

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
290 Broadway  
New York, New York 10007-1866

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In the Matter of

Government of the Virgin Islands  
of the United States  
Public Works Department  
8244 Sub Base  
St. Thomas, U.S.V.I. 00802-5805

ORDER  
ON  
CONSENT

EPA-CWA-II-98-125

Proceeding Pursuant to §309(a) of the  
Clean Water Act, 33 U.S.C. §1319(a)  
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**I. STATUTORY AUTHORITY**

The following Findings are made and Order issued pursuant to §309(a) of the Clean Water Act ("the Act"), 33 U.S.C. §1319(a), under authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, and by her duly delegated to the Regional Administrator of EPA, Region II, who has further redelegated this authority to the Director of the Division of Environmental Planning and Protection of EPA, Region II.

**II. STIPULATIONS AND FINDINGS**

1. The Government of the United States Virgin Islands Department of Public Works ("Respondent") is a "person" under Section 502 of the Act, 33 U.S.C. §1362.
2. Respondent owns and operates a solid waste landfill facility named Bovoni Landfill ("the Landfill") located south of Route 30 in Estate Bovoni on the island of St. Thomas in the United States Virgin Islands (see Exhibit A).
3. The Landfill is bordered by tidal salt flats and mangrove swamp on its eastern side, adjacent to an open water embayment called Mangrove Lagoon.

4. Respondent has been operating the Landfill over a period of approximately 20 years in such a manner that solid waste, including such items as discarded automobiles, appliances, tires, and scrap metal, is disposed into and along the edge of the tidal salt flats and mangrove swamp bordering the Landfill on its eastern side adjacent to the access road through the Landfill (see Exhibit B).
5. In September 1995, during the clean-up operations subsequent to the occurrence of Hurricane Marilyn, Respondent discharged fill, consisting of earthen material and assorted small solid waste debris, over approximately 0.2 acres of the tidal salt flats bordering the Landfill on its eastern side. Specifically, this fill was discharged adjacent to the southern side of a pre-existing, triangular-shaped area of old fill located east of the scale-house (see Exhibit B). The fill is depicted in a color aerial photograph (see Exhibit C). This material was discharged via dump truck and D8 bulldozer. Assorted solid waste debris, including large tree stumps, cables, tires, scrap metals, and discarded automobiles were subsequently discharged onto this new fill and onto the triangular-shaped pre-existing earthen fill.
6. The U.S. Army Corps of Engineers ("the Corps") observed this activity in September 1995 and issued an oral order to cease and desist. However, discharge of solid waste debris in these areas continued.
7. On December 17, 1996, the Corps issued a written Cease and Desist Order to Respondent for the above-described activities. This Order cited a discharge of 0.09 acres of fill in mangrove wetlands, and placement of discarded automobiles on 1.15 acres of mangrove wetlands and an undetermined area of salt flats (estimated to be about 2 acres).
8. By letter dated January 16, 1997, the Corps transferred lead enforcement authority for this case to EPA in accordance with the national Memorandum of Agreement for designating lead agency status for enforcement of Section 404 of the Act on the basis of their determination that the violations are flagrant.
9. EPA inspected the site on March 21, 1997; issued a Request for Information letter pursuant to Section 308 of the Act on May 29, 1997; and inspected the site a second time on December 12, 1997. During the latter inspection EPA observed continuing discharge of solid waste debris into the areas described in Paragraph 4, above.

10. Respondent submitted a letter, dated September 22, 1997, in response to EPA's Section 308 request. This letter describes the history of discharges of solid waste material as described in Paragraphs 4 and 5, above. It also states that Respondent disposed of over 1,000 tons of scrap metal in the area described in Paragraph 5, above, in January 1997. It further states that additional fill was discharged by Respondent in this area at that time by means of dump trucks and bulldozers. The letter also clarifies that the 0.09 acres of fill in mangroves that is described in the Corps' Cease and Desist Order was a discharge of dredged material that was side-casted during excavation of a ditch within the mangroves for use by the fire department in putting out a fire at the Landfill. Specifically, in an emergency situation, Respondent excavated a ditch through the mangroves extending from Mangrove Lagoon to the Landfill access road in order to bring seawater close to the access road so as allow the fire department to draw water with its pumps for extinguishing the fire (see Exhibit B).
11. Based upon Respondent's response to EPA's Section 308 request, review of historical aerial photography and maps of the Landfill, and EPA inspections, EPA has determined that at least half of the approximately 3 acres of fill cited by the Corps in its Cease and Desist Order was discharged on the triangular-shaped area of old earthen fill, or was discharged directly onto salt flats and mangrove wetlands more than five years prior to the Corps' issuance of a Cease and Desist Order. A minimum of 0.2 acres of fill and maximum of about 1.5 acres of fill was discharged onto U.S. jurisdictional wetlands (tidal mangrove swamp and salt flat) between the time of the occurrence of Hurricane Marilyn and the time of EPA's first inspection on March 21, 1997.
12. The salt flats and mangrove swamp referenced above are waters of the United States which came under the jurisdiction of the EPA and the Corps effective September 1, 1976. The Act's jurisdiction encompasses "navigable waters" which are defined as "waters of the U.S." (33 U.S.C. §1362(7)).
13. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 306, 307, 318, 402 and 404 of the Act.
14. The discharge of pollutants into navigable waters of the United States without authorization from the Secretary of the Army as provided by Section 404 of the Act is unlawful under Section 301(a) of the Act, 33 U.S.C. §1311(a).

15. The Secretary of the Army has not issued authorization pursuant to Section 404 of the Act for the discharges described above.
16. The discharged fill material, including earthen material and solid waste, which was deposited in the waters of the United States constitutes "pollutants" within the meaning of Section 502(6) of the Act, U.S.C. §1362(6). The placement of fill material into the waters of the United States constitutes a "discharge of pollutants" as defined by Section 502(12) of the Act, 33 U.S.C. §1362(12).
17. Based on the above Findings, EPA finds Respondent to be in violation of Section 301 of the Act, 33 U.S.C. §1311, for the discharge of pollutants consisting of earthen fill and solid waste in no more than 1.5 acres of navigable waters without authorization by the Secretary of the Army as provided by Section 404 of the Act. Respondent admits the jurisdictional and factual findings of this Order concerning its violations.
18. Each day that the subject activities remain unauthorized by the Corps pursuant to Section 404 of the Act, 33 U.S.C. §1344, constitutes an additional day of violation of Section 301 of the Act, 33 U.S.C. §1311.

### III. SETTLEMENT ORDER AND CONSENT

Based upon the foregoing Stipulations and Findings, and pursuant to the provisions of Section 309(a) of the Act, 33 U.S.C. §1319(a), EPA hereby orders and Respondent hereby consents that:

1. Respondent shall cause no further discharges of dredged or fill material into waters of the United States except as authorized by a valid permit issued by the Corps pursuant to Section 404 of the Act, 33 U.S.C. §1344.
2. Respondent shall remove all fill material, including earthen fill and solid waste fill, from the areas described in Paragraphs 4, 5, and 10 of the Stipulations and Findings, above, within five (5) months of execution of this Order, as set forth in Paragraph 3, below. This shall include all earthen fill that was discharged in U.S. waters on the eastern side of the Landfill, and all solid waste that was disposed in this area either in U.S. waters, on top of discharged earthen fill, or on pre-existing fill, such as on the triangular-shaped area of pre-existing fill east of the scale-house (see Exhibit D).

3. Within thirty (30) days of execution of this Order, Respondent shall submit to EPA a plan, including a time schedule, for removal of material as set forth in Paragraph 2, above. The plan shall identify the ultimate and all intermediate destinations of all removed material. Within thirty (30) days of receipt of the plan, EPA shall approve the plan, with or without changes, and return the plan to Respondent. Thereafter, Respondent shall implement the approved plan, with any changes specified by EPA in its approval of the plan. Implementation of the plan by Respondent must result in completion of all work described in the plan within five (5) months of execution of this Order.
4. Respondent shall notify EPA in writing immediately upon completion of the removal, whereupon EPA or a representative of EPA from another governmental agency may inspect the removal area to determine compliance with this Order. Should EPA find the removal to be inadequate, EPA may order further removal consistent with the requirements of Paragraph 2, above.
5. Subsequent to fill removal, and within one (1) year of execution of this Order, Respondent shall have installed a chain-link fence, a minimum of ten (10) feet high, along the entire eastern boundary of the Landfill. This fence shall pass the scale-house on its eastern side and also follow the access road on its eastern side, thus separating Landfill operations from the wetlands (see Exhibit D).
6. If Respondent cannot comply with any of the deadlines or requirements in this Order, Respondent shall, upon learning of the delay or cause for a delay, immediately notify EPA via faxed message or overnight mail. Such notification shall include the anticipated length of the delay, the cause of the delay, the measures taken by Respondent to prevent or minimize the delay, and a timetable by which Respondent intends to implement these measures. If EPA and Respondent agree that the delay is caused by circumstances beyond the reasonable control of Respondent, such as an Act of God or third parties not under the direction of Respondent, or the obtaining of necessary permits or approvals where Respondent made all reasonable efforts to timely obtain said permits or approvals, the time for performance hereunder may be extended in the sole discretion of EPA for a reasonable period. Neither increased costs or expenses associated with the implementation of this Order nor changed economic circumstances shall be the basis for an extension of time to achieve compliance with this Order.

7. All written information required to be submitted to EPA pursuant to Paragraphs 3 and 4, above, shall be sent via certified mail (return-receipt requested), overnight mail and/or fax to:

Mr. Daniel Montella, Chief  
Wetlands Protection Section  
U.S. Environmental Protection Agency, Region 2  
290 Broadway - 24th Floor  
New York, New York 10007-1866  
Fax number: (212) 637-3889

8. Respondent's compliance with the requirements of this Order shall resolve the violations of Section 301 of the Act, 33 U.S.C. §1311, set forth in the Stipulations and Findings, above.
9. Failure to comply with the requirements of this Order may result in the imposition of civil penalties pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), by EPA against Respondent for the violations of Section 301 of the Act as set forth in the Stipulations and Findings, above. It may also result in referral of this matter to the U.S. Department of Justice for judicial action to achieve injunctive relief.

#### GENERAL PROVISIONS

1. The provisions of the Consent Order shall be binding upon Respondent, its officers, directors, agents, servants, employees and successors or assigns.
2. This Consent Order does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §1252 et seq., or any regulations promulgated thereunder, or any state, territorial, or local law or regulation. This action is an enforcement action taken by EPA to ensure swift compliance with the Act. Issuance of this Consent Order is not an election by EPA to forego any civil or any criminal action otherwise authorized by the Act.

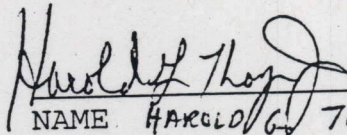
EFFECTIVE DATE

This Consent Order shall become effective upon the date of execution by the Director, Division of Environmental Planning and Protection, of EPA, Region II.

In the Matter of Government of the Virgin Islands of the United States, Department of Public Works  
Docket No. EPA-CWA-II-98-125

For Respondent, U.S. Virgin Islands Dept. of Public Works:

Date: 4/12/99

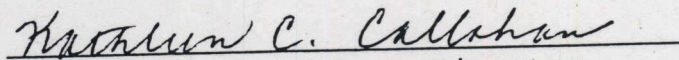


NAME HAROLD G. THOMPSON.

TITLE ACTING COMMISSIONER OF PUBLIC WORKS

For U.S. EPA:

Date: 5/7/99

  
Kathleen C. Callahan, Director  
Division of Environmental Planning  
and Protection



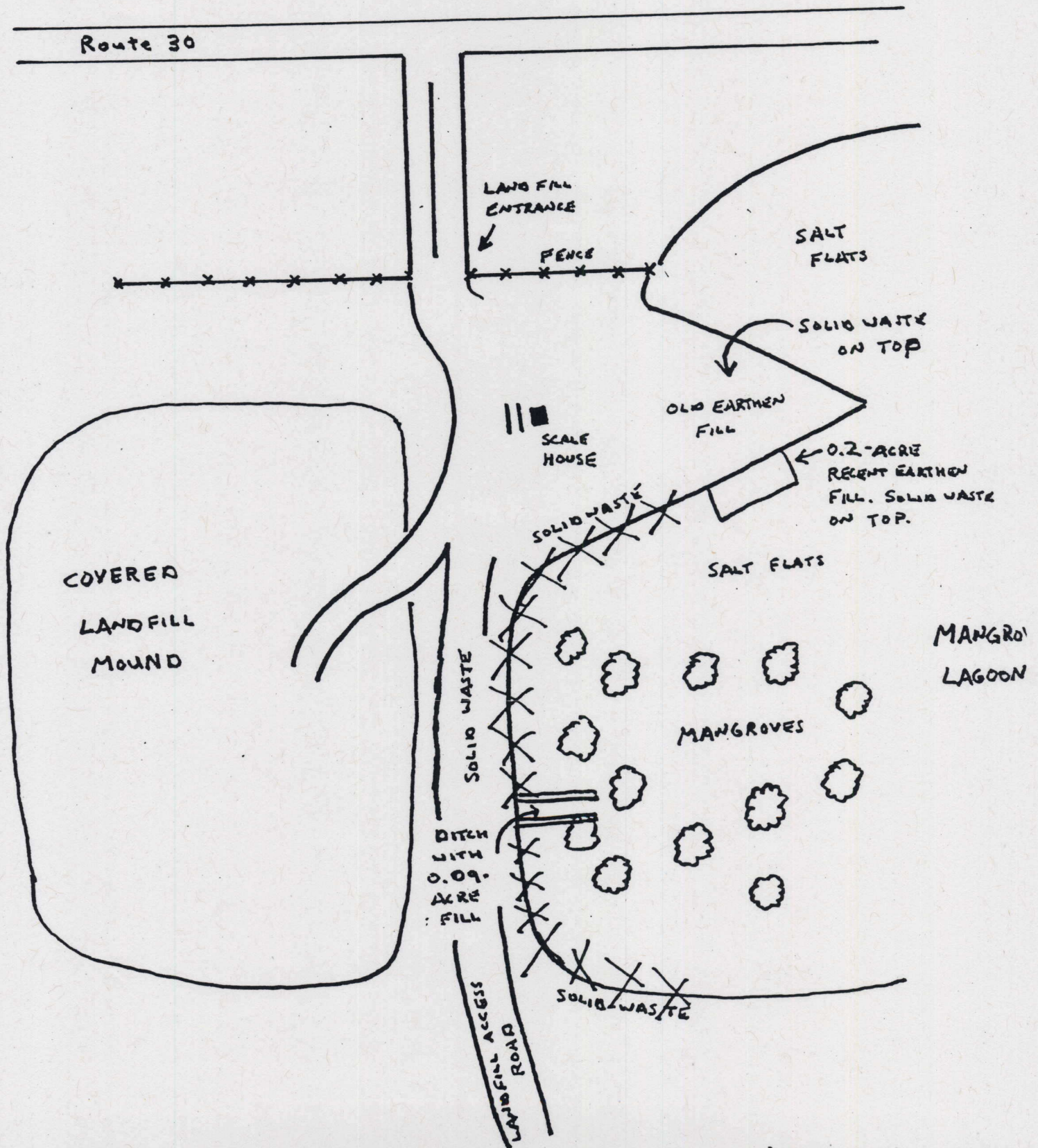
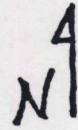
Docket # EPA-CWA-II-98-125  
EXHIBIT A.



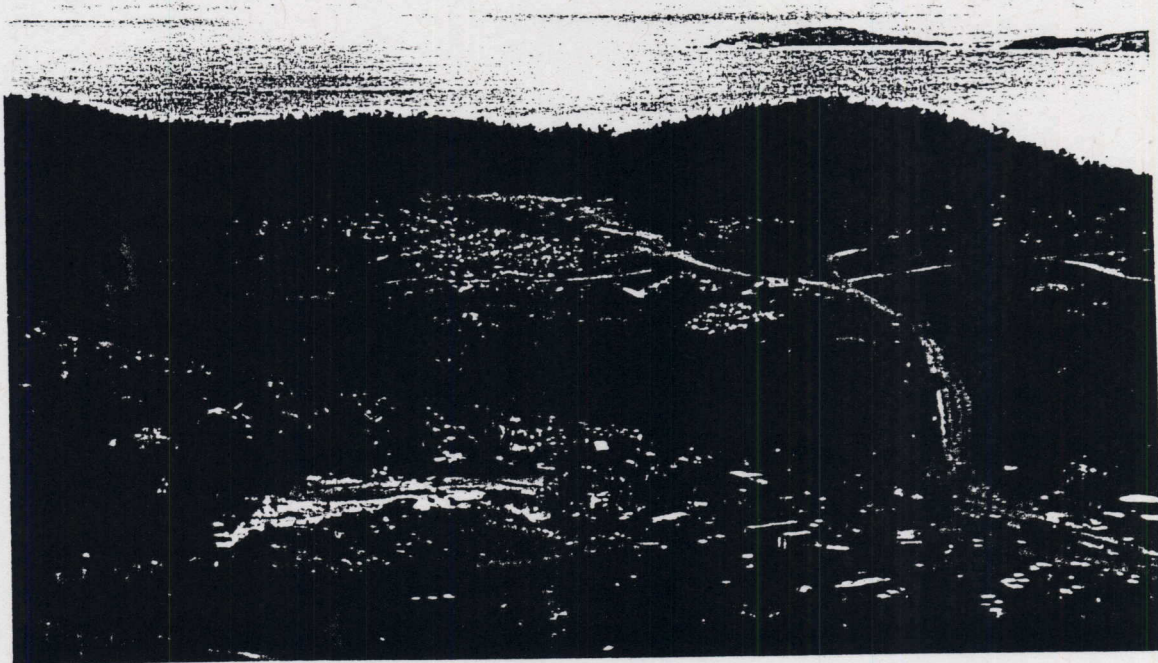
Docket # EPA-CWA-II-98-125

EXHIBIT B.

BOVONI LANDFILL



Not drawn to scale.



**Exhibit C.** Color aerial photograph of Bovoni Landfill taken during emergency clean-up operations subsequent to the occurrence of Hurricane Marilyn in September 1995. An area, approximately 0.2 acres, of earthen fill and assorted small debris covering salt flats, is depicted at the bottom of the photograph. This area appears gray. It is located on the south side of a triangular-shaped spit of old earthen fill (appears brown) projecting into the salt flats.

DOCKET # EPA-CWA - II - 98-125

EXHIBIT D

BOVONI LANDFILL

