

## **ST. CROIX SEA-CHANGE ACCORD**

The parties to this St. Croix Sea-Change Accord, which is a legally binding settlement agreement of the issues in Pugh v. Turnbull, Virgin Islands District Court Case No. 2005/0149, through their respective attorneys, are: Michelle Pugh, Edward Buckley, Molly Buckley, Edward Schuster, Sr., Robert Wesley, Margo Wesley, Elizabeth Scoggins, Sharon Prudoff, the St. Croix Ocean Defense Group, C.R.A.B.B., Inc., St. Croix Commercial Fishermen's Association, St. Croix Environmental Association, Inc., (collectively the "Plaintiffs"); Hon. John P. deJongh, Jr. (as successor to Hon. Charles W. Turnbull), Hon. Robert S. Mathes (as successor to Hon. Dean C. Plaskett), Darryl A. Smalls (as successor to Hon. George Phillips), V.I. Department of Public Works, V.I. Department of Planning and Natural Resources, V.I. Waste Management Authority (collectively the "GVI Defendants" or "the GVI").

WHEREAS, pursuant to that certain Consent Decree entered in U.S. District Court Civil Action No. 1984-104 as amended in 1996, as later modified in December 2002, and as may be further modified (the "Consent Decree"), the Government of the Virgin Islands (GVI) is required to undertake and complete the construction and upgrade of two new Wastewater Treatment Plants (WWTP); one (1) each on St. Croix (the "Anguilla WWTP") and St. Thomas, and to place them into operation. In accord with the Consent Decree, the new WWTPs, when placed into operation, are to meet secondary (or better) treatment requirements rather than the primary treatment of effluents which now occurs at the currently operating WWTPs before discharge of the effluent into the ocean through existing outfalls. And,

WHEREAS, the GVI has completed construction of the Anguilla WWTP. And,

WHEREAS, the Anguilla WWTP is designed to, and after construction and acceptance testing, must meet the secondary treatment standards for publicly owned wastewater treatment facilities required pursuant to the federal Clean Water Act; 33 U.S.C §§1251, et seq. And,

WHEREAS, in addition to the construction or modification of the existing primary treated Anguilla WWTP to meet secondary treatment standards, the Anguilla WWTP has been designed and built incorporating an ultra-violet light ("UV") effluent disinfection system and a disk filter effluent filtration system which are add-on equipment and systems to the biological and mechanical Sequencing Batch Reactor ("SBR") treatment plant necessary to achieve tertiary sewage treatment. And,

WHEREAS, tertiary sewage treatment has been described as water treatment process which involves coagulation, flocculation, clarification, filtration, and UV disinfection. (Crites and Tchobanoglous-Small and Decentralized Wastewater Management Systems; McGraw-Hill Companies, Inc. 1998). And

WHEREAS, the end product of the tertiary treatment of sewage is the production of water that may be re-used ("re-use water") for irrigation of farmlands, golf courses, hotel ornamental foliage, and for other non-potable applications ("non-potable applications"), subject to applicable federal and/or local regulations regarding such re-use ("regulated re-use"). And,

WHEREAS, the plaintiffs' grave concern for the protection of the marine environment, specifically the extensive coral reef system near the location of the Anguilla WWT outfall pipe, which is the habitat of the elkhorn coral, the staghorn coral, the green sea turtle, and the hawksbill sea turtle (all listed as threatened or endangered species under federal and local law), as well as the recognition that St. Croix is constantly in need of water sources for irrigation, other land-based activities, and recharging of aquifers, prompted the plaintiffs to file a civil action in the Superior Court of the Virgin Islands for Declaratory and Injunctive Relief, which civil action was subsequently removed to the U.S. District Court for the Virgin Islands. And,

WHEREAS, the defendants denied the material allegations set forth in the complaint.

And,

WHEREAS, the plaintiffs have by their suit and ongoing settlement negotiations with the Defendants sought to encourage the Defendants to secure all necessary and required permits for the construction and operation of the Anguilla WWTP; and sought to encourage the Defendants to install and operate such UV and disk filter systems as would result in the plant treating the effluent to tertiary treatment standards before discharge, or to consider alternative technologies to elevate the WWTP from secondary treatment mode to tertiary treatment.

WHEREAS, the modified treatment plant utilizes an "SBR" design, and with the additional UV and disk filter systems built in, the WWTP will be capable of improving the quality of the effluent from secondary to tertiary, thereby enabling its diversion for regulated re-use. And,

WHEREAS, the Plaintiff and the GVI Defendants agree that considering that the SBR system has been decided upon as the treatment mode for the Anguilla WWTP, and the UV and disk filter systems having been installed at the plant, that it would be in the best interest of the environment and the Territory of the Virgin Islands that the GVI provide, through prudent facility and regional planning, and subject to regulated re-use, such additional storage and on-site distribution systems at the facility, or adjacent thereto, as would make "re-use" water available for non-potable applications. And,

WHEREAS, the GVI Defendants have agreed to expend such sums for design and planning as are necessary to make tertiary treated re-use water available for non-potable applications, and for the installation of the necessary equipment on-site or adjacent thereto, so that interconnections may readily be made to transport such re-use water to other entities which may have a need for such a by-product for non-potable applications.

**NOW THEREFORE IT IS HEREBY AGREED**, by and between the parties hereto that the Defendants, jointly and separately to the extent specified below, shall undertake and perform the following activities and tasks as they relate to the Anguilla WWTP.

1. The GVI Defendants shall complete construction of the WWTP in accord with that certain contract entered into between VVNA Caribbean, LLC and the GVI on March 1, 2004, including construction to operational status of the disk filter and ultraviolet tertiary-treatment features.

2. The GVI Defendants shall diligently and without undue delay apply for and secure all Territorial and federal permits and approvals for the operation of the Anguilla WWTP in furtherance of the objectives set forth in the Consent Decree.

3. The GVI Defendants shall diligently and without undue delay undertake all necessary regional re-use facility planning, and execute contracts or contract modifications or amendments and secure all necessary approvals, in order to facilitate and authorize operation of equipment and devices, including the UV system and the disk filter system, in order to improve wastewater treatment at the Anguilla WWTP from secondary to tertiary treatment.

4.. The GVI Defendants shall, within eighteen (18) months from the date of the issuance of the Territorial Pollutant Discharge Elimination System ("TPDES") Permit, the application for which is currently pending before the Department of Planning and Natural Resources ("DPNR"), procure the design thereof and acquire the appropriate equipment at the Anguilla WWTP through which re-use water may be made available in conformance with applicable federal and/or local regulations regarding reuse, and with applicable design considerations and environmental planning, for distribution to the general public and businesses for non-potable applications, except that the distribution system for such re-use water shall not be installed except upon agreement with one or more entities as set forth in paragraph 7 hereof.

5. The GVI Defendants shall, within eighteen (18) months from the date of the issuance of the TPDES Permit, the application for which is currently pending before the

DPNR, construct or acquire storage facilities of sufficient capacity that a reliable source of re-use water may be stored therein.

6. The GVI Defendants shall, within eighteen (18) months from the date of the issuance of the TPDES Permit, plan the necessary steps and, upon agreement with one or more entities as set forth in paragraph 7, acquire, obtain usage rights, or construct all of the onsite or adjacent distribution systems and equipment necessary to provide a reliable source of re-use water for appropriate agricultural, development, and/or recreational uses.

7. The GVI Defendants, upon agreement with one or more entities, and upon the installation of the necessary ancillary off-site re-use water distribution systems and equipment and their connection to the WWTP, shall provide for the reliable availability of re-use water to such entities. The GVI Defendants shall, within eighteen (18) months from the date of the issuance of the TPDES Permit, execute all necessary contracts or contract modifications of amendments to implement the above.

8. The Defendant Department of Planning and Natural Resources ("DPNR") shall exercise its authority to review, consider, and to issue such permits and approvals as would permit the acceptance testing and operation of the Anguilla WWTP and the discharge of the effluent which has been treated to not less than secondary (or better) standards; provided, however, that the intent of this Agreement is that tertiary treatment be undertaken as soon as reasonably possible, and such secondary treatment shall be acceptable only on an interim basis, during such period of time as is reasonably required to implement tertiary treatment.

9. Within three (3) years from date of the issuance of the TPDES Permit, all sewage will be treated to a tertiary level at the Anguilla WWTP.

10. Within three (3) years from date of the issuance of the TPDES Permit, all storage, distribution systems and equipment necessary for the beneficial reuse of treated effluent shall be acquired, constructed, installed, and made fully operational.

11. After three (3) years from date of the issuance of the TPDES Permit, the application for which is currently pending before the DPNR, there shall be no discharge of any sewage, treated or otherwise, into the sea from the Anguilla WWTP.

12. The deadlines herein are presumptive, and may be extended for good cause shown, such as unforeseeable circumstances rendering timely performance impracticable, provided that Defendants have acted in good faith and with due diligence.

13. Nothing in this Settlement Agreement is intended to foreclose future consideration of alternative waste treatment technologies to be used in some combination with the SBR-UV-disk filter technology for the treatment of some part of the effluent, should the future combined or supplemental use of such alternative treatment technology appear efficient, effective, and economically beneficial.

14. At no time and under no circumstances shall any landfill leachate, or any other substance that originates or derives from any solid waste disposal facility, be introduced into the Anguilla WWT system, and at no time will any Defendant seek any type of permit for such activity.

15. The GVI Defendants and each of them shall proceed with diligence and good faith to accomplish all of the foregoing commitments and agreements as are applicable to each of them individually or jointly.

**FOR AND IN CONSIDERATION** of the promises, commitments and performance of the Defendants as set forth hereinabove, the Plaintiffs and each of them agree to the following:

6. The Plaintiffs hereby release and covenant not to sue Defendants or any of them, or any of their past or present directors, officers, employees, agents, shareholders, consultants, divisions, parents, subsidiaries, affiliates, predecessors, assignors or licensees, from and for any and all claims, demands, damages, judgments, actions, or causes of action, under any state, territory or federal law or the common law, including those laws and regulations that Plaintiffs rely on in their complaint in this litigation with respect to the permitting, construction or operation of the Anguilla WWTP; provided, however, that nothing herein shall be construed as a waiver of any rights arising under this settlement agreement.

7. This "St. Croix Sea-Change Accord" is a binding legal agreement enforceable at law and in equity, and the prefatory matters set forth herein are not merely recitations but are an integral part of the agreement, and shall be accepted as stipulated fact by the Court in the event of any action for enforcement of this agreement. The agreement shall remain enforceable as a contract in any Virgin Islands court of competent jurisdiction, if for unforeseen reasons the Virgin Islands District Court declines to exercise ancillary jurisdiction to enforce it.

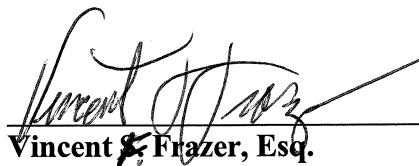
8. The parties agree that upon execution hereof, Plaintiff shall file a motion for voluntary dismissal of the entire pending lawsuit, with prejudice, pursuant to Rule 41(a)(2), with the parties to bear their own costs and attorneys' fees, and shall further lodge with the Court an appropriate proposed judgment of dismissal, with prejudice, the parties to bear their own costs and fees, and otherwise in a form mutually agreed-upon, and the proposed Judgment shall provide that the Court shall reserve enforcement jurisdiction of this settlement agreement, in accordance with the rule of *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378, 128 L. Ed. 2d 391, 114 S. Ct. 1673 (1994).

This **ST. CROIX SEA-CHANGE ACCORD** has been subscribed by the parties through their authorized representatives on the day and year set forth hereinbelow.



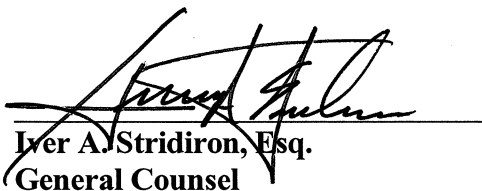
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December 4, 2007  
Date



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**Government of the Virgin Islands,**  
**Hon. John P. deJongh, Jr.**  
**Hon. Robert S. Mathes**  
**Hon. Darryl A. Smalls**  
**V.I. Department of Public Works**  
**V.I. Department of Planning**  
**and Natural Resources**

12/30/07  
Date



**Iver A. Stridiron, Esq.**  
**General Counsel**  
**Attorney for Defendant**  
**V.I. Waste Management Authority**

12/10/07  
Date