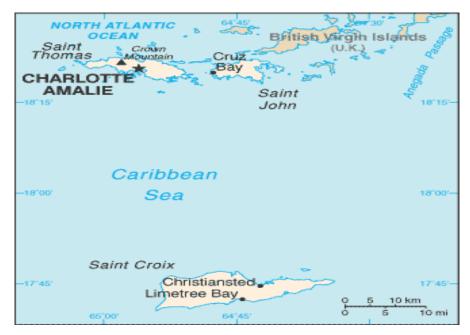


Regulation of the Solid Waste and Waste Water Sectors:

A Novel Assignment for the Virgin Islands Public Services Commission

The Virgin Islands of the United States

The United States Virgin Islands, located in the Leeward, is comprised of four major islands and about 50 cays. St. Thomas and Water Island lie approximately 60 miles east of Puerto Rico. St. John which is the smallest of the major islands is approximately 4 miles east of St. Thomas, and St. Croix, the largest of the islands is about 40 miles south of St. Thomas and St. John.



Map courtesy of: www.lib.utexas.edu/maps/americas.html

The total land area of the Territory is 346.36 km or 133.73 sq mi. and the total acreage is approximately 85,383 acres. St. Thomas and St. John are part of the Puerto Rican geographical bank, known as the Greater Antilles, between the Atlantic Ocean and the Caribbean Sea. St. Croix which is geographically located in the Lesser Antilles, lies completely within the Caribbean Sea.

Virgin Islands	Size	Acreage
St. Croix	84 square miles	54,563 acres
St. Thomas	28 square miles	17,985 acres
St. John	20 square miles	12,835 acres
Water Island		

The year-round population of the Virgin Islands is approximately 115,000. As most of our Caribbean destinations can also boast, the U.S. Virgin Islands is one of the most beautiful and frequently visited vacation spots in the world, bringing an additional 2.2 million visitors each year, many of whom arrive by air and cruise ships. The physical dimensions of the islands are admittedly relatively small, however, the considerable impact caused by increased residential, commercial and industrial development along the islands' hilly slopes and mountainous terrain, sediment and stormwater runoffs that end up in the sewer systems, often amounts to environmental damage and ruinous consequences on the waste treatment systems, and enevitably, on the fragile ecosysems, including our beaches, coral reef systems, seagrass beds, mangrove lagoons and degradation of surrounding waters quality.

The Public Services Commission of the Virgin Islands

The Public Services Commission (PSC) was created in the late 1950's, under Title 3, Section 137(a) of the Virgin Islands Code, to regulate services that were provided by any "public utility." A public utility was then defined as "an individual, firm, co-partnership, association, corporation or other person for compensation," performing any of the specified list of services which were "declared to be affected with a public interest".

Services regulated by the PSC are lighterage¹ and cargo handling; dockage, wharfage, or related cargo services; telephone and cable tv services; water supply services (except retail deliveries); electric power services; passenger services by motor busses or trucks, and ferry services between St. Thomas and St. John (under exclusive franchise only).

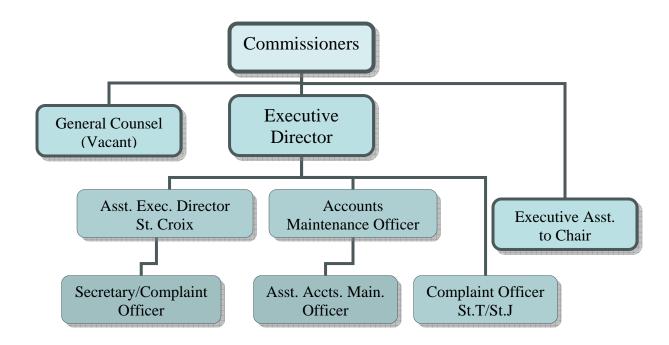
The PSC is a semi-autonomous, quasi-judicial organization with broad mandate to ensure that Virgin Islands consumers receive safe, reliable utility services at reasonable and fair rates. The Commission is comprised of nine members, seven voting members who are nominated by the Governor with consent by the Legislature, to serve three-year terms. Two non-voting Senate members are appointed by the Senate President, at the commencement of their two-year Legislative tenure.

The office of a Public Services Commissioner is part time and Commissioners share critical decision-making duties and responsibilities with full-time professional careers in the public and/or private sectors. This test of strength and endurance is made feasible only by the Commission's qualified, professional staff of seven. The Executive Director, Accounts Maintenance Officer, Executive Assistant to the Chair, Assistant to Accounts Officer and the Complaint Officer reside on St. Thomas. The St. Croix operation is served by the Assistant

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Lighterage is the transportation of goods on a "lighter;" a lighter is a large flatbottom barge, especially one used to deliver or unload goods to or from a cargo ship or transport goods over short distances).

Executive Director and a Complaint Officer. The Commission is presided over by the Chairperson who is elected annually by a majority of votes from the membership.



The PSC faced greater and greater challenges over recent years, as the once monopolistic industries it was created to regulate threatened to reposition themselves toward competitive market driven environments influenced by both pricing and service. As the Commission confronted these challenges we continued to experience increased workloads which directly impacted the size, volume and cost of our operations.

The PSC's operating budget request to the Legislature, in fiscal years 2001 through 2003, sought increases from about \$60,000 to \$87,000 the first year and then approximately another 15% increase the following year. These requests were made in order to automate and upgrade our facilities, ensuring improved efficiency in servicing utilities consumers and greater productivity in addressing the complex issues facing an already stretched organization. So

imagine the enthusiasm and gratification we felt when Bill No. 25-0082 was drafted, introduced and passed by the Legislature in 2003, to amend T. 29, VIC, Chapter 8 "creating a new entity... "that shall be subject to the regulation of the PSC pursuant to V. I. Code T. 30, Chapter 1." Section 500(a)(a), titled Environmental User Fee (EUF), of Bill No. 25-0082 now Act 6638, requires that the PSC review, approve and regulate the EUF.

Regulating Solid Waste and Waste Water Services in the V. I.

Regulation of solid wastes and wastewater services is frankly not the most glamorous area of work that any regulatory authority can hope for. It is, however, one of the most important because of its direct link to the safety and security of our public health and the environment. The Government of the U. S. Virgin Islands (Government) for well over twenty years had struggled with the effects of deteriorating waste management facilities and systems, ineffective asset management and inefficient capital planning. During this continuous struggle the people of the Virgin Islands witnessed legal sanctions by the federal government, consent judgments by the Territory's highest court, our U.S. District Court, and has ultimately led to the passage of legislation.

The Government for many years had not been able to achieve and maintain compliance with local or federal mandatory requirements and regulations. Violations of the provisions of the Air and Water Pollution Control Policies (AWCPC Acts), the Solid Waste Disposal Act, and the V. I. Solid and Hazardous Waste Management Act were cited.

Transfer of Authority

In 2003, the Legislature of the U.S. Virgin Islands proposed the creation of the Virgin

Islands Waste Management Authority (WMA) and, after public hearings, careful scrutiny, and lively debates, that proposal was enacted into law. On January 2, 2004, the Honorable Governor Charles W. Turnbull signed Act No. 6638 into law, creating the Virgin Islands Waste Management Authority. The Waste Management Authority, an autonomous agency, is charged with the responsibility to effectively provide environmentally sound management for the collection

ACT NO. 6638

BILL NO. 25-0082

T\VENTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS
OF THE UNITED STATES

Regular Session 2003

To amend Title 29, Virgin Islands 'Code, to add a new Chapter 8 creating a new entity called the Virgin Islands Waste Management Authority to assume all the powers, duties, and responsibilities pertaining to solid waste and wastewater management services in the Territory, and for other purposes related thereto

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BE IT ENACTED by the Legislature of the Virgin Islands:

SECTION 1. Title 29, Virgin Islands Code, is amended by adding thereto a new Chapter 8 to read as follows:

Chapter 8. VIRGIN ISLANDS WASTE MANAGEMENT AUTHORITY Subchapter I. Waste Management Authority - establishment §494. Declaration of findings and policy

The Legislature hereby finds and declares that:

- (a) The public health and safety and the environment are threatened where wastewater and solid waste is not managed in an environmentally sound manner and where there are not sufficient waste management facilities available;
- (b) Providing environmentally-sound management for the collection and disposal of solid waste, including operation and closure of landfills, along with wastewater collection, treatment and disposal, is essential to the preservation and improvement of the health, welfare and living conditions of the citizens of the Territory as well as to the promotion and growth of industry and employment and the problem of managing wastewater and solid waste have become a matter of territorial concern;

and disposal of solid waste and wastewater collection, movement, treatment and disposal. The WMA inherited the task of effectively operating and maintaining the Territory's waste management infrastructure and thereby achieving and sustaining compliance of the rules and regulations of the V. I. Department of Planning & Natural Resources and the U. S. Environmental Protection Agency.

In order to accomplish this, the solid waste and wastewater functions were transferred from the Department of Public Works (DPW), where they were administered since the late 1950's and early 1960's. Real and personal properties, fixed assets, equipment, etc. were also reassigned to the WMA. Existing contracts held by DPW with vendors, suppliers, solid waste haulers, truckers, waste water treatment facilities and landfill operators, etc. were honored by WMA until their expiration when new WMA contracts were negotiated and issued. Solid waste and wastewater treatment plant division personnel and funds were transferred.

The Start Up of the Virgin Islands Waste Management Authority

Management consulting services were engaged to facilitate the transition, development and progress of the WMA Board and Administration, in assembling its organization and structure. Vision and mission statements were prepared and governance documents were drafted and finalized. The WMA Board bylaws, procurement policies and procedures and a human resources manual were written, reviewed and approved. Still being reviewed and completed are WMA's organization chart, job descriptions and compensation study, Solid Waste and Waste Water Rules and Regulations and a department's Communication Plan.

In addition, financial experts were consulted and conferred with to assist the WMA in developing its financial accounting system and its capital improvement projects and planning. The Authority's financial assets management system was audited. As a result, a new financial management system was implemented.

The Cost of Solid Waste and Wastewater Treatment Systems

Income to support Virgin Islands government's expenditures is derived from several kinds of taxes. As a U. S. territory, the Congress allows the Federal income tax schedules to be

applied in the Islands as a local tax. Our local income tax is the largest source of funding.

Federal excise taxes are collected in the United States on all imports from the Virgin Islands, particularly rum, and they are returned to the islands as matching funds. In order for the Territory to receive these funds, however, it must raise, through local taxes, money with matches in the amount of the excise tax to be rebated. United States Customs revenues collected in the Territory are turned over, after expenses to the Virgin Islands treasury. Other revenues in the Virgin Islands include real property taxes, inheritance taxes, gross receipt taxes, Federal grants in aid, and other services charges, licenses and fees.

As we stated earlier in our paper, solid waste and wastewater treatment systems and services development are capital intensive with high infrastructural improvement and maintenance costs. Because of the unique characteristics of the Virgin Islands, the Government determined that the major financing tool for managing waste efficiently and effectively should be in the form of a waste charge program. In 2003, the prospect of an environmental user fee was introduced. The user fee proposed then was to be collected on the manufacture, sale or importation of goods. It was expected that the fee would address the costs of the goods' ultimate disposal.

Development of the User Fees

In 2004, the WMA commissioned a local consulting firm, the NJR Consulting Group to conduct a study to create the Environmental User (EU) and Wastewater User (WU) fee schedules. The information presented here is based on a commissioned study and analysis performed by NJR and associated consulting firms.

The proposed EUF would be developed to allow the Government to recover the costs of collecting and disposal of solid wastes, while the proposed WUF would be developed to recover the costs of providing waste water service in the Territory. The rate setting objectives and powers of the WMA utilized in this process were those specifically mandated in Section I. Title 29, Virgin Islands Code.

The Target

- I. The objective of the development of the EUF would be to establish a fee, which when assessed to any goods imported into, or made in the Territory would:
 - 1) recover the total cost of providing solid waste service throughout the Territory, and
- 2) would be fair and equitable relative to the contribution of the imported goods or suspended solids, and their packaging, to the solid waste stream (the total pounds of solid waste received at the landfills).

Now, in the legislation authorizing the EUF, it is considered that the EUF would include non-exempt manufacturers of goods consumed in the Territory. After considerable evaluation, it was concluded that virtually all manufactured products and the packaging associated with those products, are imported into the Territory. Practically none of the raw materials are produced within the Territory for use in manufactured products. As a result then, after implementation of the user fee, unless the raw materials used in the manufactured products are exempted as imported goods, the materials in all manufactured products and used to package manufactured products consumed in the Territory, that may find its way to the solid waste or wastewater streams, will have already been assessed an EUF when it was imported into the Territory.

Further, exempting all of these goods at the level of entry into the Territory, in anticipation of applying an EUF rate at the manufactured goods level, would have the advantage of the manufacturers being evidently included in the EUF; however, being able to identify all classes of imported goods, and portions thereof, that should be so exempted would be a challenging, if not an impossible assignment.

In addition, 1) determining a place where the EUF rates on manufactured goods could be collected is very problematic and, 2) there does not appear to be a source for determining on an historical basis the pounds or weight of manufactured goods that would be subject to the EUF and which would be needed to establish the initial EUF rates on those manufactured goods.

Consequently, it was concluded that the raw materials that go into all manufactured goods will have paid an EUF fee; therefore, it was recommended that all manufactured goods be exempt from the EUF on the basis that the materials used in the manufacture of the goods and the associated packaging will have been assessed an EUF at the time that the raw materials used in these applications where imported.

II. The aim of the development of the WUF would be to develop a fee, that when assessed through the property taxes would 1) recover the total cost of providing waste water collection and treatment services throughout the Territory, and 2) would be fair and equitable relative to the benefit received by the properties and the contribution of connected properties to the waste water stream (the total gallons of wastewater received at the Territory's wastewater treatment facilities). The scope also included consideration of a payment from the EUF fund to the WUF fund for the contribution of imported consumable goods to the wastewater stream.

The scope of the Study conducted by the consultants included consideration of the potential need for supplemental funding assistance, in the form of appropriations from the General Fund (GF), for a few years until the EUF and WUF can general sufficient revenues for the VIWMA to become financially self sufficient. The scope of the Study also included evaluation of the economic impact of implementing the EUF and WUF.

The Methodology

I. The EUF Methodology

The process used by the consultants to determine and develop the EUF was to identify and group the commodity codes of all goods imported into the Territory into EUF Rate Groups based upon similar rates of transfer of the imported goods and packaging to the solid waste stream (pounds to solid waste stream/pounds of imported goods for each EUF Rate Group). A second engineering consulting firm was then engaged and utilized to assist in determining the classification of commodity codes into EUF Rate Groups and also in determining the waste transfer rates of the product and packaging to the solid waste stream for each EUF Rate Group. The source of commodity code import data used was historical import data for the Territory derived from the U. S. Customs Service for the calendar year 2004.

An EUF Rate Model was developed which included a revenue forecast component, a cost of service component and a rate determination component for the EUF. The classification of commodity codes into EUF Rate Groups and the estimated pounds of waste to be transferred to the waste stream from each EUF Rate Group were incorporated into the EUF Rate Model. The test year used was 2007 and based on this test year, costs of service and estimated pounds of

imported goods projected to be transferred to the solid waste stream in the test year, the EUF Rate model calculated a cost per pound of solid waste estimated to be disposed of at the landfills during that test year. This cost per pound was multiplied times the estimated pounds to be transferred to the solid waste stream for each EUF Rate Group in the test year to determine the test year revenue requirement for each EUF Rate Group. This test year revenue requirement for each EUF Rate Group was divided by the estimated test year pounds of imported goods for each EUF Rate Group to determine the EUF Rate per pound for each EUF Group in the test year. This EUF Rate per pound in the test year, when charged to the total pounds of all goods estimated to be imported to the Territory during the test year, will recover the total EUF test year revenue requirement in each EUF Rate Group and in total. As stated earlier, the EUF revenue requirements also include a transfer out to the WUF fund for the transfer of consumable goods to the waste water stream.

II. The WUF Methodology

The process used to develop the WUF was to determine the total equivalent residential units (ERUs) that are served and that benefit from the provision of wastewater service throughout the Territory. This included an allocation of a portion of the wastewater costs of service to the general welfare and environmental benefit to all citizens of the Virgin Islands, and a portion to the properties that are connected to the Territory's wastewater system.

The costs of service allocated to the general welfare and environmental benefit of all USVI citizens were included in a Base Fee that was calculated with the assumption that it will be paid by all properties in the Territory, those connected as well as those not connected to the Territory's wastewater system. The Base Fee was calculated as a fixed monthly fee for all properties, regardless of the type or size.

The Results

The initial user fee rates developed during the WMA Study were developed in the context of a ten (10) year long term projection of financial results. It was determined during the Study that a "phasing in" of the user fee rates from partial to full cost recovery over a three-year period would reduce and temper the "rate shock" of implementation of a new fee on imported goods

and would enhance the public acceptance of the new fee. It was also determined that a phase-in of the WUF from partial to full cost recovery over a number of years would also reduce and temper the shock of a very large increase over the current Sewer User Fee, that would occur if the full cost recovery WUF were to go into effect at once.

In the total years of the project period, it is assumed that the EUF fund would have transferred over \$6 million to the WUF fund, which will be included in the WUF rate for imported consumable goods (suspended solids) that are discharged into the Territory's wastewater system.

The Economic Impact

When it comes to deciding what to do with scarce public resources the process calls for either cost-benefit analysis or economic impact analysis. The goal of cost-benefit analysis is to understand the efficiency of public projects or policy; would the benefit of the public project or policy out-weigh the cost to implement it? On the other hand, the goal of economic impact analysis is to estimate the sum effect, including the primary, secondary and perhaps even the tertiary economic effects, which the public project or policy will have on the Territory. What happens to business activity, jobs, and wages when a particular public project or policy is implemented?

The findings of these analyses were essentially summarized by the consultants as follows:

In terms of economic impacts, reduced consumer and household spending caused by the EUF and WUF is expected to be mitigated to a large degree from the capture of direct and indirect economic benefits of incremental WMA operating and capital spending. A reduction in consumer demand resulting from proposed EUF and WUF tariffs is estimated to generate a total loss in economic output of \$38 million, reducing employment and earnings by 223 jobs and \$11 million in wages and salaries, respectively. However, incremental output from operating and capital spending is expected to generate approximately \$32 million in additional output, about 200 jobs and up to \$10 million in wages and salaries. There should, therefore, be no significant net economic impact (positive or negative) to the local economy resulting from the proposed solid waste and wastewater management program and fees.

The proposed EUF, however, is subject to market reactions at the retail sales level. As businesses are confronted with the cost of the EUF, either directly upon goods that they import to the Territory, or indirectly through higher prices of goods purchased from the importers of those goods into the Territory, they must make free market decisions.

They must first decide to either pass through all or a portion of the increased cost of goods to their customers. If they do not, or cannot pass through all of the increased costs because of competitive pressure, they will have to accept less profit.

Secondly, if all or a considerable portion of the increased costs cannot be passed through to customers in the price of retail products due to the above discussed market pressures, the supplier must decide if the portion of the increased costs that must be absorbed reduce profit by an acceptable amount or not. If the reduced profit is not acceptable, the supplier may cease operations, or perhaps relocate, potentially resulting in harmful affects on the Virgin Island's economy.

Increases in the costs of retail products, however, will likely be small as a percentage, because the average proposed EUF fee is \$0.012 per pound, this when compared to the price of retail items sold competitively in the Territory's economy, especially to our seasonal visitors, will be very small. The exception here would be durable and consumable goods that are considerably heavier than goods that are typically purchased by vacationers (e.g., jewelry), and whose EUF rates may be as high as \$0.060 per pound. Such durable and consumable goods are purchased in large part by residents and, therefore, are not as subject to competitive forces as would be those goods sold to vacationers. Consequently, it is likely that the increased costs of durable and consumable goods will be passed on to consumers and the ultimate impact of the EUF on these goods will be passed through in the price of products and fall primarily upon the resident consumers, not so much on the retailer.

According to the consultants, the proposed EUF and WUF are expected to impact households, particularly income levels of under \$50,000. On average, the WUF could result in total wastewater charges of 5% of household income. In addition, to the extent that local businesses pass through the EUF in prices in the local economy, the impact of the combined EUF and WUF would be greater than 5% of household income. This impact would most likely result in reduced household consumption resulting from budget constraints. When considering

the net economic impact, however, the potential loss in household consumption to the local economy would be offset from annual WMA spending (direct and indirect economic impacts) captured by the local economy.

The net economic impact is somewhat indirect when considered from the point of view of many individual residents, and the economic impact that most households in the Territory will feel will be the increased cost associated with the WUF and EUF.

Conclusion

As pointed out earlier in this paper, the U. S. Virgin Islands is presently under a consent decree and administrative orders requiring approximately \$70 millions of dollars of capital projects over the next 10 years to clean up the solid waste disposal situation. This includes the costs of closing the territory's old landfills, any associated post-closure costs to treat those landfills, and certainly the cost to build, operate and maintain new landfills and waste management facilities in compliance with local and federal regulatory requirements. "To fail to accomplish these projects required by the above referenced consent decree and administrative orders is not an option due to the civil and potentially criminal penalties and fines of non compliance."

According to the consultants, the addition of these charges in a typical collection and tipping fee would result in significantly high collection and disposal fees and would be challenging because:

- 1) the level of expected unauthorized discarding of solid waste throughout the Territory to avoid the extremely high collection and disposal fees would cause severe environmental damage, and
- 2) any avoidance of the fees charged to dump the waste would at best jeopardize the solid waste revenue stream and would make obtaining debt financing for the program difficult, expensive and potentially impossible, without a secondary pledge of general revenues.

Therefore, the consultants concluded and the WMA Board and administrators have agreed, that the "only viable" solid waste revenue source that will provide secure funding to finance the requirements of the consent decrees and administrative orders, are the proposed User Fees.

The proposed EUF and WUF rates will be reviewed and investigated by the PSC to determine if they provide the most reasonable and equitable means to generate the critical funding required to recover the costs of providing solid waste and wastewater services in the Virgin Islands.

CHRONOLOGY:

- In March of 1984 the U. S. Environmental Protection Agency (EPA) filed a complaint against the Government of the Virgin Islands (Government) citing that the Government was in violation of certain provisions of the Federal Water Pollution Control Act, most commonly known as the Clean Water Act (CWA). Eight Wastewater Treatment Plants (WWTPs) in the Territory were identified as being in violation. The EPA and Government settled the litigation by committing to upgrade and construct new waste treatment facilities.
- On May 10th the Government applied to the EPA for modification of the secondary treatment requirements, pursuant to Section 301(h) of the CWA.
 - In September, responding to the Government's application for modification, the V. I. District Court issued a Consent Decree stipulating the terms and schedule of the Territory's wastewater treatment system upgrade and improvement program. The terms of the 1984-85 EPA-Government settlement were incorporated into this Consent Decree.
- In July the Government again applied to the EPA for modification of secondary treatment requirements, pursuant to Section 301(h) of the CWA
- 1991 The EPA filed a motion in the VIDC to hold the Government in civil contempt for failure to meet certain conditions of the 1985 Consent Decree. Those infractions included:
 - failure to construct the Mangrove Lagoon Regional Facility
 - failure to construct the Cruz Bay Facility
 - failure to operate the St. Croix WWTP in compliance w/CWA requirements
 - failure to operate the Charlotte Amalie WWTP in compliance w/CWA requirements
- The EPA released the Combined Sewer Overflow (CSOS) Control Policy. The CSOS Control Policy requires districts, including the Virgin Islands, to control CSOS by utilizing a combination of immediate measures, i.e., public notices, improved operation and maintenance, construction of storage or treatment facilities for wet weather flows.*2
- 1996 The EPA and the Government negotiated revisions to the 1985 Consent Decree and the VIDC issued an amended Judgement to include:
 - a new compliance schedule for the construction of the Mangrove Lagoon facilities
 - a new compliance schedule for the construction of the Cruz Bay facilities, and
 - a three-year schedule for construction of secondary treatment facilities replacing both the St. Croix and the Charlotte Amalie Wastewater Treatment Plants
- The EPA reported that the U. S. Virgin Islands along with 42 other states were (now) authorized to issue National Pollutant Discharge Elimination System (NPDES) permits. NPDES permits regulate wastewater discharge from all point source wastewater outflows.
- The EPA issued a Notice of Intent to deny the Government's application to modify secondary treatment requirements as per Section 301(h).

- In October the Government submitted new requests to the EPA for 301(h) variances.
- 2001 In June the Government withdrew its Section 301(h) applications and began to establish new, feasible and acceptable schedules for construction of the STX & STT WWTP with the EPA and US Department of Justice.
- In March the Government, EPA & federal DOJ reached a new agreement with a more realizable schedule to construct the secondary treatment facilities.

Accordingly, in December a new agreement and schedule were incorporated in a Stipulation to the 1996 ACD and were approved by the VI District Court. The new conditions specified that the Government of the Virgin Islands must:

- complete construction of a new wastewater treatment facility on St. Croix by November 30, 2005
- come into compliance with the secondary treatment standards on St. Croix by February 28, 2006
- complete construction of a new wastewater treatment facility on St. Thomas by November 30, 2006
- comply with the secondary treatment standards by February 28, 2007
- 2003 The V. I. Legislature proposes the Virgin Islands Waste Management Act to address waste management issues and bring the Territory into compliance with local and national standards.
- In January 2004, the Governor of the Virgin Islands signed Act No. 6638 into law creating the Virgin Islands Waste Management Authority.
 - In June, the first four members of the seven-member Waste Management Board were approved and the first WMB meeting was held.
 - The NARUC'S Committee on Water expanded its mission in 2004 to explicitly include wastewater utilities.
- 2005 In May, the WMA Board selected the Authority's first Executive Director to begin the transition and administration of personnel, funds, and assets from the central government, DPW, to the Authority.
- 2006 The WMA commissioned the development of the Virgin Islands Environmental and Waste Water User Fees Study.

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