UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF:	
U.S. Virgin Islands Water and Power Authority,	**COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING**
Respondent,	
Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928.	Docket No. RCRA-02-2012-7108

RESPONSE TO COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING

Pursuant to 40 C.F.R. § 22.15 and the Order dated November 14, 2012, the U.S. Virgin Islands Water and Power Authority ("V1 WAPA") hereby responds to the Complaint, Compliance Order, and Notice of Opportunity for Hearing (the "Complaint") issued to VI WAPA by the United States Environmental Protection Agency ("EPA") on September 27, 2012.

VI WAPA is an autonomous public utility created by the Virgin Islands Legislature in 1964. VI WAPA generates and distributes electricity to approximately 55,000 customers throughout the U.S. Virgin Islands. In addition, VI WAPA provides potable water to 13,000 customers in major population centers on St. Thomas, St. Croix, and St. John.

It is VI WAPA's policy to minimize the use of hazardous substances and, accordingly, to avoid producing hazardous waste. To carry out this policy, VI WAPA purchases and uses primarily non-hazardous cleaning agents, paint materials, paint thinners, cleaning agents, and corrosion inhibitors. Further, when VI WAPA hires contractors to conduct special operating and maintenance activities, the contractors are required to control, store, and properly dispose of all

wastes produced as part of the contract. Examples of these special activities include cleaning the steam boilers and cleaning the seawater desalination units. Finally, materials that have come into contact with chemicals or oil are collected in containers and transferred to a waste disposal firm that disposes of such wastes at an approved disposal site in Florida.

VI WAPA responds to the allegations in the Complaint using the same numbering of paragraphs and sentences as the Complaint. Respecting the general allegations on Page 1 and in the first sentence of Page 2 of the Complaint, VI WAPA makes no response, as these general allegations comprise EPA's characterization of this action, the Solid Waste Disposal Act, as amended ("the Act" or "RCRA"), and EPA regulations implementing RCRA.

1. VI WAPA lacks sufficient knowledge or information to form a belief as to the truth of the assertion in ¶ 1 that EPA has given notice of this action to the U.S. Virgin Islands.
2. The allegations in ¶ 2 include assertions of law, to which no response is required.
3. The allegations in ¶ 3 include assertions of law, to which no response is required.
4. The allegations in ¶ 4 include assertions of law, to which no response is required.
5. The allegations in ¶ 5 include assertions of law, to which no response is required.
6. VI WAPA is a body corporate and politic constituting a public corporation and autonomous governmental instrumentality of the Government of the U.S. Virgin Islands.
7. VI WAPA is a body corporate and politic constituting a public corporation and autonomous governmental instrumentality of the Government of the U.S. Virgin Islands that contributes to the U.S. Virgin Islands' Government's budget through an annual payment in lieu of taxes to the U.S. Virgin Islands' Treasury.
8. The allegations in ¶ 8 include assertions of law, to which no response is required.

9. VI WAPA admits that it operates two electricity generating plants in the U.S. Virgin Islands. VI WAPA's Krum Bay facility is located at Charlotte Amalie, St. Thomas, and its Richmond facility is located at Christiansted, St. Croix.

10. VI WAPA admits that its Krum Bay and Richmond facilities include both electricity generation and desalinization plants, and that VI WAPA also provides services to maintain electric power distribution and water distribution lines.

11. VI WAPA admits that the North America Industry Classification System codes for the Krum Bay Facility located at Charlotte Amalie, St. Thomas, and the Richmond Facility located at Christiansted, St. Croix, are Codes 221112 and 221310.

12. The allegations in ¶ 12 include characterizations of the facilities categorized under Code 221112 of the North America Industry Classification System. VI WAPA lacks sufficient knowledge or information to form a belief as to the veracity of EPA's characterizations.

13. The allegations in ¶ 13 include characterizations of the facilities categorized under Code 221310 of the North America Industry Classification System. VI WAPA lacks sufficient knowledge or information to form a belief as to the veracity of EPA's characterizations.

14. VI WAPA admits that its Krum Bay facility employs approximately one hundred twenty five (125) personnel and that it operates twenty-four (24) hours per day, seven days per week.

15. VI WAPA admits that its Krum Bay facility's electric power generation units, water desalinization units, and fleet management building are located in a peninsula enclosed by the Krum Bay and the Lindberg Bay. VI WAPA further admits that its Krum Bay facility supplies electricity and potable water to St. Thomas and to St. John.

16. VI WAPA admits that its Richmond facility employs approximately one hundred (100) personnel and that it operates twenty-four (24) hours per day, seven days per week.

17. VI WAPA admits that its Richmond facility is bordered by Christiansted Bay to the north, by an abandoned mid-rise residential complex to the East, and by an abandoned mid-rise residential complex to the West. VI WAPA further admits that its Richmond facility is bordered to the South by a local road that separates the facility from a water tank and an electricity substation.

18. The allegations in ¶ 18 include assertions of law, to which no response is required.

19. The allegations in ¶ 19 include assertions of law, to which no response is required.

20. The allegations in ¶ 20 include assertions of law, to which no response is required.

21. The allegations in ¶ 21 include assertions of law, to which no response is required.

22. VI WAPA avers that it has determined, based on its knowledge of its processes, that oil used at its facilities is not exposed to hazardous substances and does not have a total halogens content exceeding 1,000 ppm.

23. VI WAPA admits that it filed a Notification of Regulated Waste Activity dated October 14, 1980, for its Richmond facility and a Notification of Regulated Waste Activity dated June 4, 1996, for its Krum Bay facility.

24. VI WAPA admits that the Notifications that it filed were prepared by one or more employee(s) or agent(s) of VI WAPA in the course of their duties.

25. The allegations in ¶ 25 characterize the Notification for the Krum Bay Facility, which speaks for itself and requires no response.

26. VI WAPA admits that the waste generator identification number for the Krum Bay Facility is VID980536056.

27. The allegations in ¶ 27 characterize the Notification for the Richmond Facility, which speaks for itself and requires no response.

28. The allegations in ¶ 28 characterize information in the RCRAInfo database, which speaks for itself and requires no response.

29. VI WAPA admits that the waste generator identification number for the Richmond facility is VID980301592.

30. VI WAPA admits that EPA representatives conducted inspections at the Krum Bay and Richmond facilities on September 25 and 26, 2003. VI WAPA lacks sufficient knowledge or information to form a belief as to whether the EPA personnel were duly designated. The remaining allegations in ¶ 30 constitute assertions of law, to which no response is required.

31. VI WAPA lacks sufficient information to allow it to verify that it received a Request for Information and Notice of Violation issued by EPA on August 4, 2004. The remaining allegations in ¶ 31 describe the referenced Request for Information and Notice of Violation, which speaks for itself and requires no response.

32. VI WAPA admits submitting to EPA a written response (the "2004 Response") to the August 4, 2004, Request for Information and Notice of Violation in September 2004. The remaining allegations in ¶ 32 describe the 2004 Response, which speaks for itself and requires no response.

33. VI WAPA admits that it developed and submitted to EPA two standard operating procedures. One standard operating procedure addressed the handling and storage of non-contaminated crude and synthetic oil that had been used by VI WAPA as well as oily rags and filters. VI WAPA avers that this standard operating procedure did not address the handling and storage of contaminated "used oil" that meets the definition of "used oil" in 40

C.F.R. § 279.1. VI WAPA admits that it submitted to EPA a standard operating procedure for the handling, storage, and disposal of paint.

34. The allegations in ¶ 34 purport to characterize the 2004 Response, which speaks for itself and requires no response. VI WAPA avers, based upon its knowledge of its own processes, that oil at its facilities does not have a total halogens concentration exceeding 1,000 ppm and is not hazardous waste.

35. VI WAPA admits that the standard operating procedures that it provided to EPA included procedures for evaluating the applicability of hazardous waste requirements on paint-related and oil-derived waste streams. VI WAPA avers, based on its knowledge of its process, that the oil does not contain total halogens in a concentration above 1,000 ppm and is not hazardous waste.

36. VI WAPA agrees with the statement in ¶ 36 that EPA took no further action based upon the 2003 inspections.

37. VI WAPA admits that EPA representatives conducted inspections of the Krum Bay and Richmond facilities on August 5 and 6, 2010. VI WAPA lacks sufficient knowledge or information to form a belief as to whether the EPA personnel were duly designated. The remaining allegations in ¶ 37 constitute EPA's characterization of its own action, to which VI WAPA is unable to respond.

38. VI WAPA admits that EPA identified several alleged violations pursuant to the August 5 and 6, 2010, inspections. VI WAPA avers that EPA provided it with no written summary or report of the inspections. Further, the allegation in ¶ 38 that EPA identified several violations constitutes a legal conclusion, to which no response is required.

39. VI WAPA admits that EPA identified potential violations involving oil and paint waste related materials during the inspection of the Krum Bay facility in August 2010. VI WAPA avers that, based on its knowledge of its processes, the oil does not contain total halogens in a concentration greater than 1,000 ppm and is not hazardous waste. Finally, the allegation that VI WAPA failed to make hazardous waste determinations constitutes a legal conclusion, to which no response is required.

40. VI WAPA admits that two 55-gallon containers were at the crusher area during the EPA inspection and that these containers were labeled "solvents" and were not covered. VI WAPA avers that these containers were placed at the crusher area to be destroyed, as they were no longer being used. VI WAPA further avers that the containers did not contain any solvents and that any liquid in the containers was rainwater. VI WAPA further avers that EPA took no sample of the liquid in the containers and performed no analysis to identify the liquid in the containers.

41. VI WAPA denies that any spent solvents were ever burned mixed with Number 6 fuel oil and burned for energy recovery in the boilers. VI WAPA avers that the oil at the facility does not come into contact with hazardous waste, does not contain total halogens in a concentration greater than 1,000 ppm, and is not hazardous waste. VI WAPA further avers that the name of the Environmental Affairs Manager for the Krum Bay facility is Maxwell George, Jr., and not George Maxwell.

42. The allegations in ¶ 42 constitute a legal conclusion, to which no response is required.

43. VI WAPA admits that a closing meeting was held by EPA representatives and was attended by Mr. Maxwell George, Jr., Environmental Affairs Manager for the Krum Bay facility. The remaining allegations in ¶ 43 constitute legal conclusions, to which no response is required.

44. VI WAPA denies the allegations in ¶ 44 and avers that the rags and pads were stored in a baker box, and the paint-related waste was stored in a 55-gallon container, because both were awaiting shipment to a certified waste disposal site on the U.S. mainland.

45. VI WAPA denies the allegations in ¶45 and avers that, based on its knowledge of its own processes, the oil burned for energy recovery has no contact with hazardous waste, does not contain more than 1,000 ppm total halogens, and is not hazardous waste.

46. VI WAPA admits that a closing meeting was held by EPA representatives and was attended by Ms. Nicole C. Turnbull, Environmental Specialist. The remaining allegations in ¶46 constitute legal conclusions, to which no response is required.

47. VI WAPA admits that EPA representatives conducted inspections on August 9 and 11, 2011. VI WAPA lacks sufficient knowledge or information to form a belief as to whether the EPA personnel were duly designated. The remaining allegations in ¶ 47 constitute EPA's characterization of its own actions, to which VI WAPA is unable to respond.

48. The allegations in ¶ 48 constitute EPA's characterization of its own actions, and VI WAPA lacks sufficient knowledge or information to form a belief as to the veracity of EPA's characterization. The remaining allegations in ¶ 48 constitute conclusions of law, to which no response is required.

49. VI WAPA denies the allegation that it did not properly label the containers referenced in subparagraph 49(a)(i). VI WAPA avers that the referenced containers did not contain spent solvents. VI WAPA further avers that EPA did not take samples of the contents of the containers. VI WAPA avers that the liquid in the containers was rain water. VI WAPA avers that the containers were placed in that location so that they could be destroyed. VI WAPA further avers that, because there was no hazardous waste in the containers, there was

no applicable labeling requirement, weekly inspection requirement, or accumulation period requirement. With respect to the allegations in subparagraph 49(b), VI WAPA admits that it did not make hazardous waste determinations with respect to paint-related waste. VI WAPA avers that determined, based on its knowledge of its own processes, that the oil had not been exposed to hazardous waste and did not have a total halogens concentration greater than 1,000 ppm. With respect to the allegations in subparagraph 49(c), VI WAPA avers that, based on its knowledge of its processes, the total halogen content of oil burned at the Facility does not exceed 1,000 ppm.

50. With respect to the allegation in subparagraph 50(a), VI WAPA admits that fluorescent bulbs were stored in wood crates and that VI WAPA failed to record the accumulation period of the waste lamps. VI WAPA avers that the fluorescent bulbs were intact and that VI WAPA stored the bulbs in a way that prevented release of the lamps or portions of the lamps to the environment.

51. VI WAPA denies that it failed to make a determination respecting the pads and rags and avers that it determined that the pads and rags were waste and that they were stored for disposal at a certified site on the U.S. mainland. With respect to the allegations in ¶ 51, VI WAPA avers that, based on its knowledge of its processes, the oil-impregnated materials did not contain total halogens exceeding 1,000 ppm. VI WAPA further avers that, based on its knowledge of its processes, the total halogen content of oil burned at the Facility does not exceed 1,000 ppm. Accordingly, VI WAPA denies the allegations in ¶ 51 that VI WAPA failed to demonstrate that used oil to be burned for energy recovery had not been mixed with listed hazardous waste.

52. VI WAPA denies that it failed to make a determination respecting the two thirty-cubic-yard roll-up containers containing soil. VI WAPA had isolated this soil and submitted samples of it to be tested. At the time of the EPA inspection, VI WAPA had not yet received the test results. VI WAPA denies that it failed to make a hazardous waste determination respecting the two 55-gallon containers with crushed fluorescent bulbs. VI WAPA admits that it did not maintain records respecting the beginning of the accumulation period of the universal waste.

53. VI WAPA avers that, based on its knowledge of the processes at its facilities, total halogens in oil combusted for energy recovery at the facilities does not exceed 1,000 ppm.

54. In answer to ¶ 54, VI WAPA incorporates its foregoing responses.

55. The allegations in ¶ 55 constitute conclusions of law, to which no response is required.

56. The allegations in ¶ 56 constitute characterizations of the cited regulations, which speak for themselves and require no response.

57. The allegations in ¶ 57 constitute characterizations of the cited regulations, which speak for themselves and require no response.

58. VI WAPA denies the allegations in ¶ 58 and avers that the referenced 55-gallon containers did not contain spent solvents and, therefore, no accumulation start date or sign identifying the contents as hazardous waste was required.

59. VI WAPA denies the allegations in ¶ 59 and avers that, because the 55-gallon containers did not contain spent solvents, the drums were properly stored at the drum crusher area to await destruction. VI WAPA further avers that, because the containers did not contain spent solvents, they presented no risk of release of hazardous waste or hazardous waste constituents to the environment.

60. VI WAPA denies the allegations in ¶ 60 and avers that, because the 55-gallon containers did not contain spent solvents, VI WAPA did not "treat" hazardous waste.

61. The allegations in ¶ 61 constitute characterizations of interactions between EPA personnel and VI WAPA personnel. Such characterizations require no response.

62. VI WAPA denies the allegations in ¶ 62 consistent with its responses to the allegations in ¶¶ 58-60.

63. VI WAPA denies the allegations in ¶63 and avers that the containers did not contain spent solvents and, accordingly, were not required to be sent off-site for treatment and/or disposal. VI WAPA further denies that it illegally disposed of or treated hazardous waste by evaporation or by blending and burning it with contaminated "used oil" as defined in 40 C.F.R. § 279.1. VI WAPA avers that, based on its knowledge of its processes, oil combusted for energy recovery at its facilities does not contain total halogen compounds greater than 1,000 ppm.

64. The allegations in ¶ 64 constitute conclusions of law, which require no response.

65. In answer to ¶ 65, VI WAPA incorporates its foregoing responses.

66. The allegations in ¶ 66 constitute characterizations of the cited regulations, which speak for themselves and require no response.

67. The allegations in ¶ 67 constitute characterizations of the cited regulations, which speak for themselves and require no response.

68. The allegations in ¶ 68 constitute characterizations of the cited regulations, which speak for themselves and require no response.

69. With respect to the allegations in subparagraphs 69(a) and (b), VI WAPA admits the allegations. With respect to the allegations in subparagraph 69(c), VI WAPA denies the

allegations and avers that, based on its knowledge of its processes, the total halogens in oil did not exceed 1,000 ppm.

70. VI WAPA admits the allegations in ¶ 70.

71. VI WAPA admits the allegations in subparagraph 71(a). VI WAPA denies the allegations in subparagraph 71(b) and avers that, based on its knowledge of its processes, the oil referenced in subparagraph 71(b) did not contain total halogens in a concentration greater than 1,000 ppm.

72. VI WAPA denies the allegations in ¶ 72. VI WAPA had the soil referred to in subparagraph 72(a) segregated, had sent a sample of the soil away for testing, and was awaiting the test results. VI WAPA denies the allegations in subparagraph 72(b) and avers that VI WAPA had the crushed bulbs properly contained and awaiting shipment for proper disposal.

73. The allegations in ¶ 73 constitute conclusions of law, which require no response.

74. VI WAPA avers that the allegations in ¶ 74 refer to ¶¶ 69 and 70, as ¶¶ 71 and 72 do not refer to the Krum Bay Facility. VI WAPA denies the allegations in subparagraph 69(c) and avers that, based on its knowledge of its operations, the oil impacting materials such as rags and absorbent pads did not contain total halogens in an amount greater than 1,000 ppm. VI WAPA admits the remaining allegations in ¶ 74.

75. VI WAPA avers that the allegations in ¶ 75 pertain only to ¶¶ 71 and 72, as ¶¶ 69 and 70 do not pertain to the Richmond Facility. VI WAPA denies the allegations in subparagraph 71(a) and avers that the waste stream referenced in subparagraph 71(a) was segregated and properly contained and awaiting disposal. VI WAPA further denies the allegations in subparagraph 71(b), because, based on its knowledge of its own processes, oil referenced in subparagraph 71(b) did not contain total halogens exceeding 1,000 ppm. VI WAPA denies

the allegations in ¶ 75 related to the allegations in ¶ 72 and avers that VI WAPA had the soil segregated, had sent samples away for testing, and was awaiting test results at the time of EPA's inspection. VI WAPA further avers that the crushed bulbs were properly contained and awaiting shipment for proper disposal.

76. The allegations in ¶ 76 constitute conclusions of law, which require no response.

77. In answer to ¶ 77, VI WAPA incorporates its foregoing responses.

78. The allegations in ¶ 78 constitute conclusions of law, which require no response.

79. The allegations in ¶ 79 constitute characterizations of the cited regulations, which speak for themselves and require no response.

80. The allegations in ¶ 80 constitute characterizations of the cited regulations, which speak for themselves and require no response.

81. VI WAPA denies the allegations in ¶ 81 and avers that it stored fluorescent lamps in containers that were structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps, as evidenced by the fact that the lamps stored in the containers described in ¶ 81 were whole and intact. VI WAPA further avers that wooden containers are structurally stronger than cardboard boxes. VI WAPA further avers that the storage capacity of the crates was adequate because the crates were not full to capacity and could accommodate additional lamps. VI WAPA further avers that, to the knowledge of its personnel, the EPA inspectors did not count the lamps or measure the crates.

82. VI WAPA admits that it did not demonstrate to EPA the amount of time that universal waste was accumulated from the date when it became waste.

83. The allegations in ¶ 83 constitute conclusions of law, to which no response is required.

84. In answer to ¶ 84, VI WAPA incorporates its foregoing responses.

85. The allegations in ¶ 85 constitute conclusions of law, to which no response is required.

86. The allegations in ¶ 86 constitute characterizations of the cited regulations, which speak for themselves and require no response.

87. The allegations in ¶ 87 constitute characterizations of the cited regulations, which speak for themselves and require no response.

88. VI WAPA denies the allegations in ¶ 88 and avers that, based on its knowledge of its processes, oil burned for energy recovery at its facilities does not contain halogenated hazardous constituents in an amount equal to or greater than 1,000 ppm. VI WAPA further denies the allegation in ¶ 88 that since at least September 25, 2003, it has been burning contaminated used oil for energy recovery at its facilities without determining the halogen concentration or rebutting the hazardous waste presumption.

89. The allegations in ¶ 89 constitute characterizations of the cited regulations, which speak for themselves and require no response.

90. The allegations in ¶ 90 constitute conclusions of law, to which no response is required.

91. The allegations in ¶ 91 constitute conclusions of law, to which no response is required.

To the extent that any allegation of fact in this Complaint remains unanswered, VI WAPA denies such allegation.

The remaining paragraphs of the Complaint constitute a proposed civil penalty, compliance order, notice of liability for additional civil penalties, notice of procedures governing this administrative litigation, notice regarding informal settlement conference, and notice regarding resolution of this proceeding without hearing or conference, to which no response is required. VI WAPA avers that the proposed penalty amounts are unwarranted based upon the

additional information that VI WAPA has provided herein. VI WAPA hereby notifies EPA that it does request a hearing upon the issues raised in the Complaint and Compliance Order.

Dated this 5th day of December, 2012.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused copies of the foregoing Response to Complaint, Compliance Order, and Notice of Opportunity for Hearing to be delivered, via electronic mail and overnight delivery service, to the following:

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