

TWENTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS

Territory of the Virgin Islands
REGULAR/SPECIAL SESSION 1998
ROLL CALL

Bill No. 22-0279

Date:

10/8/98

Short Title: ~~To provide for the lump sum appropriation of funds from the Virgin Islands Air Protection Fund for Salaries, operating expenses and for other purposes, of the operating permit program of the Department of Planning and Natural Resources for the fiscal year ending September 30, 1999~~

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.....

Adopted
10/8/98

MEMBERS	YEA	NAY	NOT VOTING	ABSENT
BERRY, Lorraine L.	1			
BRYAN, Adelbert M.		1		
BURKE, Carol	2			
CAMACHO, Miguel A.	3			
DAVID, Roosevelt St. C.	4			
DONASTORG, Adlah "Foncie"	5			
FRETT, Stephen "Smokey"	6			
GOMEZ, Judy M.				
HANSEN, Alicia "Chucky"				1
JONES, David	7			2
LIBURD, Almando "Rocky"	8			
PETRUS, Allie-Allison	9			
REDFIELD, Holland L.	10			
RICHARDS, Vargrave	11			
WHITE, Sr., Celestino A.				3

Certified true and correct

Alicia M. Stueh
CLERK

10/02/98 - REPORTED OUT TO THE FLOOR WITH CLOSE RULE (5 MINUTES DEBATE TIME)
09/28/98 - AMENDED AND REPORTED OUT TO THE COMMITTEE ON RULES

BILL NO. 22-0279**Twenty-Second Legislature of the Virgin Islands
of the United States**

MAY 29, 1998

To provide for the lump sum appropriation of funds from the Virgin Islands Air Protection Fund for salaries, operating expenses and for other purposes, of the operating permit program of the Department of Planning and Natural Resources for the fiscal year ending September 30, 1999

PROPOSED BY: Senators Lorraine L. Berry, Carol M. Burke, Miguel M. Camacho, Roosevelt St. C. David, Adlah "Foncie" Donastorg, Jr., Stephen "Smokey" Frett, Judy M. Gomez, David S. Jones, Almando "Rocky" Liburd, Allie-Allison Petrus, Holland L. Redfield, II and Vargrave A. Richards

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

2 SECTION 1. The following sums, or so much thereof as may be necessary, are
3 hereby appropriated out of the Virgin Islands Air Protection Fund, as established by Act
4 No. 6011, Section 205, for operating expenses, including wages and salaries, and other
5 purposes of the operating permit program, Department of Planning and Natural
6 Resources:
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FUND	505000	V.I. AIR PROTECTION FUND
ORG	4900	PLANNING & NAT RESOURCES
C/CNTR	S50549	AIR POLLUTION CONT AGENCY

PERSONAL SERVICES

UNCLASSIFIED	98,000
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CLASSIFIED	93,534
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ALL OTHER EXPENSES	626,499
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TOTAL	ORG	4900	818,033
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TOTAL FUND	505000	818,033
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SECTION 2. Title 12, Chapter 9, Virgin Islands Code is amended as follows:

(a) Section 202 (Definitions) is amended by redesignating subsections (b) through (w) as (c) through (x), and adding a new subsection (b) to read as follows:

“(b) “Air pollution” means any contaminated dust, fumes, gas, mist, smoke, vapor, odor, or particular matter or any combination thereof which is emitted into or otherwise enters into the ambient air that is or likely to be injurious to the public welfare, human health, animal or plant life to property or causes undue interference with the enjoyment of life or property.”

(b) Section 202 (Definitions) is amended by deleting the word “of” in the first clause of the redesignated subsection (c) and inserting *in lieu* thereof the word “or”.

“(c) “Person” includes an individual, corporation, partnership, association, and any officer or governing or managing body of such entity; and further includes the Government of the Virgin Islands and the

Government of the United States, and any board, commission, authority or instrumentality thereof.”

(c) Section 202 (Definitions) is amended by deleting the word “Statutory” in the redesignated subsection (v) and inserting *in lieu* thereof the word “Stationary”.

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

(d) Section 205 (Virgin Islands Air Protection Fund) is amended as follows:

(1) Subsection (a) is amended by adding the phrase “pertaining to the Part 70 permit program” after the word “chapter” in both sentences.

“(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) Subsection (b)(1) is amended to add the phrase “pertaining to the Part 70 permit program” after the word “chapter”.

“(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) Subsection (b)(2) is amended to add the phrase “Part 70” after the word “the”.

“(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) Section 206 (Permits), Subsection (c) is amended by deleting the word “enforceable” in the last sentence.

“(b) 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 non-Part 70 permits during the Administrator’s approval process.”

(f) Section 209 (Enforcement), subsection (b) is amended by deleting the word “a” in the second sentence and inserting *in lieu* thereof the word “an”, and by adding the

phrase, "be issued to the alleged violator and such order shall" after the word "shall" in the last sentence.

1 “(b) If the alleged violator notifies the Commissioner that he
2 intends to contest a notice of violation issued under subsection (a), the
3 Commissioner shall immediately advise a hearing examiner of such
4 notification, and the hearing examiner shall afford an opportunity for a
5 hearing. The hearing examiner shall thereafter issue an order, based on
6 findings of fact and conclusions of law affirming, modifying or vacating
7 the Commissioner’s notice of violation or proposed penalty order, or
8 directing other appropriate relief. Written notice of such order shall be
9 issued to the alleged violator and such order shall become final and
10 binding on all parties unless appealed to the courts as provided in section
11 212 within thirty (30) days after its issuance.”

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13 (g) Section 212 (Hearings and Judicial Review) is amended by changing the name
14 of that section to “Hearings” *in lieu* of “Hearing and Judicial Review”.

15 “Section 212. Hearings”

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17 (h) Section 212 (Hearings), Subsection (a) is amended by deleting the word
18 “after” and inserting *in lieu* thereof the word “without”.

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20 “(a) No rule or regulation and no amendment or repeal thereof, or
21 permit issuance, significant modification, reopening or renewal shall take
22 effect without public comment and/or hearing on due notice as provided
23 herein.”

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(i) Section 215 (Penalties), Subsection (a) is amended by deleting the phrase “for which the” and inserting *in lieu* thereof the phrase “or both, for any”, and by deleting the phrase “compliance order” and inserting *in lieu* thereof the phrase “notice of violation”, all in the first sentence.

“(a) The Commissioner shall, as appropriate, in the case of any person that is the owner or operator of a major emitting facility, or a major stationary source, and may, in the case of any other person, or any source of air pollution, commence a civil action for a permanent or temporary injunction, or assess and recover a civil penalty up to \$50,000 per day per violation or both, for any violation or threatened violation for which the Commissioner is authorized to issue a notice of violation under section 209 of this chapter. It shall not be necessary to first revoke any permit prior to seeking injunctive relief. Any action under this subsection shall be brought in the Territorial Court of the Virgin Islands, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees and noncompliance assessment owed the Virgin Islands under this chapter, and to award any other appropriate relief. Recourse to and exhaustion of the administrative remedies prescribed in section 209 shall not be a condition precedent to enforcement under this section.”

(j) Section 215 (Penalties), Subsection (b)(3) is amended by adding a second sentence to read 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) Section 216 (Sampling and Testing), Subsection (c) is amended by adding the word “ten” in front of the number (10) in the last sentence.

“(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.”

SECTION 3. Each item of appropriation contained in this Act shall be reduced by the sum expended for objects and purposes of such item between October 1, 1998 and the

effective date of this Act, which sum was expended pursuant to Section 9(e) of the Revised Organic Act of the Virgin Islands.

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BR98-2223/June 2, 1998/ :as

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