

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

**PORT HAMILTON REFINING AND
TRANSPORTATION, LLLP**

and

WEST INDIES PETROLEUM LIMITED

Respondents

1 Estate Hope
Christiansted, St. Croix, Virgin Islands 00820

Facility

Petroleum Refinery & Bulk Fuels Storage Terminal
1 Estate Hope, Christiansted
St. Croix, Virgin Islands

Proceeding pursuant to Sections 308(a) and 309(a) of the
Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a)

**ADMINISTRATIVE
COMPLIANCE ORDER AND
REQUEST FOR INFORMATION**

**DOCKET NUMBER
CWA-02-2023-3104**

I. STATUTORY AUTHORITY

1. This Administrative Compliance Order and Request for Information (together the “Order”) are issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Sections 308(a) and 309(a) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1318(a) and 1319(a).
2. The Administrator has delegated the authority to take these actions to the Regional Administrator of EPA Region 2, who in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division (“Director” or “CEPD”).

II. APPLICABLE LAW

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), as relevant, defines “discharge of a pollutant” as any addition of any pollutant to navigable waters from any point source.
5. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the waters of the United States, including the territorial seas.
6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5) defines “person” as an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
7. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as, among other things, any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container, from which pollutants are or may be discharged.
8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” as, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial waste discharged into water.
9. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator to issue permits authorizing certain discharges under specified conditions and with specified limits and pollution control requirements.
10. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p), requires permits for any storm water discharges associated with industrial activity into waters of the US.
11. Pursuant to Section 402 of the CWA, EPA promulgated regulations creating a National Pollutant Discharge Elimination System (NPDES) permit program, at 40 C.F.R. Part 122.
12. Pursuant to Sections 301 and 402 of the CWA and 40 C.F.R. § 122.1(b)(1), NPDES permits are required for the discharge of any pollutant from any point source into waters of the US.
13. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete NPDES permit application to EPA, and/or to an EPA-approved State permit program.
14. Pursuant to 40 C.F.R. § 122.21(b), when a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.
15. Pursuant to 40 C.F.R. § 122.21(c), any person proposing a new discharge shall submit a complete application at least 180 days before the date on which the discharge is to commence.
16. Pursuant to 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), certain categories of facilities identified as engaging in regulated industrial activities are required to obtain a NPDES permit for storm water discharges associated with industrial activity.

17. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), petroleum refining facilities are considered to be engaging in “industrial activity” subject to the permitting requirement in 40 C.F.R. § 122.26(a)(1)(ii).
18. Pursuant to 40 C.F.R. § 122.26(b)(14)(viii), certain transportation facilities are considered to be engaging in “industrial activity” subject to the permitting requirement in 40 C.F.R. § 122.26(a)(1)(ii).
19. Pursuant to 40 C.F.R. §§ 122.46 and 123.25, NPDES permits shall be effective for a fixed term not to exceed five (5) years, and except as provided in 40 C.F.R. § 122.6, the term of a permit shall not be extended by modification beyond the maximum duration.
20. Pursuant to 40 C.F.R. § 122.61(a), except as provided in 40 C.F.R. § 122.61(a), a NPDES permit may be transferred by the permittee to a new owner or operator only if the NPDES permit has been modified or revoked and reissued under 40 C.F.R. § 122.62, or a minor modification made under 40 C.F.R. § 122.63(d), to identify the new permittee and incorporate such other requirements as may be necessary under the CWA.
21. Pursuant to 40 C.F.R. § 122.63(d), a change in ownership or operational control of a facility is allowed where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.
22. EPA promulgated petroleum refining effluent guidelines and standards regulation under provisions of the CWA, which are found at 40 C.F.R. § 419.
23. The CWA and the NPDES regulations contain the following definitions:
 - a. “Best Management Practices” (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. 40 C.F.R. § 122.2;
 - b. “Director” means the [EPA] Regional Administrator or the State Director, as the context requires, or an authorized representative. 40 C.F.R. § 122.2;
 - c. “Discharge Monitoring Report” (“DMR”) means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. 40 C.F.R. § 122.2;
 - d. “Effluent limitation” means any restriction imposed by the Director on quantities, discharge rates, and concentrations of “pollutants” which are “discharged” from “point sources” into “waters of the United States,” the waters of the “contiguous zone,” or the ocean. 40 C.F.R. § 122.2;

- e. “Facility or activity” means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program.” 40 C.F.R. § 122.2;
 - f. “Owner or operator” means the owner or operator of any “facility or activity” subject to regulation under the NPDES program. 40 C.F.R. § 122.2;
 - g. “Permit” means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of 40 C.F.R. Parts 122, 123 and 124. 40 C.F.R. § 122.2;
 - h. “State” includes, among other things, the United States Virgin Islands (VI). *See* Section 502(3) of the CWA, 33 U.S.C. § 502(3), and 40 C.F.R. § 122.2;
 - i. “Storm water associated with industrial activity” means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at [40 C.F.R.] [P]art 401 ...); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. *See* 40 C.F.R. §§ 122.2 and 122.26(b)(14).
24. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), authorizes States to apply to administer their own permit program for discharges into navigable waters within their jurisdiction.
25. On June 30, 1976, EPA approved the request of the VI to administer the NPDES Permit Program in the territory, and delegated responsibility for the implementation of the NPDES program under the VI Territorial Pollutant Discharge Elimination System (“TPDES”) Permit Program. The approval of the TPDES Permit Program was documented in a Memorandum of Agreement (“MOA”) between EPA Region 2 and the Government of the Virgin Islands. Pursuant to the MOA, the Virgin Islands Department of Planning and Natural Resources (hereinafter the “Department” or “DPNR”) is the agency authorized to implement the TPDES Permit Program.
26. On June 20, 2007, the VI amended the TPDES Rules and Regulations (“TPDES Rules”), which were codified in Title 12, Chapter 7, Subchapter 184, of the Virgin Islands Administrative Code, 12 V.I.R.&Regs. § 184, pursuant to the Virgin Islands Water Pollution Control Act (“WPCA”), 12 V.I.C. § 181, et seq.

27. On December 26, 2007, EPA Region 2 and DPNR amended the MOA to provide the Government of the VI with the authority to issue general permits as part of its delegation under the TPDES Permit Program.
28. Pursuant to 12 V.I.R.&Regs. § 184-21(a), “except as provided in section 184-22 of this division, a TPDES permit is required for any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the [USVI].’ No person shall discharge or cause a discharge of any pollutant without a TPDES permit having been issued to such person pursuant to this subchapter with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.”
29. Pursuant to 12 V.I.R.&Regs. § 184-23, any person who discharges or proposes to discharge pollutants and who does not have an effective permit must submit a complete TPDES application to the Commissioner.
30. Pursuant to 12 V.I.R.&Regs. § 184-23(b), when a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a TPDES permit.
31. Pursuant to 12 V.I.R.&Regs. § 184-23(a) the Commissioner shall not issue a permit before receiving a complete application for a permit except for TPDES general permits. An application for a permit is complete when the Commissioner receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.
32. Pursuant to 12 V.I.R.&Regs. § 184-25, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit if the permittee has submitted a timely and complete application for a new permit under Subchapter 184-31; and the Commissioner, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).
33. Pursuant to 12 V.I.R.&Regs. § 184-45(a)(1)(ii), certain categories of facilities are considered to be engaging in industrial activity and are required to obtain a NPDES permit for storm water discharges associated with industrial activity.
34. Pursuant to 12 V.I.R.&Regs. § 184-45(b)(1), dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a general permit. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C, and Form 2F.
35. Pursuant to 12 V.I.R.&Regs. § 84-75(d), a change in ownership or operational control of a facility is allowed when the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

36. Pursuant to 12 V.I.R.&Regs. § 184-2:

- a. “‘Applicable water quality standards and effluent standards and limitations’ means all Territorial and Federal water quality standards and effluent standards and limitations to which a discharge is subject under the Act [12 V.I.C. § 181 et seq.], or under Territorial law, including, but not limited to, water quality standards, effluent limitations, standards of performance, toxic effluent standards and prohibitions, best management practices, pretreatment standards, and ocean discharge criteria.” 12 V.I.R.&Regs. § 184-2(a)(4);
- b. “‘Co-permittee’ means a permittee to a TPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.” 12 V.I.R.&Regs. § 184-2(a)(19);
- c. “‘Outfall’ means a point source at the point of discharge and where a municipal separate storm sewer discharges to waters of the [VI]. It does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the [VI] and are used to convey waters of the [VI].” 12 V.I.R.&Regs. § 184-2(a)(56);
- d. “‘Owner or operator’ means the owner or operator of any ‘facility or activity’ subject to regulation under the TPDES program.” 12 V.I.R.&Regs. § 184-2(a)(58);
- e. “‘Process wastewater’ means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.” 12 V.I.R.&Regs. § 184-2(a)(67);
- f. “‘Territorial Pollutant Discharge Elimination System’ or ‘TPDES’ means the territorial system of water pollution control established by 12 V.I.C., Chapter 7, Act No. 1979, as amended.” 12 V.I.R.&Regs. § 184-2(a)(88);
- g. “‘Water quality standards’ or ‘WQS’ means any water quality standards adopted and effective under [VI] or Federal laws applicable to waters of the [VI], including the beneficial use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an antidegradation policy.” 12 V.I.R.&Regs. § 184-2(a)(101).

37. Section 308(a)(A) of the CWA provides that “[w]henever required to carry out the objectives of ... [CWA Section 402] the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as [the Administrator] may reasonably require.”

38. Section 309(a)(3) of the CWA provides that “[w]henver on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the Act, the Administrator] shall issue an order requiring such person to comply with such section....”
39. Pursuant to Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), and provision of the MOA, EPA hereby is requesting information and ordering Respondents to cease their violations of the CWA and its implementing regulations.

III. FACTUAL FINDINGS

40. HOVENSA, L.L.C. (“HOVENSA”) was the owner and operator of the industrial complex located at 1 Estate Hope, Christiansted, St. Croix, Virgin Islands at which location it operated a petroleum refinery and bulk fuels storage terminal (together the “Facility”).
41. The Facility includes at least 10 outfalls that convey process wastewater, storm water, ballast water, non-contact cooling water, and miscellaneous non-process waters from the Facility to Limetree Bay via Hess Harbor (Outfalls 001, 008, 009 and 011); to Cane Garden Bay (Outfalls 006, 007, and 012); and to Krause Lagoon (Outfalls 004, 005, and 013), all of which are continuously connected to the territorial sea, and are therefore waters of the United States.
42. On February 27, 2008, the Department issued a TPDES permit to HOVENSA. The expired HOVENSA Permit became effective on March 1, 2008, with an expiration date of February 28, 2013.
43. In 2012, HOVENSA ceased operation of the refinery, and the Facility stopped operating.
44. On or about January 4, 2016, Limetree Bay Terminal (“LBT”) purchased the refinery process units and utilities.
45. On November 30, 2018, the refining assets were transferred from LBT to Limetree Bay Refining, LLC (“LBR”) to undertake operation of the refinery and related support systems, including the Facility’s Wastewater Treatment Plant (“WWTP”), and to assume LBT’s rights over certain sections of the Facility where these operations are located. LBT continued to own and operate the terminal and related assets.
46. In late 2020, LBR began attempting start-up operations at the refinery.
47. On May 3 through May 7, 2021, pursuant to CWA Section 308(a), duly authorized EPA officials conducted a NPDES Inspection (the “2021 Inspection”) at the Facility. The Inspection included a walkthrough of the Facility, interviews with Respondent PHRT’s representatives, and review of certain Facility records to determine compliance with Sections 301(a) and 402 of the CWA.
48. The 2021 Inspection revealed, among other things, that:

- a. Storm water Outfalls 005 and 013, which discharge to Krause Lagoon, and Outfall 012, which discharges to Cane Garden Bay, were not controlled or monitored;
 - b. Due to its location, the sampling point in the effluent channel upstream of Outfall 001 is not representative of the Facility's actual discharges into Limetree Bay; and
 - c. There was a lack of proper housekeeping and implementation of BMPs, including:
 - i. failure to prevent sediment-laden runoff from entering the area where sampling is performed, and failure to minimize pollutant (e.g., sediment, stored materials) discharges to the area along the American Canal that drains into Outfall 401, and then into the channel which discharges to Limetree Bay through Outfall 001;
 - ii. failure to prevent the release of wash-off of petroleum product residues during vehicle fueling operations; and
 - iii. failure to protect stormwater inlets to minimize transport of pollutants from the Facility to Limetree Bay and Krause Lagoon.
49. Starting on or about May 13, 2021, operations of the Refinery were again ceased.
50. On July 19, 2021, as provided for in the MOA, EPA gave notice to DPNR during a telephone conference that EPA would proceed with enforcement under Section 309 of the CWA against the Facility for potential violations of the CWA. This was documented in an August 13, 2021, correspondence from EPA to DPNR.
51. On January 21, 2022, Port Hamilton Refining & Transportation, LLLP ("PHRT" or "Respondent PHRT") and West Indies Petroleum Limited ("WIPL" or "Respondent WIPL") acquired certain assets of LBR, including the refinery, in a bankruptcy proceeding.
52. By letter dated August 11, 2022, LBT notified EPA that it had changed its business name, and was doing business as Ocean Point Terminals, LLC ("OPT") in the USVI, effective August 8, 2022.
53. PHRT/WIPL and OPT are the current owners and/or operators of the refinery and terminal portions of the Facility, respectively.
54. On January 20, 2022, Respondents advised EPA and the United States Department of Justice ("DOJ") of their intention to re-start the refinery operations in a phased fashion and documented this preliminary proposal in separate correspondence the same day.
55. In a letter dated May 25, 2022, EPA reminded Respondents of their affirmative obligation to apply for a new TPDES permit for all pollutants discharged from the Facility into waters of the United States.
56. In a letter dated August 22, 2022, EPA reminded Respondents of the Agency's May 25, 2022 letter, and that it had not taken the actions, as advised by EPA, in order to secure a TPDES permit.

57. The HOVENSA permit has expired and has not been modified or revoked and reissued, and Respondents have not submitted a current TPDES permit application to DPNR.
58. Respondents discharge stormwater from the refinery section to the oily-water sewer system, which flows to the wastewater treatment plant before discharging to Limetree Bay via Hess Harbor through Outfall 001.
59. Based on DMRs submitted by OPT for the period from May 2021 through February 2023, pollutants are being discharged from the Facility from Outfalls 001, 008, 009, and 011 to Limetree Bay, from Outfall 004 to Krause Lagoon, and from Outfalls 006 and 007 to Cane Garden Bay.
60. On August 29 and 30, 2022, a duly authorized EPA official performed a site visit (the “2022 Site Visit”) of specific sections of the Facility. The 2022 Site Visit entailed meeting with representatives of the Respondents on-site, and a walk-through of identified areas of the Facility of interest to the Agency.
61. During the 2022 Site Visit, the EPA official observed, among other things, that Respondents:
 - a. Have material storage activities at the Facility, including a coke dome; an anhydrous ammonia storage tank; numerous sulfur bags; a liquified propane gas storage tank; and several amine drums;
 - b. Discharged coke, a pollutant, through Outfall 011 into the East Turning Basin on August 25, 2022;
 - c. Did not have storm sewer inlet protection at inlets that are part of the stormwater collection and conveyance system that discharges through Outfall 011; and
 - d. Failed to maintain stormwater BMPs inside the North and South Coke Domes, and lacked any BMPs at the dome entrances to prevent wastewater from flowing into the stormwater collection and conveyance system and discharging through Outfall 011 to Limetree Bay;

IV. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS

62. Respondents are “persons” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2.
63. Respondents own and operate portions of the Facility, as defined in 40 C.F.R. § 122.2.
64. Respondents discharge stormwater associated with industrial activity from several outfalls at the Facility, as defined in 40 C.F.R. § 122.26(b)(14)(i) and (ii).
65. Respondents’ Facility is subject to the petroleum refining effluent guidelines and standards regulations at 40 C.F.R. § 419.

66. The outfalls through which discharges leave the Facility are “point sources” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
67. Respondents have discharged and continue to discharge pollutants from the Facility into Limetree Bay, Krause Lagoon, and Cane Garden Bay.
68. Limetree Bay, Krause Lagoon, and Cane Garden Bay all maintain continuous surface connections to the territorial sea, and are, therefore “waters of the U.S.” pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).
69. Respondents are subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq., and the applicable NPDES regulations found at 40 C.F.R. § 122.
70. Respondents have not obtained permit coverage authorizing their discharges of pollutants from the Facility into waters of the U.S., as required by Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.
71. Based upon the above, Respondents have violated, and continue to violate, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342; therefore, Respondents are subject to an enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.

V. ORDERED PROVISIONS

Based on the above Findings of Fact and Conclusions of Law and Findings of Violations, and pursuant to the authority in Section 309 of the CWA, 33 U.S.C. § 1319, EPA hereby orders Respondents to do the following:

72. **Immediately upon receipt of this Order**, an authorized representative of each Respondent shall complete an “Acknowledgment of Receipt” form, included as **Attachment 1** of this Order, and return it via electronic mail (“email”) to casey.jim@epa.gov.
73. **As soon as possible, but no later than sixty (60) days from the effective date of this Order**, Respondents shall apply for a TPDES permit(s) to authorize any discharges of process wastewater, stormwater associated with industrial activity, or other pollutants from the Facility into any waters of the U.S. In addition to the submission of a TPDES permit application, Respondents shall identify wastewater streams and sources of stormwater from sources outside of the Facility. The minimum NPDES permit application forms required are described below:¹
 - a. Application Form 1 – General Form
 - b. Application Form 2C – Existing Manufacturing, Commercial, Mining, and Silvicultural Operations
 - c. Application Form 2F – Stormwater Discharges Associated with Industrial Activity

¹ The NPDES forms are available at <https://www.epa.gov/npdes/npdes-application-forms>.

74. **Beginning immediately upon receipt of this Order, and continuing until Respondents obtain TPDES permit coverage**, Respondents shall perform and maintain, at a minimum, the following activities at the Facility to reduce, and/or eliminate any unpermitted discharges into waters of the U.S.:

Industrial Wastewater Treatment Plant

- a. Operate and maintain the industrial wastewater treatment plant according to the operation and maintenance requirements in 40 C.F.R. § 122.41(e) and 12 V.I.R.&Regs. § 184-51(e);

Sampling and Data Report

- b. Perform sampling at the Facility according to the sampling requirements in the expired HOVENSA permit, including mixing zone sampling;
- c. Create and/or maintain an account in NetDMR for the submittal of effluent discharge data according to the requirements of the expired HOVENSA permit;
- d. Submit monitoring data in electronic DMR form through NetDMR according to the requirements of the expired HOVENSA permit;

Selection and Implementation of BMPs

- e. Implement the following control measures for all areas that contribute stormwater runoff associated with industrial activities into the storm water outfalls at the Facility:
- i. minimize the exposure of material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain and runoff in order to minimize pollutant discharges by either locating these industrial materials and activities inside or protecting them with storm resistant coverings;
 - ii. keep clean all exposed areas that are potential sources of pollutants and perform good housekeeping measures in order to minimize pollutant discharges;
 - iii. maintain all control measures that are used to achieve the effluent limits in the expired HOVENSA permit in effective operating condition, as well as all industrial equipment and systems, in order to minimize pollutant discharges;
 - iv. minimize the potential for leaks, spills, and other releases that may be exposed to storm water, develop plans for effective response to such spills if or when they occur in order to minimize pollutant discharges, and conduct spill prevention and response measures;
 - v. minimize erosion by stabilizing exposed soils;

- vi. divert, infiltrate, reuse, contain, or otherwise reduce storm water runoff into the Facility to minimize the discharge of pollutants; and
- vii. train all employees and keep training records for those individuals who work in areas where industrial materials or activities are exposed to storm water, or who are responsible for implementing storm water control measures based on the requirements of the SWPPP developed pursuant to Paragraph 83.b, below.

Facility Routine Inspections and Documentation

- f. In accordance with the SWPPP developed pursuant to Paragraph 83.b, below, perform at least quarterly inspections of all areas where industrial materials or activities are exposed to storm water, all control measures, areas where spills and leaks have occurred in the past three years, and all identified outfalls during normal Facility operating hours; and

Quarterly Visual Assessments and Documentation of Storm Water Discharges

- g. Perform quarterly visual assessments of storm water discharges through the outfalls identified in Paragraph 61, as well as Outfalls 005, 012, and 013. The visual assessment shall be made of a sample in a clean, clear glass or plastic container, and examined in a well-lit area, using samples collected within the first 30 minutes of any actual discharges from a storm event that occurs at least 72 hours (3 days) from the previous discharge. If it is not possible to collect the sample within the first 30 minutes of discharge, the sample shall be collected as soon as practicable after the first 30 minutes and Respondents shall document why it was not possible to take samples within the first 30 minutes. The visual assessment shall be made for color, odor, clarity (diminished), floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution.

- 75. **Within forty-five (45) calendar days of receipt of this Order**, Respondents shall install appropriate rain gauge systems at suitable locations at the Facility, per the manufacturer's recommendations.
- 76. **Within ninety (90) calendar days of receipt of this Order**, Respondents shall perform the following:
 - a. Develop and submit a SWPPP² for the areas of the Facility that they operate for EPA's review and approval. The SWPPP shall be signed and dated by the authorized representative(s) of the Respondent. Upon approval and notification by EPA, Respondents shall implement the SWPPP; and
 - b. Conduct of Engineering Analysis ("EA") of the industrial wastewater collection, conveyance and treatment systems associated with the existing (internal) permitted Outfall 401 in order to segregate and perform independent sampling of storm water and treated

² Guidance on selecting and implementing control measures and developing a SWPPP is available at <https://www.epa.gov/npdes/industrial-stormwater-guidance>.

effluent from the wastewater treatment plant before these waste streams comingle and drain into the conveyance channel that discharges through Outfall 001.

77. Once Respondents have secured TPDES permit coverage for the discharge of pollutants from the Facility into waters of the U.S., Respondents shall immediately notify EPA pursuant to Paragraph 86 of this Order and shall comply with all terms of the issued permit.
78. **Until Respondents obtain permit coverage**, Respondents shall prepare and submit Monthly Progress Reports (“MPR”) on the 15th day of each month describing the status and progress of the actions taken in the previous calendar month to comply with the provisions of this Order. Respondents shall:
- a. Submit the first MPR on September 15, 2023, and subsequent ones on the 15th day of each month thereafter;
 - b. The MPRs shall include, at a minimum, the following:
 - i. a description of the actions taken by Respondents during the prior month to comply with this Order;
 - ii. a description of any non-compliance with this Order, including its underlying causes and a proposed plan and timeline for returning to compliance;
 - iii. photographic and other evidence of the installation of required measures, such as appropriate rain gauge(s) at suitable location(s) at the Facility;
 - iv. the monthly rain data from the rain gauges installed pursuant to Paragraph 77, above; and
 - v. a report detailing the expenses incurred during the prior month.

If Respondents submit a deliverable to EPA during the compliance filing dates of this Order, Respondents do not have to re-submit such deliverable in future MPRs.

VI. REQUEST FOR INFORMATION

Based on the above Finding of Facts, Conclusion of Law and Findings of Violation, and pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondents shall submit the following information to EPA by email to attention of persons identified in Paragraph 86:

79. **Within fifteen (15) calendar days of receipt of this Order**, Respondents shall provide information concerning their current operations at the Facility and their use of identified outfalls, including:
- a. The location, including lambert coordinates, for each outfall Respondents operate, including a site map depicting the outfall number or other identifier and locations. In addition, a

minimum of three (3) clear color pictures depicting different views for each outfall operated by Respondents;

- b. A detailed description of the routine industrial activities and material storage that Respondents conduct at areas of the Facility that they operate during a typical week of operation;
- c. A description of the specific structural or non-structural BMPs, or capital improvements that Respondents have completed, are currently implementing, and/or are planning;
- d. Dates that BMP improvements made pursuant to Paragraph 76.e were achieved, and prospective dates if not yet completed; and
- e. A description of all process wastewater streams generated because of industrial activities conducted by Respondents at the Facility, the treatment of those wastewater streams, and the final disposition of the treated wastewater streams.

80. **Within forty-five (45) calendar days of receipt of this Order,** Respondents shall submit the following prepared information:

- a. Copies of all written communications between either Respondent and DPNR related to TPDES permitting for the Facility;
- b. Incident reports on non-compliance with the CWA and implementing regulations, and implemented corrective actions related to such incidents. In addition, Routine Facility inspection reports related to the TPDES regulated activities during the period from November 2021 through the effective date of this Order; and
- c. A written Rain Gauge Standard Operating Procedure (“Rain Gauge SOP”) for the rainfall data collection, management, and recordkeeping, which shall at a minimum include: (a) procedures for adequate operation, maintenance and calibration (per manufacturer’s specifications) of the rain gauge; (b) as an appendix, a flow chart describing the key features of the rain gauge; (c) established rain gauge reading time in the morning (e.g., 6:00 a.m.) and the afternoon (e.g., 6:00 p.m.) and the data recording process based upon the normal business hours for the Facility; and (d) a monthly precipitation data log where precipitation data is documented at the beginning and end of normal business hours, and it is signed and certified by a representative authorized by Respondents. In addition, post and maintain a copy of the rain gauge flow chart at suitable locations at the Facility where the rain gauge(s) were installed.

81. **Within sixty (60) calendar days of receipt of this Order,** Respondents shall submit the following prepared documents:

- a. Analytical laboratory reports of wastewater and storm water sampling conducted from November 2021 through the effective date of this Order, including chain of custody records, and;

- b. Quarterly visual assessments of storm water discharges through the Outfalls identified in Paragraph 76.g., above.

83. **Within one hundred twenty (120) calendar days of receipt of this Order**, Respondents shall submit a detailed plan for implementation of identified BMPs and installation of sampling points for the independent sampling of storm water and treated effluent from the industrial wastewater treatment plant before these waste streams are comingled in the conveyance channel that empties through Outfall 001. The plan shall be submitted for EPA's review and approval.

VII. GENERAL PROVISIONS

84. Respondents shall have the opportunity, for a period of twenty (20) calendar days from the effective date of this Order, to confer regarding this Order with designated Agency representatives.
85. Any technical questions concerning this Order should be directed to Mr. Jim C. Casey, Enforcement Officer, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, who can be reached by phone at: (340) 714-2333, (202) 655-1137 or by e-mail at: casey.jim@epa.gov. Any legal questions concerning this Order should be directed to Mr. Chris Saporita, Assistant Regional Counsel, Water and General Law Branch, Office of Regional Counsel, who can be reached by phone at: (212) 637-3203, or by email at: saporita.chris@epa.gov.
86. Any information required to be submitted under this Order shall be sent by email, and shall be signed by an authorized representative (see 40 C.F.R. § 122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

87. All information required to be submitted under this Order shall be transmitted through email to the following contacts at their addresses:

Jim C. Casey
Senior Environmental Engineer / V.I. Coordinator
Clean Water Act Team Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2
Tunick Building, Suite 102
1336 Beltjen Road St. Thomas, USVI 00802
Email: casey.jim@epa.gov

and

José A. Rivera, BSCE
Team Leader
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069
Email: rivera.jose@epa.gov

and

Austin Callwood
Director
Division of Environmental Protection
V.I. Department of Planning & Natural Resources
4611 Tutu Park Mall, Suite 300, 2nd Floor
St. Thomas, USVI 00802
Email: austin.callwood@dpr.vi.gov

88. Respondents may, as appropriate, assert a business confidentiality claim covering all or part of the cost report information required to be submitted under this Order. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret” or “proprietary” or “company confidential.” Information covered by such a claim will be disclosed by EPA only in accordance with and by means of procedures set forth in 40 C.F.R. Part 2.
89. If no such claim accompanies the information contained in the submittal when it is received by EPA, it may be made available to the public by EPA without further notice to Respondents. Respondents should read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by Respondents. If Respondents desire confidential treatment of information only until a certain date or until the occurrence of a certain event, Respondents’ response should state so.
90. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to

forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the Act.

91. Notice is hereby given that failure to comply with any requirements of this Order may result in Respondents' liability for civil penalties for each violation of up to \$64,618 per day under Section 309 of the CWA, as modified by 40 C.F.R. Part 19.
92. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

VIII. EFFECTIVE DATE

93. This Order shall become effective upon the date of execution by the undersigned Director of Caribbean Environmental Protection Division, Region 2, EPA.

Dated: July 21, 2023

Signed: _____
CARMEN R. GUERRERO PÉREZ
Director
Caribbean Environmental Protection Division
Environmental Protection Agency, Region 2

ATTACHMENT

cc: Director, Division of Environmental Protection, VIDPNR