures for certification.

(c) The Commissioner, by regulation, shall require re-certification, as necessary, to insure continued compliance.

(d) The Commissioner may waive all or part of the certification requirements of this chapter on a reciprocal basis with any state or territory that has substantially the same standards, and may issue a certificate on the basis of reciprocity.

(e) The Commissioner, by regulation, may establish and collect fees for any certification service performed by the Department for initial certification, re-certification and late filing fees, as may be necessary.

§664. Certificate classification; denial, suspension, or revocation of certification; proof of financial responsibility

(a) The Commissioner may classify certificates issued pursuant to this chapter.

(b) The Commissioner may deny, suspend, or revoke the certification of any person who violates any provision of this chapter, or rule or regulation promulgated thereunder.

(c) The Commissioner may require proof of financial responsibility, including the maintenance of pollution liability insurance, prior to the issuance or renewal of certification.

§665. Recording of UST in land records

For the purpose of placing future purchasers on notice, the owner of the property on which an underground storage tank is located shall record the existence and location of underground storage tank in the office of the Recorder of Deeds in the district where the UST is located.

(a) The Commissioner, by regulation, shall establish the information to be recorded and the procedure to be followed.

(b) If the owner of the real property fails to comply with the provision of this section, the Commissioner may record the required information.

§666 Tank integrity tests

The Commissioner may order the owner or operator of an UST system to perform a tank integrity test if;

(a) there is reason to suspect that there is or has been a release of a regulated substance into the environment;

(b) the age, operation, maintenance records, location or circumstance related to installation, or any other relevant factor so warrant the taking of this precaution to protect human health and the environment; or

(c) the tank integrity test is required by any provision of this chapter, or rule or regulation promulgated thereunder.

§667. Release detection

The Department shall require owners and operators of UST systems to provide an acceptable method, or a combination of methods of release detection for tanks and connected piping in a manner consistent with the protection of human health and the environment, but in no event shall be less stringent than the corresponding federal requirements.

§668. Reporting, investigation and assessing releases, spills and overfills

(a) The owner or operator of an UST systems shall report any release, suspected release, spill or overfill of any regulated substance to the Department within 24 hours of discovery thereof, or within a period specified by the Department or by regulation. Such reporting shall be provided in addition to any other reporting requirement prescribed by territorial or federal law.

(b) The owner or operator of an UST system shall investigate any suspected release, spill or overfill, and if confirmed perform abatement measures as required by the Department or by regulation.

§669. Financial Responsibility

(a) All owners and operators of UST systems, within 180 days of the effective date of this chapter, shall establish and maintain evidence of financial responsibility, as provided for in this section, for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks in at least the following per-occurrence amounts:

(1) For all owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities or that own or operate five or more tanks or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year, \$2,000,000.

(2) For all other owners or operators of petroleum underground storage tanks: \$500,000.

(c) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(1) For owners or operators of four or fewer tanks, an annual aggregate amount of \$1,000,000.

(2) For owners or operators of five or more tanks, an annual aggregate amount of \$2,000,000.

(3) Owners or operators of 10 or more tanks shall establish and maintain a level of financial responsibility as determined by the Commissioner.

(c) Subject to the approval of the Commissioner, an owner or operator of an UST may establish evidence of financial responsibility by any one, or a combination of the following methods:

- (1) commercial or private insurance, including risk retention groups;
- (2) qualification as a self-insurer;
- (3) a guarantee, surety bond, or letter of credit; or
- (4) any other reasonable and economically practicable means.

(d) Surety bonds shall be payable to the Government of the Virgin Islands, to include costs and expenses of the cleanup of any release, as well as damages incurred by the Government, consistent with the provisions of this chapter. Any bond filed with the Department must be issued by a bonding company authorized to do business within the territory.

(e) To qualify as a self-insurer the UST system owner or operator shall

- (1) demonstrate a tangible net worth of at least ten times:

(A) The total of the aggregate amount required in subsection (c) of this section;

(B) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and the amount of liability coverage required under this chapter; and

(C) The sum of the plugging and abandonment costs estimates in effect for which a financial test is used to demonstrate financial responsibility under this chapter.

(2) The owner or operator shall have a tangible net worth of at least \$10,000,000.

(3) The owner or operator shall meet the requirements set forth in 40 CFR 280.95 (7-1-98 edition).

(f) The total liability of any guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to the UST system owner or operator under this section. Nothing in this subsection may be construed to limit any other territorial or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantors for bad faith either in negotiating or in failing to negotiate the settlement of any claim. For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to this section.

(g) Any claim for costs incurred by the Government for taking emergency, preventive, corrective or enforcement action may be filed directly against the bonding company, the insurer, the guarantor, or any other person providing evidence of financial responsibility. Any amount collected or awarded under this subsection shall be paid into the Virgin Islands Underground Storage Tank Trust Fund.

(h) An owner or operator of an UST system shall designate a person within the United States Virgin Islands as his resident agent for service of process, and such designation shall be filed in accordance with rules and regulations promulgated by the Department.

(i) The financial responsibility amounts required by this section, or any portion of such an amount, may be satisfied by utilization of the Virgin Islands Underground Storage Tank

Trust Fund established pursuant to Title 33, chapter 111 of this code, at the discretion of and in a manner determined by the Commissioner.

§670. Corrective Action

(a) Whenever the Commissioner has reason to believe that there is or has been a release or a threat of a release into the environment from a UST system, the Commissioner shall order corrective action for the release from any owner or operator, or from any past owner or operator who has contributed to such release, either jointly or severally. Such corrective action shall be performed in accordance with a plan submitted by or on behalf of the UST system owner or operator and approved by the Commissioner, pursuant to Department policy or rules and regulations. The Commissioner, may order that the necessary corrective action be performed within a reasonable time and in such manner, as may be prescribed in the order.

(b) If the tank owner or operator is unable, as determined by the Commissioner, to perform corrective action as provided for in subsection (a) of this section, the Commissioner, may undertake preventive or corrective action using funds from the Virgin Islands Underground Storage Tank Trust Fund.

(c) To encourage voluntary corrective action, an owner or operator conducting corrective action under this chapter and in good standing in the Virgin Islands Underground Storage Tank Trust Fund, either through the owner's or operator's own personnel or through response action contractors or subcontractors, is entitled to reimbursement of reasonable costs from the trust fund subject to the following provisions:

(1) Before initiating the corrective action, the owner or operator shall submit to and receive approval from the Department of the proposed corrective action plan and projected costs of the corrective action, and once approved the owner or operator may not substantially deviate from the approved costs and corrective action without the prior approval of the Department;

1 (2) The owner or operator shall keep and preserve suitable records of all
2 corrective actions taken and all invoices and financial records associated with costs for
3 which reimbursement will be requested;

4 (3) Upon receipt of a completed corrective action plan, the Commissioner
5 shall make a determination and provide written notice as to whether the owner or
6 operator responsible for corrective action is eligible or ineligible for reimbursement of
7 costs. If the Commissioner determines that the owner or operator is ineligible, a written
8 notice of such ineligibility shall explanation set forth in detail the reasons for the
9 determination;

10 (4) The owner or operator shall submit to the Commissioner within 30 days
11 of the completion of the corrective action a written notice of that fact.

12 (5) No later than 30 days after the submission of the notice as required by
13 paragraph (4) of this subsection, the owner or operator shall submit an application for
14 reimbursement of costs in accordance with criteria established by the Department, or by
15 regulation. The application for reimbursement must include the total amount of the
16 corrective action and the amount of reimbursement sought;

17 (6) The amount of financial responsibility required by Section 669 of this
18 chapter of the owner or operator of an UST system is not eligible for reimbursement from
19 the trust fund nor are costs related to replacement or retrofitting leaking tanks and
20 associated piping.

21 (7) No costs may be reimbursed to the owner or operator until such time as
22 corrective action has been completed in accordance with the plan approved by the
23 Department; except that interim payments may be made if the corrective action is being
24 conducted in accordance with a plan approved by the Department which allows for
25 interim payments.
26

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, if Department finds that any of the following circumstances exist, the owner or operator jointly and severally, shall be liable for up to 100 percent of costs associated with preventive, corrective, or enforcement actions necessary to protect human health or the environment:

(1) The release was due to willful or negligent actions by the owner or operator;

(2) The owner or operator is in arrears of moneys owed to the Virgin Islands Underground Storage Tank Trust Fund;

(3) The owner or operator, in any manner, obstructs the efforts of the Department or its contractors to effectuate corrective action;

(4) The owner or operator of an underground storage tank has stored a regulated substance in a tank that has not been subjected to the environmental assurance fee imposed by Section 672 of the chapter;

(5) The release is from an underground storage tank not registered or issued a permit by the Department in accordance with the provisions of this chapter; or

(6) The owner or operator has failed to comply with a provision of this chapter or rules and regulations promulgated thereunder.

(e) If no underground storage tank owner or operator can be found, the Commissioner, may undertake preventive or corrective actions using funds from the Virgin islands Underground Storage Tank Trust Fund, funds available pursuant to federal law, and payments due from the real property owner by virtue of the fact that he has allowed the subject underground storage tank to exist or be placed on his property. The real property owner shall be deemed to have granted permission to the Department or its contractors or agents to enter its property to investigate and take samples and, when the Commissioner finds that such action is necessary to effectuate the corrective action required to protect human health and the environment.

1 §671. Cost recovery by the Government

2 In the event of any discharge or threatened discharge of a regulated substance, the
3 government of the Virgin Islands or any of its agencies or instrumentalities, may recover in a civil
4 action from any owner, operator, or other responsible person all costs incurred in the prevention,
5 assessment, abatement, or cleanup and removal of any release or threatened release of a regulated
6 substance, including reasonable attorney fees and any other necessary costs of response incurred
7 by the territory or any of its departments, divisions or agencies. The territory shall have a lien on
8 the real property on which the UST system that caused the discharge is located, even if owned by
9 a person other than the owner or operator, if the owner or operator is in privity with the real
10 property owner.

11 §672. Environmental Assurance Fee

12 An Environmental Assurance Fee shall be established in such an amount, as may be
13 determined by the Commissioner as sufficient to assure the funding of emergency, preventive, or
14 corrective action necessary when human health or the environment is, or potentially may be,
15 threatened by a release of regulated substances from a petroleum UST system, at a rate not to
16 exceed two cents per gallon of motor fuel, sold or exchanged by a terminal operator, distributor or
17 dealer.

18 (a) The fee shall be collected and deposited into the Virgin Islands
19 Underground Storage Tank Trust Fund.

20 (b) The owner or operator of any petroleum UST shall maintain proof that he
21 has paid the environmental assurance fee imposed under this section.

22 §673. Record-keeping; furnishing information

23 All owners and operators of UST systems shall maintain records and information relating
24 to tanks, their associated equipment, their contents, repairs, tank system testing, monitoring,
25 analysis, and release detection, including inventory controls, for the operating life of the UST
26 system. All required records and information, including records regarding tank closure, shall be

1 kept at the UST site or at a readily available alternative site and made immediately available for
2 inspection and copying by an authorized employee of the Department.

3 §674. Inspection; right of entry

4 (a) The Commissioner, an authorized employee of the Department, or an authorized
5 contractor or agent of the Department, upon presentation of his credentials, shall have the right to
6 enter upon or through premises of persons subject to this chapter, under the following
7 circumstances:

8 (1) A violation of this chapter, or rules and regulations promulgated pursuant
9 thereto is reasonably believed to be occurring or is reasonably believed to be about to
10 occur, to investigate, take samples of, and copy all records relating to the storage of
11 regulated substances in underground storage tanks, and to inspect for compliance with the
12 requirements imposed under this chapter, or rules and regulations promulgated pursuant
13 thereto, or to determine whether such a violation or threatened violation exists; or

14 (2) A release of a regulated substance in violation of this chapter, or rules
15 and regulations promulgated pursuant thereto is reasonably believed to be occurring or is
16 reasonably believed to have previously occurred, and it is necessary to investigate, take
17 samples, copy all records relating to storage of regulated substances in underground
18 storage tanks, and inspect for compliance with the requirements imposed under this
19 chapter, or the rules and regulations promulgated pursuant thereto in order to determine
20 whether such a current release is occurring or past release has occurred and to conduct
21 appropriate corrective action for any release which may currently exist or may have
22 existed.

23 (3) The Department is conducting systematic inspections of all facilities
24 subject to the requirements of this chapter, or rules and regulations promulgated pursuant
25 thereto in a manner designed to determine compliance or non-compliance, to verify the
26 accuracy of information submitted by owners or operators of regulated UST systems, and

1 to verify adequacy of methods utilized by owners or operators in developing that
2 information.

3 (b) If a person does not consent to an inspection or investigation, the Commissioner,
4 or an authorized employee of the Department, shall have the authority through the Attorney
5 General of the Virgin Islands to seek and shall be entitled to the issuance of a warrant from any
6 court of competent jurisdiction authorizing an inspection or search of the premises based upon a
7 prima facie showing of one or more of the foregoing factors, events, or occasions.

8 (c) Any real property owner or person in possession of property adjoining a leaking
9 underground storage tank site who refuses to allow either the owner or operator of an UST
10 system, or the authorized employees, agents or contractors of the Department, access for purposes
11 of providing corrective action for any contamination that may have migrated onto his real
12 property from the leaking underground storage tank site shall be responsible for the remediation
13 and cleanup of contamination of his property, as well as any contamination that may migrate or
14 have migrated off his property onto the real property of another.

15 §675. Prohibited acts

16 (a) It is unlawful for any person to engage in the storage of regulated substances in
17 underground tanks except in such a manner so as to conform to and comply with any provisions
18 of this chapter, or any of the rules, regulations, and orders promulgated or established pursuant
19 thereto.

20 (b) It is a violation of this chapter to:

21 (1) Cause or permit the release of a regulated substance from an
22 underground storage tank into the environment; or

23 (2) Install an underground storage tank that does not meet the minimum
24 standards in accordance with the provisions of this chapter, or rule and regulations
25 promulgated thereunder.
26

§676. Emergency Orders

Upon receiving information that the operation, maintenance, or condition of an underground storage tank or the surrounding area may present a threat or a hazard to the health of persons or to the environment, or may present an actual or threatened violation of any provision of this chapter, or rule or regulation promulgated thereunder, the Commissioner may issue to the owner or operator an emergency order establishing reasonable and proper methods for the control of the activity, tank closure, removal of contaminated materials, and the management of substances in the tank or the surrounding area in order to reduce or eliminate the hazard or the violation. Such order shall become effective upon issuance. Any person to whom such order is directed shall comply therewith immediately but on application to the Commissioner shall be afforded a hearing within 48 hours. On the basis of such hearing, the Commissioner may continue such an order in effect, revoke it, or modify it.

§677. Administrative Proceedings

(a) Whenever the Commissioner has reason to believe that a violation of any provision of this chapter, or of any rule or regulation promulgated thereunder, or of any order issued pursuant to the provisions of this chapter has occurred, the Commissioner may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter, rule or regulation, or order alleged to be violated, the facts alleged to constitute a violation thereof, and may include any order for necessary corrective action and any penalty assessed pursuant to section 680 of this chapter. An order for corrective action is effective upon issuance. Any person named therein may request in writing, within 15 days after receipt of the notice or order, a hearing before the Commissioner. The request does not act as a stay of the Commissioner's order unless so ordered and directed by the Commissioner or by a Court of competent jurisdiction.

(b) The Commissioner shall afford an opportunity for a hearing to the alleged violator at a time and place designated by the Commissioner. On the basis of the evidence

1 produced at the hearing, the Commissioner, shall make findings of fact and conclusions of law
2 and enter such order as in his opinion will best further the purposes of this chapter. The
3 Commissioner, before entering his order on the basis of the record and recommendations, shall
4 provide an opportunity to the parties to submit for consideration exceptions to the recommended
5 findings of facts and conclusions of law and supporting reasons for such exceptions. The parties
6 shall submit written exceptions within 10 days after the hearing. Written notice of such order
7 shall become final and binding on all parties unless appealed to the appropriate Court as provided
8 for in section 676 of the chapter.

9 (c) Any person who has had a certificate, license, or registration denied, modified,
10 suspended, or revoked shall be afforded an opportunity for a hearing pursuant to the provisions of
11 this section upon written application to the Commissioner within 30 days after receipt of notice
12 from the Commissioner of such denial, modification, suspension or revocation.

13 (d) The Commissioner may provide an expedited hearing to an aggrieved party, if
14 specifically requested by the alleged violator and if circumstances so warrant.

15 (e) The Commissioner may prescribe rules and regulations as are necessary for the
16 lawful and orderly transaction of proceedings and hearings pursuant to the provisions of this
17 chapter.

18 (f) The Commissioner may order testimony to be taken by deposition in any
19 proceedings pending before him. Any person may be compelled to appear, testify and produce
20 papers or documents in the same manner and consistent with same rules as witnesses may be
21 compelled to appear, testify, and produce documentary evidence before the Territorial Court.

22 §678. Review

23 Any person aggrieved by any action, decision, or order of the Commissioner may obtain
24 a review thereof by filing a written petition in the appropriate division of the Territorial Court
25 within 30 days after the date of the action, decision or order, and the petition shall include such
26 information as required by the applicable rules of the Territorial Court.

1 §679. Enforcement

2 In addition to any other any other provisions or procedures set forth in this chapter, if the
3 Commissioner finds that a person is in violation of this chapter, or has failed to comply with any
4 provisions of any order, standard, rule or regulation promulgated or issued in accordance with this
5 chapter, he may file suit, through the Office of the Attorney General, in the Territorial Court, in
6 the district where the noncompliance has occurred, to enjoin the act, obtain compliance or impose
7 a penalty. The Court may issue injunctive relief or such other relief as may be appropriate and
8 may exercise all plenary powers available to it, including but not limited to:

- 9** (1) enjoining the threat of or any further releases;
- 10** (2) ordering design, construction, installation, or operation of alternate
11 facilities;
- 12** (3) ordering the removal of facilities, equipment, contaminated water and
13 soils, and the restoration of the environment;
- 14** (4) assessing and ordering compensation for any public or private property
15 destroyed, damaged or injured;
- 16** (5) assessing and order damages for injury to, destruction of, or loss of
17 natural resources, including the reasonable costs of assessing such injury, destruction, or
18 loss resulting from such a release;
- 19** (6) assessing and awarding punitive damages; and
- 20** (7) ordering reimbursement to any agency or department of the federal or
21 territorial government from any person whose acts caused governmental expenditures
22 pursuant to this Chapter.

23 §680. Penalties**24** (a) Civil Penalties

- 25** (1) Any person who violates any provision of this chapter, or of any rule,
26 regulation, standard promulgated or order issued or under this chapter, shall be subject

to a civil penalty not to exceed \$25,000 for each day of violation for each UST system in violation.

(2) Civil penalties provided under this section may be assessed administratively by the Commissioner against any person who violates any provision of this chapter, or any rule, regulation, standard or order issued or promulgated thereunder.

(b) Criminal Penalties

(1) Any person who knowingly or intentionally violates any provision of this chapter, or any rule, regulation, standard or order issued or promulgated thereunder, shall, upon conviction, be subject to a fine of not less than \$2,500 but not more than \$25,000 per day of violation, or imprisoned not more than one year, or both fine and imprisonment.

(2) Any person who knowingly or intentionally makes any false statement, representation or certification in any application, record, report, plan or other documents filed or required to be maintained under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or by any rule, regulation, or order issued or promulgated thereunder, shall, upon conviction, be subject to a fine of not more than \$25,000, or imprisoned not more than one year, or both fine and imprisonment.

(c) Each violation is a separate and distinct offense and in the case of a continuing violation, continuance of each day thereof may be considered a separate and distinct offense.

§681. Public Participation

(a) Upon timely application any person whose interests may be adversely affected by a release or threatened from a UST system by shall be allowed to intervene as of right in any civil action when the applicant claims an interest relating to the property or transaction which the subject of the action, and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest. The Department

1 of Planning and Natural Resources or any other department or agency of the Government of the
2 Virgin Islands may not oppose any such intervention on the ground that the applicant's interest is
3 adequately represented by the Government.

4 (b) Any person may maintain an action for declaratory and equitable relief to restrain
5 any violation of this chapter. On a prima facie showing of a violation of this chapter, a
6 preliminary injunction shall be issued to restrain any further violation of the chapter. No bond is
7 required for an action under this subsection.

8 (c) Any person may maintain an action to compel the performance of duties
9 specifically imposed on the Commissioner or on the Department under this chapter; except, no
10 such action may be initiated prior to 30 days after written notice has been given to the
11 Commissioner by complaint specifying the duties that the complainant alleges have not been
12 performed. No bond is required for an action under this subsection.

13 (d) The Department shall provide notice and opportunity for public comment on all
14 proposed settlements of civil enforcement actions, except when immediate action is necessary to
15 protect human health and the environment adequately.

16 (e) The Department shall investigate and provide prompt responses to citizen
17 complaints about violations.

18 §682. Confidentiality

19 (1) Any records, reports, or information obtained from any persons shall be available
20 to the public, except that upon a showing satisfactory to the Commissioner by any person that
21 records, reports, or information, or a particular part thereof, to which the Commissioner or any
22 officer, employee, or representative thereof has access, if made public would divulge information
23 entitled to protection under Title 3, Section 881 of this Code, such information or particular
24 portion thereof shall be considered confidential in accordance with the purposes of that section,
25 except that such record, report, document, or information may be disclosed to other officers,
26

employees or authorized representatives of the territory concerned with carrying out the provisions of this Chapter, or when relevant in any proceeding under this chapter.

(2) Any person who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000, or to imprisonment not to exceed one year, or both.

(3) In submitting data under this subchapter, a person required to provide such data may:

(a) designate the data which such person believes is entitled to protection; and

(b) submit such designated data separately from other data submitted under this chapter.

§683. Field Citation Authorization

The Commissioner, by regulation, may establish a field citation program for the issuance of citations by any authorized employee of the Department to any owner or operator of an UST system who violates any provisions of this Chapter, or any rules or regulations promulgated thereunder.

SECTION 2. Title 33, Virgin Islands Code, is amended by adding a new section, to read as follows:

"§ _____. Virgin Islands Underground Storage Tank Trust Fund

(a) There is hereby established the Virgin Islands Underground Storage Tank Trust Fund, referred to as "the Fund", of which the Commissioner of the Department of Planning and Natural Resources, shall serve as Trustee. All underground storage tank registration fees, permit fees, environmental assurance fees and other administrative fees, all fines collected pursuant to title 12, chapter 16 of this code, all fund disbursements that have been recovered, and all monies available for use through the Federal Leaking Underground Storage Tank Trust Fund shall be deposited into the Fund.

(f) Disbursements from the fund may be made by the Commissioner to:

(1) take whatever emergency action necessary or appropriate to assure that public health or safety is not threatened in the event that there is a release or threat of a release of a regulated substance from a petroleum UST system;

(2) take preventative or corrective action where the release of the regulated substance presents an actual or potential threat to human health or the environment where the owner or operator has not been identified or is unable or unwilling to perform corrective action. Such expenditure shall not exceed \$2,000,000, including the costs of emergency actions pursuant to paragraph (1) of this subsection.

(3) provide compensation, in whole or in part, for third-party liability, provided, however, that any such expenditure shall be subject to the following limitations:

(A) A property owner may not be considered a third-party if the property was transferred by the owner or operator of a UST system in anticipation of damage due to a release;

(B) Third-party liability property damage shall be reimbursed from the Virgin Islands Underground Storage Tank Trust Fund based on the rental costs of comparable property during the period of loss of use up to a maximum amount, to be prescribed by regulation. Loss of business or damages as a result thereof may not be reimbursed from the trust fund. In the case of property that is actually destroyed as a result of a petroleum release, reimbursement shall be an amount necessary to replace, restore or repair the destroyed property, whichever is less;

(C) Disbursements for compensating third parties for bodily injury and property damage may not exceed \$2,000,000 and may not include payments

1 for any claim for attorney's fees for third-party claimants, punitive damages, or
2 damages for mental anguish; and

3 (D) In the event of multiple third-party claims, disbursement from
4 the fund shall be apportioned as determined appropriate by the Commissioner to
5 compensate the parties.

6 (4) to pay for all necessary costs of administering the Virgin Islands
7 Underground Storage Tank Trust Fund, including maintaining an office and hiring
8 qualified personnel;

9 (5) to provide reimbursement to eligible owners or operators who have
10 conducted corrective action; and

11 (6) to provide payments to contractors hired by the Department on behalf of
12 owners or operators who are unable, as determined by the Commissioner, to conduct
13 corrective action for petroleum releases for UST systems.

14 (7) to disburse funds allocated to the Virgin Islands Underground Storage
15 Tank Trust Fund from the Federal leaking Underground Storage Tank Trust fund,
16 consistent with territorial and federal regulations.

17 BR00-1158 /January 10, 2000 /Reviewed by YLT
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TWENTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS
 Territory of the Virgin Islands
 REGULAR/SPECIAL SESSION 20____
 ROLL CALL

Bill No. 23-0201

Date: 5/1/2000

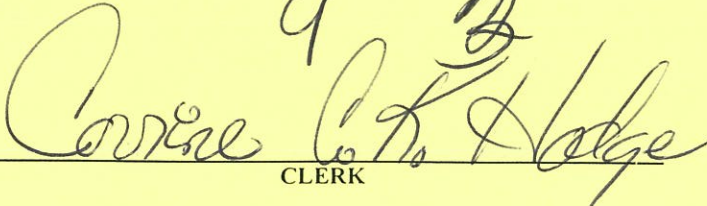
Short Title: _____

LEGISLATIVE HISTORY

- (a) Introduced and sent to Committee on.....Date.....
- (b) Reported from Committee and sent to Rules on.....
- (c) Reported from Committee on Rules.....
- (d) Recalled from Committee by Special Order.....
- (e) Adopted on.....
- (f) Rejected on.....
- (g) Vetoed by Governor on.....
- (h) Reconsidered by Legislature and passed or rejected
over Governor's Veto on.....

MEMBERS	YEA	NAY	NOT VOTING	ABSENT
BENNERSON, Gregory A.		3		X-CRHA
BERRY, Lorraine L.		1		
BRYAN, Adelbert M.	1			
LE, Donald "Ducks"	2			
DAVID, Roosevelt St. C.	3			
DONASTORG, Adlah "Foncie"	4			
GOLDEN, Violet Anne		2		
GOMEZ, Judy M.	5			
GOODWIN, George E.	6			
HANSEN, Alicia "Chucky"	7			
JN. BAPTISTE, Norman				2
JONES, David S.				3
LIBURD, Almando "Rocky"	8			
PETRUS, Allie-Allison	9			
RICHARDS Vargrave A.				4

Certified true and correct


 CLERK

4
3

Amendment to Bill No. 23-0201
Offered by Senator Donastorg

123-113 Bill No. 23-0201 is amended
in the following instances;

1. Page 39, beginning on line
8, delete "Such expenditure
shall not exceed \$2,000,000, including
the costs of emergency actions
pursuant to paragraph (1) of this
subsection." ; and

2. Page 39, beginning on
line 23, delete subitem (c) &
re letter the remaining subitem.