REVISIONS TO:
U.S. VIRGIN ISLANDS WATER QUALITY STANDARDS

Chapter 7. Water Pollution Control

Subchapter 186. Water Quality Standards for Waters of the Virgin Islands

SECTIONS
186-1. General water quality criteria
186-2. Class A
186-3. Class B
186-4. Class C
186-5. Thermal policy
186-6. Mixing zones
186-7. Antidegradation
186-8. Analytical procedures
186-9. Applicability of standards
186-10. Natural waters
186-11. Legal limits
186-12. Time for compliance; schedules of compliance
186-13. Site-specific Criteria
186-14. Variances
186-15. Reissuance of this chapter

§ 186-1. General water quality criteria

(a) All waters of the U.S. Virgin Islands shall meet generally accepted aesthetic qualifications and shall be capable of supporting diversified aquatic life. "Waters" of the U.S. Virgin Islands shall be defined, as follows, as in by Title 12, Chapter 7, Section 182(f) of the Virgin Islands Code: "Waters of the United States Virgin Islands" means all waters within the jurisdiction of the United States Virgin Islands including all harbors, streams, lakes, ponds, impounding reservoirs, marshes, water-courses, water-ways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the United States Virgin Islands, including the territorial seas, contiguous zones, and oceans."

(b) Biocriteria: The Territory shall preserve, protect, and restore water resources to their most natural condition. The condition of these waterbodies shall be determined from measures of physical, chemical, and biological characteristics of each waterbody class, according to its designated use. As a component of these measures, the Territory may consider the biological integrity of the benthic communities living within waters. These communities shall be assessed by comparison to reference conditions(s) with similar

abiotic and biotic environmental settings that represent the optimal or least disturbed condition for that system. Such reference conditions shall be those observed to support the greatest community diversity, and abundance of aquatic life as is expected to be or has been historically found in natural settings essentially undisturbed or minimally disturbed by human impacts, development, or discharges. This condition shall be determined by consistent sampling and reliable measures of selected indicator communities of flora and/or fauna and may be used in conjunction with other measures of water quality. Waters shall be of a sufficient quality to support a resident biological community as defined by metrics based upon reference conditions. These narrative biological criteria shall apply to fresh water, wetlands, estuarine, mangrove, seagrass, coral reef and other marine ecosystems based upon their respective reference conditions and metrics.

(c) These waters shall be free of substances attributable to municipal, industrial, or other discharges or wastes as follows:

(1) Materials that will settle to form objectionable deposits.
(2) Floating debris, oils, scum, and other matter.
(3) Substances producing objectionable color, odor, taste, or turbidity.
(4) Materials, including radionuclides, in concentrations or combinations which are toxic or which produce undesirable physiological responses in human, fish and other animal life, and plants.
(5) Substances and conditions or combinations thereof in concentrations which produce undesirable aquatic life.
(6) Exotic or aquatic nuisance species.

(d) The applicable numeric water quality standards for toxic pollutants to protect the designated uses of waters of the U.S. Virgin Islands shall be the Environmental Protection Agency's (EPA) national recommended Clean Water Act section 304(a) water quality criteria, EPA's Office of Water, Office of Science and Technology (4304T), 2006, which is incorporated by reference for: the protection of saltwater aquatic life from acute (criterion maximum concentration) and chronic (criterion continuous concentration) effects; and, the protection of human health from the consumption of organisms. The applicable criteria may be found at:

<http://www.epa.gov/waterscience/criteria/wqctable/index.html>

Source: Sections 186-1 to 186-11: Rules and Regulations Relative to Water Quality Standards for Coastal Waters of the Virgin Islands were revised and issued by Commissioner of Health, dated July 20, 1973, and approved by Governor. Filed with Lieutenant Governor July 26, 1973; File No. 750.

Authority. 12 V.I.C. § 184(I).

Prior regulations:

1968: Similar regulations of the Commissioner of Health, dated Oct. 4, 1968, and approved by the Governor were filed with Government Secretary Jan. 16, 1969; File No. 570.
1985: Amendments issued by the Commissioner of Conservation and Cultural Affairs and approved by the Governor, and corrected May 30, 1985. Filed with the Lieutenant Governor March 7, 1985; File No. RR27-85, and May 30, 1985, File No. RR44-85.
2004: Amendments issued by the Commissioner of Planning and Natural Resources and approved by the Governor on October 8, 2004. Filed with the Lieutenant Governor; File No. 1053, containing a gubernatorial certificate dated Oct. 8, 2004, which provided such regulations shall take effect without the usual prior publication.

§ 186-2. Class A

(a) **Best usage of waters:** Preservation of natural phenomena requiring special conditions, such as the Natural Barrier Reef at Buck Island, St. Croix and the Under Water Trail at Trunk Bay, St. John. These are outstanding natural resource waters that cannot be altered except towards natural conditions. No new or increased dischargers shall be permitted.

(b) **Quality criteria:** Existing natural conditions shall not be changed. The biological condition shall be similar or equivalent to reference condition for biological integrity. In no case shall Class B water quality standards be exceeded.

§ 186-3. Class B

(a) **Best usage of waters:** For maintenance and propagation of desirable species of aquatic life (including threatened, endangered species listed pursuant to section 4 of the federal Endangered Species Act and threatened, endangered and indigenous species listed pursuant Title 12, Chapter 2 of the Virgin Islands Code) and for primary contact recreation (swimming, water skiing, etc.). This Class allows minimal changes in structure of the biotic community and minimal changes in ecosystem function. Virtually all native taxa are maintained with some changes in biomass and/or abundance; ecosystem functions are fully maintained within the range of natural variability.

(b) **Quality criteria:** The biological condition shall reflect no more than a minimal departure from reference condition for biological integrity. The following criteria apply at and beyond the boundary of the applicable mixing zone as specified in section 186-5(f) or 186-6, as the case may be.
(1) **Dissolved oxygen:** Not less that 5.5 mg/l from other than natural conditions.
(2) **pH:** Normal range of pH must not be extended at any location by more that ±0.1 pH unit. At no time shall the pH be less than 7.0 or greater than 8.3.
(3) **Temperature:** Not to exceed 32^{0}C at any time, nor as a result of waste

discharge to be greater than 1.0^{0}C above natural. Thermal policies (Section 186-5) shall also apply.

(4) **Bacteria:**

(A) Shall not exceed a geometric (log) mean of 70 fecal coliforms per 100 ml by MF or MPN count.

(B) Shall not exceed a geometric mean of 35 enterococci per 100 ml., not to exceed a single sample maximum of 104 per 100 ml at any time.

(5) **Phosphorus:** Phosphorus as total P shall not exceed 50 ug/l in any waters.

(6) **Chlorine:** The 4-day average concentration of Chlorine shall not exceed 7.5 ug/l. The 1-hour average concentration of Chlorine shall not exceed 13 ug/l.

(7) **Suspended, colloidal, or settleable solids:** None from wastewater sources which will cause disposition or be deleterious for the designated uses shall be present in any waters.

(8) **Oil and floating substances:** No residue attributable to wastewater nor visible oil film nor globules of grease shall be present in any waters.

(9) **Radioactivity:**

(A) **Gross beta:** 1000 picocuries per liter, in the absence of Sr 90 and alpha emitters.

(B) **Radium-226:** 3 picocuries per liter.

(C) **Strontium-90:** 10 picocuries per liter.

(10) **Taste and odor producing substances:** None in amounts that will interfere with the use for primary contact recreation, potable water supply or will render any undesirable taste or odor to edible aquatic life.

(11) **Color and turbidity:**

(A) Except for Class B waters listed in section 186-11(b)(1)(A), a Secchi disc shall be visible at a minimum depth of one (1) meter. For waters where the depth does not exceed one (1) meter, the bottom must be visible.

(B) Except for Class B waters listed in section 186-11(b)(1)(A), a maximum nephelometric turbidity unit reading of three (3) shall be permissible.

Amended March 7, 1985; May 30, 1985.

Amendments - 1985. Regulation amending subsec. (B)(11) by designating present provisions as (b)(11)(A) and adding (b)(11)(B) was issued by the Commissioner of Conservation and Cultural Affairs and approved by the Governor March 7, 1985 and corrected May 30, 1985. Filed with the Lieutenant Governor March 7, 1985; File No. RR27-85 and May 30, 1985; File No. RR44-85.

Amendments – 2004. General: All references to "*coastal*" and "*surface*" were removed, and ^{o}F were converted to ^{o}C throughout; Subsec. 186-1: The source for the definition of "waters" of the USVI was inserted; and reference to the EPA numeric standards has been added; Subsec. 186-3: Language referring to "threatened and endangered species" was added; Numeric standards for enterococci were added; the standard for dissolved gases was deleted; and numeric standards for chlorine were added.

Effective date of the 1985 amendment. A gubernatorial certificate preceding the regulations stated that due to compelling circumstances these amendments are to become

effective on the day of approval without delay or prior publication (March 7 and May 30, 1985).

Effective date of the 2004 amendment. Amendments issued by the Commissioner of Planning and Natural Resources and approved by the Governor on October 8, 2004. Filed with the Lieutenant Governor; File No. 1053, containing a gubernatorial certificate dated Oct. 8, 2004, which provided such regulations shall take effect without the usual prior publication.

§ 186-4. Class C

(a) **Best usage of waters:** For maintenance and propagation of desirable species of aquatic life (including threatened and endangered species listed pursuant to section 4 of the federal Endangered Species Act and threatened, endangered and indigenous species listed pursuant Title 12, Chapter 2 of the Virgin Islands Code) and for primary contact recreation (swimming, water skiing, etc.). This Class allows for evident changes in structure of the biotic community and minimal changes in ecosystem function. Evident changes in structure due to loss of some rare native taxa; shifts in relative abundance of taxa (community structure) are allowed but sensitive-ubiquitous taxa remain common and abundant; ecosystem functions are fully maintained through redundant attributes of the system.

(b) **Quality criteria:** The biological condition shall reflect no more than a minimal departure from reference condition as observed at the least disturbed reference site(s) within Class C waters. The following criteria apply at and beyond the boundary of the applicable mixing zone as specified in section 186-5(f) or section 186-6, as the case may be.

(1) **Dissolved oxygen:** Not less that 5.0 mg/l from other than natural conditions.

(2) **pH:** Normal range of pH must not be extended at any location by more than ±0.1 pH unit. At no time shall the pH be less than 6.7 or greater than 8.5.

(3). **Temperature:** Not to exceed 32^0C at any time, nor as a result of waste discharge to be greater than 1.0^0C above natural. Thermal policies (Section 186-5) shall also apply.

(4) **Bacteria:**

(A) Shall not exceed a geometric (log) mean of 200 fecal coliforms per 100 ml by MF or MPN count.

(B) Shall not exceed a geometric mean of 35 enterococci per 100 ml., not to exceed a single sample maximum of 104 per 100 ml at any time

(5) **Phosphorus:** Phosphorus as total P shall not exceed 50 ug/l in any waters.

(6) **Chlorine:** The 4-day average concentration of Chlorine shall not exceed 7.5 ug/l. The 1-hour average concentration of Chlorine shall not exceed 13 ug/l.

(7) **Suspended, colloidal, or settleable solids:** None from wastewater sources

which will cause disposition or be deleterious for the designated uses shall be present in any waters.

(8) **Oil and floating substances:** No residue attributable to wastewater nor visible oil film nor globules of grease shall be present in any waters.

(9) **Radioactivity:**

(A) **Gross beta:** 1000 picocuries per liter, in the absence of Sr 90 and alpha emitters.

(B) **Radium-226:** 3 picocuries per liter.

(C) **Strontium-90:** 10 picocuries per liter.

(10) **Taste and odor producing substances:** None in amounts that will interfere with the use for primary contact recreation, potable water supply or will render any undesirable taste or odor to edible aquatic life.

(11) **Color and turbidity:** A Secchi disc shall be visible at a minimum depth of one (1) meter.

Amended March 7, 1985; May 30, 1985.

Amendments - 1985. Regulation amending subsec. (A) by substituting "primary" for "secondary" and "swimming, water skiing" for "boating, fishing, wading"; subsec. (b)(3) by substituting 200 for 1,000; by adding a new subsec. (b)(5) and redesignating present subsec. (b)(5) as subsec. (b)(6) was issued by the Commissioner of Conservation and Cultural Affairs and approved by the Governor and corrected May 30, 1985. Filed with the Lieutenant Governor March 7, 1985; File No. RR27-85, and May 30, 1985, File No. RR44-85.

Amendments – 2004. Subsec. 186-4: Language referring to "threatened and endangered species" was added; Standards for enterococci were added.

Effective date of the 1985 and 2004 amendments. See note under section 186-3 of this title.

§ 186-5. Thermal policy

(a) Fish and other aquatic life shall be protected from thermal blocks, providing for a minimum of 75 percent stream or estuarine cross-section and/or volumetric passageway, including a minimum of one half of the surface as measured from water edge to water edge at any stage of tide.

(b) In non-passageway the surface water temperature shall not exceed 32 ^{0}C.

(c) No heat may be added except in designated mixing zones which would cause temperatures to exceed 32 ^{0}C., or which would cause the monthly mean of the maximum daily temperature at any site, prior to the addition of any heat, to be exceeded by more than 1.0 ^{0}C.

(d) No discharge or combination of discharges shall be injurious to aquatic life (including threatened and endangered species listed pursuant to section 4 of the federal Endangered Species Act and Title 12, Chapter 2 of the Virgin Islands Code) or the culture or propagation of a balanced indigenous population thereof.

(e) Rate of temperature change outside the mixing zone shall not be more that 0.5 ^{0}C per hour nor to exceed 3 ^{0}C in any 24-hour period except when natural phenomena cause these limits to be exceeded.

(f) Unless specific conditions, such as spawning ground, migratory routes, or other sections of conditions from these regulations are applicable, the mixing zone should be defined by a sphere with a specified point as the center (not necessarily the outfall but limited to one point for each installation) and a radius equal to the square root of the volume of discharge (A) expressed as millions of gallons per day, times 200 feet; and in no case exceed 3/8 mile. The formula is:
Radius (mixing zone) = $(\sqrt{A}) * 200$ feet $\leq$ 3/8 mile

Amendments – 2004. Subsec. 186-5 (d): Language referring to "threatened and endangered species" was added.

Effective date to the 2004 amendments. See note under section 186-3 of this title.

§ 186-6. Mixing zones

The need, location, size and depth of the mixing zones in all waters shall be established according to the following mixing zone criteria and boundaries.

(a) **Mixing zone criteria:**

(1) Mixing zones shall be provided solely for mixing. Mixing must be accomplished as quickly as possible through the use of devices which insure that the waste is mixed with the allocated dilution water in the smallest practicable area.

(2) For the protection of aquatic life resources (including threatened and endangered species listed pursuant to section 4 of the federal Endangered Species Act and Title 12, Chapter 2 of the Virgin Islands Code), the mixing zones must not be used for, or be considered as, a substitute for waste treatment facilities.

(3) At the boundary of the mixing zone the water should comply with all the water quality standards set forth for its classification. If, after complete mixing with the available dilution water, these requirements are not met, the effluent must be adequately pretreated until the standards are met.

(4) No conditions shall be permitted to exist within the mixing zone, (A) that are rapidly lethal (i.e. exceed the 96-hour median tolerance limit) to locally important and desirable indigenous aquatic life, (B) that prohibit planktonic organisms from being carried through the mixing zone and will survive without undue damage or stress while they are passing through.

(5) Maximum vertical dispersion of wastewater discharge flow shall be provided for in the mixing zone.

(6) Mixing zones shall not intersect spawning or nursery areas, migratory routes, water intake nor mouths of rivers.

(7) Suspended solids in wastewaters being discharged shall not settle in measurable amounts in the mixing zones.

(b) **Mixing zone boundaries**

(1) The mixing zone must be located in such manner as to allow at all times, passageways for the movement on drift of the biota (pelagic or invertebrate organisms). The width of the mixing zone and the volume of flow in it shall depend on and will be determined by the nature of the water current and/or the estuary. The area, depth, and volume of the flow must be sufficient to provide a usable and desirable passageway for fish and other aquatic organisms.

(2) The passageway must contain at least 75 percent of the cross sectional area and/or volume of flow of the estuary, and should extend to at least 50% of the width.

(3) A mixing zone established for a specific pollutant shall not overlap with an adjacent mixing zone for the same pollutant.

§ 186-7. Antidegradation

(a) Existing in-stream water uses, including those that protect threatened and endangered species listed pursuant to section 4 of the federal Endangered Species Act and Title 12, Chapter 2 of the Virgin Islands Code, and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Waters whose existing water quality is better than the established standards as of the date on which such standards become effective will be maintained at their existing high quality. The quality of these and other waters of the United States Virgin Islands shall be maintained and protected unless the Territory's water pollution control agency and the Environmental Protection Agency find, after full satisfaction of the intergovernmental coordination and public participation provisions of the Territory's continuing planning process, that allowing lower water quality is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently possible in such waters. Further, the Territory's water pollution control agency and the Environmental Protection Agency shall assure that there is achieved the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practice for nonpoint source control.

(c) Where high quality waters constitute an outstanding National resource; such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, the water quality shall be maintained and protected.

(d) In those cases where potential water quality impairment associated with thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Clean Water Act.

Amended March 7, 1985; May 30, 1985.
Amendments-1985. Regulations amending this section generally was issued by the Commissioner of Conservation and Cultural Affairs and approved by the Governor on March 7, 1985, and corrected May 30, 1985. Filed with the Lieutenant Governor on March 7, 1985; File No. RR27-85, and May 30, 1985, File No. RR44-85.
Amendments – 2004. Subsec. 186-7: Sub-section (a) was added.

Effective date to the 1985 and 2004 amendments. See note under section 186-3 of this title.

§ 186-8. Analytical procedures

The analytical procedures used as methods of analysis to determine the chemical, bacteriological, biological, and radiological quality of waters sampled shall be in accordance with those specified in or approved under 40 CFR Part 136 or other methods approved by the Virgin Islands Department of Planning and Natural Resources and the Environmental Protection Agency.
Amended Sept. 1, 1978, File No. 1053, §1.4.

§ 186-9. Applicability of standards

The preceding criteria will be applicable to all waters of the U.S. Virgin Islands at all places and at all times except as otherwise provided herein.

§ 186-10. Natural waters

Natural waters may, on occasion, have characteristics outside of the limits prescribed by these criteria. The criteria contained herein do not relate to violations of standards resulting from natural forces.

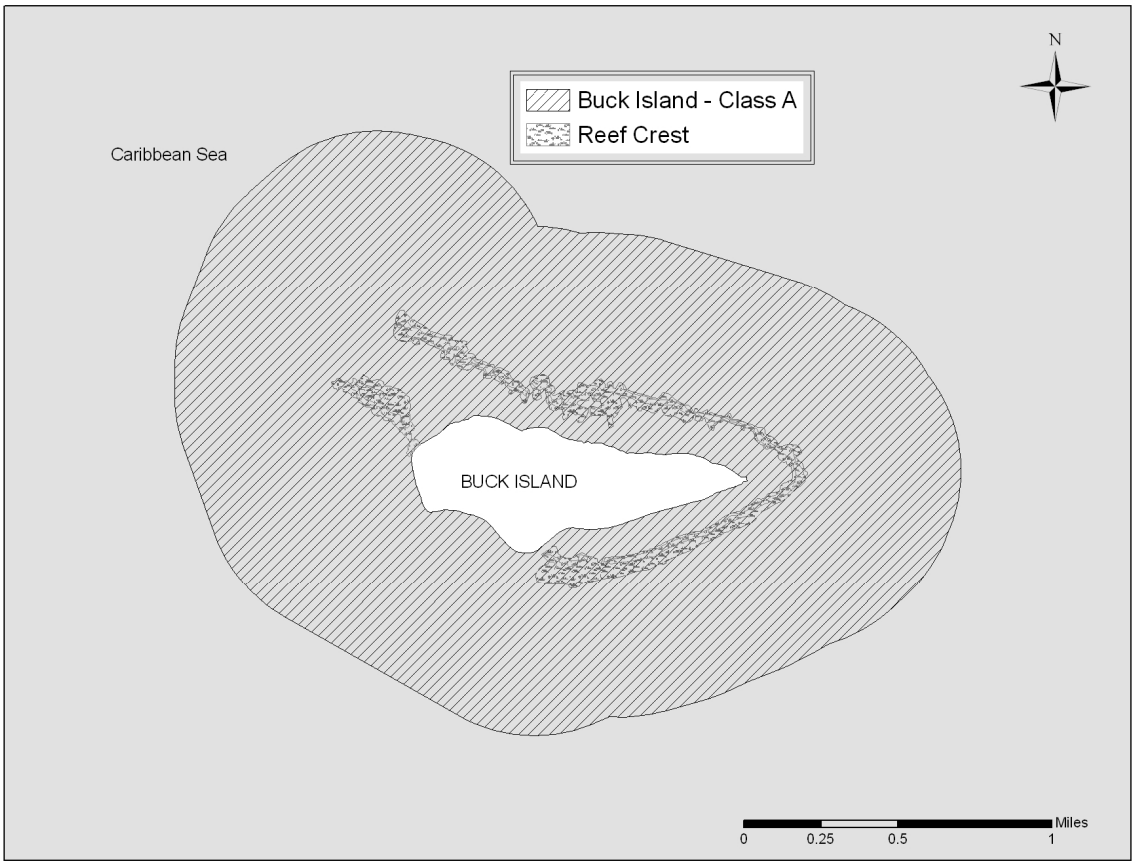
(a) Natural forces refer to chemical, biological, geological, ecological or any other conditions existing at specific sites, not resulting from, or as a consequence of, human intervention, that may cause the standard for a particular parameter not to be met at those sites.

§ 186-11. Legal limits

(a) Class "A" (natural phenomena).

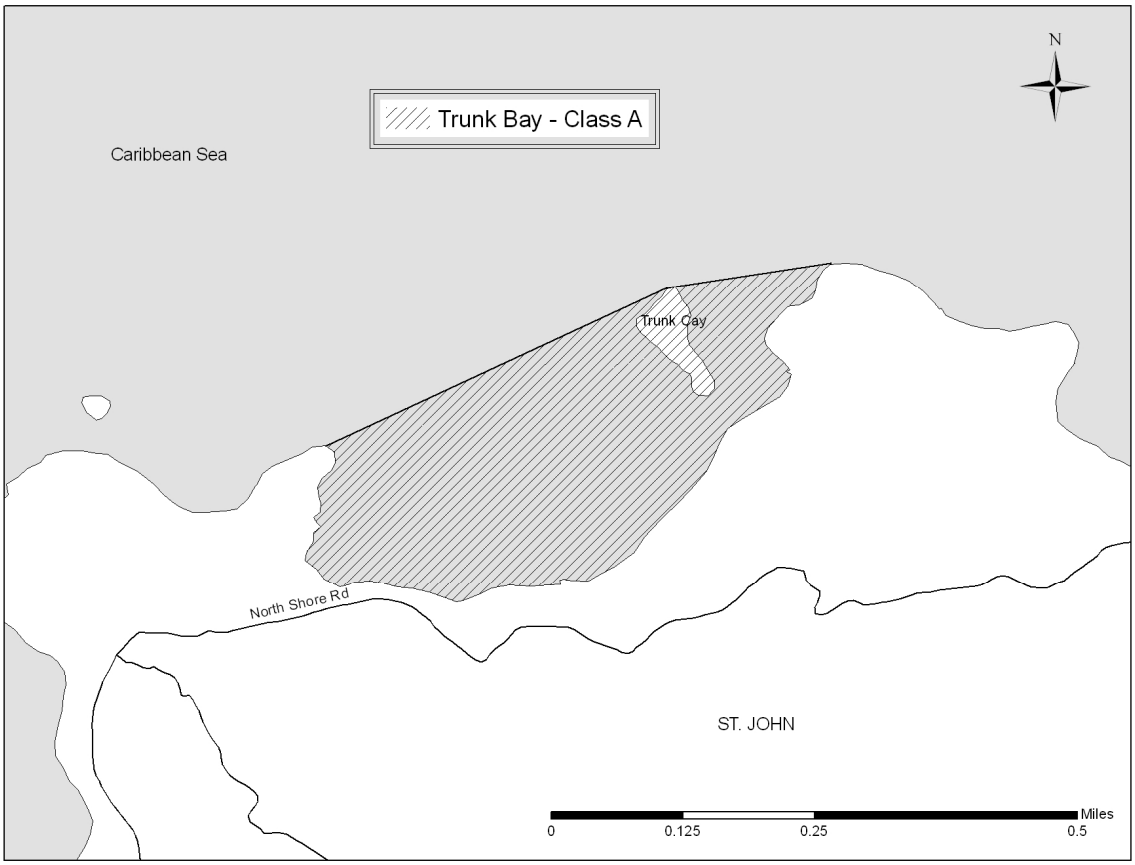
(1) Within 0.5 miles of the boundaries of Buck Island's Natural Barrier Reef, St. Croix.

Figure 1. Class A - Buck Island, St. Croix



(2) Trunk Bay, St. John.

Figure 2. Class A - Trunk Bay, St. John



(b) Class "B" (aquatic life and primary contact recreation).

(1) All other waters not classified as Class "A" or Class "C".

(A) Those Class "B" waters not covered by color and turbidity criteria in section 186-3(b)(11) of this chapter include:

(i) St. Thomas waters-Mandahl Bay (Marina), Vessup Bay, Water Bay, Benner Bay, and the Mangrove Lagoon.

(ii) St. Croix waters-Carlton Beach, Good Hope Beach, Salt River Lagoon (Marina), Salt River Lagoon (Sugar Bay), Estate Anguilla Beach, Buccaneer Beach, Tamarind Reef Lagoon, Green Cay Beach and Enfield Green Beach.

(iii) All non-marine waters defined as all Virgin Islands waters shoreward of the mean high-tide line.

(B) All other Class "B" waters are covered by the color and turbidity criteria in section 186-3(b)(11)(B) of this subchapter.

Figure 3. Class B - St. Croix (only marine waters displayed)

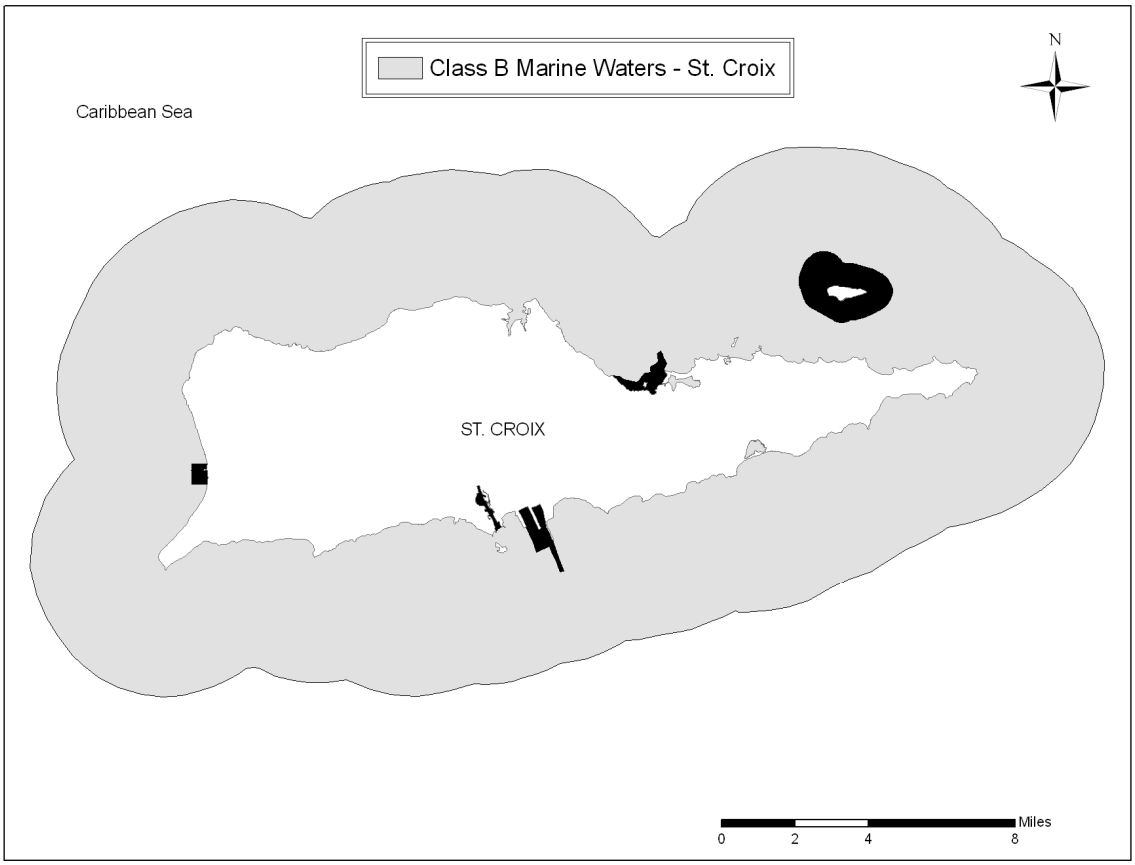
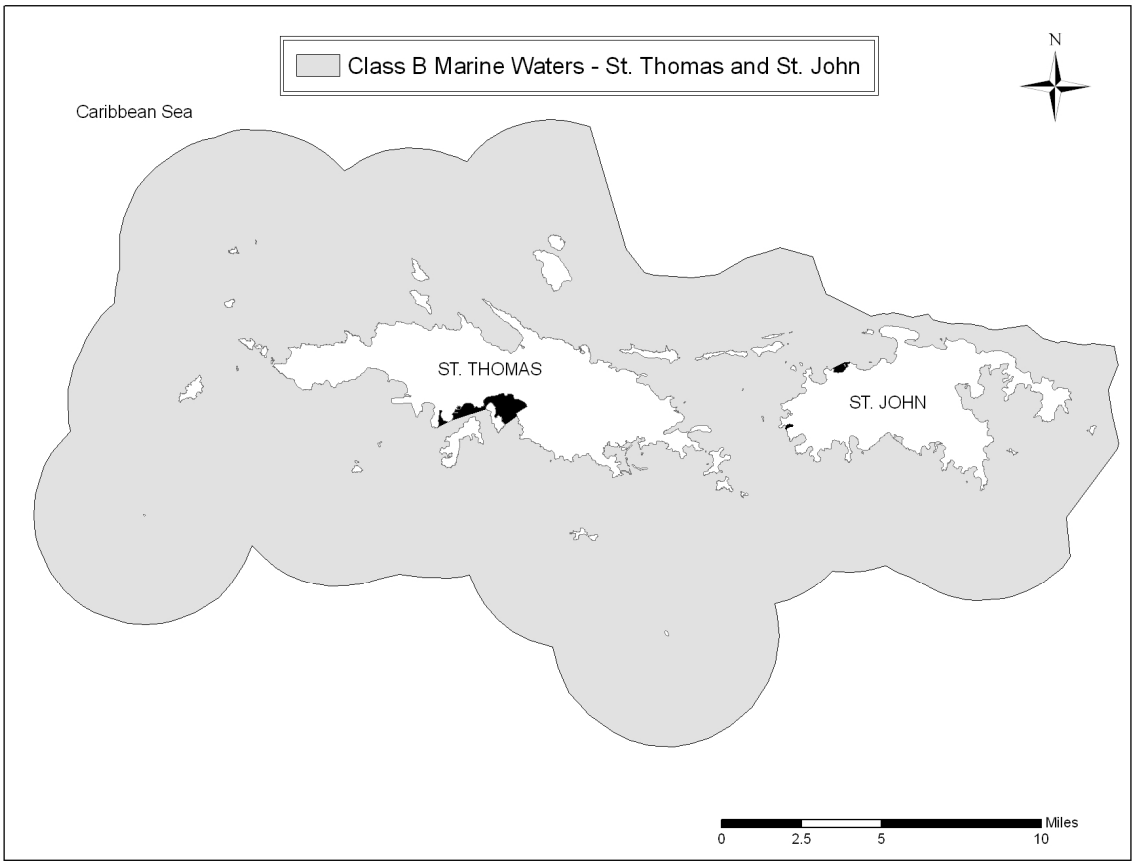


Figure 4. Class B - St. Thomas and St. John (only marine waters displayed)



(c) Class "C" (aquatic life and primary contact recreation).

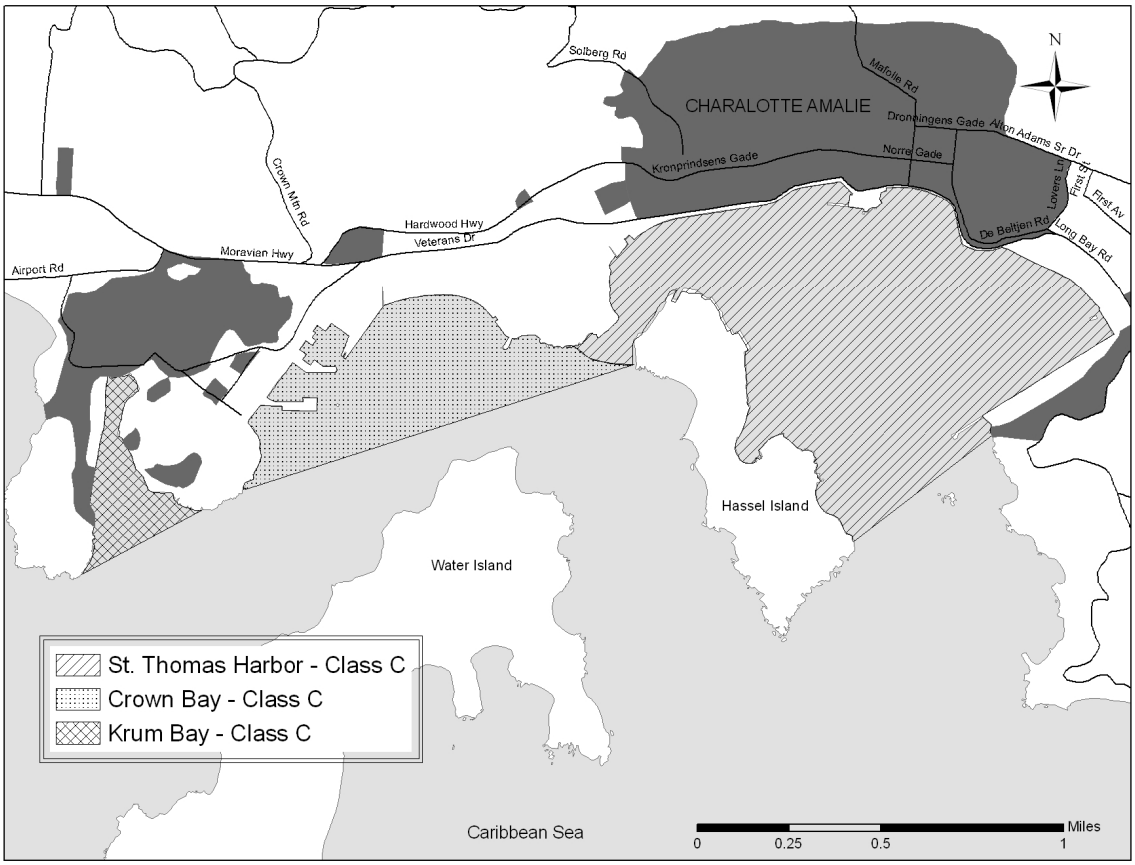
(1) St. Thomas:

(A) St. Thomas Harbor beginning at Rupert Rock and extending to Haulover Cut.

(B) Crown Bay enclosed by a line from Hassel Island at Haulover Cut to Regis Point at West Gregerie Channel.

(C) Krum Bay.

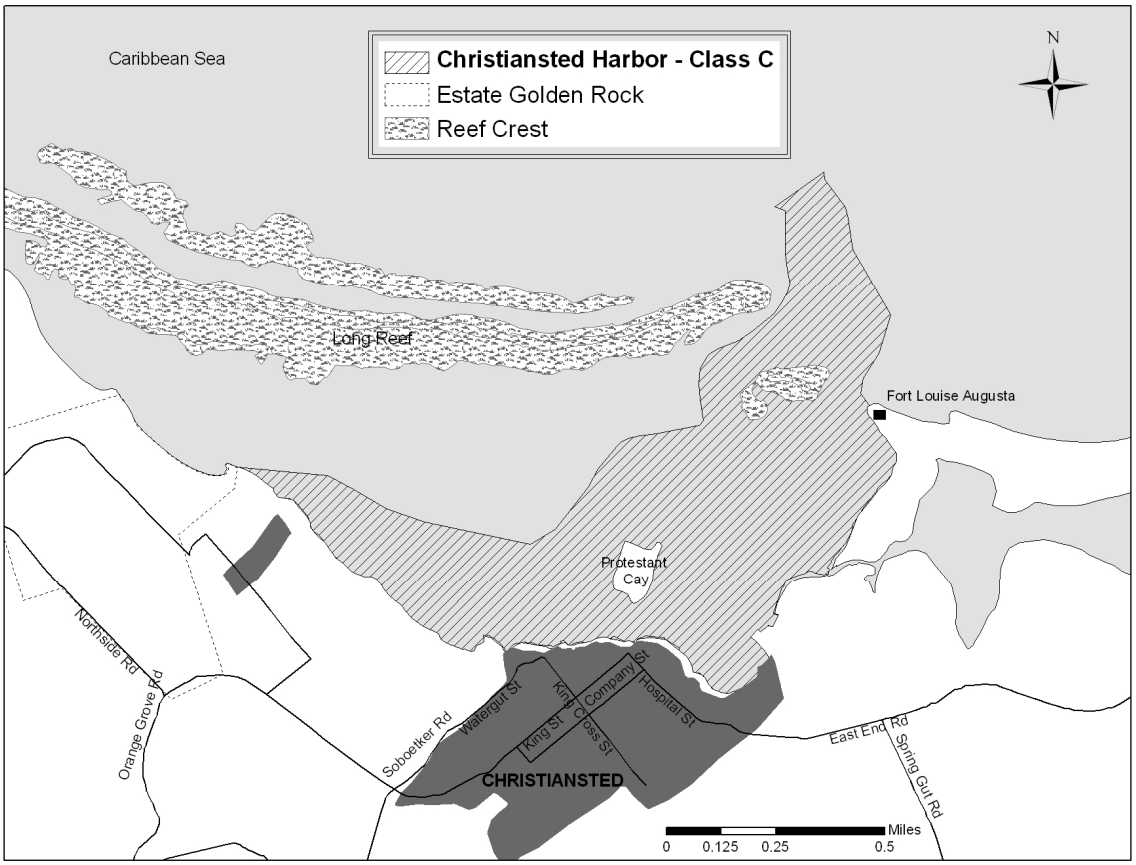
Figure 5. Class C - St. Thomas Harbor, Crown Bay and Krum Bay, St. Thomas



(2) St. Croix:

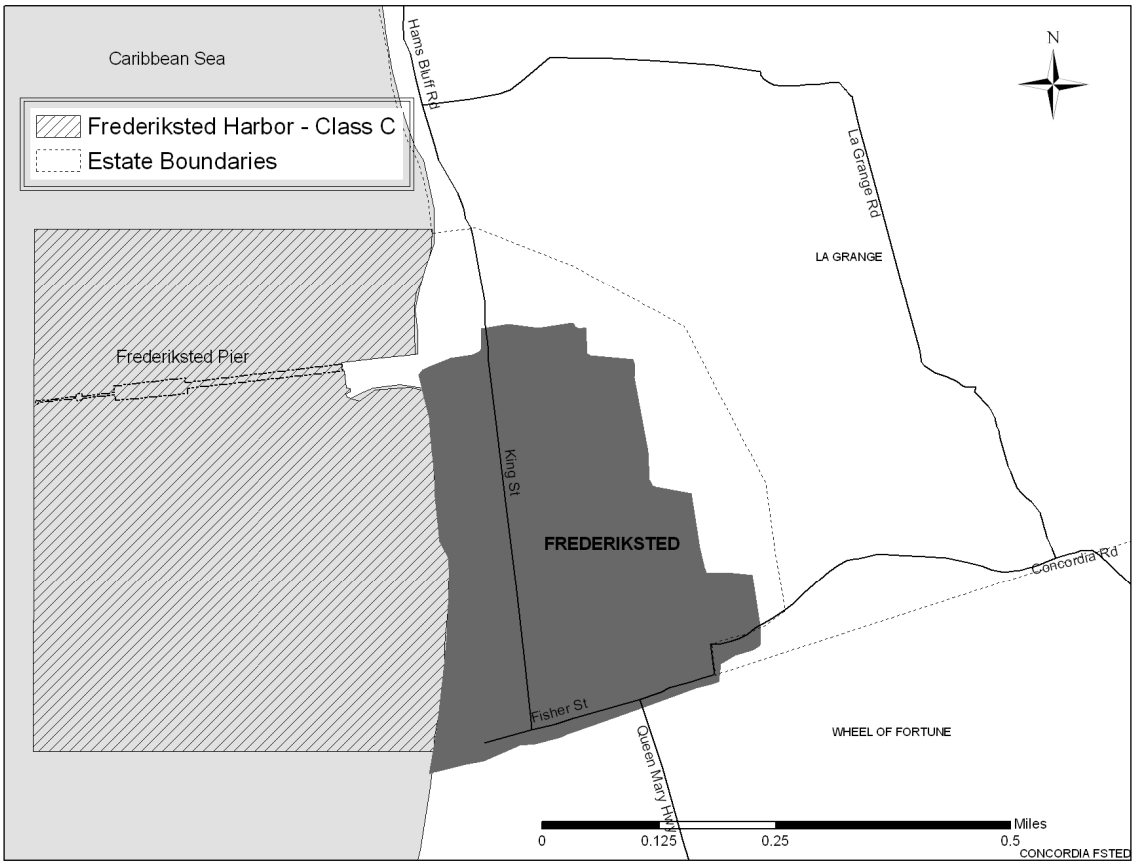
(A) Christiansted Harbor from Fort Louise Augusta to Golden Rock, along the waterfront and seaward to include the navigational channels and mooring areas.

Figure 6. Class C - Christiansted Harbor, St. Croix



(B) Frederiksted Harbor from La Grange to Fisher Street and seaward to the end of the Frederiksted Pier.

Figure 7. Class C - Frederiksted Harbor, St. Croix



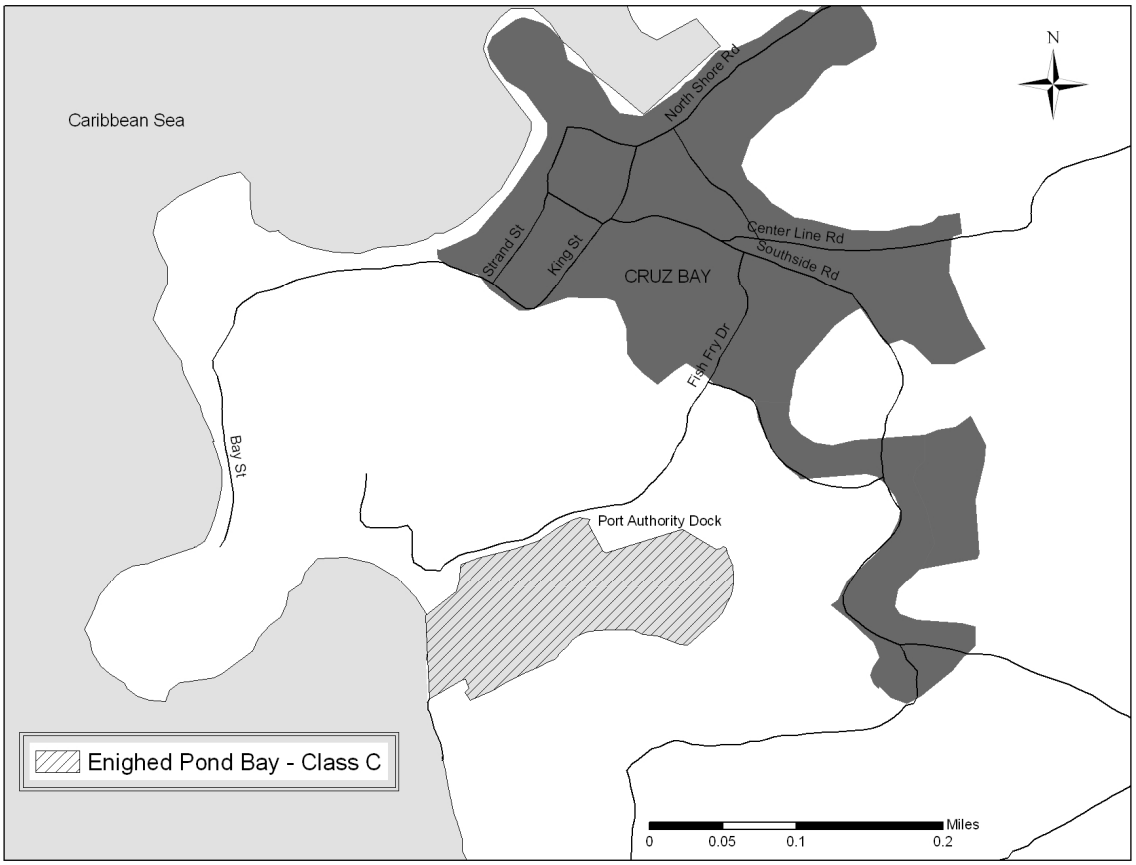
(C) Hess Oil Virgin Islands Harbor (alternatively named HOVENSA Harbor).
(D) Martin-Marietta Alumina Harbor (alternatively named Port Alucroix or St. Croix Renaissance Group Harbor).

Figure 8. Class C - HOVENSA Harbor and St. Croix Renaissance Group Harbor,

(3) St. John:

(A) Enighed Pond Bay

Figure 9. Class C - Enighed Pond, St. John



Amended March 7, 1985; May 30, 1985.
Amendments - 1985. Regulation adding subpars. (A) and (B) to subsec. (b)(1) and substituting "primary" for "secondary" in subsec. (c) was issued by the Commissioner of Conservation and Cultural Affairs and approved by the Governor March 7, 1985 and corrected May 30, 1985. Filed with the Lieutenant Governor March 7, 1985; File No. RR27-85, and May 7, 1985, File No. RR44-85.
Amendments – 2004. All references to "*coastal*" and "*surface*" were removed, and ^{o}F were converted to ^{o}C throughout.
Effective date of the 1985 and 2004 amendments. See note under section 186-3 of this title.

§ 186-12. Time for compliance; schedules of compliance

Persons who are authorized to discharge pollutants into the waters of the Virgin Islands at the time this subchapter is amended or revised to add or make more stringent any water quality standards shall meet such newly adopted or more stringent water quality standards within three years of the amendment or revision

of this subchapter; and the Commissioner shall upon the expiration of the three years shall revoke or modify any discharge permit previously issued which result in reducing the quality of such waters below the newly established standards. Nothing in this Section 186-12 shall limit any authority of the Commissioner to set or revise schedules of compliance pursuant to the statues and regulations referred to herein.

§ 186-13. Site-specific criteria

(a) Requirements for Site-specific Modifications to Criteria: Criteria may be modified on a site-specific basis to reflect local environmental conditions as restricted by the following provisions. Any such modifications must be protective of designated uses and aquatic life, wildlife or human health and be submitted to EPA for approval. In addition, any site-specific modifications that result in less stringent criteria must be based on a sound scientific rationale and shall not be likely to jeopardize the continued existence of endangered or threatened species listed or proposed under section 4 of the federal Endangered Species Act (ESA) Act and Title 12, Chapter 2 of the Virgin Islands Code or result in the destruction or adverse modification of such species' critical habitat. More stringent modifications shall be developed to protect endangered or threatened species listed or proposed under section 4 of the federal ESA Act and Title 12, Chapter 2 of the Virgin Islands Code, where such modifications are necessary to ensure that water quality is not likely to jeopardize the continued existence of such species or result in the destruction or adverse modification of such species' critical habitat.

(b) Aquatic Life.

(1) Aquatic life criteria may be modified on a site- specific basis to provide an additional level of protection.

(2) Less stringent site-specific modifications to chronic or acute aquatic life criteria may be developed when: i. The local water quality characteristics such as pH, hardness, temperature, color, etc., alter the biological availability or toxicity of a pollutant; or ii. The sensitivity of the aquatic organisms species that ``occur at the site'' differs from the species actually tested in developing the criteria. The phrase ``occur at the site'' includes the species, genera, families, orders, classes, and phyla that: are usually present at the site; are present at the site only seasonally due to migration; are present intermittently because they periodically return to or extend their ranges into the site; were present at the site in the past, are not currently present at the site due to degraded conditions, and are expected to return to the site when conditions improve; are present in nearby bodies of water, are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. The taxa that ``occur at the site'' cannot be determined merely by sampling downstream and/or upstream of the site at one point in time. ``Occur at the site'' does not include taxa that were once present at the site but cannot exist at the site now due to permanent physical alteration of the habitat at the site resulting, for example, from dams, etc.

(3) Less stringent modifications also may be developed to acute and chronic aquatic life criteria to reflect local physical and hydrological conditions.

(c) Human Health.

(1) Human health criteria may be modified on a site-specific basis to provide an additional level of protection. Human health criteria shall be modified on a site-specific basis to provide additional protection appropriate for highly exposed subpopulations.

(2) Less stringent site-specific modifications to human health criteria may be developed when: i. local fish consumption rates are lower than the rate used in deriving the human health criteria in 186-1(b) and/or ii. a site-specific bioaccumulation factor is derived which is lower than that used in deriving human health criteria in 186-1(b).

§ 186-14. Variances

(a) Applicability: A variance from any water quality standard (WQS) that is the basis of a water quality-based effluent limitation included in a Territorial Pollutant Discharge Elimination System (TPDES) permit may be granted. A variance from WQS applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance. A variance does not affect, or require DPNR to modify, the corresponding water quality standard for the waterbody as a whole. A variance from a water quality standard shall not be granted that would likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the federal Endangered Species Act (ESA) Act and Title 12, Chapter 2 of the Virgin Islands Code or result in the destruction or adverse modification of such species' critical habitat. A variance from WQS shall not be granted if standards will be attained by implementing effluent limits required under sections 301(b) and 306 of the Clean Water Act (CWA) and by the permittee implementing cost-effective and reasonable best management practices for nonpoint source control.

(b) Maximum Timeframe for Variances: A variance from WQS shall not exceed five years or the term of the TPDES permit, whichever is less. DPNR will review, and modify as necessary, variances from WQS as part of each water quality standards review pursuant to section 303(c) of the CWA.

(c) Conditions to Grant a Variance: A variance from WQS may be granted if:

(1) The permittee demonstrates to DPNR that attaining the WQS is not feasible because:

(A) Naturally occurring pollutant concentrations prevent the attainment of the WQS;

(B) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the WQS, unless these conditions may be compensated for by the discharge of sufficient volume of effluent to enable WQS to be met without violating State or Tribal water conservation requirements;

(C) Human-caused conditions or sources of pollution prevent the attainment of the WQS and cannot be remedied, or would cause more environmental damage to correct than to leave in place;

(D) Dams, diversions or other types of hydrologic modifications preclude the attainment of the WQS, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the WQS;

(E) Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of WQS; or

(F) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(2) In addition to these requirements, the permittee shall also:

(A) Show that the variance requested conforms to the requirements of the antidegradation procedures in §186-7; and

(B) Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with WQS absent the variance, such that DPNR is able to conclude that any such increased risk is consistent with the protection of the public health, safety and welfare.

(d) Submittal of Variance Application: The permittee shall submit an application for a variance from WQS to DPNR. The application shall include:

(1) All relevant information demonstrating that attaining the WQS is not feasible based on one or more of the conditions in §186-14 (c)(1); and,

(2) All relevant information demonstrating compliance with the conditions in §186-14 (c)(2) of this procedure.

(e) Public Notice of Preliminary Decision: Upon receipt of a complete application for a variance from WQS, and upon making a preliminary decision regarding the variance, DPNR shall public notice the request and preliminary decision for public comment. This public notice requirement may be satisfied by including the supporting information for the variance from WQS and the preliminary decision in the public notice of a draft TPDES permit.

(f) Final Decision on Variance Request: DPNR will issue a final decision on the variance request within 90 days of the expiration of the public comment period required in §186-14 (e) of this procedure. If all or part of the variance from WQS is approved by DPNR, the decision shall include all permit conditions needed to implement those parts of the variance so approved. Such permit conditions shall, at a minimum, require:

(1) Compliance with an initial effluent limitation which, at the time the variance from WQS is granted, represents the level currently achievable by the permittee, and which is no less stringent than that achieved under the previous permit;

(2) That reasonable progress be made toward attaining the water quality standards for the waterbody as a whole through appropriate conditions;

(3) When the duration of a variance from WQS is shorter than the duration of a permit, compliance with an effluent limitation sufficient to meet the underlying water quality standard, upon the expiration of said variance; and

(4) A provision that allows DPNR to reopen and modify the permit based on any triennial water quality standards revisions to the variance. A variance from WQS request will be denied if the permittee fails to make the demonstrations required under §186-14 (c) of this procedure.

(g) Incorporating Variance into Permit: DPNR will establish and incorporate into the permittee's TPDES permit all conditions needed to implement the variance from WQS as determined in §186-14 (f) of this procedure.

(h) Renewal of Variance: A variance may be renewed, subject to the requirements of §186-14 (a) through §186-14 (g) of this procedure. As part of any renewal application, the permittee shall again demonstrate that attaining WQS is not feasible based on the requirements of §186-14 (c) of this procedure. The permittee's application shall also contain information concerning its compliance with the conditions incorporated into its permit as part of the original variance from WQS pursuant to §186-14 (f) through §186-14 (g). Renewal of a variance may be denied if the permittee did not comply with the conditions of the original variance.

(i) EPA Approval. All variances from WQS and supporting information shall be submitted by DPNR to EPA Region 2 and will include:

(1) Relevant permittee applications pursuant to §186-14 (d);
(2) Public comments and records of any public hearings pursuant to §186-14 (e);
(3) The final decision pursuant to §186-14 (f) of this procedure; and,
(4) TPDES permits issued pursuant to §186-14 (g) of this procedure.

§ 186-15. Reissuance of this chapter

Title 12, chapter 7, sections 186-1 through 186-15, Virgin Islands Rules and Regulations, as previously issued by the Commissioner of Health, are hereby reissued by the Commissioner of the Department of Planning and Natural Resources.

Source. Section 186-15: Regulations to reissue this chapter issued by the Commissioner of Conservation and Cultural Affairs Aug. 31, 1978, and approved Sept. 1, 1978 by the Governor. Filed with Lieutenant Governor Sept. 1, 1978; File No. 1053.

Effective date: The regulation, File No. _____, contained a gubernatorial certificate dated _____, which provided such regulations shall take effect without the usual prior publication.