

TWENTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS

Territory of the Virgin Islands
REGULAR/SPECIAL SESSION 19____
ROLL CALL

Bill No. 23-0072

Date: 12/15/99

Short Title: To amend Title 12, Chapter 9, Virgin Islands Code, pertaining to air pollution control

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.	3			
COLE, Donald "Ducks"	4			
DAVID, Roosevelt St. C.	5			
DONASTORG, Adlah "Foncie"	6			
GOLDEN, Violet Anne	14		14 Ckt	
GOMEZ, Judy M.	7			
GOODWIN, George E.	8			
HANSEN, Alicia "Chucky"				1
JN. BAPTISTE, Norman	9			
JONES, David S.	10			
LIBURD, Almando "Rocky"	11			
PETRUS, Allie-Allison	12			
RICHARDS Vargrave A.	13			

Certified true and correct

CLERK

11/30/99 - AMENDED AND REPORTED OUT TO THE FLOOR
07/12/99 - REPORTED OUT TO THE COMMITTEE ON RULES

BILL NO. 23-0072

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

JUNE 8, 1999

To amend Title 12, Chapter 9, Virgin Islands Code, pertaining to air pollution control

PROPOSED BY: Senator Adlah "Foncie" Donastorg

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

2

3 SECTION 1. Title 12, Chapter 9, Virgin Islands Code, is amended by showing

4 the deletions with ~~strikeouts~~ and additions with underline as follows:

5 (a) Section 202 (Definitions) is amended by redesignating subsections (b) through

6 (w) as (c) through (x), and adding a new subsection (b) to read:

7

8 "(b) 'Air pollution' means the presence in the outdoor atmosphere

9 of one or more air contaminant or air pollutant, or any combination

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1 thereof, in sufficient quantities, as defined quantitatively by the
2 Department in its rules and regulations and in the Clean Air Act in its rules
3 and regulations, and of such characteristics and duration as is or is likely to
4 be injurious to public welfare, to the health of human, plant or animal life,
5 or to property, or which unduly interferes with the enjoyment of life of
6 property."

7
8 (b) In Section 202 (Definitions), the redesignated subsection (c) is amended as
9 follows:

10 “(c) ‘Person’ includes an individual, corporation, partnership,
11 association and any officer ~~of~~ or governing or managing body of such
12 entity; and further includes the Government of the Virgin Islands and the
13 Government of the United States, and any board, commission, authority or
14 instrumentality thereof.”

15
16 (c) In Section 202 (Definitions), the redesignated subsection (v) is amended as
17 follows:

18 “(v) ‘~~Statutory~~ Stationary source’ means any building, structure,
19 facility or installation which emits or may emit any air pollutant subject to
20 regulation under the Clean Air Act, as amended.”

21
22 (d) Section 205 (Virgin Islands Air Protection Fund) is amended as follows:
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(1) In subsection (a):

“(a) The Virgin Islands Air Protection Fund is established to be used by the Department as a revolving fund for carrying out the purposes of this chapter pertaining to the Part 70 permit program. To this fund shall be credited all permit fees, penalties and other fees and charges related to this chapter pertaining to the Part 70 permit program, including administrative expenses;”

(2) In subsection (b)(1):

“(b)(1) Administrative expenses, personnel expenses and equipment costs of the Department related to the enforcement of this chapter pertaining to the Part 70 permit program;”

(3) In subsection (b)(2):

“(b)(2) All reasonable (direct and indirect) costs required to implement and support the Part 70 permit program requirements of this chapter, including section 203(b) of this title.”

(e) In Section 206 (Permits), subsection (c) is amended as follows:

“(c) The effective date of the Part 70 permit program promulgated under this chapter shall be the effective date of approval by the Administrator. No Part 70 source required to have a permit under this

chapter shall be in violation of section 206(b) of this chapter before the date on which the source is required to submit an application under this chapter and the rules and regulations promulgated thereto. The Commissioner shall have the authority to issue ~~enforceable~~ non-Part 70 permits during the Administrator's approval process."

(f) In Section 209 (Enforcement), subsection (b) is amended as follows:

"(b) If the alleged violator notifies the Commissioner that he intends to contest a notice of violation issued under subsection (a), the Commissioner shall immediately advise a hearing examiner of such notification, and the hearing examiner shall afford an opportunity for a hearing. The hearing examiner shall thereafter issue a an order, based on findings of fact and conclusions of law affirming, modifying or vacating the Commissioner's notice of violation or proposed penalty order, or directing other appropriate relief. Written notice of such order shall be issued to the alleged violator and such order shall become final and binding on all parties unless appealed to the courts as provided in section 212 within thirty (30) days after its issuance."

(g) The title of Section 212 (Hearings and Judicial Review) is amended as follows:

"Section 212. Hearings ~~and Judicial Review~~"

(h) Section 212(a) is amended as follows:

1 “(a) No rule or regulation and no amendment or repeal thereof, or
2 permit issuance, significant modification, reopening or renewal shall take
3 effect ~~after~~ without public comment and/or hearing on due notice as
4 provided herein.”

5 (i) In Section 215 (Penalties), subsection (a) is amended as follows:

6 “(a) The Commissioner shall, as appropriate, in the case of any
7 person that is the owner or operator of a major emitting facility, or a major
8 stationary source, and may, in the case of any other person, or any source
9 of air pollution, commence a civil action for a permanent or temporary
10 injunction, or assess and recover a civil penalty up to \$50,000 per day per
11 violation ~~for which the~~ or both, for any violation or threatened violation
12 for which the Commissioner is authorized to issue a ~~compliance order~~
13 notice of violation under section 209 of this chapter. It shall not be
14 necessary to first revoke any permit prior to seeking injunctive relief. Any
15 action under this subsection shall be brought in the Territorial Court of the
16 Virgin Islands, and such court shall have jurisdiction to restrain such
17 violation, to require compliance, to assess such civil penalty, to collect any
18 fees and noncompliance assessment owed the Virgin Islands under this
19 chapter, and to award any other appropriate relief. Recourse to and
20 exhaustion of the administrative remedies prescribed in section 209 shall
21 not be a condition precedent to enforcement under this section.”
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(j) In Section 215 (Penalties), Subsection (b)(3) is amended as follows:

“(3) The Commissioner’s authority under this subsection shall be limited to matters where the total penalty sought does not exceed \$250,000. The assessment of any administrative fine in excess of \$250,000 may be enforced by the commencement of a civil action by the Attorney General pursuant to Virgin Islands law.”

(k) In Section 216 (Sampling and Testing), Subsection (c) is amended as follows:

“(c) It shall be the responsibility of the owner or operator of the operation tested to provide, at his expense, reasonable and necessary openings in the system or stack, and safe and easy access thereto, to monitor emissions and to conduct source tests. All new sources of air contaminants erected after the effective date of this act, may be required by the Commissioner to provide adequate openings in the system or stack, and safe and easy access thereto, to permit technically valid measurements and samples to be taken. If a person refuses to supply testing openings, access scaffolding, and other pertinent facilities requested for the purpose of conducting valid emission tests by the Commissioner, the Commissioner shall notify such person to show cause before the Commissioner on a day certain, not less than ten (10) nor more than twenty (20) days from the date of notice, why the equipment should not be sealed.”

1 **SECTION 2.** Title 12, Section 190, Virgin Islands Code, is amended as follows:

2 (a) In Subsection (b), paragraph (1), delete the phrase "\$10,000 per day of such
3 violation" at the end of the sentence and insert in lieu thereof the phrase "\$25,000 per day
4 for each violation".

5 (b) In Subsection (c), paragraph (1)(C), delete the figure "\$2,500" and insert in
6 lieu thereof the figure "\$5,000"; and delete the figure "\$25,000" and insert in lieu thereof
7 the figure "\$50,000".
8

9 **SECTION 3.** Notwithstanding the provisions of Title 12, sections 205, 711 and
10 911(f), Virgin Islands Code, or any other law, fifty percent (50%) of all monies collected
11 by the Government of the Virgin Islands in fiscal years ending September 30, 1999,
12 September 30, 2000 and September 30, 2001, from fines, penalties, settlements and
13 lawsuits involving the coastal zone and air pollution violations, shall be deposited into the
14 Union Arbitration Award and Government Employees Increment Fund ("Fund"),
15 established pursuant to Title 33, section 3066, Virgin Islands Code. Monies deposited
16 into this Fund shall be used for no other purpose than to pay retroactive wages owed to
17 unionized government employees.
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21 BR99-0492/February 3, 1999/ :as
22 Reviewed by: YLT
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Amendment # 25001
Seconded by Sen Holder
Objected by Sen. Donastorg
Adopted

TWENTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS
 Territory of the Virgin Islands
 REGULAR/SPECIAL SESSION 19____
 ROLL CALL

Bill No. 23-0072
 Short Title: _____
 Date: 12/15/99

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

9 DEC 15 1999
Carrie B. Hodge
 Certified true and correct
 CLERK

Drafted
by
legal
counsel

Amendment to Bill NO
23-0072

OFFERED BY SENATOR
DONALD "DUCKS" COLE

Bill NO 23-0072 is
amended by striking
section 3 in its entirety.

Floor Amendment NO 23-081/ Dec 15
Drafted by YLT

Sen. Petrus Government #
Seconded by Sen. Jn Baptiste
Adopted
Sen. Bryan

TWENTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS
 Territory of the Virgin Islands
 REGULAR/SPECIAL SESSION 19____
 ROLL CALL

Bill No. 23-0042
 Short Title: _____

Date: 12/15/99

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

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 Certified true and correct
Corrine C. Hodge
 CLERK

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*Disfilled by
Leg. Council
yet*

**AMENDMENT TO Bill 23-
OFFERED BY SENATOR ALLIE-ALLISON PETRUS**

Bill No. 23- is amended by adding an appropriately numbered section to read as follows:

"SECTION ____.

(a). Section 1562 (a) is amended by striking "\$10 and inserting \$100 in lieu thereof, striking "\$250" and insert ^{1,000}~~\$25,000~~ in lieu thereof and by striking "60" and inserting "180 days.

(b) Section 1562 is amended by adding subsection (c) to read:

(1)"Any person violating Section 1563(23) of this chapter shall be fined for each day of violation not less than five thousand (\$5,000) dollars and not in excess of fifty thousand (\$50,000) dollars or one year imprisonment or both fine and imprisonment. A violator's waste collection permit may be subject to revocation for up to thirty (30) days per violation. No permit shall be revoked or suspended unless the permittee shall be given notice and an opportunity to be heard at a full hearing by the Department of ~~Public~~ ~~Health~~ Planning and Natural Resources on such violation warranting revocation of the permit.

(c) Section 1563 is amended by redesignating the existing subsection (23) as (24) and inserting a new subsection (23) to read:

'(a) Dump, deposit, place, or otherwise dispose or permit the dumping, depositing, placing of otherwise disposing of sewage or sewage sludge at a landfill, or other public or private land.'

SECTION 2

Title 12, Section 190 is amended in the following instances:

- (a) In subsection (b)(1) strike \$10,000 and insert \$50,000 in lieu thereof.
- (b) In subsection (c)(1)(C) insert after the phrase "\$50, 000 per day of violation" add, 'or imprisonment of at least 2 years or both.'

Amendment No. 23-404 / SA / December 14, 1999

Sen. Bryan amended report # 22083 Objected by Sen. Donastorg
Seconded by Sen. Cole

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BENNERSON, Gregory A.		8		X CKH
BERRY, Lorraine L.		1		
BRYAN, Adelbert M.	1			
COLE, Donald "Ducks"	2			
DAVID, Roosevelt St. C.				2
DONASTORG, Adlah "Foncie"		2		
GOLDEN, Violet Anne		3		
GOMEZ, Judy M.		9		B CKH
GOODWIN, George E.		4		
HANSEN, Alicia "Chucky"				4
JN. BAPTISTE, Norman				5
JONES, David S.				6
LIBURD, Almando "Rocky"		5		
PETRUS, Allie-Allison		6		
RICHARDS Vargrave A.		7		

Certified true and correct
Corine [Signature]
 CLERK

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Proposed
by
Legal
Counsel

Amendment to Amendment NO F23-
0080

Offered by Senator Adelbert
M. "Bert" Bryan

Amendment NO F 23-080
is amended by striking
" as much as practicable

Floor Amendment NO 22-083/Dec 15, 1999
Drafted by YLT

*Sen. Holder time served 4-23 1990 released.
 Seconded by Sen. David. Objection by Sen. Lomastorg
 Lost*

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BRYAN, Adelbert M.	2			
COLE, Donald "Ducks"	3			
DAVID, Roosevelt St. C.		6		X CKH
DONASTORG, Adlah "Foncie"		2		
GOLDEN, Violet Anne	4			
GOMEZ, Judy M.	5 5			
GOODWIN, George E.	6			
HANSEN, Alicia "Chucky"				2 CKH
JN. BAPTISTE, Norman				3
JONES, David S.	7			
LIBURD, Almando "Rocky"		3		
PETRUS, Allie-Allison		4		
RICHARDS Vargrave A.			1	

6 7 4 6 1
 Certified true and correct
Corrine G. Hope
 CLERK

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Drafted
by
Legal
Counsel
tup

Revised. tup

Amendment F23-0080 to Bill No. 23-0072

Offered by Senator Violet Anne Golden

Bill No. 23-0072 is amended by adding a new Section to read as follows:

"Section — Any monies collected pursuant to Title 3, §§205, 711, 911(F) Technical
~~Section 2 of this Act~~
~~shall be for violations committed~~
~~in the Territory~~ shall be allocated as much as practicable for that specific district in which the violation occurred."

Amendment No. F23-0080 / 12/15/99 / amp

Drafted
Legal
Counsel
tup

Revised clup

Amendment F23-0080 to Bill No. 23-0072

Offered by Senator Violet Anne Golden

Bill No. 23-0072 is amended by adding a new Section to read as follows:

"Section — Any monies collected pursuant to ~~Section 29 of the Act~~ ^{Title 12, §§205, 711, 911(F)} Technical ~~shall be for violations committed in the Territory~~ shall be allocated as much as practicable ^{ably} for that specific district in which the violation occurred."

Amendment No. F23-0080 / 12/15/99 / amp

Test Holder Experiment # 230000 *Rejected by Sen Donastorg*
Seconded by Sen

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LIBURD, Almando "Rocky"				
PETRUS, Allie-Allison				
RICHARDS Vargrave A.				

Certified true and correct
Corina B. Hodge
 CLERK

Drafted
Legal
Counsel
tup

Amendment F23-0080 to Bill No. 23-0072

Offered by Senator Violet Anne Golden

Bill No. 23-0072 is amended by adding a new Section to read as follows:

"Section ____ Any monies collected pursuant to Section 3 of this Act ~~shall be for violations committed in the Territory~~ shall be allocated as much as practicable for that specific district in which the violation occurred."

Amendment No. F23-0080 / 12/15/99 / amp